

**AMENDED AND RESTATED  
GROUND LEASE**

This Amended and Restated Ground Lease ("Lease") is made and entered into effective June 1, 2017 ("Effective Date") between ERIE YACHT CLUB ("EYC") and ERIE YACHT CLUB FOUNDATION, INC. ("Foundation"), both being non-profit corporations formed under the laws of the Commonwealth of Pennsylvania.

**Recitals**

WHEREAS, EYC is a Pennsylvania Non-Profit Corporation and a 501(c)(7) social club under the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Foundation is a Pennsylvania Non-Profit Corporation and a 501(c)(3) organization under the Code that must be organized and operated exclusively for exempt purposes as set forth in Section 501(c)(3) and not for the benefit of private interests and with none of its earnings inuring to any private shareholder or individual;

WHEREAS, EYC owns and operates the Erie Yacht Club on approximately fifty-nine (59) acres of property on Presque Isle Bay in the City of Erie, Pennsylvania, a description of such property being set forth on Exhibit "A" attached hereto ("EYC Premises"), such EYC Premises consisting of a clubhouse, parking and maintenance facilities, docks, water lots and various related improvements and facilities;

WHEREAS, the Foundation is organized and shall at all times be operated exclusively for educational, scientific, literary and/or other charitable purposes enumerated under Sections 170(c)(2)(B) and 501(c)(3) of the Code;

WHEREAS, on April 23, 2013, EYC and the Foundation entered into a ground lease (the "Initial Lease") under which EYC leased to the Foundation a parcel of land on which to build a "Maritime Education Building";

WHEREAS, the Initial Lease contained a number of contingencies, including (without limitation) that the Foundation build the Maritime Education Building within two years;

WHEREAS, the Maritime Education Building has been built as contemplated by the Initial Lease and all other contingencies have been satisfied; and

WHEREAS, EYC and the Foundation desire to amend and restate the Initial Lease in its entirety to delete references to the contingencies and to address certain other matters.

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound hereby, EYC and the Foundation agree as follows:

1. Description of Leased Land. EYC hereby leases to the Foundation the parcel of property measuring approximately 80' x 100' that is depicted on Exhibit "B" attached hereto (the

"Leased Land") on which Leased Land the Foundation has previously erected the Maritime Education Building.

2. Appurtenant Rights. In addition to leasing the Leased Land, EYC grants to the Foundation and where applicable, to its invitees, the following easements and appurtenant rights in, over, upon and through the EYC Premises:

A. An access easement for ingress and egress to and from the Leased Land for the benefit of the Foundation and its invitees. Access shall at all times be subject to reasonable rules, regulations and restrictions as necessary to protect the security and property of EYC and its members.

B. A utilities easement that will enable the connection of the facilities constructed and located on the Leased Land to electric, gas, telephone, cable, water and sewer services.

C. A non-exclusive easement over and across the water lot portions of the EYC Premises that are adjacent to the Leased Land to permit ingress and egress by boat to the waters of Presque Isle Bay.

D. The non-exclusive use of docking facilities adjacent to the Leased Land for use by the Foundation in the pursuit of its charitable and educational mission and purpose.

E. Access to EYC parking facilities on the EYC Premises that may be required to comply with City of Erie Ordinances for the operation of the Maritime Education Building, subject to such reasonable rules and regulations as would be applicable to EYC invitees and also being subject to such preferential use as may be granted to EYC members in connection with docking facilities adjacent to the Leased Land.

3. Term of Lease. The term of this Lease shall commence on April 23, 2013 and shall continue through April 30, 2063 unless earlier terminated by the mutual agreement of EYC and the Foundation or as otherwise provided herein.

4. Rent. The rent payable by the Foundation to EYC during the term of the Lease shall be \$1.00 per year.

5. Use of Leased Land and of Maritime Education Building. EYC and the Foundation agree as follows with respect to the use of the Leased Land and the Maritime Education Building:

A. The Leased Land shall be used by the Foundation solely and exclusively for the purpose of maintaining and operating the Maritime Education Building in support of its charitable mission and purposes.

B. The Foundation shall be responsible for securing and maintaining in force all zoning, occupancy and other permits or certificates necessary for its use of the Leased Land and of the Maritime Education Building.

C. The Foundation shall not be permitted to assign or sublet its rights and benefits under this Ground Lease to any other person.

D. The Foundation shall not use or permit the use of the Leased Land or the Maritime Education Building in any manner or for any purpose that would jeopardize its 501(c)(3) tax-exempt status.

6. Taxes, Utilities, and Other Services. EYC agrees to: (1) pay all real estate taxes on the Leased Land and the Maritime Education Building; (2) provide and pay for all fire, hazard and liability insurance relating thereto with coverage to be in commercially reasonable amounts; and (3) provide the following utility and other services in connection with the operation of the Maritime Education Building:

A. Water;

B. Sewer;

C. Electricity;

D. Gas;

E. Local telephone, data, and internet services;

F. Routine repairs and maintenance, including capital improvements necessary to maintain the facility;

G. Such scheduling and administrative services as the Foundation may from time to time reasonably request; and

H. Garbage collection.

These utilities and services shall be subject to reasonable limits and restrictions and the Foundation shall control access and use as necessary to avoid abuse.

7. EYC Access and Use of Maritime Education Building. In exchange for the \$1.00 per year rent the rights and easements as herein granted and the utility and other services as provided in Paragraphs 2 and 6, EYC shall have the right to access and to use the Maritime Education Building solely for the limited purposes as set forth below, provided that: (1) such access and use does not interfere with the Foundation's charitable mission and purposes, which shall at all times be given priority; (2) such access and use, and the frequency thereof, does not jeopardize the status of the Foundation as an organization described in Section 501(c)(3) of the Code; and (3) such access and use complies with any requirements set forth in that certain Use Agreement dated as of the Effective Date, between EYC and the Foundation.

8. Liens and Encumbrances. Foundation shall not be permitted to assign, transfer or encumber the leasehold interest as created by this Lease nor the Maritime Education Building located on the Leased Land without the express written consent of EYC, which consent shall not be unreasonably withheld.

9. **[Intentionally Omitted]**

10. Surrender of Improvements. Upon the termination of this Lease, any and all improvements erected on the Leased Land, including the Maritime Education Building, shall be surrendered to EYC without compensation or other payment.

11. Default by Foundation. Any of the following occurrences or acts shall constitute an event of default under this Lease:

A. If Foundation shall:

1. Fail to pay the rent, or other sum required to be paid by Foundation hereunder, and such failure shall continue for ten (10) days after written notice to Foundation of such failure; or

2. Fail to observe or perform any other term or condition of this Lease and such failure shall continue for thirty (30) days after written notice to Foundation of such failure, provided that in case of any such default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period, if Foundation shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence, the time within which such default may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence.

B. If Foundation shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, or shall be adjudicated a bankrupt or become insolvent or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Foundation as a bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law shall be filed in any court and Foundation shall consent to or acquiesce in the filing thereof, or such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof (provided, however, that no Default shall exist if such petition not be discharged within said ninety (90) days so long as Foundation is diligently attempting to defend and have such petition dismissed).

C. If a receiver, trustee, or liquidator of Foundation or of all or substantially all of the assets of Foundation, or of the Leased Land or Foundation's estate therein shall be appointed in any proceeding brought by Foundation, as the case may be, or if any such receiver, trustee, or liquidator shall be appointed in any proceeding brought against Foundation and shall not be discharged within ninety (90) days after such appointment (provided, however, that no Default shall exist if such petition not be discharged within said ninety (90) days so long as Foundation is diligently attempting to defend and have such petition dismissed), or if Foundation shall consent to or acquiesce in such appointment.

D. If the Leased Land or the Maritime Education Building shall have been left unoccupied and unattended for a period of ninety (90) days.

12. Remedies for Foundation Default.

A. If an event of default shall have happened and be continuing, EYC shall have the right to give Foundation written notice of EYC's termination of the term of this Lease. Upon the giving of such notice, the term of this Lease and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the term of the Lease, and all rights of Foundation hereunder shall expire and terminate.

B. If an event of default shall have happened and be continuing, EYC shall have the immediate right, whether or not the term of this Lease shall have been terminated pursuant to 12(A), to re-enter and repossess the Leased Land by summary proceedings, ejectment, any other legal action, or in any manner EYC determines to be necessary or desirable and the right to remove all persons and property therefrom.

13. Foundation's Remedies. In the event of EYC's breach of this Lease, and such breach is not cured at EYC's expense within thirty (30) days after receipt of written notice from Foundation of said breach, Foundation may exercise any and all rights and remedies available to it in law or in equity.

14. Entire Agreement. Except as may otherwise be provided herein and the Use Agreement dated as of the Effective Date between EYC and the Foundation, this instrument contains the entire agreement between the Foundation and EYC as of this date and the execution hereof has not been induced by either of the parties by representations, promises, or undertakings not herein expressed. Except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Lease shall be binding upon EYC or Foundation unless in writing and signed by them.

15. Notices. All notices provided to be given under this Lease shall be given by certified mail, or registered mail, addressed to the proper party, at the following addresses:

Erie Yacht Club  
PO Box 648  
Erie, PA 16512  
Attention: General Manager

Erie Yacht Club Foundation  
PO Box 648  
Erie, PA 16512  
Attention: Chairman

16. Memorandum of Lease. A Memorandum of this Lease may be executed by both parties and recorded in the Office of the Recorder of Deeds of Erie County, Pennsylvania at the option and expense of either party.

17. Miscellaneous.

A. This Lease shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania.

B. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, where permitted by this Lease.

C. It is understood and agreed by EYC and the Foundation that if any provision of this Lease or the relationship as hereby established, either contractually or operationally, should jeopardize the Foundation's Section 501(c)(3) tax-exempt status, this Lease and/or the operational relationship shall be amended or adjusted in order to protect and preserve such tax-exempt status.

D. This Lease supersedes the Initial Lease in its entirety.

E. The parties hereto agree and acknowledge that the Effective Date of this Amended and Restated Ground Lease shall be June 1, 2017, regardless of the actual date(s) of the parties' execution hereof.

F. In the event of a conflict between this Lease and the Use Agreement dated as of the Effective Date, between EYC and the Foundation, the provisions of this Lease shall control.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, EYC and Foundation have duly executed this Lease as of the Effective Date.

ERIE YACHT CLUB

Attest:

Karen L. Carns

By Og Hall (SEAL)  
Title Commodore

ERIE YACHT CLUB FOUNDATION

Attest:

\_\_\_\_\_

By James P. McBride (SEAL)  
Title CHAIRMAN

1322720.3

**EXHIBIT A**

**EYC PREMISES DESCRIPTION**



**EXHIBIT B**

**LEASED LAND DESCRIPTION**