

Date March 6, 2006

WHEREAS, the Park and Recreation Department is charged with the responsibility of providing recreational opportunities for the residents of Des Moines; and

WHEREAS, the City of Des Moines is the owner of a facility known as the "Overlook Terrace" located at the southwest corner of Grays Lake Park; and

WHEREAS, use of a portion of the Overlook Terrace is not presently needed for storage of Park and Recreation Department equipment and vehicles or other municipal purposes; and

WHEREAS, the Des Moines Rowing Club ("DMRC") desires to lease a portion of the Overlook Terrace for the storage of the Des Moines Rowing Clubs' equipment and boats; and

WHEREAS, Park and Recreation Department staff and the DMRC have negotiated a Lease Agreement, a copy of which is on file in the City Clerk's Office, for an initial period from May 1, 2006 until December 31, 2010, with two 5 year renewal options; and

WHEREAS, DMRC has agreed to pay a lease rental rate of \$4.00 per square foot for a total of \$3,375.00 annually; and

WHEREAS, on February 20, 2006, by Roll Call No. 06-346, it was truly resolved by the City Council that the proposed lease of such real property be set down for hearing on March 6, 2006, at 5:00 p.m. in the Council Chamber; and

WHEREAS, in accordance with said notice, those interested in said proposed Lease Agreement, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed lease of public real property located in a portion of Overlook Terrace at the southwest corner of Grays Lake Park, as described in the Lease Agreement which is on file with the City Clerk's Office, are hereby overruled and the hearing is closed.
2. That the form of the Lease Agreement between the Des Mines Rowing Club and the City of Des Moines, which is on file with the City Clerk's Office, be and is hereby approved.
3. That the Mayor is authorized and directed to sign said Lease Agreement and the City Clerk is authorized and directed to attest to the Mayor's signature.

★ **Roll Call Number**

Agenda Item Number

37

Date March 6, 2006

4. That the City Clerk is authorized and directed to forward the original of the Lease Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Property Management division of the Park and Recreation Department for the purpose of causing said documents to be recorded in the Polk County Recorder's Office, upon full execution.

5. Upon receipt of the recorded documents back from the Polk County Recorder, the Property Management division shall file the original of the Lease Agreement and send copies to the City Clerk, the Land Records Clerk and to the Des Moines Rowing Club.

(Council Communication 06-127)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

Mayor

City Clerk

LEASE AGREEMENT
With the Des Moines Rowing Club
Activity ID 29-2001-093

THIS LEASE, made and entered into this _____ day of _____, 2006, by and between the City of Des Moines, Iowa, a Municipal Corporation hereinafter referred to as City, and the Des Moines Rowing Club, a non-profit Iowa corporation, P.O. Box 872, Des Moines, Iowa 50304, hereinafter referred to as Lessee;

WHEREAS, the City is the titleholder of the facility locally known as the "Overlook Terrace" located at the southwest corner at Gray's Lake Park, Des Moines, Iowa; and

WHEREAS, use of the entire space in said building is presently not required for municipal purposes and City desires to lease a portion of such building, in accordance with the terms set forth hereunder; and

WHEREAS, use of the entire said building is not likely to be needed for municipal purposes within the term of this Lease.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants of the parties, the parties agree as follows:

1. **PREMISES.** City leases unto the Lessee and Lessee leases from City, the right to use approximately 1,125 square feet of the "Overlook Terrace" in Gray's Lake Park as follows: Lessee will use 1,125 square feet from May through October and 562.5 square feet from November through April, as described in the Attached Exhibit A and hereinafter referred to as the "Leased Premises." Lessee acknowledges that the City will be using space abutting the Leased Premises in the Overlook Terrace. City shall install an additional dock for the public and Lessee's use by May 31, 2006, hereinafter referred to as "the Dock". City's installation of the Dock by May 31, 2006 shall constitute a material term of this Lease Agreement. Lessee shall have the non-exclusive right to direct access to the Dock. City agrees to provide a sign notifying the public of launch and landing priority use of the Dock by Lessee. City shall be responsible for the operation, maintenance and security of the Dock.

2. **TERM OF LEASE.** The term of this Lease Agreement shall be for the period from May 1, 2006 until December 31, 2010, with up to two five-year extensions with the mutual agreement of the parties. City agrees to provide Lessee with written notice of 90 days prior to the expiration of the initial and any renewal term(s) of this Lease Agreement of Lessee's option to renew. Lessee shall notify City of its desire to renew by providing City with written notice no less than sixty (60) days prior to the expiration of each Lease Agreement period.

3. **USE OF LEASED PREMISES.** Lessee agrees that the Leased Premises shall be used for the purpose of storing racing shells and related equipment. Lessee shall have right to erect, place and maintain shell storage structures and auxiliary equipment thereto on the Leased Premises so long as such structures and equipment do not cause structural damage to the Leased Premises. Lessee will not use the Leased Premises for any other purpose without the express written consent of the City. All structures, equipment, and materials placed on the Leased Premises shall be and remain the property of

Lessee, and may be removed by Lessee at any time prior to the expiration of the term of this Lease Agreement.

City agrees to allow Lessee full access to the Leased Premises during the times that Grays Lake Park is open to the public and during Lessee's scheduled events approved by the City. Lessee agrees to provide City a schedule of all events prior to the rowing season each year for approval by the City. Lessee shall provide City with at least one week's written notice of any additional unscheduled event for the city's approval. In the event of a conflict between the City and an unscheduled or non-approved event planned by Lessee, the City shall have priority on the use of Gray's Lake Park. In all cases where City approval is required for Lessee's events, to the extent that such approval is solely the determination of the Park and Recreation Director, such approval shall not be unreasonably withheld.

4. CONSIDERATION. Lessee agrees to pay to the City rental of \$4.00 per square foot per year for the use of the Leased Premises as set out in Section 1 hereof. The \$3,375.00 annual rent shall be paid in two (2) payments. The first (prorated) payment of \$375.00 is due May 1, 2006. The second payment of 1,687.50 is due August 1, 2006. Subsequent biannual payments of \$1,687.50 each shall be due on January 1 and August 1 throughout the term of this Agreement. Payments shall be made at the Office of the City Treasurer, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 50309-1981. In addition, Lessee agrees to provide custodial clean-up of the interior of the Leased Premises to the City's reasonable satisfaction. Lessee shall repair at its expense any damage or vandalism to the Leased Premises or the Dock caused by Lessee, its members, agents, invitees and sublessees.

5. SECURITY. Lessee agrees that it will provide all security for its shells, structures, equipment and materials at the Leased Premises and will be responsible for reasonable efforts to prevent unauthorized access to its possessions and other contents of the Leased Premises. Lessee agrees that the City shall not be responsible, or in any way liable, for any damages sustained as a result of the Lessee's use of the Leased Premises or the Dock or conduct of the rowing instruction classes or any other event by Lessee. Lessee shall secure the Leased Premises after unlocking the entry if other City employees are not present. Lessee shall maintain an accurate record of usage of the Leased Premises by Club members.

6. COMPLIANCE WITH LAW. Lessee at its sole expense shall comply with all laws, orders and regulations of Federal, state and municipal authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon City or Lessee with respect to the Leased Premises, Gray's Lake Park or the Dock. Lessee, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Lease Agreement, or for the making of repairs, alterations, improvements or additions authorized by the City. Lessee agrees to operate the rowing instruction classes and its conduct of its use of the Leased Premises, Gray's Lake Park and the Dock in a safe and prudent manner and in compliance with all applicable Federal, state and municipal laws and regulations.

7. FORCE MAJEURE. No party shall have any liability to the other for failure to perform any of its obligations hereunder due to events that are unforeseeable and/or beyond its reasonable control, such as Acts of God, weather delays, governmental restrictions or unforeseen commercial delays. If such events occur, each party will have an additional amount of time to perform its obligations hereunder equivalent to the length of delay caused by the force majeure.

8. TERMINATION OF LEASE. This Lease Agreement shall be continued for the lease term, including renewal term(s), unless earlier terminated as provided herein. Either party may terminate this Lease agreement upon a material breach of any term or condition set forth herein which is not cured within thirty (30) days after receipt of written notice from the non-breaching party.

In the event that the Dock has not been installed by the City by May 31, 2006, Lessee shall have the right to terminate this Lease Agreement upon five (5) days written notice to the City, even if the failure to install by such date is due to a force majeure event.

Lessee shall use its best efforts to conduct the use of the Dock and the Leased Premises in a safe manner. At anytime after October 31, 2006, if Lessee determines that the use of the Dock and/or the Leased Premises is unsafe or otherwise unacceptable for the Lessee's purposes, Lessee shall have the right to terminate this Lease Agreement upon thirty (30) days written notice. In such event, if the parties enter into a new lease agreement for a mutually acceptable different location at Gray's Lake, Lessee shall then have the right, at its sole expense, to relocate the Dock to such new location. If the City determines that Lessee's use of the Leased Premises and/or the Dock is unsafe, the City shall have the right to terminate this Lease Agreement immediately if Lessee does not remedy those conditions within the Lessee's control that are causing or contributing to the unsafe use upon thirty (30) days written notice from the City.

The City shall have the right to terminate or cancel this Lease Agreement prior to the expiration of the term upon a determination by the City of Des Moines City Council that the Leased Premises are required for a public purpose and upon giving Lessee at least ninety (90) days written notice stating the intent to so terminate this Lease Agreement. If City so terminates this Lease Agreement by giving ninety (90) days written notice, there shall be no damages to Lessee.

If this Lease Agreement is terminated prior to the end of the initial or any renewal term for any reason other than for the uncured, material breach of Lessee, City shall promptly refund to Lessee the lease payment prescribed in Section 4 hereof, prorated for the time that the Lessee occupied the Leased Premises, and any other advance payments paid by Lessee to the City, if any.

9. POSSESSION AND CONDITION AT END OF TERM. At the expiration of the term of this Lease Agreement, Lessee will deliver possession of the Leased Premises to City in good and clean condition, substantially similar to the condition which it was in at the beginning of this Lease Agreement, except for the effects of ordinary wear and tear and depreciation arising from lapse of time or damage, for which Lessee shall have no liability. Any property of Lessee remaining on the Leased Premises at the expiration of this Lease Agreement shall be considered abandoned.

10. INJURY TO TREES, SHRUBS AND PLANTS. Lessee shall take all necessary measures to avoid injury to the trees, shrubbery and plants adjacent to the Leased Premises and on the route to the Dock. The City acknowledges that Lessee's activities in transporting boats to and from the Dock to the Leased Premises may result in a worn path in the grass.

11. NO SUBLETTING. Lessee shall not sell, assign, sublet or relinquish the Leased Premises to any third party without prior written approval of City. Notwithstanding the foregoing, it is understood that Lessee's members shall be allowed to store privately owned shells and related equipment in the

Leased Premises with the approval of Lessee. Lessee agrees to indemnify the City and to release the City from any liability arising out of, caused by or related to the use and storage of privately owned shells and related equipment in or around the Leased Premises.

12. MAINTENANCE OF LEASED PREMISES. Lessee, at its sole cost and expense, shall keep the interior of the Leased Premises clean, neat, and in good condition excepting ordinary wear and tear. City shall not be required to provide any janitorial service for the Leased Premises. Lessee shall not permit trash or rubbish to accumulate and shall be entitled to use the City trash receptacles located in the areas adjacent to the Leased Premises.

13. ACCESS. During the term of this Lease Agreement, Lessee shall not interfere with or in any way prohibit City from use of the Overlook Terrace or from accessing the Leased Premises for any purpose City desires. Such access by City will not unreasonably interfere with Lessee's reasonable access to, or use and enjoyment of the Leased Premises.

14. CO-PARTNERSHIP DISCLAIMER. It is mutually understood that nothing in this Lease Agreement is intended or shall be construed as in any way creating or establishing the relationship of co-partners between the parties hereto, or as constituting Lessee as an agent or representative of City for any purpose or in any manner whatsoever.

15. CHANGES IN LEASE TERMS. No act of either party, or both parties, shall be construed as an extension of this Lease Agreement, or any change in the terms and provisions, unless changes are reduced to writing and signed by both parties.

16. CONTRACT LANGUAGE. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as the appropriate gender.

17. INSURANCE. Lessee shall defend, pay on behalf of, indemnify and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers, and others working on behalf of the City of Des Moines, Iowa, as provided in Exhibit B. Lessee shall obtain and maintain in continuous effect during the term of this Lease Agreement and while any of its obligations remain unsatisfied, the insurance coverages, limits and endorsements set forth in Exhibit B.

18. NOTICES. Notices pursuant to this Lease Agreement shall be deemed sufficient if sent by certified mail, Return Receipt Requested, to:

To the City:
Attn: City Properties Administrator
Park and Recreation Dept.
3226 University Avenue
Des Moines, Iowa 50309.

To the Lessee:
Des Moines Rowing Club
Attn: Julia Martinusen, President
P.O. Box 872

Des Moines, Iowa 50304

19. **ENTIRE AGREEMENT.** This Lease Agreement, together with all exhibits and attachments attached hereto, constitutes the entire agreement between the parties, and all other representations or statements hereto made, verbal or written, are merged herein, and this Lease Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto. Lessee acknowledges that this Lease Agreement supercedes and cancels any and all previous agreements regarding the Leased Premises.

20. **CHOICE OF LAWS.** This Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

Lessee
DES MOINES ROWING CLUB

City
CITY OF DES MOINES, IOWA

By: *Julia Martinusen*
Julia Martinusen, President

By: _____
T. M. Franklin Cownie, Mayor

Date: 2/14/06

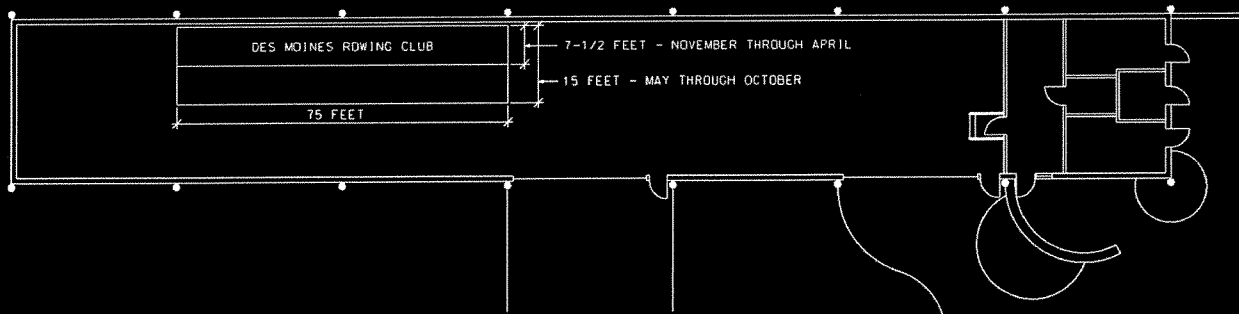
Attest:

Diane Rauh, City Clerk

APPROVED AS TO FORM:

Ann DiDonato
Ann DiDonato
Assistant City Attorney

EXHIBIT A



GRAY'S LAKE RESOURCE CENTER
STORAGE SPACE PLAN
12/7/05

EXHIBIT B

STANDARD INSURANCE & INDEMNIFICATION REQUIREMENTS (NC)

1. GENERAL

The Lessee shall purchase and maintain insurance to protect the Lessee, the City of Des Moines, Iowa throughout the duration of the Contract. Said insurance shall be provided by an insurance company(ies), "admitted" and "nonadmitted" to do business in the State of Iowa, having no less than an A.M. Best Rating of "B+". All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City of Des Moines. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City prior to contract execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

A. COMMERCIAL GENERAL LIABILITY INSURANCE: The Lessee shall procure and maintain during the life of this contract, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Fire Damage Legal Liability with limits of not less than \$100,000. **Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions "a" through "o" or any subsequent ISO equivalent or a non-ISO equivalent form).**

B. AUTOMOBILE LIABILITY INSURANCE: The Lessee shall procure and maintain during the life of this contract, Automobile Liability Insurance with limits of liability of not less than \$500,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles. **If the Lessee does not own any vehicles, coverage is required on non-owned and hired vehicles.**

C. LIQUOR LIABILITY (When applicable): If alcoholic beverages **are provided** and/or dispensed by someone who is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages; or by someone who is **required to have** a liquor license, the licensee shall secure and maintain throughout the life of this agreement, commercial Liquor Liability Insurance with limits of not less than \$1,000,000 combined single limit including bodily injury, property damage and injury to means of support. If licensee is not the Lessee, the licensee must also secure and maintain General Liability coverage with limits of not less than \$1,000,000 per occurrence and/or aggregate combined single limit.

D. ADDITIONAL INSURED & CONTRACTUAL LIABILITY: The City **shall not be named or included** as an Additional Insured, **but all policies except Workers Compensation shall include** Contractual Liability,

including cost of defense and settlement, and a definition of “Insured Contract” that includes indemnification of a municipality.

E. **CANCELLATION:** All policies shall include a Cancellation Endorsement guaranteeing the City **no less than 30 days** advance written notification of policy cancellation.

F. **SUBCONTRACTORS:** The Lessee shall require that any of its agents and subcontractors who perform work and/or services pursuant to the provisions of this contract meet similar insurance requirements as are required of the Lessee.

G. **CERTIFICATE(S) OF INSURANCE:** The Lessee shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through G and I above. **The Certificate(s) of Insurance shall specify under “Description of Operations/ Locations/ Vehicle/Special Items”: (1) the title of the contract, agreement, permit, license, etc. and (2) the following statement: “General Liability and Automobile Liability insurance policies include Contractual Liability coverage. The General Liability definition of “Insured Contract” includes the indemnification of a municipality when required by ordinance or by contract or agreement.”**

3. INDEMNIFICATION REQUIREMENTS

A. **INDEMNIFICATION (HOLD HARMLESS) PROVISION:** To the fullest extent permitted by law, the Lessee agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of the work and/or services provided by the Lessee pursuant to the provisions of this contract.

It is the intention of the parties that the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by the Lessee, its officers, employees, subcontractors, and others affiliated with the Lessee due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the work and/or services performed by the Lessee pursuant to the provisions of this contract.

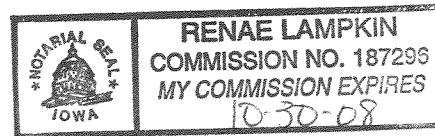
4. WAIVER OF SUBROGATION

A. **WAIVER OF SUBROGATION:** To the extent permitted by law, Lessee hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, from and against any and all liability or responsibility to the Lessee or anyone claiming through or under the Lessee by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this contract. The Lessee’s policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of the Lessee to recover thereunder.

STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this 14TH day of February, 2006 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared JULIA MARTINUSEN, to me personally known, who, being by me duly sworn, did say that she is PRESIDENT of the DES MOINES ROWING CLUB executing the foregoing instrument; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; that JULIA MARTINUSEN acknowledges the execution of the instrument to be the voluntary act and deed of the Club and of the fiduciary, by it, by them and as the fiduciary voluntarily executed.

Renae Lampkin
Notary Public in the State of Iowa



STATE OF IOWA)
) ss.
COUNTY OF POLK)

On this _____ day of _____, 2006, before me, the undersigned, a Notary Public, personally appeared T. M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, who, being by me duly sworn, did state that they are the MAYOR and CITY CLERK, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution adopted under Roll Call 06- _____, Agenda Item _____, dated _____, 2006 and that T. M FRANKLIN COWNIE and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Notary Public in the State of Iowa