

RIVERFRONT IMPROVEMENT COMMISSION MEETING

CITY OF DAVENPORT, IOWA

Thursday, July 10, 2025; 12:00 PM

City Hall | 226 West 4th Street | Council Chambers

I. Call to Order

II. Leases

Lindsay Park Yacht Club | Lease and Management Agreement Updates

III. Adjournment

City of Davenport

Department: Administration

Contact Info: |

Subject:

Lindsay Park Yacht Club | Lease and Management Agreement Updates

**Action / Date**

**7/10/2025**

Attachments:

1. LP Marina Management Agreement DRAFT 070925
2. LPYC Lease DRAFT 070925

## MARINA MANAGEMENT AGREEMENT

THIS MARINA MANAGEMENT AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_\_, by and between the CITY OF DAVENPORT, an Iowa municipal corporation, through its Riverfront Improvement Commission ("Owner"), and LINDSAY PARK YACHT CLUB, INC., an Iowa corporation not for pecuniary profit ("Manager").

WHEREAS, by ordinance of the City Council of Davenport, Iowa, the area of the river and land adjacent thereto, where the Lindsay Park Marina ("Marina") has been constructed, has been placed un the jurisdiction of the Davenport Riverfront Improvement Commission, to be by said Commission improved, controlled, and managed on behalf of the City of Davenport, Iowa, and,

WHEREAS, in furtherance of said purposes the Riverfront Improvement Commission desires to secure the services of the Manager to perform and carry out under the authority of the Riverfront Improvement Commission, the acts necessary to further improve the Marina location by providing access to said Marina, a public parking area, and public mooring in said Marina for boats.

### 1. TERM

Subject to the following terms and conditions, the Owner and Manager agree that Manager shall be employed by the Owner for the purpose of managing the operation of the Marina and the area and facilities which are attendant thereto. The term of this Agreement shall be for a period of twenty (20) years beginning on August 1, 2025, and ending on July 31, 2045.

### 2. MANAGEMENT FEE

In consideration for performing such services Owner agrees to pay Manager an annual fee of forty-five thousand dollars (\$45,000.00) for the years 2026- 2035 and fifty thousand dollars for the (\$50,000.00) for the years of 2036-2044, and a pro-rated amount of twenty-nine thousand and one hundred sixty-six dollars and sixty-seven cents (\$29,166.67) for January 1, 2045, to July 31, 2045.

- a) The management fee is to be paid from the Marina Management Account discussed in Section 3(b).

### 3. MANGER DUTIES AND AUTHORITY

During the Term of this Agreement, Manager shall perform the following management functions and services for the Marina. To assist this, Owner grants Manager the authority, to do the following:

- a) Property Management Standards: Manager shall exercise reasonable care and diligence in alignment with industry standards while managing the Marina and performing its obligations under this Agreement.
- b) Collect Rents and Deposits: Manager shall bill and collect all charges and rents due from renters and deposit them into an FDIC- or NCUA-insured account owned by both the Owner and the Manager the Marina Management Account. Manager shall deposit all receipts collected for Owner in a separate insured account(s) in a reputable financial institution separate from Manager's other accounts. Funds from this account shall be applied to operational expenses, with invoices for each such expense to be provided to Owner. Manager shall make reasonable efforts to send appropriate notices in the event a boat owner is more than 30-days delinquent and engage in efforts to remove such boats, collect delinquent charges or rents before attorney collection efforts.
- c) Slip Lease Administration: Manager shall be responsible for the administration of all slip leases affecting the Marina. Manager shall, in connection with such slip lease administration, monitor tenant compliance and enforce the Owner's rights under all such slip leases; upon default any tenant and after consultation with Owner, terminate tenancies and sign and serve in the name of Owner to evict tenants and to recover possession of the slip, and recover rents and other sums due; when expedient, settle, compromise, and release such disputes, actions, or suits or reinstate such tenancies; advise Owner of suggested slip lease rental rates and terms, but not increase such rates without authorization of Owner.
- d) Provide Management Reports: Manager shall provide Owner an accounting of the operation, income, expenses, and maintenance regarding the operation of the Marina on a yearly basis for all transactions occurring during the prior year. Owner shall have access to Manager's books, records, and receipts concerning the Marina held at Manager's office during normal business hours.
- e) Pay Operating Expenses: Manager shall pay utility charges, water charges, insurance premiums, and other charges to operate and manage the Marina from the accounts described in Section 3(b). Manager shall establish accounts and enter contracts for electricity, gas, fuel. Water, steam, trash, janitorial, security, and other services Manager may deem advisable.

- f) Administer Repairs and Maintenance: Manager shall make, or cause to be made, and supervise repairs, maintenance, replacements, alterations, and decorating of the Marina, and purchase supplies and pay all bills, therefore. Manager shall obtain Owner's prior approval for all expenditures above \_\_\_\_\_ for any one item, except for emergency repairs. In the case of an emergency, Manager shall immediately notify Owner and attempt to mitigate any further damage and stabilize the situation before seeking additional expenditure approval. All expenses incurred in the repair or maintenance of the Marina is to come from the accounts referred to in Section 3(b). All rebates or refunds shall be applied to the accounts referred to in Section 3(b).
- g) Hire Independent Contractors: Manager shall hire, supervise, and discharge any additional labor contractors required for the operation and maintenance of the Marina as independent contractors. Owner may request Manager to discontinue using a particular independent contractor.
- h) Capital Improvements and Repairs: Manager shall be responsible for contracting and obtaining financing for all capital improvements and repairs necessary for the operation of the Marina. All improvements and repairs shall be considered property of the Owner.
- i) Act as Government Liaison: Manager shall prepare, execute, and file, or submit to Owner for execution and filing, as applicable, all necessary reports to governmental or other regulatory authorities such as sales tax returns, if necessary, and insurance reports, and advise Owner of any necessary licenses or permits required by any regulatory authority or competent jurisdiction.
- j) Additional Services: Manager may perform any other services beyond the scope of ordinary management services of the Agreement as requested by Owner. This includes, but is no limited to, supervising major capital repairs, additions, or restoration of damage.

#### **4. OWNER'S DUTIES**

The Owner shall exercise reasonable efforts to enable the Manager to operate and maintain the Marina in first class condition.

#### **5. MANAGER'S ON-SITE EMPLOYEES**

Any on-site marina or general manager, maintenance technicians, dockhands, front-desk, or other employees will be the employee of Manager and not of Owner. Manager shall comply with all applicable laws and regulations regarding employees including obtaining and maintaining worker's compensation insurance, withholding and paying employment taxes, paying wages, establishing an unemployment compensation account with the of Iowa, filing required state and federal reports, and monitoring labor hours and other matters the parties may agree to. Manager is an equal-opportunity employer and will advertise as such. All employees shall be under Manger's sole direction and control to perform the services under this Agreement.

## **6. MANAGER'S AGENCY STATUS**

Manager is an independent contractor and shall act as Owner's exclusive agent to manage, operate, maintain, and service the Marina in Manager's sole discretion, and as further stated in this Agreement.

## **7. INDEMNIFICATION**

- a) Owner: Owner shall indemnify and hold Manager harmless for any claims, actions, proceedings, damages, liabilities, costs, expense, interest, and fees including, without limitation, reasonable attorneys' fees and costs, arising directly or indirectly, from any of the following:
  - i. The grossly negligent acts or omissions of Owner or its employees or agents;
  - ii. the breach of any representation or warranty of the Owner given in this Agreement;
  - iii. the breach or default in the performance by Owner of any of the obligations in this Agreement;
- b) Manager: Manager shall indemnify and hold Owner harmless for any claims, actions, proceedings, damages, liabilities, costs, expenses, interest, and fees including without limitation, reasonable attorneys' fees and costs, arising directly or indirectly, from any of the following:
  - i. The negligent acts or omissions of Manager or its employees or agents and any subcontractors retained or hired by Manager;
  - ii. the breach of any representation or warranty of the Manager given in this Agreement;
  - iii. the breach or default in the performance by the Manager of any of the obligations in this Agreement;

- iv. any employment related claims or assertions by any employee of Manager performing services at the Marina of incorrect employment classification, direct liability, joint or co-employer responsibility, or claims of Owner's employment responsibility for Manager's employees. Such claims shall be the sole responsibility of Manager to defend, at its sole expense.

If any claim is covered by an insurance policy maintained for the benefit of Owner and Manager, Manager waives, for itself and for all its insurers, all claims and rights of subrogation, which it may have against Owner, its employees, and agents. This Manager indemnity does not apply to any acts or omissions of the Owner, its directors, officer, or employees involving negligence, willful misconduct, fraud, or bad faith.

- c) Mutual Cooperation: If any claims, demands, suits, or other legal proceedings are made by any person against Owner or Manager relating to this Agreement, each party shall give the other all pertinent information and reasonable cooperation in the defense or to the disposition thereof.

## 8. INSURANCE

The Manager will purchase and maintain the following types and amounts of insurance:

### **Commercial General Liability**

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

### **Commercial Automobile Liability (if autos are used)**

Any Auto, Hired & Non-Owned Combined Single Limit	\$1,000,000
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<b>Excess Liability Umbrella</b>	<b>\$1,000,000</b>
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**Statutory Worker's Compensation** with waiver of subrogation in favor of the Owner.

The Owner shall be identified as a certificate holder and specifically named as an additional insured under General Liability. The insurance required under this section shall be Primary insurance and non-contributory and include contractual liability insurance coverage.

## 9. TERMINATION

- a) Termination: This agreement may be terminated by the Owner upon one (1) year's notice to the Manager; by the Owner without notice if a petition in bankruptcy is filed the Manager, and such petition is not dismissed within thirty (30) days of filing ; or by either party upon material breach of any term of this Agreement by the other party and failure to cure such breach within thirty (30) days after written notice of such breach has been given to the breaching party.
- b) Turnover to Owner Records and Funds Upon Termination: Upon termination, Manager shall, at its sole cost, deliver to Owner: copies of all books, records, contracts, leases, deposit receipts, unpaid bills, and deposit account records related to managing the Marina, a final accounting reflecting the income and expense balances as of the date termination, within 30 days after termination, and any balance of Owner funds or security deposits held by Manager.
- c) Debts Upon Termination: All debts incurred during capital improvements or repairs shall be assumed by the Owner of the property upon termination of this Agreement.

## **10. OPERATION OF FUELING STATION**

Manager, its employees or subcontractors shall be responsible for the operation of the Marina fueling station including routine maintenance, inspection, fueling of watercraft, other vehicles at the Marina and for overseeing the filling of any above ground or underground storage tanks related to the operation of the Marina fueling station. The manager shall be responsible for any cleanup costs associated with spills, leaks, or environmental contamination caused by the negligent acts of the Manager, its employees or subcontractors in the operation of the fueling system as noted above. In the vent that the Manager, its employees or subcontractors become aware of an event which has resulted in the discharge or release of any fuel or other petroleum product into the water, they shall immediately notify Owner. The Manager shall carry liability insurance which would explicitly cover any such environmental cleanup or other costs associated with regressing any spill or contamination due to Manager's operation of the fueling station in the minimum amount of one million (\$1,000,000.00) dollars. Said insurance policy shall list the City of Davenport as ana additional insured. The Manager shall indemnify and hold harmless the Owner form any cleanup costs, damages, fines, or other damages resulting from negligence or willful acts of the Manager, its employees or subcontractors while operating the fueling station at the Marina.

## **11. MSICELLANEOURS PROVISIONS**

- a) Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be delivered (i) in person, (ii) by certified mail, return receipt requested, or (iii) by a recognized overnight delivery service, and shall be addressed as follows:

To Landlord: City of Davenport  
226 W 4<sup>th</sup> Street  
Davenport, Iowa 52801  
Attention: City Administrator

To Tenant: Lindsay Park Yacht Club, Inc.  
PO Box 3484  
Davenport, Iowa 52808-3484  
Attention: Commodore

- b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Iowa. Any disputes arising under this Agreement shall be resolved through mediation, and if mediation is unsuccessful, then through binding arbitration, in accordance with the rules of the American Arbitration Association.
- c) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- d) Entire Agreement. This Agreement, together with the attachment attached hereto, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, whether written or oral, between the parties.
- e) Amendments. This Agreement may not be amended, modified, or supplemented except by a written instrument signed by both Owner and Manager.
- f) Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- g) Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No waiver of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof.
- h) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- i) Authority. Each party represents and warrants that it has full power and authority to enter into this Agreement and that the person signing on its behalf has been duly authorized to do so.
- j) Limitation of Liability. Notwithstanding anything to the contrary contained in this Agreement, neither Owner nor Manager shall be liable to the other for any consequential, incidental, indirect, special, or punitive damages arising out of or in connection with this Agreement, except in cases of gross negligence or willful misconduct.
- k) Dispute Resolution. In the event of any dispute arising out of or relating to this Agreement, the parties agree to first attempt to resolve the dispute through good-faith negotiations. If the parties are unable to resolve the dispute through negotiations within 30 days, they shall submit the dispute to mediation in accordance with the rules of the American Arbitration Association. If mediation is unsuccessful, the parties shall proceed to binding arbitration, also in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in Davenport, Iowa, by a single arbitrator mutually agreed upon by the parties or, if they cannot agree, selected in accordance with the American Arbitration Association rules. The arbitrator's decision shall be final and binding on the parties and may be entered as a judgment in any court of competent jurisdiction. The costs of mediation and arbitration shall be shared equally by the parties.
- l) Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from events beyond the control of such party, including but not limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes, or other disasters (each a "Force Majeure Event"). If a Force Majeure Event occurs, the party whose performance is affected shall give prompt written notice to the other party and shall use diligent efforts to minimize the impact of such event.

IN WITNESS WHEREOF, the parties have executed this Marina Management Agreement as of the date first written above.

LANDLORD:  
CITY OF DAVENPORT

By: \_\_\_\_\_  
Name: Michael Matson  
Title: Mayor

TENANT:  
LINDSAY PARK YACHT CLUB, INC.

By: \_\_\_\_\_  
Name: Kris Clements  
Title: Commodore

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into this \_\_\_\_\_, by and between the CITY OF DAVENPORT, an Iowa municipal corporation, through its Riverfront Improvement Commission ("Landlord"), and LINDSAY PARK YACHT CLUB, INC., an Iowa corporation not for pecuniary profit ("Tenant").

### ARTICLE 1. PREMISES

1.1. Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises containing approximately 1.25 rentable acres, which includes all buildings and structures. See Attachment A. (the "Premises").

### ARTICLE 2. TERM; DELIVERY OF PREMISES; CONDITION OF PREMISES

2.1. Term. The term of this Lease (the "Term") shall commence on August 1, 2025, (the "Commencement Date") and shall expire on July 31, 2045, unless sooner terminated.

2.2. Delivery of Possession. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date.

2.3. Condition of Premises. Tenant has inspected the Premises and agrees to accept the same "AS-IS" in their present condition. Landlord makes no representation or warranty concerning the condition of the Premises, except as expressly set forth in this Lease.

### ARTICLE 3. RENT

3.1. Rent. Tenant shall pay to Landlord as rent for the Premises ("Rent") the following amounts:

- 1) 8/1/25-12/31/25- \$0.00
- 2) 1/1/26 – 12/31/30- \$ \_\_\_\_\_ per year
- 3) 1/1/31 - 12/31/35- \$ \_\_\_\_\_ per year
- 4) 1/1/36 – 12/31/40- \$ \_\_\_\_\_ per year
- 5) 1/1/41 – 12/31/44- \$ \_\_\_\_\_ per year
- 6) 1/1/45 – 7/31/45- \$ \_\_\_\_\_

3.2. Payment of Rent. Rent shall be payable in equal yearly installments, in advance, on the first day of each calendar year during the Term. All Rent and other amounts payable by Tenant at the address specified in Section 11.1 or such other place as Landlord may designate in writing.

### ARTICLE 4. UTILITIES

4.1. Tenant's Duties. The Tenant shall provide and be responsible for payment of all charges for water, gas, heat, air conditioning, electricity, and sewer for the Leased Premises. The Tenant shall pay all charges for telephone and internet service, trash, garbage, and rubbish removal used by the Tenant. Any security deposit or connection charges required by any utility company to furnish service to the Tenant shall be paid by the Tenant. Landlord shall provide and maintain the necessary mains, conduits, wires, and cables to bring water, electricity, and gas to the Leased Premises.

## **ARTICLE 5. USE OF PREMISES**

5.1. Permitted Use. Tenant shall use and occupy the Premises for social, recreational, and education purposes for the purpose of providing year round facilities and accommodations for the owners of private water-crafts for parking and storage of such water-craft, and to provide said members of the Tenant's club a Clubhouse and other facilities for recreational, educational, and social purposes. Tenant shall not use the Premises for any other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Tenant's use of the Premises shall comply with all applicable laws, ordinances, rules, and regulations of the City of Davenport and the state of Iowa.

5.1.1. Signs and Advertising Materials. The Tenant recognizes there are Signage Restrictions for the demised area. All proposed signage must be submitted and approved by the City of Davenport before installation, whether affixed to the building or window-type display signs. The Tenant shall submit its signage plan to the Landlord for review and approval.

5.2. Compliance with Laws. Tenant, at its sole cost and expense, shall comply with all applicable laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises, including any requirements or regulations specific to Tenant's status as a non-profit organization. Landlord shall be responsible for ensuring that the Premises complies with all applicable laws, including the Americans with Disabilities Act (ADA), except to the extent that any non-compliance is caused by Tenant's specific use of the Premises or any Alterations made by Tenant.

## **ARTICLE 6. TEMPORARY SUSPENSION OF USE DUE TO FLOODING**

6.1. Notwithstanding any other provision in this Lease, Tenant's right to use, occupy, or access the Premises shall be temporarily suspended during periods of significant flooding, as defined below.

6.2. For purposes of this Lease, "significant flooding" means:

6.2.1. The issuance of a flood warning by the National Weather Service for the county in which the Premises is located;

6.2.2. Water levels on the Premises; or

6.2.3. A declaration of a state of emergency due to flooding by the Governor of Iowa or local officials with jurisdiction over the Premises.

6.3. Landlord shall provide Tenant with prompt Notice of the occurrence of significant flooding and the temporary suspension of Tenant's right to use the Premises. Such Notice may be provided by email, text message, or other reasonable means of communication.

6.4. The temporary suspension shall remain in effect until Landlord provides notice that the significant flooding has abated and it is safe to resume use of the Premises. Landlord shall not unreasonably delay providing such notice once flooding conditions have improved.

6.5. Landlord shall not be liable for any loss, injury, or damage to person or property resulting from significant flooding or the temporary suspension of use under this Section.

6.6. Landlord shall calculate the pro-rated amount of rent for the time that use of the Premises is suspended due to flooding. That amount shall be credited to the rent due in the year following the significant flooding event.

## **ARTICLE 7. MAINTENANCE AND REPAIRS**

7.1. Tenant's Obligations. Tenant shall, at its sole cost and expense, keep and maintain the Premises, including any Alterations (as defined in Article 7), in good condition and repair, reasonable wear and tear excepted. Tenant shall be responsible for all maintenance, repairs, and replacements within the Premises, including, but not limited to, interior walls, floors, ceilings, windows, doors, and lighting fixtures.

## **ARTICLE 8. ALTERATIONS**

8.1. Alterations by Tenant. Tenant shall not make any alterations, additions, or improvements to the Premises (collectively, "Alterations") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. All Alterations shall be performed in a good and workmanlike manner, in compliance with all applicable laws and regulations, and shall be completed free of liens. Tenant shall provide Landlord with detailed plans and specifications for any proposed Alterations and shall obtain all necessary permits and approvals before commencing any work.

8.2. Ownership of Alterations. All Alterations made by or on behalf of Tenant shall become the property of Landlord upon the expiration or earlier termination of this Lease, unless Landlord requires Tenant to remove any such Alterations, in which case Tenant shall remove the same at Tenant's sole cost and expense and restore the Premises to their prior condition. Landlord shall notify Tenant at the end of the Term whether such Alterations will be required to be removed at the end of the Term.

## **ARTICLE 9. INSURANCE AND INDEMNIFICATION**

9.1. Fire Insurance. The Tenant shall be responsible for carrying fire insurance and other risk insurance on personal property owned or used by the Tenant. The Landlord shall be responsible for fire and extended coverage, including casualty, on the building in which the Leased Premises are located.

9.2. Tenant's Insurance. The Tenant shall secure and maintain such primary insurance policies as will protect themselves or their Subcontractors from claims for bodily injuries, death, or property damage which may arise from operations under this Lease whether such operations be by themselves or by any Subcontractor or anyone employed by them directly or indirectly.

9.2.1. The following insurance policies are required unless other limits are specified. The City shall be identified as a certificate holder and specifically named as an additional insured under General Liability.

### **Commercial General Liability**

Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000

### **Commercial Automobile Liability (if autos are used)**

Any Auto, Hired & Non-Owned Combined Single Limit	\$1,000,000
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<b>Excess Liability Umbrella</b>	<b>\$1,000,000</b>
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**Statutory Worker's Compensation** with waiver of subrogation in favor of the City.

9.2.2 Contractual Liability: the insurance required under this section shall:

1. **be Primary insurance and non-contributory.**
2. **include contractual liability insurance coverage for the Tenant's obligations under the paragraph 8.5.**

9.3 Certificates of Insurance. Certificates of Insurance, acceptable to the Landlord indicating insurance required by the Contract is in force, shall be filed with the Landlord prior to approval of the Contract by the Landlord. The Tenant shall ensure that coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Landlord. The Tenant will accept responsibility for damages and the Landlord's defense in the event no insurance is in place and the Landlord has not been notified.

9.4. Mutual Waiver of Subrogation. Landlord and Tenant each hereby release the other, and the other's partners, shareholders, officers, directors, agents, and employees, from any and all liability for any loss or damage to the extent such loss or damage is covered by the releasing party's insurance, regardless of the cause of such loss or damage. Each party shall cause its insurance policies to include a waiver of subrogation endorsement or clause.

9.5. Indemnification. To the fullest extent permitted by the law, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims, actions, damages, liabilities, and expenses, including reasonable attorneys' fees, arising from or related to: (i) Tenant's use or occupancy of the Premises; (ii) any negligent or willful act or omission of Tenant or Tenant's agents, employees, or invitees; or (iii) any breach or default by Tenant in the performance of its obligations under this Lease. Notwithstanding the foregoing, Tenant shall not be required to indemnify Landlord for any claims, actions, damages, liabilities, or expenses to the extent caused by the negligence or willful misconduct of Landlord or its agents, employees, or contractors.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

10.1. Termination. In the event of destruction of the Premises during the said term, which requires repairs to said Premises, or is declared to be unfit for occupancy by any authorized public authority for any reason other than the Tenant's act, use, or occupation, which declaration requires repairs provided the Tenant gives to the Landlord written notice of the necessity, therefore. If those repairs are not, or cannot be, completed within Thirty (30) Days of said notice, then the Tenant may, at its option, cancel this Lease. However, if the Tenant does not desire to cancel the Lease, rent shall be abated during the period which those repairs are made, and the Tenant is compelled to discontinue business in the Premises.

## **ARTICLE 11. ASSIGNMENT AND SUBLETTING**

11.1. Restriction on Transfer. Tenant shall not assign, mortgage, pledge, encumber, or in any manner transfer this Lease or any interest herein, or sublet the Premises or any part thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Any request for Landlord's consent shall be accompanied by detailed information about the proposed assignee or subtenant, including financial statements, business history, and intended use of the Premises.

11.2. Landlord's Recapture Right. Notwithstanding anything to the contrary in Section 11.1, Landlord shall have the option, exercisable by written notice to Tenant within thirty (30) days after receipt of Tenant's notice of a proposed transfer, to recapture the space proposed to be transferred. If Landlord exercises this option, this Lease shall terminate with respect to the space proposed to be transferred as of the date specified in Landlord's notice.

## **ARTICLE 12. DEFAULT AND REMEDIES**

12.1. Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" by Tenant:

- (a) Failure to pay any installment of Rent or any other amount due hereunder within fifteen (15) days after the same is due and payable;
- (b) Failure to perform any other term, condition, or covenant of this Lease, which failure continues for more than thirty (30) days after written notice from Landlord; provided, however, that if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;
- (c) The filing of a petition by or against Tenant for adjudication as a bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of Tenant's property;
- (d) The making by Tenant of an assignment for the benefit of creditors; or
- (e) The abandonment or vacation of the Premises by Tenant.

12.2. Landlord's Remedies. Upon the occurrence of any Event of Default, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or equity:

- (a) Terminate this Lease and Tenant's right to possession of the Premises, in which case Tenant shall immediately surrender the Premises to Landlord; or
- (b) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial

decisions of the state of Iowa.

12.3. Mitigation of Damages. Landlord shall use commercially reasonable efforts to mitigate its damages in the event of a default by Tenant.

12.4. Costs and Attorney Fees. If the Tenant shall fail to pay any part of the rent herein provided, or any other sum required by this Lease to be paid to the Landlord at the times or in the manner provided, or if default shall be made in any of the other covenants or conditions on its part agreed to be performed, then the Tenant shall be responsible for payment of all reasonable costs and attorney fees of the Landlord that result from the Landlord pursuing its rights and remedies.

## **ARTICLE 13. MISCELLANEOUS PROVISIONS**

13.1. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be delivered (i) in person, (ii) by certified mail, return receipt requested, or (iii) by a recognized overnight delivery service, and shall be addressed as follows:

To Landlord: City of Davenport  
226 W 4<sup>th</sup> Street  
Davenport, Iowa 52801  
Attention: City Administrator

To Tenant: Lindsay Park Yacht Club, Inc.  
PO Box 3484  
Davenport, Iowa 52808-3484  
Attention: Commodore

13.2. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the state of Iowa. Any disputes arising under this Lease shall be resolved through mediation, and if mediation is unsuccessful, then through binding arbitration, in accordance with the rules of the American Arbitration Association.

13.3. Binding Effect. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13.4. Entire Agreement. This Lease, together with the attachment attached hereto, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements, whether written or oral, between the parties.

13.5. Amendments. This Lease may not be amended, modified, or supplemented except by a written instrument signed by both Landlord and Tenant.

13.6. Severability. If any provision of this Lease is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13.7. Waiver. No waiver of any provision of this Lease shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No waiver of any breach of this Lease shall constitute a waiver of any subsequent breach of the same or any other provision

hereof.

13.8. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.9. Authority. Each party represents and warrants that it has full power and authority to enter into this Lease and that the person signing on its behalf has been duly authorized to do so.

13.10. Limitation of Liability. Notwithstanding anything to the contrary contained in this Lease, neither Landlord nor Tenant shall be liable to the other for any consequential, incidental, indirect, special, or punitive damages arising out of or in connection with this Lease, except in cases of gross negligence or willful misconduct.

13.11. Compliance with Municipal Regulations. Landlord represents and warrants that it has full authority to enter into this Lease and that this Lease complies with all applicable municipal laws, regulations, and policies governing the leasing of City-owned property. Tenant acknowledges that this Lease may be subject to additional municipal requirements and agrees to cooperate with Landlord in complying with any such requirements.

13.12. Non-Profit Accommodation. Landlord acknowledges Tenant's status as a non-profit organization and agrees to reasonably cooperate with Tenant in maintaining its tax-exempt status, including providing any necessary documentation or certifications related to Tenant's use of the Premises.

13.13. Early Termination Option. Tenant shall have the one-time right to terminate this Lease early, effective as of the last day of the [NUMBER] month of the Term, by providing Landlord with at least [NUMBER] months' prior written notice and paying to Landlord a termination fee equal to [AMOUNT] months' Base Rent. This early termination option shall be personal to the original Tenant and may not be exercised by any assignee or subtenant.

13.14. Dispute Resolution. In the event of any dispute arising out of or relating to this Lease, the parties agree to first attempt to resolve the dispute through good-faith negotiations. If the parties are unable to resolve the dispute through negotiations within 30 days, they shall submit the dispute to mediation in accordance with the rules of the American Arbitration Association. If mediation is unsuccessful, the parties shall proceed to binding arbitration, also in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in Davenport, Iowa, by a single arbitrator mutually agreed upon by the parties or, if they cannot agree, selected in accordance with the American Arbitration Association rules. The arbitrator's decision shall be final and binding on the parties, and may be entered as a judgment in any court of competent jurisdiction. The costs of mediation and arbitration shall be shared equally by the parties.

13.15. Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from events beyond the control of such party, including but not limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, governmental regulations superimposed after the fact, fire, communication line failures, power failures, earthquakes, or other disasters (each a "Force Majeure Event"). If a Force Majeure Event occurs, the party whose performance is affected shall give prompt written notice to the other party and shall use diligent efforts to minimize the impact of such event.

13.16. Holding Over. If Tenant remains in possession of the Premises after the expiration or earlier

termination of this Lease without Landlord's written consent, such occupancy shall be a tenancy at sufferance, and Tenant shall pay Rent at 150% of the rate in effect immediately prior to such holding over, computed on a monthly basis for each month or partial month of the holdover period. No holding over by Tenant shall operate to extend the Term of this Lease.

13.17. Estoppel Certificates. Tenant shall, within ten (10) business days after written notice from Landlord, execute, acknowledge, and deliver to Landlord a statement in writing certifying such information as Landlord may reasonably request, including but not limited to the following: (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) the date to which the Rent and other charges are paid in advance, if any; (c) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed; and (d) such other matters as Landlord may reasonably require.

13.18. Quiet Enjoyment. Landlord covenants that Tenant, upon paying the Rent and performing all of the terms, covenants, and conditions of this Lease, shall peaceably and quietly enjoy the Premises during the Term, subject to the terms and conditions of this Lease.

IN WITNESS WHEREOF, the parties have executed this Office Lease Agreement as of the date first written above.

LANDLORD:  
CITY OF DAVENPORT

By: \_\_\_\_\_  
Name: Michael Matson  
Title: Mayor

TENANT:  
LINDSAY PARK YACHT CLUB, INC.

By: \_\_\_\_\_  
Name: Kris Clements  
Title: Commodore