

ANN ARBOR ROWING CLUB
BANDEMER PARK LEASE

THIS Lease is made and entered into this 15 day of FEBRUARY, 2002, between the City of Ann Arbor, a Michigan municipal corporation, with principal offices located at 100 N. Fifth Avenue, Ann Arbor, Michigan 48104, hereafter referred to as the "City" and the Ann Arbor Rowing Club (AARC), a Michigan non-profit organization, whose mailing address is: P.O. Box 3128, Ann Arbor, Michigan 48106, hereafter referred to as the "Tenant."

WHEREAS, the City owns, operates and maintains certain parkland designated as Bandemer Park located in the City of Ann Arbor, hereafter referred to as the "Park"; and

WHEREAS, the City has the authority to lease premises and facilities at the Park and to grant rights and privileges with respect thereto; and

WHEREAS, the Tenant desires to lease from the City certain premises at the Park.

NOW, THEREFORE, in consideration of the premises and mutual undertakings of the parties hereto, it is agreed as follows:

ARTICLE I

1.1 Premises

The City, for and in consideration of the rents and other consideration specified herein and the stipulations and covenants herein given on the part of the Tenant, grants, demises, and leases to the Tenant, for the Tenant's use as described herein, and the Tenant hires and takes from the City the following premises, 1325 Lakeshore Drive, Ann Arbor, Michigan, the location of which is more fully described as:

The western face the boathouse shall be located 10'0" East of and parallel to the west property line of South Bandemer Park. The south face of the boathouse shall be located such that its southern face is in alignment with the south face of two existing metal buildings currently located in South Bandemer Park,

hereafter referred to as the "Premises."

The City makes no warranties or representations about the condition, fitness or safety of the Premises, or any part thereof, and Tenant accepts the same "as is" on the comment date hereof.

1.2 Use of Premises

The Tenant has the right, subject to the terms, conditions, and covenants set forth herein, to use the Premises for the storage and maintenance of rowing equipment. Storage of boats shall

be limited to the inside of the boathouse only. The Boat Storage Facility located on the Premises is approximately 120'0" in length and 44'0" in width, 1 story pole-barn style boathouse.

In addition to any rental payments made under this Agreement, the Tenant agrees as further consideration for the use of the Premises to do the following:

1. Provide the necessary administrative and supervisory services in order to offer a public rowing program of high quality acceptable to the Superintendent of Parks and Recreation.
2. Submit for approval of the Superintendent of Parks and Recreation a schedule of anticipated rowing use for the year on an annual basis during the term of the Lease, including projected dates and times for routine and special events as well as a public rowing program. The schedule will be delivered to the Parks and Recreation Department no later than March 1 of each year commencing March 1, 2002.
3. Submit a copy of its annual operating budget to the Superintendent of Parks and Recreation, including information on fund raising activities the Tenant anticipates sponsoring during the fiscal year within thirty (30) days after the budget is approved by the Tenant. Any proposed use of the premises for fund raising activities must be approved, in writing, by the City.
4. Provide the Superintendent of Parks and Recreation Department annually or more frequently if necessary the most current and updated copies of all documents relating to Tenant's organization, including but not limited to, bylaws, operating policies and procedures, rules and regulations (including weather policy, regulations regarding coaches, first aid, safety plan and others), membership makeup, and, philosophy.
5. Make every effort possible to cooperate with other users of Bandemer Park, including but not limited to participation in the Organization for Ann Arbor Rowing (OAAR) and compliance with the current OAAR safety plan for use of Argo Pond. Copy of which is attached hereto and made a part hereof as Exhibit 1.

The Tenant will not use the Premises for any other purpose without the prior written consent of the City. All usage of the Premises by Tenant shall conform to Chapter 39 of the Ann Arbor City Code (Park Rules and Regulations) and shall conform its use to all State and local permitting requirements for the Huron River.

Parking is permitted for up to twenty-five (25) vehicles in designated areas adjacent to the Premises. Additional parking for a special event will require Tenant to obtain a Park Use Permit. Bike parking shall be in designated areas. Parking availability to other users of the Park, exclusive of Tenant, will be maintained at all times.

1.3 Term

The term of this Lease is from February 1, 2001 to June 30, 2002, and may continue July 1st to June 30th thereafter upon agreement of the parties, and until canceled by the parties, and not to exceed a period of fifteen years.

This Lease may be renewed by mutual agreement of the parties, subject to obtaining all necessary approvals by City Council or the Tenant's governing board, under the same general terms and conditions stated herein, for terms of not less than five years per renewal period, with rental fees to be adjusted as provided for in Section 1.4 below. Tenant must request renewal of this Lease, in writing, no less than thirty (30) days before the expiration of the original lease term or any previous renewal period agreed to by the parties.

1.4 Rental

In consideration for the Tenant's use of the Premises and preferential use of the Boat Dock Area, the Tenant will pay to the City during the Lease term an annual rental fee of \$4,200.00 for years 1-5. Tenant will pay to the City during the Lease term an annual rental fee of \$5,100 for years 6-15. Tenant shall be permitted to defer 11/12 of the term's rent, payable in monthly installments of 1/12 of the term's rent (\$350 per month yrs 1-5/\$425 per month yrs 6-15) The City will make every attempt to mail reminder notices to the Tenant. All due dates and terms of this paragraph shall apply regardless of the Tenant's receipt of such notices. Tenant shall pay the City the deferred monthly rental payment one month in advance, on the first day of each month. Failure to make any of the deferred payments before the 15th of the month, for whatever reason, shall eliminate Tenant's right to deferred payments. Any further payments and all of the term's rent shall immediately come due and be payable.

Should the parties mutually agree to renew this Lease for a term or terms certain on or after July 1, 2016, rent for each renewal period shall be not less than \$5,100 annually plus ½ the percentage that the Consumer Price Index shall have increased over and above the CPI as of May 1, 2001.

1.5 Security Deposit

The Tenant will not be required to make a security deposit under the terms of this Lease.

1.6 Utilities

The Tenant will be responsible for the cost of all utilities servicing the Premises including but not limited to electricity and alarm services required for life safety devices. Tenant shall pay the heating, cooling, cleaning and associated costs related to the use of the Premises, including a portable restroom for each 50 participants with a minimum weekly pumping and cleaning

The Tenant must arrange directly for telephone services at the Premises, and for payment to the utility company or supplier for Tenant's use of such services. In the event Tenant requires

any addition or improvement to, or increase in the capacity of, any utility system currently servicing the Premises, Tenant will have sole responsibility for paying the full cost of such addition, improvement or increase.

1.7 Limitation of City's Obligations Regarding Utilities and Facilities

The City is not obligated to provide any utility services or facilities other than as specified herein, nor is the City obligated to increase the voltage or capacity of any utility service or facility existing on the effective date hereof. The City will not, under any circumstances, be liable to the Tenant or any person for any personal injury or property damage caused by any defect in or malfunctioning of any plumbing, heating, ventilating, sprinkler or air conditioning system, electrical wiring or insulation thereof, gas or steam pipes, or from the backing-up of any sewer pipe, or from the bursting, leaking, or running of any tank, tub, washstand, toilet, or waste pipe, drain, or any other pipe or tank in, on, or about the Premises, or from the escape of steam or hot water from any boiler or radiator, or from any damage or injury caused by water being on or coming from the roof, stairs or walks, or any other place on or near the Premises.

1.8 Payments

All sums payable to the City by the Tenant pursuant to the terms of this Lease are considered rent for all purposes hereunder. If the Tenant fails to pay any rent when the same is due, then Tenant will pay, in addition to the full amount owed, a late payment charge equal to one percent (1%) of the amount due per month for each month, or part thereof, that such sums have not been paid.

1.9 Easements

Tenant's rights and privileges under this Lease are subject to all existing utility and other easements in, on, under or above the Premises.

ARTICLE II

2.1 Maintenance and Repair of Premises

The City will provide, at its own expense, the following maintenance and repair services for the Premises:

1. Provide lawn mowing and other park maintenance as per usual practice in public parks in all areas adjacent to and surrounding the Premises not under the Tenant's control or responsibility. Mowing shall occur approximately every ten (10) days or when grass exceeds 4" in height. Trash refuse to be collected regularly at sites and in containers designated by the City.

2. Maintain all parking areas adjacent to the Premises, including paving, resurfacing, and snow removal.
3. Maintain, in accordance with State and local regulations, access to the water and the boat dock.

The City has no responsibility to provide any maintenance, repair or other services other than as stated above. All City responsibilities are subject to the availability of funds.

The Tenant will, at its own expense, maintain the Premises in a sanitary and slightly condition and in good repair, reasonable wear and tear excepted, by providing the following maintenance and repair services:

1. Repair, at Tenant's cost, any and all damage to caused to the Premises by its use and occupancy.
2. Maintain the grounds immediately surrounding the boathouse free of bottles, papers, trash and other debris.
3. Maintain the boathouse is clean and sanitary condition.
4. Seasonal removal and resetting of the dock in cooperation with OAAR.

If the Tenant fails to perform any obligation required by this section within sixty (60) days after receiving written notice of such failure from the Superintendent of Parks and Recreation, or under circumstances where the obligation is of such character as to require more than sixty (60) days to perform, the Tenant fails within said sixty (60) days period to commence and thereafter proceed diligently to perform such obligation, then in either of such events, the City may, at its option and in addition to its other remedies, perform such obligation. Any sum expended by the City in the performance of any such obligation will be additional rent for all purposes hereunder and will be due within thirty (30) days after the date an invoice for such expenses is mailed to the Tenant.

In the event Tenant's failure to perform any obligation under this section adversely affects or endangers the health or safety of the public or the City's employees, and the Superintendent of Parks and Recreation so states in its aforesaid notice, the City may, but is not obligated to, perform such obligation at anytime after giving such notice and without waiting the expiration of said sixty (60) day period.

If the City performs any of the Tenant's obligations pursuant to the provisions of this section, the City will not be liable to the Tenant for any loss resulting from such performance.

2.2 Maintenance of Park Roadways

The City will maintain all Park roads providing access to the Premises in good and adequate condition, and will maintain free and uninterrupted access to the Premises at all times, acts of God and circumstances over which the City has no control excepted.

2.3 Tenant Fixed Improvements

For purposes of this Lease, the term "fixed improvement" includes all buildings and other permanent structures located on the Premises including, but not limited to, all fencing, grading, paving, and surfacing with stone or hard top; all underground wires, cables, pipes, conduits, tanks, and drains; air-conditioning system; and any other kinds of property, excluding trade fixtures that are so attached to any building or permanent structure on the Premises that they cannot be removed without causing material injury to the building or structure to which they are attached.

2.3.1 Construction of Fixed Improvements. Prior to construction of any fixed improvements, Tenant must submit for the City's approval, all plans and specifications for such work. If such plans and specifications are not completely satisfactory to the City, Tenant must make modifications that are mutually agreed upon by the parties hereto.

Prior to construction of any fixed improvement, in addition to any permits or licenses required to satisfy City building, zoning or other local ordinances or regulations, Tenant must submit to the Superintendent of Parks and Recreation, an application for an Construction or Alteration permit, pay any charges therefor, and obtain the Superintendent's approval of the permit.

Upon completion of the construction of any fixed improvement, Tenant must furnish the City with a certified itemized account of the costs thereof, and a set of "as built" documents in hard copy format and on electronic media.

2.3.2 Construction Contracts/Other Records. Prior to commencement of construction of any approved fixed improvements or subsequent additions or alternation thereto; Tenant must submit to the City a copy of the contract or contracts for such construction, which must include a requirement that the contractor provide performance and labor and material payment bonds in compliance with the City's standard specifications for construction contracts. Tenant may not enter into any contracts prior to the Superintendent of Parks and Recreation's approval of all of Tenant's plans and specifications. Any contract entered into by Tenant and any warranties contained therein must be for the benefit of the City as well as the Tenant, and such contract must contain a provision giving the City a direct right of action to enforce the provisions of the contract including, without limitation, the right to recover damages for breach thereof by the contractor.

Tenant must also furnish to the City copies of other records, including but not limited to, receipts and timekeeping documents that the Superintendent of Parks and Recreation may require to verify construction of any fixed improvements.

2.3.3 Certificate of Non-Lien and Cost. Tenant agrees that it will not enter into any contract for the construction of, repair of, or addition to, any fixed improvement, or any part thereof, or for any work to be performed or materials to be furnished upon or to the Premises, or any part thereof, without first providing in such contract a disclosure that the Premises are owned by the City of Ann Arbor, Michigan and that Tenant is merely a tenant of the City, and further, that no lien, security interest, or other encumbrance may be created or may arise against the Premises, except as otherwise provided herein. To this end, Tenant agrees to defend and save harmless the City and the Premises from any lien, security interest, or other encumbrance asserted or filed against the Premises.

After completion of construction of any fixed improvements, Tenant must, within thirty (30) days following the close of the statutory mechanics lien period, submit to the City certificates by Tenant and the construction contractor and its subcontractor that no liens, mechanics or otherwise, have been or are attached to such building or improvement, and that all charges and costs therefor have been paid in full.

2.4 Tenant Trade Fixtures

For purposes of this Lease, the term "trade fixture" includes, but is not limited to, any sign, electrical or otherwise, used to identify or advertise Tenant's operations and all materials and equipment used in connection with such operations, whether or not, such sign, materials or equipment are bolted or otherwise attached to any fixed improvement.

Tenant may, at its own expense, install, maintain, operate and replace any and all trade fixtures and other personal property used in connection with Tenant's operations, or use of the Premises; all such trade fixtures are and will remain the property of the Tenant.

Tenant must repair any damage to fixed improvements caused by the removal of trade fixtures, by placing said fixed improvements in the same condition as when constructed or installed, normal wear and tear excepted.

2.5 Right of Ingress and Egress

The Tenant has full rights of ingress to and egress from the Premises for the Tenant, its members, affiliates, employees and other invitees, including persons supplying materials or furnishing services to Tenant.

2.6 Inspections by the City

The City has the right to periodically inspect the premises during the construction of any new, or addition to, or alteration of, any fixed improvement on the Premises, and Tenant will reimburse the City for the reasonable cost, if any, thereof.

The City has the right, at its sole expense, to periodically inspect the Premises at times other than during construction.

2.7 Indemnification

The Tenant will indemnify, defend, and hold harmless the City, and its officials, employees, agents and representatives from and against any and all claims, liabilities, losses, demands, causes of action, suits or judgments including, but not limited to, those for death of or injury to persons and for loss of or damage to property, arising or alleged to arise, either directly or indirectly, (a) out of or in connection with the Tenant's use or occupancy of the Premises, or (b) out of or in connection with the acts or omissions of the Tenant, its officers, members, affiliates, employees, agents, representatives, contractors, guests or other invitees where such acts or omissions occur on the Premises, or (c) out of or in connection with any acts or omissions of the Tenant, its officers, members, affiliates, employees, agents, representatives, contractors, guests or other invitees where such acts or omissions occur elsewhere at the Park; provided, however, that the Tenant will not be liable hereunder for any injury, death, damage or loss caused by the City's sole negligence, or by the joint negligence of the City and any person or entity other than the Tenant.

2.8 Insurance

Subject to the conditions hereinafter set forth, Tenant, at its own expense and in its own name, and in the City's name, as additional insured, as their respective interests may appear, must maintain and keep in force during the term of this lease the following policies of insurance, which must be written by an insurance company or companies licensed to conduct business in the State of Michigan:

- A. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.

\$1,000,000 Personal Injury

- B. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

3. Participant Accident Insurance. The City of Ann Arbor shall be an additional insured.

Coverage shall include all AARC activities, regular and special event. Further the limits of liability shall be not less than the insurance limits established by the City for Park Use Permits.

4. Worker's Disability Compensation Insurance. AARC will provide coverage in compliance with Section 115 of the Worker's Disability Compensation Act of 1969 (P.A. 1969, No. 317).

Insurance required under this Lease shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Tenant agrees to waive any right of recovery by its insurer against the City.

Any insurance provider of Tenant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.

Any insurance provided hereunder may be provided by a special policy arranged for this particular purpose or may be provided under a blanket policy that covers the property and obligations provided for herein as well as other property and obligations of the Tenant.

Each policy required hereunder must provide for at least thirty (30) days unconditional advance written notice to the City prior to any cancellation, termination, or material modification of the policy or any part thereof in any manner adverse to the interests of the City.

Prior to occupancy of the Premises, Tenant must deliver to the Parks and Recreation Department, a certified copy of each insurance policy required hereunder. If at any time, any of the policies become unsatisfactory to the City as to form or substance, or if the companies issuing such policies become unsatisfactory to the City, Tenant will promptly obtain new and satisfactory policies in replacement.

Compliance with this section is a continuing condition of Tenant's enjoyment of the rights and privileges granted under this Lease. In the event Tenant fails to maintain and keep in force insurance as hereinabove required, Tenant will forthwith cease all operations from and at the Premises until such failure is completely remedied.

2.9 Damage to or Destruction of Premises.

If the Premises are partially damaged or totally destroyed by fire, the elements, or other casualty, and are rendered untenable, the City may, at its option, terminate this Lease or repair and restore the Premises to a tenantable condition. Until the premises are restored to a tenantable condition, the rent payable under this Lease will be abated totally if the entire Premises are rendered untenable or if less than fifty percent (50%) of the Premises is rendered untenable, the rent will be abated pro rata for the portion rendered untenable.

Notwithstanding the foregoing, if the Premises are damaged or destroyed as a result of negligence, omission, or willful act of Tenant, its agents, representatives, employees, guests or other invitees, then Tenant will not receive any rental abatement and Tenant, at its own expense, must repair and restore the Premises.

ARTICLE III

3.1 Signs

The Tenant may not erect or install any exterior signs in the Park, including the Premises, without the previous written consent of the Superintendent of Parks and Recreation. All exterior signs must comply with Chapter 61 of the Ann Arbor City Code (Signs and Outdoor Advertising).

3.2 Assignment and Subletting

The Tenant agrees to not assign or in any other manner transfer this Lease or any estate or interest herein, without the prior written consent of the Superintendent of Parks and Recreation, which consent shall not be unreasonably withheld.

Tenant also agrees limit subletting of the Premises, or any part thereof, to the following organizations unless prior written consent of the Superintendent of Parks and Recreation has been obtained: Pioneer Rowing Team and Huron Rowing Team. A copy of any sublease agreement entered into by Tenant and an approved sub-Tenant must be filed with the Parks and Recreation Department. Tenant may require a fee for rental of the sublessee.

3.3 City's Right of Entry

The City has the right to enter upon the Premises at all reasonable hours for any purpose necessary, incidental to, or connected with its performance of any obligations under this Lease, including the inspection the Premises, making repairs, or in the exercise of its governmental functions, or in the event of an emergency.

3.4 City's Right to Reenter Premises and Option to Cancel Lease

The City, in addition to other rights or remedies it may have, has the immediate right of reentry and may remove all persons and property from the Premises and store such property in a public warehouse or elsewhere at Tenant's expense upon occurrence of any of the following: a) Tenant becomes bankrupt or insolvent, or b) Tenant abandons the Premises for more than thirty (30) days.

Any act of Tenant described in this section will be deemed a material breach of the Tenant's obligations hereunder; upon such breach, the City may, at its option, and in addition to any other remedy available to the City, cancel this Lease and terminate all rights of the Tenant hereunder by giving the Tenant in writing notice of the election of the City to cancel the Lease.

3.5 City's Right to Relet

If the City elects to re-enter the Premises as herein provided, or takes possession thereof pursuant to legal proceedings or any notice provided for by law, it may cancel this Lease and may relet said Premises or any part thereof for such term or terms which the City in its sole discretion may deem advisable.

3.6 City's Waiver of Breach

One or more waivers of any covenant or condition by the City will not be construed as a waiver of a subsequent breach of the same covenant or condition, and the approval by the City of any act by the Tenant requiring the City's approval will not be deemed to waive or render unnecessary the City's approval of any subsequent similar act by the Tenant.

3.7 Tenant's Right to Cancel

Notwithstanding any other provision of this Lease, the Tenant has the right to cancel this Lease upon the occurrence of the City's breach of any provision of this Lease and failure to remedy such breach within sixty (60) days after receipt of notice thereof from the Tenant.

3.8 Taxes

The Tenant is responsible for and must pay before delinquency all taxes lawfully assessed during the term of this Lease against any leasehold interest or personal property of any kind, owned by or placed in, upon, or about the Premises by the Tenant; provided, however, the Tenant will not be in default of this section pending the outcome of any legal proceedings instituted to determine the validity of such taxes.

3.9 Notice by Tenant

The Tenant will give immediate notice to the City in case of fire or accidents on the Premises.

3.10 Compliance with Laws, Rules and Regulations

The Tenant and any assignees and sublessees must comply with all rules and regulations adopted by the City with respect to the use and enjoyment of its Parks, including but not limited to ramp areas, and all applicable federal and state laws and regulations. Tenant must include in each of its sublessees, if any, a provision requiring the sublessee's similar compliance.

3.11 Covenant Against Discrimination

The Tenant for itself, its assignees and sublessees, as a part of the consideration hereof, covenants and agrees that no person will be excluded from participation in, denied the benefits of, or will otherwise be subjected to discrimination in the use of said Premises and agrees to comply with the nondiscrimination and affirmative action provisions of Chapter 112 of the Ann Arbor City Code.

Article IV

4.1 Notices

All notices, demands, or other writings required or provided for under this Lease shall be sent by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this agreement when personally delivered to the Superintendent of Parks and Recreation or placed in the U.S. mail, postage prepaid to the City, care of the Superintendent of Parks and Recreation.

4.2 Choice of Law

This Lease will be construed and enforced according to the laws of the State of Michigan. By executing this Lease, the Tenant and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Lease.

4.3 Severability

Whenever possible, each provision of this Lease will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Lease or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Lease or the application of the provision to other parties or other circumstances.

4.4 Entire Agreement.

This Lease sets forth all the covenants, promises, conditions, and understandings between the City and the Tenant concerning the Premises and Tenant's use thereof. No alteration, amendment, change, or addition to this Lease is binding upon the City unless it is in writing and signed by each party hereto.

FOR ANN ARBOR ROWING CLUB

By 
June Lee
Its: President

By 
Brigid Blaschak
Its: Secretary


FOR THE CITY OF ANN ARBOR

By 
John Hiefertje, Mayor

By 
Yvonne Carl, Interim City Clerk

Approved as to substance

By 
Ron Olson, Interim City Administrator

By 
Gerald Clark, Interim Superintendent of Parks and Recreation

Approved as to form and content

  1-16-02
Abigail Elias, City Attorney