

MEADOWBROOK GOLF COURSE CART BARN  
CONSTRUCTION & FINANCING AGREEMENT

PARTIES

The parties to this Agreement are the **City of Rapid City, South Dakota**, a municipality established and operated under the laws of the State of South Dakota, with headquarters at 300 6th Street, Rapid City, South Dakota, hereinafter referred to as "City", and **PAJO Properties, LLC**, a South Dakota limited liability company, with headquarters at 1719 W. Main Street, Rapid City, South Dakota, hereinafter referred to as "PAJO".

PURPOSE

The purpose of this Agreement is to fix the terms and conditions under which PAJO shall build and finance the construction project described herein and City shall repay PAJO for building and financing that project.

RECITALS

1. City is owner of Meadowbrook Golf Course located at 3625 Jackson Boulevard, Rapid City, South Dakota.
2. City desires to make certain improvements to Meadowbrook Golf Course, hereinafter referred to as the "Project", including a new golf cart barn and parking area.
3. City desires a second party to construct and finance the capital costs of the Project and to repay that second party for those costs with installment payments approximating the revenues City anticipates it shall receive from the golf cart storage fees it will charge to Meadowbrook Golf Course's customers.
4. PAJO has funds to finance the capital costs of the Project and is willing to build the Project and be repaid the costs of the Project with installment payments from City.

PROJECT DESIGN AND CONSTRUCTION

The Project shall be sited and laid out as shown in Exhibit 1. City may opt to change the site plan for the Project at any time prior to start of construction of the Project.

The Project shall be designed and constructed according to City's specifications, which currently are those shown in Exhibit 2. City may opt to change these specifications at any time prior to final completion of the Project.

PAJO and City jointly shall arrange for all engineering and design work as shall be required to complete the Project. PAJO and City jointly shall obtain all local permits as may be required to complete the Project. PAJO and City jointly shall put out to bid in a manner satisfactory to City all labor and materials to be provided by contractors for the construction of the Project. The provisions of SDCL Chapter 5-18 are hereby incorporated into this Agreement. PAJO and City jointly shall oversee the Project's construction.

PROJECT COSTS

PAJO shall pay in a timely manner all costs of construction of the Project, hereinafter referred to as "Project Costs". Project Costs shall include all PAJO's costs to complete the Project including but not limited to costs for engineering, design, permitting, advertising for and awarding of bids, materials, labor, other contractor fees, utilities, insurance, taxes (excluding property taxes), and legal fees. Additionally, the Project Costs shall include a management fee equal to five percent (5%) of the aforementioned Project Costs. Additionally, the Project Costs shall include interest of ten percent (10%) per annum on each expenditure made as a Project Cost, such interest to accrue from the date of the expenditure to the date PAJO submits a final accounting of the total Project Costs to City as provided herein. PAJO and City agree that the Project Costs shall not exceed \$200,000.00 inclusive of all fees and interest.

### MECHANICS LIENS

PAJO shall obtain lien waivers from all contractors used in connection with the Project. Parties agree that if any mechanic's liens are filed against Meadowbrook Golf Course or the City in connection with the Project during the term of this Agreement, that said liens shall be removed within ninety (90) days after PAJO has knowledge of said lien; provided, however, that PAJO shall not be required to so remove the mechanic's liens which are filed as a result of a bonafide dispute on condition that PAJO posts a bond for the protection of City as to the filing of any such mechanic's lien against the property.

### REPAYMENT OF PROJECT COSTS

As total consideration for PAJO's constructing and financing of the Project, City agrees as follows:

1. Upon final completion of the Project, City shall repay PAJO for PAJO's Project Costs by paying PAJO those costs in equal installments over one hundred eighty (180) months, plus interest thereon at 10 percent (10%) per annum. The first installment payment shall be due on the first day of the month following submittal by PAJO to City of a final accounting of the total Project Costs and an amortization schedule using the total Project Costs as principal. All subsequent installment payments shall be due on the first day of each month thereafter.

2. City shall pay a late charge of One Hundred Dollars (\$100.00) for any payment not made by the 15th day of the month. This late charge shall be in addition to the regular monthly installments due hereunder and shall not be applied as a portion of payment on principal or interest.

3. The parties agree that all payments made shall apply first to the payment of interest and the balance to the reduction of principal, except as noted above.

4. City agrees it shall not have the right to prepay any of the principle balance owed to PAJO at any time, unless otherwise agreed by PAJO.

### POSSESSION

The parties agree that City may assume possession of the Project upon final completion of the Project's construction and receipt of an occupancy permit from the City of Rapid City. Delivery and possession of the Project hereunder shall be deemed to have occurred for all purposes at 12:01 AM on the day following receipt of the occupancy permit. All risk of loss, whether or not covered by insurance, shall be on PAJO until such time, and on City from and after such time.

### TAXES

During the term of this Agreement, City shall pay any real estate taxes or other taxes assessed against Meadowbrook Golf Course or the Project before the date such taxes become delinquent.

### INSURANCE

Until such time as the Project's construction is complete, PAJO shall provide builder's risk insurance on the Project for at least the estimated cost of the Project (\$128,000). PAJO further agrees to provide liability insurance on the Project until construction is complete in the amount of One Million Dollars (\$1,000,000) for each person, One Million Dollars (\$1,000,000) for each accident, and One Hundred Thousand Dollars (\$100,000) for property damage. Such liability insurance policy shall name the City as additional insured. PAJO agrees to provide proof of such insurance to City showing such insurance to be in full force and effect during the construction of the Project. The costs of such insurance shall be included in the Project's Costs.

Upon final completion of the Project and City's taking possession thereof, City agrees to provide insurance on the Project against fire and extended coverage in an amount of at least the principal and interest balance owed to PAJO for the remaining term of this Agreement. Such insurance policy shall name PAJO as a loss payee. City agrees to provide proof of such insurance to PAJO showing such insurance to be in full force and effect during the term hereof.

### SALE, ASSIGNMENT OR RENTAL

City agrees not to assign this Agreement or sell or otherwise dispose of any interest in the Project, either in whole or in part, to any other person, firm or corporation for any reason without the express written consent of PAJO. Consent granted in any case or waiver of consent shall not constitute consent except for the specific waiver or consent granted. PAJO agrees that any consent required of it under this part of this Agreement shall not be unreasonably withheld.

City agrees that PAJO may assign its interest in this Agreement, either in whole or in part, without the express written consent of City. In the event of an assignment requiring City to make its scheduled payments to the assignee, PAJO shall notify City within ten (10) days of the assignee's name and address.

City shall have the right to rent all or a portion of the Project. If City chooses to exercise such right, City shall have full control of and responsibility for such rental, and specifically agrees that all obligations on the part of City under the terms of this Agreement are fully applicable to the rental. City hereby expressly agrees to indemnify PAJO and hold it harmless

against any loss, claim, demand or action by whomsoever made or brought relating to, as a consequence of, or arising out of the occupancy and use of the property as a rental property.

#### DEFAULT

In the event the City defaults in the performance of any of the terms, covenants, conditions or obligations of this Agreement assumed by it, the parties agree that PAJO shall have the option to declare all deferred principle and interest balances immediately due and payable. Such option shall be exercisable by giving to City at its address in Rapid City, South Dakota, by certified mail, fifteen (15) days written notice of the nature of such default. In the event of the failure of City to cure such default within such fifteen (15) day period, then all such deferred balances shall be due and payable at the end of said fifteen (15) day period. The parties further agree that, in the event of such default, all other remedies available to PAJO under the laws of the State of South Dakota shall accrue to PAJO.

#### GUARANTY

City guarantees payment of its payments required herein with all its sources of revenue, subject to all limitations upon the expenditure of municipal funds imposed by State law.

#### REPRESENTATION

City acknowledges and agrees that it has independently assessed the economic feasibility of the Project, including its potential cost and revenues, and is not relying upon any representation of PAJO or its agents regarding its economic feasibility. City further acknowledges and agrees that it is relying upon its own business judgment in the purchase of the Project and is not relying upon statements of income or expenses by PAJO or anyone acting in behalf of PAJO.

#### TIME

The parties agree that time is of the essence of this Agreement.

#### CONSTRUCTION OF AGREEMENT

If two or more persons constitute either PAJO or City, unless the context hereof clearly requires otherwise, the singular shall include the plural and the plural shall include the singular. The masculine shall also include the feminine and neuter and the feminine shall include the masculine and neuter.

#### LAW GOVERNING AND COMPLIANCE WITH LAW

The parties agree that this Agreement is a South Dakota contract and shall be governed, interpreted, and construed according to the laws of South Dakota, notwithstanding that one or more of the parties hereto may be a resident of a state other than South Dakota or that they may have signed this Agreement in a state other than South Dakota. Any dispute arising out of this

Agreement shall only be litigated in the Seventh Circuit Judicial Court for the State of South Dakota located in Rapid City, Pennington County, South Dakota.

At all times during the Agreement, PAJO and City shall comply with all applicable federal, state and local laws in the construction, use and maintenance of the Project.

INTEGRATION

The parties agree that this writing constitutes the entire Agreement between them and that there are no other oral or collateral agreements or understanding of any kind or character except those contained herein.

BINDING EFFECT

This Agreement shall extend to and be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto.

HEADINGS

The headings used for each section herein are for descriptive purposes only.

SEVERABILITY

It is mutually agreed by and between the parties hereto that if any of the provisions of this Agreement are held invalid, such invalidity shall not effect the other provisions or applications of the other provisions of this Agreement, which can be given effect without the invalid provisions and to this end the provisions of this Agreement are declared to be severable.

Dated this \_\_\_\_ day of September, 2003.

PAJO PROPERTIES, LLC

CITY OF RAPID CITY, SOUTH  
DAKOTA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_