

**LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND MARTINEZ BOXING CLUB, INC.**

For and in consideration of the mutual promises and agreements contained herein, the City of Rapid City (City), a municipal corporation, agrees to lease to Martinez Boxing Club, Inc., formerly known as Rapid City Youth Boxing, a corporation of the State of South Dakota, a specified area to operate a boxing club, subject to the following terms and conditions:

1. Consideration. The City hereby leases to Martinez Boxing Club, Inc. the below described premises for the sum of One Dollar (\$1.00) per year and other good and valuable consideration, including but not limited to, maintenance of general grounds, construction of incidental improvements, administration of a boxing program open to the citizens of the City, and responsibility for all utility bills. Said sum is payable to the City of Rapid City on or before the first day of January of each succeeding year.

2. Term. The term of this agreement is from April 1, 2009, to December 31, 2012. This lease may be terminated by either party giving notice of its intent to terminate said lease on or before October 15th of any year, which termination will be effective as of January 1st immediately following unless otherwise stated.

3. Premises. The premises leased by the City to Martinez Boxing Club, Inc. are described as follows:

MARTINEZ BOXING CLUB, INC.:

A portion of Tract 29, Rapid City Greenway Tracts, Section 6, Township One North (T1N), Range Eight East (R8E), Black Hills Meridian, Rapid City, Pennington County, South Dakota; commonly known as 200 E. Main North Street.

4. Surrender of Premises. Martinez Boxing Club, Inc. agrees to surrender the premises, or a part thereof, in the event it is necessary for expansion or utilization of public park facilities, and they further agree to abandon the premises, or a part thereof, in the event the demand is made by the United States government. They further agree to abandon the premises, or a part thereof, whenever ordered to do so by a court of law or whenever the City is ordered to terminate said agreement by an order of any court.

5. Use. Martinez Boxing Club, Inc. shall have priority use of the premises during the lease period, subject to the terms of this lease, for the purpose of operating a boxing club. Martinez Boxing Club, Inc. agrees that the City may use the premises when the same is not required for use by Martinez Boxing Club, Inc., and such use by the City shall be consistent with the normal usage of said premises.

6. Use by Others. Martinez Boxing Club, Inc. agrees to allow other persons or organizations to use the premises, subject to the reasonable terms and conditions, including provisions for maintenance, electricity, and insurance.

7. Maintenance. Martinez Boxing Club, Inc. agrees to maintain said premises under the authority of the Parks and Recreation Director or his designee. Martinez Boxing Club, Inc. agrees to repair or replace any property damaged by Boxing Club members or invitees which occurs while the premises are in use by Martinez Boxing Club, Inc. Martinez Boxing Club, Inc. agrees to be responsible for policing the premises and to pick up and make ready for city collection of all trash, debris, and waste material of every nature (including mowing of weeds), resulting from the use of the premises by Martinez Boxing Club, Inc., its participants or any of its invitees. Martinez Boxing Club, Inc. agrees to provide its own trash receptacles for use at the premises. Martinez Boxing Club, Inc. also

agrees to place all collected trash, debris, and waste in a designated location for removal by the City of Rapid City.

The City of Rapid City, at its own expense, agrees to provide routine maintenance to the structure itself, permanent fixtures, and infrastructure, including but not limited to repair or replacement of HVAC systems; repair of water, sewer, storm sewer and other utility lines; and maintenance of parking lots. The City of Rapid City will undertake the aforementioned repairs at its expense only to the extent that the repair or replacement is not due to damage caused by the negligence or intentional acts of Martinez Boxing Club, Inc. or its invitees.

8. Mowing. Martinez Boxing Club, Inc. shall mow the grass areas around the boxing facility on a substantially weekly basis. The Parks Division Manager can mow the area at the rate of twenty-five dollars (\$25.00) per hour for each man and machine used, provided that the Parks Division Manager: (1) determines the need for mowing; (2) gives Martinez Boxing Club, Inc. three (3) days notice of his intent to do so if Martinez Boxing Club, Inc. fails to mow; and (4) determines he has the available manpower and equipment. Should the Parks Division Manager not have the available manpower and equipment, he can arrange for a private contractor to mow at the expense of Martinez Boxing Club, Inc.

9. Construction. Martinez Boxing Club, Inc. shall have the right to construct at its own expense accessory and customarily incidental improvements with prior approval of the plans by the Director of Parks and Recreation or his designee. Construction and other improvements shall be in conformity with the regulatory codes of the City and subject to the approval of the Director of Parks and Recreation or his designee. Any permanent

improvements or fixtures constructed by Martinez Boxing Club, Inc. on the leased premises shall be considered the property of the City.

10. Parking. Martinez Boxing Club, Inc. agrees that it will permit no vehicular parking at the boxing facility except as may be designated by the Parks and Recreation Director.

11. Expense. The City of Rapid City shall assume no expenses as a result of this lease or any of the operations of Martinez Boxing Club, Inc. Martinez Boxing Club, Inc. agrees to pay its own administration expenses, including but not limited to, lights and electricity, grounds crew, office supplies, miscellaneous equipment, and secretarial fees. Martinez Boxing Club, Inc. agrees that the electric utilities will be metered in the name of and billed directly to Martinez Boxing Club, Inc. and that all expenses incurred by it shall be paid within thirty (30) days of due date.

12. Public Accounting. Martinez Boxing Club, Inc. agrees to make a public accounting of its financial transactions within sixty (60) days after the close of its operating year. Such accounting shall be in the form of a report of income and expenses and a balance sheet of its assets and liabilities, which report shall be available for public inspection at the City Finance Office.

13. Termination. If Martinez Boxing Club, Inc. shall dissolve or if it shall abandon the use of the premises for one season, this lease shall be terminated and Martinez Boxing Club, Inc. shall have no further rights hereunder. Further, if Martinez Boxing Club, Inc. shall default in its compliance with any term or covenant hereunder, this Lease may be terminated at the option of the City of Rapid City.

14. Liability. Martinez Boxing Club, Inc. agrees that the City shall be held harmless from any and all liability arising from any operation or use under this lease of the described premises by it or its agents or employees or any other person using the premises. Martinez Boxing Club, Inc. further agrees to defend the City against any and all claims arising from the operation or use under this lease of the described premises by it or its agents or employees or any other person using the premises. Martinez Boxing Club, Inc. agrees to purchase and maintain bodily injury and property damage insurance for each occurrence of injury or damage in the minimum amount of One Million Dollars (\$1,000,000) with participant's injury liability of at least Five Hundred Thousand Dollars (\$500,000). The City shall be named an additional insured in said policy or policies and Martinez Boxing Club, Inc. shall furnish to the City evidence of insurance by a certificate of insurance of required coverage.

15. Assignment or Subletting. This lease shall not be assigned, nor the premises sublet, by Martinez Boxing Club, Inc. except on written consent and approval of the City.

16. Concession, Advertising, and Naming Rights. Martinez Boxing Club, Inc. shall have the right to operate concessions for the sale of beverages, food, programs, and other items usually sold in this type of facility. Martinez Boxing Club, Inc. shall have the right to sell advertising space on the inside of the facility and all revenue derived from concessions and advertising shall belong to Martinez Boxing Club, Inc.

The City retains all naming rights for the facilities and premises; the concessions and advertising rights granted herein to Martinez Boxing Club, Inc. shall not abrogate the

City's authority to sell naming rights to the facilities and premises which are the subject of this Lease, and to retain all revenues therefrom.

17. City Authority. All matters pertaining to the terms of this lease shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota.

18. Change of Contacts and Officers. Martinez Boxing Club, Inc. agrees to notify the Director of Parks and Recreation of any changes in the officers of Martinez Boxing Club, Inc. within thirty (30) days after said change. Attached to and incorporated by reference into the terms of this agreement are the names and addresses of the current office holders of Martinez Boxing Club, Inc.

19. Non-Discrimination. Martinez Boxing Club, Inc. shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons in any manner prohibited by local, state, or federal laws. Martinez Boxing Club, Inc. further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

20. Relationship Between the Parties. This lease does not create any employee/employer relationship between the City of Rapid City and Martinez Boxing Club, Inc., its agents or employees. Nothing contained in this Lease is intended to create a partnership or joint venture between Martinez Boxing Club, Inc. and the City of Rapid City. No agent of Martinez Boxing Club, Inc. shall be the agent of the City, and Martinez Boxing Club, Inc. covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

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

22. Savings Clause. Should any of portions of this Lease be declared void, the remainder of the Lease shall remain in full force and effect.

23. Choice of Law. This Lease shall be governed by the laws of the State of South Dakota and any action to enforce the terms of this Lease shall be venued in the 7th Judicial Circuit, Pennington County, South Dakota.

24. Time of Essence. Time is of the essence of this Lease.

25. Notices. All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the parties at the following addresses:

Director of Parks and Recreation
125 Waterloo
Rapid City, SD 57701

President, Martinez Boxing Club, Inc.
200 E. Main North Street
Rapid City, SD 57701

26. Condition of Premises; No Warranties; Release. The taking of possession of the premises by Martinez Boxing Club, Inc. shall be conclusive evidence that Tenant (i) accepts the premises as suitable for the purposes for which same are leased; (ii) accepts the premises and each and every part and appurtenance thereof as being in a good and satisfactory condition, and (iii) waives any defects in the premises and its appurtenances.

IT IS UNDERSTOOD AND AGREED THAT THE PREMISES ARE BEING LEASED
HEREUNDER **"AS IS,"** WITHOUT ANY REPRESENTATION OR WARRANTY,

EXPRESS OR IMPLIED, BY THE CITY OF RAPID CITY. The City has not made (except as expressly set forth herein) any representations or warranties of any kind or character whatsoever, express or implied, with respect to the premises, its condition (including without limitation any representation or warranty regarding suitability, habitability, quality of construction, workmanship, merchantability, or fitness for a particular purpose), environmental condition or compliance with environmental or other applicable laws, and Martinez Boxing Club, Inc. acknowledges that it is entering into this Lease without relying upon any such statement or representation or warranty. The City of Rapid City shall not be liable, and Martinez Boxing Club, Inc. hereby releases the City, for (i) injury or damage which may be sustained by Martinez Boxing Club, Inc., or any invitee or their property, caused by or resulting from the state of repair of the premises; (ii) injury or damage from fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the premises; or (iii) the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the premises.

Dated this _____ day of _____, 2009.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

MARTINEZ BOXING CLUB, INC.



