

LEASE AGREEMENT FOR MAIN STREET SQUARE

For and in consideration of the mutual promises and agreements contained herein, the **CITY OF RAPID CITY**, hereinafter referred to as the "City," a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, agrees to lease to the **DOWNTOWN BUSINESS IMPROVEMENT DISTRICT BOARD**, hereinafter referred to as "Board," an instrumentality of the City of Rapid City, of 300 Sixth Street, Rapid City, SD 57701, a specified area more particularly described below subject to the following terms and conditions:

1. Property. City hereby leases to Board the complex legally described as:

**Lots 17-23, Block 75, Original Town of Rapid City, Pennington
County, South Dakota**

commonly known as 524 Main Street, as shown on Exhibit "A" attached hereto and incorporated herein by this reference.

2. Construction. The property is currently being used as a parking lot. It is anticipated that construction and development of what will be known as Main Street Square on the property shall commence in the fall of 2010 and be substantially completed in the spring or early summer of 2011.

3. Term. The term of this lease shall run from the date of approval by City and Board until December 31, 2020.

4. Options to Renew. At the end of the lease term, Board shall have the option to renew this Lease for another ten (10) year term, which term would begin January 1, 2021, and end December 31, 2030. Board may exercise said option by giving written notice to the City no sooner than January 1, 2020, and no later than September 1, 2020. Board shall have the option to renew for a third ten (10) year term, which term would run January 1, 2031, through December 31, 2040. Board may exercise said option by giving written notice to the City no sooner than January 1, 2030, and no later than September 1, 2030.

5. Use. Board shall have use of the property and facilities during the lease period, subject to the terms of this Lease, for the purpose of operating a public plaza to be known as Main Street Square. Board shall make no use of the property and/or facilities inconsistent with such purpose, and Board shall comply with all federal, state, and local laws and regulations in carrying out said use.

6. Possession. City shall maintain possession of the leased premises at all times prior to and during construction of the facilities that will comprise Main Street Square. City shall notify Board in writing when the construction project is substantially complete. Upon receiving such notice, Board shall take possession of the property. For purposes of this Section, substantial completion shall be the stage in the progress of the construction where the work is sufficiently complete so that the property may be utilized for its intended use, as determined by City, its architects and engineers.

7. Maintenance. All routine maintenance of the leased premises shall be provided by Board including but not limited to keeping all grounds, sidewalks, trees, shrubbery, buildings, equipment and all other structures in an attractive, safe, repaired condition. The City may assist Board with the maintenance when the City deems it feasible. City agrees to provide maintenance to the park's utilities infrastructure, including but not limited to, repair of broken water mains, sewer mains, and storm sewer.

Board agrees to maintain said facilities to all city standards for buildings and grounds. Board agrees to be responsible for cleaning the facilities and on a regular basis to pick up and make ready for City collection all trash, debris, and waste material of every nature resulting from the use of the facility by itself or any visitors in attendance at such facilities. Board agrees to provide its own trash receptacles for use at the facilities. Board also agrees to place all collected trash, debris, and waste in a dumpster provided by the City for removal by the City. Board further agrees to keep clean and maintain the concession and restroom facilities within the leased premises on a regular basis.

8. Construction Approval. Construction and other new improvements at the premises shall be in conformity with the regulatory codes of the City and subject to the approval of City. Any permanent improvements or fixtures constructed by Board on the leased premises shall be considered the property of the City.

9. Expenses. Board agrees to pay its own expenses. Board further agrees that the electric utilities will be metered in the name and billed directly to Board and that all expenses incurred by it shall be paid within thirty (30) days of the due date.

10. Early Termination. The City shall have the option of terminating this Lease before the end of the initial or a renewal term if any of the following occur:

- a. Board abandons the use of the premises for one year;
- b. City sells all or a controlling interest in the property;
- c. Board is dissolved;
- d. Board enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise; or
- e. Board defaults in its compliance with any other term or covenant hereunder, which default is not cured within ninety (90) days after notice is given.

Should the City choose to exercise its option to terminate this Lease early, such termination will be effective upon mailing of written notice to Board, at which time Board shall have no further rights under this Lease.

11. Surrender of Premises. Board agrees to surrender and vacate the premises at the termination of this Lease.

12. Liability. Board agrees to defend, release, indemnify and hold City harmless from any and all liability arising from any operation or use of the described premises by Board, its officers, directors, contractors, agents and/or employees or by any other person using the premises. Board agrees to purchase and maintain liability insurance for each occurrence of injury or property damage in the minimum amount of Five Million Dollars (\$5,000,000) with participant's injury liability of at least Five Million Dollars (\$5,000,000) per occurrence. The City shall be named an additional insured in said policy or policies, and Board shall annually furnish to the City evidence of insurance by a certificate of insurance of required coverage.

In the event Board contracts the responsibilities for operations and management of the premises to a third party, the Board shall require any such third party to defend, release, indemnify and hold the City harmless as provided above. The Board's requirement for liability insurance may be fulfilled by the third party, provided that the City and Board shall be named as additional insureds in said policy or policies, and evidence of insurance shall annually be furnished to the City by a certificate of insurance of required coverage.

Notwithstanding any provision in this Lease to the contrary, if the requirements of this Section are not met by Board or its contractor, including a failure to secure said insurance, lapse of said insurance, or any other default of this Section, Board shall have fifteen (15) days to cure said default. If the default is not cured, City may terminate this Lease without further obligation.

13. Assignment and Subletting. This Lease shall not be assigned nor shall the premises be sublet by Board except upon written consent and approval of the City Council. The prohibition against assignment and sublease shall not prevent Board from entering a contract with a third party for operations and management services.

14. Concessions. Board shall have the right to operate concessions for the sale of beverages, food, programs, gifts, and other items customarily sold in public parks. Operation of concessions may be included in any management agreement at the discretion of Board.

15. Condition of Premises; No Warranties; Release. Upon substantial completion of construction of Main Street Square, the taking of possession of the premises by the Board shall be conclusive evidence that Board (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 Board acknowledges that it is entering into this Lease without relying upon any such statement or representation or warranty. The City shall not be liable, and Board hereby releases the City, for injury or damage which may be sustained by Board, or any invitee or their property, caused by or resulting from the state of repair of the premises.

16. Relationship between the Parties. This Lease does not create an employment relationship between the City of Rapid City and the Board or its officers, directors, agents or employees. Nothing contained in this Lease is intended to create a partnership or joint venture between Board and the City of Rapid City. No agent of Board shall be the agent of the City, and Board 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.

17. Non-Discrimination. Board 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. Board further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

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

19. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

20. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

22. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

23. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

24. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

25. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

[Signature pages follow]

DATED this _____ day of _____, 2010.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Officer

(seal)

State of South Dakota)
) ss.
County of Pennington)

On this the ____ day of _____, 2010 before me, the undersigned officer, personally appeared Alan Hanks and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

Notary Public - South Dakota
My Commission Expires _____

DATED this _____ day of _____, 2010.

DOWNTOWN BUSINESS IMPROVEMENT BOARD

By _____
Terry Nelson,
Its Chairman

Attest _____
Clancy Kingsbury, Secretary

State of South Dakota)
) ss.
County of Pennington)

On this the _____ day of _____, 2010 before me, the undersigned officer, personally appeared Terry Nelson and Clancy Kingsbury, who acknowledged themselves to be the President and Secretary of the Board of the Downtown Business Improvement Board, and that they, as such President and Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Board by themselves as President and Secretary.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal) _____
Notary Public - South Dakota
My Commission Expires _____