

**LEASE BETWEEN CITY OF RAPID CITY AND  
RAPID CITY SOFTBALL ASSOCIATION  
OUTDOOR RECREATION COMPLEX**

For and in consideration for the mutual promises and agreements contained herein, the City of Rapid City, a municipal corporation, hereinafter referred to as the “City,” agrees to lease to the Rapid City Softball League Association, Inc., organized under the laws of the State of South Dakota, hereinafter referred to as “Association,” a specified area, known as the “Star of the West” complex, hereinafter referred to as the “Complex” subject to the following terms and conditions:

1.     Consideration. The City hereby leases to the Association an eight (8) field softball complex located east of Creek Drive, north of East St. Patrick Street, west of Sedivy Lane, and immediately adjacent to the east bank of Rapid Creek, not to include the five (5) field soccer complex. The legal description is:

Lot Four (4) of Dairyland Subdivision, Rapid City, Pennington County,  
South Dakota.

2.     Term. The term of this lease is from January 1, 2013 to December 31, 2017. This lease may be terminated by either party giving notice of its intent to terminate said lease on or before October 15<sup>th</sup> of any year, which termination will be effective as of January 1<sup>st</sup> immediately following unless otherwise stated.

3.     Surrender of Premises. The Association agrees to surrender the premises in the event it is necessary for the expansion or utilization of public park facilities and to abandon the premises in the event the demand is made by the United States Government. The Association further agrees to abandon the premises whenever ordered by a court of law or whenever the City is ordered to terminate said lease by an order of a court of law.

4. Use. The Association shall have use of the facilities during the lease period, subject to the terms of this lease, for the purpose of practicing or playing softball. The Association agrees that the City may use the facilities when the same is not required for the use by the Association, and such use by the City shall be consistent with the normal usage of said facilities.

5. Use by Others. The Association shall allow the Rapid City Midget Football League to use the premises two (2) nights per week during September and October with specific dates and times negotiated with the Association and according to the terms and conditions required by the City Parks and Recreation Director or his designee. The Association shall also allow the Rapid City Youth Soccer League, Inc. to have reasonable access to restrooms and to the soccer fields by way of the gates to the softball fields.

Lessee also agrees to allow other persons or organizations to use the premises, subject to the reasonable terms and conditions. City and Lessee agree that Lessee will have the opportunity to review proposals for activities at the facility at least one year in advance, or before the schedule for the following season is complete. If other persons or organizations use the premises, Lessee may be compensated for use of the facility and/or offered the opportunity to work on the event and earn compensation for their program. Both parties agree that Lessee or its designee shall participate in the local organizing committee that is charged with reviewing and fully considering any proposals for use of the facilities by others.

6. Water Provisions: Due to the high cost of maintenance and repair to irrigation systems, beginning in 2013 the Rapid City Department of Parks and Recreation will be responsible for turning water on at the beginning of the season, and turning water off at the end

of the season. Allow for up to 30 days from the date of the request for water service to be provided. Exact dates for provision of water services will be determined solely by the Parks and Recreation Director or his/her designee.

To assist in the promotion of good water conservation practices, the Lessee agrees to assume all costs to connect to and utilize the City's proposed central irrigation control system, in cooperation with the City and in conformance with City specifications. Connections shall be made by December 31, 2014 unless an exception is granted by the City Council.

7. Maintenance. All maintenance of the Complex shall be provided by the Association including but not limited to keeping all grounds, ball diamonds, buildings, and all other structures in an attractive, safe, repaired condition. The areas to be maintained by the Association shall include the areas and nodes adjacent to Sedivy Lane at the entrance to the complex. Maintenance shall be done on a weekly or as-needed basis. The Association shall pay for all maintenance

The Association will also agree to designate a Facility Maintenance Coordinator. The name of the Facility Maintenance Coordinator shall be provided to the Parks and Recreation Director or his designee by March 1<sup>st</sup> of each year during the term of this lease.

The Association agrees to maintain said facilities under the supervision of the Parks and Recreation Director or his designee. The Association agrees to repair or replace any property damaged willfully by the Association's members or invitees which occurs while the premises are in use by the Association. The Association agrees to be responsible for policing the facility and on a regular basis to pick up and make ready for City collection all trash, recyclables, debris, and waste material of every nature (including

mowing of weeds) resulting from the use of the facility by itself or any spectators in attendance at such facilities. The Association agrees to provide its own trash and recycling receptacles for use at the facilities. The Association agrees to be responsible for preparation of the playing fields, including but not limited to raking the infield and chalking the infield lines prior to each scheduled game day. The association also agrees to place all collected trash, recyclables, debris, and waste in a dumpster provided by the City for removal by the City. The Association further agrees to keep clean and maintain the concession and restroom facilities on a regular basis. Lessee agrees to promote and encourage recycling throughout the premises.

The City, at its own expense, agrees to provide routine maintenance to the infrastructure, including but not limited to, repair of broken water mains, sewer, storm sewer, all repairs and surface maintenance of parking lots, and winterizing the irrigation system.

8. Mowing. The Association in cooperation with the Rapid City Youth Soccer League shall mow all grassy areas of the Complex as designated on Exhibit “A” on a weekly or as needed basis, and shall provide for the maintenance of such areas including fertilizing aerating and watering in compliance with the maintenance responsibilities as described in Exhibit “B” attached hereto.

9. Keys. The Rapid City Softball Association will make available to the Parks and Recreation Director or his/her designee a set of keys and alarm codes, if any, for all facility gates and buildings, including the concession stand. These keys will be used for inspection and emergency purposes only and the Parks and Recreation

Department will call the Softball Association before entering the facility unless in an emergency.

10. Complex Master Plan. A Complex Master Plan will be prepared with the help of the Parks and Recreation Landscape Architect. A five (5) year Work Plan will then be developed and updated each year.

11. Construction Approval. Construction and other improvements at the premises shall be in conformity with the regulatory codes of the City and subject to the approval of the Parks and Recreation Director or his designee and should be included in the five year work plan. Any permanent improvements or fixtures constructed by the Association in the leased area shall be considered the property of the City.

12. Expenses. The Association agrees to pay its own administration expenses of the softball league, including but not limited to ASA Registration, umpire fees, balls, lights and electricity, ground crew, office supplies, miscellaneous equipment, and secretarial fees. The Association agrees that the electric utilities will be metered in the name and billed directly to the Association and that all expenses incurred by it shall be paid within thirty (30) days of the due date.

13. Public Accounting. The Association 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.

14. Termination. If the Association dissolves or abandons the use of the facilities for one calendar year or fails to meet its consideration requirements as set forth

in Section I of this lease without approval from the City, this lease shall be terminated and the Association shall have no further rights to use the Complex. If the Association changes the character of its operation significantly from that of a corporation organized to support and promote amateur softball, then it shall have no further rights under this lease.

15. Liability. Lessee 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. Lessee 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. Lessee 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 the Lessee shall furnish to the City evidence of insurance by a certificate of insurance of required coverage.

16. Assignment or Subletting. This lease shall not be assigned, nor the premises sublet, by Lessee except on written consent and approval of the City.

17. Concession, Advertising, and Naming Rights. Lessee shall have the right to operate concessions for the sale of beverages, food, programs, and other items usually sold in the public parks. Lessee shall have the right to sell advertising space on the inside of the fences enclosing the playing fields and all revenue derived from concessions and advertising shall belong to Lessee. Lessee also agrees to be responsible for cleaning and maintaining the concession area.

The City retains all naming rights for the facilities and premises; the concessions and advertising rights granted herein to Lessee 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.

18. 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.

19. Change of Contacts and Officers. Lessee agrees to notify the Director of Parks and Recreation of any changes in the officers of Lessee 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 Lessee.

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

21. Relationship Between the Parties. Lessee is an independent contractor of the City. This Agreement does not create an employment relationship between the City of Rapid City and Lessee or its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Lessee and the City of Rapid City. No agent of Lessee shall be the agent of the City, and Lessee 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.

22. Time of Essence. Time is of the essence of this Agreement.

23. 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.

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

25. Entire Agreement. This Agreement, along with any attachments constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

26. 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.

27. 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.

28. 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.

29. 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.



Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

State of South Dakota )

ss

County of Pennington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Sam Kooiker 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.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

(SEAL)

RAPID CITY SOFTBALL LEAGUE ASSOC., INC.

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State of South Dakota )

ss.

County of Pennington )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the President of Rapid City Softball League Association, Inc. and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing his name as President.

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

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Notary Public, South Dakota

My Commission Expires:

(SEAL)

## EXHIBIT "A"

Areas to be mowed by Softball Association



LEASE BETWEEN CITY OF RAPID CITY AND  
RAPID CITY SOFTBALL LEAGUE ASSOCIATION, INC.

EXHIBIT "B"

Turf Maintenance

Bluegrass and ryegrass turf areas should be maintained at a consistent growing height of 2 and ½ inches. Mowing should be done on a weekly interval or when no more than 1/3 of the grass blade will be removed. Grass clippings should be left on the turf areas as long as it is not left in clumps. Fields should be swept if excessive grass clumps are left after mowing.

No less than two (2) applications of fertilizer should be made on the ryegrass and bluegrass turf areas. Fertilizer recommendations shall be based on soil samples taken from the fields (to be submitted to a soils lab). No less than four (4) pounds of nitrogen per 1m000 squire feet should be applied per year.

All turf areas should be aerified with a core aerifier at least once per year and arrangements shall be made with the City Parks Department for the aeration. Ideal time is prior to the application of fertilizer. All sprinkler heads should be marked prior to aerification to avoid sprinkler damage. Insect and disease problems should be identified and treated immediately by qualified turf care professionals. Broadleaf weed control should take place annually. Weeds should be controlled on all turf areas within the complex. Weed control along Rapid Creek will be handled by the Parks Department.

Turf areas that have irrigation should receive an average of 1 and ½ inches of water (including natural rainfall) per week. No more than three (3) inches of water should be applied to turf areas per week through the irrigation system. The irrigation system can be adjusted for optimum moisture conditions. Irrigation should take place within the guidelines set by the Rapid City Water Division and the City Council in order to meet current water use and irrigation restrictions. Turf care problems and questions should be referred to the Parks Division Manager.