

**LEASE AGREEMENT BETWEEN  
RAPID CITY ARTS COUNCIL, INC. AND CITY OF RAPID CITY**

Lease made as of the \_\_\_\_ day of \_\_\_\_\_, 2002, by and between the City of Rapid City (City), Lessor, and Rapid City Arts Council, Inc. (Lessee).

For and in consideration of the mutual covenants herein contained, the City hereby leases to Lessee and Lessee hires and takes from the City the property hereinafter described as the demised premises subject to the terms, conditions, and stipulations herein provided.

**I.**

**DEMISED PREMISES**

The demised premises leased to the Lessee shall consist of approximately \_\_\_\_\_ square feet (\_\_\_\_\_) of area within the building located at 703 Kansas City Street, the same being located upon portions of the following described real property:

Lots One, Two, Three, Four, and Five in Block One Hundred Three (103) of the Original Townsite of the City of Rapid City, Pennington County South Dakota.

Lessee shall not have the use of the parking area for the building, the use of which is reserved for the sole and exclusive use of Lessor.

**II.**

**USE**

Lessee may use the demised premises, including the common areas, for any legal purpose.

**III.**

**RENT**

Lessee shall pay to the City before occupying the demised premises the sum of One Dollar (\$1.00). Such sum shall be in addition to such other consideration as Lessee provides by virtue of its occupancy and upkeep of the demised premises

**IV.**

**AGREEMENT TO OCCUPY**

As part of the consideration for the execution of this lease, Lessee agrees to occupy the demised premises and to conduct its business therefrom insofar as may, in good faith, be practical.

**V.**

**SUBLEASING**

Lessee shall have the right to sublease the demised premises on terms consistent with this Lease.

**VI.**

**TIME OF THE ESSENCE**

Time is of the essence of each and every provision hereof.

**VII.**

**TERM**

The term of this lease shall for one (1) year commencing on the date last written below. Should either party choose to terminate this lease before the running of the one year period, the terminating party shall notify the other party in writing ninety (90) days in advance of such desired termination of lease. Upon such proper notice to terminate said lease, said lease shall be terminated.

**VIII.**

**OCCUPANCY AND ACCEPTANCE**

By entering into and occupying the demised premises, Lessee shall be deemed to have acknowledged that the demised premises are in good order and repair.

**IX.**

**SIGNS**

Lessee may erect, place, or maintain only permitted on-premise signs upon the demised premises.

**X.**

**INSTALLATION AND MAINTENANCE OF FIXTURES**

Lessee shall furnish and install upon the demised premises trade fixtures, light fixtures, floor coverings, equipment, and furnishings as shall be proper for the conduct of the business.

Items to be furnished and installed by Lessee shall be installed as expeditiously as reasonably possible, shall be of first quality and commensurate in appearance and in keeping with the demised premises, and shall be maintained in good order and repair by Lessee, at its expense, during the term of this lease.

**XI.**

**ALTERATIONS, CHANGES, ADDITIONS**

No structural changes, alterations, or additions shall be made by Lessee to the demised premises without the express written consent of the City. Any such structural changes, alterations, or additions to or on the demised premises made with such consent shall remain for the benefit of and become the property of the City unless otherwise provided in such written consent.

**XII.**

**DEFECTS: DEFECTIVE CONDITIONS: WIND: ACTS OF THIRD PARTIES**

The City of Rapid City shall not be liable to Lessee for any damage or injury to Lessee or Lessee's property occasioned by any defect of plumbing, heating, air cooling, air conditioning equipment and ducts, electrical wiring or installation thereof, gas pipes, steam pipes, or from broken steps, or from the backing 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 demised premises, or from the escape of steam or hot water from any boiler or radiator, or for any such damage or injury occasioned by water being on or coming through the roof, stairs, walks, or any other place on or near the demised premises unless the City neglects or fails to make necessary repairs required of it to be made under the terms of this lease after receipt of written notice thereof from Lessee, or for any such damage or injury done or occasioned by the falling of any fixture, plaster, or stucco, or for any such damage or injury caused by wind or by the act, omission, or negligence of co-tenants or of other persons, occupants of the same building or of adjacent buildings or contiguous property.

All claims against the City for any damage or injury as provided in the preceding paragraph of this section are hereby expressly waived by Lessee, except those claims occasioned by the City's neglect or failure to make repairs for which the City is responsible under this lease, after due written notice thereof by Lessee.

For the purposes of this section, Lessee shall include Lessee, its agents, sublessees, licensees, permittees, assigns, guests, and bailors.

### **XIII.**

#### **REPAIRS**

The City shall repair any damage to the demised premises occasioned by termites, dry rot, or fungus, and keep and maintain the roof and exterior walls of the demised premises in good repair at all times, and will further keep and maintain all underground plumbing in good order and repair, but not including the repair of plumbing stopped up by reason of foreign matter introduced into the plumbing fixtures. There shall be no obligation on the part of the City to make any of the repairs required in this section unless and until Lessee gives to the City at least ten (10) days written notice, advising the City of the necessity of the repair or repairs, and the City shall not be liable to Lessee for any loss or damage caused by the failure of the City to make any repairs required of it hereunder unless the City, on receipt of such notice, shall fail to proceed with due diligence to make such repair or repairs. The phrase "exterior walls" as herein used shall not be so construed as to require the City to make repairs to the interior surfaces thereof. Except as provided herein, Lessee shall not call on the City to make any improvements or repairs whatsoever in or on the demised premises.

Lessee shall, at its own expense, keep and maintain all of the demised premises, including but not limited to walls, floors, doors, counters, and other fixtures, in good order, condition, and repair, and in compliance with all laws and regulations applicable thereto, during the entire term of this lease, except for those repairs required of the City to be made and as provided in the first paragraph of this section.

### **XIV.**

#### **MAINTENANCE**

The City shall maintain and repair all sidewalks, including cleaning, snow and ice removal, cost and expenses of planting, replanting, and replacing flowers and landscaping. Lessee shall be solely responsible for all utility costs, security alarm costs, janitorial costs, liability insurance, and administration of sublessees. The City will maintain the sidewalks and be responsible for garbage pickup, and undertake major repairs and capital improvements as the City, in its sole discretion, deems necessary.

### **XV.**

#### **INSURANCE**

Lessee shall at all times during the term of this lease, at its own expense, maintain in force a policy or policies of insurance, written by responsible insurance carriers, insuring Lessee against liability or injury or death of persons or loss or damage to property occurring on or about the demised premises. The liability under any such insurance shall not be less than One Million Dollars (\$1,000,000.00) per

occurrence or Two Million Dollars (\$2,000,000.00) aggregate. Lessor shall maintain umbrella insurance on the premises.

## **XVI.**

### **SURRENDER OF PREMISES**

Lessee shall, at the termination of this lease, vacate the demised premises in as good a condition as they were at the time of entry thereon by Lessee, except for reasonable use and wear thereof, acts of God, or damage by casualty beyond the control of Lessee, and on vacating shall leave the demised premises free and clear of all rubbish and debris.

## **XVII.**

### **INDEMNIFICATION OF LESSOR**

Lessee shall serve a written notice on the City at least ten (10) days prior to permitting any work involving repairs, improvements, construction, and the like to be commenced in or on the demised premises.

Lessee shall indemnify the City and the premises herein demised and all improvements placed thereon against all claims, liens, claims of lien, demands, charges, encumbrances, or litigation arising directly or indirectly out of or by reason of any work or activity of Lessee on the demised premises, and shall work with or within thirty (30) days after the filing of any lien for record fully pay and satisfy the same, and shall reimburse the City for all loss, damage, and expense, including reasonable attorney's fees, which it may suffer or be put to by reason of any such claim of lien, demands, charges, encumbrances or litigation.

Lessee shall indemnify the City and the demised premises against any cost, liability, or expense arising out of any claims of any person or persons whatsoever by reason of the use or misuse of the demised premises by Lessee or any person or persons holding under Lessee, shall indemnify the City against any penalty, damage, or charge incurred or imposed by reason of any violation of law or ordinance by Lessee or any person or persons holding under Lessee, against any costs, damage, or expense arising out of the death of or injury to any person or persons holding under Lessee.

## **XVIII.**

### **LESSOR'S RIGHT OF INSPECTION**

The City shall have access to the demised premises, and each part thereof, during Lessee's regular business hours for the purpose of inspecting the same, making repairs, and posting notices which the City may deem to be for the protection of the City or the demised premises.

**XIX.**

**EXPENSES OF ENFORCEMENT**

Should either party incur any expense in enforcing the provisions of this lease, the party in default shall pay to the other all expenses so incurred, including reasonable attorney's fees.

**XX.**

**NOTICES**

All notices or demands of any kind which the City may be required or may desire to serve on Lessee under the terms of this lease may be served on Lessee by leaving a copy of such demand or notice, or by mailing a copy thereof by first class mail to Lessee at the demised premises or at such other address or addresses as may from time to time be designated by Lessee in writing to the City. All notices and demands from Lessee to the City may be similarly served on the City at 300 Sixth Street, Rapid City, South Dakota, or at such other address as the City may in writing designate to Lessee.

**XXI.**

**NEAT APPEARANCE**

Lessee shall maintain its leased area in a neat and businesslike appearance. No parcels, packages, bundles, baggage, or other items of cargo received, stored, or held for shipment shall be stored or kept in a place visible from any area commonly and customarily open to the public.

IN WITNESS WHEREOF, the parties have executed this lease at Rapid City, South Dakota, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

CITY OF RAPID CITY

By: \_\_\_\_\_  
Jerry Munson, Mayor

ATTEST:

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



\_\_\_\_\_ of Rapid City Arts Council, Inc., and that he, as such \_\_\_\_\_,  
being authorized so to do, executed the foregoing instrument for the purposes therein contained by  
signing the name of Rapid City Arts Council, Inc. by himself as \_\_\_\_\_.

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

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

My Commission Expires:

(SEAL)

Prepared By: CITY ATTORNEY'S OFFICE