

LEASE AGREEMENT BETWEEN CITY OF RAPID CITY  
AND BLACK HILLS AMATEUR BASEBALL

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 Black Hills Amateur Baseball,

(Lessee), a non-profit corporation of the State of South Dakota, a specified area to operate a amateur baseball program, subject to the following terms and conditions:

1. Consideration. City hereby leases to Lessee the below described premises for the sum of One Dollar(s) (\$ 1<sup>00</sup>) per year and other good and valuable consideration, including but not limited to, maintenance of general grounds, construction of incidental improvements, administration, responsibility for mowing of the fields, and responsibility for all electrical 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 Jan. 1, 2002 to Jan. 1, 2012.

3. Premises. The premises leased by the City to the Lessee are described on Exhibit "A", attached hereto and incorporated herein by reference.

4. Surrender of Premises. Lessee agrees to surrender the premises, or any 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 any part thereof, in the event the demand is made by the United States government, State of South Dakota, or City of Rapid City. It further agrees to abandon the premises, or any 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. Lessee shall have priority but non-exclusive use of the premises during the lease period, subject to the terms of this lease, for the purpose of operating a amateur baseball program. Lessee agrees that the City may use the premises when the same is not required for use by Lessee, and such use by the City shall not be inconsistent with the normal usage of said premises.

6. Use by Others. Lessee will not allow other persons or organizations to use the premises under this Lease without the express written consent of the Public Works Director or his/her designee. However, upon the direction of the Public Works Director or his/her designee, Lessee shall allow other persons or organizations to use the premises if the premises are not in bona-fide use by the Lessee. In keeping with the best interests of the community and equitable access to all City recreation facilities, Lessee agrees to negotiate in good faith as to the use of the premises by others. The maintenance costs for such use shall be determined by Lessee and the authorized user; provided, however, that the Public Works Director will determine said costs if the parties are unable to agree.

7. Maintenance. Lessee agrees to maintain said premises under the authority of the Public Works Director or his designee. Lessee agrees to repair or replace any property damaged willfully by Lessee's members or invitees which occurs while the premises are in use by Lessee. Lessee 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 itself or any spectators in attendance at such premises. Lessee agrees to provide its own trash receptacles for use at the premises. Lessee agrees to be responsible for the preparation of the playing fields prior to all scheduled game days. Lessee

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

City, at its own expense, agrees to provide unique or unusual maintenance and routine maintenance to the infrastructure, including but not limited to, repair of broken water mains, sewer, storm sewer and all repairs and surface maintenance of parking lots. City agrees to provide water to the premises for the purpose of watering the playing field grass. City specifically reserves the right to restrict water usage under this agreement if water restrictions are placed on other water users within the City.

8. Mowing. Lessee shall mow the playing fields on a substantially weekly basis during the season. The Superintendent of Parks can mow the fields and charge Lessee at the rate of twenty-five dollars (\$25.00) per hour for each person and machine used, provided that the Superintendent of Parks: (1) determines the need for mowing; (2) gives Lessee three (3) days notice of his intent to do so if Lessee fails to mow; and (3) determines he has the available personnel and equipment. Should the City Parks Department not have the available personnel and equipment, the Superintendent of Parks can arrange for a private contractor to mow at the expense of Lessee.

9. Construction Approval. Construction and other improvements at the leased areas shall be in conformity with the regulatory codes of the City and subject to the approval of the Public Works Director or his designee. Any permanent improvements or fixtures constructed by the Lessee in the leased area shall be considered the property of the City.

10. Expense. City shall assume no expenses as a result of this lease or any of the operations of the Lessee. Lessee agrees to pay its own administration expenses, including but not limited to, employees, lights and electricity, grounds crew, office supplies, equipment, and

secretarial fees. Lessee agrees that the electric utilities will be metered in the name of and billed directly to Lessee and that all expenses incurred by it shall be paid within thirty (30) days of due date.

11. Public Accounting. Lessee agrees to make available to the City upon request a public accounting of its financial transactions. Such accounting shall be in the form of a report of income and expense and balance sheet of its assets and liabilities.

12. Termination. If Lessee shall dissolve or abandon the use of the premises for one season or fail to meet its consideration requirements as set forth in Section 1 of this lease without approval from the City, this lease shall be terminated and Lessee shall have no further rights hereunder. If Lessee changes the character of its operation significantly from that of a non-profit corporation, then it shall have no further rights under this lease.

13. 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 agrees to purchase or provide 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). The City shall be named an additional insured in said policy or policies, and Lessee shall furnish to the City evidence of insurance by a certificate of insurance of required coverage.

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

15. 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 also agrees to be responsible for cleaning and maintaining the concession

area. 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; provided, however, that any permits required shall be obtained and all regulations and City ordinances shall be followed. Lessee shall have no naming rights over the premises unless specifically approved by the Common Council of the City of Rapid City.

16. Parking. Lessee agrees that it will permit no vehicular parking within the leased areas except in those areas as may be designated for parking by the Public Works Director or his designee.

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. Lessee agrees to notify the Director of Public Works and the City Finance Officer 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.

19. Non-Discrimination. Lessee shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin, sexual preference, 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.

20. Relationship Between the Parties. This lease does not create any employee/employer relationship between the City and Lessee, its agents or employees.

21. Integration. The parties agree that this 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.

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

CITY OF RAPID CITY

By: \_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

\_\_\_\_\_  
(NAME OF LESSEE)

By: Tom Andby  
Its: Vice President BHAB

State of South Dakota )

SS.

County of Pennington )

On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned officer, personally appeared Jerry Munson and James F. Preston, 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)

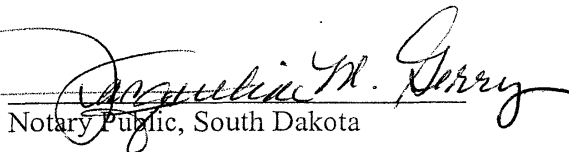
State of South Dakota )

SS.

County of Pennington )

On this the 18th day of April, 2002, before me, the undersigned officer, personally appeared Lon Nordbye, who acknowledged himself to be the VICE PRESIDENT of BHA'B, and that he, as such VICE PRESIDENT, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Lon Nordbye by himself as VICE PRESIDENT.

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

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

My Commission Expires: **My Commission Expires**  
**July 15, 2006**

(SEAL)

Prepared By: CITY ATTORNEY'S OFFICE



EXHIBIT A



## **Black Hills Amateur Baseball Board of Directors**

President-Darrel Deneke

Vice President- Lon Nordbye

Secretary\_Greg Eiesland

Treasure- John Graves

Members-

Jason Olson

Kevin Morsching

Larry Renz

Ben Eicher

Wade Huntington

Darren Douglas

Western Dakota Insurers, Inc.  
 816 Fifth Street  
 Rapid City SD 57701-3708  
 Phone: 605-342-3130 Fax: 605-342-2162

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED  
 BH Amateur Baseball Assoc  
 1907 Sunset  
 Sturgis SD 57785

INSURER A: Capitol Indemnity Corporation  
 INSURER B:  
 INSURER C:  
 INSURER D:  
 INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	CP00092513	05/14/01	05/14/02	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ EXCLUDED
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
					GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
	EXCESS LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input type="checkbox"/> RETENTION \$					\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 Operations of Insured.  
 City of Rapid City listed as additional insured.

CERTIFICATE HOLDER **N** ADDITIONAL INSURED; INSURER LETTER: \_\_\_\_\_ CANCELLATION

CITYRAP  
 City of Rapid City  
 300 6th Street  
 Rapid City SD 57701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.  
 AUTHORIZED REPRESENTATIVE  
 Carol Buckingham SEA