

LEASE AGREEMENT

For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to be paid annually on January 1st of each year during the duration of this Lease, the receipt and sufficiency of which is hereby acknowledged, the City of Rapid City (hereinafter "City"), a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota, 57701, hereby leases to the Rapid City YMCA (hereinafter "YMCA"), 815 Kansas City Street, Rapid City, South Dakota, 57701, the below described real property, subject to the terms hereinafter set forth. All notices and correspondence relating to this lease shall be delivered to the above addresses.

1. THE REAL PROPERTY

The premises that is the subject of this lease is legally described as:

(INSERT LEGAL DESCRIPTION)

and is more commonly known as the Lacroix Links golf course. All structures and improvements located on the above described real estate are included in this lease.

2. ADDITIONAL EQUIPMENT

In addition to the above described real estate, the City agrees to allow the YMCA to use the following equipment at no additional charge:

1 Jacobsen Greens King IV
Model # 62226
Serial # 583512

1 Cushman Turf Truckster
Model #899532-8610
Serial # 583512

1 John Deere Rotary Mower
Model #F935
Serial # 111159

1 Jacobsen Tri-Plex Tree Mower
Model # TF60
Serial # 1604

1 Jacobsen 22" Push Mower

1 Weed Trimmer

1 Par Aid Hole Cutter

All golf flags and golf cups currently used on the Lacroix Links golf course.

The YMCA shall have the right to use this equipment throughout the term of this lease. YMCA agrees to maintain all equipment in an operable condition and to replace all equipment as necessary. At the termination of this lease, the YMCA shall return all of the above described equipment to the City in fully operation condition, less reasonable wear and tear. Lease of equipment is for items on hand. The City will not purchase replacement equipment.

3. THE TERM

This lease shall commence upon signing by both parties and shall expire on December 31, 2008. Thereafter, the lease shall be renewable for up to three additional five (5) year terms upon the agreement of the parties. YMCA shall give notice to the City of its application for renewal of this lease at least ninety (90) but not more than one hundred twenty (120) days prior to the expiration of the term. Failure to provide this notice at least ninety (90) days prior to the expiration of the term shall void YMCA's right to renew this lease.

Either party may terminate this lease on December 31st of any year. However, written notice of such termination of this lease must be delivered to the other party by the terminating party on or before October 1st immediately preceding December 31st.

4. SUBSIDY

The City has previously operated Lacriox Links at an economic loss. In consideration thereof, the City agrees to pay YMCA thirty-thousand dollars (\$30,000.00) in the year 2004 to aid in the operation of the golf course. In addition, the City agrees to pay YMCA twenty-five thousand dollars (\$25,000.00) in the year 2005 and twenty thousand dollars (\$20,000.00) in the year 2006. Thereafter, YMCA shall receive no subsidy from the City. The City shall make monthly payments to YMCA of 1/6 of the total amount due for the year during the months of April, May, June, July, August and September. Such payments shall be made by the 15th of each of these months.

5. USES PERMITTED

The YMCA may use the above described premises for the sole purpose of operating a golf course April to October. The YMCA is authorized to use the facilities for other golf-related or educational programs November through March. The YMCA shall have full authority to set all rates and times of operation for the use of the course. YMCA shall notify the City on or before November 1st each year of its complete rate structure for the following year. The YMCA shall be permitted to limit the amount of time the golf course is open for public use, provided that the golf course is open to the public at least 70% of the time. In addition, YMCA shall guarantee that the golf course shall be open to the public from 7:00 am to 10:00 am every day of the week except Sunday.

6. USES PROHIBITED

YMCA shall not use, or permit the premises, or any part thereof, to be used, for any purpose other than a golf course; and no use shall be made of the premises, or acts done, which will cause a cancellation of any insurance policy covering the buildings located on the premises,

or any part thereof, nor shall YMCA sell, or permit to be kept, used, or sold, in or about the demised premises any article which may be prohibited by the standard form of the fire insurance policies. YMCA shall, at its sole cost, comply with all requirements pertaining to the premises of any insurance organization or company necessary for the maintenance of insurance, as herein provided, covering any building and appurtenances at any time located on the demised premises.

Notwithstanding any other provision of this paragraph, YMCA shall be allow to use the clubhouse for programs related to golf or education during the months November to March as permitted by Section 5 of this Agreement.

7. DUTY TO MAINTAIN THE PREMISES

YMCA shall at all times maintain the premises, buildings, and equipment that is the subject of this lease. Specifically, the YMCA shall maintain the real property for use as a golf course and shall regularly mow, water, fertilize and undertake all other functions normally and usually associated with the maintenance of a golf course. YMCA shall perform all maintenance at its own expense, provided that the City of Rapid City shall provide the YMCA with 1.26 million cubic feet of water to be used for watering the golf course. YMCA shall pay for all additional water necessary for the maintenance of the golf course. YMCA shall maintain the golf course in a like or better condition than existed at the implementation of this lease and employ or contract with an individual or entity fully qualified in golf course maintenance for the purpose of insuring proper adequate care of the golf course.

YMCA shall maintain all buildings and structures on the premises at its own cost. Also, YMCA shall fully repair or replace existing buildings or structures if they are damaged in any way. YMCA shall not modify existing buildings or structures or construct new buildings or structures on the premises without the prior approval of the City. In addition, any newly

constructed buildings or structures shall become the property of the City upon the termination of this lease. Upon approval of the City Council to construct new buildings or structures, YMCA shall obtain all required approvals from the City Planning Department and all necessary permits, including but not limited to grading, building, plumbing, mechanical, and electrical permits.

8. WASTE AND NUISANCE PROHIBITED

During the term of this Lease, YMCA shall comply with all applicable laws, regulations and restrictions affecting the premises, including but not limited to building regulations and planning and zoning ordinances. YMCA shall not commit, or suffer to be committed, any waste on the premises, or any nuisance.

9. CITY'S RIGHT OF ENTRY AND INSPECTION

YMCA shall permit the City to enter into and upon the premises at all reasonable times for the purpose of inspection, or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of premises thereby occasioned. YMCA shall also permit the City to inspect all equipment that is a part of this lease.

If the City determines that the condition of the real property, buildings or structures or equipment is substandard, the City shall notify YMCA in writing. YMCA shall have twenty (20) business days to correct the deficiency. Failure of the YMCA to correct any noted deficiency shall be deemed a material breach of this lease and shall be a basis for the immediate termination of the lease by the City.

10. SUBLETTING AND ASSIGNMENT

YMCA may not sublet the premises in whole or in part without the City's prior written consent, and the making of any such sublease shall not release YMCA from, or otherwise affect

in any manner, any of the YMCA's obligations hereunder. YMCA shall not assign or transfer this Lease, or any interest herein, without the prior written consent of the City, and consent to an assignment shall not be deemed to be consent to any subsequent assignment. Any such assignment without such consent shall be void, and shall, at the option of the City, constitute a termination of this Lease.

11. UTILITIES

YMCA shall fully and promptly pay for all gas, heat, light, power, telephone service, and other public utilities of every kind furnished to the premises throughout the term hereof, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the premises and all activities conducted thereon. The City shall supply water as described in paragraph 6 of this lease and YMCA shall pay in accordance with that provision.

12. INDEMNIFICATION OF LESSOR

The City shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by the YMCA or by any person whosoever may at any time be using or occupying or visiting the demised premises or be in, on, or about the same, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of YMCA or of any act, omission, or negligence of the City or of any occupant, subtenant, visitor, or use of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and YMCA shall fully indemnify the City against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. YMCA hereby waives all claims against the City for damages to the building

and improvements that are now or hereafter placed or built on the premises and to the property of YMCA in, on or about the premises, and for injuries to persons or property in or about the premises, from any cause arising at any time.

13. REMEDIES CUMULATIVE

All remedies hereinbefore and hereafter conferred on Lessor shall be deemed cumulative and no one exclusive of the other, or of any other remedy conferred by law.

14. INSURANCE

(a) *Insurance coverage of premises.* YMCA shall, at all times during the term of this Lease and at YMCA's sole expense, keep all improvements which are now or hereafter a part of the premises insured against loss or damage by fire and the extended coverage hazards for one hundred percent (100%) of the full replacement value of such improvements, with loss payable to City and YMCA as their interest may appear. Any loss adjustment shall require the written consent of both Lessor and Lessee.

(b) *Personal injury liability insurance.* YMCA shall maintain in effect throughout the term of this Lease personal injury liability insurance covering the premises and its appurtenances and the sidewalks fronting thereon in the amount of One Million Dollars (\$1,000,000.00) for injury to or death of any one person, and One Million Dollars (\$1,000,000.00) for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of One Million Dollars (\$1,000,000.00). Such insurance shall specifically insure YMCA against all liability assumed by it hereunder, as liability imposed by law, and shall insure both the City and YMCA but shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for the City and YMCA.

(c) *City's right to pay premiums on behalf of Lessee.* All of the policies of insurance referred to in this section shall be written in a form satisfactory to and approved by the City. All of the policies of insurance referred to in this section shall be issued by insurance companies satisfactory to the City. YMCA shall pay all of the premiums therefore and deliver such policies, or certificates thereof, to the City, and in the event of the failure of YMCA, either to effect such insurance in the names herein called for or to pay the premiums thereof or to deliver such policies, or certificates thereof, to City, the City shall be entitled, but have no obligation, to effect such insurance and pay the premiums therefore, which premiums shall be repayable to the City with the next installment of rental, and failure to repay the same shall carry with it the same consequence as failure to pay any installment of rental. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give to the City sixty (60) days' written notice before the policy or policies in question shall be altered or cancelled. The City agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by the YMCA.

(d) *Definition of full replacement value.* The term "full replacement value" of improvements as used herein, shall mean the actual replacement cost thereof from time to time less exclusions provided in the normal fire insurance policy. In the event either party believes that the full replacement value (that is to say, the then replacement cost less exclusions) has increased or decreased, it shall have the right, but, except as provided below, only at intervals of not less than two (2) years, to have such full replacement value redetermined by the fire insurance company which is then carrying the largest amount of fire insurance carried on the demised premises (hereinafter referred to as "impartial appraiser"). The party desiring to have the full replacement value so redetermined by such impartial appraiser shall forthwith on submission of such

determination to such impartial appraiser shall forthwith on submission of such determination to such impartial appraiser give written notice thereof to the other party hereto. The determination of such impartial appraiser shall be final and binding on the parties hereto, and Lessee shall forthwith increase (or may decrease) the amount of the insurance carried pursuant to this section as the case may be to the amount so determined by the impartial appraiser. Such determination shall be binding for a period of two (2) years, and until superseded by agreement between the parties hereto or by a subsequent redetermination by an impartial appraiser. Lessee shall pay the fee, if any, of the impartial appraiser. If during any such two (2) year period Lessee shall have made improvements to the premises, the City may have such full replacement value redetermination at any time after such improvements are made, regardless of when the full replacement value was last determined.

(e) *Adjustment of coverage.* In the event that City shall at any time deem the limits of the personal injury or property damage public liability insurance then carried to be insufficient, the City shall raise the limits for such insurance then to be carried and such determination, if any, shall be borne by the YMCA.

(f) *Blanket Insurance policies.* Notwithstanding anything to the contrary contained in this section, YMCA's obligation to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by YMCA; provided, however, that the coverage afforded City will not be reduced or diminished or otherwise be different from that which would exist under separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance, and provided further that the requirements of the foregoing Paragraph (e) of this section are otherwise satisfied.

15. WAIVER

The waiver by the City of, or the failure of Lessor to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition therein contained. The subsequent acceptance of rent hereunder by the City shall not be deemed to be a waiver of any preceding breach by lessee of any term, covenant, or condition of this lease, other than the failure of YMCA to pay the particular rental so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent.

16. PARTIES BOUND

The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

17. CHOICE OF LAW AND VENUE

The parties agree that the terms of this lease shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.

18. MERGER

This written lease agreement represents the entire agreement of the parties. No other writing is a part of this agreement. All other prior representations, writings, oral statements or

negotiations have been merged into this document and are either included herein or intentionally excluded.

Dated this ____ day of _____, 2003.

CITY OF RAPID CITY

By: _____
Jim Shaw, Mayor

ATTEST:

Finance Officer

(SEAL)

YMCA

By: _____
Its: _____

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

On this ____ day of _____, 2003, before me, the undersigned officer, personally appeared Jim Shaw and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____

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

On this _____ day of _____, 2003, before me, the undersigned officer,
personally appeared _____, who acknowledged himself to be the
_____ of the YMCA, and that as such _____, being authorized so to do,
executed the foregoing instrument for the purposes therein contained by signing the name of the
YMCA as such _____.

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

[SEAL]

Notary Public, State of South Dakota
My Commission Expires: _____

Prepared By: CITY ATTORNEY’S OFFICE