

**LEASE BETWEEN THE CITY OF RAPID CITY AND THE BENEVOLENT AND
PROTECTIVE ORDER OF THE ELKS RAPID CITY LODGE 1187 FOR
PROPERTY LOCATED AT THE SOUTHERN EDGE OF THE WALLY BYAM
SITE.**

This Lease agreement is made as of the ____ day of _____, 2009, by and between the City of Rapid City, (the "City"), and of the Benevolent and Protective Order of Elks, Rapid City Lodge 1187, (the "Elks").

For and in consideration of the mutual covenants conditions contained herein, to be kept and performed by the respective parties, the City and the Elks hereby agree as follows:

The City hereby leases to the Elks a certain parcel of real property, containing 20.31 acres, more or less legally described as:

A portion of the Southwest Quarter (SW 1/4) of the Southeast Quarter (SE 1/4) of Section Nine (9), T1N, R8E, BHM, Pennington County, South Dakota, as shown on Exhibit A which has been attached hereto and is incorporated herein.

The Elks shall use the leased premises as a driving range in conjunction with the golf course it presently operates on the abutting premises. All access to the property by the Elks and its licensees, permittees, guests, agents, and employees shall be through and across property owned by the Elks, except with the express permission of the Director of Public Works or their authorized designee. The Elks may not assign its rights under this lease without the express written consent of the City.

All construction or improvements required to provide access to the leased premises shall be constructed by the Elks at its sole expense and shall be removed by the Elks at its sole expense upon expiration or termination of this lease. All other grading and all construction by the Elks upon the leased premises shall be at its sole expense and shall be subject to the approval of the Director of Public Works or their designee. Any improvements or other personal property not removed by the Elks at the expiration or termination of this lease shall become the property of the City.

This lease shall be for a term of five (5) years beginning on the ____ day of _____, 2009. This lease shall be terminable for any reason by either party upon sixty (60) days written notice to the other party. The Elks acknowledges the City desires to sell this property in the future and agrees that it will bring no claims related to the loss of its driving range if the City decides to terminate the lease before the expiration of the full lease term.

All notices or other communications hereunder shall be in writing and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, postage prepaid, to the parties at the following addresses:

CITY:

City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701
Attention: Public Works Director

STATE:

Elks - Rapid City Lodge No. 1187
3333 Jolly Lane
Rapid City, SD 57703
Attention: Lodge Secretary

The parties, by notice given hereunder, may designate any further or different methods of notification and addresses to which notices and communications shall be provided.

As consideration for granting this lease the Elks shall pay the City on or before April 15th of each year the sum of Five Hundred Dollars (\$500.00). If the Elks has not yet paid the lease for this year, the payment shall be made within Forty-five days of approval of this lease. If the City terminates the lease on or before July 1st of any year, the City will refund the Elks payment. If the lease is terminated after this date, no refund will be made. If the Elks terminates the lease after payment is made, no refund will be required.

The Elks shall obtain insurance coverage of at least One Million Dollars (\$1,000,000) combined single limit for property damage and/or property damage per occurrence. The Elks shall defend, indemnify and otherwise hold the City harmless from any and all liability arising out of its use and occupancy of the leased premises and shall cause the City to be named as an additional insured on all liability policies.

The Elks may not assign its interests under the lease to any other person or entity without the express authorization of the City.

If any section(s), or provision of this lease is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this lease if they can be given effect without the invalid section(s) or provisions.

This lease represents the entire agreement of the parties. No other writing is a part of this lease. All other prior representations, writings, oral statements or negotiations have been merged into this document and are either included herein or intentionally excluded.

The parties' rights and obligations under this lease shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute

concerning this lease shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

CITY OF RAPID CITY

Alan Hanks, Mayor

ATTEST:

Finance Officer

(SEAL)

RAPID CITY ELKS LODGE NO. 1187

By: _____
Its: _____

State of South Dakota)

SS.

County of Pennington)

On this the ____ day of _____, 2009, before me, the undersigned officer, personally appeared Alan Hanks 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 ____ day of _____, 2009, before me, the undersigned officer, personally appeared _____, who acknowledged themselves to be the _____ of Rapid City Lodge No. 1187 of the Benevolent and Protective Order of Elks, a corporation, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporation for the purposes herein contained.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)