

SUBLEASE AGREEMENT FOR MAIN STREET SQUARE

This Sublease Agreement is entered into effective the ____ day of _____, 2011, by and between the **Downtown Business Improvement District Board** (hereinafter referred to as "Board"), an instrumentality of the City of Rapid City ("City"), a municipal corporation, of 300 Sixth Street, Rapid City, South Dakota 57701; and **Downtown Rapid City Economic Development Corporation**, a South Dakota corporation, d/b/a Destination Rapid City, of 617½ Saint Joseph Street, Rapid City, South Dakota 57701 (hereinafter referred to as "DRC").

WHEREAS, Board leases from City certain property known as Main Street Square, by virtue of that certain Lease Agreement for Main Street Square between the City of Rapid City and the Downtown Business Improvement District Board dated September 21, 2010 (hereinafter "MSS Lease"); and

WHEREAS, Board has entered into an Operations and Management Agreement with DRC to manage and operate Main Street Square; and

WHEREAS, DRC intends to apply for one or more licenses to sell alcoholic beverages at Main Street Square; and

WHEREAS, in order to make application for and receive a license to sell alcoholic beverages, DRC must either own or lease the premises on which the alcoholic beverages are to be sold; and

WHEREAS, Board supports DRC's intention to obtain a license to sell alcoholic beverages, and believes said intention is in the best interests of the success of Main Street Square; and

WHEREAS, Board desires to sublet Main Street Square to DRC, and DRC wishes to rent Main Street Square from Board; and

WHEREAS, the parties mutually desire to reduce their understandings and agreements to writing by executing this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Incorporation of Recitals. The aforementioned recitals are incorporated herein by reference as if more fully set forth hereinafter.
2. Sublease of Main Street Square. Board hereby subleases to DRC the property commonly known as Main Street Square and legally described as follows:

Lots 17-23, Block 75, vacated portion of 6th Street adjacent to Lot 17, vacated portion of Main Street adjacent to Lots 17-22, and all of vacated alley located in Block 75, Original Town of Rapid City, Pennington County, South Dakota.

3. Contingency. At the time of execution of this Agreement, the parties are currently making application to the City for vacation of the alley right of way extending from 5th Street to 6th Street in Block 75. Should the City decline to vacate the right of way, the reference to the vacated alley in the above paragraph shall be deleted.

4. Term. The initial term of this Sublease Agreement shall run from its execution until December 31, 2020.

5. Option to Renew. Should Board exercise its option to renew the MSS Lease at the end of the initial term, Board will notify DRC of such election. Upon such notice, DRC shall have ninety days in which to renew this sublease for a term identical to the Board's renewed term under the MSS Lease. The same notice and option to renew this sublease procedure shall be followed should Board exercise its option for a second renewal at the end of the first renewal term.

6. Validity of Operations and Management Agreement. All provisions and agreements contained in that certain Operations and Management Agreement Between Downtown Business Improvement District Board and Downtown Rapid City Economic Development Corporation dated October 19, 2010, (hereinafter "Operations and Management Agreement") shall remain in full force and effect. In the case of conflict of the Operations and Management Agreement with this Sublease Agreement, the Sublease Agreement shall control.

7. Cross Default. The parties agree that any default by one of them of this Sublease Agreement or of the Operations and Management Agreement shall operate as a default of both agreements, and shall constitute cause for the termination of both agreements.

8. Terms of Lease Agreement Applicable. All terms of the MSS Lease shall bind DRC unless otherwise provided herein.

9. Subject to Master Lease. DRC acknowledges that it has read the MSS Lease and is fully familiar with the terms and conditions thereof. This Sublease Agreement is and shall at all times during the term hereof remain subject and subordinate to the MSS Lease, and DRC shall conduct itself and its operations in and on the premises so as not to cause Board to be in default under the MSS Lease.

10. Possession. At the time of the execution of this Sublease Agreement, Main Street Square is under construction. Upon completion of its construction, Board will have exclusive possession of Main Street Square by virtue of the MSS Lease. Board agrees to immediately turn over possession of Main Street Square to DRC.

11. Consideration. DRC agrees to pay Board rent of One Dollar (\$1) per year. The parties further agree that the mutual covenants and promises contained herein and in the Operations and Management Agreement shall constitute good and sufficient consideration for the execution of this Sublease Agreement.

12. Maintenance. DRC agrees to provide all routine maintenance of the leased premises including but not limited to keeping all grounds, sidewalks, trees, shrubbery, buildings, equipment and all other structures in an attractive, safe, repaired condition. Board hereby assigns to DRC any assistance in may receive from City to assist with the maintenance of the leased premises.

DRC agrees to maintain said facilities to all city standards for buildings and grounds. DRC agrees to be responsible for cleaning the facilities and on a regular basis to pick up and make ready for city collection all trash, debris, and waste material of every nature resulting from the use of the facility by itself or any visitors in attendance at such facilities. DRC agrees to provide its own trash receptacles for use at the facilities. DRC also agrees to place all collected trash, debris, and waste in a dumpster provided for removal by the City. DRC further agrees to keep clean all facilities within the leased premises.

13. Utilities. DRC agrees to pay for all of its own utilities, including but not limited to electricity, gas, water, sewer, telephone, cable, and internet

14. Construction Approval. Construction and other new improvements at the premises shall be in conformity with the regulatory and building codes of the City and subject to the approval of the City. Any permanent improvements or fixtures constructed by DRC on the subleased premises shall be considered the property of the City.

15. Insurance. DRC agrees to purchase and maintain commercial general liability insurance for each occurrence of injury or property damage in the minimum amount of Five Million Dollars (\$5,000,000) with participant's injury liability of at least Five Million Dollars (\$5,000,000) per occurrence. The Board and City shall be named an additional insured in said policy, and DRC shall annually furnish to both the Board and City evidence of insurance by a certificate of insurance of required coverage. Notwithstanding any provision herein to the contrary, if DRC shall fail to secure said insurance, if said insurance shall lapse, or if any other default of this Section occurs, DRC shall have fifteen (15) days to cure said default.

16. Indemnification. DRC agrees to defend, release, indemnify and hold harmless the Board and the City of Rapid City from any and all claims, actions, demands and liability, including reasonable attorney fees, in respect to bodily injury, death, and property damage arising from any operation or use of the described premises by DRC its officers, directors, contractors, agents and/or employees or by any other person using the premises.

17. Condition of Premises; No Warranties; Release. The taking of possession of the leased premises by DRC shall be conclusive evidence that DRC (i) accepts the premises as suitable for the purposes for which same are leased; (ii) accepts the premises and each and every part and appurtenance thereof as being in a good and satisfactory condition, and (iii) waives any defects in the premises and its appurtenances. IT IS UNDERSTOOD AND AGREED THAT THE PREMISES ARE BEING LEASED HEREUNDER “AS IS,” WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT BOARD OR THE CITY OF RAPID CITY. The Board has not made (except as expressly set forth herein) any representations or warranties of any kind or character whatsoever, express or implied, with respect to the premises, its condition (including without limitation any representation or warranty regarding suitability, habitability, quality of construction, workmanship, merchantability, or fitness for a particular purpose), environmental condition or compliance with environmental or other applicable laws, and DRC acknowledges that it is entering into this Sublease Agreement without relying upon any such statement or representation or warranty. The Board shall not be liable, and DRC hereby releases the Board and City, for injury or damage which may be sustained by DRC, or any invitee or their property, caused by or resulting from the state of repair of the premises.

18. Early Termination. The Board shall have the option of terminating this Sublease Agreement before the end of the initial or any renewal term if any of the following occur:

- a. DRC abandons the use of the premises for one year;
- b. City sells all or a controlling interest in the property;
- c. Board or the Downtown Business Improvement District is dissolved;
- d. DRC is dissolved;
- e. DRC enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise; or
- f. DRC defaults in its compliance with any other term or covenant hereunder, which default is not cured within sixty (60) days after notice is given.

Should the Board choose to exercise its option to terminate this Sublease Agreement immediately pursuant to this section, such termination will be effective upon mailing of written notice to DRC, at which time DRC shall have no further rights under this Sublease.

19. Relationship between the Parties. This Sublease Agreement does not create an employment relationship between the Board and DRC’s officers, directors, agents or employees. Nothing contained in this Sublease Agreement is intended to create a partnership or joint venture between DRC and the Board. No agent of DRC shall be the agent of the Board, and DRC covenants that it will not take any action in the name of, or by holding itself out as the agent of, the Board.

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

21. Time of Essence. Time is of the essence of this Lease Agreement.
22. 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 Lease Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
23. Amendments. This Agreement may only be amended by a written document duly executed by all parties.
24. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.
25. 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.
26. 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.
27. 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.
28. Construction and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota without regard to any conflicts of laws provision. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

[Signature pages follow]

DATED this _____ day of _____, 2011.

**DOWNTOWN RAPID CITY ECONOMIC
DEVELOPMENT CORPORATION**

By _____
Dan Senftner, President

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

On this the _____ day of _____, 2011 before me, the undersigned officer, personally appeared Dan Senftner, who acknowledged himself to be the President of the Downtown Rapid City Economic Development Corporation, a South Dakota nonprofit corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Downtown Rapid City Economic Development Corporation by himself as President.

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

(seal)

Notary Public - South Dakota
My Commission Expires _____

DATED this _____ day of _____, 2011.

DOWNTOWN BUSINESS IMPROVEMENT BOARD

By _____
Terry Nelson,
Its Chairman

Attest _____
Clancy Kingsbury, Secretary

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

On this the _____ day of _____, 2011, before me, the undersigned officer, personally appeared Terry Nelson and Clancy Kingsbury, who acknowledged themselves to be the President and Secretary of the Board of the Downtown Business Improvement Board, and that they, as such President and Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Board by themselves as President and Secretary.

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

(seal)

Notary Public - South Dakota
My Commission Expires _____