

## ***LEASE***

This lease, dated as of January \_\_\_\_, 2003 (the "**Lease**"), is by and between **CITY OF RAPID CITY**, Pennington County, South Dakota, having an address at 300 6<sup>th</sup> Street, Rapid City, South Dakota 57701 ("**Landlord**") and **YOUTH AND FAMILY SERVICES**, having an address at P.O. Box 2813, Rapid City, South Dakota 57709 ("**Tenant**").

## ***TERMS***

In consideration of the Parties' respective performance of the following terms, conditions, and covenants during the term of this Lease and any extension or renewal term, Landlord and Tenant agree as follows:

### ***1. DESCRIPTION OF LEASED BUILDING***

Landlord shall lease to Tenant the property commonly known as the Counseling Center ("Counseling Center"), situated on the real property owned by Landlord and leased to Tenant under a certain Ground Lease dated September 3, 2002, which is more particularly described in Exhibit "A" (attached). Tenant, its employees, customers, and invitees, shall further have the right to use all common areas and facilities, if any, appurtenant to said property, (collectively "Premises") with Landlord and any other tenants and their employees, customers, and invitees.

### ***2. TERM***

The term of this Lease shall commence upon the completion of construction and the issuance of a Certificate of Occupancy for the Counseling Center (the "**Commencement Date**"). The term of this Lease (the "**Term**") shall be twenty (20) years, commencing on the Commencement Date.

Following the Term, Tenant has the option to purchase the Counseling Center for the purchase price of One Dollar (\$1.00).

### ***3. RENT***

Tenant shall pay to Landlord rent in the amount of \$1 per year during the Term. Rent for the first year shall be due no later than ten (10) days after the Commencement Date. All payments due under this Lease shall be delivered to the Landlord at the address specified above.

### ***4. PAYMENT OF PROPERTY TAXES.***

All applicable taxes and special assessments lawfully levied against the premises shall be paid by the Tenant directly to the taxing entity.

## **5. SERVICES AND UTILITIES**

(a) Contractual Arrangements. Tenant shall make arrangements for delivery to the Counseling Center of any gas, electrical power, water, sewer, telephone and other utility services and any cleaning, trash and snow removal and maintenance services as Tenant deems necessary or desirable for its operations during the Term.

(b) Payment of Charges. Tenant shall promptly pay all charges for utility and other services contracted by Tenant to be delivered to or used by the Counseling Center during the Term and shall be responsible for providing such security deposits, bonds or assurances as may be necessary to procure such services.

## **6. MAINTENANCE AND REPAIR**

After the commencement of the Term, Tenant shall promptly make or cause to be made all repairs needed to maintain the Counseling Center in its present condition, subject to reasonable wear and tear. Tenant shall promptly make or cause to be made all repairs and replacements caused by any lateral, sublateral or subjacent subsidence of the Premises.

## **7. TENANT'S PROPERTY**

For purposes of this Lease, the Term “**Tenant's Property**” shall mean all equipment, inventory and other articles of movable personal property owned or leased by Tenant and located at the Counseling Center. All Tenant's Property shall be and remain the property of Tenant throughout the Term of this Lease and may be removed by Tenant at any time during the Term. Upon the expiration of this Lease, unless Tenant chooses to purchase the Counseling Center, Tenant shall remove all Tenant's Property from the Counseling Center.

## **8. QUIET ENJOYMENT**

Landlord covenants that Tenant shall and may, at all times during the Term, peaceably and quietly have, hold, occupy, and enjoy the Counseling Center.

## **9. INSURANCE**

(a) Tenant's Liability Insurance. Throughout the Term, Tenant shall maintain commercial general liability insurance, including a contractual liability endorsement, and personal injury liability coverage in respect of the Counseling Center and the conduct or operation of business therein with limits of not less than \$1,000,000.00 combined single limit for bodily injury and property damage liability in any one occurrence. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability. Each such policy of insurance shall provide that the same will not be canceled without at least thirty (30) days prior written notice to Landlord.

(b) Waiver of Subrogation. A party shall have no claim against the other or the employees, officers, directors, managers, agents, shareholders, partners or other owners of the

other for any loss, damage or injury which is covered by insurance carried by such party and for which recovery from such insurer is made, notwithstanding the negligence of either party in causing the loss. The foregoing waiver and release shall not apply, however, to any damage caused by intentionally wrongful actions or omissions. Each party represents that its current insurance policies allow such waiver. Neither Landlord nor Tenant shall obtain or accept any insurance policy which would be invalidated by or which would conflict with this paragraph.

## **10. INDEMNIFICATION**

(a) Indemnification by Tenant. Except as may otherwise be provided in this Lease, Tenant shall indemnify and hold harmless Landlord, its employees, officers, directors, managers, agents, shareholders, partners or other owners from and against any and all third-party claims arising from or in connection with: (i) the conduct or management of the Counseling Center, or any condition created in or about the Counseling Center during the term of this Lease, unless created in whole or in part by Landlord or any person or entity acting at the instance of Landlord; (ii) any act, omission or negligence of Tenant or its employees, officers, directors, managers, agents, shareholders, partners or other owners, invitees or contractors; and (iii) any accident or injury or damage whatsoever, not caused by Landlord or any person or entity acting at the instance of the Landlord occurring in, at the Counseling Center. With respect to this Section 14(a), Tenant shall have the right to assume the defense of any such third-party claim with counsel chosen by Tenant or by Tenant's insurance company. Tenant shall not be responsible for the fees of any separate counsel employed by the Landlord.

(b) Indemnification by Landlord. Except as may otherwise be provided in this Lease, Landlord shall indemnify and hold harmless Tenant, its employees, officers, directors, managers, agents, shareholders, partners or other owners from and against any and all third-party claims arising from or in connection with: (i) any act, omission or negligence of Landlord or its employees, officers, directors, managers, agents, shareholders, partners or other owners, invitees or contractors; and (ii) any accident or injury or damage whatsoever, caused by Landlord or any person or entity acting at the instance of the Landlord occurring in or at the Counseling Center. With respect to this Section 14(b), Landlord shall have the right to assume the defense of any such third-party claim with counsel chosen by Landlord or by Landlord's insurance company. Landlord shall not be responsible for the fees of any separate counsel employed by the Tenant.

## **11. ASSIGNMENT**

Neither party shall assign this Lease without the prior written consent of the other party.

## **12. MISCELLANEOUS**

(a) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State in which the Counseling Center is located.

(b) Consents and Approvals. If, pursuant to any provision of this Lease, the consent or approval of either party is required to be obtained by the other party, then, unless otherwise provided herein, the party whose consent or approval is required shall not unreasonably withhold, condition or delay such consent or approval.

(c) Rights and Remedies. All rights and remedies of either party expressly set forth herein are intended to be cumulative and not in limitation of any other right or remedy set forth herein or otherwise available to such party at law or in equity. Notwithstanding the foregoing, in no event shall either party be liable to the other for consequential or punitive damages, except as otherwise provided in this Lease.

(d) Successors and Assigns. Each and all of the terms and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto, and their heirs, legal representatives, successors and assigns. Any sale or transfer of the Counseling Center by Landlord during the Term of this Lease shall be made by an instrument that expressly refers to this Lease as a burden upon the Counseling Center.

(e) Recording. Tenant may record a memorandum of this Lease. Landlord will cooperate with Tenant in the execution and delivery of any such memorandum as may be required to effectuate the foregoing in accordance with the requirements, customs and practices governing such recordation.

(f) Notices. All notices, consents, approvals and other communications under this Lease shall be in writing and shall be deemed to have been duly given or made (a) upon delivery if hand delivered; (b) one (1) business day after delivery to any nationally recognized overnight courier service for next business day delivery, fee prepaid; (c) one (1) business day after facsimile transmission, with transmission verified and a hard copy of the transmission promptly sent by U.S. Priority Mail; or (d) three (3) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case addressed as follows (or to such other addresses as either party may subsequently designate in writing to the other):

TENANT:

Youth & Family Services  
PO Box 2813  
Rapid City, SD 57709

LANDLORD:

City of Rapid City  
300 6<sup>th</sup> Street  
Rapid City, South Dakota 57701

(h) Entire Agreement; Modifications. This Lease contains the entire agreement between the parties concerning the matters set forth herein and may not be modified orally or in any manner other than by an agreement in writing signed by all the parties hereto or their respective successors in interest. Notwithstanding the foregoing, Tenant's remedies hereunder shall be cumulative and not exclusive.



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 January, 2003, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Youth & Family Services, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Youth & Family Services by himself as \_\_\_\_\_.

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

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

My Commission Expires:

(SEAL)

Approved By: CITY ATTORNEY'S OFFICE	
Initials: _____	
Attorney	Date

**APPENDIX A**

**Description of Premises**

Counseling Center building to be located on property described as:

Lot Three (3) of Block Twenty-One (21), Wise's Addition to the City of Rapid City, Pennington County, South Dakota, according the recorded plat thereof.