LEASE AGREEMENT BETWEEN THE CITY OF RAPID CITY AND ONEHEART: A PLACE FOR HOPE & HEALING

This Lease Agreement is made and entered into, on this ___ day of June 2019, by and between the CITY OF RAPID CITY, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (hereinafter the “City”), and ONEHEART, a South Dakota nonprofit corporation, of 803 Saint Joseph Street, Rapid City, South Dakota 57701.

RECITALS

WHEREAS, the City solicited proposals for projects seeking funding from the City’s Vision Account; and

WHEREAS, OneHeart submitted a funding request in which the City would buy certain properties for use as a transformation center which will provide transitional housing and support services to help people in the community get into permanent housing; and

WHEREAS, the project proposed by OneHeart was one of the projects recommended for funding by the City’s Vision Committee; and

WHEREAS, the City Council held meetings on January 31st, 2019, and March 18, 2019 at which it approved the proposed project and authorized funding for the purchase identified in the OneHeart request; and

WHEREAS, the parties desire to enter into this agreement in order to protect the City’s investment in this project and specify the terms and conditions by which OneHeart can use the property for the purposes identified in its application.

NOW THEREFORE, for and in consideration of the mutual promises and agreements contained herein, the parties hereby agree as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by reference as if fully set forth herein as agreements of the parties.

2. Property. The City hereby agrees to lease to OneHeart the real property generally located at 121 and 217 Kansas City Street, 124, 216, and 218 Quincy Street, and 716 2nd Street which are legally described as follows:

LOTS SEVEN (7) THROUGH SIXTEEN (16) IN BLOCK ONE HUNDRED NINE (109) OF THE ORIGINAL TOWNSITE OF RAPID CITY, TOGETHER WITH THE EAST ONE-HALF OF VACATED SECOND STREET BETWEEN LOT 1 IN SAID BLOCK 108 AND LOT 16 IN SAID BLOCK 109, PURSUANT TO RESOLUTION OF VACATION RECORDED AUGUST 30, 1983, IN BOOK 20 OF MISC. RECORDS ON PAGE(S) 7283 IN THE OFFICE OF THE REGISTER OF DEEDS, PENNINGTON COUNTY, SOUTH DAKOTA
LOTS 1 THROUGH 22 AND LOTS 26 THROUGH 32 IN BLOCK 108 OF THE ORIGINAL TOWNSITE OF RAPID CITY;

TOGETHER WITH THE WEST ONE-HALF OF VACATED SECOND STREET BETWEEN LOT 1 IN SAID BLOCK 108 AND LOT 16 IN SAID BLOCK 109 AND THE EAST ONE-HALF OF VACATED THIRD STREET BETWEEN LOT 1 IN SAID BLOCK 107 AND LOT 16 IN SAID BLOCK 108, PENNINGTON COUNTY, SOUTH DAKOTA.

LOT TWENTY-FIVE (25) AND THE EAST HALF (E1/2) OF LOT TWENTY-FOUR (24) IN BLOCK ONE HUNDRED EIGHT (108) OF THE ORIGINAL TOWNSITE TO RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA.

LOT TWENTY-THREE (23) AND THE WEST HALF (W1/2) OF LOT TWENTY-FOUR (24) IN BLOCK ONE-HUNDRED EIGHT (108) OF THE ORIGINAL TOWNSITE TO RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA.

THE NORTH FORTY-SIX AND TWO-THIRDS FEET (N46 2/3’) OF LOTS SEVENTEEN (17), EIGHTEEN (18), NINETEEN (19) AND TWENTY (20) OF BLOCK ONE HUNDRED AND NINE (109) OF THE ORIGINAL TOWNSITE OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA.

LOTS TWENTY-ONE (21) AND TWENTY-TWO (22) IN BLOCK ONE HUNDRED NINE (109) OF THE ORIGINAL TOWNSITE OF RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

The property is shown on Exhibit A attached hereto and incorporated herein by this reference. The property leased to OneHeart shall be hereinafter referred to as the “Leased Premises.”

3. **Term.** The initial term of this Lease Agreement shall begin on the execution of this Lease by the parties, and shall end on December 31, 2026. This Lease will automatically renew at the end of the initial lease term for a period of five (5) years. At the end of each successive five (5) year term, this Lease shall automatically renew for another five (5) year term. This lease shall automatically renew until this agreement is terminated by the parties hereto according to its terms, or December 31, 2041. The Lease may be terminated prior to the automatic renewal of any term by either party delivering to the other party written notice of its intent to terminate the lease prior to July 31st of the year in which the current lease term expires.

4. **Consideration.** OneHeart agrees to pay the City One Dollar ($1) rent per year for the Leased Premises. The parties further agree that the City’s contribution of the property and OneHeart’s payment of a dollar per year and its commitment to operate a transformational center consistent with its application for Vision funds constitutes good and sufficient consideration for the execution of this Lease Agreement.

5. **Possession.** OneHeart shall be entitled to possession of the property upon execution of this Lease by both parties.
6. **Use.** OneHeart shall have use of the leased premises during the term hereof, subject to any restrictions contained herein, for the purpose of operating a transformation campus which provides transitional housing and a variety of social and vocational support services for those who qualify. The use of the leased premises is based on the application materials and presentations that OneHeart made to support its request for funding from the City’s Vision Account. The application materials and records of the presentations are specifically incorporated into this agreement and OneHeart agrees that the leased premises shall be used in a manner consistent with the award of Vision funds to which were used to fund the purchase of the leased property. OneHeart acknowledges that the City’s decision to purchase the properties and lease them to this entity was made based on the properties’ proposed use and, but for the promises made by this entity for the use of the property, the City would not have allocated funds to purchase these properties. While the City has an interest in guaranteeing that the property is used in a manner consistent with the original request, the parties recognize that OneHeart will need flexibility in the operation of the facilities and programs and it is not the intent of the City to prohibit flexibility or to be involved in the day to day management, or operation, of the facilities located on the leased premises which will be the sole responsibility of OneHeart. OneHeart shall make no use of the property and/or facilities inconsistent with such uses, and OneHeart shall comply with all federal, state, and local laws and regulations in carrying out said use.

7. **Maintenance.** All maintenance of the leased premises shall be provided by OneHeart including but not limited to keeping all grounds, sidewalks, trees, shrubbery, buildings, and all other structures in an attractive, safe, and repaired condition. OneHeart shall be responsible for all infrastructure maintenance and upkeep, including but not limited to fixtures, utility service lines, parking lots, HVAC and other building systems, and structural repairs.

8. **Construction Approval.** The parties understand that OneHeart will need to construct improvements and do renovations to the structures on the leased premises. OneHeart shall notify the City prior to commencing any projects or improvements to the leased premises in excess of $50,000. OneHeart shall need City approval prior to the demolition, or partial demolition, of any structures on the property. For purposes of this section, demolition means the permanent removal of a structure or a portion of a structure and does not mean demolition of walls, interior or exterior features, or other work that is normally associated with renovations of property. There are several single family residences on the property and the parties agree that the single family residences can be demolished without the City’s prior approval. Construction and other new improvements at the premises shall be in conformity with the regulatory and building codes of the City. Any permanent improvements or fixtures constructed by OneHeart on the leased premises shall be considered the property of the City.

9. **Insurance.** OneHeart will maintain comprehensive general liability insurance to cover the Leased Premises. The minimum amount of insurance coverage shall be $2,000,000 per each occurrence of bodily injury and property damage, and $3,000,000 aggregate. A combination of liability insurance and an umbrella policy to obtain such limits shall be acceptable. The City should be named as an additional insured on OneHeart’s insurance policy or policies. OneHeart shall provide the City with proof of insurance coverage meeting the minimum standards of this paragraph upon request. OneHeart agrees to defend, indemnify, and otherwise hold the City harmless for any claims made by its employees, service partners, clients, or visitors against the
City, to the extent such claims are not based on the alleged actions or omissions of the City or its agents.

10. **Property Insurance.** The City shall pay the costs of all insurance on the building and the permanent fixtures installed therein. This requirement shall not require the City to repair, replace or rebuild at the current, or any other location, should the property be damaged significantly or destroyed. OneHeart is responsible for insuring its personal property located upon the leased premises. The City will not provide any property insurance coverage for the benefit of OneHeart.

11. **Termination.** The City shall have the option of terminating this Lease immediately without notice if any of the following instances of default occur:

   a. OneHeart abandons the premises;
   b. OneHeart dissolves or is administratively dissolved;
   c. OneHeart enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise;
   d. The character of OneHeart’s operation changes significantly from that of a nonprofit organization; or
   e. OneHeart ceases to operate the leased premises as a transformational center consistent with its application for Vision funds;
   f. OneHeart ceases substantial construction activities on the leased premises for a period of six (6) months once construction on the proposed campus has commenced;
   g. OneHeart 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 City choose to exercise its option to terminate this Lease immediately pursuant to this section, such termination will be effective upon mailing of written notice to OneHeart, at which time OneHeart shall have no further rights under this Lease.

12. **Surrender of Premises.** OneHeart agrees to surrender and vacate the Leased Premises upon termination of this Lease Agreement.

13. **Liability.** OneHeart agrees to defend, hold harmless, and indemnify the City from any and all legal liability, including reasonable attorney fees, in respect to bodily injury, death, and property damage arising from the negligence of OneHeart in the occupation or use of the leased premises by OneHeart, its officers, directors, agents and/or employees.

14. **Assignment and Subletting.** This Lease shall not be assigned except upon written consent and approval of the City. OneHeart may sublease portions of the property to service providers that are providing services or support to the mission and purpose for which the City has agreed to lease the premises to OneHeart. OneHeart may not sublease portions of the property to tenants who are not locating at the leased premises to support its program or solely for the purpose of generating revenue without the City’s prior approval. This provision does not apply to any business or venture which is being located on the premises to support OneHeart’s mission or
provide employment and/or vocational training to participants in OneHeart’s programs. Notwithstanding any other provision of this Lease, the parties acknowledge that the Leased Premises currently has tenants who generate revenue. The City agrees to allow OneHeart to continue to lease the property consistent with its current uses during the period the property is transitioning from its current use to the proposed transformational center. OneHeart will be solely responsible for the management of the property and collection of any revenue generated from tenants. OneHeart will retain any revenue generated from the property from the date that the title to the property was acquired by the City until the Lease is terminated or ends.

15. Notices. All notices given hereunder shall be made by hand delivery or certified mail, return receipt requested, to the parties at the following addresses:

City of Rapid City
Attn: Finance Officer
300 Sixth Street
Rapid City, SD 57701

OneHeart
Attn: Charity Doyle
P.O. Box 231
Rapid City, SD 57701

16. Condition of Premises; No Warranties; Release. The taking of possession of the leased premises by OneHeart shall be conclusive evidence that OneHeart (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 HERUNDER “AS IS,” WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY THE CITY OF RAPID CITY. The City 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 OneHeart acknowledges that it is entering into this Lease Agreement without relying upon any such statement or representation or warranty. The City shall not be liable, and OneHeart hereby releases the City, for injury or damage which may be sustained by OneHeart, or any invitee or their property, caused by or resulting from the state of repair of the premises.

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

18. Non-Discrimination. OneHeart 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. OneHeart further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.
19. **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.

20. **Binding Effect.** This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. The rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

21. **Amendments.** This Agreement may only be amended by a written document duly executed by all parties.

22. **Time of Essence.** Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

23. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

24. **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.

25. **Severability.** The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

26. **Construction.** The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. 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. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
27. **Jurisdiction and Venue.** The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

DATED this ______ day of ________________________, 2019.

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CITY OF RAPID CITY

___________________________
Steve Allender, Mayor

ATTEST

___________________________
Pauline Sumption, Finance Officer

(SEAL)

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ONEHEART: A PLACE FOR HOPE & HEALING

By ________________________________
Charity Doyle, Executive Director

By ________________________________
TBD, Chair of the Board of Directors

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

On this the _____ day of ________________, 2019, before me, the undersigned officer, personally appeared Charity Doyle known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged herself to be the Executive Director of OneHeart, and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(SEAL) Notary Public - South Dakota
My Commission Expires ________________

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

On this the _____ day of ________________, 2019, before me, the undersigned officer, personally appeared TBD, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged herself to be the Chair of the Board of Directors of OneHeart, and as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

(SEAL) Notary Public - South Dakota
My Commission Expires ________________