

**LEASE AGREEMENT FROM CITY TO DOWNTOWN BUSINESS IMPROVEMENT
DISTRICT BOARD FOR MAIN STREET SQUARE**

For and in consideration of the mutual promises and agreements contained herein, the **CITY OF RAPID CITY**, herein after referred to as the “City,” a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, agrees to lease to the **DOWNTOWN BUSINESS IMPROVEMENT DISTRICT BOARD**, hereinafter referred to as “Board,” an instrumentality of the City of Rapid City, of 300 Sixth Street, Rapid City, SD 57701, a specified area more particularly described below subject to the following terms and conditions:

1. Property. City hereby leases to Board the complex legally described as:

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

All of vacated alley adjacent to Lots 1-16, Block 75, Original Town of Rapid City, Pennington County, South Dakota; and

The enclosed portion of the ground level of the parking structure located on Lots 11-16, Block 75, Original Town of Rapid City, Pennington County, South Dakota.

Commonly known as 524 Main Street, as shown on Exhibit “A” attached hereto and incorporated herein by this reference.

2. Term. The terms of this lease shall run from the date of approval by City and Board for a period of five (5) years.
3. Options to Renew. At the end of the lease term, Board shall have the option to renew this Lease for two additional five (5) year terms, which would begin immediately at the end of the original term. Board may exercise said option by giving written notice to the City no sooner than one year prior to the end of the term, and no later than four months prior to the end of the term.
4. Use. Board shall have use of the property and facilities during the lease period, subject to the terms of this Lease, for the purpose of operating a public plaza known as Main Street Square. Board shall make no use of the property and/or facilities inconsistent with such purpose, and Board shall comply with all federal, state, and local laws and regulations in carrying out said use.
5. Possession. Board shall obtain and maintain possession of the property during the term of the Lease.
6. Maintenance. All routine maintenance of the leased premises shall be provided by Board including but not limited to keeping all grounds, sidewalks, trees, shrubbery, buildings, equipment and all other structures in an attractive, safe, and repaired condition. The City may assist Board with the maintenance when the City deems it feasible. City agrees to provide

maintenance to the park's utilities infrastructure, including but not limited to, repair of broken water mains, sewer mains, and storm sewer.

Board agrees to maintain said facilities to all city standards for buildings and grounds. Board agrees to be responsible for cleaning the facilities and on a regular basis to pick up and make ready for 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. Board agrees to provide its own trash receptacles for use at the facilities. Board further agrees to keep clean and maintain the concession and restroom facilities within the lease premises on a regular basis.

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

8. Utilities. City agrees to pay for water, sewer, gas and electricity utilities. Board and its subtenant shall coordinate with City's Finance Officer to put said utilities in City's name, to be billed directly to the City. Board or its subtenant shall be responsible for all other utilities and expenses not expressly assumed by the City.

9. Early Termination. The City shall have the option of terminating this Lease before the end of the initial or any renewal term if any of the following occur:

- a. Board abandons the use of the premises for one year;
- b. City sells all or a controlling interest in the property;
- c. Board is dissolved;
- d. Board enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise; or
- e. Board defaults in its compliance with any other terms or covenant hereunder, which default is not cured within ninety (90) days after notice is given.

Should the City choose to exercise its option to terminate this Lease early, such termination will be effective upon mailing of written notice to Board, at which time Board shall have no further rights under this Lease.

10. Surrender of Premises. Board agrees to surrender and vacate the premises at the termination of this Lease.

11. Liability. Board agrees to defend, release, indemnify and hold City harmless from any and all liability arising from any operation or use of the described premises by Board, its officers, directors, contractors, agents and/or employees or by any other person using the premises. Board agrees to purchase and maintain 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 City shall be named an

additional insured in said policy or policies, and Board shall annually furnish to the City evidence of insurance by a certificate of insurance of required coverage.

In the event Board contracts the responsibilities for operations and management of the premises to a third party, the Board shall require any such third party to defend, release, indemnify, and hold the City harmless as provided above. The Board's requirement for liability insurance may be fulfilled by third party, provided that the City and Board shall be named as additional insured in said policy or policies, and evidence of insurance shall annually be furnished to the City by a certificate of insurance of required coverage.

Notwithstanding any provision in this Lease to the contrary, if the requirements of this Section are not met by Board of its contractor, including a failure to secure said insurance, lapse of said insurance, or any other default of this Section, Board shall have fifteen (15) days to cure said default. If the default is not cured, City may terminate this Lease without further obligation.

12. Assignment and Subletting. This Lease shall not be assigned nor shall the premises be sublet by Board except upon written consent and approval of the City Council. The prohibition against assignment and sublease shall not prevent Board from entering a contract with a third party for operations and management services.

13. Concessions. Board shall have the right to operate concessions for the sale of beverages, food, programs, gifts, and other items customarily sold in public parks. Operation of concessions may be included in any management agreement at the discretion of Board.

14. Copyrights. Lessee will not perform publicly any copyrighted content, including but not limited to live music or broadcast music (from recordings, radio, television, or via streaming services) without the proper authorization from the copyright holder. Lessee will abide by all copyright laws in conjunction with Lessee's use of the Premises. Lessee will indemnify, defend, and hold harmless the City, its City Council, officers, employees, and agents against all claims, expenses and losses resulting from any copyright infringements by Lessee that occurred on City property.

15. Condition of Premises; No Warranties; Release. Upon the execution on this Lease, the taking of possession of the premises by the Board shall be conclusive evidence that Board (i) accepts the premises as suitable for the purposes for which same are leased; (ii) accepts the premises and each and every party and appurtenance thereof as being in 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 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 the environmental or other applicable laws, and board acknowledges that it is entering into this Lease without relying upon such statement or representation or warranty. The City shall not be liable, and Board hereby releases the City, for injury or damage which may be sustained by Board, or any invitee or their property, caused by or resulting from the state of repair of the premises.

16. Relationship between the Parties. This Lease does not create an employment relationship between the City of Rapid City and the Board or its officers, directors, agents or employees. Nothing contained in this Lease is intended to create a partnership or joint venture between Board and the City of Rapid City. No agent of Board shall be the agent of the City, and Board 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.

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

18. Time of Essence. Time is of the essence of this Lease.

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 Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

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

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

22. 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.

23. 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.

24. 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.

25. Construction and Venue. This agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

DATED this _____ day of _____, 20____.

CITY OF RAPID CITY

Mayor

ATTEST

Finance Director

DATED this _____ day of _____, 20____.

DOWNTOWN BUSINESS IMPOROVEMENT BOARD

Jerry Schmidt, President

ATTEST

Nick Patton, Secretary