

SOUTH DAKOTA PROPERTY MANAGEMENT AGREEMENT

I. **THE PARTIES.** This Property Management Agreement (“Agreement”) made this _____, 20____, by and between:

Owner: _____, with a mailing address of _____ (“Owner”), and

Property Manager: _____, with a mailing address of _____ (“Agent”).

The Owner and Agent shall be referred to as the “Parties” and agree to the following:

II. **APPOINTMENT OF AGENT.** The Owner hereby appoints the Agent the exclusive right to rent, lease, operate, and manage the following properties: (check one)

1st Property

Type: Commercial Residential

Property Address: _____

Description: _____

2nd Property

Type: Commercial Residential

Property Address: _____

Description: _____

3rd Property

Type: Commercial Residential

Property Address: _____

Description: _____

Hereinafter known as the “Property”.

III. **TERM.** This Agreement shall be for a term of _____ months beginning _____, 20____, and ending _____, 20____ (“Term”).

After the Term expires, this Agreement shall: (check one)

- **Terminate.**

- **Continue on a month-to-month basis** with either Party having the option to terminate with thirty (30) days’ notice.

IV. **RIGHT TO TERMINATE.** During the Term of this Agreement, either Party: (check one)

- **May terminate** this Agreement by providing at least _____ days’ notice.

- **May NOT** terminate this Agreement and both Parties must satisfy the terms and conditions of this Agreement until the expiration of the Term.

V. **RIGHT TO LEASE.** The Owner hereby grants the Agent power to create rental agreements related to the Property: (check all that apply)

- For fixed-term arrangements not exceeding ____ months.
- For month-to-month rental arrangements in accordance with Governing Law.
- For vacation rentals
- Other. _____.

VI. **RENTAL AMOUNT.** The Owner hereby grants the Agent power to create rental agreements related to the Property for: (check one)

- Market rent.
- A rate no lower than \$_____ per month year.

VII. **SECURITY DEPOSITS.** The Owner hereby grants the Agent power to collect security deposits from the tenants on the Property. Returning said security deposit shall be the responsibility of the: (check one)

- Agent.
- Owner.

VIII. **DISTRIBUTION TO OWNER.** The Parties agree that the Agent shall make the following distributions to the Owner: (check one)

- With each payment made by a tenant of the Property on a timely basis.
- ____% of payments collected to be paid each week month with the full balance owed five (5) days before the end of each taxable quarter.
- \$_____ to be paid each week month with the full balance owed five (5) days before the end of each taxable quarter.
- To be paid-in-full five (5) business days before the end of each taxable quarter.
- Other. _____.

Any unpaid amount from the Agent to the Owner shall be held by the Agent and designated for other fees, expenses, distributions, or other items related to the Property. Any such remaining amounts shall be distributed to the Owner upon the termination of this Agreement.

IX. **AGENT'S COMPENSATION.** The Owner agrees to pay the Agent the following fees indicated below for the services and provided: (check all that apply)

- **Management Fee.** _____.
- **New Lease.** _____.
- **Renewal of Lease.** _____.
- **Eviction.** _____.
- **Preparing the Property for Leasing.** _____.
- **Other.** _____.

- X. SALE OF THE PREMISES.** In the event the Property is marketed to be sold by the Owner during the Term of this Agreement, the Agent: (check one)
- **Shall have** exclusive rights of representation under terms agreed upon in a separate listing agreement.
 - **Shall NOT** have any rights to sell the Property under any circumstance, terms, or conditions.
- XI. KEY-SAFE / LOCKBOX.** The Owner: (check one)
- **Authorizes** the use of a key-safe / lockbox to allow entry into the Property.
 - **Does NOT** authorize the use of a key-safe / lockbox to allow entry into the Property.
- XII. REPAIRS; MAINTENANCE.** The Owner hereby gives power to the Agent to supervise repairs, improvements, alterations, and decorations to the Property as well as purchase and pay bills for services and supplies. The Agent shall obtain prior approval of the Owner for all expenditures over \$ _____ for any single item. Prior approval for lesser amounts shall not be required for monthly or recurring operating charges or if emergency expenditures over the maximum are, in the Agent's opinion, needed to protect the Property from damage, prevent injury to persons, avoid suspension of necessary services, avoid penalties or fines, or suspension of services to tenants required by a lease or rental agreement or by law, including, but not limited to, maintaining the Property in a condition fit for human habitation as required by applicable law.
- XIII. LEAD-BASED PAINT.** The Owner shall be responsible for providing information about the Property in regard to lead-based paint. It is understood that in accordance with 42 U.S. Code § 4852d that all occupants of residential property must be made aware of the existence of lead-based paint in residential dwellings built prior to January 1, 1978.
- XIV. FINANCIAL STATEMENTS TO OWNER.** The Agent shall render statements of receipts, expenses, and other charges for the Property as requested by the Owner with no more than one (1) statement per month.
- XV. OTHER COMPENSATION.** Unless otherwise stated, this Agreement does not include the Agent's service of preparing the Property for sale or refinance, modernization, fire or major damage restoration, rehabilitation, financial accounting or legal advice, representation before public agencies, advising on proposed new construction, debt collection, counseling, attending any Association or Condominium meetings, and any other obligation not listed as a Service. If the Owner requests the Agent to perform services not included in this Agreement, a fee shall be agreed upon before such services are performed.
- XVI. EQUAL HOUSING OPPORTUNITY.** The Property is offered in compliance with Federal, State, and local anti-discrimination laws.
- XVII. RESPONSIBILITIES OF THE OWNER.** The Owner agrees to:
- a.) Provide all documentation, records, and disclosures as required by law or required by the Agent to manage and operate the Property, and immediately

notify the Agent if the Owner becomes aware of any change in such documentation, records or disclosures, or any matter affecting the habitability of the Property;

- b.) Indemnify, defend, and hold harmless the Agent, and all persons in the Agent's firm, regardless of responsibility, from all costs, expenses suits, liabilities, damages, attorneys fees, and claims of every type, including, but not limited to, those arising out of injury or death of any person, or damage to any real or personal property of any person, including the Owner, for:
1. Any repairs performed by the Owner or by others hired directly by the Owner; or
 2. Those relating to the management, leasing, rental, security deposit, or operation of the Property by the Agent, or any person in the Agent's company, or the performance or exercise of any of the duties, powers, or authorities granted to the Agent.

This sub-section, and all rights to the Agent's indemnification, shall be considered void if the Agent exemplifies any willful acts of gross negligence;

1. Maintain the Property in a condition fit for human habitation as required by applicable State and local laws;
2. Pay all interest on Tenants' security deposits if required by applicable laws;
3. Carry and pay for:
 - i. Public and premises liability insurance in an amount of no less than one-million dollars (\$1,000,000.00); and
 - ii. Property damage and worker's compensation insurance adequate to protect the interests of the Owner and the Agent. The Agent shall be, and the Owner authorizes Agent to be, named as an additional insured party on the Owner's policies; and
4. Pay any late charges, penalties and/or interest imposed by lenders or other parties for failure to make payment only if the failure is due to insufficient funds in the Agent's trust account available for such payment. In addition, the Owner agrees to replace any funds required if there are insufficient funds in the Agent's trust account to cover such responsibilities of the Owner.

XVIII. REPRESENTATIONS OF THE OWNER. The Owner represents, unless otherwise specified in writing, to be unaware of the following:

- a.) Any recorded Notice of Default affecting the Property;
- b.) Any delinquent amounts due under any loan secured by the Owner or other obligations affecting the Property;
- c.) Any bankruptcy, insolvency, or similar proceeding affecting the Property;
- d.) Any litigation, arbitration, administrative action, government investigation, or other pending or threatened action that does or may affect the Property or Owner's ability to lease the Property or transfer possession of ownership; and
- e.) Any current, pending, or proposed special assessments affecting the Property.

The Owner shall promptly notify the Agent in writing if the Owner becomes aware of any of the aforementioned items in this Section during the Term of this Agreement.

XIX. TAX WITHHOLDING. The Owner shall be responsible for all tax withholding and payments of revenues and incomes to local, State, and Federal authorities.

- XX. ACCORDANCE WITH FEDERAL AND STATE LAW.** All services provided by the Agent shall comply with federal, State, or local law requiring the delivery of agreements, reports, notices, and/or the posting of signage or notices.
- XXI. EVICTIONS.** The Owner hereby gives power to the Agent to sign and serve notices on the Owner's behalf and prosecute actions to evict tenants; recover possession of the Property; recover rents and other sums due; and, when expedient, settle, compromise and release claims, actions, and suits and/or reinstate tenancies.
- XXII. LEASE ALTERATIONS.** The Owner hereby gives power to the Agent to initiate, sign, renew, modify, or cancel rental agreements and leases for the Property, or any part thereof and collect and give receipts for rents, other fees, charges, and security deposits.
- XXIII. DUE DILIGENCE.** The Agent accepts the appointment of the Owner and agrees to use due diligence in the performance of this Agreement while furnishing their services to properly lease, maintain, and continue the operation and management of the Property.
- XXIV. TRUST FUNDS.** The Owner hereby gives power to the Agent to deposit all receipts collected for the Owner, less any sums properly deducted or disbursed, in a financial institution whose deposits are insured by an agency of the United States government. The funds shall be held in a trust account separate from the Agent's personal accounts. The Agent shall not be liable in the event of a bankruptcy or failure of a financial institution. All funds managed under this section must be done so in accordance with applicable law.
- XXV. ADVERTISING.** The Owner grants the Agent the right to display "For Rent / Lease" and similar signage on the Property and advertise the availability of space through publications and online marketing methods.
- XXVI. HIRING CONTRACTORS.** The Owner hereby gives power to the Agent to contract, hire, supervise and/or discharge firms and persons, including utilities, required for the operation and maintenance of the Property. The Agent may perform any of the Agent's duties through attorneys, agents, employees, or independent contractors and, except for persons working in the Agent's firm, shall not be responsible for their acts, omissions, defaults, negligence and/or costs of same.
- XXVII. EXPENSE PAYMENTS.** The Owner hereby gives power to the Agent to pay expenses and costs for the Property from the Owner's funds held by the Agent, unless otherwise directed by the Owner. The expenses and costs may include, but are not limited to, property management compensation, fees and charges, expenses for goods and services, property taxes and other taxes, association or condominium dues, assessments, loan payments, and insurance premiums.
- XXVIII. TENANT FEES.** Owner agrees that the Agent may receive and keep fees and charges from tenants for:
- a.) Requesting an assignment of lease or sublease of the Property;
 - b.) Processing rental applications for credit and background checks;
 - c.) Returned (NSF) checks;
 - d.) Late payments; and

e.) Any other services that are not in conflict with this Agreement.

XXIX. AGENCY RELATIONSHIPS. If permitted by applicable law, the Owner hereby consents to the Agent acting as a dual agent for the Owner and any tenant(s) or buyer(s) resulting in a real estate transaction. The Owner understands that the Agent may have or obtain property management agreements on other properties and that potential tenants may consider, make offers on, or lease through the Agent property the same as or similar to the Property. The Owner consents to the Agent's representation of the other owners' properties before, during, and after the expiration of this Agreement.

XXX. NOTICES. Any written notice to the Owner or the Agent required under this Agreement shall be served by sending such notice by Certified Mail with return receipt. Such notice shall be sent to the respective address in Section I of this Agreement unless written below:

Owner:

Name: _____
Address: _____
Phone: _____
E-Mail: _____

Agent:

Name: _____
Address: _____
Phone: _____
E-Mail: _____

XXXI. ARBITRATION. All disputes arising under this agreement shall be governed by and interpreted in accordance with the Governing Law in Section XXXIII, without regard to principles of conflict of laws. The Parties to this agreement will submit all disputes arising under this agreement to arbitration before a single arbitrator of the American Arbitration Association ("AAA"). The arbitrator shall be selected by application of the rules of the AAA, or by mutual agreement of the Parties, except that such arbitrator shall be an attorney admitted to practice under the State of Governing Law. No Party to this agreement will challenge the jurisdiction or venue provisions as provided in this section. Nothing contained herein shall prevent the Party from obtaining an injunction.

The following matters shall be excluded from arbitration hereunder:

- a.) A judicial or non-judicial foreclosure or other action proceeding to enforce a deed of trust or mortgage;
- b.) An unlawful detainer action;
- c.) The filing or enforcement of a mechanic's lien; and
- d.) Any matter that is within the jurisdiction of a court of probate, small claims, and/or bankruptcy.

The filing of a court action to enable the recording of a notice of pending action for an order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of this Section.

XXXII. ATTORNEY FEES. In any action, proceeding, or arbitration between the Owner and the Agent regarding the obligation to pay compensation under this Agreement, the prevailing

Owner or Agent shall be entitled to reasonable attorneys' fees and costs from the non-prevailing Owner or Agent, except as provided in Section XXXI.

XXXIII. GOVERNING LAW. This Agreement shall be governed under the laws in the state of South Dakota. ("Governing Law").

XXXIV. ADDITIONAL TERMS & CONDITIONS.

XXXV. ENTIRE AGREEMENT. This Agreement contains all the terms agreed to by the Parties relating to its subject matter including any attachments or addendums. This Agreement replaces all previous discussions, understandings, and oral agreements. The Owner and Agent agree to the terms and conditions and shall be bound until the end of the Term.

IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

Owner's Signature _____ Date: _____
Print Name: _____

Agent's Signature _____ Date: _____
Print Name: _____