

SOUTH DAKOTA COMMERCIAL LEASE AGREEMENT

I. THE PARTIES. This South Dakota Commercial Lease Agreement ("Agreement") made on _____, 20____, by and between:

Lessor: _____ [name of lessor], with a mailing address of _____ ("Lessor"), and

Lessee: _____ [name of lessee], with a mailing address of _____ ("Lessee"), and collectively shall be known as the "Parties", agree as follows:

II. DESCRIPTION OF LEASED PREMISES. The Lessor agrees to lease to the Lessee the following described space:

Street Address: _____
Square Feet: _____ SF
Type of Space: _____ (retail, office, industrial, etc.)
Other Description: _____

Hereinafter known as the "Premises."

III. USE OF LEASED PREMISES. The Lessee agrees to use the Premises for: (check one)

- All purposes legal under law.
- Only the following purposes: _____.
Any change in the above-mentioned purposes of the Premises shall only be permitted upon the Lessor's prior written consent.

IV. TERM OF LEASE. The term of this Agreement shall be for a period of ____ year(s) ____ month(s) commencing on _____, 20____, and expiring at midnight on _____, 20____ ("Initial Term").

V. SECURITY DEPOSIT. As part of this Agreement: (check one)

- There shall be no deposit required for the successful performance of this Agreement ("Security Deposit").
- There shall be a deposit in the amount of \$_____ shall be due and payable in advance of the Term or at the signing of this Agreement ("Security Deposit"). The Security Deposit shall be held in escrow by the Lessor in a separate bank account as security for the successful performance of the terms and conditions of this Agreement. The Security Deposit may not be used to pay the last month's Rent unless written permission is granted by the Lessor.

VI. RENT. The net monthly payment shall be _____ dollars (\$_____) payable monthly with the first payment due upon the commencement of this Agreement and each monthly installment payable thereafter on the ____ day of each month after the Initial Term ("Base Rent"). The Base Rent shall also be applied to any pro-rata period when the Lessee occupies the Premises for less than a one (1) month period.

a.) Percentage Rent. In addition to the Base Rent, Lessee shall be: (check one)

- Not required to make payments related to Lessee's sales or revenue ("Percentage Rent").

- Required to pay _____ percent (____%) of _____ (gross sales, net sales, etc.). Such payment shall be made Monthly Quarterly Annually along with a receipt to show proof of percentage calculation ("Percentage Rent").

The Base Rent and the Percentage Rent shall be referred collectively to as the "Rent."

VII. LATE FEE. If Rent has been not paid within ____ days after the due date, the Lessee shall accrue a payment penalty of one of the following: (check one)

- Interest at a rate of _____ percent (____%) per annum on a daily basis until the amount is paid in full ("Late Fee").

- Late fee of _____ dollars (\$_____) per day until the amount is paid in full ("Late Fee").

In this regard, all delinquent rental payments made shall be first applied to the Late Fee and all remaining amounts toward the outstanding rental payments.

VIII. EXPENSES. [Check and Initial next to selection)

- **GROSS.** Tenant's Initials _____ Landlord's Initials _____

It is the intention of the Parties that this Agreement is considered a "Gross Lease," and as such, the Rent is the entirety of the payments to the Lessor. Therefore, the Lessee is not obligated to pay any additional expenses, which include utilities, real estate taxes, insurance (other than on the Lessee's personal property), charges, or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. The Lessor shall be obligated to maintain the general exterior structure of the Premises, in addition, shall maintain all major systems such as the heating, plumbing, and electrical. The parking area shall be maintained by the Lessor, including the removal of any snow or environmental hazards as well as the grounds and lands surrounding the Premises. The Lessor shall maintain at their expense casualty insurance

for the Premises against loss by fire which may or may not include any extended coverage. The Lessee will provide and maintain personal liability and property damage insurance as a lessee, at least to the limits of One Million Dollars (\$1,000,000.00), that will designate the Lessor as an "also named insured" and shall provide the Lessor with a copy of such insurance certification or policy prior to the effective date of this Agreement.

- **MODIFIED GROSS**. Tenant's Initials _____ Landlord's Initials _____

It is the intention of the Parties that this Agreement shall be considered a "Modified Gross Lease."

In addition to the Rent, the Lessee shall be responsible for the following monthly expenses: _____.

Lessor shall be responsible for the following monthly expenses: _____.

- **TRIPLE NET (NNN)**. Tenant's Initials _____ Landlord's Initials _____

It is the intention of the Parties that this Agreement shall be considered a "Triple Net Lease."

a.) Operating Expenses. The Lessor shall have no obligation to provide any services, perform any acts, or pay expenses, charges, obligations, or costs of any kind whatsoever with respect to the Premises. The Lessee hereby agrees to pay one hundred percent (100%) of all Operating Expenses as hereafter defined for the Term of this Agreement and any extensions thereof in accordance with specific provisions hereinafter set forth. The term "Operating Expenses" shall include all costs to the Lessor of operating and maintaining the Premises and shall include, without limitation, real estate and personal property taxes and assessments, management fee(s), heating, air conditioning, HVAC, electricity, water, waste disposal, sewage, operating materials and supplies, service agreements and charges, lawn care, snow removal, restriping, repairs, repaving, cleaning and custodial, security, insurance, the cost of contesting the validity or applicability of any governmental acts which may affect operating expenses, and all other direct operating costs of operating and maintaining the Premises and related parking areas, unless expressly excluded from operating expenses.

b.) Taxes. Lessee shall pay, during the Term of this Agreement, the real estate taxes, including any special taxes or assessments (collectively, the "taxes") attributable to the Premises and accruing during the Term. Lessee, at Lessor's option, shall pay to Lessor said taxes on a monthly basis, based on one-twelfth (1/12) of the

estimated annual amount for taxes. Taxes for any fractional calendar year during the Term hereof shall be prorated. In the event the Lessee does not make any tax payment required hereunder, Lessee shall be in default of this Agreement.

- c.) **Insurance.** Lessee shall maintain, at all times during the Initial Term of this Agreement, comprehensive general liability insurance in an insurance company licensed to do business in the State in which the Premises are located and that is satisfactory to Lessor, properly protecting and indemnifying Lessor with single limit coverage of not less than: (check all that apply)

- \$ _____ for injury or death.
- \$ _____ for property damage.
- \$ _____ for casualty insurance.

During the Term of this Agreement, Lessee shall furnish the Lessor with certificate(s) of insurance, in a form acceptable to Lessor, covering such insurance so maintained by Lessee and naming Lessor and Lessor's mortgagees, if any, as additional insured.

IX. OPTION TO RENEW. (check one)

- Lessee may not renew this Agreement (“Renewal Periods”).
- Lessee may have the option to renew this Agreement with a total of _____ renewal period(s) with each term being _____ year(s) _____ month(s) which may be exercised by giving written notice to Lessor no less than 60 days prior to the expiration of this Agreement or renewal period thereafter (“Renewal Periods”).

Rent for each Renewal Period shall: (check one)

- Not increase.
- Increase as calculated by multiplying the Rent by the annual change in the Consumer Price Index (CPI) published by the Bureau of Labor Statistics by the most recent publication to the option period start date.
- Increase by _____ %
- Increase by _____ dollars (\$ _____)

The Initial Term and the Renewal Periods shall be collectively referred to as the “Term.”

X. LEASEHOLD IMPROVEMENTS. The Lessee agrees that no leasehold improvements, alterations, or changes of any nature (except for those listed on any attached addenda) shall be made to the leasehold premises or the exterior of the building without first obtaining the consent of the Lessor in writing, which consent shall

not be unreasonably withheld, and thereafter, any and all leasehold improvements made to the Premises which become affixed or attached to the leasehold Premises shall remain the property of the Lessor at the expiration or termination of this Agreement. Furthermore, any leasehold improvements shall be made only in accordance with applicable federal, state, or local codes, ordinances, or regulations, having due regard for the type of construction of the building housing the subject leasehold Premises. If the Lessee makes any improvements to the Premises the Lessee shall be responsible payment, except the following: _____

Nothing in this Agreement shall be construed to authorize the Lessee or any other person acting for the Lessee to encumber the rents of the Premises or the interest of the Lessee in the Premises or any person under and through whom the Lessee has acquired its interest in the Premises with a mechanic's lien or any other type of encumbrance. Under no circumstance shall the Lessee be construed to be the agent, employee, or representative of Lessor. In the event a lien is placed against the Premises, through actions of the Lessee, Lessee will promptly pay the same or bond against the same and take steps immediately to have such lien removed. If the Lessee fails to have the lien removed, the Lessor shall take steps to remove the lien, and the Lessee shall pay Lessor for all expenses related to the lien and removal thereof and shall be in default of this Agreement.

XI. DEFAULT AND POSSESSION. In the event that the Lessee shall fail to pay said Rent, and expenses as set forth herein, or any part thereof, when the same is due and payable, or shall otherwise be in default of any other terms of said Agreement for a period of more than 15 days, after receiving notice of said default, then the parties hereto expressly agree and covenant that the Lessor may declare this Agreement terminated and may immediately re-enter said Premises and take possession of the same together with any of Lessee's personal property, equipment or fixtures left on the Premises which items may be held by the Lessor as security for the Lessee's eventual payment and/or satisfaction of rental defaults or other defaults of Lessee under this Agreement. It is further agreed that if the Lessee is in default, that the Lessor shall be entitled to take any and all action to protect its interest in the personal property and equipment, to prevent the unauthorized removal of said property or equipment which threatened action would be deemed to constitute irreparable harm and injury to the Lessor in violation of its security interest in said items of personal property. Furthermore, in the event of default, the Lessor may expressly undertake all reasonable preparations and efforts to release the Premises including, but not limited to, the removal of all inventory, equipment or leasehold improvements of the Lessee's, at the Lessee's expense, without the need to first procure an order of any court to do so, although obligated in the interim to undertake reasonable steps and procedures to safeguard the value of Lessee's property, including the storage of the same, under reasonable terms and conditions at Lessee's expense, and, in addition, it is understood that the Lessor may sue the Lessee for any damages or past Rents due and owing and may undertake all and additional legal remedies then available.

In the event any legal action must be instituted to enforce any terms or provisions under this Agreement, then the prevailing party in said action shall be entitled to recover a reasonable attorney's fee in addition to all costs of said action.

XII. LICENSES AND PERMITS. A copy of all local, state, or federal permits acquired by the Lessee which are required for the use of the Premises shall always be kept on-site and shall be readily accessible and produced to the Lessor and/or their agents or any local, state, or federal officials upon demand.

XIII. OBLIGATIONS OF LESSEE. The Lessee shall be primarily responsible whenever needed for the maintenance and general pickup of the entranceway leading into the Premises so that this is kept in a neat, safe, and presentable condition. The Lessee shall also be responsible for all minor repairs and maintenance of the leasehold Premises, particularly those items which need immediate attention and which the Lessees, or their employees, can do and perform on their own, including but not limited to, the replacement of light bulbs, as well as the normal repair and cleaning of windows, cleaning, and clearing of toilets, etc., and the Lessee shall properly maintain the Premises in a good, safe, and clean condition. The Lessee shall properly and promptly remove all rubbish and hazardous wastes and see that the same are properly disposed of according to all local, state, or federal laws, rules, regulations, or ordinances.

In the event the structure of the Premises is damaged as a result of any neglect or negligence of Lessee, their employees, agents, business invitees, or any independent contractors serving the Lessee or in any way as a result of Lessee's use and occupancy of the Premises, then the Lessee shall be primarily responsible for seeing that the proper claims are placed with the Lessee's insurance company, or the damaging party's insurance company, and shall furthermore be responsible for seeing that the building is safeguarded with respect to said damage and that all proper notices with respect to said damage, are made in a timely fashion, including notice to the Lessor, and the party or parties causing said damage. Any damage that is not covered by an insurance company will be the liability of the Lessee.

The Lessee shall, during the Term of this Agreement, and in the renewal thereof, at its sole expense, keep the interior of the Premises in as good a condition and repair as it is at the date of this Agreement, reasonable wear and use excepted. This obligation would include the obligation to replace any plate glass damaged as a result of the neglect or acts of Lessee or her guests or invitees. Furthermore, the Lessee shall not knowingly commit nor permit to be committed any act or thing contrary to the rules and regulations prescribed from time to time by any federal, state, or local authorities and shall expressly not be allowed to keep or maintain any hazardous waste materials or contaminates on the Premises. Lessee shall also be responsible for the cost, if any, which would be incurred to bring her contemplated operation and business activity into compliance with any law or regulation of a federal, state, or local authority.

XIV. INSURANCE. In the event the Lessee shall fail to obtain the insurance required hereunder and fails to maintain the same in force continuously during the Term, Lessor may, but shall not be required to, obtain the same and charge the Lessee for same as additional Rent. Furthermore, Lessee agrees not to keep upon the Premises any

articles or goods which may be prohibited by the standard form of fire insurance policy, and in the event, the insurance rates applicable to fire and extended coverage covering the Premises shall be increased by reason of any use of the Premises made by Lessee, then Lessee shall pay to Lessor, upon demand, such increase in insurance premium as shall be caused by said use or Lessee's proportionate share of any such increase.

XV. SUBLET/ASSIGNMENT. The Lessee may not transfer or assign this Agreement or any right or interest hereunder or sublet said leased Premises or any part thereof without first obtaining the prior written consent and approval of the Lessor.

XVI. DAMAGE TO LEASED PREMISES. In the event the building housing the Premises shall be destroyed or damaged as a result of any fire or other casualty which is not the result of the intentional acts or neglect of Lessee and which precludes or adversely affects the Lessee's occupancy of the Premises, then in every such cause, the Rent herein set forth shall be abated or adjusted according to the extent to which the leased Premises have been rendered unfit for use and occupation by the Lessee and until the demised Premises have been put in a condition at the expense of the Lessor, at least to the extent of the value and as nearly as possible to the condition of the Premises existing immediately prior to such damage. It is understood, however, in the event of total or substantial destruction to the Premises that in no event shall the Lessor's obligation to restore, replace or rebuild exceed an amount equal to the sum of the insurance proceeds available for reconstruction with respect to said damage.

XVII. INDEMNIFICATION. The Lessee hereby covenants and agrees to indemnify, defend, and hold the Lessor harmless from any and all claims or liabilities which may arise from any cause whatsoever as a result of Lessee's use and occupancy of the Premises, and further shall indemnify the Lessor for any losses which the Lessor may suffer in connection with the Lessee's use and occupancy or care, custody, and control of the Premises. The Lessee also hereby covenants and agrees to indemnify and hold harmless the Lessor from any and all claims or liabilities which may arise from any latent defects in the subject Premises that the Lessor is not aware of at the signing of the lease or at any time during the Term.

XVIII. BANKRUPTCY - INSOLVENCY. The Lessee agrees that in the event all or a substantial portion of the Lessee's assets are placed in the hands of a receiver or a Trustee, and such status continues for a period of 30 days, or should the Lessee make an assignment for the benefit of creditors or be adjudicated bankrupt; or should the Lessee institute any proceedings under the bankruptcy act or any amendment thereto, then such Agreement or interest in and to the leased Premises shall not become an asset in any such proceedings and, in such event, and in addition to any and all other remedies of the Lessor hereunder or by law provided, it shall be lawful for the Lessor to declare the Term hereof ended and to re-enter the leased land and take possession thereof and all improvements thereon and to remove all persons therefrom, and the Lessee shall have no further claim thereon.

XIX. SUBORDINATION AND ATTORNMENT. Upon request of the Lessor, Lessee will subordinate its rights hereunder to the lien of any mortgage now or hereafter in force against the property or any portion thereof, and to all advances made or hereafter to be

made upon the security thereof, and to any ground or underlying lease of the property provided, however, that in such case the holder of such mortgage or the Lessor under such Agreement shall agree that this Agreement shall not be divested or in any way affected by foreclosure, or other default proceedings under the said mortgage, obligation secured thereby, or agreement, so long as the Lessee shall not be in default under the terms of this Agreement. Lessee agrees that this Agreement shall remain in full force and effect notwithstanding any such default proceedings under said mortgage or obligation secured thereby.

Lessee shall, in the event of the sale or assignment of Lessor's interest in the building of which the Premises form a part, or in the event of any proceedings brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Lessor covering the Premises, attorn to the purchaser and recognize such purchaser as Lessor under this Agreement.

XX. MISCELLANEOUS TERMS.

- a.) Usage by Lessee. Lessee shall comply with all rules, regulations, and laws of any governmental authority with respect to use and occupancy. Lessee shall not conduct or permit to be conducted upon the Premises any business or permit any act which is contrary to or in violation of any law, rules or regulations and requirements that may be imposed by any authority or any insurance company with which the Premises is insured, nor will the Lessee allow the Premises to be used in any way which will invalidate or be in conflict with any insurance policies applicable to the building. In no event shall explosives or extra hazardous materials be taken onto or retained on the Premises. Furthermore, Lessee shall not install or use any equipment that will cause undue interference with the peaceable and quiet enjoyment of the Premises by other tenants of the building.
- b.) Signs. Lessee shall not place on any exterior door, wall, or window of the Premises any sign or advertising matter without Lessor's prior written consent and the approval of the local municipality. Thereafter, Lessee agrees to maintain such sign or advertising matter as first approved by Lessor in good condition and repair. Furthermore, Lessee shall conform to any uniform, reasonable sign plan or policy that the Lessor may introduce with respect to the building. Upon vacating the Premises, Lessee agrees to remove all signs and to repair all damages caused or resulting from such removal.
- c.) Pets. Unless otherwise stated in this Agreement, the only pets that shall be allowed on the Premises are those needed legally due to a disability or handicap.
- d.) Condition of Premises/Inspection by Lessee. The Lessee has had the opportunity to inspect the Premises and acknowledges with its signature on this Agreement that the Premises are in good condition and comply in all respects with the requirements of this Agreement. Furthermore, the Lessor makes no representation or warranty with respect to the condition of the Premises or its fitness or availability for any particular use, and the Lessor shall not be liable for any latent or patent defect therein. Furthermore, the Lessee represents that Lessee has inspected the Premises and is leasing and will take possession of

the Premises with all current fixtures present in their "as is" condition as of the date hereof.

- e.) Right of Entry. It is agreed and understood that the Lessor and its agents shall have the complete and unencumbered right of entry to the Premises at any time or times for purposes of inspecting or showing the Premises and for the purpose of making any necessary repairs to the building or equipment as may be required of the Lessor under the terms of this Agreement or as may be deemed necessary with respect to the inspection, maintenance or repair of the building.

XXI. ESTOPPEL CERTIFICATE. Lessee at any time and from time to time, upon at least ten (10) days prior notice by Lessor, shall execute, acknowledge and deliver to Lessor, and/or to any other person, firm, or corporation specified by Lessor, a statement certifying that this Agreement is unmodified and in full force and effect, or if this Agreement has been modified, then that the same is in full force and effect except as modified and stating the modifications, stating the dates to which the Rent have been paid, and stating whether or not there exists any default by Lessor under this Agreement and, if so, specifying each such default.

XXII. HOLDOVER. Should Lessee remain in possession of the Premises after the cancellation, expiration, or sooner termination of this Agreement, or any renewal thereof, without the execution of a new agreement or addendum, such holding over in the absence of a written agreement to the contrary shall be deemed, if Lessor so elects, to have created and be construed to be a tenancy from month to month, terminable upon thirty (30) days' notice by either party.

XXIII. WAIVER. Waiver by Lessor of a default under this Agreement shall not constitute a waiver of a subsequent default of any nature.

XXIV. GOVERNING LAW. This Agreement shall be governed by the laws of the State of South Dakota.

XXV. NOTICES. Payments and notices shall be addressed to the following:

Lessor: _____

Lessee: _____

XXVI. AMENDMENT. No amendment of this Agreement shall be effective unless reduced to writing and subscribed by the parties with all the formality of the original.

XXVII. BINDING EFFECT. This Agreement and any amendments thereto shall be binding upon the Lessor and the Lessees and/or their respective successors, heirs, assigns, executors, and administrators.

XXVIII. ADDITIONAL TERMS & CONDITIONS. _____

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

LESSEE'S SIGNATURE: _____ **DATE:** _____

PRINT NAME: _____

LESSOR'S SIGNATURE: _____ **DATE:** _____

PRINT NAME: _____

LESSOR'S ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____
_____ County, ss.

On this ____ day of _____, 20____, before me appeared _____, as **LESSOR** of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public
My commission expires: _____

LESSEE'S ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF _____
_____ County, ss.

On this ____ day of _____, 20____, before me appeared _____, as **LESSEE** of this Commercial Lease Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public
My commission expires: _____

