

SOUTH DAKOTA RESIDENTIAL LEASE AGREEMENT

(With Option to Purchase)

This Lease to Purchase Option Agreement (“Option to Purchase Agreement”) is made on _____ [month, day, year] between _____ (the “Seller/Landlord”) and _____ (the “Buyer/Tenant”) Hereinafter known as the “Parties”.

WHEREAS, Seller/Landlord is the fee owner of certain real property being, lying and situated in _____ County, _____, South Dakota such real property having a street address of _____ (the “Property”).

WHEREAS, Seller/Landlord and Buyer/Tenant have together executed a prior lease agreement, the subject of which is the aforementioned Property (the “Lease Agreement”).

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller/ Landlord hereby grants to Buyer/Tenant an exclusive option to purchase the aforementioned “Property.”

The parties hereto hereby agree as follows:

1. **Rent.** Tenant shall pay Landlord the annual rent of _____ Dollars (\$_____) during said term, in monthly payments of _____ Dollars (\$_____), each payable monthly on the ____ day of each month in advance at such place as we may from time to time specify by written notice to you. Tenant shall pay a security deposit of _____ Dollars (\$_____) to be returned upon termination of this Lease and the payment of all rents due and performance of all other obligations.

2. **Utilities and Services.** Tenant shall at its own expense provide the following utilities or services: Tenant must pay promptly as they become due all charges for furnishing _____

[specify, e.g., water, electricity, garbage service, and other public utilities] to the premises during the lease term.

Landlord shall at its expense provide the following utilities or services: _____

[specify]



Landlord does not warrant the quality or adequacy of the utilities or services specified above, nor does Landlord warrant that any of the utilities or services specified above will be free from interruption caused by repairs, improvements, or alterations of the building or the premises or any of the equipment and facilities of the building, any labor controversy, or any other causes of any kind beyond Landlord's reasonable control. Any such interruption--and any other inability on Landlord's part to fulfill Landlord's lease obligations resulting from any such cause--will not be considered an eviction or disturbance of Tenant's use and possession of the premises, or render Landlord liable to Tenant for damages, or relieve Tenant from performing Tenant's lease obligations.

3. Tenant further agrees that:

- a) Condition of Premises: Upon the expiration of the Lease it shall return possession of the leased premises in its present condition, reasonable wear and tear, fire casualty excepted. Tenant shall commit no waste to the leased premises.
- b) Assignment or Subletting: Tenant shall not assign or sublet said premises or allow any other person to occupy the leased premises without Landlord's prior written consent.
- c) Alterations: Tenant shall not make any material or structural alterations to the leased premises without Landlord's prior written consent.
- d) Compliance with Law: Tenant shall comply with all building, zoning and health codes and other applicable laws for the use of said premises.
- e) Tenant's Conduct: Tenant shall not conduct on premises any activity deemed extra hazardous, or a nuisance, or requiring an increase in fire insurance premiums.
- f) Pets: Tenant shall not allow pets on the premises.
- g) Right of Termination and Re-Entry: In the event of any breach of the payment of rent or any other allowed charge, or other breach of this Lease, Landlord shall have full rights to terminate this Lease in accordance with South Dakota State law and re-enter and re-claim possession of the leased premises, in addition to such other remedies available to Landlord arising from said breach.

4. OPTION TERM. The option to purchase period commences on _____ [month, day, year] and expires at 11:59 PM _____ [month, day, year].

5. NOTICE REQUIRED TO EXERCISE OPTION. To exercise the Option to Purchase, the Buyer/ Tenant must deliver to the Seller/Landlord written notice of Buyer/Tenant's intent to purchase. In addition, the written notice must specify a valid closing date. The closing date must occur before the original expiration date of the Lease Agreement, or the date of the expiration of the Option to Purchase Agreement designated in paragraph 1, whichever occurs later.

6. OPTION CONSIDERATION. As consideration for this Option to Purchase Agreement, the Buyer/ Tenant shall pay the Seller/Landlord a non-refundable fee of _____ Dollars (\$_____), receipt of which is hereby acknowledged by the Seller/Landlord. This amount shall be credited to the purchase price at closing if the Buyer/Tenant timely exercises the option to purchase, provided that the Buyer/Tenant: (a) is not in default of the Lease Agreement, and (b) closes the conveyance of the Property. The Seller/Landlord shall not refund the fee if the Buyer/Tenant defaults in the Lease Agreement, fails to close the conveyance, or otherwise does not exercise the option to purchase.

7. PURCHASE PRICE. The total purchase price for the Property is _____ Dollars (\$_____), Provided that the Buyer/Tenant timely executes the option to purchase, is not in default of the Lease Agreement, and closes the conveyance of the Property, the Seller/Landlord shall credit towards the purchase price at closing the sum of _____ Dollars (\$_____), from each monthly lease payment that the Buyer/Tenant timely made. However, the Buyer/Tenant shall receive no credit at closing for any monthly lease payment that the Seller/Landlord received after the due date specified in the Lease Agreement.

8. EXCLUSIVITY OF OPTION. This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Buyer/Tenant attempt to assign, convey, delegate, or transfer this option to purchase without the Seller/Landlord's express written permission, any such attempt shall be deemed null and void.

9. CLOSING AND SETTLEMENT. Seller/Landlord shall determine the title company at which settlement shall occur and shall inform Buyer/Tenant of this location in writing. Buyer/Tenant agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Buyer/Tenant. The only expense related to closing costs apportioned to Seller/Landlord shall be the pro-rated share of the ad valorem taxes due at the time of closing, for which Seller/Landlord is solely responsible.

10. FINANCING AVAILABILITY. SELLER/LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE AVAILABILITY OF FINANCING REGARDING THIS OPTION TO PURCHASE. BUYER/TENANT IS

SOLELY RESPONSIBLE FOR OBTAINING FINANCING IN ORDER TO EXERCISE THIS OPTION.

11. **FINANCING DISCLAIMER.** The parties acknowledge that it is impossible to predict the availability of obtaining financing towards the purchase of this Property. Obtaining financing shall not be held as a condition of performance of this Option to Purchase Agreement. The parties further agree that this Option to Purchase Agreement is not entered into in reliance upon any representation or warranty made by either party.

12. **REMEDIES UPON DEFAULT.** If Buyer/Tenant defaults under this Option to Purchase Agreement or the Lease Agreement, then in addition to any other remedies available to Seller/Landlord at law or in equity, Seller/Landlord may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Buyer/Tenant shall lose entitlement to any refund of rent or option consideration. For this Option to Purchase Agreement to be enforceable and effective, the Buyer/Tenant must comply with all terms and conditions of the Lease Agreement.

13. **COMMISSION.** No real estate commissions or any other commissions shall be paid in connection with this transaction.

14. **RECORDING OF AGREEMENT.** Buyer/Tenant shall not record this Option to Purchase Agreement on the Public Records of any public office without the express and written consent of Seller/Landlord.

15. **ACKNOWLEDGMENTS.** The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy. The parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Option to Purchase Agreement.

16. **TIMING.** Time is of the essence in this Option to Purchase Agreement.

17. **GOVERNING LAW AND VENUE.** This Option to Purchase Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of South Dakota. The parties further agree that the venue for any and all disputes related to this Option to Purchase shall be _____ County, South Dakota.

18. **OPTION TO PURCHASE CONTROLLING.** In the event a conflict arises between the terms and conditions of the Lease Agreement and the Option to Purchase Agreement, the Option to Purchase Agreement shall control.

19. **METHAMPHETINES.** (§ 43-32-30) If the Seller/Landlord is aware that the residential premises was used for the manufacturing of Methamphetamines, or simply known as a "Meth-lab", then the Buyer/Tenant must be informed.

20. **ENTIRE AGREEMENT.** This document sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Option to Purchase Agreement, nor any waiver of any rights under this Option to Purchase Agreement, will be effective unless in writing signed by the party to be charged.

SELLER/LANDLORD'S SIGNATURE: _____

Print: _____

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Print: _____

BUYER/TENANT'S SIGNATURE: _____

Print: _____

BUYER/TENANT'S SIGNATURE: _____

Print: _____

AGENT'S SIGNATURE: _____

Print: _____

WITNESS'S SIGNATURE: _____

Print: _____

