

# SOUTH DAKOTA PROPERTY MANAGEMENT AGREEMENT

1. **THE PARTIES.** This Property Management Agreement (“Agreement”) made on \_\_\_\_\_ is by and between:

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

Manager: \_\_\_\_\_, with a mailing address of \_\_\_\_\_ (“Manager”).

The Owner and Manager shall each be referred to as a “Party” and collectively as the “Parties.” Both Parties agree to the following:

2. **PROPERTY.** The Owner hereby appoints the Manager the exclusive right to rent, lease, operate, and manage the property located at \_\_\_\_\_

with the following legal description:

Hereinafter known as the “Property.” The Property is currently used as: \_\_\_\_\_.

3. **TERM.** This Agreement shall be for a term of \_\_\_\_\_ beginning on the date of \_\_\_\_\_ and ending on \_\_\_\_\_ (“Term”).

After the Term expires, this Agreement shall continue on a month-to-month basis with either Party having the option to terminate by providing thirty (30) days’ notice.

4. **MANAGEMENT SERVICES.** The Manager agrees to provide the following Services under this Agreement: (check all that apply)

- Leasing. Advertising, screening, and negotiating with tenants.
- Eviction. Notifying tenants of lease violations and removal.
- Rent Collection. Collecting rent and any other fees from tenants.
- Property Maintenance. Handling the day-to-day repairs on the Property.
- Financial Reports. As mentioned in Section 8 of this Agreement.
- Other. \_\_\_\_\_.

Hereinafter known as the “Services.”

5. **RIGHT TO LEASE.** In order to enter into a lease agreement with a tenant, the Manager is: (check one)

- REQUIRED to obtain the Owner's written approval.
- NOT REQUIRED to obtain the Owner's written approval.

6. **SECURITY DEPOSITS.** The Manager is allowed to collect security deposits from tenants. Returning security deposits to tenants shall be the responsibility of the: (check one)

- Manager.
- Owner.

Any security deposits collected by either the Manager or Owner must be placed in a bank account with an interest rate in accordance with Governing Law.

7. **MANAGER'S COMPENSATION.** The Owner agrees to pay the Manager the following fees for the services provided under this Agreement: (check all that apply)

- Management fee in the amount of \$\_\_\_\_\_ per \_\_\_\_\_.
- New lease fee in the amount of \$\_\_\_\_\_.
- Renewal of lease fee in the amount of \$\_\_\_\_\_.
- Fee for each month's rentals in the amount equal to \_\_\_\_\_% of each month's rentals every \_\_\_\_\_.
- Other fee for \_\_\_\_\_  
in the amount of \$\_\_\_\_\_ per \_\_\_\_\_.

8. **REPORTS.** The Manager agrees to provide the following statements, reports, and disclosures to the Owner on a periodic basis: (check all that apply)

- Income statements provided  monthly  quarterly  annually.
- Maintenance reports provided  monthly  quarterly  annually.
- Occupancy reports provided  monthly  quarterly  annually.
- Rent rolls provided  monthly  quarterly  annually.
- Tenant screening reports provided  monthly  quarterly  annually.
- Other. \_\_\_\_\_ provided  monthly  quarterly  annually.

9. **RIGHT TO SELL.** In the event the Property is marketed to be sold by the Owner during the Term of this Agreement, the Manager: (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.

**10. KEY-SAFE / LOCKBOX.** The use of a key-safe / lockbox on the Property is: (check one)

- REQUIRED to be used by the Manager for shared access.
- NOT REQUIRED to be used by the Manager.

**11. TERMINATION.** During the Term of this Agreement, both Parties may terminate this Agreement by mutual and written agreement. Both Parties shall also retain the right to terminate this Agreement, with or without cause, by providing the other Party at least 30 days' notice. On termination, the Owner shall pay to Manager any fees, commissions, or expenses owed under the terms of this Agreement.

This Agreement shall automatically terminate: (1) on the Owner's voluntary sale of the Property; (2) upon foreclosure of the Property, transfer in lieu thereof, or exercise of a lender's remedies; or (3) in the event of total condemnation of the Property. In case of a sale, the Owner shall notify the Manager as soon as such sale is negotiated.

**12. REPAIRS AND MAINTENANCE.** The Manager shall obtain prior approval from the Owner for all expenditures over \$\_\_\_\_\_ for any single item.

The Owner hereby gives power to the Manager to supervise repairs, improvements, alterations, and decorations to the Property, as well as purchase and pay bills for services and supplies. Prior approval for lesser amounts shall not be required for monthly or recurring operating charges or if emergency expenditures over the aforementioned maximum amount are, in the Manager'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.

**13. DISTRIBUTIONS.** The Manager shall make distributions to the Owner within 15 days after rent has been collected. Any unpaid amount from the Manager to the Owner shall be held by the Manager 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.

**14. 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, 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.

**15. FINANCIAL STATEMENTS TO OWNER.** The Manager 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.

**16. OTHER COMPENSATION.** Unless otherwise stated, this Agreement does not include the Manager'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 Manager to perform services not included in this Agreement, a fee shall be agreed upon before such services are performed.

**17. EQUAL HOUSING OPPORTUNITY.** The Property is offered in compliance with federal, state, and local anti-discrimination laws.

**18. REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS OF PARTIES.**

The Owner agrees, represents, and warrants that:

- a) Owner will provide all documentation, records, disclosures, and any Loan Documents, as defined in Section 34 of this Agreement, required by law or required by the Manager to manage and operate the Property, and immediately notify the Manager if the Owner becomes aware of any change in such documentation, records, or disclosures, or any matter affecting the habitability of the Property.
- b) Owner will maintain the Property in a condition fit for human habitation as required by applicable state and local laws.
- c) Owner shall pay all interest on Tenants' security deposits as required by Governing Law.
- d) Owner shall 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 interest of the Owner and the Manager. The Manager shall be, and the Owner authorizes the Manager to be, named as an additional insured party on the Owner's policies.
- e) Owner will pay any late charges, penalties, or interest imposed by lenders or other parties for failure to make payment only if the failure is due to insufficient funds in the Manager's trust account available for such payment. In addition, the Owner agrees to replace any funds required if there are insufficient funds in the Manager's trust account to cover such responsibilities of the Owner.

The Owner further represents that, unless otherwise specified in writing, they are 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 Manager in writing if the Owner becomes aware of any of the aforementioned items in this section during the Term of this Agreement.

The Manager agrees, represents, and warrants that:

- a) Manager is fully qualified and licensed, if and to the extent required by Governing Law, to manage a property of the same type and size as the Property and perform all obligations assumed by Manager hereunder.
- b) Manager will use their best efforts to ensure the Property is maintained in an attractive condition and in a good state of repair as required by this Agreement and in accordance with widely accepted industry standards.
- c) Manager will carry out the Services in accordance with the terms of this Agreement and Governing Law.

**19. INDEMNIFICATION.** Owner shall, and Owner does hereby agree to, indemnify, defend, and forever hold harmless Manager and Manager's members, directors, officers, and employees from and against any loss (except to the extent covered by insurance carried by Manager or Owner or required to be carried by Manager hereunder) which Manager or Manager's members, directors, officers, and employees may suffer or incur, or which may be asserted against Manager or Manager's members, directors, officers, and employees, whether meritorious or not, and which arises in connection with the performance of Manager's duties and obligations under the terms of this Agreement, which indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement regarding any occurrence preceding such expiration or termination; provided, however, that in no event shall the indemnity provided under this Section extend to any loss caused by the gross negligence or willful misconduct of Manager or its agents or employees.

Manager shall, and Manager does hereby agree to, indemnify, defend, and forever hold harmless Owner and Owner's members, directors, officers, and employees from and against any loss (except to the extent covered by insurance carried by

Manager or Owner or required to be carried by Owner hereunder) which Owner or Owner's members, directors, officers, or employees may suffer or incur, or which may be asserted against Owner or Owner's members, directors, officers, or employees, whether meritorious or not, caused by the gross negligence or willful misconduct of Manager or its agents or employees, or acts by Manager outside of the scope of authority granted under this Agreement, which indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement regarding any occurrence preceding such expiration or termination; provided, however, that in no event shall the indemnity provided under this Section extend to any loss caused by the gross negligence or willful misconduct of Owner or its agents or employees.

- 20. TAX WITHHOLDING.** The Owner shall be responsible for all tax withholding and payments of revenues and incomes to local, state, and federal authorities.
- 21. ACCORDANCE WITH FEDERAL AND STATE LAW.** All services provided by the Manager shall comply with federal, state, or local law requiring the delivery of agreements, reports, notices, and the posting of signage or notices.
- 22. EVICTIONS.** The Owner hereby gives power to the Manager 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 or reinstate tenancies.
- 23. LEASE ALTERATIONS.** The Owner hereby gives power to the Manager 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.
- 24. DUE DILIGENCE.** The Manager 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.
- 25. TRUST ACCOUNTS.** The Owner hereby gives power to the Manager 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 Manager's personal accounts. The Manager shall not be liable in the event of a bankruptcy or failure of a financial institution. All funds managed under this section must be managed in accordance with applicable law.
- 26. ADVERTISING.** The Owner grants the Manager 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.

- 27. HIRING CONTRACTORS.** The Owner hereby gives power to the Manager to contract, hire, supervise, and discharge firms and persons, including utilities, required for the operation and maintenance of the Property. The Manager may perform any of the Manager's duties through attorneys, agents, employees, or independent contractors and, except for persons working in the Manager's firm, shall not be responsible for their acts, omissions, defaults, negligence, or costs of the same.
- 28. EXPENSE PAYMENTS.** The Owner hereby gives power to the Manager to pay expenses and costs for the Property from the Owner's funds held by the Manager, 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.
- 29. TENANT FEES.** The Owner agrees that the Manager 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.
- 30. AGENCY RELATIONSHIPS.** If permitted by applicable law, the Owner hereby consents to the Manager acting as a dual agent for the Owner and tenants in any resulting real estate transaction. The Owner understands that the Manager may have or obtain property management agreements on other properties and that potential tenants may consider, make offers on, or lease through the Manager property the same as or similar to the Property. The Owner consents to the Manager's representation of the other owners' properties before, during, and after the expiration of this Agreement.
- 31. NOTICES.** Any written notice to the Owner or the Manager 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 1 of this Agreement.
- 32. ARBITRATION.** All disputes arising under this agreement shall be governed by and interpreted in accordance with the Governing Law in Section 35, 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, 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.

**33. ATTORNEY FEES.** In any action, proceeding, or arbitration between the Owner and the Manager regarding the obligation to pay compensation under this Agreement, the prevailing Owner or Manager shall be entitled to reasonable attorneys' fees and costs from the non-prevailing Owner or Manager, except as provided in Section 32.

**34. LENDER CONSIDERATIONS.** If the Owner is financing the Property through a lender, the Owner shall remain in compliance with any and all documents, instruments, and notes evidencing or securing a loan secured by the Property or any interest therein, including any mortgage, deed of trust, or other security agreement, which is held by a third party unaffiliated with Owner or any member therein (collectively, "Loan Documents"). Owner shall provide any relevant Loan Documents to the Manager if the Manager can be reasonably expected to understand, be aware, or comply with any obligations imposed by said Loan Documents.

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

**36. ADDITIONAL TERMS & CONDITIONS.**

**37. 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 Manager 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: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Manager's Signature** \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_