

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2021 by and between the City of Minot (“Landlord”), whose address is 515 2nd Ave. SW, PO Box 5006, Minot, ND 58702, and Minot Area Council of the Arts, a non-profit corporation whose address is 3 Main Street South, Suite 2, Minot, ND 58701 (“Tenant”). The parties agree:

- 1. TERM.** The term of this Agreement is two (2) years, beginning September 1, 2021 and ending August 31, 2023 (“Base Term”). Provided that Tenant is not in default of performance of the Agreement, and the Agreement has not been terminated by either Party, Tenant shall have the option to renew the lease for three (3) additional one (1) year terms (“Renewal Term”). The option to renew the lease shall be exercised by written notice to the Landlord not less than sixty (60) days prior to the expiration of the Base Term or Renewal Term, whichever is applicable.
- 2. SCOPE OF LEASE.** Landlord, in consideration of the rent to be paid and the covenants to be performed by Tenant, hereby leases to Tenant the following described premises (“Premises”) situated in the city of Minot, county of Ward, and state of North Dakota:

The West 100 Feet of Lots 9, 10, 11, and 12, Block 8, Original Townsite, Minot.

An approximate floor plan of the Premises is attached and incorporated into this Agreement as Exhibit A (2 pages).

- 3. BASE RENT.** Tenant agrees to pay Landlord \$1.00 annually as rent for the Premises (“Base Rent”).
- 4. ADDITIONAL RENT.** In addition to Base Rent, Tenant also agrees to pay Landlord twenty percent (20%) of gross revenue earned from renting the Premises for events (“Additional Rent”). Gross rent shall not include “Add-on Fees” as outlined in Exhibit B.

Tenant shall calculate the Additional Rent monthly and, within ten (10) days of the last day of each month, Tenant shall (1) submit such written calculation to Landlord and (2) pay the Additional Rent to Landlord.

The Additional Rent is payable at the address of Landlord, unless Tenant is notified otherwise in writing by Landlord.

- 5. USE OF PREMISES.** The Premises shall be used and occupied by Tenant, as an event facility. In addition, the space identified in Exhibit A as a storage room may be used for storage and the space identified as the parking pad may be used to store a trailer. The Premises should not be used for any other use, including but not limited to office space or any residential purpose. Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.

6. FACILITY RENTAL FEE. Tenant shall charge a facility rental fee to any individual or entity using the Premises for an event. The facility rental fee shall be in accordance with the Fee Schedule, which is attached and incorporated into this Agreement as Exhibit B. Any modification to Exhibit B shall require a written amendment executed by both Parties.

To the extent the Premises is available for use on the requested date(s), Tenant may use the Premises for up to twenty-four (24) events annually without paying a rental fee. In addition, Tenant may use the Premises for regular administrative meetings (e.g., board meetings), so long as the Premises is not being rented for any other event.

Upon reasonable request, and to the extent the Premises is available on the requested date, Landlord may use the Premises for any reason at no charge to Landlord. Landlord acknowledges and agrees that Tenant will control and administer the calendar for the Premises and that Tenant is not obligated to reschedule other pending events to accommodate Landlord's requested use of the Premises.

7. LANDLORD OBLIGATIONS. Landlord agrees:

- (a) To maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the Landlord;
- (b) To comply at its own expense with all federal, state, county, and city laws and ordinances and all lawful rules, regulations, or orders of any duly constituted authority, present or future, affecting the Premises; and
- (c) To pay for the following utility services: water, sewer, heat, electricity, air conditioning, and standard City garbage collection.

8. TENANT OBLIGATIONS. Tenant agrees:

- (a) To pay the rent when due;
- (b) To pay for its own telephone installation and/or services and internet installation and/or services;
- (c) To pay for garbage collection above and beyond standard City garbage collection (e.g., bulk items; dumpsters; etc.);
- (d) To keep the Premises clean and provide its own janitor services;
- (e) To keep sidewalks and parking area of the Premises free of accumulations of snow and ice and to cut and care for the grass, shrubbery, plants, and trees on the Premises;
- (f) To keep the Premises in reasonable condition the same as at the commencement of the Term, except for reasonable use and wear, or damage by fire or unavoidable casualty;
- (g) Not to make any unlawful, improper, or offensive use of the Premises, and to observe all the laws of the State of North Dakota and the ordinances of the City of Minot in force from time to time relating to the lease Premises;

- (h) To permit Landlord at all reasonable times to enter and examine the Premises and to make necessary repairs for the protection of the Premises;
- (i) To surrender the Premises to Landlord at the end of the Term; and, in default of payment of rent due or failure to perform its obligations under this Agreement, to surrender the Premises upon demand by Landlord; and
- (j) To maintain at its own expense and assume responsibility for all equipment, furniture, and fixtures installed by Tenant.

9. ASSIGNMENT AND SUB-LETTING. Tenant shall not assign this Agreement, or sub-let or grant any license to use the Premises without the prior written consent of Landlord. Consent by Landlord to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license.

10. ALTERATIONS AND IMPROVEMENTS. Tenant shall not make any alterations or improvements to or on the Premises without the prior written consent of Landlord. Any and all alterations, changes, or improvements built, constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement.

11. TAXES. To the extent any portion of the Premises is ever subject to real estate taxes, property taxes, or special assessments, Tenant shall be solely responsible for the prompt payment of any such taxes or special assessments.

12. INDEMNIFICATION AND INSURANCE. Tenant agrees to indemnify Landlord and hold it harmless from any and all claims for damage or injury to persons or property, including costs of defense against such claims, arising out of or as a result of any transaction or occurrence on or about the Premises during the term of this Agreement, or any breach of Tenant in the performance of any of the Tenant's obligations. Tenant shall secure and keep in force during the term of this Agreement, from insurance companies authorized to do business in the state of North Dakota, the following insurance coverages: (1) commercial general liability, including contractual coverage, with minimum liability limits of \$1,000,000 per occurrence; (2) workers' compensation coverage meeting all statutory requirements; and (3) property insurance insuring the full and true value of all Tenant's real property and personal property located on or in the building in which the leased premises are located for all losses. Tenant waives any right to seek compensation from Landlord for any covered losses for which this required insurance is to apply. Tenant shall furnish a certificate of insurance evidencing the required coverages are in effect prior to commencement of this Agreement. Failure to provide or to maintain insurance as required in this Agreement is a material breach of contract entitling Landlord to terminate this Agreement immediately.

13. TENANT'S HOLDING OVER. If Tenant remains in possession of the Premises after this Agreement expires, and Landlord accepts rent from Tenant, this Agreement shall be deemed renewed on a month-to-month basis with all other terms and conditions of this Agreement remaining in effect until otherwise agreed in writing.

14. TERMINATION.

If Tenant fails to comply with any of the material provisions of this Agreement, other than the covenant to pay Base Rent or Additional Rent, or materially fails to comply with any duties imposed on Tenant by statute, within seven days after delivery of written notice by Landlord specifying the non-compliance and indicating the intention of Landlord to terminate the Lease, Landlord may terminate this Agreement. If Tenant fails to pay rent when due and the default continues for seven days, Landlord may, at Landlord's option, declare the entire balance of rent payable to be immediately due and payable and may exercise any and all rights and remedies available to Landlord at law or in equity or may immediately terminate this Agreement.

During the Term of this Lease or any renewal or extension, Landlord may terminate this Lease by providing thirty (30) days' written notice to Tenant, (1) if Landlord is ordered by a Court with competent jurisdiction to allow a different entity to use, lease, or occupy the Premises, or (2) if the Minot City Council determines, in its sole discretion, that there is a higher and better use for the Premises.

During the Term of this Lease or any renewal or extension, Tenant may terminate this Lease by providing thirty (30) days' written notice to Landlord, if Landlord fails to comply with any of its obligations under this Lease, or if Tenant determines it must relocate to comply with the Americans With Disabilities Act of 1990 or any rules adopted under the act, or with any other state or federal law or rules.

If the leased Premises are destroyed or damaged by fire or the elements to the extent they become untenable, this Lease will terminate immediately, unless Landlord, within twenty (20) days of the happening of the event, gives written notice of intention to restore the building and fully restores the Premises within a reasonable time. During the term between destruction and restoration of the Premises rent will not be due, and if rent has already been paid Landlord shall refund to Tenant all that portion of the prepaid rent attributable to the time during which Tenant was unable to use the Premises for its intended use.

15. ATTORNEYS' FEES. Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Tenant agrees to pay all expenses so incurred, including a reasonable attorneys' fee.

16. GOVERNING LAW. This Agreement shall be governed, construed and interpreted under the laws of the State of North Dakota. Any action to enforce this Agreement must be adjudicated exclusively in the state District Court of Ward County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

17. SEVERABILITY. If any provision of this Agreement is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is

unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Agreement did not contain that term.

18. **BINDING EFFECT.** The covenants, obligations and conditions in this Agreement shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties.
19. **MODIFICATION.** The parties agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties.
20. **COMPLIANCE WITH LAWS; NONDISCRIMINATION.** Tenant shall comply with all applicable laws, regulations and ordinances, and require such compliance by its guests and visitors. Tenant shall not discriminate against any person because of race, color, religion, sex, national origin, disability, or otherwise in violation of federal or state law, and shall comply with any applicable federal or state laws requiring affirmative action.
21. **AUDIT.** All records, regardless of physical form, and the accounting practices and procedures of Tenant relevant to this Agreement are subject to examination by Landlord, the Landlord's designee(s), or auditors, if required. Tenant shall maintain all of these records for a period of time consistent with the North Dakota Record Retention Policy, or as otherwise directed by Landlord in writing. Landlord, or Landlord's designee(s), or auditors, shall provide reasonable notice to Tenant prior to conducting examination.
22. **COMPLIANCE WITH PUBLIC RECORDS LAWS.** Tenant agrees that Landlord must disclose to the public upon request any records it receives from Tenant. Tenant further understands that any record obtained or generated by Tenant under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Tenant agrees to contact Landlord immediately upon receiving a request for information under the public records law and to comply with Landlord's instructions on how to respond to the request.
23. **NOTICE.** Any notice required or permitted under this Agreement or under state law shall be deemed sufficiently given or served if sent by United States mail, addressed as follows:

If to Landlord to:

Finance Director
City of Minot
PO Box 5006
Minot, ND 58702

If to Tenant to:

Minot Area Council of the Arts
3 Main Street South
Minot, ND 58701

LANDLORD:

TENANT:

Signature

Print Name

Date

Signature

Print Name

Date