

***ADDENDUM TO PURCHASE CONTRACT***

NAME OF SELLER/LANDLORD:

NAME OF BUYER/TENANT:

\_\_\_\_\_

\_\_\_\_\_

**AGREEMENT TO LEASE PRIOR TO PURCHASE**

**\*This is a legally binding contract between the above named Landlord and Tenant. If you do not understand it, seek legal advice.**

**\* This Lease is only to be entered into in association with, and as an addendum to, an appropriate Purchase Contract for the real property that is the subject hereof (the "Purchase Contract"). The effective date of this Lease shall be the same as that of the associated Purchase Contract.**

**\* This Lease should be expressly incorporated into the associated Purchase Contract by placing the following language, or similar language, into the Addenda Section of the Purchase Contract: "Agreement to Lease Prior to Purchase - By signing this contract, the parties further agree to the terms of said lease and to promptly execute a copy of said lease."**

1. Leased Premises. Landlord (Seller under the associated Purchase Contract) hereby leases to Tenant (Buyer under the associated Purchase Contract) and Tenant hereby leases from Landlord, subject to all the terms, conditions and provisions herein set forth, the residence and associated property which Tenant has entered into a contract to purchase under the Purchase Contract (the "Property"), which Purchase Contract is incorporated herein by this reference.

2. Term. Unless otherwise agreed in writing by the parties hereto, the term of this Lease shall be from the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Commencement Date") until such time as: i) Tenant closes on its purchase of the Property pursuant to the Purchase Contract; ii) this Lease is terminated pursuant to the terms hereof; or iii) the Purchase Contract is terminated without closing.

3. Use. Tenant shall use the Property exclusively for a private residence and for no other purpose without the written consent of the Landlord.

4. Rental. Tenant agrees to pay Landlord as rental \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per  **month**  **week**, commencing on the Commencement Date. The payment is to be paid by the Tenant in advance on or before the Commencement Date and thereafter on or before each  **weekly**  **monthly** anniversary of the Commencement Date. Tenant's obligation to pay such rental amount is independent of and in addition to Tenant's obligation to pay the purchase price under the Purchase Contract.

5. Rental as Credit Towards Purchase Price. In the event of closing under the Purchase Contract:

- No portion of any rental payment shall be credited towards the purchase price or any other payment obligation of Tenant set forth in the Purchase Contract.
- \_\_\_\_\_ percent [OR] \_\_\_\_\_ Dollars [*complete the appropriate blank*] of each rental payment made shall be credited towards the purchase price due under the Purchase Contract at the time of closing.

Regardless of whether any portion of the rental payments is to be credited towards the purchase price at closing, in the event such closing does not occur, Tenant shall not be entitled to the return of any portion of the rental payments paid and shall be fully liable for the full amount of any rental payments then or thereafter due or past due, and Tenant acknowledges and agrees that such rental payments are fully earned by Landlord as good and sufficient consideration for the Tenant's leasehold interest in the Property.

6. Deposit.

- No deposit is required for purposes of this Lease. (This does not affect any earnest money/deposit requirements under the Purchase Contract.)
- In addition to, and without any effect upon, any earnest money/deposit required by and for purposes of the Purchase Contract, Tenant shall deposit with Landlord the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00), payable on or before the Commencement Date, as security for the full and faithful performance of each term, provision, covenant, and condition of this Lease. In the event Tenant defaults in respect of any of the terms, provisions, covenants, or conditions hereof, including but not limited to payment of rent, Landlord may use, apply, or retain the whole or any part of such security for the payment of any rent in default or for any other sum which Landlord may spend or be required to spend or otherwise be entitled to by reason of Tenant's default. Should Tenant faithfully and fully comply with all of the terms, provisions, covenants, and conditions of this Lease, the security deposit or any balance thereof shall be returned to Tenant, or, at the option of Landlord, to the last consented to assignee of Tenant's interest in this Lease, at the expiration of the term hereof. Tenant shall not be entitled to any interest on such security deposit.

7. Alterations, Maintenance and Repairs. During the term of this Lease or any extension thereof, Tenant may not make any alterations, additions or improvements to the Property unless Tenant first obtains the prior written consent of the Landlord. Any alterations, additions or improvements approved by Landlord shall remain with the Property upon the termination of this Lease and become the property of Landlord (if the Property is not ultimately sold to Tenant). For purposes of this Lease only, and without prejudice to any rights of

Tenant/Buyer under the Purchase Contract, Tenant accepts the Property in its as-is condition. However, Tenant/Buyer shall not take possession of or otherwise use or occupy the Property unless and until all inspections allowed by the Purchase Contract have been made and all material issues arising therefrom have been resolved by the parties. In the event Tenant/Buyer so takes possession of or otherwise uses or occupies the Property prior to said inspections being completed and issues arising therefrom being resolved, such action on the part of Tenant/Buyer shall be deemed a waiver of any inspection rights or unresolved inspection issues under the Purchase Contract, and Tenant/Buyer shall be deemed to have accepted the property in its as-is condition (unless otherwise agreed in writing by Tenant and Landlord). Subject to any inspection rights under the Purchase Contract (and the resolution of any issues arising therefrom) that have not been so waived, Tenant agrees to provide and pay for maintenance for the Property, including, but not limited to, the residence and other buildings on the Property; and, subject to paragraph 21 below, to repair and pay for any damage thereto, regardless of the cause. Such maintenance and repair obligations shall include, without limitation, repair of items such as HVAC systems, plumbing systems, electrical systems and appliances. Without limiting the foregoing, Tenant expressly agrees to be responsible for the maintenance of the lawn and the removal of ice and snow from the sidewalk and driveway areas. The provisions of this paragraph 7 regarding Tenant's duties to maintain and repair shall take precedence over and supersede any conflicting maintenance or repair obligations Landlord would otherwise have under the Purchase Contract.

8. Utilities, Debris Removal, Etc. Tenant shall pay for Tenant's own utilities, such as water, fuel, gas, garbage removal, electricity and telephone service. Tenant shall have all utilities transferred to Tenant's name in a timely manner. Tenant shall also keep the residence and other buildings clean and free from all dirt and other refuse matter.

9. Taxes and Fire and Extended Coverage Insurance. During the term of this Lease, Landlord shall be responsible for the payment of all real estate taxes imposed in connection with the Property and to cover the Property (but not the contents therein) with fire and extended coverage insurance.\* However, this obligation to pay taxes shall not supersede or alter any tax proration provisions contained in the Purchase Contract.

10. Inspection. Tenant agrees to permit Landlord or Landlord's agents to inspect or examine the Property at any reasonable time.

11. Tenant's Liability. Subject to the following paragraph 12, Tenant agrees to be responsible for and to relieve Landlord from all liability by reason of any damage or injury to any person or property which may arise from or be due to the use or misuse of any part of the Property or failure to properly maintain the same.

12. Landlord's Liability. Nothing in this Lease shall be construed to relieve Landlord from liability to Tenant, Tenant's agents, employees, invitees, guests and independent

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\* Note- Landlord should verify with Landlord's insurer that appropriate fire and extended coverage insurance is in place. A rental endorsement or other modification to Landlord's insurance policy may be required.

contractors, for Landlord's own negligence or the negligence of Landlord's servants, employees or representatives, including but not limited to Landlord's independent contractors performing work in or about the Property.

13. Damage to the Premises. It is agreed that if the Property is damaged by fire or other casualty to such an extent as to render the residence wholly unfit for occupancy, or if the residence is so seriously damaged by fire or other casualty that it shall be necessary to rebuild, then this Lease shall terminate.

14. Tenant's Insurance. Tenant shall obtain and keep in force, with insurers licensed to do business in the State of South Dakota, comprehensive general liability insurance, which may be provided in the form of a renter's insurance policy or any other form of insurance policy that includes comprehensive general liability coverage, insuring the interests of Tenant with minimum limits of liability of:

no such insurance required     \$300,000     \$500,000     other \_\_\_\_\_

per injury or occurrence. Tenant shall also be responsible for obtaining any fire, renter's or similar insurance covering Tenant's personal property located on Property, and Landlord need not request such insurance be obtained. If requested by Landlord, Landlord shall be named as an additional insured under any one or more of the policies required by this paragraph 14. In addition, within five (5) days of receiving a request from Landlord to do so, Tenant shall deliver to Landlord a Certificate of Insurance evidencing compliance with this paragraph.

15. Binding Effect. This Lease shall be binding upon and inure to the benefit of the respective parties hereto and their heirs, executors, administrators, assigns and successors in interest.

16. Default. If any rental payment due hereunder shall at any time be in arrears and unpaid and shall remain in such status for five (5) days after Landlord gives written notice thereof to Tenant, or if Tenant breaches any of Tenant's other covenants and agreements contained herein or in the Purchase Contract and such breach is not cured within ten (10) days (or any longer period that may be required by law) after Landlord gives written notice of such breach to Tenant, Landlord may enter in and upon the Property and repossess and enjoy the same, with or without terminating this Lease. No action by Landlord in repossessing the Property shall be deemed a termination of this Lease unless Landlord has expressly terminated this Lease in writing. Any re-entry unto the Property or any termination of this Lease due to Tenant's default shall be without prejudice to the rights of Landlord to recover from Tenant all past-due rents and all damages caused by Tenant's default, including the worth of all rents due hereunder for the remainder of the lease term in excess of the then existing rental value of the Property, and without prejudice to Landlord's rights under the Purchase Contract. Landlord shall have the additional right, at Landlord's discretion, to terminate the Purchase Contract in the event of Tenant's default, without timely cure, under this Lease. In the event of such a termination by Landlord, this Lease shall also be thereby terminated without prejudice to the rights of Landlord

to recover from Tenant all past-due rents and all damages caused by Tenant's default and other amounts due under this Lease.

17. Assignment and Sublease. This Lease shall not be assigned, nor the Property be sublet, by Tenant without the prior written consent of the Landlord.

18. Quiet Enjoyment. Landlord agrees that upon compliance with the terms and conditions of this Lease, Tenant shall and may peacefully and quietly have, hold and enjoy the Property for the term of this Lease.

19. Surrender. At the expiration of the term of this Lease or upon the prior termination of this Lease, Tenant will immediately quit and surrender the Property in as good a state and condition as reasonable use and wear thereof will permit, with the exception of damage by the elements, fire and other casualty when such damage is caused by any of the perils included within the standard form of fire and extended coverage insurance. Any holding over by Tenant shall not operate, except by written agreement, to extend or renew this Lease, and no tenancy of any duration shall be created thereby. Notwithstanding anything in the Purchase Contract to the contrary, an action of forcible entry and detainer, or of detainer only, may be brought without first submitting such claim to mediation, and in the event such an action is brought, Landlord may, without first submitting to mediation, pursue any other actions or claims that are legally permitted to be brought in the same action as the forcible entry and detainer or detainer only action.

20. Notices. All notices or demands given or required to be given hereunder shall be in writing and either personally delivered or sent by United States registered or certified mail, postage prepaid, to the recipient's last known address, provided that either party by like written notice may designate any different addresses to which subsequent notices shall be sent. Any such notice or demand shall be deemed effective immediately upon being personally delivered, or in the event it is mailed, upon the 2<sup>nd</sup> day (excluding Sundays and mail service holidays) after the date such notice or demand is mailed.

21. Waiver of Subrogation. Landlord and Tenant hereby agree that neither shall be liable to the other for loss arising out of damage to or destruction of the Property or the contents thereof, when such loss is caused by any of the perils included within the standard form of fire and extended coverage insurance. This agreement shall be binding whether or not such damage or destruction shall be caused by the negligence of either Landlord or Tenant, or their agents, servants or employees, and further, any and all right of subrogation by any insurance carrier is hereby waived. The parties hereto will sign any and all documents necessary to implement this provision.\* The foregoing notwithstanding, nothing contained in this paragraph shall operate in such a fashion that the terms of any applicable policy of insurance are violated.

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\* Note- Landlord and Tenant should verify that paragraph 21, including but not limited to the subrogation waiver, is compliant and consistent with their respective insurance policies and that such policies will properly and sufficiently protect them in light of the provisions of paragraph 21.

22. Entire Agreement. This Lease and the associated Purchase Contract contain the entire agreement between the parties, and no representations, inducements, promises or agreements, oral or otherwise, not embodied herein or therein, shall be of any force or effect.

23. Governing Law/Forum. This Lease shall be governed by and interpreted and construed in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands effective as of the effective date of the associated Purchase Contract.

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BUYER/TENANT

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SELLER/LANDLORD