

**TERMS AND CONDITIONS OF OCCUPANCY AGREEMENT  
SPRING 2024**

IT IS HEREBY AGREED AND UNDERSTOOD:

1. **PAYMENT.** That the undersigned Occupant entering into this agreement, hereinafter referred to as "Occupant" shall pay the Office of School and Public Lands for the State of South Dakota herein after referred to as the "Lessor" the sum above specified per annum, in advance of January 31 of each year.
2. **OCCUPANCY AGREEMENT.** Said Occupants will maintain and occupy the main shop building on a consistent basis. That Occupant will maintain the remaining buildings and structures, with the exception of the former residence, in their present condition. Any repairs that cost in excess of \$1000.00 will be considered improvements and permission for such improvements must be obtained from Lessor prior to construction. Failure to obtain permission prior to construction may result in forfeiture of the improvement to Lessor, at Lessor's sole discretion. Occupant shall obtain permission from the Lessor through submission of a form furnished by the Lessor which shall contain the following information: type of improvement, cost of improvement, and location of improvement. That the cost of such improvements may not exceed an amount permitted by the Lessor. That the Lessor shall not be liable for any material furnished or labor performed on the improvements pursuant to SDCL 5-5-22 and 5-5-23.
3. **EXPIRATION.** That the Occupant will peaceably and quietly leave, surrender, and yield all the property at the expiration of this agreement, or upon cancellation or termination of this agreement for any cause.
4. **EXTENSION.** That at the expiration of a one-year agreement, the State may enter into another one-year agreement subject to at least one or more inspections of the house and buildings. In the event that the occupant fails to maintain the house or buildings in a husband-like manner and as set forth in Section 2 of this agreement, the State will give notice to Occupant to which there will be a minimum of 30 days to correct the inadequacies. If said inadequacies are not corrected, the State may cancel the occupancy agreement and may initiate the cancellation of the lease and will cause for the default of any permitted improvements to become the property of the State. If Occupant shows good stewardship and maintenance, the State will continue with one-year extensions until the expiration of the lease of associated agricultural and grazing leases.
5. **SUB-LEASING—CHANGE OF OCCUPANCY.** That the sub-leasing or change of occupancy of the property, or any part thereof, is specifically prohibited; that sub-leasing is cause for the cancellation and forfeiture of this lease, at the Lessor's sole discretion; and Occupant is liable to the Lessor for damages as provided in SDCL 5-5-20 and SDCL 5-5-21.
6. **TAXES.** That Occupant shall pay all real property taxes payable to the County Treasurer of the county in which the property is situated. Failure to pay these taxes shall result in the cancellation of the agreement and the lease pursuant to SDCL Ch. 5-11.
7. **INSURANCE.** Occupant shall maintain property and casualty insurance on the buildings and name the State of South Dakota as an additional insured. Occupant of the primary buildings shall carry liability insurance and name the State as additionally insured.
8. **BUILDINGS.** The house and buildings will be maintained by Occupant. Those repairs of \$1,000 or less per occurrence will be the responsibility of Occupant. Repairs that exceed \$1,000 will be an obligation of the State. Failure of Occupant to maintain the buildings as required by this section may result in cancellation of the lease at the sole discretion of Lessor.
9. **UTILITIES.** Occupant is responsible for the cost of utilities, deposits, and annual fees, with the exception of cost of the well and building in the event of shared use. It will then be acceptable for an equitable prorate share of shared utility billing or a separate meter and costs of said meter maintained. Failure of Occupant to timely pay all required utility costs pursuant to this section may result in cancellation of the lease at the sole discretion of Lessor.
10. **NON-AGRICULTURAL USE OF BUILDINGS AND IMPROVEMENTS.** Any use of buildings and improvements beyond the normal agricultural and grazing use will be subject to authorization by Commissioner and will require a separate occupancy agreement. (Example: Commercial use of shop site or buildings beyond the scope of normal agricultural and grazing purposes will require a separate occupancy agreement and additional payment.)

Failure to obtain such a separate agreement prior to any non-agricultural use of the buildings and improvements may result in cancellation of the lease at the sole discretion of Lessor.

11. **STATE OF SOUTH DAKOTA USE.** State of South Dakota will continue to use the airstrip and may elect to use hangar as well as outbuildings. Utility costs to Occupant will be reimbursed by the State of South Dakota, as well as adjustments. Occupant shall not disrupt the State's use of the property as described herein.
12. **ASSIGNMENT.** That this lease may be assigned and transferred only after Occupant submits a completed assignment form as well as the assignment fee to the Lessor, and obtains the Lessor's approval.
13. **SALE BY LESSOR.** That the Lessor reserves the right to sell the property; that, if the property or any part thereof is sold during the term of this lease, the lease shall terminate on January 1 of the year following the date of the public auction at which the property is sold, regardless of the dates upon which written sales contracts therefore are executed and approved; that Occupant agrees to surrender possession of the property to the purchaser not later than the herein described January 1; that no damages of any kind may be claimed by Occupant or any other party against the Lessor on account of anything connected with the sale of any of the property. The Lessor retains ingress and egress on behalf of the Lessor, the Lessor's Agent, or, for purposes of a sale pursuant to Section 14 of this Lease, Buyer or Buyer's agent to access the property for purposes of inspection, appraisal, maintenance, or repair of the property at any time without notice.
14. **CONDITION.** Occupant acknowledges that the property is at the time of this Lease in acceptable condition. The Lessor makes no warranty of fitness for any particular use of the leased premises and makes no warranty of quiet enjoyment of the leased premises.
15. **USE OF PREMISES.** Occupant will use the property only for the purposes contemplated by this Lease and agrees not to engage in any activity or practice that will depreciate the value of the property.
16. **ABANDONMENT.** If, at any time during the term of this Lease, Occupant abandons the property or any part of the property, the Lessor may, at the Lessor's option, obtain possession of the leased premises in the manner provided by law, without becoming liable to Occupant for damages or for any payment of any kind whatsoever, and may, at the Lessor's discretion, relet the leased premises, or any part, for the whole or any part of the then unexpired term. The Lessor may receive and collect all rent payable by virtue of such reletting, and, at the Lessor's option, hold the Occupant liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Lease had continued in force, and the net rent for such period realized by Occupant by means of such reletting. If the Lessor's right of reentry is exercised following abandonment of the leased premises by Occupant, then the Lessor may consider any personal property belonging to Occupant and left on the leased premises to also have been abandoned, in which case the Lessor may dispose of all such personal property in any manner the Lessor will deem proper and the Lessor is hereby relieved of all liability for doing so.
18. **FORCE MAJEURE (ACT OF GOD).** Should the property, during the course of the Lease, become unsuitable for the purposes contemplated by this Lease due to drought, fire, natural disaster, or any other unforeseen circumstances beyond the control of the Parties and should said condition persist for longer than six months this Lease becomes voidable by either party. Lessor shall not be responsible for any loss of income or other damages suffered by Occupant as a result of these circumstances.
19. **INDEMNIFICATION.** Occupant agrees to indemnify and hold harmless Lessor, its officers, agents and employees, against and from any and all claims by or on behalf of any person arising from any condition of the property, or arising from any breach or default on the part of Occupant, or arising from any act or omission of Occupant or any other occupant of the property, or any part thereof, or of its or their agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person or property occurring during the term of this Lease in or about the property, upon or under the property and the land adjacent thereto, or arising from this Lease, and from and against all judgments, costs, expenses and liabilities incurred in or about any such claim or action.
20. **DEFAULT.** Occupant shall be in default of this Lease if Occupant fails to perform any of the agreements, terms, covenants or conditions hereof on Occupant's part to be performed, and failure continues for a period of thirty days after written notice by Lessor or if default is of such a nature that it cannot be reasonably cured within the thirty day period or Occupant has not in good faith commenced performance within the thirty day period to diligently proceed curing such default. Lessor may void this Lease upon Occupant's default at Lessor's sole discretion.

21. **NOTICE.** All notices, including notice of default, or other forms submitted to Lessor pursuant to this Lease shall be deemed to have been given when mailed by United States mail, First Class, postage prepaid, to the addresses set out below, or, if personally delivered, when received by such party.

Lessor:  
Office of School & Public Lands  
500 E. Capitol Ave  
Pierre, SD 57501

Occupant:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22. **WAIVER.** Failure of any party to insist upon the strict performance of any or all of the terms or conditions of this lease shall not constitute, nor be construed as, a waiver of that party's right to enforce any such terms or conditions, but the same shall continue in full force and effect.

23. **SUCCESSORS AND ASSIGNS.** This Lease shall bind and inure to the benefit of the parties hereto and their successors and assigns.

24. **CONSTRUCTION.** The language in all parts of this Lease shall be in all cases construed according to its plain meaning and not strictly for or against Lessor or Occupant.

25. **SEVERABILITY.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unreasonable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

26. **GOVERNING LAW.** This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

27. **ENTIRE AGREEMENT.** This Lease, together with any written modifications, addendums or amendments, hereinafter entered into, shall constitute the entire agreement between the parties and shall supersede any prior agreements or understandings, if any, whether written or oral, which the parties may have had relating to the subject matter.

28. **PRIOR LEASE.** This Lease shall render null and void any previous lease or agreements between Occupant and Lessor for the Premises.

29. **COUNTERPARTS.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

30. **MODIFICATIONS.** Any modification of this Lease, or additional obligation assumed by either party in connection with this Lease shall be binding only if evidenced in writing and signed by each of the parties.

31. **AUTHORITY.** Occupant is an individual or is: (i) a partnership duly formed; (ii) a corporation duly incorporated; (iii) a limited liability company duly formed; or (iv) a limited liability partnership duly formed. If not an individual, Occupant is validly existing and in good standing under the laws of its state of incorporation or formation; and has all requisite corporate or organizational (as the case may be) power and authority to execute, deliver and perform its obligations under this Lease. The execution, delivery and performance of this Agreement has been duly authorized by Lessor; and the individual(s) signing this Lease on behalf of Lessor are authorized to sign this Lease. No approval, authorization or consent of any member, private party, governmental or regulatory agency is required in order for Lessor to enter into this Lease and perform its obligations under this Lease that has not been obtained. If Occupant is acting as an agent for a previously undisclosed entity, Occupant shall inform Lessor of the identity of said undisclosed entity at the time of, or prior to, execution of this Lease. Failure to disclose in compliance with this provision constitutes immediate default of the Lease without regard to the provisions of Section 22 of this Lease.

\_\_\_\_\_  
Occupant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Date