

LEASE

This lease is entered into by **New Vision Properties LLC**, the owner of the premises described in Section 1 (LANDLORD), and the State of North Dakota, **Department of Corrections and Rehabilitation ("DOCR"), Division of Adult Services "DAS" (STATE)**.

1. SCOPE OF LEASE

LANDLORD, in consideration of the rent to be paid and the covenants to be performed by STATE, hereby leases to STATE the following described premises situated in the city of Bismarck, county of Burleigh and state of North Dakota:

Located at 601 Channel Drive, Bismarck, ND 58502

2. TERM OF LEASE

The term of this lease is for a period of 72 months, commencing on the 1st day of July 2021, and terminating on the 30th day of June 2027.

3. RENTAL PAYMENTS

STATE will pay rent for the premises, consisting of **6,400** square feet of office space and **1,600** square feet of mezzanine storage space, as shown in the table below per square foot per annum. Rent will be paid by the 10th day of the current month at 1/12 of the annual amount, commencing on the 1st day of July, 2021, and continuing monthly thereafter for the term of this lease. Rent is payable at the address of the LANDLORD, which is **New Vision Properties LLC, 4007 State Street, Suite 10, Bismarck, ND 58503**, unless STATE is notified otherwise in writing by LANDLORD.

<u>Year</u>	<u>AREA (Sq Ft)</u>	<u>\$ / SF (Sq Ft)</u>	<u>AREA (Sq Ft)</u>	<u>\$ / SF (Sq Ft)</u>	<u>\$/Year (Annual)</u>	<u>\$ /Month (1/12 of Annual)</u>
7/1/21-6/30/23	6,400	\$16.75	1,600	\$7.50	\$119,199.96	\$9,933.33
7/1/23-6/30/25	6,400	\$17.59	1,600	\$7.87	\$125,160.00	\$10,430.00
7/1/25-6/30/27	6,400	\$18.47	1,600	\$8.25	\$131,418.00	\$10,951.50

4. LANDLORD'S OBLIGATIONS

LANDLORD agrees:

- a. To pay all water, sewer, heat, electricity, air conditioning, garbage collection, and all other utility fees (except telephone) charged against the premises.
- b. To perform all required maintenance for the premises, including all janitorial services, which will be done on a bi-weekly basis, including furnishing of related supplies.
- c. To perform all maintenance and repairs requested by STATE which are related to use and habitability of the premises.
- d. To keep the walkways and parking areas 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.
- e. That if other portions of the building are leased to other parties, LANDLORD shall not permit any activity to be conducted in other portions of the building or grounds that will materially interfere with STATE'S use and enjoyment of the premises.
- f. That STATE may install items that it deems necessary for maximum and optimum utilization of the premises. STATE may, at any time, remove from the premises all fixtures and other equipment owned by STATE, provided the removal is completed by termination of this lease or any renewal, extension, or hold-over. STATE agrees to repair any damages that may be done to the premises resulting from the removal of the items, if any.
- g. STATE may place decorations, wall hangings, signs and directories upon entrance doors, in hallways leading to its premises, or doors and walls within the premises.

- h. To furnish **(28)** automobile parking stalls for use by STATE, its agents or designees, in the lot provided for use by the building tenants.
- i. 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.
- j. LANDLORD will construct a wall providing separation between mezzanine space and shop space.

5. STATE'S OBLIGATIONS

For the term of this lease, and any renewals or extensions, STATE agrees:

- a. To pay the rent when due.
- b. To pay for its own telephone service, fire suppression system monitoring, security system and data and video services, carpet cleaning services, exterior window cleaning.
- c. To keep the premises in reasonable condition the same as at the commencement of the term or as it may be put by LANDLORD, except for reasonable use and wear, or damage by fire and unavoidable casualty.
- d. 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 **Bismarck** in force from time to time relating to the leased premises.
- e. To permit LANDLORD at all reasonable times to enter and examine the premises and to make necessary repairs for the protection of the premises, upon notice to STATE and only when escorted by STATE.
- f. To surrender the premises to LANDLORD at the end of the term; and, in default of the payment of rent due or failure to perform its obligations under this lease, to surrender the premises upon demand made by LANDLORD.
- g. To maintain at its own expense and assume responsibility for all office equipment, kitchen equipment repairs, window coverings, furniture, and fixtures installed by STATE.
- h. To maintain and repair at the STATE'S expense all locks, keys, rekeying of locks, RFID security system mechanisms, door closing mechanisms, server room climate control systems,

6. TERMINATION OF LEASE

For any termination of lease based on a reduction in appropriations to be exercised, STATE must request the funds from the legislature for rental payments, and the legislature must deny the requested appropriation of the funds to the agency for rental payments.

It is expressly understood and agreed that STATE has no obligation under this lease for the initial or succeeding terms if the North Dakota Legislature fails to appropriate to STATE sufficient funds to defray the full rental costs. STATE, without any liability, may terminate this lease by providing thirty **(90) days** written notice, if its legislative appropriations are reduced or if its authority to spend its appropriations is reduced or limited by law or by reductions in federal or other grant funds to a point STATE, in its sole discretion, deems insufficient to pay the full rental cost for the remainder of the term of this lease.

During the term of this lease or any renewal or extension, STATE may terminate this lease by providing 30 days written notice to LANDLORD, if LANDLORD fails to comply with any of its obligations under this lease, or if STATE 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.

7. TERMINATION OF LEASE IN THE EVENT OF DESTRUCTION OF PREMISES

If the leased premises are destroyed or damaged by fire or the elements to the extent they become untenable, then this lease immediately terminates, unless LANDLORD, within 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 STATE all that portion of the prepaid rent attributable to the time during which STATE was unable to use the Premises for its intended use.

8. HOLDING OVER

If STATE remains in possession of the premises after the lease expires, and LANDLORD accepts rent from it, the lease will be deemed renewed on a month-to-month basis with all other terms and conditions of this Lease remaining in effect until otherwise agreed in writing.

9. MERGER AND MODIFICATION

This lease is the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Lease. This Lease may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

10. SEVERABILITY

If any term of this lease is declared by a court of competent jurisdiction to be invalid, the validity of the remaining terms will not be affected, and the rights and obligations of the parties will be construed and enforced as if the lease did not contain that term.

11. ASSIGNMENT

This lease must not be assigned or subleased by STATE unless LANDLORD endorses its written consent to the assignment or sublease. This lease must not terminate by reason of any sale of the premises by LANDLORD to third parties, but must continue throughout the entire term.

12. NOTICE

All notices or other communications required under this Lease must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

Division of Adult Services

Adam Anderson, Program Manager Or
PO Box 1898
Bismarck, ND 58502
Phone: (701) 328-9726
Email: adanderson@nd.gov

New Vision Properties LLC

Bob Vander Vorst
4007 State Street Suite 10
Bismarck, ND 58503
Phone: (701) 391-9911
Email: bob@dwiz.com

Notice provided under this provision does not meet the notice requirements at N.D.C.C. § 32-12.2-04.

13. APPLICABLE LAW

This lease is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this lease must be brought and solely litigated in the District Court of **Burleigh** 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*.

14. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering into this Lease, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

15. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

LANDLORD shall promptly notify STATE of all potential claims that arise from or result from this lease. LANDLORD shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

16. INDEMNITY

LANDLORD agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees, from and against claims based on the vicarious liability of the STATE or its agent, but not against the STATE's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by LANDLORD to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney

appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. LANDLORD also agrees to reimburse STATE for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

17. INSURANCE

- a. LANDLORD shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:
 - 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - 2) Automobile liability, including owned (if any), hired, and non-owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - 3) Property insurance insuring the full and true value of all Landlord's (or Tenant's) real and personal property located on or in the building in which the leased premises are located for all losses.
 - 4) Workers compensation coverage meeting all statutory requirements (if applicable). The policy shall provide coverage for all states of operation that apply to the performance of this contract.
 - 5) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- b. The insurance coverages listed above must meet the following additional requirements:
 - 1) Any deductible or self-insured retention amount or other similar obligation under the policies is the sole responsibility of Contractor. The amount of any deductible or self-retention is subject to approval by State.
 - 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by State. The policies shall be in form and terms approved by State.
 - 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
 - 4) The State of North Dakota and its agencies, officers, and employees (State) must be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. State must have all the benefits, rights and coverages of an additional insured under the policies.
 - 5) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against State.
 6. **LANDLORD shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.** All endorsements must be provided as soon as practicable.
 7. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
 8. LANDLORD shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. LANDLORD shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be

provided 10 days prior to coverage expiration. An update, current certificate of insurance shall be provided in the event of any changes to a policy.

18. CONFIDENTIALITY

LANDLORD shall not use or disclose any information it receives from STATE under this Lease that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Lease or as authorized in advance by STATE. STATE shall not disclose any information it receives from LANDLORD that LANDLORD has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and LANDLORD to maintain confidentiality of information under this section continues beyond the Term of this Lease. LANDLORD acknowledges that STATE possesses substantial amounts of information at the leased Premises that is confidential pursuant to state law.

LANDLORD, if it views, comes into possession of, or otherwise becomes knowledgeable of confidential information located at the leased Premises, shall maintain the confidentiality of that information and shall refrain from re-disclosing that information to any third party. LANDLORD shall require, by contract, any agent it retains to fulfill its obligations otherwise set out in this Lease to similarly maintain the confidentiality of any information it views, comes into possession of or of which otherwise becomes knowledgeable. Those indemnity provisions otherwise set out in the Lease agreement specifically apply to this confidentiality requirement.

19. COMPLIANCE WITH PUBLIC RECORDS LAWS

LANDLORD understands that, in accordance with this Lease's Confidentiality clause, STATE must disclose to the public upon request any records it receives from LANDLORD. LANDLORD further understands that any records obtained or generated by LANDLORD under this Lease, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. LANDLORD agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

20. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of LANDLORD relevant to this Lease are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. LANDLORD shall maintain all of these records for at least three (3) years following completion of this Lease and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to LANDLORD prior to conducting examination.

21. EFFECTIVENESS OF LEASE

This lease is not binding on STATE until it is reviewed by the Office of Attorney General and approved by the Facility Management Division, Office of Management and Budget, as required in N.D.C.C. § 54-21-24.1.

LANDLORD



BY: Robert Vander Vorst

ITS: President

STATE OF NORTH DAKOTA

BY: Michele Zander

ITS: DOCR Chief Financial Officer

FORM APPROVED BY ATTORNEY GENERAL:

BY:  DATE: 6-3-21
Special Assistant Attorney General

APPROVED BY FACILITY MANAGEMENT:

BY:  DATE: 6-2-2021