

**OPERATING AGREEMENT
FOR
MUNICIPAL ON-SALE AND OFF-SALE LIQUOR ESTABLISHMENT**

THIS AGREEMENT, made and entered into by and between the **City of Bridgewater**, a municipal corporation of the State of South Dakota, hereinafter referred to as “City” and _____ of **Bridgewater, South Dakota**, hereinafter referred to as “Manager”:

WHEREAS, the City has been issued an on-sale and off-sale liquor license and is engaged in the operation of a municipal on-sale and off-sale establishment; and

WHEREAS, the City desires to enter into an operating agreement on a limited basis with the Manager for the purpose of operating the on-sale and off-sale liquor establishment for and on behalf of the City pursuant to Title 35 of the South Dakota Codified Laws; and

WHEREAS, the City has offered to provide manager facilities in which to operate said on-sale and off-sale liquor establishment on the premises hereinafter described; now, therefore,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. This agreement is made and entered into between the parties hereto, for the purpose of allowing the Manager to operate an on-sale and off-sale liquor establishment in the City of Bridgewater, McCook County, South Dakota. The Municipal Liquor Store shall be under the direct supervision of the City Council and shall be operated by the Manager

2. Manager shall be solely responsible for all operating expenses of the liquor establishment, including by way of example, but not limited to, all utilities, all rental payments, sales taxes, maintenance as described below, and all other operating expenses not a part of this Operating Agreement.

3. The Manager shall dispense only liquor supplied by the municipal off-sale establishment.

4. The liquor establishment shall be situated on Lot Twelve (12) Block Twelve (12), of the Original City of Bridgewater, South Dakota.

5. The term and duration of this Agreement shall be for a period commencing _____ and ending at the hour of 8:00 pm on the evening of the first City Council meeting in May 2018.

6. This agreement may be terminated by either party by providing to the other party written notice of termination at least ninety (90) days prior to the effective date of this termination.

7. The Manager shall receive, as full compensation for his services rendered, the gross profit from the on-sale and off-sale liquor establishment under his management. Further, all incidental items for sale, such as pop, candy, cigarettes, cigars, snacks and any other miscellaneous items may be purchased, stocked and sold by the Manager and the Manager shall receive all the profits of such sales.

8. The Manager agrees to keep the premises neat and clean and further agrees that he/she shall operate the liquor establishment only on such days and at such times as permitted by state law and city ordinances. Manager agrees that the carpet will be professionally cleaned once every 6 months with the manager bearing the cost and submitting a paid receipt to the city for proof of compliance.

9. Manager agrees that Manager and any/all employees shall vacate the building within one hour following closing.

10. The Manager agrees to provide the City of Bridgewater with a Deposit as security assuring his faithful performance of this agreement, in an amount not less than Five Thousand Dollars (\$5000.00). This Deposit shall also serve the purpose of a damage deposit. Such deposit shall guarantee payment by the Manager to the City for damages caused to the furnishings and fixtures and for unpaid sales tax, unpaid rent, unpaid video lottery payouts or other operating expenses which are unpaid by the Manager.

11. The Manager shall pay for all liquors supplied by the municipal off-sale establishment, the actual cost price and the transportation charges.

12. A complete and detailed record shall be maintained by the Manager and submitted monthly to the City, of all liquors supplied the on-sale manager and such liquors so supplied shall be evidenced by prenumbered invoices prepared in triplicate showing the date, quantity, brand, size and actual cost as set forth in Paragraph 10 above. Such invoices shall bear the signature of the manager or his authorized representative. One copy thereof shall be retained by the off-sale establishment, one copy shall be retained by the on-sale establishment and one copy shall be filed with the municipal auditor or clerk. All copies shall be kept as permanent records and made available for reference and audit purposes.

13. The Manager agrees to and hereby does indemnify and hold harmless the City and their property from and against any loss, damage or liability occasioned by or resulting from any default hereunder or any tortuous or negligent act on the part of the Manager, his agents, or employees, or persons permitted on the demised premises by the Manager.

14. The City agrees to and hereby does indemnify and hold harmless the Manager and his property from and against any loss, damage or liability occasioned by or resulting from and default hereunder, or any tortuous or negligent act on the part of the City, its agents or employees, or persons permitted on the premises by the City.

15. The Manager agrees to furnish to City, within ten (10) days of the signing of this agreement, without demand, evidence of payment of the following:

Public liability insurance protecting both City and the Manager against claims for injury or damages to persons or property, said policy to have a combined single limit liability of not less than \$300,000.00.

16. The Manager agrees to observe all statutes of the State of South Dakota, all ordinances of the City of Bridgewater, and all rules and regulations of the Department of Revenue of the State of South Dakota regulating the sale of on-sale and off-sale liquor and the operation of an on-sale and off-sale liquor establishment.

17. The Manager shall pay the City the following amount: \$800 per month, which payment is due by 10:00 am on or before the first day of each successive month. For each day after the 1st day of any month that the rent remains unpaid, Manager agrees to pay a late fee of \$5.00. Payment shall be made to: Finance Officer, City of Bridgewater, South Dakota 57319 or such other address as the City may from time to time designate in writing, without demand therefor.

18. The City shall have the right to make inspections and investigations of the premises during the hours of operation, and to make audits, as it deems necessary or appropriate. Manager shall provide the City with a means of access for such inspections/investigations.

19. The City and the Manager agree to apportion financial responsibility for repairs as follows:

City shall make all necessary repairs

- a. To the exterior of the building:
- b. To the furnace, walk-in cooler and central air conditioner and water heater.

Manager shall make all necessary repairs to the following:

- a. To the interior of the building, including bathrooms.
- b. All self-contained coolers;
- c. All kitchen or other equipment;
- d. All other personal property within the facility;
- e. Window air conditioner; and
- f. Exposed kitchen and bathroom plumbing.

The replacement of any property, including personal property, equipment or fixtures shall be at the discretion of the City. The Manager shall be responsible for the entire cost of

replacement or repair of any equipment or fixtures which are lost or damaged, as a result of the negligence of the Manager, any employee or agent of the Manager, or any patron or during the manager's operation of the premises. The Manager shall be solely responsible for any vandalism to the premises.

20. The Manager shall be responsible for maintaining the real property upon which the premises is situated in a neat, clean and attractive appearance and shall be responsible for keeping the sidewalks in front of the establishment free of debris, snow and ice.

21. In the event that the premises become damaged or destroyed by fire or other casualty for which Manager's negligence is not a contributing cause, to the extent that it is impracticable for the Manager to continue occupying the same for the operation of its business therein, then and in such event the Manager, at his option, may terminate this agreement by giving written notice to the City with in thirty (30) days after such damages or destruction. If Manager shall not give notice of termination of this agreement, then and in that event, the City may, but shall not be required, to rebuild the premises, such rebuilding to be completed within six months from the date of such damage or destruction. No moneys shall be paid by the Manager during the time that such premises are wholly untenable by reason of such fire or other casualty rebuilt and restored. The length of time required shall be extended for the same period during which the City may be delayed in requiring or rebuilding the premises by reason of strikes, riots, war, insurrection, shortages of labor, materials, casualty or other cause beyond the control of the City.

This agreement shall be extended for the same length of time as the premises are untenable.

22. The City covenants and agrees that upon termination, it will purchase the then existing inventory, at its then existing fair market value.

23. The Manager covenants and agrees:

a. To furnish all reports necessary by law and required by the City and to permit state and city personnel to audit and inspect all books and records.

b. To not make any physical changes to the inside or outside of the building without first obtaining approval of the City.

c. To make all payments for beer and liquor by the 5th of the month following purchase.

d. To leave the interior of the premises and the personal property in a like condition upon termination of the agreement. Reasonable wear and tear excepted.

24. City also hereby grants to Manager, during the terms of this agreement, a license to all parking, driving and walking areas of said building, as such areas may from time to time be constituted; with rights of ingress and egress and free parking; said areas to be used by Manager, its invitees, customers, and the general public; and City also grants to Manager during the terms of this agreement, the privileged or temporarily parking in designated "Access Areas" such

delivery equipment as may be reasonably required in the conduct of Manager's business. City shall have the right to establish all rules and regulations for the purpose of designating "Employee Parking". City may also establish such additional rules and regulations governing usage of the parking lot and service areas not otherwise covered by this agreement as City deems advisable.

25. Nothing contained herein shall be deemed or construed by the parties hereto by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of compensation nor any other provision contained herein nor any parts of the parties hereto constitute any relationship other than the relationship of City and Manager. Manager shall not be considered an employee of the city. Those policies and procedures set forth in the City Personnel Manual shall not apply to Manager.

a. The various rights and remedies herein contained and reserved to each of the parties hereto shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute.

b. The heading of several Articles contained herein are for convenience only and do not define, limit, or construe the contents of such Articles. All negotiations, considerations, representations, and understandings, between the parties are incorporated herein and may be modified or altered only by agreement in writing between the parties.

26. At the expiration of the term created hereunder, whether by lapse of time or otherwise, Manager will quit and surrender the demised premises in good condition and repair, reasonable wear and tear and loss by fire and other casualty excepted.

a. Alterations, additions, or improvements on or in said demised premises at the expiration of this agreement, including the replacement of furniture or fixtures, shall be and become a part of the demised premises and shall remain upon and be surrendered with said premises as a part thereof at the termination of this agreement.

b. In the event Manager remains in possession of the demised premises after the expiration of this agreement and without the execution of a new agreement, it shall be deemed to be occupying said premises as a Manager from month-to-month, subject to all other conditions provisions, and obligations of this agreement.

27. Condition of City bar at termination shall be as follows:

1. All furnishings, walls, floors and ceiling concealed by equipment shall be thoroughly cleaned.
2. Backroom areas to be in the same condition as at the outset of the agreement.
3. Restroom area to be in the same conditions as at the outset of the agreement.

4. All stools and vanities to be as in the same condition as at the outset of the agreement.

5. All of the above to be inspected by the three (3) City Council members on the Liquor Committee.

28. If the above conditions are not satisfactorily met, a clean-up fee in the amount of \$600.00 (minimum) shall be due upon termination of this agreement. In the event security deposit funds are available, such shall go toward this clean-up fee.

29. City agrees to furnish for the Manager's use during the term of this agreement the items of personal property and fixtures which are currently located on the premises. Manager shall be responsible for maintenance, replacement, and repairs to such items.

30. It is agreed that any waiver or rights by City under this Assignment shall not constitute a continuing or continuous waiver. Any violation or breach of the terms of this Agreement by the Manager shall constitute separate and distinct ground for immediate termination of this Agreement as provided herein.

31. This Agreement shall not be assignable by the Manager.

32. The Manager shall sell off-sale liquors for no more than the manufacturer's suggested retail price.

33. Lottery machines are to be placed in a location to be coordinated with and approved by the City law enforcement (McCook Co Sheriff).

34. A violation of state, local or federal laws by the Manager or any agent or employee of the Manager shall constitute a breach of this agreement, resulting in the termination of the contract.

35. Manager shall not consume alcoholic beverages while managing the bar operation. Employees shall not be permitted to consume alcoholic beverages while on duty.

36. The parties agree that time is of the essence of this Agreement.

37. No alteration or other modification of this Agreement shall be effective unless the same shall be in writing and be signed by the parties hereto.

38. The parties agree that this writing represents the entire agreement between them and exist no other oral or collateral agreement or understanding of any kind or character except those contained herein.

IN WITNESS WHEREOF, the parties have hereunto fixed their seals dated this _____ day of _____, 20_____.

CITY OF BRIDGEWATER

By: _____
Mayor or Council President

ATTEST:

By: _____
Joan M Julson
Finance Officer

MANAGER:

WITNESS:
