

Cover memo revised 12/22/16
but attachment remains
unchanged



ADMINISTRATION

DATE: December 20, 2016
FROM: Jason Tomanek – Assistant City Administrator *JT.*
ITEM: Fort Abraham Lincoln Foundation | Lease Agreement

REQUEST

The Fort Abraham Lincoln Foundation is requesting an extension to the lease agreement for the City-owned property at 1700 River Road (Port of Bismarck).

Please place this item on the December 27, 2016 City Commission meeting.

BACKGROUND INFORMATION

The Fort Abraham Lincoln Foundation has been working to reestablish a permanent structure to help preserve, promote and develop heritage tourism sites and educational activities of significance to North Dakota, particularly in the Bismarck-Mandan region. This project ties in with the operation of the Lewis & Clark Riverboat.

RECOMMENDED CITY COMMISSION ACTION

Consider the request to approve the lease agreement with the Fort Abraham Lincoln Foundation.

STAFF CONTACT INFORMATION

Aaron L. Barth | Executive Director – Fort Abraham Lincoln Foundation
663.4758 | aaron@fortlincoln.org

LEASE AGREEMENT

THIS LEASE is made and entered into effective this ___ day of December, 2016 between the City of Bismarck, PO Box 5503, Bismarck North Dakota, hereinafter called "**LESSOR**" and the Fort Abraham Lincoln Foundation, a non-profit corporation, 401 West Main Street, Mandan, North Dakota, 58554 hereinafter called "**LESSEE**".

1. THE LEASED PREMISES: The "Leased Premises" shall consist of:

- a. The approximately one half (1/2) acre parcel (21,780 sq. ft.) of undeveloped land described as

Tract A: All that part of the South one-half (S ½) of Section Thirty (30), Township One Hundred Thirty-Nine North (T139N), Range Eighty West (R80W), City of Bismarck, North Dakota, that lies within and is bounded as follows:

Along the Easterly side by the Westerly right-of-way line of River Road, along the Southerly side by the Northerly right-of-way of Interstate Highway Number Ninety-four (94), along the Westerly side by the Easterly bank of the Missouri River and along the Northerly side by a line being one hundred fifty (150.00) feet North and parallel with the said Northerly right-of-way line of Interstate Highway Number Ninety-four (94).

Said Tract contains one half (1/2) of an acre, more or less.

And, as shown in Exhibit A, attached to and made a part of this Agreement.

- b. All improvements, including the Initial Improvements, now or hereafter constructed on the aforementioned land. The Initial Improvements shall consist of construction of an approximately 3,477 sq. ft. ground level multi-use building with an approximately 1,008 square ft. loft area. Exterior improvements include a patio and approach of approximately 3,500 square feet substantially as shown on **LESSEE'S** Drawing and Layout Plan, as shown in Exhibit B, attached to this Agreement and hereinafter referred collectively to as the "Warehouse Museum".

1. The parties agree and acknowledge that any improvements existing on the Leased Premises constructed by the **LESSEE** are the property and responsibility of the **LESSEE**, subject to the terms of this Agreement. Within sixty (60) days of the expiration or any earlier termination or cancellation of the Agreement, the **LESSEE** shall remove all of its improvements, including the Initial Improvements, and return the Leased Premises to its original condition unless the **LESSOR** gives its written permission to **LESSEE** to leave the improvements on the Leased Premises. All **LESSOR** property damaged by, or as a result of, the removal of **LESSEE'S** property shall be restored by the **LESSEE** at its sole expense to the condition existing prior to the construction of the improvements. Should the **LESSEE** fail to remove the improvements within the sixty (60) day period, the **LESSOR** may proceed to effect such removal at the expense of the **LESSEE**, and the **LESSEE** agrees to pay the **LESSOR** for such expense upon receipt of an invoice therefor. If the **LESSEE**, with the written permission of the **LESSOR**, leaves the improvements on the Leased Premises, the improvements shall become the property of the **LESSOR** and the **LESSEE** shall remove all of its personal property from the Leased Premises and surrender entire possession rights to the **LESSOR**.

2. TERM: The term of this lease shall commence on January 1, 2017, and shall terminate on December 31, 2042. If **LESSEE** has complied with all conditions, covenants, and provisions of this Agreement and **LESSEE** shall not be in default of this Agreement, **LESSEE** shall have the option to renew this Agreement for one additional (5) five-year period upon the same terms and conditions as herein stated. If the parties hereto cannot negotiate a new agreement to the satisfaction of both parties, this lease shall terminate with the initial term given above.

It is mutually agreed that after expiration of the term of this lease or any renewal thereof, any hold over will be at month to month tenancy and both parties shall be subject to all of the terms and conditions of this Agreement.

3. RENT, FEES AND CHARGES:

- a. Commencing January 1, 2017 **LESSEE** agrees to pay the **LESSOR** an annual rent of one (1) dollar per annum and, without deduction, setoff, prior notice or demand, a sum equal to one percent of the total of the **LESSEE'S** gross sales derived from the operations of the riverboat during each yearly period. As used in this Agreement the term "gross sales" shall mean the gross amount of all sales derived from or connected with the operations of the riverboat only. Gross sales shall include monies collected from any boat or vessel using the docking site, any souvenir or concession on or related to the riverboat, any restaurant or liquor sales on the riverboat or, any gift shop related to the riverboat and any other revenue generated from the riverboat. Rent shall be paid over to the **LESSOR** on or before the 10th day of November each year. All rent shall be paid to **LESSOR** in lawful money of the United States at the office of the City Administrator or at such other place or places or to such other party or parties as **LESSOR** may hereafter designate.
 - b. As additional rent, the **LESSEE** shall construct the Initial Improvements generally in accordance with Exhibit B, as modified, supplemented or amended pursuant to the **LESSOR'S** review and approval process, the "Initial Improvements". Promptly upon the execution of this Agreement, **LESSEE** shall submit plans and specifications to the **LESSOR** and shall complete construction of such improvements within twenty-four (24) months of the start of this Agreement. **LESSEE'S** failure to construct the Initial Improvements shall be a material breach of this Agreement.
 - c. Beginning January 1, 2043, and thereafter, the annual rent shall be \$1.00 per annum, shall include the payment of the percentage of riverboat gross revenue in Paragraph a. of this section and shall additionally include a sum of one percent of all other gross revenue derived from the Leased Premises, including from the Warehouse Museum.
4. RECORDS: The **LESSEE**, at all times during the term of this Agreement, shall keep accurate books, accounts, records and receipts, showing the gross sales of the **LESSEE'S** business from the Leased Premises. These books, accounts, records and receipts shall be available for inspection by the **LESSOR**

during regular business hours and the **LESSOR** may have an audit done of the same. If the audit should reveal any error as a result of which the **LESSOR** shall have been paid less than the amount to which it is entitled, then the expense of such audit shall be borne by the **LESSEE**; otherwise it shall be borne by the **LESSOR**. The **LESSEE** agrees to furnish the **LESSOR**, on or before the 20th day of each and every January during the entire term of this Agreement, a complete statement of accounts for the preceding calendar year. Such statement of accounts shall show, in detail, the gross sales for the preceding calendar year, and shall be certified by an accountant or firm of accountants satisfactory to the **LESSOR**, as being a true, correct and complete statement of all gross sales, as defined above, of the **LESSEE** in the Leased Premises for such preceding year.

5. CONDITION OF THE LEASED PREMISES: **LESSEE** accepts the Leased Premises in their present condition and without expense to the **LESSEE** and will repair and maintain any installations thereon. **LESSEE** agrees that there will be no exposed outside storage on the Leased Premises, and will cause to be removed at **LESSEE'S** expense, all trash, garbage, etc., and agrees to not deposit same on any part of the **LESSOR'D** property except temporarily in conjunction with collection or removal.
6. UTILITIES: In addition to the payments required by Paragraph 3 above, **LESSEE** agrees to pay for all utilities and services consumed by the **LESSEE** when they become due and payable.
7. REPAIRS: During the term of this Agreement or during any extension **LESSEE** will, at its own expense, routinely maintain and keep all parts or portions of the demised premises, including but not limited to windows, doors, fences, plumbing, heating and electrical systems, in good order and repair.
8. LESSOR'S OBLIGATION FOR REPAIRS: The **LESSOR** shall not be obligated to provide any maintenance or make any repairs, upon the premises or on any equipment, facilities or fixtures therein contained. The **LESSEE** shall keep all equipment, facilities or fixtures located on the premises in good order, condition and repair, and in a clean, sanitary and safe condition in accordance with all applicable laws, ordinances and regulations of any governmental authority having jurisdiction.
9. COVENANT AGAINST WASTE: **LESSEE** shall, throughout the term, take good care of the Leased Premises and other improvements

located upon the Leased Premises and keep them free from waste or nuisance of any kind. At the end or other termination of this Agreement, **LESSEE** shall deliver up the Leased Premises together with all improvements located thereon, in good repair and condition, reasonable wear and tear excepted.

10. ALTERATIONS AND IMPROVEMENTS: **LESSEE** shall not make any major alterations, additions or improvements to the Leased Premises without the written consent of the **LESSOR**. **LESSEE** may, at its own cost and expense and in good workmanlike manner, make minor alterations, additions or improvements or erect, remove or alter trade fixtures as it may deem advisable, without altering the basic character of the building or improvements, without the consent of the **LESSOR**. For any alteration, addition or improvement, the **LESSEE** shall comply with all applicable governmental laws, ordinances, regulations and any other requirements. At the termination of this Lease Agreement, **LESSEE** shall, if **LESSOR** so elects, remove all alterations, additions and improvements erected by the **LESSEE** and restore the Leased Premises to its original condition. Otherwise, such improvements shall be delivered up to **LESSOR** with the Leased Premises. All trade fixtures installed by **LESSEE** may be removed by **LESSEE** at the termination of this Agreement if such removal can be and is accomplished in a good workmanlike manner so as not to damage the Leased Premises.

11. SIGNS: It is agreed that any and all advertising signs or signs of any character which **LESSEE** locate upon the Leased Premises shall be subject to the approval of the **LESSOR**, which approval shall not be unreasonably withheld or delayed and subject to any applicable codes or regulations. All signs installed by **LESSEE** shall remain the property of **LESSEE**. At the termination of this Lease Agreement, **LESSEE** shall remove all signs and restore the premises to its original condition.

12. USE OF LEASED PREMISES

a. The **LESSEE** and any sub-lessee approved by the City shall occupy and use the Leased Premises for a Missouri River themed museum, riverboat operation and a riverboat concession, meeting and public use rooms, a food concession and patio area and other tourism and public recreation related uses and for no other purposes whatsoever:

- b. **LESSEE**, its agents, employees, suppliers and invitees shall have the right of ingress and egress to and from the Leased Premises and the public use areas/facilities used in connection therewith.
 - c. The **LESSEE** agrees for itself, its agents and employees that it will not perform any acts or carry on any practices which could result in the necessity to repair or replace **LESSOR** property or be a nuisance or menace to others.
 - d. The **LESSOR** covenants that upon paying the rent and performing the covenants and conditions herein contained, **LESSEE** shall peacefully and quietly have, hold and enjoy the Leased Premises.
 - e. The **LESSOR** covenants and agrees that it is in lawful possession of the Leased Premises and has good and lawful authority to execute this Agreement.
13. HAZARDOUS USAGE: The **LESSEE** will not permit the Leased Premises to be used for any purpose which would render the insurance thereon void or the insurance risk more hazardous; it being understood and agreed that the use of the Leased Premises in the proper and ordinary conduct of **LESSEE'S** business shall not in any event be considered in violation of this paragraph.
14. ASSIGNMENT AND SUBLETTING: Neither **LESSEE** nor any successor of **LESSEE** shall in any manner, directly or indirectly, by operation of law or otherwise, assign, sublet, transfer or encumber any of **LESSEE'S** rights in and to this Agreement or any interest therein, nor license or permit the use or the rights herein granted in whole or in part without the prior written consent of the City. Such consent shall not be unreasonably withheld, provided, that, any such assignee shall be professionally qualified to do business as intended, acceptable to the City, possess sufficient financial resources and security to assure compliance with all the terms and conditions of this Agreement. This Agreement must be included in, and made a part of, any sublease agreement and the sublessee must agree in writing to comply with all the terms and conditions of this Agreement, as they may apply to a sublessee.
15. PROPERTY INSURANCE: The **LESSEE** shall procure and maintain, throughout the term of this Agreement, insurance protection for fire and extended coverage on the Improvement for one hundred percent (100%) of the actual replacement cost to the extent insurable in that amount. The insurance shall be written by insurers of recognized financial standing and authorized to

conduct business in the State of North Dakota. If the insurers become financially incapable of performing under the terms of the policy, the **LESSEE** will promptly obtain a new policy issued by a financially responsible carrier. If the **LESSEE** is unable to obtain insurance to the extent required, the **LESSEE** will maintain insurance to the extent reasonably obtainable and shall notify the **LESSOR** of inability to obtain insurance.

The **LESSEE** shall, at its own expense, replace and repair any and all of **LESSEE'S** fixtures, equipment and other personal property necessary to properly and adequately continue its operations but in no event shall the **LESSEE** be obligated to provide equipment and fixtures in excess of those existing prior to the damage or destruction except for requirements of building codes existing at the time of repair or replacement.

16. TAXES: The **LESSEE** agrees to pay all lawful property, possessory interest and sales taxes and special assessments which, during the term of this Agreement may be levied or charged by the State, County, City or other tax-levying body upon or against the Leased Premises. Nothing herein shall prevent the **LESSEE** from protesting, through due process, any taxes levied. Upon expiration or termination of this Agreement, the **LESSEE** shall pay all property taxes prorated to the last effective date of this Agreement. Failure to pay possessory interest taxes, property taxes or special assessments when due, prior to delinquency, will be considered a breach of this Agreement.

17. CASUALTY: In the event that the improvements located upon the demised premises should be damaged or destroyed by fire or other casualty, **LESSEE** shall give written notice thereof to **LESSOR** within a reasonable time. In the event that the improvements are to be re-built, this Agreement shall remain in full force and effect and **LESSEE**, at **LESSEE'S** sole expense, shall proceed with due diligence to repair and restore said premises to substantially the same condition as prior to such damage or destruction. If the **LESSEE** determines that the improvements will not be rebuilt, then this Agreement shall cease and come to an end.

18. INSURANCE

a. **LESSEE** shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified in Schedule A attached hereto with companies that have at least an "A-VI" rating according to the

Best Guide. The City of Bismarck, including its elected and appointed officials, agents and employees, shall be named as an additional insured with respect to **LESSEE'S** use of the Leased Premises which are the subject of this Agreement.

- b. **LESSEE** shall promptly upon execution of this Agreement, furnish to the **LESSOR** appropriate certificates of insurance evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than the amounts specified in Schedule A; such limits are subject to periodic adjustments upward by **LESSEE** based on **LESSEE'S** own assessment of the risks associated with its operations on the Leased Premises. The **LESSOR** shall not in any event be liable for any shortfall in **LESSEE'S** coverage.
 - c. During construction of the Initial Improvements, the **LESSEE** shall:
 - 1. Be responsible for all damage to life and property due to the activities of **LESSEE**, its agents, employees and contractors, in connection with the construction of the Initial Improvements pursuant to this Agreement. **LESSEE** specifically agrees that its agents, employees and contractors shall possess the experience and knowledge necessary to qualify them for the particular duties they perform.
 - 2. Require individuals, firms or corporations providing professional services or undertaking the Initial Improvements pursuant to this Agreement, hereinafter, "Contractor", to procure and maintain insurance for liability for damages naming the City as additional named insured, in the kinds and in the amounts included in Appendix A. with insurance companies authorized to do such business in the State of North Dakota covering all operations or services necessary for the conduct of the construction of the Initial Improvements whether performed by it or by Contractor. Copies of insurance certificates for such coverage shall be delivered to the City prior to the commencement of the construction of the Initial Improvements.
19. ENVIRONMENTAL CONSIDERATIONS: In order to assure that the Leased Premises described in Section 1a. hereof are environmentally acceptable, the **LESSEE** conducted a Phase I

Environmental Assessment Report on August 1, 2014. The conclusion of that report noted that the only use of the site in recent history was a restaurant/ice cream shop and ticket office for the riverboat, and all of these findings fall under the de-minimus category of environmental conditions. If during construction unusually colored soil, or soil with petroleum or chemical odors are discovered, construction activities will cease until appropriate regulators and/or a consultant would visit the site to determine the source. This would conform to a Phase II Environmental Baseline Studies consistent with protocols approved by the **LESSOR**, the "First Studies", to ascertain whether adverse environmental conditions or hazardous materials exist on the Leased Premises. The costs of such First Studies have been borne by the **LESSEE**. The First Studies did not reveal the presence of adverse environmental conditions or hazardous materials on the Leased Premises. The **LESSEE** shall be responsible for all costs of such remedial action relating to adverse conditions, provided, however, that nothing herein shall be construed as a limitation of the **LESSEE'S** rights to pursue contributions from third parties who might have caused or contributed to such adverse conditions. Upon expiration or earlier termination of this Agreement, additional Phase I and Phase II Environmental Baseline Studies shall be conducted by the **LESSEE** and paid for by the **LESSEE**, the "Second Studies", to determine if the **LESSEE** has caused or allowed adverse environmental conditions to occur. If the **LESSEE** chooses to not conduct the First Studies, it will be assumed that the Leased Premises was clean at the beginning of the lease term. If an adverse environmental condition is disclosed by the Second Study, the **LESSEE** shall be liable for, and be required to immediately undertake, at its sole cost and expense, all remedial actions as required by applicable law.

20. INDEMNITY: **LESSOR** shall not be liable to **LESSEE** or **LESSEE'S** employees, agents or visitors or to any other person whomsoever, for any injury to a person or damage to property on or about the Leased Premises including the building, sidewalks, parking lots, and other areas on or adjacent to the Leased Premises, caused by the negligence or misconduct of or situations involving the liability of the **LESSEE**, its agents, servants, employees or of any other person entering upon the premises under express or implied invitation of **LESSEE**.

LESSEE agrees to indemnify **LESSOR** from all liability, loss, or other damage claims or obligations resulting from any

injuries to property or persons or any other losses sustained as a result of the **LESSEE'S** use of the Leased Premises.

LESSOR agrees to indemnify **LESSEE** from all liability, loss, or other damage claims or obligations resulting from any injuries to property or persons or any other losses sustained as a result of the negligence of the **LESSOR** or its officials, employees or agents.

21. EVENTS OF DEFAULT BY LESSEE: The following events shall be deemed to be events of default by **LESSEE** under this Agreement.

a. **LESSEE** shall fail to comply with any term, provision or covenant of this Agreement and shall not cure such failure within fifteen (15) days after its receipt of written notice to **LESSEE**.

b. **LESSEE** shall fail to operate the Leased Premises in as a museum, riverboat and public use facility in a manner and as provided by this Agreement.

c. The appointment of a receiver of **LESSEE'S** assets, or any general assignment for the benefit of the **LESSEE'S** creditors.

d. The abandonment by **LESSEE** of the Leased Premises, except in connection with its surrender to an approved assignee, sub-lessee, mortgagee, or other party succeeding to **LESSEE'S** interest hereunder or cancellation of the Agreement by the **LESSEE** before the end of the term. Upon abandonment or cancellation by the **LESSEE**, the **LESSEE** shall remain liable for payments due for the unexpired term, such payments to be based upon an average of the yearly payments already paid under the Agreement.

e. Failure by the **LESSEE** to pay real property possessory interest taxes when due.

f. Failure by the **LESSEE** to begin construction of the Initial Improvements by December 31, 2017.

22. RE-ENTRY COVENANT: Upon the occurrence of any event of default contained in Paragraph 21, and the failure of the **LESSEE** to cure the default within the 60-day period shall enable the **LESSOR** to take immediate possession of the Leased Premises and remove **LESSEE'S** effects, forcibly if necessary,

without being deemed guilty of trespassing, and with no payments to **LESSEE**. Upon such entry this Agreement shall terminate.

Failure of **LESSOR** to declare this Agreement to be terminated upon the default of the **LESSEE** for any of the reasons set out above shall not operate to bar or destroy the right of the **LESSOR** to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement. **LESSEE** agrees to pay to **LESSOR** the amount of all loss and damage that **LESSOR** may suffer by reason of such termination, pursuant to North Dakota law. Further, the acceptance of rental by **LESSOR** for any period after a default of any of the terms, covenants or conditions of this Agreement by **LESSEE** shall not be deemed a waiver of any right on the part of **LESSOR** to cancel this Agreement.

23. ENCUMBRANCES AND LIENS:

- a. The fee interest in the Leased Premises may not be encumbered by the **LESSEE** for any purpose.
- b. Subject to the prior written consent by the **LESSOR**, **LESSEE** may encumber this Agreement, its leasehold estate and its improvements thereon by deed of trust, leasehold mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of **LESSEE**, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of purchasing the business operations or developing the Leased Premises and the improvements thereon.
- c. In the event any such approved deed of trust, mortgage or other security-type instrument, should, at any time, be in default and be foreclosed, or transferred in lieu of foreclosure, the **LESSOR** will accept the approved mortgagee or beneficiary thereof as its new tenant under this Agreement with all the rights, privileges and duties granted and imposed in this Agreement.
- d. Any foreclosure to said deed of trust, leasehold mortgage or other security instrument, shall be invalid with respect to this Agreement without prior notice thereof to the **LESSOR**. Any sale of assets and assignment of this Agreement pursuant to said deed of trust, leasehold mortgage or other security instrument, shall be invalid with respect to this Agreement without

prior notice thereof to, and approval by, the **LESSOR**. The **LESSOR'S** inquiry regarding its approval of an assignment of this Agreement shall be limited to the financial fitness of the proposed assignee and the appropriateness of the proposed use of Leased Premises (recognizing that it is public property). Such approval shall not be unreasonably withheld. Any deed of trust, leasehold mortgage or other security instrument shall be subject to all the terms, covenants and conditions of this Agreement and shall not be deemed to amend or alter any of the terms, covenants or conditions of this Agreement.

e. **LESSEE** shall keep the Leased Premises free and clear of all mechanic's or material men's liens or any other liens on account of any work done on the Leased Premises at **LESSEE'S** request. **LESSEE** agrees to and shall indemnify, and hold the City of Bismarck free from and harmless against all liability, loss, damage, cost, attorney's fees (where allowable by law) and all other expenses on account of claims of lien of laborers or material men, or others, for work performed or materials or supplies furnished to **LESSEE** for use on the Leased Premises.

24. NOTICE: Each provision of this Agreement with reference to the sending, mailing or delivery of any notice or the making of any payment between the parties shall be deemed to be complied with when and if the following steps are taken:

a. Any payment, notice or document required or permitted to be delivered shall be deemed to be delivered, whether actually received or not, when deposited in the U.S. Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested and addressed to either party at the address as they have specified by written notice pursuant to this Lease Agreement.

LESSOR: City of Bismarck
City Administrator
P O. Box 5503
Bismarck, ND 58506-5503

LESSEE: Fort Abraham Lincoln
Foundation
401 W. Main Street
Mandan, ND 58501

25. SUCCESSORS: The covenants, conditions and agreements made and entered into by the **LESSOR** and **LESSEE** shall be binding on their heirs, personal representative, administrators, executors, successors and assigns.
26. SURRENDER OF POSSESSION: **LESSOR** agrees to peaceably and quietly surrender possession of the premises at the termination of this lease or any renewal or extension thereof, however occurring.
27. GOVERNING LAW: The Provisions of this agreement shall be construed and interpreted in accordance with the laws of the State of North Dakota.
28. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties and it supersedes any prior negotiations or agreements of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year above written in duplicate originals.

LESSOR: CITY OF BISMARCK

Dated this ____ day of December, 2016.

By _____
Michael C. Seminary, Mayor,
City of Bismarck

Attest:

Keith J. Hunke,
City Administrator

LESSEE: Fort Abraham Lincoln Foundation

Dated this ____ day of December, 2016.

By _____
Aaron L. Barth,
President/Executive Director

SCHEDULE A
MINIMUM INSURANCE REQUIREMENTS

LESSEE shall, at its own cost and expense, take out and maintain such insurance for the term of this Agreement as the **LESSEE** is required under the Workers' Compensation Act; and also take out and maintain such public liability insurance as will protect the **LESSEE**, the **LESSOR** from any claims for damage to persons, property, etc., arising out of, occurring or caused by operations under this Agreement by the **LESSEE** or otherwise arising out of this Agreement. The policy will provide the amounts of insurance specified in this Schedule A. Upon execution of this Agreement, certificates of insurance shall be provided in a form acceptable to the **LESSOR**. Each certificate shall include:

A clause naming the City of Bismarck, its elected and appointed officials, agents and employees as additional insureds under the policies with respect to **LESSEE'S** use of the Leased Premises which are the subject of this Agreement.

Upon failure of **LESSEE** to furnish, deliver, and maintain such insurance as provided for herein, the **LESSOR** may obtain such insurance and charge Lessee as additional rental, the cost of the insurance plus all appropriate administrative charges and incidental expenses associated with the transaction. Failure of Lessee to take out and/or maintain, or the taking out and/or maintenance of any required insurance shall not relieve **LESSEE** from any liability under this Agreement, nor shall the minimum insurance requirements be construed to conflict with the obligations of **LESSEE** concerning indemnification.

All insurance must be in effect and so continue during the life of this Agreement in not less than the amounts:

- A. Workers' Compensation Unlimited - Statutory - in compliance with the Compensation Law of the State of North Dakota.
- B. Comprehensive Commercial Liability Insurance with a limit of \$2,000,000 per occurrence.
- C. Auto Liability Insurance with a combined single limit of \$1,000,000 per occurrence for all owned, non-owned and hired vehicles.

Nothing herein contained shall prevent the Lessee from taking out any other insurance for protection of its interest which it deems advisable or necessary.