

**CITY FIVE CENT SLOT MACHINE LEASE
AND
OPERATING AGREEMENT**

This Agreement is made and entered into on this 1st day of July, 2021, by and between Tin Lizzie, of Deadwood, South Dakota, hereinafter referred to as **OWNER**, and the **CITY OF DEADWOOD**, a municipal corporation of the State of South Dakota, hereinafter referred to as **DEADWOOD**.

WITNESSETH

The parties acknowledge that Deadwood has been authorized by SDCL 42-7B-44 to purchase or lease fifty (50) up to and including five-cent (5¢) slot machines to be placed in businesses with retail gaming licenses. The parties further acknowledge that Deadwood has advertised for and requested bids for leasing space in retail licensed gaming businesses, for leasing from gaming businesses up to and including five-cent slot machines, and entering into agreement for the operation of said up to and including five-cent slot machines. The parties further acknowledge that OWNER was a successful bidder for fifteen (15) up to and including five-cent (5¢) slot machines in the total amount of One Hundred Seventeen Thousand Five Hundred and No/100ths Dollars (\$117,500.00).

NOW THEREFORE, it is agreed by and between OWNER and DEADWOOD as follows:

1) For and in consideration of the sum of Zero Dollars (\$0.00) per year, to be paid from DEADWOOD to OWNER, OWNER agrees to let and lease to the City of Deadwood five (5) up to and including five-cent (5¢) slot machines along with sufficient space in OWNER'S retail licensed business for said five (5) up to and including five-cent (5¢) slot machines, for a period of three (3) years with said lease payment due and payable from the City of Deadwood to OWNER at the end of the three (3) year lease period.

2) For and in consideration of the sum of Ninety Two Thousand Five Hundred and No/100ths Dollars (\$92,500.00) per year for ten (10) machines to be paid from OWNER to DEADWOOD, OWNER shall be entitled to keep and receive all revenue from such machines. OWNER agrees to operate and maintain said up to and including five-cent (5¢) slot machines during the three (3) year lease period term commencing on the 1st day of July, 2021, and ending on the 30th day of June, 2023, for the use and benefit of DEADWOOD. This sum in the amount of One Hundred Seventeen Thousand Five Hundred and No/100ths Dollars (\$117,500.00) shall be payable as follows:

a) The sum of Twenty Nine Thousand Three Hundred Seventy Five and No/100ths Dollars (\$29,375.00) shall be due and payable on or before the 30th day of June, in the years of 2021, 2022 and 2023.

b) Monthly payments for the balance owing each year after the "down payment" is made in the amount of Two Thousand Five Hundred and No/100ths Dollars (\$2,500.00) per month all of which shall be due and payable on or before the 31st day of the month for the months of July through May of each year of this lease with the first payment due and payable in such amount on or before the 31st day of July, 2021, and like payment on the 31st day of each month thereafter.

- 3) Such payments shall be made to the City of Deadwood as net proceeds generated from the operation of the up to and including five-cent (5¢) slot machines under this Agreement to be forwarded by DEADWOOD to the South Dakota Commission on Gaming for deposit in the South Dakota Gaming Commission fund.
- 4) OWNER shall be responsible for all maintenance, repairs, and all other operations connected with the up to and including five-cent (5¢) slot machines including all record keeping, accounting, and such other requirements or procedures as may be imposed or required at any time by DEADWOOD or the South Dakota Commission on Gaming.
- 5) The City up to and including five-cent (5¢) slot machines placed under this agreement shall be licensed and stamped by the South Dakota Commission on Gaming. Neither this Lease Agreement nor any rights obtained hereunder may be transferred to any other retail licensee without the express written consent of DEADWOOD.
- 6) In the event that South Dakota laws are changed so as to allow for an increase in the number of gaming devices allowed per building for any building in Deadwood by more than twenty-five percent (25%), OWNER shall have the right to terminate this Lease upon ninety (90) days written notice to DEADWOOD prior to the end of the year for which OWNER wishes to terminate this Lease, at which time the CITY will be allowed to enter into a lease and operating agreement or other agreement for up to and including five-cent (5¢) slot machines at any other retail licensed gaming business in the City of Deadwood.
- 7) Except as set forth above, OWNER shall not have the right to terminate this Lease at any time during the lease period and in the event that OWNER fails to make any payment required herein when due, DEADWOOD may immediately cancel and terminate this Lease and operating agreement provided, however, that such cancellation and termination shall not relieve OWNER of its obligation to make all of the payments required under this agreement as penalty and liquidated damages. OWNER specifically acknowledges that said penalty and liquidated damages are fair and due and owing DEADWOOD and specifically acknowledges the right of DEADWOOD to collect the same in the event of default by OWNER in the making of any payment when due under this agreement. OWNER further specifically agrees that upon such cancellation and termination DEADWOOD may enter into a Lease Agreement with another retail licensed business for such canceled or terminated nickel slot machines.
- 8) OWNER acknowledges and agrees to the extent that this Agreement is contingent upon an appropriation by the City of Deadwood being made available for the purpose of paying lease payments under this Lease and if such funding is not available from such sources, or in the event sufficient money is not appropriated, this Lease is null and void and said Lease shall expire at the end of the fiscal year for which the last funding shall be made available for the lease payments required under this Lease. Further, in the event that this Lease or any City of Deadwood action or preceding or provision of SDCL 42-7(b) is declared illegal or unlawful or amended so as to remove authorization for this Lease, or in event that any action or proceeding by the City of Deadwood is set aside by reason of a legal challenge or referral, this Lease shall be null and void and terminated without penalty to DEADWOOD.

9) OWNER agrees to indemnify and hold harmless CITY and any of its officers, agents, and employees from any and all liabilities, actions, causes of actions, claims or executions of any character, including attorney's fees, or any sums which CITY may have to pay to any person on account of any personal or bodily injury, death or property damage, which results from any negligent act, error or omission of Tin Lizzie in connection with this agreement or services performed or materials provided pursuant to this contract.

10) In further consideration of the sums to be paid OWNER to DEADWOOD under this agreement, DEADWOOD grants to OWNER an option to extend the term of this agreement for an additional three (3) years from and after the expiration of this agreement on the 30th day of June, 2023. This option may be exercised by OWNER by giving DEADWOOD written notice of its intent to exercise this option, which notice must be received by DEADWOOD on or before the 30th day of April, 2023.

Dated this 6th day of July, 2021.

OWNER:

CITY OF DEADWOOD

By: _____
David Ruth Jr., Mayor

ATTEST:

Jessica McKeown, Finance Officer