

MINUTE RECORD

No. 729—REDFIELD & COMPANY, INC., OMAHA

LA VISTA CITY COUNCIL MEETING November 20, 2007

A meeting of the City Council of the City of La Vista, Nebraska was convened in open and public session at 7:00 p.m. on November 20, 2007. Present were Mayor Kindig and Councilmembers: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Absent: None. Also in attendance were City Attorney McKeon, City Administrator Gunn, Assistant City Administrator Ramirez, City Engineer Kottmann, City Clerk Buethe, Finance Director Lindberg, Library Director Iwan, Community Development Director Birch, Police Chief Lausten, Fire Chief Uhl, Recreation Director Stopak, and Public Works Director Soucie.

A notice of the meeting was given in advance thereof by publication in the Times on November 8, 2007. Notice was simultaneously given to the Mayor and all members of the City Council and a copy of the acknowledgment of the receipt of notice attached to the minutes. Availability of the agenda was communicated to the Mayor and City Council in the advance notice of the meeting. All proceedings shown were taken while the convened meeting was open to the attendance of the public. Further, all subjects included in said proceedings were contained in the agenda for said meeting which is kept continuously current and available for public inspection within 10 days after said meeting and prior to the next convened meeting of said body.

Mayor Kindig called the meeting to order and led the audience in the pledge of allegiance.

Mayor Kindig made an announcement of the location of the posted copy of the Open Meetings Act for public reference.

PROCLAMATION – NATIONAL FAMILY WEEK

The Mayor read a proclamation for National Family Week from November 14 – 24, 2007.

A. CONSENT AGENDA

1. APPROVAL OF THE AGENDA AS PRESENTED
2. APPROVAL OF CITY COUNCIL MINUTES FROM NOVEMBER 6, 2007
3. APPROVAL OF LIBRARY ADVISORY BOARD MINUTES FROM SEPTEMBER 13, 2007
4. PAY REQUEST #2 FROM JOHN Q HAMMONS FOR CONSTRUCTION
LOAN - \$1,008,069.60
5. KEYSTONE TRAIL – LA VISTA LINK
 - a. PAY REQUEST FROM THOMPSON, DREESSEN & DORNER, INC. FOR
PROFESSIONAL SERVICES - \$4,507.82
6. APPROVAL OF CLAIMS

Councilmember McLaughlin made a motion to approve the consent agenda as presented. Seconded by Councilmember Quick. Councilmember Ellerbeck reviewed the claims for this period and reported that he found everything to be in order. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

3CMA MEMBERSHIP, Training	300.00
A.S.P. ENTERPRISES, St. Maint.	650.24
AA WHEEL & TRUCK SUPPLY, Vehicle Maint.	143.30
ACTION BATTERIES, Bldg & Grnds/Vehicle Supplies	369.80
ALAMAR UNIFORMS, Wearing Apparel	123.99
ALL MAKES, Equip. Repair	83.00
AQUILA, Utilities	198.28
ARAMARK UNIFORM SERVICES, Contract Services	232.69
ASSOCIATED FIRE PROTECTION, Contract Services	1,090.50
BAKER & TAYLOR BOOKS, Books	322.09
BBC AUDIOBOOKS AMERICA, Media	187.38
BENNINGTON IMPLEMENT, Vehicle Maint.	608.22
BENSON RECORDS, Contract Services	50.30
BRENTWOOD AUTO WASH, Vehicle Maint.	104.67
BUILDERS SUPPLY CO, Maint./Supplies	94.87
CARDMEMBER SERVICE, Travel/Training/Printing	8,896.70
CENTER POINT PUBLISHING, Books	80.28
CITY OF OMAHA, Contract Services	40,145.52
CITY OF PAPILLION, Training	190.00
CJ'S HOME CENTER, Bldg & Grnds/Maint.	1,095.09
CONTROL MASTERS, Bldg & Grnds	34.20
COX COMMUNICATIONS, Contract Services	252.65
DATA TECHNOLOGIES, Contract Services	8,345.87

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DBA MUDJACKING, Storm Sewer Maint.	1,050.00
DEMCO, Supplies	383.98
DMI VIDEOS, Media	201.12
ED ROEHR SAFETY PRODUCTS, Publication	125.96
ELECTRIC FIXTURE & SUPPLY, Bldg & Grnds	93.68
EXPERIMENTAL DECALS, Wearing Apparel	10.50
FASTENAL COMPANY, Vehicle Maint.	417.84
FEDEX, Postage	7.94
FEDEX KINKO'S, Printing	436.71
FIRE-EXTRICATION-HAZMAT, Rescue Revenue	161.60
FISHER EQUIPMENT COMPANY, Traffic Signs	955.15
FITZGERALD SCHORR BARMETTLER, Professional Services	4,776.50
GRAINGER, Bldg & Grnds	10.19
GRAYBAR ELECTRIC, Bldg & Grnds	90.55
GREAT PLAINS ONE-CALL SVC, Contract Services	361.51
GUNN, BRENDA, Travel	76.90
H W WILSON COMPANY LOCKBOX, Books	227.00
HANEY SHOE STORE, Wearing Apparel	240.00
HANNEBAUM GRAIN, Maintenance	6,224.38
HARM'S CONCRETE, Street Maint.	83.00
HEARTLAND TIRES AND TREADS, Vehicle Maint.	511.08
HEIMES CORPORATION, Street Maint.	244.99
HOBBY LOBBY, Equipment	46.62
HOME DEPOT, Bldg & Grnds	7.12
HOST COFFEE, Concessions	39.60
HUNTEL, Contract Services	3,954.71
HURST, JEAN, Travel	175.57
INDUSTRIAL SALES, Bldg & Grnds	12.27
INLAND TRUCK PARTS, Vehicle Maint.	70.85
IOWA PRISON INDUSTRIES, Traffic Signs	224.84
IWAN, ROSE, Travel	184.30
J Q OFFICE EQUIPMENT, Supplies/Contract Services	435.29
JO DON'S, Supplies	160.00
LANDSHIRE, Concessions	134.54
LANGLEY ANIMAL HOSPITAL, Contract Services	15.00
LAUGHLIN, KATHLEEN, Payroll Withholdings	372.00
LERNER PUBLISHING GROUP, Books	1,155.27
LINWELD, Supplies/Storm Sewer Maint.	111.23
LOGAN CONTRACTORS SUPPLY, Bldg & Grnds/Vehicle Maint.	450.29
LOU'S SPORTING GOODS, Equipment	419.53
M & M PORTABLES, Rentals	136.00
MARSHALL CAVENDISH CORP, Books	150.09
MAX I WALKER CLEANERS, Uniform Cleaning	235.30
METAL SUPERMARKETS, Bldg & Grnds	46.93
METRO GRAPHIC ARTS, Printing	143.30
METRO LANDSCAPE, Bldg & Grnds	938.00
MIDLANDS COMMUNITY HOSPITAL, Legal Advertising	150.00
MIDWEST GANG INVESTIGATORS, Dues	25.00
MILLER PRESS, Printing	110.00
MSC INDUSTRIAL SUPPLY, Equip. Repair	213.81
NE LIBRARY COMMISSION, CD Rom	26.97
NEBRASKA MACHINERY, Vehicle Maint.	33.81
NEBRASKA TURF PRODUCTS, Street Maint.	450.00
NEUMAN EQUIPMENT COMPANY, Bldg & Grnds	122.00
NEXTEL, Telephone	383.61
NORTHERN WATER WORKS, Equip. Repair	486.00
OABR PRINT SHOP, Printing	150.45
OFFICE DEPOT, Supplies	1,041.18
OMAHA COMPOUND COMPANY, Bldg & Grnds	165.39
ON YOUR MARKS, Supplies	983.03
OPPD, Utilities	31,100.10
OVERHEAD DOOR, Bldg & Grnds	29.25
PAM BUETHE, Vehicle Maint./Contract Services	61.99
PAPILLION SANITATION, Contract Services	214.60
PARAMOUNT LINEN & UNIFORM, Uniform Cleaning	320.58
PENWORTHY COMPANY, Books	994.36
PRECISION INDUSTRIES, Vehicle Maint.	23.15
PRESCO SALES & SERVICE, Equip. Maint.	4,341.64
PRINCIPAL LIFE-FLEX SPENDING, Employee Benefits	155.25
QUALITY BRANDS, Concessions	82.35
QWEST, Telephone	81.52
RADAR SHOP, Equipment	23.50

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READY MIXED CONCRETE, Street Maint.	4,116.05
REMINGTON ARMS, Training	400.00
ROURKE PUBLISHING, Books	2,337.10
SAM'S CLUB, Concessions	590.72
SAPP BROS PETROLEUM, Vehicle Maint.	6,656.74
SARPY COUNTY TREASURER, Contract Services	12,075.00
SHAMROCK CONCRETE COMPANY, Bldg & Grnds	36.00
STERIL MANUFACTURING, Bldg & Grnds	50.00
SUBURBAN NEWSPAPERS, Legal Advertising	319.35
THOMPSON DREESSEN & DORNER, Professional Services	8,498.45
THOMSON GALE, Books	66.21
THREE RING ENTERPRISES, Vehicle Maint.	1,152.48
TROE, ANN, Printing	745.00
U S ASPHALT COMPANY, Street Maint.	54.74
UPS, Postal	15.75
UNIVERSAL HOSPITAL SVCS, Training	2,390.00
UNIVERSITY OF NE LINCOLN, Training	30.00
VIERREGGER ELECTRIC, Street Maint.	20,312.88
WASTE MANAGEMENT, Contract Services	648.57
WICK'S STERLING TRUCKS, Vehicle Maint.	9.49

REPORTS FROM CITY ADMINISTRATOR AND DEPARTMENT HEADS

City Administrator Gunn informed Council the Employee Activity Committee is holding a coat drive through December 31, 2007 and has collection boxes set up for Toys for Tots through December 9th. The City also has collection bins for the food drive sponsored by the Chamber of Commerce through the end of November.

Fire Chief Uhl informed Council that he recently visited the Sutphen Corporation in Columbus, Ohio for inspection of new fire pumper truck the City has ordered. He stated there were a few deficiencies on the pumper which will be fixed by their December meeting to inspect the aerial. Uhl informed Council that there have been 25 applicants for the LVFD after the weekend academy. He informed Council that the phone number given by Ralston allows a person to pick which department they wish to contact and gives them the appropriate contact information.

B. ORDINANCE – BOND ISSUANCE – PUBLIC SAFETY BONDS (FIRE EQUIPMENT)

Councilmember McLaughlin introduced Ordinance No. 1050, which was tabled at the November 6, 2007 meeting, entitled: AN ORDINANCE AUTHORIZING THE ISSUANCE OF PUBLIC SAFETY TAX ANTICIPATION BONDS OF THE CITY OF LA VISTA, NEBRASKA, IN THE PRINCIPAL AMOUNT OF ONE MILLION THREE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$1,335,000) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUIRING CERTAIN PUBLIC SAFETY EQUIPMENT; PRESCRIBING THE FORM OF SAID BONDS; PROVIDING FOR THE LEVY AND COLLECTION OF TAXES TO PAY THE SAME; PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE DELIVERY OF THE BONDS TO THE PURCHASERS; PROVIDING FOR THE DISPOSITION OF BOND PROCEEDS; AND ORDERING THE ORDINANCE PUBLISHED IN PAMPHLET FORM.

Councilmember Carlisle moved that the statutory rule requiring reading on three different days be suspended. Councilmember Sell seconded the motion to suspend the rules and upon roll call vote on the motion the following Councilmembers voted aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. The following voted nay: None. The following were absent: None. The motion to suspend the rules was adopted and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Councilmember Carlisle moved for final passage of the ordinance which motion was seconded by Councilmember Quick. The Mayor then stated the question was, "Shall Ordinance No.1050 be passed and adopted?" Upon roll call vote the following Councilmembers voted aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. The following voted nay: None. The following were absent: None. The passage and adoption of said ordinance having been concurred on by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the City Clerk attested the passage/approval of the same and affixed her signature thereto.

C. COLLECTIVE BARGAINING AGREEMENT – LA VISTA FRATERNAL ORDER OF POLICE 1. RESOLUTION – APPROVE PROPOSED COLLECTIVE BARGAINING AGREEMENT

Councilmember Gowan introduced and moved for the adoption of Resolution No. 07-118: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA

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ACCEPTING THE PROPOSED COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF LA VISTA AND THE LA VISTA FRATERNAL ORDER OF POLICE, LODGE NO. 28 FOR FISCAL YEAR 2008 AND FISCAL YEAR 2009 AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, the City of La Vista has recognized the La Vista Police Officers Association for the purpose of collective bargaining by Resolution No. 78-020; and

WHEREAS, the La Vista Police Officers Association is now a member of and affiliated with the Fraternal Order of police and is known as the La Vista Fraternal Order of Police Lodge No. 28 ("LVFOP"); and

WHEREAS, the City Administrator and the LVFOP's appointed negotiating team have reached a tentative agreement as authorized by and in accordance with Resolution No. 78-020;

WHEREAS, the membership of the LVFOP did vote on and approve the tentative agreement reached by the City Administrator and the LVFOP's negotiating team with said votes being tabulated on November 12, 2007.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of La Vista, Nebraska, does hereby accept the terms of the negotiated agreement and authorizes the Mayor of the City of La Vista, Nebraska, to execute the same on behalf of the City subject to approval of form by the city attorney and city administrator.

BE IT FURTHER RESOLVED that the Mayor and City Council hereby agree and declare that the effective date of the Agreement shall be October 1, 2007.

Seconded by Councilmember McLaughlin. Councilmember Sheehan stated he wanted to see a 3 year contract; and that was the only reason that he would be voting against the resolution. Councilmembers voting aye: Sell, Ronan, Quick, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: Sheehan. Absent: None. Motion carried.

2. ORDINANCE – AMEND COMPENSATION ORDINANCE

Councilmember McLaughlin introduced Ordinance No. 1051 entitled: AN ORDINANCE TO FIX THE COMPENSATION OF OFFICERS AND EMPLOYEES OF THE CITY OF LA VISTA; TO PROVIDE FOR THE REPEAL OF ALL PRIOR ORDINANCES IN CONFLICT HERewith; ORDERING THE PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM; AND TO PROVIDE THE EFFECTIVE DATE HEREOF.

Councilmember Carlisle moved that the statutory rule requiring reading on three different days be suspended. Councilmember Sell seconded the motion to suspend the rules and upon roll call vote on the motion the following Councilmembers voted aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. The following voted nay: None. The following were absent: None. The motion to suspend the rules was adopted and the statutory rule was declared suspended for consideration of said ordinance.

Said ordinance was then read by title and thereafter Councilmember Carlisle moved for final passage of the ordinance which motion was seconded by Councilmember Quick. The Mayor then stated the question was, "Shall Ordinance No.1051 be passed and adopted?" Upon roll call vote the following Councilmembers voted aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. The following voted nay: None. The following were absent: None. The passage and adoption of said ordinance having been concurred on by a majority of all members of the Council, the Mayor declared the ordinance adopted and the Mayor, in the presence of the Council, signed and approved the ordinance and the City Clerk attested the passage/approval of the same and affixed her signature thereto.

Police Sergeant Kinsey addressed the Mayor and Council to thank them for the agreement and the progression of the City to give competitive wages.

D. RESOLUTION – AMENDMENT TO PENSION PLANS

Councilmember Carlisle introduced and moved for the adoption of Resolution No. 07-119, formerly Resolution No. 07-110 which was tabled at the November 6, 2007 meeting: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE APPOINTMENT OF VANTAGE TRUST COMPANY AS SUCCESSOR TRUSTEE OF CITY OF LA VISTA RETIREMENT PLANS AND AUTHORIZING CORRESPONDING PLAN AMENDMENTS.

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WHEREAS, the City maintains retirement plans for the employees of the City, including:

Plan No. 107200 - The City of La Vista, NE Defined Contribution Pension Plan and Trust,
Plan No. 106162 - The City of La Vista, NE City Administrators' Defined Contribution Pension Plan and Trust,
Plan No. 106442 - The City of La Vista, NE Firefighters Pension Plan and Trust ("Firefighters Plan"), and
Plan No. 107185 - The City of La Vista, NE Police Officers Pension Plan and Trust (collectively the "Plans"); and

WHEREAS, Investors Bank & Trust is trustee of the Plans; and

WHEREAS, The City also maintains two additional plans - Plan No. 300510 - The City of La Vista, NE City Administrators' 457 Deferred Compensation Plan and Trust, and Plan No. 304703 - The City of La Vista, NE Civilian Employees Supplemental 457 Deferred Compensation Plan and Trust - for which the City of La Vista serves as trustee, which duties are carried out by the City Treasurer; and

WHEREAS, the City has been notified that the State Street Bank and Trust Company acquired Investors Bank and Trust Company by merger, and as a result is successor trustee of the Plans, and will resign as trustee of the Plans effective as of January 1, 2008; and

WHEREAS, the City desires to appoint the Vantage Trust Company to serve as successor trustee of the Plans, effective as of January 1, 2008.

NOW, THEREFORE, BE IT RESOLVED, that Vantage Trust Company is hereby appointed to serve as the trustee of the above named retirement plans and trusts effective January 1, 2008;

BE IT RESOLVED FURTHER that the Mayor and City Clerk are authorized to execute the approved amendments for the Plans and to take any and all other action on behalf of the City as is necessary or appropriate to carry out the actions approved in this Resolution and to maintain the qualified status of the Plans.

Seconded by Councilmember Quick. Councilmember Sheehan stated previous concerns had been resolved. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

E. RESOLUTION - DEPARTMENT OF ROADS MAINTENANCE AGREEMENT - 84TH STREET

Councilmember McLaughlin introduced and moved for the adoption of Resolution No. 07-120: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF AGREEMENT #112 WITH THE NEBRASKA DEPARTMENT OF ROADS FOR THE SURFACE MAINTENANCE OF HIGHWAY N-85 (84TH STREET).

WHEREAS, the Nebraska Department of Roads is proposing to renew an agreement whereby the City of La Vista would assume maintenance responsibilities for that portion of Highway N-85 (84th Street) which lies within the City of La Vista's corporate boundaries; and

WHEREAS, it is the determination of the City Council of the City of La Vista that it is in the best interest of our citizenry and the traveling public to assume official maintenance responsibilities.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor of the City of La Vista be, and hereby is, authorized to renew an agreement with the Nebraska Department of Roads for maintenance of that portion of Highway N-85 (84th Street) which lies within the corporate limits of the City of La Vista for the period of January 1, 2008 to December 31, 2008.

Seconded by Councilmember Quick. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

F. RESOLUTION - LEASE AGREEMENT - POLICE DEPARTMENT VEHICLE

Councilmember Carlisle introduced and moved for the adoption of Resolution No. 07-121: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT WITH

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WOODHOUSE FORD, BLAIR, NEBRASKA FOR A NARCOTICS VEHICLE FOR THE POLICE DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$6,900 OVER TWENTY-FOUR MONTHS.

WHEREAS, the City Council of the City of La Vista approved a lease agreement in December of 2005 for an undercover vehicle to be used by the department's narcotics officer, and

WHEREAS, the current lease agreement expires on December 7, 2007, and

WHEREAS, the City did appropriate funds in the 2007-2008 municipal budget to continue to lease an undercover vehicle, and

WHEREAS, the Police Chief has obtained and reviewed quotes for leased vehicles from several area dealers, and

WHEREAS, Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure Council approval prior to authorizing any purchase over \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, do hereby authorize the execution of a lease agreement with Woodhouse Ford, Blair, Nebraska, for an undercover vehicle for the Police Department in an amount not to exceed \$6,900 over twenty-four months.

Seconded by Councilmember Quick. Councilmember Sheehan asked if this was a different vehicle from what the City currently has. Police Chief Lausten stated that the lease is up on the current vehicle. This vehicle will be the same type. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

G. RESOLUTION – CHANGE OF LOCATION – LIQUOR LICENSE - SKC BRENTWOOD INC. DBA SUMMER KITCHEN CAFÉ & BAKERY

Councilmember Carlisle introduced and moved for the adoption of Resolution No. 07-122: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA RECOMMENDING APPROVAL OF A REQUEST FOR A CHANGE OF LOCATION FOR THE LIQUOR LICENSE OF SKC-BRENTWOOD INC. DBA SUMMER KITCHEN CAFÉ & BAKERY.

WHEREAS, SKC-Brentwood Inc. dba Summer Kitchen Café & Bakery currently holds a valid Class C Liquor License from the Nebraska Liquor Control Commission; and

WHEREAS, SKC-Brentwood Inc. dba Summer Kitchen Café & Bakery has made a request to Nebraska Liquor Control for change of location from 7855 South 83rd Street to 12010 Giles Road; and

WHEREAS, the Nebraska Liquor Control Commission has asked that this request be presented to the City Council for action.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista do hereby approve the request for change of location as presented by SKC-Brentwood Inc. dba Summer Kitchen Café & Bakery and instructs the City Clerk to inform the Nebraska Liquor Control Commission of said approval.

Seconded by Councilmember Ellerbeck. Councilmember Carlisle asked why the change was being made so early, with the new location not yet built. City Clerk Buethe stated that most businesses don't think ahead to these type of changes until they are ready to open. The new liquor license will not be issued by the state until all their facilities have met the States requirements and the liquor license itself will come to the City first in order for us to be sure they are in compliance with all of our regulations and have obtained their Certificate of Occupancy. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

H. DISCUSSION – LOCAL OPTION SALES TAX – CONTINUATION OF ½ % OPTION

City Administrator Gunn informed Council this discussion was in preparation for possibly putting the ½ % sales tax on the election in May. Councilmember Sheehan stated he thinks the City should go ahead with putting the tax on the election in May to know where the City is at for future budgeting and planning. Councilmember Gowan agreed and asked if there were any other capital expenditures other than the street projects. Gunn stated that except for a few sidewalk and parking lot improvements the money has all been used for street projects. Mayor Kindig

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asked that the timeline for the resolution be moved to a meeting in January. Gunn inquired as to the feeling of the council regarding the 10 year sunset. Councilmember Carlisle would like to see the sunset dropped as the city has shown that this money is being used responsibly for the items which the voters approved. Councilmember's Sheehan, McLaughlin, and Gowan favored a ten year sunset while Councilmember Sell stated he would like to see a 20 year sunset. Councilmember Ellerbeck stated that he would like to extend the sunset further into the future as we have the option of property tax reduction if the revenues would allow. Information will be presented to the Mayor and Council before the first meeting in January and a resolution will be presented at the second meeting in January.

COMMENTS FROM THE FLOOR

Mayor Kindig asked if there were any comments from the floor, and asked that each individual limit his or her comments to 5 minutes. Debbie Rinner, a resident in the Val Verde subdivision, addressed the Council. She stated the subdivision has seen welcome changes from the Public Works department since the recent annexation. Her concern is the "No Parking" sign that was put on her property in her flowers. Public Works Director Soucie said the City used to put just two signs up in cul-de-sacs, but people would then park where signs were not posted. So protocol was to change to 3 signs with any new cul-de-sacs. At this property, there is a fire hydrant and a storm drain sewer on one side of the property and the driveways are very close together on the other side. Councilmember Gowan stated he sympathizes with the homeowner and asked if the policy could be changed for this cul-de-sac. Public Works Director Soucie stated there are 16 other cul-de-sacs, and a change would set precedence. Councilmember Gowan stated he would like to see the sign removed, and review other concerns on a case by case basis. Councilmember Sell asked why the sign can't be put on the opposite side of the fire hydrant. Public Works Director Soucie responded that the driveways are close enough together that there is concern with a vehicle hitting the sign. Councilmember Sheehan suggested two signs have the arrow, and that should be enough in a cul-de-sac. An agreement was reached to review on a case by case basis.

COMMENTS FROM MAYOR AND COUNCIL

Mayor Kindig reminded Council of the State of the County Breakfast on December 18th from 7:30 a.m. – 9:00 a.m. The breakfast will be at the PayPal Building 2 East Door. Please RSVP to Mary by December 12th. Speakers at the breakfast will include Sarpy County Mayors, Sarpy County Economic Development, and Stratcom.

Mayor Kindig thanked Council President Carlisle for attending the Midlands Business Journal 40 under 40 awards breakfast on the Mayor's behalf. La Vista had three winners: Jason Nielsen – PayPal, Shawn William – BounceU, and Paul Lofties – Securities America.

Councilmember Sheehan had questions on a letter for violations. Community Development Director Birch will supply him with the requested information.

Mayor Kindig reminded Council of the tree lighting ceremony on Monday, at 6:00 p.m. He asked that Councilmember shows up about 5:30 p.m. Recreation Director Stopak and Executive Assistant Alex will assign tasks. He also stated that Santa will be visiting the City on Sunday, starting at 5:00 p.m.

ADJOURNMENT

At 7:51 p.m. Councilmember Gowan made a motion to adjourn the meeting. Seconded by Councilmember Sell. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER 2007.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

DRAFT

CITY OF LA VISTA
PLANNING COMMISSION MINUTES
NOVEMBER 15, 2007

The Planning Commission meeting of the City of La Vista was convened at 7:00 p.m. on Thursday, November 15, 2007 at the La Vista City Hall, 8116 Park View Boulevard. Members present were: Krzywicki, Andsager, Horihan, Carcich, Malmquist, and Gahan. Hewitt was absent. Also in attendance were City Engineer John Kottmann, City Planner Marcus Baker and Community Development Director Ann Birch.

Legal notice of the public meeting and hearing was posted, distributed and published according to Nebraska law. Notice was simultaneously given to all members of the Planning Commission and a copy of the acknowledgement of the receipt of notice is attached to the minutes. All proceedings shown were taken while the convened meeting was open to the attendance of the public.

1. Call to Order

The meeting was called to order by Chairperson Krzywicki at 7:03 p.m. A copy of the agenda and staff report was made available to the public.

2. Approval of Meeting Minutes – September 20, 2007

Malmquist motioned to approve the minutes of September 20, 2007. Carcich seconded. Ayes: Andsager, Gahan, Carcich, Krzywicki, Malmquist, and Horihan. Nays: None. Motion carried.

3. Old Business

None.

4. New Business

A. Proposed Revisions to City of La Vista Zoning Ordinance – Section 5.13 I-1 Light Industrial, Section 5.14 I-2 Heavy Industrial, Section 2.02 Definitions, and Section 7.16 Performance Standards for Industrial Uses.

i. Staff Report: Revisions have been made to these sections of the Zoning Ordinance to create more generalized categories of uses, to clarify and/or define uses and standards, and allow a greater diversity of services in the Industrial Zoning Districts. The proposed revisions are shown in a preliminary draft, which is currently under review by City staff. A more refined version should be available for discussion at the next Planning Commission meeting. At this time, staff is recommending a continuance to the next meeting.

ii. **Public Hearing:** Malmquist motioned to open the public hearing. Andsager seconded. Ayes: Andsager, Krzywicki, Gahan, Carcich, Malmquist, and Horihan. Nays: None. Public hearing was opened at 7:05 p.m.

There was no one in the audience to speak on this request.

iii. **Recommendation:** Carcich motioned to continue the public hearing to the December 20th meeting. Malmquist seconded. Ayes: Andsager, Gahan, Krzywicki, Carcich, Malmquist, and Horihan. Nays: None. Motion approved.

B. **Rezoning request for Lot 26, Oakdale Park, land owned by Colonial Press.** The proposed rezoning would "down zone" property from I-2 Heavy Industrial to C-1 Shopping Center Commercial.

i. **Staff Report:** The applicant Tom Visty of Colonial Press, Inc. is requesting a rezoning and amendment to the Future Land Use Map of the Comprehensive Plan for a portion of Lot 26, Oakdale Park, proposed as Lots 1 and 2 of Colonial Press Addition. The property currently contains Colonial Press on the western half of the original parcel and is zoned I-2 Heavy Industrial. The eastern half of the parcel is vacant.

The proposal is to rezone a portion of Lot 26, Oakdale Park (proposed Lot 2, Colonial Press Addition) from I-2 to the C-1 zoning district. Colonial Press is on the western portion of the property. The land to be rezoned is vacant. Harrison Street exists on the north side of the property; Cimarron Woods Subdivision (R-1 zoning) is to the east; Rotella's Italian Bakery, Inc. is to the south and west.

The Future Land Use Map of the Comprehensive Plan designates this property for industrial uses. The proposal would revise the plan to designate Lot 2 for commercial uses.

The Colonial Press Addition Administrative Plat has been submitted and is under review. The plat proposes two lots. Lot 1 is the site of Colonial Press; future plans for Lot 2 (the subject of the rezoning) are unknown.

1. An existing access allows ingress / egress via 107th Street to Colonial Press. An easement would have to be granted across proposed Lot 1 in order for proposed Lot 2 to have access to 107th Street
2. A second full access is proposed to 104th Street with the possibility of a cut in the landscaped median. Information has not been received from Sanitary and Improvement District (SID) 237, Cimarron Woods, regarding their support or opposition to this median

reconstruction. Without their support, a right in/ right out access onto a 104th Street may be a consideration, but this could encourage unsafe traffic patterns by forcing people to do u-turns at the end of the median in order to get to Harrison Street.

3. A traffic study has been conducted and reviewed by the City's traffic engineer to assess the potential access points for proposed Lot 2. The study indicates that a right in/ right out would be possible if permission could be obtained from the State; however, the City's Traffic Engineer does not support this access to Harrison Street due to traffic conflicts with vehicles turning right at 104th Street.
4. The traffic study does not show a need for a signalized intersection at 104th Street at this time, but it is recommended that the intersection be monitored for increased traffic in the future. The future Average Daily Trips (ADT) is partially dependent on the traffic volumes created by the proposed use of lot which is the subject of the rezoning.
5. The rezoning request would allow for commercial uses on proposed Lot 2; however, a specific use and development proposal is unknown at this time.

All utilities are available to the site.

Staff recommends the following:

1. The rezoning and Comprehensive Plan amendment to a commercial district would be a "down zoning" or a rezoning to a less intensive district and may be more compatible with the abutting residential area in Cimarron Woods. However, some uses allowed in the C-1 District could have the effect of being more intensive from a traffic standpoint than some light industrial uses.
2. Access to the property remains an issue and may limit the use of the property if rezoned to a commercial district. Further discussion by staff regarding access to this property is on-going. Access may be possible from 107th Street if an easement is recorded with the Colonial Press Addition to provide such access.
3. To avoid land-locking a parcel, the Colonial Press Addition Administrative Plat cannot be approved until the access issues are resolved. Section 3.09.03 does not allow approval of administrative plats if the subdivision would require additional curb cuts and repaving to gain access (i.e. full access to 104th Street).

A vicinity map and traffic engineer's report are attached to the staff report.

Staff recommends a continuance on the re-zoning request until the Sanitary and Improvement District can provide comments regarding the access to 104th Street and access issues are resolved.

DRAFT

Tom Visty, 1026 Hickory, Papillion, the applicant, and Rich Reeves, the applicants representative, were present to answer questions. Carcich asked if he was aware that staff was recommending a delay. Visty explained there are two separate lots; on the one to the east they are asking for a change. This lot is landlocked and they were hoping for a commercial use such as an office or day care which would be a buffer. Krzywicki asked where he would be providing access. Visty explained there was no access to the south, and to the west is Colonial Press, so the only access is to the north or east. Krzywicki asked if access to the north to Harrison Street has to be applied for and what is the alternative if it isn't allowed. Visty explained the only other option is 104th Street. He further stated during the hearings on Cimarron Woods the plans showed a commercial buffer between the industrial and residential areas. Reeves stated they felt this was an appropriate zoning request as a buffer. There was general discussion about the layout of the lot and the access possibilities.

Jeff Blackwell, 10505 Polk Street, Omaha, stated he lives in the Applewood subdivision and has no opposition to the change of zoning and appreciates the statement that they want to have commercial development. His concern is with the use of the property; he would prefer the day care or office to a lounge or C-store. He further stated he is opposed to a signal at the intersection because of how close it is to other intersections with signals.

Mark Wolter, 7028 103rd Circle, La Vista, and Mike Circo, 7029 S. 103rd Circle, La Vista, stated they lived in Cimarron Woods. Circo stated he is opposed to the commercial use due to traffic problems; he would be opposed to trucks using their street except for workers going to the site during the day. He was also concerned with the interruption of the green space. Wolter agreed there would be an adverse effect between commercial and industrial uses. If the median on 104th Street were cut it would have to be fairly wide in order to make a turn. He has concerns with the use of 104th Street since it is a main entrance into the neighborhood. If there were restrictions for what might be able to be placed on the lot such as a gas station, and there were visual buffers and sound buffers to protect the neighborhood. Mrs. Circo stated she was concerned with the effect of this on the housing market which is already having problems.

Krzywicki asked if permission is required in order to have access to 104th Street. Kottmann explained the 104th Street right-of-way is under the control of the SID. Malmquist asked if access to Harrison Street is limited. Kottmann stated it is unlikely to get a break in the controlled access and reminded the Commission of the Harrison Hills project and the reasons for that access being granted. Kottmann explained this would be a continuous right-turn bay for this lot and 104th Street, and felt the possibility is remote.

explained this would be a continuous right-turn bay for this lot and 104th Street, and felt the possibility is remote.

iii. **Recommendation:** Malmquist motioned to recommend a continuance on the re-zoning request until the Sanitary and Improvement District can provide comments regarding the access to 104th Street and until access issues are resolved. Horihan seconded. Ayes: Andsager, Gahan, Krzywicki, Carcich, Malmquist, and Horihan. Nays: None. Motion approved.

C. **Conditional Use Permit application for a tavern and cocktail lounge in the C-3 Highway Commercial/Office Park district.** The property is located on Lot 2 Southport East Replat 3.

i. **Staff Report:** The applicant, Lyllette Fields of Fields, Inc. is requesting approval of a Conditional Use Permit to construct an approximately 2,700 square foot bar and grill inside of a newly constructed commercial flex building. Also, the sidewalk in front of the bays is proposed as an outdoor beer garden.

The property at 7826 S. 123rd Plaza, Suite E & F, Lot 2 of Southport East Replat 3, is zoned C-3 Highway Commercial/Office Park District and Gateway Corridor District and is approximately 1.9 acres. It is owned by Fantasy's Inc. Currently under construction on the site is a gas station/convenience store and a coffee kiosk. Additional commercial uses have been proposed.

PayPal exists to the north and is zoned C-3, Pinnacle Bank zoned C-3 is to the south, Embassy Suites zoned C-3 is to the west, the property to the east is zoned C-3 and is vacant. This lot was replatted as a part of Southport East Replat 3.

The Future Land Use Map of the Comprehensive Plan designates this property for commercial uses in the gateway corridor. Building plans have been submitted and construction is underway for the restaurant portion of the business. Fantasy's Food and Fuel had a Conditional Use Permit approved and architectural design and landscaping requirements were satisfied for all buildings on Lot 2, Southport East Replat 3.

Ingress / egress will be provided via South 123rd Plaza only. The applicant did not provide the number of proposed parking spaces; however, the City Engineer has calculated that 21 parking spaces would be available for the proposed bar and grill. A request was made to the owners to provide a revised site plan to show how many spaces would be provided and what parking spaces would be reserved for the Island Bar and Grill. Pedestrian sidewalks and access is not provided to this site. No other modes of transportation exist to this site at this time. The only sidewalks on-site

are in front of the buildings' entrances. The bar and grill proposes to use 8' x 27' of their sidewalk as a beer garden. All utilities are available to the site.

The site plan for Fantasy's Food and Fuel shows 74 parking spaces to be divided among the convenience store (14 required spaces) and retail space (50 required spaces). The convenience store may also count spaces in front of the gas pumps as parking spaces. To accommodate each tenant, seven parking spaces would be available per bay. Ideally, the proposed use should not exceed fourteen parking spaces in order to prevent overflow parking from affecting other businesses. The application states that 10-12 employees will be the maximum number per working shift. The number of employees alone will nearly fill fourteen parking spaces. Both the Fire Chief and the Police Chief have reviewed the proposal and have no concerns at this time. The City Engineer and Planning Staff recommend against having the beer garden, as this adds additional seating capacity which further adds to the problem of limited parking.

A vicinity map, the City Engineer's letter and the draft Conditional Use Permit with Exhibits is attached to the staff report.

Staff recommends approval of the Conditional Use Permit to allow a bar and grill in the C-3 zoning district with the following conditions:

1. The applicant shall demonstrate they can provide the necessary number of parking spaces for the bar and grill without negatively impacting the parking required for future tenants on this lot. A revised site plan shall be submitted prior to City Council's review.
2. No additional restaurants will be allowed in the same building as tenants.
3. The beer garden shall not be permitted. All seating shall be inside the building.

ii. **Public Hearing:** Carcich motioned to open the public hearing. Malmquist seconded. Ayes: Andsager, Krzywicki, Gahan, Carcich, Malmquist, and Horihan. Nays: None. Public hearing was opened at 7:40 p.m.

Lyllette Fields, 7405 S. 77th Ave., the applicant, clarified there would only be four employees per shift total, not 10-12 as stated in her application. She also explained she would like to have the option of extending the hours of operation listed in the CUP as beginning at 7 a.m. so they may serve breakfast if they decide to. She also explained that the landlord indicated to them they have 21 parking stalls for their business. She would like to open the beer garden and asked if this can be revisited at a later date. Krzywicki asked if there was a concern with the use of the sidewalk. Baker replied the problem is adding to the seating capacity and the parking demand. Kottmann asked the applicant about the licensed capacity of the restaurant. Fields stated the architect had told her it was 104 persons.

Kottmann explained with a 40% parking requirement for a restaurant, 22 stalls would be required. Fields explained the parking on the west side of the lot was also available. She also explained if the state adopts a non-smoking ban she would like to offer outdoor seating. There was general discussion about the parking requirement.

Malmquist questioned the square footage of each bay as noted on the site plan and these were determined to be in error. Gahan noted his concerns stating this is the only gas station in the area and with Cabela's and the hotels nearby there will be a lot of activity and traffic, and inadequate parking could cause problems. Baker explained the site plan was approved with the required parking provided; however, the property owner will have to be careful with the other proposed tenants so as not to overload the parking capacity of the lot. Gahan asked if there was any off-site parking. Baker stated that should not be encouraged and the development should support itself on its premises. Gahan expressed concern with the parking. Baker agreed and explained this was the reason staff was recommending no other restaurant be allowed if this CUP is approved.

Horihan noted a typo in the draft CUP in section 2c. It was also noted that the number of employees would be corrected and a revision to the proposed hours of operation would be made. There was further discussion regarding the parking count; the stalls counted under the gas canopy; and the effect on other potential tenants. Baker stated it would be possible to add the beer garden in a future amendment to the CUP if the parking numbers supported it. He further explained a restaurant can go in as a tenant without a conditional use permit and this was the reason for the staff recommendation, which will limit the property owner to only one restaurant tenant. There was further discussion about the occupancy numbers of the restaurant and regulating the parking. Kottmann stated there were two aspects to consider: the parking will be somewhat self-regulating in that Fantasy's will have trouble leasing the other bays; and the CUP gives the city some control over the operation. There was general discussion regarding other potential tenants. Gahan felt there should be no other fast food uses and only retail tenants would be better for the parking situation since most retail businesses slow down during the evening hours. Gahan asked the applicant if most of their sales will be liquor or food. Fields stated liquor and suggested some customers may walk from the office buildings. Baker explained additional pedestrian connections will need to be installed with the development of the lot to the east.

Gahan motioned to close the public hearing. Malmquist seconded. Ayes: Andsager, Gahan, Krzywicki, Carcich, Malmquist, and Horihan. Nays: None. Public hearing closed at 8:06 p.m.

iii. **Recommendation:** Gahan motioned to recommend approval based on no additional restaurants will be allowed and the applicant must demonstrate they can provide the necessary parking without negatively impacting the rest of the site, and no beer garden will be

allowed. Carcich seconded. Ayes: Andsager, Gahan, Krzywicki, and Carcich. Nays: Malmquist and Horihan. Motion approved.

This item is tentatively scheduled to be on the City council agenda of December 4, 2007.

5. Comments from the Floor.

None.

6. Comments from the Planning Commission.

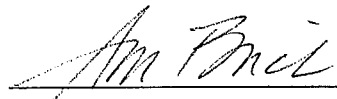
Krzywicki noted it was Marcus's birthday the Commission wished him a happy birthday. Carcich stated he was happy to be back and was walking without a limp for the first time in years however he will have to go in to test for a blood clot tomorrow. Gahan asked about the status of the home beauty salon which was causing some complaints. Baker stated no further complaints have been received.

Baker noted several informational items on the desks. The city has subscribed to APA's Commissioner Newsletter and received two back issues. Additional newsletters will arrive quarterly. Baker also reported 2-3 applications have been received for the openings on the Commission and new members should be forthcoming.

7. Adjournment

Malmquist motioned to adjourn. Horihan seconded. Ayes: Andsager, Gahan, Carcich, Krzywicki, Malmquist, and Horihan. Nays: None. Meeting adjourned at 8:15 p.m.

Reviewed by Planning Commission: John Gahan



Recorder

Planning Commission Chair

Approval Date

City of LaVista
Park & Recreation Advisory Committee Minutes
October 17, 2007

A meeting of the Park and Recreation Advisory Committee for the City of LaVista convened in open and public session at 7:00 p.m. on October 17, 2007. Present were Recreation Director Scott Stopak, Chris Kuehner, John Vendetti, Greg Johnson, Randy Cahill. Absent: George Forst.

A notice of the meeting was given advance thereof by publication in the Times on October 11, 2007. Simultaneously given to the members of the Park and Recreation Advisory Committee and a copy of their acknowledgment of receipt of the notice is attached to the minutes. Availability of the agenda was communicated in the advance notice to the members of the Park and Recreation Advisory Committee of this meeting. All proceedings hereafter were taken while the convened meeting was open to attendance of the public. Further, all the subjects included in said proceedings were contained in the agenda for inspection within ten working days after said meeting, prior to the convened meeting of said body.

CALL TO ORDER

Recreation Director Stopak called the meeting to order.

Seconded by Committee Member Kuehner. Motion carried.

Recreation Director Stopak led the audience in the Pledge of Allegiance.

Recreation Director Stopak made an announcement of the location of the posted copy of the Open Meetings Act for public reference and read the Emergency Procedures Statement.

A. CONSENT AGENDA

Committee Member Vendetti made the motion to approve the consent agenda.
Seconded by Committee Member Cahill. Motion carried.

REPORTS FROM STAFF

Assistant Recreation Director David Karlson reported Halloween Safe Night will be held Wednesday, October 31, 2007 at the La Vista Community Center. This event will be held from 6:00 p.m. – 7:30 p.m. for children 12 and under with their parents. There will be candy handed out by area businesses, hot dogs, chips and drink provided by the Fire Dept. Secondly, the City of La Vista Health Fair will be held on Friday, November 9, 2007 from 10:00 a.m. – 1:00 p.m. There will be numerous booths, plus flu shots for employees and public.

Director Stopak reported for absent Program Director Rich Carstensen. The Halloween 5k Run Walk and Relay, with this year's theme of "Run from the Reaper" will be held at

the La Vista Falls Golf Course on Sunday, October 28, 2007. Food and awards will be held at the Community Center gymnasium following the run. The Midwest Winds Kite Fliers Kite Fly to be held on October 14, 2007 at the La Vista Soccer Complex was rained out. A decision on whether to reschedule, or wait until next spring's event has not been made yet.

Director Scott Stopak reported that the City of La Vista successfully took over the administration and maintenance of the La Vista/Ralston Special Services Bus as of October 1st. There was no lapse in service and only minor changes have been made. Bus service will not run on holidays that the City offices are closed. On snow days, if the Papillion-La Vista or Ralston Schools are closed due to inclement weather, the bus will not operate. On days they are opening late, the bus will operate during normal times.

The Program Coordinator position has not been filled. The City will re-advertise for the position with a projected start date of December 1, 2007.

Director Stopak reported that a city wide survey was approved and there will be a couple of questions on the survey concerning a new aquatic facility. The aquatic committee will look at the results and they make recommendations to the City Council.

Director Stopak referred to the golf and swimming pool summaries included in their packets. The golf course is showing over 5,000 more rounds of golf were played this fiscal year than last. Concessions at the golf course were also higher. All pool stats are summarized monthly on the spreadsheet, but daily numbers are also available.

B. ELECTION of COMMITTEE CHAIRPERSON

John Vendetti nominated Greg Johnson for committee chairperson. Greg Johnson accepted the nomination. Randy Cahill made a motion to approve Greg Johnson as committee chairperson. Committee members voting aye: Chris Kuehner, John Vendetti, Randy Cahill. Nays: None. Abstain: Greg Johnson. Absent: George Forst. Motion carried.

C. SWIMMING POOL CONCEPT DISCUSSION

No comments.

COMMENTS FROM THE FLOOR

No comments.

COMMENTS FROM COMMITTEE MEMBERS

Committee Member Kuehner commented that the La Vista Falls grounds are great looking. He also asked if there are any ideas to keep the numbers up at the course. Said the slope on hole #7 and the tree in the middle of the fairway on hole #9 may be something that could be altered.

Director Stopak said we lose business due to the lack of cart paths during wet weather. Money has been budgeted for the paths. Possible re-structuring of hole #7 is also an idea, but no money has been budget for that. Stopak has reported that new blinds, tables

and chairs have been budgeted for the clubhouse. The La Vista Falls logo has also been added to the wall in the clubhouse.

Chairperson Johnson said cart paths would be a great improvement. Also wanted to know when the meeting next month would be, since the 3rd Wednesday is night before Thanksgiving?

Director Stopak said they would tentatively set the meeting for November 28, 2007, pending any other city meetings that may be scheduled.

ADJOURNMENT

Member Cahill made the motion to adjourn. Seconded by Chairperson Johnson. Motion carried.

Meeting adjourned at 7:22 p.m.



FELSBURG
HOLT &
ULLEVIG

engineering paths to transportation solutions

Invoice

tel 303.721.1440
fax 303.721.0832

Mail Payments to:
Department 1704
Denver, CO 80291-1704

November 26, 2007

Brenda Gunn
City of La Vista
8116 Park View Boulevard
La Vista, NE 68128

RE: La Vista Quiet Zone Study
Felsburg Holt & Ullevig Project # 06-282
Invoice # 06-282-9

For Professional Services for the Period from October 1, 2007 to October 31, 2007:

Professional Services

Principal I, 2.50 hours @ \$150.00	\$375.00
Engineer II, 2.75 hours @ \$85.00	233.75
Sr. Designer, 2.00 hours @ \$105.00	210.00
Administrative, 6.00 hours @ \$65.00	390.00

Total Professional Services: \$1,208.75

Other Direct Costs

Reproduction \$76.28

Total Other Direct Costs: \$76.28

Total Amount Due This Invoice

\$1,285.03

Previously Billed	\$8,214.96	Contract Maximum	\$9,500.00
Current Invoice	<u>\$1,285.03</u>	Less Total Billed To Date	<u>\$9,499.99</u>
Total Billed To Date	\$9,499.99	Remaining	\$0.01

OK BLS
12/04/07
Consent
Agenda
5-71-0658

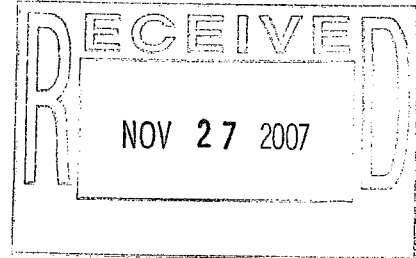


FELSBURG
HOLT &
ULLEVIG

engineering paths to transportation solutions

November 26, 2007

RE: La Vista Quiet Zone Study
FHU # 06-282



Ms. Ann Birch
Community Development Director
City of La Vista
8116 Park View Blvd.
La Vista, NE 68128

Dear Ann,

Enclosed please find Invoice # 06-282-9 in the amount of \$1,285.03 for services associated with the La Vista Quiet Zone Study. This invoice reflects work performed during September and October 2007 and is the final invoice for the project. The final reports have been delivered to the City for distribution and a presentation was given to the City Council on October 16, 2007.

The scope of services and fee estimate associated with the preliminary and final design of the quiet zone improvements have been submitted to Brenda under separate cover. We are ready to begin the topographic survey at each of the crossings upon receipt of the notice to proceed.

If you have any questions regarding this invoice or the study, please give me a call.

Sincerely,

FELSBURG HOLT & ULLEVIG

Kyle A. Anderson, PE, PTOE
Principal

12-04-07
Consent
Agenda

05,71,0817,01

O:\Projects\06-282 La Vista Quiet Zone Study\Steno\Invoice Letter 06-282-9.doc

ACCOUNTS PAYABLE CHECK REGISTER

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
1	Bank of Nebraska			(600-873)					
91113	11/21/2007	2546	BOLER WOOD & ASSOCIATES		4,263.05				**MANUAL**
91114	11/21/2007	3718	GENWORTH LIFE AND HEALTH		1,649.02				**MANUAL**
91115	11/21/2007	143	THOMPSON DREESSEN & DORNER		4,507.82				**MANUAL**
91116	12/04/2007	762	ACTION BATTERIES UNLTD INC		479.70				
91117	12/04/2007	571	ALAMAR UNIFORMS		24.00				
91118	12/04/2007	435	ANDERSON FORD LINCOLN MERCURY		50.77				
91119	12/04/2007	3344	APPLIED INFORMATION MGMT INST		2,995.00				
91120	12/04/2007	196	AQUILA		21.28				
91121	12/04/2007	536	ARAMARK UNIFORM SERVICES INC		96.08				
91122	12/04/2007	706	ASSOCIATED FIRE PROTECTION		60.00				
91123	12/04/2007	2945	AUDIOVISUAL INC		1,907.00				
91124	12/04/2007	201	BAKER & TAYLOR BOOKS		435.88				
91125	12/04/2007	3875	BAKER, MARCUS		50.00				
91126	12/04/2007	145	BANK OF NEBRASKA		25.00				
91127	12/04/2007	929	BEACON BUILDING SERVICES		6,737.00				
91128	12/04/2007	793	BENNETT REFRIGERATION		156.48				
91129	12/04/2007	410	BETTER BUSINESS EQUIPMENT		37.00				
91130	12/04/2007	3448	BIRCH, ANN		50.00				
91131	12/04/2007	3703	BUETHE, PAM		100.00				
91132	12/04/2007	2285	CENTER POINT PUBLISHING		79.08				
91133	12/04/2007	2821	CHASE AUTO TRANSMISSION REPAIR		1,020.00				
91134	12/04/2007	3450	CITY OF BELLEVUE		150.00				
91135	12/04/2007	3895	CITY OF LINCOLN PUBLIC WORKS		950.00				
91136	12/04/2007	3186	CLASSIC REFRIGERATION		277.47				
91137	12/04/2007	3176	COMP CHOICE INC		427.00				
91138	12/04/2007	3706	CORBIT, JEFF		100.00				
91139	12/04/2007	836	CORNHUSKER INTL TRUCKS INC		375.95				
91140	12/04/2007	3486	DANKO EMERGENCY EQUIPMENT CO		134.02				
91141	12/04/2007	261	DAVIS, JAMES C		1,500.00				
91142	12/04/2007	2000	DENNIS, SHARON		140.65				
91143	12/04/2007	127	DON'S PIONEER UNIFORMS		78.98				
91144	12/04/2007	632	EASTERN LIBRARY SYSTEM		15.00				
91145	12/04/2007	3084	EBSCO SUBSCRIPTION SERVICES		1,495.00				
91146	12/04/2007	3334	EDGEWEAR SCREEN PRINTING		164.20				
91147	12/04/2007	2098	ERICKSON, RANDALL		100.00				
91148	12/04/2007	3617	FAIRWAY GOLF LLC		24.00				
91149	12/04/2007	3463	FARQUHAR, MIKE		100.00				
91150	12/04/2007	1201	FERRELLGAS		456.25				
91151	12/04/2007	1254	FLEETPRIDE		25.54				
91152	12/04/2007	3132	FORT DEARBORN LIFE INSURANCE		1,172.50				
91153	12/04/2007	1256	FREMONT NATIONAL BANK & TRUST		2,205.90				
91154	12/04/2007	35	GOLDMAN, JOHN G		40.00				
91155	12/04/2007	164	GRAINGER		11.70				
91156	12/04/2007	3105	GREAT AMERICAN LEASING CORP		309.00				
91157	12/04/2007	3885	GROSSENBACHER BROTHERS INC		242.25				
91158	12/04/2007	1624	GUNN, BRENDA		92.00				
91159	12/04/2007	3473	GUNN, BRENDA S		300.00				
91160	12/04/2007	3886	HALL, ERICA		90.00				
91161	12/04/2007	3887	HALL, LAUREN		180.00				
91162	12/04/2007	1688	HANNEBAUM GRAIN CO INC		4,403.83				
91163	12/04/2007	104	HARROD, RAYMOND		1,500.00				

ACCOUNTS PAYABLE CHECK REGISTER

BANK NO	BANK NAME						
CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
91164	12/04/2007	1403	HELGET GAS PRODUCTS INC	67.00			
91165	12/04/2007	2108	HERTZ EQUIPMENT RENTAL	80.00			
91166	12/04/2007	3220	HOIT, DAVID	36.00			
91167	12/04/2007	1612	HY-VEE FOOD STORES & DRUGTOWN	174.20			
91168	12/04/2007	3646	INTERNATIONAL CODE COUNCIL INC	15,282.00			
91169	12/04/2007	2762	IOWA PRISON INDUSTRIES	82.50			
91170	12/04/2007	2534	IWAN, ROSE	45.00			
91171	12/04/2007	1896	J Q OFFICE EQUIPMENT INC	400.64			
91172	12/04/2007	3888	JESUS, MATTHEW	70.00			
91173	12/04/2007	3891	KEYPER SYSTEMS	412.69			
91174	12/04/2007	788	KINDIG, DOUGLAS	40.00			
91175	12/04/2007	3474	KINDIG, DOUGLAS	150.00			
91176	12/04/2007	1054	KLINKER, MARK A	280.00			
91177	12/04/2007	2697	KROGER-DILLON CUST CHARGES	177.56			
91178	12/04/2007	2057	LA VISTA COMMUNITY FOUNDATION	375.50			
91179	12/04/2007	516	LA VISTA KENO	25.00			
91180	12/04/2007	1241	LEAGUE ASSN OF RISK MGMT	28.00			
91181	12/04/2007	1573	LOGAN CONTRACTORS SUPPLY	49.39			
91182	12/04/2007	2124	LUKASIEWICZ, BRIAN	40.00			
91183	12/04/2007	741	LYNN PEAVEY COMPANY	96.95			
91184	12/04/2007	1247	M E SHARPE INC PUBLISHER	310.60			
91185	12/04/2007	1875	MARSHALL CAVENDISH CORP	225.14			
91186	12/04/2007	553	METROPOLITAN UTILITIES DIST.	.00	**CLEARED**	**VOIDED**	
91187	12/04/2007	553	METROPOLITAN UTILITIES DIST.	1,007.65			
91188	12/04/2007	98	MICHAEL TODD AND COMPANY INC	218.00			
91189	12/04/2007	2497	MID AMERICA PAY PHONES	100.00			
91190	12/04/2007	3475	MIDLANDS BUSINESS JOURNAL	70.00			
91191	12/04/2007	342	MUNICIPAL PIPE TOOL CO LLC	75.00			
91192	12/04/2007	808	NEWMAN TRAFFIC SIGNS INC	.00	**CLEARED**	**VOIDED**	
91193	12/04/2007	808	NEWMAN TRAFFIC SIGNS INC	4,456.75			
91194	12/04/2007	2631	NEXTEL COMMUNICATIONS	98.08			
91195	12/04/2007	408	NOBBIES INC	12.99			
91196	12/04/2007	3415	OABR PRINT SHOP	4,012.50			
91197	12/04/2007	3504	OCCUVAX	1,113.00			
91198	12/04/2007	1014	OFFICE DEPOT INC-CINCINNATI	27.72			
91199	12/04/2007	195	OMAHA PUBLIC POWER DISTRICT	4,305.15			
91200	12/04/2007	46	OMAHA WORLD HERALD COMPANY	830.24			
91201	12/04/2007	976	PAPILLION TIRE INCORPORATED	136.25			
91202	12/04/2007	2589	PAPIO-MO RVR NATURAL RESOURCES	5,000.00			
91203	12/04/2007	1769	PAYLESS OFFICE PRODUCTS INC	182.50			
91204	12/04/2007	1821	PETTY CASH-PAM BUETHE	80.11			
91205	12/04/2007	1921	PRINCIPAL LIFE-FLEX SPENDING	155.25			
91206	12/04/2007	802	QUILL CORPORATION	204.30			
91207	12/04/2007	219	QWEST	2,230.46			
91208	12/04/2007	3120	RACOM CORPORATION	312.20			
91209	12/04/2007	3469	RAMIREZ, JOHN	18.00			
91210	12/04/2007	1828	RAMIREZ, RITA	75.00			
91211	12/04/2007	427	RAMIREZ, RITA M	234.80			
91212	12/04/2007	3889	REED, JASON	160.00			
91213	12/04/2007	487	SAPP BROS PETROLEUM INC	325.17			
91214	12/04/2007	1335	SARPY COUNTY CHAMBER OF	50.00			
91215	12/04/2007	2240	SARPY COUNTY COURTHOUSE	3,234.94			
91216	12/04/2007	2927	SEAT COVER CENTER OF NEBRASKA	166.00			

ACCOUNTS PAYABLE CHECK REGISTER

BANK NO	BANK NAME	CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
91217	12/04/2007	533	SOUKIE, JOSEPH H JR			30.00			
91218	12/04/2007	3838	SPRINT			88.33			
91219	12/04/2007	2869	STANDARD DIGITAL IMAGING			162.50			
91220	12/04/2007	2111	STAPLES BUSINESS ADVANTAGE			63.92			
91221	12/04/2007	3893	STRATEGIC INSIGHTS INC			1,200.00			
91222	12/04/2007	3253	SUBWAY SANDWICHES			109.91			
91223	12/04/2007	264	TED'S MOWER SALES & SERVICE			109.07			
91224	12/04/2007	1344	THOMSON GALE			229.36			
91225	12/04/2007	1122	TURF CARS LTD			126.03			
91226	12/04/2007	62	UNITED RENTALS INC			85.86			
91227	12/04/2007	269	UNITED SEEDS INCORPORATED			189.00			
91228	12/04/2007	3729	UNIVERSITY OF NEBRASKA LINCOLN			100.00			
91229	12/04/2007	809	VERIZON WIRELESS, BELLEVUE			65.80			
91230	12/04/2007	3690	VIERS, STEVE			100.00			
91231	12/04/2007	1174	WAL-MART COMMUNITY BRC			279.89			
91232	12/04/2007	3244	WILDER, JONI			33.00			
BANK TOTAL						92,118.30			
OUTSTANDING						92,118.30			
CLEARED						.00			
VOIDED						.00			
FUND						TOTAL	OUTSTANDING	CLEARED	VOIDED
01	GENERAL FUND					74,173.86	74,173.86	.00	.00
02	SEWER FUND					9,749.22	9,749.22	.00	.00
04	BOND(S) DEBT SERVICE FUND					2,205.90	2,205.90	.00	.00
05	CONSTRUCTION					4,507.82	4,507.82	.00	.00
09	GOLF COURSE FUND					1,481.50	1,481.50	.00	.00
REPORT TOTAL						92,118.30			
OUTSTANDING						92,118.30			
CLEARED						.00			
VOIDED						.00			
+ Gross Payroll 11/30/07						207,009.08			
GRAND TOTAL						\$299,127.38			

APPROVED BY COUNCIL MEMBERS
12/04/07

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 4, 2007 AGENDA**

Subject:	Type:	Submitted By:
APPLICATION FOR REPLAT — LOTS 1 & 2, BROOK VALLEY BUSINESS PARK REPLAT 2 (NW OF 108 TH & EMILINE)	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A public hearing has been scheduled and a resolution prepared to consider a replat application for Lots 1 & 2, Brook Valley Business Park Replat 2 (a replat of Lot 13A, Brook Valley Business Park), generally located northwest of 108th & Emiline Streets.

FISCAL IMPACT

None.

RECOMMENDATION

Approve.

BACKGROUND

A public hearing has been scheduled to consider an application for a replat of Lot 13A, Brook Valley Business Park into two lots (totaling one acre). The property is zoned I-2 Heavy Industrial. The application was submitted by Ron Westergard on behalf of Cornhusker Car Washes, Inc.

The eastern portion of the site (proposed Lot 2) is currently the location of a car wash; the western portion is vacant (proposed Lot 1). The purpose of the replat is to make an additional lot available for development within the I-2 district guidelines.

City engineer John Kottmann and staff have reviewed the application for the proposed replat and have the following comments:

1. Addressing of Lot 1 and Lot 2 needs to be corrected to show addresses from Emiline Street.
2. Minimum setbacks may be difficult to achieve with new industrial development on a relatively small lot, especially given the recorded easements on the property. New buildings will be required to meet setbacks in the zoning district.
3. A drainage plan will be required when a building permit is requested on Lot 1; an erosion control plan is also required.
4. A tract sewer connection fee will be required when a building permit is requested for Lot 1.

The Planning Commission held a public hearing on September 20, 2007, and recommended approval of the proposed replat subject to the resolution of items identified by the City Engineer and staff as it complies with the zoning and subdivision regulations.

I:\BRENDA\WORD\COUNCIL\06 Memos\Southport East Replat 3.doc

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING APPROVAL OF A REPLAT FOR LOTS 1 AND 2, BROOK VALLEY BUSINESS PARK REPLAT 2, BEING A REPLAT OF LOT 13A, BROOK VALLEY BUSINESS PARK, LOCATED IN THE NE ¼ OF SECTION 17, T14N, R12E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, GENERALLY LOCATED AT 108TH STREET AND EMILINE STREET.

WHEREAS, the owners of the above described piece of property have made application for approval of a replat for the proposed Lots 1 and 2, Brook Valley Business Park Replat 2; and

WHEREAS, the City Administrator and the City Engineer have reviewed the replat; and

WHEREAS, on September 20, 2007, the La Vista Planning Commission held a public hearing and reviewed the replat proposal and has recommended approval with the following comments from the City Engineer and staff:

1. Addressing of Lot 1 and Lot 2 needs to be corrected to show addresses from Emiline Street.
2. Minimum setbacks may be difficult to achieve with new industrial development on a relatively small lot, especially given the recorded easements on the property. New buildings will be required to meet setbacks in the zoning district.
3. A drainage plan will be required when a building permit is requested on Lot 1; an erosion control plan is also required.
4. A tract sewer connection fee will be required when a building permit is requested for Lot 1.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the replat for Lots 1 and 2, Brook Valley Business Park Replat 2, being a replat of Lot 13A, Brook Valley Business Park, located in the NE ¼ of Section 17, T14N, R12E of the 6th P.M., Sarpy County, Nebraska, generally located at 108th Street and Emiline Street be, and hereby is, approved subject to the satisfactory resolution of all identified items as approved by the City Administrator and City Attorney.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

\\Lvdclp01\users\Administration\BRENDA\COUNCIL\07 Resolutions\Brook Valley Bus Park Replat 2.DOC

**CITY OF LA VISTA
PLANNING DIVISION**

CASE NUMBER:

FOR HEARING OF: December 4, 2007
Report Prepared on November 27, 2007

I. GENERAL INFORMATION

- A. APPLICANT:** Ron Westergard, Cornhusker Car Washes, Inc.
- B. PROPERTY OWNER:** Cornhusker Car Washes, Inc
- C. LOCATION:** The site is located at 108th and Emiline Street.
- D. LEGAL DESCRIPTION:** Lot 13A, Brook Valley Business Park
- E. REQUESTED ACTION(S):** Replat / Subdivision into two lots
- F. EXISTING ZONING AND LAND USE:**
I-2 Heavy Industrial; the property currently has a building for a car wash.
- G. PURPOSE OF REQUEST:** The proposal is to replat Lot 13A of Brook Valley Business Park into Lot 1 (0.35 acres) and Lot 2 (0.65 acres) of Brook Valley Business Park Replat 2.
- H. SIZE OF SITE:** 1 acre

II. BACKGROUND INFORMATION

- A. EXISTING CONDITION OF SITE:** Car wash constructed on the eastern portion of Lot 13A.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
 - 1. **North:** I-2, Kwik Shop
 - 2. **East:** I-2, Rotella's Italian Bakery, Inc.
 - 3. **South:** I-2, Brook Valley Business Park
 - 4. **West:** I-2, Brook Valley Business Park
- C. RELEVANT CASE HISTORY:** None
- D. APPLICABLE REGULATIONS:**
 - 1. Section 3.08, Subdivision Regulations, regarding Replats.
 - 2. Section 4.15, Subdivision Regulations, regarding Design Standards, Lots.
 - 3. Section 5.14, Zoning Ordinance, regarding I-2 Zoning District.

III. ANALYSIS

- A. COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates this property for Industrial uses.
- B. OTHER PLANS:** None. Future plans for Lot 1 are unknown.
- C. TRAFFIC AND ACCESS:**
1. An existing access allows ingress / egress to Emiline Street.
 2. A second access to Emiline Street may be possible for Lot 1.
- D. UTILITIES:** All utilities are available to the site.

IV. REVIEW COMMENTS:

1. Addressing of Lot 1 and Lot 2 needs to be corrected to show addresses from Emiline Street.
2. Minimum setbacks may be difficult to achieve with new industrial development on a relatively small lot, especially given the recorded easements on the property. New buildings will be required to meet setbacks in the zoning district.
3. A drainage plan will be required when a building permit is requested on Lot 1; an erosion control plan is also required.
4. A tract sewer connection fee will be required when a building permit is requested for Lot 1.

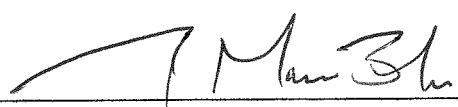
V. PLANNING COMMISSION RECOMMENDATION: Approval of Brook Valley Business Park Replat 2 subject to addressing the review items noted.

VI. ATTACHMENTS TO REPORT:

1. Brook Valley Replat 2 Final Plat
2. Brook Valley Replat 2 Preliminary Plat
3. City Engineer's comments

VII. COPIES OF REPORT TO:

1. Ron Westergard
2. Chris Dorner, Thompson, Dreesen & Dorner, Inc.
3. Public Upon Request


Prepared by:


Community Development Director

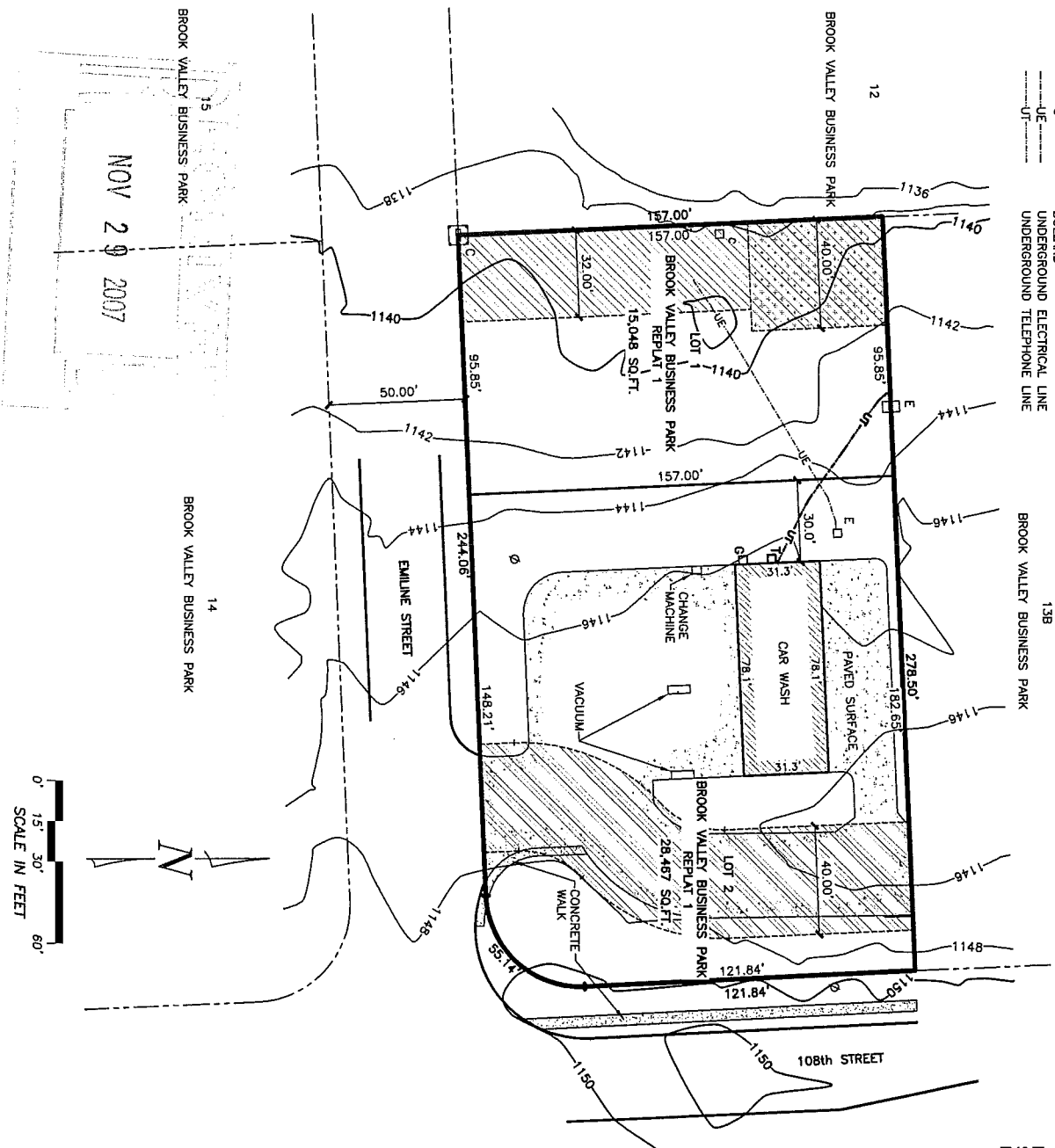
11-27-07
Date

BROOK VALLEY BUSINESS PARK REPLAT 2

LOTS 1 AND 2
BEING A REPLAT OF LOT 13A, BROOK VALLEY BUSINESS PARK,
A SUBDIVISION IN SARPY COUNTY, NEBRASKA

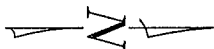
LEGEND

- LIGHT POLE
- ELECTRICAL PEDESTAL
- TELEPHONE PEDESTAL
- CABLE TV PEDESTAL
- BOLLARD
- UNDERGROUND ELECTRICAL LINE
- UNDERGROUND TELEPHONE LINE



NOV 29 2007

0' 15' 30' 60'
SCALE IN FEET



LEGAL DESCRIPTION

LOT 13A, BROOK VALLEY BUSINESS PARK, A SUBDIVISION
IN SARPY COUNTY, NEBRASKA.

NOTES

1. CONTOURS SHOWN HEREON ARE BASED ON SARPY COUNTY GIS INFORMATION AND ARE SHOWN AT 2' INTERVALS.
 2. ALL REQUIRED UTILITIES EXIST.
 3. EXISTING ZONING IS I-2. PROPOSED ZONING IS I-2.
- MINIMUM SETBACK REQUIREMENTS:
- FRONT YARD SETBACK..... 35 FEET
SIDE YARD SETBACK..... 30 FEET
REAR YARD SETBACK..... 25 FEET

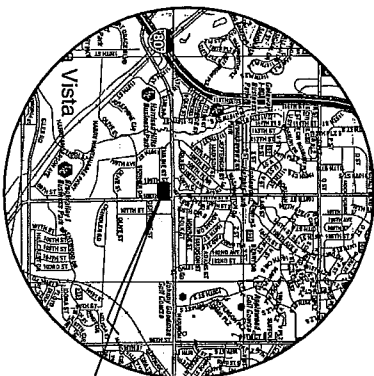
ENGINEER

THOMPSON, DREESSEN & DORNER, INC.
10836 OLD MILL ROAD
OMAHA, NEBRASKA 68154

DEVELOPER

RON WESTERGARD
11738 NORTH 173rd CIRCLE
BENNINGTON, NEBRASKA 68007

- EASEMENT GRANTED TO U.S. WEST COMMUNICATIONS RECORDED AS INSTRUMENT NUMBER 1995-21004 OF THE SARPY COUNTY RECORDS.
- ACCESS EASEMENT RECORDED AS INSTRUMENT NUMBER 1995-20158 OF THE SARPY COUNTY RECORDS.
- ACCESS EASEMENT RECORDED AS INSTRUMENT NUMBER 1995-20158 OF THE SARPY COUNTY RECORDS.



VICINITY MAP

PROJECT SITE



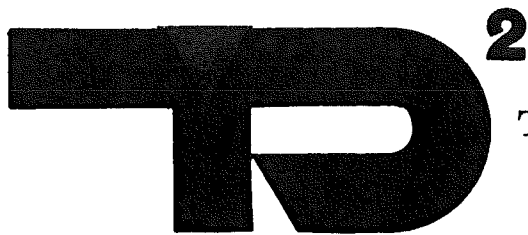
THOMPSON, DREESSEN & DÖRNER, INC.
Consulting Engineers & Land Surveyors
10836 OLD MILL ROAD OMAHA, NEBRASKA 68154

PHONE: 402.330.8860 FAX: 402.330.5868 EMAIL: TD2MAIL@TD2CO.COM
WEBSITE: WWW.TD2CO.COM

BROOK VALLEY BUSINESS PARK REPLAT 2

PRELIMINARY PLAT

SCALE:	1"=30'
DATE:	JULY 3, 2007
DRAWN BY:	MRS
CHECKED BY:	CED
REVISION	



THOMPSON, DREESSEN & DORNER, INC.
Consulting Engineers & Land Surveyors

August 20, 2007

Mr. Marcus Baker
City Planner
City of La Vista
8116 Park View Boulevard
La Vista, NE 68128

RE: 2007 Minor & Administrative Plat Reviews
Brook Valley Business Park Replat 2
Review of Proposed Replat
TD² File No. 171-344.8

ROBERT E. DREESSEN, P.E.
NELSON J. HYMAN, P.E.
JAMES D. WARNER, L.S.
CHARLES E. RIGGS, P.E.
KA "KIP" P. SQUIRE III, P.E., S.E.
JOHN M. KOTTMANN, P.E.
ARTHUR D. BECCARD, P.E.
JOSEPH G. KOSINOVSKY, P.E.
DOUGLAS S. DREESSEN, P.E.
DEAN A. JAEGER, P.E.
RICHARD M. BROYLES, L.S.
DAVID H. NEEF, L.S.
RONALD M. KOENIG, L.S.
CHRIS E. DORNER, L.S.

TIMOTHY T. PAPSTEIN, P.E.
MICHAEL J. SMITH, L.S.
TROY J. NISSEN, P.E., S.E.
DOUGLAS E. KELLNER, P.E.
KEVIN L. TRUE, L.S.
GARY A. NORTON, P.E.
BRIAN L. LODES, P.E.
KURTIS L. ROHN, P.E.
JEFFREY L. THOMPSON, P.E.
DAREN A. KONDA, P.E.
MICHAEL T. CANIGLIA, L.S.
JEREMY T. STEENHOEK, P.E.
JOSHUA J. STORM, P.E.

Mr. Baker:

I have reviewed the above-referenced final plat as requested. For the record, please be aware that this document was prepared by other personnel in this office. I had no participation in the preparation of the document and I have reviewed this plat for conformance to the subdivision regulations in the same manner as any other submittal.

It is my opinion that this application can be treated as a replat and a separate submission of the preliminary and final plats is not required. After review of the documents attached to your transmittal of August 15, 2007, I have the following comments:

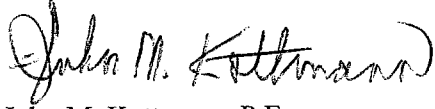
1. The existing structure on proposed Lot 2 is currently addressed on 108th Street. This would make the north side of the existing building a side yard. The existing building is approximately 28 feet from the north line of the lot by scaling the preliminary plat. Current side yard requirements are 30 feet. At the time this structure was constructed the side yard requirements were 25 feet. So, the existing structure constitutes an existing, non-conforming use. An alternative to address the situation would be to address the building off of Emiline Street. If this were done then the existing building would meet current zoning regulations with the proposed replatting.
2. The applicant should be aware that when a building permit is taken for any development on proposed Lot 1, a drainage plan will be required that demonstrates the ability to pass drainage across the site from the existing property to the north (the Kwik Shop) that presently drains across this lot.
3. The applicant should be aware that the tract sewer connection fee will apply to the proposed Lot 1, whenever a building permit is requested on that lot.

Mr. Marcus Baker
August 20, 2007
Page 2

Although the proposed Lot 1 is very small, it does not violate any zoning regulators. I have no objections to the approval of this replat, subject to the comments noted above.

Prepared by,

THOMPSON, DREESSEN & DORNER, INC.

A handwritten signature in black ink, appearing to read "John M. Kottmann". The signature is written in a cursive, flowing style.

John M. Kottmann, P.E.

JMK/jlf

cc: File

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 4, 2007 AGENDA**

Subject:	Type:	Submitted By:
CONDITIONAL USE PERMIT — BAR AND GRILL LOT 2, SOUTHPORT EAST REPLAT THREE	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A public hearing has been advertised and a resolution has been prepared to approve a Conditional Use Permit to operate a bar and grill on Lot 2, Southport East Replat Three, located at Fantasy's Food and Fuel northeast of Southport Parkway and Giles Road.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval subject to the conditions identified by the Planning Commission.

BACKGROUND

A public hearing has been advertised and a resolution prepared for the City Council to consider an application submitted by Lylette Fields of Fields, Inc. on behalf of the property owner, Fantasy's Inc. for a conditional use permit to operate a bar and grill on Lot 2, Southport East Replat Three, located in the Fantasy's Food and Fuel complex at 7826 S. 123rd Plaza. The property is zoned C-3 Highway Commercial/Office Park District and is the site of the Fantasy's Food and Fuel development. A portion of one of the two buildings, Suites E and F, is being leased for a new business called *Island Bar and Grill*. The restaurant portion of the business is a permitted use within the C-3 district however taverns and cocktail lounges are a conditional use.

City Engineer John Kottmann and staff have reviewed the application for the conditional use permit and have the following comments:

1. The site plan for Fantasy's Food and Fuel shows 74 parking spaces to be divided among the convenience store (14 required spaces) and retail space (50 required spaces). The convenience store may also count spaces in front of the gas pumps as parking spaces.
2. To accommodate each tenant, seven parking spaces would be available per bay. Ideally, the proposed use should not exceed fourteen parking spaces in order to prevent overflow parking from affecting other businesses. However, the occupancy of the building is 104 people, so 22 parking spaces are required.
3. The applicant states that 3-4 employees will be the maximum number per working shift.

4. Both the Fire Chief and the Police Chief have reviewed the proposal and have no concerns at this time.
5. The City Engineer and staff recommend against having the beer garden, as this adds additional seating capacity which further adds to the problem of limited parking.
6. Staff is also recommending no other restaurants be allowed in the same building due to the parking requirements.

The Planning Commission held a public hearing on November 15, 2007, and recommended approval of the conditional use permit to City Council subject to the following conditions: no additional restaurants will be allowed; the applicant must demonstrate they can provide the necessary parking without negatively impacting the rest of the site; and no beer garden will be allowed.

\\Lvdcfp01\users\Administration\BRENDA\COUNCIL\07 Memos\CUP Island Bar & Grill.DOC

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A CONDITIONAL USE PERMIT FOR FANTASY'S INC. TO OPERATE A BAR AND GRILL ON LOT 2, SOUTHPORT EAST REPLAT THREE.

WHEREAS, Lylette Fields, on behalf of Fantasy's Inc. has applied for a conditional use permit for the purpose of operating a bar and grill on Lot 2, Southport East Replat Three, located at 7826 S. 123rd Plaza; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval subject to no additional restaurants will be allowed, the applicant must demonstrate they can provide the necessary parking without negatively impacting the rest of the site, and no beer garden will be allowed; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit for such purposes, subject to the following conditions:

1. Based on the occupancy of the building, a minimum of 22 parking spaces are required. Parking shall not overflow outside of the parking lot onto other properties.
2. No other restaurants will be permitted in the same building.
3. The beer garden shall not be permitted. All seating shall be inside the building.

NOW THEREFORE, BE IT RESOLVED, that the Conditional Use Permit presented at the December 4, 2007, City Council meeting for Fantasy's Inc. to operate a bar and grill on Lot 2, Southport East Replat Three be, and hereby is approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

CASE NUMBER:

FOR HEARING OF: December 4, 2007
Report Prepared on November 27, 2007

I. GENERAL INFORMATION

- A. APPLICANT:** Lylette Fields, Fields, Inc.
- B. PROPERTY OWNER:** Fantasy's Inc.
- C. LOCATION:** 7826 S. 123rd Plaza, Suites E & F.
- D. LEGAL DESCRIPTION:** Lot 2, Southport East Replat Three
- E. REQUESTED ACTION(S):** Approval of a Conditional Use Permit
- F. EXISTING ZONING AND LAND USE:**
C-3, Highway Commercial / Office Park District and Gateway Corridor District. The site has a gas station / convenience store and a coffee kiosk under construction. Additional commercial uses have been proposed.
- G. PURPOSE OF REQUEST:** The proposal is to construct a bar and grill inside of a newly constructed commercial flex building. Also, the sidewalk in front of the bays is proposed as an outside beer garden.
- H. SIZE OF SITE:** Approx. 2,700 square feet of the building is proposed for the bar and grill. The lot is approximately 1.9 acres.

II. BACKGROUND INFORMATION

- A. EXISTING CONDITION OF SITE:** Fantasy's Food and Fuel with additional commercial flex building under construction.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
 - 1. **North:** C-3, PayPal
 - 2. **East:** C-3, Vacant
 - 3. **South:** C-3, Pinnacle Bank
 - 4. **West:** C-3, Embassy Suites
- C. RELEVANT CASE HISTORY:** This lot was re-platted as a part of Southport East Replat 3
- D. APPLICABLE REGULATIONS:**
 - 1. Section 5.12, Zoning Ordinance, regarding C-3 Zoning District

2. Section 5.17, Zoning Ordinance, regarding Gateway Corridor Dist.
3. Section 6.05, Zoning Ordinance, CUP Standards for Approval
4. Southport Architectural and Site Design Guidelines

III. ANALYSIS

- A. **COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates this property for commercial uses in the gateway corridor.
- B. **OTHER PLANS:** Building plans have been submitted and construction is underway for the restaurant portion of the business. Fantasy's Food and Fuel had a Conditional Use Permit approved and architectural design and landscaping requirements were satisfied for all buildings on Lot 2, Southport East Replat Three.
- C. **TRAFFIC AND ACCESS:**
 1. Ingress / egress will be provided via South 123rd Plaza only.
 2. The applicant did not provide number of proposed parking spaces; however, the City Engineer has calculated that 21 parking spaces would be available for the proposed bar and grill. A request was made to the owners to provide a revised site plan to show how many spaces would be provided and what parking spaces would be reserved for the Island Bar and Grill.
 3. Pedestrian sidewalks and off-site access is not provided to this site. No other modes of transportation exist to this site at this time. The only sidewalks on-site are in front of the buildings' entrances. The bar and grill proposes to use 8' x 27' of their sidewalk as a beer garden.
- D. **UTILITIES:** All utilities are available to the site.

IV. REVIEW COMMENTS:

1. The site plan for Fantasy's Food and Fuel shows 74 parking spaces to be divided among the convenience store (14 required spaces) and retail space (50 required spaces). The convenience store may also count spaces in front of the gas pumps as parking spaces.
2. To accommodate each tenant, seven parking spaces would be available per bay. Ideally, the proposed use should not exceed fourteen parking spaces in order to prevent overflow parking from affecting other businesses. However, the occupancy of the building is 104 people, so 22 parking spaces are required.
3. The applicant states that 3-4 employees will be the maximum number per working shift.
4. Both the Fire Chief and the Police Chief have reviewed the proposal and have no concerns at this time.

5. The City Engineer and staff recommend against having the beer garden, as this adds additional seating capacity which further adds to the problem of limited parking.
6. Staff is also recommending no other restaurants be allowed in the same building due to the parking requirements.

V. PLANNING COMMISSION RECOMMENDATION:

The Planning Commission recommended approval of the Conditional Use Permit to allow a bar and grill in the C-3 zoning district with the following conditions:


1. The applicant shall demonstrate they can provide the necessary number of parking spaces for the bar and grill without negatively impacting the parking required for future tenants on this lot.
2. No additional restaurants will be allowed.
3. The beer garden shall not be permitted. All seating shall be inside the building.


VI. ATTACHMENTS TO REPORT:

1. Vicinity Map
2. City Engineer's Report
3. Draft Conditional Use Permit with Exhibits

VII. COPIES OF REPORT SENT TO:

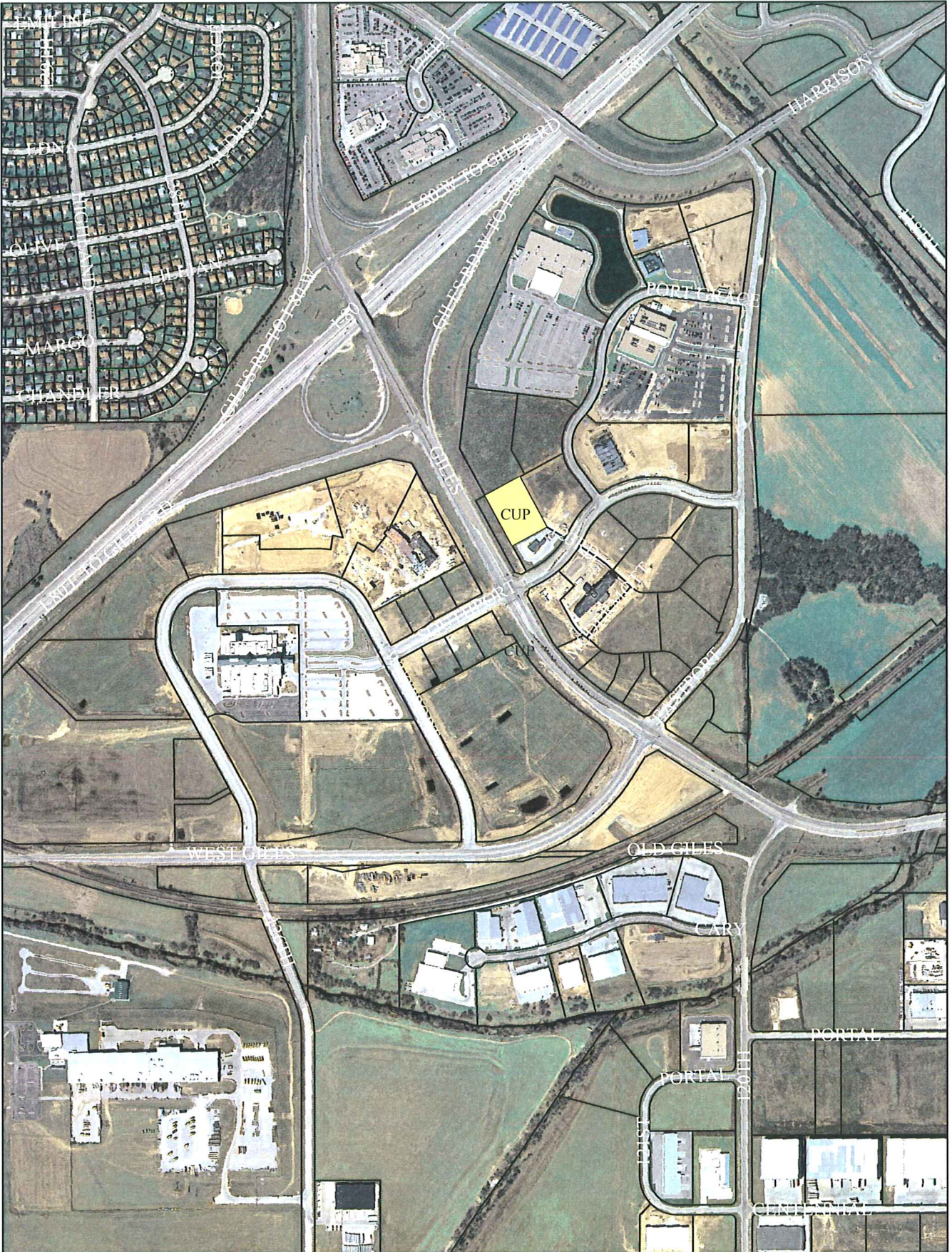
1. Lylette Fields, Applicant
2. Public Upon Request


Prepared by:

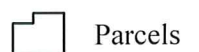

Community Development Director

11-27-07
Date

Vicinity Map



Legend





THOMPSON, DREESSEN & DORNER, INC.
Consulting Engineers & Land Surveyors

November 12, 2007

Mr. Marcus Baker
City Planner
City of La Vista
8116 Park View Boulevard
La Vista, NE 68128

ROBERT E. DREESSEN, P.E.
NELSON J. HYMANS, P.E.
JAMES D. WARNER, L.S.
CHARLES E. RIGGS, P.E.
KA "KIP" P. SQUIRE III, P.E., S.E.
JOHN M. KOTTMANN, P.E.
ARTHUR D. BECCARD, P.E.
JOSEPH G. KOSINOVSKY, P.E.
DOUGLAS S. DREESSEN, P.E.
DEAN A. JAEGER, P.E.
RICHARD M. BROYLES, L.S.
DAVID H. NEEF, L.S.
RONALD M. KOENIG, L.S.
CHRIS E. DÖRNER, L.S.

TIMOTHY T. PAPSTEIN, P.E.
MICHAEL J. SMITH, L.S.
TROY J. NISSEN, P.E., S.E.
DOUGLAS E. KELLNER, P.E.
KEVIN L. TRUE, L.S.
GARY A. NORTON, P.E.
BRIAN L. LODES, P.E.
KURTIS L. ROHN, P.E.
JEFFREY L. THOMPSON, P.E.
DAREN A. KONDA, P.E.
MICHAEL T. CANIGLIA, L.S.
JEREMY T. STEENHOEK, P.E.
JOSHUA J. STORM, P.E.

RE: Rezoning & Conditional Use Permit Reviews 2007
Lot 2, Southport East Replat Three
Proposed Conditional Use Permit for Cocktail Lounge
Review of Updated Site Plan
TD² File No. 171-345.12

Marcus:

I have reviewed the updated Site Plan that you provided to me via e-mail on November 8, 2007 for the total development on Lot 2, Southport East Replat Three. The applicant has indicated that the Subway sandwich shop shown on the site plan is no longer a tenant and is to be disregarded. The site plan indicates that there are 89 parking stalls on the site. However, this figure includes counting the 16 cars at the fuel islands as parking stalls. A problem with this approach is that not all customers of the Fantasy's facility will stop at the fuel islands. There will be a certain amount of customers that stop to buy items other than fuel. The basis on which to make this estimation is not addressed by the parking regulations and therefore becomes a matter of judgment. From having visited Fantasy's stores at various locations, it is my observation that there are often times when there are 6 to 8 cars parked in front of the store and not at fuel pumps.

In my opinion the parking requirements are as follows:

USE

STALLS REQUIRED

Fantasy's C-Store non-fuel sales
Fantasy's Fuel Islands
General Retail Space

7 (Based on observations)
16
29.4
(Based on 5,885 sf @ 1/200 sf)

Coffee Kiosk

1.3
(Based on 192 sf @ 1/150 sf)

Taco Del Mar

13.6
(Based on 40% of 34 person capacity)

Total

67 Stalls w/o Island Bar & Grill

The total number of parking stalls on the site (including the fuel island spaces) is 89. This leaves 22 stalls for the proposed Island Bar & Grill. The applicant has indicated that there may be 10 to 12 employees during the peak shift. We think this may be overstated. The applicant needs to identify the proposed occupant capacity of the facility so that we can make a determination as to the adequacy of 22 parking stalls for this business.

Mr. Marcus Baker
November 12, 2007
Page 2

The conversion of any other bays in the facility to restaurant type uses will further increase the parking demand and it may be appropriate to include a limitation in this use permit, if approved, to specify no other restaurant type uses beyond those included in this plan.

Submitted by,

THOMPSON, DREESSEN & DORNER, INC.

A handwritten signature in black ink, appearing to read "John M. Kottmann". The signature is written in a cursive, flowing style.

John M. Kottmann, P.E.

JMK/jlf

cc: File

City of La Vista Conditional Use Permit

Conditional Use Permit for a Tavern and Cocktail Lounge

This Conditional Use Permit issued this 4th day of December, 2007, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Fantasy's, Inc. ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate a tavern and cocktail lounge upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 2, Southport East Replat 3 located in the NE ¼ Section 18 and the NW ¼ Section 17, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating a tavern and cocktail lounge; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on Exhibit "A" hereto for a tavern and cocktail lounge, said use hereinafter being referred to as "Permitted Use or Use".

Conditions of Permit

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
 - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives shall be provided to the City and attached to the permit as Exhibit "A". Specifically, based on the occupancy of the building, a minimum of 22 parking spaces shall be designated for the bar and grill. Parking for the use shall not overflow outside of the parking lot onto other properties.
 - b. Hours of operation for the use will be from 7 a.m. – 1:00 a.m. seven days a week.
 - c. There will be a maximum of four (4) employees working at any given time at the tavern.
 - d. The use will be comprised of 2,666 sq. feet of building space; all seating for the permitted use shall be inside the building.
 - e. Adequate parking (22 parking stalls) shall be provided on-site to accommodate the maximum number of patrons and employees (104 occupants) in attendance at any one time between the hours of operation.
 - f. No additional restaurants, taverns, or cocktail lounges will be permitted within the same building as

- the tenants of the permitted use.
- g. The premises shall be developed and maintained in accordance with the site plan (Exhibit "A") as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
 - h. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City.
 - i. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete.
 - j. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, ADA and FAA.
 - k. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
 - l. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
 - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval, if the violation continues after written notice from the City to Owner and a reasonable time was given for Owner to cure such violation.
 4. In respect to the Gateway Corridor Overlay District and Southport East Design Guidelines:
(All design guidelines have been followed in original Conditional Use Permit for Fantasy Food and Fuel)
 5. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
 - a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
 - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.
 - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
 6. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
 - a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
 - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
 - c. Owner's construction or placement of a storage tank, structure or other improvement on the premises

not specified in this permit.

- d. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
7. If the permitted use is not commenced within one (1) year from December 4, 2007, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
8. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
9. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Miscellaneous

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

Contact Name and Address: Mike Schramek
Fantasy's, Inc.
8930 So. 137th Circle
Omaha, NE 68138
(402) 891-9455

Effective Date:

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By _____
Douglas Kindig, Mayor

Attest:

Pamela A Buethe, CMC
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

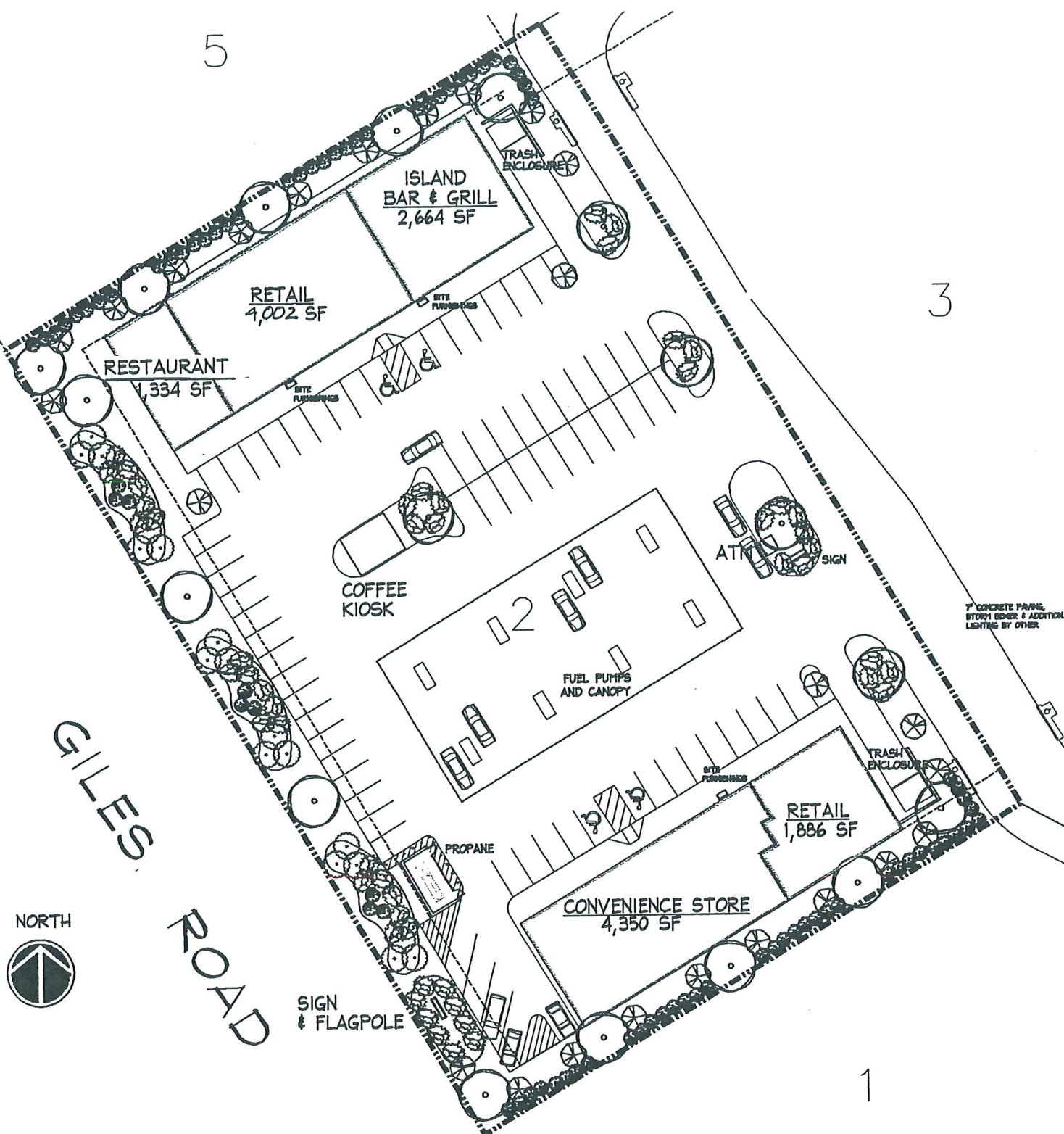
By: _____

Title: _____

Date: _____

5

3



C-STORE
RETAIL
RESTAURANT
RESTAURANT (Island Bar & Grill)

4,350 SF/300
5,884 SF/200
SEATING 34 x 40%
SEATING 52 x 40%

15 STALLS
30 STALLS
14 STALLS
21 STALLS

80 STALLS REQUIRED/89 STALLS PROVIDED
(NOTE: 16 STALLS @ GAS ISLANDS)

SOUTHPORT SQUARE SITE PLAN

SCALE: 1" = 50'-0"

LOT 2, REPLAT III
SOUTHPORT EAST SUBDIVISION
LA VISTA, NEBRASKA

11/8/2007 REV.

EXHIBIT "A"

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 4, 2007 AGENDA**

Subject:	Type:	Submitted By:
TRAIL & PARK IMPROVEMENTS — PORTAL RIDGE (108 TH & GILES RD.)	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A public hearing has been advertised and a resolution has been prepared to approve the plans, specifications and contract documents for the 2007 Trail Improvement Plans in Portal Ridge (SID No. 276), generally located SE of 108th & Giles Road.

FISCAL IMPACT

The Developer will pay the City an Administrative Fee in an amount equal to two percent of the actual construction costs.

RECOMMENDATION

Approval.

BACKGROUND

On June 6, 2006, the City Council approved the subdivision agreement and final plat for Portal Ridge (SID No. 276), generally located SE of 108th & Giles Road. The conceptual park improvement plans received favorable recommendation from the Park and Recreation Advisory Board and Planning Commission and were provided to the Mayor and Council as part of the final plat and subdivision agreement approval process. The City Engineer and staff have reviewed the park improvement plans, specifications and contract documents as submitted by the Developer and recommend approval subject to the following:

1. Shop drawings shall be submitted for the proposed pedestrian bridge for City review prior to the contractor ordering the materials.
2. Administrative fees must be paid.

The plans include the following: trail system, pedestrian bridge, four park benches, seeding, landscaping and retaining walls, and the installation of handicap curb ramps throughout the subdivision.

The City Engineer's review also noted that Outlots A through F were conveyed to the SID however Outlots D and F are to be maintained by the Homeowner's Association per the subdivision agreement. The attached resolution also requires the conveyance of Outlots D and F to the Homeowner's Association.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING APPROVAL OF THE PLANS, SPECIFICATIONS AND CONSTRUCTION DOCUMENTS FOR THE PORTAL RIDGE 2007 TRAIL IMPROVEMENT PLANS AND AUTHORIZING EXECUTION OF CONTRACTS AND CONSTRUCTION DOCUMENTS.

WHEREAS, Sanitary and Improvement District No. 276 of Sarpy County ("District"), Portal Ridge and the City of La Vista ("City") entered into a Subdivision Agreement concerning the development of lands locally known as Portal Ridge within the zoning jurisdiction of the City ("Subdivision Agreement") on October 11, 2006; and

WHEREAS, the District has presented to City for approval plans, specifications and construction documents to construct certain improvements; and

WHEREAS, said plans, specifications and construction documents were prepared by E & A Consulting Group, Inc., which firm of engineers has certified to the City that said plans and specifications are in accordance with the Subdivision Agreement and all of the applicable ordinances, policies and regulations of the City and that improvements constructed pursuant to such plans will be adequate for their intended purpose; and

WHEREAS, Thompson, Dreessen & Dörner, Inc., as City Engineer, and city staff have been presented the plans for review and recommend approval subject to resolution of the following items:

1. Shop drawings shall be submitted for the proposed pedestrian bridge for City review prior to the contractor ordering the materials.
2. Administrative fees must be paid.
3. The conveyance of Outlots D and F by the SID as required by the City Administrator in accordance with the Subdivision Agreement and in consultation with the City Attorney.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, hereby approves the plans, specifications and construction documents for Portal Ridge 2007 Trail Improvement Plans, copies of which have been filed with the City Clerk, subject to resolution of the items identified by the City Engineer.

BE IT FURTHER RESOLVED, that the City Council does hereby approve the execution of a contract by the District for said improvements with CYC Construction, Inc., Omaha, Nebraska in the amount of \$338,878.60.

BE IT FURTHER RESOLVED, that the approval herein given is conditioned upon District, prior to its granting authorization of commencement of construction, shall deliver to the City Administrator the following, as required by the Subdivision Agreement:

1. District's warrant in the amount of \$6,777.57 in payment of applicable administrative fee.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER, 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

\\Lvdcp01\users\Administration\BRENDA\COUNCIL\07 Resolutions\Portal Ridge Park Improvements.DOC

SANITARY AND IMPROVEMENT DISTRICT NO. 276
SARPY COUNTY, NEBRASKA

CONTRACT DOCUMENTS
FOR
2007 TRAIL IMPROVEMENTS
PORTAL RIDGE

PREPARED BY
E & A CONSULTING GROUP, INC
330 N. 117TH STREET
OMAHA, NE 68154
402 895-4700

AUGUST 2007
PROJECT NO. 2005 054.01

PROPOSAL
SID 276, SARPY COUNTY
2007 TRAIL IMPROVEMENTS

DATE: AUGUST 29, 2007 @ 2:00 P.M. PER ADDENDUM 1

TO: Chairman and Board of Trustees
Sanitary and Improvement District No. 276
Sarpy County, Nebraska

The undersigned, having carefully examined the plans, specifications and all addenda thereto and other contract documents prepared by E&A CONSULTING GROUP, 330 N. 117TH STREET, OMAHA NE, for the construction of 2007 TRAIL IMPROVEMENT in Sanitary and Improvement District 276, Sarpy County, Nebraska, and having carefully examined the site of work and become familiar with all local conditions, including labor affecting the cost thereof, and having familiarized himself with federal, state and local laws, ordinances, rules and regulations affecting performance of the work, do hereby propose to furnish all labor, superintendence, mechanics, tools, materials, equipment and all utilities and transportation services necessary to perform and complete said work, and work incidental thereto, in a workmanlike manner, as described in said plans, specifications and other contract documents including addenda numbers 1, 2 issued thereto, for the Total Bid Sum based upon the Unit Prices as listed on the accompanying "Schedule of Prices".

The undersigned further certifies that he has personally inspected the actual location of the work, together with the local sources of supply, and that he understands the conditions under which the work is to be performed or that if he has not so inspected the site and conditions of the work, he waives all right to plead any misunderstanding regarding the work required or conditions peculiar to the same.

The undersigned understands that the quantities listed in the accompanying "Schedule of Prices" are subject to increase or decrease, and hereby proposes to perform all quantities of work, as increased or decreased, in accordance with the plans, the provisions of specifications and all addenda thereto, and the provisions of other contract documents at the Unit Price Bid.

The undersigned hereby agrees to commence work within Ten (10) working days after written Notice to Proceed and further agrees to complete the work in its entirety within a period of **60 Working Days** after date of said Notice to Proceed, or after the start of construction, whichever occurs first. The undersigned shall forfeit liquidated damages as set forth in the Special Provisions in the event of the over-run of time. Liquidated damages will be assessed not as a penalty but as a predetermined and agreed liquidated damages.

The owner reserves the right to eliminate in part or whole, one or more items of work from this proposal as may be required to bring the cost of the work within the limits of available funds or for any other reason without affecting the Unit Prices as bid for any specific item.

**SCHEDULE OF PRICES
SID 276, SARPY COUNTY
2007 TRAIL IMPROVEMENTS**

NO	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1.	8'X6" CONCRETE SIDEWALK	39,610	SF	\$2.51	\$99,421.00
2	4'X8" CONCRETE SIDEWALK	11,290	SF	\$2.73	\$30,821.70
3	SITE GRADING	2,500	CY	\$8.22	\$20,550.00
4	6" DOUBLE CONCRETE RAMP (13)	1,870	SF	\$3.28	\$6,133.60
5	6" SINGLE CONCRETE RAMP(36)	770	SF	\$9.45	\$7,276.50
6	CURB RAMP INSERT PLATES (2'X2")	124	EA	\$226.00	\$28,024.00
7	GRIND CURB	880	LF	\$6.21	\$5,464.80
8	CONSTRUCT PEDESTRIAN BRIDGE W/ ABUTMENTS	1	LS	\$83,658.00	\$83,658.00
9	REMOVABLE BOLLARDS AT BRIDGE	6	EA	\$555.00	\$3,330.00
10	SEEDING TURF FESCUE	6	AC	\$1,339.00	\$8,034.00
11	RETAINING WALLS	390	SF	\$17.04	\$6,645.60
12	6' BLACK VINYL CHAIN LINK FENCE	170	LF	\$24.93	\$4,180.30
13	PARK BENCH WITH CONCRETE BASE	4	EA	\$975.00	\$3,900.00
14	SHADE TREES	20	EA	\$200.00	\$4,000.00
15	CROWN VETCH WITH MATTING	7,000	SF	\$0.21	\$1,470.00
16	4' TRAIL (BY OTHERS)	1,640	SF	\$3.00	\$4,920.00
17	AREA LIGHT (COMPLETE)	1	LS	\$4,829.00	\$4,829.00
18	REMOVE 6"-10" TREES	30	EA	\$280.00	\$8,400.00
19	ADJUST MANHOLE TO GRADE	2	EA	\$230.00	\$460.00
20	CONSTRUCT SILT FENCE	860	LF	\$2.05	\$1,763.00
21	REMOVE SILT FENCE	100	LF	\$0.95	\$95.00
22	REMOVE MATERIAL FROM CHANNEL	300	CY	\$18.34	\$5,502.00

TOTAL BASE BID (ITEMS 1-22, INCLUSIVE)

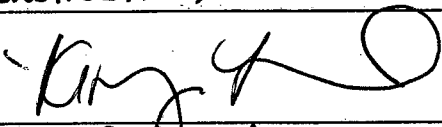
\$338,878.60

The undersigned agrees to furnish the required bond or bonds and insurance certificates and to execute the contract within ten (10) days of written Notice of Award. Accompanying this proposal, as a guarantee that the undersigned will execute the contract and furnish the required bond or bonds and insurance certificates in accordance with the terms and requirements of the contract documents, is a certified check or bidding bond in the amount of SIXTEEN THOUSAND, NINE HUNDRED AND TWENTY FOUR 00/100 DOLLARS... (\$16,924.00).

If awarded the contract, our surety will be North American Specialty
(Name of Surety)
Insurance Co. of Itasca, IL
(address)

If awarded the contract, our anticipated start date would be October 1, 2007

Respectfully submitted,

CYC Construction, Inc.
Contractor
By  President
Name Kimberly Remyneid Title
13425 F Street
Street Address
Omaha NE 68137
City State ZIP

CONTRACT

THIS CONTRACT AND AGREEMENT made and entered into in quadruplicate this ____ day of _____ 2007, by and between the Board of Trustees of Sanitary and Improvement District No. 276; Sarpy County, Nebraska; party of the first part and hereinafter called the District.

AND CYC Construction, Inc.; party of the second part, and hereinafter called the Contractor:

WHEREAS, the Contractor did on the 29TH day of August, submit a proposal to construct 2007 TRAIL IMPROVEMENTS within the District and to perform such other work as may be incidental thereto, all in strict accord with the plans and specifications prepared by E & A CONSULTING GROUP, INC. Consulting Engineers, Omaha, Nebraska, which plans and specifications are all on file in the office of said E & A Consulting Group.

NOW THEREFORE, in consideration of the following mutual agreements and covenants, it is understood by and between the parties hereto that:

- (a) The above referred to plans and specifications are expressly made a part hereof the same as though fully set forth herein.
- (b) The Resolution of the District ordering or authorizing the construction of the aforesaid work, a Notice inviting Contractors, the Instructions to Bidders, the Proposal of the Contractor, the Performance, Payment and Guarantee Bond, all Addenda and any other documents referred to herein are a part of this Contract by reference thereto, the same as though each had been fully set out and attached thereto, except that to the extent this Agreement is inconsistent therewith, if at all, this Agreement shall govern.
- (c) The District agrees to pay and the Contractor agrees to accept in full consideration of the performance of the Contractor's obligations hereunder, the unit and lump sum prices as set forth in the aforesaid proposal of the Contractor, said payment to be made by the District by issuance of its warrants, payable to Contractor.
- (d) The Contractor agrees to furnish all tools, labor, mechanics for labor, equipment and materials to perform said work in accordance with the aforesaid plans, specifications and documents.
- (e) All provisions of the aforesaid plans, specifications and documents shall be strictly complied with by the Contractor the same as if rewritten herein, and no substitution or change in said plans, specifications and documents shall be made except on written consent or written direction (the form of either of which shall be a written "Change Order") of the engineer and any such substitution or change shall in no manner be construed to release either party from any specified or implied obligations of the aforesaid plans, specifications and documents except as specifically provided for in the Change Order.

(f) This Contract is entered into subject to the following conditions:

f-1 Contractor shall conform with all laws, rules and regulations applicable to this Contract and construction shall be in accordance therewith.

f-2 Contractor shall furnish Performance, Payment and Guarantee Bond in an amount at least equal to one hundred percent of the contract price, and shall maintain during the life of the contract, Fire, Workman's Compensation, Public Liability and Property Damage Insurance, all as required in the aforesaid specifications.

f-3 The Contractor shall indemnify and save harmless the District, its officers, employees and agents from all claims, suits or actions of every kind and character made upon or brought against the said District, its officers, employees and agents, for or on account of any injuries or damages received or sustained by any party or parties by or from the acts of the said Contractor or its servants, agents and subcontractors, in doing the work herein contracted for, or by or in consequence of any negligence in guarding the same or any improper material used in its construction, or by or on account of any act or omission of said Contractor or its servants, agents and subcontractors; and also from all claims of damage for infringement of any patent in fulfilling this Contract. This indemnity Shall include attorney's fees and costs and all expenses incurred in the defense of any suit.

f-4 Contractor shall not, in the performance of this Contract, discriminate or permit discrimination against any person because of race, political or religious opinions or affiliations.

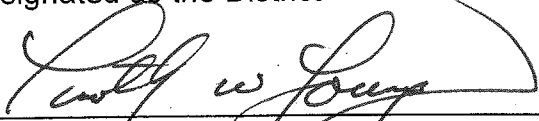
f-5 Final five percent (5%) of amount for this Contract shall not be paid to Contractor until the Contractor has furnished the District with a certificate from the Commissioner of Labor of the State of Nebraska, as required by Section 48-4317, R.R.S. Supp. 1988, showing that unemployment contributions and interest due under the Nebraska Law under this Contract have been paid by the Contractor or its subcontractors.

(g) Payment shall be made by the District to the Contractor by issuance of warrants of the District payable to Contractor, it being specifically understood that it shall be the responsibility of Contractor to convert such warrants to cash on such terms as may be satisfactory to Contractor. District shall not be deemed to be in default under this contract by reason of late issuance of warrants until it shall first have received written notice from Contractor of such late issuance of warrants and shall have failed to issue such warrants for a period of fifteen (15) days after receipt of such written notice.

IN WITNESS WHEREOF, we, the contracting parties, by our respective duly authorized agents,
hereto affix our signatures and seals at Sarpy County, Nebraska, this 7th day of
Sept 2007.

SANITARY AND IMPROVEMENT DISTRICT 276
OF SARPY COUNTY, NEBRASKA,
Party of the First Part and also
designated as the District

ATTEST



Chairman, Board of Trustees



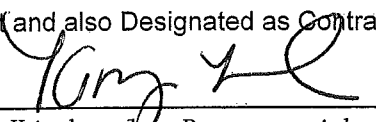
Clerk of SID 276

CYC Construction, Inc.
Contractor

13425 F Street
Street

Omaha, NE 68137
City State Zip

Party of the Second Part and also Designated as Contractor.

By 

Title Kimberly Rimmereid, President

(Corporate Resolution of Contractor authorizing Execution attached).

CERTIFICATE
(L.B. 126, 1963)

The undersigned hereby certifies that all equipment, EXCEPT that equipment acquired since the assessment date, to be used by undersigned in the performance of the work covered by the Contract between the undersigned and Sanitary and Improvement District 276, Sarpy County, Nebraska, pertaining to 2007 TRAIL IMPROVEMENTS, has been assessed for taxation for the current year in _____ County, Nebraska.

CYC Construction
Contractor

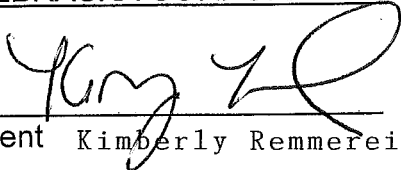
IF A PARTNERSHIP

By _____
Partner

Partner

Partner

IF A NEBRASKA CORPORATION

By 
President Kimberly Remmereid

Secretary

AFFIX CORPORATE SEAL

STATE OF NEBRASKA)
COUNTY OF)

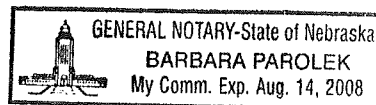
Kimberly Remmereid being first duly sworn on oath,
deposes and says that they have read the foregoing Certificate, know its contents, and the same are true.

SUBSCRIBED and sworn to before me this 25 day of Sept, 2007.

Barbara Parolek
Notary Public

(Seal)

LB-126 FORM



PERFORMANCE, PAYMENT AND GUARANTEE BOND

BY THESE PRESENT: That we CYC Construction, Inc. hereinafter called PRINCIPAL, and North American Specialty Insurance Company a Corporate Surety Company authorized to do business in the State of Nebraska hereinafter called SURETY are held and firmly bound unto Sanitary and Improvement District NO. 276, Sarpy County, Nebraska, hereinafter called OWNER, in the penal sum of **See Below Dollars (\$338,878.60)

lawful money of the United States of America, for the payment of which sum well and truly to be made the PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, legal representatives, successors and assigns jointly and severally by these present.

WHEREAS the PRINCIPAL is about to enter or has entered into a written contract with the OWNER for the construction by the PRINCIPAL of 2007 TRAIL IMPROVEMENTS, PORTAL RIDGE, in accordance with the plans and specifications prepared by E & A CONSULTING GROUP; Consulting Engineers, Omaha, Nebraska, which contract hereby defined to include all contract documents is made a part hereof by reference thereto the same as though fully set forth herein.

NOW, THEREFORE, the conditions of this obligation are such that:

FIRST: If the PRINCIPAL shall faithfully perform the contract on his or its part, shall satisfy all claims and demands incurred for the same, shall fully indemnify and save harmless the OWNER from all costs and damage which said OWNER may suffer by reason of failure to do so, and shall fully reimburse and repay said OWNER all outlay and expense which said OWNER may incur in making good any such default; and,

SECOND: The PRINCIPAL shall indemnify and save harmless the OWNER, its officers, employees and agents from all claims, suits or actions of every kind and character made upon or brought against the said OWNER and its officers, employees and agents, for or on account of any injuries or damages received or sustained by any party or parties by or from the acts or omissions of the said PRINCIPAL or his or its servants, agents and subcontractors, in performing under said Contract, or by or in consequence of any negligence in guarding the same or any improper material used in its construction or by or on account of any act or omission or said PRINCIPAL or his or its servants, agents and subcontractors and also from all claims of damage for infringement of any patent in fulfilling said contract; and also from all expenses incurred in defense of any suit including attorney's fees and costs; and

THIRD: The PRINCIPAL and SURETY on this Bond hereby agree to pay all persons, firms or corporations having contracts directly with the PRINCIPAL or with subcontractors all just claims due them for the payment of all laborers and mechanics for labor that shall be performed, for the payment of all materials, tools, repairs, provisions, utilities, fuels, lubricants, equipment furnished and all other supplies or materials actually used or rented by the PRINCIPAL or by the subcontractors in the performance of the contract including all insurance premiums on insurance required by the Contract, on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the OWNER may retain until completion of the improvement as provided by law; and,

FOURTH: PRINCIPAL and SURETY are jointly and severally liable under the provisions hereof and action against either or both may proceed without prior action against the other, and both may be joined in one action.

****Three Hundred Thirty-eight Thousand Eight Hundred Seventy-eight and 60/100 Dollars**

FIFTH: The PRINCIPAL shall guarantee the work constructed for the OWNER under said Contact as hereinafter more specifically set forth for the full number of years specified as set forth below. The term of guarantee of the respective projects shall be no less than the following:

- a. Paving Projects (including pavement repair).....2 years
- b. Utility Projects (all sewer & water construction).....2 years
- c. Lighting and Traffic Signal Control Projects.....1 year
- d. Grading Projects.....1 year
- e. Sidewalk Projects.....2 years
- f. Park Improvements.....2 years
- g. Other Projects Not Listed Above.....1 year

The PRINCIPAL hereby binds himself and his heirs and assigns for the entire expense of the guarantee and for all repairs or reconstruction which may, from any imperfection in the said work or material, become necessary within the term of guarantee. The PRINCIPAL further agrees to correct and repair promptly during the term of guarantee all failures of whatsoever description and settlements and irregularities of trenches, sidewalks, paving, other surfacing, sewers, drains or other structures caused by any imperfection in his workmanship or material and shall deliver the work in all respects in good condition at the end of that time.

If at any time within the term of guarantee after the completion and acceptance of the work contracted for, the work shall, in the judgment of the Engineer, require such repairs or reconstruction as above set out, he shall notify the PRINCIPAL by certified mail and should the PRINCIPAL refuse or neglect to begin to make such repairs within ten (10) days from the date of the service of such notice, then the OWNER shall have the right to cause such repairs or reconstruction to be made in such manner as he shall deem best, and the cost thereof shall be paid by the PRINCIPAL or his SURETIES.

Then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Any SURETY on this bond shall be deemed and held, any contract to the contrary notwithstanding to consent without notice:

1. To any extension of time to the PRINCIPAL in which to perform the contract.
2. To any such change in the plans, specifications or contract, when such change does not involve an increase of more than twenty percent (20%) of the total contract price, and shall then be released only as to such excess increase.
3. That no provision of this bond or of any other contract shall be valid which limits to less than five years from time of acceptance of the work the right to sue on this bond for defects in workmanship or material not discovered or known to the obligee at the time such work was accepted.

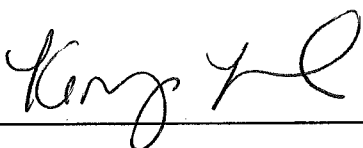
SIGNED AND SEALED THIS 17th DAY OF September, 2007

IN PRESENCE OF:

Kimberly Remmereid
Name *

13425 F Street
Address

Omaha, NE 68137
City State Zip

By 


CYC Construction, Inc.
PRINCIPAL

13425 F Street
Address

Omaha, NE 68137
City State Zip

Title President
(Attach Corporate Resolution of Principal
Authorizing Execution)

COUNTERSIGNED:



Resident Agent * Maury J. Spieker

The Harry A. Koch Co.
Company Name

11949 Q Street
Address

Omaha, NE 68137
City State Zip

North American Specialty Insurance Company
Surety

By 
Attorney-in-Fact * Maury J. Spieker

11949 Q Street
Address

Omaha, NE 68137
City State Zip

*Instruction: Type names of person under signature of each

Official Nebraska Government Website

[Home](#) » Corporation and Business Entity Searches
Tue Sep 25 14:05:21 2007

For Letters of Good Standing (\$6.50), Certificates of Good Standing (\$10.00), and/or images (\$0.45 per page) of documents filed with the Secretary of State please click the corresponding service below:

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Entity Name

CYC CONSTRUCTION, INC.

SOS Account Number

0028568

Principal Office Address13425 F ST
OMAHA, NE**Registered Agent and Office Address**MICHAEL M. HUPP
SUITE 800
1125 S. 103RD ST.
OMAHA, NE 681240000

Nature of Business

CONCRETE CONSTRUCTION

Entity Type

Domestic Corp

Date Filed

Jul 24 1969

Account Status

Active

Corporation Position

Name

Address

President

KIMBERLY A REMMEREID

13425 F STREET
OMAHA, NE 68137**Secretary**

TODD REMMEREID

13425 F STREET
OMAHA, NE 68137**Treasurer**

KIMBERLY A REMMEREID

13425 F STREET
OMAHA, NE 68137**Director**

KIMBERLY A REMMEREID

13425 F STREET
OMAHA, NE 68137**Director**

TODD REMMEREID

13425 F STREET
OMAHA, NE 68137**Pay Services:**

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If a check box is visible, the document may be retrieved online, otherwise you must contact the Secretary of State's office to obtain a copy of the document.

	Code	Trans	Date	Price
<input type="checkbox"/>	AP	Articles Perpetual	Jul 24 1969	\$2.25 = 5 page(s) @ \$0.45 per page
	NP	Non Payment of Taxes	Aug 02 1973	

SURETY RIDER

To be attached to and form a part of

Bond No. **2082236**

Type of

Bond: Performance and Payment

dated

effective 09/17/2007
(MONTH-DAY-YEAR)

executed by CYC Construction, Inc.
(PRINCIPAL)

,as Principal,

and by North American Specialty Insurance Company

,as Surety,

in favor of Sanitary and Improvement District No. 276, Sarpy County, NE
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing

add dual obligee rider

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider

is effective 09/17/2007
(MONTH-DAY-YEAR)

Signed and Sealed 11/28/2007

(MONTH-DAY-YEAR)

CYC Construction, Inc.
(PRINCIPAL)

By:

(PRINCIPAL) Kimberly Remmereid, President

North American Specialty Insurance Company

(SURETY)

By:

(ATTORNEY-IN-FACT) Maury J. Spieker

NAS SURETY GROUP

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Manchester, New Hampshire, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of Arizona and having its principal office in the City of Itasca, Illinois, each does hereby make, constitute and appoint:

DAVID A. DOMINIANI, JOAN LEU, MAURA P. KELLY

SHARON K. MURRAY and MAURY J. SPIEKER

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

TWENTY-FIVE MILLION (\$25,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 24th of March, 2000:

"RESOLVED, that any two of the President, any Executive Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By

Steven P. Anderson, President & Chief Executive Officer of Washington International Insurance Company &
Vice President of North American Specialty Insurance Company



By

David M. Layman, Vice President of Washington International Insurance Company &
Vice President of North American Specialty Insurance Company

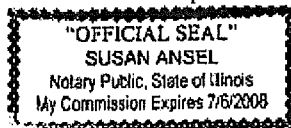
IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 25th day of May, 2007.

North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Du Page

ss:

On this 25th day of May, 2007, before me, a Notary Public personally appeared Steven P. Anderson, President and CEO of Washington International Insurance Company and Vice President of North American Specialty Insurance Company and David M. Layman, Vice President of Washington International Insurance Company and Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



Susan Ansel, Notary Public

I, James A. Carpenter, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 25th day of May, 2007.

James A. Carpenter, Vice President & Assistant Secretary of Washington International Insurance Company &
North American Specialty Insurance Company

DUAL OBLIGEE RIDER

To be attached to and form a part of contract bond number 2082236 issued by the North American
Specialty Insurance Company

on behalf of CYC Construction, Inc.

in the amount of Three Hundred Thirty Eight Thousand Eight Hundred Seventy Eight and 60/100 -----
----- Dollars (\$ 338,878.60)

and dated September 17 2007 in favor of Sanitary and Improvement District No. 276, Sarpy County, NE

in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration receipt of which is hereby acknowledged, the
Undersigned hereby agree as follows:


1. The City of LaVista

is hereby added to said bond as an additional obligee.

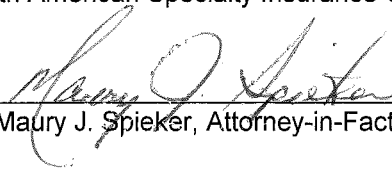
2. The Surety shall not be liable under this bond to the Obligee, or either of them unless the said Obligees, or either of them, shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.
3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.
4. Aggregate liability of Surety hereunder to Obligees is limited to the penal sum above stated and Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against any other party liable to the payee on the discharged obligation.

Signed, Sealed and Dated this 28th day of November, 2007.

CYC Construction, Inc.

By 
Kimberly Remmeroid, President

North American Specialty Insurance Company

By 
Maury J. Spieker, Attorney-in-Fact

By _____

By _____

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
11/08/07

PRODUCER

The Harry A. Koch Co.
P.O. Box 45279
Omaha, NE 68145-0279
402 861-7000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

CYC Construction, Inc.
Remcon General Contractors Inc.
13425 'F' St
Omaha, NE 68137

INSURERS AFFORDING COVERAGE

NAIC

INSURER A: Charter Oak Fire Insurance Co.	25615
INSURER B: Travelers Indemnity Company	25658
INSURER C: The Phoenix Insurance Co	25623
INSURER D: Travelers Property Casual	25674
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	DTCO6237L363COF07	09/01/07	09/01/08	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	DT8106237L363COF07	09/01/07	09/01/08	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	CUP6237L363IND07	09/01/07	09/01/08	EACH OCCURRENCE \$8,000,000 AGGREGATE \$8,000,000 \$ \$ \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	DTNUB6237L36307	09/01/07	09/01/08	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000
D		OTHER Installation Floater	QT6602874C361TIL	09/01/07	09/01/08	\$500,000 per Location \$500,000 @ Temp Loc \$500,000 in Transit

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Project: 2007 Trail Improvements - Protal Ridge, SID 276
Sanitary and Improvement District No. 276, City of LaVista and E & A Consulting Group are additional insureds for General Liability when required by written contract.

CERTIFICATE HOLDER

Sanitary and Improvement
District No. 276
c/o E & A Consulting Group
330 N 117th Street
Omaha, NE 68154

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Scott F. Folsch

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

				CYC CONSTRUCTION 13425 F STREET OMAHA, NE 68137		DOSTALS CONSTRUCTION 13680 S. 220TH STREET GRETNA, NE 68028		NAVARRO ENTERPRISES 2914 R STREET OMAHA, NE 68107		TAB CONSTRUCTION 4153 S. 67TH OMAHA, NE 68117	
Bid Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	8'X6" CONCRETE SIDEWALK	39,610	SF	2.51	99,421.10	3.10	122,791.00	2.95	116,849.50	2.72	107,739.20
2	4'X6" CONCRETE SIDEWALK	11,290	SF	2.73	30,821.70	3.30	37,257.00*	3.15	35,563.50	2.66	30,031.40
3	SITE GRADING	2,500	CY	8.22	20,550.00	6.40	16,000.00	5.00	12,500.00	14.36	35,900.00
4	6" DOUBLE CONCRETE RAMP (13)	1,870	SF	3.28	6,133.60	3.50	6,545.00	7.00	13,090.00	4.85	9,069.50
5	6" SINGLE CONCRETE RAMP(36)	770	SF	9.45	7,276.50	4.00	3,080.00	5.00	3,850.00	12.44	9,578.80
6	CURB RAMP INSERT PLATES (2'X2")	124	EA	226.00	28,024.00	100.00	12,400.00	95.00	11,780.00	100.00	12,400.00
7	GRIND CURB	880	LF	6.21	5,464.80	7.70	6,776.00	8.00	7,040.00	7.50	6,600.00
8	CONSTRUCT PEDESTRIAN BRIDGE W/ ABUTMENTS	1	LS	83,658.00	83,658.00	96,000.00	96,000.00	112,800.00	112,800.00	114,919.00	114,919.00
9	REMOVABLE BOLLARDS AT BRIDGE	6	EA	555.00	3,330.00	400.00	2,400.00	671.00	4,026.00	145.00	870.00
10	SEEDING TURF FESCUE	6	AC	1,339.00	8,034.00	2,000.00	12,000.00	1,800.00	10,800.00	1,400.00	8,400.00
11	RETAINING WALLS	390	SF	17.04	6,645.60	20.00	7,800.00	22.00	8,580.00	26.73	10,424.70
12	6' BLACK VINYL CHAIN LINK FENCE	170	LF	24.59	4,180.30	25.00	4,250.00	13.00	2,210.00	25.00	4,250.00
13	PARK BENCH WITH CONCRETE BASE	4	EA	975.00	3,900.00	750.00	3,000.00	600.00	2,400.00	821.00	3,284.00
14	SHADE TREES	20	EA	200.00	4,000.00	225.00	4,500.00	209.00	4,180.00	205.00	4,100.00
15	CROWN VETCH WITH MATTING	7,000	SF	0.21	1,470.00	0.30	2,100.00	0.26	1,820.00	0.25	1,750.00
16	4' TRAIL (BY OTHERS)	1,640	SF	3.00	4,920.00	3.00	4,920.00	3.00	4,920.00	3.00	4,920.00
17	AREA LIGHT (COMPLETE)	1	LS	4,829.00	4,829.00	5,500.00	5,500.00	6,855.00	6,855.00	4,700.00	4,700.00
18	REMOVE 6"-10" TREES	30	EA	280.00	8,400.00	150.00	4,500.00	75.00	2,250.00	120.00	3,600.00
19	ADJUST MANHOLE TO GRADE	2	EA	230.00	460.00	300.00	600.00	75.00	150.00	290.00	580.00
20	CONSTRUCT SILT FENCE	860	LF	2.05	1,763.00	3.00	2,580.00	2.15	1,849.00	2.15	1,849.00
21	REMOVE SILT FENCE	100	LF	0.95	95.00	2.00	200.00	0.55	55.00	1.00	100.00
22	REMOVE MATERIAL FROM CHANNEL	300	CY	18.34	5,502.00	22.00	6,600.00	19.80	5,940.00	17.00	5,100.00
TOTAL BASE BID (ITEMS 1-22, INCLUSIVE)					\$338,878.60		\$361,799.00**		\$369,508.00		\$380,165.60

*CORRECTED
EXTENSION
**CORRECTED
TOTAL BASE
BID

E&A Consulting Group, Inc.
330 North 117th Street
Omaha, NE 68154

Bid Tabulations
SID 276
Subdivision Portal Ridge
Project Type 2007 Trail Improvements

Bid Date:8/29/07
E&A Project No.2005 054.01
Engineer's Est: \$338,477.00
Page 2 of 2

				LAWNSMITH & CO. 3731STATE STREET OMAHA, NE 68112		M.E. COLLINS CONTRACTING P.O. BOX 83 WAHOO, NE 68066					
Bid Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount		Amount
1	8'X6" CONCRETE SIDEWALK	39,610	SF	2.80	110,908.00	3.38	133,881.80				
2	4'X6" CONCRETE SIDEWALK	11,290	SF	2.65	29,918.50	3.55	40,079.50				
3	SITE GRADING	2,500	CY	7.00	17,500.00	7.00	17,500.00				
4	6" DOUBLE CONCRETE RAMP (13)	1,870	SF	5.00	9,350.00	4.14	7,741.80				
5	6" SINGLE CONCRETE RAMP(36)	770	SF	10.00	7,700.00	4.14	3,187.80				
6	CURB RAMP INSERT PLATES (2'X2")	124	EA	85.00	10,540.00	168.00	20,832.00				
7	GRIND CURB	880	LF	7.00	6,160.00	9.20	8,096.00				
8	CONSTRUCT PEDESTRIAN BRIDGE W/ ABUTMENTS	1	LS	118,800.00	118,800.00	115,000.00	115,000.00				
9	REMOVABLE BOLLARDS AT BRIDGE	6	EA	400.00	2,400.00	515.00	3,090.00				
10	SEEDING TURF FESCUE	6	AC	1,400.00	8,400.00	1,375.00	8,250.00				
11	RETAINING WALLS	390	SF	23.00	8,970.00	19.40	7,566.00				
12	6' BLACK VINYL CHAIN LINK FENCE	170	LF	28.50	4,845.00	25.30	4,301.00				
13	PARK BENCH WITH CONCRETE BASE	4	EA	700.00	2,800.00	3,684.00	14,736.00				
14	SHADE TREES	20	EA	300.00	6,000.00	221.00	4,420.00				
15	CROWN VETCH WITH MATTING	7,000	SF	0.40	2,800.00	0.22	1,540.00				
16	4' TRAIL (BY OTHERS)	1,640	SF	3.00	4,920.00	3.00	4,920.00				
17	AREA LIGHT (COMPLETE)	1	LS	6,000.00	6,000.00	5,394.00	5,394.00				
18	REMOVE 6"-10" TREES	30	EA	600.00	18,000.00	50.00	1,500.00				
19	ADJUST MANHOLE TO GRADE	2	EA	250.00	500.00	298.00	596.00				
20	CONSTRUCT SILT FENCE	860	LF	2.00	1,720.00	2.10	1,806.00				
21	REMOVE SILT FENCE	100	LF	1.00	100.00	1.00	100.00				
22	REMOVE MATERIAL FROM CHANNEL	300	CY	30.00	9,000.00	15.00	4,500.00				
TOTAL BASE BID (ITEMS 1-22, INCLUSIVE)					\$387,331.50		\$409,037.90				

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA RECOMMENDING TO THE NEBRASKA LIQUOR CONTROL COMMISSION, APPROVAL OF THE CLASS C LIQUOR LICENSE APPLICATION OF FIELDS INC DBA ISLAND BAR & GRILL, LA VISTA, NEBRASKA.

WHEREAS, Fields Inc dba Island Bar & Grill, 7826M S 123rd Plaza, La Vista, Sarpy County, Nebraska, has applied to the Nebraska Liquor Control Commission for a Class C Liquor License, and

WHEREAS, the Nebraska Liquor Control Commission has notified the City of said application, and

WHEREAS, the City has adopted local licensing standards to be considered in making recommendations to the Nebraska Liquor Control Commission, and

WHEREAS, said licensing standards have been considered by the City Council in making its decision.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska, hereby recommend to the Nebraska Liquor Control Commission approval of the Class C Liquor License application submitted by Fields Inc dba Island Bar & Grill, 7826M S 123rd Plaza.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

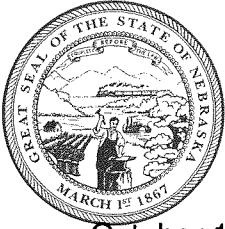
ATTEST:

Pamela A. Buethe, CMC
City Clerk

LA VISTA POLICE DEPARTMENT INTEROFFICE MEMORANDUM

TO: PAM BUETHE, CITY CLERK
FROM: BOB LAUSTEN, POLICE CHIEF
SUBJECT: LOCAL BACKGROUND- LIQUOR LICENSE-ISLAND BAR AND GRILL
DATE: 12/3/2007
CC:

The police department conducted a check of computerized records on the applicants, William N. Fields, Lylette S. Fields, and Larry E. Fields. William Fields was arrested for DUI in Douglas County on 4-7-98 and convicted. He completed his probation in that case. On his Liquor License application he listed that he was cited for possession of marijuana in 1974 and 1975, as well as a DUI in 1985. Larry Fields listed on the application that he was arrested for DUI and completed a diversion program in 1992. Both William and Larry Fields were cited by Game and Parks for a hunting violation in 1997 and fined \$25. Lylette Fields had no entries.



Dave Heineman
Governor

October 10, 2007

**LA VISTA CITY CLERK
8116 PARK VIEW BLVD
LA VISTA NE 68128-2198**

STATE OF NEBRASKA

NEBRASKA LIQUOR CONTROL COMMISSION

Hobert B. Rupe

Executive Director

301 Centennial Mall South, 5th Floor

P.O. Box 95046

Lincoln, Nebraska 68509-5046

Phone (402) 471-2571

Fax (402) 471-2814

TRS USER 800 833-7352 (TTY)

web address: <http://www.lcc.ne.gov/>

RE: New Application for Class C FOR FIELDS INC DBA ISLAND BAR & GRILL

Dear Local Governing Body:

Attached is the form to be used on all retail liquor license applications. Local clerks must collect proper license fees and occupation tax per ordinance, if any, before delivering the license at time of issuance.

TWO KEY TIME FRAMES TO KEEP IN MIND ARE:

- 1) Publicize one time not less than 7 days not more than 14 days prior to date of hearing.
- 2) You have 45 days to conduct a hearing after the date of receipt of the notice from this Commission (§53-134). You may choose **NOT** to make a recommendation of approval or denial to our Commission.

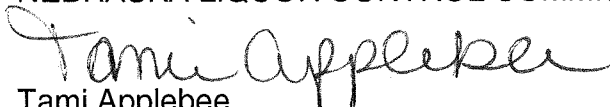
PER §53-133, THE LIQUOR CONTROL COMMISSION SHALL SET FOR HEARING ANY APPLICATION WHEREIN:

- 1) There is a recommendation of denial from the local governing body.
- 2) A citizens protest; or
- 3) Statutory problems that the Commission discovers.

PLEASE NOTE...A LICENSEE MUST BE "PROPERLY" LICENSED IN ORDER TO PURCHASE FROM WHOLESALERS; AND, A LICENSE IS EFFECTIVE:

- 1) Upon payment of the license fees;
- 2) Physical possession of the license;
- 3) Effective date on the license.

Sincerely,
NEBRASKA LIQUOR CONTROL COMMISSION


Tami Applebee
Licensing Division

Enclosures

Rhonda R. Flower
Commissioner

Bob Logsdon
Chairman

Pat Thomas
Commissioner

FORM 35-4001
REV. 12/99

RECOMMENDATION OF THE NEBRASKA LIQUOR CONTROL COMMISSION

Date Mailed from Commission Office: **October 10, 2007**

I, _____ Clerk of _____
(City, Village or County)

Nebraska, hereby report to the Nebraska Liquor Control Commission in accordance with Revised Statutes of Nebraska, Chapter 53, Sec. 134 (7) (reissue 1984) the recommendation of said city, village or county, as the case may be relative to the application for a license under the provisions of the Nebraska Liquor Control Act as applied for by:

FIELDS INC DBA ISLAND BAR & GRILL
7826M S 123RD PLAZA
LA VISTA NE 68128/ SARPY COUNTY
Application C-79069
45 days = 11/26/2007

1. Notice of local hearing was published in a legal newspaper in or of general circulation in city, village or county, one time not less than 7 nor more than 14 days before time of hearing.

Check one.....Yes _____ No _____

The Statutes require that such hearing shall be held not more than 45 days after the date of receipt of this notice from the Commission.

2. Local hearing was held not more that 45 days after receipt of notice from the Nebraska Liquor Control Commission. **Check one**.....Yes _____ No _____

3. Date of hearing of Governing

Body: _____

4. Type or write the Motion as voted upon by the Governing Body. If additional Motions are made by the Governing Body, then use an additional page and follow same format.

5. Motion was made by: _____ Seconded
by: _____

6. Roll Call

Vote: _____

7. Check one: The motion passed: _____ The motion failed _____

8. If the motion is for recommendation of denial of the applicant, then list the reasons of the governing body upon which the motion was made.

(Attach additional page if necessary)

SIGN HERE _____ **DATE** _____
 clerks signature

79069

NEW APP C-79069
LEASE : Expires 1/15/2013Applicant Name Fields, Inc. Telephone # (402) 339-7897Trade Name Island Bar & Grill Previous Trade Name N/A

Provide all the items requested. Failure to provide any item will cause this application to be returned or placed on hold. All documents must be legible. Any false statement or omission may result in the denial, suspension, cancellation or revocation of your license. If your operation depends on receiving a liquor license, the Nebraska Liquor Control Commission cautions you that if you purchase, remodel, start construction, spend or commit money that you do so at your own risk. Prior to submitting your application review the application carefully to ensure that all sections are complete, and that any omissions or errors have not been made. All applications & attachments must be submitted in triplicate. You may want to check with the city/village or county clerk, where you are making application, to see if any additional requirements must be met before submitting application to the state.

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REQUIRED ATTACHMENTS

NEBRASKA LIQUOR
CONTROL COMMISSION

Each item must be checked off and included or marked N/A for not applicable.

- QA
- X 1. Fingerprint cards for each person (two cards per person) must be enclosed with a separate check payable to the Nebraska State Patrol for processing in the amount of \$38.00 per person. All areas must be completed on cards as per brochure.
- X 2. Enclose registration fee for the appropriate class of license, made out to the Nebraska Liquor Control Commission.
- X 3. Enclose the appropriate application forms; Individual License – Form 1; Partnership License – Form 2; Corporate/LLC License – Form 3 and manager application (with corporate application only). LLC application must include all members.
- X 4. If building is being leased send a copy of the lease. Be sure it is in the individual(s) or corporate name being applied for. Also, the lease must extend through the license year being applied for. If building is owned, send a copy of the deed or purchase agreement in the appropriate name.
- N/A 5. If you are buying the business of a current licensee, provide a copy of the purchase agreement from licensee. This also needs to be in applicants name.
- N/A 6. Enclose a copy of the Temporary Agency Agreement, if applicable. Must be on Commission forms only. Include a copy of the signature card from the bank showing both the sellers and buyers name(s) on account.
- N/A 7. Copy of alcohol inventory being purchased. Inventory shall include brand names and container sizes. Inventory may be taken at the time application is being submitted.



0700018108

Per 1047
45-mm

- N/A 8. Enclose a list of any inventory or property owned by other parties that are on the premise.
- N/A 9. For Individual and Partnership applications enclose proof of citizenship, birth certificates, or naturalization documents for all persons listed on application. Documents must be a certificate from the State, where born, not hospital certificate.
- X 10. If a corporation enclose a copy of the articles of incorporation. This document must show receipt (barcode) by the Secretary of States Office.

When you have completed this checklist, the application form(s) and attached a the required documents, in triplicate, submit them to: **Nebraska Liquor Control Commission, 301 Centennial Mall South, PO Box 95046, Lincoln, NE 68509-5046**

I acknowledge that this application is not a guarantee that a liquor license will be issued to me, and that the average processing period is 45-60 days. Furthermore, I understand that all the information is truthful and I accept all responsibility for any false documents.

Will N. Fiedt
Signature

APPLICATION FOR LIQUOR LICENSE

NEBRASKA LIQUOR CONTROL COMMISSION
301 CENTENNIAL MALL SOUTH
PO BOX 95046
LINCOLN, NE 68509-5046
PHONE: (402) 471-2571
FAX: (402) 471-2814
Website: www.nol.org/home/NLCC/

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NEBRASKA LIQUOR
CONTROL COMMISSION

OFFICE USE ONLY

CLASS OF LICENSE FOR WHICH APPLICATION IS MADE AND FEES CHECK DESIRED CLASS(S)

RETAIL LICENSE(S)

<input type="checkbox"/>	A	Beer, On Sale Only	\$45.00
<input type="checkbox"/>	B	Beer, Off Sale Only	\$45.00
<input checked="" type="checkbox"/>	C	Beer, Wine & Distilled Spirits, On & Off Sale	\$45.00
<input type="checkbox"/>	D	Beer, Wine & Distilled Spirits, Off Sale Only	\$45.00
<input type="checkbox"/>	I	Beer, Wine & Distilled Spirits, On Sale Only	\$45.00

Class K Catering license may be added to any of these classes with an additional fee of \$100.00 and filing form 35-4202

MISCELLANEOUS

			Bond
<input type="checkbox"/>	L	Craft Brewery (Brew Pub)	\$295.00 1,000 min.
<input type="checkbox"/>	O	Boat	\$ 95.00 N/A
<input type="checkbox"/>	V	Manufacturer, Beer, Wine & Distilled Spirits (additional fee of \$100 to \$1,000-call for exact amount)	\$ 45.00 10,000 min.
<input type="checkbox"/>	W	Wholesale Beer	\$545.00 5,000
<input type="checkbox"/>	X	Wholesale Liquor	\$795.00 5,000
<input type="checkbox"/>	Y	Farm Winery	\$295.00 1,000

All Class C licenses expire October 31st

All other licenses expire April 30th

Catering expire same as underlying retail license

TYPE OF APPLICATION BEING APPLIED FOR (CHECK ONE)

- ☐ Individual License, requires insert form 1
☐ Partnership License, requires insert form 2
☒ Corporate License, requires insert form 3a and manager application 3b

NAME OF PERSON OR FIRM ASSISTING WITH APPLICATION

(Commission will call this person with any questions we may have)

Name: David E. Pavel Phone: (402) 895-7779

Firm Name: David E. Pavel Law Office, P.C.

Firm address: 1190 Omaha Tower, 2120 South 72nd Street, Omaha,
Nebraska 68124

PREMISE INFORMATION

Trade Name (doing business as) Island Bar & Grill

Street Address #1 7826 So. 123rd Plaza

Street Address #2 _____

City LaVista County Sarpy #59

Zip Code 68128

Telephone number at premise to be licensed Under construction; not issued must have before issued

Is this location inside the city/village corporate limits: ☒ YES ☐ NO C7M

Mail to Address (where you want receipt of Liquor Control Commission mailings)

Name: Fields, Inc. d/b/a Island Bar & Grill

Street Address #1 7826 So. 123rd Plaza

Street Address #2 _____

City LaVista County Sarpy

Zip Code 68128

DESCRIPTION AND DIAGRAM OF THE STRUCTURE TO BE LICENSED

In the space provided or on an attachment draw the area to be licensed. This should include storage areas, basement, sales areas and areas where consumption or sales of alcohol will take place. If only a portion of the building is to be covered by the license, you must still include dimensions (length x width) of the licensed area as well as the dimensions of the entire building in situations. No blue prints please. Be sure to indicate the direction north and number of floors of the building.

See Attached

Entire one story bldg approx
50' x 52' including beer
garden approx 6' x 27'

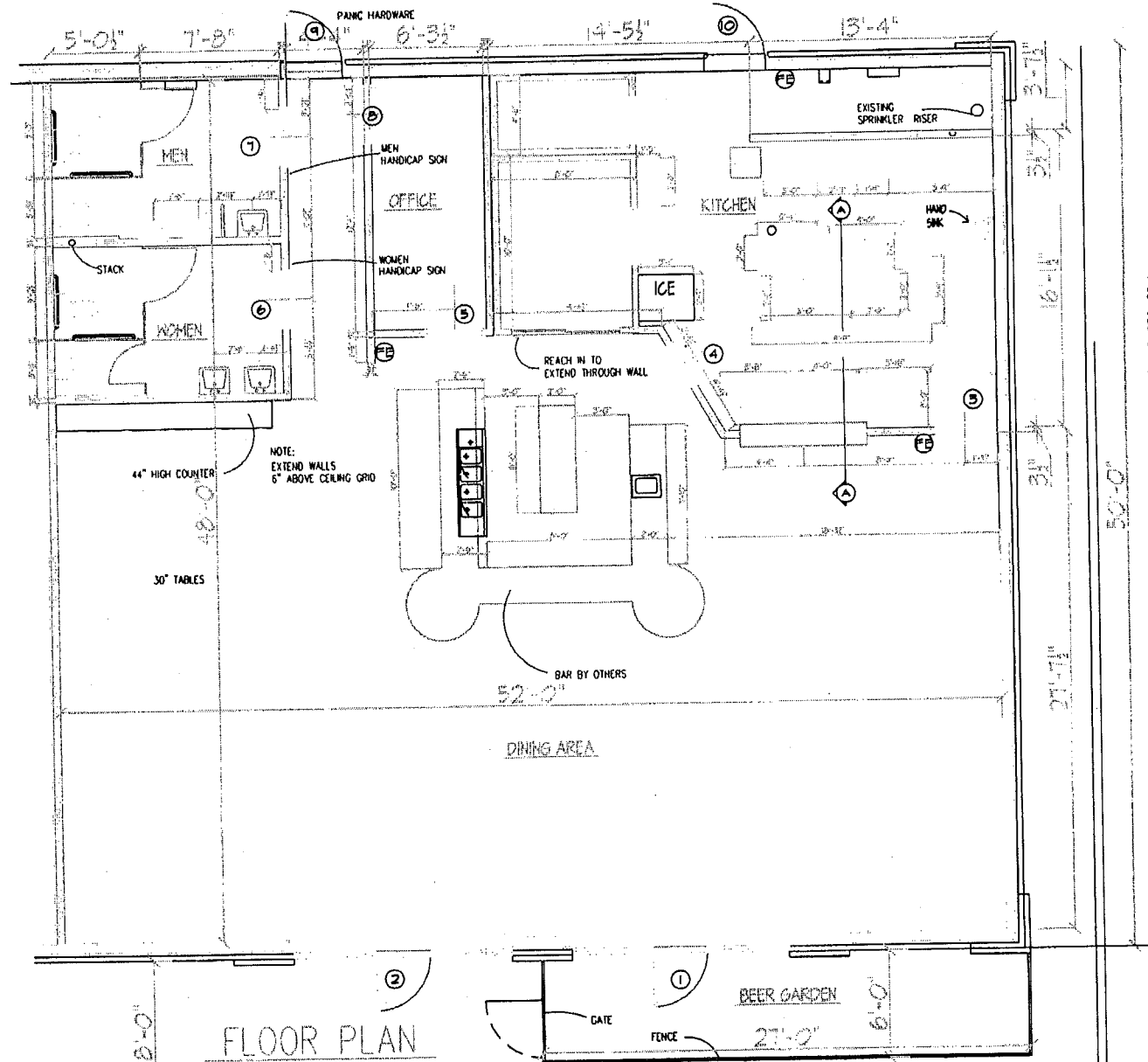
NUMBER	ROOM	WIDTH	HEIGHT	HARDWARE	NOTES
1	ENTRY	5'-0"	7'-0"	A	EXISTING
2	ENTRY	5'-0"	7'-0"	A	EXISTING
3	KITCHEN	5'-0"	7'-0"	C	EXISTING
4	KITCHEN	4'-8"	7'-0"	F	EXISTING - FULL
5	OFFICE	5'-0"	7'-0"	B	EXISTING - FULL DOUBLE HINGES
6	HOFEN	5'-0"	7'-0"	D	ND DOOR - METAL FRAME
7	HOFEN	5'-0"	7'-0"	D	ND DOOR - METAL FRAME
8	OFFICE	5'-0"	7'-0"	D	ND DOOR - METAL FRAME
9	HALL	5'-0"	7'-0"	E	EXISTING
10	KITCHEN	5'-0"	7'-0"	A	EXISTING

[illegible]

nettinarchitect@cox.net

J. ROBERT PERRIN
ARCHITECT. A.I.A.

1101 SOUTH 20TH ST. CHANDLER, ARIZONA 85125
341-4738 FAX 341-6232 (402)



FLOOR PLAN

0 1 2 4
SCALE

HANDICAP PARKING
INCLUDED IN SHELL
PERMIT DRAWINGS

FADE OF CURB

BEER GARDEN

5547

1000

2008 12 27

Figure 1

100

電話
02-2652-1111

4

25

SEPTEMBER 19, 2007
REV 9-26-2007

J. ROBERT PERRIN, ARCHITECT 9/26/2007 4:53 PM SALND-LIQUOR9--25.dwg

ISLAND BAR & GRILL
FANTASY'S SOUTHPORT SQUARE
7826 SOUTH 123RD PLAZA SUITE E & F OMAHA, NE

ISLAND BAR & GRILL

FANTASY'S SOUTHPORT SQUARE
7926 SOUTH 173RD PLAZA

SUITE E & F

OMAHA, NE

SHEET
1 OF 2

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APPLICANT INFORMATION

OCT 09 2007

READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY.

NEBRASKA LIQUOR
CONTROL COMMISSION

Has anyone who is a party to this application, or their spouse, EVER been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea. Also list any charges pending at the time of this application. If more than one party, please list charges by each individual's name.

☒ Yes If yes, please explain below or attach a separate page.
☐ No

Larry E. Fields: DUI-Diversion completed July, 1992.

William N. Fields - Possession of Marijuana, Papillion, NE 1974
Possession of Marijuana, Omaha, NE, 1975
DWI, Omaha, NE, 1985
DWI, Omaha, NE, 1998

Are you buying the business and/or assets of a licensee? If yes, submit a copy of the sales agreement with a listing of assets being acquired including liquor inventory (name brand and container size required). Liquor Inventory may be taken at time of application being submitted.

☐ Yes
Current business name and license number _____
☒ No

Are you filing a temporary agency agreement, Commission form 4231, whereby current licensee allows you to operate on their license. If yes, attach agreement.

Please note: This agreement is not effective until Commissions assigns you a 3-digit ID number.

☐ Yes
☒ No

Are you borrowing any money from any source to establish and/or operate the business? If yes, list the lender.

☐ Yes _____
☒ No _____

☒ Will any person or entity other than applicant be entitled to a share of the profits of this business? If yes, explain. All involved members must be disclosed on application.

☒ Yes William N. Fields, Larry E. Fields, Lylette S. Fields,
☐ No each 1/3 shareholders

☒ Will any of the furniture, fixtures and equipment to be used in this business be owned by others? If yes, list such items and the owner.

☐ Yes _____

☒ No

☒ Will any person(s) other than named in this application have any direct or indirect ownership or control of the business? If yes, explain? (No silent partners)

☐ Yes _____

☒ No

☒ Are the premises to be licensed within 150 ft of a church, school, hospital, home for the aged or indigent persons or for veterans, their wives, children, or within 300 ft of a college or university campus? If yes, list the name of such institution and where it is located in relation to the premises. Neb. Rev. Stat. 53-177.

☐ Yes _____

☒ No

☒ Is anyone listed on this application a law enforcement officer? If yes, list the person, the law enforcement agency involved and the person's exact duties.

☐ Yes _____

☒ No

☒ List the primary bank and/or financial institution (branch if applicable) to be utilized by the business and the individual(s) who will be authorized to write checks and/or make withdrawals on accounts at the institutions.

Pinnacle Bank

person - William Fields, Larry Fields, Lylette Fields

☒ List all past and present liquor licenses held in Nebraska or any other state by any person named in this application. Include license holder name, location of license and license number. Also list reasons for termination of any licenses previously held.

William N. Fields, P.J.'s Bar & Grill, Omaha, NE #66233-Sold Bar
William N. Fields, Geneaux's Lounge, Omaha, NE #61506-Current

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12.

List the person who will be the on site supervisor of the business and the estimated number of hours per week such person or manager will be on the premises supervising operations.

William N. Fields - 40 Hrs/Wk

NEBRASKA LIQUOR
CONTROL COMMISSION

13.

List the training or experience (when and where) of the person listed in #12 above in connection with selling and/or serving alcohol products.

William N. Fields

P.J.'s Bar & Grill - 2002-2003

Geneaux's Lounge - 2003 to Present

14.

If the property for which this license is sought is owned, submit a copy of the deed, or proof of ownership. If leased, submit a copy of the lease covering the entire license year. Documents must show title or lease held in name of applicant as owner or lessee in the individual(s) or corporate name for which the application is being filed.

☒ Lease: expiration date January 15, 2013 plus two 5 year options
☐ Deed to extend term
☐ Purchase Agreement

15.

When do you intend to open for business? Approximately December 1, 2007

16.

What will be the main nature of business? What are the anticipated hours of operation? Bar & Grill

Hours of Operation: 10:00 a.m. thru 1:00 a.m. Mon-Sat
1:00 a.m. Sunday

17.

List the principal residence(s) for the past 10 years for all persons required to sign application, including spouses. If necessary attach a separate sheet.

Applicant Name	From: Year	To: Year	City/State
Larry E. Fields	1977	Present	LaVista, NE
Lylette S. Fields	1977	Present	LaVista, NE
William N. Fields	1978	Present	Omaha, NE

The undersigned applicant(s) hereby consent(s) to a background investigation and release present & future records of every kind and description including police records, tax records (State and Federal), bank or lending institution records, and said applicant(s) and spouse(s) waive(s) any right or causes of action that said applicant(s) or spouse(s) may have against the Nebraska Liquor Control Commission, the Nebraska State Patrol, and any other individual disclosing or releasing said information. Any documents or records for the proposed business or for any partner or stockholder that are needed in furtherance

of the application investigation or any other investigation shall be supplied immediately upon demand to the Nebraska Liquor Control Commission or the Nebraska State Patrol. The undersigned understand and acknowledge that any license issued, based on the information submitted in this application, is subject to cancellation if the information contained herein is incomplete, inaccurate or fraudulent.

Individual applicants agree to supervise in person the management and operation of the business and that they will operate the business authorized by the license for themselves and not as an agent for any other person or entity. Corporate applicants agree the approved manager will superintend in person the management and operation of the business. Partnership applicants agree one partner shall superintend the management and operation of the business. All applicants agree to operate the licensed business within all applicable laws, rules, regulations, and ordinances and to cooperate fully with any authorized agent of the Nebraska Liquor Control Commission.

Must be signed in the presence of a notary public by applicant(s) and spouse(s). If partnership or LLC (Limited Liability Company), all partners, members and spouses must sign. If corporation all officers, directors, stockholders (holding over 25% of stock) and spouses. Full (birth) names only, no initials.

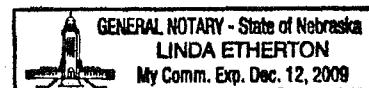
FIELDS, INC. d/b/a ISLAND BAR & GRILL
By: William N. Fields (sign here) _____ (sign here)
William N. Fields, President
By: Larry E. Fields (sign here) _____ (sign here)
Larry E. Fields
By: Lylette S. Fields (sign here) _____ (sign here)
Lylette S. Fields
By: William N. Fields (sign here) _____ (sign here)
William N. Fields, Individually

(sign here) (sign here)

Subscribed in my presence and sworn to before me this

3rd day of OCTOBER, 2007

Linda Etherton
Notary Public Signature & Seal



In compliance with the ADA, this application for license form is available in other formats for persons with disabilities. A ten day advance period is requested in writing to produce the alternate format.

FORM 35-4010
REV. 4/05

**APPLICATION FOR LIQUOR LICENSE
CORPORATION/LLC INSERT - FORM 3a**

NEBRASKA LIQUOR CONTROL COMMISSION
301 CENTENNIAL MALL SOUTH
PO BOX 95046
LINCOLN, NE 68509-5046
PHONE: (402) 471-2571
FAX: (402) 471-2814
Website: www.nol.org/home/NLCC

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NEBRASKA LIQUOR
CONTROL COMMISSION

Name of Corporation or Limited Liability Company that will hold license. Attach copy of Articles of Incorporation. (Document must show [barcode] receipt by Secretary of States Office.

Fields, Inc.

Corporate Street Address: 7826 So. 123rd Plaza

City: LaVista State: NE Zip Code: 68128

Corporate Telephone Number Not issued yet, temporary # (402) 339-7897

Total number of shares issued (if corporation) 300

Is this a Non Profit Corporation? ☐ YES ☒ NO

If yes, what is your Federal ID #? 87-0810088

Name of Registered Agent David E. Pavel

Name of Proposed Manager William N. Fields

This person must complete form 35-4013

List name of Chief Executive Officer

Last Name: Fields First Name: William MI N.

Address Street 9516 Park Dr., #102 City Omaha

State NE Zip Code 68127 Home Phone number (402) 699-2697

Social Security Number 508-76-3042 Date of Birth 01/29/56

List names of all Officers, Directors, Stockholders, Members and their Spouses

Last Name Fields First Name Larry E.

Social Security Number _____ Date of Birth 12/28/51

Title Vice President Number of Shares 100

Spouse Name (indicate N/A if single) Lylette S. Fields

Spouse Social Security Number _____ Date of Birth 03/29/56

Title Secretary/Treasurer Number of Shares 100

Last Name Fields First Name William N.

Social Security Number _____ Date of Birth 01/29/56

Title President Number of Shares 100

Spouse Name (indicate N/A if single) N/A

Spouse Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Last Name _____ First Name _____

Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Spouse Name (indicate N/A if single) _____

Spouse Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Last Name _____ First Name _____

Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Spouse Name (indicate N/A if single) _____

Spouse Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Last Name _____ First Name _____

Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Spouse Name (indicate N/A if single) _____

Spouse Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Last Name _____ First Name _____

Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Spouse Name (indicate N/A if single) _____

Spouse Social Security Number _____ Date of Birth _____

Title _____ Number of Shares _____

Is this Corporation or Limited Liability Company controlled by another Corporation?

☐ Yes ☒ No

If yes, give name of corporation and supply organizational chart

Indicate tax year with the IRS

Starting Date November 1, 2007 Ending Date December of each year

FIELDS, INC., d/b/a ISLAND BAR & GRILL

By:

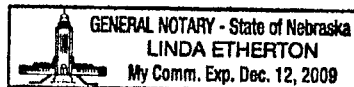
Will N. Fields

Signature of President/Managing Member

William N. Fields, President

Linda Etherton

Notary Public Signature & Seal

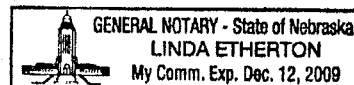


Subscribed in my presence and sworn to before me this

3rd day of OCTOBER, 2007

Linda Etherton

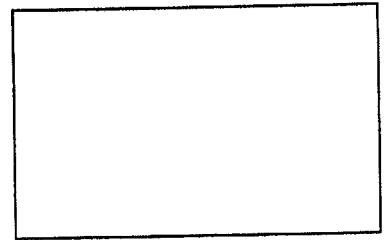
Notary Public Signature & Seal



In compliance with the ADA, this application for license form is available in other formats for persons with disabilities. A ten day advance period is requested in writing to produce the alternate format.

**APPLICATION FOR LIQUOR LICENSE
CORPORATION MANAGER - FORM 3b
*MUST BE A NEBRASKA RESIDENT***

301 CENTENNIAL MALL SOUTH
PO BOX 95046
LINCOLN, NE 68509-5046
PHONE: (402) 471-2571
FAX: (402) 471-2814
Website: www.nol.org/home/NLCC/



LIQUOR LICENSE INFORMATION

NAME OF LICENSED CORPORATION Fields, Inc. d/b/a Island Bar & Grill

CLASS & LICENSE NUMBER "C"

TRADE NAME Island Bar & Grill

STREET ADDRESS 7826 So. 123rd Plaza CITY LaVista

Applicant

SIGNATURE OF CORPORATION PRESIDENT/CEO

APPLICANT INFORMATION (MUST BE 21 OR OVER AND NEBRASKA RESIDENT)

NAME William N. Fields

ADDRESS 9516 Park Dr., #102

CITY Omaha STATE NE ZIP CODE 68127

HOME PHONE NUMBER (402) 699-2697 BUSINESS PHONE NUMBER Not issued yet

SEX ☒ MALE ☐ FEMALE SOCIAL SECURITY NUMBER 508-76-3042

DATE OF BIRTH 01/29/56 PLACE OF BIRTH Garnett, KS

DRIVERS LICENSE NUMBER & STATE _____

SPOUSES INFORMATION

SPOUSE NAME N/A

SOCIAL SECURITY NUMBER _____ DATE OF BIRTH _____

DRIVERS LICENSE NUMBER & STATE _____

1. READ CAREFULLY. ANSWER COMPLETELY AND ACCURATELY.

Has anyone who is a party to this application, or their spouse, EVER been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law; a violation of a local law, ordinance or resolution. List the nature of the charge, where the charge occurred and the year and month of the conviction or plea. Also list any charges pending at the time of this application. If more than one party, please list charges by each individual's name.

☒ YES ☐ NO

If yes, please explain below or attach a separate page.

Possession of Marijuana - 1974 & 1975

DWI - 1985 & 1998

~~Driving violations, parking tickets are not listed since such information is not available without access to applicant's records~~

2. Have you or your spouse ever made application for any liquor license or manager for any liquor license? IF YES, for what premise give license number and date.

☒ YES ☐ NO P.J.'s Bar & Grill #66233 - 2002-2003

Geneaux's Lounge #61506 - 2003 to present

3. Have you or your spouse ever made a compromise settlement for violation of such laws?

☐ YES ☒ NO

4. Do you, as a manager, have all the qualifications required by any person entitled to hold a Nebraska Liquor License?
Nebraska Liquor Control Act (§53-131.01)

☒ YES ☐ NO

5. Have you filed fingerprint cards and **PROPER FEES** (if check, make out to the NE State Patrol), with this application?

☒ YES ☐ NO

RESIDENCES FOR THE PAST 10 YEARS, APPLICANT AND SPOUSE MUST COMPLETE

APPLICANT: CITY & STATE		YEAR FROM TO		SPOUSE: CITY & STATE		YEAR FROM TO	
Omaha, NE		1977	Present	N/A			

EMPLOYERS - LIST LAST TWO EMPLOYERS

MONTH/YEAR FROM TO		NAME OF EMPLOYER	NAME OF SUPERVISOR	TELEPHONE NUMBER
2003	Present	Geneaux's Lounge	William N. Fields	(402) 592-0330
2002	2003	P.J.'s Lounge & Grill	William N. Fields	(402) 396-0128

**PERSONAL OATH AND CONSENT OF INVESTIGATION
MUST BE SIGNED BY APPLICANT & SPOUSE**

The above individual(s), being first duly sworn upon oath, deposes and states that the undersigned is the applicant and/or spouse of applicant who makes the above and foregoing application, that said application has been read and that the contents thereof and all statements contained therein are true. If any false statement is made in any part of this application, the applicant(s) shall be deemed guilty of perjury and subject to penalties provided by law. (Sec. §53-131.01) Nebraska Liquor Control Act.

The undersigned applicant hereby consents to an investigation of his/her background including all records of every kind and description including police records, tax records (State and Federal), and bank or lending institution records, and said applicant and spouse waive any rights or causes of action that said applicant or spouse may have against the Nebraska Liquor Control Commission and any other individual disclosing or releasing said information to the Nebraska Liquor Control Commission. If spouse has NO interest directly or indirectly, an affidavit of non participation may be attached.

The undersigned understand and acknowledge that any license issued, based on the information submitted in this application, is subject to cancellation if the information contained herein is incomplete, inaccurate, or fraudulent.

William N. Fields

Signature of Applicant

William N. Fields

Signature of Spouse

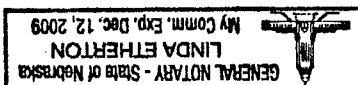
Subscribed in my presence and sworn to before me this 3rd
day of OCTOBER, 2007

Subscribed in my presence and sworn to before me this _____
day of _____

Linda Etherton

Notary Signature & Seal

Notary Signature & Seal



RECEIVED

OCT 09 2007

#14

SOUTHPORT SQUARE LEASE

NEBRASKA LIQUOR
CONTROL COMMISSION

THIS LEASE, made the 24th day of SEPTEMBER, 2007, by and between Fantasy's Inc., a Nebraska Corporation (hereinafter called "Landlord"); and Fields, Inc. D/B/A Island Bar & Grill, a Nebraska Corporation, (hereinafter called "Tenant");

WITNESSETH:

1. PREMISES

The Landlord, for and in consideration of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved, and contained, to be paid, kept and performed by the Tenant, has leased and rented, and by these presents does lease and rent, unto the said Tenant, and said Tenant hereby agrees to lease and take upon the terms and conditions which hereinafter appear, the following described property (hereinafter called "Demised Premises"), to wit: approximately 2528 square feet of gross leasable area, Suite No. E & F as per site plan of the Shopping Center (referred to herein as the "Shopping Center") (Exhibit "A") attached to and made a part of this, and described on Exhibit "B" attached hereto, located in Sarpy County, Nebraska. No easement of light or air is included in the Demised Premises. The site plan provided as Exhibit "A" is for illustration purposes and no representation is being made that specific tenants will occupy the Shopping Center. The Shopping Center design and configuration is subject to change from time to time by the Landlord.

2. USE

Tenant shall use and occupy the Demised Premises solely for a BAR & GRILL and for no other purposes, and shall comply with all laws, ordinances, orders, and regulations, including the Rules and Regulations of Landlord, and zoning classification of any lawful authority having jurisdiction over the Demised Premises and the use thereof. The Demised Premises shall not be used for any purpose which violates any exclusive use, right, covenant or clause that has been granted by Landlord, or any successor of Landlord, to any other tenant in the Shopping Center or that violates any restrictive covenant applicable to the Shopping Center. At Tenant's request, Tenant shall be provided with a listing of any such exclusive uses, rights, covenants or clauses. Tenant shall indemnify and hold Landlord harmless from any penalties, fines, costs, expenses, including attorney's fees, or damages resulting from the failure to comply with this paragraph. Tenant shall not do any act or follow any practice relating to the Demised Premises which shall constitute a nuisance or detract in any way from the reputation of the Shopping Center as a first class real estate development. The Tenant will comply with any requirements of an insurance company, at its own expense or if the Tenant alters its space in anyway which violates a law, regulation, or insurance company requirement, Tenant will at its expense make any changes necessary for compliance including structural alterations. Tenant shall be permitted vending rights for Keno Machines, Gaming Machines, Juke Box Machines, Dart Board Machines, Pool Table Machines and Shuffle Board Machines however Landlord retains all ATM rights. Tenant shall be allowed to utilize sidewalk area directly in front of leased premises to within 2 foot of the parking curb for the purpose of an outside patio. Permitting and expenses related to the construction and maintenance of such area is the responsibility of the Tenant. Landlord shall not lease to any other bar & grill operation within Southport Square.

THIS LEASE IS CONTINGENT UPON TENANT OBTAINING A CLASS "C" LIQUOR LICENSE.

3. TERM

To have and to hold the same for a term beginning on the 15th day of OCTOBER, 2007 ("Date of Possession"), the 15th day of JANUARY, 2008 ("Date of Commencement") and ending, unless sooner terminated as provided herein, on JANUARY 15, 2013. Tenant shall have two (2) five year options to extend the term of this Lease. Possession of the Demised Premises shall be delivered to Tenant upon execution of this Lease and payment of the Security Deposit. In the event possession of the Demised Premises is delivered to Tenant prior to the Date of Commencement to allow Tenant to complete its Tenant Improvements, all terms and conditions of this Lease shall apply to and govern Tenant's occupancy of the Demised Premises from the date that possession is delivered to Tenant ("Date of Possession") except for payment of monthly rental, which shall commence upon the Date of Commencement of the Lease Term. Tenant acknowledges that Tenant shall be responsible for all other amounts to be paid by Tenant hereunder commencing with the Date of Possession by Tenant, including but not limited to Tenant's share of taxes, insurance, common area maintenance and merchant's promotional fund.

Should the Lease contain options for renewal, it shall be the responsibility of the Tenant to provide written notice regarding their exercising of that option one (1) year prior to the expiration of the Lease Term.

3a. TERMS OF POSSESSION

Tenant shall take possession of premise on October 15, 2007 with three (3) months of rate abatement. The security deposit will be due upon signing of Lease. Monthly charges for Common Area Maintenance, Insurance and taxes are due at inception of lease. If Lease begins on a day other than the first of the month, the charge will be prorated.

4. RENTAL

Tenant, for itself, its sublessees, administrators, executors, successors and assigns agrees to pay Landlord a monthly rental as follows:

TERM	MONTHLY BASE RENT
First 3 months	\$0
Months 4 thru 63	\$ 4,213.33

Rent shall be adjusted according to the following schedule:

<u>Lease Years</u>	<u>Percentage Increase (compounded)</u>
6 thru 10	3% annually
11 thru 15	3% annually

Rent shall be payable, without offset, notice or demand, in lawful money of the United States of America, and at such place as Landlord may from time to time designate in writing, in advance on the first day of each month, said monthly installment being a minimum guaranteed rental. Landlord designates that all monthly rental payments shall be made by Tenant via automatic deposit into an account designated by the Landlord.

If Landlord shall direct Tenant to pay fixed minimum rent or additional rent to a "lockbox" or other depository whereby checks issued in payment of fixed minimum rent or additional rent (or both, as the case may be) are initially cashed or deposited by a person or entity other than Landlord (albeit on Landlord's authority), then, for any and all purposes under this Lease: (i) Landlord shall not be deemed to have accepted such payment until ten (10) days after the date on which Landlord shall have actually received funds and (ii) Landlord shall be deemed to have accepted such payment if (and only if) which said ten (10) day period, Landlord shall not have refunded (or attempted to refund) such payment to Tenant. Nothing contained in the immediately preceding sentence shall be construed to place Tenant in default of Tenant's obligation to pay rent if and for so long as Tenant shall timely pay the rent required pursuant to this Lease in the manner designated by Landlord.

If Landlord shall direct Tenant to pay fixed minimum rent by wire transfer, then Tenant shall not be in default of Tenant's obligation to pay fixed minimum rent if and for so long as Tenant shall timely comply with Landlord's wire instructions in connection with such payments. Accordingly, if Tenant shall have timely complied with Landlord's instructions pertaining to a wire transfer, but the funds shall thereafter been misdirected or not accounted for properly by the recipient bank designated by Landlord, then the same shall not relieve Tenant's obligation to make the payment so wired, but shall toll the due date for such payment until the wire funds shall have been located. However, for all other purposes under this Lease: (i) Landlord shall not be deemed to have accepted such payment until ten (10) days after the date on which such funds shall have actually been deposited in Landlord's account at said bank, and (ii) Landlord shall be deemed to have accepted such payment if (and only if) within said (10) day period, Landlord shall not have refunded (or attempted to refund) such payment to Tenant.

In the event that this lease term should commence at any time other than the first day of the month, or terminate on any date other than the last day of the month, then minimum rent shall be prorated for the portion of the month applicable.

Security Deposit Amount	\$ 4,273.62
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As additional rent, Tenant shall make estimated monthly payments as follows:

Common Area Maintenance (CAM)	\$ 130.24
(CAM share to be 18.5262 % of actual expenses)	
Taxes	\$ 628.20
Insurance	\$ 172.37
Merchant's Promotional Fund	\$ n/a
TOTAL:	\$ 930.81
	(\$ 4.35 Estimated Avg. Per Square Foot)

Such amounts shall be paid at the same time as the minimum guaranteed rental.

5. [Future Use]

6. BROKERS

Tenant warrants that it has only dealt with Lund Co. to whom Landlord will pay a commission pursuant to a separate agreement. Tenant agrees to indemnify Landlord from any and all loss and expense incurred by Landlord if this representation by Tenant is false or incorrect.

7. TAXES

As additional minimum guaranteed rental due hereunder, Tenant shall pay to Landlord, Tenant's pro rata share of any ad valorem real and personal property taxes for the Shopping Center regardless of the governmental jurisdiction, jurisdictions, authority or authorities levying the same. Tenant's share of such taxes on the Shopping Center shall be a fraction, the numerator of which shall be the

square footage in the Demised Premises, and the denominator of which shall be the total square footage of all buildings in the tax parcel or Shopping Center.

Tenant agrees to make estimated tax payments in the amount stated in paragraph 4 or in an amount otherwise stipulated by Landlord. Landlord may adjust the amount of such estimated payments from time to time to reflect changes in such taxes. At the end of each fiscal year, Tenant shall pay the amount by which Tenant's share of such taxes exceeds the estimated payment. Such amount shall be paid within thirty (30) days receipt of notice of such balance being due. Likewise, Landlord shall refund any payments made in excess of Tenant's pro rata share of taxes as defined herein.

Tenant shall be liable for and shall pay before delinquency all taxes levied or assessed against trade fixtures, equipment, furnishings, merchandise and other personal property of whatsoever kind and to whomsoever belonging situate or installed in or upon the Demised Premises, whether or not affixed to the realty.

If at any time during the term and any extension or renewal of the term hereof any said personal property be assessed as part of the real property of which the Demised Premises are a part or on which the Demised Premises are situate, then and in such event Tenant shall pay to Landlord upon demand the amount of such taxes or assessments as may be levied or assessed against said real property by reason thereof. For the purpose of determining said amount, figures supplied by the County Assessor or other taxing authority as to the amount so assessed shall be conclusive.

8. INSURANCE RATES

As additional minimal guaranteed rental due hereunder, Tenant shall pay to Landlord, Tenant's pro rata share of any Landlord's hazard, casualty or liability insurance premiums for the Shopping Center which fall due during the first full insurance policy premium paying year after the earlier of; Tenant's occupancy or the completion of the improvements to be constructed upon the Demised Premises by Landlord for Tenant's occupancy. Tenant agrees to make estimated insurance payments in the amount stated in paragraph 4. Landlord may adjust the amount of such estimated payments from time to time to reflect changes in the amount of such premiums. At the end of each fiscal year, Tenant shall pay the amount by which Tenant's share of such premiums exceeds the estimated payment. The amount shall be paid within thirty (30) days receipt of notice of such balance being due. Likewise, Landlord shall refund any payments made in excess of Tenant's pro rata share of insurance as defined herein. Tenant's share shall be a fraction, the numerator of which shall be the square footage in the Demised Premises, and the denominator of which shall be the total square footage of all Landlord insured buildings in the Shopping Center.

9. [Future Use]

10. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant has deposited with Landlord the sum stated in paragraph 4 in addition to the first (1st) month's rent. Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of rent and/or other charges, Landlord may (but shall not be required to) use, apply, or retain all or any part of this security deposit for the payment of any rent or any other sum in default; or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default; or for the compensation of Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall within five (5) days after written demand thereof, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount. Landlord shall not be required to keep this security deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty (30) days following the earlier of either the day on which the final payment is due under this Lease or expiration of the Term. In the event of termination of Landlord's interest in this Lease, said deposit, or any part thereof not previously applied, may be turned over by Landlord to Landlord's grantee and, if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section 10, and the return thereof in accordance herewith. The holder of a lien on property which includes the Demised Premises shall never be responsible to Tenant for the return or application of any such deposit, except for deposits received in hand by such holder.

11. LATE PAYMENTS

Since late payment of base rent, adjusted base rent or other sum due under this Lease from Tenant to Landlord will result in administrative expense to Landlord, the extent of which would be extremely difficult and economically impractical to ascertain, Tenant agrees that if base rent, adjusted base rent or any other payment due remains unpaid for more than five (5) days after such amount is due, such payment shall be increased by late charge payable to Landlord equal to ten percent (10%) of the amount of the delinquent payments, including all accrued late charges, then outstanding. Payments returned for insufficient funds will be considered late and require a \$25.00 NSF fee. After two checks are returned, Landlord has the right to require payment in certified funds. The provisions of this paragraph in no way relieve Tenant of the obligations to make all required payments when due, nor do such provisions in any way affect or waive any of Landlord's remedies under this Lease. No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or payment of rent shall be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of rent, or pursue any other remedies available to

Landlord. Landlord can refuse any rent payment that does not come directly from the Tenant, and can return the check from a third party, demanding payment from Tenant.

12. ABANDONMENT OF LEASED PREMISES AND CONTINUOUS OPERATION

Tenant agrees not to abandon or vacate leased Demised Premises during the period of this Lease. To abandon or vacate the premises is considered a default of the Lease. Tenant shall continuously conduct and carry on Tenant's business in the Demised Premises during at least _____ hours per week, provided Tenant shall at all times be open for business from (hours) _____ (days of week) _____, excluding national bank holidays. Tenant shall maintain within the Demised Premises an adequate stock of merchandise, equipment and trade fixtures, and shall employ and schedule the presence on the Demised Premises of sufficient personnel to service and supply the usual and ordinary demands and requirements of its customers, according to seasonal needs. Landlord's acceptance of this Lease is based on the condition that the Tenant agrees store will remain open. Landlord's damages following a store closing cannot be determined monetarily.

13. UTILITY BILLS

Tenant shall pay water, gas, electricity, fuel, light, heat and power bills for leased Demised Premises, or used by Tenant in connection therewith. If Tenant does not pay the same, Landlord may pay the same and such payment shall be added to the rental of the Demised Premises on a proportionate basis.

14. REPAIRS BY LANDLORD

Landlord agrees to keep in good order the roof, exterior walls (exclusive of all glass, including plate glass, locks, hinges, doors, door hardware, and door frames), water and sewer systems up to the demising walls of the Demised Premises (except blockages caused by Tenant), electrical systems up to the distribution panel, and main supply line for sprinkler systems (if any), but not fixtures pertaining to such systems. Landlord gives to Tenant exclusive control of Demised Premises and shall be under no obligation to inspect said Demised Premises. Tenant shall at once report in writing to Landlord any defective condition known to him which Landlord is required to repair, and failure to so report such defects shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such defect.

15. REPAIRS BY TENANT

Tenant accepts or will accept the Demised Premises in their present condition or when completed as per plans and specifications and that Demised Premises are suited for the uses intended by Tenant. Tenant shall, at its own expense, keep and maintain the said Demised Premises and appurtenances and every part thereof, in good order and repair except portions of Demised Premises to be repaired by Landlord under terms of Paragraph 14. Tenant will at all times keep the Demised Premises in compliance with any local, state, or federal rule, regulation or law having to do with the use or occupancy of the Demised Premises. Tenant agrees also to keep all systems within the Demised Premises and fixtures pertaining to heating, air-conditioning, water, sewer, electrical and sprinkler systems (if any) in good order and repair and agrees also that it is liable for any damage to such heating, air conditioning, water, sewer, electrical and sprinkler systems (if any) and any damages from the improper maintenance of these systems. Tenant agrees to keep a maintenance contract on the HVAC system to include at least quarterly filter changes and inspections; and to perform preventative maintenance determined to be necessary from the inspections. Tenant shall retain and if asked provide copies of inspection reports to Landlord. If a maintenance contract and inspection repairs are not performed, Tenant may lose its security deposit and be in default under the Lease. Landlord may at its option implement a HVAC maintenance contract for the Shopping Center with charges being prorated to each Tenant. Furthermore, Landlord may authorize contractor to make repairs up to \$250.00 per occurrence to be charged to the Tenant as additional rent. Any repairs costing over \$250.00 must first be approved by Tenant.

16. PAINTING & REDECORATING

All parts of the interior of the leased Demised Premises shall be painted, at the Tenant's own expense at least once every five (5) years during the term of this Lease.

17. SIGNS & ADVERTISING

Tenant shall not permit, allow or cause to be erected, installed, maintained, painted or displayed on, in or at said premises or any part thereof any exterior sign, lettering, placard, announcement, decorating, advertising media or advertising material of any kind whatsoever visible from the exterior of said Demised Premises, without the prior written approval of Landlord; and Tenant, at its sole cost and expense, at all times thereafter during the term hereof, agrees to promptly repair and at all times maintain in good condition such sign as approved in writing by Landlord. Tenant shall not permit, allow or cause to be used in or at said Demised Premises without Landlord's permission, any advertising media or device such as photograph, radios, public address system, sound production or reproduction devices, mechanical or moving display devices, motion pictures, television devices, excessively bright lights, changing, flashing, flickering or moving lights or lighting devices, or any similar devices, the effect of which shall be visible or audible from the exterior of said Demised Premises. Tenant shall not solicit any business or place any handbills in any of the common areas. Other than approved signs, no other alterations or improvements will be made by Tenant to the exterior of the Demised Premises. Tenant may install and display signage advertisements within the interior storefront windows of the demised premises. All signage and advertisements shall meet all government/city regulations/codes.

Notwithstanding anything to the contrary herein, Tenant agrees to install an internally lighted facade sign within sixty (60) days of execution of this Lease. Said identification signs will be of such size, shape, configuration, material, lighting and colors acceptable to

Landlord and State and local codes. Such approval of Landlord will be in writing, upon submittal by Tenant of a rendering showing location, size, configuration, lighting, color, proposed attachment method, and any other pertinent data necessary. Any damage to building or related structure, upon installation, maintenance, or removal of such sign are Tenant's sole responsibility and will be repaired to Landlord's specifications, at Tenant's sole expense. Upon termination of this Lease, Tenant will remove said sign and repair building facade to a condition acceptable to Landlord, such acceptance not be unreasonably withheld. Tenant is responsible for maintaining its signs in first class condition including prompt replacement of burned out lighting elements. Tenant is required to keep its facade sign and canopy lights lit, if not controlled by Landlord, after dusk during Shopping Center's operating hours or 10:00 p.m., whichever is later. If during any remodeling, repair, or expansion of the Shopping Center (the "Work"), it is necessary for Landlord to remove Tenant's storefront sign (the "Permanent" Sign), or to install scaffolding or other aids for performing the Work that obscures the Permanent Sign in whole or part, then Landlord may do so, provided Landlord complies with the requirements set forth below:

- a. Permanent Sign. Removal of the Permanent Sign shall be subject to the following conditions:
 - (i) Landlord shall, at its sole cost and expense, remove the Permanent Sign in a careful manner so as not to damage it, and store it in an appropriate facility;
 - (ii) As soon as the Work has progressed to the point that the Permanent Sign can be reinstalled, Landlord, at Landlord's sole cost and expense, shall reinstall the Permanent Sign at its former location; and
 - (iii) Landlord, at Landlord's sole cost and expense, shall promptly repair any damage to the Permanent Sign which occurs during the removal, storage, or reinstallation thereof; and
- b. Temporary Sign. If the Permanent Sign is removed or blocked by scaffolding or other Work aids for a period in excess of thirty (30) days, then Landlord, at Landlord's sole cost and expense, shall provide a temporary sign to advertise Tenant's business. Such temporary sign shall be as similar as reasonably possible in both size and style to the Permanent Sign, and shall be installed by Landlord in a location as near as reasonably possible to the location from which the Permanent Sign was removed or blocked, consistent with the goal of achieving maximum visibility for such temporary sign.

18. RUBBISH REMOVAL

The Tenant shall keep the Demised Premises clean, both inside and outside, at its own expense, and will remove all refuse from said Demised Premises. The Tenant shall not burn any materials or rubbish of any description upon said Demised Premises. The Tenant also agrees to keep the parking area and sidewalk adjoining said store free from Tenant's rubbish, dirt, garbage, and other refuse. Tenant agrees to keep all accumulated rubbish in covered containers and to have same removed regularly. In the event the Tenant fails to keep the Demised Premises and other portions heretofore described in the proper condition, the Landlord may cause the same to be done from the Tenant and the Tenant hereby agrees to pay the expense thereof on demand as additional rent.

19. COMMON AREAS

All common areas and other common facilities (hereinafter collectively called "Common Areas") made available by the Landlord in or about the Shopping Center shall be subject to the exclusive control and management of Landlord, expressly serving unto Landlord, without limitation, the right to erect and install within the parking areas or other common areas, retail carts, kiosk, planters, pools, sculpture, or otherwise. "Common Areas" shall mean all areas, space, facilities, equipment, sidewalks, parking areas, driveways, landscaped areas, pedestrian walkways, signs and special services from time to time made available by Landlord for the common and joint use and benefit of Landlord, the stores in and/or adjoining the Shopping Center, Tenant, and other tenants of the Shopping Center, and their respective employees, customers, and other invitees. Landlord hereby expressly reserves the right, from time to time to change the area, level, location and arrangement of the parking areas and other facilities forming a part of said Common Areas; to restrict parking by tenants of the Shopping Center and their employees, agent, subtenants, concessionaires and licensees; to close temporarily all or any portion of the Common Areas for the purpose of making repairs or changes thereto, and to discourage non-customer parking; and to establish, modify and enforce reasonable rules and regulations with respect to the Common Areas and the use to be made thereof. Landlord shall operate, manage, equip, light and maintain the Common Areas in such manner as Landlord, in its sole discretion, may from time to time determine, and Landlord shall have the sole right to employ and discharge all personnel with respect thereto. Tenant is hereby given a license (in common with all other to whom Landlord has or may hereafter grant rights) to use, during the term of this Lease, the Common Areas of the Shopping Center; provided, however, that if the size, location or arrangement of such Common Areas of the Shopping Center, or the type of facilities at any time forming a part thereof, be changed or diminished, Landlord shall not be subject to any liability therefor, nor shall Tenants be entitled to any compensation or diminution or abatement of rent therefor, nor shall such change or diminution of such areas be deemed a constructive or actual conviction.

Landlord shall not be responsible for any merchandise, cash, or any other valuables left in Common Areas at any time (either before, during, or after hours of operation).

20. MAINTENANCE OF COMMON AREAS

Landlord will keep the Common Areas of the Shopping Center in good repair. The Common Area Maintenance ("CAM") will include without limitation the following: removing all ice and snow, mud and sand and refuse and sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition; placing, keeping in repair and replacing any necessary appropriate directional or pylon signs, markers, and lines; and maintaining, trimming, watering, mowing, weeding all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; private patrol or watch service, lighting, lawn sprinkler

systems, domestic water (if not individually metered) and garbage disposal if provided by Landlord. As additional minimum guaranteed rental, Tenant shall pay to Landlord each month during the term of this Lease its pro rata share of the cost of said maintenance and any property management costs plus an administrative fee of 15% of the total cost thereof. Tenant's initial monthly estimated CAM payments shall be in the amount stated in paragraph 4 hereof. Thereafter, Landlord may adjust the amount of such estimated payments to reflect changes in CAM costs. Tenant's pro rata share shall be determined by dividing the total square footage of the Demised Premises by the total square footage of the buildings in the Shopping Center. At the end of each fiscal year, Landlord shall determine its actual CAM costs. Tenant shall pay any balance due within thirty (30) days after receipt of notice of such balance due and Landlord shall credit any excess payments to future CAM costs, or at the end of the Lease Term, by payment to Tenant. Upon request, Landlord shall furnish Tenant a detailed accounting for such costs.

21. INDEMNITY AND RELEASE

(a) Tenant shall indemnify Landlord and save it harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon or at or from the Demised Premises (except that caused by Landlord's gross negligence or failure to perform hereunder) or the occupancy or use by Tenant of said Demised Premises or any part thereof, occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires, including the sidewalks and common areas and facilities within the Shopping Center development; and (b) Tenant shall store its property in and shall occupy the Demised Premises, and all other portions of the Shopping Center at its own risk, and releases Landlord, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage, (except that caused by Landlord's gross negligence) (c) Landlord shall not be responsible or liable at any time for any loss, including but not limited to, burglary and theft loss or damage to the Demised Premises, or any part thereof, or to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or to Tenant's business (except that caused by Landlord's gross negligence); and (d) Landlord shall not be responsible or liable to Tenant or to those claiming by, through or under Tenant from any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining Demised Premises; and (e) Landlord shall not be responsible or liable for any patent defect in any building in the Shopping Center or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused by or resulting from bursting, breakage or by or from leakage, steam or snow or ice, running, backing up, seepage, or the overflow of water or sewage in any part of said Demised Premises or for any injury (except that caused by Landlord's gross negligence) or damage caused by or resulting from acts of God or the elements, or for any injury or damage caused by resulting from any defect or negligence in the occupancy, construction, operation or use of any of said Demised Premises, building, machinery, apparatus or equipment by any person or by or from the acts or negligence of any occupant of the Demised Premises (except that caused by Landlord's gross negligence); (f) Tenant shall give prompt notice to Landlord in case of fire or accidents in the Demised Premises or in the building of which the Demised Premises are a part or of defects therein or in any fixtures or equipment; (g) In case Landlord shall without fault on its part be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees; (h) Tenant shall also pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in enforcing the terms of this Lease.

Any language to the contrary notwithstanding, Landlord hereby releases Tenant, any assignee and sublessee of Tenant, and Tenant hereby releases Landlord, from and against any and all claims, demands, liabilities or obligations whatsoever for damage to the property or loss of rents or profits of either Landlord or Tenant resulting from or in any way connected with any fire, accident or other casualty, whether or not such fire, accident or other casualty shall have been caused by the negligence or contributory negligence of Landlord, Tenant, any assignee and sublessee or Landlord and Tenant or by any agent, associate or employee of either of them, to the extent of the insurance recovery and to the extent that such damage or loss either is insured under any insurance contract which at the time of such damage or loss permits waiver of subrogation rights prior to a loss thereunder.

21 a. PERSONAL GUARANTEE

Rent and other payments due from the Tenant to the Landlord are assured by the Personal Guarantee that appears as Exhibit G.

22. LIABILITY INSURANCE

Tenant shall procure and pay the premium for liability insurance in the amounts of One Million Dollars and 00/100 (\$1,000,000.00) with respect to injuries to any one person, One Million Dollars and 00/100 (\$1,000,000.00) with respect to any one accident, and One Hundred Thousand Dollars (\$100,000.00) with respect to property damage to protect Tenant and Landlord against liability for such injury to persons and such damage upon or about the Demised Premises. Such insurance shall be obtained from an insurance company licensed to do business in the state where the Shopping Center is located, and shall have at least one of the following ratings by A.M. Best Co. or a combination of Best's Rating and Best's Financial Size Category: A-, XII; A+, IX; A++, VII. Tenant agrees that such policy shall name Landlord as an additional insured with a certificate to Landlord providing evidence of such coverage. Such policy shall also contain a provision providing that it may not be canceled except upon not less than ten (10) days written notice to Landlord and Tenant. Tenant must send to Landlord by certified mail immediate information regarding any material change in the coverage.

23. TERM SEVERABLE

The provisions of this are hereby declared to be severable. If any paragraphs, sentences, clauses, or phrases be held void for any reason, the remainder of this shall continue to be in full force and effect.

24. DESTRUCTION

If the Demised Premises shall be partially damaged by any casualty insurable under the Landlord's insurance policy, Landlord shall, upon receipt of the insurance proceeds, repair the same and the minimum rent shall be abated proportionately as to the portion of the Demised Premises rendered untenable. If the Demised Premises (a) by reason of such occurrence is rendered wholly untenable; or (b) should be damaged as a result of a risk which is not fully covered by Landlord's insurance; or (c) if any mortgagee or other person entitled to the proceeds of insurance does not consent to the payment to Landlord of such proceeds for such purpose, or (d) should be damaged in whole or in part during the last three (3) years of the term or of any renewal term hereof, or (e) the building of which it is a part, whether the Demised Premises is damaged or not or all of the buildings which then comprise the Shopping Center should be damaged to the extent of Fifty (50%) Percent or more of the then monetary value thereof, or (f) if any or all of the buildings or common areas of the Shopping Center are damaged, whether or not the Demised Premises are damaged to such an extent that the Shopping Center cannot in the sole judgment of the Landlord be operated as an integral unit, then or in any of such events, Landlord may either elect to repair the damage or may cancel this Lease by notice of cancellation within One Hundred Eighty (180) days after such event and thereupon this Lease shall expire, and Tenant shall vacate and surrender the Demised Premises to Landlord. Tenant's liability for rent upon termination of this Lease shall cease as of the day following the event or damage. In the event Landlord elects to repair the damage insurable under Landlord's policies, any abatement of rent shall end five (5) days after notice by Landlord to Tenant that the Demised Premises have been repaired. Nothing in this paragraph shall be construed to abate percentage rent, but the computation of such rent shall be based upon the revised minimum rent as the same may be abated. If the damage is caused by the negligence of Tenant or its employees, agents, invitees, concessionaires there shall be no abatement of rent. Unless this Lease is terminated by Landlord, Tenant shall repair and refixture the interior of the Demised Premises in a manner and to at least a condition equal to that existing prior to its destruction or casualty and the proceeds of all insurance carried by Tenant on its property and improvements shall be held in trust by Tenant for the purpose of said repair and replacement. In no event shall Landlord be required to repair to a condition different from that originally delivered to Tenant.

If all or any part of the Shopping Center is destroyed or damaged as set out in this paragraph, the architect designated by Landlord shall determine the extent of the destruction or damage and provide Landlord with a certificate attesting to the condition of the Demised Premises. The certificate of the architect shall bind the parties as to: (a) the percentage of the rentable area of the Shopping Center or the percentage of the area of the common facilities of the parking facilities damaged or destroyed; (b) whether or not any individual retail leasable premises has been wholly or substantially destroyed or will be unfit for business for a period of 180 days or more after the occurrence of the damage or destruction; and (c) the date the Demised Premises are repaired for Tenant use.

25. CONDEMNATION

(a) Total: If the whole of the Demised Premises shall be acquired or taken by eminent domain for any public or quasi-public use or purpose then this and the term herein shall cease and terminate as of the date of title vesting in such proceeding, (b) Partial: If any part of the Demised Premises shall be taken as aforesaid, and such partial taking shall render that portion not so taken unsuitable for the business of Tenant, then this and the term herein shall cease and terminate as aforesaid. If such partial taking is not extensive enough to render the Demised Premises unsuitable for the business of Tenant, then this Lease shall continue in effect except that the minimum rent shall be reduced in the same proportion that the floor area of the Demised Premises (including basement if any) taken bears to the original floor area demised and Landlord shall, upon receipt of their award in condemnation, make all necessary repairs or alterations to the building in which the Demised Premises are located so as to constitute the portion of the building not taken a complete architectural unit, but such work shall not exceed the scope of the work to be done by Landlord in originally constructing said building, nor shall Landlord in any event be required to spend for such work an amount in excess of the amount received by Landlord as damages for the part of the Demised Premises so taken. "Amount received by Landlord" shall mean that part of the award in condemnation which is free and clear to Landlord of any collection by mortgagees or for the value of the diminished fee. (c) If more than twenty (20%) percent of the floor area of the building, in which the Demised Premises are located shall be taken as aforesaid, Landlord may, by written notice to Tenant, terminate this Lease, such termination to be effective as aforesaid, (d) If this Lease is terminated as provided in this paragraph, the rent shall be paid up to the day that possession is so taken by public authority and Landlord shall make an equitable refund of any rent paid by Tenant in advance. (e) Award: Tenant shall not be entitled to and expressly waives all claim to any condemnation award for any taking, whether whole or partial, and whether for diminution in value of the leasehold or to the fee although, Tenant shall have the right to the extent that the same shall not reduce Landlord's award to claim from the condemnor, but not from the Landlord, such compensation as may be recoverable by Tenant in its own right for the unamortized value of immovable fixtures on a straight-line basis and the reasonable cost of moving stock, furniture and fixtures to another location within 10 miles of the Demised Premises.

26. ASSIGNMENT AND SUBLETTING

Tenant shall not assign, sublet, mortgage, pledge or encumber this Lease, the Demised Premises, or any interest in the whole or in any portion thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld. In determining whether to grant consent to the Tenant's sublet or assignment request, the Landlord may consider any reasonable factor. Landlord and Tenant agree that any one of the following factors, or any other reasonable factor, will be reasonable grounds for deciding the Tenant's request: (a) financial strength of the proposed subtenant/assignee must be at least equal to that of the existing Tenant; (b) business reputation of the proposed subtenant/assignee must be in accordance with generally acceptable commercial standards; (c) use of the Demised Premises by the proposed subtenant/assignee must be identical to the use permitted by this Lease; (d) percentage rent of the proposed subtenant/assignee, or the prospect of percentage rents, must be at least equal to that of the existing Tenant; (f) use of the Demised Premises will not violate any other agreements affecting the Demised Premises, the Landlord or other tenants. Consent to one assignment or sublease shall not constitute a waiver of this provision with respect to subsequent transactions. Landlord shall have no duty or obligation to consent to any assignment or sublease of the Demised Premises unless such assignment or sublease provides that the assignee or subtenant shall be liable to Landlord for all obligations of Tenant under this Lease. Tenant shall pay to Landlord as additional rent an amount equal to reasonable legal and other expenses incurred by Landlord in connection with any request by Tenant for consent to assignment and subletting. If Tenant subleases Demised Premises for an amount greater than the rental due on the

original Lease then Landlord and Tenant will equally share the increased rental. Neither this Lease nor the leasehold interest described herein shall be assignable or transferable by reason of bankruptcy, receivership or by operations of any applicable state law. The transfer of the majority of the voting stock of the Tenant, if Tenant is a corporation, the transfer of a majority of the partnership interests of the Tenant, if the Tenant is a partnership, and any transfer by operation of law will be deemed "assignments" requiring Landlord's consent. Any subletting or assignment by Tenant without the written consent of the Landlord will constitute an event of default, and Landlord reserves the right to terminate this Lease by written notice to the Tenant and to pursue any remedies available to Landlord under this Lease or in law or equity. The joint and several liability of Tenant named herein and any immediate and remote successor in interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not in any way be discharged, released or impaired by any (a) agreement which modifies any of the rights or obligations of the parties under this Lease, (b) stipulation which extends the time within which an obligation under this Lease is to be performed, (c) waiver of the performance of an obligation required under this Lease, or (d) failure to enforce any of the obligations set forth in this Lease; provided, however, that (i) in the case of any modification increases or enlarges the obligations of Tenant or reduces the rights of Tenant, then Tenant named herein and each respective assignor or transferor shall not be liable under or bound by such increase, enlargement or reduction, and (ii) in the case of any waiver by Landlord of a specific obligation of an assignee or transferee of Tenant, such waiver shall also be deemed a waiver of such obligation with respect to the immediate and remote assignors or transferors of such assignee or transferee.

27. PROPERTY OF TENANT

Tenant may, if not in default, at the expiration or earlier termination of this Lease remove, at Tenant's expense, all furniture, equipment, trade fixtures, and other personal property which Tenant shall have placed in the Demised Premises, provided that Tenant shall repair any damage to the Demised Premises caused by such removal. All such property shall during the term hereof, be at the risk of Tenant only, and Landlord shall not be liable for any loss of or damage to such property resulting from any cause. Each policy of insurance maintained by Tenant covering such property shall contain a standard waiver of subrogation endorsement. Any such property not removed at the expiration or earlier termination of this Lease shall be deemed abandoned and may be disposed of by Landlord in any manner, and Tenant shall be liable to Landlord for the cost of such removal and disposal. Tenant shall keep the Demised Premises free from hazardous and/or toxic substances, wastes, materials, pollutants or contaminants ("Hazardous Substances"), including without limitation, asbestos and raw materials which include hazardous constituents and any other substances or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or cleanup ("Environmental Laws"). In the event Tenant intends to use Hazardous Substances in the operation of its business, Tenant must obtain the prior written consent of Landlord to do so, and deposit with Landlord an amount reasonably sufficient to dispose of such Hazardous Substances at the expiration or earlier termination of this Lease should Tenant fail to do so. Tenant grants to Landlord and its agents and employees access to the Demised Premises to do all things Landlord shall deem necessary to bring the Demised Premises in conformance with Environmental Laws. Upon the expiration or earlier termination of this Lease, Tenant will remove all Hazardous Substances from the Demised Premises, in accordance with the provisions of Environmental Laws. Tenant agrees to indemnify Landlord and hold Landlord harmless from and against any and all expenses, damages and costs, including without limitation attorney's fees and consequential damages, incurred by Landlord as a result of any Hazardous Substances on the Demised Premises and/or failure of Tenant to comply with Environmental Laws, even if such expenses, damages and costs are incurred by Landlord after the expiration or earlier termination of this Lease, and such indemnity shall survive the termination or expiration of this Lease. This indemnity is specifically binding upon any guarantor of Tenant's obligations under this Lease.

28. CANCELLATION OF LEASE BY LANDLORD

It is mutually agreed that in the event the Tenant shall default in the payment of rent herein reserved, when due, and fails to cure default within five (5) days after written notice thereof from Landlord; or if Tenant shall be in default in performing any of the terms or provisions of this other than the provision requiring the payment of rent, and fails to cure such default within thirty (30) days after the date of receipt of written notice of default from Landlord; or if Tenant is adjudicated bankrupt; or if a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; or if, whether voluntarily or involuntarily, Tenant takes advantage of any debtor relief proceedings under present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred; or if Tenant makes an assignment for benefit of creditors; or if Tenant's effects should be levied upon or attached under process against Tenant, not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof; then, and in any of said events, Landlord at his option may terminate this Lease by written notice to Tenant; whereupon this Lease shall end, or may, without terminating this Lease, re-enter the Demised Premises and take possession thereof. After an authorized assignment or subletting of the entire Demised Premises covered by this Lease, the occurring of any of the foregoing defaults or events shall affect this Lease only if caused by, or happening to, the assignee or sublessee. Any notice provided in this paragraph may be given by Landlord, or his attorney, or Agent herein named. Upon such termination by Landlord, or retaking possession without termination, Tenant will at once surrender possession of the Demised Premises to Landlord and remove all of the Tenant's effects therefrom; and Landlord may forthwith re-enter the Demised Premises and repossess himself thereof, and remove all persons and effects therefrom, using such force as maybe necessary without being guilty of trespass, forcible entry or detainer or other tort.

The service of a notice to quit or vacate the Demised Premises, demand for possession, notice that the tenancy hereby created will be terminated on any date, institution or an action of forcible detainer or ejectment or entering of a judgment for possession of the Demised Premises (as distinguished from termination of this Lease pursuant to an express notice from Landlord) shall not relieve Tenant from Tenant's obligation to pay the rent hereunder during the balance of the term or any extension thereof, except as herein expressly provided. Institution by Landlord or Landlord's agents or attorneys of a forcible detainer or ejectment action to re-enter the Demised Premises shall not be construed to be an election by Landlord to terminate this Lease. Landlord may collect and receive any rent due from Tenant and the payment thereof shall not constitute a waiver of any notice or demand given, suit instituted or judgment

obtained by Landlord, or be held to waive, affect, change, modify or alter the rights or remedies which Landlord may have in equity or at law or by virtue of this Lease at the time of such payment.

29. BANKRUPTCY AND TENANT ASSURANCES

- (1) Event of Bankruptcy - An "Event of Bankruptcy" means the filing of a voluntary petition by Tenant, or the entry of an order for relief against Tenant, under Chapter 7, 11, or 13 of the Bankruptcy Code (or the conversion to a Chapter 11 or 13 proceeding of a proceeding that is filed by or against Tenant under any other chapter of the Bankruptcy Code)
- (2) Assumption of Lease - If an Event of Bankruptcy occurs, the trustee of Tenant's bankruptcy estate or Tenant as debtor-in-possession may assume the Lease, and may subsequently assign it, only if it does the following within sixty (60) days after the date of the filing of the voluntary petition, the entry of the order for relief or the date of conversion (or such additional time as a court of competent jurisdiction may grant, for cause, upon a motion made within the original sixty (60) day period):
 - (a) file a motion to assume the Lease with the appropriate court;
 - (b) satisfy all of the following conditions, which Landlord and Tenant acknowledge to be commercially reasonable:
 - (i) cure all defaults under the Lease or provide Landlord with adequate Assurance (see Paragraph 29(3)) that:
 - (A) it will cure all monetary defaults under the Lease within ten (10) days from the date of the assumption;
and
 - (B) it will cure all non-monetary defaults under the Lease within thirty (30) days from the date of assumption;
 - (c) compensate Landlord and any other person or entity, or provide Landlord with Adequate Assurance (see Paragraph 29(3)) that within 10 days after the date of assumption, it will compensate Landlord and such other person or entity, for any pecuniary loss that Landlord and such other person or entity incurred as a result of the default of Tenant, the trustees, or the debtor-in-possession.
 - (d) provide Landlord with Adequate Assurance of Future Performance (see Paragraph 29(3)) of all of Tenant's obligations under the Lease.
 - (e) deliver to Landlord a written statement that the conditions in Paragraph 29(2) have been satisfied.
- (3) Adequate Assurance; Adequate Assurance of Future Performance
 - (a) Adequate Assurance - For purposes only of Paragraph 29(2), and in addition to any other requirements under the Bankruptcy Code, any future federal bankruptcy law and applicable case law, "Adequate Assurance" means at least:
 - (i) entering an order segregating sufficient cash to pay Landlord and any other person or entity under Paragraph 29(2), and
 - (ii) granting to Landlord a valid first lien and security interest (in form acceptable to Landlord) in Tenant's property or its bankruptcy estate, which lien and security interest secures the trustee's or debtor-in-possession's obligation to cure the monetary and non-monetary defaults under the Lease within the periods set forth in Paragraph 29(2);
 - (b) Adequate Assurance of Future Performance - For purposes only of Paragraph 29(2), and in addition to any other requirements under the Bankruptcy Code, any future federal bankruptcy law and applicable case law. Adequate Assurance of Future Performance means at least:
 - (i) the trustee or debtor-in-possession depositing with Landlord, as security for the timely payment of rent and other monetary obligations, an amount equal to the sum of two (2) months minimum annual rent and 1/6 of Tenant's annual obligation under the Lease for the immediately preceding twelve (12) months for CAM costs, real estate tax payments, promotional fund and similar charges;
 - (ii) the trustee or the debtor-in-possession agreeing to pay in advance, on each day that the minimum annual rent is payable, 1/12 of Tenant's annual obligation under the Lease for the immediately preceding twelve (12) months for CAM costs, real estate tax payments, promotional fund and similar charges;

- (iii) the trustee or debtor-in-possession providing adequate assurance of the source of the rent and other consideration due under this Lease;
- (iv) the trustee or debtor-in-possession providing adequate assurance of the source of the rent due under the Lease will not decline substantially; and
- (v) Tenant's bankruptcy estate and the trustee or debtor-in-possession providing adequate assurance that the bankruptcy estate (and any successor after the conclusion of the Tenant's bankruptcy proceedings) will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that the bankruptcy estate (and any successor after the conclusion of the Tenant's bankruptcy proceedings) will have sufficient funds to fulfill Tenant's obligations under the Lease and keep the Demised Premises stocked with merchandise and properly staffed with sufficient employees to conduct a fully-operational, actively promoted business on the Demised Premises; and

(4) **Assignment of Lease**

- (a) General - If the trustee or the debtor-in-possession assumes the Lease under Paragraph 29(2) and applicable bankruptcy law, it may assign its interest in this Lease only if the proposed assignee first provides Landlord with Adequate Assurance of Future Performance [see Paragraph 29(4)(b)] of all of Tenant's obligations under the Lease and if Landlord determines, the exercise of its reasonable business judgment, that the assignment of the Lease will not:
 - (i) breach any other lease, mortgage, financing agreement, or other agreement relating to the Shopping Center by which Landlord is bound (and Landlord is not required to obtain consents or waivers from any third party required under any lease, mortgage, financing agreement, or other agreement by which Landlord is bound); or
 - (ii) disrupt the tenant mix of the Shopping Center or any other attempt by Landlord to provide a specific variety of retail stores in the Shopping Center that, in Landlord's reasonable business judgment, would be most beneficial to all of the tenants of the Shopping Center and would enhance the image, reputation, and profitability of the Shopping Center.
- (b) Adequate Assurance of Future Performance - For purposes only of Paragraph 29(4)(a), and in addition to any other requirements under the Bankruptcy Code, any future federal bankruptcy law and applicable case law, "Adequate Assurance of Future Performance" means at least the satisfaction of the following conditions, which Landlord and Tenant acknowledge to be commercially reasonable:
 - (i) the proposed assignee submitting a current financial statement, audited by a certified public accountant, that shows a net worth and working capital in amounts determined in the reasonable business judgment of Landlord to be sufficient to assure future by the assignee of Tenant's obligation under the Lease;
 - (ii) if requested by Landlord in the exercise of its reasonable business judgment, the proposed assignee obtaining a guarantee (in form and substance satisfactory to Landlord) from one or more persons who satisfy Landlord's standards of credit worthiness; and
 - (iii) the proposed assignee submitting written evidence, satisfactory to Landlord in the exercise of its reasonable business judgment, of substantial retailing experience in shopping centers of comparable size to the Shopping Center and in the sale of merchandise and services permitted under the Lease.

30. **RELETTING BY LANDLORD**

Landlord reserves other remedies at law or in equity, including, but not limited to, the right to dispossess Tenant (in the event of any of the above defaults) by entering and taking possession of the Demised Premises. In the event of dispossession, Tenant, its successors and assigns shall no longer have the right to use and occupy the Demised Premises, but Tenant shall continue to be liable for the rental provided for. In such event, Landlord shall have the right to re-let the Demised Premises as agent for Tenant (for this specific purpose) to such parties as Landlord deems suitable for the best rental Landlord can obtain by reasonable effort and Landlord may hold Tenant liable for any loss or damage whether suffered in re-renting, or by reasons of the property's remaining vacant, or for any damage done to the Demised Premises, and for any expense of reletting or remodeling in order to re-lease the Demised Premises. No Tenant shall have trade dress rights regarding the interior or exterior of the premise. Landlord reserves the right to use premise "as is".

31. **ENTRY FOR CARDING, ETC.**

Landlord may card Demised Premises "For Sale" at any time and "For Rent" ninety (90) days before the termination of this Lease. Landlord may enter the Demised Premises at reasonable hours to exhibit same to prospective purchasers or tenants and to make repairs required of Landlord under the terms hereof, or to make repairs to Landlord's adjoining property, if any.

32. EFFECT OF TERMINATION OF LEASE

No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

33. ESTOPPEL CERTIFICATE

Within ten (10) days after written request by Landlord or any mortgage or trustee under a mortgage or deed of trust covering the Demised Premises, Tenant shall deliver in recordable form a statement to any mortgagee, trustee or other transferee, or to Landlord, certifying any facts that are then true with respect to this Lease, including without limitation that this Lease is in full force and effect, that Tenant is in possession, that Tenant has commenced the payment of rent, and that Tenant claims no defense or setoff to the due and full performance of its obligations under this Lease.

34. SUBORDINATION AND ATTORNMENT

Tenant agrees that this Lease shall be subject and subordinate to any mortgages, deeds or trust or any ground lease now or hereafter placed upon the Demised Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust. Tenant agrees to attorn to the mortgage, trustee, beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosure thereof, and to the Landlord in the event of a termination of any such ground lease. This provision shall be self-operative without any further instrument necessary to effect such subordination and attornment. Tenant will, however, upon request by Landlord, execute and deliver to Landlord or to any other person designated by Landlord, any instrument or instruments required to give effect to the provisions of this paragraph. In default of Tenant's so doing, Landlord shall be and is authorized and empowered to execute such instrument in the name of and as the act and as the act and deed of Tenant, its authority being declared to be coupled with an interest and to be irrevocable.

35. NO ESTATE IN LAND

This contract shall create the relationship of landlord and tenant between Landlord and Tenant; no estate shall pass out of Landlord; Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except as provided in Paragraph 26 hereof.

36. HOLDING OVER

If the Tenant withholds from the Landlord possession of the Demised Premises at the termination of this Lease, and after a twenty-four (24) hours written notice to vacate the Demised Premises has been given by the Landlord, the damages for which the Tenant shall be liable for such detention shall be and are liquidated at a sum equal to double the rate of rentals stipulated herein, the same to be due for the entire period of such holding over or detention; or, if the Tenant remains in the Demised Premises after the termination of this Lease, Landlord may elect, without notice to the Tenant, to constitute such withholding of the Demised Premises as a hold over under this Lease and such tenancy shall be considered a tenancy at sufferance and in no event shall it be considered a tenancy from month to month or from year to year, and the rental rates shall be double the amount of the rent as set out herein, if the parties cannot agree otherwise.

37. RELOCATION OF TENANT

Landlord shall have the right, at its option, to relocate Tenant from the Demised Premises to other space in the Shopping Center, substantially similar in size to the Demised Premises. Such relocation shall be at Landlord's cost and expense and shall include all of Tenant's costs to relocate and all actual losses incurred by Tenant while its business is closed due to relocation, except to the extent that same are reimbursed to Tenant by way of Business Interruption Insurance. In the event Landlord relocates Tenant to an area of the Shopping Center where the fair market value of the rental is greater or less than the fair market value of the Demised Premises, Tenant's minimum rent shall be adjusted upward or downward as the case may be to reflect the fair market value for the new space.

38. ATTORNEY'S FEES AND HOMESTEAD

In the event the Tenant fails to keep the Demised Premises and surrounding areas in the proper condition as provided in Paragraphs 15, 16, 18 and 44 herein, the Landlord may cause the same to be done for the Tenant and Tenant hereby agrees to pay the expense thereof on demand as additional rent. Tenant waives all homestead rights and exemptions which he may have under any law as against any obligations owing under this Lease, Tenant hereby assigns to Landlord his homestead and exemption. If Tenant shall at any time be in default hereunder, and if Landlord shall deem it necessary to engage attorney's to enforce Landlord's rights hereunder, the determination of such necessity to be in the sole discretion of Landlord, Tenant will reimburse Landlord for the reasonable expenses incurred thereby, including but not limited to court costs and reasonable attorney's fees, all being rental obligations of Tenant.

39. RIGHTS CUMULATIVE

All Rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.

40. **NOTICES**

All notices provided for in this Lease shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, addressed (a) to the same address where rent is received; (b) to Tenant at its last known address and the Demised Premises; and (c) to the holder or holders of any mortgage or deed of trust covering the Demised Premises at such address as such holder or holders may have given notice. Either party, or any such holder, may from time to time, by notice, designate a different address to which notices to it shall be sent.

Tenant's notice address shall be:

7876 Fields, Inc. c/o Bill Fields
7228 S. 123rd Plaza, Suite F
La Vista, NE 68128

Phone Number: 402. 699. 2697

Landlord's notice address shall be:

Fantasy's Inc.
8930 S. 137th Circle, Suite 2
Omaha, NE 68138

Phone Number: (402) 891-9455

41. **WAIVER OF RIGHTS**

No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with its obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the term hereof.

The receipt by Landlord of rent from any assignee, under Tenant or occupant of the Demised Premises shall not be deemed to be a waiver of the covenants of this Lease against assignment and subletting or an acceptance of the assignee, sublessee or occupancy as Tenant or a release of Tenant from the further observance or performance by Tenant of the covenants in this Lease.

42. **TIME OF ESSENCE**

Time is of essence of this agreement.

43. **USE OF SHOPPING CENTER NAME**

Tenant shall not, except to designate the Tenant's business address (and then only in a conventional manner and without emphasis or display) use the Shopping Center name, or any simulation or abbreviation of such name for any purpose. The Landlord reserves the right to change the name of the Shopping Center at any time. The Tenant will discontinue using such name and any simulation or abbreviation thereof with (30) days after the Landlord shall notify the Tenant that the Shopping Center is no longer known by such name.

44. **CONDITION OF PREMISES**

Tenant accepts Demised Premises in such condition and repair as they are in at the commencement of the term of the Lease, which acceptance shall be conclusive evidence of the good and satisfactory condition of the Demised Premises at such time. Upon expiration or earlier termination of this Lease, Tenant shall surrender the Demised Premises in good condition and repair, ordinary wear and tear accepted. All equipment and lighting should be in good working order, and the premises free of debris and broom swept or vacuumed.

45. **IMPROVEMENTS**

All improvements, alterations, and additions to the Demised Premises as set forth on Exhibit "C" shall be made at Tenant's expense, in good workman-like manner and in accordance with plans and specifications which have been previously approved in writing by Landlord. Landlord agrees to reimburse Tenant for the cost of such improvements up to a maximum of \$ 45,000. Upon completion of Tenant's work, Tenant shall present to Landlord paid invoices for such work, together with signed mechanics' lien waivers from all contractors and material suppliers furnishing labor or materials for such work, and such other documents as Landlord may reasonably request, and upon receipt of such satisfactory documentation, Landlord shall pay Tenant for the cost of the work, up to the maximum of \$45,000. Any cost in excess of the maximum amount shall be paid by Tenant. If the improvements, alterations, or additions are to be made by a contract other than one previously approved by Landlord in writing, Landlord reserves the right (1) to approve such contractor, which approval shall not be unreasonably withheld, and (2) to require adequate lien waiver, bonds, permits, licenses, insurance and the like. All improvements and additions made by, for, or at the direction of Tenant and attached to the Demised Premises, including without limitation, all walls, ceilings, partitions, carpets, floor and wall coverings, lighting fixtures, doors, hardware, shelves, cabinets, ceilings, and other fixture excluding Tenant's trade fixtures and other personal property, shall when made become at the option of the Landlord the property of Landlord and shall remain in the Demised Premises and shall be surrendered to Landlord at the expiration earlier termination

of this Lease. Landlord has made no representations as to the condition of the Demised Premises or Building in which the Demised Premises are located, or any agreement to remodel, repair or decorate the Demised Premises.

Notwithstanding any provision of this Lease relating to improvements, additions, alterations, repairs, and/or reconstruction of or to the Demised Premises, Landlord and Tenant hereby agree and confirm that (a) Landlord has not consented and will not consent to the furnishing of any labor or materials to the Demised Premises that would or may result in any construction lien attaching to Landlord's interest in the Demised Premises, (b) Tenant is not the agent of Landlord for the purposes of any such improvements, additions, alterations, repairs and/or reconstruction, and (c) except as expressly provided herein, Landlord has retained no control over the manner in which any such improvements, additions, alterations, repairs and/or reconstruction are or is accomplished, and has made no agreement to make or be responsible for any payment to or for the benefit of any person furnishing labor and/or materials to or for the account of Tenant shall be entitled to claim any lien against the interest of Landlord in the Demised Premises and such person(s) shall look solely to Tenant and the leasehold interest of Tenant under this Lease for satisfaction of any such claim.

Tenant is specifically warned that any alterations that include penetrating, fastening to, or placement on the roof may void the roof warranty and Tenant will be held liable. Any penetrations, fastenings, or placements on the roof must be (1) approved in advance in writing by Landlord, (2) performed by contractor, approved by roof manufacturer, and (3) documented by contractor and acknowledged by manufacturer to Landlord that repairs were properly made.

46. DEFINITIONS

"Landlord" as used in this shall include first party, its heirs, representatives, assigns and successors in title to Demised Premises. "Tenant" shall include second party, its heirs and representatives and, if this shall be validly assigned or sublet, shall include also Tenant's assignees or sublessees, as to Demised Premises covered by such assignment or sublease. "Agent" shall include third party, its successors, assigns, heirs, and representatives. "Landlord," "Tenant" and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

47. REASONABLE REGULATION

Tenant shall not permit allow or cause any act or deed to be performed or any practice to be adopted or followed in or about said Demised Premises which shall cause or be likely to cause injury or damage to any person or to said Demised Premises or the building or to the sidewalks and pavement adjoining the Demised Premises. Tenant shall not permit, allow or cause any noxious, disturbing or offensive odors, fumes or gases or any smoke, dust, steam or vapors, or any loud disturbing noise, sound or vibration to originate in or to be emitted from said Demised Premises. Tenant at all times shall keep said Demised Premises in a neat and orderly condition and shall keep the entry ways, sidewalks and delivery areas adjoining the Demised Premises clean and free from Tenant's rubbish and dirt. Tenant shall not use or permit the use of any portion of said Demised Premises as sleeping or living quarters or as lodging rooms, or keep or harbor therein any live animals, fish, or birds or use the same for illegal purpose. Tenant shall not permit, allow or cause the sinks, toilets or urinals in the Demised Premises or building to be used for any purpose except that for which they were designed and installed, and the expense of repairing any breakage or damage or removal of any stoppage resulting from a contrary use shall be paid by Tenant. Tenant shall maintain the show windows in a clean, neat and orderly condition and the glass thereof clean, and shall store all trash, rubbish and garbage within said Demised Premises. Tenant shall keep the Demised Premises clean and free of rodents, bugs and vermin and at the request of Landlord participate and cooperate in executing any program of extermination that Landlord may direct and Tenant shall bear the cost thereof. Tenant agrees to abide by the Rules and Regulations attached hereto as Exhibit "D" as the same may be amended by Landlord from time to time, and such other rules and regulations that may be implemented from time to time so long as they are uniformly applied and reasonable in nature. The Landlord reserves the right to impose reasonable restrictions as to loading.

48. CONDUCT OF TENANT'S BUSINESS

Tenant agrees during the term of this Lease that Tenant will:

- a. To use the entire Store for the use specified and to conduct Tenant's business in a reputable manner;
- b. To adequately staff and stock its Store to handle the business;
- c. To maintain displays in the display windows, if any;
- d. To place and maintain signs on the Store only in conformity with Exhibit G hereto and to keep the display windows and signs, if any, well lighted during such hours that the center is lighted by Landlord;
- e. To maintain the Store and property and signs therein, and the windows and doors, in a neat, clean, sanitary and safe condition;
- f. To store in the Store only merchandise Tenant intends to sell;
- g. To comply with all licenses or permits which may be required by Tenant for business conducted in the Store;
- h. To use for offices only such space as is reasonably required for the conduct of Tenant's business in the Store;

- i. To use the Insignia or other identifying mark of the Shopping Center designated by Landlord in Tenant's advertising, whether printed or visual, and to make reference to the name of the Shopping Center in each instance of audio advertising.
- j. Not to place any weight upon the floors which shall exceed seventy-five (75) pounds per square inch of floor space covered;
- k. Not to change the trade or advertising name of the business operated in the Store without Landlord's prior written consent;
- l. Not to conduct any auction, distress, fire or bankruptcy sale (whether real or fictitious) or any fictitious going-out-business sale.

49. RADIUS RESTRICTION

Tenant covenants and agrees that it will not engage, directly or indirectly, nor through a subsidiary or affiliated corporation, not through partnerships or other commercial entities, in the same or in any business similar to that to be conducted in the Store within a radius of two (2) miles from the extreme limits of Landlord's premises during the term of this Lease and all renewals and extensions. The restrictions of this section shall not apply to any such business of Tenant open and doing business within the radius as of the date of the execution of this Lease.

In the event of any violation of the restriction, then Landlord, at its option, shall be entitled to an injunction restraining such violation in addition to other legal or equitable damages or remedies available and Landlord shall also have the right to require that the Gross Sales (as defined in this Lease) of any such store or business within three restricted radius shall be included in the Gross Sales made from the Store and from such other store or business, and Tenant shall make all records of such competing store or business available to Landlord for inspection and/or copying for the purpose of properly determining Percentage Rental.

50. (Future Use)

51. PROVISIONS BINDING, ETC.

Except as otherwise expressly provided, all provisions herein shall be binding upon and shall inure to benefit of the parties, their legal representatives, successors and assigns. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound, jointly and severally, by these provisions. In the event of any sale of the land, building or this Lease of the Shopping Center, Landlord shall be entirely relieved of all obligations hereunder.

52. ENTIRE AGREEMENT, ETC.

This Lease and the Exhibits, Riders and/or Addenda if any attached, set forth the entire agreement between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties. If any provision contained in an exhibit, rider or addenda is inconsistent with the printed provision of this Lease, the provision contained in said exhibit, rider or addenda shall supersede said printed provision. It is herewith agreed that this Lease contains no restrictive covenants or exclusive in favor of Tenant. Should the Tenant at any time during the term of this Lease claim rights under a restrictive covenant or exclusive, whether implied or otherwise, the Tenant herewith specifically waives any such claim with respect to department stores or regional or national chains, in addition to other merchants with whom leases had been signed prior to the date of the signing of this Lease by both the Tenant and Landlord. The captions, numbers and index appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any paragraph, nor in any way affect this lease. The laws of the state in which the Demised Premises are located shall govern the validity, performance and enforcement of this Lease.

53. FORCE MAJEURE

This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations, or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by including but not limited to acts of God or by reason of strikes, civil unrest, or governmental preemption in connection with a National Emergency declared by the President of the United States or in connection with any rule, order, or regulation of any department or subdivision thereof of any governmental agency or by reason of the conditions of supply and demand which have been or are affected by war.

54. FINANCIAL STATEMENTS

Prior to execution of this Lease, Tenant has furnished to Landlord a financial statement stating Tenant's net worth. Tenant will furnish an updated financial statement upon Landlord's request during the term of this Lease. Landlord may not make this request more than once in any one calendar year. Landlord has relied on the financial statement and representations made by Tenant on its application in this Lease. Any material misrepresentation or omission of this information shall be considered a default hereunder and grounds for Landlord terminating this Lease.

55. WAIVER OF LIABILITY

Anything in this Lease to the contrary notwithstanding, Landlord shall have no personal liability arising from this Lease and Tenant agrees that it shall look solely to estate and property of the Landlord in the land and buildings comprising the Shopping Center of which the Demised Premises are a part, and subject to prior rights of any mortgagee of the Demised Premises, for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord, and no other assets of the Landlord shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies.

56. GOVERNMENTAL LEVIES

Tenant agrees to pay (A) any tax levied by any governmental authority against: (1) the rents paid to Landlord hereunder, (2) the gross receipts paid to Landlord hereunder (including, if applicable, real estate ad valorem taxes, insurance premiums, common area maintenance payment and percentage rental, but not limited to these items) or (B) any "commercial lease tax" as it may be defined or similar tax, the intention herein being that the Tenant shall be responsible for the payment of this tax on or before the date it is due and payable.

57. GOVERNMENTAL REQUIREMENTS

Tenant agrees, at its own expenses, to promptly comply with all requirements of any legally constituted public or governmental authority made necessary during Tenant's occupancy and use of said Demised Premises.

58. SECURITY INTEREST

As security for the performance of Tenant's obligations hereunder, Tenant (Debtor herein) grants unto Landlord, its successors and assigns, a lien on all of the inventory, goods, fixtures and equipment (and any replacements thereof) used in the operation of Tenant's (Debtor's) business on the Demised Premises. Landlord shall have all the rights of a secured party under the applicable Uniform Commercial Code adopted in the state where the Demised Premises are located, in addition to all other rights granted to Landlord by law. Tenant shall execute all Financing Statements, Continuation Statements and other documents required by Landlord to perfect and continue perfection of its security interest at lease execution. In default of Tenant's so doing, Landlord shall be and is authorized and empowered to execute such instrument in the name of and as the act and deed of Tenant, this authority being declared to be complied with an interest and to be irrevocable.

59. DELIVERY OF LEASE

Because the Demised Premises are on the open market and are presently being shown, this Lease shall be treated as an offer with the Demised Premises being subject to prior lease and such offer subject to withdrawal or non-acceptance by Landlord or to other use of the Demised Premises without notice, and this lease shall not be valid or binding unless and until accepted by Landlord in writing and a fully executed copy delivered to both parties hereto.

In so far as the attached stipulations conflict with any of the provisions set forth below, the attached shall control:

60. RECORDING

Tenant shall not record this Lease or Memorandum of Lease without prior written consent of Landlord.

61. EXHIBITS

The following exhibits are included as a part of this Lease:

- Exhibit A Site Plan
- Exhibit B Legal Description
- Exhibit C Improvements
- Exhibit D Rules and Regulations
- Exhibit F Signage Criteria
- Exhibit G Personal Guarantee
- Exhibit H Receipt Acknowledgement for Southport East Subdivision Agreement and Covenants

62. CONFIDENTIALITY

Tenant acknowledges that the terms and provision of this Lease, including, but not limited to, amounts and forms of rent and other consideration, were negotiated and agreed to by or on behalf of Landlord and Tenant without reference to comparability with the terms and conditions of leases for other of the tenantable space at the Shopping Center. Tenant agrees that it will not, without the prior written consent of Landlord, reveal the terms and conditions of this Lease, including, but not limited to, amounts and forms of rent, any other part thereof, to anyone other than financial and legal advisors who themselves agree to keep such information confidential, including, but not limited to, other existing or prospective tenants of the Shopping Center.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals.

LANDLORD:

Fantasy Inc

BY:

John T. Spauld
President

ITS:

TENANT:

Bill Fields

BY:

BILL FIELDS

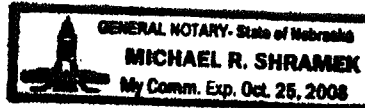
ITS:

MANAGING MEMBER

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 3 day of December, 2007, by John Spawr
the President of Proseco, Inc. a Nebraska Corp., on behalf of such entity.
Michael R. Shramek
Notary Public

Commission expires: Oct 25, 2008



STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 24 day of September, 2007, by Bill Fields
the Managing member of Fields, Inc. a Nebraska Corporation, on behalf of such entity.
Jane H. Loach
Notary Public

Commission expires: 2/14/2010
A rectangular notary seal stamp. It features a small graphic of a notary on the left. The text reads: "GENERAL NOTARY - State of Nebraska", "JANE H. LOACH", and "My Comm. Exp. Feb. 14, 2010".

EXHIBIT B

LEGAL DESCRIPTION

**Southport Square
7826 S. 123rd Plaza, Suite E & F
La Vista, NE 68128**

Exhibit C

TENANT IMPROVEMENTS

Landlord shall deliver the premises to Tenant in AS IS where is condition. Tenant shall be solely responsible for all buildout and improvements to the premises. Tenant shall not be permitted to commence construction of the premises until Landlord has provided Tenant with written consent and authorization, which shall not be unreasonably withheld, to proceed with said construction. Tenant shall submit it's final drawings of it's plans for construction to the premises to Landlord for Landlord's written approval prior to the Date of Possession. Landlord shall provide Tenant with it's written consent or rejection to Tenant's request no later than 10 days from date of Landlord's receipt of said plans.

Landlord shall provide a contribution to the Tenant's work in the amount of \$ 45,000.

EXHIBIT D

RULES AND REGULATIONS

1. The sidewalk, entrances, passages, courts, vestibules, corridors and halls shall not be obstructed or encumbered by any Tenant or used for any purposes other than ingress and egress to and from the respective stores.
2. No awnings or other projections shall be attached to the outside walls of the building without the prior consent of Landlord. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any windows or doors of the respective stores, without written consent of Landlord.
3. No sign, signal, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the respective stores without the prior written consent of Landlord. In the event of the violation of the foregoing by any Tenant, Landlord may remove same without any liability and may charge any expense in such removal to the Tenants violating this rule.
4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the buildings shall not be covered or obstructed by any Tenant, nor shall any bottles, parcels or other articles be placed on the windowsills.
5. No showcases, sales tables, merchandise displays, signs or other articles shall be put in front of or affixed to any part of the exterior of the building, nor placed in the halls, common passageways, corridors or vestibules without the prior written consent of Landlord.
6. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse or the fixtures shall be borne by the Tenant who, or whose employees, agents, visitors, or licensees, shall have caused the same.
7. No Tenant shall cause or permit any unusual or objectionable odors to be produced upon or released from the respective stores.
8. No space in the Shopping Center shall be used for the sale of merchandise, goods or property of any kind at auction.
9. No Tenant shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Shopping Center or those having business therein, whether by the use of any musical instruments, amplified sound, unmusical noise, whistling, or singing, or in any other way. No Tenant shall throw anything out of the doors, windows, or skylights down the passageways.
10. No Tenant, nor any of Tenant's servants, employees, agents, visitors, or licensees, shall at any time bring or keep in the respective stores any flammable, combustible or explosive fluid, chemical or substance.
11. All boxes must be broken down flat before being placed in special cardboard bins (or dumpsters). All plastic bags, wrapping paper, loose materials, etc., must be secured in boxes or tied in bags prior to emptying into dumpster.
12. The respective stores shall not be used for lodging or sleeping or for any immoral or illegal purposes.
13. The requirements of each Tenant will be attended to only upon application at the office of Landlord. Landlord's employees shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of Landlord.
14. Canvassing, soliciting and distribution of handbills other than in the respective stores is prohibited and each Tenant shall cooperate to prevent the same.
15. There shall not be used in any space, or in the public halls or the building, either by any Tenant or by jobbers or others in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires.
16. Each Tenant must, upon the termination of this tenancy, restore to Landlord all keys to stores, offices, and toilet rooms either furnished to, or otherwise procured by Tenant, and in the event safes, closets or other lockable permanent fixtures are installed in the respective store, give all keys or combinations thereto to Landlord at the termination of the Lease.
17. Each Tenant must, upon termination of its tenancy, restore floors, walls, and ceilings to repaired condition, leaving no holes or damage caused by Tenant use and/or removal of Tenant fixtures.

RECEIVED

OCT 09 2007

EXHIBIT F

TENANT SIGNAGE CRITERIA

NEBRASKA LIQUOR
CONTROL COMMISSION

1. GENERAL

All Tenant signage (with the exception of signs located wholly within demising partitions of stores) including anything on the outside of storefronts or the inside of windows and on the outside of loading doors, shall be governed by this Lease Exhibit F.

Signage governed hereby must have design approved in writing by Landlord prior to fabrication and installation.

Written Application for permanent store identity sign approval shall be submitted in triplicate and shall include at least the following, all of which are subject to Landlord's approval:

A drawing of the sign detailing the following:

Size and style of the following:

- i) sign structure support;
- ii) lettering; and
- iii) logo, artwork, graphics, etc.

Materials and colors.

All dimensions.

Illumination details and specifications (including electrical load requirements).

Plan and elevation sketches illustrating the exact locations proposed for the sign.

Within two (2) weeks of receipt of Tenant's complete sign application, Landlord shall approve or deny said application.

Approval will not be unreasonably withheld from applications submitted in compliance with this Lease Exhibit F.

Approval may be conditioned upon changes required from the plan as submitted.

Landlord reserves the right of purely subjective judgment on aesthetic matters.

All Tenant signage shall be illuminated, and both the installation and maintenance shall be at the Tenant's sole responsibility and expense.

Switches to sign illumination shall be photoelectric or timers, set to illuminate each day at dusk. Illumination of signs must be switched on during all hours of operations after dusk.

Landlord's responsibility relative to Tenant's signs is limited to approval solely for Landlord's purposes, and Tenant bears the full and final responsibility, financial and otherwise, for the following, relative to Tenant's signs:

Meeting all applicable regulatory, approval, code, and permit requirements, etc.

Proper installation, operation, maintenance, and repair of Tenant's sign(s).

Holding Landlord harmless against damage to Landlord's building, and against any other property damage or personal injury that might be occasioned by the installation, operation or removal of Tenant's sign(s).

Failure to Maintain: In the event Tenant is notified of disrepair or improper illumination of its signs as approved by Landlord, Tenant shall correct such disrepair within ten (10) days of written notice from Landlord. Should Tenant fail to correct such disrepair within the aforesaid time period, Landlord will correct such disrepair at Tenant's expense based upon Landlord's actual cost plus twenty percent (20%).

All criteria are subject to compliance with city ordinance and approval.

II. PERMANENT STORE IDENTITY SIGNS

Bulkhead Signs:

Tenant's bulkhead signs shall be store identity signs only, and shall be mounted directly on a raceway to the vertical fascia overhanging the storefront with no other background material, and;

No higher than one foot (1') below the top of the vertical fascia.

No closer than three feet (3') to an extension of Tenant's side lease line.

Bulkhead signs shall be 3-dimensional, cut or cast letters, reversed channel or plexiglass self-illuminated face with metal sides. Exceptional use of predominately decorative sculpture, coat of arms, shields or logos, may be permitted if approved by landlord. All lamps, conductors, transformers, and other equipment shall be completely concealed either within the letters or behind the fascial overhang.

The thickness of Tenant's "cut-out" type illuminated letters shall be limited to a maximum of six inches (6").

Tenant's bulkhead signs shall be limited to letters conforming to the following height criteria;

Up to 25' storefront: 3' Max.; 2'3" Min.

Over 25' storefront: 4' Max.; 3'0" Min.

In addition, size of signs shall be limited in length to a maximum of seventy percent (70%) of the length of the wall upon which the sign is located and which is within an extension of the demising partitions of the store.

Rear Signs: Directly on the back of the west-facing wall of those tenants with a west rear or side wall, with no other background material mounted on raceway:

The top of each sign to be immediately below the rain gutter.

No part of any sign to be closer than three feet (3') to point of intersection of Tenant's west-facing wall with a demising partition.

III. SPECIFICALLY NOT PERMITTED

Without limiting the generality of the foregoing, the following will specifically not be permitted on the exterior of the building or outside the storefront:

Any flat, painted permanent sign.

Any flashing action, moving action, or audible action sign parts.

Permanent signs not mounted to the fascia or overhang in front of the store.

Listing of products, unless part of name or logotype.

Neon signs (except as mounted inside of tenant's windows).

Back-lighted, box-type signs.

IV. EXCEPTIONS

Landlord, at Landlord's sole discretion, may grant temporary and/or permanent exceptions to these sign criteria when in landlord's sole discretion, such exception will be consistent with the intent hereof.

Where appropriate and feasible, exceptions will be considered for tenants desiring to repeat their bulkhead sign on the side or rear walls for additional exposure.

Any such exception shall only be in writing and in response to written requests for same, fully documenting the reasons for same, and illustrated with detailed plans and elevations.

Exhibit "G"

PERSONAL GUARANTY

On or about Sept 24th, 2007 Fantasy's Inc, a Nebraska corporation ("Landlord") and FIELDS INC. A NEBRASKA CORPORATION ("Tenant") entered into a certain lease for the real estate located at or about 7826 So 123rd PLAZA (the "Lease). To induce the Landlord to enter into that certain Lease dated as of SEPTEMBER, 2007 and for other valuable consideration, the undersigned Guarantors hereby jointly, severally and unconditionally guarantee to Landlord : 1) prompt and full payment of all rent and other payments due from the Tenant and/or the Successor Tenant under the Lease; and ii) prompt and complete performance of all of the other terms and conditions and covenants of the Tenant and/or the Successor Tenant under the Lease.

The Guarantors each intend and agree that this Guaranty shall remain effective until full and complete payments and performance of all of the Tenant's and/or Successor Tenant's obligations under the Lease, including any modifications or extensions thereof, notwithstanding any act or incurrence which might otherwise act to reduce or discharge the Guarantors. In this regard, each of the Guarantors acknowledges and agrees that the liability of the Guarantors under the Guaranty shall continue notwithstanding any assignment, extension, amendment or modification of, or any forbearance under the Lease. The Guarantors each waive notice of any such assignment< extension, amendment, modification or forbearance. Each Guarantor further agrees that Landlord may pursue its remedies under this Guaranty without proceeding against the Tenant and/or Successor tenant and may pursue its remedies against one Guarantor without pursuing the other Guarantor.

This Guaranty shall be binding upon the heirs, successors and personal representatives of each Guarantor and shall be construed according to Nebraska law. The liability and obligation of each Guarantor under this Guaranty shall be joint and several.

EXECUTED this 24th day of SEPTEMBER, 2007.

GUARANTORS:

Bill Fields
Bill Fields

Larry Fields
Larry Fields

Lynette Fields
Lynette Fields

EXHIBIT "H"

Receipt Acknowledgement for Southport East Subdivision Agreement and
Covenants

This is to acknowledge receipt of the Subdivision Agreement and Covenants for
Southport East.

TENANT:

Bill Fields

BY:

BILL FIELDS

ITS:

MANAGING MEMBER

DATE:

September 24th, 2007

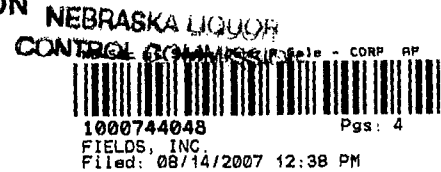
RECEIVED

OCT 09 2007

ARTICLES OF INCORPORATION

OF

FIELDS, INC.



The undersigned natural person of full age, acting as incorporator of a corporation under all applicable provisions of the Nebraska Business Corporation Act, as amended, hereby adopts the following Articles of Incorporation for such corporation.

ARTICLE I.
NAME

The name of the Corporation shall be **FIELDS, INC.**

ARTICLE II.
DURATION

The period of the corporation's duration is perpetual.

ARTICLE III.
PURPOSE

The purpose for which this corporation is organized and the general nature of the business to be transacted by the corporation shall be the transaction of any and all lawful business for which corporations may be incorporated under the provisions of the Nebraska Business Corporation Act.

ARTICLE IV.
POWERS

The corporation shall have and exercise all powers and rights conferred upon corporations by the Nebraska Business Corporation act and any enlargement of such powers conferred by subsequent legislative acts; and, in addition thereto, the corporation shall have and exercise all powers and rights, not otherwise denied corporations by the laws of the State of Nebraska, as are necessary, suitable, proper, convenient or expedient to the attainment of the purposes set forth in Article III above.

ARTICLE IV.
AUTHORIZED SHARES

1. The capital stock of this corporation shall be Ten Thousand and 00/100 Dollars (\$10,000.00) which shall be divided into Ten Thousand (10,000) shares of fully paid and nonassessable common stock with a par value of One and 00/100 Dollar (\$1.00) each.

then inconsistent with these Articles of Incorporation as at any time or from time to time modified.

ARTICLE VIII.
INTEREST OF DIRECTORS
IN TRANSACTIONS

In the absence of fraud, no contract or other transaction between the corporation and any other person, corporation, firm, syndicate, association, partnership, or joint venture shall be wholly or partially invalidated or otherwise affected by reason of the fact that one or more of the directors of the corporation are or are to become directors or officers of such other corporation, firm, syndicate, or association, or members of such partnership or joint venture, or are pecuniarily or otherwise interested in such contractual transaction, provided, that the fact such director or directors of the corporation are so situated or so interested or both, shall be disclosed or shall have been known to the Board of Directors of the corporation. Any director of the corporation who is also a director or officer of such other corporation, firm, syndicate or association, or a member of such partnership, or joint venture, or pecuniarily or otherwise interested in such contract or transaction, may be counted for the purpose of determining the existence of a quorum at any meeting of the Board of Directors of the corporation which shall authorize any such contract or transaction, with like force and effect as if he were not a director or officer of such other corporation, firm, syndicate, or association, or a member of such partnership or joint venture, or pecuniarily or otherwise interested in such contract or transaction.

ARTICLE IX.
INDEMNIFICATION

The corporation shall indemnify every officer or director, or former director or former officer, his heirs, executors, personal representatives and administrators, and any person, or the heirs, executors, personal representatives and administrators of such person, who shall serve at its request as an officer or director of any other corporation or entity of which it is a stockholder, partner or creditor and from which he is not entitled to be indemnified from reasonable expenses actually incurred by him in connection with the defense of any action, suit or proceeding to which he may be made a party by reason of his being, or having been, an officer or director of the corporation or of such other corporation, except in relation to matters to which he shall be finally adjudged in such action, suit or proceeding, to be liable for gross negligence or willful misconduct in the performance of his duties. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the corporation is advised by independent counsel, selected by or in the manner designated by the Board of Directors, that the person to be indemnified did not commit such a breach of duty. The foregoing right of indemnification shall not be exclusive of other rights to which he may be entitled.

ARTICLE X.
AMENDMENT AND RESERVATION

The shareholders have authority and reserve the right from time to time to alter or at any time revoke all or any part or parts of these Articles of Incorporation as permitted or required by applicable law; and all rights of the shareholders of the corporation are acquired and granted subject to such reservation.

ARTICLE XI.
INITIAL REGISTERED OFFICE
AND INITIAL REGISTERED AGENT

The street address of the initial registered office of the Corporation is 1190 Omaha Tower, 2120 So. 72nd St., Omaha, NE 68124 and the initial registered agent at such address is David E. Pavel.

ARTICLE XI.
NAME AND ADDRESS OF INCORPORATOR

The name and address of the incorporator is David E. Pavel, 1190 Omaha Tower, 2120 South 72nd Street, Omaha, NE 68124.

DATED this 13th day of August, 2007.



David E. Pavel, Incorporator

AFFIDAVIT OF PUBLICATION

RECEIVED
OCT 09 2007
NEBRASKA LIQUOR
CONTROL COMMISSION

State of Nebraska}

ss.

County of Sarpy}

Being duly sworn, upon oath, Shon Barenklau deposes and says that he is the Publisher or Ann Oatman deposes and says that she is the Business Manager of the **Papillion Times**, a legal newspaper of general circulation in Sarpy County, Nebraska, and published therein; that said newspaper has been established for more than one year last past; that it has a bona-fide paid subscription list of more than three hundred; that to this personal knowledge, the advertisement, a copy of which is hereto attached, was printed in the said newspaper once each week, the first insertion having been on:

Thursday, August 30, 2007

Thereafter, Thursday, September 6, 2007

Thereafter, Thursday, September 13, 2007

And that said newspaper is a legal newspaper under the statutes of the State of Nebraska. The above facts are within my personal knowledge.

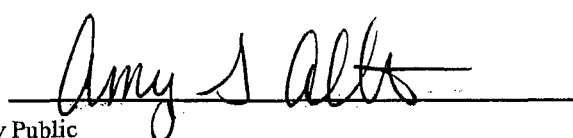


Shon Barenklau
Publisher

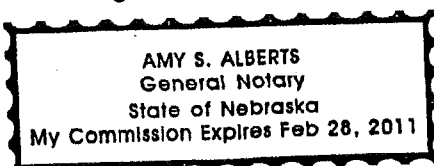
OR Ann Oatman
Business Manager

Today's Date 09-12-2007

Signed in my presence and sworn to before me:



Notary Public



DAVID E. PAVEL LAW OFFICES, P.C.
1190 Omaha Tower
2120 South 72nd Street
Omaha, Nebraska 68124

NOTICE OF INCORPORATION OF
FIELDS, INC.

NOTICE IS HEREBY GIVEN that the undersigned has formed a corporation under the laws of the State of Nebraska, as follows:

1. The name of the corporation is FIELDS, INC.
 2. The address of the registered office is 1190 Omaha Tower, 2120 South 72nd Street, Omaha NE 68124, and the initial registered agent at that address is David E. Pavel.
 3. The general nature of the business is any business allowed by law.
 4. The authorized capital stock of the corporation shall be 10,000 shares of common stock with a par value of \$1.00 per share.
 5. The corporation commenced on November 1, 2007 and its duration shall be perpetual.
 6. The affairs of the corporation shall be directed by a Board of Directors, a President, one or more Vice Presidents, a Secretary and Treasurer.
- By: David E. Pavel, Incorporator
11930522; 8/30, 9/6, 9/13

Printer's Fee \$ 48.10

Customer Number: 5511831693

Order Number: 11930522

DAVID E. PAVEL LAW OFFICES, P.C.

1190 Omaha Tower
2120 South 72nd Street
Omaha, Nebraska 68124
Telephone: (402) 895-7779 Facsimile: (402) 392-0099
Email: David@DEPavelLaw.com

RECEIVED

October 3, 2007

OCT 09 2007

Nebraska Liquor Control Commission
301 Centennial Mall South
P.O. Box 95046
Lincoln, NE 69509-5046

NEBRASKA LIQUOR
CONTROL COMMISSION

In Re: Fields, Inc. d/b/a Island Bar & Grill

Gentlemen:

Enclosed herewith please find the necessary documentation for the Application for a Liquor License regarding the above referenced applicant:

1. Two fingerprint cards each for William N. Fields, Larry E. Fields and Lylette S. Fields along with a check in the amount of \$114.00 payable to Nebraska State Patrol;
2. Check to cover the registration fee in the amount of \$45.00 made payable to the Nebraska Liquor Control Commission;
3. Original and two copies of Application Checklist and Application for Liquor License;
4. Original and two copies of Application for Liquor License Corporation/LLC Insert-Form 3a;
5. Original and two copies of Application for Liquor License Corporation Manager – Form 3b;
6. Three copies of Lease Agreement between Fields, Inc., d/b/a Island Bar & Grill and Fantasy's Inc.; and
7. Three copies of Articles of Incorporation for Fields, Inc.

If there is anything further you need to process this application, please contact me.
Thank you.

Yours Very Truly,

David E. Pavel

DEP/le
enclosures
cc: William N. Fields

F

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE LA VISTA CITY CLERK TO FILE WITH THE SARPY COUNTY TREASURER A SPECIAL ASSESSMENT FOR PROPERTY IMPROVEMENTS AT LOCATIONS AND IN AMOUNTS CITED HEREIN.

WHEREAS, the property owners of
7410 Park View Blvd, Lot 757, La Vista, \$415.94, and
12958 Margo Street, Lot 15, Millard Highland South, Replat 2, \$1,718.20,
9221 Granville Parkway, Lot 121, Southwind Subdivision, \$376.18, and
7105 S 75th Ave., Lot 66, Crestview Heights, \$435.86
were notified to clean up their property as they were in violation of the City Municipal Code, Sections 133.01, and/or 92.15, or the City would do so and bill them accordingly, and

WHEREAS, the property owners of said addresses chose not to clean the property, thus necessitating the City to do the clean up, and

WHEREAS, the City sent the property owners bills for said clean up which have not been paid, and

WHEREAS, the City may file a Special Assessment for Improvements against property for which a City bill for services has not been paid.

NOW THEREFORE BE IT RESOLVED, that the La Vista City Clerk is hereby authorized to file with the Sarpy County Treasurer Special Assessments for Improvements in the amounts and against the properties specified above, all located within Sarpy County, La Vista, Nebraska.

PASSED AND APPROVED THIS 4TH DAY OF DECEMBER 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

September 24, 2007

Marvin and Connie Shannon
7410 Park View Blvd
La Vista, NE 68128

10/19 -
Resent to
NEW ADDRESS



RE: Lot 757/7410 Park View Blvd, La Vista, NE 68128
La Vista, Sarpy County

Dear Mr. and Mrs. Shannon:

On August 16, 2007, your property at 7410 Park View Blvd in La Vista was in violation of the City of La Vista's Municipal Code, Section 133.01 and a letter was sent to you giving you until August 23, 2007 to mow or the City would correct the violation at the owner's expense. On August 30, 2007 the Public Works Department mowed and trimmed the property. A total cost of \$415.94 was incurred by the City for the clean up. The cost breakdown is as follows:

Administrative Fee	\$	50.00
Mowing and Trimming		
Three Workers, 2 Hours Each		155.94
Equipment Cost		203.00
Material		7.00
TOTAL	\$	<u>415.94</u>

Please remit \$415.94, payable to the City of La Vista, 8116 Park View Blvd., La Vista, Nebraska 68128, within 30 days. If payment is not received within 30 days of issuance of this statement, the City Council will, on December 4, 2007, take action to file the above referenced cost with the Sarpy County Treasurer as a special assessment for improvements against your property.

Thank you for your attention to this matter.

Sincerely,

Pamela A. Buethe, CMC
City Clerk

City Hall
8116 Park View Blvd.
La Vista, NE 68128-2198
p: 402-331-4343
f: 402-331-4375

Community Development
8116 Park View Blvd.
p: 402-331-4343
f: 402-331-4375

Fire
8110 Park View Blvd.
p: 402-331-4748
f: 402-331-0410

Golf Course
8305 Park View Blvd.
p: 402-339-9147

Library
9110 Giles Rd.
p: 402-537-3900
f: 402-537-3902

Police
7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works
9900 Cornhusker Rd.
p: 402-331-8927
f: 402-331-1051

Recreation
8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299



September 24, 2007

Marvin and Connie Shannon
7410 Park View Blvd
La Vista, NE 68128

RE: Lot 757/7410 Park View Blvd, La Vista, NE 68128
La Vista, Sarpy County

Dear Mr. and Mrs. Shannon:

On August 16, 2007, your property at 7410 Park View Blvd in La Vista was in violation of the City of La Vista's Municipal Code, Section 133.01 and a letter was sent to you giving you until August 23, 2007 to mow or the City would correct the violation at the owner's expense. On August 30, 2007 the Public Works Department mowed and trimmed the property. A total cost of \$415.94 was incurred by the City for the clean up. The cost breakdown is as follows:

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Thank you for your attention to this matter.

Sincerely,


Pamela A. Buethe, CMC
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7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works
9900 Cornhusker Rd.
p: 402-331-8927
f: 402-331-1051

Recreation
8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299

September 12, 2007

TO: Valerie Houloose
Code Enforcement

FR: Joe Soucie
Public Works Director

RE: Residential Property Clean-Up
7410 Park View Blvd.

The following is a list of the expenses incurred by the Public Works Department on August 30, 2007 while mowing and trimming the property at 7410 Park View Blvd., per your request.

EQUIPMENT:

	<u>HOURLY RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
2 pickups	\$40.00	2	\$80.00
1 trailer	\$20.00	2	\$40.00
1 36" walk-behind mower	\$15.00	2	\$30.00
1 leaf blower	\$7.50	2	\$15.00
2 line trimmers	\$19.00	2	\$38.00
TOTAL			\$203.00

LABOR:

	<u>HOURLY WAGE</u>	<u>HOURS</u>	<u>TOTAL</u>
Employee #1	\$36.40	2	\$72.80
Employee #2	\$25.19	2	\$50.38
Employee #3	\$16.38	2	\$32.76
TOTAL			\$155.94

MATERIALS:

12 heavy duty trash bags	\$7.00
TOTAL	\$7.00

TOTAL EQUIPMENT, LABOR and MATERIALS: \$365.94

City of La Vista

Service Request Form



☐ Council Member

☒ Citizen

☐ Employee

Caller's Name: [REDACTED]

Address: [REDACTED]

Phone Number: [REDACTED]

Date Received: 08-22-2007 Time Received: 10:22 a.m. Received By: Cathy

☒ Request by Phone

☐ Request by Mail

☐ Request in Person

Nature of Request: 7410 Park View Blvd - grass in front yard is very high.

Department Responsible for Action:

Assigned Date:

Report of Action:

The property was identified on 8/16/07 and given a due date of 8/23/07. The property has not been mowed. Took before pictures and turned over to Public works to mow the entire property.

Date Accomplished:

Reviewed by DH:

Date:

Reviewed by CA:

Date:

Date Mailed:

8/16/07

Marvin & Connie Shannon
7410 Park View Blvd.
La Vista, NE 68128

Re: Lot #757
La Vista Subdivision

To Marvin & Connie Shannon:

The City of La Vista continues to emphasize citizen participation in improving our community. Through our efforts we hope to make La Vista a safe and more attractive place.

This letter is to inform you that the property needs to be mowed. Once a property has been identified as needing to be mowed, the owner does not have to be notified again that growing season. The city can mow the property once it is in violation. Please have the property mowed by 8/23/07 or the city will a crew out to correct the violation. Any violation corrected by the city would be at the owner's expense.

If you have any questions, please contact our office at 331-4343.

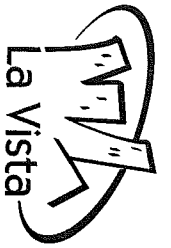
Sincerely,

Valerie Houloose
Valerie Houloose
Code Enforcement Inspector

8/16/07 Letter sent to the owner to mow the property. Due date 8/23/07. We have had lots of rain the last week.

8/23/07 Rain this morning.

8/24/07 Yard not mowed; piece between the street and sidewalk not mowed and is very high. Took before pictures and turned them over to Public Works.



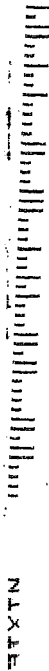
City of La Vista
8116 Park View Blvc
La Vista, NE 68128



7004 1350 0004 0296 6274



NOTIFY SENDER OF NEW ADDRESS
681 DSE 1 9071 70 09/25/07
SHANNON
4851 Q ST APT 1
OMAHA NE 68117-2163
BC: 68117216301 *1186-00288-25-42

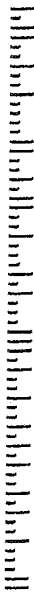


N1X1E

OCT 17 2007

NO LUT/18/07

FINAL NOTICE



BC: 68128219899 *1186-00288-25-42

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

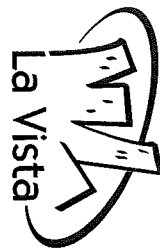
U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)
For delivery information, visit our website at www.usps.com
OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

9/28
Postmark
Here

Sent To: **MARVIN + CONNIE SHANNON**
Street, Apt. No., or PO Box No.: **7410 PARK VIEW BLVD**
City, State, ZIP+4: **LA VISTA NE 68128**
PS Form 3800, June 2002 See Reverse for Instructions

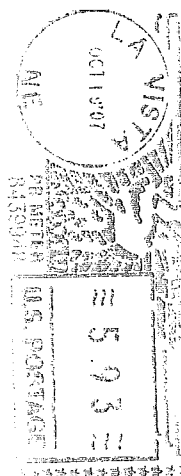
4229 9620 4000 05ET 4002



City of La Vista
8116 Park View Blv.
La Vista, NE 68128



7004 1350 0004 0296 6335



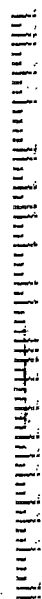
Marvin & Connie Shannon
4851 Q Street, Apt. 1
Omaha, NE 68117-2153

NIXIE

684 AC 1 70 11/05/07
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 68128219899 *1086-03029-19-42

6811716000000000



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent to MARVIN & CONNIE SHANNON
Street, Apt. No.,
or PO Box No. 4851 Q ST #1
City, State, ZIP+4 OMAHA NE 68127
PS Form 3800, June 2002 See Reverse for Instructions

5529 9620 4000 0521 4002

City of La Vista

Service Request Form



☐ Council Member

☒ Citizen

☐ Employee

Caller's Name: Mike Heidesch

Address: 7406 Park View Blvd

Phone Number: 402-850-5483

Date Received: 08-22-2007 Time Received: 10:22 a.m. Received By: Cathy

☒ Request by Phone

☐ Request by Mail

☐ Request in Person

Nature of Request: 7410 Park View Blvd - grass in front yard is very high.

Department Responsible for Action:

Assigned Date:

Report of Action:

The property was identified on 8/16/07 and given a due date of 8/23/07. The property has not been mowed. Took before pictures and turned over to Public works to mow the entire property.

Date Accomplished:

Reviewed by DH:

Date:

Reviewed by CA:

Date:

Date Mailed:

September 24, 2007

Chard and Crystal Howard
12958 Margo Street
Omaha, NE 68138



RE: Lot 15//12958 Margo Street, La Vista, NE 68128
Millard Highland South, Replat 2, Sarpy County

Dear Mr. and Mrs. Howard:

On August 2, 2007, your property at 12958 Margo Street in La Vista was in violation of the City of La Vista's Municipal Code, Section 133.01 and a yellow tag was left at the property giving you 5 days to mow or the City would correct the violation at the owner's expense. On September 6, 2007 the Public Works Department mowed the property, line trimmed, and dumped the recycle bin. A total cost of \$1,718.20 was incurred by the City for the clean up. The cost breakdown is as follows:

Administrative Fee	\$	50.00
Mowing, Trimming, and Dumping of Recycle Bin		
One Worker, 6 Hours		218.40
One Worker, 8 Hours		219.20
One Worker, 3 Hours		64.83
One Worker, 7 Hours		59.50
One Worker, 4 Hours		100.76
Equipment Cost		944.76
Material		60.75
TOTAL	\$	<u>1,718.20</u>

Please remit \$1,718.20, payable to the City of La Vista, 8116 Park View Blvd., La Vista, Nebraska 68128, within 30 days. If payment is not received within 30 days of issuance of this statement, the City Council will, on December 4, 2007, take action to file the above referenced cost with the Sarpy County Treasurer as a special assessment for improvements against your property.

Thank you for your attention to this matter.

Sincerely,

Pamela A. Bueth, CMC
City Clerk

City Hall
8116 Park View Blvd.
La Vista, NE 68128-2198
p: 402-331-4343
f: 402-331-4375

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p: 402-331-4748
f: 402-331-0410

Golf Course
8305 Park View Blvd.
p: 402-339-9147

Library
9110 Giles Rd.
p: 402-537-3900
f: 402-537-3902

Police
7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works
9900 Cornhusker Rd.
p: 402-331-8927
f: 402-331-1051

Recreation
8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299

September 12, 2007

TO: Valerie Houloose
Code Enforcement

FR: Joe Soucie
Public Works Director

RE: Residential Property Clean-Up
12958 Margo St.

The following is a list of the expenses incurred by the Public Works Department on September 6, 2007 while mowing, line trimming, trimming tree branches and dumping the recycle bin at 12958 Margo St., per your request.

EQUIPMENT:

	<u>HOURLY RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
1 dump truck	\$25.00	6	\$150.00
2 pickups	\$40.00	6	\$240.00
1 trailer	\$20.00	3	\$60.00
1 brush chipper	\$50.00	6	\$300.00
1 power pruner	\$7.75	3	\$23.25
1 14" chainsaw	\$8.67	3	\$26.01
1 36" walk-behind mower	\$15.00	3	\$45.00
1 leaf blower	\$7.50	2	\$15.00
3 line trimmers	\$28.50	3	\$85.50
TOTAL			\$944.76

LABOR:

	<u>HOURLY WAGE</u>	<u>HOURS</u>	<u>TOTAL</u>
Employee #1	\$36.40	6	\$218.40
Employee #2	\$27.40	8	\$219.20
Employee #3	\$21.61	3	\$64.83
Employee #4	\$8.50	7	\$59.50
Employee #5	\$25.19	4	\$100.76
TOTAL			\$662.69

MATERIALS:

2 trailer dumpster fee	\$50.00
1 qt. Tordon	\$3.75
12 trash bags	\$7.00
TOTAL	\$60.75

TOTAL EQUIPMENT, LABOR and MATERIALS: \$1,668.20

Date 8/2/07

Location 12958 Margo Street

Violation 133.01

Time to Comply 5 days

Vehicle Description NOT DONE

8/21/07

Follow-up Officer

Valerie Thruoose

Due 8/7/07

8/15/07

Chad & Crystal Howard
12958 Margo Street
Omaha, NE 68138

Re: Lot #15
Millard Highlands South 2nd Platting

To Chad & Crystal Howard:

The City of La Vista continues to emphasize citizen participation in improving our community. Through our efforts we hope to make La Vista a safe and more attractive place.

Your property has been identified as needing to be mowed. A yellow tag was left on the property on 8/2/07 with a due date of 8/7/07. The property has been turned over to Public Works to mow. Please maintain the property for the rest of the growing season or the city can mow the property.

Any violation corrected by the city would be at the owner's expense.

If you have any questions, please contact our office at 331-4343.

Sincerely,

Valerie Houloose

Valerie Houloose
Code Enforcement Inspector

8/20/07 Brian said he does not have this one, I will check again and turn over to Public Works.

* 8/21/07 Not done. Turned over to Public Works. Trim tree branches off the sidewalk, Dump recycle bin by the street, & mow the entire property.

City of La Vista

Service Request Form



☐ Council Member

☒ Citizen

☐ Employee

Caller's Name: [REDACTED]

Address: [REDACTED]

Phone Number: [REDACTED]

Date Received: 7/31/7

Time Received: 9:00am

Received By: TEK

☒ Request by Phone

☐ Request by Mail

☐ Request in Person

Nature of Request: At 12958 Margo St., house has been vacant for 4 to 6 weeks, lawn needs mowing and there are recycle bins filled with garbage sitting by the curb.

Department Responsible for Action:

Assigned Date:

Report of Action:

Date Accomplished:

Reviewed by DH:

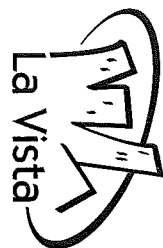
Date:

Reviewed by CA:

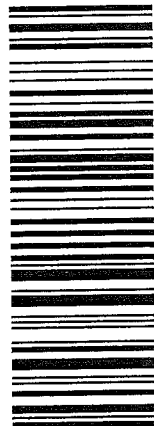
Date:

Date Mailed:

8/6, 8/7 & 8/8 Rain with storms.
8/8/07 Not done. possible storms.
8/10/07 Not done. Storms overnight. Will turn over to
Public works on 8/14/07 to mow when dried out. Pictures
taken on 8/14/07.



City of La Vista
8116 Park View Blv
La Vista, NE 68128



7004 1350 0004 0296 6267



2735 N 4th
9-27-7

Chard and Crystal Howard
12958 Margo Street
Omaha, NE 68138

FINAL NOTICE

NO RESPONSE LEFT NOTICE

RT # INIT
1ST NOTICE 9-27
2ND NOTICE 10-2
RETURN 10-12

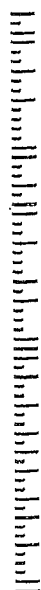
NIXIE

681 4E 1 70 10/18/07

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

BC: 68128219899 *1186-00287-25-42

681282198999



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OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

9/28/07
Postmark
Here

Sent To CHARD & CRYSTAL HOWARD
Street, Apt. No., or PO Box No. 12958 MARGO ST
City, State, ZIP+4 OMAHA, NE 68138
PS Form 3800, June 2002 See Reverse for Instructions

2929 9620 4000 05ET 4002



September 24, 2007

ProLine Custom Homes Inc
PO Box 390427
Omaha, NE 68127

RE: Lot 121/9221 Granville Parkway, La Vista, NE 68128
Southwind Subdivision, Sarpy County

To Whom It May Concern:

On August 21, 2007, your property at 7410 Park View Blvd in La Vista was in violation of the City of La Vista's Municipal Code, Section 133.01 and 92.15 and a letter was sent to you giving you until August 29, 2007 to mow and move the dirt mound by the street and or the City would correct the violation at the owner's expense. On September 6, 2007 the Public Works Department mowed the property. A total cost of \$376.18 was incurred by the City for the clean up. The cost breakdown is as follows:

Administrative Fee	\$	50.00
Mowing and Removal of Dirt/Rock Pile		
Three Workers, 2 Hours Each		123.18
Equipment Cost		203.00
TOTAL	\$	<u>376.18</u>

Please remit \$259.12, payable to the City of La Vista, 8116 Park View Blvd., La Vista, Nebraska 68128, within 30 days. If payment is not received within 30 days of issuance of this statement, the City Council will, on November 6, 2007, take action to file the above referenced cost with the Sarpy County Treasurer as a special assessment for improvements against your property.

Thank you for your attention to this matter.

Sincerely,

Pamela A. Bueth, CMC
City Clerk

City Hall

8116 Park View Blvd.
La Vista, NE 68128-2198
p: 402-331-4343
f: 402-331-4375

Community Development

8116 Park View Blvd.
p: 402-331-4343
f: 402-331-4375

Fire

8110 Park View Blvd.
p: 402-331-4748
f: 402-331-0410

Golf Course

8305 Park View Blvd.
p: 402-339-9147

Library

9110 Giles Rd.
p: 402-537-3900
f: 402-537-3902

Police

7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works

9900 Cornhusker Rd.
p: 402-331-8927
f: 402-331-1051

Recreation

8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299

September 12, 2007

TO: Valerie Houloose
Code Enforcement

FR: Joe Soucie
Public Works Director

RE: Residential Property Clean-Up
9221 Granville Pkwy

The following is a list of the expenses incurred by the Public Works Department on September 6, 2007 while mowing, cutting weeds by the street and moving any dirt/rock pile that is needed for visibility concerns of the neighbors, at 9221 Granville Pkwy., per your request.

EQUIPMENT:

	<u>HOURLY RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
2 pickups	\$40.00	2	\$80.00
1 trailer	\$20.00	2	\$40.00
1 walk-behind mower	\$15.00	2	\$30.00
1 leaf blower	\$7.50	2	\$15.00
2 line trimmers	\$19.00	2	\$38.00
TOTAL			\$203.00

LABOR:

	<u>HOURLY WAGE</u>	<u>HOURS</u>	<u>TOTAL</u>
Employee #1	\$27.40	2	\$54.80
Employee #2	\$25.19	2	\$50.38
Employee #3	\$9.00	2	\$18.00
TOTAL			\$123.18

TOTAL EQUIPMENT and LABOR: \$326.18

7/31/07

Proline Custom Homes Inc.
PO Box 390427
Omaha, NE 68139

Re: Lot#121
Southwind Subdivision

To Proline Custom Homes Inc.:

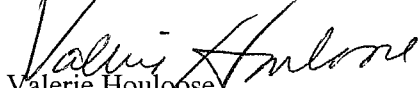
The City of La Vista continues to emphasize citizen participation in improving our community. Through our efforts we hope to make La Vista a safe and more attractive place.

This letter is to make you aware that the property needs to be mowed. Any weeds/grass over 12" inches in height must be cut. A copy of our ordinance has been provided for you to read.

The ordinance explains that no other notice is needed to be sent for the rest of the growing season. Once the city identifies a property as needing to be mowed, the city can mow the property once it is in violation again within the same growing season. Please have these violations corrected by August 8th, 2007, or a crew from the city will be schedule to correct the violations. This would be at the owner's expense.

If you have any questions, please contact our office at 331-4343.

Sincerely,


Valerie Houlbese
Code Enforcement Inspector

8/14/07 Not done. Pictures taken and turned over
to Public Works.
8/20/07 We have been having lots of rain. Brian
said he did not get these from Cindy or me.
I will check again and turn over to P.W.

8/21/07

Proline Custom Homes Inc.
PO Box 390427
Omaha, NE 68139

Re: Lot #121/9221 Granville Parkway, La Vista, NE 68128
Southwind Subdivision

To: Proline Custom Homes Inc.,

The City of La Vista continues to emphasize citizen participation in improving our community. Through our efforts we hope to make La Vista a safe and more attractive place.

This letter is to notify you that the dirt mound with weeds protruding from it needs to be moved. This is causing a visibility obstruction for the neighboring lot when attempting to back out from the residence. Please cut down the weeds and move the dirt mound by the street. Please have the violation corrected by August 29th, 2007 or the city will send a crew out to correct the violation. All violations corrected by the city will be at the owner's expense.

If you have any questions, please contact us at 331-4343.

Sincerely,

Valerie Houloose

Valerie Houloose
Code Enforcement Inspector

8/30/07 Not done. Mow entire property
and cut weeds by the street. Move any dirt/
rock pile that is needed for visibility concerns of
the neighbor to the east. Pictures taken.

City of La Vista

Service Request Form



☐ Council Member

☒ Citizen

☐ Employee

Caller's Name: [REDACTED]

Address: [REDACTED]

Phone Number: [REDACTED]

Date Received: 7/31/7

Time Received: 11:47am

Received By: TEK

☒ Request by Phone

☐ Request by Mail

☐ Request in Person

Nature of Request: At the new home being built at 9221 Granville Parkway, the weeds are very high in spots. Also there is a high mound of dirt covered with weeds next to caller's driveway, which is restricting visibility for them to back out of their drive.

Department Responsible for Action:

Assigned Date:

Report of Action:

Date Accomplished:

Reviewed by DH:

Date:

Reviewed by CA:

Date:

Date Mailed:

7004 1350 0004 0296 6359

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OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.21

Postmark
Here

Sent To: PRO LINE Custom Homes
 Street, Apt. No.,
 or PO Box No. P.O. Box 390427
 City, State, ZIP+4[®]
OMAHA NE 68127

PS Form 3800, June 2002

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PRO LINE Custom Homes INC
 PO Box 390427
 OMAHA NE 68127

2. Article Number
 (Transfer from service label)

7004 1350 0004 0296 6359

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Becly Benson ☐ Agent ☒ Addressee

B. Received by (Printed Name)

Becly Benson 11/21/07

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Domestic Return Receipt

102595-02-M-154C

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

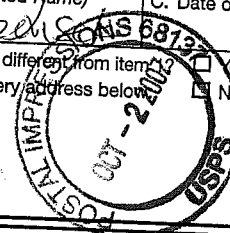
PROLINE CUSTOM HOMES
PO Box 390427
OMAHA, NE 68127

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
Barley Kozak

B. Received by (Printed Name) *Barley Kozak* C. Date of Delivery *SEPT 2 2004*

D. Is delivery address different from item? ☐ Yes ☒ No
If YES, enter delivery address below



3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label)

7004 1350 0004 0296 6298

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

7004 1350 0004 0296 6298

**U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT**
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OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here
9/2

Sent To *PROLINE CUSTOM HOMES INC.*
 Street, Apt. No., or PO Box No. *PO Box 390427*
 City, State, ZIP+4 *OMAHA NE 68127*

PS Form 3800, June 2002

See Reverse for Instructions



September 24, 2007

Gerry L. Cooper
7105 S. 75th Ave
La Vista, NE 68128

RE: Lot 66/7105 S. 75th Ave, La Vista, NE 68128
Crestview Heights, Sarpy County

Dear Mr. Cooper:

On August 21, 2007, your property at 7105 S. 75th Avenue in La Vista was in violation of the City of La Vista's Municipal Code, Section 133.01 and a yellow tag was left at the property giving you 5 days to mow or the City would correct the violation at the owner's expense. On September 6, 2007 the Public Works Department mowed the property, trimmed the branches back from the sidewalk and removed a pegboard. A total cost of \$435.86 was incurred by the City for the clean up. The cost breakdown is as follows:

Administrative Fee	\$	50.00
Mowing, Trimming, and Pegboard Removal		
Three Workers, 2 Hours Each		123.18
Equipment Cost		237.68
Material		25.00
TOTAL	\$	<u>435.86</u>

Please remit \$435.86, payable to the City of La Vista, 8116 Park View Blvd., La Vista, Nebraska 68128, within 30 days. If payment is not received within 30 days of issuance of this statement, the City Council will, on December 4, 2007, take action to file the above referenced cost with the Sarpy County Treasurer as a special assessment for improvements against your property.

Thank you for your attention to this matter.

Sincerely,

Pamela A. Buethe, CMC
City Clerk

City Hall
8116 Park View Blvd.
La Vista, NE 68128-2198
p: 402-331-4343
f: 402-331-4375

Community Development
8116 Park View Blvd.
p: 402-331-4343
f: 402-331-4375

Fire
8110 Park View Blvd.
p: 402-331-4748
f: 402-331-0410

Golf Course
8305 Park View Blvd.
p: 402-339-9147

Library
9110 Giles Rd.
p: 402-537-3900
f: 402-537-3902

Police
7701 South 96th St.
p: 402-331-1582
f: 402-331-7210

Public Works
9900 Cornhusker Rd.
p: 402-331-8927
f: 402-331-1051

Recreation
8116 Park View Blvd.
p: 402-331-3455
f: 402-331-0299

September 12, 2007

TO: Valerie Houloose
Code Enforcement

FR: Joe Soucie
Public Works Director

RE: Residential Property Clean-Up
7105 S. 75th Ave.

The following is a list of the expenses incurred by the Public Works Department on September 6, 2007 while mowing, trimming the branches back from the sidewalk and removing the pegboard at 7105 S. 75th Ave., per your request.

EQUIPMENT:

	<u>HOURLY RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
2 pickups	\$40.00	2	\$80.00
1 trailer	\$20.00	2	\$40.00
2 14" chainsaw	\$17.34	2	\$34.68
1 walk-behind mower	\$15.00	2	\$30.00
1 leaf blower	\$7.50	2	\$15.00
2 line trimmers	\$19.00	2	\$38.00
TOTAL			\$237.68

LABOR:

	<u>HOURLY WAGE</u>	<u>HOURS</u>	<u>TOTAL</u>
Employee #1	\$27.40	2	\$54.80
Employee #2	\$25.19	2	\$50.38
Employee #3	\$9.00	2	\$18.00
TOTAL			\$123.18

MATERIALS:

1 trailer dumpster fees	\$25.00
TOTAL	\$25.00

TOTAL EQUIPMENT, LABOR and MATERIALS: \$385.86

Date 8/21/07

Location 7105 S. 75th Ave.

Violation 133.01 moved (vacant)
(per neighbor)

Time to Comply 5 days

Vehicle Description _____

Follow-up Officer _____

Valerie Hrubosk

Due: 8/27/07

City of La Vista

Service Request Form



☐ Council Member

☒ Citizen

☐ Employee

Caller's Name: [REDACTED]

Address: [REDACTED]

Phone Number: [REDACTED]

Date Received: 8/20/07

Time Received: 9:15am

Received By: TEK

☒ Request by Phone

☐ Request by Mail

☐ Request in Person

Nature of Request: At 7107 S. 75th Ave., yard needs mowed and cleaned up; both front and back. House is vacant.

*↑
No such address
Should be 7105 S. 75th Avenue*

Department Responsible for Action:

Assigned Date:

Report of Action:

8/30/07 Not done. mow, take peg board, and trim bushes back from the sidewalk.

Date Accomplished:

Took before pictures & turned over to Public Works.

Reviewed by DH:

Date:

Reviewed by CA:

Date:

Date Mailed:

7004 1350 0004 0296 6281

U.S. Postal Service™	
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(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To: GERLY COOPER Street, Apt. No., or PO Box No. 7105 S. 75TH AVE City, State, ZIP+4 LA VISTA NE 68128	
PS Form 3800, June 2002 See Reverse for Instructions	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>Gerly Cooper</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Gerly Cooper</i> C. Date of Delivery <i>9.29.05</i></p> <p>D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No <i>2004 Warren St Bellevue NE 68005</i></p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>1. Article Addressed to:</p> <p><i>GERLY COOPER 7105 S. 75TH AVE LA VISTA, NE 68128</i></p>	
<p>2. Article Number (Transfer from service label)</p> <p><i>7004 1350 0004 0296 6281</i></p>	

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 4, 2007 AGENDA**

Subject:	Type:	Submitted By:
DISCUSSION — SMOKING BAN	RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

The City's Keno operator has requested that the City consider adopting a smoking ban policy similar to the one recently passed by the City of Ralston.

FISCAL IMPACT

N/A.

RECOMMENDATION

N/A.

BACKGROUND

As you may recall, LB 395 introduced during the 2007 legislative session would amend the Nebraska Clean Indoor Air Act by restricting smoking in any place of employment or public place in the State. During the session, a number of amendments were proposed, including an exemption provision for a metropolitan class city (Omaha) that had a smoking ban ordinance prior to January 1, 2007; and a provision for other cities or villages to adopt more or less stringent smoking ordinances. LB 395 was not adopted. *(Copies of both the original and amended bill are included in your packet).*

The City's Keno operator has expressed concern that if the Legislature passes a state-wide smoking ban, Omaha will be granted an exemption which will result in Omaha's keno operations having a competitive advantage over La Vista's keno operations.

This item has been placed on the Council agenda as a discussion item to give the Mayor and City Council an opportunity to discuss the merit of adopting a smoking ban ordinance similar to that passed recently by the City of Ralston, in the hope that by doing such La Vista would also be granted an exemption.

The Keno operator has been advised that this is being placed on the agenda and invited to attend this meeting.

LB 395

LB 395

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 395

Introduced by Johnson, 37; Aguilar, 35; Hansen, 42; Kruse, 13;
Pankonin, 2; Preister, 5; Schimek, 27; Stuthman, 22;

Read first time January 16, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health; to repeal the current
2 Nebraska Clean Indoor Air Act and adopt a new act;
3 to create penalties; to provide severability; and to
4 outright repeal sections 71-5701, 71-5702, 71-5703,
5 71-5704, 71-5706, 71-5708, 71-5709, 71-5710, 71-5711,
6 71-5712, and 71-5713, Reissue Revised Statutes of
7 Nebraska, and sections 71-5705 and 71-5707, Revised
8 Statutes Cumulative Supplement, 2006.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 25 of this act shall be known
2 and may be cited as the Nebraska Clean Indoor Air Act.

3 Sec. 2. The Legislature declares it to be the public
4 policy of this state to encourage smoke-free places of employment
5 and public places to reduce the health and safety risks posed
6 by smoking in such places. The purposes of the Nebraska Clean
7 Indoor Air Act are (1) to protect the public health and welfare
8 by prohibiting smoking in public places and places of employment
9 and (2) to guarantee the right of nonsmokers to breathe smoke-free
10 air and to recognize that the need to breathe smoke-free air has
11 priority over the desire to smoke. The Legislature authorizes the
12 Director of Regulation and Licensure of the Nebraska Health and
13 Human Services System, local health departments, and state and
14 local law enforcement to administer and enforce the act within
15 the State of Nebraska. Nothing in the act shall be construed to
16 restrict or prohibit the governing body of a county, city, or
17 village from establishing and enforcing ordinances at least as
18 stringent as, or more stringent than the act.

19 Sec. 3. The Nebraska Legislature finds that:

20 (1) The 2006 United States Surgeon General's Report,
21 The Health Consequences of Involuntary Exposure to Tobacco Smoke,
22 has concluded that (a) secondhand smoke exposure causes disease
23 and premature death in children and adults who do not smoke,
24 (b) children exposed to secondhand smoke are at an increased
25 risk for sudden infant death syndrome, acute respiratory problems,

1 ear infections, and asthma attacks and that smoking by parents
2 causes respiratory symptoms and slows lung growth in their
3 children, (c) exposure of adults to secondhand smoke has immediate
4 adverse effects on the cardiovascular system and causes coronary
5 heart disease and lung cancer, (d) there is no risk-free level
6 of exposure to secondhand smoke, (e) establishing smoke-free
7 workplaces is the only effective way to ensure that secondhand
8 smoke exposure does not occur in the workplace, because ventilation
9 and other air cleaning technologies cannot completely control the
10 exposure of nonsmokers to secondhand smoke, and (f) evidence from
11 peer-reviewed studies shows that smoke-free policies and laws do
12 not have an adverse economic impact on the hospitality industry;

13 (2) Secondhand smoke is particularly hazardous to elderly
14 people, individuals with cardiovascular disease, and individuals
15 with impaired respiratory function, including asthmatics and those
16 with obstructive airway disease;

17 (3) The United States Surgeon General has determined that
18 the simple separation of smokers and nonsmokers within the same
19 air space may reduce, but does not eliminate, the exposure of
20 nonsmokers to secondhand smoke; and

21 (4) Hundreds of communities in the United States,
22 plus numerous states, including California, Delaware, Florida,
23 Massachusetts, Montana, New Jersey, New York, and Washington,
24 have enacted laws requiring workplaces, restaurants, bars, and
25 other public places to be smoke free, as have numerous countries,

1 including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda,
2 and Uruguay.

3 Sec. 4. For purposes of the Nebraska Clean Indoor Air
4 Act, the definitions in sections 5 to 15 of this act shall apply.

5 Sec. 5. Employed means hired, contracted, subcontracted,
6 or otherwise engaged to furnish goods or services.

7 Sec. 6. Employee means a person who is employed by an
8 employer in consideration for direct or indirect monetary wages,
9 profit, or other remuneration.

10 Sec. 7. Employer means a person, nonprofit entity, sole
11 proprietorship, partnership, joint venture, corporation, limited
12 partnership, limited liability company, cooperative, firm, trust,
13 association, organization, or other business entity formed for
14 profit-making purposes, including retail establishments where goods
15 or services are sold, who employs one or more employees.

16 Sec. 8. Guestroom or suite means sleeping rooms and
17 directly associated private areas, such as bathrooms, living
18 rooms, and kitchen areas, if any, rented to the public for
19 their exclusive transient occupancy including, but not limited to,
20 guestrooms or suites in hotels, motels, inns, lodges, or other such
21 establishments.

22 Sec. 9. Health director includes (1) the state health
23 officer, the Director of Regulation and Licensure or, if a chief
24 medical officer is appointed pursuant to section 81-3201, the chief
25 medical officer, (2) local health officers, the health directors

1 of local public health departments as defined in section 71-1626
2 or the medical advisor to the board of health of a county, city,
3 or village, and (3) authorized representatives of the state health
4 officer and local health officers.

5 Sec. 10. Indoor area means an area enclosed by a
6 floor, ceiling, and floor-to-ceiling walls on all sides that
7 are continuous and solid except for closeable entry and exit doors
8 and windows.

9 Sec. 11. International no-smoking symbol means a
10 pictorial representation of a burning cigarette enclosed in a red
11 circle with a red bar across it.

12 Sec. 12. Place of employment means an indoor area under
13 the control of a proprietor that an employee accesses as part
14 of the course of employment without regard to whether work is
15 occurring at any given time. The indoor area shall include, but
16 is not limited to, work areas, employee breakrooms, restrooms,
17 conference rooms, meeting rooms, classrooms, employee cafeterias,
18 and hallways. A private residence is not a place of employment.

19 Sec. 13. Proprietor means any employer, owner, operator,
20 supervisor, manager or any other person who controls, governs, or
21 directs the activities in a place of employment or public place.

22 Sec. 14. Public place means an indoor area to which the
23 public is invited or in which the public is permitted, whether or
24 not the public is always invited or permitted. A private residence
25 is not a public place.

1 Sec. 15. Smoke or smoking means the lighting of any
2 cigarette, cigar, or pipe or the possession of any lighted
3 cigarette, cigar, or pipe, regardless of its composition.

4 Sec. 16. It is unlawful for any person to smoke in a
5 place of employment or a public place.

6 Sec. 17. Smoking is prohibited within a distance of
7 twenty feet outside entrances, operable windows, and ventilation
8 systems of enclosed areas where smoking is prohibited, to insure
9 that tobacco smoke does not enter those areas.

10 Sec. 18. Notwithstanding any other provision of the
11 Nebraska Clean Indoor Air Act, the following areas shall be exempt
12 from sections 16 and 17 of this act:

13 (1) Private residences, except when used as a childcare,
14 adult day care, or health care facility;

15 (2) Guestrooms and suites that are rented to guests and
16 are designated as smoking rooms, except that not more than twenty
17 percent of rooms rented to guests in an establishment may be
18 designated as smoking rooms. All smoking rooms on the same floor
19 shall be contiguous and smoke from these rooms shall not infiltrate
20 into areas where smoking is prohibited under the act. The status
21 of rooms as smoking or nonsmoking cannot be changed, except to add
22 additional nonsmoking rooms; and

23 (3) Areas used as part of a research study on the
24 health effects of smoking conducted in a scientific or analytical
25 laboratory either governed by state or federal law or at a

1 college or university approved by the Coordinating Commission for
2 Postsecondary Education. The proprietor shall post a temporary sign
3 on all entrances to the laboratory indicating that smoking is being
4 allowed for research purposes.

5 Sec. 19. A proprietor shall:

6 (1) Post no-smoking signs or the international no-smoking
7 symbol clearly and conspicuously in every place of employment and
8 public place where smoking is prohibited by the Nebraska Clean
9 Indoor Air Act;

10 (2) Post at every entrance a conspicuous sign clearly
11 stating that smoking is prohibited in every place of employment and
12 public place where smoking is prohibited by the act; and

13 (3) Remove all ashtrays from any place where smoking is
14 prohibited by the act.

15 Sec. 20. (1) No person or employer shall discharge,
16 refuse to hire, or in any manner retaliate against an employee,
17 applicant for employment, or customer because that employee,
18 applicant, or customer exercises any rights afforded by the
19 Nebraska Clean Indoor Air Act or reports or attempts to prosecute
20 a violation of the act.

21 (2) An employee who works in a place where an employer
22 allows smoking does not waive or otherwise surrender any legal
23 rights the employee has against the employer or any other party.

24 Sec. 21. A health director or law enforcement officer may
25 inspect a place of employment or public place at any reasonable

1 time to determine compliance with the Nebraska Clean Indoor Air
2 Act.

3 Sec. 22. (1) A person who smokes in a place of employment
4 or a public place in violation of the Nebraska Clean Indoor Air
5 Act is guilty of a Class V misdemeanor for the first offense and a
6 Class IV misdemeanor for the second and any subsequent offenses.

7 (2) A proprietor who fails, neglects, or refuses to
8 perform a duty under the act is guilty of a Class V misdemeanor for
9 the first offense and a Class IV misdemeanor for the second and any
10 subsequent offenses.

11 (3) Each day that a violation continues to exist shall
12 constitute a separate and distinct offense and shall be punishable
13 as such.

14 (4) Every act or omission constituting a violation of the
15 act by an employee or agent of a proprietor is deemed to be the
16 act or omission of such proprietor, and such proprietor shall be
17 punished in the same manner as if the act or omission had been
18 committed by such proprietor.

19 Sec. 23. (1) The Department of Regulation and Licensure
20 shall engage in a continuing program to explain and clarify the
21 purposes and requirements of the Nebraska Clean Indoor Air Act
22 to citizens affected by it, and to guide proprietors in their
23 compliance with it. The program may include publication of a
24 brochure for affected persons explaining the provisions of the act.

25 (2) The Department of Regulation and Licensure shall

1 adopt and promulgate rules and regulations necessary and
2 reasonable to implement the Nebraska Clean Indoor Air Act. The
3 department shall consult with interested persons and professional
4 organizations before promulgating such rules and regulations.

5 Sec. 24. The Nebraska Clean Indoor Air Act shall not be
6 interpreted or construed to permit smoking where it is otherwise
7 restricted by other applicable law.

8 Sec. 25. The Nebraska Clean Indoor Air Act shall be
9 liberally construed to further its purposes.

10 Sec. 26. If any section in this act or any part of any
11 section is declared invalid or unconstitutional, the declaration
12 shall not affect the validity or constitutionality of the remaining
13 portions.

14 Sec. 27. The following sections are outright repealed:
15 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,
16 71-5709, 71-5710, 71-5711, 71-5712, 71-5713, Reissue Revised
17 Statutes of Nebraska, and sections 71-5705 and 71-5707, Revised
18 Statutes Cumulative Supplement, 2006.

Amended

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LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 395

FINAL READING

Introduced by Johnson, 37; Aguilar, 35; Hansen, 42; Kruse, 13;
Pankonin, 2; Preister, 5; Schimek, 27; Stuthman, 22;
Howard, 9

Read first time January 16, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health; to repeal the current
2 Nebraska Clean Indoor Air Act and adopt a new act; to
3 provide penalties; to provide operative dates; to provide
4 severability; and to outright repeal sections 71-5701,
5 71-5702, 71-5703, 71-5704, 71-5706, 71-5708, 71-5709, and
6 71-5712, Reissue Revised Statutes of Nebraska, section
7 71-5705, Revised Statutes Cumulative Supplement, 2006,
8 sections 71-5710, 71-5711, and 71-5713, Reissue Revised
9 Statutes of Nebraska, as amended by sections 630,
10 631, and 632, respectively, Legislative Bill 296, One
11 Hundredth Legislature, First Session, 2007, and section
12 71-5707, Revised Statutes Cumulative Supplement, 2006,

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1 as amended by section 629, Legislative Bill 296, One
2 Hundredth Legislature, First Session, 2007.
3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 21 of this act shall be known
2 and may be cited as the Nebraska Clean Indoor Air Act.

3 Sec. 2. The purpose of the Nebraska Clean Indoor Air Act
4 is to protect the public health and welfare by prohibiting smoking
5 in public places and places of employment. The act shall not be
6 construed to prohibit or otherwise restrict smoking in outdoor
7 areas. The act shall not be construed to permit smoking where it is
8 prohibited or otherwise restricted by other applicable law. The act
9 shall be liberally construed to further its purpose.

10 Sec. 3. For purposes of the Nebraska Clean Indoor Air
11 Act, the definitions found in sections 4 to 13 of this act apply.

12 Sec. 4. Employed means hired, contracted, subcontracted,
13 or otherwise engaged to furnish goods or services.

14 Sec. 5. Employee means a person who is employed by an
15 employer in consideration for direct or indirect monetary wages,
16 profit, or other remuneration.

17 Sec. 6. Employer means a person, nonprofit entity, sole
18 proprietorship, partnership, joint venture, corporation, limited
19 partnership, limited liability company, cooperative, firm, trust,
20 association, organization, or other business entity, including
21 retail establishments where goods or services are sold, who or
22 which employs one or more employees.

23 Sec. 7. Guestroom or suite means a sleeping room and
24 directly associated private areas, such as a bathroom, a living
25 room, and a kitchen area, if any, rented to the public for their

1 exclusive transient occupancy, including, but not limited to, a
2 guestroom or suite in a hotel, motel, inn, lodge, or other such
3 establishment.

4 Sec. 8. Indoor area means an area enclosed by a floor,
5 a ceiling, and walls on all sides that are continuous and solid
6 except for closeable entry and exit doors and windows and in which
7 less than twenty percent of the total wall area is permanently open
8 to the outdoors. For walls in excess of eight feet in height, only
9 the first eight feet shall be used in determining such percentage.

10 Sec. 9. Place of employment means an indoor area under
11 the control of a proprietor that an employee accesses as part
12 of his or her employment without regard to whether the employee
13 is present or work is occurring at any given time. The indoor
14 area includes, but is not limited to, any work area, employee
15 breakroom, restroom, conference room, meeting room, classroom,
16 employee cafeteria, and hallway. A private residence is a place of
17 employment when such residence is being used as a licensed child
18 care program and one or more children who are not occupants of such
19 residence are present.

20 Sec. 10. Proprietor means any employer, owner, operator,
21 supervisor, manager, or other person who controls, governs, or
22 directs the activities in a place of employment or public place.

23 Sec. 11. Public place means an indoor area to which the
24 public is invited or in which the public is permitted, whether or
25 not the public is always invited or permitted. A private residence

1 is not a public place.

2 Sec. 12. Smoke or smoking means the lighting of any
3 cigarette, cigar, pipe, or other smoking material or the possession
4 of any lighted cigarette, cigar, pipe, or other smoking material,
5 regardless of its composition.

6 Sec. 13. Tobacco retail outlet means a retail store that
7 sells only tobacco and related products and in which the sale of
8 other products is only incidental.

9 Sec. 14. Except as otherwise provided in sections 15, 16,
10 and 17 of this act, it is unlawful for any person to smoke in a
11 place of employment or a public place.

12 Sec. 15. The following indoor areas are exempt from
13 section 14 of this act:

14 (1) Guestrooms and suites that are rented to guests and
15 are designated as smoking rooms, except that not more than twenty
16 percent of rooms rented to guests in an establishment may be
17 designated as smoking rooms. All smoking rooms on the same floor
18 shall be contiguous, and smoke from such rooms shall not infiltrate
19 into areas where smoking is prohibited under the Nebraska Clean
20 Indoor Air Act;

21 (2) Indoor areas used in connection with a research
22 study on the health effects of smoking conducted in a scientific
23 or analytical laboratory under state or federal law or at a
24 college or university approved by the Coordinating Commission for
25 Postsecondary Education; and

1 (3) Tobacco retail outlets.

2 Sec. 16. (1) In any city of the metropolitan class which
3 had an ordinance in effect on January 1, 2007, prohibiting smoking
4 in certain public places, the provisions of such ordinance shall
5 supersede the other provisions of the Nebraska Clean Indoor Air Act
6 enacted by this legislative bill until June 1, 2009, except that
7 the governing body of such city may, prior to such date, (a) repeal
8 such ordinance and become subject to such act at an earlier time or
9 (b) adopt a new ordinance pursuant to section 17 of this act.

10 (2) In any other city or village, any ordinance with
11 respect to smoking regulation which was not adopted under section
12 17 of this act shall become invalid on June 1, 2008.

13 Sec. 17. (1) On and after September 1, 2007, the
14 governing body of any city, village, or county, or the voters
15 of any city, village, or unincorporated area of any county as
16 provided in subsection (2) of this section, may adopt a nonsmoking
17 ordinance or resolution that is less stringent than or more
18 stringent than the Nebraska Clean Indoor Air Act enacted by this
19 legislative bill, except that such ordinance or resolution shall
20 not be less stringent than sections 71-5707 to 71-5709 as such
21 sections existed prior to September 1, 2007.

22 (2) A proposed ordinance or resolution may be placed on
23 the ballot for the voters of the city, village, or unincorporated
24 area of the county (a) by a majority vote of the governing body
25 of such city, village, or county, (b) by initiative under sections

1 18-2501 to 18-2538, or (c) by petition meeting the requirements
2 of and subject to sections 32-628 to 32-630 and signed by at
3 least five percent of the registered voters residing in the
4 unincorporated area of such county on the day such petitions are
5 filed for verification. The election shall be conducted as provided
6 in sections 32-556 to 32-559.

7 (3) Any ordinance or resolution adopted by the governing
8 body of any city, village, or county under subsection (1) of this
9 section without being submitted to the voters under subsection (2)
10 of this section shall take effect ninety days after its adoption
11 unless, within such ninety-day period, such governing body receives
12 a petition signed by at least five percent of the registered
13 voters residing in such city, village, or unincorporated area of
14 such county on the date the ordinance or resolution was adopted
15 requesting that such ordinance or resolution be repealed. Upon
16 verification of the signatures on such petition, the ordinance or
17 resolution shall be repealed.

18 (4) A copy of any ordinance or resolution adopted by a
19 city, village, or county under this section shall be provided to
20 the Department of Health and Human Services and to the local public
21 health department as defined in section 71-1626 of such city,
22 village, or county.

23 Sec. 18. A proprietor of a place of employment or public
24 place where smoking is prohibited under the Nebraska Clean Indoor
25 Air Act shall take necessary and appropriate steps to ensure

1 compliance with the act at such place.

2 Sec. 19. (1) The Department of Health and Human Services
3 or a local public health department as defined in section
4 71-1626 may institute an action in any court with jurisdiction
5 to enjoin a violation of the Nebraska Clean Indoor Air Act. Any
6 interested party may report possible violations of the act to such
7 departments.

8 (2) No person or employer shall discharge, refuse to
9 hire, or in any manner retaliate against an employee, applicant
10 for employment, or customer because such employee, applicant, or
11 customer reports or attempts to report a violation of the act.

12 (3) The Department of Health and Human Services or a
13 local public health department may waive provisions of the Nebraska
14 Clean Indoor Air Act upon good cause shown and shall provide for
15 appropriate protection of the public health and safety in the
16 granting of such waivers.

17 Sec. 20. (1) A person who smokes in a place of employment
18 or a public place in violation of the Nebraska Clean Indoor Air
19 Act is guilty of a Class V misdemeanor for the first offense and
20 a Class IV misdemeanor for the second and any subsequent offenses.
21 A person charged with such offense may voluntarily participate, at
22 his or her own expense, in a smoking cessation program approved by
23 the Department of Health and Human Services, and such charge shall
24 be dismissed upon successful completion of the program.

25 (2) A proprietor who fails, neglects, or refuses to

1 perform a duty under the Nebraska Clean Indoor Air Act is guilty
2 of a Class V misdemeanor for the first offense and a Class IV
3 misdemeanor for the second and any subsequent offenses.

4 (3) Each day that a violation continues to exist shall
5 constitute a separate and distinct violation.

6 (4) Every act or omission constituting a violation of
7 the Nebraska Clean Indoor Air Act by an employee or agent of a
8 proprietor is deemed to be the act or omission of such proprietor,
9 and such proprietor shall be subject to the same penalty as if the
10 act or omission had been committed by such proprietor.

11 Sec. 21. The Department of Health and Human Services
12 shall adopt and promulgate rules and regulations necessary to
13 implement the Nebraska Clean Indoor Air Act. The department shall
14 consult with interested persons and professional organizations
15 before adopting such rules and regulations.

16 Sec. 22. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
17 13, 14, 15, 18, 19, 20, 21, and 24 of this act become operative
18 on June 1, 2008. Sections 16, 17, 22, and 23 of this act become
19 operative on September 1, 2007.

20 Sec. 23. If any section in this act or any part of any
21 section is declared invalid or unconstitutional, the declaration
22 shall not affect the validity or constitutionality of the remaining
23 portions.

24 Sec. 24. The following sections are outright repealed:
25 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,

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1 71-5709, and 71-5712, Reissue Revised Statutes of Nebraska,
2 section 71-5705, Revised Statutes Cumulative Supplement, 2006,
3 sections 71-5710, 71-5711, and 71-5713, Reissue Revised Statutes of
4 Nebraska, as amended by sections 630, 631, and 632, respectively,
5 Legislative Bill 296, One Hundredth Legislature, First Session,
6 2007, and section 71-5707, Revised Statutes Cumulative Supplement,
7 2006, as amended by section 629, Legislative Bill 296, One
8 Hundredth Legislature, First Session, 2007.