

# MINUTE RECORD

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

## LA VISTA CITY COUNCIL MEETING October 7, 2008

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 October 7, 2008. Present were Mayor Kindig and Councilmembers: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Also in attendance were City Attorney McKeon, City Administrator Gunn, Assistant City Administrator Ramirez, City Engineer Kottmann, City Clerk Buethe, Library Director Iwan, Police Chief Lausten, Fire Chief Uhl, Recreation Director Stopak, Finance Director Lindberg, Public Works Director Soucie, and Building and Grounds Director Archibald.

A notice of the meeting was given in advance thereof by publication in the Times on September 25, 2008. 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 at City Hall during normal business hours.

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 – FIRE PREVENTION WEEK

Mayor Kindig presented a proclamation for Fire Prevention Week for the week of October 5 – 11, 2008 to Fire Chief Uhl.

#### A. CONSENT AGENDA

1. APPROVAL OF THE AGENDA AS PRESENTED
2. APPROVAL OF CITY COUNCIL MINUTES FROM SEPTEMBER 16, 2008
3. APPROVAL OF LIBRARY ADVISORY BOARD MINUTES FROM SEPTEMBER 11, 2008
4. APPROVAL OF CITIZEN ADVISORY REVIEW COMMITTEE MINUTES FROM SEPTEMBER 8, 2008
5. PAY REQUEST FROM KIRKHAM MICHAEL FOR GIS CONVERSION PROFESSIONAL SERVICES - \$1,274.00
6. PAY REQUEST FROM KIRKHAM MICHAEL FOR GIS CONVERSION PROFESSIONAL SERVICES - \$2,103.00
7. PAY REQUEST NO. 1 FROM U.S. ASPHALT COMPANY, INC. FOR 2008 PAVEMENT REHABILITATION - \$207,263.61
8. PAY REQUEST NO. 1 FROM CITY OF OMAHA FOR HARRISON STREET IMPROVEMENTS 48<sup>TH</sup> TO 71<sup>ST</sup> STREET - \$28,670.54
9. PAY REQUEST FROM KISSEL/E&S ASSOCIATES FOR LEGISLATIVE SERVICES - \$5,797.29
10. PAY REQUEST FROM MULLEN & MULLEN FOR PROFESSIONAL SERVICES – LEGAL - \$35,008.00
11. APPROVAL OF CLAIMS

Councilmember McLaughlin made a motion to approve the consent agenda. Seconded by Councilmember Gowan. Councilmember McLaughlin 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.

ABE'S PORTABLES, Rentals	220.00
ACTION BATTERIES, Vehicle Supplies	29.95
ACW MANUFACTURING, Vehicle Maint.	58.00
AKSARBEN GARAGE DOOR SVCS, Bldg & Grnds	75.00
ALADDIN CUSTOM SPORTSWEAR, Wearing Apparel	30.00
ALAMAR UNIFORMS, Wearing Apparel	144.43
ALERT-ALL CORP, Printing	2,662.50
ALEX, MARY, Travel	81.26
AMERICAN LIBRARY ASSOCIATION, Supplies	80.00
AMSAN, Supplies	513.90
AQUILA, Utilities	18.53
ARAMARK UNIFORM SERVICES, Contract Services	388.04

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BAKER & TAYLOR BOOKS, Books	3,597.37
BARONE SECURITY SYSTEMS, Supplies	275.00
BCDM-BERINGER CIACCIO DENNELL, Professional Services	5,681.25
BEACON BUILDING SERVICES, Contract Services	6,737.00
BENNETT REFRIGERATION, Ice Machine	2,794.00
BENNINGTON IMPLEMENT, Vehicle Maint.	616.34
BENSON RECORDS, Contract Services	56.18
BEST ACCESS SYSTEMS DIVISION, Equip.	20.92
BEST EXPRESSIONS, Program Incentives	3,808.79
BETTER BUSINESS EQUIPMENT, Rentals	40.30
BIG BOY BBQ, League Banquet	96.00
BRENTWOOD AUTO WASH, Vehicle Maint.	155.00
BUETHE, PAMELA, Vehicle Maint./Supplies/Travel	220.09
BUILDERS SUPPLY, Vehicle Maint.	107.52
CARROT-TOP INDUSTRIES, Flags	485.82
CAVE, TOM, Contract Services	18.00
CENTER POINT PUBLISHING, Books	38.94
CITY OF OMAHA, Contract Services	32,849.52
COCA-COLA, Concessions	231.42
COLORS DA CLOWN, Library Reading Prog.	70.00
COMP CHOICE, Professional Services	747.95
CONTROL MASTERS, Bldg & Grnds/Equipment	1,930.00
COX, Telephone	130.65
CUMMINS CENTRAL POWER, Bldg & Grnds/Vehicle Maint.	555.03
D & D COMMUNICATIONS, Pagers	3,015.50
DASH MEDICAL GLOVES, Supplies	59.90
DENNIS, SHARON, Travel	59.67
DESANTIS HOLSTER & LEATHER, Wearing Apparel	339.43
DON'S PIONEER UNIFORMS, Wearing Apparel	17.90
DOUGLAS COUNTY SHERIFF, Contract Services	137.50
EARL RISSE CONCRETE, Street Maint.	7,015.00
EBSCO SUBSCRIPTION SERVICES, CD	790.00
ED M. FELD EQUIPMENT, Equipment	4,434.00
EDGEWEAR SCREEN PRINTING, Wearing Apparel	1,062.00
EMBASSY SUITES, Travel	97.03
FAIRWAY GOLF, Consignment Sales	154.00
FASTENAL, Vehicle Maint.	239.59
FEDEX, Postage	46.63
FILTER CARE, Vehicle Maint.	60.15
FIRE-EXTRICATION-HAZMAT, Rescue Revenue	138.20
FIREGUARD, Sports Equip	311.80
FITZGERALD SCHORR BARMETTLER, Professional Services	20,689.51
FLEETPRIDE, Vehicle Maint.	27.50
FORT DEARBORN LIFE INSURANCE, Employee Benefits	1,235.50
GALE, Books	46.43
GALL'S, Wearing Apparel	202.66
GCR OMAHA TRUCK TIRE CENTER, Vehicle Maint.	3,934.52
GRAINGER, Bldg & Grnds	55.20
GRAYBAR ELECTRIC, Bldg & Grnds	424.66
GREAT PLAINS ONE-CALL SVC, Contract Services	326.34
GREAT WESTERN BANK, Bond Fees	250.00
GREENKEEPER COMPANY, Repair/Maint./Supplies	1,569.05
H & H CHEVROLET, Vehicle Maint.	90.68
HANEY SHOE STORE, Wearing Apparel	347.06
HEARTLAND AWARDS, Supplies	361.50
HEIMES CORPORATION, Street Maint.	129.23
HELGET GAS, Squad Supplies	70.50
HEWLETT PACKARD, Supplies	273.00
HOBBY LOBBY, Supplies	24.00
HOOK-FAST SPECIALTIES, Wearing Apparel	90.44
HOST COFFEE SERVICE, Concessions	24.00
HY-VEE, Concessions/Supplies	94.92
INDUSTRIAL SALES COMPANY, Construction Costs	3,313.63
INTERNATIONAL E-Z UP, Equipment	1,045.00
J Q OFFICE EQUIPMENT, Contract Services	1,997.15
JONES, DAVID, Contract Services	36.00
JUSTIN THYME CAFÉ, League Banquet	214.50
KELLER, RON, Contract Services	31.25

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LA VISTA COMMUNITY FOUNDATION, Payroll Deductions	70.00
LA VISTA PHARMACY, Squad Supplies	52.28
LANDSHIRE, Concessions	31.86
LAUGHLIN, KATHLEEN, Payroll Withholdings	372.00
LIFE ASSIST, Squad Supplies	758.74
LIFEGUARD STORE, Equipment	1,014.85
LINWELD, Wearing Apparel/Street Maint.	809.10
LOGAN CONTRACTORS, Street Maint.	5,361.05
MALLARD SAND & GRAVEL, Street Maint.	235.16
MARSHALL CAVENDISH, Books	146.90
MARTIN MARIETTA AGGREGATES, Supplies	74.42
MCKEAN'S FLOOR COVERINGS, Equipment	892.00
MENARDS-BELLEVUE, Bldg & Grnds	19.98
MES-MIDAM, Wearing Apparel	211.87
METAL SUPERMARKETS, Vehicle Maint.	167.53
METRO AREA TRANSIT, August Fees	563.00
METROPOLITAN COMMUNITY COLLEGE, Utilities/Phone/Cont. Svcs	12,233.31
MID AMERICA PAY PHONES, Telephone	150.00
MID CON SYSTEMS, Vehicle Maint.	105.68
MIDLANDS BUSINESS JOURNAL, Vehicle Maint.	70.00
MIDLANDS LIGHTING & ELECTRIC, Bldg & Grnds	1,428.00
MID-STATES UTILITY TRAILER, Vehicle Maint.	44.00
MIDWEST PLASTICS, Bldg & Grnds	47.54
MIDWEST TURF & IRRIGATION, Vehicle Maint.	739.75
MILLER BRANDS, Concessions	121.45
MONARCH OIL, Street Maint.	675.00
MOTOROLA, Batteries	709.00
MUD, Utilities	7,872.67
MULHALL'S, Supplies	514.50
MUNICIPAL PIPE TOOL, Equipment	1,734.13
NE BUSINESS ELECTRONICS, Supplies	56.00
NE FURNITURE MART, Equipment	2,621.97
NE LANDSCAPE SOLUTIONS, Street Maint.	247.50
NE LIBRARY COMMISSION, CD	24.66
NE NATIONAL BANK, Cart Lease	660.00
NE SALT & GRAIN COMPANY, Ice Control Salt	14,691.86
NEBRASKA IOWA SUPPLY, Vehicle Supplies	23,206.27
NEUMAN EQUIPMENT, Bldg & Grnds	122.00
NEXTEL COMMUNICATIONS, Telephone	524.42
NIKE, Equipment	339.48
NOVA HEALTH EQUIPMENT, Equipment	81.00
OFFICE DEPOT, Supplies	953.01
OFFUTT YOUTH CENTER, Contract Services	864.00
OMAHA WORLD HERALD, Legal Advertising	1,492.74
OPPD, Utilities	2,093.76
PAPILLION LA VISTA SCHOOLS, Citations/Licenses	6,747.50
PAPILLION SANITATION, Contract Services	200.09
PAPILLION TIRE, Vehicle Maint.	152.15
PARAMOUNT LINEN & UNIFORM, Uniform Cleaning	655.02
PAUL CONWAY SHIELDS, Wearing Apparel	289.00
PAYLESS, Supplies	754.15
PERFORMANCE DODGE, Vehicle Maint.	88.31
PHILLIPS, LAURA, Refund	95.00
PIONEER GRAPHICS, Supplies	110.00
PITNEY BOWES, Supplies	221.00
PRECISION INDUSTRIES, Bldg & Grnds/Vehicle Maint.	861.80
PREMIER-MIDWEST BEVERAGE, Concessions	86.75
PRINCIPAL LIFE-FLEX SPENDING, Employee Benefits	155.25
PROPERTY SERVICES, Supplies	119.00
PVP COMMUNICATIONS, Equip. Repair	219.77
QUALITY AUTO REPAIR & TOWING, Contract Services	51.00
QUALITY BRANDS, Concessions	417.60
QWEST, Telephone	1,069.12
RAINBOW GLASS & SUPPLY, Bldg & Grnds	1,750.00
RAMIREZ, JOHN, Contract Services	18.00
RANDOM HOUSE, Media	76.50
READY MIXED CONCRETE, Street Maint.	1,784.00
RECREONICS, Equipment	1,931.23

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RON TURLEY ASSOCIATES, Vehicle Maint./Bldg & Grnds	1,495.00
SAM'S CLUB, Bldg & Grnds/Concessions	655.37
SAPP BROS PETROLEUM, Vehicle Supplies	3,533.75
SARPY COUNTY FIRE CHIEFS ASSN, Dues	150.00
SARPY COUNTY REGISTER OF DEEDS, Professional Services	142.50
SCHOLASTIC LIBRARY PUBLISHING, Books	449.80
SE AREA CLERK'S ASSN, Dues	20.00
SENTRY ARMOR SYSTEMS, Wearing Apparel	2,100.00
SIRCHIE FINGER PRINT LABS, Supplies	37.19
SMOOTHER CUT ENTERPRISES, Contract Services	1,329.00
SNITILY CARR, Contract Services	1,077.00
SOUTHWIND PARTNERS LLP, Zoning Fees	1,000.00
SPRINT, Telephone	90.69
STAPLES, Staples	59.96
SUBURBAN NEWSPAPERS, Legal Advertising	1,168.07
SUMMER KITCHEN CAFÉ, Supplies	18.83
SUN COUNTRY DISTRIBUTING, Supplies	141.98
SUTPHEN CORPORATION, Vehicle Maint.	442.70
TAB HOLDING COMPANY, Contraction Costs	13,560.90
TED'S MOWER SALES & SERVICE, Equip. Maint.	1,196.06
THOMPSON DREESSEN & DORNER, Professional Services	22,311.82
THREE RING ENTERPRISES, Vehicle Maint.	1,592.77
TITLEIST, Equipment	411.30
TURF CARS, Cart Maint.	30.25
TURFWERKS, Vehicle Maint.	116.80
U S ASPHALT COMPANY, Street Maint.	1,249.77
UNDERWRITERS LABORATORIES, Contract Services	2,831.00
UNITED SEEDS, Street Maint.	90.00
UNL, Library Reading Program	25.00
UPS, Postage	14.08
VERIZON, Telephone	37.32
WAL-MART, Supplies/Equip./Squad Supplies	1,169.81
WATER'S EDGE, Pool Study	2,699.62
WASTE MANAGEMENT, Contract Services/Bldg & Grnds	1,422.76
WHITE CAP CONSTRUCTION, Equipment	64.03
WICK'S STERLING TRUCKS, Vehicle Maint.	52.47

## REPORTS FROM CITY ADMINISTRATOR AND DEPARTMENT HEADS

Assistant City Administrator Ramirez thanked Council for allowing her to attend the recent ICMA Convention. She attended sessions on community blogging, innovative employee benefits, the hiring of a Police Chief (Management), and The City was presented the Voice of the People award from feedback on the citizen survey and the high ranking of our Police Department. Ramirez presented this plaque to Chief Lausten.

Finance Director Lindberg informed Council of the status of the cities cash and investment portfolios. Our only investments are with NPAIT whose investments are entirely government, so they are not at such high risk.

Police Chief Lausten informed council that he will be meeting with Sarpy County representatives and representatives of the Nebraska Humane Society on Thursday to discuss animal control. They will determine if current ordinances are sufficient, or if any changes are recommended. Councilmember Sheehan asked where the dollars from any fee increase would go. Lausten stated that the increase goes to the Nebraska Humane Society. Lausten stated the city pays per capita, regardless of the fee. Mayor Kindig asked that Chief Lausten inform the group that we need to watch to be sure any increased costs from current changes in other communities does not get passed on to Sarpy County.

Lausten informed Council that there was a neighborhood meeting after the recent shooting at Crestview, and another one will be held on Thursday, October 16<sup>th</sup>.

Public Works Director Soucie informed Council that Harrison Street (from 58th Street to 72nd Street) should open by the middle of next week. The section from 48th Street to 58th Street – should be completed by winter.

Soucie informed Council that more than 120 tires were turned in at Public Works on September 26th and 27th during their cleanup days. Soucie brought up two of the most recent hires in Public



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Works to introduce themselves to the mayor and council. Jeff Calentine the new golf course superintendent and Jeremy Schlegel the new maintenance worker in the sewer department.

Recreation Director Stopak informed Council the La Vista Community Foundation has issued a \$4,000 grant for 2 defibrillators for the Community Center. The La Vista Youth Cheerleading Associated provided a defibrillator for the Sports Complex.

Stopak informed Council that Triple Crown Sports, which hosted the Slumbuster tournament at the Sports Complex in June, brought in a plaque for the event. They plan to return next year.

Library Director Iwan informed Council that volunteer time from July-August consisted of 600 hours which is a savings of \$4,300.00. The library received a grant in the amount of \$4,000.00 to update the storytime room. Jean Hurst procured a grant in order to attend a National Conference.

## **B. CITIZEN ADVISORY REVIEW COMMITTEE – EDP REPORT**

### **1. PUBLIC HEARING**

At 7:25 p.m. Mayor Kindig opened the public hearing and stated the floor was now open for discussion on the Citizen Advisory Review Committee EDP Report.

At 7:26 p.m. Councilmember Ellerbeck made a motion to close the public hearing. Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

## **C. ORDINANCE - AMENDMENT TO MUNICIPAL CODE – REQUIREMENT TO KEEP SIDEWALKS CLEAN; NOTIFICATION REQUIREMENTS**

Councilmember McLaughlin introduced Ordinance No. 1075 entitled: AN ORDINANCE TO AMEND SECTION 93.016 OF THE LA VISTA MUNICIPAL CODE REGARDING THE NOTICE TO COMPLY WITH THE REQUIREMENT TO KEEP SIDEWALKS CLEAN; TO REPEAL SECTION 93.016 AS PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

Councilmember Sell moved that the statutory rule requiring reading on three different days be suspended. Councilmember Sheehan 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 McLaughlin moved for final passage of the ordinance which motion was seconded by Councilmember Carlisle. The Mayor then stated the question was, "Shall Ordinance No.1075 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.

## **D. RESOLUTION - PURCHASE SPRAY RIG – GOLF COURSE**

Councilmember Gowan introduced and moved for the adoption of Resolution No. 08-090: A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE PURCHASE OF A TORO WORKMAN 3200 SPRAY RIG FROM MIDWEST TURF & IRRIGATION, 14201 CHALCO VALLEY PARKWAY, OMAHA, NEBRASKA, FOR AN AMOUNT NOT TO EXCEED \$29,028.00.

WHEREAS, the City Council of the City of La Vista has determined that the purchase of a spray rig is necessary; and

WHEREAS, the FY 2008/09 Golf Fund Budget provides funding for said purchase; and

WHEREAS, the purchase will be made from the National Intergovernmental Purchasing Alliance (National IPA); which Midwest Turf & Irrigation is a participating agency; and

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WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure council approval prior to authorizing any purchases over \$5,000.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, due hereby award the purchase of a Toro Workman 3200 Spray Rig to Midwest Turf & Irrigation, Omaha, Nebraska, for an amount not to exceed \$29,028.00.

Seconded by Councilmember Carlisle. Councilmember Sheehan asked why the City is financing the purchase. City Administrator Gunn stated this purchase is from the golf course fund and with the amount of this rig it was put in the budget to finance over a period of time for less of an impact in one year. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

## **E. SPECIAL ASSESSMENTS FOR PROPERTY IMPROVEMENTS**

### **1. PUBLIC HEARING**

At 7:29 p.m. Mayor Kindig opened the public hearing and stated the floor was now open for discussion on Special Assessments for Property Improvements.

At 7:30 p.m. Councilmember Ellerbeck made a motion to close the public hearing. Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

### **2. RESOLUTION**

Councilmember Ellerbeck introduced and moved for the adoption of Resolution No. 08-091: 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  
7815 Leafplum Drive, Lot 29, Briarwood, \$368.23,  
7415 James Avenue, Lot 490, La Vista Replat, \$503.05,  
7342 S 76<sup>th</sup> Avenue, Lot 639, La Vista Replat, \$392.26,  
12958 Margo Street, Lot 15, Millard Highlands South 2<sup>nd</sup> Platting, \$627.46,  
8017 Park View Boulevard, Lot 1287, La Vista, \$392.26,  
were notified to clean up their property as they were in violation of the City Municipal Code, Section 133.01, 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.

Seconded by Councilmember Gowan. Councilmember Quick stated she would like to see an updated list of repeat offenders. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

Councilmember McLaughlin made a motion to move "Comments from the Floor" up on the agenda ahead of Item F. "Executive Session". Seconded by Councilmember Sell. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, Ellerbeck, McLaughlin, and Gowan. Nays: None. Absent: None. Motion carried.

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## COMMENTS FROM THE FLOOR

Mayor Kindig asked if there were any comments from the floor; and stated that anyone having comments should limit them to three minutes. There were no comments from the floor.

## F. EXECUTIVE SESSION – LAND ACQUISITION; PERSONNEL PERFORMANCE

At 7:32 p.m. Councilmember McLaughlin made a motion to go into executive session for protection of the public interest for Land Acquisition discussion; and to prevent needless injury to the reputation of an individual to discuss personnel performance. Seconded by Councilmember Carlisle. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried. Mayor Kindig stated the executive session would be limited to the subject matter contained in the motion.

At 8:14 p.m. the Council came out of executive session. Councilmember McLaughlin made a motion to reconvene in open and public session. Seconded by Councilmember Gowan. Councilmembers voting aye: Sell, Ronan, Quick, Sheehan, Carlisle, McLaughlin, Ellerbeck, and Gowan. Nays: None. Absent: None. Motion carried.

## COMMENTS FROM MAYOR AND COUNCIL

Mayor Kindig asked Council if they wished to contribute the same amount for the chili/soup feed at the Tree Lighting Ceremony. All agreed to contribute.

Mayor Kindig reminded Council of the event at Mercy Housing on Thursday, October 16th at 6:00 p.m.

Councilmember Sheehan commended the Police department on the handling of the blogs after the Crestview incident.

Mayor Kindig had a call from PayPal that the cutbacks were a part of the eBay group and PayPal continues to hire and grow.

At 8:18 p.m. Councilmember Sheehan 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 21ST DAY OF OCTOBER 2008.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
PLANNING COMMISSION MINUTES  
SEPTEMBER 18, 2008**

The Planning Commission meeting of the City of La Vista was convened at 7:00 p.m. on Thursday, September 18, 2008, at the La Vista City Hall, 8116 Park View Boulevard. Members present were: Krzywicki, Alexander, Circo, Andsager, Horihan, Malmquist, Hewitt, Nielsen, and Gahan. Carcich was absent. Also in attendance was John Kottman, City Engineer, Marcus Baker, City Planner and Ann Birch, Community Development Director

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 Chairman Krzywicki at 7:00 p.m. Copies of the agenda and staff report were made available to the public.

**2. Approval of Meeting Minutes – August 21, 2008**

Alexander motioned to approve the minutes of August 21, 2008, as corrected. Andsager seconded the motion. Ayes: Krzywicki, Alexander, Circo, Andsager, Horihan, Malmquist, Hewitt and Gahan. Nays: None. Motion carried.

**3. Old Business**

**A. Revisions to City of La Vista Zoning Ordinance – Section 2.02 Definitions**

i. Staff Report: Revisions have been made to the definition section of the Zoning Ordinance to eliminate words or phrases that appear nowhere else in the code; to add definitions to uses that are elsewhere in the code; and to revise content for definitions that are in need of clarity, rewriting, and/or updating.

The American Planning Association's Planning Advisory Service has been utilized to help determine appropriate wording for definitions.

These staff revisions have been submitted and a draft of revisions is ready for review by the Planning Commissioners. More revisions are forthcoming, but it is hoped that the commissioners review tonight will bring forward any changes, additions, deletions that may still be needed.

Staff recommends further continuance to assure that a final draft would include all necessary revisions.

Hewitt would like to see in 2.02.36 where it says "*school, pre*" to reference preschool to clarify this is included. Malmquist wondered if *care services, regardless of age*, (ex: senior care) would suffice. Baker said these are not addressed within the definitions as the zoning code does not use these as terms.

Krzywicki asked if zoning criteria is set up where a use is listed and a determination would need to be made as to where it fits in best.

Baker said if someone were to make a text amendment to add a use to a zoning area, it would be proper that a definition be assigned at that time.

Baker pointed out that Sec. 4.05 of the Zoning Ordinance states a use has to be expressly permitted by the zoning district.

Hewitt references the strike out of *homeowner's association*. Baker said it doesn't appear anywhere else in the code. Kottman advised that it probably appears in the subdivision regulations chapter but not in zoning regulations chapter. Perhaps this definition should be moved into the appropriate chapter of its appearance.

Horihan noted that *greenway* had been crossed out in the zoning regulations chapter, but it appears in the Park & Recreation Master Plan chapter. Baker agreed that is probably where it should appear.

Hewitt inquired about a definition of *family*. Baker stated this definition needs to be more in line with federal regulations, as the current local definition is outdated.

Krzywicki suggested that the Planning Commission mull the changes over and come back with their revisions to include in a further draft before review by City Council.

iii. Recommendation: Horihan recommended continuance of the public hearing to the October meeting. Malmquist seconded. Ayes: Krzywicki, Alexander, Circo, Andsager, Horihan, Hewitt, Malmquist and Gahan. Nays: None.

#### **B. Nebraska Indoor Karting Conditional Use Permit (CUP)**

i. Staff Report: No word had been received from the applicant regarding their project. Therefore, no requested revisions had been received either.

Staff recommends continuance of the public hearing for the Nebraska Indoor Karting Conditional Use Permit to the October 2008 meeting.

ii. Public Hearing: Hewitt motioned to continue the public hearing. Horihan seconded. Ayes: Hewitt, Krzywicki, Alexander, Circo, Andsager, Horihan, Malmquist, Hewitt and Gahan. Nays: None.

#### **4. New Business**

##### **A. Revision to Section 5.12.06.01 C-3 Zoning District – Height Restriction**

i. Staff Report: Staff has had several requests, regarding development projects in the C-3 zone, to exceed the 45-foot maximum height requirement in that zone. Some have been granted by creating a Planned Unit Development (i.e. Courtyard by Marriott and Embassy Suites), while others may need to go through a variance process. It seems reasonable to staff that the maximum height should be greater in our Highway Commercial/Office Park Zoning District. Therefore, staff is proposing an increase from 45' to 75'. This would accommodate a six story building with a pitched roof. It is possible that the FAA may not always allow a height up to 75", so in those cases the height would be lower.

Horihan asked the radius of the FAA zone controls. Baker passed around a map for a visual on this flight zone radius.

Staff recommends approval of the revision to Section 5.12.06.01 to the City Council.

ii. Public Hearing: Malmquist motioned to open public hearing. Hewitt seconded. Ayes: Krzywicki, Alexander, Circo, Andsager, Horihan, Malmquist, Hewitt and Gahan. Nays: None. Public hearing opened at 7:30 p.m.

There were no public comments.

Circo asked at what point the FAA gets involved. Baker said the plans are sent to the FAA first by the building department, as it does take awhile for their comments.

Krzywicki asked if there should be a concern with adding height to a structure, but not modify the side and rear yard requirements for more open space? Baker felt it was a fair question, and had not been discussed elsewhere. Baker felt some language could be added to the affect that if the height of a structure went above 45 ft. then other setback rules may apply.

Andsager asked how many stories was equal to 75 feet. Baker said this is figured as six stories with a pitched roof.

Krzywicki felt that additional setbacks would be taken care of by the additional parking requirements on the land. Also, some landscaping requirements may address some of these issues.

Baker said that setbacks are for structures only. Parking lots and landscaping can be within setbacks.

Kottman said they may want to re-visit the side and rear yard setbacks, particularly if a C-3 is abutting a residential area you wouldn't want the maximum height next to that category.

Gahan felt this increased height adjustment would be more welcoming to business coming in. Malmquist agreed. She felt there are other reviews that would allow for assessments to adjacency, parking and those sorts of issues.

Gahan felt that a six story building will have to prove they can provide adequate parking.

Circo pointed out that a baseball/basketball arena would also need this height.

Horihan agreed with City Engineer Kottman that staff needs to think about the circumstances that may arise with the height of the structures and all setbacks as 15 foot setbacks don't seem to be enough for that tall of a building.

Krzywicki questioned if the fire department had sufficient access to taller buildings with smaller setbacks. Birch related information on this gained from the fire chief that no one goes above four stories with an aerial ladder unit. They rely on the interior fire suppression systems. There are requirements for a 24 ft. paved fire lane around commercial buildings over a certain size.

Malmquist said fire requirements depend on size of the building, etc. Other things are in place which require review of setbacks and other such items.

Krzywicki suggested City Engineer Kottman should look at adjacency, setbacks.

Baker said a 45 ft. height is maximum in all other zones, with the exception of single-family, R-1, which is 35 feet. This is not typical in other city's major office park / commercial zoning districts.

Krzywicki deducted that some members are okay as is and others want a review.

Nielsen agreed that time is needed to look at this. Hewitt agreed there were no pressing projects that require the changes. Baker said there may be a project appearing within a month or so, but if the Planning Commission needs time to look at it, they should take the time.

Hewitt and Circo felt other factors may come into play and should be looked at. Krzywicki wondered if any changes could be made before City Council approval.

Hewitt felt if staff should review and it should come back to Planning Commission.

Krzywicki felt a footnote should be added that 45 ft. maximum if property is abutting a residential area. Horihan suggested that if two buildings would abut they would be only 30 feet apart.

Gahan and Krzywicki asked about the landscape requirements.

iii. Recommendation: Hewitt motioned to recommend approval of the revision to Section 5.12.06.01 to the City Council subject to the staff review of the front, rear and side yard setbacks and if there are no proposed changes, that the issue be sent on to City Council for review. Circo seconded. Ayes: Krzywicki, Alexander, Circo, Andsager, Horihan, Hewitt, Malmquist and Gahan. Nays: None.

This item will tentatively appear on the City Council of October 21, 2008.

## **5. Comments from the Floor**

None

**6. Comments from the Planning Commission**

Malmquist invited everyone to the opening of the Bob Kerry pedestrian bridge to be held on September 28, 2008.

Krzywicki asked if there had been any comments or questions about parking around the conference center, Embassy Suites. Baker nor Birch had heard of any. Kottman said he and Public Works were working on a little piece of sidewalk to connect to the crosswalk, but was not aware of any other issues out there. Krzywicki asked the opening date of the Marriott. Kottman said it would be next spring.

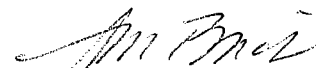
Jason Nielsen introduced himself as the new alternate member of the Planning Commission.

Alexander asked if the van tour had been worked out as yet. Baker said it had not.

**7. Adjournment**

Hewitt motioned to adjourn. Malmquist seconded. Ayes: Hewitt, Krzywicki, Alexander, Circo, Andsager, Horihan, Malmquist, Hewitt and Gahan. Nay: None. Motioned carried. Nays: None. Meeting was adjourned at 8:13 p.m.

Reviewed by Planning Commission: John Gahan



Recorder



Planning Commission Chair

10-16-2008

Approval Date



City of LaVista  
Attn: Brenda Gunn  
8116 Park View Blvd  
La Vista, NE 68128

**INVOICE**

September 23, 2008

Invoice No: 003-10050-000 - 0000010

Development of a Municipal Facilities Plan focusing on General Administrative services (Mayor/Council, Administration, City Clerk, Finance, and Public Buildings and Grounds), Community Development services, Recreation Department administrative services, and Public Works services.

**Professional Services Through September 19, 2008****Fee**

Total Fee	60,000.00		
Percent Complete	90.00	Total Earned	54,000.00
		Previous Fee Billing	51,000.00
		Current Fee Billing	3,000.00
		<b>Total Fee</b>	<b>3,000.00</b>
		<b>Total this Invoice</b>	<b>\$3,000.00</b>


**Billings to Date**

	<b>Current</b>	<b>Prior</b>	<b>Total</b>
Fee	3,000.00	51,000.00	54,000.00
<b>Totals</b>	<b>3,000.00</b>	<b>51,000.00</b>	<b>54,000.00</b>

Please make checks payable to:

Leo A Daly Company  
Attn: Accounting  
8600 Indian Hills Drive  
Omaha NE 68114

Tax ID: 47-0363104  
Tel: (402) 391-8111  
Fax: (402) 391-8564

  
Edward Vidlak

Consent  
OK - R. Ramirez  
02.71.08/10.01





John Q Hammons  
INDUSTRIES

October 3, 2008

Sheila Lindberg, Finance Director  
City of La Vista  
8116 Park View Blvd.  
LaVista, NE 68128

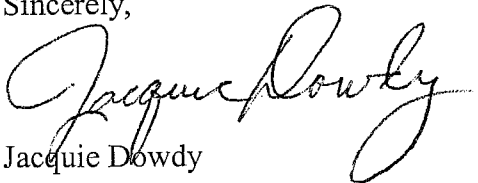
RE: Draw Request #13 on LaVista, NE Conference Center

Dear Ms. Lindberg:

Enclosed is our thirteenth draw on the Conference Center in LaVista, NE in the amount of \$64,630.36 with supporting invoices. Our 28% equity of this draw is \$18,096.50.

We would like the funds in the amount of \$46,533.86 wired as early as possible on the morning of October 22, 2008 using the enclosed wiring instructions. Please notify me at 417/864-4300 when this is completed.

Sincerely,



Jacquie Dowdy  
Treasurer

lfh  
enclosures

PROJECT: LAVISTA, NE CONVENTION CENTER

LENDER: CITY OF LAVISTA

DRAW #13

OCTOBER 3, 2008

LAVISTANECONVCTRDRAW.xls

	CONSTRUCTION BUDGET	AMOUNT PAID BY JOH	ADVANCED TO DATE	TOTAL PAID TO DATE BEFORE REQUEST	CURRENT DRAW #12	LESS JOH 28.00%	NET CURRENT REQUEST	TOTAL ADV AFTER REQUEST	TOTAL PAID AFTER REQUEST	TOTAL % OF BUDGET	BALANCE TO FINISH
LAND	\$ 1,200,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ 1,200,000.00
CONSTRUCTION	\$ 14,830,000.00	\$ 4,125,989.80	\$ 10,657,935.20	\$ 14,783,925.00	\$ -	\$ -	\$ -	\$ 10,657,935.20	\$ 14,783,925.00	99.56%	\$ 66,075.00
BUILDING PERMITS	\$ 90,000.00	\$ 35,551.65	\$ 91,418.54	\$ 126,970.19	\$ -	\$ -	\$ -	\$ 91,418.54	\$ 126,970.19	141.08%	\$ (36,970.19)
TECHNICAL FEES	\$ 1,312,000.00	\$ 177,858.06	\$ 455,853.07	\$ 633,711.13	\$ 2,017.36	\$ (564.86)	\$ 1,452.50	\$ 457,305.57	\$ 635,728.49	48.45%	\$ 676,271.51
F R & E	\$ 3,957,000.00	\$ 1,050,924.21	\$ 2,702,376.51	\$ 3,753,300.72	\$ 62,613.00	\$ (17,531.64)	\$ 45,081.36	\$ 2,747,457.87	\$ 3,815,913.72	96.43%	\$ 141,086.28
CAPITALIZED INTEREST	\$ 665,156.00	\$ 106,992.31	\$ 275,123.09	\$ 382,115.40	\$ -	\$ -	\$ -	\$ 275,123.09	\$ 382,115.40	57.45%	\$ 283,040.60
FINANCE COSTS	\$ 626,844.00	\$ 18,762.75	\$ -	\$ 18,762.75	\$ -	\$ -	\$ -	\$ -	\$ 18,762.75	2.99%	\$ 608,081.25
PRE-OPENING	\$ 300,000.00	\$ 21.69	\$ 55.76	\$ 77.45	\$ -	\$ -	\$ -	\$ 55.76	\$ 77.45	0.03%	\$ 299,922.55
LEGAL FEES	\$ 50,000.00	\$ 110.60	\$ 284.40	\$ 395.00	\$ -	\$ -	\$ -	\$ 284.40	\$ 395.00	0.79%	\$ 49,605.00
MISCELLANEOUS	\$ 150,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.00%	\$ 150,000.00
TOTAL	\$ 23,201,000.00	\$ 5,516,211.07	\$ 14,183,046.57	\$ 19,699,257.64	\$ 64,630.36	\$ (18,096.50)	\$ 46,533.86	\$ 14,229,580.43	\$ 19,765,888.00	72.00%	\$ 3,437,112.00
% OF JOB AFTER CURENT DRAW											27.91%

28% PAID BY BORROWER: \$ 18,096.50

72% ADVANCED BY CITY: \$ 46,533.86

TOTAL INVOICES SUBMITTED: \$ 64,630.36

## 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)								
		45992			Payroll Checks				
Thru		45994							
		45995			Gap in Checks				
Thru		94189							
94190	10/01/2008	451	NEBRASKA MOSQUITE/VECTOR ASSN		100.00				**MANUAL**
94191	10/02/2008	3702	LAUGHLIN, KATHLEEN A, TRUSTEE		372.00				**MANUAL**
94192	10/08/2008	3956	KIRKHAM MICHAEL		3,377.00				**MANUAL**
94193	10/08/2008	167	U S ASPHALT COMPANY		207,263.61				**MANUAL**
94194	10/08/2008	152	CITY OF OMAHA		28,670.54				**MANUAL**
94195	10/08/2008	4018	KISSEL/E & S ASSOCIATES		5,797.29				**MANUAL**
94196	10/08/2008	3753	MULLEN & MULLEN		35,008.00				**MANUAL**
94197	10/10/2008	1681	CARSTENSEN, RICH		295.00				**MANUAL**
94198	10/14/2008	1194	QUALITY BRANDS OF OMAHA		89.75				**MANUAL**
94199	10/15/2008	3702	LAUGHLIN, KATHLEEN A, TRUSTEE		372.00				**MANUAL**
94200	10/15/2008	3234	SNITILY CARR		2,175.00				**MANUAL**
94201	10/15/2008	2625	CARDMEMBER SERVICE-ELAN		3,720.48				**MANUAL**
94202	10/16/2008	480	UNITED STATES POSTAL SERVICE		1,350.99				**MANUAL**
94203	10/21/2008	762	ACTION BATTERIES UNLTD INC		449.75				
94204	10/21/2008	435	ANDERSON FORD LINCOLN MERCURY		57.30				
94205	10/21/2008	196	AQUILA		2,604.72				
94206	10/21/2008	536	ARAMARK UNIFORM SERVICES INC		245.87				
94207	10/21/2008	3875	BAKER, MARCUS		50.00				
94208	10/21/2008	1784	BENNINGTON IMPLEMENT		271.76				
94209	10/21/2008	3774	BENSON RECORDS MANAGEMENT CTR		68.70				
94210	10/21/2008	3448	BIRCH, ANN		50.00				
94211	10/21/2008	1231	BLAND, CHRIS		72.00				
94212	10/21/2008	1242	BRENTWOOD AUTO WASH		84.00				
94213	10/21/2008	3703	BUETHE, PAM		100.00				
94214	10/21/2008	3760	BUETHE, PAM		20.00				
94215	10/21/2008	76	BUILDERS SUPPLY CO INC		433.88				
94216	10/21/2008	4024	CALENTINE, JEFFREY		30.00				
94217	10/21/2008	83	CJ'S HOME CENTER		.00	**CLEARED**	**VOIDED**		
94218	10/21/2008	83	CJ'S HOME CENTER		.00	**CLEARED**	**VOIDED**		
94219	10/21/2008	83	CJ'S HOME CENTER		.00	**CLEARED**	**VOIDED**		
94220	10/21/2008	83	CJ'S HOME CENTER		1,211.95				
94221	10/21/2008	836	CORNHUSKER INTL TRUCKS INC		77.70				
94222	10/21/2008	2158	COX COMMUNICATIONS		212.15				
94223	10/21/2008	4013	D & B SALVAGE		734.00				
94224	10/21/2008	4017	DAVIS, FRANKLIN TODD		31.25				
94225	10/21/2008	3334	EDGEWEAR SCREEN PRINTING		296.40				
94226	10/21/2008	475	ELLIOTT EQUIPMENT COMPANY		621.46				
94227	10/21/2008	3617	FAIRWAY GOLF LLC		42.00				
94228	10/21/2008	3463	FARQUHAR, MIKE		100.00				
94229	10/21/2008	3159	FASTENAL COMPANY		26.83				
94230	10/21/2008	1235	FEDEX KINKO'S		460.03				
94231	10/21/2008	1201	FERRELLGAS		452.33				
94232	10/21/2008	1245	FILTER CARE		106.35				

## ACCOUNTS PAYABLE CHECK REGISTER

BANK NO	BANK NAME						
CHECK NO	DATE	VENDOR NO	VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
94233	10/21/2008	3007	FIRE-EXTRICATION-HAZMAT	154.94			
94234	10/21/2008	142	FITZGERALD SCHORR BARMETTLER	.00	**CLEARED**	**VOIDED**	
94235	10/21/2008	142	FITZGERALD SCHORR BARMETTLER	19,269.06			
94236	10/21/2008	3132	FORT DEARBORN LIFE INSURANCE	1,235.50			
94237	10/21/2008	4020	GHIAT, NICK	100.00			
94238	10/21/2008	35	GOLDMAN, JOHN G	85.00			
94239	10/21/2008	385	GREAT PLAINS ONE-CALL SVC INC	389.65			
94240	10/21/2008	2062	GREAT WESTERN BANK	250.00			
94241	10/21/2008	71	GREENKEEPER COMPANY INC	239.40			
94242	10/21/2008	3473	GUNN, BRENDA S	300.00			
94243	10/21/2008	1044	H & H CHEVROLET LLC	29.55			
94244	10/21/2008	426	HANEY SHOE STORE	120.00			
94245	10/21/2008	4021	HILDING, TRACI	20.00			
94246	10/21/2008	797	HOBBY LOBBY STORES INC	92.86			
94247	10/21/2008	2888	HOME DEPOT CREDIT SERVICES	179.94			
94248	10/21/2008	526	HOST COFFEE SERVICE INC	24.00			
94249	10/21/2008	1612	HY-VEE INC	7.60			
94250	10/21/2008	1498	INDUSTRIAL SALES COMPANY INC	608.95			
94251	10/21/2008	2534	IWAN, ROSE	45.00			
94252	10/21/2008	1896	J Q OFFICE EQUIPMENT INC	646.55			
94253	10/21/2008	100	JOHNSTONE SUPPLY CO	122.64			
94254	10/21/2008	3612	JONES, DAVID	18.00			
94255	10/21/2008	4022	KIERCHER, ADAM	110.00			
94256	10/21/2008	3954	KILE, TIM	1,240.00			
94257	10/21/2008	788	KINDIG, DOUGLAS	40.00			
94258	10/21/2008	3474	KINDIG, DOUGLAS	150.00			
94259	10/21/2008	1054	KLINKER, MARK A	200.00			
94260	10/21/2008	1241	LEAGUE ASSN OF RISK MGMT	422,921.00			
94261	10/21/2008	877	LINWELD	180.56			
94262	10/21/2008	1573	LOGAN CONTRACTORS SUPPLY	289.51			
94263	10/21/2008	2664	LOU'S SPORTING GOODS	147.70			
94264	10/21/2008	2124	LUKASIEWICZ, BRIAN	295.00			
94265	10/21/2008	3035	MEDICAID-NE DEPT OF SOC SVCS	70.18			
94266	10/21/2008	588	MENARDS-BELLEVUE	66.72			
94267	10/21/2008	553	METROPOLITAN UTILITIES DIST.	1,707.18			
94268	10/21/2008	4016	MIDWEST VEHICLE PROFESSIONALS	65.00			
94269	10/21/2008	3352	NE DEPT OF LABOR-WORKFORCE DEV	100.00			
94270	10/21/2008	944	NE DEPT OF REVENUE-LOTT/51	75,918.95			
94271	10/21/2008	97	NEBRASKA MIDGET FOOTBALL LEAG	1,485.00			
94272	10/21/2008	451	NEBRASKA MOSQUITO/VECTOR ASSN	100.00			
94273	10/21/2008	214	NEBRASKA MUNICIPAL CLERKS ASSN	70.00			
94274	10/21/2008	2631	NEXTEL COMMUNICATIONS	94.23			
94275	10/21/2008	1014	OFFICE DEPOT INC-CINCINNATI	105.28			
94276	10/21/2008	195	OMAHA PUBLIC POWER DISTRICT	.00	**CLEARED**	**VOIDED**	
94277	10/21/2008	195	OMAHA PUBLIC POWER DISTRICT	.00	**CLEARED**	**VOIDED**	
94278	10/21/2008	195	OMAHA PUBLIC POWER DISTRICT	38,729.59			
94279	10/21/2008	3039	PAPILLION SANITATION	200.09			
94280	10/21/2008	2686	PARAMOUNT LINEN & UNIFORM	340.44			
94281	10/21/2008	1769	PAYLESS OFFICE PRODUCTS INC	167.99			
94282	10/21/2008	1821	PETTY CASH-PAM BUETHE	112.64			
94283	10/21/2008	3657	PROPERTY SERVICES	244.00			
94284	10/21/2008	219	QWEST	1,110.05			
94285	10/21/2008	3469	RAMIREZ, JOHN	72.00			

10.16.06

## ACCOUNTS PAYABLE CHECK REGISTER

BANK NO CHECK NO	BANK NAME DATE	VENDOR NO VENDOR NAME	CHECK AMOUNT	CLEARED	VOIDED	MANUAL
94286	10/21/2008	1828 RAMIREZ, RITA	75.00	APPROVED BY COUNCIL MEMBERS		
94287	10/21/2008	427 RAMIREZ, RITA M	154.00	10-21-08		
94288	10/21/2008	3700 RAPPOLD, KYLE	11.00			
94289	10/21/2008	4023 RICCHINI, MATT	100.00			
94290	10/21/2008	292 SAM'S CLUB	84.48			
94291	10/21/2008	487 SAPP BROS PETROLEUM INC	114.75			
94292	10/21/2008	2240 SARPY COUNTY COURTHOUSE	3,234.94			
94293	10/21/2008	2740 SARPY COUNTY FISCAL ADMINSTRTN	8,874.00			
94294	10/21/2008	150 SARPY COUNTY TREASURER	13,965.50	COUNCIL MEMBER		
94295	10/21/2008	2186 SID 195 - MAYFAIR	660.00			
94296	10/21/2008	3707 SMITH, MELANIE	100.00			
94297	10/21/2008	2704 SMOOTHER CUT ENTERPRISES INC	1,659.00			
94298	10/21/2008	533 SOUCIE, JOSEPH H JR	60.00			
94299	10/21/2008	3838 SPRINT	90.17			
94300	10/21/2008	47 SUBURBAN NEWSPAPERS INC	552.24			
94301	10/21/2008	3795 SUN COUNTRY DISTRIBUTING LTD	205.08	COUNCIL MEMBER		
94302	10/21/2008	3718 SUN LIFE & HEALTH INSURANCE CO	1,662.82			
94303	10/21/2008	3959 TANGEMAN, JODI	33.00			
94304	10/21/2008	3309 THREE RING ENTERPRISES INC	.00	**CLEARED** **VOIDED**		
94305	10/21/2008	3309 THREE RING ENTERPRISES INC	.00	**CLEARED** **VOIDED**		
94306	10/21/2008	3309 THREE RING ENTERPRISES INC	.00	**CLEARED** **VOIDED**		
94307	10/21/2008	3309 THREE RING ENTERPRISES INC	1,892.58			
94308	10/21/2008	167 U S ASPHALT COMPANY	951.41			
94309	10/21/2008	809 VERIZON WIRELESS, BELLEVUE	37.31			
94310	10/21/2008	3690 VIERS, STEVE	100.00			
94311	10/21/2008	78 WASTE MANAGEMENT NEBRASKA	782.48			
BANK TOTAL			903,173.60	COUNCIL MEMBER		
OUTSTANDING			903,173.60			
CLEARED			.00			
VOIDED			.00			
FUND	TOTAL		OUTSTANDING	CLEARED	VOIDED	
01	GENERAL FUND	397,997.20	397,997.20	.00	.00	
02	SEWER FUND	174,372.57	174,372.57	.00	.00	
04	BOND(S) DEBT SERVICE FUND	250.00	250.00	.00	.00	
05	CONSTRUCTION	237,306.27	237,306.27	.00	.00	
08	LOTTERY FUND	81,178.45	81,178.45	.00	.00	
09	GOLF COURSE FUND	10,499.96	10,499.96	.00	.00	
15	OFF-STREET PARKING	1,569.15	1,569.15	.00	.00	
REPORT TOTAL			903,173.60			
OUTSTANDING			903,173.60			
CLEARED			.00			
VOIDED			.00			
+ Gross Payroll 10-17-08			191,424.63			
GRAND TOTAL			<u>\$1,094,598.23</u>	COUNCIL MEMBER		

COUNCIL MEMBER

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
OCTOBER 21, 2008 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
OFFICIALS/EMPLOYEE BONDS AMEND MUNICIPAL CODE SECTIONS 31.21, 31.23, 33.23, AND 33.40	RESOLUTION ◆ ORDINANCE RECEIVE/FILE	PAM BUETHE CITY CLERK

**SYNOPSIS**

Ordinances have been prepared to amend the City of La Vista Municipal Code Sections 31.21(A)(3), 31.23(E), 33.23, and 33.40 to allow for a Blanket bond for Elected/Appointed Officials and employees of the City of La Vista who are required by state statute to have a bond.

**FISCAL IMPACT**

The city would incur a savings of approximately \$3,000.00.

**RECOMMENDATION**

Approval.

**BACKGROUND**

In January 2007 Legislative Bill (LB) 347 was introduced to amend various sections of revised statutes of Nebraska to allow a city, in place of the individual bonds previously required by municipal officers, to have a "single corporate surety fidelity, schedule, position, or blanket bond or undertaking, or evidence of insurance coverage covering all the officers, including officers required by law to furnish an individual bond or undertaking". LB 347 was passed by the legislature March 13, 2007 and approved by the Governor March 19, 2007. The blanket bond will be for \$100,000 for each elected/appointed official or employee. A separate bond in the amount of \$25,000 will still be required for the position of Treasurer as is stated in the City of La Vista Municipal Code.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND MUNICIPAL CODE SECTION 31.21(A)(3) REGARDING CITY TREASURER BOND, INSURANCE, PREMIUM, DUTIES AND REPORTS; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; AND TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Municipal Code Section 31.21(A)(3) is hereby amended to read as follows:

"(3) The Treasurer shall be required to give bond ~~in not less than \$25,000 or evidence of equivalent insurance of not less than twenty-five thousand dollars, or he or she~~ may be required to give bond in double the sum of money estimated by the City Council at any time to be in his or her hands belonging to the City and school district, and ~~the Treasurer he or she~~ shall be the custodian of all money belonging to the corporation. The City Council shall pay the actual premium of the bond or insurance coverage of ~~the such~~ Treasurer. The Treasurer shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. ~~The Treasurer~~ He or she shall give every person paying money into the treasury a receipt therefor, specifying date of payment and on what account paid. ~~and The Treasurer He or she~~ shall also file ~~a copy of the copies of such~~ receipts, except tax receipts, with his or her monthly reports. ~~The Treasurer, and he or she~~ shall at the end of every month, and as often as may be requested, render an account to the City Council, under oath, showing the state of the treasury at the date of such account, the amount of money remaining in each fund and the amount paid therefrom, and the balance of money in the treasury. ~~The Treasurer He or she~~ shall also accompany such account with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him or her, which warrants, with all vouchers held by ~~the Treasurer him or her~~, shall be filed with ~~the his or her~~ account in the clerk's office. ~~The Treasurer He or she~~ shall produce and show all funds shown by ~~the such~~ report to be on hand, or satisfy the ~~City Council~~ or its committee that he or she has such funds in his or her custody or under his or her control. If the Treasurer ~~neglects or fails for the space of ten days from the end of every month to~~ render his or her account within twenty days after the end of the month, or by a later date established by the Council, the Mayor with the consent of the Council may consider this failure as cause to remove the Treasurer from office. ~~the treasurer's office may, by resolution of the Mayor and City Council, be declared facant, and the Mayor shall appoint and the City Council confirm some person to fill the cy until the next election for city officers.~~ The Treasurer may employ and appoint a delinquent tax collector, who shall be allowed a percent upon his or her collections to be fixed by the Council not to exceed the fees allowed by law to the County Treasurer for like services, and upon taxes collected by such delinquent tax collector the City Treasurer shall receive no fees. The City Treasurer shall prepare all paving and curbing tax lists and shall collect all paving and curbing taxes."

SECTION 2. Repeal of Conflicting Ordinances. Section 31.21(A)(3) as originally enacted, and all ordinances and parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof, are hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall be in force and take effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2008.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

274279-2



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND MUNICIPAL CODE SECTION 31.23(E) REGARDING CITY ADMINISTRATOR BOND; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; AND TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Municipal Code Section 31.23(E) is hereby amended to read as follows:

"(E) The City Administrator shall take no part in any election held for the purpose of electing the Mayor, members of the City Council or other elective city office of the city, except for the casting of his or her individual ballot. The City Administrator shall be an officer of the city within the meaning of Neb. Rev. Stat. section 16-502 and shall be subject to and bound by the prohibitions therein contained. Before taking office, the City Administrator shall file with the City Clerk a bond in favor of the city for the faithful performance of his or her duties in the amount of \$5,000, or such blanket bond or other bond or insurance in lieu of individual bond as permitted by Code section 33.40(2). The premium of said bond shall be paid by the city."

SECTION 2. Repeal of Conflicting Ordinances. Section 31.23(E) as originally enacted, and all ordinances and parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof, are hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall be in force and take effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2008.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND MUNICIPAL CODE SECTION 33.23 REGARDING CITY COUNCIL ORGANIZATIONAL MEETING AND BONDING REQUIREMENTS; REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; AND TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Municipal Code Section 33.23 is hereby amended to read as follows:

**"33.23 ORGANIZATIONAL MEETING.**

The newly elected Council shall convene at the regular place of meeting in the city on the first regular meeting in December of each year in which a city election is held immediately after the prior Council adjourns and proceed to organize themselves for the ensuing year. The Mayor elected for the new municipal year shall call the meeting to order. The Council shall then proceed to examine the credentials of its members and other elective officers of the city to see that each has been duly and properly elected and to see that such oaths and bonds have been given as are required. After ascertaining that all members are duly qualified, the Council shall then elect one of its own body who shall be styled as "President of the Council." The Mayor shall then nominate his or her candidates for appointive offices. He or she shall then proceed with the regular order of business. It is hereby made the duty of each and every member of the Council, or his or her successor in office, and of each officer elected to any office, to qualify ~~prior to the first regular meeting in December within the time required by applicable law~~ following his or her election. All appointive officers ~~likewise~~ shall qualify within ~~the time~~ following their appointment as required by applicable law. Qualification for each officer who is not required to give bond shall consist of his or her subscribing and taking an oath ~~to support the Constitution of the United States, the Constitution of the state of Nebraska, the laws of the city and to perform faithfully and impartially the duties of his or her office, in form specified in Neb. Rev. Stat. Section 11-101,~~ said oath to be filed in the office of the City Clerk. Each officer who is required to give a bond shall file the required bond in the office of the City Clerk with sufficient sureties, conditioned on the faithful discharge of the duties of his or her office, with the oath endorsed thereon: or satisfy an alternative method of compliance described in Code Section 33.40(2)."

SECTION 2. Repeal of Conflicting Ordinances. Section 33.23 as originally enacted, and all ordinances and parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof, are hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall be in force and take effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2008.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND MUNICIPAL CODE SECTION 33.40 REGARDING OFFICIAL BOND REQUIREMENTS; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; AND TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Municipal Code Section 33.40 is hereby amended to read as follows:

**“33.40 BONDS; FORM.**

(1) Subject to subsection 33.40(2) below, official bonds of the city shall be in form joint and several and shall be made payable to the city in such penalty as the City Council may set by resolution; provided however, that, absent specification by resolution, the required penalty shall be \$1,000. Provided further, however, that the penalty amount-on-any-bond shall not fall below the legal minimum, when one has been set by the State of Nebraska, for each particular official. All official bonds of the city officials shall be executed by the principal named in such bonds and by at least two sufficient sureties who shall be freeholders of the county, or by the official as principal and by a guaranty, surety, fidelity or bonding company, provided that no city official, while still in his or her official term of office, shall be accepted as surety on any other official's bond, contractor's bond, license bond or appeal bond under any circumstances. Only companies that are legally authorized to transact business in the state of Nebraska shall be eligible for suretyship on the bond of an official of the city. All said bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of such principal and shall inure to the benefit of the city and any persons who may be injured by a breach of the conditions of such bonds, in addition to incorporating any other requirements of applicable law. Notwithstanding anything in this Code to the contrary, each bond shall be required to be filed no earlier than the date that the bond is required to be filed under applicable Nebraska statute, as enacted or amended from time to time. Bonds of City Council members shall be approved by the Mayor. Bonds of all other city officials shall be approved by the City Council. The approval of each official bond shall be endorsed upon such bond by the officer approving the same. The Mayor shall be authorized to endorse approval of bonds approved by the City Council, and the Mayor shall be deemed to be and constitute the officer approving said bonds for purposes of said endorsement. The premium on any official bond required to be given shall be paid out of the General Fund or other proper city fund. All official bonds, meeting the conditions herein, shall be filed with the City Clerk for his or her official records, and it shall be the duty of the City Clerk to furnish a certified copy of any bond so filed upon the payment of a fee which shall be set by resolution of the City Council. In the event that the sureties on the official bond of any appointed officer of the city, in the opinion of the Mayor, with the approval of the City Council, become insufficient, the Mayor, with approval of the City Council, may fix a reasonable time within which the said officer may give a new bond or additional sureties as directed. In the event that the officer should fail, refuse or neglect to give a new bond or additional sureties to the satisfaction of the Mayor, then, with the approval of the City Council, the office shall, by such failure, refusal or neglect, become vacant, and another officer shall be appointed to fill said office in accordance with applicable law. Any official who is re-elected or re-appointed to office shall be required to file a new bond after each election or appointment.

(2) In place of the individual bonds required to be furnished by City officers or officials, a schedule, position, blanket bond or undertaking, or evidence of equivalent insurance may be given by City officers or officials, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking, or evidence of insurance coverage covering all the officers and officials, including officers and officials required by law to furnish an individual bond or undertaking, may be furnished. The City shall pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by law, by the Council or otherwise by Section 33.40(1) above, and with such terms and conditions as may be required."

SECTION 2. Repeal of Conflicting Ordinances. Section 33.40 as originally enacted, and all ordinances and parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof, are hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall be in force and take effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
OCTOBER 21, 2008**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
RESTATEMENT OF MUNICIPAL RETIREMENT PLANS	◆ RESOLUTION ◆ ORDINANCE RECEIVE/FILE	RITA M. RAMIREZ ASSISTANT CITY ADMINISTRATOR

**SYNOPSIS**

An ordinance has been prepared to amend and restate the retirement plans for public safety employees (police officers and firefighters) and a resolution has been prepared to rename, amend and restate the retirement plans for general employees and the city administrators.

**FISCAL IMPACT**

N/A

**RECOMMENDATION**

Approval.

**BACKGROUND**

IRS guidelines require that governmental pension plans must be restated to incorporate all amendments and changes in the tax laws and related guidance by January 31, 2009. The appropriate adoption agreements and the Basic Plan Document have been prepared by the City Attorney for your consideration. Following is a synopsis of the primary changes made to the restated Basic Plan Document and the accompanying Adoption Agreements.

1. Incorporated periodic changes to tax laws made since 2001; the most significant being the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). Changes included increasing dollar limits on benefits and contributions under Code section 415, increasing compensation for plan purposes under Code section 401(a)(17) from \$150,000 to \$200,000, subject to periodic cost of living adjustment, and permitting expanded rollovers between plans, including greater flexibility for rollovers involving different plans, contributions and distributees.
2. Integrated into the plan document required and discretionary amendments adopted by the employer since the plan was last restated. Required amendments included changes to reflect new minimum required distribution regulations adopted in 2002 and to provide for automatic rollover of cash out distributions in excess of \$1,000 to IRAs, or lowering of cash out amount, effective March 28, 2005.
3. Incorporated extensive new Treasury Regulations under Code section 415 adopted in 2007 and effective for limitation years beginning on or after July 1, 2007.

4. Other revisions to incorporate desired plan provisions published by the IRS and integrate the foregoing changes and applicable state law.

Copies of the adoption agreements are included in the packet. The Plan and Trust Agreement (85 pages) is available for review in the office of the City Clerk.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO AMEND AND RESTATE PUBLIC SAFETY EMPLOYEES RETIREMENT PLANS, THE CITY OF LA VISTA POLICE OFFICERS RETIREMENT PLAN AND TRUST AND CITY OF LA VISTA FIREFIGHTERS RETIREMENT PLAN AND TRUST; TO AUTHORIZE FURTHER ACTIONS AND REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; AND TO PROVIDE FOR SEVERABILITY AND AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Pursuant to Nebraska Statutes, Sections 16-1001 through 16-1042, the Mayor and Council of the City of La Vista maintain the City of La Vista Police Officers Retirement Plan and Trust and City of La Vista Firefighters Retirement Plan and Trust ("Plans") for its paid police officers and firefighters, embodied in plan documents including adoption agreements and basic plan documents attached thereto and constituting integral parts thereof, as well as various amendments required by applicable law.

SECTION 2. Applicable tax law requires that the Plans be amended and restated, and for this purpose, there has been presented to the City proposed retirement plans and trusts embodied in instruments entitled "Adoption Agreement" and "Basic Municipal Employees Plan and Trust Agreement" as an integral part thereof ("Basic Plan Document"; and together the Adoption Agreements and Basic Plan Documents sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.

SECTION 3. The City does hereby approve and adopt said Agreements as the amendment and restatement of the Plans, and makes the designations and elections with respect to the Plans as indicated in the Adoption Agreements, to be effective on the date(s) specified in the Adoption Agreements or Basic Plan Documents.

SECTION 4. The Mayor is authorized to execute said Adoption Agreements and Basic Plan Documents on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed herein or otherwise determined necessary or advisable, to cause said Agreements to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Adoption Agreements or Basic Plan Documents and take such further actions as he or she determines necessary or appropriate to obtain a favorable ruling.

SECTION 5. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this ordinance or any part hereof are hereby repealed.

SECTION 6. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.



SECTION 7. Effective Date. This Ordinance shall be in force and take effect from and after passage, approval and publication as provided by law.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2008.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA TO RENAME, AMEND AND RESTATE THE CITY OF LA VISTA, NEBRASKA DEFINED CONTRIBUTION PENSION PLAN AND TRUST AND AMEND AND RESTATE THE CITY OF LA VISTA CITY ADMINISTRATORS' DEFINED CONTRIBUTION PENSION PLAN AND TRUST, AND TO AUTHORIZE FURTHER ACTIONS.

BE IT RESOLVED:

SECTION 1. Pursuant to Nebraska Statutes, Section 19-3501, the Mayor and Council of the City of La Vista maintain the City of La Vista, Nebraska Defined Contribution Pension Plan and Trust and the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, embodied in plan documents including adoption agreements and basic plan documents attached thereto and constituting integral parts thereof, as well as various amendments required by applicable law ("Plans").

SECTION 2. The City desires to and does hereby change the name of the City of La Vista, Nebraska Defined Contribution Pension Plan and Trust to the City of La Vista General Employees Defined Contribution Pension Plan and Trust. Furthermore, applicable tax law requires that the Plans be amended and restated. For these purposes, there has been presented to the City proposed retirement plans and trusts embodied in instruments entitled "Adoption Agreement" together with a "Basic Municipal Employees Plan and Trust Agreement" as an integral part thereof ("Basic Plan Documents"; and together the Adoption Agreements and Basic Plan Documents sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.

SECTION 3. The City does hereby approve and adopt said Agreements as the amendment and restatement of the Plans, and hereby makes the designations and elections with respect to the Plans as indicated in the Adoption Agreements, to be effective on the date(s) specified in the Adoption Agreements or Basic Plan Documents.

SECTION 4. That the Mayor is authorized to execute said Adoption Agreements and Basic Plan Documents on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in this resolution or otherwise determined necessary or advisable, to cause said Agreements to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions

of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Adoption Agreements or Basic Plan Documents and take such further actions as he or she determines necessary or appropriate to obtain a favorable ruling.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

**ADOPTION AGREEMENT**

**CITY OF LA VISTA**

**GENERAL EMPLOYEES DEFINED CONTRIBUTION PENSION**

**PLAN AND TRUST**

**TO BE USED WITH  
BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT**

THIS IS TO CERTIFY THAT:

The following resolution was adopted by resolution by the City of La Vista, Nebraska, by its City Council, at a meeting thereof duly called and held on \_\_\_\_\_, 20\_\_:

RESOLVED,

SECTION 1. Pursuant to Nebraska Statutes, Section 19-3501, the Mayor and Council of the City of La Vista maintain the City of La Vista, Nebraska Defined Contribution Pension Plan and Trust, embodied in plan documents including an adoption agreement and basic plan document attached thereto and constituting an integral part thereof, as well as various amendments required by applicable law.

SECTION 2. The City desires to change the name of the Plan to the City of La Vista General Employees Defined Contribution Pension Plan and Trust. Furthermore, applicable tax law requires that the Plan be amended and restated. For these purposes, there has been presented to the City a proposed retirement plan and trust embodied in an instrument entitled "Adoption Agreement" together with the "Basic Municipal Employees Plan and Trust Agreement" as an integral part thereof ("Basic Plan Document"; and together the Adoption Agreement and Basic Plan Document sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.

SECTION 3. The City does hereby approve and adopt said Agreements as an amendment and restatement of the Plan, and hereby makes the designations and elections with respect to the Plan as indicated in the Adoption Agreement, to be effective on the date(s) specified in the Adoption Agreement or Basic Plan Document.

SECTION 4. That the Mayor is authorized to execute said Adoption Agreement and Basic Plan Document on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in said resolution or otherwise determined necessary or advisable, to cause said Agreements to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the

Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Adoption Agreement or Basic Plan Document and take such further actions as he or she determines necessary or appropriate to obtain a favorable ruling.

This Adoption Agreement is the Adoption Agreement referred to in the foregoing resolution, and the designations and elections hereinafter set forth are those made by the City in accordance with said resolution, to-wit:

**A. ESTABLISHMENT, EFFECTIVE DATE, AND CITY DATA:**

- (1) \_\_\_\_\_ establishes on \_\_\_\_\_, \_\_\_\_\_, a Retirement Plan and Trust to be known as \_\_\_\_\_

Plan and Trust ("Plan") effective \_\_\_\_\_, \_\_\_\_\_ (Effective Date).

OR

- (2)   X   amends, restates and continues the City of La Vista, Nebraska Defined Contribution Pension Plan and Trust, herein renamed the City of La Vista General Employees Defined Contribution Pension Plan and Trust ("Plan"), originally established on August 1, 1974. This amendment and restatement is effective January 1, 2002, unless otherwise specified herein or in the Basic Plan Document or required under applicable law or regulations or guidance thereunder. (Supplemental Effective Date).

- (3) City's Address:  
Street: 8116 Park View Boulevard  
City, State, Zip Code: La Vista, Nebraska 68128  
Attention: Pam Buethe, City Clerk  
Telephone: (402) 331-4343
- (4) Retirement Committee: As may be designated from time to time pursuant to Section 12.3 of the Basic Plan Document.
- (5) Plan Administrator: the City of La Vista, with the exception of any administrative functions expressly delegated from time to time to the Retirement Committee herein or in or under the Basic Plan Document or otherwise by direction of the Mayor and City Council.
- (6) City's Taxpayer Identification No.: 47-6050031
- (7) City's Fiscal Year: October 1 – September 30

- (8) The Plan serial number ("PN") assigned to this Plan by the City for reporting and disclosure purposes is: 002
- (9) The last day of the Plan Year shall be December 31 and the Annual Valuation Date shall be December 31 [Sections 1.1.26 and 1.1.4]
- (10) The last day of the Plan's Limitation Year shall be December 31 [Section 1.1.20] *(All qualified retirement plans maintained by the City shall have the same Limitation Year.)*

## B. ELIGIBILITY REQUIREMENTS

- (1) **Age Requirement.** The minimum age which each Employee must attain before becoming a Participant in the Plan is age N/A.
- (2) **Service Requirement.** To become a Participant in the Plan, each Employee must complete at least N/A year(s) of Eligibility Service. *(Not Applicable for Police and Fire Plans. Not more than five (5) years for other Plans.)* If year(s) of service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year.
- (3) The computation period for Eligibility Service will be *(Not Applicable for Fire and Police Plans)* Check One: N/A

\_\_\_\_\_ as set forth in Section 1.1.9(a)(i), the year beginning with the date the Employee first performs an Hour of Service and then Plan Years.

\_\_\_\_\_ as set forth in Section 1.1.9(a)(ii), based upon years commencing on the date the Employee first performs an Hour of Service and anniversaries thereof.

Upon reemployment, former Participants shall again participate in the Plan under the immediate reentry rule of Section 2.2.

- (4) Plan Entry Date shall be *(check one)*:
  - X (a) the first day of service in Recognized Employment with the City *(Police and Fire Plans)*.
  - \_\_\_\_\_ (b) the first day \_\_\_\_\_ *(e.g., the Plan Year, the month, etc.)* following the Employee's satisfaction of the Eligibility Requirements [Section 2.1(d)]

- \_\_\_ (c) the first day of the Plan Year in which the Employee first satisfies the Eligibility Requirements. [Section 2.1(c)]
- \_\_\_ (d) the first day of the first month or the first day of the seventh month of the Plan Year, whichever occurs first, following the Employee's satisfaction of the Eligibility Requirements. [Section 2.1(b)]
- \_\_\_ (e) Other \_\_\_\_\_

(5) **Recognized Employment.** Recognized Employment is service in the employment of the City in those job classifications indicated below (*place "X" on blank(s) indicating selection*): [Section 1.1.30]

- \_\_\_ (a) All Employees of the City employed as police officers.
- \_\_\_ (b) All Employees of the City employed as fire fighters.
- \_\_\_ (c) All Employees of the City as that term is defined in Section 1.1.10.
- \_\_\_ (d) All common law Employees of the City.
- \_\_\_ (e) Salaried Employees of the City.
- \_\_\_ (f) Hourly Employees of the City.
- \_\_\_ (g) Employees who are not covered by any retirement plan established by the City.
- X (h) Other (*specify*): Employees whose employment classifications with the City are as full-time Employees and who do not participate in any other retirement plan of the City that is intended to be qualified under Internal Revenue Code Section 401(a).

(6) **Participation Election:** (*check one*)

Employees and Participants

\_\_\_ have

X do not have (*Police and Fire*)

a participation election provided in Section 3.3(b).

**C. MANDATORY EMPLOYEE CONTRIBUTIONS**

*[Section 3.1]*

- (1) **Amount of Contribution.** The Employee contribution to the Trustee for each Plan Year shall be:

- \_\_\_ (a) Six percent (6%) of his or her Salary. *(Police)*
- \_\_\_ (b) Six and one-half percent (6 1/2%) of his or her Salary. *(Fire)*
- X (c) Other: 6% of each Participant's Recognized Compensation

- (2) **Employee Contributions:**

- X shall *(Police and Fire)*
- \_\_\_ shall not

be picked up by the City and treated as Employer contributions as permitted under Section 414(h) of the Code.

**D. VOLUNTARY EMPLOYEE CONTRIBUTIONS**

- X shall *(Police and Fire)*
- \_\_\_ shall not

be permitted in any amount equal to a whole percentage from 2% to 5% of monthly compensation, not to exceed the maximum amount allowed under the Internal Revenue Code.

**E. ALLOCATION OF CITY CONTRIBUTIONS AND FORFEITURES**

*[Sections 3.2 and 6.4]*

- (1) **Amount of Contribution.** Subject to the limitations of Section 3, the City's contribution to the Trustee for each Plan Year shall be: *(Select one option only. Complete blanks as applicable.)*

- \_\_\_ (a) Six percent (6%) of each Participant's Salary. *(Police)*
- \_\_\_ (b) Thirteen percent (13%) of each Participant's Salary. *(Fire)*



X   (c) Other: 6% of each Participant's Recognized Compensation

**Treatment of Forfeitures:** *(Select one unless Item I(2)(a) is elected in which case this provision does not apply.) [Sections 6.4.1 and 6.4.2]*

  X   (a) Forfeitures shall first be used to pay administration costs of the Plan and then used to reduce City contributions. *(Police)*

       (b) Forfeitures shall be allocated to the Unallocated Employer Account, and if the Unallocated Employer Account is sufficient to meet Plan liabilities, then forfeitures shall first be used to pay expenses of administration and then to reduce City contributions. *(Fire)*

       (c) Forfeitures will be added to the City contribution for allocation.

       (d) Forfeitures will reduce City contributions.

(2) Is the Plan integrated with Social Security?

       Yes   X   No *(Police and Fire)*

***(If yes, complete items E, 3-6 and 11; if no, complete items E, 7-11).***

*NOTE: Items E, 3-6 and 11 relate to an integrated plan. Contributions are allocated pursuant to Section 3.3 of the Plan.*

(3) "Recognized Compensation" shall be defined to mean all of each Participant's: *(place "X" to indicate selection)*

       (a) W-2 earnings; or,

       (b) Wages as defined in Code Section 3401(a); or

       (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;

       (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below *(select all that apply):*

       (1) Exclude leave cashouts and deferred compensation *(Section 3.6.9(b)-3(b))*

- (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*):
- \_\_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_.
- \_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*); and/or
- (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_ (e) Other \_\_\_\_\_

which is actually paid to the Participant during

- \_\_\_\_ the Plan Year
- \_\_\_\_ the taxable year ending with or within the Plan Year
- \_\_\_\_ the Limitation Year ending with or within the Plan Year.
- \_\_\_\_ a consecutive 12-month period ending with or within the Plan Year beginning with the \_\_\_\_ day of \_\_\_\_\_ (*enter month*).

Recognized Compensation

- \_\_\_\_ shall include
- \_\_\_\_ shall not include

Employee contributions picked up by the City under Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (4) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]:
- \_\_\_\_ shall
- \_\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (5) "Integration Level" is defined as *(place "X" next to definition selected and complete appropriate blanks)*

\_\_\_ (a) For any Plan Year, an amount equal to \$\_\_\_\_\_*(insert stated dollar amount not to exceed the Taxable Wage Base in effect at the beginning of the Plan Year).*

\_\_\_ (b) For any Plan Year, an amount equal to \_\_\_\_% *(not more than 100%)* of the Taxable Wage Base in effect at the beginning of the Plan Year.

\_\_\_ (c) For any Plan Year, an amount equal to the lesser of: (i) \$\_\_\_\_\_*(insert stated dollar amount);* or (ii) the Taxable Wage Base in effect beginning at the Plan Year.

- (6) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year (check one) :

\_\_\_ shall

\_\_\_ shall not

share in the City contribution and reallocation of the forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after Normal Retirement Date

\_\_\_ disability.

*NOTE: Items E, 7-11 relate to a nonintegrated plan. Contributions are allocated directly on Recognized Compensation. (Section 3.3(b)).*

- (7) Subject to an exclusion in Item (8), "Recognized Compensation" shall be defined to mean all of each Participant's *(place "X" to indicate selection, check only one)*

\_\_\_ (a) W-2 earnings;

\_\_\_ (b) Wages as defined in Code Section 3401(a); or

- X   (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- \_\_\_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as “default provisions” unless otherwise elected below *(select all that apply)*:
- \_\_\_\_\_ (1) Exclude leave cashouts and deferred compensation *(Section 3.6.9(b)-3(b))*
- \_\_\_\_\_ (2) Include military continuation payments *(Section 3.6.9(b)-3(c))*
- \_\_\_\_\_ (3) Include disability continuation payments *(Section 3.6.9(b)-3(d))*:
- \_\_\_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule *(Section 3.6.9(b)-4)*; and/or
- \_\_\_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_\_ (e) Salary as that term is defined in Section 1.1.36(a) of the Plan *(Police)*;
- \_\_\_\_\_ (f) Salary as that term is defined in Section 1.1.36(b) of the Plan *(Fire)*; or
- \_\_\_\_\_ (f) Other
- \_\_\_\_\_
- \_\_\_\_\_

which is actually paid to the Participant during

  X   the Plan Year.

\_\_\_\_\_ the taxable year ending with or within the Plan year.

\_\_\_\_\_ the Limitation Year ending with or within the Plan year.

Recognized compensation *(Police and Fire Plans see definition of “Salary” in Section 1.1.36 of the Basic Plan Document)*

X   shall include

       shall not include

Employee contributions picked up by the City pursuant to Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (8) "Recognized Compensation" shall not include: *(place "X" to indicate exclusion(s) and complete blank, if applicable) N/A*

       (a) overtime, shift, holiday and vacation pay

  X   (b) fringe benefits

       (c) bonuses

       (d) commissions, but not more than the first \$\_\_\_\_\_ thereof  
*(insert dollar limitation desired, if any)*

       (e) overtime, callback pay, clothing allowances and other such benefits reported on Employee federal withholding statement  
*(Fire).*

- (9) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year *[check one]*: **N/A**

       shall

       shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (10) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year. *(Check one)*:

  X   shall *(Police and Fire)*

       shall not

share in the City contribution and reallocation of forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

       death

☐ retirement at or after their Normal Retirement Date

☐ disability

(11) Forfeitures will be reallocated *[Sections 6.4.2 and 6.4.3]*

☒ as of the following Valuation Date

☐ after a Participant incurs 5 consecutive One Year Breaks in Service or his Account is no longer subject to restoration.

**F. INTEREST N/A**

☐ shall

☐ shall not

be paid on Employer Contributions pursuant to Section 3.2(a)(ii) of the Plan.

**G. WITHDRAWAL OF PRIOR VOLUNTARY CONTRIBUTIONS**

If this Plan or a predecessor plan previously permitted Voluntary Contributions, Participants:

☒ are

☐ are not

permitted to withdraw their voluntary contributions before an Event of Maturity.  
*[Section 7.9]*

**H. ROLLOVERS**

(1) Rollover contributions by Participants *[Section 3.5]*

☒ are permitted as specified in Section 3.5. In addition to the plans specified in Section 3.5, rollover contributions and direct rollovers may be made from the following types of plans as of the specified effective date(s) *(specify all that apply)*:

☒ (a) annuity contract described in Code section 403(b), effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

X (b) eligible plan under Code section 457(b) which is maintained by a state or political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

\_\_\_\_\_ are not permitted

(2) Eligible rollover distribution [Section 7.12]

\_\_\_\_\_ must

X need not

be distributions that are reasonably expected to total \$200 or more during a year.

## I. VESTING OF REGULAR ACCOUNTS

[Section 5]

(1) **Employee Accounts:** Each Employee is fully vested in his or her Employee Account at all times.

(2) **Employer Accounts:** Each Participant's Employer Account shall become Vested in him as follows (*place "X" next to formula selected and complete appropriate blanks*):

\_\_\_\_\_ (a) **Full and Immediate Vesting.** Each Employer Account shall be fully Vested in him at all times.

X (b) **Graded Vesting.** Each Participant's Employer Account shall be vested in him in accordance with the following schedule (*Choose One*):

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:\*

X (i) Four Year Vesting (effective January 1, 2005)\*:

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:

Less than 4 years	<u>0%</u>
4 years but less than 5 years	<u>40%</u>
5 years but less than 6 years	<u>50%</u>
6 years but less than 7 years	<u>75%</u>
7 years or more	100%

\* Before January 1, 2005, the vesting schedule was Ten Year Vesting below.

\_\_\_ (ii) Five Year Vesting:

Less than 1 year	___ %
1 year but less than 2 years	___ %
2 years but less than 3 years	___ %
3 years but less than 4 years	___ %
4 years but less than 5 years	___ %
5 years or more	100 %

\_\_\_ (iii) Seven Year Vesting:

Less than 1 year	___ %	(0%)
1 year but less than 2 years	___ %	(0%)
2 years but less than 3 years	___ %	(0%)
3 years but less than 4 years	___ %	(20%)
4 years but less than 5 years	___ %	(40%)
5 years but less than 6 years	___ %	(60%)
6 years but less than 7 years	___ %	(80%)
7 years or more	100 %	

\_\_\_ (iv) Seven Year Special Vesting (Fire):

Less than 4 years	___ %
4 years but less than 5 years	___ %
5 years but less than 6 years	___ %
6 years but less than 7 years	___ %
7 years or more	___ %

\_\_\_ (v) Ten Year Vesting (Police):

Less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	50 %
6 years but less than 7 years	60 %



7 years but less than 8 years	70 %
8 years but less than 9 years	80 %
9 years but less than 10 years	90 %
10 years or more	100 %

- (3) In determining a Participant's Plan Years of Service, the following periods shall be disregarded: *[Section 1.1.44] (Not Applicable for Police and Fire Plans).*

☐ Yes ☒ No Plan Years prior to the Effective Date of this Plan or a predecessor Plan. *[Yes, 1.1.44(c); No, Section 1.1.44(c)]*

☐ Yes ☒ No Plan Years completed prior to the date upon which the Participant attained age \_\_\_\_ years. *(Insert age, but not greater than age 18.) [Section 1.1.44(e)]*

- (4) Notwithstanding any of the foregoing, each Participant's Employer Account shall be 100% Vested in him upon his attainment of:

☐ (a) 60 *(Police)*

☒ (b) 55 *(Fire)*

☐ (c) Other \_\_\_\_\_

years of age while in the employment of the City. *(If no age is entered, it will be assumed Normal Retirement Date was intended.)*

*[Section 5.1.2]*

- (5) Normal Retirement Date is: *(place "X" next to choice selected)*

*[Section 1.1.22]*

☒ (a) The Participant's 65th birthday.

☐ (b) The Participant's 65th birthday or, if later, the 5th anniversary of the date the Participant first becomes a Participant.

☐ (c) Age \_\_\_\_ years *(60 for Police; 55 for Fire; Otherwise not greater than the Participant's 65th birthday and not less than age 55.*

- (6) Early Retirement Date is age 55 years. *(Specify age. Not applicable for Police/Fire Plans – see Section 1.1.34 of Basic Plan for definition of Early Retirement Date for Police or Fire Plan.)*

- (7) An Employee who returns to employment of the City in Covered Employment after terminating service

  X   shall

       shall not

be permitted to restore his or her Employer Account to the amount on the date of distribution. *(Section 5.1.3 or 6.4.4)*

## **J. INVESTMENT DIRECTIONS**

- (1) Participants:

       are

  X   are not

permitted to direct the investment of a portion of their accounts into life insurance.

*[Section 10.10]*

- (2) Participant Account Investment Direction *[Section 10.11.2]*

- (a) Participants:

  X   are

       are not

permitted to direct the investment of their:

  X   Employee Accounts *(Required of Police and Fire Plans)*

  X   Employer Accounts *(Permitted for all types of plans, with the exception of pre-1984 contributions under Police and Fire Plans, and the Employer Account of pre-1984 hires under Fire Plans.)*

The City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such direction. *(Sections 1.1.35, 4.3 and 10.11)*

- (b) Separate Investment Accounts *(Police)*

The City

\_\_\_ may

\_\_\_ may not

direct the establishment of separate investment accounts for each Participant to allow each Participant to direct the investment of all or a portion of his or her Employee or Employer Account

If in the affirmative, enter name or title of person (or committee) authorized to communicate such directions to the Trustee: City Administrator, Assistant City Administrator or City Clerk. Such directions shall be in writing and the City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such directions.

(3) Investment Direction *[Sections 4.3, 10 and 12]*

(a) The

X City

X may

\_\_\_ may not

\_\_\_ Retirement Committee *(Police and Fire)*

\_\_\_ may

\_\_\_ may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: *[Section 10.13]*

\_\_\_ are permitted

X are not permitted

**K. INTERNAL REVENUE CODE SECTION 415 LIMITATIONS**

*[Section 3.6]*

If the City maintains or ever has maintained another qualified plan in which any Participant in this Plan is (or was) a Participant or could possibly become a Participant,

the City must complete this Section. City must also complete this Section if it maintains a welfare benefit fund, as defined in Code section 419(e), an individual medical account, as defined in Code section 415(1)(2), or simplified employer pension, as defined in Code section 408(k) under which amounts are treated as annual additions with respect to any Participant in this Plan. *(Designate whether (1) or (2) applies, and complete as appropriate.)*

If a Participant is covered by another qualified plan maintained by the City:

  X   (1) the provisions of Sections 3.6.4 through 3.6.9 will apply;

OR

       (2) set forth the method under which the Plans will limit total annual additions or distributions to the maximum permissible amount or benefit, as applicable, and will properly reduce any excess amounts or benefits, in a manner that precludes City discretion.

\_\_\_\_\_  
(Use additional continuation pages if alternative limitation rules are to be specified.)

415 Compensation. The definition of Compensation for Code section 415 purposes shall be 415 Safe Harbor Compensation defined in section 3.6.9(b)i of the Plan, unless an alternative definition of compensation is elected below pursuant to section 3.6.9(b)ii of the Plan *(select desired alternative definition)*:

       (1) W-2 Wages; or

       (2) Section 3401(a) Wages

Modifications to 415 Compensation – Compensation for 415 purposes shall include amounts described in Sections 3.6.9(b)-2 and 3.6.9(b)(vi) as “default provisions” unless otherwise elected below *(select all that apply)*. **N/A**

       (1) Exclude leave cashouts and deferred compensation *(Section 3.6.9(b)-3(b))*

       (2) Include military continuation payments *(Section 3.6.9(b)-3(c))*

       (3) Include disability continuation payments *(Section 3.6.9(b)-3(d))*

           (a) For nonhighly compensated Employees only

           (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.

       (4) Apply the administrative delay (“first few weeks”) rule *(Section 3.6.9(b)-4)*

       (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.

**L. CREDITING SERVICE** *(Complete (1) and (2), as appropriate.)*

  X   (1) **Hours of Service Method.** *[Section 1.1.18]* Except as provided in (2) below, for the purpose of determining an Employee's One-Year Breaks in Service *[Section 1.1.23]*, Vesting Service *[Section 1.1.44]*, Eligibility Service *[Section 1.1.9]* and minimum annual service requirement to share in the City contribution made for a Plan Year *[Section 3.3]*, service will be determined by reference to Hours of Service according to the following: *(check one)*

  X   (a) On the basis of the actual recorded hours for which an Employee is paid or entitled to payment.

\_\_\_\_\_ (b) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 10 Hours of Service for a day if under Section 1.1.18 such Employee would be certified with at least one hour of service during that day.

\_\_\_\_\_ (c) On the basis that, without regard to his actual recorded hours, an Employee shall be credited under 45 Hours of Service for a calendar week if under Section 1.1.18 such Employee would be credited with at least One Hour of Service during that calendar week.

\_\_\_\_\_ (d) On the basis of semimonthly payroll periods, an Employee shall be credited with 95 Hours of Service for a semi-monthly payroll period if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that semimonthly payroll period.

\_\_\_\_\_ (e) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 190 Hours of Service for a calendar month if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that calendar month.

  X   (2) **Elapsed Time Method.** *[Section 1.2]* Notwithstanding (1) above, service will be credited based upon elapsed time for the following purposes: *(check as appropriate)*

  X   (a) None

\_\_\_\_\_ (b) All

\_\_\_\_\_ (c) Eligibility (and Eligibility Breaks in Service)

- \_\_\_ (d) Vesting (and Vesting Breaks in Service)(*Police and Fire*)
- \_\_\_ (e) Minimum Service for benefit accrual for a Plan Year

## M. INVESTMENTS

*[Section 10.14(p)]*

- (1) All funds of a Plan for police officers or fire fighters must be invested pursuant to the policies established by the Nebraska Investment Council.
- (2) The Trustee's collective investment fund or funds incorporated by reference into this Agreement as indicated in Appendix "C" of the Basic Municipal Employees Plan and Trust and incorporated herein by this reference as amended from time to time.
- (3) The Trustee is hereby specifically authorized and empowered to invest Plan assets in deposit accounts of \_\_\_\_\_ which bear a reasonable rate of interest and securities offered by \_\_\_\_\_ (*name of Trustee or financial institution*). Such specification shall be permitted in any other applicable document related to funding the Plan, which document shall be incorporated herein by this reference.

*[Section 4.2]*

- (4) **Intermediate Valuation of Accounts.** Participant accounts will be valued for investment purposes as follows: (*select one*)
- \_\_\_ (a) Annually
- \_\_\_ (b) Semi-annually
- \_\_\_ (c) Quarterly
- \_\_\_ (d) Monthly
- X (e) Daily

## N. ACCELERATED DISTRIBUTIONS

The following optional provisions for accelerated distributions may be made available to Plan Participants: (*Select as many as shall apply. Not applicable for Police and Fire Plans*) *[Section 14]* N/A

- ☐ (1) Medical emergency
- ☐ (2) Financial hardships
- ☐ (3) Education expenses
- ☐ (4) Purchase of home
- ☐ (5) After Normal Retirement Date

**O. OPTIONAL FORMS OF DISTRIBUTION**

The optional forms of benefit payment provided by this Plan are: *(Select as many as apply. If the requirements of Code section 411(d)(6) are applicable (which is not the case if this Plan is a government plan within the meaning of Code section 414(d)), the City may not eliminate optional forms of payment for benefits which have accrued prior to the date of Plan amendment unless said requirements are satisfied.)*

- ☒ (1) a single sum
- ☒ (2) straight life annuity
- ☐ (3) straight life annuity with a guarantee of at least 60 monthly payments
- ☐ (4) annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50% as elected by the City.
- ☐ (5) a combination of (1) through (4)
- ☐ (6) if this Plan is a transferee plan, an optional form of distribution provided under the transferor plan which is required to be preserved under Code section 411(d)(6) (and the regulations issued thereunder – which is not the case if this is a government plan under Code section 414(d)) with respect to accrued benefits of any Participant as of the date of transfer. *(Indicate name of transferor plan and date on which prior accrued benefit distribution options are protected)*  


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- ☒ (7) Other *(Describe)*: Single life annuity with period certain of 5, 10 or 15 years; single life annuity with installment refund; survivorship life annuity with installment refund and annuity to survivor of 100%, 66 2/3% or 50%; fixed period annuity for any period of whole months which is not less than

60 and does not exceed the life expectancy of the Participant and the named beneficiary; or a series of installments with a minimum payment each year beginning with the year the Participant attains age 70 1/2.

**P. MANDATORY DISTRIBUTION ALTERNATIVES** *(Section 5.1.3(a)(ii))*

The following election is made in lieu of the provisions of Section 5.1.3(a)(ii) reducing the mandatory cash out amount to an amount equal to or less than \$1,000 *(Option for plans other than Fire Plans -- Participant consent to distribution is always required for Fire Plans.) (select one):*

- \_\_\_\_\_ (1) Elimination of Mandatory Cash-Outs. An Employee's Vested Retirement Value will not be distributed upon the Employee's termination of service without the Employee's prior written consent, regardless of amount.
- \_\_\_\_\_ (2) Increase Mandatory Cash Out Amount. Upon termination of service, the Employee's Vested Retirement Value will be automatically distributed without the Employee's consent if the Vested Retirement Value is less than \$3,500 if a Police Plan (or not in excess of \$5,000 for plans other than Police or Fire Plans). *(Note that automatic distributions without Participant consent are not permitted for Fire Plans).* Said distribution, if greater than \$1,000, will be paid in a direct rollover to an "individual retirement plan" designated by the Plan Administrator if the Employee does not elect to have the distribution paid in a direct rollover directly to an "eligible retirement plan" specified by the Employee in accordance with direct rollover provisions of the Plan, or to receive the distribution directly.

- Q.** The City shall periodically pay to the Trustee a fee for services rendered according to the Trustee Fee Schedule attached to the Basic Municipal Employees Plan and Trust Agreement as Appendix A or otherwise agreed to by the parties, as incorporated herein by this reference as amended from time to time. The terms of any agreement adopted and executed by the City and Trustee separate and apart from this document and defining rights and duties of the parties to said agreement shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein; and the same, if entered before the date of this Adoption Agreement, shall continue and remain in effect. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

**R. INITIAL DEPOSIT**

In the case of establishment of a new Plan, the City hereby delivers to the Trustee the sum of \$ N/A as its initial deposit to establish the Trust, and receipt of the stated sum is hereby acknowledged by the Trustee.



- S. The completion of this Adoption Agreement creates certain legal relationships and responsibilities. Accordingly, your legal counsel should review the Plan and Trust prior to the execution of this document so as to insure the suitability of the Plan and Trust for your City.

The City acknowledges that it has consulted with and has been advised by its attorney(s) with respect to the effect of entering this Plan and executing this Adoption Agreement.

Terms used in this Adoption Agreement which are defined in the Plan shall have the meaning given them in the Plan.

The City hereby agrees to the provisions of this Plan and Trust, and, in witness whereof, the City and the Trustee have caused this Agreement to be executed on the date(s) set forth below.

THE CITY OF LA VISTA, NEBRASKA

By: \_\_\_\_\_

## NOTICE TO ADOPTING CITY

Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

In order to obtain reliance with respect to Plan qualification, the City, upon adopting and executing this Plan, must apply to the Employee Plans Determinations of the Internal Revenue Service for a determination letter.

This Adoption Agreement may only be used with the Basic Municipal Employees Plan and Trust Agreement.

CITY OF LA VISTA, NEBRASKA, Employer

By: \_\_\_\_\_  
\_\_\_\_\_  
Printed Name Title

Date: \_\_\_\_\_

\_\_\_\_\_, Trustee

By: \_\_\_\_\_  
\_\_\_\_\_  
Printed Name Title

Date \_\_\_\_\_

**ADOPTION AGREEMENT**

**CITY OF LA VISTA**

**CITY ADMINISTRATORS' DEFINED CONTRIBUTION PENSION**

**PLAN AND TRUST**

**TO BE USED WITH**

**BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT**

THIS IS TO CERTIFY THAT:

The following resolution was adopted by resolution by the City of La Vista, Nebraska, by its City Council, at a meeting thereof duly called and held on \_\_\_\_\_, 20\_\_:

RESOLVED,

SECTION 1. Pursuant to Nebraska Statutes, Section 19-3501, the Mayor and Council of the City of La Vista maintain the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust, embodied in an adoption agreement and basic plan document attached thereto and constituting an integral part thereof, as well as various amendments required by applicable law.

SECTION 2. Applicable tax law requires that the Plan be amended and restated, and for this purpose, there has been presented to the City a proposed retirement plan and trust embodied in an instrument entitled "Adoption Agreement" together with the "Basic Municipal Employees Plan and Trust Agreement" as an integral part thereof ("Basic Plan Document"; and together the Adoption Agreement and Basic Plan Document sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.

SECTION 3. The City does hereby approve and adopt said Agreements as an amendment and restatement of the Plan, and hereby makes the designations and elections with respect to the Plan as indicated in the Adoption Agreement, to be effective on the date(s) specified in the Adoption Agreement or Basic Plan Document.

SECTION 4. That the Mayor is authorized to execute said Adoption Agreement and Basic Plan Document on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in said resolution or otherwise determined necessary or advisable, to cause said Agreements to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions of the Internal Revenue Code of the United States and, in particular, Sections

401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Adoption Agreement or Basic Plan Document and take such further actions as he or she determines necessary or appropriate to obtain a favorable ruling.

This Adoption Agreement is the Adoption Agreement referred to in the foregoing resolution, and the designations and elections hereinafter set forth are those made by the City in accordance with said resolution, to-wit:

**A. ESTABLISHMENT, EFFECTIVE DATE, AND CITY DATA:**

- (1) \_\_\_\_\_ establishes on \_\_\_\_\_, \_\_\_\_\_, a Retirement Plan and Trust to be known as \_\_\_\_\_  
\_\_\_\_\_ Plan and Trust ("Plan") effective \_\_\_\_\_, \_\_\_\_\_ (Effective Date).

OR

- (2)   X   amends, restates and continues the City of La Vista City Administrators' Defined Contribution Pension Plan and Trust ("Plan"), originally established on January 1, 2006. This amendment and restatement is effective January 1, 2006, unless otherwise specified herein or in the Basic Plan Document or required under applicable law or regulations or guidance thereunder. (Supplemental Effective Date).
- (3) City's Address:  
Street: 8116 Park View Boulevard  
City, State, Zip Code: La Vista, Nebraska 68128  
Attention: Pam Buethe, City Clerk  
Telephone: (402) 331-4343
- (4) Retirement Committee: As may be designated from time to time pursuant to Section 12.3 of the Basic Plan Document.
- (5) Plan Administrator: the City of La Vista, with the exception of any administrative functions expressly delegated from time to time to the Retirement Committee herein or in or under the Basic Plan Document or otherwise by direction of the Mayor and City Council.
- (6) City's Taxpayer Identification No.: 47-6050031
- (7) City's Fiscal Year: October 1 – September 30
- (8) The Plan serial number ("PN") assigned to this Plan by the City for reporting and disclosure purposes is: 005

- (9) The last day of the Plan Year shall be December 31 and the Annual Valuation Date shall be December 31 [Sections 1.1.26 and 1.1.4]
- (10) The last day of the Plan's Limitation Year shall be December 31 [Section 1.1.20] (All qualified retirement plans maintained by the City shall have the same Limitation Year.)

## B. ELIGIBILITY REQUIREMENTS

- (1) **Age Requirement.** The minimum age which each Employee must attain before becoming a Participant in the Plan is age N/A.
- (2) **Service Requirement.** To become a Participant in the Plan, each Employee must complete at least N/A year(s) of Eligibility Service. (Not Applicable for Police and Fire Plans. Not more than five (5) years for other Plans.) If year(s) of service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year.
- (3) The computation period for Eligibility Service will be (Not Applicable for Fire and Police Plans) Check One: N/A

\_\_\_ as set forth in Section 1.1.9(a)(i), the year beginning with the date the Employee first performs an Hour of Service and then Plan Years.

\_\_\_ as set forth in Section 1.1.9(a)(ii), based upon years commencing on the date the Employee first performs an Hour of Service and anniversaries thereof.

Upon reemployment, former Participants shall again participate in the Plan under the immediate reentry rule of Section 2.2.

- (4) Plan Entry Date shall be (check one):
- X (a) the first day of service in Recognized Employment with the City (Police and Fire Plans).
- \_\_\_ (b) the first day \_\_\_\_\_ (e.g., the Plan Year, the month, etc.) following the Employee's satisfaction of the Eligibility Requirements [Section 2.1(d)]
- \_\_\_ (c) the first day of the Plan Year in which the Employee first satisfies the Eligibility Requirements. [Section 2.1(c)]

\_\_\_ (d) the first day of the first month or the first day of the seventh month of the Plan Year, whichever occurs first, following the Employee's satisfaction of the Eligibility Requirements. [Section 2.1(b)]

\_\_\_ (e) Other \_\_\_\_\_

(5) **Recognized Employment.** Recognized Employment is service in the employment of the City in those job classifications indicated below (*place "X" on blank(s) indicating selection*): [Section 1.1.30]

\_\_\_ (a) All Employees of the City employed as police officers.

\_\_\_ (b) All Employees of the City employed as fire fighters.

\_\_\_ (c) All Employees of the City as that term is defined in Section 1.1.10.

\_\_\_ (d) All common law Employees of the City.

\_\_\_ (e) Salaried Employees of the City.

\_\_\_ (f) Hourly Employees of the City.

\_\_\_ (g) Employees who are not covered by any retirement plan established by the City.

X (h) Other (*specify*): the City Administrator and Assistant City Administrator.

(6) **Participation Election:** (*check one*)

Employees and Participants

\_\_\_ have

X do not have (*Police and Fire*)

a participation election provided in Section 3.3(b).

## C. MANDATORY EMPLOYEE CONTRIBUTIONS

[Section 3.1]

- (1) **Amount of Contribution.** The Employee contribution to the Trustee for each Plan Year shall be:

\_\_\_ (a) Six percent (6%) of his or her Salary. *(Police)*

\_\_\_ (b) Six and one-half percent (6 1/2%) of his or her Salary. *(Fire)*

X (c) Other 6% of the Participant's Recognized Compensation

- (2) **Employee Contributions:**

X shall *(Police and Fire)*

\_\_\_ shall not

be picked up by the City and treated as Employer contributions as permitted under Section 414(h) of the Code.

**D. VOLUNTARY EMPLOYEE CONTRIBUTIONS**

X shall *(Police and Fire)*

\_\_\_ shall not

be permitted to the maximum amount allowed under the Internal Revenue Code.

**E. ALLOCATION OF CITY CONTRIBUTIONS AND FORFEITURES**

*[Sections 3.2 and 6.4]*

- (1) **Amount of Contribution.** Subject to the limitations of Section 3, the City's contribution to the Trustee for each Plan Year shall be: *(Select one option only. Complete blanks as applicable.)*

\_\_\_ (a) Six percent (6%) of each Participant's Salary. *(Police)*

\_\_\_ (b) Thirteen percent (13%) of each Participant's Salary. *(Fire)*

X (c) Other: 6% of the Participant's Recognized Compensation

**Treatment of Forfeitures:** *(Select one unless Item I(2)(a) is elected in which case this provision does not apply.) [Section 6.4.1] N/A*

- \_\_\_ (a) Forfeitures shall first be used to pay administration costs of the Plan and then used to reduce City contributions. *(Police)*
- \_\_\_ (b) Forfeitures shall be allocated to the Unallocated Employer Account, and if the Unallocated Employer Account is sufficient to meet Plan liabilities, then forfeitures shall first be used to pay expenses of administration and then to reduce City contributions. *(Fire)*
- \_\_\_ (c) Forfeitures will be added to the City contribution for allocation.
- \_\_\_ (d) Forfeitures will reduce City contributions.

(2) Is the Plan integrated with Social Security?

\_\_\_ Yes X No *(Police and Fire)*

***(If yes, complete items E, 3-6 and 11; if no, complete items E, 7-11).***

*NOTE: Items E, 3-6 and 11 relate to an integrated plan. Contributions are allocated pursuant to Section 3.3 of the Plan.*

(3) "Recognized Compensation" shall be defined to mean all of each Participant's:  
*(place "X" to indicate selection)*

- \_\_\_ (a) W-2 earnings; or,
- \_\_\_ (b) Wages as defined in Code Section 3401(a); or
- \_\_\_ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- \_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below *(select all that apply)*:
  - \_\_\_ (1) Exclude leave cashouts and deferred compensation *(Section 3.6.9(b)-3(b))*
  - \_\_\_ (2) Include military continuation payments *(Section 3.6.9(b)-3(c))*
  - \_\_\_ (3) Include disability continuation payments *(Section 3.6.9(b)-3(d))*:
    - \_\_\_ (a) For nonhighly compensated Employees only; or



- \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay ("first few weeks") rule (*Section 3.6.9(b)-4*); and/or
- \_\_\_\_\_ (5) Include "deemed" section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_\_ (e) Other \_\_\_\_\_

which is actually paid to the Participant during

- \_\_\_\_\_ the Plan Year
- \_\_\_\_\_ the taxable year ending with or within the Plan Year
- \_\_\_\_\_ the Limitation Year ending with or within the Plan Year.
- \_\_\_\_\_ a consecutive 12-month period ending with or within the Plan Year beginning with the \_\_\_\_\_ day of \_\_\_\_\_ (*enter month*).

#### Recognized Compensation

- \_\_\_\_\_ shall include
- \_\_\_\_\_ shall not include

Employee contributions picked up by the City under Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (4) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]:

- \_\_\_\_\_ shall
- \_\_\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (5) "Integration Level" is defined as (*place "X" next to definition selected and complete appropriate blanks*)

- \_\_\_ (a) For any Plan Year, an amount equal to \$\_\_\_\_\_ (*insert stated dollar amount not to exceed the Taxable Wage Base in effect at the beginning of the Plan Year*).
- \_\_\_ (b) For any Plan Year, an amount equal to \_\_\_% (*not more than 100%*) of the Taxable Wage Base in effect at the beginning of the Plan Year.
- \_\_\_ (c) For any Plan Year, an amount equal to the lesser of: (i) \$\_\_\_\_\_ (*insert stated dollar amount*); or (ii) the Taxable Wage Base in effect beginning at the Plan Year.

(6) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year (check one) :

\_\_\_ shall

\_\_\_ shall not

share in the City contribution and reallocation of the forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after Normal Retirement Date

\_\_\_ disability.

*NOTE: Items E, 7-11 relate to a nonintegrated plan. Contributions are allocated directly on Recognized Compensation. (Section 3.3(b)).*

(7) Subject to an exclusion in Item (8), "Recognized Compensation" shall be defined to mean all of each Participant's (*place "X" to indicate selection, check only one*)

\_\_\_ (a) W-2 earnings;

\_\_\_ (b) Wages as defined in Code Section 3401(a); or

X (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;

\_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below (*select all that apply*):

- \_\_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- \_\_\_\_ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- \_\_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*):
- \_\_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_.
- \_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*); and/or
- \_\_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_ (e) Salary as that term is defined in Section 1.1.36(a) of the Plan (*Police*);
- \_\_\_\_ (f) Salary as that term is defined in Section 1.1.36(b) of the Plan (*Fire*); or
- \_\_\_\_ (f) Other
- 
- 

which is actually paid to the Participant during

  X   the Plan Year.

\_\_\_\_ the taxable year ending with or within the Plan year.

\_\_\_\_ the Limitation Year ending with or within the Plan year.

Recognized compensation (*Police and Fire Plans see definition of “Salary” in Section 1.1.36 of the Basic Plan Document*)

  X   shall include

\_\_\_\_ shall not include

Employee contributions picked up by the City pursuant to Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not

includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (8) "Recognized Compensation" shall not include: (*place "X" to indicate exclusion(s) and complete blank, if applicable*) *N/A*

\_\_\_ (a) overtime, shift, holiday and vacation pay

\_\_\_ (b) fringe benefits

\_\_\_ (c) bonuses

\_\_\_ (d) commissions, but not more than the first \$ \_\_\_\_\_ thereof  
(*insert dollar limitation desired, if any*)

\_\_\_ (e) overtime, callback pay, clothing allowances and other such benefits reported on Employee federal withholding statement (*Fire*).

- (9) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]: **N/A**

\_\_\_ shall

\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (10) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year. (*Check one*):

X shall (*Police and Fire*)

\_\_\_ shall not

share in the City contribution and reallocation of forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after their Normal Retirement Date

\_\_\_ disability

- (11) Forfeitures will be reallocated *[Sections 6.4.2 and 6.4.3; not applicable if section 1.2(a) is elected below]* **N/A**

\_\_\_ as of the following Valuation Date

\_\_\_ after a Participant incurs 5 consecutive One Year Breaks in Service or his Account is no longer subject to restoration.

**F. INTEREST N/A**

\_\_\_ shall

\_\_\_ shall not

be paid on Employer Contributions pursuant to Section 3.2(a)(ii) of the Plan.

**G. WITHDRAWAL OF PRIOR VOLUNTARY CONTRIBUTIONS**

If this Plan or a predecessor plan previously permitted Voluntary Contributions, Participants: **N/A**

\_\_\_ are

\_\_\_ are not

permitted to withdraw their voluntary contributions before an Event of Maturity. *[Section 7.9]*

**H. ROLLOVERS**

- (1) Rollover contributions by Participants *[Section 3.5]*

  X   are permitted as specified in Section 3.5. In addition to the plans specified in Section 3.5, rollover contributions and direct rollovers may be made from the following types of plans as of the specified effective date(s) *(specify all that apply)*:

  X   (a) annuity contract described in Code section 403(b), effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

  X   (b) eligible plan under Code section 457(b) which is maintained by a state or political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state,

effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

\_\_\_\_\_ are not permitted

(2) Eligible rollover distribution [Section 7.12]

\_\_\_\_\_ must

X need not

be distributions that are reasonably expected to total \$200 or more during a year.

## I. VESTING OF REGULAR ACCOUNTS

[Section 5]

(1) **Employee Accounts:** Each Employee is fully vested in his or her Employee Account at all times.

(2) **Employer Accounts:** Each Participant's Employer Account shall become Vested in him as follows (*place "X" next to formula selected and complete appropriate blanks*):

X (a) **Full and Immediate Vesting.** Each Employer Account shall be fully Vested in him at all times.

\_\_\_\_\_ (b) **Graded Vesting.** Each Participant's Employer Account shall be vested in him in accordance with the following schedule (*Choose One*):

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:\*

\_\_\_\_\_ (i) Five Year Vesting:

Less than 1 year	_____ %
1 year but less than 2 years	_____ %
2 years but less than 3 years	_____ %
3 years but less than 4 years	_____ %
4 years but less than 5 years	_____ %
5 years or more	100 %

\_\_\_\_ (ii) Seven Year Vesting:

Less than 1 year	____%	(0%)
1 year but less than 2 years	____%	(0%)
2 years but less than 3 years	____%	(0%)
3 years but less than 4 years	____%	(20%)
4 years but less than 5 years	____%	(40%)
5 years but less than 6 years	____%	(60%)
6 years but less than 7 years	____%	(80%)
7 years or more	100 %	

\_\_\_\_ (iii) Seven Year Special Vesting (Fire):

Less than 4 years	____%
4 years but less than 5 years	____%
5 years but less than 6 years	____%
6 years but less than 7 years	____%
7 years or more	____%

\_\_\_\_ (iv) Ten Year Vesting (Police):

Less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	50 %
6 years but less than 7 years	60 %
7 years but less than 8 years	70 %
8 years but less than 9 years	80 %
9 years but less than 10 years	90 %
10 years or more	100 %

- (3) In determining a Participant's Plan Years of Service, the following periods shall be disregarded: [Section 1.1.44] (Not Applicable for Police and Fire Plans).

\_\_\_\_ Yes X No Plan Years prior to the Effective Date of this Plan or a predecessor Plan. [Yes, 1.1.44(c); No, Section 1.1.44(c)]

\_\_\_\_ Yes X No Plan Years completed prior to the date upon which the Participant attained age \_\_\_\_ years. (Insert age, but not greater than age 18.) [Section 1.1.44(e)]

- (4) Notwithstanding any of the foregoing, each Participant's Employer Account shall be 100% Vested in him upon his attainment of: N/A

\_\_\_\_ (a) 60 (Police)

\_\_\_\_ (b) 55 (Fire)

\_\_\_ (c) Other \_\_\_\_\_

years of age while in the employment of the City. *(If no age is entered, it will be assumed Normal Retirement Date was intended.)*

*[Section 5.1.2]*

- (5) Normal Retirement Date is: *(place "X" next to choice selected)*

*[Section 1.1.22]*

X (a) The Participant's 65th birthday.

\_\_\_ (b) The Participant's 65th birthday or, if later, the 5th anniversary of the date the Participant first becomes a Participant.

\_\_\_ (c) Age \_\_\_ years *(60 for Police; 55 for Fire; Otherwise not greater than the Participant's 65th birthday and not less than age 55.)*

- (6) Early Retirement Date is age N/A years. *(Specify age. Not applicable for Police/Fire Plans – see Section 1.1.34 of Basic Plan for definition of Early Retirement Date for Police or Fire Plan.)*

- (7) An Employee who returns to employment of the City in Covered Employment after terminating service

X shall

\_\_\_ shall not

be permitted to restore his or her Employer Account to the amount on the date of distribution. *(Section 5.1.3 or 6.4.4)*

## **J. INVESTMENT DIRECTIONS**

- (1) Participants:

\_\_\_ are

X are not

permitted to direct the investment of a portion of their accounts into life insurance.

*[Section 10.10]*



(2) Participant Account Investment Direction [Section 10.11.2]

(a) Participants:

  X   are

       are not

permitted to direct the investment of their:

  X   Employee Accounts (*Required of Police and Fire Plans*)

  X   Employer Accounts (*Permitted for all types of plans, with the exception of pre-1984 contributions under Police and Fire Plans, and the Employer Account of pre-1984 hires under Fire Plans.*)

The City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such direction. (*Sections 1.1.35, 4.3 and 10.11*)

(b) Separate Investment Accounts (*Police*)

The City

  X   may

       may not

direct the establishment of separate investment accounts for each Participant to allow each Participant to direct the investment of all or a portion of his or her Employee or Employer Account

If in the affirmative, enter name or title of person (or committee) authorized to communicate such directions to the Trustee: City Clerk.

Such directions shall be in writing and the City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such directions.

(3) Investment Direction [Sections 4.3, 10 and 12]

(a) The

  X   City

  X   may

\_\_\_\_\_ may not

\_\_\_\_\_ Retirement Committee (*Police and Fire*)

\_\_\_\_\_ may

\_\_\_\_\_ may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: *[Section 10.13]*

  X   are permitted

\_\_\_\_\_ are not permitted

**K. INTERNAL REVENUE CODE SECTION 415 LIMITATIONS**

*[Section 3.6]*

If the City maintains or ever has maintained another qualified plan in which any Participant in this Plan is (or was) a Participant or could possibly become a Participant, the City must complete this Section. City must also complete this Section if it maintains a welfare benefit fund, as defined in Code section 419(e), an individual medical account, as defined in Code section 415(1)(2), or simplified employer pension, as defined in Code section 408(k) under which amounts are treated as annual additions with respect to any Participant in this Plan. (*Designate whether (1) or (2) applies, and complete as appropriate.*)

If a Participant is covered by another qualified plan maintained by the City:

  X   (1) the provisions of Sections 3.6.4 through 3.6.9 will apply;

OR

\_\_\_\_\_ (2) set forth the method under which the Plans will limit total annual additions or distributions to the maximum permissible amount or benefit, as applicable, and will properly reduce any excess amounts or benefits, in a manner that precludes City discretion.

\_\_\_\_\_  
\_\_\_\_\_ (Use additional continuation pages if alternative limitation rules are to be specified.)

415 Compensation. The definition of Compensation for Code section 415 purposes shall be 415 Safe Harbor Compensation defined in section 3.6.9(b)i of the Plan,

unless an alternative definition of compensation is elected below pursuant to section 3.6.9(b)ii of the Plan:

- ☐ (1) W-2 Wages; or
- ☐ (2) Section 3401(a) Wages

Modifications to 415 Compensation – Compensation for 415 purposes shall include amounts described in Sections 3.6.9(b)-2 and 3.6.9(b)(vi) as “default provisions” unless otherwise elected below (*select all that apply*).

- ☐ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- ☐ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- ☐ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*)
  - ☐ (a) For nonhighly compensated Employees only
  - ☐ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- ☐ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*)
- ☐ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.

**L. CREDITING SERVICE** (*Complete (1) and (2), as appropriate.*)

- ☒ (1) **Hours of Service Method.** [*Section 1.1.18*] Except as provided in (2) below, for the purpose of determining an Employee's One-Year Breaks in Service [*Section 1.1.23*], Vesting Service [*Section 1.1.44*], Eligibility Service [*Section 1.1.9*] and minimum annual service requirement to share in the City contribution made for a Plan Year [*Section 3.3*], service will be determined by reference to Hours of Service according to the following: (*check one*)
  - ☒ (a) On the basis of the actual recorded hours for which an Employee is paid or entitled to payment.
  - ☐ (b) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 10 Hours of Service for a day if under Section 1.1.18 such Employee would be certified with at least one hour of service during that day.
  - ☐ (c) On the basis that, without regard to his actual recorded hours, an Employee shall be credited under 45 Hours of Service for a calendar week if under Section 1.1.18 such

Employee would be credited with at least One Hour of Service during that calendar week.

— (d) On the basis of semimonthly payroll periods, an Employee shall be credited with 95 Hours of Service for a semi-monthly payroll period if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that semimonthly payroll period.

— (e) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 190 Hours of Service for a calendar month if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that calendar month.

X (2) **Elapsed Time Method.** [Section 1.2] Notwithstanding (1) above, service will be credited based upon elapsed time for the following purposes: *(check as appropriate)*

X (a) None

— (b) All

— (c) Eligibility (and Eligibility Breaks in Service)

— (d) Vesting (and Vesting Breaks in Service)(*Police and Fire*)

— (e) Minimum Service for benefit accrual for a Plan Year

## M. INVESTMENTS

[Section 10.14(p)]

(1) All funds of a Plan for police officers or fire fighters must be invested pursuant to the policies established by the Nebraska Investment Council.

(2) The Trustee's collective investment fund or funds incorporated by reference into this Agreement as indicated in Appendix "C" of the Basic Municipal Employees Plan and Trust and incorporated herein by this reference as amended from time to time.

(3) The Trustee is hereby specifically authorized and empowered to invest Plan assets in deposit accounts of \_\_\_\_\_ which bear a reasonable rate of interest and securities offered by \_\_\_\_\_ *(name of Trustee or financial institution)*.

Such specification shall be permitted in any other applicable document related to funding the Plan, which document shall be incorporated herein by this reference.

[Section 4.2]

- (4) **Intermediate Valuation of Accounts.** Participant accounts will be valued for investment purposes as follows: *(select one)*

- ☐ (a) Annually
- ☐ (b) Semi-annually
- ☐ (c) Quarterly
- ☐ (d) Monthly
- ☒ (e) Daily

#### N. ACCELERATED DISTRIBUTIONS

The following optional provisions for accelerated distributions may be made available to Plan Participants: *(Select as many as shall apply. Not applicable for Police and Fire Plans)* [Section 14] N/A

- ☒ (1) Medical emergency
- ☒ (2) Financial hardships
- ☐ (3) Education expenses
- ☒ (4) Purchase of home
- ☐ (5) After Normal Retirement Date

#### O. OPTIONAL FORMS OF DISTRIBUTION

The optional forms of benefit payment provided by this Plan are: *(Select as many as apply. If the requirements of Code section 411(d)(6) are applicable (which is not the case if this Plan is a government plan within the meaning of Code section 414(d)), the City may not eliminate optional forms of payment for benefits which have accrued prior to the date of Plan amendment unless said requirements are satisfied.)*

- ☒ (1) a single sum

- X (2) straight life annuity
- X (3) straight life annuity with a guarantee of any certain number of monthly payments
- (4) annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50% as elected by the City.
- X (5) a combination of forms of benefit elected in (1) through (4) and (7)
- (6) if this Plan is a transferee plan, an optional form of distribution provided under the transferor plan which is required to be preserved under Code section 411(d)(6) (and the regulations issued thereunder – which is not the case if this is a government plan under Code section 414(d)) with respect to accrued benefits of any Participant as of the date of transfer. *(Indicate name of transferor plan and date on which prior accrued benefit distribution options are protected)*
- \_\_\_\_\_
- \_\_\_\_\_
- X (7) Other *(Describe)*: installment (monthly, quarterly, semi-annually, or annually) with or without a period certain, Code Section 401(a)(9) minimum distributions, and any other payment option available under the funding medium.

**P. MANDATORY DISTRIBUTION ALTERNATIVES** *(Section 5.1.3(a)(ii))*

The following election is made in lieu of the provisions of Section 5.1.3(a)(ii) reducing the mandatory cash out amount to an amount equal to or less than \$1,000 *(Option for plans other than Fire Plans -- Participant consent to distribution is always required for Fire Plans.) (select one):*

- (1) Elimination of Mandatory Cash-Outs. An Employee's Vested Retirement Value will not be distributed upon the Employee's termination of service without the Employee's prior written consent, regardless of amount.
- (2) Increase Mandatory Cash Out Amount. Upon termination of service, the Employee's Vested Retirement Value will be automatically distributed without the Employee's consent if the Vested Retirement Value is less than \$3,500 if a Police Plan (or not in excess of \$5,000 for plans other than Police or Fire Plans). *(Note that automatic distributions without Participant consent are not permitted for Fire Plans).* Said distribution, if greater than \$1,000, will be paid in a direct rollover to an "individual retirement plan" designated by the Plan Administrator if the Employee does not elect to have the distribution paid in a direct rollover

directly to an "eligible retirement plan" specified by the Employee in accordance with direct rollover provisions of the Plan, or to receive the distribution directly.

- Q.** The City shall periodically pay to the Trustee a fee for services rendered according to the Trustee Fee Schedule attached to the Basic Municipal Employees Plan and Trust Agreement as Appendix A or otherwise agreed to by the parties, as incorporated herein by this reference as amended from time to time. The terms of any agreement adopted and executed by the City and Trustee separate and apart from this document and defining rights and duties of the parties to said agreement shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein; and the same, if entered before the date of this Adoption Agreement, shall continue and remain in effect. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

**R. INITIAL DEPOSIT**

In the case of establishment of a new Plan, the City hereby delivers to the Trustee the sum of \$ N/A as its initial deposit to establish the Trust, and receipt of the stated sum is hereby acknowledged by the Trustee.

- S.** The completion of this Adoption Agreement creates certain legal relationships and responsibilities. Accordingly, your legal counsel should review the Plan and Trust prior to the execution of this document so as to insure the suitability of the Plan and Trust for your City.

The City acknowledges that it has consulted with and has been advised by its attorney(s) with respect to the effect of entering this Plan and executing this Adoption Agreement.

Terms used in this Adoption Agreement which are defined in the Plan shall have the meaning given them in the Plan.

The City hereby agrees to the provisions of this Plan and Trust, and, in witness whereof, the City and the Trustee have caused this Agreement to be executed on the date(s) set forth below.

THE CITY OF LA VISTA, NEBRASKA

By \_\_\_\_\_

## NOTICE TO ADOPTING CITY

Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

In order to obtain reliance with respect to Plan qualification, the City, upon adopting and executing this Plan, must apply to the Employee Plans Determinations of the Internal Revenue Service for a determination letter.

This Adoption Agreement may only be used with the Basic Municipal Employees Plan and Trust Agreement.

CITY OF LA VISTA, NEBRASKA, Employer

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_, Trustee

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date \_\_\_\_\_



**ADOPTION AGREEMENT**  
**CITY OF LA VISTA**  
**FIREFIGHTERS RETIREMENT**  
**PLAN AND TRUST**  
**TO BE USED WITH**  
**BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT**

THIS IS TO CERTIFY THAT:

The following actions were adopted by ordinance by the City of La Vista, Nebraska, by its City Council, at a meeting thereof duly called and held on \_\_\_\_\_, 20\_\_:

RESOLVED,

SECTION 1. Pursuant to Nebraska Statutes, Sections 16-1020 through 16-1042, the Mayor and Council of the City of La Vista maintain the City of La Vista Firefighters Retirement Plan and Trust ("Plan") for its paid firefighters, embodied in plan documents including an adoption agreement and basic plan document attached thereto and constituting an integral part thereof, as well as various amendments required by applicable law.

SECTION 2. Applicable tax law requires that the Plan be amended and restated, and for this purpose, there has been presented to the City a proposed retirement plan and trust embodied in an instrument entitled "Adoption Agreement" together with the "Basic Municipal Employees Plan and Trust Agreement" as an integral part thereof ("Basic Plan Document"; and together the Adoption Agreement and Basic Plan Document sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.

SECTION 3. The City does hereby approve and adopt said Agreements as an amendment and restatement of the Plan, and hereby makes the designations and elections with respect to the Plan as indicated in the Adoption Agreement, to be effective on the date(s) specified in the Adoption Agreement or Basic Plan Document.

SECTION 4. That the Mayor is authorized to execute said Adoption Agreement and Basic Plan Document on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in said ordinance or otherwise determined necessary or advisable, to cause said Agreements to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent

provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Adoption Agreement or Basic Plan Document and take such further actions as he or she determines necessary or appropriate to obtain a favorable ruling.

This Adoption Agreement is the Adoption Agreement referred to in the foregoing actions, and the designations and elections hereinafter set forth are those made by the City in accordance with said actions, to-wit:

**A. ESTABLISHMENT, EFFECTIVE DATE, AND CITY DATA:**

- (1)     \_\_\_ establishes on \_\_\_\_\_, \_\_\_\_\_, a Retirement Plan and Trust to be known as \_\_\_\_\_  
Plan and Trust ("Plan") effective \_\_\_\_\_, \_\_\_\_\_ (Effective Date).
- OR
- (2)     X amends, restates and continues the City of La Vista Firefighters Retirement Plan and Trust ("Plan"), originally established on April 3<sup>rd</sup>, 2007. This amendment and restatement is effective April 3<sup>rd</sup>, 2007, unless otherwise specified herein or in the Basic Plan Document or required under applicable law or regulations or guidance thereunder. (Supplemental Effective Date).
- (3)     City's Address:  
Street: 8116 Park View Boulevard  
City, State, Zip Code: La Vista, Nebraska 68128  
Attention: Pam Buethe, City Clerk  
Telephone: (402) 331-4343
- (4)     Retirement Committee: As designated from time to time pursuant to Section 12.3(i) of the Basic Plan Document.
- (5)     Plan Administrator: the City of La Vista, with the exception of any administrative functions expressly delegated from time to time to the Retirement Committee herein or in or under the Basic Plan Document or otherwise by ordinance of the Mayor and City Council.
- (6)     City's Taxpayer Identification No.: 47-6050031
- (7)     City's Fiscal Year: October 1 – September 30

- (8) The Plan serial number ("PN") assigned to this Plan by the City for reporting and disclosure purposes is: 006
- (9) The last day of the Plan Year shall be December 31 and the Annual Valuation Date shall be December 31 [Sections 1.1.26 and 1.1.4]
- (10) The last day of the Plan's Limitation Year shall be December 31 [Section 1.1.20] *(All qualified retirement plans maintained by the City shall have the same Limitation Year.)*

## B. ELIGIBILITY REQUIREMENTS

- (1) **Age Requirement.** The minimum age which each Employee must attain before becoming a Participant in the Plan is age N/A.
- (2) **Service Requirement.** To become a Participant in the Plan, each Employee must complete at least N/A year(s) of Eligibility Service. *(Not Applicable for Police and Fire Plans. Not more than five (5) years for other Plans.)* If year(s) of service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year.
- (3) The computation period for Eligibility Service will be *(Not Applicable for Fire and Police Plans)* Check One: N/A

\_\_\_\_\_ as set forth in Section 1.1.9(a)(i), the year beginning with the date the Employee first performs an Hour of Service and then Plan Years.

\_\_\_\_\_ as set forth in Section 1.1.9(a)(ii), based upon years commencing on the date the Employee first performs an Hour of Service and anniversaries thereof.

Upon reemployment, former Participants shall again participate in the Plan under the immediate reentry rule of Section 2.2.

- (4) Plan Entry Date shall be *(check one)*:
  - X (a) the first day of service in Recognized Employment with the City *(Police and Fire Plans)*.
  - \_\_\_\_\_ (b) the first day \_\_\_\_\_ *(e.g., the Plan Year, the month, etc.)* following the Employee's satisfaction of the Eligibility Requirements [Section 2.1(d)]

- \_\_\_ (c) the first day of the Plan Year in which the Employee first satisfies the Eligibility Requirements. [Section 2.1(c)]
- \_\_\_ (d) the first day of the first month or the first day of the seventh month of the Plan Year, whichever occurs first, following the Employee's satisfaction of the Eligibility Requirements. [Section 2.1(b)]
- \_\_\_ (e) Other \_\_\_\_\_

(5) **Recognized Employment.** Recognized Employment is service in the employment of the City in those job classifications indicated below (*place "X" on blank(s) indicating selection*): [Section 1.1.30]

- \_\_\_ (a) All Employees of the City employed as police officers.
- X (b) All Employees of the City employed as fire fighters.
- \_\_\_ (c) All Employees of the City as that term is defined in Section 1.1.10.
- \_\_\_ (d) All common law Employees of the City.
- \_\_\_ (e) Salaried Employees of the City.
- \_\_\_ (f) Hourly Employees of the City.
- \_\_\_ (g) Employees who are not covered by any retirement plan established by the City.
- \_\_\_ (h) Other (*specify*) \_\_\_\_\_

(6) **Participation Election:** (*check one*)

Employees and Participants

\_\_\_ have

X do not have (*Police and Fire*)

a participation election provided in Section 3.3(b).

## C. MANDATORY EMPLOYEE CONTRIBUTIONS

[Section 3.1]

- (1) **Amount of Contribution.** The Employee contribution to the Trustee for each Plan Year shall be:

\_\_\_ (a) Six percent (6%) of his or her Salary. (*Police*)  
X (b) Six and one-half percent (6 1/2%) of his or her Salary. (*Fire*)  
\_\_\_ (c) Other \_\_\_\_\_

- (2) **Employee Contributions:**

X shall (*Police and Fire*)  
\_\_\_ shall not

be picked up by the City and treated as Employer contributions as permitted under Section 414(h) of the Code.

#### D. VOLUNTARY EMPLOYEE CONTRIBUTIONS

X shall (*Police and Fire*)  
\_\_\_ shall not

be permitted to the maximum amount allowed under the Internal Revenue Code.

#### E. ALLOCATION OF CITY CONTRIBUTIONS AND FORFEITURES

[Sections 3.2 and 6.4]

- (1) **Amount of Contribution.** Subject to the limitations of Section 3, the City's contribution to the Trustee for each Plan Year shall be: (*Select one option only. Complete blanks as applicable.*)

\_\_\_ (a) Six percent (6%) of each Participant's Salary. (*Police*)  
X (b) Thirteen percent (13%) of each Participant's Salary. (*Fire*)  
\_\_\_ (c) Other \_\_\_\_\_

**Treatment of Forfeitures:** (*Select one unless Item I(2)(a) is elected in which case this provision does not apply.*) [Sections 6.4.1 and 6.4.2]

\_\_\_ (a) Forfeitures shall first be used to pay administration costs of the Plan and then used to reduce City contributions. *(Police)*

X (b) Forfeitures shall be allocated to the Unallocated Employer Account, and if the Unallocated Employer Account is sufficient to meet Plan liabilities, then forfeitures shall first be used to pay expenses of administration and then to reduce City contributions. *(Fire)*

\_\_\_ (c) Forfeitures will be added to the City contribution for allocation.

\_\_\_ (d) Forfeitures will reduce City contributions.

(2) Is the Plan integrated with Social Security?

\_\_\_ Yes X No *(Police and Fire)*

***(If yes, complete items E, 3-6 and 11; if no, complete items E, 7-11).***

*NOTE: Items E, 3-6 and 11 relate to an integrated plan. Contributions are allocated pursuant to Section 3.3 of the Plan.*

(3) "Recognized Compensation" shall be defined to mean all of each Participant's:  
*(place "X" to indicate selection)*

\_\_\_ (a) W-2 earnings; or,

\_\_\_ (b) Wages as defined in Code Section 3401(a); or

\_\_\_ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;

\_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below *(select all that apply)*:

\_\_\_ (1) Exclude leave cashouts and deferred compensation *(Section 3.6.9(b)-3(b))*

(2) Include military continuation payments *(Section 3.6.9(b)-3(c))*

(3) Include disability continuation payments *(Section 3.6.9(b)-3(d))*:

\_\_\_ (a) For nonhighly compensated Employees only; or

- \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay ("first few weeks") rule (*Section 3.6.9(b)-4*); and/or
- (5) Include "deemed" section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_\_ (e) Other \_\_\_\_\_

which is actually paid to the Participant during

- \_\_\_\_\_ the Plan Year
- \_\_\_\_\_ the taxable year ending with or within the Plan Year
- \_\_\_\_\_ the Limitation Year ending with or within the Plan Year.
- \_\_\_\_\_ a consecutive 12-month period ending with or within the Plan Year beginning with the \_\_\_\_\_ day of \_\_\_\_\_ (*enter month*).

Recognized Compensation

- \_\_\_\_\_ shall include
- \_\_\_\_\_ shall not include

Employee contributions picked up by the City under Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (4) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]:

- \_\_\_\_\_ shall
- \_\_\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (5) "Integration Level" is defined as (*place "X" next to definition selected and complete appropriate blanks*)

- \_\_\_ (a) For any Plan Year, an amount equal to \$\_\_\_\_\_ (*insert stated dollar amount not to exceed the Taxable Wage Base in effect at the beginning of the Plan Year*).
- \_\_\_ (b) For any Plan Year, an amount equal to \_\_\_% (*not more than 100%*) of the Taxable Wage Base in effect at the beginning of the Plan Year.
- \_\_\_ (c) For any Plan Year, an amount equal to the lesser of: (i) \$\_\_\_\_\_ (*insert stated dollar amount*); or (ii) the Taxable Wage Base in effect beginning at the Plan Year.

(6) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year (check one) :

\_\_\_ shall

\_\_\_ shall not

share in the City contribution and reallocation of the forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after Normal Retirement Date

\_\_\_ disability.

*NOTE: Items E, 7-11 relate to a nonintegrated plan. Contributions are allocated directly on Recognized Compensation. (Section 3.3(b)).*

(7) Subject to an exclusion in Item (8), "Recognized Compensation" shall be defined to mean all of each Participant's (*place "X" to indicate selection, check only one*)

\_\_\_ (a) W-2 earnings;

\_\_\_ (b) Wages as defined in Code Section 3401(a); or

\_\_\_ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;

\_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below (*select all that apply*):



- \_\_\_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- \_\_\_\_\_ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- \_\_\_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*):
- \_\_\_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*); and/or
- \_\_\_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_\_ (e) Salary as that term is defined in Section 1.1.36(a) of the Plan (*Police*);
- X   (f) Salary as that term is defined in Section 1.1.36(b) of the Plan (*Fire*); or
- \_\_\_\_\_ (f) Other
- \_\_\_\_\_
- \_\_\_\_\_

which is actually paid to the Participant during

  X   the Plan Year.

\_\_\_\_\_ the taxable year ending with or within the Plan year.

\_\_\_\_\_ the Limitation Year ending with or within the Plan year.

Recognized compensation (*Police and Fire Plans see definition of “Salary” in Section 1.1.36 of the Basic Plan Document*)

\_\_\_\_\_ shall include

\_\_\_\_\_ shall not include

Employee contributions picked up by the City pursuant to Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4),

402(e)(3), 402(h), 403(b) or 457 of the Code. (*Police and Fire Plans see definition of "Salary" in Section 1.1.36 of the Basic Plan Document*)

- (8) "Recognized Compensation" shall not include: (*place "X" to indicate exclusion(s) and complete blank, if applicable*) *N/A*

\_\_\_ (a) overtime, shift, holiday and vacation pay

\_\_\_ (b) bonuses

\_\_\_ (c) commissions, but not more than the first \$\_\_\_\_\_ thereof  
(*insert dollar limitation desired, if any*)

X (d) overtime, callback pay, clothing allowances and other such benefits reported on Employee federal withholding statement (*Fire*).

- (9) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]:

\_\_\_ shall

X shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (10) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year. (*Check one*):

X shall (*Police and Fire*)

\_\_\_ shall not

share in the City contribution and reallocation of forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after their Normal Retirement Date

\_\_\_ disability

- (11) Forfeitures will be reallocated [*Sections 6.4.2 and 6.4.3*]

X as of the following Valuation Date

\_\_\_\_\_ after a Participant incurs 5 consecutive One Year Breaks in Service or his Account is no longer subject to restoration.

**F. INTEREST**

  X   shall

\_\_\_\_\_ shall not

be paid on Employer Contributions pursuant to Section 3.2(a)(ii) of the Plan.

**G. WITHDRAWAL OF PRIOR VOLUNTARY CONTRIBUTIONS**

If this Plan or a predecessor plan previously permitted Voluntary Contributions, Participants:

\_\_\_\_\_ are

  X   are not

permitted to withdraw their voluntary contributions before an Event of Maturity.  
[Section 7.9]

**H. ROLLOVERS**

(1) Rollover contributions by Participants [Section 3.5]

  X   are permitted as specified in Section 3.5. In addition to the plans specified in Section 3.5, rollover contributions and direct rollovers may be made from the following types of plans as of the specified effective date(s) (*specify all that apply*):

  X   (a) annuity contract described in Code section 403(b), effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

  X   (b) eligible plan under Code section 457(b) which is maintained by a state or political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

\_\_\_\_\_ are not permitted

(2) Eligible rollover distribution [Section 7.12]

\_\_\_ must

X need not

be distributions that are reasonably expected to total \$200 or more during a year.

## I. VESTING OF REGULAR ACCOUNTS

[Section 5]

(1) **Employee Accounts:** Each Employee is fully vested in his or her Employee Account at all times.

(2) **Employer Accounts:** Each Participant's Employer Account shall become Vested in him as follows (*place "X" next to formula selected and complete appropriate blanks*):

\_\_\_ (a) **Full and Immediate Vesting.** Each Employer Account shall be fully Vested in him at all times.

X (b) **Graded Vesting.** Each Participant's Employer Account shall be vested in him in accordance with the following schedule (*Choose One*):

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:\*

\_\_\_ (i) Five Year Vesting:

Less than 1 year	___%
1 year but less than 2 years	___%
2 years but less than 3 years	___%
3 years but less than 4 years	___%
4 years but less than 5 years	___%
5 years or more	100 %

\_\_\_ (ii) Seven Year Vesting:

Less than 1 year	___%	(0%)
1 year but less than 2 years	___%	(0%)
2 years but less than 3 years	___%	(0%)

3 years but less than 4 years	_____ %	(20%)
4 years but less than 5 years	_____ %	(40%)
5 years but less than 6 years	_____ %	(60%)
6 years but less than 7 years	_____ %	(80%)
7 years or more	100 %	

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:

X (iii) Seven Year Special Vesting (Fire):

Less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	60 %
6 years but less than 7 years	80 %
7 years or more	100 %

\_\_\_\_\_ (iv) Ten Year Vesting (Police):

Less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	50 %
6 years but less than 7 years	60 %
7 years but less than 8 years	70 %
8 years but less than 9 years	80 %
9 years but less than 10 years	90 %
10 years or more	100 %

- (3) In determining a Participant's Plan Years of Service, the following periods shall be disregarded: *[Section 1.1.44] (Not Applicable for Police and Fire Plans).*

\_\_\_ Yes \_\_\_ No Plan Years prior to the Effective Date of this Plan or a predecessor Plan. *[Yes, 1.1.44(c); No, Section 1.1.44(c)]*

\_\_\_ Yes \_\_\_ No Plan Years completed prior to the date upon which the Participant attained age \_\_\_\_\_ years. *(Insert age, but not greater than age 18.) [Section 1.1.44(e)]*

- (4) Notwithstanding any of the foregoing, each Participant's Employer Account shall be 100% Vested in him upon his attainment of:

\_\_\_\_\_ (a) 60 (Police)

X (b) 55 (Fire)

\_\_\_\_\_ (c) Other \_\_\_\_\_

years of age while in the employment of the City. *(If no age is entered, it will be assumed Normal Retirement Date was intended.)*

*[Section 5.1.2]*

- (5) Normal Retirement Date is: *(place "X" next to choice selected)*

*[Section 1.1.22]*

- \_\_\_ (a) The Participant's 65th birthday.
- \_\_\_ (b) The Participant's 65th birthday or, if later, the 5th anniversary of the date the Participant first becomes a Participant.
- X (c) Age 55 years *(60 for Police; 55 for Fire; Otherwise not greater than the Participant's 65th birthday and not less than age 55.)*

- (6) Early Retirement Date is age \_\_\_\_\_ years. *(Specify age. Not applicable for Police/Fire Plans – see Section 1.1.34 of Basic Plan for definition of Early Retirement Date for Police or Fire Plan.)*

- (7) An Employee who returns to employment of the City in Covered Employment after terminating service

X shall

\_\_\_ shall not

be permitted to restore his or her Employer Account to the amount on the date of distribution. *(Section 5.1.3 or 6.4.4)*

## **J. INVESTMENT DIRECTIONS**

- (1) Participants:

\_\_\_ are

X are not

permitted to direct the investment of a portion of their accounts into life insurance.

*[Section 10.10]*

- (2) Participant Account Investment Direction *[Section 10.11.2]*

(a) Participants:

  X   are

       are not

permitted to direct the investment of their:

  X   Employee Accounts (*Required of Police and Fire Plans*)

  X   Employer Accounts (*Permitted for all types of plans, with the exception of pre-1984 contributions under Police and Fire Plans, and the Employer Account of pre-1984 hires under Fire Plans.*)

The City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such direction. (*Sections 1.1.35, 4.3 and 10.11*)

(b) Separate Investment Accounts (*Police*)

The City

       may

       may not

direct the establishment of separate investment accounts for each Participant to allow each Participant to direct the investment of all or a portion of his or her Employee or Employer Account

If in the affirmative, enter name or title of person (or committee) authorized to communicate such directions to the Trustee: \_\_\_\_\_.  
Such directions shall be in writing and the City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such directions.

(3) Investment Direction [*Sections 4.3, 10 and 12*]

(a) The

       City

       may

       may not

X   Retirement Committee (*Police and Fire*)

  X   may

       may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: *[Section 10.13]*

       are permitted

  X   are not permitted

**K. INTERNAL REVENUE CODE SECTION 415 LIMITATIONS**

*[Section 3.6]*

If the City maintains or ever has maintained another qualified plan in which any Participant in this Plan is (or was) a Participant or could possibly become a Participant, the City must complete this Section. City must also complete this Section if it maintains a welfare benefit fund, as defined in Code section 419(e), an individual medical account, as defined in Code section 415(1)(2), or simplified employer pension, as defined in Code section 408(k) under which amounts are treated as annual additions with respect to any Participant in this Plan. (*Designate whether (1) or (2) applies, and complete as appropriate.*)

If a Participant is covered by another qualified plan maintained by the City:

  X   (1) the provisions of Sections 3.6.4 through 3.6.9 will apply;

OR

       (2) set forth the method under which the Plans will limit total annual additions or distributions to the maximum permissible amount or benefit, as applicable, and will properly reduce any excess amounts or benefits, in a manner that precludes City discretion.

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(Use additional continuation pages if alternative limitation rules are to be specified.)

415 Compensation. The definition of Compensation for Code section 415 purposes shall be 415 Safe Harbor Compensation defined in section 3.6.9(b)i of the Plan, unless an alternative definition of compensation is elected below pursuant to section 3.6.9(b)ii of the Plan:



- \_\_\_ (1) W-2 Wages; or
- X (2) Section 3401(a) Wages

Modifications to 415 Compensation – Compensation for 415 purposes shall include amounts described in Sections 3.6.9(b)-2 and 3.6.9(b)(vi) as “default provisions” unless otherwise elected below (*select all that apply*).

- \_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- \_\_\_ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- \_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*)
  - \_\_\_ (a) For nonhighly compensated Employees only
  - \_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_.
- \_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*)
- \_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.

**L. CREDITING SERVICE** (*Complete (1) and (2), as appropriate.*)

- X (1) **Hours of Service Method.** [*Section 1.1.18*] Except as provided in (2) below, for the purpose of determining an Employee's One-Year Breaks in Service [*Section 1.1.23*], Vesting Service [*Section 1.1.44*], Eligibility Service [*Section 1.1.9*] and minimum annual service requirement to share in the City contribution made for a Plan Year [*Section 3.3*], service will be determined by reference to Hours of Service according to the following: (*check one*)
  - X (a) On the basis of the actual recorded hours for which an Employee is paid or entitled to payment.
  - \_\_\_ (b) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 10 Hours of Service for a day if under Section 1.1.18 such Employee would be certified with at least one hour of service during that day.
  - \_\_\_ (c) On the basis that, without regard to his actual recorded hours, an Employee shall be credited under 45 Hours of Service for a calendar week if under Section 1.1.18 such Employee would be credited with at least One Hour of Service during that calendar week.

\_\_\_ (d) On the basis of semimonthly payroll periods, an Employee shall be credited with 95 Hours of Service for a semi-monthly payroll period if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that semimonthly payroll period.

\_\_\_ (e) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 190 Hours of Service for a calendar month if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that calendar month.

X (2) **Elapsed Time Method.** [Section 1.2] Notwithstanding (1) above, service will be credited based upon elapsed time for the following purposes: *(check as appropriate)*

\_\_\_ (a) None

\_\_\_ (b) All

\_\_\_ (c) Eligibility (and Eligibility Breaks in Service)

X (d) Vesting (and Vesting Breaks in Service)(*Police and Fire*)

\_\_\_ (e) Minimum Service for benefit accrual for a Plan Year

## M. INVESTMENTS

*[Section 10.14(p)]*

(1) All funds of a Plan for police officers or fire fighters must be invested pursuant to the policies established by the Nebraska Investment Council.

(2) The Trustee's collective investment fund or funds incorporated by reference into this Agreement as indicated in Appendix "C" of the Basic Municipal Employees Plan and Trust and incorporated herein by this reference as amended from time to time.

(3) The Trustee is hereby specifically authorized and empowered to invest Plan assets in deposit accounts of \_\_\_\_\_ which bear a reasonable rate of interest and securities offered by \_\_\_\_\_ *(name of Trustee or financial institution)*. Such specification shall be permitted in any other applicable document related to funding the Plan, which document shall be incorporated herein by this reference.

[Section 4.2]

- (4) **Intermediate Valuation of Accounts.** Participant accounts will be valued for investment purposes as follows: *(select one)*

- ☐ (a) Annually
- ☐ (b) Semi-annually
- ☐ (c) Quarterly
- ☐ (d) Monthly
- ☒ (e) Daily

**N. ACCELERATED DISTRIBUTIONS**

The following optional provisions for accelerated distributions may be made available to Plan Participants: *(Select as many as shall apply. Not applicable for Police and Fire Plans) [Section 14] N/A*

- ☐ (1) Medical emergency
- ☐ (2) Financial hardships
- ☐ (3) Education expenses
- ☐ (4) Purchase of home
- ☐ (5) After Normal Retirement Date

**O. OPTIONAL FORMS OF DISTRIBUTION**

The optional forms of benefit payment provided by this Plan are: *(Select as many as apply. If the requirements of Code section 411(d)(6) are applicable (which is not the case if this Plan is a government plan within the meaning of Code section 414(d)), the City may not eliminate optional forms of payment for benefits which have accrued prior to the date of Plan amendment unless said requirements are satisfied.)*

- ☒ (1) a single sum
- ☒ (2) straight life annuity
- ☒ (3) straight life annuity with a guarantee of at least 60 monthly payments

- X   (4) annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50% as elected by the City.
- (5) a combination of (1) through (4)
- (6) if this Plan is a transferee plan, an optional form of distribution provided under the transferor plan which is required to be preserved under Code section 411(d)(6) (and the regulations issued thereunder – which is not the case if this is a government plan under Code section 414(d)) with respect to accrued benefits of any Participant as of the date of transfer. *(Indicate name of transferor plan and date on which prior accrued benefit distribution options are protected)*
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- (7) Other *(Describe)*: \_\_\_\_\_
- \_\_\_\_\_

**P. MANDATORY DISTRIBUTION ALTERNATIVES** *(Section 5.1.3(a)(ii))*

The following election is made in lieu of the provisions of Section 5.1.3(a)(ii) reducing the mandatory cash out amount to an amount equal to or less than \$1,000 *(Option for plans other than Fire Plans -- Participant consent to distribution is always required for Fire Plans.) (select one):*

- (1) Elimination of Mandatory Cash-Outs. An Employee's Vested Retirement Value will not be distributed upon the Employee's termination of service without the Employee's prior written consent, regardless of amount.
- (2) Increase Mandatory Cash Out Amount. Upon termination of service, the Employee's Vested Retirement Value will be automatically distributed without the Employee's consent if the Vested Retirement Value is less than \$3,500 if a Police Plan (or not in excess of \$5,000 for plans other than Police or Fire Plans). *(Note that automatic distributions without Participant consent are not permitted for Fire Plans).* Said distribution, if greater than \$1,000, will be paid in a direct rollover to an "individual retirement plan" designated by the Plan Administrator if the Employee does not elect to have the distribution paid in a direct rollover directly to an "eligible retirement plan" specified by the Employee in accordance with direct rollover provisions of the Plan, or to receive the distribution directly.

**Q.** The City shall periodically pay to the Trustee a fee for services rendered according to the Trustee Fee Schedule attached to the Basic Municipal Employees Plan and Trust

Agreement as Appendix A or otherwise agreed to by the parties, as incorporated herein by this reference as amended from time to time. The terms of any agreement adopted and executed by the City and Trustee separate and apart from this document and defining rights and duties of the parties to said agreement shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein; and the same, if entered before the date of this Adoption Agreement, shall continue and remain in effect. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

**R. INITIAL DEPOSIT**

In the case of establishment of a new Plan, the City hereby delivers to the Trustee the sum of \$ N/A as its initial deposit to establish the Trust, and receipt of the stated sum is hereby acknowledged by the Trustee.

- S.** The completion of this Adoption Agreement creates certain legal relationships and responsibilities. Accordingly, your legal counsel should review the Plan and Trust prior to the execution of this document so as to insure the suitability of the Plan and Trust for your City.

The City acknowledges that it has consulted with and has been advised by its attorney(s) with respect to the effect of entering this Plan and executing this Adoption Agreement.

Terms used in this Adoption Agreement which are defined in the Plan shall have the meaning given them in the Plan.

The City hereby agrees to the provisions of this Plan and Trust, and, in witness whereof, the City and the Trustee have caused this Agreement to be executed on the date(s) set forth below.

THE CITY OF LA VISTA, NEBRASKA

By \_\_\_\_\_

## NOTICE TO ADOPTING CITY

Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

In order to obtain reliance with respect to Plan qualification, the City, upon adopting and executing this Plan, must apply to the Employee Plans Determinations of the Internal Revenue Service for a determination letter.

This Adoption Agreement may only be used with the Basic Municipal Employees Plan and Trust Agreement.

CITY OF LA VISTA, NEBRASKA, Employer

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_, Trustee

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date \_\_\_\_\_

**ADOPTION AGREEMENT**  
**CITY OF LA VISTA**  
**POLICE OFFICERS RETIREMENT**  
**PLAN AND TRUST**  
**TO BE USED WITH**  
**BASIC MUNICIPAL EMPLOYEES PLAN AND TRUST AGREEMENT**

THIS IS TO CERTIFY THAT:

The following actions were adopted by ordinance by the City of La Vista, Nebraska, by its City Council, at a meeting thereof duly called and held on \_\_\_\_\_, 20\_\_:

RESOLVED,

SECTION 1. Pursuant to Nebraska Statutes, Sections 16-1001 through 16-1019, the Mayor and Council of the City of La Vista maintain the City of La Vista Police Officers Retirement Plan and Trust ("Plan") for its police officers, embodied in plan documents including an adoption agreement and basic plan document attached thereto and constituting an integral part thereof, as well as various amendments required by applicable law.

SECTION 2. Applicable tax law requires that the Plan be amended and restated, and for this purpose, there has been presented to the City a proposed retirement plan and trust embodied in an instrument entitled "Adoption Agreement" together with the "Basic Municipal Employees Plan and Trust Agreement" as an integral part thereof ("Basic Plan Document"; and together the Adoption Agreement and Basic Plan Document sometimes are referred to herein together as "Agreements"), which Agreements have been reviewed by legal counsel for the City.

SECTION 3. The City does hereby approve and adopt said Agreements as an amendment and restatement of the Plan, and hereby makes the designations and elections with respect to the Plan as indicated in the Adoption Agreement, to be effective on the date(s) specified in the Adoption Agreement or Basic Plan Document.

SECTION 4. That the Mayor is authorized to execute said Adoption Agreement and Basic Plan Document on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in said ordinance or otherwise determined necessary or advisable, to cause said Agreements to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent

provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the designations, elections or provisions under or of said Adoption Agreement or Basic Plan Document and take such further actions as he or she determines necessary or appropriate to obtain a favorable ruling.

This Adoption Agreement is the Adoption Agreement referred to in the foregoing actions, and the designations and elections hereinafter set forth are those made by the City in accordance with said actions, to-wit:

**A. ESTABLISHMENT, EFFECTIVE DATE, AND CITY DATA:**

- (1) \_\_\_\_\_ establishes on \_\_\_\_\_, \_\_\_\_\_, a Retirement Plan and Trust to be known as \_\_\_\_\_

Plan and Trust ("Plan") effective \_\_\_\_\_, \_\_\_\_\_ (Effective Date).

OR

- (2)   X   amends, restates and continues the City of La Vista Police Officers Retirement Plan and Trust ("Plan"), originally established on May 1, 1973. This amendment and restatement is effective January 1, 2002, unless otherwise specified herein or in the Basic Plan Document or required under applicable law or regulations or guidance thereunder. (Supplemental Effective Date).

- (3) City's Address:  
Street: 8116 Park View Boulevard  
City, State, Zip Code: La Vista, Nebraska 68128  
Attention: Pam Buethe, City Clerk  
Telephone: (402) 331-4343

- (4) Retirement Committee: As designated from time to time pursuant to Section 12.3(i) of the Basic Plan Document.

- (5) Plan Administrator: the City of La Vista, with the exception of any administrative functions expressly delegated from time to time to the Retirement Committee herein or in or under the Basic Plan Document or otherwise by ordinance of the Mayor and City Council.

- (6) City's Taxpayer Identification No.: 47-6050031

- (7) City's Fiscal Year: October 1 – September 30



- (8) The Plan serial number ("PN") assigned to this Plan by the City for reporting and disclosure purposes is: 001
- (9) The last day of the Plan Year shall be December 31 and the Annual Valuation Date shall be December 31 [Sections 1.1.26 and 1.1.4]
- (10) The last day of the Plan's Limitation Year shall be December 31 [Section 1.1.20] *(All qualified retirement plans maintained by the City shall have the same Limitation Year.)*

## B. ELIGIBILITY REQUIREMENTS

- (1) **Age Requirement.** The minimum age which each Employee must attain before becoming a Participant in the Plan is age N/A.
- (2) **Service Requirement.** To become a Participant in the Plan, each Employee must complete at least N/A year(s) of Eligibility Service. *(Not Applicable for Police and Fire Plans. Not more than five (5) years for other Plans.)* If year(s) of service selected is or includes a fractional year, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year.
- (3) The computation period for Eligibility Service will be *(Not Applicable for Fire and Police Plans)* Check One: N/A

\_\_\_ as set forth in Section 1.1.9(a)(i), the year beginning with the date the Employee first performs an Hour of Service and then Plan Years.

\_\_\_ as set forth in Section 1.1.9(a)(ii), based upon years commencing on the date the Employee first performs an Hour of Service and anniversaries thereof.

Upon reemployment, former Participants shall again participate in the Plan under the immediate reentry rule of Section 2.2.

- (4) Plan Entry Date shall be *(check one)*:
- X (a) the first day of service in Recognized Employment with the City *(Police and Fire Plans)*.
- \_\_\_ (b) the first day \_\_\_\_\_ *(e.g., the Plan Year, the month, etc.)* following the Employee's satisfaction of the Eligibility Requirements [Section 2.1(d)]
- \_\_\_ (c) the first day of the Plan Year in which the Employee first satisfies the Eligibility Requirements. [Section 2.1(c)]

\_\_\_\_ (d) the first day of the first month or the first day of the seventh month of the Plan Year, whichever occurs first, following the Employee's satisfaction of the Eligibility Requirements. [Section 2.1(b)]

\_\_\_\_ (e) Other \_\_\_\_\_  
\_\_\_\_\_

(5) **Recognized Employment.** Recognized Employment is service in the employment of the City in those job classifications indicated below (*place "X" on blank(s) indicating selection*): [Section 1.1.30]

X (a) All Employees of the City employed as police officers.

\_\_\_\_ (b) All Employees of the City employed as fire fighters.

\_\_\_\_ (c) All Employees of the City as that term is defined in Section 1.1.10.

\_\_\_\_ (d) All common law Employees of the City.

\_\_\_\_ (e) Salaried Employees of the City.

\_\_\_\_ (f) Hourly Employees of the City.

\_\_\_\_ (g) Employees who are not covered by any retirement plan established by the City.

\_\_\_\_ (h) Other (*specify*) \_\_\_\_\_  
\_\_\_\_\_

(6) **Participation Election:** (*check one*)

Employees and Participants

\_\_\_\_ have

X do not have (*Police and Fire*)

a participation election provided in Section 3.3(b).

## C. MANDATORY EMPLOYEE CONTRIBUTIONS

[Section 3.1]

- (1) **Amount of Contribution.** The Employee contribution to the Trustee for each Plan Year shall be:

  X   (a) Six percent (6%) of his or her Salary. *(Police)*

       (b) Six and one-half percent (6 1/2%) of his or her Salary. *(Fire)*

       (c) Other \_\_\_\_\_

- (2) **Employee Contributions:**

  X   shall *(Police and Fire)*

       shall not

be picked up by the City and treated as Employer contributions as permitted under Section 414(h) of the Code.

#### **D. VOLUNTARY EMPLOYEE CONTRIBUTIONS**

  X   shall *(Police and Fire)*

       shall not

be permitted to the maximum amount allowed under the Internal Revenue Code.

#### **E. ALLOCATION OF CITY CONTRIBUTIONS AND FORFEITURES**

*[Sections 3.2 and 6.4]*

- (1) **Amount of Contribution.** Subject to the limitations of Section 3, the City's contribution to the Trustee for each Plan Year shall be: *(Select one option only. Complete blanks as applicable.)*

  X   (a) Six percent (6%) of each Participant's Salary. *(Police)*

       (b) Thirteen percent (13%) of each Participant's Salary. *(Fire)*

       (c) Other \_\_\_\_\_

**Treatment of Forfeitures:** *(Select one unless Item I(2)(a) is elected in which case this provision does not apply.) [Sections 6.4.1 and 6.4.2]*

- ☒ (a) Forfeitures shall first be used to pay administration costs of the Plan and then used to reduce City contributions. *(Police)*
- ☐ (b) Forfeitures shall be allocated to the Unallocated Employer Account, and if the Unallocated Employer Account is sufficient to meet Plan liabilities, then forfeitures shall first be used to pay expenses of administration and then to reduce City contributions. *(Fire)*
- ☐ (c) Forfeitures will be added to the City contribution for allocation.
- ☐ (d) Forfeitures will reduce City contributions.

(2) Is the Plan integrated with Social Security?

☐ Yes ☒ No *(Police and Fire)*

***(If yes, complete items E, 3-6 and 11; if no, complete items E, 7-11).***

*NOTE: Items E, 3-6 and 11 relate to an integrated plan. Contributions are allocated pursuant to Section 3.3 of the Plan.*

(3) "Recognized Compensation" shall be defined to mean all of each Participant's: *(place "X" to indicate selection)*

- ☐ (a) W-2 earnings; or,
- ☐ (b) Wages as defined in Code Section 3401(a); or
- ☐ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;
- ☐ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below *(select all that apply)*:
- ☐ (1) Exclude leave cashouts and deferred compensation *(Section 3.6.9(b)-3(b))*
- ☐ (2) Include military continuation payments *(Section 3.6.9(b)-3(c))*
- ☐ (3) Include disability continuation payments *(Section 3.6.9(b)-3(d))*:
- ☐ (a) For nonhighly compensated Employees only; or

- \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay ("first few weeks") rule (*Section 3.6.9(b)-4*); and/or
- (5) Include "deemed" section 125 compensation pursuant to 3.6.9(b)-vi.
- \_\_\_\_\_ (e) Other \_\_\_\_\_

which is actually paid to the Participant during

- \_\_\_\_\_ the Plan Year
- \_\_\_\_\_ the taxable year ending with or within the Plan Year
- \_\_\_\_\_ the Limitation Year ending with or within the Plan Year.
- \_\_\_\_\_ a consecutive 12-month period ending with or within the Plan Year beginning with the \_\_\_\_\_ day of \_\_\_\_\_ (*enter month*).

#### Recognized Compensation

- \_\_\_\_\_ shall include
- \_\_\_\_\_ shall not include

Employee contributions picked up by the City under Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h), 403(b) or 457 of the Code.

- (4) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year [*check one*]:

- \_\_\_\_\_ shall
- \_\_\_\_\_ shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (5) "Integration Level" is defined as (*place "X" next to definition selected and complete appropriate blanks*)

- \_\_\_ (a) For any Plan Year, an amount equal to \$\_\_\_\_\_ (*insert stated dollar amount not to exceed the Taxable Wage Base in effect at the beginning of the Plan Year*).
- \_\_\_ (b) For any Plan Year, an amount equal to \_\_\_% (*not more than 100%*) of the Taxable Wage Base in effect at the beginning of the Plan Year.
- \_\_\_ (c) For any Plan Year, an amount equal to the lesser of: (i) \$\_\_\_\_\_ (*insert stated dollar amount*); or (ii) the Taxable Wage Base in effect beginning at the Plan Year.

(6) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year (check one) :

\_\_\_ shall

\_\_\_ shall not

share in the City contribution and reallocation of the forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after Normal Retirement Date

\_\_\_ disability.

*NOTE: Items E, 7-11 relate to a nonintegrated plan. Contributions are allocated directly on Recognized Compensation. (Section 3.3(b)).*

(7) Subject to an exclusion in Item (8), "Recognized Compensation" shall be defined to mean all of each Participant's (*place "X" to indicate selection, check only one*)

\_\_\_ (a) W-2 earnings;

\_\_\_ (b) Wages as defined in Code Section 3401(a); or

\_\_\_ (c) Compensation as that term is defined in Section 3.6.9(b)(i) of the Plan;

\_\_\_ (d) Provided, that Recognized Compensation defined in (a) through (c) shall include amounts described in Sections 3.6.9(b)(vi) and 3.6.9(b)-2 as "default provisions" unless otherwise elected below (*select all that apply*):

- \_\_\_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- \_\_\_\_\_ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- \_\_\_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*):
- \_\_\_\_\_ (a) For nonhighly compensated Employees only; or
- \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*); and/or
- \_\_\_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.
- X   (e) Salary as that term is defined in Section 1.1.36(a) of the Plan (*Police*);
- \_\_\_\_\_ (f) Salary as that term is defined in Section 1.1.36(b) of the Plan (*Fire*); or
- \_\_\_\_\_ (f) Other
- \_\_\_\_\_
- \_\_\_\_\_

which is actually paid to the Participant during

  X   the Plan Year.

\_\_\_\_\_ the taxable year ending with or within the Plan year.

\_\_\_\_\_ the Limitation Year ending with or within the Plan year.

Recognized compensation (*Police and Fire Plans see definition of “Salary” in Section 1.1.36 of the Basic Plan Document*):

\_\_\_\_\_ shall include

\_\_\_\_\_ shall not include

Employee contributions picked up by the City pursuant to Section 414(h), and City contributions made pursuant to a salary reduction agreement which are not includable in the gross income of the Employee under Sections 125, 132(f)(4),

402(e)(3), 402(h), 403(b) or 457 of the Code. *(Police and Fire Plans see definition of "Salary" in Section 1.1.36 of the Basic Plan Document)*

- (8) "Recognized Compensation" shall not include: *(place "X" to indicate exclusion(s) and complete blank, if applicable) N/A*

\_\_\_ (a) overtime, shift, holiday and vacation pay

\_\_\_ (b) bonuses

\_\_\_ (c) commissions, but not more than the first \$\_\_\_\_\_ thereof  
*(insert dollar limitation desired, if any)*

\_\_\_ (d) overtime, callback pay, clothing allowances and other such benefits reported on Employee federal withholding statement *(Fire)*.

- (9) If an Employee participates in the Plan for only a portion of the year, his Recognized Compensation for the year *[check one]*:

\_\_\_ shall

X shall not

include otherwise Recognized Compensation during the portion of the year during which he was not a Participant in the Plan.

- (10) Participants who have been credited with a Year of Service for a Plan Year but who terminate employment before the last day of the Plan Year. *(Check one)*:

X shall *(Police and Fire)*

\_\_\_ shall not

share in the City contribution and reallocation of forfeitures for that Plan Year. If shall not is elected, designate any exceptions that apply:

\_\_\_ death

\_\_\_ retirement at or after their Normal Retirement Date

\_\_\_ disability

- (11) Forfeitures will be reallocated *[Sections 6.4.2 and 6.4.3]*

X as of the following Valuation Date



\_\_\_\_\_ after a Participant incurs 5 consecutive One Year Breaks in Service or his Account is no longer subject to restoration.

**F. INTEREST**

  X   shall

\_\_\_\_\_ shall not

be paid on Employer Contributions pursuant to Section 3.2(a)(ii) of the Plan.

**G. WITHDRAWAL OF PRIOR VOLUNTARY CONTRIBUTIONS**

If this Plan or a predecessor plan previously permitted Voluntary Contributions, Participants:

\_\_\_\_\_ are

  X   are not

permitted to withdraw their voluntary contributions before an Event of Maturity.  
[Section 7.9]

**H. ROLLOVERS**

(1) Rollover contributions by Participants [Section 3.5]

  X   are permitted as specified in Section 3.5. In addition to the plans specified in Section 3.5, rollover contributions and direct rollovers may be made from the following types of plans as of the specified effective date(s) (*specify all that apply*):

  X   (a) annuity contract described in Code section 403(b), effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

  X   (b) eligible plan under Code section 457(b) which is maintained by a state or political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, effective for distributions after \_\_\_\_\_ (December 31, 2001 if no date specified)

\_\_\_\_\_ are not permitted

(2) Eligible rollover distribution [Section 7.12]

\_\_\_ must

X need not

be distributions that are reasonably expected to total \$200 or more during a year.

## I. VESTING OF REGULAR ACCOUNTS

[Section 5]

(1) **Employee Accounts:** Each Employee is fully vested in his or her Employee Account at all times.

(2) **Employer Accounts:** Each Participant's Employer Account shall become Vested in him as follows (*place "X" next to formula selected and complete appropriate blanks*):

\_\_\_ (a) **Full and Immediate Vesting.** Each Employer Account shall be fully Vested in him at all times.

X (b) **Graded Vesting.** Each Participant's Employer Account shall be vested in him in accordance with the following schedule (*Choose One*):

When the Participant Has Completed  
the Following Vesting Service:

The Vested Portion of  
His Regular Account  
Will Be:\*

\_\_\_ (i) Five Year Vesting:

Less than 1 year	___%
1 year but less than 2 years	___%
2 years but less than 3 years	___%
3 years but less than 4 years	___%
4 years but less than 5 years	___%
5 years or more	100 %

\_\_\_ (ii) Seven Year Vesting:

Less than 1 year	___%	(0%)
1 year but less than 2 years	___%	(0%)
2 years but less than 3 years	___%	(0%)

3 years but less than 4 years	_____ %	(20%)
4 years but less than 5 years	_____ %	(40%)
5 years but less than 6 years	_____ %	(60%)
6 years but less than 7 years	_____ %	(80%)
7 years or more	100 %	

\_\_\_\_ (iii) Seven Year Special Vesting (Fire):

Less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	60 %
6 years but less than 7 years	80 %
7 years or more	100 %

X (iv) Ten Year Vesting (Police):

Less than 4 years	0 %
4 years but less than 5 years	40 %
5 years but less than 6 years	50 %
6 years but less than 7 years	60 %
7 years but less than 8 years	70 %
8 years but less than 9 years	80 %
9 years but less than 10 years	90 %
10 years or more	100 %

- (3) In determining a Participant's Plan Years of Service, the following periods shall be disregarded: *[Section 1.1.44] (Not Applicable for Police and Fire Plans).*

\_\_\_ Yes \_\_\_ No Plan Years prior to the Effective Date of this Plan or a predecessor Plan. *[Yes, 1.1.44(c); No, Section 1.1.44(c)]*

\_\_\_ Yes \_\_\_ No Plan Years completed prior to the date upon which the Participant attained age \_\_\_\_\_ years. *(Insert age, but not greater than age 18.) [Section 1.1.44(e)]*

- (4) Notwithstanding any of the foregoing, each Participant's Employer Account shall be 100% Vested in him upon his attainment of:

- X (a) 60 (Police)
- \_\_\_ (b) 55 (Fire)
- \_\_\_ (c) Other \_\_\_\_\_

years of age while in the employment of the City. *(If no age is entered, it will be assumed Normal Retirement Date was intended.)*

[Section 5.1.2]

- (5) Normal Retirement Date is: *(place "X" next to choice selected)*

[Section 1.1.22]

- \_\_\_ (a) The Participant's 65th birthday.
- \_\_\_ (b) The Participant's 65th birthday or, if later, the 5th anniversary of the date the Participant first becomes a Participant.
- X (c) Age 60 years *(60 for Police; 55 for Fire; Otherwise not greater than the Participant's 65th birthday and not less than age 55.*
- (6) Early Retirement Date is age \_\_\_\_\_ years. *(Specify age. Not applicable for Police/Fire Plans – see Section 1.1.34 of Basic Plan for definition of Early Retirement Date for Police or Fire Plan.)*
- (7) An Employee who returns to employment of the City in Covered Employment after terminating service

X shall

\_\_\_ shall not

be permitted to restore his or her Employer Account to the amount on the date of distribution. *(Section 5.1.3 or 6.4.4)*

**J. INVESTMENT DIRECTIONS**

- (1) Participants:

\_\_\_ are

X are not

permitted to direct the investment of a portion of their accounts into life insurance.

[Section 10.10]

- (2) Participant Account Investment Direction [Section 10.11.2]

- (a) Participants:

X   are

       are not

permitted to direct the investment of their:

  X   Employee Accounts (*Required of Police and Fire Plans*)

  X   Employer Accounts (*Permitted for all types of plans, with the exception of pre-1984 contributions under Police and Fire Plans, and the Employer Account of pre-1984 hires under Fire Plans.*)

The City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such direction. (*Sections 1.1.35, 4.3 and 10.11*)

(b) Separate Investment Accounts (*Police*)

The City

  X   may

       may not

direct the establishment of separate investment accounts for each Participant to allow each Participant to direct the investment of all or a portion of his or her Employee or Employer Account

If in the affirmative, enter name or title of person (or committee) authorized to communicate such directions to the Trustee: Retirement Committee, Mayor, City Administrator or City Clerk. Such directions shall be in writing and the City agrees to indemnify the Trustee and hold it harmless for the Trustee's actions taken pursuant to such directions.

(3) Investment Direction [*Sections 4.3, 10 and 12*]

(a) The

       City

       may

       may not

  X   Retirement Committee (*Police and Fire*)

X   may  
      may not

direct the Trustee in the investment management of Plan assets.

(4) Participant Loans: *[Section 10.13]*

      are permitted  
  X   are not permitted

**K. INTERNAL REVENUE CODE SECTION 415 LIMITATIONS**

*[Section 3.6]*

If the City maintains or ever has maintained another qualified plan in which any Participant in this Plan is (or was) a Participant or could possibly become a Participant, the City must complete this Section. City must also complete this Section if it maintains a welfare benefit fund, as defined in Code section 419(e), an individual medical account, as defined in Code section 415(1)(2), or simplified employer pension, as defined in Code section 408(k) under which amounts are treated as annual additions with respect to any Participant in this Plan. *(Designate whether (1) or (2) applies, and complete as appropriate.)*

If a Participant is covered by another qualified plan maintained by the City:

  X   (1) the provisions of Sections 3.6.4 through 3.6.9 will apply;

OR

      (2) set forth the method under which the Plans will limit total annual additions or distributions to the maximum permissible amount or benefit, as applicable, and will properly reduce any excess amounts or benefits, in a manner that precludes City discretion.

---

(Use additional continuation pages if alternative limitation rules are to be specified.)

415 Compensation. The definition of Compensation for Code section 415 purposes shall be 415 Safe Harbor Compensation defined in section 3.6.9(b)i of the Plan, unless an alternative definition of compensation is elected below pursuant to section 3.6.9(b)ii of the Plan:

      (1) W-2 Wages; or

X (2) Section 3401(a) Wages

Modifications to 415 Compensation – Compensation for 415 purposes shall include amounts described in Sections 3.6.9(b)-2 and 3.6.9(b)(vi) as “default provisions” unless otherwise elected below (*select all that apply*).

- \_\_\_\_\_ (1) Exclude leave cashouts and deferred compensation (*Section 3.6.9(b)-3(b)*)
- \_\_\_\_\_ (2) Include military continuation payments (*Section 3.6.9(b)-3(c)*)
- \_\_\_\_\_ (3) Include disability continuation payments (*Section 3.6.9(b)-3(d)*)
  - \_\_\_\_\_ (a) For nonhighly compensated Employees only
  - \_\_\_\_\_ (b) For all Employees and the salary continuation will continue for the following fixed or determinable period \_\_\_\_\_.
- \_\_\_\_\_ (4) Apply the administrative delay (“first few weeks”) rule (*Section 3.6.9(b)-4*)
- \_\_\_\_\_ (5) Include “deemed” section 125 compensation pursuant to 3.6.9(b)-vi.

**L. CREDITING SERVICE** (*Complete (1) and (2), as appropriate.*)

X (1) **Hours of Service Method.** [*Section 1.1.18*] Except as provided in (2) below, for the purpose of determining an Employee's One-Year Breaks in Service [*Section 1.1.23*], Vesting Service [*Section 1.1.44*], Eligibility Service [*Section 1.1.9*] and minimum annual service requirement to share in the City contribution made for a Plan Year [*Section 3.3*], service will be determined by reference to Hours of Service according to the following: (*check one*)

- X (a) On the basis of the actual recorded hours for which an Employee is paid or entitled to payment.
- \_\_\_\_\_ (b) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 10 Hours of Service for a day if under Section 1.1.18 such Employee would be certified with at least one hour of service during that day.
- \_\_\_\_\_ (c) On the basis that, without regard to his actual recorded hours, an Employee shall be credited under 45 Hours of Service for a calendar week if under Section 1.1.18 such Employee would be credited with at least One Hour of Service during that calendar week.
- \_\_\_\_\_ (d) On the basis of semimonthly payroll periods, an Employee shall be credited with 95 Hours of Service for a semi-monthly payroll period if under Section 1.1.18 such

Employee would be credited with at least one Hour of Service during that semimonthly payroll period.

- \_\_\_\_ (e) On the basis that, without regard to his actual recorded hours, an Employee shall be credited with 190 Hours of Service for a calendar month if under Section 1.1.18 such Employee would be credited with at least one Hour of Service during that calendar month.

X (2) **Elapsed Time Method.** [Section 1.2] Notwithstanding (1) above, service will be credited based upon elapsed time for the following purposes: *(check as appropriate)*

- \_\_\_\_ (a) None
- \_\_\_\_ (b) All
- \_\_\_\_ (c) Eligibility (and Eligibility Breaks in Service)
- X (d) Vesting (and Vesting Breaks in Service)(*Police and Fire*)
- \_\_\_\_ (e) Minimum Service for benefit accrual for a Plan Year

## M. INVESTMENTS

[Section 10.14(p)]

- (1) All funds of a Plan for police officers or fire fighters must be invested pursuant to the policies established by the Nebraska Investment Council.
- (2) The Trustee's collective investment fund or funds incorporated by reference into this Agreement as indicated in Appendix "C" of the Basic Municipal Employees Plan and Trust and incorporated herein by this reference as amended from time to time.
- (3) The Trustee is hereby specifically authorized and empowered to invest Plan assets in deposit accounts of \_\_\_\_\_ which bear a reasonable rate of interest and securities offered by \_\_\_\_\_ *(name of Trustee or financial institution)*. Such specification shall be permitted in any other applicable document related to funding the Plan, which document shall be incorporated herein by this reference.

[Section 4.2]



- (4) **Intermediate Valuation of Accounts.** Participant accounts will be valued for investment purposes as follows: *(select one)*

- ☐ (a) Annually
- ☐ (b) Semi-annually
- ☐ (c) Quarterly
- ☐ (d) Monthly
- ☒ (e) Daily

**N. ACCELERATED DISTRIBUTIONS**

The following optional provisions for accelerated distributions may be made available to Plan Participants: *(Select as many as shall apply. Not applicable for Police and Fire Plans) [Section 14]* N/A

- ☐ (1) Medical emergency
- ☐ (2) Financial hardships
- ☐ (3) Education expenses
- ☐ (4) Purchase of home
- ☐ (5) After Normal Retirement Date

**O. OPTIONAL FORMS OF DISTRIBUTION**

The optional forms of benefit payment provided by this Plan are: *(Select as many as apply. If the requirements of Code section 411(d)(6) are applicable (which is not the case if this Plan is a government plan within the meaning of Code section 414(d)), the City may not eliminate optional forms of payment for benefits which have accrued prior to the date of Plan amendment unless said requirements are satisfied.)*

- ☒ (1) a single sum
- ☒ (2) straight life annuity
- ☒ (3) straight life annuity with a guarantee of at least 60 monthly payments

- X (4) annuity payable for life of Participant and annuity to surviving beneficiary of 100%, 75% or 50% as elected by the City.
- \_\_\_ (5) a combination of (1) through (4)
- \_\_\_ (6) if this Plan is a transferee plan, an optional form of distribution provided under the transferor plan which is required to be preserved under Code section 411(d)(6) (and the regulations issued thereunder – which is not the case if this is a government plan under Code section 414(d)) with respect to accrued benefits of any Participant as of the date of transfer. *(Indicate name of transferor plan and date on which prior accrued benefit distribution options are protected)* \_\_\_\_\_
- \_\_\_ (7) Other *(Describe)*: \_\_\_\_\_

**P. MANDATORY DISTRIBUTION ALTERNATIVES** *(Section 5.1.3(a)(ii))*

The following election is made in lieu of the provisions of Section 5.1.3(a)(ii) reducing the mandatory cash out amount to an amount equal to or less than \$1,000 *(Option for plans other than Fire Plans -- Participant consent to distribution is always required for Fire Plans.) (select one):*

- \_\_\_ (1) Elimination of Mandatory Cash-Outs. An Employee's Vested Retirement Value will not be distributed upon the Employee's termination of service without the Employee's prior written consent, regardless of amount.
- \_\_\_ (2) Increase Mandatory Cash Out Amount. Upon termination of service, the Employee's Vested Retirement Value will be automatically distributed without the Employee's consent if the Vested Retirement Value is less than \$3,500 if a Police Plan (or not in excess of \$5,000 for plans other than Police or Fire Plans). *(Note that automatic distributions without Participant consent are not permitted for Fire Plans).* Said distribution, if greater than \$1,000, will be paid in a direct rollover to an "individual retirement plan" designated by the Plan Administrator if the Employee does not elect to have the distribution paid in a direct rollover directly to an "eligible retirement plan" specified by the Employee in accordance with direct rollover provisions of the Plan, or to receive the distribution directly.

**Q.** The City shall periodically pay to the Trustee a fee for services rendered according to the Trustee Fee Schedule attached to the Basic Municipal Employees Plan and Trust

Agreement as Appendix A or otherwise agreed to by the parties, as incorporated herein by this reference as amended from time to time. The terms of any agreement adopted and executed by the City and Trustee separate and apart from this document and defining rights and duties of the parties to said agreement shall be supplemental and additional to, and incorporated by reference into, this document to the extent not contrary to terms contained herein; and the same, if entered before the date of this Adoption Agreement, shall continue and remain in effect. If any terms of any such separate trust document conflict with the terms of this document, the terms of this document shall control.

**R. INITIAL DEPOSIT**

In the case of establishment of a new Plan, the City hereby delivers to the Trustee the sum of \$ N/A as its initial deposit to establish the Trust, and receipt of the stated sum is hereby acknowledged by the Trustee.

- S.** The completion of this Adoption Agreement creates certain legal relationships and responsibilities. Accordingly, your legal counsel should review the Plan and Trust prior to the execution of this document so as to insure the suitability of the Plan and Trust for your City.

The City acknowledges that it has consulted with and has been advised by its attorney(s) with respect to the effect of entering this Plan and executing this Adoption Agreement.

Terms used in this Adoption Agreement which are defined in the Plan shall have the meaning given them in the Plan.

The City hereby agrees to the provisions of this Plan and Trust, and, in witness whereof, the City and the Trustee have caused this Agreement to be executed on the date(s) set forth below.

THE CITY OF LA VISTA, NEBRASKA

By \_\_\_\_\_

## NOTICE TO ADOPTING CITY

Failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

In order to obtain reliance with respect to Plan qualification, the City, upon adopting and executing this Plan, must apply to the Employee Plans Determinations of the Internal Revenue Service for a determination letter.

This Adoption Agreement may only be used with the Basic Municipal Employees Plan and Trust Agreement.

CITY OF LA VISTA, NEBRASKA, Employer

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_, Trustee

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date \_\_\_\_\_

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
OCTOBER 21, 2008 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
ELECTION OF DIRECTORS TO THE LA VISTA METROPOLITAN COMMUNITY COLLEGE BOARD OF DIRECTORS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

**SYNOPSIS**

A resolution has been prepared to designate and ratify, as well as affirm and approve the re-election of, the City's three directors of the La Vista Metropolitan Community College Board of Directors for the purposes of the Condominium Board for the public library and MCC Sarpy Center and approving actions of the directors at the 2008 Annual Meeting.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval.

**BACKGROUND**

Currently, the City Council has elected the following persons to the Condominium Board:

- City Administrator
- Library Director
- Public Building and Grounds Superintendent

It is proposed that Council designate these positions to hold a seat on the Board on behalf of the City. Additionally, the Condominium Board of Directors will hold its annual meeting on November 3, 2008, at which time the above directors will take action on behalf of the City and the resolution will ratify their actions.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO ELECT DIRECTORS OF THE LA VISTA/METROPOLITAN COMMUNITY COLLEGE CONDOMINIUM OWNERS ASSOCIATION, INC.

WHEREAS, the City of La Vista Facilities Corporation ("City Facility Corporation") and the Metropolitan Community College Facilities Corporation made and entered a Declaration and Master Deed of La Vista Metropolitan Community College Condominium Property Regime dated December 29, 1997 ("Declaration") for the purposes of administering the condominium property regime and maintaining common areas of the Library/Sarpy Center; and

WHEREAS, the La Vista/Metropolitan Community College Condominium Owners Association, Inc., ("Association") was incorporated for purposes of administering the condominium property regime and maintaining the common areas under the Declaration, and the Association is governed by a Board of Directors; and

WHEREAS, pursuant to Article 1.24 of the Declaration, as amended, the City Facilities Corporation delegated to and authorized the City of La Vista ("City") to exercise voting rights with respect to the Association and its Board of Directors, and the City desires to exercise said voting rights to elect Directors of the Association.

WHEREAS, the following positions (and the individuals holding the titles) have been previously designated by the Mayor and City Council to be the City's three directors on the Association's Board of Director's ("City's Director's):

City Administrator  
Library Director  
Director of Public Buildings and Grounds

WHEREAS, the Association will hold its 2008 Annual Meeting on November 3, 2008, at which time and at such meeting the City's Directors shall vote on behalf of the City and in accordance with the desire of the City Council and the Mayor to nominate and re-elect the City's Director's to the Association's Board of Directors; and

WHEREAS, the Mayor and City Council desire to designate, and ratify, affirm and approve the re-election of the City's Directors.

NOW, THEREFORE, BE IT RESOLVED, that effective November 3, 2008, the following are hereby designated and re-elected to serve as the City's appointees to the Board of Director's of the Association:

City Administrator  
Library Director  
Director of Public Buildings and Grounds

and further that their attendance, participation, voting and exercise of other rights

**Resolution No.**

Page 2

on behalf of the City (in exercise of the delegated rights of the City Facilities Corporation) to nominate and re-elect said individuals as directors at the annual meeting of the Association held November 3, 2008 (and all other related actions) are hereby ratified, affirmed and approved.

PASSED AND APPROVED THIS 21ST DAY OF OCTOBER 2008.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
OCTOBER 21, 2008 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
PURCHASE DUMP TRUCK – PUBLIC WORKS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

**SYNOPSIS**

A resolution has been prepared for the purchase of a 2008 Sterling LT7501 Tandem Dump Truck from Wick's Sterling Trucks, Inc., 10502 S. 147<sup>th</sup> Street, Omaha, NE 68138 for an amount not to exceed \$130,000.00.

**FISCAL IMPACT**

They FY 2008/09 Street Maintenance Fund provides funding for financing this purchase through the street operating budget. Because of the current state of the market, we are asking for approval to purchase this equipment but will wait to make the actual purchase until we can determine acceptable financing rates.

**RECOMMENDATION**

Approval

**BACKGROUND**

The purchase is being made off the State Bid – Contract #12214OC. The new truck is to replace truck #1124; a 1988 Chevy Single Axle Dump Truck.



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE PURCHASE OF A 2008 STERLING LT7501 TANDEM DUMP TRUCK FROM WICK'S STERLING TRUCKS, INC., OMAHA, NEBRASKA, IN AN AMOUNT NOT TO EXCEED \$130,000.00.

WHEREAS, the City Council of the City of La Vista has determined that the purchase of said dump truck is necessary; and

WHEREAS, the FY 2008/09 Street Maintenance Budget provides funding for said purchase; and

WHEREAS, the purchase will be from the State Bid – Contract #12214OC; and

WHEREAS, Subsection (C) (9) of Section 31.23 of the La Vista Municipal Code requires that the City Administrator secure council approval prior to authorizing any purchases over \$5,000.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, do hereby award the purchase of a 2008 Sterling LT7501 Tandem Dump Truck to Wick's Sterling Trucks, Inc., Omaha, Nebraska, in an amount not to exceed \$130,000.00.

PASSED AND APPROVED THIS 21ST DAY OF OCTOBER, 2008

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

# **WICK'S**

**Sterling Trucks, Inc.**

10502 South 147th St. • Omaha, Nebraska 68138  
Phone 402-891-9200 • Fax 402-895-2253

City of LaVista  
9900 Cornhusker Rd.  
LaVista, Ne.68128

October 16<sup>th</sup>, 2008

J. Greg Goldman

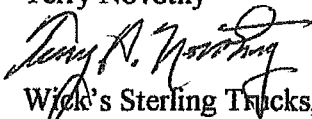
State of Nebraska Contract # 12214 OC

2009 Sterling Model LT7501	63,681.00
Allison Automatic 3500RDS	6,288.00
Rt. Hand Mid.-Mount Wing	6,336.00
Pre Wet system	3,332.00
Force America Hydraulic System	15,382.00
Hot Shift PTO for Automatic Transmission	680.00
11' Steel plow per State of Ne Contract	4,457.00
Plow install	250.00
12' Dump body and hoist ILO 14' Body per State of Ne. spec.	12,111.00
Install price for body, wing, pre-wet, plow, hydraulic system.	6,540.00
Quick Hitch	850.00
Hitch install	1820.00
12' V-Box Sander 50" sides 6.8 cu yd cap.	9,278.00
Plow freight	500.00
Total w/o Body and required hydraulics for hook system	\$ 131,355.00
Less Additional Government Discount	-1,355.00
 Total price delivered complete.	 \$130,000.00

Greg let me if I forgot something you wanted, I did not include the Two Way radio.

Thanks Greg,

Terry Novotny

  
Wick's Sterling Trucks, Inc.  
Omaha, Ne. 68138



## 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 FOR PGS SOUTHPORT INC DBA PIZZA GOURMET, LA VISTA, NEBRASKA.

WHEREAS, PGC Southport Inc dba Pizza Gourmet, 12040 McDermott Plaza, Suite 300, 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 PGC Southport Inc dba Pizza Gourmet, 12040 McDermott Plaza, Suite 300, La Vista, NE.

PASSED AND APPROVED THIS 21ST DAY OF OCTOBER 2008.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

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**LA VISTA POLICE DEPARTMENT INTEROFFICE MEMORANDUM**

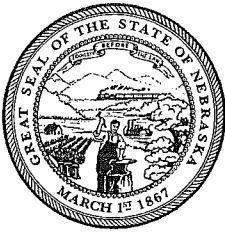
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**TO:** PAM BUETHE, CITY CLERK  
**FROM:** BOB LAUSTEN, POLICE CHIEF  
**SUBJECT:** LOCAL BACKGROUND- LIQUOR LICENSE  
**DATE:** 9/24/2008  
**CC:**

---

The police department conducted a check of computerized records on the applicants, Joseph Raya and Mark Hansen for criminal conduct in Nebraska and Sarpy County in reference to the Liquor License application. The applicant Hansen has traffic entries only.



**Dave Heineman**  
Governor

## 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/>

September 22, 2008

City Clerk of La Vista  
8116 Park View Boulevard  
La Vista, NE 68128

RE: Pizza Gourmet

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  
Jackie B. Matulka  
Licensing Division

Enclosures **Rhonda R. Flower**  
Commissioner

**Bob Logsdon**  
Chairman

**Robert Batt**  
Commissioner

# RECOMMENDATION OF THE NEBRASKA LIQUOR CONTROL COMMISSION

October 22, 2008 JBM

Date Mailed from Commission Office: September 22, 2008

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, Section 134 (7) 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:

**PGC Southport Inc DBA Pizza Gourmet**

**12040 McDermott Plaza, Suite 300, La Vista, NE 68128 (Sarpy County)**

**NEW APPLICATION for Class C 83019**

**45 days – November 6, 2008**

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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

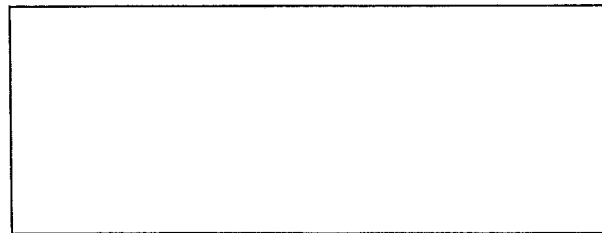
(Attached additional page(s) if necessary)

**SIGN HERE** \_\_\_\_\_ **DATE** \_\_\_\_\_  
(Clerks Signature)

# APPLICATION FOR LIQUOR LICENSE CHECKLIST

301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.ne.gov

03019



Applicant Name PGC Southport, Inc.

Trade Name The Pizza Gourmet Company Previous Trade Name \_\_\_\_\_

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. 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.

## REQUIRED ATTACHMENTS

Each item must be checked and included with application or marked N/A (not applicable)

- ☒ 1. Fingerprint cards for each person (two cards per person) must be enclosed with a 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.
- ☒ 2. Enclose registration fee for the appropriate class of license, made out to the Nebraska Liquor Control Commission.
- ☒ 3. Enclose the appropriate application forms; Individual License – Form 1; Partnership License – Form 2; Corporate - Form 3a; Limited Liability Form (LCC) – Form 3b. Corporate Form 3a and LLC Form 3b requires Corporate Manager application – Form 3c.
- ☒ 4. If building is being leased send a copy of the lease. Be sure it reads in the individual(s), corporate or LLC name being applied for. Also, the lease must extend through the license year being applied for. If building owned, send a copy of the deed or purchase agreement in 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 appropriate applicant's name.
- N/A ☐ 6. If wishing to run on current liquor license enclose temporary agency agreement (**must be Commission form only, must include copy of signature card from the bank showing both the seller and buyers name on account**).

Rec  
165469  
Bus 20870-45  
mm


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.

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, partnership and LLC enclose proof of citizenship; copy of birth certificate (certificate from the State where born, not hospital certificate), naturalization paper or passport, for all applicants, members and spouses.

☒ 10. If corporation or LLC enclose a copy of articles as filed with the Secretary of States Office. This document must show barcode.

**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.**

  
Signature

Joseph E. Raya  
President  
PGC Southport, Inc.



# APPLICATION FOR LIQUOR LICENSE

301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: www.lcc.ne.gov/

## 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 the filing of the appropriate form and fee of \$100.00

### MISCELLANEOUS

- |                          |   |                          |                        |                       |
|--------------------------|---|--------------------------|------------------------|-----------------------|
| <input type="checkbox"/> | L | Craft Brewery (Brew Pub) | \$295.00               | \$1,000 minimum bond  |
| <input type="checkbox"/> | O | Boat                     | \$ 95.00               |                       |
| <input type="checkbox"/> | V | Manufacturer             | \$ 45.00(+license fee) | \$10,000 minimum bond |
| <input type="checkbox"/> | W | Wholesale Beer           | \$545.00               | \$5,000 minimum bond  |
| <input type="checkbox"/> | X | Wholesale Liquor         | \$795.00               | \$5,000 minimum bond  |
| <input type="checkbox"/> | Y | Farm Winery              | \$295.00               | \$1,000 minimum bond  |
| <input type="checkbox"/> | Z | Micro Distillery         | \$295.00               | \$1,000 minimum bond  |

All Class C licenses expire October 31<sup>st</sup>

All other licenses expire April 30<sup>th</sup>

Catering expire same as underlying retail license

## TYPE OF APPLICATION BEING APPLIED FOR (CHECK ONE)

- |                                     |   |
|-------------------------------------|---|
| <input type="checkbox"/>            | Individual License (requires insert form 1)       |
| <input type="checkbox"/>            | Partnership License (requires insert form 2)      |
| <input checked="" type="checkbox"/> | Corporate License (requires insert form 3a & 3c)  |
| <input type="checkbox"/>            | Limited Liability Company (requires form 3b & 3c) |

## NAME OF PERSON OR FIRM ASSISTING WITH APPLICATION

(commission will call this person with any questions we may have on this application)

Name John M. Gilroy

Phone number: (402) 614-6100

Firm Name Revolution Capital Partners

**PREMISE INFORMATION**Trade Name (doing business as) The Pizza Gourmet CompanyStreet Address #1 12040 McDermott PlazaStreet Address #2 Suite 300-311City La VistaCounty Sarpy

#59

Zip Code 68128Premise Telephone number not yet assigned

Is this location inside the city/village corporate limits:



YES

city



NO

Mail address (where you want receipt of mail from the commission)

Name PGC Southport, Inc.

Street Address

#1 15475 Ruggles Street

Street Address

#2 Suite 105City OmahaCounty DouglasZip Code 68116**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 drawing of the Premises (Exhibit A) and the Site Plan (Exhibit B). The Premises is an irregular shaped interior bay measuring approximately 56' by 14' by 28' by 67' by 50' by 72' containing approximately 4,721 square feet and an outside patio on the south southeast side of the bay measuring approximately 50' by 16' by 17' by 30' by 12' by 10' by 12' and containing approximately 1,150 square feet. The Premises is single story with no basement.

## APPLICANT INFORMATION

### 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.

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### 2. Are you buying the business and/or assets of a licensee?

☐ YES ☒ NO

If yes, give name of business and license number \_\_\_\_\_

a) Submit a copy of the sales agreement including a list of the furniture, fixtures and equipment.

b) Include a list of alcohol being purchased, list the name brand, container size and how many?

### 3. Are you filing a temporary agency agreement whereby current licensee allows you to operate on their license?

☐ YES ☒ NO

If yes, attach temporary agency agreement form and signature card from the bank.

**This agreement is not effective until you receive your three (3) digit ID number from the Commission.**

### 4. Are you borrowing any money from any source to establish and/or operate the business?

☒ YES ☐ NO

If yes, list the lender Mutual of Omaha Bank, 3333 Farnam Street, Omaha, Nebraska 68131

### 5. Will any person or entity other than applicant be entitled to a share of the profits of this business?

☐ YES ☒ NO

If yes, explain. All involved persons must be disclosed on application. \_\_\_\_\_

### 6. Will any of the furniture, fixtures and equipment to be used in this business be owned by others?

☐ YES ☒ NO

If yes, list such items and the owner. \_\_\_\_\_

### 7. Will any person(s) other than named in this application have any direct or indirect ownership or control of the business?

☐ YES ☒ NO

If yes, explain. \_\_\_\_\_

**No silent partners**

8. Are you premises to be licensed within 150 feet of a church, school, hospital, home for the aged or indigent persons or for veterans, their wives, children, or within 300 feet of a college or university campus?

☐ YES ☒ NO

If yes, list the name of such institution and where it is located in relation to the premises (Neb. Rev. Stat. 53-177)

9. Is anyone listed on this application a law enforcement officer?

☐ YES ☒ NO

If yes, list the person, the law enforcement agency involved and the person's exact duties

10. 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 withdrawals on accounts at the institution.

Mutual of Omaha Bank. Authorized signers will be Joseph E. Raya and Mark W. Hansen

11. 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 reason for termination of any license(s) previously held.

The Pizza Gourmet Company, 15475 Ruggles Street, Suite 105, Omaha. License no. 78729

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. Mark W. Hansen - 40 hours

13. List the training and/or experience (when and where) of the person lists in #12 above in connection with selling and/or serving alcoholic beverages. Employed 40+ hours per week as supervisor/bartender at Pizza Gourmet since July 2005

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 Initial term expires October 31, 2015; option to extend to October 31, 2020

☐ Deed

☐ Purchase Agreement

*lease assigned to new corporation*

15. When do you intend to open for business? November 1, 2008

16. What will be the main nature of business? Casual dining restaurant/sports bar

17. What are the anticipated hours of operation? 11:00 A.M. to 1:00 A.M.

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

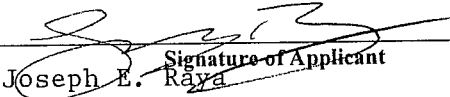
**RESIDENCES FOR THE PAST 10 YEARS, APPLICANT AND SPOUSE MUST COMPLETE**

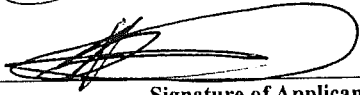
APPLICANT: CITY & STATE	YEAR FROM TO		SPOUSE: CITY & STATE	YEAR FROM TO	
Raya, Joseph E. - Roscoe, IL	1997	1999			
Raya, Joseph E. - Brown Deer, WS	1999	2000			
Raya, Joseph E. - Omaha, NE	2000	Now			
Hansen, Mark W. - Omaha, NE	1998	Now	Hansen, Elizabeth - Omaha, NE	1998	Now

The undersigned applicant(s) hereby consent(s) to an investigation of his/her background investigation and release present and future records of every kind and description including police records, tax records (State and Federal), and 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 of 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.

  
\_\_\_\_\_  
Signature of Applicant  
Joseph E. Raya

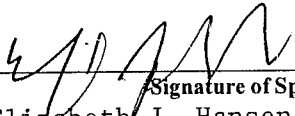
  
\_\_\_\_\_  
Signature of Applicant  
Mark W. Hansen

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Spouse

  
\_\_\_\_\_  
Signature of Spouse  
Elizabeth J. Hansen

\_\_\_\_\_  
Signature of Spouse

\_\_\_\_\_  
Signature of Spouse

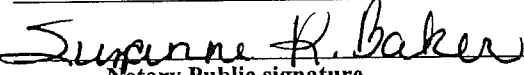
\_\_\_\_\_  
Signature of Spouse

State of Nebraska

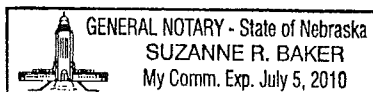
County of Douglas

The foregoing instrument was acknowledged before  
me this 9/18/2008 by

Joseph E. Raya

  
\_\_\_\_\_  
Notary Public signature


Affix Seal Here



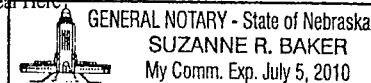
County of Douglas

The foregoing instrument was acknowledged before  
me this 9/18/2008 by

Mark W. Hansen and Elizabeth J. Hansen

  
\_\_\_\_\_  
Notary Public signature

Affix Seal Here



in compliance with the ADA, this manager insert form 3c is available in other formats for persons with disabilities.  
A ten day advance period is required in writing to produce the alternate format.

**MANAGER APPLICATION  
INSERT - FORM 3c**

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.lcc.ne.gov](http://www.lcc.ne.gov)

Office Use

Corporate manager, including their spouse, are required to adhere to the following requirements

- 1) Must be a citizen of the United States
- 2) Must be a Nebraska resident (Chapter 2 – 006)
- 3) Must provide a copy of their certified birth certificate or INS papers
- 4) Must submit their fingerprints (2 cards per person)
- 5) Must be 21 years of age or older
- 6) Applicant may be required to take a training course

**Corporation/LLC information**

✓ Name of Corporation/LLC: PGC Southport, Inc.

**Premise information**

Premise License Number: Applied for


Premise Trade Name/DBA: The Pizza Gourmet Company

✓ Premise Street Address: 12040 McDermott Plaza

City: La Vista State: Nebraska Zip Code: 68128

Premise Phone Number: not yet assigned

**The individual whose name is listed in the president or contact member category on either insert form 3a or 3b must sign their name below.**

✓   
CORPORATE OFFICER SIGNATURE  
(Faxed signatures are acceptable)

Manager's information must be completed below PLEASE PRINT CLEARLY

Gender: ☒ MALE ☐ FEMALE

Last Name: Hansen First Name: Mark MI: W.

Home Address (include PO Box if applicable): 7857 Mary Street

City: Omaha State: Nebraska Zip Code: 68116

Home Phone Number: (402) 880-3977 Business Phone Number: not yet assigned

Social Security Number: \_\_\_\_\_ Drivers License Number & State: \_\_\_\_\_

Date Of Birth: \_\_\_\_\_ Place Of Birth: Omaha, Nebraska

Are you married? If yes, complete spouse's information (Even if a spousal affidavit has been submitted)

☒ YES ☐ NO

Spouse's information

Spouses Last Name: Hansen First Name: Elizabeth  
MI: J.

Social Security Number: \_\_\_\_\_ Drivers License Number & State: \_\_\_\_\_

Date Of Birth: \_\_\_\_\_ Place Of Birth: Omaha, Nebraska

APPLICANT AND SPOUSE MUST LIST RESIDENCE(S) FOR THE PAST 10 YEARS

APPLICANT			SPOUSE		
CITY & STATE		YEAR FROM TO	CITY & STATE		YEAR FROM TO
Omaha, Nebraska		1998 Now	Omaha, Nebraska		1998 Now

MANAGER'S LAST TWO EMPLOYERS

YEAR FROM TO		NAME OF EMPLOYER	NAME OF SUPERVISOR	TELEPHONE NUMBER
10/01	07/05	Home Depot	Ron Scott	(402) 968-6002
07/05	Now	Pizza Gourmet	Joseph E. Raya	(402) 932-8998

Manager and spouse must review and answer the questions below  
PLEASE PRINT CLEARLY

1. READ PARAGRAPH CAREFULLY AND 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.

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2. Have you or your spouse ever been approved or made application for a liquor license in Nebraska or any other state? **IF YES**, list the name of the premise.

☐ YES

☒ NO

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

☒ YES

☐ NO

4. Have you filed the required fingerprint cards and **PROPER FEES** with this application? (The check or money order must be made out to the **Nebraska State Patrol for \$38.00 per person**)

☒ YES

☐ NO

prints enclosed



## PERSONAL OATH AND CONSENT OF INVESTIGATION

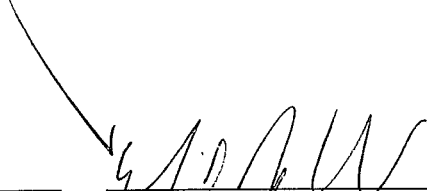
The above individual(s), being first duly sworn upon oath, deposes and states that the undersigned is the applicant and/or spouse of applicant who makes the above and foregoing application that said application has been read and that the contents thereof and all statements contained therein are true. 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, a spousal 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.

  
Signature of Manager Applicant

Mark W. Hansen

  
Signature of Spouse

Elizabeth J. Hansen

State of Nebraska

County of Douglas

County of Douglas

The foregoing instrument was acknowledged before  
me this 9/18/2008 by

Mark W. Hansen

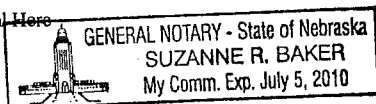
The foregoing instrument was acknowledged before  
me this 9/18/2008 by

Elizabeth J. Hansen

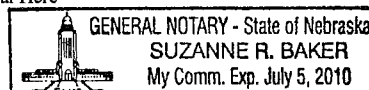
  
Notary Public signature

  
Notary Public signature

Affix Seal Here



Affix Seal Here



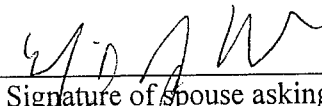
In compliance with the ADA, this manager insert form 3c is available in other formats for persons with disabilities.  
A ten day advance period is required in writing to produce the alternate format.

# SPOUSAL AFFIDAVIT OF NON PARTICIPATION INSERT

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.lcc.ne.gov](http://www.lcc.ne.gov)

Office Use

I acknowledge that I am the spouse of a liquor license holder. My signature below confirms that I will have not have any interest, directly or indirectly in the operation or profit of the business (§53-125(13)) of the Liquor Control Act. I will not tend bar, make sales, serve patrons, stock shelves, write checks, sign invoices or represent myself as the owner or in any way participate in the day to day operations of this business in any capacity. I understand my fingerprint will not be required; however, I am obligated to sign and disclose any information on all applications needed to process this application.



Signature of spouse asking for waiver  
(Spouse of individual listed below)

Elizabeth J. Hansen

Printed name of spouse asking for waiver

State of Nebraska

County of Douglas

September 18, 2008

date

The foregoing instrument was acknowledged before me this

Elizabeth J. Hansen

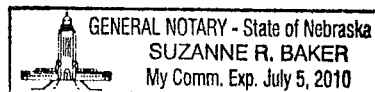
by

name of person acknowledged

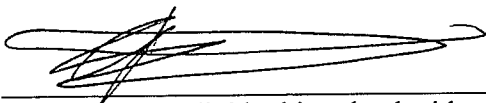


Notary Public signature

Affix Seal



I acknowledge that I am the spouse of the above listed individual. I understand that my spouse and I are responsible for compliance with the conditions set out above. If it is determined that the above individual has violated (§53-125(13)) the Commission may cancel or revoke the liquor license.



Signature of individual involved with application  
(Spouse of individual listed above)

Mark W. Hansen

Printed name of applying individual

State of Nebraska

County of Douglas

September 18, 2008


date

The foregoing instrument was acknowledged before me this

Mark W. Hansen

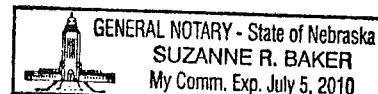
by

name of person acknowledged



Notary Public signature

Affix Seal



In compliance with the ADA, this spousal affidavit of non participation 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  
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.lcc.ne.gov](http://www.lcc.ne.gov)

Office Use

Officers, directors and stockholders holding over 25%, including spouses, are required to adhere to the following requirements

- 1) The president and stockholders holding over 25% and their spouse (if applicable) must submit their fingerprints (2 cards per person)
- 2) All officers, directors and stockholders holding over 25 % and their spouse (if applicable) must sign the signature page of the Application for License form (Even if a spousal affidavit has been submitted)

**Attach copy of Articles of Incorporation (Articles must show barcode receipt by Secretary of States Office)**

Name of Registered Agent: Joseph E. Rava

**Name of Corporation that will hold license as listed on the Articles**

PGC Southport, Inc.

Corporation Address: 12040 McDermott Plaza

City: La Vista State: Nebraska Zip Code: 68128

Corporation Phone Number: (402) 932-8998 Fax Number: \_\_\_\_\_

Total Number of Corporation Shares Issued: 6,666


**Name and notarized signature of president (Information of president must be listed on following page)**

Last Name: Rava First Name: Joseph MI: E.

Home Address: 6063 North 146th Street City: Omaha

State: Nebraska Zip Code: 68116 Home Phone Number: (402) 614-1993

State of Nebraska  
County of Douglas

  
Signature of president


The foregoing instrument was acknowledged before me this

September 18, 2008  
date

by Joseph E. Rava

name of person acknowledged

  
Notary Public signature

Affix Seal Here  GENERAL NOTARY - State of Nebraska  
SUZANNE R. BAKER  
My Comm. Exp. July 5, 2010

Is the applying Corporation controlled by another Corporation?

☐ YES

☒ NO

✓ If yes, provide the name of corporation and supply an organizational chart

---

Indicate the Corporation's tax year with the IRS (Example January through December)

✓ Starting Date: January 1 Ending Date: December 31

---

Is this a Non-Profit Corporation?

☐ YES

☒ NO

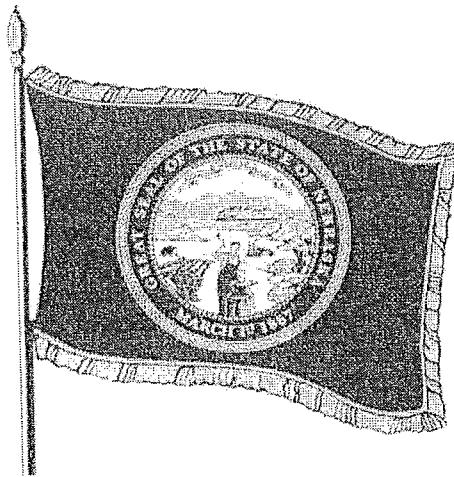
✓ If yes, provide the Federal ID #.

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In compliance with the ADA, this corporation insert form 3a is available in other formats for persons with disabilities.  
A ten day advance period is requested in writing to produce the alternate format.

STATE OF

NEBRASKA



United States of America,  
State of Nebraska } ss.

Department of State  
Lincoln, Nebraska

I, John A. Gale, Secretary of State of Nebraska do hereby certify;

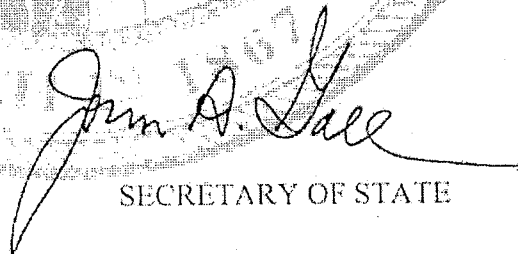
the attached is a true and correct copy of Articles of Incorporation of

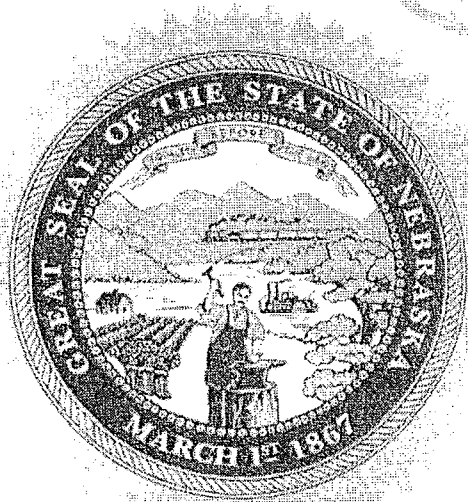
PGC SOUTHPORT, INC.

with its registered office located in OMAHA, Nebraska, as filed in this  
office on September 16, 2008.

In Testimony Whereof,

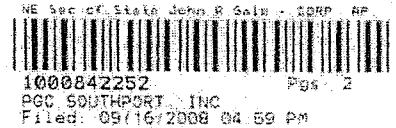
I have hereunto set my hand and  
affixed the Great Seal of the State of  
Nebraska on September 16, 2008.

  
SECRETARY OF STATE



This certificate is not to be construed as an endorsement,  
recommendation, or notice of approval of the entity's  
financial condition or business activities and practices.

**ARTICLES OF INCORPORATION  
OF  
PGC SOUTHPORT, INC.**



The undersigned natural person of majority age, acting as the incorporator of a corporation under the Nebraska Business Corporation Act, adopts the following Articles of Incorporation for such corporation:

**ARTICLE I**

The name of the corporation is PGC Southport, Inc.

**ARTICLE II**

The corporation will have perpetual existence.

**ARTICLE III**

The purposes for which the corporation is organized are to transact fully all lawful business for which a corporation may be incorporated under the Nebraska Business Corporation Act, as amended from time to time.

**ARTICLE IV**

The aggregate number of shares which the corporation will have authority to issue is 10,000 shares, having a par value of \$1.00 each, all of which will be common stock, will have unlimited voting rights and will be entitled to receive the net assets of the corporation upon dissolution. All transfers of the shares of the corporation will be made in accordance with the provisions of the by-laws of the corporation.

**ARTICLE V**

No shareholder of the corporation will have any preemptive right to purchase, subscribe for or otherwise acquire shares or other securities of the corporation, whether now or hereafter authorized unissued or issued.

**ARTICLE VI**

6.1 To the extent permitted by law, the corporation will indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including any action or suit by or in the right of the corporation to procure a judgment in its favor, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation,

partnership, joint venture or other enterprise or as a trustee, officer, employee or agent of an employee benefit plan, against expenses, including attorney fees, and, except for actions by or in the right of the corporation, judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful.

6.2 To the extent permitted by law, the corporation will have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability.

6.3 The indemnity provided for in this Article VI shall not be deemed to be exclusive of any other rights to which those indemnified may otherwise be entitled, nor shall the provisions of this Article VI be deemed to prohibit the corporation from extending its indemnification to cover other persons or activities to the extent permitted by law or pursuant to any provision in the by-laws of the corporation.

#### ARTICLE VII

The corporation reserves the right to amend or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter permitted by law. All rights conferred upon the shareholders of the corporation are granted subject to this reservation.


#### ARTICLE VIII

The street address of the initial registered office of the corporation is 11840 Miracle Hills Drive, Suite 200, Omaha, Douglas County, Nebraska 68154-4475. The name of the initial registered agent at such address is John M. Gilroy.

#### ARTICLE IX

The name and street address of the incorporator are as follows: Joseph E. Raya, 15475 Ruggles Street, Suite 105, Omaha, Nebraska 68116-8839.

Dated: September 15, 2008

  
\_\_\_\_\_  
Joseph E. Raya, Incorporator

#14

## ASSIGNMENT AND ASSUMPTION AGREEMENT

### PARTIES:

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment Agreement"), dated as of September 18, 2008, is made and entered into by and between The Pizza Gourmet Company ("Assignor"), a Nebraska corporation, as assignor, and PGC Southport, Inc. ("Assignee"), a Nebraska corporation as assignee.

### RECITALS:

This Agreement is made with reference to the following facts and objectives:

A. Assignor entered into that certain Southport Center Lease (the "Lease"), dated December 31, 2008, by and between John L. Hoich ("Hoich"), as landlord, and Assignor, as tenant, with respect to premises located at 12040 McDermott Plaza, Suite 300-311, La Vista, Nebraska (the "Premises").

B. The obligations of Assignor under the Lease have been personally guaranteed by Joseph E. Raya and Mark W. Hansen, shareholders of Assignor.

C. Hoich and Assignor entered into that certain Addendum to Lease (the "Addendum"), dated as of August 1, 2008, approving the location of an outside patio adjacent to the Premises.

D. Assignor desires to assign to Assignee, and Assignee is willing to assume, all of the obligations of Assignor under the Lease.

### AGREEMENT:

NOW, THEREFORE, in consideration of the recitals and the mutual agreements, provisions and covenants herein contained, Seller and Purchaser hereby agree as follows:

#### SECTION 1 ASSIGNMENT

Assignor hereby sells, assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Lease and the Addendum.

#### SECTION 2 ASSUMPTION

Assignee hereby assumes and agrees to pay, perform and discharge, as and when due, all of the obligations of Assignor under the Lease and the Addendum.

#### SECTION 3 FURTHER ASSURANCES

Assignor and Assignee each agree to cooperate with the other, and to execute such other and further documentation and take any further action which may be necessary or convenient to effect the transfer of the Lease to Assignee.



#14

SECTION 4 MISCELLANEOUS

4.1 This Assignment Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, among the parties with respect to the subject matter of this Assignment Agreement.

4.2 This Assignment Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Nebraska applicable to contracts made and performed in Nebraska.

4.3 This Assignment Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Except with the written consent of the other parties hereto, no person shall take any act which would allow any right hereunder to be assigned or held by any other person.

4.4 The headings of the various sections and subsections herein are inserted merely as a matter of convenience and for reference and shall not be construed as in any manner defining, limiting or describing the scope or intent of the particular sections to which they refer, or as affecting the meaning or construction of the language in the body of such sections.

4.5 Words of any gender used in this Assignment Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

4.6 This Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.


4.7 All of the recitals are incorporated with and made a part of this Assignment Agreement.

IN WITNESS WHEREOF, this Assignment Agreement has been duly executed by the parties hereto, at the place and date specified immediately adjacent to their respective names.

Executed at Omaha, Nebraska,  
on September 18, 2008.

THE PIZZA GOURMET COMPANY,  
a Nebraska corporation


By:

  
Joseph E. Raya, President

Executed at Omaha, Nebraska,  
on September 18, 2008.

PGC SOUTHPORT, INC.,  
a Nebraska corporation

By:

  
Joseph E. Raya, President

RECEIVED

Southport Center

SEP 05 2009

Lease

NEBRASKA LIQUOR  
CONTROL COMMISSION

THIS LEASE (this "Lease") is made and entered into this 31<sup>st</sup> day of December 2007, by and between John L. Hoich, successors and/or assigns ("Landlord") and The Pizza Gourmet Company ("Tenant"), a Nebraska corporation, upon the following terms and conditions:

ARTICLE I

FUNDAMENTAL LEASE PROVISIONS

Each of the following subparagraphs is individually referred to in this Lease as a "Fundamental Lease Provision" and is contained in this paragraph for convenience. Each reference in this Lease to a Fundamental Lease Provision shall be construed to incorporate all of the terms of such Fundamental Lease Provision. In the event of any conflict between a Fundamental Lease Provision and any other provision of this Lease, such other provision shall govern.

- (a) Landlord: John L. Hoich or Assigns
- (b) Landlord's Address for Notices and Rent Payments: John L. Hoich  
c/o Coldwell Banker Commercial  
World Group  
780 North 114<sup>th</sup> Street  
Omaha, NE 68154
- (c) Tenant: The Pizza Gourmet Company, a Nebraska corporation
- (d) Tenant's Address for Notices: 15475 Ruggles Street, Suite 105  
Omaha, Nebraska 68116-8839
- (e) Tenant's Trade Name: Pizza Gourmet
- (f) Address of Premises: 12040 McDermott Plaza, Suite 300-311, La Vista, NE 68128 ("Premises")
- (g) Name and Address of Shopping Center Development: Southport Center, 12112 McDermott Plaza, Legal Description: Lots 4-5, Southport East Replat Six, La Vista, Sarpy County, Nebraska
- (h) Approximate Number of Square Feet in Premises: 4,815

- (i) Number of Years in Lease Term: Seven (7) Years and Four (4) Months
- (j) Annual Base Rent Per Square Foot: The initial Base Rent (on a NNN basis) for the first year of the Lease will be \$16.00 per square foot per annum. The Base Rent (on a NNN basis) for the second year of the Lease will be \$19.75 per square foot per annum. The base rental rate on a NNN basis will increase two and one-half percent (2.5 %) each subsequent year including the option periods, if any.
- (k) Initial Annual Common Areas Charge: \$2.10 per square foot
- (l) Initial Insurance Contribution: \$0.26 per square foot
- (m) Initial Tax Contribution: \$2.25 per square foot
- (n) Permitted Use of Premises: Pizza Restaurant serving beer, wine and liquor providing sales of alcoholic beverages account for no more than 40% of total sales.
- (o) Security Deposit: \$5,000.00
- (p) Landlord shall turnover the Premises having substantially completed all of Landlord's Improvements, defined on attached **Exhibit "C", Landlord's Work**. Rent commencement shall be the earlier of 1) One Hundred Fifty (150) days after substantial completion of Landlord's Work and delivery of the Premises to Tenant, or 2) Forty-Five (45) days after Tenant opens for business. Approximate Rent Commencement date is December 1, 2008. (B) 2/14
- (q) Tenant Fraction: 4,815/ 43,357 (11.11%)
- (r) Approximate Number of Square Feet in the Shopping Center: 43,357 in two buildings \$120,375<sup>00</sup>
- (s) Tenant's Allowance: The allowance in the amount of up to \$25.00 per square foot of the Premises to be paid by Landlord to Tenant for the construction and completion of Tenant's Work and Tenant's Improvements, as defined in Article XXXIV, Section 34.1, in accordance with the provisions of Section 34.2.

**Size of Premises:** Landlord and Tenant acknowledge that the actual number of square feet in the Premises and in the Shopping Center will be determined after the floor plans of the Premises and Shopping Center are finalized by the Shopping Center's architect. When determined, the architect will deliver notice of the number of square feet in (1) the Premises and (2) in the Shopping Center. If the number of square feet in the Premises in Section (h), above or if the number of square feet in the Shopping Center in Section (r) above are different than the

numbers determined by the architect, the figures in Sections (h), (j), (o), (q) and (r) will change according to the architect's figures.

**Payment of Operating Expenses:** Payment of Tenant's Tax Contribution, Tenant's Insurance Contribution and Tenant's Common Area Charge will commence the earlier of 1) One Hundred Twenty (120) days after substantial completion of Landlord's Work and delivery of the Premises to Tenant, or 2) Tenant opening for business. Tenant will place gas and electric services in Tenant's name upon delivery of the Premises.

## **ARTICLE II**

### **PREMISES**

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises located in the spaces shown in red on Exhibit A (the "Premises"). The address of the Premises is set forth as a Fundamental Lease Provision in Article I, subsection (f). As indicated on **Exhibit "A"**, the Premises will be a part of the "Shopping Center," which is identified as a Fundamental Lease Provision in Article I, subparagraph (g) and shown on **Exhibit "B"**. The Premises contains the approximate number of square feet of floor space that is set out as a Fundamental Lease Provision in Article I, subparagraph (h). The use and occupation by Tenant of the Premises shall include the irrevocable license for the term (including any renewals) of this Lease to use, in common with others entitled thereto, the common areas of the Shopping Center. "Common Areas" shall include parking areas, loading facilities, truck service-ways, service corridors, landscaped areas, streets, sidewalks, driveways and such other areas as may be so designated from time to time by Landlord for the common use of tenants in the Shopping Center, subject, however, to the terms and conditions of this Lease and such reasonable rules and regulations as Landlord shall adopt from time to time in connection therewith.

## **ARTICLE III**

### **TERM**

This Lease shall be for a term consisting of the number of years set forth as a Fundamental Lease Provision in Article I, subparagraph (i), unless sooner terminated pursuant to the provisions of this lease. The commencement date of the term of this Lease (the "Commencement Date") shall be that date set forth as a Fundamental Lease Provision in Article I, subparagraph (p). If the Commencement Date occurs on a day other than the first day of a calendar month, or if the expiration occurs on a day other than the last day of a calendar month, then the monthly rent for such fractional month will be prorated on a daily basis. Possession shall be deemed to occur on the date that the Premises are Ready for Occupancy. Earlier or later possession shall not change the termination date of this Lease. This Lease shall not be void or voidable in the event of a late delivery of possession by Landlord, nor shall Landlord be liable to Tenant for any resulting loss or damage.

## ARTICLE IV

### USE OF PREMISES

The Premises are leased to Tenant, and are to be used by Tenant, for the permitted use set forth as a Fundamental Lease Provision in Article I, subparagraph (n) and for no other purpose. Tenant agrees to use the Premises in such a manner as to not interfere with the rights of other tenants in the Shopping Center, to comply with all applicable governmental laws, ordinances and regulations in connection with its use of the Premises, to keep the Premises in a clean and sanitary condition, to use all reasonable precaution to prevent waste, damage or injury to the Premises.

## ARTICLE V

### RENT

Section 5.1. **Base Rent.** Tenant agrees to pay rent to Landlord at the address set forth as a Fundamental Lease Provision in Article I, subparagraph (b), or at any other place Landlord may designate in writing, in lawful money of the United States, in monthly installments in advance, on the first date of each month, as follows:

For the period from December 1, 2008 to November 30, 2009, \$6,420.00 per month  
For the period from December 1, 2009 to November 30, 2010, \$7,924.69 per month  
For the period from December 1, 2010 to November 30, 2011, \$8,122.80 per month  
For the period from December 1, 2011 to November 30, 2012, \$8,325.87 per month  
For the period from December 1, 2012 to November 30, 2013, \$8,534.02 per month  
For the period from December 1, 2013 to November 30, 2014, \$8,747.37 per month  
For the period from December 1, 2014 to October 31, 2015, \$8,966.06 per month

Section 5.2. **Payment of Rent.** Tenant agrees to pay the Base Rent as and when due, together with all adjustments and all other amounts required to be paid by Tenant under this Lease.

In the event of nonpayment of any amounts due under this Lease, whether or not designated as rent, Landlord shall have all the rights and remedies provided in this Lease or by law for failure to pay rent.

Section 5.3. **Late Charge.** If Tenant fails to pay the Base Rent together with Tenant's share of the Common Area Charges (as defined below) and all other amounts required to be paid by Tenant under this Lease, on or before the fifth day after such payments are due, Tenant agrees to pay Landlord a late charge equal to ten percent (10%) of the amount due per month.

Section 5.4. **Security Deposit.** As partial consideration for the execution of this Lease, Tenant has delivered to Landlord the sum set forth as a Fundamental Lease Provision in Article I, subparagraph (o) as a Security Deposit. The Security Deposit will be returned to Tenant at the expiration of this Lease if Tenant has fully complied with all covenants and conditions of this Lease.

Section 5.5. *Tenant Fraction.* That fraction whose numerator is the total number of square feet of floor space contained in the Premises and whose denominator is the total number of square feet of leasable floor space contained in all of the buildings in the Shopping Center (the "Tenant Fraction") may be adjusted in the event of addition or deletion to the Shopping Center.

## ARTICLE VI

### REAL ESTATE TAXES AND ASSESSMENTS

*Section 6.1.* Landlord agrees to pay, prior to delinquency, the general real estate taxes and installments of special taxes, assessments, or levies of any kind however denominated payable during the term of this Lease (collectively referred to in this paragraph as the "Taxes") on the land and improvements constituting the Shopping Center, provided that Tenant shall pay to Landlord for each calendar year, as additional rent, the Tenant Fraction of the taxes actually paid by Landlord during such calendar year, regardless of the tax period to which such Taxes relate (the "Tenant's Tax Contribution"). Tenant Fraction is set forth as a Fundamental Lease Provision in Article I, subparagraph (q). If any portion of the Shopping Center is assessed for real estate tax purposes as a separate parcel and the Taxes on such separate parcel are payable by a tenant or owner other than Landlord, then such Taxes shall not be included in the Taxes for purposes of Tenant's Tax Contribution under this Article VI and in such event the denominator of Tenant Fraction for purposes of this Article shall be reduced by the number of square feet of leasable floor space contained in the building or buildings located on such separate parcel.

*Section 6.2.* Tenant shall pay to Landlord, as additional rent, at the same time and in the same manner as provided for payment of Base Rent in Article V hereof, an amount equal to one-twelfth (1/12) of Tenant's estimated Tax Contribution for the current calendar year, as determined annually and communicated to Tenant in writing by Landlord. Within 30 days after the end of each Lease year, Tenant shall pay to Landlord any unpaid portion of Tenant's Tax Contribution for such calendar year or shall be entitled to a credit from Landlord for any excess Tax Contribution actually paid by Tenant for such calendar year. Tenant's Tax Contribution shall be prorated for any period which Tenant occupies the Premises for only part of the calendar year. Tenant's estimated Tax Contribution for the first calendar year is set forth as a Fundamental Lease Provision in Article I, subparagraph (m). Tenant agrees to pay when due all property taxes of any kind which during the term of this Lease may be assessed against any personal property, fixtures, or leasehold improvements of Tenant at any time located in or about the Premises, as well as any increase in the Taxes resulting from any improvements or alterations made to the Premises by Tenant pursuant to Article XII.

## ARTICLE VII

### FIRE AND EXTENDED COVERAGE

*Section 7.1.* Landlord agrees to purchase and maintain during the term of this Lease fire insurance with an extended coverage endorsement, including, but not limited to, windstorm and tornado damage of the Premises, with a responsible insurance company or companies authorized to do business in the State of Nebraska. Such insurance shall be obtained in the amount of the replacement value of the Shopping Center excluding trade fixtures.

*Section 7.2.* Tenant shall pay to Landlord for each calendar year, as additional rent, the Tenant Fraction of the premiums actually paid by Landlord for the insurance coverage referred to in Section 7.1 (the "Tenant's Insurance Contribution"). Tenant Fraction is set forth as a Fundamental Lease Provision in Article I, subparagraph (q). If any building in the Shopping Center is separately insured against physical loss or damage and the premiums for such separate insurance are payable by a tenant or owner other than Landlord, then such insurance premiums shall not be included in the premiums upon which Tenant's Insurance Contribution is based and in such event the denominator of Tenant Fraction for purposes of allocation of casualty insurance shall be reduced by the number of square feet of leasable floor space contained in the building or buildings which are covered by such separate insurance.

*Section 7.3.* Tenant shall pay to Landlord, as additional rent, at the same time and in the same manner as provided for payment of Base Rent in Article V hereof, an amount equal to one-twelfth (1/12) of Tenant's estimated Insurance Contribution for such calendar year as determined annually and communicated to Tenant in writing by Landlord. Within 30 days after the end of each calendar year, Tenant shall pay to Landlord any unpaid portion of its actual Insurance Contribution for such calendar year or shall be entitled to a credit from Landlord for any excess Insurance Contribution actually paid by Tenant for such calendar year. Tenant's estimated Insurance Contribution for the first calendar year is set forth as the Fundamental Lease Provision in Article I, subparagraph (l). Tenant's Insurance Contribution shall be prorated for any period which Tenant occupies the Premises for only part of the calendar year.

## ARTICLE VIII

### COMMON AREA CHARGES

*Section 8.1.* Except as otherwise provided in this Lease, Landlord shall operate and maintain the Common Areas during the term of this Lease in good order and repair in accordance with reasonable standards of shopping center cleanliness and maintenance, provided that Tenant at its expense shall keep the Common Areas free of litter, trash and debris generated by or resulting from the operation of Tenant's business in and about the Premises. Tenant shall pay to Landlord for each calendar year, as additional rent, the Tenant Fraction of the costs paid, incurred or accrued by Landlord for operating and maintaining the Common Areas (the "Tenant's Common

Area Charge"). Tenant Fraction is set forth as a Fundamental Lease Provision in Article I, subparagraph (q).

**Section 8.2.** Tenant shall pay to Landlord, as additional rent, at the same time and in the same manner as provided for payment of Base Rent in Section 5.1 hereof, an amount equal to one-twelfth (1/12) of Tenant's estimated Common Areas Charge for the current calendar year, as determined annually and communicated to Tenant in writing by Landlord. Tenant's estimated Common Areas Charge for the first calendar year is set forth as a Fundamental Lease Provision in Article I, subparagraph (k). Within 30 days after the end of each calendar year, Tenant shall pay to Landlord any unpaid portion of its actual Common Areas Charge for such calendar year or shall be entitled to a credit from Landlord for any excess Common Areas Charge actually paid by Tenant for such calendar year. If Tenant shall occupy the Premises only during part of a calendar year, Tenant's Common Areas Charge for such partial calendar year shall be prorated for such partial calendar year. Landlord may change the amount to be paid by Tenant at any time upon written notice to Tenant. Landlord agrees to furnish Tenant within a reasonable amount of time after the end of each calendar year, with a detailed breakdown of all Common Area Charges for the Shopping Center and Tenant's proportionate share thereof. Landlord shall also furnish Tenant, from time to time, with such information substantiating the Common Area Charges as Tenant may reasonably request. Tenant shall also have the right, at any time from time to time upon request, during normal business hours, at its expense, to audit Landlord's books and records concerning such charges.

**Section 8.3.** The costs of operating and maintaining Common Areas shall include, but not be limited to, lighting, electricity, heating and air conditioning for any enclosed portions of the Common Areas; professional property management services; water; cleaning, sweeping and other janitorial services; trash removal and maintenance of refuse receptacles; snow and ice removal; pollution control; repairing, repainting and re-striping the parking lot; landscaping of all outdoor common areas and landscape maintenance; sewer charges; maintaining markers and signs; seasonal holiday decorations; music to common areas; removing trash from the common areas; wages, payroll taxes, worker's compensation insurance and other benefits paid to, or on behalf of, employees; parking lot liability insurance; licenses and permit fees; policing and security services; fire protection; traffic direction; repairs, replacements, depreciation and maintenance of equipment or rent paid for leasing such equipment; maintenance supplies; personal property taxes; and other everyday maintenance expenses.

## **ARTICLE IX**

### **CONTROL OF COMMON AREAS BY LANDLORD**

Landlord reserves the following rights with respect to the common areas of the Shopping Center:

- (a) to establish reasonable rules and regulations for the use of the common areas, including, without limitation, the delivery of goods and the disposal of trash;



(b) to use or permit the nonexclusive use of the common areas by others to whom Landlord may grant or have granted such reasonable rights in such manner as Landlord may, from time to time, reasonably designate, including, but not limited to, sales and special promotional events;

(c) to temporarily close all or any portion of the common areas, to make repairs or changes in accordance with this Lease, to prevent a dedication of the common areas or the accrual of any rights to any person or to the public;

(d) to change the layout of such common areas, including the right to add to or subtract from their shape and size, whether by the addition of building improvements or otherwise; provided, however, that in all events, such construction or change shall not obstruct or materially and adversely change the ingress or egress to the Premises, impair the visibility of the Premises or otherwise unreasonably interfere with Tenant's use and enjoyment of the Premises;

(e) to enter into operating, maintenance or similar agreements with respect to the common areas; and

(f) to do such other acts in and to the common areas as in Landlord's reasonable judgment may be desirable; provided, however, that such rights shall be exercised in such manner as not to unreasonably interfere with Tenant's conduct of its business in the Premises.

## **ARTICLE X**

### **UTILITIES**

Upon Tenant's possession of the Premises, Tenant shall contract, in its own name, for and pay when due all charges for connection or use of water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Premises during the term of this Lease. Under no circumstances shall Landlord be responsible for any interruption of any utility service.

## **ARTICLE XI**

### **CONSTRUCTION AND ACCEPTANCE OF PREMISES**

Landlord shall deliver to Tenant possession of the Premises when they are ready for occupancy. The term "Ready for Occupancy" shall mean that Landlord's work to the Premises has been substantially completed to the extent reasonably necessary for commencement of any work required by Tenant with only (i) minor portions of Landlord's work or (ii) any portion of Landlord's work, which is dependent upon the progress or completion of Tenant's work,

remaining to be accomplished. All construction or improvements by Tenant (the "Tenant's Work") must be approved by Landlord in writing prior to commencement of construction.

Landlord shall notify Tenant of the date on which the Premises are Ready for Occupancy, and thereon Tenant shall accept delivery of the Premises, enter upon them, promptly and diligently install its furniture, fixtures and equipment and perform Tenant's Work contemporaneously with Landlord's remaining work, if any.

Landlord shall not be responsible nor have any liability whatsoever at any time for loss or damage to Tenant's Work or to fixtures, equipment or other property of Tenant installed or placed by Tenant on the Premises, except when caused by Landlord's gross negligence or intentional misconduct. Any occupancy by Tenant prior to the Commencement Date, even though Base Rent free, shall in all other respects be subject to this Lease. By occupying the Premises as a Tenant or to complete Tenant's Work and install fixtures, facilities or equipment, Tenant shall be deemed conclusively to have accepted the same and to have acknowledged that the Premises are in an acceptable condition, except as to incomplete or defective items of Landlord's work then specified in writing by Tenant. Landlord shall have a reasonable time following such notification within which to correct same. In no event shall Landlord be liable to Tenant for latent defects. In the event of any dispute, the certificate of Landlord's architect or engineer shall be conclusive that the Premises are in condition required by this Lease and are "Ready for Occupancy."

## ARTICLE XII

### ALTERATIONS

*Section 12.1.* Tenant shall not, without Landlord's prior written consent which will not be unreasonably withheld, either make, or cause to be made, any alterations, additions or improvements in or to the Premises or any part thereof (structural or otherwise), including, but not limited to, the foundations, the roof and any signs, shades or awnings located outside of the Premises.

*Section 12.2.* Tenant shall promptly pay its contractors, subcontractors and materialmen for all work done or performed at the Premises by or on behalf of Tenant, so as to prevent the assertion or imposition of any lien or claim upon or against the Shopping Center, the Premises or Landlord and should any such lien or claim be asserted or filed, Tenant shall bond against or discharge the same within 10 days after Tenant receives notice thereof. Landlord may satisfy and remove any such lien or claim by paying the full amount claimed or otherwise, without investigating the validity thereof, if Tenant fails to comply with the foregoing provision. Tenant shall reimburse Landlord, including Landlord's reasonable attorneys' fees, costs and expenses, together with interest at the rate of 15% per annum from the date of Landlord's payment until repaid by Tenant. In no event shall Tenant have any authority whatsoever to enter into any agreement on behalf of Landlord which could result in the imposition of any lien or claim against the Premises or the Shopping Center.

RECEIVED

ARTICLE XIII

SEP 05 2003

SIGNS

NEBRASKA LIQUOR  
CONTROL COMMISSION

Tenant will not, without Landlord's prior written consent, place or suffer to be placed or maintained on any exterior door, wall or window of the Premises, any sign, awning or canopy or advertising matter or other thing of any kind, and will not, without such consent, place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises.

Landlord's consent may be given or withheld in a manner so as to assure reasonable uniformity throughout the Shopping Center and to maintain a first-class appearance of the same. All signs, awnings, canopies, decorations, lettering, advertising matter or other things so approved by Landlord and installed by Tenant shall at all times be maintained by Tenant, at its expense, in good condition and repair. Landlord's consent shall be deemed given only when this Lease is amended by an addendum executed by the parties hereto specifically describing the sign, awning, canopy or advertising matter permitted. Please refer to Exhibit "E", Tenant Sign Criteria, attached to and made a part of this Lease. Notwithstanding the foregoing, Tenant shall have the right to install one neon "open" sign and up to five other neon signs in the windows of the Premises advertising products sold by Tenant in accordance with all local governmental codes and Tenant's sign budget.

ARTICLE XIV

ASSIGNMENT OR SUBLEASE

Tenant shall not assign this Lease or sublet the whole or any part of the Premises, transfer this Lease by operation of law or otherwise or permit any other person except agents and employees of Tenant to occupy the Premises, or any part thereof, without the prior written consent of Landlord. Landlord may consider the following in determining whether to withhold consent: (a) financial responsibility of the new tenant, (b) identity and business character of the new tenant and (c) nature and legality of the proposed use of the Premises. Notwithstanding the foregoing, prior to the Commencement Date, Tenant shall have the right to assign this Lease to any corporation in which the individual guarantors of this Lease are majority shareholders, to any limited partnership in which the individual guarantors of this Lease are general partners, either directly or through another entity, or to a limited liability company in which the individual guarantors of this Lease own a majority of the interests.

Landlord shall have the right to assign its interest under this Lease or the rent reserved hereunder.

## **ARTICLE XV**

### **REPAIRS**

Landlord agrees to maintain in good condition and repair as necessary the foundations, roof, exterior portions of the outside walls, gutters and downspouts of the Shopping Center, which shall be maintained by Landlord at its cost, except when the condition requiring such repairs shall result from the negligence or willful act of Tenant, its officers, employees, invitees, servants or agents.

Tenant agrees that it will make, at its own cost and expense, all repairs and replacements to the Premises not required to be made by Landlord, including, but not limited to, all interior and exterior doors, door frames, windows, plate glass and the heating, ventilation & air conditioning (HVAC) systems, plumbing and electrical systems servicing the Premises. Tenant agrees to do all redecorating, remodeling, alteration and painting required by it during the term of the Lease at its own cost and expense, to pay for any repairs to the Premises or the Shopping Center made necessary by any negligence or willful act of Tenant or any of its officers, invitees, servants, agents or employees, and to maintain the Premises in a safe, clean, neat and sanitary condition. Tenant shall be entitled to no compensation for inconvenience, injury or loss of business arising from the making of any repairs by Landlord, Tenant or other tenants to the Premises or the Shopping Center, regardless of under which Article of this Lease such repairs are made. In the event of an emergency or in the event Tenant fails within a reasonably practicable time period after written notice from Landlord as to the need for such repairs to make such repairs for which Tenant is responsible under this Lease, Landlord may make such repairs and, upon completion thereof, Tenant shall forthwith pay, as additional rent, Landlord's actual and reasonable costs for making such repairs or replacements, together with interest upon such sums as shall be advanced by Landlord from the date of advancement at the rate of 15% per annum until reimbursed by Tenant.

## **ARTICLE XVI**

### **CONDITION OF PREMISES**

Except as provided herein, Tenant agrees that no promises, representations, statements or warranties have been made on behalf of Landlord to Tenant respecting the condition of the Premises or the manner of operating the buildings or the making of any repairs to the Premises. Tenant shall, at the termination of this Lease, by lapse of time or otherwise, remove all of Tenant's property in accordance with Article XXVII below and surrender the Premises to Landlord in as good condition as when Tenant took possession, normal wear excepted.

## **ARTICLE XVII**

## PERSONAL PROPERTY AT RISK OF TENANT

All personal property and trade fixtures in the Premises shall be at the risk of Tenant only. Landlord shall not be liable for any damage to any property or trade fixtures of Tenant or its agents or employees in the Premises caused by any casualty, steam, electricity, sewage, gas or odors or from water, rain or snow which may leak into, issue or flow into the Premises from any part of the Shopping Center or from any other place, or for any damage done to Tenant's property in moving same to or from the Shopping Center or the Premises. Tenant shall give Landlord or its agents, prompt written notice of any damage to or defects in water pipes, sewer, electrical, gas or warming or cooling apparatus in the Premises.

## ARTICLE XVIII

### LANDLORD'S RESERVED RIGHTS

Without notice to Tenant, without liability to Tenant for damage or injury to property, person or business and without effecting an eviction of Tenant or a disturbance of Tenant's use or giving rise to any claim for set off or abatement of rent, Landlord and its agents shall have the right to:

- (a) change the name or street address of the Shopping Center;
- (b) install and maintain signs on the Shopping Center;
- (c) have access to all mail chutes according to the rules of the United States Post Office Department;
- (d) at reasonable times, to decorate and to make, at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to the Premises (provided that the same do not impair Tenant's improvements to the premises), the Shopping Center or part thereof, and any adjacent building, land, street or alley, and during such operations to take into and through the Premises or any part of the Shopping Center all materials required, and to temporarily close or suspend operation of entrances, doors, corridors or other facilities to do so;
- (e) possess passkeys to the Premises;
- (f) show the Premises to prospective Tenants at reasonable times during the six-month period prior to expiration of the term of this Lease and exhibit "For Rent" signs thereon; and
- (g) take any and all reasonable measures, including inspections or the making of repairs, alterations and additions and improvements to the Premises or to the Shopping

Center, which Landlord deems necessary or desirable for the safety, protection, operation or preservation of the Premises or the Shopping Center.

## **ARTICLE XIX**

### **ACCESS BY LANDLORD**

Landlord or Landlord's agents shall have the right to enter the Premises at all reasonable times upon reasonable advance notice to Tenant (except in cases of emergency) to examine the same and to show them to prospective purchasers and to make such repairs, alterations, improvements or additions as permitted under this Lease, provided that Landlord shall not thereby unreasonably interfere with the conduct of Tenant's business.

## **ARTICLE XX**

### **INSURANCE**

Tenant shall not use or occupy the Premises or any part thereof in any manner which could invalidate any policies of insurance now or hereafter placed on the Shopping Center or increase the risks covered by insurance on the Shopping Center or necessitate additional insurance premiums or policies of insurance, even if such use may be in furtherance of Tenant's business purposes. In the event any policies of insurance are invalidated by acts or omissions of Tenant, Landlord shall have the right to terminate this Lease or, at Landlord's option, to charge Tenant for extra insurance premiums required on the Shopping Center on account of the increased risk caused by Tenant's use and occupancy of the Premises. Each party hereby waives all claims for recovery from the other for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such policies. However, this waiver shall apply only when permitted by applicable policies of insurance.

## **ARTICLE XXI**

### **INDEMNITY**

Tenant shall indemnify, hold harmless and defend Landlord from and against, and Landlord shall not be liable to Tenant on account of, any and all costs, expenses, liabilities, losses, damages, suits, actions, fines, penalties, demands or claims of any kind, including reasonable attorneys' fees, asserted by or on behalf of any person, entity or governmental authority arising out of or in any way connected with (a) a failure by Tenant to perform any of the agreements, terms or conditions of this Lease required to be performed by Tenant; (b) a failure by Tenant to comply with any laws, statutes, ordinances, regulations or orders of any governmental authority; (c) any accident, death or personal injury, or damage to or loss or theft of property arising from, related to or connected with the conduct and operation of Tenant's business in the Premises, or arising out of and connected with the use and occupancy of sidewalks and other common areas by Tenant which shall occur on or about the Premises or the Shopping Center, except as the same

may be the result of the gross negligence or intentional misconduct of Landlord, its employees or agents; or any risks associated with any so-called "dram-shop" liability.

## **ARTICLE XXII**

### **LIABILITY INSURANCE**

Tenant agrees to procure and maintain continuously during the term of this Lease, a policy or policies of insurance in a company or companies acceptable to Landlord, at Tenant's own cost and expense, insuring Landlord, the property manager and Tenant from all claims, demands or actions; such comprehensive insurance shall protect and name Tenant as the Insured and shall provide coverage of at least \$2,000,000 for injuries to any one person, \$2,000,000 for injuries to persons in any one accident and \$2,000,000 for damage to property, made by or on behalf of any person or persons, firm or corporation arising from, related to or connected with the conduct and operation of Tenant's business in the Premises, or arising out of and connected with the use and occupancy of sidewalks and other common areas by Tenant. All such insurance shall provide that Landlord shall be given a minimum of 10 days' notice by the insurance company prior to cancellation, termination or change of such insurance. Tenant shall provide Landlord with copies of the policies or certificates evidencing that such insurance is in full force and effect and stating the terms and provisions thereof. If Tenant fails to comply with such requirements for insurance, Landlord may, but shall not be obligated to, obtain such insurance and keep the same in effect and Tenant agrees to pay Landlord, upon demand, the premium cost thereof. The policy limits of any such insurance shall not, however, limit the liability of Tenant hereunder. Tenant agrees to provide Landlord with evidence of such coverage upon Tenant's possession of the Premises and at anytime Landlord requests evidence of such coverage.

## **ARTICLE XXIII**

### **DAMAGE BY FIRE OR OTHER CASUALTY**

If, during the term of this Lease, the Premises shall be so damaged by fire or any other cause except Tenant's negligent or intentional act so as to render the Premises un-tenantable, the Base Rent shall be abated while the Premises remain un-tenantable and, in the event of such damage, Landlord shall elect whether to repair the Premises or to cancel this Lease, and shall notify Tenant in writing of its election within 60 days after such damage. In the event Landlord elects to repair the Premises, the work or repair shall begin promptly and shall be carried on without unnecessary delay. In the event Landlord elects not to repair the Premises, this Lease shall be deemed canceled as of the date of the damage and Base Rent and all other prorated charges will be prorated to such date. If the extent of damage is not so great so as to render the Premises un-tenantable, the Premises will be promptly repaired and the Base Rent will not be abated in whole or in part.

## **ARTICLE XXIV**

## CONDEMNATION

If the whole or any part of the Premises shall be taken by public authority under the power of eminent domain, then the term of this Lease shall cease on that portion of the Premises so taken from the date of possession, and the Base Rent shall be paid to that date, with a proportionate refund by Landlord to Tenant of such rent as may have been paid by Tenant in advance. If the portion of the Premises taken is such that it prevents the practical use of the Premises for Tenant's purposes, then Tenant shall have the right either (a) to terminate this Lease by giving written notice of such termination to Landlord not later than 30 days after the taking or (b) to continue in possession of the remainder of the Premises, except that the Base Rent shall be reduced in proportion to the area of the Premises taken. In the event of any taking or condemnation of the Premises, in whole or in part, the entire resulting award of damages shall be the exclusive property of Landlord, including all damages awarded as compensation for diminution in value to the leasehold, without any deduction for the value of any unexpired term of this Lease or for any other estate or interest in the Premises now or hereafter vested in Tenant.

## ARTICLE XXV

### DEFAULT OR BREACH

Each of the following events shall constitute a default or a breach of this Lease by Tenant:

- (a) if Tenant fails to pay Landlord any Base Rent or any other amounts required to be paid by Tenant when due hereunder;
- (b) if Tenant vacates or abandons the Premises or ceases to continually use the Premises for the purposes stated in Article IV above;
- (c) if Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or voluntarily takes advantage of any such act by answer or otherwise or makes an assignment for the benefit of creditors;
- (d) if involuntarily proceedings under any bankruptcy or insolvency act shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within 30 days after the institution or appointment; or
- (e) if Tenant fails to perform or comply with any other term or condition of this Lease and if such nonperformance shall continue for a period of 10 days after written notice thereof by Landlord to Tenant, time being of the essence, provided if Tenant has commenced to cure such event of default and diligently follows through, such 10 days shall be extended by an additional 10 days to allow Tenant time to cure such event of default.

## ARTICLE XXVI



## **EFFECT OF DEFAULT**

In the event of any default or breach hereunder, in addition to any other right or remedy available to Landlord, either at law or in equity, Landlord may exert any one or more of the following rights:

(a) Landlord may re-enter the Premises immediately and remove the property and personnel of Tenant and shall have the right, but not the obligation, to store such property in a public warehouse or at a place selected by Landlord, at the risk and expense of Tenant;

(b) Landlord may retake the Premises and may terminate this Lease by giving written notice of termination to Tenant. Without such notice, Landlord's retaking will not terminate this Lease. On termination, Landlord may recover from Tenant all damages proximately resulting from the breach, including the cost of recovering the Premises, all costs of re-renting and the difference between the rent due for the balance of the Lease term, as though the Lease had not been terminated, and the reasonable rental value of the Premises, which sum shall be immediately due Landlord from Tenant;

(c) Landlord may re-let the Premises or any part thereof for any term without terminating this Lease, at such rent and on such terms as it may choose. In connection with any re-letting, Landlord may make alterations and repairs to the Premises. In addition to Tenant's liability to Landlord for breach of this Lease, Tenant shall be liable for all expenses of the re-letting, for any alterations and repairs made and for the rent due for the balance of the Lease term, which sum shall be immediately due Landlord from Tenant. The amount due Landlord will be reduced by the net rent received by Landlord during the remaining term of this Lease from re-letting the Premises or any part thereof.

## **ARTICLE XXVII**

### **SURRENDER; HOLDING OVER**

Upon termination of this Lease, whether by expiration of the Lease term or otherwise, Tenant shall peaceably surrender the Premises, including all alterations, additions, improvements, decorations and repairs made thereto, clean and in good condition and repair, reasonable wear and tear excepted and damage for casualty, eminent domain or negligence or willful act of Landlord, its office, agents, employees, servants or invitees. Tenant shall remove all its trade fixtures and any of its other business equipment and personal property not required to be surrendered to Landlord before surrendering the Premises as aforesaid, and shall repair any damage to the Premises caused thereby. Any property of Tenant not removed by the end of the Lease term shall be deemed abandoned by Tenant and may be disposed of by Landlord without any obligation to account to Tenant therefore.

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If the Premises are not promptly surrendered upon termination of this Lease as hereinabove set out, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, claims made by the succeeding Tenant founded on such delay, and lost rentals and prorated charges. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.

If Tenant remains in possession after termination of this Lease without a written Lease, Tenant shall be deemed a trespasser. If Tenant pays and Landlord accepts Base Rent for a period after termination, Tenant shall be deemed to be occupying the Premises only as a tenant from month to month, subject to all of the other terms and provisions of this Lease, except that the Base Rent will be twice the monthly Base Rent in effect immediately prior to the termination.

## ARTICLE XXVIII

### SUBORDINATION AND ATTORNMENT

Landlord reserves the right to place liens and encumbrances on the Premises superior in lien and effect to this Lease. This Lease, and all rights of Tenant hereunder, shall, at the option of Landlord, be subject and subordinate to any liens and encumbrances now or hereafter imposed by Landlord upon the Premises or the Shopping Center or any part thereof, and Tenant agrees to execute, acknowledge and deliver to Landlord, upon request, any and all instruments that may be necessary or proper to subordinate this Lease and all rights herein to any such lien or encumbrance as may be required by Landlord. Tenant further agrees to execute any estoppel certificate which may be required by any lender of Landlord or mortgage holder on the Shopping Center.

In the event any proceedings are brought for the foreclosure of any mortgage on the Premises, Tenant will attorn to the purchaser at the foreclosure sale and recognize such purchaser as Landlord under this Lease. The purchaser, by virtue of such foreclosure, shall be deemed to have assumed, as substitute Landlord, the terms and conditions of this Lease until the resale or other disposition of its interest. Such assumption, however, shall not be deemed an acknowledgment by the purchaser of the validity of any then existing claims of Tenant against the prior Landlord.

Tenant agrees to execute and deliver such further assurances and other documents, including a new Lease upon the same terms and conditions contained herein confirming the foregoing, as such purchaser may reasonably request. Tenant waives any right of election to terminate this Lease because of any such foreclosure proceedings.

## ARTICLE XXIX

### NOTICES

Any notice given hereunder shall be given in writing and sent by personal delivery or by registered or certified mail to Landlord at the address set forth as a Fundamental Lease Provision in Article I, subparagraph (b) and to Tenant at the address set forth as a Fundamental Lease Provision in Article I, subparagraph (d) or at such other address as either party may from time to time designate in writing. Each such notice shall be deemed to have been given at the time it shall be personally delivered to such address or deposited in the United States mail in the manner prescribed herein.

### **ARTICLE XXX**

**Intentionally Deleted**

### **ARTICLE XXXI**

### **RULES AND REGULATIONS**

Tenant and Tenant's agents, employees and invitees shall fully comply with all rules and regulations of the Shopping Center, as amended from time to time, which are made a part of this Lease as if fully set forth herein. Landlord shall have the right to adopt and to amend such rules and regulations as Landlord deems necessary or desirable for the safety, care, cleanliness or proper operation of the Premises and the Shopping Center.

Tenant agrees as follows:

(a) The delivery or shipping of goods, merchandise, supplies and fixtures to and from the Premises shall be subject to such reasonable rules and regulations as in the judgement of Landlord are necessary for the proper operation of the Shopping Center.

(b) No loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside the Premises, without the prior written consent of Landlord which may be withheld in Landlord's sole discretion.

(c) Subject to Section 35.3, Tenant shall not place or permit any obstructions or merchandise in the outside or common areas immediately adjoining the Premises or other common facilities, and shall not use such areas for business purposes other than for ingress and egress.

(d) Tenant shall have full responsibility for protecting the Premises and the property located therein from theft and robbery.

(e) Tenant shall not permit on the Premises any act or practice which is unlawful, immoral or which might injure the reputation of the Shopping Center.

(f) Tenant and Tenant's employees and agents shall not solicit business in the parking or other common areas, nor shall Tenant distribute or place handbills or other advertising matter in or on automobiles parked in the parking areas or other common areas.

(g) Tenant shall keep the Premises free and clear of rodents, bugs and vermin, and Tenant shall use, at its cost and at such intervals as Landlord shall reasonably require, a reputable pest extermination contractor to provide extermination services in the Premises.

(h) Tenant shall not burn any trash, rubbish or garbage in or about the Premises or the Shopping Center.

## ARTICLE XXXII

### NET LEASE

This Lease is a net lease, and the parties agree and understand that Tenant shall pay Tenant's proportionate share of the Taxes, insurance, Common Area Charges and all other expenses as described in this Lease.

## ARTICLE XXXIII

### MISCELLANEOUS

Section 33.1. ***Binding on Assigns.*** All terms, conditions and agreements of this Lease shall be binding upon, apply and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

Section 33.2. ***Amendment in Writing.*** This Lease contains the entire agreement between the parties and may be amended only by subsequent written agreement signed by Landlord and Tenant.

Section 33.3. ***Non-waiver.*** The failure of Landlord to insist upon strict performance of any of the terms, conditions and agreements of this Lease shall not be deemed a waiver of any of its rights or remedies hereunder and shall not be deemed a waiver of any subsequent breach or default of any of such terms, conditions and agreements. The doing of anything by Landlord which Landlord is not obligated to do hereunder shall not impose any future obligation on Landlord nor otherwise amend any provisions of this Lease.

Section 33.4. ***No Surrender.*** No surrender of the Premises by Tenant shall be effected by Landlord's acceptance of the keys to the Premises or of the rent or any other sums due hereunder, or by any other means whatsoever, without Landlord's written acknowledgment that such acceptance constitutes a surrender.

Section 33.5. **Captions.** The captions of the various paragraphs in this Lease are for convenience only and do not define, limit, describe or construe the contents of such paragraphs.

Section 33.6. **Brokers.** The Brokers involved in this transaction are: Trenton B. Magid and Ryan D. Callinan of Coldwell Banker Commercial World Group as agent for Landlord; and Joel McNeil as agent(s) for Tenant. Landlord and Tenant acknowledge that Coldwell Banker Commercial World Group is being paid a fee by Landlord and this fee will be shared by the Brokers based on their separate agreement. Tenant hereby warrants that no other real estate broker has or will represent it in this transaction and that no finder's fees have been earned by a third party, except as specifically agreed to in writing by Landlord.

Section 33.7. **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska.

## ARTICLE XXXIV

### INITIAL IMPROVEMENTS OF THE PREMISES

Section 34.1 Landlord shall deliver possession of the Premises to Tenant in the condition described in attached **Exhibit C, "Landlord's Work"**. Upon acceptance, Tenant agrees to perform "**Tenant's Work**" as described in attached **Exhibit "D"**. All of Tenant's Work shall be performed at Tenant's cost and expense. Tenant shall fully equip the Premises with all trade fixtures, lighting fixtures, furniture, furnishings, fixtures, floor coverings, any special equipment, and other items of personal property as may be necessary for the completion of the Premises and the proper operation of Tenant's business therein. All improvements made to the Premises by Tenant are hereinafter sometimes called "**Tenant's Improvements**". All of Tenant's Work and any work or improvements not included in Exhibit "D" must be approved in writing by Landlord prior to commencement of such work or improvements.

Section 34.2 **Tenant's Allowance.** Landlord shall pay Tenant Allowance for the construction and completion of Tenant's Work and Tenant's Improvements in accordance with the provisions of section (s) of the Fundamental Lease Provisions section of this Lease. Payment of Tenant Allowance shall be subject to the following conditions: (i) Tenant shall deliver to Landlord reasonably satisfactory documentation of all costs and expenses incurred in connection with Tenant's Work and Tenant's Improvements; (ii) Tenant shall furnish to Landlord copies of lien waivers or releases from all suppliers; materialmen and contractors; or subcontractors who have supplied either labor or materials in connections with Tenant's Work or Tenant's Improvements.

## ARTICLE XXXV

### OTHER PROVISIONS

Section 35.1 **Limited Exclusive Use.** Landlord agrees that during the entire Term of this Lease, Landlord shall not rent any other space in the Shopping Center to another person or entity (i) whose primary business activity within the space lease, is or would be the sale of pizza, carry out pizza or delivery of pizza. For purposes of this Limited Exclusive Use, the definition of "primary business activity" **does not include** other potential tenants which serve pizza or pizza-like items on their menu(s) but do not constitute more than twenty-percent (20%) of their gross sales.

Section 35.2 **Option to Extend Lease.** If this lease shall be in force and effect on the date for the expiration of the term hereof, and the Tenant on that date shall have fully performed all of its obligations hereunder, the Tenant shall have the right, at its option, to extend this Lease for one additional term of Five (5) years ("Option Period") upon the same terms and conditions contained in this Lease, except, the Base Rent for each year of the Option Period ("Option Base Rent") will increase two and one-half percent (2 ½ %) greater than the immediately preceding year of the Lease. To exercise such option, the Tenant shall notify the Landlord in writing, at any time during the original term hereof but no later than eight (8) months prior to the expiration of such term of the Tenant's intention to extend such term.

Section 35.3 **Patio Area.** Landlord agrees that Tenant shall be allowed to have an outside patio area of no less than 1,000 sq. ft. or a smaller size if approved by Tenant in writing. The exact location of the patio area will be subject to Landlord's approval. Landlord, at Landlord's expense, agrees to provide the necessary railing and concrete pad for the outside patio area. Landlord will also provide awnings for the patio to provide no less than 80% cover. However, Tenant will pay for any upgrades and other improvements to the patio area including, but not limited to, upgraded fencing or stamped concrete, service station or other improvements.

Section 35.4 **Intentionally Deleted.**

Section 35.4 **Liquor License.** The parties acknowledge that Tenant must apply for a Class C liquor license from all governing authorities in order to operate a bar at the Premises. Tenant hereby agrees to make submit an application for such license within ten (10) days after execution of this Lease and provide copies of the applications and other documents to Landlord upon submission. If Tenant's liquor license has not been approved or is rejected by all governing authorities on or before April 15, 2008, Tenant may give written notice along with a copy of such rejection notice to Landlord on or before April 21, 2008, and this Lease shall be terminated and of no effect. In the case of such termination, Landlord shall return the amount of the Security Deposit and Base Rent received to Tenant.

Section 35.5 **Exhibits.** The following items and exhibits are attached to and made a part of this Lease:

Personal Guarantee  
Exhibit "A" The Premises  
Exhibit "B" The Shopping Center  
Exhibit "C" Landlord's Work

Exhibit "D" Tenant's Work  
Exhibit "E" Tenant Sign Criteria

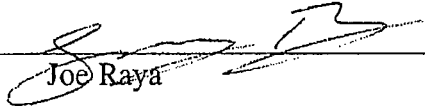
Section 35.6 Time of Essence. The parties agree that time is an essential element to the performance of their respective obligations hereunder; provided, however, if the final date of any period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of the State of Nebraska or the United States of America, the final date of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

Until this Lease is executed on behalf of all parties hereto, it shall be construed as an offer to lease from Tenant to Landlord.


IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

**TENANT**

The Pizza Gourmet Company, a Nebraska corporation

By   
Joe Raya

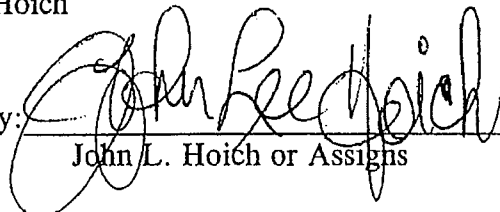
Title owner

By   
Mark Hansen

Title: owner

**LANDLORD**

John L. Hoich

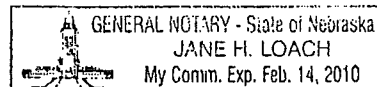
By:   
John L. Hoich or Assigns

STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged by Joe Ray before me this  
31 day of December 2007.

Jane H. Loach  
Notary Public

My commission expires: 2/14/2010

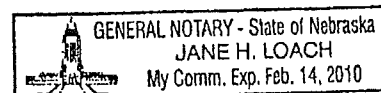


STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged by Mark Hansen before me this  
31 day of December 2007.

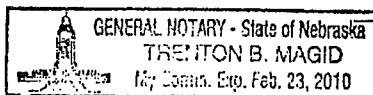
Jane H. Loach  
Notary Public

My commission expires: 2/14/2010



STATE OF NEBRASKA )  
 )SS  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 31st day of December 2007  
by John L. Hoich..



Trenton B. Magid  
Notary Public

My commission expires: \_\_\_\_\_

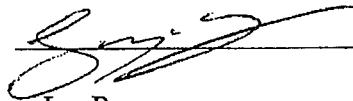


## PERSONAL GUARANTEE

The undersigned hereby absolutely and unconditionally guarantee unto the Landlord the payment of the rent and the performance of all of the covenants under the Lease and all renewals and extensions thereof by the Tenant and hereby waive notice of any default under the Lease and agree that this liability shall not be released or affected by an extension of time for payment, by any forbearance by the Landlord, or by any assignment or modification of this lease.

Dated this 31<sup>st</sup> day of December 2007.

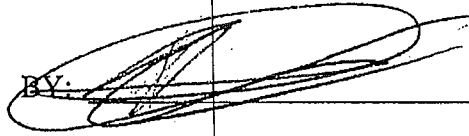
BY:

  
Joe Raya

6063 N 14th St  
STREET ADDRESS

Omaha NE 68116  
CITY, STATE, ZIP

BY:

  
Mark Hansen

7857 May St  
STREET ADDRESS

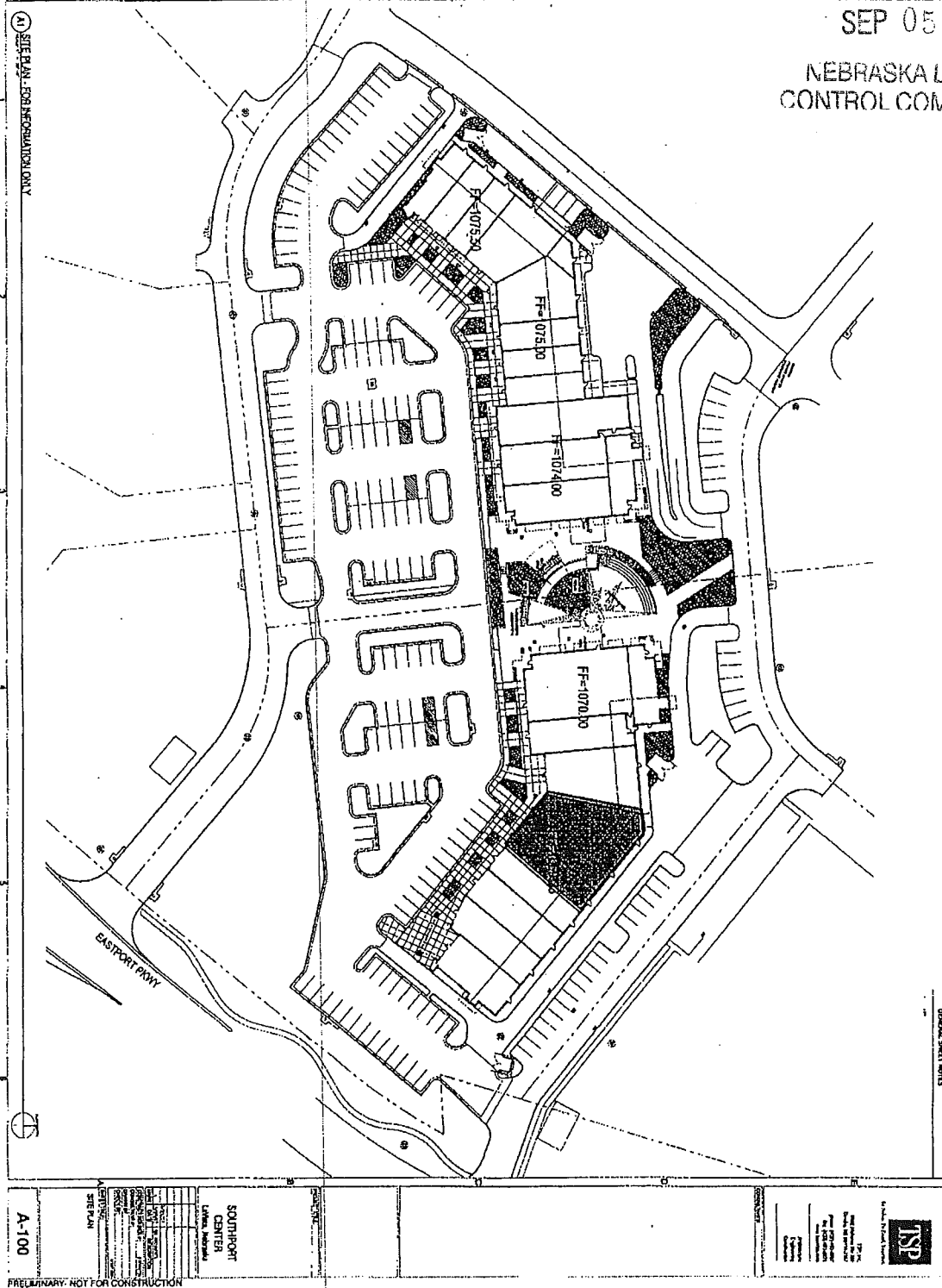
Omaha NE 68122  
CITY, STATE, ZIP

EXHIBIT "A"  
THE PREMISES

RECEIVED

SEP 05 2011

NEBRASKA LIQUOR  
CONTROL COMMISSION



## ADDENDUM TO LEASE

### PARTIES:

THIS ADDENDUM TO LEASE, dated as of August 1, 2008, is made and entered into by and between John L. Hoich ("Landlord") and The Pizza Gourmet Company ("Tenant").

### RECITALS:

A. On or about December 31, 2007, the parties entered into a written lease agreement (the "Lease") with respect to premises located at 12040 McDermott Plaza, Suite 300-311. La Vista, Nebraska 68128.

B. The parties now desires to amend the Lease as herein provided.

### AGREEMENT:

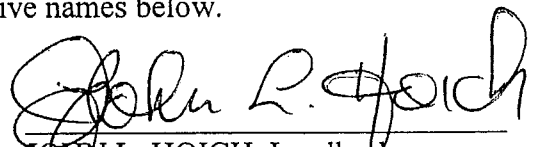
NOW, THEREFORE, in consideration of the recitals and the mutual agreements, provisions and covenants herein contained, the parties hereby agree as follows:

1. Section 35.3 of the Lease provides that Tenant shall have the use of an outside patio area of not less than 1,000 square feet at a location to be approved by Landlord. Landlord hereby approves the location of the outside patio area as set forth on Exhibit "F" attached to this Addendum and by this reference made a part of the Lease.

2. Except as specifically provided herein to the contrary, all other terms and conditions of the lease shall remain in full force and effect

IN WITNESS WHEREOF, the parties have caused this Addendum to Lease to be executed at the place and on the date set forth opposite their respective names below.

Executed at Omaha, Nebraska,  
on August 21, 2008

  
JOHN L. HOICH, Landlord

Executed at Omaha, Nebraska,  
on August 26, 2008

THE PIZZA GOURMET  
COMPANY, Tenant

By:   
Joseph E. Raya, President

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# PROJECT LOCATION PLAN

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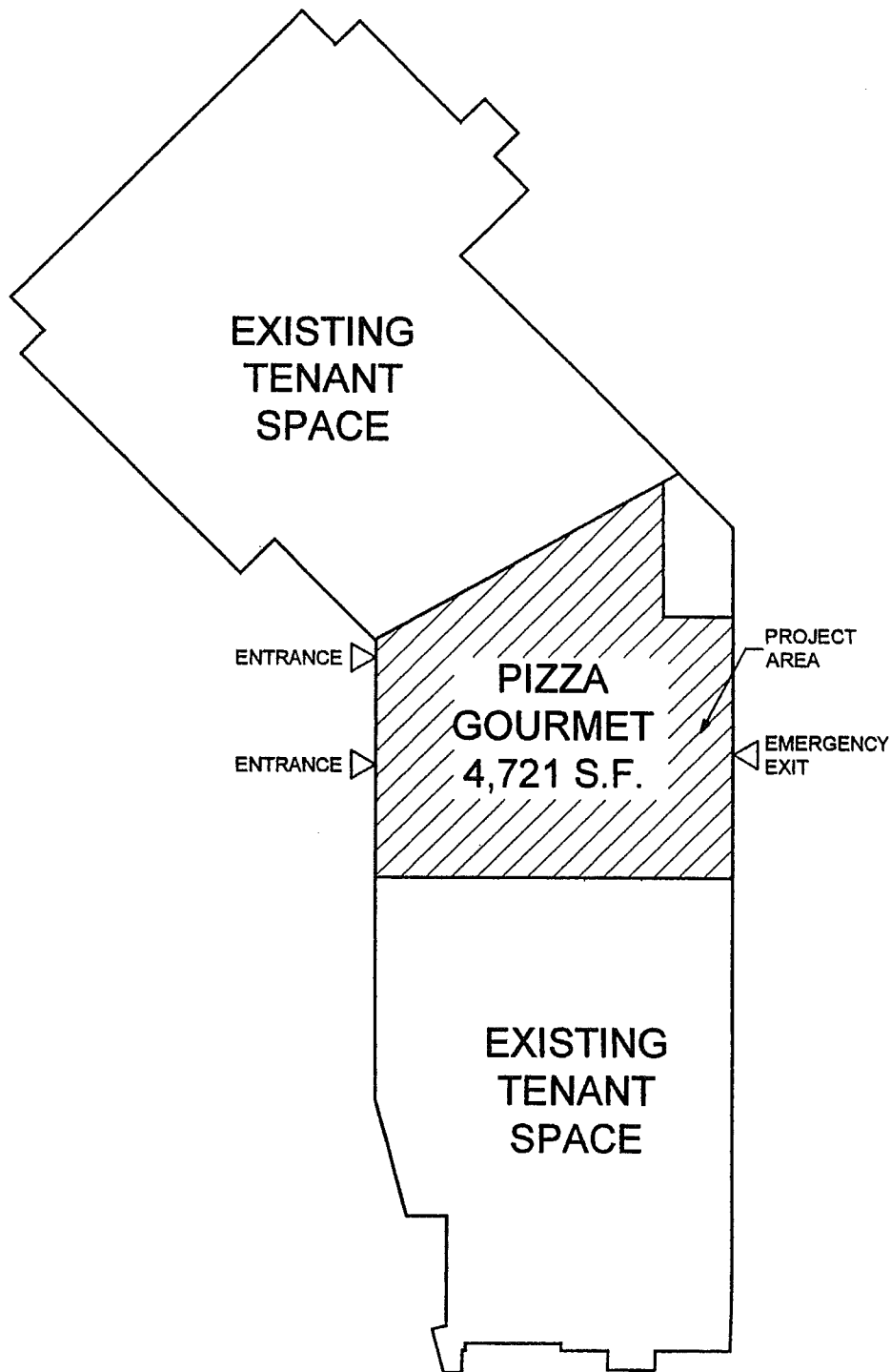
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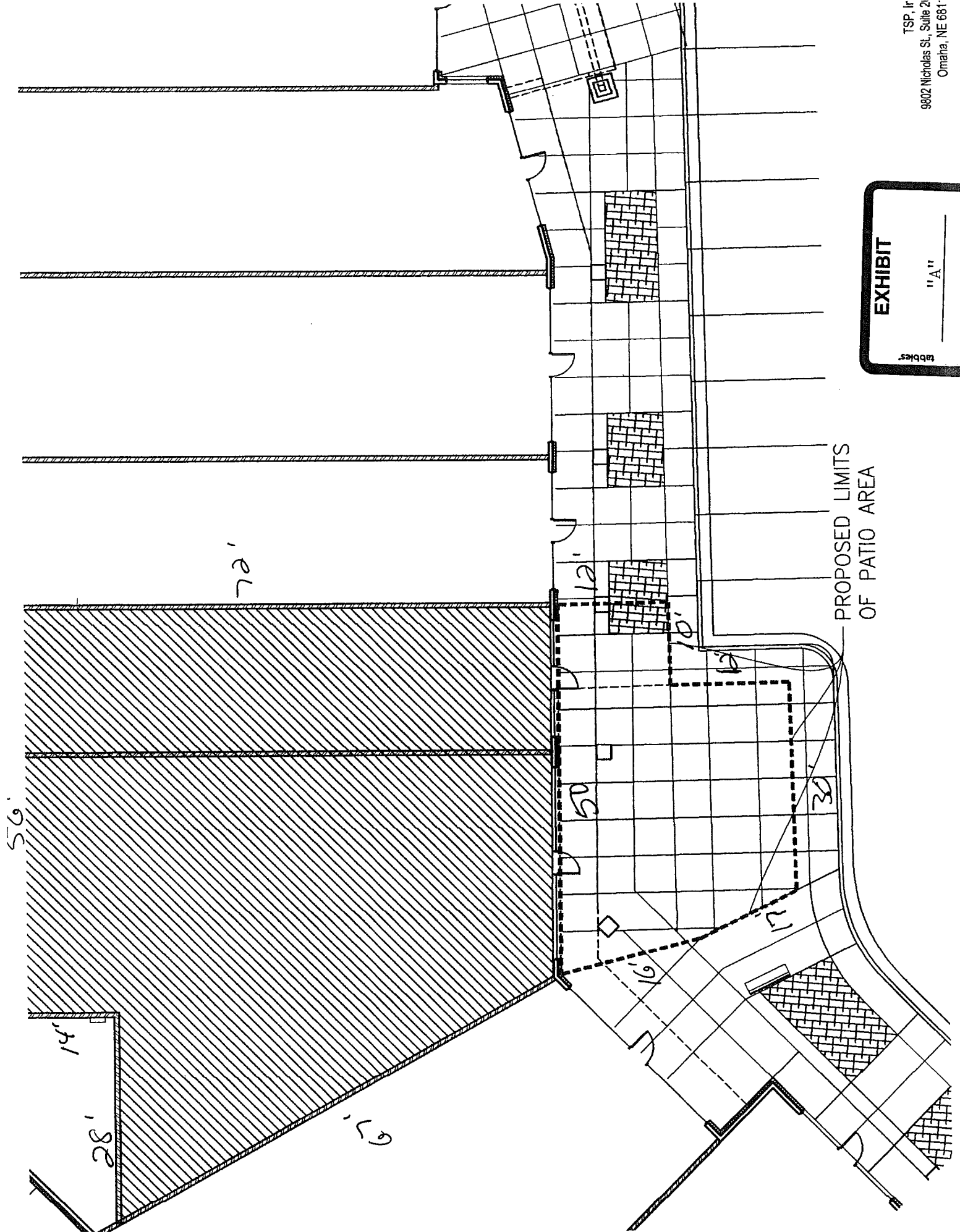


**Project Location Plan**

SCALE: None

**EXHIBIT**

"B"



**EXHIBIT**

"A"

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TSP, Jr  
 9802 Nicholas St., Suite 20  
 Omaha, NE 68114