

## 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 APPLICATION FOR ADDITION TO PENDING CLASS C LIQUOR LICENSE 82199 FOR PREMISE-RECONSTRUCTION FOR BEYOND GOLF LLC DBA BEYOND GOLF, LA VISTA, NEBRASKA.

WHEREAS, Beyond Golf LLC dba Beyond Golf, 12040 McDermott Plaza, Suite 330 , La Vista, Sarpy County, Nebraska, has applied to the Nebraska Liquor Control Commission for an addition to their liquor license, and

WHEREAS, the Nebraska Liquor Control Commission has notified the City of said application to change the description of the new license to read "One story building approx 50 x 75 including sidewalk café approx 17 x 25, which is the addition of an outdoor area, and

WHEREAS, the City, at their meeting of August 19, 2008 recommended to the Nebraska Liquor Control Commission approval of a Class C Liquor License, 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 application for addition to premise-reconstruction submitted by Beyond Golf LLC dba Beyond Golf, 12040 McDermott Plaza, Suite 330, La Vista, Sarpy County, Nebraska.

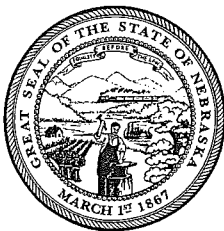
PASSED AND APPROVED THIS 2ND DAY OF DECEMBER 2008.

CITY OF LA VISTA

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

ATTEST:

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



**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/>

October 31, 2008

City Clerk of La Vista  
8116 Park View Boulevard  
La Vista, NE 68128

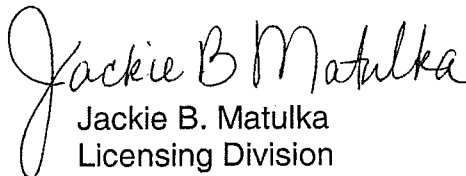
RE: Addition to Premise/Reconstruction for PENDING License Class C 82199

Dear Clerk:

The licensee Beyond Golf LLC DBA Beyond Golf located at 126<sup>th</sup> & Giles Road, Suite ( & 10, La Vista, NE 68128 (Sarpy County) has requested an addition to premise/reconstruction. (See Attached Diagram). The description for the new license will be read as follows unless changed by State Patrol: **One story building approx 50 x 75 including sidewalk café approx 17 x 25.**

Please review the enclosed description diagram and present this reconstruction to premise request to the Council for consideration and return the results to the Nebraska Liquor Control Commission office. If you should have any questions, please feel free to give me a call at (402) 471-4881.

Sincerely,

  
Jackie B. Matulka  
Licensing Division

Enclosure  
pc: File

**Rhonda R. Flower**  
*Commissioner*

**Bob Logsdon**  
*Chairman*

**Robert Batt**  
*Commissioner*

# APPLICATION FOR ADDITION TO LIQUOR LICENSE

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
Website: [www.lcc.ne.gov](http://www.lcc.ne.gov)

Office Use

# RECEIVED

OCT 14 2005

NEBRASKA LIQUOR  
CONTROL COMMISSION

## Application:

- Must include processing fee of \$45.00 made payable to Nebraska Liquor Control Commission
- Must include a copy of the lease or deed showing ownership of area to be added
  - This is still required even if it's the same as on file with our office
- Must include simple sketch showing existing licensed area and area to be added, must include outside dimensions in feet (not square feet), direction north. No blue prints.
- May include a letter of explanation

LIQUOR LICENSE #

Pending Appl - 82199

LICENSEE NAME

BEYOND GOLF LLC

TRADE NAME

BEYOND GOLF

PREMISE ADDRESS

12040 McDERMOTT PLAZA SUITE 330

CITY

LA VISTA

CONTACT PERSON

JOSH GALVIN

PHONE NUMBER OF CONTACT PERSON

402-598-7877

## Complete the following questions:

1) Are you adding on to your building?

☐

Yes

☒

No

- Include a sketch of the area to be added showing:

- existing building
- outside dimensions (in feet)
- direction north

2) Are you adding an outdoor area?

☒

Yes

☐

No

If an outdoor area (check one of the following)

☒

012.07 "Beer garden" shall mean an outdoor area included in licensed premises, which is used for the service and consumption of alcoholic liquors, and which is contained by a fence or wall preventing the uncontrolled entrance or exit of persons from the premises, and preventing the passing of alcoholic liquors to persons outside the premises. (examples may include, but are not restricted to sand volleyball, horseshoe pits...)

BUS No #  
45-mm

☐ 012.08 "Sidewalk cafe" shall mean an outdoor area included in licensed premises, which is used by a restaurant or hotel with a restaurant license, for the service of meals as well as alcoholic liquors, and which is contained by a permanent fence, wall, railing, rope or chain, defining the licensed area, provided that one open entrance not to exceed eight (8) feet shall be allowed.

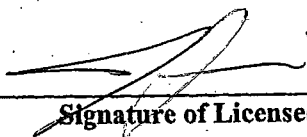
What type of permanent fencing will you be using?

4' WRAUGHT IRON

- Include a sketch of the area to be added showing:
  - existing building
  - outside dimensions (in feet)
  - direction north

JOSH GALVIN

Print Name of Signature



Signature of Licensee or Officer

State of Nebraska

County of

Douglas

The forgoing instrument was acknowledge before me this

10/9/08

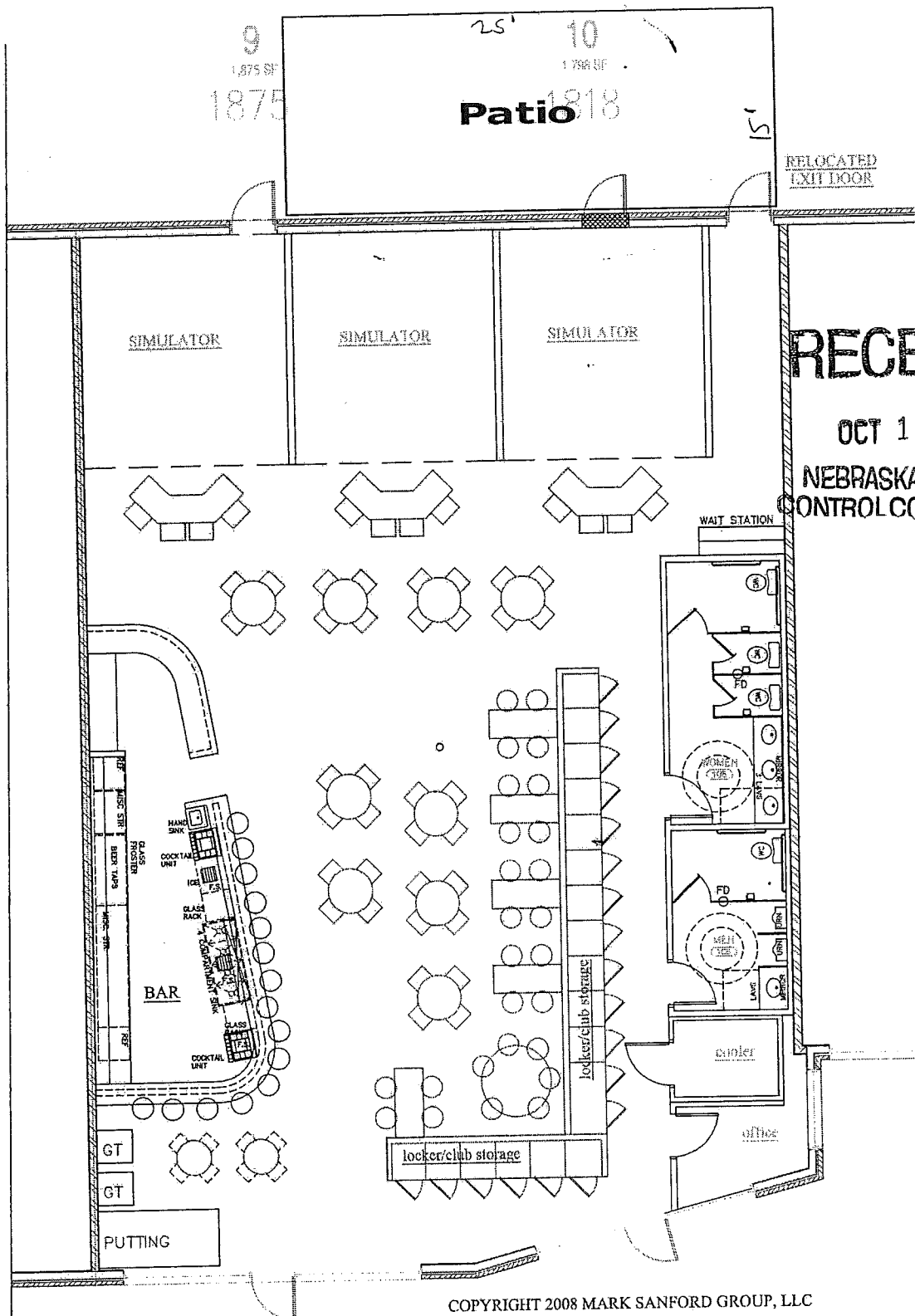
Date

Danielle M Leach

Notary Public Signature

Affix Seal Here

DANIELLE M LEACH  
General Notary  
State of Nebraska  
My Commission Expires Aug 29, 2012



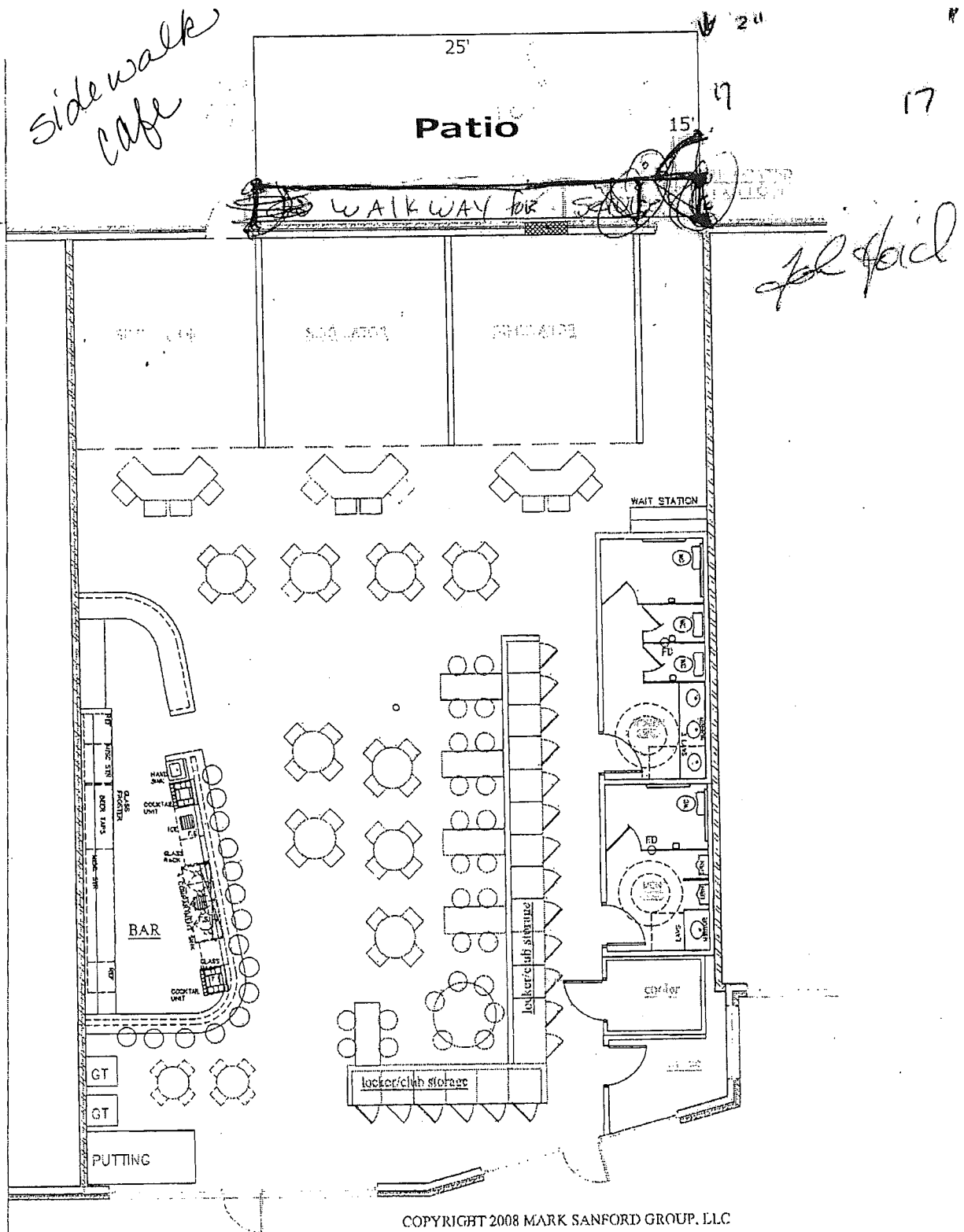
**RECEIVED**  
 OCT 14 2008  
 NEBRASKA LIQUOR  
 CONTROL COMMISSION

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# **BAY 9 & 10 PLAN**





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## BAY 9 & 10 PLAN



**FIRST AMENDMENT  
TO THE LEASE AGREEMENT**

In regard to the lease dated June 30, 2008 by and between John L. Hoich, successors and/or assigns, ("Landlord"), as Landlord, and Beyond Golf, LLC, a Nebraska limited liability company, ("Tenant"), as Tenant, for the Premises located at suite 330-340 in the Southport Center, LaVista, NE, (the "Lease") is hereby amended by mutual consent as follows:

- 1) Tenant desires to have an outdoor patio area adjacent to the leased premises for the purpose of providing customers an outdoor service area, therefore under ARTICLE II PREMISES Exhibit "A" is hereby deleted and replaced with Exhibit A (the Premises) of this First Amendment to the lease Agreement.
- 2) All plans and construction documents must comply with all local and state building codes and require Landlord approval before any work may begin.
- 3) Tenant agrees to be responsible for all building permits and to pay all costs associated with the development and construction of the patio area including a security fence enclosing the patio as identified in Exhibit A. *To include any wall needed to be required JLT*
- 4) Tenant agrees to provide copies for final lien waivers or releases from all suppliers, contractors, or subcontractors who have supplied labor or material in connection with Tenant's patio work.

All other terms and conditions remain according to the Lease.

TENANT:

Beyond Golf, LLC

By: 

Date: 10/24/08

LANDLORD:

John L. Hoich, successors and/or assigns

By: 

Date: Oct. 23, 2008

RECEIVED

OCT 14 2008

NEBRASKA LIQUOR  
CONTROL COMMISSION

Southport Center

Lease

THIS LEASE (this "Lease") is made and entered into this 30th day of June 2008, by and between John L. Hoich, successors and/or assigns, ("Landlord") and Beyond Golf, LLC, a Nebraska limited liability company, ("Tenant"), 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: Beyond Golf, LLC, a Nebraska limited liability company
- (d) Tenant's Address for Notices: 15411 Allan Drive Omaha, NE 68137
- (e) Tenant's Trade Name: Beyond Golf
- (f) Address of Premises: (To Be Determined), Suites 9-10, La Vista, NE 68128 ("Premises")
- (g) Name and Address of Shopping Center Development: Southport Center, Address to be determined, Legal Description: Lots 4-5, Southport East Replat Six, La Vista, Nebraska
- (h) Approximate Number of Square Feet in Premises: 3,673
- (i) Number of Years in Lease Term: Five (5) Years
- (j) Annual Base Rent Per Square Foot: Year 1, \$19.00 NNN; Year 2, \$19.29 NNN; Year 3, \$19.57 NNN; Year 4, \$19.87 NNN; Year 5, \$20.17 NNN
- (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: Virtual golf course and other lawful purposes, as approved by the Landlord, with the following stipulations:
  - i. Tenant shall derive less than fifty percent (50%) of its total sales at the Premises from alcoholic beverages and will be required to submit sales reports to the property manager quarterly for verification. Starting with the first full calendar month of operation of business, sales of alcoholic beverages must not be more than fifty percent (50%) of total sales during each consecutive twelve month period. If Tenant's sales of alcoholic beverages exceed fifty percent (50%) Tenant will be in default of this Lease.
  - ii. Tenant shall not participate in or offer any form of KENO if that option becomes available.
  - iii. Tenant will operate its golf simulator screens for broadcast television, satellite, or cable no more than 10 days per year.
  - iv. Tenant will not play NFL Sunday Ticket on simulator Screens.
- (p) Security Deposit: \$7,226.63
- (q) The commencement date for the Lease will be approximately October 1, 2008 or when Landlord notifies Tenant that the Premises are substantially completed with regard to the Landlord's Work defined in **Exhibit "C"** and Article XI below. Tenant will have a period of Sixty (60) days from the commencement date to complete interior improvements without rent or operating expenses ("Improvement Period"). Tenant will have Sixty (60) days of beneficial occupancy from the Improvement Period without rent but will be responsible for the payment of operating expenses. Beneficial occupancy will start at the end of the Improvement Period or the date Tenant opens for business, whichever occurs first.
- (q) Tenant Fraction: 3,673 / 43,357 (8.47%)
- (r) Approximate Number of Square Feet in the Shopping Center: 43,357 in two buildings
- (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) (r) and section 5.1 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 start at the end of the Improvement Period defined in Fundamental Lease Provision (P) above. 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 October 1, 2008 to September 30, 2009, \$ 5,815.58 per month  
For the period from October 1, 2009 to September 30, 2010, \$ 5,902.82 per month  
For the period from October 1, 2010 to September 30, 2011, \$ 5,991.36 per month  
For the period from October 1, 2011 to September 30, 2012, \$ 6,081.23 per month  
For the period from October 1, 2012 to September 30, 2013, \$ 6,172.45 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 a third party 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 10% 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.

## ARTICLE XIII

### SIGNS



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.

#### **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.

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 but costs to tenant directly related to printing costs of new business cards and stationary to be reimbursed by landlord;
- (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 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 thereunder. 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.

## 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.

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 prorate 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) 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. 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.

Section 33.8 ***Liquor License.*** The parties acknowledge that Tenant must apply for a 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, if necessary, to Landlord upon submission. If Tenant's liquor license has not been approved or is rejected by all governing authorities within thirty (30) days Tenant may give written notice along with a copy of such rejection notice to Landlord within sixty (60) days and this Lease shall be terminated and of no effect. In the case of such termination, (1) all improvements made by Tenant to the Premises will become the property of Landlord at no cost Landlord and (2) Landlord shall return the amount of the Security Deposit and Base Rent received to Tenant.

Section 33.9 *Financing*. The parties acknowledge that Tenant must apply for a SBA loan. If Tenant is unable to obtain financing within sixty (60) after execution of this Lease the Lease shall be terminated and of no effect. In the case of such termination Landlord shall retain the amount of the Security Deposit.

## 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. Such payment shall be due within ten (10) days after receipt of a written request from Tenant but not before ten (10) days after Tenant opens for business to the public at the Premises. 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 35.2 **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**") is to be two percent (2%) greater than the immediate 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 one hundred eighty (180) days prior to the expiration of such term of the Tenant's intention to extend such term.

Section 35.3 **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 35.4 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**

Beyond Golf, a limited liability corporation.

By: 

Josh Galvin

**LANDLORD**

John L. Hoich

By: 

John L. Hoich or Assigns

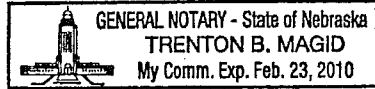
STATE OF NEBRASKA )

) ss.

COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged by Josh Galvin before me this 30th day of June 2008.

*Trenton B. Magid*



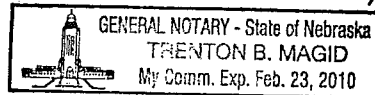
Notary Public

My commission expires: \_\_\_\_\_

STATE OF NEBRASKA    )  
                                  )SS  
COUNTY OF DOUGLAS   )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of June 2008  
by John L. Hoich..

*Trenton B. Magid*



Notary Public

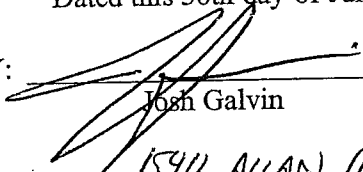
My commission expires: \_\_\_\_\_

### 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 for the first three years 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 30th day of June 2008


BY:

  
Josh Galvin

STREET ADDRESS

15411 ALAN DR  
OMAHA, NE 68137  
CITY, STATE, ZIP

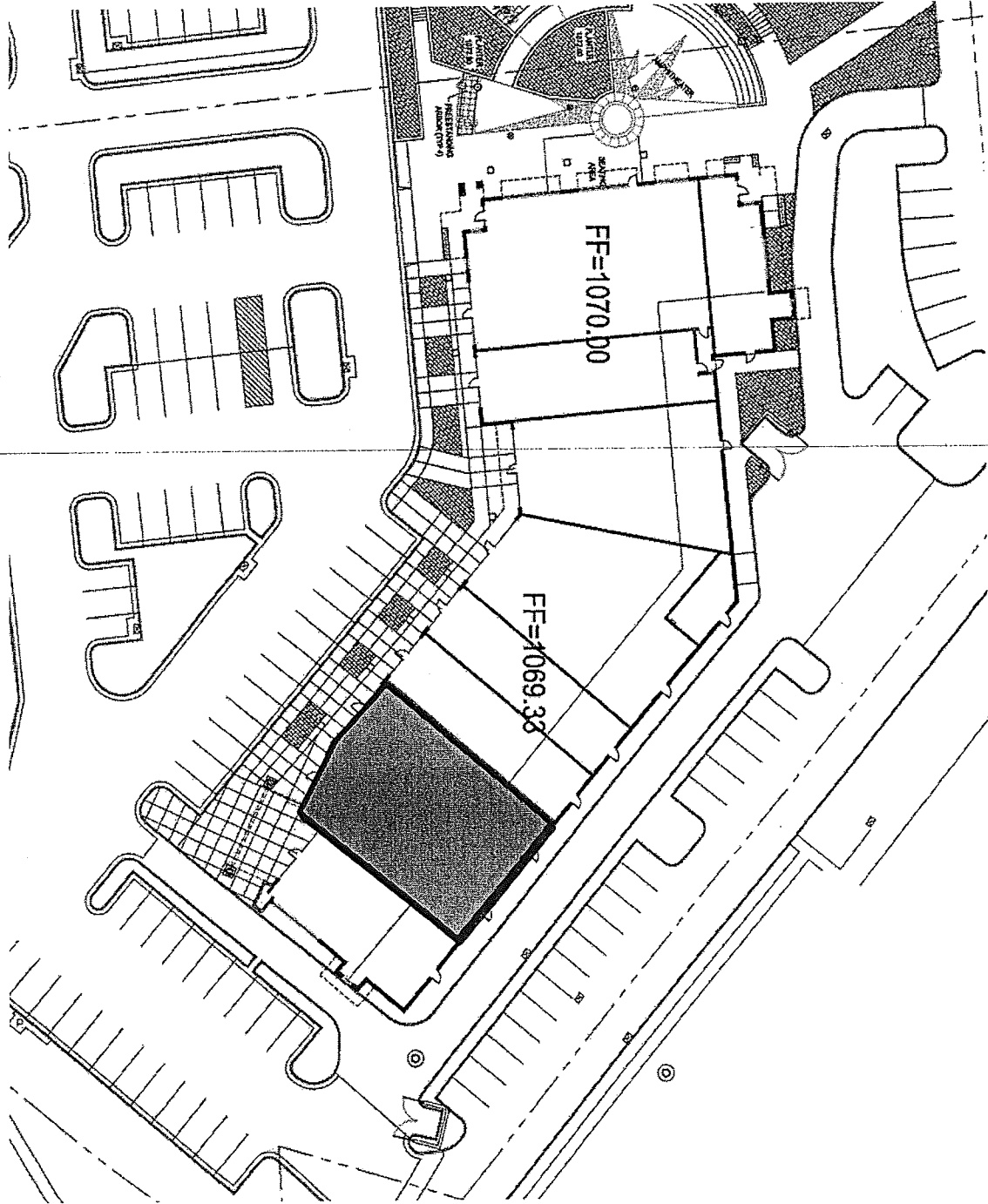
BY:

  
Kim O'mara

STREET ADDRESS

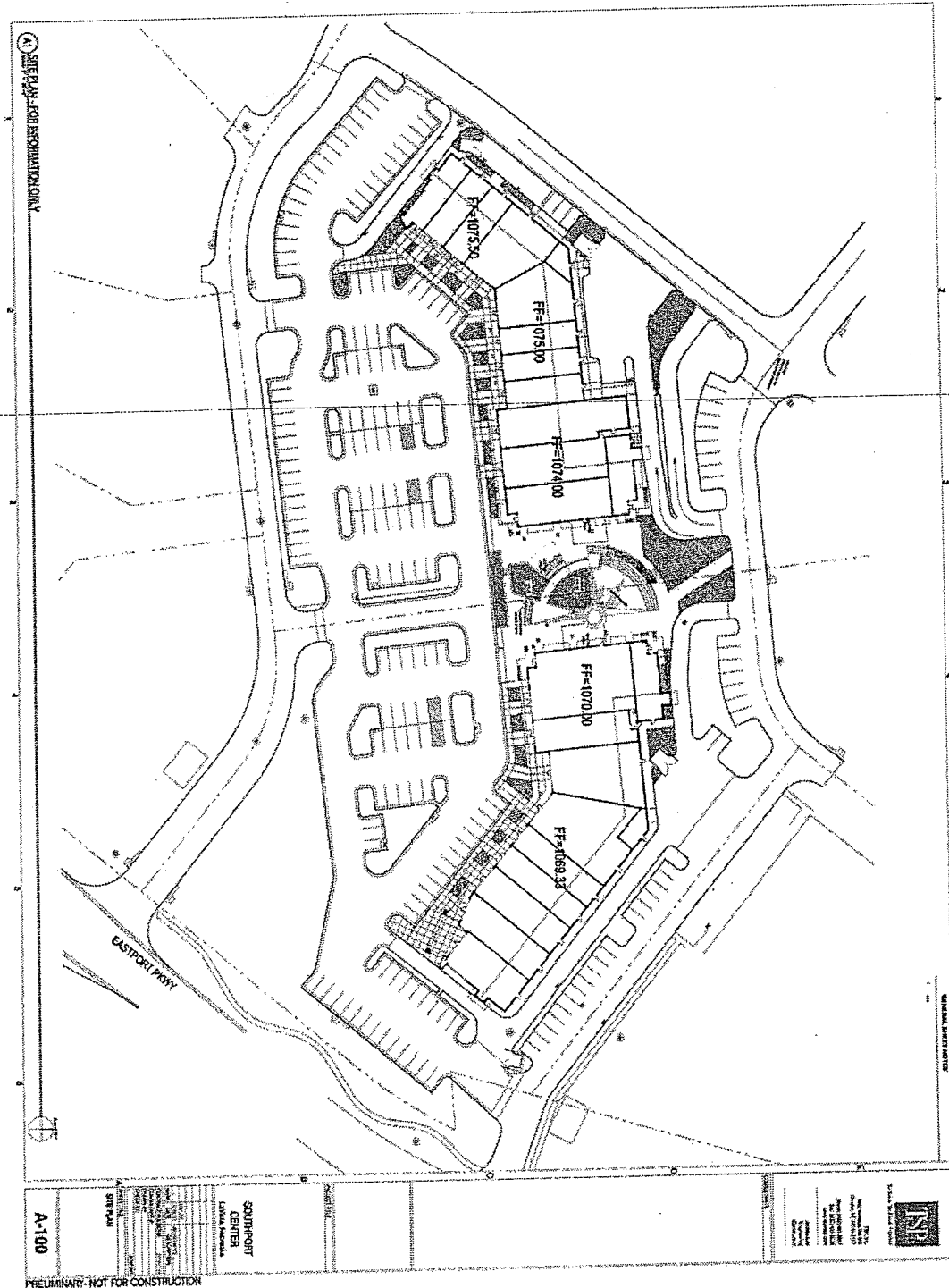
14923 Himebaugh Ave  
Omaha, NE 68116  
CITY, STATE, ZIP

**EXHIBIT "A"**  
**THE PREMISES**



# EXHIBIT "B"

## THE SHOPPING CENTER



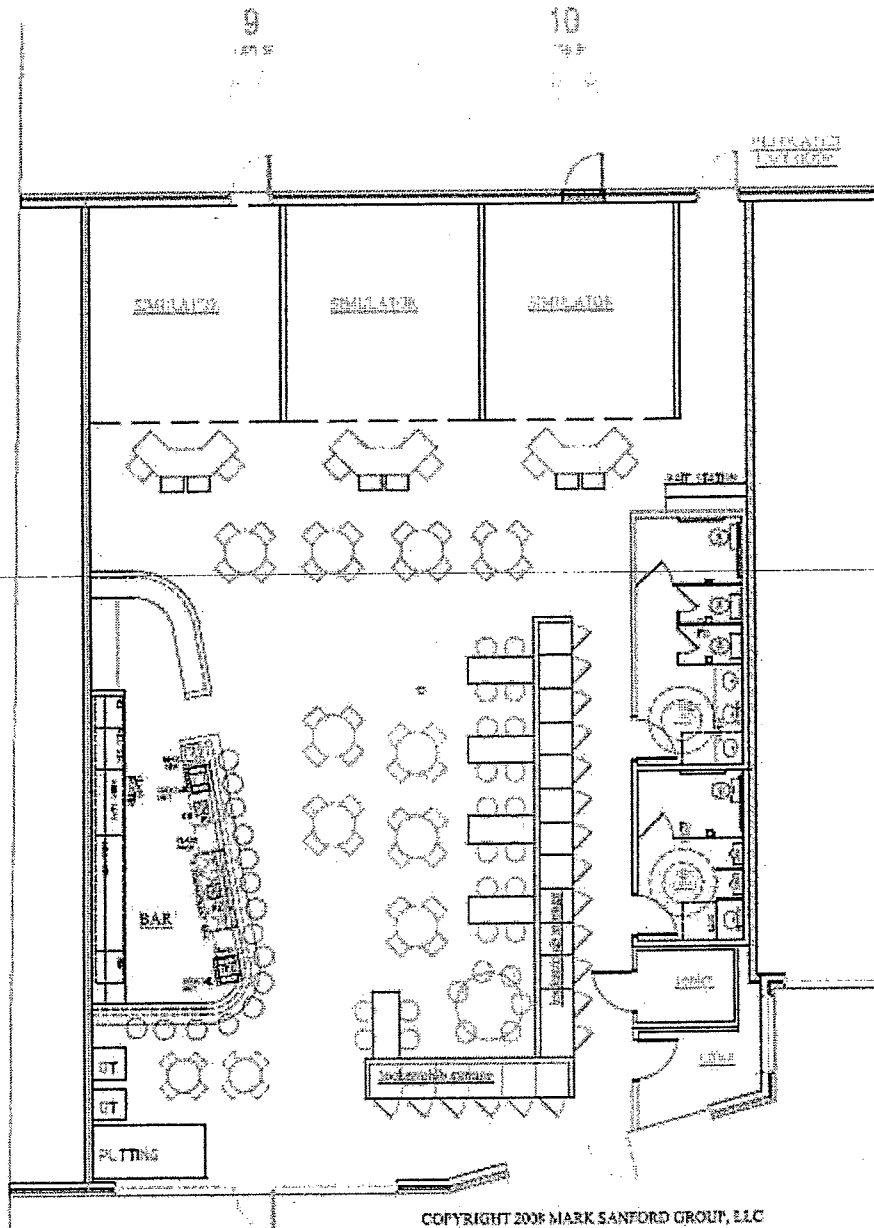


## Exhibit "C" LANDLORD'S WORK

Prior to the delivery date, Landlord shall, at no cost to Tenant, perform the work and/or furnish and install the equipment and materials described below in the Premises using new materials, so that the Premises are in the condition described below. All work under this Exhibit "C" shall be performed in a good and workmanlike manner and in compliance with all applicable code requirements:

1. HVAC: Landlord shall deliver the Premises as follows:
  - A. Packaged HVAC Roof-top unit(s) set in place with all roof top curb cuts necessary to accommodate the same, appropriately sized condenser and air handler to provide a minimum of one ton per 350 square feet.
  - B. Temporary thermostats, minimum one for each unit.
2. ELECTRICAL: 200 amp service, including the following:
  - A. Service drop from utility company location on the Property line into the Shopping Center at a central electrical room.
  - B. Main feeders from utility service point to panel in Premises, main breaker and main disconnect to be dedicated for Tenant's use only.
    - (1) Installation of all components listed above.
3. TELEPHONE: One 4" empty conduit from utility company location on the property line into the Shopping Center at a central electrical room.
4. PLUMBING:
  - A. Minimum 4" Sanitary waste-line brought within Premises at suitable depth to drain from any location within the premises.
  - B. 1" cold water supply line located within the Premises with shut-off valve.
  - C. One separately metered natural gas line to a location within the Premises.
  - D. If applicable, Landlord shall verify plumbing layout with Tenant's contractor prior to pouring the concrete slab.
  - E. Rough in for one male and one female restroom.
5. WALLS:
  - A. The exterior (if applicable) and front framed walls will be insulated, but not dry-walled.
  - B. Demising Walls will be 2" X 6" framing with insulation. Tenant will be required to provide 5/8" drywall from floor to underside of roof deck, taped (one-hour rated), sanded and ready for paint.
  - C. Landlord shall be allowed to inspect the walls prior to Tenant installing its gypsum board.
  - D. If applicable, Tenant will be required to provide fire stopping and sound control installation at the request of Landlord.
6. ROOF: The Shopping Center roof will be a structure consisting of steel beams, joists and structural metal decking utilizing roof construction materials which incorporate insulation. The roof system will be engineered to support the building-standard HVAC system for the Premises.
7. STOREFRONT AND ENTRY DOORS: Storefront with single doors of 3'-0" x 7'-0" containing single 1/4" pane, tempered glass where required by code. All other storefront shall be anodized finished thermally broken members with 1" insulated glass. Rear doors to be hollow metal 3'-0" x 7'-0".
8. FLOOR:
  - A. Level 4" concrete slab over a 6-mil vapor barrier.
  - B. If applicable, a portion of the floor shall be left open for plumbing rough in, pursuant to Tenant's plans.

# Exhibit "D" TENANT'S WORK



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## BAY 9 & 10 PLAN



## Exhibit "E" Exterior Sign Specifications

This criteria has been established for the purpose of assuring an outstanding shopping center and for the mutual benefit of all tenants. Conformance will be strictly enforced and any nonconforming installation or unapproved sign must be brought into conformance at the expense of the Tenant.

### General Requirements

1. Signs must be store and business name identification signs only and shall be placed on the building façade in the location approved by Landlord's consent and discretion. Sign copy shall be limited to the proper business name of the Tenant. No script will be permitted unless it is part of an established trademark of Tenant.
2. All signs and their installation shall comply with all local building and electrical codes.
3. Working on signs shall not include the product sold except as part of Tenant's trade name or insignia.
4. Tenant is required to maintain its signs in good working order at all times. At installation and upon the termination of the Tenant's Lease, the Tenant will remove its sign and repair any damaged EIFS (Exterior Insulation Finish System) or other damage caused by the sign to a condition acceptable to the Landlord. All repairs to exterior EIFS must be performed by an EIFS contractor acceptable to the Landlord and all penetrations of the building structure required for sign installation shall be sealed in a watertight condition and shall be patched to match the adjacent EIFS finish.
5. Except as provided herein, no advertising placards, banners, pennants, names, insignia, trademarks, or other descriptive material shall be affixed or maintained upon the glass panes and supports of the show windows and doors, storefront, upon the exterior walls of the building, or within 24 inches of the show or storefront windows.
6. Each Tenant who has a non-customer door for receiving merchandising may have, as approved by the Landlord, in 2-inch high block letters, the Tenant's name and address. Where more than one Tenant uses the same door, each name and address shall be applied. Color of letters will be as selected by the Landlord.
7. No can, box, exposed skeleton neon, non-illuminated, audible, flashing or animated signs shall be allowed. No signs with the face perpendicular to the face of the building or storefront shall be allowed. No exposed lamps, transformers, tubing, raceways, crossover, conductors or conduit shall be allowed.
8. Subject to Landlord's specific approval, registered corporate logos, shield, etc., will be permitted provided they are contained within the designated signable area, comply with these sign specifications and conform to the applicable height, width and color allowance as outlined.
9. Revisions to or deviations from these specifications and conditions, including re-allocation or relocation of assigned signable area shall be at Landlord's sole discretion.
10. Tenant shall install on the storefront the numbers for the street address and/or suite number in the exact location, size, type and color as required by the Landlord.

### Sign Manufacturing Requirements

1. Only sign vendors approved by the Landlord shall be allowed to manufacture and install all exterior signage.
2. Tenant shall be liable for the operations of Tenant's sign contractor.
3. All signs shall be constructed and installed, including electrical hook-up from Tenant's meter, at Tenant's expense.
4. No projections above or below the sign limits will be permitted. Signs must be within limits indicated.
5. Signs must not exceed 36" in height. The depth from the back of the sign to the face shall be a maximum of five inches. If text is stacked due to restricted length, each line of text must be no less than 12" in height with overall signage height not to exceed 36".
6. Signs shall consist of individually and internally illuminated pan channel letters with a 1" trim cap and mounted to 8" high x 8" deep raceways. Raceways shall be required to be painted to match the building façade. The color of the returns shall be approved by the Landlord. Letter fastening clips are to be concealed and be of galvanized stainless or aluminum metals.
7. No sign letters or components shall have exposed neon or other exposed lighting. All light sources shall be concealed by translucent material. Sign letters or components may be back-illuminated with lamps wholly concealed within the

- depth of the letter. Maximum brightness shall not exceed 100 foot-lamberts.
8. No labels will be permitted on the exposed surface of signs, except those required by local ordinance which shall be placed in an inconspicuous location, except UL labels as provided by code.
  9. The width of Tenant's fascia sign shall not exceed 80 percent of the width of Tenant's bay and shall be centered vertically and horizontally on the allocated sign area.
  10. Individual illuminated channel letters shall be constructed out of aluminum with 5" returns and ¼" weep holes in the bottom of each letter.
  11. Plexiglas faces shall be 3/16" thick and Landlord shall approve color. Trimcap to be 1" wide and color shall be approved by Landlord.
  12. Each channel letter and transformer(s) to be wired behind the mounting surface.
  13. Midpoint grounded installations shall not be acceptable.
  14. All signs must be UL approved. All transformers must comply with NEC Article 600-23 and UL's 2161 specifications per the City of Omaha's electrical code. These transformers are also known as Ground Fault Protected Transformers. 60 MA transformers shall use all mercury (argon gas) tubing. 30MA transformers may be used on red (neon) tubing.

#### **Prohibited Signs**

The following sign types or sign components will not be permitted:

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1. Signs of box or cabinet type.
  2. Letters using any color, style, material or placement other than those specified by criteria.
  3. Signs employing exposed transformers.
  4. Moving or rotating signs.
  5. Signs employing moving or flashing lights.
  6. Signs, letters, symbols or identification of any nature painted directly on sign or background surfaces.
  7. Signs employing un-edged or uncapped letters, or letters with no returns and exposed fastenings.
  8. Cloth, wood, paper or cardboard signs, stickers, decals, or painted signs around or on exterior surfaces (including doors and/or windows) of the Premises, unless approved by Landlord.
  9. Freestanding signs.
  10. Rooftop signs.
  11. Signs employing noise-making devices or components.
  12. Signs exhibiting the names, stamps, or decals of the sign manufacturer or installer.

#### **Submittals and Approval**

1. Signs must be approved by the Landlord before manufacturing is begun or permits are applied for and will be reviewed for conformance with this criteria and overall design quality. Approval or disapproval of sign submittal based on aesthetics or design shall remain the sole right of the Landlord.
2. Approval of sign drawings, store design drawings or working drawings and specifications for the Premises does not constitute approval of manufacturing and installation. Landlord's written approval of Tenant's proposed sign drawings and specifications is required.
3. Tenant shall submit drawings and specifications including samples of materials and colors, if needed, for all proposed sign work to Landlord before fabrication. Three (3) sets of detailed drawings shall be submitted to Landlord. The drawings shall clearly show location, size, layout, method of attachment, design, colors, proposed graphics, logos, and position and location of sign on the building elevation. Tenant should note that approval may take two or more weeks. Full information regarding electrical load requirements and brightness in foot-lamberts is to be included for all signs.
4. Landlord shall return one (1) set of the sign drawings to the Tenant marked "Approved" "Approved as Noted," or "Disapproved". Drawings marked "Approved" or "Approved as Noted" and returned to Tenant shall need to obtain any applicable sign permit from the City of Omaha. The City of Omaha will not approve the sign permit without a drawing marked with Landlord's approval. Drawings that have been marked as "Disapproved" are to be redesigned and resubmitted to the Landlord for approval. The Landlord will retain two (2) sets of drawings.

5. No signage shall be manufactured or installed until the Landlord with the "Approved or "Approved as Noted" has returned the drawings.
  6. All permits for signs and their installation shall be obtained by the Tenant or Tenant's representative and shall be signed by the Landlord prior to being sent to the City of Omaha.
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