

## 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 THE CLASS C LIQUOR LICENSE FOR MICHAEL J. PIGNOTTI AND SUSANNE M. MOLLACK DBA PHILLY SPORTS BAR & GRILL, LA VISTA, NEBRASKA.

WHEREAS, Michael J. Pignotti and Susanne M. Mollack dba Philly Sports Bar & Grill, 8116 S 84th Street, La Vista, Sarpy County, Nebraska, has applied to the Nebraska Liquor Control Commission for an addition to their Class C Liquor License to add a beer garden, 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 application for the addition to the Class C Liquor License submitted by Michael J. Pignotti and Susanne M. Mollack dba Philly Sports Bar & Grill, 8116 S 84th Street, La Vista, Nebraska.

PASSED AND APPROVED THIS 1ST DAY OF MAY, 2012.

CITY OF LA VISTA

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

ATTEST:

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

## Pam Buethe

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**From:** Bob Lausten  
**Sent:** Monday, April 23, 2012 9:28 AM  
**To:** Pam Buethe  
**Subject:** RE: Agenda items

The police department has reviewed both plans submitted and have not identified any law enforcement concerns.

Robert S. Lausten  
Chief of Police  
La Vista Police Department  
7701 S. 96th St.  
La Vista, Nebraska 68128  
(402) 331-1582 FAX: (402) 331-7210

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**From:** Pam Buethe  
**Sent:** Friday, April 20, 2012 9:22 AM  
**To:** Bob Lausten  
**Subject:** Agenda items

Bob,  
Please review these two requests for additions to liquor license areas and send me your comments. If I could have those by Wednesday, that would be great.  
Thank you  
Pam

*Pamela A. Buethe, CMC  
City Clerk  
City of La Vista  
8116 Park View Boulevard  
La Vista NE 68128  
Phone: (402) 331-4343  
Fax: (402) 331-4375  
[pbuethe@cityoflavista.org](mailto:pbuethe@cityoflavista.org)*

# STATE OF NEBRASKA

Dave Heineman  
Governor

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)

April 10, 2012

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

Dear Clerk

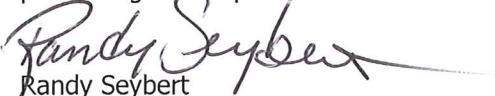
The below licensee has requested an **ADDITION**:

LICENSE #: **C-45403**  
LICENSEE NAME: **PIGNOTTI, MICHAEL J. & MOLLACK, SUSANNE M.**  
TRADE NAME: **PHILLY SPORTS BAR & GRILL**  
ADDRESS: **8116 S 84<sup>TH</sup> STREET**  
CITY/COUNTY: **LA VISTA / SARPY**  
PREMISE PHONE: **402-331-6112**

OLD DESCRIPTION: **ONE STORY BLDG APPROX 100' X 45'**

NEW DESCRIPTION: **ONE STORY BLDG APPROX 100' X 45' W/BEER GARDEN APPROX 15' X 15'**

Please present this request to you city/village/county board and send us a copy of their recommendation. If recommendation of denial or no recommendation is made the Commission has no alternative but to cease processing this request.

  
Randy Seybert  
Licensing Division  
Nebraska Liquor Control Commission

rs  
cc: file

Janice Wiebusch  
Commissioner

Bob Batt  
Chairman  
An Equal Opportunity/Affirmative Action Employer

William Austin  
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

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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

RS

LIQUOR LICENSE #

45403 - C

LICENSEE NAME

Michael J. Pignotti Susanne M. Mollak

TRADE NAME

Philly Sports Bar &amp; Grill

PREMISE ADDRESS

8116 South 84th Street

CITY

LaVista

CONTACT PERSON

Michael J. Pignotti

PHONE NUMBER OF CONTACT PERSON

(402) 490-5751

### 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...)



1200007697

10R # 19761  
\$45.00

1  
he



☐ 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?

14 gauge tubular steel

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

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

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Michael J PIGNOTTI

Print Name of Signature

Michael J Pignotti

Signature of Licensee or Officer

State of Nebraska

County of Sarpy

The foregoing instrument was acknowledge before  
me this 3.30.12

Date

Evelyn Vogel

Notary Public Signature

Affix Seal Here

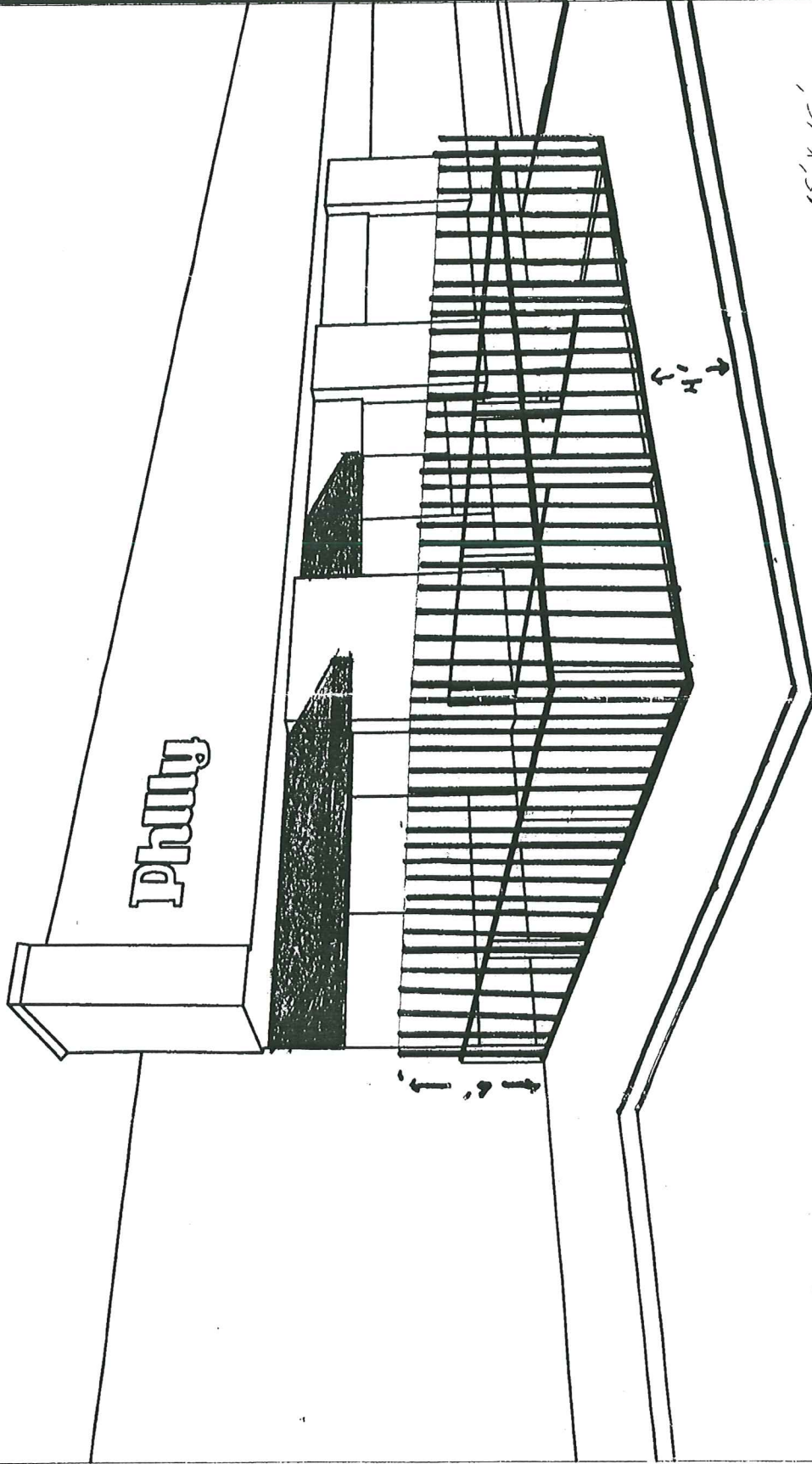


1944-1945

OUTDOOR PATIO ADDITION

PHILLY SPORTS BAR AND GRILL  
8116 SOUTH 84TH STREET - LA VISTA, NE

CITY OF LA VISTA  
APPROVED BY \_\_\_\_\_  
NAME: \_\_\_\_\_  
DATE: \_\_\_\_\_  
REC'D BY \_\_\_\_\_  
INI \_\_\_\_\_  
DATE \_\_\_\_\_



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## BRENTWOOD SQUARE SHOPPING CENTER LEASE

THIS LEASE, made this 6th day of July, 2011, by and between F & J REALTY, hereinafter referred to as "Landlord", and MICHAEL PIGNOTTI and SUSANNE MOLLAK, husband and wife, hereinafter referred to as "Tenant".

### WITNESSETH:

1. **PURPOSE:** Landlord hereby demises and leases to Tenant that certain space in Landlord's building located at Brentwood Square Shopping Center, and having the address of 8086 & 8116-8118 South 84th Street, LaVista, Nebraska 68128, which space is described as follows: an area consisting of approximately 3,250 square feet, and said space so leased shall be used as a restaurant/lounge and for no other use or purpose whatsoever without the express written consent of the Landlord.

2. **COMMENCEMENT:** The term of this lease shall be for a period of four (4) years beginning October 1, 2011.

3. **RENTS:** Tenant shall pay to Landlord as rent for said leased premises during the initial Lease Term the total sum of One Hundred Fifty-Six Thousand and 00/100 Dollars (\$ 156,000.00) per the rent schedule below. Tenant shall pay rent and assessments on the first day of each and every month of said term, in advance, at the office of the Landlord or its duly appointed agent.

### RENT SCHEDULE:

From October 1, 2011 to end of lease term, \$ 3,250.00 per month.  
From \_\_\_\_\_ to \_\_\_\_\_, \$ \_\_\_\_\_ per month.  
From \_\_\_\_\_ to \_\_\_\_\_, \$ \_\_\_\_\_ per month.

Rent representing \_\_\_\_\_, 19\_\_\_\_ (\$ \_\_\_\_\_) is hereby acknowledged upon the execution of this Lease.

4. **COMMON AREA MAINTENANCE CHARGES:** Tenant shall pay Landlord additional annual rental equal to the sum of the amounts:

(i) by which taxes, assessments, and governmental charges whether Federal, State, County or Municipal, which are levied on or charged against the real estate of which the leased premises are part and any other taxes and assessments attributable to said real estate or its operation by multiplying the following percentage (4.890% for taxes/3.489% for CAM\*), representing the relationship of the net rentable square feet of floor area occupied by the Tenant as it relates to the total net rentable square feet on the site of which the leased premises form a part, however, Tenant shall be responsible for all such taxes per square foot of space; and shall pay its prorated amount in monthly installments, along with monthly rent.

(ii) by which the Insurance Premiums attributable to the real estate of which the leased premises form a part by multiplying the percentage specified in subparagraph (i) hereof for insurance of multi-peril all risk policy covering the buildings and liability in the manner consistent with the shopping center.

\*Tenant's pro rata share of taxes are exclusive of Space No. 8020 square footage in the shopping center and the Tenant's pro rata share of common area maintenance is inclusive of Space No. 8020 square footage with relation to net rentable square footage of the shopping center in relation to Tenant's demised square footage.

(iii) common area operating and maintenance costs, which costs include all costs of maintenance, repairs and replacements to common areas, including but not limited to line painting, cleaning of center, roads, lighting, snow removal, management, liability insurance, depreciation of machinery and equipment used in such maintenance, repair and replacement and the cost of

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personnel in implementing such services (excluding structural maintenance, repair or replacement to buildings).

All such costs shall be multiplied by the fraction or percentage specified in subparagraph (i) hereof and paid by Tenant with monthly base rent payments. Common areas not inclusive of gravel parking area to west of property.

Tenant's share of such costs in excess of the amount hereinafter provided shall be determined on an annual basis for each calendar twelve (12) month period ending on December 31, prorating fractional years. Based upon and establishing costs for common areas, Tenant shall pay \$ 848.00 per month on the first day of each month in advance with rent and at the end of each year an analysis of the total year's common area operating costs shall be presented to Tenant and Tenant shall pay any excess charge to the Landlord within thirty (30) days of receiving said statement.

5. **DESTRUCTION:** If said building or the leased premises shall be damaged or destroyed in whole or in part by fire, the elements or other casualty so as to render the building or leased premises unfit for occupancy, and if in Landlord's or Tenant's judgment, they cannot be repaired within one hundred eighty (180) days from the happening of said injury, this lease shall terminate, at Landlord's or Tenant's election, effective as of the date of such damage. If Landlord elects to repair the leased premises, such repairs shall be completed within one hundred eighty (180) days from the happening of such injury, delays due to force majeure, strikes, material shortages, and other factors outside Landlord's control excepted. Landlord's failure to repair the leased premises within such time period shall cause this lease to terminate at the expiration thereof without any further liability whatsoever on the part of either party. Upon termination hereunder, Tenant shall immediately surrender the possession of the leased premises and all rights therein to Landlord, the Landlord shall have the right immediately to enter into and take possession of said leased premises and shall not be liable for any loss, damage or injury to the property or person of Tenant or any occupant of, in or upon said leased premises. Rental and all other amounts payable hereunder shall abate during such period as the leased premises remain wholly untenanted due to such event.

6. Tenant agrees that no representations as to the condition of said leased premises have been made by Landlord to Tenant either directly or indirectly prior to or at the execution of this lease that are not herein expressed and Tenant accepts space in "as is" condition.

7. **LANDLORD REPAIRS:** Landlord agrees to maintain in good condition, and repair as necessary the foundations, exterior walls and the roof of the leased premises.

8. **TENANT REPAIRS:** During the continuance of this lease Tenant shall keep the leased premises and appurtenances in good order and repair and shall keep the said premises and appurtenances in a wholesome condition without charge or expense to Landlord. Tenant shall make all repairs and replacements necessary to carry out the foregoing including, but not by way of limitation, those to and of all interior and exterior doors, door frames, windows, plate glass, and the heating, air conditioning, plumbing, and electrical system servicing said bay. **Landlord agrees to replace the heating and air conditioning system serving the leased premises at Landlord's expense in the event it is no longer in a serviceable condition.**

Tenant shall pay for all damages to the building as well as damages to the tenants or occupants thereof caused by any waste, misuse or neglect of said leased premises, its apparatus or appurtenances and shall not make or allow to be made any change, alteration or addition, in, upon or to said premises without the written consent of Landlord for that purpose first had and obtained. At the expiration of the time mentioned in this lease, or at an earlier termination thereof by forfeiture or otherwise, Tenant shall yield up said leased premises together with all its apparatus and appurtenances to Landlord in the same condition as when leased, reasonable wear and tear and damage beyond the control of Tenant excepted, and will surrender all original and duplicate keys of the several doors and such other things as pertain to said leased premises.

Landlord hereby waives all claim to the cabinetry, appliances and moveable equipment installed by Tenant on the leased premises or adjacent grounds. Landlord agrees that said personal property shall remain property of Tenant and may be removed by Tenant upon the expiration of its tenancy; provided however, that Tenant restore said premises to its original condition to the extent

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practicable.

9. CLEANING: The Tenant shall not perform any acts or carry on any practice which may injure the leased premises or building of which the leased premises are a part, or be a nuisance or menace to other tenants in said building and shall keep the premises under its control ~~(including adjoining drives, streets, alleys or yards)~~ clean and free from rubbish and dirt, at all times, and it is further agreed that in the event the Tenant shall not comply with these provisions, the Landlord may enter upon said premises and have rubbish, and dirt and ashes removed ~~and the sidewalks cleaned~~, in which event the Tenant agrees to pay all charges that the Landlord shall pay for hauling rubbish, ashes and dirt, ~~or cleaning walks~~. Said reasonable charges shall be paid to the Landlord by the Tenant as soon as bill is presented to Tenant and the Landlord shall have the same remedy as is provided in paragraph 16 of this lease in the event of Tenant's failure to pay.

10. COMPLIANCE WITH LAWS: The Tenant shall at its own expense promptly comply with all laws, orders, regulations or ordinances of all Municipal, County and State authorities affecting the leased premises and the cleanliness, safety, occupation and use of same, except those relating to the structural portions of the leased premises which shall be Landlord's responsibility unless resulting from the particular use of the leased premises by Tenant.

11. REMEDY: If the Tenant shall default in any payment, expenditure or covenant other than rent required to be paid, expended or performed by the Tenant under the terms hereof, which shall continue for thirty (30) days after written notice thereof is provided to Tenant, the Landlord may at its option, make such payment or expenditure or perform such covenant, in which event the amount or cost thereof shall be payable as rental to the Landlord by the Tenant on the next ensuing rent day together with a charge of five percent (5%) of the amount thereof for Landlord's administrative expenses in connection therewith.

12. EASEMENTS: Tenant hereby grants to Landlord such licenses or easements in or over the leased premises or any portion or portions thereof as shall be reasonably required for the installation or maintenance of mains, conduits, pipes, or other facilities to serve the building of which the leased premises are a part, or any part thereof, including but not by way of limitation, the premises of any other Tenant thereof, provided, however, that Landlord shall pay for any alteration required on the leased premises as a result of any such exercise, occupancy under, or enjoyment of, any such license or easement, and provided further that no exercise, occupancy under, or enjoyment of any such license or easement shall result in any unreasonable interference with Tenant's use, occupancy, or enjoyment of the leased premises as contemplated by this lease.

13. ROOF ACCESS: The Landlord reserves the right of free access at all times to the roof of the leased premises. The Tenant shall not use the roof for any purpose without the consent in writing of the Landlord.

14. SUBLET: Tenant shall not sublet said leased premises or any part thereof, nor allow the same to be used or occupied by any other person or for any other use than that herein specified, nor assign this lease or any interest therein, without the written consent of the Landlord, which written consent the Landlord agrees will not be unreasonably withheld, and shall not suffer or permit any assignment or transfer by operation of law or otherwise, of the estate, or interest of Tenant in said leased premises acquired in, by or through this lease. Any written consent which Landlord may give to any assignment of Tenant's lease or to any sublease or co-tenancy of the leased premises shall be bound by the terms hereof, and be restricted to the particular assignment or sublease or co-tenancy, and the agreement herein not to assign or sublet remain in effect against the Tenant and Tenant's assigns and subleases it shall not be deemed unreasonable for Landlord to withhold consent to any new use or Tenant on the basis of existence of a competing use by a then current or prospective tenant of the shopping center, exclusive of non-compete clauses in existing leases.

15. LANDLORD'S OPTION: The Tenant agrees that if the estate hereby created shall be taken in execution, or by other process of law, or if the Tenant shall be declared bankrupt or insolvent, according to law, or any receiver be appointed for the business and property of the Tenant, or if any assignment shall be made of the Tenant's property for the benefit of creditors, then and in such event this lease may be canceled at the option of the Landlord.

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16. CURE FOR DEFAULTS: If Tenant shall default in the payment of rent reserved, or move out of, abandon or vacate the leased premises, then if Tenant shall not have cured such defaults within ten (10) days after receiving written notice thereof, Landlord may either:

(i) terminate this lease, and with or without process of law, expel and remove Tenant, or any other person or persons in occupancy from the leased premises, together with their goods and chattels, using such force as may be necessary in the judgment of Landlord or its agents in so doing, and repossess the leased premises, provided that in the event of termination pursuant hereto Landlord shall, nevertheless, be entitled to damages provided by law, just as if Tenant repudiated this lease, or

(ii) terminate Tenant's right to possession only, without terminating this lease, and with process of law, expel, and remove Tenant, or any other person or persons in occupancy from the leased premises together with their goods and chattels, using such force as may be necessary in the judgment of Landlord or its agents in so doing, and repossess the leased premises without such entry and possession terminating this lease or releasing Tenant in whole or in part from Tenant's obligation to pay rent hereunder for the full term hereof. Upon and after entry into possession without termination of this lease, Landlord shall use its best efforts to relet the leased premises or any part thereof for the account of the Tenant, to any person, firm, or corporation, for such rent, for such term (including a term beyond the term hereof, but the part of such term which is beyond the term hereof shall not be chargeable to Tenant's account), and upon such terms and conditions as Landlord, in Landlord's sole discretion, shall determine, and Landlord shall apply all rents received upon such a reletting as follows:

(a) first to the payment of such reasonable expenses as Landlord may have incurred in recovering possession of said leased premises (including legal expense and attorneys' fees), and in putting the same into good order or condition, or preparing, or altering the same for rental and reletting, and all other reasonable expense, commissions and charges paid, assumed, or incurred by Landlord in or about reletting the leased premises; and

(b) then to the fulfillment of the covenants of Tenant hereunder, if the consideration collected by Landlord upon any such reletting is not sufficient to pay in full the amount of rent reserved in this lease together with the items and expenses enumerated in subparagraphs (a) and (b) above, then Tenant shall pay to the Landlord the amount of each monthly deficiency upon demand.

The foregoing remedies shall not be deemed mutually exclusive nor are the foregoing intended to be exclusive of any other remedies available at law or in equity to Landlord, all such rights and remedies being cumulative. In the event any payment of rent is paid after ten (10) days from the date on which said rent is due, Tenant shall pay an administrative charge of five percent (5%) of the amount of the late payment of the next rent due date.

17. LIEN: Landlord shall have a lien on all of the property, fixtures and furniture of Tenant situated on the leased premises during the term of this lease as security for the payment of the rent reserved and the performance of the agreements of this lease by Tenant, which lien Landlord may enforce by distress or attachment, and Tenant hereby waives all exemptions. If the rent reserved herein shall at any time be in arrears or Tenant shall breach any of the agreements of this lease, Landlord shall thereupon be entitled to the immediate possession of all of the property, fixtures and furniture of Tenant situated on the leased premises and may enter said premises and take possession thereof. If at the end of thirty (30) days Tenant shall not have fulfilled its obligations hereunder then Landlord, at its option, may sell the same at a public or private sale, and if such property is sold Landlord shall apply the proceeds, first, to the cost and expenses of such sale, second, to the satisfaction of any sums owing to it from Tenant for nonpayment of rent and expense of such sale, third, to the satisfaction of any sums owing to it from Tenant for nonpayment of rent accrued or to accrue under the terms hereof or breaches of other obligations of the lease, and the balance, if any, it shall pay over to Tenant. Any property, furniture or fixtures belonging to Tenant which Landlord may store, shall be at Tenant's sole risk and Landlord shall not be held responsible for any breakage or damage occasioned by such storing. If this lease is terminated at the election of Landlord, as aforesaid, or in any other way, Tenant shall without demand, surrender and deliver up said leased premises and property peaceably to Landlord immediately upon such termination, and if Tenant shall remain in possession of the leased premises, or any part thereof, one day after the termination of this lease in any of the ways above named, Tenant shall be deemed guilty of forcible detainer of the leased

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premises under the statutes of the State of Nebraska and shall be subject to all the conditions and provisions above named and to eviction and removal forcibly or otherwise with or without process of law as above stated. After the commencement of a suit, or after final judgment, for possession of said premises, Landlord may receive and collect any rent due from Tenant, and the payment of said rent shall not waive or affect said suit or said judgement. All rights of Landlord in the event of default herein enumerated shall be in addition to and without prejudice to any remedy or remedies which Landlord may have at law or in equity for nonpayment of rent or for breaches of the covenants and agreements hereof.

18. HOLD HARMLESS: Landlord shall not be liable for any damage occasioned by failure to keep the leased premises in repair, other than as results from its own negligent acts or omissions, and shall not be liable for any damage done or occasioned by or from electric current, plumbing, gas, water, steam or sewage, or the bursting, leaking, running or failure of operation of any radiator, tank, water closet, wash stand, waste pipe, air-conditioning or any other apparatus in, above, upon or about said building or leased premises, nor for damage occasioned by water, snow, or ice being upon any sidewalk or entrance way, or being upon or coming through the roof, skylight, trap door or any other opening in said building or premises, nor for any damage arising from the action or negligence of Tenant, co-tenants or other occupants of the said building or of any owners or occupants of adjacent or contiguous property. Tenant hereby releases, discharges and agrees to indemnify, protect and save harmless Landlord of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to person or property arising from the foregoing and hereby, in advance of loss, waives any right to subrogation arising by reason of such loss. To the extent obtainable, Tenant shall be required to obtain in Tenant's insurance coverage a waiver of subrogation clause as to any rights against Landlord and other tenants in the shopping center upon an insured loss. Tenant and Landlord hereby release, discharge and agree to indemnify, protect and save harmless each other of and from any and all claims, demands and liability for any loss, damage, injury or other casualty to property, whether it be that of either of the parties hereto or of third persons, whether they be third persons, or employees caused by, growing out of or happening in connection with use or occupancy of the leased premises or use of any equipment, facilities or property in, on or adjacent to aforesaid building.

19. INSURANCE REQUIREMENTS: Tenant agrees to indemnify and hold harmless the Landlord from any liability for damages to any person or property in, on or about said leased premises from any cause whatsoever, excluding causes created by its own act or omissions or that of its contractors, employees or agents and Tenant will procure and keep in effect during the term hereof public liability and property damage insurance for the benefit of the Landlord of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for damages resulting to one person, Five Hundred Thousand Dollars (\$500,000.00) for damages resulting from one casualty, and Fifty Thousand Dollars (\$50,000.00) property damage resulting from any one occurrence. Tenant shall deliver said policies or a certificate of insurance to the Landlord with an endorsement providing that the policy cannot be canceled or the coverage lapsed except after thirty (30) days notice to Landlord, and upon Tenant's failure so to do the Landlord may at its option obtain such insurance and the cost thereof shall be paid as additional rent due and payable upon the next ensuing rent day.

20. All of the remedies herein are cumulative and given without impairing any other rights or remedies of Landlord, and Tenant shall pay and discharge all costs and expenses and attorney fees that shall arise from the enforcing of the covenants of this lease by Landlord.

21. The fact that Landlord does not exercise its rights hereunder in the event of breach of one or more covenants herein by Tenant shall not be deemed a waiver of such rights as to that or any subsequent breaches of the same or any other covenants herein by Tenant.

22. EMINENT DOMAIN: In the event that the whole of the building of which the leased premises form a part or the whole of the leased premises shall be taken by the exercise of the power of eminent domain, then in such case, this lease shall terminate as of the date of the taking of possession by or the vesting of title in the condemning authority.

If less than the whole, but more than twenty percent (20%) of the leased premises are taken under the power of eminent domain, Landlord and Tenant shall each have the right to terminate this lease by giving written notice to the other within thirty (30) days after being notified of such taking and in

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such event, such termination shall be effective upon the day possession of such premises shall be required for public use. In the event (i) neither party hereto shall elect to terminate this lease; or (ii) less than twenty percent (20%) of the leased premises are so taken, Landlord shall, at its own cost and expense, make all necessary repairs and alterations to the basic building, storefront and interior work in order to constitute the remaining premises a complete architectural unit. In the event, pursuant to the terms of this paragraph 22, this lease is not terminated, all of the terms herein provided shall continue in effect, except that the rent shall be reduced in proportion to the amount of the leased premises taken. Any award made for any taking under the power of eminent domain shall belong solely to Landlord with the exception of any portion of the award made specifically for tangible personal property of Tenant. Landlord may, in its sole discretion, effect a sale of the whole or any portion of the leased premises in lieu of condemnation, in which case the sale shall be construed as a taking under the power of eminent domain and the proceeds of sale as an award.

23. SUBORDINATION: This lease shall, at the option of Landlord, be subject and subordinate to any mortgages or deeds of trust now of record affecting the leased premises or hereafter placed on the leased premises by Landlord. Landlord may exercise the aforesaid option to subordinate this lease by notifying Tenant thereof at any time in writing. In the event Landlord exercises its option to subordinate this lease to any deed of trust or mortgage pursuant hereto, Tenant shall, at the option of the holder of said deed of trust or mortgage or of any purchaser at any foreclosure sale thereunder, attorn to said holder of any such deed of trust or mortgage or to any purchaser at any foreclosure sale thereunder.

24. NOTICES: Any notice, demand, request, consent, approval, or other communication which either party hereto is required or desires to give or make or communicate upon or to the other shall be in writing and shall be given or made or communicated by United States registered or certified mail, addressed in the case of Landlord to:

F & J Realty  
Brentwood Square Shopping Center  
c/o First Management, Inc.  
Suite 550-The Center  
1941 South 42nd Street  
Omaha, Nebraska 68105-2982

and addressed in the case of Tenant to:

Michael Pignotti and Susanne Mollak  
22026 Silverado Drive  
Elkhorn, Nebraska 68022

subject to the right of either party to designate a different address by notice similarly given. Any notice, demand, request, consent, approval, or other communication so sent shall be deemed to have been given, made or communicated, as the case may be on the date the same was deposited in the United States mail as certified matter with postage thereon fully prepaid.

25. All payments to be made to the Landlord shall be made to the address indicated in paragraph 24 hercof.

26. The term "Landlord" as used in this Lease, as relates to Landlord's covenants and obligations, shall be limited to mean and include only the owners (at the relevant time) of the fee simple title to the leased premises and/or underlying realty. It shall be a condition of any transfer of Landlord's interest in this lease that the transferee agrees to be bound by and perform all obligations of the Landlord hereunder, in the absence of which no purported transfer shall be effective. In the event such transfer is properly effective, the transferor shall be automatically relieved of all personal liability regarding the performance of Landlord's obligations herein contained which arise out of acts occurring after the effective date of such transfer (it being intended hereby that all of Landlord's obligations herein contained shall be binding upon Landlord, its successors and assigns, but only during and in respect of their respective periods of ownership of any interest in the leased premises

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or the underlying realty). Landlord hereby stipulates that it holds title to said premises, has the authority to execute this lease, and guarantees Tenant of its rights to peaceful, quiet use of said premises.

27. RIGHT TO SHOW: The Tenant hereby agrees that for a period commencing ninety (90) days prior to the expiration of this lease, the Landlord may show the premises to prospective Tenants, and sixty (60) days prior to the expiration of this lease, may display in and about said premises and in the windows thereof, the usual and ordinary "FOR LEASE OR RENT" signs.

28. HOLDOVER: Should Tenant, or any of its successors in interest, holdover the premises, or any part thereof, after the expiration of the term of this lease, unless otherwise agreed in writing, such holdover shall constitute and be construed as tenancy from month to month only, at a rental equal to the rental payable for the last month of the term of this lease plus one hundred percent (100%) of such amount. The inclusion of the preceding sentence shall not be construed as Landlord's permission for Tenant to holdover. Notwithstanding the foregoing, however, such increased rentals shall be no more than one hundred twenty percent (120%) of the previously applicable rental unless (i) Landlord and Tenant are not then actively negotiating for the renewal of the occupancy of the leased premises or (ii) Landlord has given Tenant at least one hundred twenty (120) days advance written notice of its intention to exercise its rights under this paragraph 28.

29. UTILITIES IN HOLDOVER: The Tenant will pay all charges made against the leased premises for gas, water, sewage, heat, and electricity during the continuance of the lease, as the same shall become due.

30. ADVERTISING, RULES AND REGULATIONS, AND PARKING: It is further agreed that all signs and advertising displayed in and about the premises shall be such that only as advertise the business carried on upon the leased premises, and that the Landlord shall control the character and size thereof, and that no sign shall be displayed excepting such as shall be approved in writing by the Landlord, and that no awning shall be installed or used on the exterior of said building unless approved in writing by the Landlord. Landlord shall have the right from time to time to establish and enforce reasonable rules and regulations regarding signs, customer and tenant parking areas, use of the common areas and of the leased premises. Such rules and regulations shall be effective upon notice to Tenant of their promulgation. Tenant shall not be entitled to conduct any fire or going out of business sales upon or about the leased premises without the prior written consent of Landlord.

Pursuant to the Landlord's ability to establish and enforce reasonable rules and regulations regarding the parking areas, Tenant does hereby agree to require all employees, agents and representatives to park to the rear of the demised premises, known as the west side, so long as adequate parking spaces exist, and upon request shall serve to Landlord or its agents, a comprehensive list of employees, agents and representatives' automobiles, by color, make and license number upon demand to aid in enforcement of this regulation. Should Tenant not comply by supplying the list or enforcement thereof upon formal written notification, Tenant shall be construed to be in default of the lease agreement.

31. ACCESS: The Landlord shall have the right to enter upon the leased premises at all reasonable hours for the purpose of inspecting the same. If the Landlord deems any repairs or replacements necessary which are Tenant's obligation to make hereunder, he may demand that the Tenant make the same and if the Tenant refuses or neglects forthwith to commence such repairs or replacements, and complete the same with reasonable dispatch the Landlord may make or cause to be made such repairs or replacements and shall not be responsible to the Tenant for any loss or damage that may accrue to his stock or business by reason thereof, and if the Landlord makes or causes to be made such repairs or replacements, the Tenant agrees that he will forthwith on demand, pay to the Landlord the cost thereof together with a charge of five percent (5%) of the amount thereof for Landlord's administrative expenses in connection therewith.

32. SECURITY DEPOSIT: The Landlord herewith acknowledges the receipt of Two Thousand Nine Hundred Seventy-Nine and 17/100 ----- Dollars (\$ 2,979.17 \_\_\_\_\_), which is to be retained as security for the faithful performance of all of the covenants, conditions, and agreements of this lease, but in no event shall the Landlord be obligated to apply the same upon rents or other charges in arrears or upon damages for the Tenant's failure to perform the said covenants, conditions and

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premises for nonpayment of rent or for any other reason shall not in any event be affected by reason of the fact that the Landlord holds this security. The sum if not applied toward the payment of rent in arrears or toward the payment of damages suffered by the Landlord by reason of the Tenant's breach of the covenants, conditions and agreements of this lease is to be returned to the Tenant when this lease is terminated, according to these terms, and in no event is the said security to be returned until the Tenant has vacated the premises and delivered possession to the Landlord.

In the event that the Landlord should repossess himself of the leased premises because of the Tenant's default or because of the Tenant's failure to carry out the covenants, conditions and agreements of this lease, the Landlord may apply the said security upon all damages suffered to the date of said repossession and may apply the said security upon all damages suffered to the date of said repossession and may retain the said security to apply upon such damages as may be suffered or shall accrue thereafter by reasons of the Tenant's default or breach. The Landlord shall not be obligated to keep the said security as a separate fund, but may mix the said security with his own funds. Under no circumstances shall Landlord be responsible to Tenant to account for such funds other than to disclose their ultimate application to whatever damages Landlord elects. Landlord's obligation to Tenant as to such deposit shall terminate upon Landlord's conveyance of the shopping center to a successor Landlord and delivery of such funds to said successor Landlord by check or credit.

33. LATE CHARGE: Any rent or assessments as so outlined in the lease not paid when due and any other sums due from Tenant to Landlord hereunder not paid when due (or upon demand) shall be subject to a \$50.00 late fee if not received by the Landlord within five (5) days after that due date and late charges shall accrue at a rate of \$5.00 per day, to be paid with said month's late rent.

34. BINDING ON PARTIES: All the terms of this lease shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of the respective parties hereto.

35. Unless prevented by events reasonably beyond Tenant's control, Tenant shall use, occupy and operate the entire premises continuously and without interruption during the term in the manner and under the names set forth in the lease hereof in a competent, dignified, energetic and consistent manner such as will enhance the premises as a whole and its reputation as a desirable place to shop so as to achieve the maximum profitable volume of sales. Unless prevented by events reasonably beyond Tenant's control, Tenant shall remain open for business and adequately stocked on all days and during all hours that it is customary for businesses in Brentwood Square Shopping Center to be open with the option of being closed or open on Sundays or any evening and shall adequately staff its store with sufficient employees to handle the maximum profitable quality to accomplish the same; and shall maintain displays of merchandise in the display windows, if any, and keep such windows well lighted.

36. PERCENTAGE RENTS: Tenant shall pay additional rental for each lease year equal to the amount by which five percent (5 %) of the gross receipts for said year, which shall include the total sales price of all merchandise sold in or from the leased premises and the total amount received or charged for services rendered or performed in or from the leased premises (exclusive of sales tax), exceed the rental paid in monthly installments during said lease year. If Tenant's fiscal year and lease year do not correspond, Tenant may pay this additional annual rental on a fiscal year basis provided Landlord agrees in writing to the calculation method to be used for any periods shorter than one year. Tenant shall provide Landlord a report showing gross receipts within sixty (60) days of the end of said period and the report must be certified as accurate by Tenant.

Landlord shall have the right to require an audit of Tenant's books and records by a Certified Public Accountant of Landlord's choice to verify the accuracy of the reported figures for gross receipts. If the results of said audit differ by more than five percent (5%) from said reported figures, Tenant shall pay to Landlord the cost of said audit as additional rent hereunder.

Said additional rent shall be paid with the submission of the report and shall be based on the gross receipts for the lease year or period immediately preceding said report.

37. SIGNAGE: All exterior signs must be approved in writing by Landlord prior to installation by Tenant. All lighted signs to be per specifications shown on Exhibit "B" sign criteria. Tenant shall at

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Tenant's sole expense, have one (1) lighted exterior can sign installed by lease commencement date. At termination of subject lease, said sign shall become property of the Landlord. Tenant shall be allowed to use a single freestanding sign at specified location on attached site plan. Said sign must meet all legal codes.

38. ESTOPPEL CERTIFICATE: Tenant shall, upon demand from Landlord, execute and deliver to Landlord, an Estoppel Certificate in such form and content as requested by Landlord, attesting to the compliance to date of Landlord with the terms and conditions of this lease and such other matters as requested by Landlord which would prevent Tenant from attesting to such a certificate. Tenant shall set forth such alleged default or defaults upon the certificate and detail or attest to the fact that these listed defaults are the only defaults by Landlord hereunder.

39. INTENT: It is the purpose and intent of Landlord and Tenant that the return to Landlord under this lease shall be absolutely net to Landlord so that the share of taxes, insurance premiums, management fees and any and all other reasonable other and necessary expenses and costs reasonably attributable to the premises (and not otherwise specifically provided for in this lease) shall be the obligation of Tenant rather than Landlord.

40. TENANT ALTERATIONS: The Tenant shall not make any alterations, additions, or improvements in or to the premises without the prior written consent of the Landlord, subject to any conditions the Landlord may deem appropriate. Any alterations, additions, or improvements consented to by the Landlord shall be made at the Tenant's sole expense. The Tenant shall provide its own trash containers for construction debris; use service entrances to the premises, if any; conduct no core drillings during business hours; and disrupt other tenants as little as possible. The Tenant shall secure any and all governmental permits, approvals, or authorizations required in connection with any such work, and shall hold Landlord harmless from any and all liability, costs, damages, expenses (including attorneys' fees), and liens resulting therefrom. All alterations, additions, and improvements (expressly including all light fixtures and floor coverings), except trade fixtures, appliances, and equipment that do not become a part of the premises, shall immediately become the property of the Landlord. Upon the expiration or early termination of the term hereof, the Tenant shall, upon written demand by Landlord (given at least thirty (30) days before the end of the term), at the Tenant's sole expense, remove any such alterations, additions, or improvements designated by the Landlord. The Tenant shall, forthwith and with all due diligence, at its sole expense, repair any damage to the premises caused by such removal. Tenant further agrees to submit to Landlord or Landlord's agents all plans and prints for said alterations prior to actual work and Tenant's contractors shall provide Landlord with proof of liability insurance prior to commencing any actual alterations.

41. RIGHT TO TRIAL: Tenant hereby waives right to request a trial by jury for any dispute arising out of the terms, conditions and covenants of this lease whether such legal action taken shall arise out of enforcement of any of the provisions contained herein or whether or not dispute arises out of consequences of Tenant occupying space in Brentwood Square Shopping Center.

42. EXPLANATORY PROVISIONS: (A) The words "Landlord" and "Tenant" shall be taken to include and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, and shall be taken in the plural sense, wherever the context requires, and all pronouns used herein and referring to said parties shall be construed accordingly, regardless of the number or gender thereof.

(B) Headings of the various paragraphs herein are inserted merely as a matter of convenience and for reference and shall not be considered as in any manner defining, limiting or describing the scope or intent of the particular paragraphs to which they refer or as affecting the meaning or construction of the language in the body of such paragraphs.

43. ADDITIONAL PROVISIONS: SEE ADDENDUM

44. Until this lease is executed on behalf of all parties hereto, it shall be construed as an offer of proposed Lessee to proposed Lessor. ~~Time being of the essence, this lease must be completed on behalf of all parties on or before~~ \_\_\_\_\_, 19\_\_\_\_, to be effective.

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45. The undersigned hereby **personally** guarantees unto the Landlord, its successors and assigns, the payment of base rent and any and all assessments so defined in master lease, and the performance of all of the covenants under said lease by Tenant and hereby waives notice of any default under said lease and agrees that liability shall not be released or affected by any extension of time for payment or by any forbearance by the Lessor.

46. There are no oral agreements between the parties hereto affecting this lease, and this lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this lease.

47. **CANCEL PRIOR LEASE:** Upon the effective date of this lease, that September 20, 2006 lease for 8086 & 8116-8118 South 84<sup>th</sup> Street, LaVista, Nebraska shall be cancelled, void, and of no further force and effect.

IN WITNESS WHEREOF, the parties hereto have caused the execution of this lease as of the day and year first above written.

F & J REALTY  
LANDLORD

Witness: Randall Weseloh

By: Frank R. Krejci  
Frank R. Krejci

TENANT

Witness: \_\_\_\_\_

By: Michael Pignotti  
MICHAEL PIGNOTTI

Witness: \_\_\_\_\_

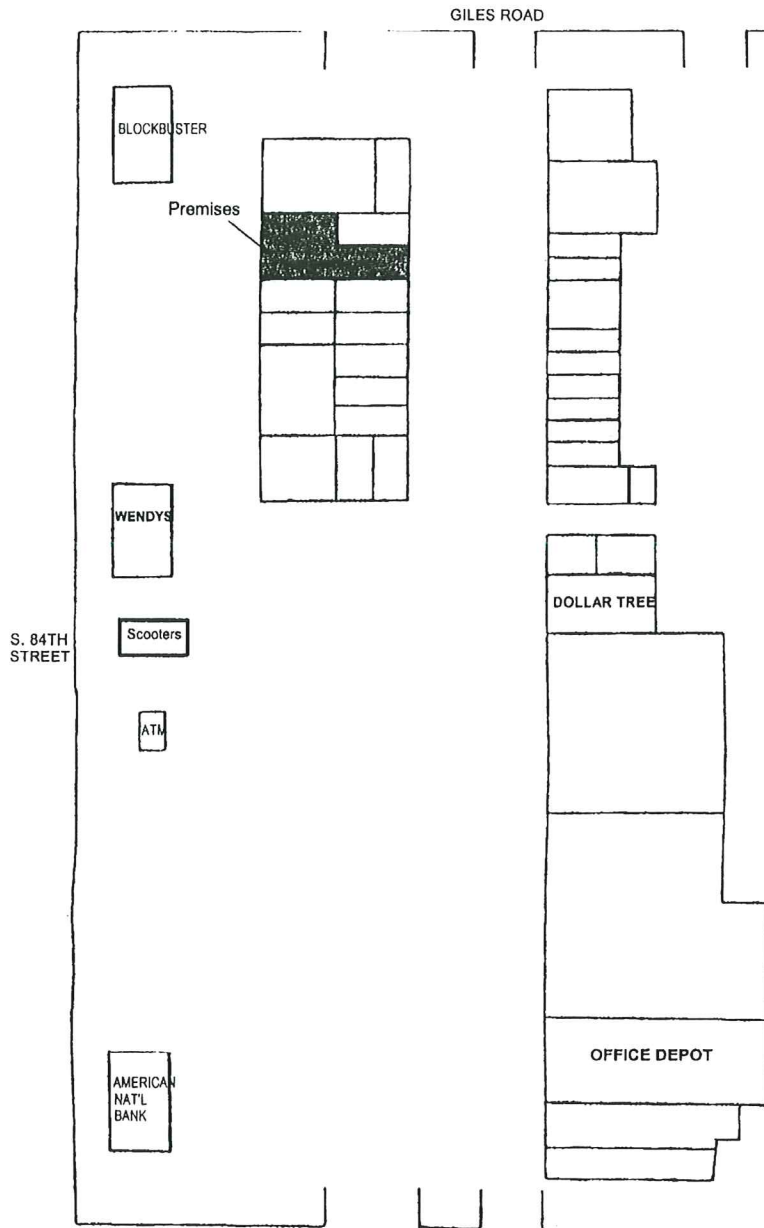
By: Susanne Mollak  
SUSANNE MOLLAK

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Exhibit A



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**BRENTWOOD SQUARE SHOPPING CENTER**

84th & Giles Road, LaVista, NE



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BRENTWOOD SQUARE SHOPPING CENTER

EXHIBIT "B"

RE: SIGN CRITERIA

This policy is established by the owner of Brentwood Square Shopping Center, LaVista, Nebraska, to attain the best possible appearance of all signs in the center.

1. Prior to construction and erection of any signs, two copies of the plans and specifications must be submitted for approval by the Landlord, First Management, Inc., Property Manager.
2. All signs on the Phase I and Phase II buildings are to be the individual letter style mounted on raceway, internally illuminated by neon illumination and mounted in the designated area on the Brentwood Square Shopping Center buildings. No flashing lamps, or revolving or rotating units will be allowed.
3. All signs letter size and sign length on the Phase I and Phase II buildings are to be approved by the Landlord, First Management, Inc., Property Manager.
4. No flashing lamps, revolving or rotating units or lighted window signs will be permitted. Neon illuminated signs are permitted.
5. No V-type marquee signs will be allowed.
6. All field measurements must be verified.

  
LANDLORD'S  
INITIALS

  
TENANT'S  
INITIALS

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**BRENTWOOD SQUARE SHOPPING CENTER**  
**RULES AND REGULATIONS**

1. AWNINGS AND CANOPIES: No awnings or other projections shall be attached to a wall, roof or fascia, the premises or the building in which the demised premises are located without, in each instance, the prior written consent of Landlord.
2. NOISE: No loudspeakers, televisions, phonographs, radios or other sound or pictorial devices shall be used in a manner so as to be heard or viewed outside the demised premises of each respective Tenant without the prior written consent of Landlord.
3. PREVENT FREEZING: Tenant shall maintain a temperature within the demised premises throughout the year to maintain a sufficiently high enough interior temperature to prevent freezing of plumbing and fixtures.
4. ODOR: Tenant shall not make, or permit, any noise or odor objectionable to the public, or other occupants of the building, or to the Landlord, to emit from the demised premises; or create, or permit the extended maintenance arising from said odor of for existence of any nuisance.
5. PARKING: The Landlord requires that any tenants, their agents or representatives do not park in stalls directly in front of any retail space or directly adjacent to such space but rather all Tenants, assigns or representatives shall park no closer than a minimum of a 100 foot radius to said space to allow easy access to customer parking.
6. Any further rules and regulations may be made at discretion of the Landlord pursuant to Section 30 of the Lease agreement attached hereto.



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ADDENDUM

The following Addendum is made a part of the Lease dated the 6th day of July, 2011, by and between F & J REALTY, Landlord, and MICHAEL PIGNOTTI and SUSANNE MOLLAK, husband and wife, Tenant.

- (A.) Merchants Association: Tenant will promptly become a member of, and during the term of this lease participate in, the Merchants Association. Each member tenant shall have one vote; Landlord shall also have one vote. Merchants Association funds are to be used solely for advertising and promotions and administration expenses incident thereto. Dues are calculated on the basis of Ten Cents (10¢) per square foot per year payable in advance on the first day of each month. Minimum dues are Ten and 00/100 Dollars (\$10.00) per month.
- (B.) Exhaust, Ventilation and Fire Extinguishing Systems: Tenant agrees to provide and maintain in good operating condition fire extinguishing equipment to provide continuous fire protection to all cooking units and equipment including, but not limited to, hoods, ducts, exhausts, deep fat fryers, ranges, grills and broilers. Said fire extinguishing equipment shall include an automatic fuel shut-off and a "catch pan" to prevent grease from leaking from Tenant's roof exhaust fan onto the building roof. Inspections of such equipment shall be made no less than annually, and Tenant shall comply with all recommendations of the Landlord's insurance carrier and of the Insurance Services Office of Nebraska. Tenant agrees to have all exhausts, hoods and sanitary sewer lines clean and free from grease build up; ventilation systems and related equipment professionally cleaned on a contracted basis no less than quarterly; agrees to provide Landlord with a copy of such contract; and agrees to comply with any and all recommendations of the Landlord's insurance carrier with regard to fire protection.
- (C.) Tenant Allowance: Provided Tenant is not in default of any of the terms and conditions herein beyond any applicable cure period, Landlord will pay to Tenant an improvement allowance in the amount of Four Thousand Dollars (\$4,000.00) to be applied to Tenant's cost of improvements for the outdoor patio. Such cash allowance shall be payable upon completion of work, and Landlord's receipt of appropriate lien waivers from Tenant or Tenant's contractor(s).