

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
SEPTEMBER 15, 2009 AGENDA**

Subject:	Type:	Submitted By:
AMEND CONDITIONAL USE PERMIT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A resolution has been prepared to approve an amended Conditional Use Permit (CUP) for Island Bar & Grill to allow for an outdoor patio area.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval

BACKGROUND

In December of 2007, the City of La Vista approved a Conditional Use Permit allowing for a bar and grill to occupy an existing commercial building on the subject property. The approval was subject to the following applicable conditions:

- The Permitted Use will be comprised of 2,664 sq. feet of building space; all seating for the Permitted Use shall be inside the building.
- Adequate parking (22 parking stalls) shall be provided on-site to accommodate the maximum number of patrons and employees (104 occupants) in attendance at any one time between the hours of operation.
- No additional restaurants, taverns, or cocktail lounges will be permitted within the same building as the Operator of the Permitted Use
-

Island Bar & Grill is requesting the proposed amendment in response to the State of Nebraska's new law banning smoking from bars and restaurants statewide. Specifically, the applicant would like to provide an area for their patrons to smoke outside of the building.

The Planning Commission held a public hearing on August 20, 2009 and recommended approval.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING AN AMENDED CONDITIONAL USE PERMIT FOR FIELDS INC DBA ISLAND BAR & GRILL TO ALLOW FOR AN OUTDOOR PATIO AREA.

WHEREAS, Fields Inc, represented by Lylette Fields, on behalf of the property owner, Fantasy's Inc, has applied for an amendment to their conditional use permit for the purpose of having an outdoor patio area on Lot 2, Southport East Replat Three; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval; and

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

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the Permitted Use:
 - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives has been provided to the City and is attached to the permit as Exhibit "A". Specifically, based on the occupancy of the building, a minimum of 24 parking spaces shall be designated for the Permitted Use. Parking for the Permitted Use shall not overflow outside of the parking lot onto other properties.
 - b. Hours of operation for the Permitted Use will be from 7 a.m. – 1:00 a.m. seven days a week.
 - c. There will be a maximum of four (4) employees working at any given time at the Permitted Use.
 - d. The Permitted Use will be comprised of 2,664 sq. feet of building space with an additional 172 sq. feet of outdoor patio area in front of the business.
 - e. Adequate parking (24 parking stalls) shall be provided on-site to accommodate the maximum number of patrons and employees (113 occupants) in attendance at any one time between the hours of operation.
 - f. A black, wrought-iron fence, not to exceed 48" in height, shall be constructed around the outdoor patio area, as shown on Exhibit "B".
 - g. No additional restaurants, taverns, or cocktail lounges will be permitted within the same building as the Operator of the Permitted Use.
 - h. The Permitted Use shall be developed and maintained in accordance with the site plan (Exhibit "A") as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
 - i. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City.
 - j. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or

concrete.

- k. Landowner and Operator shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, ADA and FAA.
 - l. Operator shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the Premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
 - m. Operator hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the Operator, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the Premises of any environmental or safety law, rule or regulation.
3. The Operator's right to maintain the Use as approved pursuant to these provisions shall be based on the following:
- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval, if the violation continues after written notice from the City to the Landowner and/or Operator and a reasonable time was given for Landowner and/or Operator to cure such violation.
4. In respect to the Gateway Corridor Overlay District and Southport East Design Guidelines:
(All design guidelines have been followed in original Conditional Use Permit for Fantasy's Food and Fuel)
5. The Landowner and Operator's right to maintain the Use as approved pursuant to these provisions shall be based on the following:
- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
 - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the Landowner and Operator have fully complied with the terms of approval.
 - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at Landowner's expense within twelve (12) months of cessation of the conditional use.
6. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
- a. Operator's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
 - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
 - c. Landowner's construction or placement of a storage tank, structure or other

- improvement on the Premises not specified in this permit.
- d. Landowner or Operator's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
7. If the permitted use is not commenced within one (1) year from September 15, 2009, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to Landowner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
8. In the event of the Landowner's failure to promptly remove any safety or environmental hazard from the Premises, or the expiration or termination of this permit and the Landowner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the Landowner or any third party to exercise said option) cause the same to be removed at Landowner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the Landowner shall reimburse the City the costs incurred to remove the same. Landowner hereby irrevocably grants the City, its agents and employees the right to enter the Premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the Premises as necessary or appropriate to carry out any other provision of this permit.
9. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the amended Conditional Use Permit in form and content submitted at this meeting, for Fields Inc dba Island Bar & Grill, represented by Lylette Fields, for the purpose of having an outdoor patio area on Lot 2, Southport East Replat Three, subject to the conditions listed in the last recital above.

PASSED AND APPROVED THIS 15TH DAY OF SEPTEMBER 2009.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk



CITY OF LA VISTA
CITY COUNCIL

STAFF REPORT

CONDITIONAL USE PERMIT AMENDMENT
ISLAND BAR AND GRILL

DATE OF HEARING:

September 15, 2009

PROPOSAL:

Addition of an outdoor seating area for the Island Bar & Grill

PROPERTY INFORMATION

APPLICANT:

Fields, Inc
Lyllette Fields
7826 S. 123rd Plaza, Suites E & F
La Vista, NE 68128

PROPERTY OWNER:

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

LOCATION AND SIZE:

7826 S. 123rd Plaza, Suites E & F
Lot 2, Southport East Replat Three
Existing business = approx. 2,700 square feet

CURRENT ZONING:

C-3, Highway Commercial / Office Park District and
Gateway Corridor District

BACKGROUND

History of Subject Properties:

In December of 2007, the City of La Vista approved a Conditional Use Permit allowing for a bar and grill to occupy an existing commercial building on the subject property. The approval was subject to the following applicable conditions:

- The Permitted Use will be comprised of 2,664 sq. feet of building space; all seating for the Permitted Use shall be inside the building.
- Adequate parking (22 parking stalls) shall be provided on-site to accommodate the maximum number of patrons and employees (104 occupants) in attendance at any one time between the hours of operation.
- No additional restaurants, taverns, or cocktail lounges will be permitted within the same building as the Operator of the Permitted Use

Description of Proposed Development:

On July 14, 2009, the City of La Vista received an application from Island Bar & Grill to amend their permit to allow for an outdoor patio area. This request is in response to the State of Nebraska's new law banning smoking from bars and restaurants statewide. Specifically, the applicant would like to provide an area for their patrons to smoke outside of the building.

The construction would include a six-foot high fence, which would be required to be black wrought iron. The enclosed patio area would be 28' wide x 6' deep. The sidewalk in front is 10' wide, so a 4' wide sidewalk would still exist in front of the fence. Three tables with chairs are proposed within the enclosed patio area.

Existing Conditions of Site:

Fantasy's Food and Fuel with additional commercial flex spaces

Surrounding Area and Adjacent Neighborhoods Land Uses and Zoning:

North – C-3, PayPal;

East – C-3, Vacant;

South – C-3, Pinnacle Bank; and

West – C-3, Embassy Suites

Applicable Regulations:

Section 5.12, Zoning Ordinance, regarding C-3 Zoning District

Section 5.17, Zoning Ordinance, regarding Gateway Corridor District

Section 6.05, Zoning Ordinance, CUP Standards for Approval

Southport Architectural and Site Design Guidelines

Applicable Plans:

Island Bar & Grill Conditional Use Permit, dated December 4, 2007 (see attached)

REVIEW COMMENTS FROM CITY STAFF AND OUTSIDE AGENCIES

City Engineer, John Kottmann:

No comments received.

Chief Building Official, Jeff Sinnett

- Four foot sidewalk must be maintained in front for ADA requirements.
- Awning projection needs to meet requirements
- Only black, wrought iron type fencing is allowed in Southport

Fire Chief, Rich Uhl

No comments received.

Police Chief, Bob Lausten

No concerns with proposal.

Public Works Director, Joe Soucie

No comments received.

PUBLIC COMMENTS

No public comments or questions have been received regarding this application.

CITY PLANNER'S ANALYSIS

Land Use:

The land use is supported by the zoning district, but the applicant's CUP currently restricts outdoor seating. The intent of the proposal is not to add more seating capacity but to provide an area for customers to step outside with an alcoholic beverage.

Transportation:

The proposal requests an additional 172 square feet of gross floor area, which would require two additional parking spaces. This would increase the required allotment of 22 parking spaces to 24 parking spaces. Parking has been in an overflow situation in the past, where people have parked in the street to enter the Island Bar & Grill. This overflow parking situation tends to happen more in the early evening

hours. However, parking has not been overflowing in the past year after more bars and restaurants have been constructed in the area. There is room for two parking spaces in front of the dumpster enclosure that the applicant says her employees can park in during peak hours.

Landscaping:

The State Liquor Commission has told the applicant that the fence height is determined by the City, and it would be preferred by City staff that the fence not exceed four feet because the fence would be located in the front of the business. The Liquor Commission therefore recommends that the applicant designate the outdoor area as a "sidewalk café" to avoid more restrictive fencing requirements from the State.

Stormwater Drainage:

N/A

PLANNING COMMISSION RECOMMENDATION

Planning Commission has recommended approval of the amendment to the Island Bar and Grill's conditional use permit to allow for an outdoor patio area as proposed.

Attachments:

1. Vicinity Map
2. Amended CUP
3. Original CUP for the Island Bar & Grill, dated December 4, 2007

Prepared by:

Community Development Director Date

Island Bar & Grill
7826 So. 123rd Plz
Ste E & F
LaVista, NE 68128

Beer Garden Proposal

We would like to enclose a small area in front of our bays with a fence and allow our smoking customers to go outside with their beverage. The fence will be 6' high and made of either black metal or green vinyl, whichever the Southport Design Team prefers. There are 2 pictures of possible fences. We will have 3 small outdoor tables 24-30" round with 2-3 chairs for each. Our intention is not to increase our occupancy but to accommodate our smoking customers. Most people are not comfortable leaving their beverage unattended while they go outside.

The drawing on graph paper shows the exact measurements of the fence. The picture is just to show the front of the building. The fence shown will not look like the picture but is similar in location. The awning shown will be installed in a couple weeks.

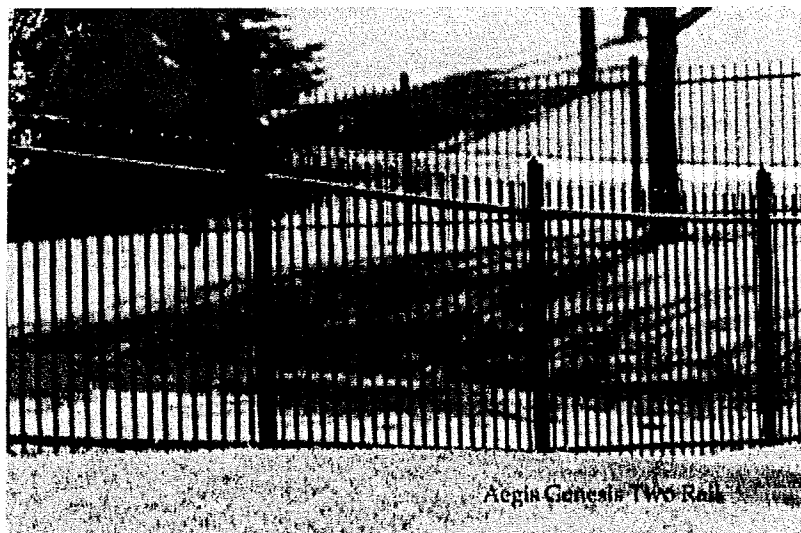
The beer garden area will not affect any of the parking and there will be 4' to walk between the curb and the fence. There has been adequate parking with no issues this entire year.

Lyllette Fields
V.P., Sec, Treas

AMERICAN FENCE COMPANY

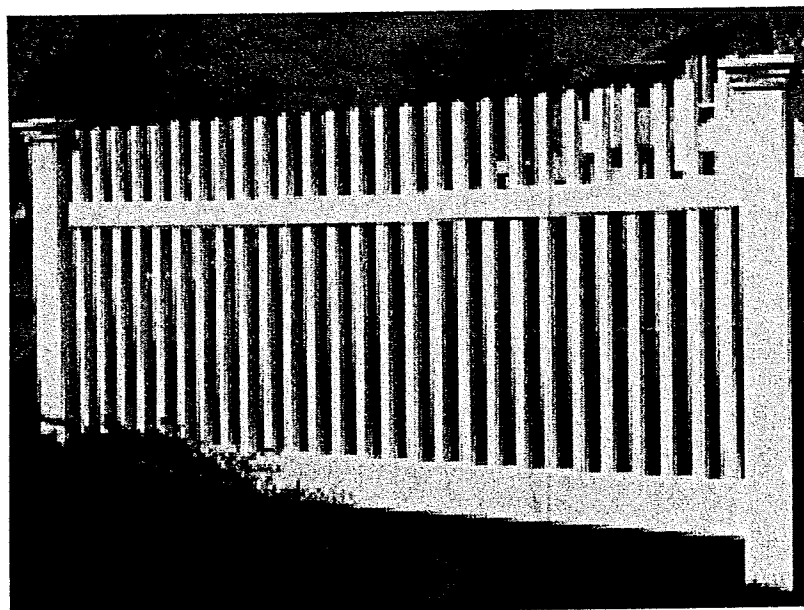
Previous

*Black
metal*



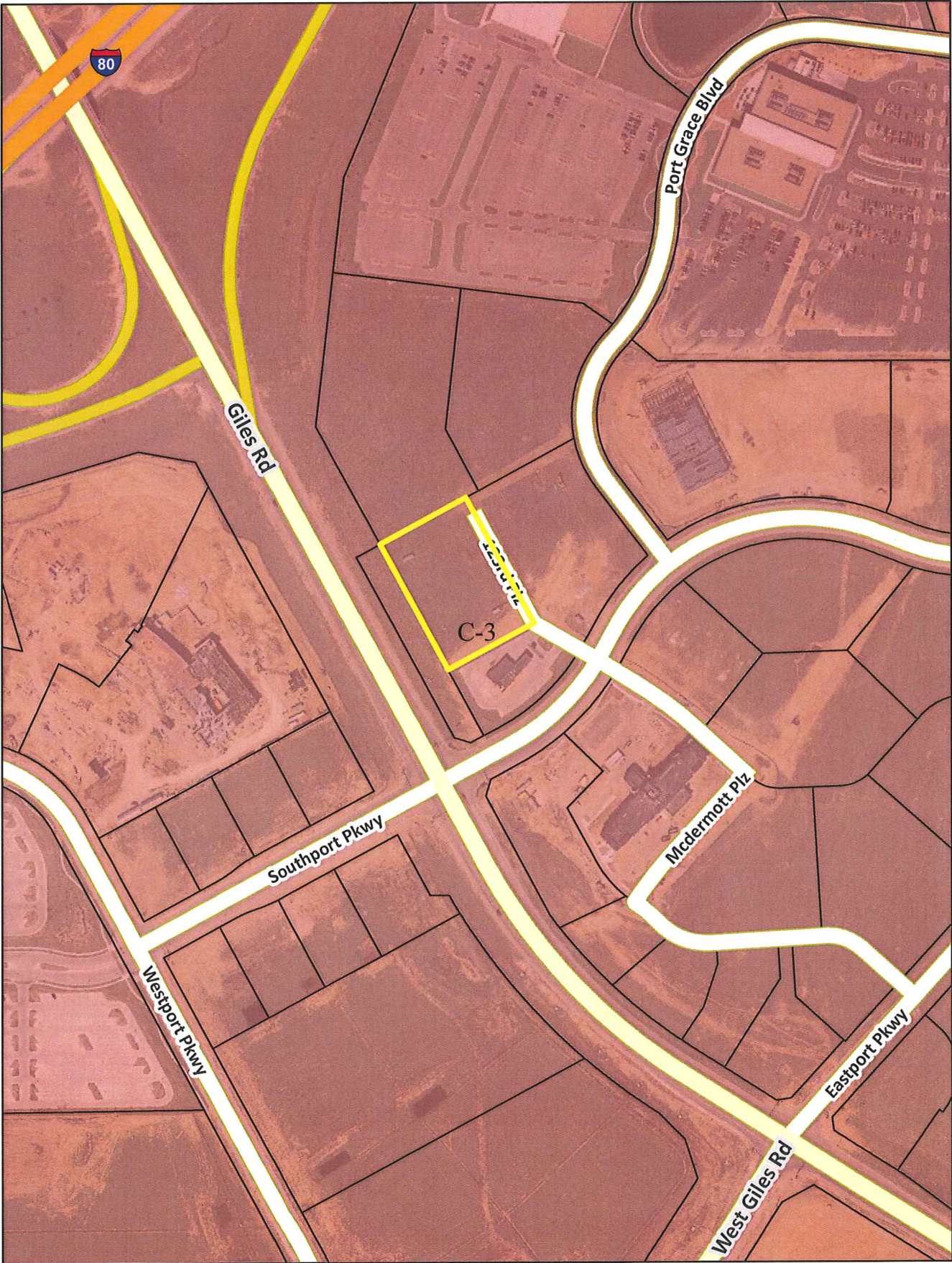
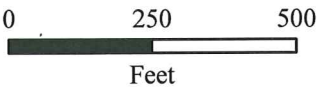
Aegis Genesis Two Rail Ornamental Fence. Ornamental Fence. Omaha, Lincoln, Sioux Falls, Grand Island, Des Moines, Nebraska, Iowa, South Dakota, Kansas Fence Contractor

Page 1 of 1



Green vinyl

Vicinity Map



- Legend**
- Parcels
 - Island Bar & Grill

City of La Vista Conditional Use Permit

Amended Conditional Use Permit for a Tavern and Cocktail Lounge

This Conditional Use Permit issued this 15th day of September, 2009, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Fantasy's, Inc. ("Landowner") and Fields, Inc. ("Operator"), pursuant to the La Vista Zoning Ordinance.

- WHEREAS, Landowner wishes to lease building space on Lot 2, Southport East Replat 3 located in the NE ¼ Section 18 and the NW ¼ Section 17, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska ("Premises") to the Operator, and
- WHEREAS, Operator wishes to operate a tavern and cocktail lounge with an outdoor patio area upon the Premises, within the City of La Vista zoning jurisdiction, and
- WHEREAS, Owner has applied for an amendment to their December 4, 2007 conditional use permit for the purpose of constructing a fenced, outdoor patio area; and
- WHEREAS, Landowner has authorized the Operator to apply for an amendment for the purpose of constructing a fenced, outdoor patio area on the Premises; and
- WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the Landowner and Operator for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this amended conditional use permit is issued to the Landowner and Operator to use the area designated as "Island Bar & Grill" on Exhibit "A" hereto for a tavern and cocktail lounge, and to use the fenced area delineated on Exhibit "B" as the outdoor patio area, said use hereinafter being referred to as "Permitted Use or Use".

Conditions of Permit

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

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the Permitted Use:
 - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives has been provided to the City and is attached to the permit as Exhibit "A". Specifically, based on the occupancy of the building, a minimum of 24 parking spaces shall be designated for the Permitted Use. Parking for the Permitted Use shall not overflow outside of the parking lot onto other properties.
 - b. Hours of operation for the Permitted Use will be from 7 a.m. – 1:00 a.m. seven days a week.
 - c. There will be a maximum of four (4) employees working at any given time at the Permitted Use.
 - d. The Permitted Use will be comprised of 2,664 sq. feet of building space with an additional 172 sq.

feet of outdoor patio area in front of the business.

- e. Adequate parking (24 parking stalls) shall be provided on-site to accommodate the maximum number of patrons and employees (113 occupants) in attendance at any one time between the hours of operation.
 - f. A black, wrought-iron fence, not to exceed 48" in height, shall be constructed around the outdoor patio area, as shown on Exhibit "B".
 - g. No additional restaurants, taverns, or cocktail lounges will be permitted within the same building as the Operator of the Permitted Use.
 - h. The Permitted Use shall be developed and maintained in accordance with the site plan (Exhibit "A") as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
 - i. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City.
 - j. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete.
 - k. Landowner and Operator shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, ADA and FAA.
 - l. Operator shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the Premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
 - m. Operator hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the Operator, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the Premises of any environmental or safety law, rule or regulation.
3. The Operator's right to maintain the Use as approved pursuant to these provisions shall be based on the following:
- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval, if the violation continues after written notice from the City to the Landowner and/or Operator and a reasonable time was given for Landowner and/or Operator to cure such violation.
4. In respect to the Gateway Corridor Overlay District and Southport East Design Guidelines:
(All design guidelines have been followed in original Conditional Use Permit for Fantasy's Food and Fuel)
5. The Landowner and Operator's right to maintain the Use as approved pursuant to these provisions shall be based on the following:
- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
 - b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the Landowner and Operator have fully complied with the terms of approval.
 - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at Landowner's expense within twelve (12) months of cessation of the conditional use.

6. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
 - a. Operator's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
 - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
 - c. Landowner's construction or placement of a storage tank, structure or other improvement on the Premises not specified in this permit.
 - d. Landowner or Operator's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
7. If the permitted use is not commenced within one (1) year from September 15, 2009, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to Landowner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
8. In the event of the Landowner's failure to promptly remove any safety or environmental hazard from the Premises, or the expiration or termination of this permit and the Landowner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the Landowner or any third party to exercise said option) cause the same to be removed at Landowner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the Landowner shall reimburse the City the costs incurred to remove the same. Landowner hereby irrevocably grants the City, its agents and employees the right to enter the Premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the Premises as necessary or appropriate to carry out any other provision of this permit.
9. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Miscellaneous

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

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

Contact Name and Address: Mike Schramek
Fantasy's, Inc.
8930 So. 137th Circle, Suite 2
Omaha, NE 68138
(402) 891-9455

Lylette Fields
Field's, Inc.
7826 S. 123rd Plaza
La Vista, NE 68128
(402) 829-8428

Effective Date:

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

THE CITY OF LA VISTA

By _____
Douglas Kindig, Mayor

Attest:

Pamela A Buethe, CMC
City Clerk

CONSENT AND AGREEMENT

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

Landowner:

By: _____

Title: _____

Date: _____

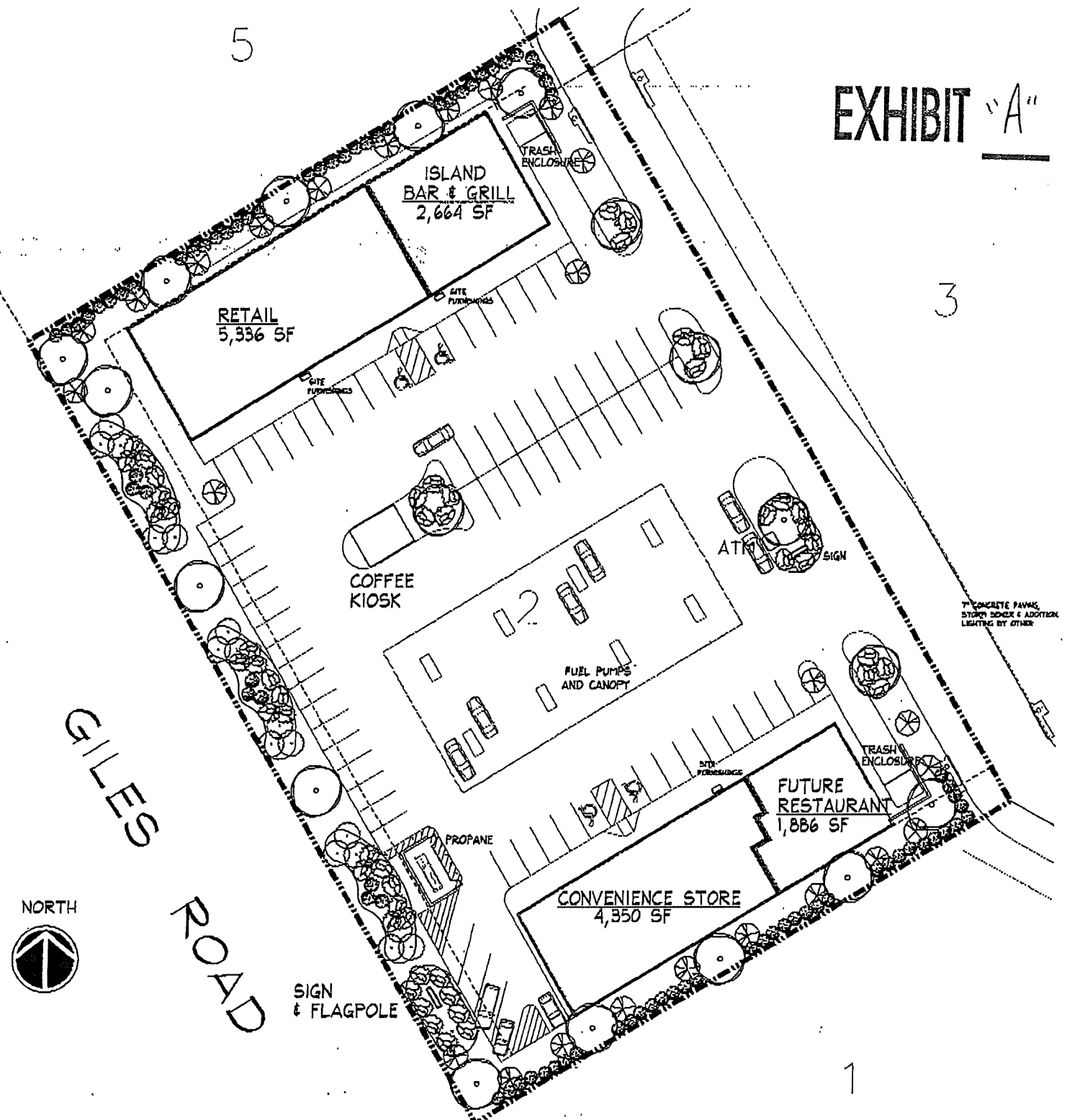
Operator:

By: _____

Title: _____

Date: _____

EXHIBIT "A"



C-STORE	4,350 SF/300	16 STALLS
RETAIL	5,336 SF/200	30 STALLS
RESTAURANT (FUTURE)	SEATING 36 x 40%	16 STALLS
RESTAURANT (Island Bar & Grill)	SEATING 52 x 40%	22 STALLS

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

SOUTHPORT SQUARE SITE PLAN

SCALE: 1" = 50'-0"

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

12/7/2007 REV.

EXHIBIT "B"

Island Bar & Grill

7826 S 123rd P/2 STE EAF

10' SIDEWALK

Window

door

Window

GATE 30'

Brick

Window

door

Window

Brick

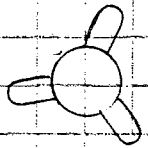
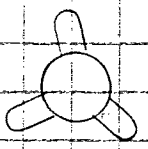
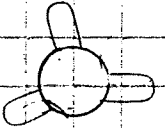
12'

3'

12'

13'

Fence 28'



6'

fence

PARKING

City of La Vista Conditional Use Permit

Conditional Use Permit for a Tavern and Cocktail Lounge

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

WHEREAS, Landowner wishes to lease building space on Lot 2, Southport East Replat 3 located in the NE ¼ Section 18 and the NW ¼ Section 17, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska ("Premises") to the Operator, and

WHEREAS, Operator wishes to operate a tavern and cocktail lounge upon the Premises, within the City of La Vista zoning jurisdiction, and

WHEREAS, Landowner has authorized the Operator to apply for a conditional use permit for the purpose of locating and operating a tavern and cocktail lounge on the Premises; and

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

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

Conditions of Permit

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

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the Permitted Use:
 - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives has been provided to the City and is attached to the permit as Exhibit "A". Specifically, based on the occupancy of the building, a minimum of 22 parking spaces shall be designated for the Permitted Use. Parking for the Permitted Use shall not overflow outside of the parking lot onto other properties.
 - b. Hours of operation for the Permitted Use will be from 7 a.m. – 1:00 a.m. seven days a week.
 - c. There will be a maximum of four (4) employees working at any given time at the Permitted Use.
 - d. The Permitted Use will be comprised of 2,664 sq. feet of building space; all seating for the Permitted Use shall be inside the building.
 - e. Adequate parking (22 parking stalls) shall be provided on-site to accommodate the maximum number of patrons and employees (104 occupants) in attendance at any one time between the hours of operation.

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

the Use.

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

Miscellaneous

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

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

Contact Name and Address: Mike Schramek
Fantasy's, Inc.
8930 So. 137th Circle, Suite 2
Omaha, NE 68138
(402) 891-9455

Lylette Fields
Field's, Inc.
7826 S. 123rd Plaza
La Vista, NE 68128
(402) 829-8428

Effective Date:

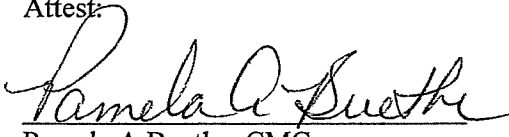
This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By


Douglas Kindig, Mayor

Attest:


Pamela A Buethe, CMC
City Clerk

CONSENT AND AGREEMENT

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

Landowner:

By:



Title:

V.P. OPERATIONS FARMER

Date:

2/1/2008

Operator:

By:



Title:

Sec/Treas

Date:

2/1/08