

## LEASE

This Lease is made this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between **B & J PARTNERSHIP, LTD.**, a Nebraska Limited Partnership ("Lessor") and the **CITY OF LINCOLN, NEBRASKA, d/b/a CITY OF LINCOLN URBAN DEVELOPMENT DEPARTMENT** ("Lessee").

### WITNESSETH:

The **Lessor**, for and in consideration of the covenants and agreement hereinafter set forth, hereby demises and leases to **Lessee** and **Lessee** hereby rents and hires from **Lessor** those certain premises (hereafter "Premises") which are deemed to contain approximately 3,217 square feet of the building located at 850 Q Street, Lincoln, Nebraska, the legal description of which is Lot 2, Haymarket Parking Garage Addition, Lincoln, Lancaster County, together with a revocable license to use, in common and with others during the Lease Term, the Common Areas, as the same may be designated from time to time by **Lessor**.

1. **Term and Use.** The Initial Term of this Lease shall commence on March 1, 2008 and continue until February 29, 2012, at which time it shall terminate, unless sooner terminated or renewed as provided herein. The **Lessee** shall use the Premises only for the operation of a business office and for no other purpose, and the rent will be calculated on that usage. **Lessee** agrees that it will not use the Premises to operate an adult book store, movie arcade, or bar or for any unlawful use.

If the Premises or the Complex are not completed at the commencement date and possession of the Premises is not delivered to **Lessee** by that date, or if the **Lessee** takes possession prior to the commencement date, the Lease commencement date and termination date shall remain unchanged. However, if **Lessee** takes possession prior to the commencement date, the rental for the interim period shall be paid by **Lessee** on a pro rata basis. Similarly, if **Lessor** delivers the Premises to **Lessee** after the commencement date, the rental paid by **Lessee** for that month shall be reduced on a pro rata basis. If **Lessor** shall be unable to give possession of the Premises on the date of commencement for the reason that the Complex or Premises is still being constructed, **Lessor** shall not be subject to any liability for failure to give possession on said date, and such failure shall in no way affect the validity of this Lease or the obligation of the **Lessee** hereunder.

2. **Rent.**

A. **Fixed Rent.** The **Lessee** shall pay to **Lessor** as fixed rent for the Premises during the first twelve (12) months of the Initial Term, the sum of Thirty Four Thousand Six Hundred Eighty and no/100ths Dollars (\$34,080.00), payable in monthly installments of Two Thousand Eight Hundred Forty Dollars and no/100ths (\$2,840.00) ("Base Rent"). Payment for the first month shall be delivered with the Lease. Payment for months two and three shall be rent free. Thereafter, monthly installments shall be payable in advance on the first (1st) day of each and every month during the Initial Term. The Base Rent payable by the **Lessee** shall be subject to annual rent adjustments as provided in paragraph 2B below.

B. Annual Rent Adjustments. In the event that the term of this Lease is for a period greater than twelve (12) months, the fixed rent payable for each additional lease year or fractional part thereof, including Lease years of the option terms, if any, shall be determined by multiplying the previous year's rent by 1.03, representing a three percent (3%) annual increase.

C. Late Rent. Any fixed or additional rent due **Lessor**, not received within five (5) days of the due date shall bear a late fee of One Hundred and no/100ths Dollars (\$100.00), and shall accrue interest at the rate of fifteen percent (15%) per annum until paid.

D. Partial Payment of Rent. Payment by **Lessee** or receipt by **Lessor** of an amount less than the monthly rent due under this Lease shall be deemed to be a partial payment of the rent. No endorsement on any check shall be deemed an accord and satisfaction. **Lessor** may accept such payment without prejudice to **Lessor's** right to collect the balance of the rent or other amounts due hereunder.

3. Renewal Option. Provided the **Lessee** is not in default under the terms of this Lease, **Lessee** shall have the option to Lease said Premises for six additional one year periods each upon the same terms and conditions, save the rental clause, which shall be as follows: On the first day of the first year and any subsequent year of all renewal terms, the rental shall be adjusted ratably by multiplying the previous year's rent by 1.03, representing a three percent (3%) annual increase from the commencement date. **Lessee** agrees to notify said **Lessor** in writing of **Lessee's** desire to exercise an option period at least 180 days prior to the termination of the Initial Term or any Renewal Term.

#### 4. Insurance.

A. Lessor, as a part of the Shared Complex expense, shall obtain and maintain Commercial Property Insurance that covers the Complex and its fixtures and equipment. The amount insured shall equal the full estimated replacement cost of the Complex and its fixtures and equipment. Lessee acknowledges that it will not be a named insured on such policy and shall have no right to receive any proceeds from any such insurance policies carried or provided by the Lessor, provided, however, that said insurance shall contain a waiver of subrogation endorsement in favor of Lessee and its officers, directors, members, employees, agents, invitees and contractees.

B. Lessee shall obtain and maintain comprehensive commercial general liability insurance and, if necessary, commercial umbrella insurance with an aggregate limit of not less than \$1,000,000 for each occurrence or maintain sufficient funds in a self insurance program. If such insurance contains a general aggregate limit, it shall apply separately to this location. Lessor shall be included as an additional insured under such policy, and under such commercial umbrella insurance, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by Lessor. There shall be no endorsement or modification of the policy to make the coverage excess over other available insurance; alternatively, if the policy states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to any additional insurance of Lessor.

C. All of Lessee's business, personal property and tenant improvements that are located on or about the Premises shall be at Lessee's risk and Lessor shall not be liable for any loss of or damage done to any such property. Lessee shall purchase and maintain in force during the Term of this Lease, business, contents and personal property insurance or maintain sufficient funds in a self insurance program to insure Lessee's business, personal property and tenant improvements located on or about the Premises against loss by fire, theft or other casualty in an amount of their full replacement value, with a waiver of subrogation endorsement in favor of Lessor and its partners, employees, agents and contractees.

D. The personal property in the Premises shall be at the risk of the Lessee only. Lessor shall not be liable for any damage to any property any time in such Premises caused by steam, electricity, sewage, gas or odors, or from water, rain or snow which may leak into, issue or flow from any part of the Premises or Complex of which they are a part, or from any other place or quarter, or for any damages done to property of the Lessee in moving the same to or from the Premises or Complex. The Lessee shall give to Lessor, or its agent, prompt written notice of any accident to or defects in water pipes, gas or warming and cooling apparatus, or any other equipment which shall be remedied with due diligence.

## 5. Expenses.

A. Maintenance and Repair. Lessor shall repair and maintain the foundations, exterior walls (except store fronts, plate glass doors, and other breakable materials used in structural portions) pipes, plumbing, heating and cooling systems, electrical wiring, switches, and fixtures and provide for roof repairs and replacement.

B. Utilities. Lessee shall pay all utility charges, including gas electricity, telephone, cable and other services supplied to the Premises which are separately metered or billed, including any and all connection charges, start-up charges, and termination charges associated therewith.

C. Common Areas. Wherever used in this Lease, the Common Areas shall include, but shall not be limited to, parking areas, sidewalks, or other pedestrian walkways, landscaped areas, pick-up and delivery areas, including appropriate use of loading dock areas, streets and other public areas designed for the common use and benefit, exclusive of space in the building designated for rental to tenants for commercial purposes, as the same may exist from time to time. All Common Areas, if any, shall be for the nonexclusive use of Lessor and Lessee, and their respective employees, agents, customers, and invitees. Lessor hereby grants to Lessee, its employees, agents, customers, and invitees a revocable license to use the common areas from time to time, such use to be in common with Lessor and any other tenants of Lessor, if any. Any income derived from Common Areas shall be the sole property of Lessor, including outdoor sign rent, ATM rent, cellular tower rent, and or similar third party rentals.

6. **Condition of the Property.** By taking possession of the Premises, **Lessee** accepts the Premises in its then "as is" condition and acknowledges that the Premises are in good and satisfactory condition at the time **Lessee** takes possession of the Premises. **Lessor** is not responsible to make any repairs or alterations to the Premises, or to do any remodeling or decoration, except as outlined in Exhibit "B." If **Lessor** makes any repairs or alterations to the Premises that are the responsibility of the **Lessee**, those expenses incurred by **Lessor** shall be reimbursed by **Lessee** to **Lessor** within five (5) days of **Lessor's** written invoice, despite the fact that all alterations may not yet be fully completed. **Lessee** shall have no right to withhold payment for completed work or any portion of the Rent, due to incomplete alterations to the Premises, regardless of who is responsible for making such alterations. Should **Lessee** withhold any payment due hereunder, or any portion of the Rent, such failure to pay shall constitute an event of default under the terms of this Lease and shall entitle the **Lessor** to the same rights and remedies available in the event of nonpayment of Rent. **Lessee** shall have the right to construct, on the property, improvements (all of which shall be considered to be the property of **Lessee** during the terms of this Lease) and to make all alterations or additions thereto and to remove, remodel, demolish, and rebuild the same, provided: **Lessor** approves the same in writing; all remodeling will be in accordance with applicable laws; the cost of all remodeling shall be paid by **Lessee**. **Lessee** shall, at all times, keep the Premises in good repair and shall also keep the same in a clean, sanitary and safe condition and in compliance with all building codes and regulations and all health and police regulations in force, and **Lessee** shall not store any materials outside the building.

7. **Default.**

A. On the occurrence of any of the following: (i) If rent or other payment from the **Lessee** to the **Lessor** shall be and remain unpaid in whole or part for more than five (5) days after it is due and payable; (ii) if the **Lessee** shall violate any of the other covenants, agreements, stipulations, or conditions herein, and such violation or default shall continue for a period of three (3) days after written notice from the **Lessor** to **Lessee** of such violation or default; (iii) if the **Lessee** shall be adjudged bankrupt or file a petition in bankruptcy or for any arrangements under the Bankruptcy Code or become insolvent or have appointed a Receiver of its property; or (iv) if **Lessee** shall vacate or abandon the Premises, then the **Lessor** may without demand and notice terminate this Lease and re-enter the Premises with or without process of law using such force as may be necessary to remove all persons or chattels therefrom, and the **Lessor** shall not be liable for damage by reason of such re-entry or forfeiture; or the **Lessor** can take any other action available to it under law. Notwithstanding re-entry by the **Lessor** or termination of this Lease, the liability of the **Lessee** for the rent provided for herein shall not be relinquished or extinguished for the balance of the term of this Lease.

B. The parties agree that if there are any chattels or personal property of **Lessee** in the Premises when **Lessor** enters upon the Premises, **Lessor** shall give **Lessee** three (3) days to remove the same. If they are not removed, then **Lessor** may remove the same to a public warehouse or at a place selected by **Lessor**, to be stored at **Lessee's** expense. **Lessor** will notify **Lessee** as to the address where the property is being stored.

C. In addition to any other actions authorized herein upon the occurrence of an event of default, **Lessor** shall be entitled to declare all rents and any advancements made for the benefit of **Lessee** which are due or contemplated to become due under this Lease to be immediately due and payable and **Lessee** shall become immediately liable for all such amounts.

8. **Mechanic's Lien.** The **Lessee** hereby covenants and agrees that **Lessee** shall pay for all labor performed and materials used by **Lessee** at its request. Any contractor employed by the **Lessee** shall hold the **Lessor** and the leased Premises harmless and free from any lien or claim therefor.

9. **Requirements of Law.** **Lessee** shall, at its expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directions, rules and regulations of all governmental authorities having or claiming jurisdiction, directly or indirectly.

10. **Lessor's Reserved Rights.** **Lessor** may enter upon the Premises and exercise the following rights without notice and without liability to **Lessee** for damage or injury to property, person, or business and without affecting an eviction or disturbance of **Lessee's** use or possession or giving rise to any claim for set-off or abatement of rent except as more specifically provided herein:

A. To change the name or street address of the Premises.

B. To install and maintain signs on the exterior of the Premises.

C. To have access to all mail chutes according to the rules of the United States Post Office Department.

D. At any reasonable time or times, to decorate, and to make at its own expense, repairs, alterations, additions and improvements, structural or otherwise, in or to the Premises, the Complex or part thereof, and any adjacent building, land, street, or alley and during such operations to take into and through the Premises or any part of the Complex all materials required, and to temporarily close or suspend operation of entrances, doors, corridors, elevators or other facilities.

E. To have pass keys to the Premises.

F. To designate all sources furnishing sign and manufacturing, painting, and lettering to the Premises.

G. To exhibit the Premises to others at reasonable times upon reasonable notice.

H. To take any and all reasonable measures, including inspections or the making of repairs, alterations, additions and improvements to the Premises necessary or desirable for the safety, protection, operation, or preservation of the Premises.

I. To approve, prior to installation thereof, all signs on the Premises. **Lessee** at its sole risk, cost and expense, shall have the right to erect and maintain ordinary and customary signs

relating to the use of the leased Premises, provided prior written approval is obtained from **Lessor**. Any signs chosen by **Lessee** shall be subject to **Lessee's** compliance with and obtaining and paying for all necessary governmental permits and approvals.

**11. Covenant to Hold Harmless.** Except in the case of the negligence of the **Lessor**, its agents, or its employees, the **Lessee** agrees to save, hold harmless and defend **Lessor** against any liability for damages to any person or property in or about the Premises. Except in the case of negligence of the **Lessor**, the **Lessor** shall not be liable to the **Lessee**. The **Lessor** shall not be liable to the **Lessee**, its agent, employees, representatives, customers, or invitees for any personal injury, death, or damage to property caused by theft, burglary, water, gas, electricity, fire, paint fumes or for any other cause occurring on or about the Premises. All property kept, stored, or maintained on the Premises shall be so kept, stored, or maintained at the sole risk of the **Lessee**, except in the case of the negligence of the **Lessor**.

**Lessee** agrees that it will defend and keep **Lessor** harmless and indemnified at all times against any loss, damage, cost or expense including, but not limited to, reasonable attorneys' fees, arising or imposed by reason of the failure of **Lessee** to comply with the covenants herein.

**12. Waiver of Subrogation.** The **Lessor** and the **Lessee** hereby mutually waive against any other, any claim or cause of action for any loss, cost, damage, or expense as a result of the occurrence of perils covered by the hazard insurance policy, except to the extent prohibited by **Lessor's** policy of insurance.

**13. Fire or Destruction of Premises; Damages Thereeto.** If fire or other casualty shall render the Premises untenantable, this Lease shall terminate forthwith, and any prepayment of rent shall be refunded by the **Lessor** pro rata; provided, however, that if the Premises can be repaired within one hundred twenty (120) days from the date of such event, then at **Lessor's** option, by notice in writing to the **Lessee**, mailed within thirty (30) days after such damage, this Lease shall remain in full effect, but the rent for the period during which the Premises are untenantable shall be abated pro rata.

**14. Condemnation.** If the whole of the Premises shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the part so taken from the date of possession and the rent shall be paid to that date with a proportionate refund by **Lessor** of such rent as shall have been paid in advance. If any portion of the building is taken, then **Lessee** may terminate this Lease by written notice to **Lessor** not later than thirty (30) days after the taking, or **Lessee** may continue in possession of the remainder as per the original terms of this Lease. All damages awarded for such taking attributable to the land and building constituting the Premises shall be exclusive property of **Lessor**.

**15. Holding Over.** If **Lessee** remains in possession after the termination of this Lease without the written consent of **Lessor**, **Lessee** shall be deemed to be a trespasser. If **Lessee** shall have paid, and **Lessor** shall have accepted, rent in respect to such holding over, **Lessee** shall be deemed to be occupying the Premises only as a **Lessee** from month-to-month subject to all the

covenants, agreements or obligations of this Lease except for the rental charged, which during the holdover period shall be at a rate which is one and one-half times the last rental rate.

**16. Surrender.** On the last day of the term of this Lease or on the sooner termination thereof, the **Lessee** shall peacefully surrender the Premises in good condition and repair, broom clean, in the same condition as on the Lease commencement date, consistent with the **Lessee's** duties to make repairs as provided within the Lease. On or before the last day of the initial or renewal term of this Lease, or the sooner termination thereof, the **Lessee** shall, at its expense, removal all of its equipment from the Premises, and any property not removed shall be deemed abandoned. All alterations, additions, and fixtures other than the **Lessee's** equipment, which have been made or installed by either the **Lessor** or the **Lessee** on the Premises shall remain as **Lessor's** property and shall be surrendered with the Premises as a part thereof. If the Premises are not surrendered at the end of the initial or renewal term or on the sooner termination thereof, the **Lessee** shall indemnify the **Lessor** against any loss or liability resulting from delays by the **Lessee** in so surrendering the Premises, including without limitation, claims made by any succeeding **Lessee** founded on such delay. The **Lessee** shall promptly surrender all keys for the Premises to the **Lessor** at the place then fixed for payment of rent and shall inform the **Lessor** of all lock and safe combinations. The provisions of this paragraph shall survive the termination of this Lease.

**17. Environmental Laws.**

A. As used herein, the term "Hazardous Material" means any "hazardous substances," "pollutants," "hazardous waste," or "toxic materials" as defined by the Comprehensive Environment Resource Conservation and Recovery Act of 1989 ("CERCLA"), 42 U.S.C. 9601 et seq., as amended, Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. 6901 et seq., as amended, the Toxic Substance Contract Act (or any regulations promulgated under the foregoing) or any other present or future federal, state or local law, ordinance, rule or regulation, including without limitation, extremely flammable substances, explosives, radioactive materials, oil, petroleum or petroleum products or hazardous substances, and any substance which is or become regulated by any federal, state, or local governmental authority.

B. **Lessee** will not dispose of any hazardous, toxic, corrosive, explosive, reactive or radioactive matter in, or about the leased Premises or Property. At all times during the term of this Lease, **Lessee** shall comply with all environmental laws and permitting requirements impacting the leased Premises. **Lessee** hereby agrees that it shall be fully liable for all costs and expenses related to its use, storage and disposal of Hazardous Material kept on the Premises by the **Lessee**, and the **Lessee** shall give immediate notice to the **Lessor** of any violation or potential violation of the provisions of this Section. **Lessee** shall defend, indemnify and hold harmless **Lessor** and its directors, officers, partners, agents or employees from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs of expenses (including, without limitation, attorney and consultant fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to any breach of the provisions of this Section. The provisions of this paragraph shall be in addition to any other obligations and liabilities **Lessee** may have to **Lessor** at law or equity and shall survive the transactions contemplated herein

and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

18. **Right to Inspect.** Lessor or their authorized agent shall have the right to enter upon said Premises at all reasonable times during this Lease to view the same, to ascertain if the terms and conditions of this Lease, are being complied with by Lessee. Lessor may show said Premises to prospective tenants at any time during normal business hours.

19. **Prohibited Actions.** Lessee shall not, without Lessor's written consent:

A. Paint, display, inscribe or affix any sign, picture, advertisement, notice, lettering or direction on any part of the inside of the Premises which can be seen from outside the building that may be in poor taste, in the opinion of the Lessor, or if it is offensive to any other Lessee. If it is offensive or in poor taste, the Lessor reserves the right to order the advertisement to be changed or removed.

B. Operate any music or sound system outside the Premises.

C. Paint or alter the outside of the building.

D. Hold sales or display merchandise outside of the Premises. The intent of this paragraph is to prohibit sidewalk sales, parking lot sales, tent sales, and the like.

E. Encumber by mortgage or other instrument Lessee's leasehold interest and estate in the Premises.

F. Assign, hypothecate, sublet, or transfer this Lease.

20. **Waiver of Breach, Not Waiver of Subsequent Breaches.** Any waiver, expressed or implied, by the Lessor of any breach of this Lease by Lessee or any terms, conditions or promises herein, and payment by the Lessee and acceptance by the Lessor hereunder shall not be construed to be a waiver of any breach of the terms, conditions or promises herein, except as to the particular installment of rent so paid and accepted.

21. **Enjoyment of Premises.** The Lessor covenants that the Lessor has full authority to execute this Lease and that upon the Lessee faithfully performing the terms, covenants and conditions hereof, including the prompt payment of the rent reserved, the Lessee shall and may quietly and peacefully have, hold and enjoy the leased Premises during the term hereof.

22. **Time is of the Essence.** It is hereby agreed that time is of the essence of this Lease and all provisions herein relating thereto shall be strictly construed.

23. **Binding on Heirs and Assigns.** The terms hereof shall bind and benefit the heirs, executors, administrators, successors and assigns of the Lessor and Lessee.

24. **Notification.** All notices given hereunder shall be in writing, mailed by United States certified mail, return receipt requested. Said notices will be sent to **Lessor** as follows: B & J Partnership, Ltd. c/o Clay F. Smith, P.O. Box 81906, Lincoln, NE 68501 or at such other address as **Lessor** may hereafter furnish by written notice to **Lessee**. Said notices will be sent to **Lessee** as follows: City Clerk, 555 South 10th Street, Lincoln, NE 68508 or at such other address as **Lessee** may hereafter furnish by written notice to **Lessor**.

25. **Subordination.** The **Lessee** agrees that at the **Lessor's** election, this Lease shall be subordinate to any land lease, mortgages, or trust deeds now on or placed on the Premises and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, and extensions thereof, the **Lessee** hereby appoints **Lessor** as attorney-in-fact to execute such documents as may be required to accomplish such subordination.

26. **Rules and Regulations.** **Lessee** and **Lessee's** agents, employees and invitees shall fully comply with all Rules and Regulations of the Complex ("Exhibit C") and the Tenant Sign Criteria ("Exhibit D"), which are made a part of the Lease as though set out herein. **Lessor** shall have the right, upon reasonable notice, to amend such Rules and Regulations as may be necessary or desirable for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

27. **Modification of Lease.** No modification of this Lease shall be effective unless it is in writing and is signed by the **Lessee** and **Lessor** or their authorized representatives. **Lessor's** authorized representatives shall consist solely of D. William Smith, A. Joyce Smith, or Clay F. Smith. No other person shall be authorized to make any modification to this Lease or any of its terms on behalf of the **Lessor**. **Lessee's** authorized representative shall be solely the Mayor of the City of Lincoln. No other person shall be authorized to make any modification to this Lease or any of its terms on of the **Lessee**.

28. **Miscellaneous.**

A. The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

B. If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

C. This Lease shall be construed and enforced in accordance with the laws of the State of Nebraska.

D. All oral negotiations between the parties are merged herein. There are no oral covenants or agreements made by either party hereto except as expressly set forth in writing herein.

E. All payments to be made under this Lease shall be made without notice or demand, unless otherwise provided herein.

F. The submission of the proposed lease to Lessee for examination or consideration does not constitute an offer to lease the Premises, and the proposed lease shall become effective only upon execution, delivery and acceptance thereof by the Lessor and the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

**B & J PARTNERSHIP, LTD., Lessor**

By: Clay F. Smith  
General Partner  
By: Joyce Smith  
General Partner

**CITY OF LINCOLN, NEBRASKA  
d/b/a CITY OF LINCOLN URBAN  
DEVELOPMENT DEPARTMENT,  
Lessee**

By: \_\_\_\_\_  
Chris Beutler, Mayor

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of February, 2008, by Clay F. Smith and Joyce Smith, General Partners of B. & J Partnership, Ltd., on behalf of said partnership.



Kenneth G. Fougerson  
Notary Public

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by Chris Beutler, Mayor of the City of Lincoln, on behalf of the City.

\_\_\_\_\_  
Notary Public