

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION APPROVING THIRD ADDENDUM TO AGREEMENT WITH THREE GALS AND A
KART, LTD. TO TERMINATE LEASE FOR COFFEE SERVICES AT THE SARPY COUNTY
COURTHOUSE

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, the County of Sarpy previously entered into an Agreement, First Addendum and Second Addendum, copies of which are attached, with Three Gals and a Kart, Ltd. to provide coffee services at the Sarpy County Courthouse; and,

WHEREAS, the parties are desirous of amending the provisions of said Agreement and Addendums by this Third Addendum.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts this Third Addendum to the original Agreement and Addendums with Three Gals and a Kart, Ltd for coffee services at the Sarpy County Courthouse, a copy of which is attached.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board this Third Addendum to the original Agreement with Three Gals and a Kart, Ltd., a copy of which is attached, and any other related documents, the same being approved by the Board.

DATED this 26th day of July, 2011.

Moved by Jim Warren, seconded by Jim Thompson, that the above Resolution be adopted. Carried.

YEAS:	NAYS:	ABSENT:
<u>James Lane</u>	<u>none</u>	<u>none</u>
<u>Russell</u>	_____	_____

<u>[Signature]</u>	_____	ABSTAIN:
<u>[Signature]</u>	_____	<u>none</u>
<u>Tom Kichall</u>	_____	_____

[Signature]
County Clerk



**THIRD ADDENDUM TO LEASE AGREEMENT
WITH THREE GALS AND A KART, LTD FOR COFFEE SERVICES.**

This Third Addendum is entered into by and between Three Gals and a Kart, LTD (hereinafter "Three Gals") and Sarpy County, Nebraska, a body politic and corporate (hereinafter "Sarpy").

WHEREAS, the parties have previously entered into an Agreement, First Addendum and Second Addendum to provide for coffee services at the Sarpy County Courthouse; and,

WHEREAS, the parties are desirous of amending the provisions of said Agreement and Addendums by this Third Addendum.

NOW, THEREFORE, it is hereby agreed by and between the parties:

I.

The prior Agreement, First Addendum and Second Addendum between the parties is hereby amended by the terms of this Second Addendum.

II.

The parties hereby agree that the term of the prior Agreement, First Addendum and Second Addendum shall be amended and such term shall end on July 31, 2011. Operations will cease on July 27, 2011 and the Lease Agreement shall not be renewed.

III.

Lessee hereby agrees to remove all non-fixture, lessee-purchased items by July 31, 2011. All remaining fixtures and items provided for in the Original Agreement or First Addendum, as shown on Attachment A, shall become or remain the property of Lessor. Lessee shall return the property to its original condition.

IV.

Lessee shall leave the "Legal Grounds" sign and display boards for use by future tenants. Lessee agrees future tenants shall be allowed to use the trade name "Legal Grounds," if desired. All licensing requirements, applications and fees related to the trade name "Legal Grounds" is the responsibility of the tenant.

V.

All phone and data line charges and commissions due under the original Agreement and first and second Addendums for the month of July are due and payable pursuant to the terms of the original Agreement and first and second Addendums.

VI.

The remaining terms and conditions of said prior Agreement and Addendums shall remain unchanged.

Dated this 26th day of July, 2011.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereby affix our signatures and seals as shown on the following signature pages.

THREE GALS AND A KART, LTD.

[Signature] 8/24/11

By: _____

Its: _____

SARPY COUNTY

[Signature] 7/26/2011

By: Tom Richards

Its: Chairman

SEAL

ATTEST:



[Signature]
County Clerk

LEASE

This lease, executed in duplicate, by and between Sarpy County, hereinafter called the Lessor, and Three Gals and a Kart, Ltd. dba Legal Grounds, hereinafter called the Lessee.

WITNESSETH

1. **PREMISES.** The Lessor warrants and represents that it is the owner of those certain premises, with appurtenances, described as following:

Sarpy County Courthouse
1210 Golden Gate Drive
Papillion, NE 68046
- 1.1 The Lessor hereby leases to the Lessee, all of the described premises referred to as the Southwest Corner of the Courthouse Remodel Project, 1210 Golden Gate Drive, Papillion, NE 68046, as illustrated in Exhibit A.
2. **TERM.** The primary term of this lease is five (5) years commencing on July 1, 2009 until June 30, 2014 unless sooner terminated as hereinafter provided.
3. **RENTAL/OCCUPANCY.** Lessee agrees to pay an 8% commission on gross monthly sales for the entire lease term.
- 3.1 Commission is due and payable on the fifteenth day of each month following the month in which the commission was earned and commencing with the commencement of the term of this lease. First commission payment shall be due on September 15, 2009 payable to Sarpy County Treasurer, and forwarded to Brian E. Hanson, Sarpy County Fiscal Administrator, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska 68046, or to such other address as the Lessor may designate by a notice in writing.
- 3.2 Lessee shall make a \$1,000 deposit to Sarpy County prior to commencement of any work by Lessee to be returned to Lessee in accordance to Section 11.
4. **AUTHORITY TO ACT.** Each party hereto declares that it has taken all steps which are legally necessary or required to authorize this lease and the rights, duties, and obligations herein. Each party represents and warrants that each has the power and authority to enter into this lease, perform its obligations, and to consummate the contemplated transactions.
5. **NOTICES.** All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To the Lessor at:

Deb Houghtaling
Sarpy County Clerk
1210 Golden Gate Drive
Papillion, NE 68046

To the Lessee at:

3 Gals & a Kart, Ltd.
1111 N. 102nd Court, Ste. ~~300~~ 330
Omaha, NE 68114

6. ASSIGNMENT AND SUBLETTING: The Lessee shall not assign this lease without the written consent of the Lessor. Any occupant, assignee, or sublessee must agree to abide by all of the terms and provisions of this lease. Assignment or subletting shall not relieve Lessee of any of Lessee's obligations under this Lease; and, Lessor will continue to treat Lessee as the primary obligor for all of the rights, duties, terms, and obligations of this lease and sublease/assignee/occupants as secondarily responsible.
7. INSPECTION. Lessee agrees to permit the Lessor and/or its authorized representative to enter the area at all reasonable times during usual business hours for the purpose of inspecting the same, or for the making of any necessary upkeep, maintenance or repairs for which the Lessor may be responsible.
8. DUTIES OF LESSEE. Prior to the commencement of any work, Vendor will place the required certificates of insurance on file with the Sarpy County Clerk.

Insurance Requirements

Lessee shall not commence work on this Agreement until he/she has obtained all insurance required under this Section and such insurance has been approved by Sarpy County, nor shall Lessee allow any subcontractors to commence work on his/her subcontract until similar insurance required of the subcontractor has been so obtained and approved.

The following insurance coverages shall be kept in force during the life of the Agreement and shall be primary with respect to any insurance or self-insurance programs covering the County, its commissioners/supervisors, officials, agents, representatives and employees.

Workers' Compensation and Employers Liability Insurance

The minimal acceptable limits shall be the statutory limits as required by the State of Nebraska for Coverage A, Workers' Compensation and \$500,000 each accident for Coverage B, Employers Liability.

Commercial General Liability Insurance

Coverage should include broad form coverage written on a commercial general liability form and written on an occurrence basis. The coverage must protect against claims for damages resulting from bodily injury, including death, personal injury and property damage.

The minimum acceptable limits of liability shall be \$1,000,000 each occurrence. If the coverage contains a general aggregate, such limit shall not be less than \$2,000,000. The products/completed operations limit shall not be less than \$2,000,000.

Certificate of Insurance

The Lessee shall furnish the County with a certificate(s) of insurance evidencing the coverages required in this section. Such certificate(s) shall specifically state that the insurance company or companies underwriting these insurance coverages shall give the County at least thirty (30) days' written notice in the event of cancellation of, or material change in, any of the coverages. If the certificate(s) is shown to expire prior to completion of all the terms of this Contract, the Vendor shall furnish a certificate(s) of insurance evidencing renewal of its coverage to the County.

The Lessee shall require each and every Subcontractor performing work under this Contract to maintain the same coverages required of the Lessee in this Section, and upon the request of the County, shall furnish the County with a certificate(s) of insurance evidencing the Subcontractor's insurance coverages required in this section.

Insurance Company

All insurance coverages herein required of the Lessee shall be written by an insurance company or companies transacting business as an admitted insurer in the State of Nebraska or under the Nebraska Surplus Lines Insurance Act. All insurance companies must possess a minimum A.M. Best Insurance Company rating of A-. Upon request by the County, the Lessee shall furnish evidence that the insurance company or companies being used by the Lessee meet the minimum requirements listed in this section.

Upon request by the County, the Lessee shall furnish the County with complete and accurate copies of the insurance policies required within this section. If at any time during the life of this Contract, the Lessee's insurance coverages and limits do not meet or exceed the minimum insurance requirements presented in this section, the Lessee is required to notify the County within thirty (30) days of any deviations from the minimum requirements presented in this section

- 8.1 Lessee will obtain and display any certificates required by any other governmental entity. All certificates shall be kept current for the term of the Lease.
- 8.2 Lessee is responsible for maintaining area inside and surrounding the coffee service area in a neat, clean and professional manner. All refuse, including coffee grounds, shall be disposed of in a manner approved by the Sarpy County Facilities Management Director. Lessor agrees to provide the use of janitorial closet as noted on Exhibit A, equipment and

supplies to facilitate maintenance of the premise.

- 8.3 Lessee will put forth all reasonable efforts possible to reduce the amount of noise.
- 8.4 Lessee will pay forty five dollars (\$45) monthly charge for phone/data lines due the 15th of each month beginning July 15, 2009.
- 8.5 Lessee will provide all personal equipment required for the operation of the coffee service. Lessee is responsible for any loses or damage to personal equipment.
- 8.6 Any fixtures, equipment or personal property installed in or attached to the premises by or at the expense of Lessee, shall be and remain the property of the Lessee and Lessor agrees that Lessee shall have the right to remove any and all of its fixtures. Equipment and other personal property which it may have stored or installed by or at the expense of Lessor shall be and remain the property of the Lessor. Lessee agrees that it will, at its expense, repair any damage occasioned to the premises by reason of the removal of its trade fixtures, equipment and other personal property.
- 8.7 Any utility installations installed or attached to the premises by Lessee shall not be removed at the termination of this Lease and shall be the property of Lessor notwithstanding the fact that the removable personalty of the Lessee is attached to such installations.
- 8.8. Lessee responsible for all signage and advertisements, to be approved by Lessor.
9. DUTIES OF LESSOR. Lessor will provide for initial installation of water, sewer, power, phone/data, and millwork.
- 9.1 Lessor will pay monthly charges for water, sewer, and power.
10. ALTERATIONS. Lessee acknowledges that the premises are leased in "as is" or new condition. Lessee will not permit any alterations of or additions to any part of the of the premises, except by written consent of Lessor, which consent shall not be unreasonably withheld, and all alterations and additions to the premises shall remain for the benefit of Lessor, unless otherwise provided in said consent. Lessee hereby indemnifies Lessor against liens, costs, damages and expenses with respect to any such additions or alterations.
11. RETURN OF PREMISES. At the conclusion of this Lease, Lessee shall return the property to the Lessor in the same condition as it was received at commencement of this Lease, normal wear and tear expected. If at the conclusion of this Lease, damage other than normal wear and tear is incurred on leased premised, then Lessee shall reimburse Lessor for the cost of repairing such damage. If such reimbursement is not made, Lessor shall be entitled to retain Deposit set forth in Section 3.2. If premises is returned in satisfactory condition the Deposit set forth in Section 3.2 will be returned to Lessee.
12. DESTRUCTION OF PREMISES. Should the premises be made unfit for occupancy due to fire or other unavoidable casualty, tenancy shall immediately be suspended and Lessee shall pay commission only to the date of such occurrence. The portion of any advance

lease payment which is attributed to the period of time after the Lease has been terminated in the above manner shall be refunded by Lessor to Lessee. If the damage is not of a permanent nature, Lessor shall be responsible for repairing the same in a timely manner at Lessor's own expense and the commission payments shall be suspended until the premises have been put in proper condition for occupancy.

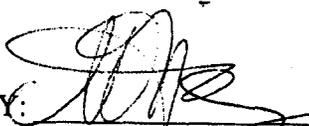
- 12.1 As used herein, the phrase "unfit for occupancy" shall mean that the premises shall be restored within 100 days for reoccupancy by tenant. In the event the restoration extends beyond such period of time, Lessee shall have the sole and exclusive right to decide to reoccupy after restoration or treat this Lease as completely terminated.
13. **REPAIR AND MAINTENANCE.** During the Lease term, the Lessor shall maintain the general landscaping, sidewalks and parking areas, the roof, exterior walls, exterior doors, exterior windows, and the building equipment in good repair and tenantable condition. Lessor's obligations include, but are not limited to, the maintenance and repair of the plumbing, heating, electrical, air conditioning, ventilating equipment, phone and data lines, and its fixtures to the end that all such facilities are kept in good operative condition. Lessor's obligations shall also include, but are not limited to furnishing and replacing electrical light bulbs, fluorescent tubes, ballasts and starters, and air conditioning and ventilating equipment filters.
14. **HOLDING OVER.** In the event Lessee remains in possession of the premises after the expiration of the Lease term, or any extension thereof, this Lease shall be automatically extended on a month-to-month basis, subject to thirty (30) days termination by either party, and otherwise on the terms and conditions herein specified, so far applicable, excepting only that commission payable during any holdover period shall be an amount mutually agreed by Lessee and lessor and not less than rental payable during the term thereof.
15. **COMPLIANCE WITH LAW.** Lessor and Lessee shall, at their own expense, comply with all applicable statutes, charters, law, ordinances, building and maintenance codes, rules, regulations, requirements and orders of duly constituted public authorities now or hereafter in any manner affecting the leased area. Lessee shall comply with all building and use or occupancy restrictions, conditions, and covenants on record; and shall also comply with the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the premises.
- 15.1 The premises shall meet all current code requirements, including but not limited to fire/life safety codes and the Americans with Disabilities Act Accessibility Guidelines.
16. **DEFAULT.** In the event Lessee fails to pay any commission due hereunder or fails to keep and perform any of the other terms or conditions thereof, time being of the essence, then ten (10) days after written notice of default from Lessor, the Lessor may, if such default has not been corrected, resort to any and all legal remedies or combination of remedies which Lessor may desire to assert, including but not limited to one or more of the following: (1) Declare the Lease at an end and terminated; (2) sue for the commission due and to become due under the Lease or for any damages sustained by Lessor; and (3) continue the Lease in effect and relet the premises on such terms and conditions as Lessor may deem advisable with Lessee remaining liable for the monthly commission plus any

repair and alterations necessary to prepare the premises for reletting, less the commissions received from such reletting, if any. No action by Lessor shall be construed as an election to terminate the Lease unless written notice of such intention be given to Lessee. In case Lessor, after written notice from the Lessee indicating the Lessor has failed to comply with any requirements of this Lease in regard to a specified condition, shall fail, refuse, or neglect to comply therewith, within (30) days or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invites, the Lessee may give Lessor notice of termination of this Lease.

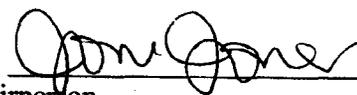
17. OPTION TO RENEW. Provided Lessee is not in default under the terms of this Lease, Lessee and Lessor shall have the option to renew this Lease for one (1), two (2) year option upon the same terms and conditions as in effect during the primary term as set in Section 3, subject to commission adjustments as provided below. Lessee and Lessor shall exercise the option to renew this Lease by delivery of written notice of its election to renew to other party at least six (6) months prior to the expiration of the primary term of this lease.
- 17.1 The commission adjustment for the two (2) year renewal term shall be negotiated between the parties; and, the new commission shall be reduced to writing as an amendment to this Lease.
18. TERMINATION. This Lease may be terminated for breach within the terms and conditions of the Agreement, upon one hundred twenty (120) days written notification as provided in Section 5.

Executed in duplicate this 7th day of April, 2009.

LESSEE:

BY: 
3 Gals & a Kart, Ltd.
dba Legal Grounds

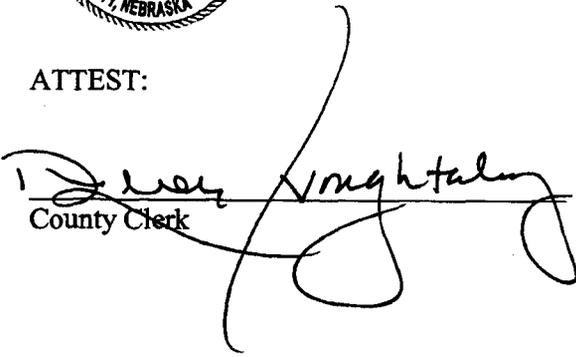
LESSOR:
THE COUNTY OF SARPY, NEBRASKA

BY: 
Chairperson
Board of Commissioners

SEAL:



ATTEST:


County Clerk

Approved as to Form:

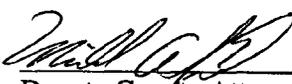
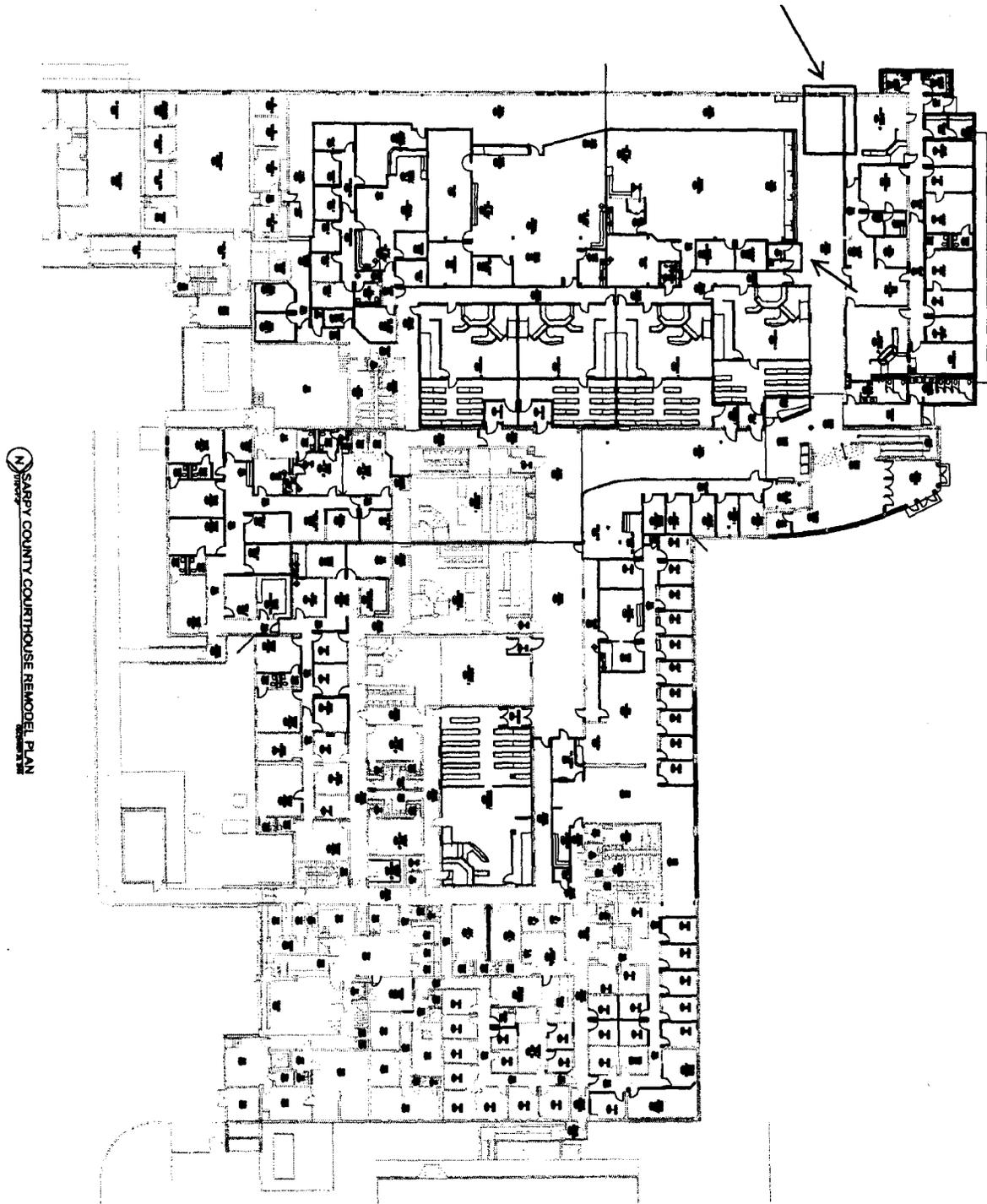

Deputy County Attorney

Exhibit A



N
SARPY COUNTY COURTHOUSE REMODEL PLAN

**ADDENDUM TO AMEND AGREEMENT
WITH THREE GALS AND A KART, LTD FOR COFFEE SERVICES.**

This Addendum is entered into by and between Three Gals and a Kart, Ltd. (hereinafter "Lessee") and Sarpy County, Nebraska, a body politic and corporate (hereinafter "Lessor").

WHEREAS, the parties have previously entered into an agreement to provide for coffee services at the Sarpy County Courthouse; and,

WHEREAS, the parties are desirous of amending the provisions of said Agreement by this Addendum.

NOW, THEREFORE, it is hereby agreed by and between the parties:

I.

The prior Agreement between the parties is hereby amended by the terms of this Addendum.

II.

Section 2 shall be amended to read, "TERM. The primary term of this lease is five (5) years commencing on November 1, 2009 until October 31, 2014 unless sooner terminated as hereinafter provided."

III.

Section 3.1 shall be amended to read, "Commission is due and payable on the fifteenth day of each month following the month in which the commission was earned and commencing with the commencement of the term of this lease. First commission payment shall be due on December 15, 2009 payable to Sarpy County Treasurer, and forwarded to Brian E. Hanson, Sarpy County Fiscal Administrator, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska 68046, or to such other address as the Lessor may designate by a notice in writing."

IV.

The Lessee's address in Section 5 shall be amended to read, "3 Gals and a Kart, Ltd., 1111 N. 102nd Court, Ste. 330, Omaha, NE 68114."

V.

Section 8.4 shall be amended to read, "Lessee will pay forty five dollars (\$45) monthly

charge for phone/data lines due the 15th of each month beginning December 15, 2009.

VI.

Section 12 shall be amended to read, "DESTRUCTION OF THE PREMISES. Should the premises be made unfit for occupancy due to fire or other unavoidable casualty, tenancy shall immediately be suspended and Lessee shall pay commission only to the date of such occurrence. The portion of any advance lease payment which is attributed to the period of time after the Lease has terminated in the above manner shall be refunded by Lessor to Lessee. If the damage is not of a permanent nature, Lessor shall be responsible for repairing the same in a timely manner at Lessor's own expense and the commission payments shall be suspended until the premises have been put in proper condition for occupancy."

VII.

Section 12.1 shall be amended to read, "As used herein, the phrase "unfit for occupancy" shall mean that the premises can be restored within 100 days for reoccupancy by tenant. In the event the restoration extends beyond such period of time, Lessee shall have the sole and exclusive right to decide to reoccupy after restoration or treat this Lease as completely terminated."

VII.

The remaining terms and conditions of said prior Agreement shall remain unchanged.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereby affix our signatures and seals as shown on the following signature pages.

THREE GALS AND A KART, LTD.

By: *Alvin Ingstarc*
Its: *[Signature]*
Corporate Officers

SARPY COUNTY

By: *Joni Jones*
Its: Sarpy County Board Chairman



Renee Lawrence
County Clerk - *Asst. Deputy*

Approved as to form:

Mark A. [Signature]
County Attorney/Deputy

**SECOND ADDENDUM TO AMEND AGREEMENT
WITH THREE GALS AND A KART, LTD FOR COFFEE SERVICES.**

This Addendum is entered into by and between Three Gals and a Kart, Ltd. (hereinafter "Lessee") and Sarpy County, Nebraska, a body politic and corporate (hereinafter "Lessor").

WHEREAS, the parties have previously entered into an agreement to provide for coffee services at the Sarpy County Courthouse which was subsequently amended by an addendum dated October 20, 2009; and,

WHEREAS, the parties are desirous of amending the provisions of said Agreement and Addendum by this Second Addendum.

NOW, THEREFORE, it is hereby agreed by and between the parties:

I.

The prior Agreement and Addendum between the parties is hereby amended by the terms of this Second Addendum.

II.

Section 3 shall be amended to read, "Rental/Occupancy. Lessee agrees to pay a 2% commission on gross monthly sales beginning March 1, 2011 through the end of the lease term."

III.

Section 8.4 shall be amended to read, "Lessee will pay a fifteen dollar (\$15.00) monthly charge for data lines due the 15th of each month beginning March 1, 2011."

IV.

Statements detailing the revenues and expenditures in the form of an annual profit/loss summary of the Lessee shall be provided to Lessor on an annual basis, no later than April 15 of the following year, with the first year commencing March 1, 2011. The Lessor's Fiscal Administrator and Deputy County Administrator will review the summary and if it is determined by Lessor that profits have improved over the previous year, the commission shall be increased to a mutually agreed upon amount, not to exceed eight (8) percent of gross revenues

V.

ABANDONMENT. If at any time during the term of this Agreement Lessee abandons the Premises or any part thereof by ceasing to operate and pay commission due under this Lease for a period of two (2) months, Lessor may, at Lessor's option, obtain possession of the Premises with ten (10) days written notice to Lessee, and without becoming liable to Lessee for damages

or for any payment of any kind whatever. Lessor may, at Lessor's discretion, as agent for Lessee, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting. If Lessor's right of reentry is exercised following abandonment of the Premises by Lessee, then, upon ten (10) days written notice to Lessee, Lessor shall consider any personal property belonging to Lessee and left on the Premises to also have been abandoned, in which case Lessor may dispose of all such personal property in any manner Lessor shall deem proper and Lessor is hereby relieved of all liability for doing so.

VI.

The remaining terms and conditions of said prior Agreement and Addendum shall remain unchanged.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereby affix our signatures and seals as shown on the following signature pages.

THREE GALS AND A KART, LTD.

By: _____
Its: _____

SARPY COUNTY

Tom Richards
3/15/11
By: Tom Richards
Its: Chairman

SEAL

ATTEST:

Dee Vaughtaling
County Clerk



Deb Houghtaling

Fred Uhe
Chief Deputy

Sarpy County Clerk

Renee Lansman
Assistant Chief Deputy

1210 Golden Gate Drive • Papillion, Nebraska 68046-2895
Phone: 402-593-2105 • Fax: 402-593-4471 • Website www.Sarpy.com • Email: Clerk@sarpy.com

August 1, 2011

3 Gals & a Kart, Ltd.
1111 N. 102nd Court, Suite 330
Omaha NE 68114

RE: Third Addendum Terminating Lease for Coffee Services

Action by the Sarpy County Board on July 26, 2011 is as follows:

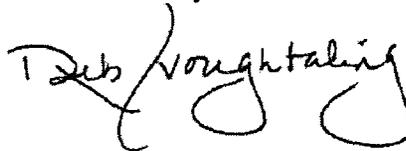
Resolution 2011-241: Approve third addendum to agreement with Three Gals and a Kart, Ltd. to terminate lease for coffee services at the Sarpy County Courthouse. Kerry Schmid, Deputy County Attorney

MOTION: Resolved by Warren, seconded by Thompson, to approve the resolution for the third addendum which amends the prior agreement and addendums term to end on July 31, 2011. Ayes: Hike, Thompson, Richards, Nekuda & Warren. Nays: None.

Please find enclosed two (2) originals of the subject agreement which have been approved and signed by the Chairman of the Board. Upon completion, please provide one original for Sarpy County records.

Mail to: Sarpy County Clerk
Attn: Kendra Koehler
1210 Golden Gate Dr.
Papillion NE 68046-2895

Sincerely,



Deb Houghtaling
Sarpy County Clerk

Enclosures (2)
DH/kk