

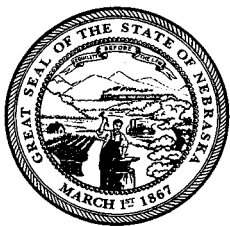
City of Seward, NE
Tuesday, September 15, 2015
Regular Session

Item G4

**CONSIDERATION OF AMENDING CLASS L LIQUOR
LICENSE FOR BOTTLE ROCKET BREWING, 230 S 5TH
STREET TO INCLUDE OUTDOOR BEER GARDEN - Gerald
Homp**

Administrative Report: Following review and discussion, a motion to approve amendment to the liquor license would be in order.

Staff Contact:



Pete Ricketts
Governor

STATE OF NEBRASKA

NEBRASKA LIQUOR CONTROL COMMISSION

Robert B. Rupe

Executive Director

301 Centennial Mall South, 5th Floor

P.O. Box 95046

Lincoln, Nebraska 68509-5046

Phone (402) 471-2571

Fax (402) 471-2814 or (402) 471-2374

TRS USER 800 833-7352 (TTY)

web address: <http://www.lcc.ne.gov/>

September 2, 2015

**SEWARD CITY CLERK
PO BOX 38
537 MAIN STREET
SEWARD NE 68434**

Dear Clerk,

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

RE: ADDITION

LICENSE #: L-112988

LICENSEE/TRADE NAME : BOTTLE ROCKET BREWING LLC / BOTTLE ROCKET BREWING

ADDRESS: 230 S 5TH STREET

CITY/COUNTY: SEWARD / SEWARD

PHONE: 402-304-5673

MANAGER: 402-643-4423

E-MAIL: GERALD@BOTTLEROCKETBREWING.COM

CURRENT DESCRIPTION: TWO STORY BUILDING APPROX 26' X 35' INCLUDING BASEMENT AREA

NEW DESCRIPTION: TWO STORY BUILDING AND BASEMENT APPROX 26' X 35' INCLUDING L SHAPED OUTDOOR AREA APPROX TO THE NORTH

APPROVED: _____ DENIED _____

**Randy Seybert
Licensing Division
Nebraska Liquor Control Commission**

rs
cc: file

Janice M. Wiebusch
Commissioner

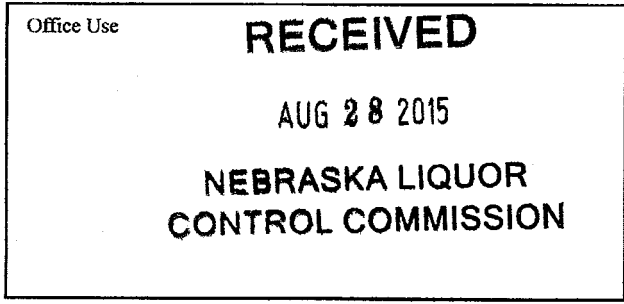
Robert Batt
Chairman

Bruce Bailey
Commissioner

An Equal Opportunity Employer

**APPLICATION FOR ADDITION
TO LIQUOR LICENSE**

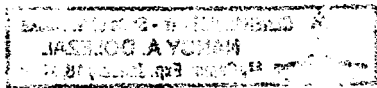
NEBRASKA LIQUOR CONTROL COMMISSION
301 CENTENNIAL MALL SOUTH
PO BOX 95046
LINCOLN, NE 68509-5046
PHONE: (402) 471-2571
FAX: (402) 471-2814
Website: www.lcc.nebraska.gov



Application:

- **Must include processing fee of \$45.00 check made payable to the Nebraska Liquor Control Commission or you may pay online at www.ne.gov/go/NLCCpayport**
- **Must include a copy of the lease or deed showing ownership of area to be added. This is still required even if it's the same as on file with original application**
- **Must include simple hand drawn sketch showing existing licensed area and area to be added, must include outside dimensions in feet (not square feet), show direction north. NO BLUE PRINTS**
- **May include approval from the local governing body; no addition shall be approved unless endorsed by the local governing body**
- **Check with your local governing body for any additional requirements that may be necessary in making this request for addition**

LIQUOR LICENSE # 112988 CLASS TYPE L
LICENSEE NAME Bottle Rocket Brewing LLC
TRADE NAME Bottle Rocket Brewing LLC
PREMISE ADDRESS 230 S. 5th St.
CITY Seward ZIP CODE 68434 COUNTY Seward
CONTACT PERSON Gerald HOMP
PHONE NUMBER OF CONTACT PERSON 402 304 5673
EMAIL ADDRESS OF CONTACT PERSON Gerald@Bottlerocketbrewing.com



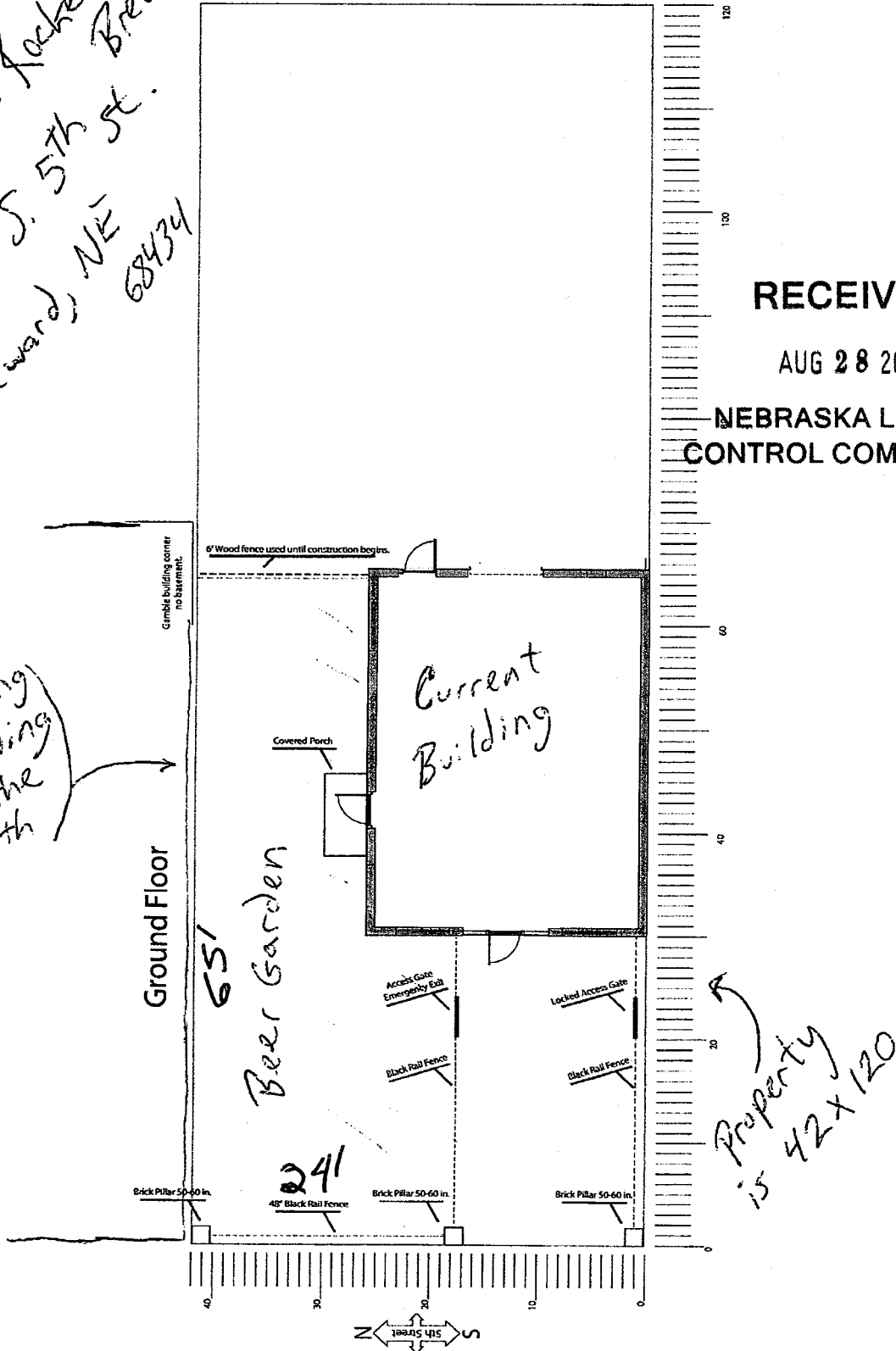
Bottle Rocket
230 S. 5th St.
Seward, NE
68434

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CONTROL COMMISSION

Neighboring
Building
To the
North



Beer Garden is L shaped 65' x 24'

1. What is being added?

Explain the type of addition that is being requested, i.e. beer garden, adding to building

Beer garden

2. Will this addition cause the location to be within 150 feet of a church, school, hospital, home for the aged or indigent persons or for veterans, their wives, and children; or within 300 feet of a college or university campus?

YES NO

If yes, provide name and address of such institution and where it is located in relation to the premises (Neb. Rev. Stat. 53-177)(1).

Must include supplemental Form 134 found at this link: <http://www.lcc.ne.gov/formsdiv.html>

If proposed location is within 300 feet of a campus, the Commission may waive this restriction upon written approval from the governing body of the college or university. (Rev. Stat. 53-177)(1).

Must include supplemental Form 135 found at this link: <http://www.lcc.ne.gov/formsdiv.html>

3. Include a sketch of the area to be added showing:

- ✓ existing licensed area with length & width in feet
- ✓ area to be added with length & width in feet
- ✓ direction north

4. If adding an outdoor area explain:

- ✓ type of fencing
- ✓ height of fence
- ✓ length & width of outdoor area in feet

12.07 Outdoor area shall mean an outdoor area included in licensed premises, which is used for the service and consumption of alcoholic liquors and which is contained by a permanent fence, wall or other barrier approved by the Commission and shall be in compliance with all building and fire, or other applicable local ordinances.

Rule Chapter 2-012.07

I acknowledge under oath that the premises as added to comply in all respects with the requirements of the act. Neb Rev Stat §53-129

Gerald Homp

Signature of Licensee or Officer

State of Nebraska

County of

Seward

The foregoing instrument was acknowledged before me this

8/28/15

Date

by

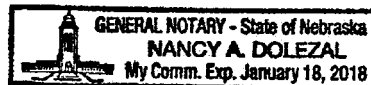
Gerald Homp

name of person acknowledged (individual(s) signing document)

Nancy A. Dolezal

Notary Public signature

Affix Seal



Lease with Option to Purchase

This Lease with Option to Purchase (this "Lease") is made effective as of January 20, 2015 ("Effective Date"), by and between Gerald and Michelle Homp ("Landlord"), and Bottle Rocket Brewing LLC ("Tenant"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Two story Commercial Historical Building (the "Premises") located at 230 S 5th St, Seward, Nebraska 68434.

TERM. The lease term will begin on January 16, 2015 and will terminate on January 16, 2055. If the Purchaser fails to exercise the option by such time and date, the option will automatically terminate and the Seller will be entitled to retain the non refundable consideration stated below.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly installments of \$1.00 per month, payable in advance on the first (1st) day of each month, for a total lease payment of \$487.00. Lease payments shall be made to Landlord at 1210 Eastridge Dr, Seward, Nebraska 68434, which location may be changed, in writing by Landlord, with a minimum of seven (7) days advanced notice to Tenant.

POSSESSION. Tenant shall be entitled to possession on the first (1st) day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to Landlord in as good condition as when delivered to Tenant, ordinary wear and tear excepted.

USE OF PREMISES/ABSENCES. Tenant shall occupy and use the Premises as a dwelling unit. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first (1st) day of the extended absence.

PROPERTY INSURANCE. Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

DAMAGE CAUSED BY TENANT. If any damage to the property shall be caused by their act or neglect, the Tenant shall forthwith repair such damage at their own expense, including damage to screens and windows where same is not covered by Landlord's insurance.

MAINTENANCE. Landlord shall have the responsibility to maintain the Premises in good repair at all times and perform all repairs necessary to satisfy any implied warranty of habitability. Tenant must notify Landlord within twenty-four (24) hours of any condition requiring maintenance.

UTILITIES AND SERVICES. Tenant shall be responsible for all utilities and services in connection with the Premises for the term of this Lease.

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TAXES. Tenant shall pay all real estate taxes.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are damaged or destroyed by fire or other casualty to the extent that enjoyment of the dwelling unit is substantially impaired, Landlord, in its sole discretion may elect to repair the Premises or terminate the Lease upon thirty (30) days' written notice to Tenant. If the Premises are condemned or cannot be repaired, this Lease will terminate upon twenty (20) days' written notice by either party.

HABITABILITY. Tenant, or an authorized agent on Tenant's behalf, has inspected the Premises and fixtures and acknowledges that the Premises are in a reasonable and acceptable condition of habitability for their intended use, and the agreed lease payments are fair and reasonable. If the condition changes so that, in Tenant's opinion, the habitability and rental value of the Premises are adversely affected, Tenant shall promptly provide reasonable notice to Landlord.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provision of law to the contrary, if Tenant fails to cure any financial obligation within 5 days (or any other obligation within 10 days) after written notice of such default is provided by Landlord to Tenant, Landlord may elect to cure such default and the cost of such action shall be added to Tenant's financial obligations under this Lease.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord lease payment(s) during the Holdover Period at a rate equal to 150% of the most recent rate preceding the Holdover Period. Such holdover shall constitute a month-to-month extension of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

NON-SUFFICIENT FUNDS. Tenant shall be charged the maximum amount allowable under applicable law for each check that is returned to Landlord for lack of sufficient funds.

REMODELING OR STRUCTURAL IMPROVEMENTS. Tenant shall have the obligation to conduct any construction or remodeling, at Tenant's expense, that may be required to use the Premises as specified above. Tenant may also construct such fixtures on the Premises, at Tenant's expense, that appropriately facilitate its use for such purposes. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of Landlord, which shall not be unreasonably withheld. At the end of the lease term, Tenant shall be entitled to remove, or at the request of Landlord, shall remove such fixtures, and shall restore the Premises to substantially the same condition of the Premises at the commencement of this Lease.

ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent, which shall not be unreasonably withheld, Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. However, Landlord does not assume any liability for the care or supervision of the Premises. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

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DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

MECHANICS LIENS. Neither Tenant nor anyone claiming through the Tenant shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

SUBORDINATION OF LEASE. This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

OPTION TO PURCHASE. Tenant, upon satisfactory performance of this Lease, shall have the option to purchase the real property described herein for a purchase price of \$130,000.00, provided that the Tenant timely executes the option to purchase and is not in default of the Lease Agreement. Thereafter, each of the parties shall promptly execute any and all further instructions or other documents including a Sale Agreement which may be reasonably required for purchase of the real property. The Landlord shall credit towards the purchase price at closing the sum of \$1.00 from each monthly lease payment that the Tenant timely made.

TITLE. Landlord agrees to deliver, and Tenant agrees to accept, title to the Premises subject only to (a) assessments levied against the Premises, (b) any covenants, conditions, restrictions, easements, right, rights-of-way of record, and (c) such other exceptions as Landlord and Tenant approve in writing. Landlord shall deliver to Tenant a preliminary title report within thirty (30) days after Tenant's exercise of the option.

NOTICE REQUIRED TO EXERCISE OPTION. To exercise the Option to Purchase, the Tenant must deliver to the Landlord, a written notice of Tenants intent to purchase, not less than One (1) days prior to the expiration of the Lease Term. In addition, the written notice must specify a valid closing date. The closing date must occur before the original expiration date of the Lease Agreement.

OPTION CONSIDERATION. Nonrefundable option consideration in the amount of \$0.00 paid by the Tenant as consideration for this Option to Purchase Agreement, shall be credited to the purchase price at closing if the Tenant timely exercises the option to purchase. If the Tenant doesn't exercise the option to purchase, the Tenant shall forfeit the nonrefundable option consideration.

EXCLUSIVITY OF OPTION. This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Tenant attempt to assign, convey, delegate, or transfer this option to purchase without the Landlords express written permission, any such attempt shall be deemed null and void.

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CLOSING AND SETTLEMENT. Tenant agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Tenant. **NEBRASKA LIQUOR CONTROL COMMISSION**

FINANCING DISCLAIMER. THE PARTIES ACKNOWLEDGE THAT IT IS IMPOSSIBLE TO PREDICT THE AVAILABILITY OF OBTAINING FINANCING TOWARDS THE PURCHASE OF THIS PROPERTY. OBTAINING FINANCING SHALL NOT BE HELD AS A CONDITION OF PERFORMANCE OF THIS OPTION TO PURCHASE AGREEMENT. THE PARTIES FURTHER AGREE THAT THIS OPTION TO PURCHASE AGREEMENT IS NOT ENTERED INTO IN RELIANCE UPON ANY REPRESENTATION OR WARRANTY MADE BY EITHER PARTY.

REMEDIES UPON DEFAULT. If Tenant defaults under this Option to Purchase Agreement or the Lease Agreement, then in addition to any other remedies available to Landlord at law or in equity, Landlord may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Tenant shall lose entitlement to any refund of rent or option consideration. For this Option to Purchase Agreement to be enforceable and effective, the Tenant must comply with all terms and conditions of the Lease Agreement

ACKNOWLEDGMENTS. The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy.

ASSIGNABILITY/SUBLETTING. Tenant may not assign or sublease any interest in the Premises, nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld.

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed to the party at the appropriate address set forth below. Such addresses may be changed from time to time by either party by providing notice as set forth below. Notices mailed in accordance with these provisions shall be deemed received on the third day after posting.

LANDLORD:

Gerald and Michelle Homp
1210 Eastridge Dr
Seward, Nebraska 68434

TENANT:

Bottle Rocket Brewing LLC

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of Nebraska.

ENTIRE AGREEMENT/AMENDMENT. This Lease contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by both parties.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

LANDLORD:

Gerald and Michelle Homp

TENANT:

Bottle Rocket Brewing LLC

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**NEBRASKA LIQUOR
CONTROL COMMISSION**

AUG 28 2015

NEBRASKA LIQUOR
CONTROL COMMISSION

REAL ESTATE LEASE
DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT
OR LEAD-BASED PAINT HAZARDS

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, landlords must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Tenants must also receive a federally approved pamphlet on poisoning prevention.

Landlord's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (Check (i) or (ii) below):
 - (i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain): _____
 - (ii) Landlord has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the landlord (Check (i) or (ii) below):
 - (i) Landlord has provided the tenant with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents):

 - (ii) Landlord has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Tenant's Acknowledgment (initial)

- (c) Tenant has received copies of all information listed above.
- (d) Tenant has received the pamphlet Protect Your Family From Lead In Your Home.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Landlord Date

AMENDMENT OF LEASE**NEBRASKA LIQUOR
CONTROL COMMISSION**

This Lease Amendment is hereby made and entered into by and between Gerald and Michelle Homp and Bottle Rocket Brewing LLC on March 3rd, 2015.

Whereas Gerald and Michelle Homp have previously entered into a Lease Agreement (herein after referred to as Lease) dated January 15th, 2015 hereby Bottle Rocket Brewing LLC leased from Gerald and Michelle Homp Two story Commercial Historical Building (the "Premises") located at 230 S 5th St, Seward, Nebraska 68434 more particularly described in the Lease; and

WHEREAS, Gerald and Michelle Homp and Bottle Rocket Brewing LLC desire to amend the Lease as herein stated.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, and other goods and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Gerald and Michelle Homp and Bottle Rocket Brewing LLC both acknowledge and agree that the lease is currently in effect and that neither party is in breach or default of the Lease.
2. Gerald and Michelle Homp hereby amend the Lease as follows:

Amend clause number 5, page 1, titled "USE OF PREMISES/ABSENCES" to state that Tenant shall occupy and use the premises as a Microbrewery. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first (1st) day of the extended absence.

Amend clause number 11, page 2, titled "DESTRUCTION OR CONDEMNATION OF PREMISES" to state If the Premises are damaged or destroyed by fire or other casualty to the extent that enjoyment of the Microbrewery is substantially impaired, Landlord, in its sole discretion may elect to repair the Premises or terminate the Lease upon thirty (30) days' written notice to Tenant. If the Premises are condemned or cannot be repaired, this Lease will terminate upon twenty (20) days' written notice by either party.

3. Except and specifically amended hereinabove, the original terms and provisions of the Lease remain in full force and effect, and both Gerald and Michelle Homp and Bottle Rocket Brewing LLC hereby affirm and consent to Lease, as herein amended, and agree to be bound thereby.
4. All other terms and conditions listed in the original Lease remain in effect, without modification. This amendment binds and benefits both parties and any successors. This document, including the Lease, constitutes the entire agreement between the Landlord and Tenant.

The Landlord and Tenant have signed and dated this amendment below.

LANDLORD:

Gerald Homp

Michelle Homp

TENANT:

Bottle Rocket Brewing LLC

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