

## **SECONDARY SUB LEASE**

THIS SECONDARY SUBLEASE (this "**Secondary Sublease**") is made and entered into by **VICTORY PARK, LLC**, a Nebraska limited liability company (herein called the "**Landlord**") and the County of Lancaster, Nebraska on behalf of the Lancaster County Veteran's Services (herein called the "**Tenant**") on this \_\_\_ day of \_\_\_\_\_, 2022 (the "**Effective Date**").

### **RECITALS**

This Secondary Sublease is entered into upon the basis of the following facts, understandings, and intentions of the parties:

A. Landlord has previously entered into a sublease of Victory Park located at 600 South 70<sup>th</sup> Street, Lincoln, NE 68510, dated August 31, 2016, executed by and between Seniors Foundation Vision VA LLC, a Nebraska limited liability company ("**Seniors**") and Landlord (the "**Prime Sublease**"). The Prime Sublease is attached hereto as Attachment "A" and hereby incorporated by this reference.

B. Pursuant to the rights and obligations Landlord obtained under the Prime Sublease, Landlord is the Prime Sublessee under that certain Enhanced – Use Lease of Certain Real Property and Facilities at the Lincoln, Nebraska Veterans Affairs Medical Center, in Lincoln Nebraska, dated December 30, 2011, and executed by the U.S. Department of Veterans Affairs ("**VA**"), as amended by that certain Amendment #1 to the Enhanced – Use Lease for Certain Real Property and Facilities at the Lincoln, Nebraska Veterans Affairs Medical Center, in Lincoln Nebraska, dated August 31, 2016 (collectively, the "**EUL**"). The EUL is attached hereto in Attachment A, beginning on page 48.

C. Pursuant to Landlord's status as Prime Sublessee under the EUL, Landlord has the right to occupy for development that certain real property including the improvements constructed thereon (herein called the "**Land**") located at 600 South 70<sup>th</sup> Street, Lincoln, Lancaster County, Nebraska and shown as "Parcel L" on Exhibit "A" attached hereto and incorporated by this reference, and Landlord has certain non-exclusive rights that benefit the Land, and to enter this Secondary Sublease with Tenant, subject to all terms and conditions of the EUL and the Prime Sublease.

D. Pursuant to the EUL, the Department of Veterans Affairs will vacate the premises, commonly referred to as 600 South 70<sup>th</sup> Street, Lincoln, Nebraska (the "**Building**").

E. Subject to the reservations and exceptions in this Secondary Sublease and subject to all applicable terms and conditions of the EUL and the Prime Sublease, Landlord desires to lease to Tenant all of Landlord's right, title and interest in and to the Premises and Landlord's interests in easements, rights of way, appurtenances to the extent necessary for Tenant to improve the Premises as more particularly described and depicted on Exhibit "B" attached hereto and incorporated by this reference, and Tenant desires to lease the Premises from Landlord in order for Tenant to construct on the Premises office and operational space, (herein called the "**Project**") consisting of approximately 1,950 gross square feet.

F. The parties desire to establish the terms and conditions of this Secondary Sublease to fulfill the foregoing objectives, which Secondary Sublease shall be subject to and limited by the applicable terms and conditions of the EUL and Prime Sublease.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

**ARTICLE 1  
DEMISE OF PREMISES**

**SECTION 1.1 Leased Premises**. On the Effective Date, Landlord, for and in consideration of the covenants and conditions herein set forth, does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Premises, pursuant to the terms, conditions, and provisions of this Secondary Sublease, the EUL, and the Prime Sublease.

**SECTION 1.2 Warranty of Title**. Landlord hereby represents and warrants to Tenant that Landlord holds a leasehold interest in the Premises as the Prime Sublessee (as defined in the EUL) of the Premises pursuant to the terms and conditions of the EUL. Landlord further represents and warrants to Tenant that Landlord is authorized to grant Tenant the rights and leasehold interest described herein.

**SECTION 1.3 Quiet Enjoyment**. Landlord agrees that Tenant, pursuant to the terms and conditions of this Secondary Sublease, the EUL, and the Prime Sublease, shall lawfully and quietly hold, occupy, and enjoy and may develop the Premises during the Term (as defined in Section 2.2) and any Extended Term (as defined in Section 2.4) of this Secondary Sublease. Landlord represents and warrants to Tenant that Landlord has complied with all requirements and conditions of the EUL and Prime Sublease in entering this Secondary Sublease.

**SECTION 1.4 Utility Easements**. Subject to Landlord's prior written approval (which approval shall not be unreasonably withheld, delayed, or conditioned), Tenant shall have the right to enter into agreements with utility companies creating easements in favor of such companies as are required in order to service the Premises and other improvements to be constructed on the Premises. Landlord agrees to join in the grant of such easements (covering the Land and the Premises) and to execute any and all documents, agreements and instruments in order to effect the same, all at Tenant's cost and expense, if required as a condition to the granting of the easement by the utility companies; provided, however, Landlord may refuse to approve, in its reasonable discretion, or refuse to join in the execution of any easement which materially and adversely affects Landlord's ability to later redevelop the Land or is prohibited by the EUL or Prime Sublease. The parties agree to use reasonable efforts to cause any encumbrances on the Premises or the Land to be subordinate to such easements, as may be required by any utility companies.

**SECTION 1.5 Documentary Stamp Tax, Intangible Tax or Sales Tax**. Notwithstanding anything in this Secondary Sublease to the contrary, if at any time this Secondary Sublease is determined to be a taxable instrument or represents a taxable transaction by the State of Nebraska under provisions relating to documentary stamp tax, intangible tax or sales tax, the payment of any such tax or taxes shall be the sole responsibility of Landlord.

**SECTION 1.6 Furnishings.** It is acknowledged between Landlord and Tenant that Tenant is responsible for furnishing the Premises and providing necessary data and communications network infrastructure throughout the Premises to support Tenant 's operations within the Premises.

**SECTION 1.7 Parking** Landlord agrees to provide a minimum of six (6) parking spaces suitable for personal vehicles in "Parcel L" as shown on Exhibit "A", attached hereto, and incorporated herein by this reference. Said spaces shall be available for the general non-exclusive use of Tenant and Tenant's employees, suppliers, shippers, contractors, and invitees.

## **ARTICLE 2 LEASE TERM**

**SECTION 2.1 Effective Date/ Late Delivery.** This Secondary Sublease is effective and begins on the Effective Date. If for any reason Landlord cannot deliver possession of the Premises to Tenant by the Effective Date, Tenant shall not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Tenant under the terms of this Secondary Sublease until Landlord delivers possession of the Premises to Tenant. If possession of the Premises is not delivered to Tenant within sixty (60) days after the Effective Date and such delay is not due to Tenant 's acts, failure to act, or omissions, Tenant may by notice in writing to Landlord within ten (10) days after the end of said sixty (60) day period cancel this Secondary Sublease and the Parties shall be discharged from all obligations hereunder.

**SECTION 2.2 Lease Term.** Subject to extension pursuant to Section 2.4, the term of this Secondary Sublease shall be for a period of twenty (20) years commencing on the Effective Date. As used in this Secondary Sublease, "**Initial Term**" shall refer to the initial twenty (20) year term of this Secondary Sublease immediately following the Effective Date. The last day of the Initial Term of this Secondary Sublease shall be the day immediately preceding the twentieth (20<sup>th</sup>) anniversary of the Effective Date (herein called, subject to extension pursuant to Section 2.4, the "**Expiration Date**") unless sooner terminated as herein provided. In no event shall the term of this Secondary Sublease exceed the term of the EUL or Prime Sublease.

**SECTION 2.3 Rent Commencement.** Tenant's obligation to pay rent shall commence and shall be due and payable as provided in Section 3.1.

**SECTION 2.4 Options to Extend.** Tenant may, solely at its option (the "**Extension Option**"), extend the Initial Term of this Secondary Sublease for up to two (2) additional periods of ten (10) years each, subject to all the provisions of this Secondary Sublease. Each additional ten (10) year period in effect hereunder shall be referred to as an "**Extended Term**". The Expiration Date shall also be deemed to include, to the extent applicable, the last day of each Extended Term of this Secondary Sublease. As used in this Secondary Sublease, "**Term**" shall refer to the Initial Term and any Extended Term exercised pursuant to the terms and conditions of this Secondary Sublease. Each Extension Option to extend the Initial Term and/or Extended Term is subject to each of the following conditions:

- (a) Tenant's notice to Landlord exercising the Extension Option to extend the Term

(the "**Extension Notice**") shall be given not later than six (6) months prior to expiration of the Initial Term, or any Extended Term, as applicable.

(b) No Event of Default (defined below) by Tenant shall have occurred and be continuing beyond any applicable cure period at the time of exercise of the Extension Option.

(c) Tenant agrees to the Common Area Maintenance Charges for such Extended Term as determined pursuant to Section 3.6.

**SECTION 2.5 Termination By Tenant.** Tenant shall have the right to cancel this Secondary Sublease, for any reason whatsoever including no reason, upon giving one hundred eighty (180) days' notice of such cancellation in writing to Landlord without penalty or liability for rent or costs. Upon Tenant's cancellation, Landlord and Tenant shall be relieved of any further respective obligation under the Prime Sublease arising from and after the early termination date; provided that, such termination shall not, however, terminate those obligations set forth in the Prime Sublease which specifically survive after expiration or earlier termination thereof.

(a) Tenant may terminate this Secondary Sublease immediately without penalty or liability for rent or costs for the following reasons: (i) if directed to do so by statute; (ii) if Landlord has made an assignment of the Prime Sublease for the benefit of creditors, or has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business; (iii) if a trustee or receiver of Landlord or of any substantial part of Landlord's assets has been appointed by any court; (iv) for fraud, misappropriation embezzlement, malfeasance, misfeasance, or illegal conduct by Landlord, its employees, officers, directors, or shareholders in connection with the execution of this Secondary Sublease or the performance of Landlord's obligations under the terms of this Secondary Sublease; (v) if an involuntary proceeding has been commenced against Landlord under any one of the chapters of Title 11 of the United States Code and (a) the involuntary proceeding has been pending for at least sixty (60) days; or (b) Landlord has consented, either expressly or by operation of law, to the entry of an order for relief; or (c) Landlord has been decreed or adjudged a debtor; (f) A voluntary petition has been filed by Landlord under any of the chapters of Title 11 of the United States Code, or (vi) Lack of funding. Except to the extent that any of the circumstances referred to herein interferes with the Tenant's use of the Premises, the Tenant shall remain liable for the payment of rent until it has vacated the premises.

(b) Tenant may terminate this Secondary Sublease, in whole or in part, without penalty or liability for rent or costs if Landlord fails to perform its obligations under this Secondary Sublease in a timely and proper manner. Tenant shall provide a written notice of default to Landlord and allow Landlord to cure a failure or breach of this Secondary Sublease within a period of thirty (30) days. If the breach is not cured within thirty (30) days, the Tenant may terminate upon written notice to Landlord.

**SECTION 2.6 Reversion.** On the Expiration Date or earlier termination of this Secondary Sublease, the Building and all other alterations, improvements and additions to the Premises shall be surrendered to and become Landlord's property free and clear of all claims by Tenant or any third person, all liens, security interests, and encumbrances other than the Permitted Encumbrances, EUL and Prime Sublease, and any other encumbrances or liens expressly agreed to by Landlord. Notwithstanding the provisions of this paragraph, the machinery, trade fixtures and equipment of Tenant or any tenant of the Building shall remain the property of Tenant or such tenant and may be removed; provided, however, that Tenant removes or causes it to be removed by the Expiration Date and promptly repairs any damage caused thereby.

**ARTICLE 3**  
**RENT, TAXES AND UTILITIES, COMMON AREA FEE**

**SECTION 3.1 Rent.** Landlord acknowledges and agrees that Tenant's presence on the Land and intended improvements to the Premises provides a significant benefit to the overall development of the Land, and therefore Landlord agrees that Tenant's presence on the Land shall serve as consideration for this Agreement. So long as Tenant is in compliance with the terms of this Agreement, Tenant may occupy the Premises for the Term of this Secondary Sublease without paying rent.

**SECTION 3.1 Taxes.**

**(a) Real Property.** Tenant and Landlord agree to cooperate to identify the Premises as a separate tax parcel as improvements on a lease, in compliance with applicable state and local laws. In the event that the improvements on lease as described herein are not considered to be exempt from real property taxes, Landlord shall pay or cause to be paid all real property taxes, general and special, ordinary, or extraordinary, foreseen, or unforeseen levied on or against the Premises or the leasehold estate described herein subject to reimbursement from Tenant of the actual amount levied. Likewise, in the event other charges or assessments are levied against the Premises, Landlord shall pay or cause to be paid all other such charges, assessments and taxes of every description, levied on or assessed against the Premises or the leasehold estate assessed during the Term subject to reimbursement from Tenant., Landlord shall make all such payments directly to the charging or taxing authority before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, applicable law expressly permits the payment of all or any of the above items in installments (whether or not interest accrues on the unpaid balance), Landlord may, at its option pay such items in installments with any interest before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for nonpayment. All payments of taxes or assessments or both, including permitted installment payments, shall be prorated for the initial year of the Term and for the year in which this Secondary Sublease expires or is terminated. Tenant shall forward any notices of assessments to Landlord within ten (10) business days of receipt in order to enable Landlord, acting with the full cooperation of the Tenant to contest such assessment consistent with the terms of Section 3.2(c) hereof.

**(b) Personal Property.** Tenant shall pay or cause to be paid all personal property taxes levied upon any and all personal property owned by Tenant and located on or in the Premises. Landlord shall forward any notices of personal property taxes on Tenant's property received by Landlord within ten (10) business days of receipt. Tenant shall furnish to Landlord, upon written request from Landlord, receipts or other appropriate evidence reasonably establishing payment of the taxes, assessments or charges for personal property taxes contemplated to be paid by Tenant under this Section 3.2.

**(c) Contesting Taxes.** Tenant and Landlord shall cooperate in good faith with one another to contest or review in good faith by legal proceedings, as permitted under applicable law, any assessed valuation, real estate tax, or assessment with respect to the Premises; provided that, unless either party has paid such tax or assessment under protest,

Tenant shall furnish to Landlord proof reasonably satisfactory to Landlord that such protest or contest may be maintained without payment under protest. If requested by Tenant, Landlord shall join in any proceeding for contest or review of such taxes or assessments, but the entire cost of the proceedings shall be paid by Tenant. Notwithstanding the foregoing, if the Premises are included in a tax parcel with other land owned or leased by Landlord, then if requested by Landlord, Tenant shall join in any proceeding for contesting such taxes or assessments and the entire costs of the proceedings shall be allocated between Landlord and Tenant in the same percentages as the taxes as described in Section 3.2(a).

**SECTION 3.3 Utilities.** Tenant shall pay or cause to be paid all charges for water, heat, gas electricity, cable, trash disposal, sewers and all other utilities used on the Premises throughout the Term, including without limitation, any connection and servicing fees, permit fees, inspection fees, and fees to reserve utilities capacity. In the event of any outage of utility services to the Premises, Landlord shall use its best efforts to restore said utility services promptly. Tenant is responsible for all materials which may be furnished to the Premises or used by the Tenant in or about the Premises, and Tenant agrees to keep the premises free and clear of any lien or encumbrance of any kind whatsoever. Tenant shall also be responsible for paying for maintenance and repair of such utility equipment and fixtures within the Premises. Landlord shall allow for either separate service to lease premises or sub-metered service for utilities dependent on the Tenant's ability to economically separate the services. In the event utilities are sub-metered the Landlord shall pay the associated utility charges and invoice Tenant for their sub-metered share. Tenant shall pay all associated invoices within thirty (30) days of receipt of invoice.

**SECTION 3.4 Security Deposit.** No security deposit is required hereunder.

**SECTION 3.5 Landlord Common Area Responsibilities.** Landlord will provide (1) snow and ice removal from parking lots, building entrances, exits, surrounding sidewalks and driveways; (2) ground and lawn care and maintenance; (3) driveway, parking area, and sidewalk maintenance and repair throughout the Veterans Administration Campus in a timely and workmanlike manner. These items shall be known throughout this Secondary Sublease as Common Area Maintenance Items. Snow and ice removal for entrances/exits and sidewalks shall be completed as soon as practicable each day before Tenant business hours. If conditions warrant, additional snow and ice removal may be needed during the business day based on conditions and the accumulation of snow, sleet, and ice, these services are to be provided at Landlord's cost and passed on to Tenant. Tenant shall be responsible for payment of its share of Landlord's costs for Common Area Maintenance Items, which share shall equal two percent (2%) of the total cost of Common Area Maintenance Items performed by Landlord throughout the Veterans Administration Campus. As additional space is filled throughout the Land, the Tenant's share of the total cost of Common Area Maintenance Items performed by Landlord shall be reduced to reflect the actual percentage of occupied space on the Veteran's Administration Campus represented by the Premises.

**SECTION 3.6 Common Area Maintenance Fee.** Tenant shall pay Landlord a fee in semi-annual installments payable in arrears on the first (1<sup>st</sup>) day of July and January each year throughout the Term of this Secondary Sublease for the common area maintenance charges as defined in this Secondary Sublease. Common Area Maintenance Charges payable hereunder for

any period of time less than a six-month period shall be determined by prorating the charges incurred by Landlord over the course of the actual number of days in that portion of the Term for which said charges are being paid

**SECTION 3.7 Common Areas-Definition.** Common Areas means the area outside and beyond the exterior boundary line Premises yet within the Land and at the VA campus that is provided and designated by Landlord from time to time for the general non-exclusive use of Landlord, Tenant, and other tenants of the building and their respective employees, suppliers, shippers, tenants, contractors, and invitees.

## **ARTICLE 4 USE OF PREMISES AND HAZARDOUS MATERIALS**

**SECTION 4.1 Use of Premises.** Tenant shall initially use the Premises for the construction, operation, and maintenance of space to conduct and support its operations as described in Recital F. However, upon the expiration or earlier termination of the VA Sublease, so long as Tenant is not then in default, Tenant may use the Premises for any commercially reasonable purpose that does not violate the terms and conditions of the EUL or Prime Sublease. In addition, and without limitation to the forgoing, Tenant shall use the Premises in a manner that fully complies with all applicable terms and conditions of the EUL and Prime Sublease. Tenant shall indemnify and hold Landlord harmless from and against any of and from, all liabilities, obligations, actions, suits, proceedings or claims, and all losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, as a direct result of any act, omission, or unperformed obligation of the Tenant arising or accruing with respect to the EUL and Sublease as they pertain to the Premises occurring or alleged to have occurred on or after the Effective Date, including, but not limited to any failure of Tenant to perform or comply with any applicable obligation, covenant, agreement, representation, warranty, or condition contained in the EUL and Prime Sublease on or after the Effective Date. Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, contractors, customers and invitees, during the term of the Prime Sublease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas, including but not limited to the roadways, sidewalks, parking lots, and green spaces throughout the VA Campus, as they exist from time to time, subject to any reasonable rights, powers, and privileges reserved by Landlord under the terms hereof that does not interfere with Tenant's use of the Premises.

(a) **Signage.** The Tenant shall be permitted to have three signs of which one shall be affixed to the covered entrance on the east side of building # 45, and the remaining signs shall be affixed to the east and west sides of building # 2 above the entrances. Before installing any sign, the Tenant shall submit plans to the Landlord for the Landlord's approval which shall show the size, content, and design of the sign and specify the material from which the sign will be constructed. The plans shall also show the intended location of the sign and the means which will be used to affix the sign to a window or wall. Tenant shall not affix any sign to the Premises other than a sign which complies fully with plans and specifications which have been approved by the Landlord. The Tenant shall pay all costs relating to the design, construction, and installation of the sign. Upon termination of the Prime Sublease, the Tenant shall be responsible for removing the sign and for repairing any damage to the premises caused by installation or removal of the sign. The Tenant may also cause directional signs from the 70<sup>th</sup> street entrance to the Aging Partners location. Tenant and Landlord must approve sign contents and logos.

## **SECTION 4.2 Hazardous Materials.**

(a) **Definitions.** The term "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including, without limitations, petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and those materials, substances and/or waste, including infectious waste, medical waste, and potentially infectious biomedical waste, which are or later become regulated by any local governmental authority, the State of Nebraska or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 43 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act, 43 U.S.C. §6901, et seq.; all corresponding and related State of Nebraska and local statutes, ordinances and regulations, including, without limitation, any dealing with underground storage tanks; and in any other environmental law, regulation or ordinance now existing or hereinafter enacted (herein collectively called "**Hazardous Materials Laws**").

(b) **Landlord's Representations.** Landlord hereby represents and warrants to Tenant as follows, which representations are made as of the date of execution of the Prime Sublease.

(1) **No Hazardous Materials.** Landlord is not aware of any Hazardous Materials located in, under or about the Premises.

(2) **No Violation of Hazardous Materials Laws.** Landlord is not aware of (i) any violation of Hazardous Materials Laws in connection with the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, transferal, production, or processing of any Hazardous Materials on the Premises, and (ii) any ongoing release occurring from the Premises of Hazardous Materials, on, under or about the Premises.

(3) **No Notices, Litigation or Liens.** Landlord has not received any request for information, notice, demand letter, administrative inquiry or formal or informal complaint or claim from or by any public or private agency or entity concerning any release or discharge of any Hazardous Materials on, under, about or off of the Premises or any alleged violation of any Hazardous Materials Laws involving the Premises or any property owned by Landlord in the vicinity of the Premises. No litigation is pending or, to the best of Landlord's knowledge without investigation, threatened with respect to the Premises concerning any Hazardous Materials or any Hazardous Materials Laws. No lien has been imposed or, to Landlord's knowledge without investigation, threatened to be imposed against the Premises by any governmental agency or entity in connection with the presence of Hazardous Materials or violation of any Hazardous Materials Laws on the Premises.

(c) **Use of Premises by Tenant; Remediation of Contamination Caused by Tenant.**



(1) **Use.** Tenant covenants that it shall not use, generate, manufacture, refine, produce, process, store or dispose of, on, under or about the Premises or transport to or from the Premises in the future for the purpose of generating, manufacturing, refining, producing, storing, handling, transferring, processing, or transporting Hazardous Materials, except in compliance with all applicable Hazardous Materials Laws. Tenant shall cause all leases for space in the Premises to contain use restrictions and limitations conforming to the terms of this Section.

(2) **Remediation.** If at any time during the Term any contamination of the Premises by Hazardous Materials shall occur unless such contamination is caused by the act or omission of Landlord (herein called a "**Contamination**") Tenant, shall promptly and diligently cause the remediation of the Contamination in accordance with the requirements of applicable Hazardous Materials Laws.

(d) **Indemnification by Tenant.** Tenant shall indemnify, defend, protect and hold Landlord and its successors and assigns, free and harmless for, from and against and to reimburse Landlord with respect to any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, remediation expenses, losses or expenses (including, without limitation, reasonable attorneys' fees and costs through litigation and all appeals) caused in whole or in part by any Contamination with respect to the Premises resulting from Tenant's activities on the Premises.

(e) **Landlord Indemnity.** Landlord shall indemnify, defend, protect and hold Tenant and its successors and assigns, free and harmless for, from and against any and to reimburse Tenant with respect to any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, remediation expenses, losses or expenses (including, without limitation, reasonable attorneys' fees and costs through litigation and all appeals), arising from or caused in whole or in part by a breach of any warranty or representation of Landlord under Section 4.2(b) hereof or any Contamination due to Landlord's failure to comply with the Hazardous Materials Laws with respect to the Premises.

(f) **Survival and Duration of Obligation.** All indemnities made or given under this Article 4 shall survive the expiration or earlier termination of this Secondary Sublease.

## **ARTICLE 5 ENCUMBRANCES OF LEASEHOLD**

**SECTION 6.1 Tenant's Right to Encumber.** Tenant may, at any time, encumber all or any portion of its interest in this Secondary Sublease and the leasehold estate of Tenant in the Premises by a Leasehold Mortgage (as hereafter defined) provided that each Leasehold Mortgage complies with the terms and provisions of this Article 6. Each Leasehold Mortgage shall be a lien or mortgage on Tenant's interest in and to this Secondary Sublease and the leasehold estate created hereby, but shall not be a lien on the fee interest of the Premises, Landlord's leasehold interest in the Premises, or any reversionary interest in the improvements located thereon. The Leasehold Mortgagee (as hereafter defined) shall not acquire by virtue a Leasehold Mortgage any greater rights to the Premises than Tenant has under this Secondary Sublease. Landlord shall have no obligation under or to any such Leasehold Mortgagee.

**SECTION 6.2 Tenant's Obligations.** Tenant covenants and agrees to:

- (a) deliver to Landlord a copy of all documents evidencing any Leasehold Mortgage;
- (b) require any Leasehold Mortgagee to copy Landlord with notices of default in the same manner and within the same time that notices are required to be sent to Tenant under the Leasehold Mortgage and deliver to Landlord all notices of default received by Tenant from the Leasehold Mortgagee promptly following receipt by Tenant; and
- (c) require any Leasehold Mortgage to provide that it, and the rights of any Leasehold Mortgagee, and all successors and assigns thereunder, are and shall be subject and subordinate to all the applicable terms, provisions, and conditions of this Secondary Sublease, the EUL, and the Sublease.

**SECTION 6.3 Rights of Leasehold Mortgagee.** A Leasehold Mortgagee may enforce its rights under its Leasehold Mortgage and acquire title to the leasehold estate of Tenant in the Premises in any lawful manner but subject to the applicable provisions of this Secondary Sublease. On foreclosure under the Leasehold Mortgage, a Leasehold Mortgagee may take possession of the Premises; subject, however, to the terms of this Secondary Sublease, any lease between Tenant, as Landlord, and any Tenant in the Building and any Leasehold Mortgage that is senior in lien to the Leasehold Mortgage being foreclosed.

**SECTION 6.4 Tenant Default.**

(a) Landlord shall deliver to each Leasehold Mortgagee a copy of each notice of default given by Landlord to Tenant simultaneous with any notice of default given to Tenant, addressed to each Leasehold Mortgagee at its address given to Landlord. No notice of Tenant's default under this Secondary Sublease shall be deemed to have been given unless and until a copy thereof has been sent to any Leasehold Mortgagee in accordance with the methods for delivery in Section 6.4(c). Unless Landlord has commenced performance to cure an Event of Default pursuant to Section 13.4, Landlord agrees to accept performance by any Leasehold Mortgagee of any covenant, condition, or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as Leasehold Mortgagee performs such covenant, condition or agreement within the timeframes required in this Secondary Sublease.

(b) Landlord will not (i) accept the surrender of the Premises by Tenant prior to the expiration or termination of this Secondary Sublease, or (ii) consent to the modification of any term of this Secondary Sublease or the termination of this Secondary Sublease, without the prior written consent of the Leasehold Mortgagee, in each instance. Landlord further agrees that it will not terminate this Secondary Sublease by reason of any default of Tenant under this Secondary Sublease until Landlord has sent (in accordance with the notice methods in Section 6.4(c)) to the Leasehold Mortgagee a copy of the notice with respect to the Tenant's default on which the proposed termination is based and otherwise complied with the requirements of this Section 6.4.

(c) The time for the Leasehold Mortgagee to cure an Event of Default (defined below) that reasonably requires the Leasehold Mortgagee be in possession of the Premises, or the time for a Leasehold Mortgagee to obtain Tenant's interest under this Secondary Sublease in order to elect to enter into a new lease with Landlord as provided in Section 6.4(f) hereof, shall

be deemed extended to include the period of time reasonably required by a Leasehold Mortgagee to obtain possession of the Premises or obtain Tenant's interest under this Secondary Sublease by foreclosure or otherwise with due diligence; provided, however, that (i) a Leasehold Mortgagee shall have delivered to Landlord its written covenant to cure all outstanding Events of Default which the Leasehold Mortgagee (in its reasonable discretion) requires possession of the Premises to cure other than those defaults which cannot be cured by the payment of money or taking of possession (such as Tenant's bankruptcy); (ii) during such period, all other obligations of Tenant under this Secondary Sublease are being duly performed to the extent that the Leasehold Mortgagee can do so; (iii) Leasehold Mortgagee shall have cured any other Event of Default, not requiring possession to cure; and (iv) the Leasehold Mortgagee is diligently attempting to obtain possession by non-judicial foreclosure. In no event shall Leasehold Mortgagee's time to cure an Event of Default extend beyond any applicable cure periods provided in the EUL or Prime Sublease.

(d) Nothing in the foregoing Section 6.4(c) shall preclude Landlord from terminating this Secondary Sublease with respect to any Event of Default which is not remedied within the period, if any, applicable to any such additional Event of Default, except that the Leasehold Mortgagee shall have the same rights specified in this section with respect to any such additional Events of Defaults. If this Secondary Sublease is terminated for any reason, including, but not limited to, a termination following a Leasehold Mortgagee's failure to cure an Event of Default or the rejection or disaffirmance of this Secondary Sublease pursuant to bankruptcy laws or other laws affecting creditors' rights, Landlord agrees to enter into a new lease of the Premises with the Leasehold Mortgagee, or any party designated by the Leasehold Mortgagee, within thirty (30) days after the request of the Leasehold Mortgagee. The new lease shall be effective as of the date of termination, rejection or disaffirmance of this Secondary Sublease, shall have as the date for expiration thereof the same date stated in this Secondary Sublease as the date for the expiration hereof, and shall be on the same terms and provisions contained in this Secondary Sublease, including the amount of rent and other sums required to be paid by Tenant hereunder, except that construction related deadlines will be extended for a reasonable period to permit the Leasehold Mortgagee to complete construction. As an express condition to Landlord's obligations to enter into a new lease, a Leasehold Mortgagee shall (i) request in writing from Landlord for the new lease within thirty (30) days after the Leasehold Mortgagee is notified of the effective date of termination, rejection or disaffirmance of the Primary Sublease, as the case may be and (ii) cure all uncured Events of Default under the Prime Sublease and pay to Landlord all rent and other sums that would have been due and payable by Tenant under this Secondary Sublease but for the rejection, disaffirmance or termination. If the Leasehold Mortgagee or the party so designated by the Leasehold Mortgagee shall have entered into a new lease with Landlord pursuant thereto, any Event of Default under this Secondary Sublease that cannot be cured by the payment of money shall be deemed cured. To the extent practicable, Landlord shall assure that any new lease made pursuant hereto shall be senior and superior to any other monetary lien or mortgage on the Land except for encumbrances suffered or created by Tenant. A Leasehold Mortgagee's rights hereunder are in addition to and not limited to, its right to cure under Section 6.4(c), hereof. The provisions of this Section 6.4(d) are a separate and independent contract made by Landlord and each Leasehold Mortgagee. From the effective date of termination, rejection or disaffirmance of this Secondary Sublease to the date of execution and delivery of a new lease or the expiration of the period during which a Leasehold Mortgagee may make a request, the Leasehold Mortgagee may, on payment of any rent and any other sums as may be due from Tenant and the performance of the covenants and conditions to be performed by Tenant under the Prime Sublease, use and enjoy the leasehold estate created by this

Secondary Sublease without hindrance by Landlord.

(e) There shall be no merger of Tenant's leasehold estate with the fee estate in the land by reason of the fact that Tenant's leasehold estate may be held directly or indirectly by or for the account of any person who shall also hold directly or indirectly the fee estate or any interest in such fee estate, nor shall there be any such merger by reason of the fact that all of any part of Tenant's leasehold estate may be conveyed or mortgaged to a Leasehold Mortgagee who shall also hold directly or indirectly the fee estate, or any part thereof, in the land or in the interest of Landlord under this Secondary Sublease.

(f) Landlord and Tenant hereby agree to cooperate in including in this Secondary Sublease by suitable amendment from time to time, any provision which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the Leasehold Mortgagee protection provisions contained in this Secondary Sublease and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage upon the occurrence of a Default hereunder. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendments.

**SECTION 6.5 Rights of Landlord to Sell.** Landlord may sell or transfer its leasehold interest in the Premises without Tenant's consent; provided, however, that the sale or transfer shall be made expressly subject to the terms of this Secondary Sublease.

**SECTION 6.6 Definitions.** The terms hereinafter set forth shall, for all purposes of this Secondary Sublease, be defined as follows:

(a) The term "**Leasehold Mortgage**" shall mean and refer to any security instrument by which Tenant's leasehold estate and the interest of Tenant hereunder is mortgaged, assigned, or otherwise transferred as security for any indebtedness Tenant may incur, whether by deed to secure debt, mortgage, deed of trust or other security instrument.

(b) The term "**Leasehold Mortgagee**" shall mean and refer to holder or holders of the indebtedness secured by a Leasehold Mortgage.

## **ARTICLE 7 MAINTENANCE**

**SECTION 7.1 Maintenance of Premises.** Tenant agrees that it will, or will cause its subtenants to maintain the Premises, and any other improvements thereon and appurtenances thereto and every part thereof, in good order, condition, and repair, ordinary wear and tear excepted, and in accordance with the Development Agreement, EUL, Prime Sublease, and all applicable laws, rules, ordinances, orders, and regulations of all governmental authorities.

**SECTION 7.2 Janitorial Services/Supplies:** Tenant shall be responsible for all janitorial services and/or supplies for the Premises which shall include but not be limited to vacuuming, floor cleaning, trash removal, and sweeping. In providing such services, Tenant shall maintain the same standards of cleanliness, neatness, and repair that Tenant generally maintains

its other facilities. If Landlord is dissatisfied with the standard of janitorial service provided by the Tenant, Landlord shall notify the Tenant in writing within ten (10) days of the dissatisfied standard, Tenant and Landlord shall confer in order to arrive at a mutually agreeable solution.

**SECTION 7.3 Replacement Reserve.** As provided in the Article 12 of the EUL, Landlord agrees to notify VA as required thereunder that in lieu of a Funded Maintenance Account, a Replacement Reserve Account shall be maintained as to the Premises. Landlord and Tenant agree to cooperate to ensure that the Premises comply with Article 12 of the EUL; provided, that, the parties specifically agree to cooperate to insure that (i) the provisions of Article 12, Section F shall be applicable to the Premises and (ii) that compliance with the funded maintenance or replacement reserve provisions of the VA Sublease shall constitute compliance with Article 12 of the EUL.

## **ARTICLE 8 MECHANIC'S LIENS**

**SECTION 8.1 Prohibition of Liens on Fee or Leasehold Interest.** Tenant shall not suffer, create or permit any mechanic's liens or other liens to be filed against the fee of the Premises or the Land, or against Landlord's leasehold interest in the Premises and Land, nor any buildings or improvements on the Premises, by reason of any work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part thereof through or under Tenant, unless such lien arises at the instance of Landlord. The Short Form of Lease shall contain a reference to this provision.

**SECTION 8.2 Removal of Liens by Tenant.** If any mechanic's or laborer's liens or materialman's lien shall be recorded against the Premises, Tenant shall cause such lien to be removed or will transfer the lien to a bond pursuant to applicable law within fifteen (15) days of the filing of same; provided, however, Tenant may, in good faith, contest the application, validity and amount of any lien so long as such contest does not expose the Premises or any part thereof to foreclosure or execution. Tenant agrees to indemnify, defend, and hold Landlord harmless for, from and against all liability for damages, including reasonable attorneys' fees and costs, occasioned by Tenant's breach of any of its obligations under this paragraph or by any contest of any lien and shall, in the event of a judgment of foreclosure of any mechanic's or materialman's lien is entered cause the same to be discharged and removed prior to the execution of such judgment. Tenant's indemnity obligations under this Section shall survive the expiration or earlier termination of this Secondary Sublease.

## **ARTICLE 9 CONDEMNATION**

**SECTION 9.1 Interests of Parties on Condemnation.** If the Premises or any part thereof shall be taken for public purpose by condemnation as a result of any action or proceeding in eminent domain or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Landlord and Tenant in the award or consideration for such transfer, and the allocation of the award and the other effect of the taking or transfer upon this Secondary Sublease, shall be as provided in this Article 9.

**SECTION 9.2 Total Taking - Termination.** If the entire Premises are taken or so transferred, this Secondary Sublease and all of the right, title and interest of Tenant hereunder shall cease on the date title to such land so taken or transferred vests in the condemning authority. In such event, all Rent and other charges payable by Tenant to Landlord hereunder attributable to the Premises, or portion thereof taken, shall be paid by Tenant up to and prorated through the date title vests in the condemning authority.

**SECTION 9.3 Partial Taking - Termination.** If a taking or transfer of only a part of the Premises or the appurtenant easement areas occurs and the remainder of the Premises may not be used for the operation thereon of Tenant's operations, either Landlord or Tenant may terminate this Secondary Sublease within sixty (60) days after the occurrence of such taking or transfer by delivering written notice to the other party. The Prime Sublease shall terminate effective on the thirtieth (30<sup>th</sup>) day after the date of such notice in which case this Secondary Sublease shall be null and void and of no force and effect.

**SECTION 9.4 Partial Taking - Continuation with Rent Abatement.** If a taking or transfer of only a part of the Premises or the appurtenant easement areas occurs ("**Partial Taking**") and neither party terminates this Secondary Sublease pursuant to Section 9.3, this Secondary Sublease shall terminate as to the portion of the Premises so taken or transferred as of the date title to such portion of the Premises vests in the condemning authority, but shall continue in full force and effect as to the portion of the Premises and the appurtenant easement areas not so taken or transferred. From and after such date of such vesting, the Common Area Maintenance charges required to be paid by Tenant shall be reduced based upon the ratio between the remaining area of the Premises of Tenant's leasehold estate at the date that title to such portion of the Premises vests in the condemning authority to the total usable area remaining on the Land immediately thereafter. Landlord and Tenant shall first negotiate in good faith with respect to such adjustment.

**SECTION 9.5 Partial Taking - Award.** If title and possession of a portion of the Premises or appurtenant easement areas is taken under the power of eminent domain, and the Prime Sublease continues as to the portion remaining, all compensation and damages payable to Tenant by reason of any improvements so taken shall be available to be used, to the extent reasonably needed, by Tenant in replacing any improvements so taken with improvements of the same type on the remaining portion of the Premises or appurtenant easement areas. All repairs to the Premises shall be in compliance with all then existing codes, zoning ordinances, rules and regulations governing the Premises. Any remainder of such compensation after restoration, shall be allocated between Landlord and Tenant in the same manner as provided in Section 9.6 hereof.

**SECTION 9.6 Allocation of Award.** Any compensation awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be awarded to Landlord and Tenant in accordance with the values of their respective interests in the Premises and all improvements thereon immediately prior to the taking. The value of Tenant's interest in the Premises and all improvements thereon immediately prior to a taking shall mean the then value of its leasehold estate in the Land and Building and other improvements. The value of Landlord's interest in the Premises and improvements immediately prior to a taking shall be deemed to mean the then value of its leasehold interest in the Land (including its interest as Landlord hereunder). The values shall be those determined in the condemnation proceeding or, if no separate determination of the respective values of Landlord and Tenant is made in such proceeding, those determined by agreement between Landlord and Tenant. If agreement cannot

be reached by Landlord and Tenant, the values shall be determined by an appraiser or appraisers selected by the parties. The time of taking shall mean 12:01 a.m. on the date title vests or the date physical possession of the Premises (or portion hereof) is surrendered in or to the condemning authority. If separate awards are given, Landlord and Tenant may retain such separate award made to each of them.

**SECTION 9.7 Voluntary Conveyance.** A voluntary conveyance by Landlord to a public utility, agency, or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Article 9.

If all or any portion of the Project shall be taken by any competent authority for temporary use or occupancy, this Secondary Sublease shall continue in full force and effect (but with a proportional reduction or abatement of rent if a portion of the Premises is taken). In such event, Tenant shall be entitled to any award specifically made for the repair and restoration of any damage to the Premises or any improvements thereon, as a result of such temporary use or occupancy and to the entire award for such taking for temporary use or occupancy to the extent that such award relates to the Premises and is applicable to the period of such temporary use or occupancy occurring during the Term and Landlord shall be entitled to the remainder of the award.

Notwithstanding anything to the contrary elsewhere in this Secondary Sublease, in the event that Tenant's leasehold estate is subject to a Leasehold Mortgage, all amounts payable to Tenant pursuant to this Article 9, if required by the Leasehold Mortgage, shall be paid to the Leasehold Mortgagee to be applied by the Leasehold Mortgagee in accordance with the Leasehold Mortgage. Such Leasehold Mortgagee shall have the right to participate, at its or Tenant's sole cost, in any condemnation proceeding affecting the Premises.

**ARTICLE 10  
ASSIGNMENT AND SUBLEASE**

**SECTION 10.1 Assignment.** Tenant hereby acknowledges that this Secondary Sublease is one which is personal to Tenant, and Tenant agrees for itself and its successors and assigns in interest hereunder that it will not, other than by Permitted Leasehold Mortgage:

(a) assign this Secondary Sublease or any of its rights under this Secondary Sublease as to all or any portion of the Premises, generally; or (b) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of any or all of the Premises, without first obtaining Landlord's express written consent thereto (which consent will not be unreasonably withheld, delayed, or conditioned). Further notwithstanding anything to the contrary herein, during the Term of this Secondary Sublease, the Landlord shall not transfer, encumber, or otherwise dispose of the Premises or any interest therein without the consent of the Tenant, and the Permitted Leasehold Mortgagee.

**SECTION 10.2 Effect on Obligations** - No such transfer shall alter or impair the obligations hereunder of Tenant or any other person constituting Tenant or holding any interest hereunder before any such Transfer.

**SECTION 10.3 Benefit and Burden** - Subject to the foregoing provisions of this section, this

Secondary Sublease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns in interest hereunder

## **ARTICLE 11 INSURANCE AND INDEMNIFICATION**

**SECTION 11.1 Comprehensive Liability Insurance.** Tenant shall, at its cost and expense, at all times, maintain in force, for the joint benefit of Landlord and Tenant, and any Leasehold Mortgagee a broad form comprehensive coverage policy of public liability insurance issued by a carrier licensed to do business in the State of Nebraska with a Best's Insurance Guide Rating of A-, by the terms of which Landlord, Tenant and any Leasehold Mortgagee are named as insureds. The insurance policy or policies shall be maintained on the minimum basis of \$1,000,000.00 for damage to property and for bodily injury or death as to any person, and \$3,000,000.00 as to any one accident. Landlord reserves the right to require reasonable increases in the limits of coverage from time to time during the Term, and the requested increases will be deemed reasonable if they are consistent with commercially reasonable practices for similar projects in the same geographic area. The insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by Landlord. If requested in writing by Landlord, a certificate of insurance, together with proof of payment of the premium thereof shall be delivered to Landlord prior to the commencement of construction of the Building, and renewal certificates and proof of payment of premium therefor shall be delivered to Landlord not less than thirty (30) days prior to the renewal date of any such insurance policies during the Term. The insurance shall be cancelable only after thirty (30) days' prior written notice to Landlord and Tenant and any Leasehold Mortgagee. If Tenant fails to timely pay any premium when due, Landlord shall be authorized to do so, and may charge all costs and expenses thereof, including the premium, to Tenant, to be paid by Tenant as additional rent hereunder. Tenant may maintain self-insurance for all or part of the public liability insurance required hereunder so long as the coverage provided either through self-insurance or insurance or some combination of the two that equals or exceeds the scope of coverage required hereunder.

**Evidence of Self Insurance.** Tenant shall annually or at the request of the Landlord provide evidence that it is self-insured for liability equal to the minimum basis set forth above in section 11.

**SECTION 11.2 Fire and Extended Coverage Property Insurance.** Tenant shall, at its cost and expense and at all times during the Term, maintain in force, for the joint benefit of Landlord and Tenant and any Leasehold Mortgagee, a policy of insurance against loss or damage by fire, earthquake, flood and such other perils as are covered under the broadest form of the "extended coverage" or "all risk" endorsement available in the State of Nebraska including, but not limited to, damage by wind storm, hurricane, lightning, explosion, smoke, sprinkler leakage, vandalism, malicious mischief and such other risks as are normally covered by such endorsements. Landlord shall be named as an additional insured on such policy of insurance, and the Leasehold Mortgagee shall be named as required by its loan documents. Any insurance proceeds shall be applied in the manner as set forth in this Secondary Sublease. The insurance shall be carried and maintained for the purpose of repairing and restoring the improvements in the event of damage to the Premises, in such amounts as may be reasonably acceptable to Tenant from time to time during the Term of this Secondary Sublease or any Extended Term except that at no time shall said coverage be less than Seven Million and No/100 Dollars (\$7,000,000.00). During the period of construction of the Building, Tenant shall provide builders' risk or a similar



type of insurance policy covering the construction of the Building, in an amount not less than the full insurable value of the Building and materials supplied in connection with the Building. The builders' risk insurance policy shall be primary and noncontributing with any insurance which may be carried by Landlord. If requested in writing by Landlord, a certificate of insurance together with proof of payment of the premium thereof, shall be delivered to Landlord prior to the commencement of construction of the Building, to be effective from and after the date of the commencement of construction of the Building. Any renewal certificates and proof of payment of premium therefor shall be delivered to Landlord not less than thirty (30) days prior to the renewal date of any insurance policy during the Term. The insurance shall be cancelable only after thirty (30) days' prior written notice to Landlord, Tenant and any Leasehold Mortgagee. If Tenant fails to timely pay any premium when due, Landlord shall be authorized to do so, and may charge all costs and expenses thereof, including the premium, to Tenant, to be paid by Tenant as additional rent hereunder.

**SECTION 11.3 Waiver of Subrogation.** Landlord and Tenant on behalf of themselves and all others claiming under them, including any insurer (other than insurers under commercial general liability insurance policies, if such policies prohibit such waivers), waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property (including, but not limited to, the Premises and the Building) which is caused by or results from perils, events or happenings which are the subject of insurance carried by the respective parties and in force at the time of any such loss, regardless of the negligence of either party. If either party so requests, the other party shall obtain from its insurer (other than insurers under commercial general liability insurance policies, if such policies prohibit such waivers) a written waiver of all rights of subrogation that it may have against the other party; provided, however, the foregoing waiver as to insurers shall no longer apply if such waivers are not generally available through the majority of casualty insurers of commercial property. If either party's commercial general liability insurance policy prohibits the waivers provided for above, then such party shall notify the other party and shall cause such other party to be named as an additional insured under such general commercial liability policy and the waivers provided above shall no longer apply to claims under either party's general commercial liability policy.

**SECTION 11.4 Indemnification.** Tenant hereby agrees to indemnify, protect, defend and save Landlord, its agents, officers, shareholders, and employees harmless for, from and against any and all losses, damages, actions, fines, penalties, demands, damages, liability and expense, not including attorneys' fees and costs through litigation and all appeals, in connection with the loss of life, personal injury and damage to property arising from or out of (i) any occurrence in, upon, at or about the Premises and (ii) the occupancy, use, construction on or maintenance of the Premises, or any part thereof, by Tenant, its agents, employees, subtenants (excluding Landlord in such capacity), guests and invitees, and any party acting by, through or under any of them. Nothing contained herein shall be construed to make Tenant liable for any injury or loss caused by the negligence or willful misconduct of Landlord or any agent or employee of Landlord, Landlord agreeing to indemnify, defend and hold Tenant harmless for, from and against such injury or loss.

**SECTION 11.5 Survival of Indemnities.** Tenant's and Landlord's indemnities as provided for in this Secondary Sublease, herein shall survive the expiration or sooner termination of this Secondary Sublease.

**ARTICLE 12**  
**DAMAGE AND DESTRUCTION**

**SECTION 12.1 Building Damaged or Destroyed by Fire or any other Casualty.**

If the Building shall be damaged or destroyed by fire or any other casualty insurable under standard fire and extended coverage insurance, and the proceeds of the insurance coverage to be maintained by Tenant in accordance with this Secondary Sublease are available to Tenant in the amount of the full replacement cost of the damaged or destroyed portion of the Building, Tenant shall promptly repair and restore the Building to its previously undamaged condition, in which event this Secondary Sublease shall continue in full force and effect; provided, however, that if repair and restoration is not possible, in accordance with reasonable time and cost estimates, within a period of two hundred seventy (270) days of work during normal working hours, commencing with the date of such casualty, or if sufficient insurance proceeds are not available to Tenant as hereinabove provided or if the VA Sublease is terminated by such casualty or will terminate prior to the completion of the repair and restoration, then Tenant shall have the right to terminate this Secondary Sublease upon thirty (30) days written notice to Landlord; and provided, further, however, in the event of partial or total destruction of the Building during the last two (2) years of any Extended Term, Tenant and Landlord shall each have the right to terminate this Secondary Sublease by written notice to the other within thirty (30) days following such partial or total destruction. The term "partial destruction" as used in the preceding sentence shall be deemed to mean damage or destruction to an extent of at least thirty-three and one-third percent (33 ⅓%) of the then full replacement cost of the Building. If the Building shall be damaged as a result of a risk not insurable under standard fire and extended coverage insurance, or if sufficient insurance proceeds are not available to Tenant as hereinabove provided, or if the Building shall be damaged to the extent of fifty percent (50%) or more of then full replacement cost, Tenant shall, within thirty (30) days following such casualty, commence repair and restoration of the damage and prosecute the same diligently to completion in which event this Secondary Sublease shall continue in full force and effect, or Tenant may within said thirty (30) day period elect not to so repair and restore, in which event this Secondary Sublease shall terminate. In either of such events, Tenant shall give Landlord notice of its intention within said thirty (30) day period.

**SECTION 12.2 Rent Abatement Due to Damage and Destruction.** If this Secondary Sublease is not terminated as provided under this Article 12, all rent shall be abated proportionately with the degree to which Tenant's use of the Building or its business therein is interfered with or impaired, commencing with the date of such casualty and continuing until the Building (or replacement thereof) is rendered wholly Tenantable. All repairs and restoration shall be at Tenant's cost and expense.

**SECTION 12.3 Termination of Lease Due to Damage and Destruction.** In the event of the termination of this Secondary Sublease under this Article 12, all rent and other charges shall be payable only to the date of the happening of such casualty resulting in the termination of this Secondary Sublease and any rent and other charges paid in advance, if any, shall be promptly refunded by Landlord to Tenant. In the event of such termination, Landlord shall share in the insurance proceeds paid by the insurer on the account of such casualty only to the extent provided for in Section 12.4 below. In the event of such termination, upon the request of Landlord, Tenant shall at its expense cause all remaining above grade portions of the Building to be razed and to cause all surface debris to be removed from the Premises.

#### **SECTION 12.4 Application of Insurance Proceeds.**

(a) Any and all fire or other insurance proceeds from policies carried by Tenant that become payable at any time during the Term because of damage to or destruction of any buildings or improvements on the Premises shall be paid, subject to the prior rights of any Leasehold Mortgagee, to Tenant and applied toward the cost of repairing and restoring the damaged or destroyed buildings (unless otherwise provided herein). If during the last two (2) years of any Extended Term, Tenant or Landlord exercise the option to terminate this Secondary Sublease pursuant to Section 12.1 because of damage to or destruction of buildings or improvements on the Premises, any and all fire or other insurance proceeds that become payable because of such damage or destruction shall be allocated between Landlord and Tenant in accordance with the values of their respective interest in the Premises and all improvements thereon immediately prior to the damage or destruction pursuant to Section 12.4(b). Notwithstanding anything to the contrary elsewhere in this Secondary Sublease, in the event that Tenant's leasehold estate is subject to a Leasehold Mortgage, all amounts payable to Tenant pursuant to this Article 12, if required by the Leasehold Mortgage, shall be paid to the Leasehold Mortgagee to be applied by the Leasehold Mortgagee in accordance with the Leasehold Mortgage.

(b) The value of Tenant's interest in the Premises and all improvements thereon immediately prior to the damage or destruction shall mean the then value of its leasehold estate in the Land and Building and other improvements. The value of Landlord's interest in the Premises and improvements immediately prior to the damage or destruction shall be deemed to mean the then value of its leasehold interest in the Land (including its interest as Landlord hereunder) and its reversionary interest in the Building and other improvements as of the date of the damage or destruction. The values shall be those determined by agreement between Landlord and Tenant. If Landlord and Tenant cannot reach an agreement as to their respective values in the Premises and all improvements thereon, the values shall be determined by an appraiser or appraisers selected by the parties. For purposes of determining such values, it shall be assumed that Tenant would have exercised all options to extend pursuant to Section 2.4.

### **ARTICLE 13 DEFAULTS AND REMEDIES**

**SECTION 13.1 Defaults.** Each of the following events shall be a default by Tenant and a breach of this Secondary Sublease and constitute and "**Event of Default**":

(a) **Default in Payment or Performance Under this Secondary Sublease.** Failure of Tenant to pay any installment of rent, additional rent, or any other sum required to be paid by Tenant to Landlord under this Secondary Sublease when each become due and payable; the filing by Tenant of a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or voluntarily taking advantage of any such act by answer or otherwise, making an assignment for the benefit of creditors, the institution of any involuntary proceedings under any bankruptcy or insolvency act against Tenant, or the appointment of a receiver or trustee of all or substantially all of the property of Tenant; the failure of Tenant to observe and perform any of its other covenants, conditions or agreements under this Secondary Sublease; or the failure of Tenant to observe and perform any covenants, conditions or agreements of the EUL or Prime Sublease applicable to the

Premises.

(b) **Notice and Right to Cure.** If the alleged default is monetary in nature such as nonpayment of rent, taxes or any other sums required to be paid by Tenant, Tenant shall have thirty (30) days after the date upon which such payment was due to cure the default. As to any default involving bankruptcy or insolvency, Tenant shall have thirty (30) after notice from Landlord to obtain the dismissal or vacation of such proceeding. As to any non-monetary default, Tenant shall have sixty (60) days after receipt of written notice from Landlord specifying the nature of the default; provided, however, that if, after exercise of due diligence and reasonable efforts to cure such non-monetary default, Tenant is unable to do so within sixty (60) days, the cure period shall be extended for a reasonable time, so long as Tenant continues to diligently prosecute to completion the cure of the default. As used herein, non-monetary default shall include, without limitation, a breach of any covenant of Tenant hereunder, Tenant's failure to perform as required hereunder (other than a covenant involving the payment of money), and a breach of any warranty, representation or other agreement of Tenant under this Secondary Sublease or the Development Agreement.

**SECTION 13.2 Remedies.** If any default by Tenant shall continue uncured after the expiration of the applicable cure period, Landlord may exercise any one or more of the following rights:

(a) Landlord may re-enter the Premises immediately and remove the property and personnel of Tenant, and shall have the right, but not the obligation, to store such property in a public warehouse or at a place Landlord selects, at the risk and expense of Tenant.

(b) Landlord may retake the Premises and may terminate this Secondary Sublease by giving written notice of termination to Tenant. Without such notice, Landlord's retaking will not terminate the Prime Sublease. On termination, Landlord may recover from Tenant all damages proximately resulting from the default, including the cost of recovering the Premises and the difference between the rent due for the balance of the Prime Sublease Term, as though the Prime Sublease had not been terminated, and the reasonable rental value of the Premises, which sum shall be immediately due from Tenant to Landlord.

(c) Landlord may relet the Premises or any part thereof for any term without terminating this Secondary Sublease, at such rent and on such terms as it may choose. Landlord may make alterations and repairs to the Premises. In addition to Tenant's liability to Landlord for default of this Secondary Sublease, Tenant shall be liable for all expenses of the reletting, which sum shall be immediately due from Tenant to Landlord.

(d) Landlord may exercise any other rights and remedies provided by law or equity, from time to time, to which Landlord may resort cumulatively or in the alternative.

**SECTION 13.3 Remedies Cumulative.** Suit or suits for the recovery of rent or additional rent or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term of this Secondary Sublease would have expired nor limit or preclude recovery by Landlord against Tenant of any sums or damages which Landlord may lawfully be entitled by reason of any Event of Default hereunder on the part of Tenant. All the remedies

given to Landlord and all rights and remedies given to Landlord and all rights and remedies given to it at law and in equity shall be cumulative and concurrent.

**SECTION 13.4 Tenant's Liability After an Event of Default.** Upon an Event of Default, Landlord, without thereby waiving such default, may (but shall not be obligated to), subject to providing notice to Tenant and after allowing Tenant the applicable period to cure said default, perform the same at the expense of Tenant. Any expenses incurred by Landlord in connection with any such performance, and all costs, expenses, and disbursements of every kind and nature whatsoever, including reasonable attorneys' fees including appellate, bankruptcy and post-judgment proceedings involved in collecting or endeavoring to collect the rent or any additional rent or any part thereof or enforcing or endeavoring to enforce any rights against Tenant or Tenant's obligations hereunder, shall be due and payable upon Landlord's submission of an invoice therefor. All sums advanced by Landlord on account of Tenant under this Section, or pursuant to any other provision of this Secondary Sublease, and all rent, if delinquent or not, paid by Tenant and received by Landlord when due hereunder, shall bear interest at the Prime Rate of interest as then published by *The Wall Street Journal* (or if *The Wall Street Journal* is no longer published, then from a similarly respected and available source as agreed upon by the Landlord and Tenant), from the date thereof until paid and the same shall be and constitute additional rent and be due and payable upon Landlord's demand therefor.

**SECTION 13.5 Holdover.** If Tenant remains in possession of the Premises or any part thereof after the expiration or sooner termination of the Term, Tenant shall become a Tenant at sufferance and, may be subject to all other damages and remedies to which Landlord may be entitled for such holding over and shall pay Landlord Common Area Maintenance charges. Notwithstanding that Landlord may allow Tenant to continue in possession after the expiration or sooner termination of this Secondary Sublease, neither that nor the provisions of this Section shall constitute a waiver of any of Landlord's rights under this Section of this Secondary Sublease.

**SECTION 13.6 Landlord Default.** If Landlord defaults in its obligations hereunder and fails to cure same after notice from Tenant and the passage of sixty (60) days following such notice, Tenant may terminate this Secondary Sublease or proceed to cure the default and charge the cost of cure to Landlord or avail itself of any other remedy under law or at equity in the event of a default by Landlord. If after exercise of due diligence and reasonable efforts to cure such default, Landlord is unable to do so within sixty days, the cure period shall be extended for such period of time mutually agreed to in writing by Landlord and Tenant to allow Landlord to reasonably prosecute to completion the cure of the default.

## **ARTICLE 14 SURRENDER AND REMOVAL**

**SECTION 14.1 Surrender of Possession.** On the expiration of the Term or earlier termination of this Lease, Tenant shall surrender to Landlord possession of the Premises and all improvements constructed and installed thereon. If Tenant is not then in default under any of the covenants and conditions hereof, Tenant may remove, or cause to be removed, all personal property and equipment of Tenant, other than permanent fixtures, from the Premises within

thirty (30) days after the date of any expiration or termination of this Secondary Sublease; thereafter all such personal property and equipment not removed shall belong to Landlord without the payment of any consideration.

**SECTION 14.2 Tenant's Quitclaim.** On the expiration of the Term, the Building and all other improvements located on the Premises shall become the absolute property of Landlord, and Tenant agrees to execute, acknowledge, and deliver to Landlord, if requested by Landlord, a proper instrument in writing, releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Premises and all improvements thereon (including the Building).

**ARTICLE 15  
GENERAL PROVISIONS**

**SECTION 15.1 Conditions and Covenants.** All of the provisions of this Secondary Sublease shall be deemed as running with Landlord's leasehold interest in and to the land, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.

**SECTION 15.2 Survival of Provisions.** All representations, warranties, and indemnities of Tenant and Landlord under this Secondary Sublease shall survive the expiration or sooner termination of this Secondary Sublease.

**SECTION 15.3 No Waiver of Breach.** No failure by either Landlord or Tenant to insist upon the strict performance by the other of any covenant, agreement, term, or condition of this Secondary Sublease, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Secondary Sublease, but each and every covenant, condition, agreement, and term of this Secondary Sublease shall continue in full force and effect with respect to any other then existing or subsequent breach.

**SECTION 15.4 Force Majeure.** If either party shall be delayed or prevented from the performance of any act required by this Secondary Sublease by reason of acts of God, pandemics, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws, or regulations or other cause, without the fault and beyond the reasonable control of the party so obligated (financial inability excepted) (any of the foregoing reason being hereinafter referred to as "**Force Majeure**"), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, it shall be the responsibility of the party whose performance is delayed to reasonably demonstrate to the other party that the delay in the time of performance was caused specifically by Force Majeure.

**SECTION 15.5 Notices.** All notices, demands, consents, approvals, requests, and other communications under this agreement shall be in writing and shall be either (a) delivered in person, (b) sent by certified mail, return receipt requested, or (c) delivered by a nationally recognized delivery service and addressed as follows:

LANDLORD: Victory Park, LLC  
Attn: George Achola  
One Burlington Place  
1004 Farnam Street, Suite 400  
Omaha, Nebraska 68102  
Email:gachola@burlingtoncapital.com

TENANT: County/City Property Management  
ATTN: Kerin Peterson, Director  
920 O St #203  
Lincoln, NE 68508  
402-441-7056

A notice, demand, consent, approval, request, and other communication shall be deemed to be duly received (a) if delivered in person or by a nationally recognized delivery service, when left at the address of the recipient; and (b) if sent by certified mail, return receipt requested, three (3) business days after the date on which such notice was deposited in the U.S. Mail. Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in its paragraph.

**SECTION 15.6 Gender.** The use herein of any gender includes all others, and the singular number includes the plural and vice-versa, whenever the context so requires.

**SECTION 15.7 Captions.** Captions in this Secondary Sublease are inserted for convenience of reference only and do not define, describe, or limit the scope or the intent of this Secondary Sublease or any of the terms hereof.

**SECTION 15.8 Entire Agreement.** This Secondary Sublease contains the entire agreement between the parties regarding the subject matter hereof. Any oral or written representations, agreements, understandings and/or statements not expressly included in this Secondary Sublease shall be of no force and effect.

**SECTION 15.9 Waiver; Amendment.** No modification, waiver, amendment, discharge or change of this Secondary Sublease shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

**SECTION 15.10 Intentionally omitted.**

**SECTION 15.11 Time.** Time is of the essence of each obligation of each party hereunder.

**SECTION 15.12 Governing Law and Documents.** This Secondary Sublease shall be construed and enforced in accordance with the laws of the State of Nebraska. In the event of a conflict between the terms and provisions of this Secondary Sublease and the Terms and provisions of the EUL or Prime Sublease, the terms and provisions of the EUL and Prime Sublease, as applicable, shall control and govern.

**SECTION 15.13 Binding Effect.** Subject to any provision of this Secondary Sublease that may prohibit or curtail assignment of any rights hereunder, this Secondary Sublease shall bind and inure to the benefit of the respective heirs, assigns, personal representatives, and successors of the parties hereto.

**SECTION 15.14 Execution of Other Instruments.** Each party agrees that it shall, upon the other's request, take any and all steps, and execute, acknowledge, and deliver to the other party and all further instruments necessary or expedient to effectuate the purpose of this Secondary Sublease.

**SECTION 15.15 Severability.** If any term, provision, covenant, or condition of this Secondary Sublease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**SECTION 15.16 Counterparts.** This Secondary Sublease may be executed in one or more counterparts, each of which shall be deemed an original and when taken together will constitute one instrument.

**SECTION 15.17 Estoppel Certificate.** Either party shall execute, acknowledge and deliver to the other party, within five (5) days after requested by the other party, a statement in writing certifying, if such is the case, that this Secondary Sublease is in full force and effect (or there have been modifications that the same is in full force and effect as modified); the Effective Date of this Secondary Sublease; the dates for which the rent and other charges have been paid; any alleged defaults and claims against the other party and providing such other information as shall be reasonably requested.

**SECTION 15.18 Short Form of Lease.** Subsequent to the Effective Date, Landlord and Tenant shall execute and acknowledge a Short Form of Lease for purpose of recordation. This Short Form of Lease shall be in the form attached hereto as Exhibit "C" and incorporated herein by reference.

**SECTION 15.19 Exhibits.** Exhibits attached hereto are by this reference incorporated herein and made a part hereof.

**[REMAINDER OF PAGE INTENTIONALLY BLANK.]**



**IN WITNESS WHEREOF**, this Secondary Sublease has been executed as of the Effective Date.

"TENANT"

---

By: Deb Schorr  
Title: County Chairperson, Lancaster County Board  
of County Commissions

"LANDLORD"

VICTORY PARK, LLC, a Nebraska limited liability company

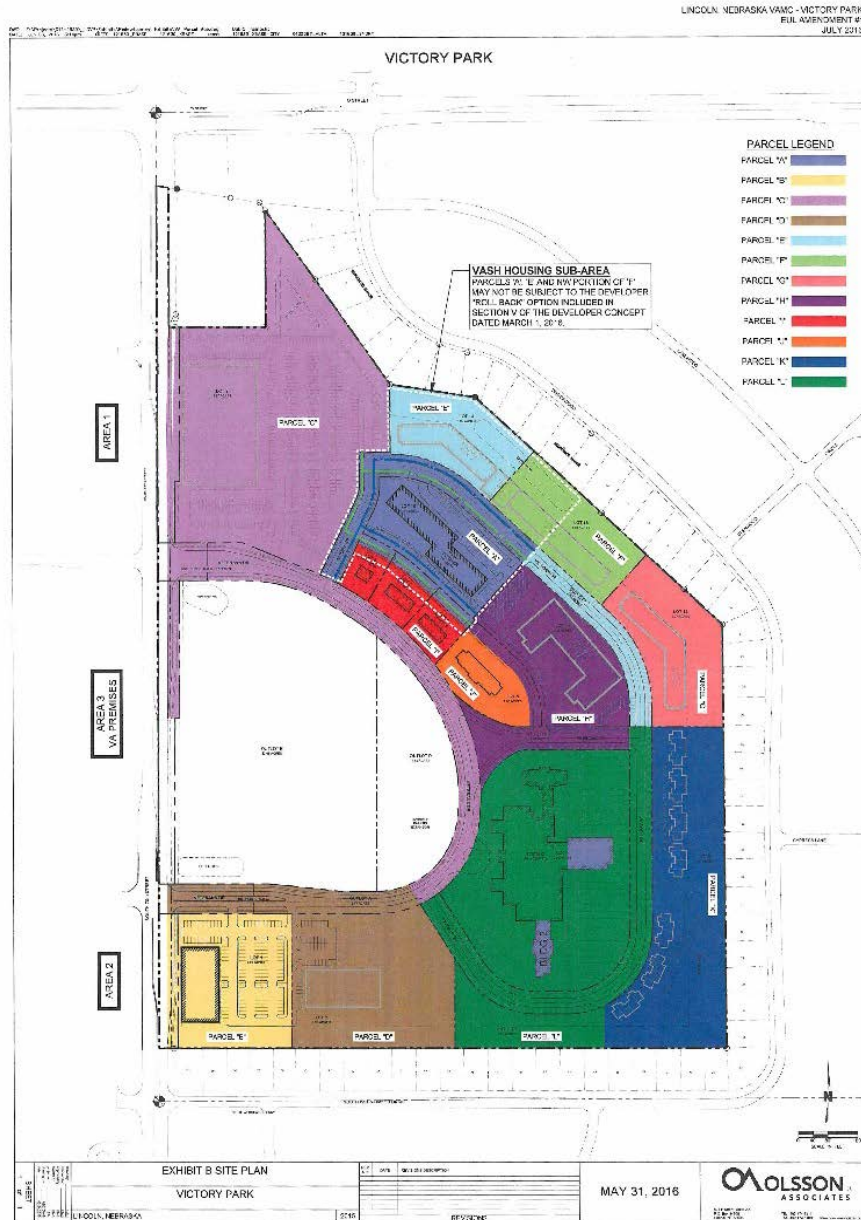
By: Burlington Capital Real Estate Group, LLC,  
a Nebraska limited liability company, Manager

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

# EXHIBIT "A" THE LAND

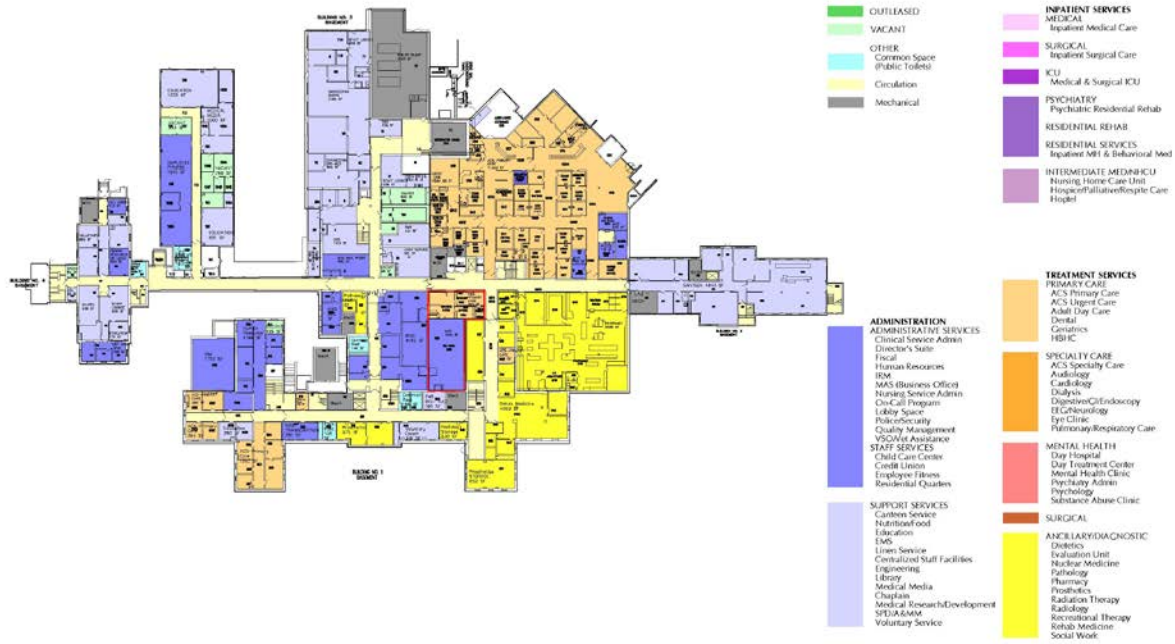
The Land is located in Lincoln, Lancaster County, Nebraska and shown as "Parcel L" below:



# EXHIBIT "B"

## THE PREMISES

The Premises is located in Lincoln, Lancaster County, Nebraska and is described as the improvements designated Building No. 2 on the Veteran's Administration Campus and that portion of the improvements designated Building No. 45 comprising approximately 1,950 square feet of space as outlined in red below:



VA LINCOLN EXISTING SPACE PLAN - BASEMENT FLOOR (77,530 GSF; 59,698 DGSF)  
VA NEBRASKA MASTER PLAN

NORTH
   
 0 10' 25' 50'
   
 MAY 5, 2005 LEO A DALY

**EXHIBIT "C"**  
**SHORT FORM OF LEASE**

**RETURN RECORDED DOCUMENT TO:**

County Attorney's Office  
Attn: John Ward  
575 S. 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

**SHORT FORM OF LEASE**

THIS SHORT FORM OF LEASE dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the "Commencement Date"), between the County of Lancaster, Nebraska (herein called the "**Tenant**"), and Victory Park, LLC, a Nebraska limited liability company, having its principal office at 1004 Farnam Street, Suite 400, Omaha, Nebraska 68102 (herein referred to as "**Landlord**").

**W I T N E S S E T H:**

**WHEREAS**, Landlord has leasehold rights to that certain unimproved real property (herein called the "Land") located in Lincoln, Lancaster County, Nebraska, described in Exhibit "A" hereof; and

**WHEREAS**, Tenant has leased from Landlord the Land on the terms and conditions more particularly set forth in that certain Lease, dated \_\_\_\_\_, 2022, by and between Landlord and Tenant (herein referred to as the "Secondary Sublease") and all licenses, rights, privileges, and easements appurtenant thereto;

**WHEREAS**, Landlord and Tenant desire to enter into this Short Form of Lease, to give notice of said Lease and all of its terms, covenants, and conditions to the same extent as if said Lease were fully set forth herein.

**NOW, THEREFORE**, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration including the rents reserved and the covenants and conditions more particularly set forth in the Prime Sublease, Landlord and Tenant do hereby covenant, promise, and agree as follows:

1. Landlord has leased, demised, and let, and does hereby lease, demise, and let unto Tenant, and Tenant does hereby lease and take from Landlord all of Landlord's leasehold interest in and to the Land and all easements, rights of way, appurtenances and other rights and benefits belonging and pertaining to such Land (herein collectively called the "Premises") for a period beginning on the Commencement Date and extending for [twenty (20)] years thereafter. Tenant may, at its option, extend the original [twenty (20)] year term of this Secondary Sublease for two (2) additional periods of ten (10) years each, subject to all the provisions of the Prime Sublease (the original term of this Secondary Sublease and any extended terms are collectively referred to as the "Term").

2. Pursuant to Section 8.1 of the Prime Sublease, all parties are put on notice of that Tenant is not authorized to suffer, create, or permit any mechanic's liens or other liens to be filed against the fee of the Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part thereof through or under Tenant.

3. All parties are hereby directed to the Prime Sublease for further agreements between Landlord and Tenant.

**IN WITNESS WHEREOF**, the parties hereto have executed this Short Form of Lease as of the day and year first above written.

"TENANT"

---

By: Deb Schorr  
Title: County Chairperson, Lancaster County Board  
of County Commissions

"LANDLORD"

VICTORY PARK, LLC, a Nebraska  
limited liability company

By: \_\_\_\_\_  
Burlington Capital Real Estate Group,  
LLC, a Nebraska limited liability company,  
Manager