

DEPARTMENT OF VETERANS AFFAIRS



REQUEST FOR PROPOSALS NO. VA-101-12-R-0013

VA MEDICAL CENTER OPTION OF THREE PARKING LOTS MEMPHIS, TN

DATE AND TIME PROPOSALS DUE: **November 7, 2011 at 12:00 Noon EST**

DISCLAIMER

The information presented in this Request for Proposals and all supplements, revisions, modifications, updates and addenda thereto (collectively, the “RFP”), including (without limitation) narrative descriptions and information, is not represented to be all of the information that may be material to an offeror’s decision to submit a proposal in response to this RFP or to develop, construct, manage and maintain the Project (as defined below) on all or a portion of the campus of the VA Medical Center in Memphis, TN (“VAMC Memphis”).

Neither the United States Department of Veterans Affairs (“VA” or the “Department”), nor any of its contractors, subcontractors, officers, employees, counsel, advisors or agents, make any representation or warranty, whether express, implied or created by operation of law, as to the accuracy or completeness of this RFP or any of its contents or materials referred to or provided pursuant to or in connection with this RFP, and no legal liability with respect thereto is assumed or may be implied. Any information or site description is merely provided to assist offerors in their independent analysis of the decision to submit a proposal. The transactions contemplated by this RFP involve significant risks. Offerors and their advisors should review carefully all the information set forth in the RFP and any additional information available to them to evaluate such risks.

Except as expressly provided in the Transaction Agreements (as defined below) executed by VA, no additional representation or warranty, whether express, implied or created by operation of law, will be made by VA. No person has been authorized to make or give on behalf of VA any other written or oral representation, warranty or assurance with respect to the Project or the accuracy or completeness of the information provided in this RFP or otherwise and, if any such representation, warranty or assurance is made or given, it may not be relied upon by any offeror as having been made by or on behalf of VA, and VA shall not have any liability for or with respect to such statements.

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- Exhibit A – Bid Terms Agreement
- Exhibit B – Milestone Timetable
- Exhibit C – Sample Enhanced-Use Lease Agreement
- Exhibit D – Consent Agreement
- Exhibit E – Site Map for VAMC Memphis
- Exhibit F – Site Metes and Bounds Description
- Exhibit G – Phase I Environmental Site Assessment
- Exhibit H – Limited Title Search

**REQUEST FOR PROPOSALS
ENHANCED-USE LEASE DEVELOPMENT PROJECT
VA MEDICAL CENTER
OPTION OF THREE PARKING LOTS
MEMPHIS, TN**

1. EXECUTIVE SUMMARY

This is a streamlined solicitation with an abbreviated response period. Offerors are encouraged to respond with their best offer. VA anticipates selecting the preferred developer for the EUL site November 2011. The preferred developer will be required to prepare a draft Development Plan within 21 calendar days of selection and a final draft for VA review and approval within 45 calendar days of selection. Upon the completion of the Development Plan and final approval by VA, and the completion of any other outstanding key milestones required under the EUL Statute (<http://www.va.gov/AssetManagement/docs/EulStatute.pdf>), VA will enter into the EUL with the Offeror selected as the preferred developer. VA anticipates executing an EUL for the site by December 31, 2011. The sample EUL agreement will be posted at the following website: www.va.gov/assetmanagement .

Pursuant to its Enhanced-Use Lease statute, 38 U.S.C. § 8161, *et seq.* (the “Statute”), the Department is authorized to lease VA-controlled property and improvements to other public and private entities for a term of up to 75 years.

The Department has identified three parking lots on the medical center in Memphis, Tennessee for a potential Enhanced-Use Lease (EUL). This opportunity is for development of one or more of the parking lots under a single EUL transaction. The Medical Center consists of approximately 29 acres, located at the southeast corner of Poplar Avenue and Pauline Street within the city limits of Memphis. In this RFP, VA is soliciting qualified developers to submit proposals to: (1) construct, operate, occupy or lease a parking structure with ancillary commercial use, (2) provide a net increase in parking on the Medical Center campus of at least 600 spaces. If a proposal is acceptable to VA, the selected preferred developer (the “Developer”) will then be obligated, pursuant to the terms of a Bid Terms Agreement to be executed and delivered as part of each offeror’s proposal, to post financial security for the benefit of VA (see Part 6.8 of this RFP) and to prepare a detailed development plan for the Project (the “Development Plan”, described in more detail in Part 3 of this RFP) for VA’s review and approval. If VA approves a Development Plan, the Developer subject to and upon VA’s request will enter into an Enhanced-Use Lease with VA. VA anticipates that the term of the Enhanced-Use Lease, the form of which will be provided in a future supplement, will be for a term up to 75 years, depending, among other things, on the proposed use(s) for the parcels and, if applicable, the proposed net gain in parking spaces for VA use.

The Bid Terms Agreement, (the form of which will provided by the Department as Exhibit A), will bind the offeror to the Milestone Timetable (see Part 3.2.1 of this RFP)

(the form of which will provided by the Department in a supplement to this RFP as Exhibit B) submitted with its proposal (with such modifications as VA may agree to in connection with the award). The Bid Terms Agreement will require that the Development Plan, as well as the other milestones included in the Milestone Timetable (i.e., all steps leading to the completion of the Development Plan and the execution and delivery of the Enhanced-Use Lease), be completed within the times specified in the Milestone Timetable. As discussed in this RFP, VA will provide the Developer with input throughout the process. The failure of the Developer to complete the Development Plan or meet any other milestone in a timely manner will allow VA to terminate the Developer's rights under the Bid Terms Agreement (and further discussions with the Developer) without any recourse against VA and, if VA so determines and in its discretion, select another developer.

This RFP may be amended or supplemented and all such amendments and supplements shall be considered part of this RFP (and references to this RFP shall include all amendments and supplements unless otherwise specified). The "Disclaimer" section at the outset of this RFP applies to all updates, supplements and revisions of this RFP.

By submitting a proposal, each offeror accepts all of the terms and conditions set forth in this RFP, its attachments, the Enhanced-Use Lease and the Consent Agreement (the form of which will provided by the Department as Exhibits C and D) and the Bid Terms Agreement. Any conflict (whether actual or perceived) between the terms of the Enhanced-Use Lease or the Bid Terms Agreement (collectively, the "Transaction Agreements") and this RFP or between different parts of this RFP, as between an Offeror and VA, shall be resolved at the sole and absolute discretion of VA.

VA reserves the right, at any time, without notice, at its sole and absolute discretion, (i) to modify, suspend or waive any terms and conditions of this RFP; (ii) to waive any deficiency or irregularity in any proposal submitted; (iii) to reject any or all proposals; (iv) to extend any deadline set forth in this RFP; (v) to terminate the RFP process, in whole or in part; (vi) to discuss any submission with the offeror that submitted it and require the submission of additional information regarding any aspect of the offeror's proposal; and (vii) to make an award to an offeror which submits a proposal that is not the proposal that would provide VA with the highest value in terms of monetary and/or in-kind consideration under the Enhanced-Use Lease or otherwise.

2. POSSIBLE DEVELOPMENT ON THE VA MEDICAL CENTER- MEMPHIS, TN

2.1. Location.

VAMC Memphis is situated on a 29-acre campus in Memphis, Tennessee. The Medical Center's address is 1030 Jefferson Avenue, Memphis, TN 38104. The VA Medical Center campus is bounded by Poplar Avenue to the north, I-240 to the east, Jefferson Avenue to the south and Pauline Street to the west. The campus is nearly rectangular, with a portion of the southwest corner cut out along the line of Pauline Street. There is an additional parking lot, the Southeast Parking lot, located on the south side of Jefferson Avenue.

This location is in the developed and rejuvenating Medical Center district, surrounded by medical, mixed use and residential uses. As part of the Medical Center district of Memphis, the VAMC is centrally located among hospitals, medical facilities, biowork and research institutions and community service providers. The Department of Veterans Affairs is a partner in the Memphis Medical Center community.

VAMC Memphis is part of the MidSouth Health Care System (VISN 9), serving Veterans through six Joint Commission accredited medical centers in West Virginia, Kentucky and Tennessee. More than 350,000 Veterans seek care annually at VISN 9 medical centers.

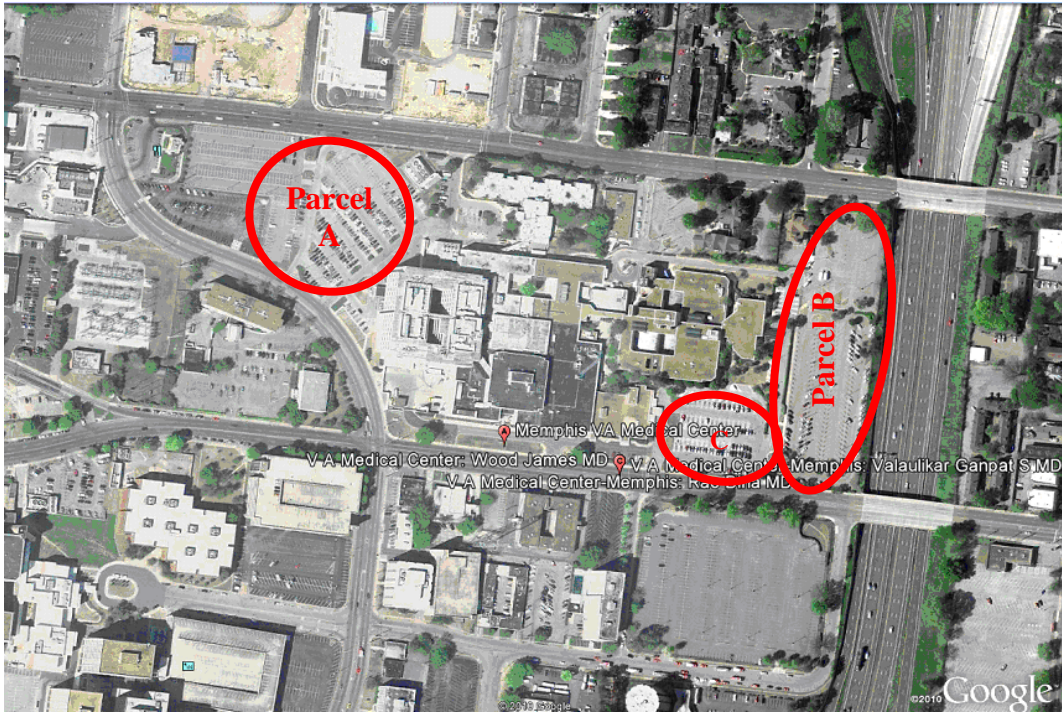
2.2. Site Description.

There are three non-contiguous parcels offered under this Request For Proposal, ranging from approximately 2.0 acres to 4.0 acres each. Each parcel is currently used for surface parking by the Department of Veterans Affairs. Below is a summary of the lots, the approximate size of each and the number of existing surface spaces.

| Parking Lot | Acres | Existing Parking |
|-----------------------------|-----------|------------------|
| Option A (West Lot) | 4.0 acres | 432 spaces |
| Option B (NE and East lots) | 3.4 acres | 352 spaces |
| Option C (Unnamed Lot) | 2.0 acres | 121 spaces |

Each parking lot is level and at grade with the remainder of the VAMC campus. The lots are paved and striped and within the fenced enclosed areas of the campus. There is pole lighting throughout the parking lots and campus.

Offerors may propose more or less acreage, based on the size of the proposed parking garage and complementary commercial development. Any development on the parking lot must replace the number of spaces taken for the development, yielding a net gain in the number of parking spaces for the project.



The site plan is inserted as Exhibit E.

2.3. Development Considerations.

In considering whether to submit a proposal, how to formulate the required Development Plan as part of a proposal, and how to develop the Site, offerors should note that their proposed EUL activities will have to comply with all applicable Federal, State, and local law, codes and ordinances. In that regard, offerors should be cognizant of the following:

2.3.1. National Historic Preservation Act.

Prior to and as a condition of entering into the proposed Enhanced-Use Lease for the Sites, the Developer must comply with the requirements of the National Historic Preservation Act, 16 U.S.C. §§ 470, *et seq.* (NHPA), particularly in conjunction with formulating a proposed development plan. NHPA requires the consideration of the effects of the Project on historic properties or historic neighborhoods eligible for listing on the National Historic Register and provide the Tennessee State Historic Preservation Officer (SHPO) and a representative of the local government a reasonable opportunity to comment on the Development Plan prior to execution of the Enhanced-Use Lease. Section 106 of the NHPA also requires the seeking of ways to avoid, minimize or mitigate adverse effects (e.g., demolition) that the Development Plan might have on any historic properties. The effort will be the responsibility of the Developer and subject to

the approval of VA. VA will act in concert with the Developer when necessary in the accomplishment of historical compliance.

2.3.2. National Environmental Policy Act and Other Environmental Considerations.

- Development and use of the Sites during the EUL term must occur in compliance with all applicable environmental laws, rules and regulations, including the National Environmental Policy Act (NEPA). NEPA requires that Federal agencies including VA, avoid adverse environmental impacts to the maximum extent practical when considering major Federal actions (e.g., an EUL). The NEPA analysis will be initiated by VA upon selection of the Developer. The Developer will be required to provide development-specific information to support the analysis. The NEPA documentation will be completed prior to execution of the EUL.
- The latest Phase I Environmental Site Assessment and an Environmental Site Investigation for the Property is attached as Exhibit G. Phase II is currently underway and will be made available to a selected developer from VA. Other than these assessments and the NEPA documentation, any other required environmental studies, reports, and site assessments will be the responsibility of the Developer, unless and to the extent that VA otherwise agrees at its sole and absolute discretion.

2.3.3. Other Legal Considerations.

A Limited Title Review is not available. The offeror is responsible for conducting its own due diligence regarding the Site, including, without limitation, whether (i) the development of the Site, as contemplated by the Proposal, can be accomplished in compliance with applicable Federal, state and local law (including zoning, building codes and any land use restrictions), (ii) the condition of the Site is suitable for the Developer's contemplated use, (iii) the necessary permits, variances, special exceptions and other governmental actions or approvals required for the contemplated development can be obtained (at no cost or expense to the Department), and (iv) the contemplated use is otherwise practical and economically feasible.

In addition, VA will require that the "prevailing wages" paid in connection with construction of the Project be not less than applicable rates by region, trade and building type established pursuant to the Davis-Bacon Act, 40 U.S.C. § 276a, *et seq.*

2.3.4. VA Requirements, Goals, Objectives, and Conditions.

In order to comply with the Enhanced-Use Lease Statute, the Secretary of VA must make certain determinations prior to execution of an EUL, including (i) that the use to which the Site will be put (i) will contribute to VA's mission, (ii) will not be inconsistent with, or adversely affect, VA's mission, and (iii) will enhance the use of the Site; or, follows a business plan that provides for using

consideration from the EUL to improve health care services to eligible Veterans in the community served. In addition, the Secretary must find that the Enhanced-Use Lease provides for fair consideration to VA. Lease consideration may be monetary, and/or in-kind which may include the provision of goods or services as benefit to VA including construction, repair, remodeling, or other physical improvements of VA facilities, maintenance of VA facilities, or the provision of office, storage, parking, or other usable space.

VA has selection preferences that fall into two categories: site development preferences and enhanced use lease in-kind consideration preference.

Site Development Preference:

The preferred development is for structured parking, providing a net gain of 600 to 800 spaces for VA. The developer may propose a complementary commercial use for the property to support the parking structure requirements by VA.

Enhanced-Use Lease In-Kind Consideration Preference:

This preference category regards the consideration that VA receives in return for leasing one or more of the parking lots. VA prefers that in-kind consideration be provided in the form of additional parking capacity on the Medical Center property. VA's primary economic objective in leasing the property is to capitalize the property's value and redirect that value, in the form of consideration from the lease, into needed VA programs, activities, facilities, and services for Veterans.

Offerors should note the following additional conditions that must be adhered to as part of this RFP process:

- VA will not participate in, or allow its or the United States' interest in the Site to be used as security for Developer financing (for the Project or otherwise), including without limitation any kind of guaranty relating to a financing vehicle.
- In regard to any proposed Project-related financing to be obtained by the Developer, VA as a general rule will not approve any financing that includes requirements that operate to deny, restrict, or subordinate VA's right to terminate the proposed EUL upon the lessee's failure to cure an outstanding event of default thereunder. Any proposed Project financing that does not comport with this restriction must be explicitly identified in the corresponding RFP proposal for VA's unilateral review and evaluation.
- VA is not permitted to enter into a build/lease-back transaction under the enhanced-use lease authority. Offers must not be based upon or assume such a transaction as part of the proposal or transactional structure.

- The successful developer must establish and maintain positive relations and communications with State and local governmental authorities and the local community during negotiations with VA and the EUL term.
- The selected developer must ensure that its proposed EUL activities are architecturally compatible with the existing buildings at VAMC Memphis, and consistent with VA's historical and environmental policy management requirements.

In preparing proposals, offerors should also be aware that, subject to and pursuant to 38 U.S.C. § 8153, VA has the authority to make arrangements, by contract or other form of agreement, for the mutual use, or exchange of use, of health care resources between VA health-care facilities and any health-care provider, or other entity or individual.

2.3.5. Other Considerations.

The Developer will be responsible for coordinating its proposed work schedule with VA in order to minimize disruption to the VAMC's activities and operations. This coordination includes the work of any contractor or subcontractor that the Developer retains in connection with the Project. Close coordination between the Developer and the VAMC in planning construction activities is particularly important because the VAMC operates 24 hours per day, seven days a week.

In addition, subject to negotiations between VA and the selected developer, any property not developed with the proposed structured parking (if developed pursuant to the proposed EUL) may be used for certain agreed-upon revenue-generating activities available from commercially developed uses. The specific operations of the commercial development component and any impact on and benefits to the VAMC must be explained within the proposal content.

3. DEVELOPMENT PROPOSALS

3.1. Submission of Proposals.

Developers interested in the Project should submit a proposal in accordance with and meeting the following requirements.

3.1.1. Time and Date of Submission.

Proposals must be received by Monday, November 7, 2011 @ 12:00 Noon EST (the "Closing Time"). Proposals received after the Closing Time may be rejected by VA in its sole and absolute discretion.

3.1.2. Proposals Irrevocable.

All proposals will be irrevocable after the Closing Time until the date that is 180 days after the Closing Time.

3.1.3. Place and Manner of Submission.

Proposals must be delivered to the following address:

Mr. Maina Gakure
Office of Asset Enterprise Management
U.S. Department of Veterans Affairs
810 Vermont Avenue NW, Room 275G
Washington, DC 20420

Proposals must be delivered by mail, courier or hand delivery. Proposals will not be accepted if delivered by electronic means (including facsimile).

3.1.4. Packaging and Copies.

Proposals must be in a sealed envelope or package with the following information on the outside of the envelope or package:

Offeror's name
Offeror's complete address
Name and contact information for the offeror's contact person (e.g., telephone, email and facsimile)

The following statement (to be completed upon delivery to VA):

"Proposal Received by VA as of _____ (time) on _____
(date)"

In addition, the following legend must appear in the lower left hand corner of the envelope or package:

“Sealed Proposal for Lease of Real Property at VAMC Memphis, Tennessee”

Each offeror must provide VA with an original and six (6) hard copies of its proposal plus six (6) electronic copies of the proposal on CD ROMs. The entire proposal must be included on each CD ROM in PDF format. In addition, any Excel or other spreadsheets that allow data to be manipulated must be included in their native (i.e., Excel) format. Each hard copy of the proposal must be bound in a three-ring binder (to allow VA to easily remove parts for copying and/or circulation).

3.2. Proposal Content

3.2.1. Cover Letter

Proposals shall include a cover letter (on the Offeror’s letter head) including a statement of the effect that the Offeror has read and agrees to comply with all of the terms, conditions, and instructions provided in this RFP. Any requests for waivers or exceptions must be clearly identified in the cover letter, and shall be subject to VA’s review and approval.

3.2.2. Format.

Proposals are limited to 35 pages. Each proposal must contain the following sections in the following order, with each section clearly labeled, beginning on a new page and not exceeding the applicable section page limit.

| Section | Description | Page Limit |
|----------------|---|-------------------|
| I | Administrative Information | 3 pages |
| II | Development Concept | 10 pages |
| III | Relevant Developer Experience, Past Performance, Etc. | 5 pages |
| IV | Financial Information | 5 pages |
| V | Property Management and Maintenance | 3 pages |
| VI | Capability and Qualifications | 5 pages |
| VII | Achievement of VA Requirements, Goals and Objectives | 2 pages |
| VIII | Experience in Community Relations | 2 pages |
| | TOTAL | 35 pages |

In addition, each proposal must include a Milestone Timetable – a detailed list of milestones and the time within which each milestone will be met. The Milestone Timetable must cover the entire period between award and approval by VA of the Development Plan and execution of the Enhanced-Use Lease. At a minimum, each offeror’s Milestone Timetable must include the timeframe within which:

- (1) the offeror will submit an outline of the Development Plan for VA’s approval;
- (2) the offeror will submit the final Development Plan for VA’s approval;

- (3) the offeror will agree to the final forms of Enhanced-Use Lease and any other transaction documentation to be executed by it and VA; and
- (4) the offeror will execute and deliver the Enhanced-Use Lease and any other transaction documentation to be executed by it and VA.

The Milestone Timetable should provide a one (1) month period for VA to conduct a final review and approval of the Development Plan after its delivery to VA. During such period, VA will endeavor to issue the statutorily-required Congressional notifications for the Project (which begins the mandated 45-day waiting period preceding any Enhanced-Use Lease execution). The one (1)-month period will be extended to include any portion of the 45-day waiting period that is not concluded at the end of the original one-month period provided for in the Milestone Timetable. The Milestone Timetable may also include additional milestones, such as the submission of portions of the Development Plan and any documentation proposed for execution by VA (e.g., an estoppel agreement) in draft form for VA's review. The Milestone Timetable must include adequate time for VA review of all drafts and other submissions and specify proposed dates by which any VA review is to be completed.

As the anticipated award is before December 31, 2011, it is advisable for offerors to plan to provide VA with drafts of documents in advance of the time when the final Development Plan is submitted for VA final review and approval. In addition, although it is not necessary to include it in the Milestone Timetable, each proposal must include a proposed timetable for obtaining financing and completing the development and construction for the Project. A final schedule of all such events must be included in the Development Plan.

Pages submitted that are in excess of any page limit (including a section page limit) will, at VA's discretion, be discarded and not be reviewed or evaluated by VA. Supporting data, such as forms required to be provided, resumes, organizational charts, financial statements, pro forma financial statements, cost estimates, engineering calculations, photographs, drawings and catalogue cuts as well as the Milestone Timetable will not be included for purposes of compliance with page limits.

Proposals must be typewritten in eleven (11) point font size or greater.

3.2.3. Section I: Administrative Information.

This section must contain the following general information about the offeror and, in the case of an offeror that is a special purpose entity (i.e., an entity that does not have or is not expected to have an on-going business other than the development and operation of the Project), each partner, member or shareholder of the offeror (referred to herein as "team members").

1. The name, Employer Identification Number, address, telephone number, e-mail address, facsimile number and, for the offeror only, the name (and

- contact information) of the representative authorized to act on behalf of the offeror and the name (and contact information) of the individual designated by the offeror as the person to whom questions and/or requests for information are to be directed;
2. The name and relationship to the offeror or team member, as applicable, of the entity that will provide the financial backing for the Project (including any guaranty or other security that may be required by VA), such as a bank or other letter of credit issuer, or an offeror's parent or other affiliate that is not a special purpose entity;
 3. A description of the offeror's form of business (whether a corporation, a nonprofit or charitable institution, a partnership, a limited liability company, a business association or a joint venture), the jurisdiction of organization and operation, and a brief history of the organization and its principals;
 4. Date and location of organization and start-up of operations;
 5. State whether the offeror, any team member, or any individual thereof, as applicable, has ever been terminated for default, non-compliance or non-performance on a contract or lease, or debarred from any Federal, state or local government contracts and, if so, provide the date and a detailed description of the occurrence;
 6. For any offeror and any team member, as applicable, that is a corporation, provide the following: (1) articles of incorporation, certificate of good standing, and by-laws; (2) copy of corporate resolutions, certified by a corporate officer, authorizing the offeror's submission of, or team member's participation with the offeror in the submission of, the proposal and the entity's authority to proceed with the Project (assuming an RFP award is made and VA's approval is obtained); and (3) a summary of its current business activities;
 7. For any offeror and any team member, as applicable, that is a partnership, joint venture or limited liability company, provide the following: (1) partnership, joint venture or limited liability company agreement; (2) unless formed for the sole purpose of submitting the proposal and engaging in the development of the Project, a summary of the offeror's and each team member's, as applicable, business activities; and (3) a copy of resolutions or other partnership, joint venture or limited liability company action, certified by a corporate officer, partner or manager, authorizing the offeror's submission of, or a team member's participation with the offeror in the submission of, the proposal and the entity's authority to proceed with the Project (assuming VA's approval is obtained); and
 8. For any offeror or team member, as applicable, that is a sole proprietorship, provide the proprietorship's date of commencement, its current address, and a summary of its current business activities.

3.2.4. Section II: Development Concept.

The development concept submitted by an offeror will be used to evaluate the desirability of the proposed Project from VA's perspective, including the timing, value and type of consideration offered, and whether the offeror has a clear understanding of the Project, including any redevelopment, construction and renovation that are proposed. The offeror's development concept must include a detailed narrative describing the offeror's proposal for the Project, its approach and vision, including an overall description of the intended Project design and construction methodology as well as its plan for any demolition, relocation or renovation proposed.

The Project development concept must include, but should not be limited to, the following:

1. A quality control plan;
2. A safety plan and security plan;
3. Phasing/sequencing of the Project, including detailed logic diagram with critical/major milestones (i.e. notice to proceed, design completion, obtaining the building permit, subcontractor selection, certificate of occupancy, etc.);
4. Project coordination (i.e., architect and engineer involvement);
5. A detailed timeline setting forth the time frame within which the offeror will (after award) prepare the initial draft and finalize the Development Plan and all architectural and construction drawings and be prepared to enter into the Enhanced-Use Lease;
6. A description of any proposed development, demolition, relocation, refurbishment or renovation of the Sites and/or the facilities currently located on the Sites (including any historic structures or properties);
7. How the proposed development can be assured of being accomplished in a manner that is consistent with applicable Federal, State, and local law, codes and ordinances, and architecturally compatible with VAMC Memphis and the surrounding community;
8. A discussion of contract management practices and how those will ensure execution of the plan as designed to private sector standards;
9. A discussion of the consideration (both cash and in-kind) and the value of the consideration VA will receive under the Enhanced-Use Lease. Offerors shall provide a detailed explanation of how the value of the consideration was determined and the assumptions upon which estimates were based. If an offeror proposes to provide in-kind consideration to VA, it must provide an analysis of the economic benefit that VA will derive from the in-kind consideration over the proposed EUL term (which shall be up to 75 years); and

10. The proposed term of the Enhanced-Use Lease and a detailed explanation why such term is the minimum lease term required. In no event shall the term of the Enhanced-Use Lease for the Sites exceed 75 years.

3.2.5. Section III: Relevant Developer Experience, Performance, Etc..

This section must include, for the offeror and, in the case of a special purpose entity offeror, for each key team member, two parts: past experience and performance (Part 1) and litigation and similar actions (Part 2). For purposes of the Section, a “key team member” should be considered any member that will be responsible for 20 percent or more of the services or fees under this proposed EUL.

In Part 1, include a concise narrative description of the offeror’s and each key team member’s (as applicable) relevant past experience and include (in the narrative) a description of at least three (3) projects (past or current). Specifically, this Part must include a description of at least three (3) projects on which either the offeror or a key team member has acted as a prime developer and which are comparable in magnitude and complexity to the Project as proposed by the offeror. Each project described must have been completed within the past ten (10) years or commenced construction no later than June 2009. For each project listed, provide sufficient information to allow VA to identify the project, confirm that the project is comparable in magnitude and complexity to the Project, and contact each of the sources of financing for, other professionals involved in, and the owner with respect to the offeror’s or team member’s past performance on, the project.

Each offeror and key team member should also include a list of at least three (3) outside references (i.e., clients or stakeholders in client projects) for whom the offeror or a team member has successfully completed development projects within the past ten (10) years. Each reference should be able to assess and provide information to the Department regarding performance and client or stakeholder (as applicable) satisfaction. Provide the name, title (if any), project role (if any), address, telephone number, e-mail address, and facsimile number for each reference.

Including a reference on this list will constitute authorization for the Department to contact and discuss the offeror’s or key team member’s performance. Some of the factors that the Department may ask references to discuss include but are not limited to:

- Quality of the working relationship with the client (the tenant and/or owner);
- Professionalism and integrity with which the offeror or key team member conducted business;
- Responsiveness to the client’s needs and expectations;

- Level of communication;
- Value added to the project as the result of cost savings, favorable financing, positive asset management, etc.;
- Delivery of the project within budget and on schedule;
- Quality control of the project design and construction; and
- Other relevant aspects in the management of a project development, and operation (as applicable) for a client.

Information provided in this Part will be used by VA to evaluate (i) the extent of the offeror's and its key team members general and key personnel experience and past performance in successfully planning for and developing comparable projects, especially under a ground lease arrangement; (ii) whether the offeror or any of its team members demonstrates experience with the development and operations of structured parking garages; and (iii) any other relevant information about other projects performed by the offeror or its team members.

In Part 2 list and explain in reasonable detail the following for **every** member of the team:

1. Each instance in which the offeror, any team member, or any principal, partner, director or officer of the offeror or any team member was convicted of or pleaded guilty or nolo contendere to a crime (other than a traffic offense);
2. Each instance within the past ten (10) years in which an order, judgment or decree (including as a result of a settlement) was entered against the offeror, any team member, or any principal, partner, director or officer of the offeror or any team member, whether by a court, an administrative agency or other governmental body, or an arbitral or other alternative dispute resolution tribunal, in any civil proceeding or action in which fraud, gross negligence, willful misconduct, misrepresentation, deceit, dishonesty, breach of any fiduciary duty, embezzlement, looting, conflict of interest or any similar misdeed was alleged; and
3. Each action or other proceeding decided within the past ten (10) years, and each action or proceeding currently pending against the offeror, any team member, or any principal, partner, director or officer of the offeror or any team member, whether before a court, an administrative agency, governmental body, or an arbitral or other alternative dispute resolution tribunal, which, if decided in a manner adverse to the offeror, team member, principal, partner, director or officer (as applicable), would reasonably be expected to adversely affect the ability of the offeror or team member to perform its obligations with respect to the Project (including the ability to obtain or repay financing).

Responses to this Part 2 should include a list of the relevant actions in the text, with the required detail cited to and contained in an appendix attached to the

proposal. The appendix portion of the response required by Part 2 will not be included when calculating compliance with proposal page limitations.

3.2.6. Section IV: Financial Information.

VA will evaluate each proposal to assess the extent of the offeror's (or its key team members') experience in obtaining and dealing with financing in connection with real estate projects that are comparable to the Project. For each offeror and, in the case of a special purpose entity offeror, each key team member, provide the following:

1. To the extent the same were prepared, for each of the past three (3) years, audited financial statements prepared by an independent licensed or certified public accountant in good standing;
2. To the extent audited financial statements were not prepared for any of the past three (3) years, unaudited financial statements;
3. The names, addresses, telephone numbers, and e-mail addresses of at least four (4) commercial or institutional credit references from which the offeror or a key team member has obtained financing for a development project comparable in cost and complexity to the Project (as proposed by the offeror) in the development concept. Include a letter from the offeror or team member (as applicable) authorizing VA to contact, and each credit reference to respond to, VA inquiries relating to the offeror's financing history and status, as well as this Project;
4. A description and/or documentation demonstrating the offeror's strategy to obtain financing for the Project, including anticipated costs and why this strategy was selected; and
5. A preliminary description of the Project's economics and finances, including the following: (1) total development costs, including hard and soft costs (including cost of issuance and legal fees); (2) financing, including types and sources, anticipated debt and equity amounts, and underlying amortization period; and (3) ownership structure, including percentage of ownership by the offeror (or in the case of a special purpose entity, each key team member).

3.2.7. Section V: Property Management and Maintenance.

The Developer will be responsible for ensuring the proper operation, management and maintenance of the Project during the term of the EUL. The Department will evaluate the information provided in this section to determine the offeror's capability to understand and address these responsibilities, to ensure the Project's long-term viability. The offeror should include in this section a reasonably detailed explanation of its or, in the case of a special purpose entity offeror, each team members' experience or the experience of the person proposed to perform these functions, including a description of its approach to operation, management and maintenance of the Project in accordance with private sector standards, and a description of at least two (2) previous comparable projects in which it or a team member was responsible for similar functions (directly or through the use of

contractors). The offeror should include detailed information (i.e., entity name, resumes, headquarters, principle places of business, relevant experience, etc.) on any personnel that are proposed to be responsible for management of the Project.

3.2.8. Section VI: Capability and Qualifications.

The offeror and key members of the development team, as previously described, should include in this section information necessary to allow the Department to assess the offeror's and, for any special purpose entity offeror, its key team members' approach to and ability to perform the Project and the qualifications of the key personnel that will be assigned to the Project. Specifically, this section must include the following:

1. The offeror's organizational approach to executing its Project responsibilities, providing overall project coordination, and responding to the Department during all phases of the Project;
2. An organizational chart and staffing plan that demonstrates the offeror's capability of carrying out all functions required for the successful completion of the Project, including, if applicable, a timetable for hiring any additional staff;
3. A statement affirming that the offeror and its proposed personnel have the capacity and will be committed to perform on this project.
4. A discussion of the extent to which the offeror and, in the case of a special purpose entity offeror, its key team members are planning to commit staff and other resources to preparation of the Development Plan (described in Part 3 of this RFP) and timely completion of the Project;
5. The identity of all key personnel (i.e., persons considered critical to the performance of services), and for each such person:
 - a description of his or her respective role during development of the Development Plan;
 - a one (1)-page resume that includes a description of the person's duties and responsibilities, education, skills, expertise and other qualifications relevant to the preparation of the Development Plan;
 - a statement, attached to the resume, defining the availability and commitment of such person to the Project, including whether the person is currently employed by the offeror or, if not employed, what kind of commitment or employment offer the offeror has made and/or accepted to assure the availability of the person during preparation of the Development Plan; and
6. A discussion of the extent to which key personnel have worked together on other projects similar to the Project.

3.2.9. Section VII: Achievement of VA Requirements, Goals and Objectives.

Information in this section will be used to evaluate the offeror's and, in the case of special purpose entity offeror, its team members' understanding of and a realistic approach to accomplishing and complying with the Department's requirements, goals and objectives. Offerors should include in this section an explanation as to how the offeror's approach will effectively accomplish and comply with the requirements, goals and objectives of the Department as part of the Project, including VA's receipt of monetary and/or in-kind consideration.

3.2.10. Section VIII: Experience in Community Relations.

VA intends to evaluate the ability and experience of the offeror and, in the case of a special purpose entity offeror, its team members in dealing with community relations in successfully completed developments. This section should include an explanation of the offeror's and, in the case of a special purpose entity offeror, each team member's philosophy and specific approach to managing community relations and interacting with local and state government officials (i.e., land use, environmental, SHPO, local community, etc.). With respect to projects listed under "Section III: Relevant Developer Experience, Past Performance, Etc." describe any experience in managing relations with the surrounding community. (Information provided in Section III may be cross-referenced or incorporated by reference into this section and need not be repeated.) Discuss the offeror's or, as applicable, its team members' experience in development projects near the Sites. In particular, each offeror must detail what, if any, experience it or its team members have in working with the relevant local and state officials on land use and development matters.

4. EVALUATION CRITERIA

VA's objective is to select as the Developer the offeror whose proposal VA determines will provide the "best overall value" to the Department. The concept of "best overall value" does not mean that VA will or is required to choose the proposal that provides VA with the highest value consideration. The value of the consideration to be provided to the Department is only one factor that VA will consider. Other factors, such as technical merit (including management capability) may reduce or enhance the value of a proposal to the Department. All of the information required to be provided in each proposal pursuant to Part 3 of this RFP is important to VA's analysis and evaluation of the proposal. VA may utilize all information provided in a proposal or otherwise available to VA (including by contacting provided references) to evaluate the proposal.

5. DEVELOPMENT PLAN

After RFP award, the selected Developer will, within 35 days (or such other time that VA may agree to at its sole and absolute discretion), submit a detailed Development Plan for the Project. Such details should include but are not limited to, the following:

Following its selection, the Offeror will be responsible for preparing a detailed Development Plan for the Project. The Development Plan must contain a description of the Project, and address comprehensively all significant issues regarding its proposed **development, security and maintenance** of the Site. Offeror will have **thirty-five (35) days** after Offeror is notified to complete and submit the Development Plan, per the requirement contained in this RFP. The Development Plan must include, but should not be limited to, the following:

a. Project Overview

- The specific type of Project contemplated by the Offeror and a comprehensive plan for the redevelopment of the EUL Site;
- Project feasibility and significant barriers to overcome and a strategy to do so;
- Plans to ensure proposed uses are compatible with VA's mission;
- Fulfillment of VA requirements, goals, objectives and preferences defined in Sections 2.3.4 and 3.2.9 of the RFP;
- Development schedule;
- Development Team composition;
- Community awareness strategies and a community relations plan; and
- A plan on how to secure local approvals for zoning, permits and other building and land use requirements and expected obstacles and a strategy to overcome them.

b. Transaction Terms

- Proposed entity of the Offeror that would serve as the lessee (on behalf of the Offeror) under the EUL including all ownership structures associated with the lessee
- Proposed term of EUL (i.e., up to 75 years)
- Description, amount, timing, and structure of in-kind consideration to be provided to VA under the EUL
- transaction structure

c. Project Financing

- Financing plan, including sources of funds and any proposed tax abatements

d. Development Budgets

- Pro forma statements for a minimum of 35 years or as long as there is a debt service.
- Sources and uses of funds sheet.
- Plan to obtain Financing Commitment Letters – written assurance(s) from the proposed funding sources that those sources will provide the project financing proposed as part of the Offeror’s financing structure at the EUL closing, with all conditions required for such funding clearly articulated. Leases cannot be executed without a formal commitment of financing from the proposed financing sources.
- Plan to execute a performance bond – a written commitment from a surety to provide a performance bond in the appropriate amount at the EUL closing.

e. Construction Plan

- Drawings (not construction level detail but adequate to understand the layout of the floors, building design and appearance) and site plans.
- Analysis of existing land use restrictions governing the EUL Site, development and land use recommendations, variances required and plans for obtaining them.
- Utilities, parking, traffic mitigation, and landscape plans.
- Impact of proposed Development Plan on historic properties, including documentation required to comply or facilitate compliance with NHPA.
- Public/private entitlements.
- Development and construction management.

f. Project Operations

- Marketing and Leasing Plan.
- Property management and asset protection (e.g., security), management, and maintenance (e.g., a funded maintenance account to cover non-routine repairs).

VA recognizes that formulation of the Development Plan will require the Developer to work closely and cooperatively with VA. VA will provide input to and cooperate with the Developer during the drafting process to facilitate preparation of the final Development Plan. The Developer will be required to meet the milestones within the timeframes set forth on the Milestone Timetable (with such modifications as VA agrees

to in connection with the award) and agreed to in the Bid Terms Agreement. The failure of the Developer to do so will allow VA to terminate the Developer's rights under the Bid Terms Agreement (and all further discussions with the Developer and the Developer's rights to lease and develop the Sites) without any recourse against VA, and will allow the Department, if it wishes, to select another developer for the Project or make such other use of the Sites as VA, in its sole and absolute discretion, may determine.

It is anticipated that the Developer will provide VA with drafts of the Development Plan (or portions thereof, depending upon the Milestone Timetable) throughout the drafting process. The Development Plan will be subject to the review and approval of VA and will be subject to review and comment by local government and other stakeholders. Public hearings and Congressional notifications required by the Statute will be the Department's responsibility.

Upon completion of the Development Plan and final approval by the Department, the Developer subject to and upon VA's request will enter into an Enhanced-Use Lease with the Department. The Enhanced-Use Lease will be in the form provided by the Department, with such modifications as are necessary to incorporate the Development Plan therein.

6. MISCELLANEOUS TERMS APPLICABLE TO THIS RFP

6.1. Site Visit.

Arrangements to visit the Sites can be made by contacting Mr. Ted Spence, the Chief of Facility Management, at the Memphis VA Medical Center. His telephone number is (901) 577-7300 and his email address is ted.spence@va.gov.

6.2. Questions and Information.

Questions, requests for clarifications and general information requests must be made in writing through the web site at: vaeulMemphis@va.gov. VA, in its sole and absolute discretion, reserves the right to provide all prospective offerors with copies of any offeror questions it receives, and any answers, clarifications, and/or information it provides in response thereto, if it determines that doing so may be of general interest to potential offerors. Unless VA otherwise advises prospective offerors, the deadline to submit questions to VA will be 7 calendar days prior to the proposal submission deadline appearing on the cover page of this RFP.

6.3. Authorizations by Submission of Proposal.

Any and all information provided by an offeror and its team members may be used by the Department to conduct credit and background checks.

6.4. Teaming Arrangements and Special Purpose Entities.

Multiple developers may joint venture for the purpose of submitting a proposal in response to this RFP. A special purpose entity may also be created for the purpose of submitting a proposal. VA may require that financial and performance guarantees be provided by these and other offerors as well as team members.

6.5. Hold Harmless.

By participating in the RFP process and as a condition of submitting an RFP proposal, each offeror agrees to indemnify and hold harmless VA and the United States and each of their respective officers, employees, contractors and advisors from and against any and all (i) real estate and other brokerage fees or commissions, finder's fees and other forms of compensation related in any way to activities undertaken by any person or entity as a result of such person's or entity's efforts towards and/or participation in this RFP process or the submission of a proposal, and (ii) liabilities, losses, costs and expenses (including reasonable attorneys' fees and expenses) incurred by any indemnified party as a result of or in connection with any claim asserted or arising as a result of or in connection with this RFP process.

6.6. Oral Presentations.

VA may require any or all offerors to make an oral presentation with respect to their proposals. If an oral presentation is required, notice will be provided to those offerors asked to make a presentation and the details regarding that presentation (i.e., length of presentation, etc.) will be provided in the notice. If an oral presentation is required, the format of the meeting will provide for a presentation by the offeror followed by questions from the Department and its advisers.

6.7. Financial Security.

Upon selection, the Offeror will be required, pursuant to the terms of the Bid Terms Agreement, to post some form of financial security for VA's benefit in the event of a default in the Offeror's obligations thereunder. The details regarding such financial security will be discussed directly between VA and the Offeror.

6.8. Ineligibility.

The following persons (including entities) are ineligible to be an offeror or a team member of an offeror or otherwise participate in the Project (including as a contractor, subcontractor or professional): (1) any person or organization that has been debarred or suspended from doing business with the VA or the Federal Government; (2) any person that is listed on the most current "Excluded Parties List System" published by the U.S. General Services Administration at <http://epls.arnet.gov/>, as updated from time to time; (3) any person who poses a security or safety risk, as determined by the Secretary of State, including but not limited to any person who either represents a country, or is a member of or provides political, financial or military support to a group, that is listed in the most current "Country Reports on Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at http://www.state.gov/www/global/terrorism/annual_reports.html; and (iv) any person who is subject to a criminal indictment or information for a felony in any U.S. court.

VA reserves the right to require any participant in the Project to confirm that it is not ineligible under any of the foregoing criteria.

Exhibit A BID TERMS AGREEMENT
(VA Medical Center Memphis, Tennessee)

Exhibit A
BID TERMS AGREEMENT
(VA Medical Center Memphis, Tennessee)

The United States Department of Veterans Affairs (the “Department”), through the Request for Proposals No. _____, dated _____, 2011 and relating to the Department’s VA Medical Center in Memphis, Tennessee, as supplemented or amended (the “RFP”), has solicited offers from the undersigned (the “Developer”) and others to lease and develop the Site (as defined in the RFP) and design, finance, construct, operate, maintain and manage the Project (as defined in the RFP) on the Site pursuant to an Enhanced-Use Lease and any other documents to be executed in connection with the transaction either by the Department or the Department and the Developer (collectively, the “Transaction Documents”). The Developer has submitted a proposal to the Department in response to the RFP (the “Proposal”) and is submitting this Bid Terms Agreement (this “Agreement”) with and as a required part of the Proposal. Capitalized terms used and not otherwise defined in this Agreement have the meanings given in the RFP. In consideration of the foregoing and being allowed to compete for an award with respect to the RFP, the Developer acknowledges and agrees as follows:

1. The Proposal becomes irrevocable on the Closing Time (as defined in Section 3.1 of the RFP), at which time the Developer is legally bound by this Agreement and the terms of the Proposal, including without limitation the development concept (the “Development Concept”) and the type and value of the consideration proposed to be provided to the Department as part of the Enhanced-Use Lease. The Proposal remains irrevocable for one hundred and eighty (180) days after the Closing Time. After the one hundred and eighty (180)-day period has expired and prior to the issuance by the Department of a Selection Notice (as defined below), the Developer may revoke its Proposal by delivering to the Department written notice of revocation. Upon receipt by the Department of such a revocation notice, the Proposal shall be deemed to be revoked.
2. The Department may, in its sole and absolute discretion: (i) modify, suspend or waive any terms and conditions of the RFP, (ii) reject any or all proposals (including the Proposal), (iii) waive any deficiency or irregularity in any proposal submitted, (iv) terminate, extend or delay the RFP process, in whole or in part, at any time, including after a proposal is accepted, (v) discuss any submission with the offeror that submitted it and require the submission of additional or clarifying information regarding any aspect of the offeror’s proposal, (vi) conduct one or more “best and final” rounds of bidding, and (vii) make an award to an offeror whose proposal is not the proposal that would provide the Department with the highest value in terms of consideration to the Department under the Enhanced-Use Lease or otherwise.

3. Any and all risks of error or mistake (including any omission) in the completion or submission of the Proposal, including this Agreement, or any other documentation submitted by the Developer shall, as between the Department and the Developer, be borne solely by the Developer. No error or mistake in the completion or submission of the Proposal, this Agreement or any other documentation shall relieve the Developer of any of its obligations hereunder or under the RFP.
4. The Developer is responsible for conducting and represents and warrants that, to the extent the Developer deems it necessary or appropriate, it has conducted its own due diligence regarding the Site, including, without limitation, whether (i) the development of the Site, as contemplated by the Proposal, can be accomplished in compliance with applicable Federal, state and local law (including zoning and other local land use restrictions), (ii) the condition of the Site is suitable for the Developer's contemplated use, (iii) the necessary permits, variances, special exceptions and other governmental actions or approvals required for the contemplated development reasonably can be obtained (at no cost or expense to the Department), and (iv) the contemplated use is otherwise practical and economically feasible.
5. If the Developer is chosen by the Department to prepare a Development Plan and enter into an Enhanced-Use Lease for the Site, the Department will provide the Developer with a written notification to that effect (the "Selection Notice"). The Selection Notice will be accompanied by the duplicate original of this Agreement executed by the Developer (submitted with the Proposal) and a copy of the Milestone Timetable agreed to by the Developer and the Department (the "Agreed Milestone Timetable"). The Department may issue a Selection Notice that is conditional (a "Conditional Selection Notice") upon the Developer and the Department reaching agreement, within a timeframe specified in the Conditional Selection Notice, on certain matters regarding the Proposal that are not acceptable to the Department or with respect to which it requests clarification. If the Department issues a Conditional Selection Notice and the conditions set forth therein are met, the Department will then issue a Selection Notice. If the Department issues a Conditional Selection Notice and the conditions are not met, as determined by the Department in its sole and absolute discretion, then the conditional selection of the Developer may be revoked by the Department (which revocation may operate automatically and without any action on the part of the Department if the Conditional Selection Notice so provides) and the Developer shall have no rights or recourse against the Department with respect thereto. The Agreed Milestone Timetable, to be attached as Schedule 1 hereto, and the Proposal, including, without limitation, the Development Concept, as the same may be amended or revised at the

request of the Department prior to the issuance of a Selection Notice, are incorporated into and made a part of this Agreement.

6. Following receipt of a Selection Notice, the Developer shall prepare a Development Plan in accordance with the Development Concept contained in the Proposal. The Development Plan shall comply with the requirements, terms and conditions regarding a Development Plan as set forth in the RFP, including, without limitation, the provisions of Parts 2.3 and 5 of the RFP. No material deviation from the Development Concept, including, without limitation, the type and value of consideration proposed therein to be provided to the Department, shall be permitted or effective unless approved in writing by the Department. Following the receipt of a Selection Notice, the Developer shall complete the Development Plan and meet the other milestones contained in the Agreed Milestone Timetable in a timely manner.
7. The Developer understands that time is of the essence to the Department in accomplishing the milestones set forth on the Agreed Milestone Timetable and in otherwise complying with the Developer's obligations under this Agreement. If the Developer fails in any material respect to meet in a timely manner any milestone contained in the Agreed Milestone Timetable or fails to execute and deliver any of the Transaction Documents as and within the timeframe required by the preceding paragraph or otherwise fails to comply with or breaches any provision of this Agreement, the Department will have the right to declare the Developer in default under this Agreement and, upon any such default, the Department shall have the right to (i) terminate the Developer's rights under this Agreement (and all further discussions with the Developer), and (ii) in the Department's sole and absolute discretion, if it so chooses, make an award to another developer.
8. Except for such representations and warranties of the Department as are expressly set forth in the Enhanced-Use Lease or any other Transaction Document to which the Department is a party, the Department makes no representations or warranties of any kind (whether express, implied or arising by operation of law). Without limiting the foregoing, the Department makes no representation or warranty regarding the suitability of the Site for use of any kind.
9. Each of the Proposal and this Agreement, has been, and any and all amendments, additions and clarifications thereto and any other documents submitted to the Department in connection with the Proposal or the RFP have been or, if submitted hereafter, will be executed and delivered by a duly authorized representative of the Developer. The Developer has all requisite corporate or other authority necessary to submit the Proposal (including this Agreement) to the Department, to agree to any amendments, additions and clarifications made thereto by the Developer,

and to submit such other documents as the Developer has submitted or hereafter submits to the Department in connection with the RFP, the Proposal or the contemplated transaction, and to be legally bound by the terms and conditions thereof and the RFP. This Agreement constitutes a valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).

10. Without limiting the indemnification and hold harmless obligation of the Developer set forth in the RFP, the Developer hereby indemnifies and holds harmless the Department and the United States and each of their respective officers, employees, contractors and advisors and their respective successors and assigns (the "Indemnified Parties") from and against (i) any and all claims asserted against any Indemnified Party arising from or relating in any way to any act or omission of the Developer or any person acting on behalf of or in conjunction with the Developer in connection with or as a result of the Developer's or such other person's participation or efforts to participate in the RFP process or in anticipation thereof, including without limitation the preparation or submission of the Proposal and this Agreement, and including without limitation any claim of any real estate or other broker, agent or finder (other than any such person retained by the Department), and any and all liabilities, losses, costs and expenses (including reasonable attorneys' fees and expenses) incurred as a result or in defense of any such claim, and (ii) any and all liabilities, losses, costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Department in connection with any action taken by the Department to defend or enforce any of its rights and/or remedies under this Agreement or otherwise in connection with the RFP process, the Proposal or this Agreement.
11. It is understood and agreed by the Developer that the Department is not obligated, and may not have the authority, to agree to any substantive change to the form of Enhanced-Use Lease or any other Transaction Documents included as part of the RFP or the structure of any transaction contemplated thereby. In addition, the Developer agrees that the Department may require financial security (such as a letter of credit or a performance guaranty) by a financially sound entity (in each case acceptable to the Department) to back the Developer's obligations under the Enhanced-Use Lease and other Transaction Documents, and the Developer is willing and able (at no cost or expense to the Department) to provide appropriate security at the Department's request.

12. The Developer represents, warrants and covenants to the Department as follows:
- (a) the Developer has read, and has had an opportunity to review with its legal counsel, the RFP (including, without limitation, all supplements thereto) and fully understands and is fully capable of complying with all of its terms and conditions and the obligations of the Developer set forth therein, including without limitation the Disclaimer that is a part thereof, and the Developer has had an opportunity to ask and has received satisfactory responses from the Department regarding the RFP;
 - (b) without limiting the foregoing, the Developer has read, and has had the opportunity to review with its legal counsel, this Agreement and the form of the Enhanced-Use Lease and other Transaction Documents included in the RFP and understands and is fully capable of complying with all of the terms, conditions and obligations of the Developer set forth therein, including any and all time frames specified for performance in the Agreed Milestone Timetable;
 - (c) the information provided in the Proposal is true and correct in all material respects as of the date of the Proposal and, in the event any of such information ceases at any time to be true and correct in all material respects, the Developer promptly shall so inform the Department in writing (specifically identifying such information);
 - (d) (i) neither the Developer nor any of its partners, members or principal stockholders (as defined below) is debarred or suspended from doing business with the Department or any other federal government agency, (ii) if at any time the Developer or any of its partners, members or principal stockholders is proposed to be debarred or suspended from doing business with the Department or any other federal government agency, the Developer will immediately so advise the Department in writing, (iii) neither the Developer nor any of its partners, members or stockholders is listed on the most current "Excluded Parties List System" published by the U.S. General Services Administration at <http://epls.arnet.gov/>, as updated from time to time, (iv) neither the Developer nor any of its partners, members or stockholders is a person who poses a security or safety risk as determined by the Secretary of State, including but not limited to any person who either represents a country, or is a member of or provides political, financial or military support to a group, that is listed in the most current "Patterns of Global Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. § 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at

http://www.state.gov/www/global/terrorism/annual_reports.html,

(v) neither the Developer nor any of its partners, members or principal stockholders is subject to a criminal indictment or information for a felony in any court in the United States, and (vi), in conjunction with any proposed assignment of this Lease, the assignment would, as determined pursuant to an opinion of the Department's Office of General Counsel, not cause or result in a violation of any federal ethics law or regulation, to include, but not limited to the "Standards of Ethical Conduct For Employees of the Executive Branch," 5 C.F.R. 2635, 2637 and 2641. For purposes of this Lease, the term "principal stockholder" shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Lessee. For purposes of this Agreement, the term "principal stockholder" shall mean any person who is a beneficial owner (as defined for purposes of Rule 13d-3 promulgated by the Securities and Exchange Commission) of ten percent (10%) or more of the outstanding stock or other equity of the Developer.

- (e) Neither the Developer, nor any of its affiliates, nor any of their respective officers, directors, partners, principals, agents, employees or parties in interest has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other offeror, firm or person to submit a collusive or sham proposal in connection with this RFP, or to take (or not take) any other action designed, or the effect of which is reasonably likely to be, to limit or curtail competition among prospective offerors with respect to the RFP.
13. Except as is otherwise set forth in the Enhanced-Use Lease and other Transaction Documents, each of the Developer and the Department shall pay its own expenses (including legal, accounting investment banker, broker or finders fees) incurred in connection with the RFP, the Proposal, this Agreement and any transaction contemplated thereby, (including without limitation the preparation and submission of the Proposal and related documentation and review and execution of this Agreement by the Developer and the preparation and dissemination of the RFP and review and evaluation of RFP proposals by the Department).
 14. This Agreement may be amended or modified, and the terms hereof waived, only by a written instrument signed by the Department and the Developer. No failure or delay on the part of the Department to exercise any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of the Department of any such right, power or privilege, or any single or partial exercise of any such right,

power or privilege, preclude any other or further exercise thereof or the exercise of any other or subsequent right, power or privilege.

15. To the maximum extent permitted by law, all disputes arising under or relating to this Agreement shall be resolved under the provisions of the Contract Disputes Act, 41 U.S.C. § 601 *et seq.* (the “Disputes Act”) and applicable regulations. For purposes of implementing this subsection, the Department will designate the person (the “Designated VA Representative”) authorized to act on its behalf under and in connection with administration of this Agreement. The Designated VA Representative shall be considered the “contracting officer” for purposes of the Disputes Act. The Designated VA Representative’s decision shall be final unless a party appeals or files suit as provided in the Disputes Act. The parties shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal or action arising under or relating to this Agreement, and comply with any decision of the Designated VA Representative.
16. The Developer shall not assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement or with respect to the RFP or the Proposal without the prior written consent of the Department (which consent may be granted or withheld in the sole and absolute discretion of the Department), and any attempted transfer or assignment in violation of this provision (i) shall be void and of no force or effect, and (ii) shall constitute a material default under this Agreement and entitle the Department to exercise its rights and remedies hereunder with respect thereto.
17. The Developer shall not be liable for any failure to perform under this Agreement or any delay in performing under this Agreement (including any failure to meet a milestone set forth in the Agreed Milestone Timetable) if such failure is due directly to any of the following causes or circumstances and such cause or circumstance is beyond the Developer’s control (and such event, an event of Force Majeure): war, fire, riot, terrorist act, flood or other extreme weather, accident, change (hereafter) in any law or regulation, labor strike or lockout, or failure of the Department to take an action required to be taken by it. If an event of Force Majeure occurs and the Developer is delayed in its performance as a result thereof, the Developer shall be entitled to an extension of time equal to the period of delay caused by the Force Majeure event, provided, that the Developer notifies the Department in writing of the event of Force Majeure and the anticipated resultant delay within five (5) days after the occurrence of the event of Force Majeure.
20. This Agreement shall be binding on and inure to the benefit of the Department (and its successors and assigns) and the Developer (and its

permitted successors and assigns), and there shall be no third party beneficiaries. This Agreement shall be binding upon the Developer as of the Closing Time, and shall remain binding on the Developer even if the Proposal is revoked in accordance with this Agreement. Neither the Department's execution nor delivery of this Agreement shall be required in order for the Department to be entitled to enforce this Agreement against the Developer. The Department shall execute and deliver this Agreement only if a Selection Notice is issued to the Developer and only for the purpose of confirming its agreement with the Agreed Milestone Schedule and the other provisions of this Agreement relating to the performance by the Developer of its obligations arising upon receipt of a Selection Notice.

21. If the Developer receives a Selection Notice, unless otherwise specified by the Department, the Developer shall provide the Department with six (6) hard copies and one (1) electronic copy of the Development Plan and each other item submitted to the Department (whether required by the Agreed Milestone Timetable or submitted voluntarily by the Developer). The electronic copy of a submission must be included on a single diskette or CD ROM in PDF format. In addition, any Excel or other spreadsheets that allow data to be manipulated must be included in their native (i.e., Excel) format.

22. Any and all notices, demands, requests and other communications given or delivered under or by reason of or in connection with the provisions of this Agreement shall be in writing, and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized air courier service, or by facsimile transmission directed, in the case of the Developer, to the address or facsimile transmission number set forth on the signature page hereof and, in the case of the Department, to the address or facsimile transmission number set forth below:

Department of Veterans Affairs
Office of Asset Enterprise Management (044C)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Attention: Designated VA Representative
Facsimile No.: 202-273-9734

Items directed to the Department pursuant to this Agreement must also be clearly labeled with the Developer's full name and the following subject heading: "VA Memphis, TN RFP, Bid Terms Agreement Matter".

Notices shall become effective when received (or refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient on a business day shall be deemed to have been given at the opening of business on the next business day. From time to time, either party may designate a new address or facsimile number to the other party, for purposes of receiving future notices hereunder.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the Closing Time by a duly authorized officer or representative of the Developer.

Developer:

Name:

Title:

Address for notice:

Attention: _____

Facsimile No.: _____

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the date of the Selection Notice by a duly authorized officer or representative of the Department solely for the purposes set forth herein.

Department:

United States Department of Veterans Affairs

Name:

Title:

Schedule 1

Agreed Milestone Timetable

[To be attached]

Exhibit B
CERTAIN MILESTONES AND TIMEFRAMES
(VA Medical Center Memphis, Tennessee)

EXHIBIT B
CERTAIN MILESTONES AND TIMEFRAMES
(VA Medical Center Memphis, Tennessee)

- I. Deliver final approved Development Plan (30 days after selection). Please allow time for VA review (not less than 10 days) and finalization of Development Plan.

- II. Initial Business Terms (within 24 hours after selection)

- III. Completion of NEPA Documentation after final VA-approved Development Plan (To Be Determined).

- IV. Award EUL (Upon finalization of all required documentation and third-party studies).

Exhibit C
SAMPLE ENHANCED USE LEASE AGREEMENT
(VA Medical Center Memphis, Tennessee)

ENHANCED – USE LEASE

**of Certain Real Property and Facilities
at the [City], [State] VA Medical Center,
in [City], [State]**

DATED: _____, ____ 201____

**Enhanced-Use Lease
of Certain Real Property and Facilities
at the [City], [State] VA Medical Center,
in [City], [State]**

This **Enhanced-Use Lease** (hereinafter referred to as the “Lease”), is made and entered into this the ____ day of _____, 201__, by and between the Secretary of the Veterans Affairs, an officer of the United States on behalf of the Department of Veterans Affairs (hereinafter “Department” or “VA”), and [insert name of Lessee] (hereinafter “Lessee”), a [insert non-profit or other business entity type] entity organized under the laws of the State of [], for the portion of land described and depicted in Exhibits A and B, respectively, which is more particularly defined as the “Property.”

RECITALS

WHEREAS, the Department has jurisdiction and control of certain real property and facilities known as the [City], [State] Veterans Affairs Medical Center, [City], [State] (hereinafter “VAMC”) that provides health care services to the nation’s veterans. The VAMC property subject to this Lease is located at [Address], [City], [State] [Zip Code], and consists of approximately [Insert #] acres of land and improvements, as further described and depicted in Exhibits “A” and “B,” respectively; and

WHEREAS, 38 U.S.C. Section 8161, et seq. “Enhanced-Use Leases of Real Property,” permits the Department to enter into long-term leases of certain property under its jurisdiction and control; and

WHEREAS, in accordance with the terms and conditions herein, VA desires to lease the Property to Lessee and Lessee desires to Lease the same from VA, so Lessee can then finance, design, develop, construct, operate, and maintain a [insert project description]

WHEREAS, a long-term use of the Property through an Enhanced-Use Lease, as authorized by the provisions of 38 U.S.C. Section 8161, et seq., by Lessee, would result in the availability of [insert description], and would permit more VA resources to be directed toward direct Veteran care; and

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED AND ACCEPTED, IT IS HEREBY AGREED THAT subject to the terms and conditions herein, the Department grants to Lessee and Lessee accepts a [insert #] year initial term, with a right in Lessee to exercise up to [insert #], [insert #-]year extensions as described in Article 3 below.

ARTICLE 1 – EXHIBITS AND DEFINITIONS

Exhibits: The following constitute the Exhibits to this Lease. Each of the Exhibits is attached to this Lease and is incorporated by this reference:

- A. Exhibit “A”: Legal Description of Property
- B. Exhibit “B”: Site Plan
- C. Exhibit “C”: Design Plan
- D. Exhibit “D”: Development Plan
- E. Exhibit “E”: Operations and Maintenance Plan
- F. Exhibit “F”: Memorandum of Lease

Definitions: The following constitute the definitions to this Lease:

“Certificate of Substantial Completion”: means the certificate defined in Article 6.B.9 of this Lease.

“Congress”: means the Congress of The United States of America.

“Commencement of Construction”: means that date that Lessee, its construction contractor, any subcontractor, or builder associated with the Project commences any reasonable act (i.e., groundbreaking, erection, etc.) on the Property aimed at, or which effectively establishes, builds, erects, constructs, raises, develops, or furthers any portion of the Project’s development, including any portion of the Project’s subsurface region(s).

“Department”: means the United States Department of Veterans Affairs.

“Designated VA Representative” or “DVR”: means the individual of the Department who: (a) is designated by the Secretary to act on matters of Lease administration but (b) is not designated to execute amendments or modifications to the Lease or its exhibits unless the individual has or acquires such authority through a written “Delegation of Authority” from the Secretary.

“Effective Date”: means the date the Lease is executed by both parties; provided that, if the parties execute the Lease on different days, the Effective Date shall mean the later day that the Lease is executed.

“Force Majeure”: means any of the following that directly cause any of Lessee’s obligations hereunder not to be performed in a timely manner: (a) an earthquake, hurricane, tornado, flood, or other similar act of God; (b) fire; (c) strikes or similar labor disputes provided such strike or similar dispute is beyond Lessee’s control and provided Lessee takes all steps reasonably possible to remediate such strike or similar dispute; (d) acts of the public enemy; (v) inability to obtain labor or materials or clear access to the Project by reason of acts or omissions of any governmental body not caused by Lessee’s actions or omissions; (e) rebellions, riots, insurrections or civil unrest; (f) unusually severe weather conditions that actually cause similar construction or development activities in the area of the Project to be suspended; (g) discovery, remediation, and abatement of any unknown environmental hazard or unknown hazardous substance (i.e., a hazardous substance, covered by any environmental law or regulation, whose existence on the Property is unknown to Lessee by the Effective Date and) which is affecting the

Property; (h) discovery of any ancient, historical, archeological, architectural, or cultural artifacts, relics, or remains on the Property; and (i) any act or omission of a governmental body other than VA not caused by Lessor's or Lessee's actions or omissions.

“Hazardous Substances”: means those substances as defined in Article 33 of this Lease.

“Improvements”: means any existing improvements on the Property, and any development, construction, operation, and maintenance activities made on or to the Property or Facility by Lessee, which the Lessee will accomplish in accordance with this Lease, particularly Article 10.

“Lease”: means this Enhanced-Use Lease between the Department and Lessee.

“Leasehold Mortgage”: means each mortgage as defined in Article 19.B.2 of this Lease.

“Leasehold Mortgagee”: means each leasehold mortgagee as defined in Article 19.B.2 of this Lease.

“Lease-Up Date:” means the date on which the Facility is occupied by its first tenant/occupant.

“Lessee”: means [Insert name], a [Insert State] [Insert business entity type].

“Project”: means the financing, design, development, construction, operation and maintenance of the [insert project description] in accordance with this Lease.

“Property”: means that certain real property consisting of approximately [insert #] acres, as described and depicted in Exhibits “A” and “B,” respectively, and all of the structures, improvements, utilities, fixtures, infrastructure, and any other Improvements that are located, constructed, erected or placed thereon.

“Secretary”: means the Secretary of Veterans Affairs or the individual delegated to act for and on behalf on the Secretary.

“Subtenants”: means a person or entity that is a subtenant or other holder of a right to use and occupy certain space within the Property pursuant to an executed sublease or other agreement with the Lessee.

“Successor”: means any such entity as defined in Article 19.B.3 of this Lease.

“VA Facility Manager”: means the VA employee that the DVR identifies to the Lessee as being available to receive a copy of the “as-built drawings” as set forth in Article 10.F of this Lease.

“VAMC”: means the United States Department of Veterans Affairs Medical Center, [City], [State].

“Veteran(s)”: means a veteran(s) within the meaning of 38 U.S.C. Section 101(2) (e.g., a person(s) who served in the active military, naval or air service, and who was discharged or

released therefrom under conditions other than dishonorable.

**ARTICLE 2 – CONSIDERATION FOR LEASE, UTILITY INFRASTRUCTURE,
AND PAYMENT OF ANCILLARY SERVICES**

A. **Consideration:** It is the understanding of both parties that Lessee is undertaking this Lease to achieve public interest objectives that are mutually beneficial, namely to [insert description and/or goal of project]. Accordingly, in consideration of the mutual benefits accruing to the parties hereto, and of the covenants, agreements and obligations set forth in this Lease, Lessee hereby agrees to provide the following consideration to VA, all of which shall constitute fair consideration for this Lease:

1. Lessee will finance, design, develop, construct, operate, and maintain the Property into the “Project” in accordance with all applicable State and local laws, codes, ordinances, and permitting requirements, and any amendments thereto; the National Fire Protection Association (“NFPA”) 101 Life Safety Code; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.); the National Historic Preservation Act of 1966 (16 U.S.C. § 470, et seq.); the Archaeological Resources Protection Act (16 U.S.C. § 470 et. seq.), all as such laws may be amended from time to time; and as otherwise set forth in this Lease, all in a manner so as at all times not to unreasonably interfere with or disrupt the VAMC’s activities and operations.
2. Lessee shall in consultation with VA, establish specific procedures, regulations, rules, and/or standards to ensure, and otherwise ensure, that [appropriate description, or for veteran type housing you may use the following words... eligible Veterans receive priority admission into the Facility and priority receipt of the supportive services offered within the Facility; ensure that Veterans receive such services or any privileges, accommodations, or activities provided in as good or better a manner as all non-Veterans on the Property or residing in the Facility; and ensure that such Veteran eligibility criteria are contained in the “Operation and Maintenance Plan” (attached as Exhibit “E”)].
3. Commencing on the first day of the month following the Effective Date, and then on each anniversary date thereafter throughout the Lease term, Lessee shall owe and pay to the Department [Insert rent and rent escalator provisions]. The Lessee shall: (i) communicate with the DVR as needed to successively remit each of its rent payments to VA in a timely manner, and if the [Insert rent escalator name] category (or any subsequent rent escalator category or annual percentage increase rate as described in Clause (ii) of this sentence) is discontinued during the Lease term, (ii) work with the DVR to select a mutually-agreeable “replacement” rent escalator category or annual percentage increase rate within not more than ten (10) working days of either party’s confirmation to the other that the-then applicable one has been discontinued.
4. [Insert in-kind consideration]

5. **Additional Future In-Kind Consideration As May Be Agreed Upon Between the Parties:** At their joint discretion, VA and Lessee may during the term of this Lease, engage in good faith negotiations with the intent of entering into one or more separate written agreements, by which Lessee and VA may exchange additional consideration. The exchange of such additional consideration may or may not at VA's discretion, involve VA's remittance of one or more EU Lease Capital Contributions to the Lessee as permitted by 38 U.S.C. § 8162(b)(4)(B).

B. **Utility Infrastructure, Metering, VA Approval of Distribution Systems, Professional Engineer's Report:**

The Department and Lessee hereby agree as follows:

1. Lessee shall be solely responsible for any and all costs (i.e., direct costs, insurance, taxes, assessments, etc.) associated with establishing/constructing the infrastructures, distribution lines and systems, connections (including any Lessee reconnections to local utility provider services due to events relating to or stemming from Articles 2.B.5 and/or 2.B.6 below), meters, taps, etc. required for the providing of gas, electricity, water, sewer, oil, fiber optics, telephone, fire alarm service or any other form of utility, communications, power, or fuel to the Property.
2. Lessee shall be solely responsible for installing meters within thirty (30) days of the Lease-Up Date, and paying the Department (within thirty (30) days of receipt of any bill from the Department detailing) the "at-cost" amounts (including any fees or charges to or assessments against VA that are attributable to VA's provision of utilities to Lessee) for any and all electricity, water, gas, oil, fiber optics, telephone, or any other form of utility, communications, power, or fuel required during construction and/or operation of the Project. Nothing in this Section B requires Lessee to acquire utility services from the Department.
3. Lessee shall be solely responsible for ensuring at its sole cost and expense and subject to Article 2.B.2 above, that the utilities necessary for the operation of the Property and required in accordance with Federal, State, and local codes are available and operable from VA or a third party utility provider at the time of final inspections.
4. In conjunction with (1) and (2) above, the Department shall have the right to review and approve any and all connections to VA's distribution systems prior to: (a) final design of such connections and (b) final installation of such connections, and the Department shall issue both such approvals to Lessee in writing. In addition, prior to the Department's approval of any and all connections to VA's distributions systems per this Paragraph 4, Lessee shall provide the Department with a "Professional Engineer's Survey Report" that evaluates the impact of the

installation of such utilities on VA's distribution systems; confirms that no adverse impact will result upon VA's distribution systems; and provides for a corrective plan of action to mitigate any potential, foreseeable adverse impacts.

5. If Lessee performs or causes the performance of any utility connection work ("Utility Work") on VA property through an easement, permit, or otherwise, then Lessee hereby agrees that: (a) it shall be solely and fully responsible and liable to VA for any and all costs associated with repairing and/or restoring any VA real or personal property damaged or destroyed by, as a result of, or in connection with such Utility Work, and (b) notwithstanding anything in Article 12 to the contrary, Lessee shall indemnify and hold VA harmless for any and all liabilities, fees, costs, and expenses regarding any injuries, deaths, and/or damage to any person's personal property resulting from or in connection with such Utility Work by Lessee, its contractors, builders, sublessees, agents, employees, licensees, affiliates, and/or invitees.
6. Subject to and in accordance with this Article 2.B.6 and Article 10.A, during the Lease term and so long as the Department has jurisdiction and control of the VAMC, the Department will, upon Lessee's request and subject to applicable Federal, State, and local law, use its best efforts to provide the Property with uninterrupted flow of utilities, but Lessee hereby acknowledges and agrees that VA will not be liable for any damages due to or caused by any interruption, cessation, inadequacy, or defect in the character, quantity, quality, or supply of utilities services to Lessee, except for damages or injuries resulting or arising from the acts of Department personnel properly cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680). Lessee further agrees that no such interruption or cessation of utility services shall constitute an Event of Default by VA under this Lease.
7. Subject to and in accordance with Article 2.B.6 above, in the event a State (or any of its agencies, departments, or commissions) or local public utility challenges, protests, or undertakes legal action against any of Lessee's utility connections and/or servicing from VA utility lines, Lessee shall have the right (subject to the Department's prior written approval, which shall not be unreasonably withheld), to legally contest or defend against such adverse actions. If Lessee elects to do so, however, it shall be solely responsible for all of its fees, costs, and expenses stemming therefrom.
8. During the Lease term, for any direct connections that Lessee makes to VA utility distribution systems, VA may if it deems necessary, contact Lessee and establish a time and place whereby VA can conduct or obtain at its sole cost and expense, an independent "utility consumption assessment" upon any sub-metering installed on the Property, to confirm or ensure proper functionality. Lessee agrees at its sole cost and expense to undertake corrective action as needed regarding any such sub-metering found to be malfunctioning.

C. **Payment to VA for Ancillary Services:** Each month during the Lease term, Lessee shall be responsible for, and shall pay to the Department, the "at-cost" amount(s) for (i.e., the actual cost to the Department for providing) any "ancillary service(s)," (e.g., grounds maintenance, trash pickup, laundry services, housekeeping services, lawn moving, snow

removal, security that Lessee requests in writing and receives from the Department during and throughout the preceding month ("Ancillary Services"). Lessee's payments to the Department for such Ancillary Services shall be paid no later than thirty (30) days after receipt of any bill from the Department for providing such services. Throughout the Lease term, charges to Lessee for ancillary services shall, on each anniversary of the "Lease-Up" date, be adjusted by VA for inflation, in accordance with the applicable percentage increase in the Consumer Price Index and actual cost increases.

ARTICLE 3 – LEASE TERM

A. **Initial Term.** Unless earlier terminated by Lessee's acquisition of the Property as provided for in Article 8, or by the Department as provided for in Article 22, the initial term of this Lease shall be for [insert #] years, commencing on the Effective Date of this Lease ("Initial Term").

B. **Extension Term(s).** Subject to the provisions of this Section B, Lessee shall have [insert #] options to extend the Lease term, each for an additional [insert #-]year period (each such time period is hereafter referred to individually as an "Extension Term" and collectively as the "Extension Terms"). **However,** Lessee shall not be permitted to exercise an Extension Term **(a)** until the date which is [insert #] years prior to the expiration of the then existing Initial Term or first Extension Term, as the case may be, and **(b)** if and while any outstanding Lessee Event of Default exists under the Lease. Should Lessee decide to exercise any Extension Term option, it shall provide written notice of such intent to the Department; **provided that; however,** each option shall automatically expire (with no notification from either party to the other required) if such notice from Lessee is not given to VA before thirty (30) days prior to the last day of the Initial Term or first Extension Term, as applicable. Furthermore, if the first Extension Term expires without timely exercise by Lessee, then the second Extension Term automatically shall concurrently expire. Lastly, notwithstanding anything in this Lease to the contrary, all of the terms, conditions, covenants, obligations, representations, warranties, and provisions of this Lease shall apply to the Extension Terms.

ARTICLE 4 - PROPERTY TO BE LEASED TO LESSEE

The Property subject to this Lease shall constitute all structures, improvements, utilities, fixtures, infrastructure, and any other Improvements located on the Property described and depicted in Exhibits "A and "B," respectively.

ARTICLE 5 - SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHT OF WAY

A. This Lease is subject to all existing easements and rights of way, whether or not recorded, for location of any type of facility over, across, in, or upon the Property or any portion thereof; and the right of the Department, upon consultation with Lessee, to grant such additional easements or rights of way over, across, in, or upon the Property; and such approval shall not be unreasonably or arbitrarily withheld or delayed, provided that any such additional easements or rights of way shall not be inconsistent with Lessee's quiet use and enjoyment of the Property

under this Lease, and shall be conditioned on the assumption by the grantee thereof of liability to the Department and to Lessee for such damages as the Department and/or Lessee shall suffer for property damaged or destroyed or property rendered uninsurable as a result of grantee's exercise of its rights thereunder. VA represents and Lessee acknowledges that VA has disclosed to Lessee all easements located on the Property of which VA is aware.

B. There is hereby reserved to the holders of such easements and rights of way as presently in existence, whether or not recorded, outstanding or which may hereafter be granted, to any Federal, State, or local officials engaged in the inspection, construction, installation, maintenance, operation, repair, or replacement of facilities located on the Property, such reasonable rights of ingress and egress over the Property as shall be necessary for the performance of their official duties with regard to such facilities.

C. The Department shall have the right to relocate any existing easements (at its sole cost and expense) and grant additional easements and rights of way over, across, in and upon the Property, provided that: (1) any additional easement or right of way shall not be inconsistent with or adversely affect Lessee's actual or intended use of the Property, and the right to non-exclusive use of the Access Roads pursuant to Article 5.E below; (2) the grantee of any such easement or right-of-way agrees in writing to indemnify, hold harmless and defend the Department and Lessee from and against any and all claims, actions, losses, damages or costs and expenses as the Department or Lessee shall suffer or incur for injury to persons, or property destroyed as a result of grantee's exercise of its rights thereunder; (3) the granting of such easement or right-of-way shall not affect the insurability of the Property (i.e., either for title insurance purposes or for purposes of liability and casualty insurance); and (4) Lessee consents in writing to VA's granting of the easement or right-of-way, such consent not to be unreasonably withheld, conditioned, or delayed.

D. **Future Easements and Rights of Way.** Upon Lessee's written request, the Department agrees to consent to and join in the execution of all applications, petitions, and non-exclusive easements and rights-of-way as may be necessary to complete or operate the Project (to the extent such execution by the Department as fee owner of the Property is required); Provided that: (1) the underlying application, petition or easement is not inconsistent with the Project and would not materially or adversely affect VA's mission or operations; (2) the grantee of any such application, petition, easement or right-of-way provides VA with prior written assurances to indemnify, hold harmless and defend the Department and Lessee from and against any and all claims, actions, demands, losses, damages, liabilities, judgments, costs, and attorneys' fees, which the Department or Lessee may suffer or incur for injury to persons, or VA property destroyed as a result of grantee's exercise of its rights thereunder; and (3) VA provides its prior written consent to Lessee after reviewing the written assurances referenced in Paragraph (2) above and the final version of each underlying application, petition, easement or right-of-way, which shall not be unreasonably withheld, conditioned, or delayed.

E. VA and Lessee agree that during the Lease term, Lessee, and any of its respective contractors, subcontractors, builders, sublessees, agents, employees, licensees, and invitees shall have a non-exclusive right to use: (1) [Insert road name] Road and [Insert road name] for general vehicular ingress and egress, and (2) the sidewalks across the VAMC for pedestrian ingress and egress to and from the Property (collectively, the "Access Roads"). However, applicable Federal law shall govern all such uses, and Lessee shall be subject to VA security

requirements and other operating procedures and restrictions, including without limitation, designated access road and parking space restrictions.

ARTICLE 6 - REPRESENTATIONS AND COMMITMENTS

A. Lessee and the Department hereby represent, warrant, and covenant that:

1. Each party has complied with all applicable laws and requirements in connection with the execution, delivery, and performance of this Lease.
2. Each party is duly authorized to execute and deliver this Lease.
3. This Lease constitutes a legal, valid, and binding obligation of each party, enforceable in accordance with its terms, subject to equitable principles that could affect specific performance.
4. Upon expiration or termination of this Lease, title to the buildings, structures, and other Improvements constructed or placed on the Property and the fixtures annexed thereto shall immediately vest in and become the property of the Department, as part of the real estate and Property, without any additional compensation therefore and without any instrument of conveyance. Lessee covenants and agrees, upon demand by the Department, on or after termination of the Lease (unless such termination is pursuant to Article 8 of the Lease), to execute any instruments requested by the Department to effectuate the conveyance of such buildings, structures, Improvements, utilities, fixtures, and infrastructure constructed or placed on the Property and the fixtures annexed thereto.
5. Each party undertakes to act with reasonable promptness, so that the other party can complete its Lease obligations within agreed timelines.

B. Lessee acknowledges and agrees that:

1. Lessee is duly organized and existing under the laws of the State of [Insert state name].
2. Lessee has duly approved, executed, and delivered this Lease by all legally requisite action.
3. This Lease constitutes a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms subject to equitable principles that could affect specific performance.
4. Lessee has inspected the Property, is fully familiar with the physical condition of the Property and based on the foregoing, accepts all of such Property “as is.”
5. As of the Effective Date, Lessee shall in accordance with and subject to Articles 15 and 33 of this Lease, be responsible for all costs associated with or pertaining to the removal of any and all Hazardous Substances and materials from the Property, including but not limited to, asbestos, mold, lead paint, and renovation, demolition, and construction debris. All such removal activities shall be performed in accordance with applicable Federal, State and local laws, codes, and ordinances.

6. The Department has made no representations or warranties concerning the condition of the Property, the fitness or suitability for any particular use or access to the Property and the Department shall not be liable to Lessee for any latent or patent defects in such Property, nor has it agreed with Lessee to alter, improve or maintain such Property.

7. During the Lease term, Lessee will finance, design, develop, construct, operate, and maintain the Property into the "Project" in accordance with the terms and conditions of this Lease, notably Article 2.A.1.

8. During the Lease term, Lessee will: (a) obtain at its own expense all pertinent Federal, State, and local permits, licenses, and approvals (including those approvals of VA) necessary for design, development, construction/renovation, and operation of the Project; (b) assure that all applicable Federal, State, and local requirements are met during operation of the Project (including but not limited to, the latest version of the National Fire Protection Association (NFPA) 101 Life Safety Code; the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.); the National Historic Preservation Act of 1966 (16 U.S.C. § 470, et seq.); and the Archaeological Resources Protection Act (16 U.S.C. § 470 et. seq.), all as such laws may be amended from time to time); (c) assure that the operation activities referenced in the preceding Clause "(b)" do not negatively affect VA's activities and operations.[____]

9. Prior to occupancy of the Project by Lessee, and any other improvements placed on the Property after the Effective Date which are made available for occupancy, Lessee shall at its sole cost and expense, hire a City inspector or an independent inspector licensed by the State of [Insert State] to conduct an inspection of the Project and certify in writing that it has been completed in compliance with the applicable State and local building codes and standards, including the NFPA 101 Life Safety Code (the "Certificate of Substantial Completion"). The Department must receive the Certificate of Substantial Completion before Lessee may occupy or receive occupants into the Project, and will promptly notify Lessee of its receipt of the Certificate of Substantial Completion from Lessee.

10. Lessee will at all times, during the Lease term and its development, construction, renovation, operation, and maintenance of the Project, use all reasonable and commercial best efforts to act so as to avoid the occurrence of any action(s) contained in Article 21 which constitute events of default.

11. Lessee will be responsible for maintaining and securing all necessary access to the Property for development, construction, operation, and maintenance of the Project. Access that requires utilization of VA property other than the Property that is the subject of this Lease shall require advance coordination with and approval of the DVR.

12. Lessee will at its sole cost and expense, design, develop, construct, equip, and substantially complete the Project within [Insert #] days after the Effective Date, in a good and workmanlike manner and pursuant to the Development Plan referenced in Article 10.A, and Article 21.A.2.

13. Lessee will be solely responsible for any and all costs associated with the repair and maintenance of the Project, the grounds, as well as any other structures on the Property in accordance with Articles 10 and 11 of this Lease.

14. Lessee will assure that its development, construction, operation and maintenance activities do not negatively affect VA's activities or operations, and use all reasonable and commercial efforts to conduct any of its construction activities involving noise, dirt, or other emissions that could negatively affect the VAMC's activities or operations to times falling within normal VA business hours.

15. At its sole cost and expense and in accordance with Article 10.A of the Lease and Exhibits "C" and "D" thereof, Lessee will take all necessary measures to: (a) control soil erosion during the design, development, construction, operation, and maintenance of the Project through a detailed sediment control plan, with specifications to include necessary preventive measures to protect all water sheds, watercourses, and surface-water drainage from sedimentation, siltation, and pollution; (b) mitigate the long-term impacts relating to changes in surface water drainage patterns through the use of filtration and sediment ponds in accordance with State and local requirements; (c) expeditiously establish the necessary landscaping to minimize erosion; and (d) ensure that all established sediment ponds continue to empty surface water in the same respective directions and locations off of the Property following any development, construction, and maintenance activities of the [Project].

16. Lessee shall at all times comply with the provisions of the National Historic Preservation Act and the Archaeological Resources Protection Act, 16 U.S.C. § 470, et seq., and any Programmatic Agreements executed with the State of Ohio Historic Preservation Office ("SHPO"), and shall coordinate and work with the Department and the SHPO as needed.

17. Lessee shall not knowingly remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Property, Lessee shall immediately notify the DVR and protect the site and items from further disturbance until the DVR gives clearance to proceed.

18. Lessee shall be responsible for providing police, fire protection and inspection, and emergency services to the Property during the Lease term.

19. (a) Lessee will, within sixty (60) days after the completion of the yearly audit for each of its annual fiscal years on which it operates, provide the Department with a copy of its audited financial statements for the Project, along with a statement of revenues and expenditures, annual reports, and any related financial disclosure documents for such fiscal year (collectively, the "Lessee Financials"). Additionally, Lessee will immediately notify the Department telephonically and in writing of the occurrence of any material adverse change to its financial condition or circumstance that may affect its ability to perform its obligations under this Lease.

(b) Upon receiving the Lessee Financials referenced in the preceding Subparagraph (a) of this Paragraph 19, VA shall be entitled to review them to ensure that Lessee is not undergoing, or about to undergo, an adverse financial condition or circumstance that would negatively impact Lessee's ability to timely and adequately meet its Lease obligations.

(c) With respect to Lessee's obligations under this Paragraph 19, the parties agree that if and to the extent that the highest court or other adjudicative body of competent jurisdiction

to which the matter may be presented determines that any Lessee Financials submitted to VA (which were not duly corrected or supplemented within a reasonable time period) are materially misleading, VA to extent of any damages directly sustained thereby, shall be entitled to pursue any and all remedies available to it under this Lease, Federal, State, and local law, and at equity.

ARTICLE 7 - USE

A. **Property Use In General.** Except as provided for in Section B of this Article, Lessee may use the Property during the Lease term only for the Project, which shall not include any political, gambling, obscene, or pornographic uses, or the implementation of any research activities or other programs illegal under or conflicting with or applicable Federal, State, and local law.

B. **Prior Consent Required For Any Other Uses.** Consistent with Section A above and except as VA and Lessee may otherwise agree in writing, no other uses of the Property shall be permitted on the Property during the Lease term.

C. Consistent with Sections A and B of this Article, and subject to the terms and conditions of this Lease, Lessee shall and may peacefully and quietly have, hold, and enjoy the Property for the Lease term, without disturbance from VA, and free from any encumbrance created or suffered by VA, except to which this Lease is made subject in accordance with Articles 5 and 18.

ARTICLE 8 - DISPOSAL OF PROPERTY TO LESSEE

Should at any time during the Lease term or within thirty (30) days after the end of the Lease term, if the Department determines that the Property is no longer needed by the Department, the Department may seek to dispose of the Property to Lessee per the provisions of 38 U.S.C. § 8164.

ARTICLE 9 - COMPLIANCE WITH APPLICABLE LAWS, RULES, AND REGULATIONS

A. Lessee agrees that it will be responsible for and will obtain at its sole cost and expense, all applicable Federal, State, and local planning approvals, and other licenses and permits which are necessary to design, develop, construct, operate, and maintain the Property as contemplated in this Lease, including Article 7. Additionally, during the Lease term, Lessee at its sole cost and expense shall comply with all applicable Federal, State, and local laws, codes, and ordinances regarding the operation and maintenance of the Property.

B. Lessee agrees that at or prior to submission of any plats, plans, specifications, or applications for any approval, license, or permit with respect to compliance with applicable Federal, State, and local laws, codes, and ordinances, Lessee shall provide VA with a copy of each such proposed submission for review and approval (which shall not to be unreasonably withheld, conditioned, or delayed). VA's comments on any submittal from Lessee will be provided to Lessee within thirty (30) days of its receiving the submitted material. VA's review and approval shall be limited to ensuring that (a) there are no material conflicts involving the

contents of the documents submitted to VA for review and the contents of Exhibits C, D, and E; (b) the proposed development and/or activities as reflected in the documents submitted to VA for review are architecturally compatible with the VAMC, are consistent with the Property uses identified in Article 7, and would not adversely affect VA's use and occupancy of the VAMC. In the event that VA disapproves of any proposed submission and design from Lessee (based upon the foregoing Clauses (a) and/or (b)), VA shall, along with a written objection, provide Lessee with a written explanation of the reasons for rejection of the proposed submittal and design. Unless the Department objects to the submitted material within thirty (30) days, its approval shall be presumed. Lastly, Lessee shall provide VA with a complete copy of all approved plats, plans, specifications, and applications.

ARTICLE 10 - IMPROVEMENTS OR CONSTRUCTION ON THE PROPERTY

A. **Improvements:** Lessee, at its sole expense, will commence and complete the Design Plan of the Project (Exhibit "C"), which Lessee will then provide to VA for reasonable review and approval no later than ninety (90) days prior to the Commencement of Construction. Further, Lessee at its sole cost and expense, will commence and complete the development and construction of the Project in accordance with the Development Plan (Exhibit "D"), which Lessee will complete and provide to VA for reasonable review and approval no later than sixty (60) days prior to the Commencement of Construction. All development, construction, and renovation activities, including but not limited to those relating to the use of roadways or pedestrian walkways, or connections with electricity, water, steam, sewer services, or other utilities, shall be coordinated in advance with the DVR. The repair of any damage to existing structures, systems, or facilities resulting from development, construction, or renovation activities relating to the Project, shall be the sole responsibility of Lessee, and any affected structures, systems, and facilities shall be immediately repaired or replaced by (or on behalf of) Lessee in a manner acceptable to VA.

Lessee shall not enter into any contract or agreement with any city, county, or governmental agency or body or public utility with reference to sewer lines or connections, water lines, or connections, street improvements, including but not limited to curbs, gutters, parkways, and street lighting, utility connections, lines or easements, without the prior written consent of the Department, which consent shall not be unreasonably withheld. The Department shall consent to or disapprove any proposed contract or agreement within sixty (60) days after the date of submission thereof by Lessee. Unless the parties otherwise agree, the Department's failure to respond within such sixty (60) days shall be a deemed approval.

B. **Lessee's Contracts For Construction:** Lessee agrees that any and all general construction contracts for the development, construction, and renovation of the Project, as well as any subsequent activities of this nature on the Property, shall contain clauses indemnifying and holding the Department harmless for any causes of action or damages arising as a result of any acts or omissions of the contractor(s).

C. **Construction Documents:** Lessee agrees that prior to undertaking development, construction, or renovation of the [Project, it will provide the DVR with a complete copy of all development, construction, and renovation documents at least sixty (60) days prior to undertaking any such activities.

D. **Design Review and Approval:** The Department's comments on any submittal, to include the Design Plan; Development Plan; development, construction, and renovation documents; and any supplements thereto, will be returned to Lessee within thirty (30) days of receiving the submittal. The Department shall have the right to reject such submittals. In any such instance, the Department shall, along with its objection, provide a detailed, written explanation of the reasons for rejecting the submittal. Unless the Department objects to the submitted material within such time period, approval shall be presumed. Upon receipt of any VA rejection, Lessee shall respond to the Department within ten (10) business days and identify specifically how it proposes to address each of the Department's objections. The Department shall then respond to the Lessee within ten (10) business days, and if the Department shall continue to have objections, the Department shall again specify those objections, and the parties shall work together to expeditiously reach an agreed set of plans and specifications.

E. **Access to Project Site:** Upon reasonable advance notice, Lessee agrees to permit the Department's representatives, agents and employees with access to and right of entry onto the Property before, during, and after any development, construction, or renovation undertaken pursuant to this Article for the purpose of monitoring, observing, and making inquiries in order for the Department to determine compliance with the Lease. It is understood by the parties that such activity does not relieve the Lessee of its responsibility for managing any and all on-site development, construction, and renovation activities.

F. **As-Built Drawings:** Upon completion of any Project-related development, construction, or renovation activities, Lessee shall provide the DVR with one complete set of reproducible drawings (all disciplines) illustrating each and all stages of changes made to the Project. The as-built drawings will incorporate all significant changes made over the life of the Project. The title block shall be dated and entitled "As-Built Drawings." One electronic copy of the As-Built Drawings in CD, "AUTOCAD 200__" (read only format) or later edition if the DVR agrees in writing shall also be transmitted to the VA Facility Manager at the time of the reproducible drawings. The Department shall have the right to review the As-Built Drawings for accuracy and completeness, and request that Lessee make any and all necessary revisions, additions, and/or modifications to them if the Department reasonably finds and accurately deems them to be incomplete or inaccurate.

G. **Mechanics and Labor Liens:** Lessee agrees that it will not permit any claim or lien made by a mechanic, material man, laborer, or other similar liens to stand against the Property for work or materials furnished to Lessee or Lessee's subleases in connection with any development, construction, renovations, improvements, maintenance, or repairs made upon the Property by Lessee or any contractors, subcontractors, builders, agents, employees, licensees, or invitees. Lessee shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof. However, in the event Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if Lessee shall give to Department such security as the Department may reasonably require to insure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, Lessee shall not be deemed to be in breach of this requirement so long as Lessee is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute or, if litigation or arbitration results therefrom, discharges said lien within thirty (30) days after the date such judgment is rendered or filed.

ARTICLE 11 - OCCUPANCY AND MAINTENANCE PROVISIONS

A. Subject to the terms and conditions of this Lease, including Articles 2.C, Lessee at its own expense, shall at all times protect, preserve, maintain, and repair the Property and Project, and shall keep same in good order and condition. All grounds, sidewalks, lawns, shrubbery, and structures, both interior and exterior, shall be maintained to a standard that is comparable to and consistent with the maintenance provided for the surrounding VA facilities and property. Lessee shall at all times exercise due diligence in the protection of the Property against damage or destruction by fire or other causes. The Property shall at all times be maintained in a tenable, safe, and sanitary condition.

B. In accordance with Article 11.A above, Lessee shall: **(1)** maintain all equipment and systems to provide reliable services without unusual interruption, disturbing noises, exposure to fire and safety hazards, and without emissions of dirt; **(2)** ensure that all maintenance work is performed in accordance with applicable codes, and display inspection certificates as appropriate; **(3)** provide labor, materials, and supervision to adequately maintain the Project's structure, roof, interior and exterior walls, windows, doors, and any other necessary building appurtenances to provide watertight integrity, structural soundness, acceptable appearance, and continuing usability; **(4)** make all capital repairs, alterations, and replacements as necessary to maintain the usable condition of Property and Project throughout the Lease term; and **(5)** notify the DVR in writing at least thirty (30) days prior to commencing any "significant non-emergency repair" on the Property (e.g., any repair that individually or in the aggregate would exceed \$[Insert #]. Any such "significant non-emergency repair" shall be considered construction as covered by Article 10 of this Lease.

C. Within fifteen (15) days after the Lease-Up Date, Lessee shall prepare and provide the Department with its "Operations and Maintenance Plan" (i.e., Exhibit E). Such Operations and Maintenance Plan shall be subject to the Department's review, approval, and final acceptance, which review, approval, and final acceptance shall not be unreasonably withheld, delayed, conditioned, or denied. The Department shall provide Lessee with such final acceptance in writing. The Department, however, reserves the right to unilaterally amend any provisions of the Operations and Maintenance Plan which it deems to be in violation of 38 U.S.C. § 8161, et seq., or which is contrary to the Department's mission, activities, land use plans at the VAMC, or which it reasonably deems to be outside of the intended scope of this Lease. In the event that the Department intends to unilaterally amend provisions of the Operations and Maintenance Plan, the Department shall provide Lessee with prompt written notice and if appropriate, as much time as is necessary to implement the operational and/or maintenance changes required by VA's amendment. In the event that Lessee objects to the proposed unilateral amendment, the Department will work with Lessee to attempt to find a mutually acceptable resolution to the concerns raised by Lessee. Upon the Department's final acceptance, subsequent changes to such Operations and Maintenance Plan shall only be made by a written modification approved and executed by both the Department, and Lessee or its assignee pursuant to Article 18 of this Lease.

2. (a) **Funded Maintenance Account.** Commencing on the first day of "Lease Up," Lessee shall establish and maintain a Funded Maintenance Account in an interest-bearing

account in a financial institution approved by the Department. The Funded Maintenance Account shall be funded to the amount of \$[Insert #] per square foot per annum for the rentable area of the Project located on the Property, except that Lessee shall not be required to increase the Funded Maintenance Account to an amount in excess of \$[Insert #] for each Project developed as part of the Project. The financial institution holding such account shall include the Department as a recipient of all account statements.

(b) **Purpose of the Account.** The funds of the Funded Maintenance Account shall be available for use by Lessee only for non-routine, capital repairs and replacements (including without limitation, roofing, HVAC systems, carpeting, elevators, security, and fire safety systems) to the Project and any other improvements duly located on the Property that are made available for use and occupancy.

(c) **Conditions for Withdrawing Funds From the Account.** Prior to withdrawing any funds of the Funded Maintenance Account, Lessee shall: (a) per Article 6.B.9, provide VA with a copy of the Certificate of Substantial Completion pertinent to the Project (and/or any other facility or improvement(s) located on the Property) for which such funds are to be used; (b) provide the DVR with not less than ten (10) days advance written notice of a proposed withdrawal along with detailed, written receipts identifying the costs for and types of “non-routine, capital repairs and replacement activities for which Lessee is seeking to withdraw funds out of the Funded Maintenance Account. Lastly, within ten (10) business days of VA’s written request, Lessee shall provide VA with written, detailed receipts of the contractor(s) that are paid from funds of the Funded Maintenance Account.

(d) **Prohibition on Using the Fund for Collateral Purposes or to Limit Lessee Obligations.** Lessee shall use the funds in the Funded Maintenance Account as described in Article 11.C.2.(b) and for no other purpose, and agrees that it shall not pledge or use any monies therein as collateral. In addition, the establishment of the Funded Maintenance Account or its use does not in any manner limit Lessee’s responsibilities under this Lease and Lessee remains responsible for any costs in excess of the Funded Maintenance Account.

(e) **Close Out of the Funded Maintenance Account.** Within thirty (30) days following the expiration or termination of the Lease term, Lessee and the Department shall retain an architect mutually acceptable to the parties (the “Architect”) to inspect the Project, and any other improvements on the Property that are made available for use and occupancy. The Architect shall prepare a report based upon the physical inspection of each such Improvement, within which it shall identify any damaged items that pursuant to this Article and in the ordinary course of business, should be repaired or replaced using proceeds from the Funded Maintenance Account. Within thirty (30) days following the issuance of the inspection report, at VA’s discretion either: (a) VA will receive a distribution of funds from the Funded Maintenance Account equal to the cost of repairing or replacing the items identified in the inspection report, or (b) Lessee shall after VA’s prior consultation as to the selection(s), hire one or more contractors to repair and correct such damaged items and remit the necessary funds in the Funded Maintenance Account to compensate each contractor for its work performed. Upon the earlier completion of either event described in Clauses (a) and (b) of this Subparagraph (e), the balance of the funds in the Funded Maintenance Account, with VA’s cooperation as may be necessary, will be disbursed by the financial institution to the Lessee. For purposes of this Paragraph C

only, notwithstanding the inspection report results, Lessee shall not be liable to the Department for any amount in excess of the amount of funds then existing in the Funded Maintenance Account.

**ARTICLE 12 - INDEMNIFICATION BY LESSEE,
GOVERNMENT NON-LIABILITY**

A. Except for damages or injuries resulting or arising from the acts of its officers, agents or its employees properly cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680), as it may be amended, neither the United States nor the Department shall be responsible for damages to the Property or for injuries to persons that may arise on the Property exclusive of those areas under the exclusive and direct control of the Department.

B. Lessee, to the extent such is consistent with applicable Federal and State laws, policies and regulations, agrees to indemnify, save, hold harmless, and defend the United States and the Department and its respective officers, agents and employees, from and against all claims, actions, demands, losses, damages, liabilities, judgments, costs, and attorneys' fees, arising out of, claimed on account of, or in any manner predicated upon: (1) personal injury, death or property damage resulting from, related to, caused by or arising out of the construction (or defective construction), possession, and/or use of the Property; or (2) any activities, omissions, or services furnished by Lessee or any contractors, subcontractors, builders, sublessees, agents, employees, licensees, or invitees undertaking any activities on the Property or that relate to the Project, which fail to comply with the terms, conditions, reservations, restrictions, and requirements of this Lease and pertinent documents referenced herein.

C. The Department shall promptly notify Lessee of the existence of any claim, action, demand, or other matter to which Lessee's indemnification obligations to VA would apply, and shall give Lessee a reasonable opportunity to defend the same at its own expense and with counsel of its selection; provided that, the Department (including the United States) shall at all times also have the right to fully participate in the defense at its own expense. The Department shall cooperate with Lessee to the extent reasonably necessary in any such defense. If Lessee shall, within a reasonable time after notice to Lessee, fail to defend, the Department shall have the right, but not the obligation, to undertake the defense of, and (while exercising reasonable business judgment in its discretion) to compromise or settle the claim or other matter on behalf, for the account, and at the risk, of Lessee. If the claim is one that cannot by its nature be defended solely by Lessee, then the Department shall make available all information and assistance that Lessee may reasonably request (in VA's discretion).

D. NOTHING IN THIS LEASE SHALL BE DEEMED TO WAIVE OR IMPAIR THE IMMUNITIES OR LIMITATIONS OF LIABILITY OF LESSEE OR THE DEPARTMENT AS TO THIRD PARTIES, DIRECTLY OR INDIRECTLY, AND NOTHING IN THIS LEASE SHALL BE DEEMED TO PROVIDE A RIGHT OF ACTION IN FAVOR OF A THIRD PARTY AGAINST THE DEPARTMENT OR AGAINST LESSEE WHICH WOULD NOT OTHERWISE EXIST.

ARTICLE 13 - RISK OF LOSS AND INSURANCE

A. **All Risk:** Lessee shall, in any event and without prejudice to any other rights of the Department, bear all risk of loss or damage to the Property arising from any causes whatsoever with or without fault, including but not limited to, fire; lightning; storm; tempest; explosion; impact; aircraft; vehicles; smoke; riot; civil commotion; bursting or overflowing of water tanks, apparatus or pipes; loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed; flood; labor disturbances; earthquake; malicious damage; or any other casualty or act of God to the fullest extent permitted by law. Lessee, and to the extent that this Lease is conveyed, transferred, assigned or sub-leased, shall maintain, at its own expense, an “All Risk” insurance policy against the risks enumerated below with a reputable insurance company of recognized responsibility. Such insurance shall be maintained at all times in an amount as specified in this Article. Provided always, however, that Lessee shall bear all risk of loss of or damage to such property for the entire Lease term for any work or other responsibilities required to be performed under the provisions of this Lease, except as otherwise provided for by the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680).

In addition, Lessee shall maintain at its sole expense, all that insurance further required in accordance with this Article. Maintenance of insurance required in accordance with this Article must include acts resulting from the willful misconduct, lack of good faith, or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees or invitees or by any failure on the part of Lessee to fully perform its obligations under this Lease. Maintenance of insurance required in accordance with this Article shall effect no limitation on Lessee’s liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees, or invitees or by any failure on the part of Lessee to fully perform its obligations under the Lease.

B. **Insurance:**

1. **The Lessee’s Insurance:** Lessee, at its expense from Project funds, shall carry and maintain with regard to the Property, the following insurance during the Lease term:

a. All-risk property and casualty insurance against the risks enumerated in Section “A” of this Article in an amount at all times equal to at least 100% of the full replacement value of the Improvements to the Property, to include the Project;

b. Public liability and property damage insurance, including but not limited to, insurance against assumed or contractual liability under this Lease, with respect to the Property as specified above, to afford protection with limits of liability in amounts approved from time to time by the Department, but not less than \$[Insert #] in the event of bodily injury and death to any number of persons in any one accident, and not less than \$[Insert #] for property damage;

c. Workers’ compensation or similar insurance in form and amounts required by law;

d. All other types of insurance imposed by applicable legal requirements or

customarily carried and maintained by owners and operators of similar properties, and as the Department may reasonably require for its protection;

e. All amounts of insurance required by this Article shall be adjusted annually, to reflect increases in 100% of the full replacement value of the Property. Lessee agrees that it will not subrogate to its insurance carrier any right or action that it has or may have against the Department for any loss covered by insurance, nor will Lessee, if it is suffering (or about to suffer) such loss, prosecute any suit against the Department by reason of such loss for which it is covered by insurance. Lessee agrees to notify its insurance carrier(s) of the provisions of this Article.

2. **The Lessee's Contractor's Insurance:** During the Lease term, Lessee shall require any contractor performing work on the Property to carry and maintain at no expense to the Department the following insurance:

a. Comprehensive general liability insurance, including but not limited to, contractor's liability coverage and contractual liability coverage of at least \$[Insert #] with respect to personal injury or death, and one million dollars (\$1,000,000.00) with respect to property damage.

b. Workers' compensation or similar insurance in form and amounts required by law; and

c. Any other insurance as the Department may reasonably require in order to protect itself and its personnel in the discharge of its duties and obligations hereunder.

Lessee and/or Lessee's contractors shall be obligated to correct any damage caused by or attributable to such contractor or subcontractors for the work or materials performed by or on behalf of Lessee.

3. **Policy Provisions:** All insurance, which this Lease requires Lessee to carry and maintain or cause to be carried or maintained pursuant to this Section B shall be in such forms, for such amounts, for such periods of time, and with such insurers as the Secretary shall approve. All policies or certificates issued by the respective insurers for public liability and all-risk property insurance will name the Department and Lessee as insured or joint loss payees as their respective interests appear, shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Lessee or the Department or any other person, and provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt of notice by the Department in all such instances. In no circumstance will Lessee be entitled to assign to any third party rights of action that Lessee may have against the Department. Further, each such policy shall provide that the insurer shall furnish written notice to the Department thirty (30) days in advance of the effective dates of any reduction or cancellation of such policies.

4. **Delivery of Policies:** Lessee shall deliver promptly to the Department a certificate of insurance or a certified copy of each policy of insurance required by this Lease and shall also deliver no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks, together with

appropriate evidence of payment of the premiums.

C. **Loss or Damage:**

1. In the event that the Property or any part thereof, is damaged by fire or by other casualty, whether or not such causality is the fault of, or results from negligence of Lessee, other than the results of negligence of Department personnel cognizable under the Federal Tort Claims Act (28 U.S.C. §§ 2671-2680), Lessee shall: (a) within thirty (30) days of such damage file an insurance claim seeking sufficient proceeds to cover such damage; and (b) within one hundred twenty (120) days of receiving such proceeds, repair, restore, or rebuild the Property to its original condition by applying all such monies towards that result. Any repairs or reconstruction shall be performed in accordance with plans and specifications approved by the Department, provided that if the repairs or reconstruction diligently pursued cannot be reasonably completed within one hundred twenty (120) days, Lessee shall have such time as is reasonably required and agreed to by the parties to complete, as applicable, the repair or construction.

2. If Lessee refuses, or fails to repair, restore, rebuild, or demolish the Property or any part thereof so damaged or destroyed, to the satisfaction of the Department in accordance with Article 13.C.1 above, the Department may terminate this Lease by providing written notification to Lessee. In such event, title to the Improvements placed on the Property shall vest in the Department without notice or further action being required on the Department's part, and the Department may undertake the repair, restoration, rebuilding, or demolishing of the Improvements placed on the property or the damaged or destroyed portion thereof, and may complete it, by contract or otherwise, and may take possession of and use any materials on the work site necessary for completing the work. Lessee and its sureties shall be liable for any damages or costs incurred by the Department to repair, restore, rebuild, or demolish the Improvements placed on the Property, or the damaged or destroyed portion thereof. This liability includes costs incurred by the Department in completing the work.

D. **Effect of Condemnation.** If all or a substantial portion of the Lessee's right, title, and interest hereunder shall be condemned, appropriated, or taken under the power of eminent domain by a taking authority, or conveyed in lieu of condemnation (each such event shall hereinafter be referred to as a "Taking"), and if, in Lessee's reasonable judgment, the remainder of the Property is not sufficient to permit Lessee to operate the Property under this Lease in a manner that is economically viable and Lessee so notifies the Department in writing, then the Lease term shall terminate at the time title to the Property vests in the Federal Government or other taking authority (hereafter referred to individually or collectively if applicable as the "Taking Authority") via the Taking; provided, however, that Lessee's rights under this Section shall be subject to the rights of the holder of any Leasehold Mortgage. Any award monies paid or payable by the taking authority in connection with the Taking shall be payable to Lessee and/or to the Leasehold Mortgagee, as their interests appear, but such monies shall be subject to any appropriate offset(s) if applicable law so allows and the Lessee is determined to owe outstanding monies to the Taking Authority in connection with this Agreement, any other Government contract(s), or any other contracts or legal obligations with such Taking Authority.

ARTICLE 14 -DELIVERY, RESTORATION, AND SURRENDER

A. **Delivery of the Property to Lessee.** Upon the Effective Date, the Department shall deliver physical possession of the Property to Lessee, free and clear of any tenancy or occupancy by third parties, except as permitted in Article 5 above.

B. **Reversion of Leasehold Title and Vesting of Improvements.** Upon the expiration or termination of this Lease, all right, title and interest of Lessee (and anyone claiming by, under, or through Lessee) in and to the Property, Improvements, and all machinery, equipment, fixtures, and personal property attached or used in connection with the Property, whether or not the same become fixtures, shall immediately revert to and/or vest in the Department without compensation therefor, and without any further action by the parties. However, should any further action be necessary to accomplish such reversion and vesting, Lessee agrees to cooperate with VA and take all actions reasonably necessary to accomplish the same. No claim for damages against VA or its officers or agents shall be created or made on account of such expiration or termination of this Lease.

C. **Surrender of the Property by Lessee.** Unless the Property is disposed of pursuant to Article 8 above and subject to the provisions of Articles 13.C.2, 21 and 22 of this Lease, Lessee shall at its sole cost and expense and on or before the expiration or earlier termination of this Lease, vacate and deliver physical possession of the Property, together with the Improvements located thereon, to the Department. At that time, the Property shall be in good order, condition and repair, and free and clear of any tenancy or occupancy by third persons and/or sublessees. If Lessee shall fail, refuse, or neglect to vacate the Property and remove its and its Subtenant's personal property, then upon expiration or termination of this Lease, such personal property shall be considered abandoned and, at the option of the Department, either become the property of VA without compensation therefor, or the Department may cause it to be removed and/or destroyed at the expense of Lessee, and no claim for damages against the Department, its officers, or agents shall be created or made by or on account of such removal and/or destruction.

ARTICLE 15 - ENVIRONMENTAL PROVISIONS

A. To the extent the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601-9675 ("CERCLA"), the Resource Conservation Recovery Act, as amended, 42 USC 6901, et seq. ("RCRA"), or other applicable environmental law properly imposes liability, loss, expense, damage, or cost upon VA for any matter relating to any hazardous material or otherwise of an environmental nature on or affecting the Property due to (1) the United States' status as Federal owner of the Property, (2) acts of VA and/or former owners on or affecting the Property, or (3) acts or omissions of government contractors on or affecting Property that occurred while VA had jurisdiction and control of the Property, VA shall indemnify Lessee, its directors, partners, officers, trustees, members, employees, agents, successors, and assigns ("Indemnitees") for any liability, loss, expense, damage, or cost incurred or suffered by the Indemnitees and arising from any of the foregoing acts set forth in Clauses (1), (2), and/or (3) and properly assessable against VA under CERCLA, RCRA, or other applicable environmental law. Lessee shall immediately notify VA upon receipt of any notices, claims, or

other information that identifies any environmental problems on or related to the Property which may require Lessee and/or VA action and/or expenditure of funds.

Consistent with the Anti-Deficiency Act (Title 31 U.S.C. Sections 1341 and 1501), the payments of VA with respect to this indemnification shall not exceed appropriations available to VA which can be lawfully expended for such purposes at the time of the claim; and nothing in this Lease may be construed as implying that Congress will at a later date appropriate funds to meet any deficiencies.

B. Notwithstanding Article 15.A above, to the extent Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), the Resource Conservation Recovery Act, as amended (“RCRA”), or other applicable environmental law properly imposes liability, loss, expense, or damage, or cost upon VA for any matter relating to any hazardous material or otherwise of an environmental nature on or affecting the Property due to acts of Lessee, its contractors, builders, sublessees, agents, employees, and/or licensees relating to the Development, including any environmental remediation, which occur after the Effective Date, Lessee shall indemnify VA for any liability, loss, expense, damage, or cost incurred or suffered by VA and properly assessable against Lessee under CERCLA, RCRA, or other applicable environmental law. Lessee shall immediately notify VA upon receipt of any notices, claims, or other information that identifies any environmental problems on or related to the Property which may require Lessee and/or VA action and/or expenditure of funds.

C. In accordance with Article 15.B above, if and to the extent that VA during the Lease term is held, by a final decision of the highest court or other adjudicative body of competent jurisdiction to which the matter has been presented, liable for costs and/or damages associated with the improper treatment, disposal, and/or release of one or more “Hazardous Substances” (as defined in Article 33 below) on or affecting the Property, VA at its sole and absolute discretion, may seek to initiate good-faith discussions and negotiations with Lessee, for Lessee on VA’s behalf and upon the parties’ consummation of a separate written agreement, to undertake and complete any and all required environmental remediation and abatement activities in accordance with all applicable Federal, State, and local law.

D. Should additional environmental studies under the National Environmental Policy Act, 42 U.S.C §§ 4321-4370d, as amended (“NEPA”), CERCLA, or other applicable environmental law become necessary during the Lease term due to proposed development activities beyond the scope of Project development as reflected in the Design Plans and Development Plans referenced in Article 10.A, then unless the parties otherwise agree in writing, the fees, costs, and expenses necessary to perform such studies shall be the sole responsibility of Lessee.

ARTICLE 16 - BONDS OF SECURITY

Not less than thirty (30) days prior to undertaking any renovation or construction, Lessee shall furnish evidence of a “Payment and Performance Bond” between Lessee and the construction contractor, with a sum equal to one hundred percent (100%) of Lessee’s total costs of construction, development, and renovation. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety of Federal

bonds will be accepted. The United States of America, acting through the Secretary, shall be named as co-beneficiary on each "Payment and Performance Bond" (including subcontract bonds) obtained by Lessee. The Department shall have the right to approve or reject any and all terms and conditions of any and all bonds obtained by Lessee pursuant to this Lease. In addition, the terms and conditions of each "Payment and Performance Bond" shall be subject to the prior approval of the Department.

ARTICLE 17 - NOTICES

- A. All notices, or other correspondence required under or arising from the terms of this Lease from the Department to Lessee shall be served on or mailed to Lessee's designated representative, who shall notify the DVR in writing of any change in Lessee's designated representative, and/or the address or office to be notified. All notices or other correspondence required or arising from the terms of this Lease from Lessee to the Department shall be served on or mailed to the DVR who shall notify Lessee's designated representative in writing of any change in the DVR , and/or the address or office to be notified.
- B. All notices, reviews, approvals and other communications required or permitted under this Agreement shall be in writing and will only be deemed properly given and received (a) when actually given and received, if delivered in person to a party who acknowledges receipt in writing; or (b) one (1) business day after deposit with a private courier or overnight delivery service, if such courier or service obtains a written acknowledgment of receipt; or (c) three (3) business days after deposit in the United States mails, certified or registered mail with return receipt requested and postage prepaid; it being understood and agreed that the period for any approval to be given hereunder shall run from the party's receipt of the documentation required for such approval as described herein with a formal written request for such approval shown thereon. The designated representatives shall be:

Department: Department of Veterans Affairs
[insert POC name and address]
Attn: [insert VA job title]

With copies to: Department of Veterans Affairs
Office of Asset Enterprise Management (044C)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Phone: (202) [____]FAX: (202) -[____]
Attn: DVR

Department of Veterans Affairs
Office of Asset Enterprise Management (044C)
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Phone: (202) [__]
Fax: (202) [__]
Attn: Post Transaction Team Leader

Department of Veterans Affairs
Office of General Counsel (021A)
Professional Staff Group I
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Phone: (202) [__]
Fax: (202) [__]
Attn: Deputy Assistant General Counsel (EU Leasing)

Lessee: [insert name and address]
Attn: [insert job title]

With Copies To: [insert name and address of copy recipients]

ARTICLE 18 - ASSIGNMENT AND SUBLETTING

A. **The Lease Is Binding Upon Lessee's Successors and Assigns.** Subject to and in accordance with Article 18.F below, Lessee hereby agrees that all of the covenants, conditions, obligations and liabilities contained in this Lease shall be binding upon and inure to the benefit of any successors and assigns of Lessee (including, without limitation, a Leasehold Mortgagee or a purchaser/assignee in foreclosure, but only during or arising from the period of their respective possession or ownership of the Property) to the same extent as if the successors and assigns were in each case named as a party to this Lease.

B. Subject to the provisions of Article 19 and except as set forth in Section D of this Article 18, Lessee may not sell, convey, transfer or assign this Lease or any interest therein, or in the Property, or grant an interest, privilege or license in connection with this Lease, without the prior written consent of the Department, which consent shall not be unreasonably or arbitrarily withheld or delayed, so long as the Department determines that the assignment or sale is not inconsistent with the terms and conditions of this Lease and that such assignee or purchaser is a responsible party ("Responsibility Determination"). Factors to be considered by the Department in making a responsibility determination include, but are not limited to, a determination that the proposed successor or assignee: **(1)** expressly agrees to at all times use the Property in accordance with the terms and conditions of the Lease; **(2)** has provided the Department with the certification described in Article 18.F; **(3)** expressly agrees and understands that the proposed assignment or sale is subject to the rights, title and interests of the United States and VA under the Lease; **(4)** is not, and any of its principals are not, entities presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from any Federal Procurement, Non-procurement or Reciprocal Programs, nor has received or is the subject of convictions, adverse civil judgments, or criminal or civil charges from contracting with the Department or any other branch, department, division, commission, bureau or other agency of the United States

Government or participating in Federal Non-Procurement programs, all as more fully described in Article 19.F.1(a) and (b); (5) does not pose a safety or security risk as determined by the Secretary of State, including but not limited to any person who either represents a country that, or is a member of or provides political, financial, or military support to a group that is listed in the most current "Patterns of Global Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at http://www.state.gov/www/global/terrorism/annual_reports.html; (6) has an adequate record of successfully operating and maintaining prior projects similar to that of the Project; and (7) has an adequate financial history and profile (net worth, cash flow, and credit support) to successfully meet the financial commitments of the Project and the Lease's terms and conditions.

C. When making any Responsibility Determination, the Department shall have fifteen (15) business days following written notice from Lessee to object to the proposed assignee or transferee. In the event that the Department based on the criteria in Section B above "rejects" the proposed assignee or transferee, the Department shall disclose the nature and scope of the conflict to Lessee and shall provide Lessee fifteen (15) days thereafter within which to provide additional information and request in writing that the Department reconsider its determination. The Department, under reconsideration, may grant or deny approval of the proposed assignee or transferee in accordance with the "factors" identified in items (1) through (7) of Section B above, and shall so notify Lessee of its determination in writing within fifteen (15) days of the reconsideration request. Alternatively, if the Department fails to object within said fifteen (15) day period, it shall be deemed to have waived any objection. However, if upon reconsideration, the Department continues to object based upon the aforementioned "factors," and timely advises Lessee of the same, the parties will continue working together in good faith to resolve the issue(s), subject to the parties' rights in Article 24 below.

D. Notwithstanding Articles 18.B and C, but subject to Article 7, the subleasing of any part of the Project, and any other Improvements located on the Property and made available for use and occupancy, is freely permitted without the prior consent of the Department, provided that in the case of a sublease (or other agreement) to a tenant other than a natural person residing in any of the aforementioned improvements (a "Space Tenant"), Lessee shall notify the Department in writing of the name, and address of such Space Tenant and the nature of its business; identify the property and premises being subleased; and notify VA in writing that to the best of Lessee's knowledge and belief: (1) the proposed sublease to the Space Tenant does not violate any terms, covenants or conditions of this Lease; (2) based upon Lessee's internet website search of <http://epls.armet.gov/> (as said website and/or its underlying list may change or be updated from time to time) within the immediately preceding thirty (30) days, the prospective Space Tenant does not appear listed on the most current "Excluded Parties List System" published by the U.S. General Services Administration at www.epls.gov; and (3) based upon Lessee's internet website search of <http://www.state.gov/s/ct/rls/crt/> (as said website and/or its underlying list may change or be updated from time to time) within the past thirty (30) days, the prospective Space Tenant does not appear in the latest edition of the publication entitled "Country Reports on Terrorism."

E. The Department agrees that during the Lease term and subject to the terms and conditions of this Lease, any approved assignee or transferee shall have the right to attorn to the Department, and the Department will accept such attornment and not disturb the occupancy or

rights of such assignee or transferee pursuant to its transfer, assignment, grant, purchase, or sublease agreement with Lessee. The Department agrees to execute any non-disturbance and attornment agreement as may be reasonably requested by Subtenant, and which the Department reasonably finds to be reasonable, to memorialize and effectuate the provisions of this Article.

F. Any succession or assignment permitted and carried out pursuant to this Article is contingent upon the execution of a written certification by the proposed assignee or transferee stating that such entity agrees to comply with all terms, covenants, obligations and liabilities contained in this Lease. The assignee or transferee shall be deemed to have assumed all of the obligations of Lessee under this Lease, but such shall not relieve Lessee of any of its obligations under this Lease as provided in Section A above, except upon the express release therefrom, if any, by VA in its sole and absolute discretion.

ARTICLE 19 - ENCUMBRANCE OF THE PROPERTY

A. Prohibition Against Encumbrance of the Property:

1. Nothing contained in this Lease authorizes Lessee to encumber in any manner, during the Lease term, the United State's (i.e., the Department's) fee interest in the Property. Such fee interest in the Property may not be subordinated or otherwise made subject to any deed of trust, mortgage, or other lien, or other encumbrance granted, suffered, or permitted by Lessee.

2. Lessee covenants that it shall not create or cause to be created a mortgage, lien, or other encumbrance to be placed upon the Property, other than such mortgage, lien, or encumbrance to be placed on Lessee's leasehold interest therein pursuant to Section B of this Article. Subject to Lessee's rights in Article 19.A.3 below, the creation of any mortgage, lien, or encumbrance, other than permitted by Paragraph B of this Article, shall be deemed a Lessee Event of Default on the date of its execution of filing of record in accordance with the provisions of Articles 21 and 22 of this Lease.

3. Lessee may in good faith and at Lessee's own expense contest the validity of any asserted lien, claim, or demand not permitted under this Article; provided Lessee has furnished a bond or cash deposit freeing the Property from the effect of such a lien claim, and provided the Department with written evidence thereof. If such lien is not promptly discharged by Lessee: (1) within thirty (30) days after a judgment is rendered following any unsuccessful challenge of Lessee as to the validity of the asserted lien or (2) if no such challenge is made, within such thirty (30) days after Lessee receives a written request from VA to discharge or free the Property from the effect of such a lien, the Department may, but shall not be obligated to, discharge such lien. Any amount so paid by the Department for any such purpose, with interest thereon at the prevailing rate of interest for "90-day U.S. Treasury Bills" or its successor from the date of any such payment, shall be repaid by Lessee to the Department not later than thirty (30) days following Lessee's receipt of written notice from the Department.

B. Encumbering Lessee's Leasehold Interest:

1. Lessee may encumber its leasehold interest to the extent necessary to provide financing for the costs of development, construction, renovation, operation, and maintenance of the Property as specified in this Lease. However, any loan involving a security interest in the leasehold may not be closed until the Department has consented to the financing.

2. Promptly after assigning this Lease or encumbering the Property as provided herein (i.e., Article 19.A.1 and 19.A.2 above), Lessee shall furnish the Department a true and verified copy of any leasehold mortgage (“Leasehold Mortgage”) and other documents creating or securing the indebtedness thereby secured, and written notice setting forth the name and business address of the Leasehold Mortgagee (“Leasehold Mortgagee”). During the Lease term, Lessee also shall provide the Department with a copy of any amendments or modifications to the Leasehold Mortgage (and any other documents creating or securing the indebtedness), and written notice of any changes to the name and/or business address of the Leasehold Mortgagee.

3. During the Lease term, the making of any Leasehold Mortgage shall not be deemed to constitute an assignment, nor shall any Leasehold Mortgagee not in possession of Lessee’s leasehold estate be deemed an assignee of the leasehold estate so as to require such Leasehold Mortgagee to assume the obligations of Lessee hereunder; however, as further provided in this Article 19.B.3, any Leasehold Mortgagee in possession, purchaser at a foreclosure sale of the leasehold estate, or assignee pursuant to an assignment in lieu of foreclosure shall be deemed to be an assignee of Lessee and shall be deemed the successor to (but only for the period of its leasehold ownership) the obligations of Lessee hereunder from and after the date of such purchase or assignment (“Successor”). Such Successor shall be fully bound by the provisions of this Lease, except to the extent that any unperformed obligations of Lessee at the time of, as applicable, such possession, foreclosure, or assignment in lieu of foreclosure, are personal in nature and incapable of being performed by the Successor.

4. Lessee agrees to make all payments and perform all obligations required or secured by any Leasehold Mortgage as and when the same are required to be made or performed thereunder.

5. In no event shall Lessee commence any development, construction, or renovation activities regarding the Project, or any other Improvements on the Property after the Effective Date that are made available for occupancy, until Lessee provides VA with documentary evidence that Lessee has adequate financial resources to undertake and complete that respective aspect of the Project.

C. Notices to Leasehold Mortgagees:

1. If a true and verified copy of a Leasehold Mortgage shall have been delivered to the Department together with a written notice of the name and address of the Leasehold Mortgagee then, notwithstanding anything to the contrary set forth in this Lease:

2. The Department shall mail to each such Leasehold Mortgagee a duplicate copy of any and all notices that the Department may be required from time to time to serve upon Lessee pursuant to the provisions of this Lease; and no notice by the Department to Lessee hereunder shall be deemed to have been given unless and until a copy thereof has been mailed to the Leasehold Mortgagee.

3. The Department shall provide each Leasehold Mortgagee that is properly identified to VA pursuant to 20.B above with a duplicate copy of any notice sent to the Lessee (or any of its successors or assigns) advising of any change in the proper representative and/or office to be notified when sending notices or correspondence to the Department.

D. Lease Termination Protection:

1. Subject to Lessee's covenant to advise VA of each and every Leasehold Mortgagee pursuant to Article 19.B, the Department shall not agree to any mutual termination nor accept any surrender of this Lease (except upon the expiration of the Term) nor shall the Department consent to any material amendment or modification of this Lease which affects the Lease terms and/or the Leasehold Mortgagee's rights, without the prior review and written consent of the Leasehold Mortgagee.

2. Notwithstanding any default by Lessee in the performance or observance of any covenant, condition or agreement of this Lease on the part of Lessee to be performed or observed, all rights of the Department to terminate this Lease for such Lessee default shall be subject to and conditioned upon (a) the Department having first given the Leasehold Mortgagee written notice of, and an opportunity to cure such default per Section E below, and (b) the Lessee's and Leasehold Mortgagee's having failed to remedy such default as set forth in, and within the applicable time period specified by Section E of this Article.

3. Each Leasehold Mortgagee who is properly identified to VA pursuant to Article 19.B above shall have the right, but not the obligation (except as otherwise may be provided herein as to a Leasehold Mortgagee in possession of the Property), at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to provide any insurance, to pay any taxes and make any other payments, to make any repairs and improvements and do any other act or thing required of Lessee hereunder, and to do any act or thing which may be necessary and proper in the performance and observance of the covenants, conditions and agreements hereof to prevent the termination of this Lease. All payments so made and all things so done and performed by the Leasehold Mortgagee shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by the Leasehold Mortgagee.

E. Leasehold Mortgagee Cure Rights:

1. A Leasehold Mortgagee who undertakes to remedy an uncured event of default by Lessee shall, except as provided in Paragraph 2 below, have sixty (60) days after receipt of notice from the Department setting forth the nature of such default within which to remedy the default.

2. If the Lessee default is such that possession of the Property is reasonably necessary to remedy the default, Leasehold Mortgagee shall have a reasonable time, not to exceed one-hundred twenty (120) days (unless VA, by prior written consent in its sole discretion, approves a longer period), after the expiration of such initial sixty (60) day cure period within which to remedy such default; provided that: (a) the Leasehold Mortgagee shall have acquired Lessee's leasehold estate created hereby or commenced foreclosure proceedings, an action for the appointment of a receiver, or other appropriate proceedings in the nature thereof within such sixty (60) day period or prior thereto, and shall be diligently and continuously prosecuting any

such proceedings to completion; (b) notwithstanding anything in this Lease to the contrary, the Leasehold Mortgagee shall have fully cured any uncured default in the payment of any monetary obligations of Lessee under this Lease within such sixty (60) day period and thereafter shall continue to faithfully perform all such monetary obligations that do not require possession of the Property; and (c) after gaining possession of the Property, the Leasehold Mortgagee or the receiver, as the case may be, shall perform all of the covenants of Lessee reasonably capable of performance by the Leasehold Mortgagee or the receiver during the period of foreclosure or receivership, as the case may be, as and when the same are due, and shall immediately proceed with all due diligence either to assign the Property or enter into a Replacement Lease with VA for the Property, as described in to Article 19.F.2. below.

3. If the Leasehold Mortgagee establishes to VA's satisfaction that a Lessee default is personal in nature or otherwise is not susceptible of cure by the Leasehold Mortgagee, then, provided the Leasehold Mortgagee fully complies with and meets all requirements of clauses (a) through (c) of Section E.2 above, the default shall be deemed remedied as between VA and the Leasehold Mortgagee.

4. Notwithstanding anything in this Lease to the contrary except for the provisions of Article 19.F.2 below and Lessee's obligation to inform VA of each Leasehold Mortgagee pursuant to Article 19.B.2 above, should the Leasehold Mortgagee(s) fail to remedy an uncured Lessee default pursuant to and within the applicable time period specified in this Section E, the Department shall immediately thereafter be permitted to terminate the Lease by issuing written notice thereof to the Lessee and each Leasehold Mortgagee identified per Article 19.B.2 of this Lease.

F. Foreclosure of Leasehold Mortgage:

1. Subject to Article 19.B.2, and pursuant to and in conjunction with an assignment or foreclosure under this Article, the Leasehold Mortgagee and its successors and assigns may assign or sell the leasehold estate subject to and consistent with Subparagraphs (i) through (iv) below, provided that the Leasehold Mortgagee or assignee provides the Department with not less than thirty (30) days advance notice or the maximum period of advance notice allowed under applicable law of any such assignment or sale, and based upon its review determines that the Successor to the Property is a "responsible" party. Factors to be considered by the Leasehold Mortgagee or assignee in making this responsibility determination shall include, but are not limited to:

(i) the Leasehold Mortgagee's receipt of a written certification ("Certification") from the Successor (which the Leasehold Mortgage shall copy and forward to the Department not less than five (5) days before such assignment or sale) confirming that the Successor: (1) expressly agrees to at all times use the Property in accordance with the terms and conditions of the Lease; (2) expressly agrees to observe and perform all of the Lessee covenants and comply with the terms and conditions contained in the Lease, (3) expressly agrees and understands that the proposed assignment or sale is subject to the rights, title and interests of the United States and VA under the Lease; (4) is not, and to the best of its knowledge any of its principals are not, presently debarred, suspended, proposed for debarment, or declared ineligible for the award of

contracts by any Federal agency and have not, within a three (3) year period preceding the date of certification, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, tax evasion, or receiving stolen property; and are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with commission of any of these offenses; and (5) does not pose a safety or security risk as determined by the Secretary of State, including but not limited to any person who either represents a country that, or is a member of or provides political, financial, or military support to a group that is listed in the most current "Patterns of Global Terrorism" report, issued by the Secretary of State in compliance with 22 U.S.C. 2656f(a), available from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402 and also available at http://www.state.gov/www/global/terrorism/annual_reports.html;

(ii) the Lessee's determination that the Successor has at least three (3) years of prior relevant experience successfully operating and maintaining projects similar to that of the Project;

(iii) the Leasehold Mortgagee's determination that the Successor has an adequate financial history and profile (net worth, cash flow, and credit support) to successfully meet the financial commitments of the Project and the Lease's terms and conditions; and

(iv) the Leasehold Mortgagee's providing of a written certification to VA within five (5) days before such assignment or sale confirming that the Successor is not on any of the procurement, non-procurement, or reciprocal lists provided at the "Excluded Parties List System" website located at <http://www.epls.arnet.gov>.

2. Within thirty (30) days after any foreclosure and termination of this Lease by reason of any uncured event of default by the Lessee hereunder (including, if permissible given applicable Federal, State, and local laws, regulations, and proceedings, any termination of this Lease in connection with any bankruptcy or similar proceeding), VA agrees to amend this Lease or execute a Replacement Lease upon the same terms and conditions hereof ("Replacement Lease") with a Successor who requests such Replacement Lease and complies with the provisions of this Paragraph 2, including subparagraphs "a" through "c" immediately below. Should two or more Leasehold Mortgagees request to enter into a Replacement Lease pursuant to this Paragraph, the most senior Leasehold Mortgagee in possession will have the first right to enter into the Replacement Lease with the Department.

a. The Replacement Lease shall be for the remaining Lease term effective as of the effective date of the termination of this Lease, but with the same right of extension as provided in the Lease, and at the same rent, and additional rent or consideration, if any, and upon the same terms, covenants and conditions (including all options to renew but excluding such terms, covenants and conditions that shall have already been fulfilled) of this Lease.

b. In the event that the Successor enters into the Replacement Lease, the Successor shall pay or cause to be paid to the Department any and all sums which at the time of execution

and delivery thereof are due it under this Lease and in addition, all reasonable expenses, including reasonable attorneys' fees which the Department shall have incurred by reason of the actual or deemed termination of this Lease and the preparation, execution and delivery of the Replacement Lease.

G. Any loan document and security instrument used to establish a security interest in the leasehold that does not include (or incorporate without modification) the foregoing provisions recited in this Article shall constitute an event of default by Lessee.

ARTICLE 20 - TAXES

A. The Department's interest in this Lease, and United States' fee interest in the Property shall not be subject, directly or indirectly, to any State or local laws relative to taxation, fees, assessment or special assessments.

B. In addition, Lessee shall pay and discharge, at least thirty (30) days prior to delinquency, all taxes, general and special assessments, charges, and fees of every description that during the Lease term may be levied or assessed against the Property and all interests therein, whether belonging to the Department or Lessee, or to which either of them may become liable in relation thereto prior to the delinquency date thereof. Lessee agrees to protect and hold harmless the Department and the Property and all improvements in, on, or about the same from all liability for any and all such taxes, assessments, charges, and fees, together with any interest, penalties, or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof. During the Lease term and at its sole cost and if the Department so requests, Lessee shall cause all taxes, assessments, charges, and fees levied or imposed upon any personal property situated in, on, or about the Property to be taxed or assessed separately from the Property and not as a lien thereon.

C. It is understood that it is the intent of the parties that this be an absolute net Lease, and that the Department shall not be obligated to pay any charges, impositions, or assessments directly or indirectly made against the Property during the term hereof.

D. In the event that Lessee is not required to make deposits on account of real estate taxes with the holder of any mortgage permitted by Article 17 of the Lease, and in the event that Lessee fails at any time during the Lease term to pay real estate taxes when due, then the Department shall have the right upon written notice to the Lessee, to require that Lessee deposit negotiable securities or other collateral to guarantee the payment of such taxes, so that there shall be sufficient sums available to pay same at least thirty (30) days prior to the due date of such taxes.

ARTICLE 21 - EVENTS OF DEFAULT BY LESSEE

A. Each of the following actions or omissions by Lessee shall be considered an event of default by Lessee:

1. Lessee fails to use its leasehold interest obtained pursuant to this Lease and the Property in a manner consistent with Article 7, and such failure remains uncured following ninety (90) days written notice from the Department.

2. The Project and Improvements are not substantially completed within [Insert #] days after the Effective Date, in a good a workmanlike manner and pursuant to the Development Plan referenced in Article 10.A. Such date may be extended by events of Force Majeure or by mutual agreement of the parties.

3. Lessee fails to pay any monetary obligation due under the provisions of this Lease and such failure continues for a period of forty-five (45) days after the Department gives written notice to Lessee that the same is due and payable.

4. Except for all other Lessee Events of Default expressly covered in the other Paragraphs of this Article 21, Lessee (or any permitted assignee or transferee in accordance with Articles 18 and 19) fails to perform any non-monetary obligation, representation, consideration, covenant or condition, to be performed under this Lease, and such failure is not cured within a period of ninety (90) days after Lessee's receipt of written notice from the Department describing the default, or if such default cannot reasonably be cured within ninety (90) days (as determined by VA in its reasonable discretion), Lessee has not commenced the remedying thereof within such ninety (90) day period or Lessee is not thereafter proceeding with due diligence to remedy such failure (it being understood that for any event of a default that is not susceptible of being cured by Lessee within ninety (90) days then the time within which Lessee may remedy such default shall be extended by VA for such period time, not to exceed one hundred twenty (120) days, as is reasonably necessary to complete a cure with continual due diligence).

5. The failure or refusal of Lessee to discharge any lien, claim, demand, or encumbrance, or to initiate appropriate action, to quiet any such claim within the time specified in Article 19.A, whether or not the Department exercises its right of discharge, or the failure or refusal of Lessee to make timely repayment to the Department of those sums expended to effectuate such discharge.

6. Lessee is (or becomes) insolvent or files a voluntary petition under any Federal or State Bankruptcy Code, or an involuntary case is filed hereunder against Lessee and the case is not dismissed within one hundred eighty (180) days. The filing of a voluntary or involuntary petition in bankruptcy shall result in the automatic termination of the Lease.

7. Lessee fails to comply with Article 6.B.19 of this Lease.

8. [Insert any other grounds for Lessee default].

ARTICLE 22 -REMEDIES FOR DEFAULT BY LESSEE

A. Subject to Articles 19 and 24, upon the occurrence of an event of default by Lessee, the Department may exercise any right, remedy or privilege, which may be available to it under this Lease or under applicable local, State or Federal law. All remedies shall be cumulative and the election of one shall not preclude the exercise of another, at the same time or subsequently. Failure to exercise a remedy shall not constitute a waiver thereof. Lessee shall remain liable to the extent permitted by law with respect to all covenants and indemnities of this Lease. Additionally, upon default by Lessee of this Lease, and Lessee's failure to cure or to commence to cure, within any applicable cure period, the Department may, subject to an in accordance with Articles 14, 19, and 24, immediately seek to terminate this Lease and recover its damages. Upon the Department's successful termination of the Lease, Lessee shall be immediately required pursuant to Article 14, to surrender possession of the Property, together with all Improvements located thereon, to the Department, and cooperate fully and in good faith to effect an orderly and efficient transition of the Property.

B. **No Termination for Convenience.** The Department shall have no right to unilaterally terminate this Lease for convenience.

ARTICLE 23 -EVENTS OF AND REMEDIES FOR DEFAULT BY THE DEPARTMENT

A. An event of default by the Department shall occur upon its failure to perform or observe any covenant or condition required by this Lease to be performed or observed, and such failure is not cured within ninety (90) days after the Department's receipt of written notice thereof, provided that such cure period shall be extended by Lessee for an additional thirty (30) days if such default cannot be reasonably cured within ninety (90) days and the Department is diligently attempting to cure the default.

B. Upon default by the Department, and the Department's failure to cure or to commence to cure, within the applicable cure period, Lessee may immediately seek to terminate this Lease and recover its damages in accordance with Article 24 hereto, and/or may exercise any other right, remedy, privilege that may be available to it under this Lease or applicable Federal, State, or local law.

ARTICLE 24 -DISPUTES

A. Lessee and the Department acknowledge and agree that disputes under this Lease shall be resolved under the Contract Disputes Act of 1978 (41 U.S.C. Sec. 601-613) (the "Disputes Act"), and that both Lessee and the Department will utilize Alternative Dispute Resolution procedures on all matters appealed by Lessee to the VA Board of Contract Appeals (including its successor, the Civilian Board of Contract Appeals, effective January 6, 2007, and any successor authority thereto), to the extent permitted under the Disputes Act, unless the parties then should otherwise agree.

B. In the event that the Disputes Act is not available or permissible under applicable law to resolve a dispute under this Lease, Lessee and the Department shall, to the extent permitted by

applicable law and regulation, resolve the dispute by arbitration. In that regard, the arbitration shall take place in Washington, D.C. unless the Department and Lessee otherwise agree in writing.

C. Interest Payable. Regardless of whether the dispute is resolved under the Disputes Act or otherwise, if the claim is resolved in favor of Lessee the Department shall pay interest in accordance with the Prompt Payment Act, 31 U.S.C. Section 3901, et seq.

D. Unless and until the Department otherwise agrees in writing, Lessee shall proceed diligently with performance of this Lease pending final resolution of any request for relief, claim, appeal or action arising under or relating to the Lease.

ARTICLE 25 -LEASE SUBJECT TO GENERAL PROVISIONS

This Lease and Lessee's occupancy of this Property shall be subject to the terms and conditions of the General Provisions attached hereto and by the reference made part of this Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

[INSERT NAME OF LESSEE]

Enhanced-Use Lessee

[Insert name of Lessee], a [insert State] [Insert business entity type]

By: _____
[insert signatory's name]

**THE UNITED STATES DEPARTMENT
OF VETERANS AFFAIRS**

Enhanced-Use Lessor

By: _____

Name: [_____]

Title: Assistant Secretary for Management

Pursuant to a Delegation of Authority dated: September 10, 2004

[General Provisions to follow]

GENERAL PROVISIONS

ARTICLE 26 - ASSIGNMENT OF CLAIMS

A. Lessee, under the Assignment of Claims Act, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 15, 48 C.F.R. § 32.800, and all applicable regulations promulgated thereunder (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this Lease in accordance with the Act.

B. Any assignment or reassignment authorized under the Act and this Article shall cover all unpaid amounts payable under this Lease and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Lease.

ARTICLE 27 - EQUAL OPPORTUNITY CLAUSE

A. If, during any twelve (12) month period (including the twelve (12) months preceding the award of this Lease), Lessee has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, Lessee shall comply with subparagraphs B(1) through (8) below. Upon request, Lessee shall provide information necessary to determine the applicability of this clause.

B. During performance of this Lease, Lessee agrees as follows:

1. Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

2. Lessee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. This shall include but not be limited to: (a) employment; (b) upgrading; (c) demotion; (d) transfer; (e) recruitment or recruitment advertising; (f) layoff or termination; (g) rates of pay or other forms of compensation; and (h) selection for training, including apprenticeship.

3. Lessee shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Secretary that explain this clause.

4. Lessee shall, in all solicitations or advertisement for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

5. Lessee shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, notice to be provided by the Secretary advising the labor union or workers’ representative of Lessee’s commitments under this clause and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. Lessee shall comply with Executive Order 11246, as amended, and the rules, regulations and orders of the Secretary of Labor.

7. Lessee shall furnish to the Secretary all information required by Executive Order 11246, as amended, and by the rules, regulations and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within thirty (30) days following the award, unless filed within twelve (12) months preceding the date of award.

8. Lessee shall permit access to its books, records and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purpose of investigation to ascertain Lessee's compliance with the applicable rules, regulations and orders.

C. If the OFCCP determines that Lessee is not in compliance with this clause or any rule, regulation or order of the Secretary of Labor, this Lease may be canceled, terminated or suspended in whole or in part, and Lessee may be declared ineligible for further Department contracts, under the procedures authorized in Executive Order 11246, as amended, the rules regulations and orders of the Secretary of Labor, or as otherwise provided by law.

D. Lessee shall include the terms and conditions of Section 29.B.1 - 8 in every subcontract or purchase order that is not exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

E. Lessee shall take such actions with respect to any subcontract or purchase order as the Department may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if Lessee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, Lessee may request the Department to enter into the litigation to protect the interests of the United States.

F. Notwithstanding any other clause in this Lease, disputes relative to this clause will be governed by the procedures in 41 CFR 60-11.

ARTICLE 28 -FACILITIES NONDISCRIMINATION

A. **Facility Defined.** As used in this Article, the term "facility" means stores, shops, restaurants, cafeterias, restrooms and any other facility of a public nature in the building in which the space covered by this Lease is located.

B. **Non-Discrimination by Lessee.** Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by Lessee solely to occupants, their employees, customers, patients, clients, guests and invitees.

C. **Remedies for Non-Compliance.** It is agreed that upon Lessee's noncompliance, the Department may take appropriate action to enforce compliance, may terminate this Lease or may pursue such other remedies as may be provided by law.

D. **Inclusion of Article In Other Contracts.** It is further agreed that from and after the date hereof Lessee will, at such time as any agreement is to be entered into or a concessions is to be permitted to operate, include or require the inclusion of the foregoing provisions of this Article in every such agreement or concession pursuant to which any person other than Lessee operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require Lessee to include or require the inclusion of the foregoing provisions of this Article in any existing agreement or concession arrangement or one in which the leasing party other than Lessee has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and unilateral right to renew or extend. Lessee also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as the Department may direct, as a means of enforcing the intent of this Article, including but not limited to termination of the agreement or concession and institution of court action.

ARTICLE 29 - GRATUITIES

A. The rights of Lessee under this Lease may be terminated by written notice if, after notice and a hearing, the Secretary determines that Lessee, its agent or another representative:

1. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official or employee of the Department; and
2. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

B. If this Lease is terminated under Article 29.A above, the Department is entitled to pursue the same remedies as in a breach of this Lease. The rights and remedies of the Department provided in this Section 30.B shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Lease.

ARTICLE 30 - COVENANT AGAINST CONTINGENT FEES

Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding, for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide agency as defined in 48 C.F.R. § 3.401. For breach or violation of this warranty, the Department shall have the right to cancel this Lease without liability or, in its discretion, to deduct from the rental or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

1. "Contingent fee," as used in this clause, means any commission, percentage, brokerage or other fee that is contingent upon the success that a person or concern has in securing a Department contract.

ARTICLE 31 - EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

A. Rights of the Comptroller General and Its Authorized Representatives

1. The Comptroller General of the United States or a duly authorized representative from the Government Accountability Office shall, until three (3) years after final payment under this Lease, have access to and the right to examine any of Lessee's directly pertinent books, documents, papers or other records involving transactions related to this Lease, provided that such records are then in existence. This paragraph may not be construed to require Lessee or its subcontractors to create or maintain any record that the Lessee or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

2. Lessee agrees to include in its first-tier subcontracts regarding the Project a clause to the effect that the Comptroller General or a duly authorized representative from the Government Accountability Office shall, until three (3) years after final payment under the subcontract, have access to and the right to examine any of the subcontractor's existing directly pertinent books, documents, papers or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes: (i) purchase orders not exceeding \$100,000; and (ii) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

3. The periods of access and examination in Paragraphs 1 and 2 above for records relating to: (i) appeals under the Disputes clause, (ii) litigation or settlement of claims arising from the performance of this Lease, or (iii) costs and expenses of this Lease to which the Comptroller General or a duly authorized representative from the Government Accountability Office has taken exception, shall continue until such appeals, litigation, claims or exceptions are disposed of.

B. Rights of the Department of Veterans Affairs

1. Upon receipt of a written request from the Department, Lessee shall grant to the Department access to Lessee's pertinent books, documents, papers or other records involving transactions directly related to this Lease (collectively "Business Documents") for purposes of examination and audit. Such access by the Department for purposes of examination and audit shall be limited to Business Documents dated within three (3) years prior to the date of Lessee's receipt of the Department's written request. The Department shall control and safeguard all information obtained during such examination and audit in accordance with the Freedom of Information Act, 5 U.S.C. Section 552 and the Privacy Act, 5 U.S.C. Section 552a. Lessee shall grant all other access for examination and audit to pertinent Lessee or sublessee Business Documents in accordance with applicable law.

2. Lessee agrees to include in any subleases under this Agreement a clause to the effect that the Department shall have access to and the right to examine any of the sublessee's Business Documents to the same extent as provided in Paragraph 1 of this Article with respect to Lessee.

3. The right of the Department to examine Lessee’s Business Documents shall be limited to the following matters in which VA is a party or has an interest hereunder: (i) payment, performance, and/or provision of the monetary and/or in-kind consideration, as applicable, which is to be provided to, on behalf of, or for the benefit of, the Department, and/or claims or disputes under the “Disputes” clause of this Lease; (ii) litigation or settlement of claims or disputes arising from the performance of this Lease in which VA is a party, or (iii) costs and expenses of this Lease to which the Comptroller General or a duly authorized representative of the General Accounting Office has taken exception, and shall continue until such appeals, litigation, claims or exceptions are disposed of.

4. The parties understand and agree that nothing in this Section B is intended or may be construed as a qualification, waiver, bar, limitation or restriction of any nature, kind, or effect on the legal authority otherwise granted the United States or any agency thereof to access, examine, review, copy, or seize such books, documents, papers or other records.

ARTICLE 32 - LABOR PROVISIONS

Unless the Lessee can demonstrate to the satisfaction of the Department that the Lease or the Project is exempt therefrom, Lessee shall comply with the requirements of the Davis-Bacon Act, as amended, 40 U.S.C. Section 3141, et seq. and the relevant rules, regulations and orders of the Secretary of Labor applicable thereto.

ARTICLE 33 - HAZARDOUS SUBSTANCES

A. **Presence and Use of Hazardous Substances.** Lessee shall not, without the Department’s prior written consent, keep on or around the Property, for use, disposal, treatment, generation, storage, or sale, any substance designated as, or containing components designated as, hazardous, dangerous, toxic, or harmful under federal, state or local law (hereafter collectively referred to as “Hazardous Substances”), and/or that is subject to regulation, by federal, state or local law, regulation statute or ordinance except as may be customary in projects similar to the Property and in compliance with all applicable laws. With respect to any such Hazardous Substance, Lessee shall:

1. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping, and submitting manifests, and obtaining and keeping current identification numbers with respect to any Hazardous Substances first brought upon the Property from and after the date hereof;

2. Submit to the Department true and correct copies of all reports, manifests, and identification numbers with respect to any Hazardous Substances first brought upon the Property from and after the date hereof at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;

3. Within sixty (60) days of the Department's request, submit written reports to the Department regarding Lessee's use, storage, treatment, transportation, generation, disposal, or sale of Hazardous Substances first brought upon the Property from and after the date hereof and provide evidence satisfactory to the Department of Lessee's compliance with the applicable governmental regulations with respect to any Hazardous Substances first brought upon the Property from and after the date hereof;

4. Allow the Department or the Department's agent or representative to come on the Property at all reasonable times with reasonable prior notice to check Lessee's compliance with all applicable governmental regulations regarding Hazardous Substances for which Lessee is responsible under the terms of this Lease;

5. Comply with minimum levels, standards or other performance standards or requirements that may be set forth or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Property, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease;

6. Comply with all applicable governmental rules, regulations, and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances; and

7. The Department shall have the right upon reasonable prior written notice and at reasonable times to enter upon the Property in order to inspect or monitor same if the Department has a reasonable belief that Hazardous Substances are present on the Property in violation of applicable law. If such inspection or monitoring by the Department confirms that Hazardous Substances are present and are in violation of applicable law, any and all reasonable costs incurred by the Department and associated with the Department's inspection of the Property and the Department's monitoring of Lessee's compliance with this Article, including the Department's reasonable attorney's fees and costs, shall be additional rent and shall be due and payable to the Department immediately upon demand by the Department.

B. **Cleanup Costs, Default, and Indemnification.** During the Lease term, Lessee shall be fully and completely liable to the Department for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed upon the Department by any governmental authority with respect to any use(s) of the Property after the Effective Date of this Lease related to disposal, transportation, generation, and/or sale of Hazardous Materials; provided, that liability and obligation by Lessee shall apply only to Hazardous Materials first brought upon the Property from and after the date hereof. Lessee shall indemnify, defend, and save the Department harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon the Department (as well as the Department's reasonable attorney's fees and costs) as a result of Lessee's use, disposal, transportation, generation, and/or sale of Hazardous Substances at the Property as described herein. Upon Lessee's default under this Article and the expiration of the applicable notice and cure periods set forth in Article 21 above, in addition to the rights and remedies set forth elsewhere in this Lease, the Department shall be entitled to the following rights and remedies:

1. At the Department's option, to terminate this Lease immediately; and/or
2. To recover any and all damages associated with the default, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by tenants of the Property, any and all damages and claims asserted by third parties and the Department's reasonable attorney's fees and costs.

ARTICLE 34 - MISCELLANEOUS PROVISIONS

A. Complete Agreement. This Lease and the Exhibits hereto contain the entire agreement between the parties with respect to the transactions contemplated by this Lease, and supersede all previous oral and written and all contemporaneous oral negotiations, commitments, writings and understandings.

B. Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one and the same instrument.

C. Amendment; Waiver. This Lease may not be amended or modified except in a writing signed by Lessee and the Department, nor may any rights hereunder be waived except by a writing signed by the party waiving such rights.

D. Article Headings. The headings contained in this Lease are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. When a provision, article, section or other provision of this Lease is referred to by number, the reference shall be deemed to be the correspondingly-numbered provision, article, section, or provision of this Lease unless another agreement, instrument or document is expressly identified, or unless the context otherwise clearly refers to another agreement, instrument or document.

E. Severability. Any provision of this Lease which is invalid, illegal or unenforceable in any applicable jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Lease invalid, illegal or unenforceable in any other jurisdiction.

F. Third Party Beneficiaries. No Person, firm or corporation that is not a party to this Lease shall be entitled to rely on or be deemed to be accorded any rights under any provision of or statement in this Lease.

G. Governing Law. This Lease shall be governed by and enforced in accordance with the laws of the United States and, to the extent such laws do not apply, then by the laws of the State of Ohio without regard to its principles of conflicts of law.

H. Interpretation. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The Department and Lessee have negotiated this Lease, have had an opportunity to be advised by legal counsel respecting the provisions contained herein and have had the right to approve each and every provision hereof. Therefore, this Lease shall not be construed against either the Department or Lessee as a result of the preparation of this Lease by or on behalf of either party.

I. Survival. All monetary obligations (together with any late payment interest payable under the Prompt Payment Act – 31 U.S.C. § 3901, et seq.) accruing before expiration of the Lease term shall survive the expiration or other termination of this Lease.

J. No Merger. There shall be no merger of this Lease or the leasehold estate created by this Lease with any other estate or interest in the Property by reason of the fact that the same person or entity may acquire, hold or own directly or indirectly: (a) this Lease, the leasehold interest created by this Lease or any interest therein; and (b) any such other estate or interest in the Property, or any portion thereof. No merger shall occur unless and until all persons and entities having an interest (including a security interest) in this Lease or the leasehold estate created thereby and any such other estate or interest in the Property, or any portion thereof, shall join in a written instrument expressly effecting such merger and shall duly record the same.

K. Relationship of the Parties. This Lease does not create the relationship of principal and agent, partnership, joint venture, association or any other relationship between the Department and Lessee.

L. Recording. This Lease shall not be recorded. The Department and Lessee, however, shall execute the Memorandum of Lease attached hereto as Exhibit G, and Lessee at its sole cost and expense is hereby permitted to record such memorandum in the official land records of Dayton, Ohio (or other appropriate land recording office).

M. Signage. No signage shall be installed or constructed on or over the Property except to the extent identified in a signage plan to be included as part of the Design Plan (Exhibit C) or Development Plan (Exhibit D) and approved by VA in accordance with Article 10, or otherwise approved by VA in writing. Such approvals shall not be unreasonably withheld, conditioned, or delayed.

N. Lease Supercedes. This Lease supersedes any and all prior negotiations, agreements or understandings between the Department and Lessee related to the subject matter hereof. None of the provisions of this Lease may be altered or modified except through an instrument in writing signed by both parties.

O. Force Majeure. Neither of the parties to this Lease, i.e., the Department nor Lessee, shall be required to perform any of its obligations under this Lease, nor be liable for loss or damage for

failure to do so, with the exception of the obligation for payment of Rent or other sums due and owing under this Lease, where such failure arises from Force Majeure, but only to the extent and for the duration that the Department or Lessee, as the case may be, is so prevented from performing such obligations by Force Majeure. Further, and without limiting the generality of the foregoing, any period afforded to a party or within which a party is required under the terms and conditions of the Lease to perform an obligation of this Lease shall be extended by (1) the actual applicable period of Force Majeure; and (2) any period during which a party was prevented from performing any such obligation as a direct result of failure by the other party to commence or complete a specific activity or activities that the Lease requires be commenced or completed as a condition precedent to such performance of such obligation.

P. Non-Recourse. The parties agree that VA's and Lessee's respective recourse against each other under this Lease shall be limited by and to the extent of applicable Federal, State, and local law.

Q. Anti-Deficiency Act. Consistent with the Anti-Deficiency Act (31 U.S.C. §§ 1341 and 1501), any payments of VA with respect to this Lease shall not exceed appropriations available to VA which can be lawfully expended for such purposes at the time of the claim; and nothing in this Lease may be construed as implying that Congress will at a later date appropriate funds to meet any deficiencies.

R. Confidential Data.

(1) Lessee hereby agrees that the creation, maintenance, use, disclosure, and disposal of any and all drawings, documents, records, data, and written information provided by VA to Lessee during the Term, if any, (collectively, the "VA Data"), shall be governed solely by all applicable Federal law, Executive Orders, and regulations. Lessee further agrees that the VA Data shall at all times constitute and remain the sole and absolute property of VA, and shall not be disclosed to any person (aside from the Lessee's permitted contractors under this Agreement, if any, where necessary to perform the Agreement) without the prior written authorization of VA. Furthermore, Lessee agrees to and shall immediately contact VA telephonically and in writing should any request be made by a third party (aside from Lessee's permitted contractors and subcontractors under this Agreement) for copies of or to review or receive any VA Data in the Lessee's (and/or any of its contractors') possession and control. Under all circumstances, VA shall be responsible for and permitted to independently and unilaterally address any such requests as it deems appropriate. Lessee shall ensure that all agreements with its contractors (and any agreements such contractors may have with any subcontractors) incorporate this Clause (1) and make it applicable to such contractors and subcontractors.

(2) VA hereby agrees that any drawings, documents, records, data, and written information provided by Lessee to VA during the Term, if any (collectively, the "Lessee Data"), shall be kept, maintained, and handled by VA as such according and subject to all applicable Federal law, Executive Orders, and regulations. Furthermore, VA agrees to and shall contact Lessee telephonically and in writing should any request be made by a third party outside of VA ("Third

Party”) for copies of or to review or receive any Lessee Data in VA’s possession and control, **unless** such Third Party making the request is officially doing so on behalf of the Executive branch; the United States Congress; the General Accountability Office; the Federal Bureau of Investigations; the VA Office of Inspector General; or a Federal court.

(3) The parties hereby agree that the understandings and obligations set forth in this Section O shall control during and shall survive the Term, notwithstanding any contrary confidential obligations, statements, or representations that may be contained in VA Data or Lessee Data submitted, as applicable, by VA to Lessee or vice versa.

EXHIBIT "A"

LEGAL DESCRIPTION

EXHIBIT "B"

SITE PLAN

EXHIBIT "C"

DESIGN PLAN

**[Note: To be incorporated into this Lease
in accordance with Article 10.A thereof]**

EXHIBIT "D"

DEVELOPMENT PLAN

**[Note: To be incorporated into this Lease
in accordance with Article 10.A thereof]**

EXHIBIT “E”

OPERATIONS AND MAINTENANCE PLAN

EXHIBIT "F"

MEMORANDUM OF LEASE

THIS MEMORANDUM OF ENHANCED-USE LEASE ("Memorandum") is made as of the ____ day of _____, 2011, by and between THE SECRETARY OF VETERANS AFFAIRS, AN OFFICER OF THE UNITED STATES, ON BEHALF OF THE DEPARTMENT OF VETERANS AFFAIRS ("Lessor") and [Insert Lessee's name], an [Insert state] [Insert "limited liability company" or other business entity type] ("Lessee").

W I T N E S S E T H:

1. Agreement of Lease. Lessor has leased to Lessee a certain parcel of land described in Exhibit "A" attached hereto, for an initial term of [Insert #] years, commencing on [Insert date] (hereinafter the "Lease") together with the non-exclusive right to use the Access Roads as set forth in the Lease. Subject to the terms and conditions in the Lease, the Lease term may be extended for [Insert #] additional period[s] of [Insert #] () years. For more information, the parties to the Lease may be contacted at the following addresses:

LESSOR: Department of Veterans Affairs
Office of Asset Enterprise Management (044C)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Attn: Designated VA Representative

LESSEE: [Insert Lessee's name and address]

2. Provisions of Lease. The provisions set forth in the Lease, dated as of even date with this Memorandum and entered into between Lessor and Lessee, are hereby incorporated into this Memorandum by reference. In the event of any conflict between the provisions of the Lease and this Memorandum, the provisions of the Lease shall control.

3. Miscellaneous. This Memorandum shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns and legal representatives. This Memorandum shall be governed by and enforced in accordance with the laws of the United States and, to the extent such laws do not apply, then by the laws of the State of [Insert State] without regard to its principles of conflicts of law.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum on the date first set forth above.

[Signatures Commence On the Next Page]

The foregoing instrument was acknowledged before me in _____, _____,
this ____ day of _____, 201__.

Notary Public

My commission expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION

Exhibit D
CONSENT AGREEMENT
(VA Medical Center Memphis, Tennessee)

EXHIBIT D
CONSENT AGREEMENT
(VA Medical Center Memphis, Tennessee)

THIS CONSENT AGREEMENT (“Consent Agreement”) dated as of _____, 201_ is made and entered into among the United States Department Of Veterans Affairs (the “Department”), _____, a _____ duly organized and validly existing under the laws of the State of _____ (the “Borrower”), and _____, in its capacity as Collateral Agent (the “Collateral Agent”) under the Security Documents (as defined below).

RECITALS

WHEREAS, the Department and the Borrower are parties to that certain Enhanced-Use Lease dated of even date herewith (the “Lease”); and

WHEREAS, pursuant to the Lease, the Department has leased to the Borrower certain property on the VA Medical Center located in Memphis, Tennessee (the “Site”); and

WHEREAS, the Borrower has agreed to develop the Site in accordance with the Company’s plan as approved by the Department, a copy of which is attached to and made a part of the Lease (the “Development Plan”): and

WHEREAS, the Department has determined that the development of the Site in accordance with the Development Plan is compatible with the Department’s mission; and

WHEREAS, the Borrower, _____ (the “Lender”), and the Collateral Agent are parties to a [_____] Agreement dated as of _____, 201_ (the “Credit Agreement”) pursuant to which the Lender will make loans to the Borrower for the purpose of financing the development of the Sites in accordance with the Development Plan; and

WHEREAS, as security for the loans made by the Lender under the Credit Agreement, the Borrower has assigned, pursuant to the security documents entered into between the Borrower and the Collateral Agent (the “Security Documents”), all of its right, title and interest in, to and under, and grants a security interest in, the Lease to the Collateral Agent for the benefit of the secured parties identified therein (the “Secured Parties”).

NOW THEREFORE, as an inducement to the Lender to make the loans, and in consideration of the premises and the covenants, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions**. Unless otherwise stated, references herein to any Person shall include its permitted successors and assigns and, in the case of any federal, state, municipal or

other governmental department, branch, commission, board, bureau, agency or instrumentality, shall also include any Person succeeding to its functions and capacities. Initially capitalized terms used and not otherwise defined in this Consent Agreement have the meanings given such terms in the Lease.

2. Representations and Warranties. The Department hereby represents and warrants to the Collateral Agent and each of the Secured Parties that:

(a) The representations made by the Department in the Lease are true and correct in all material respects.

(b) The execution, delivery and performance by the Department of this Consent Agreement have been duly and validly authorized by all necessary action on the part of the Department. Neither the execution and delivery of this Consent Agreement, nor compliance with the provisions hereof, will violate any Applicable Law.

(c) This Consent Agreement has been duly executed and delivered by the Department and, assuming due authorization, execution and delivery by the Borrower and the Collateral Agent, constitutes a valid and binding obligation of the Department enforceable against the Department in accordance with its terms (except as enforcement may be limited by the application of equitable principles in any proceeding, whether at law or in equity).

(d) As of the date hereof and to the knowledge of the Department, no litigation involving the Department currently exists that, if adversely determined, would reasonably prevent the Department from executing and delivering the Lease and performing its obligations contained therein.

(e) Except as is expressly permitted hereunder, the Department has not assigned, transferred or hypothecated the Lease or this Consent Agreement or any interest herein or therein.

3. Consent to Assignment.

(a) The Department hereby consents to the assignment by the Borrower of all of Borrower's right, title and interest in, to and under the Lease to the Collateral Agent for the benefit of the Secured Parties as collateral security for the obligations as and to the extent provided in the Security Documents and, subject to the prior written consent of the Department (which consent shall not be unreasonably withheld, conditioned or delayed), any subsequent assignments or the exercise by the Collateral Agent of the Collateral Agent's rights and enforcement of its remedies under and in accordance with the Credit Agreement, the Security Documents and this Consent Agreement, at law, in equity, or otherwise.

(b) The Borrower agrees that, to the extent provided in the Lease, it shall remain liable to the Department for all obligations of the Borrower under the Lease. The

Department agrees that, to the extent provided in the Lease, it shall be and remain obligated to the Borrower to perform all of the Department's obligations and agreements under the Lease.

(c) Subject to the delivery of the prior written notice required pursuant to Section 3(c), the prior approval requirements set forth in Section 3(a), and compliance with the requirements in Section 3(e) and Section 4, the Department acknowledges and agrees that none of the following (to the extent not inconsistent with the terms of this Consent Agreement) shall constitute, in and of itself, a default by the Borrower under the Lease or shall result in a termination thereof: (i) the assignment of the Lease to the Collateral Agent pursuant to the Security Documents; (ii) the operation of the Project by a Person who is a Qualified Party designated by the Collateral Agent as its nominee or designee, following the occurrence and continuance of an event of default under the Credit Agreement; (iii) foreclosure or any other enforcement of the Security Documents by the Collateral Agent; (iv) acquisition of the rights of the Borrower under the Lease by the Collateral Agent (whether in foreclosure or by acceptance of an absolute assignment of the Lease in lieu of foreclosure); or (v) assignment of the Lease by the Collateral Agent to a Qualified Party following a purchase in foreclosure in accordance with the Security Documents or following an absolute assignment thereof in lieu of foreclosure.

(d) The Department hereby consents to the disclosure as needed of the Lease to the Collateral Agent and the Lender, and to any other entity to be offered the opportunity to participate in or insure the credit facilities contemplated under the Credit Agreement, and their respective shareholders, directors, officers, employees, agents, representatives, experts, and attorneys and each of their respective successors and assigns.

(e) In the event of a foreclosure or any other enforcement of the Security Documents by the Collateral Agent, the Collateral Agent shall provide for the continued development, if applicable, and operation of the Project in compliance with the Borrower's obligations under and in accordance with the Lease by a Person who meets the requirements of a Qualified Party.

4. Other Agreements. The Department hereby acknowledges and agrees that:

(a) Subject to the provisions of this Consent Agreement, upon receipt by the Department of written notice from the Collateral Agent that an event of default has occurred and is continuing under the Credit Agreement or the Security Documents, the Collateral Agent and any assignee thereof shall be entitled to exercise, or to cause the exercise of, any and all rights of the Borrower under the Lease in accordance with its terms and the Department shall comply in all respects with such exercise. Without limiting the generality of the foregoing, the Collateral Agent, and any permitted assignee thereof, shall have the full right and power to enforce, or to cause the enforcement, directly against the Department of all obligations of the Department and otherwise to exercise all remedies under (and in accordance with the terms of) the Lease and this Consent Agreement and to make, or cause to be made, all demands and give all notices and make, or cause to be made, all requests required or permitted to be made by the Borrower under (and in accordance with the terms of) the Lease.

(b)(1) The Department will not, without the prior written consent of the Collateral Agent (such consent not to be unreasonably withheld, conditioned or delayed), take any action to (i) exercise any of its rights set forth in the Lease to cancel or terminate, or suspend performance there under, prior to its expiration, unless the Department shall have delivered to the Collateral Agent written notice stating that it intends to exercise such right on a date not less than ninety (90) days or, in the case of nonpayment, ten (10) days after the date of such notice, and specifying the nature of the default giving rise to such right (and, in the case of a payment default, specifying the amount thereof), and the Department shall not exercise any such rights if, on or prior to such date, (x) such default has been waived in writing by the Department, (y) such default has been cured by the Borrower or (z) the Collateral Agent cures or causes the cure of such default by making a payment in the amount due under the Lease, in the case of a monetary default or by performing or causing to be performed the obligation in default, as the case may be, (ii) except as permitted under the Lease, amend, supplement or otherwise modify the terms of the Lease (as in effect on the date hereof), or (iii) subject to the provisions set forth in clauses (i) and (ii) above and except as permitted by the Lease or required by Applicable Law, petition, request or take any other legal or administrative action which seeks, or may reasonably be expected, to rescind, terminate, suspend, cancel, amend or modify the Lease prior to its expiration.

(2) Any curing of or attempt to cure, or causing the cure of or the attempt to cure, any of the Borrower's defaults under the Lease shall not be construed as an assumption by the Collateral Agent or any Secured Party of any covenants, agreements, liabilities or obligations of the Borrower under the Lease. Neither the Collateral Agent nor any Secured Party shall have any obligation to the Department for the payment or the performance of any obligations under the Lease unless and until, and solely to the extent that, such entity succeeds to the interest of the Borrower under the Lease as contemplated by Paragraph (3) of this Section and Sections 4(d), 4(e) or 4(f) below.

(3) In the event that the Collateral Agent or any Secured Party succeeds to or otherwise acquires the rights of the Borrower under the Lease (whether in foreclosure, assignment in lieu of foreclosure or otherwise), then the Collateral Agent or Secured Party shall assume and perform all obligations of the Borrower under the terms and conditions of the Lease during the period that the Collateral Agent or Secured Party is in possession thereof.

(c) The Department shall deliver to the Collateral Agent at the address set forth on the signature pages hereof, or at such other address as the Collateral Agent may designate in writing from time to time to the Department, concurrently with the delivery thereof to the Borrower, a copy of each material notice, request or demand given by the Department pursuant to the Lease. The Collateral Agent shall deliver to the Department at the address set forth on the signature pages hereof, or at such other address as the Department may designate in writing from time to time to the Collateral Agent, concurrently with the delivery thereof to the

Borrower, a copy of each material notice, request or demand given by the Collateral Agent pursuant to the Credit Agreement or any of the Security Documents.

(d) The Department consents to the transfer of the Borrower's interest under the Lease pursuant to the exercise of the Secured Parties' remedies hereunder and under the Security Documents and agrees that upon such transfer the Department shall recognize the Collateral Agent, for the benefit of the Secured Parties, as the beneficiary of the rights of the Borrower under the Lease. Except as otherwise set forth in the immediately preceding sentence and Sections 4(b), 4(e) and (g) herein, neither the Collateral Agent nor any of the Secured Parties shall be liable for the payment, performance or observance of any of the obligations, covenants or duties of the Borrower under the Lease, and except as expressly set forth in this Consent Agreement, the assignment of the Lease by the Borrower to the Collateral Agent pursuant to the Security Documents shall not give rise to any duties or obligations whatsoever on the part of the Collateral Agent or any of the Secured Parties owing to the Department.

(e) Subject to the rights of the Department set forth in Section 4(b) above, upon the exercise by the Collateral Agent of any of the remedies with respect to an event of default under the Security Documents in respect of the Lease, subject to the prior written consent of the Department as set forth in Section 3(a) above, the Collateral Agent may assign its rights and interests and the rights and interests of the Borrower under the Lease to any Qualified Party who is determined by the Department, in the exercise of its reasonable discretion, to be financially and otherwise able to meet the obligations of the Borrower under the Lease in a timely manner, provided that, unless and to the extent the same is waived in writing by the Department, such Person shall absolutely, irrevocably and unconditionally assume in writing all of the obligations and liabilities of the Borrower or the Developer (as applicable) under the Lease. Upon such assignment and assumption, the Collateral Agent and the Secured Parties shall have no liabilities, duties or obligations under the Lease arising after such assignment and assumption.

(f) In the event that (i) the Lease is rejected by a trustee, liquidator, debtor-in-possession or similar Person in any bankruptcy, insolvency or similar proceeding involving the Borrower or (ii) the Lease is terminated as a result of any bankruptcy, insolvency or similar proceeding involving the Borrower and if, within thirty (30) days after such rejection or termination, the Collateral Agent or its designee(s) shall so request and shall certify in writing to the Department that it intends to perform or cause the performance of the obligations of the Borrower as and to the extent required under the Lease, the Department will execute and deliver to the Collateral Agent or such designee(s) a replacement lease which shall be for the balance of the remaining term under the original Lease before giving effect to such rejection or termination and shall contain the same conditions, agreements, terms, provisions and limitations as the original Lease (except for any requirements which have been fulfilled by the Borrower and the Department prior to such rejection or termination). References in this Consent Agreement to the "Lease" shall be deemed also to refer to a replacement lease as referred to in this Section.

(g) In the event that the Collateral Agent or its designee(s), or any purchaser, transferee, grantee or assignee of the interests of the Collateral Agent or its designee(s) in the Project, assumes or becomes liable under the Lease (as contemplated in subsections (b)(3), (d), (e) or (f) above or otherwise), liability in respect of any and all obligations of any such Person under the Lease shall be limited to such Person's expressly assumed obligations (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto). Nothing herein shall obligate the Collateral Agent to exercise any of its rights under this Consent Agreement.

(h) All references in this Consent Agreement to the "Collateral Agent" shall be deemed to refer to the Collateral Agent, and/or any designee, nominee or transferee thereof acting with full power and authority on behalf of the Secured Parties, and/or any agent, nominee, designee, or transferee thereof, including any experts or counsel selected by the Collateral Agent to act as such, acting for the benefit of the Secured Parties (regardless of whether so expressly provided), and all actions permitted to be taken by the Collateral Agent under this Consent Agreement may be taken by any such agent, nominee, designee or transferee and shall be deemed to be taken with full and valid authority therefore.

5. Insurance. Each of the parties hereto agrees that all proceeds of any policy of insurance with respect to damage to, or destruction of, the Demised Premises (the "Insurance Proceeds"), shall be applied to repair the Demised Premises, in accordance with the provisions of the Lease; provided, however, that any and all such Insurance Proceeds not applied (in accordance with the Lease) to repair the Demised Premises shall be (x) applied to the prepayment of the loans made by the Lender under the Credit Agreement and to the payment of all other amounts owing from time to time under the Credit Agreement and the Security Documents, in each case, in accordance with the provisions of the Credit Agreement and the Security Documents, (y) the balance, if any, of such Insurance Proceeds remaining thereafter shall be applied to remove debris from and restore the damaged area of the Demised Premises to a reasonably clean and safe condition, and (z) the balance, if any, of such Insurance Proceeds remaining thereafter shall be paid to the Borrower.

6. Miscellaneous.

(a) No failure on the part of any party hereto to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege hereunder shall operate as a waiver thereof (subject to any statute of limitations), and no single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, remedies, powers and privileges provided herein are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(b) All notices, requests and other communications provided for herein and under the Lease (including, without limitation, any modifications of, or waivers or consents under, this Consent Agreement) shall be given or made in writing (including, without limitation,

by telecopy) and delivered by (i) certified or registered mail, return receipt requested, (ii) telecopy, (iii) hand delivery or (iv) by nationally recognized air courier service, to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof or, as to any party hereto, at such other address as shall be designated by such party in a notice to each other party hereto. Except as otherwise provided in this Consent Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopy or personally delivered or, in the case of a mailed notice, upon receipt thereof, in each case given or addressed as aforesaid.

(c) This Consent Agreement may be amended or modified, and any provision hereof waived, only by an instrument in writing signed by the Department, the Borrower and the Collateral Agent. Any waiver shall be effective only for the specified purpose for which it is given.

(d) This Consent Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of each of the Department, the Borrower, and the Secured Parties and the Collateral Agent.

(e) This Consent Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties hereto may execute this Consent Agreement by signing any such counterpart. This Consent Agreement shall become effective at such time as the Collateral Agent shall have received counterparts hereof signed by all of the intended parties hereto.

(f) Except as is otherwise expressly set forth in this Consent Agreement, nothing contained in this Consent Agreement shall in any way affect or alter the rights or obligations of the parties under the Lease.

(g) Headings appearing herein are used solely for convenience and are not intended to affect the interpretation of any provision of this Consent Agreement.

(h) This Consent Agreement shall remain in full force and effect until the earlier to occur of: (1) the date on which the Security Documents cease to be in effect, or (2) the date of expiration or earlier termination of the Lease.

(i) To the maximum extent permitted by law, all disputes arising under or relating to this Lease shall be resolved under the provisions of the Contract Disputes Act, 41 U.S.C. § 601 *et seq.* (the "Disputes Act") and applicable regulations. For purposes of implementing this subsection, the Designated VA Representative shall be considered the "contracting officer" for purposes of the Disputes Act. The Designated VA Representative's decision shall be final unless a party appeals or files suit as provided in the Disputes Act. The parties shall proceed diligently with performance of this Consent Agreement, pending final resolution of any request for relief, claim, appeal or action arising under or relating to this Consent Agreement, and comply with any decision of the Designated VA Representative.

(j) The agreements of the parties hereto are solely for the benefit of the Department, the Collateral Agent and the Secured Parties, and no Person (other than the parties hereto and the Secured Parties and their successors and assigns permitted hereunder) shall have any rights hereunder.

(k) **THIS CONSENT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, FEDERAL STATUTORY AND COMMON LAW, AND IN THE EVENT THERE IS NO APPLICABLE FEDERAL LAW, THIS CONSENT AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLE OR OTHER PROVISIONS THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS CONSENT AGREEMENT TO THE LAW OF ANY OTHER JURISDICTION).**

IN WITNESS WHEREOF, the undersigned by its officer duly authorized has caused this Consent Agreement to be duly executed and delivered as of the date first set forth above.

UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,
as the Department

By: _____

Name:

Title:

Address for Notices:

Department of Veterans Affairs
Office of Asset Enterprise Management (004B2)
810 Vermont Avenue, N.W.
Washington, D.C. 20820
Attention: Designated the Department Representative
Facsimile: 202-273-9734

with a copy to:

Department of Veterans Affairs
Office of General Counsel (021A)
810 Vermont Avenue, N.W.
Washington, D.C. 20420
Attention: Deputy Assistant General Counsel (EU Leasing)
Facsimile: 202-273-7624

_____ as Borrower

By: _____

Name:

Title:

Address for Notices:

Facsimile:

_____ as Collateral Agent

By: _____

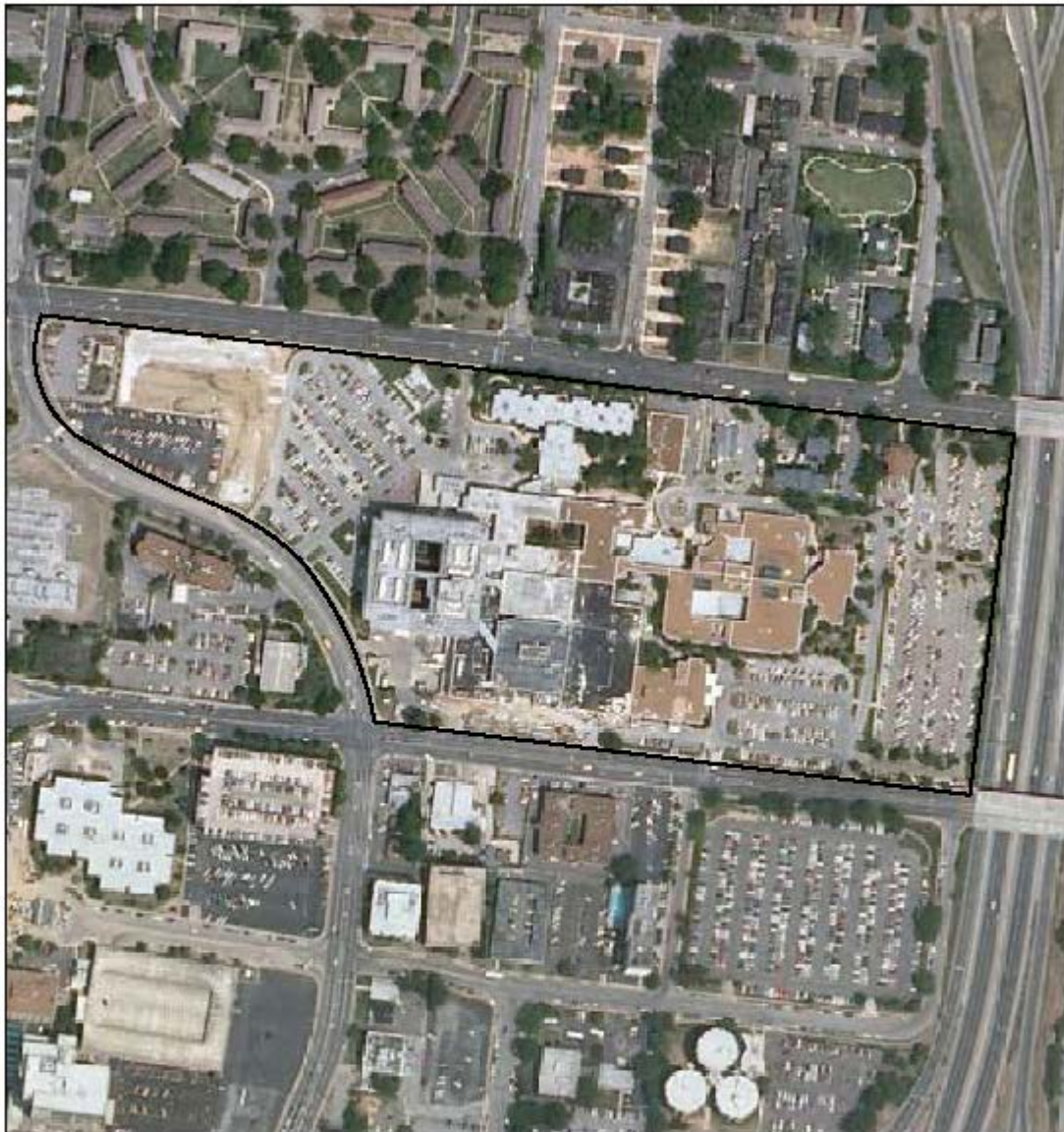
Name:

Title:

Address for Notices:

Facsimile:

Exhibit E
SITE MAP
(VA Medical Center Memphis, Tennessee)



2006 AERIAL PHOTO

**LC LEWIS CONSULTING
GROUP, LLC**

SOURCE: HDR 2006 AERIAL PHOTO

SCALE: 1:800

**FIGURE 3
VA CARES MEMORIE
1800 JEFFERSON AVENUE
SHELBY COUNTY, TENNESSEE**

**PREPARED FOR:
VA CARES
JULY 2010**

Exhibit F
SITE METES AND BOUNDS DESCRIPTION
(VA Medical Center Memphis, Tennessee)

Exhibit F
SITE METES AND BOUNDS DESCRIPTION
(VA Medical Center Memphis, Tennessee)

Not available

EXHIBIT G
PHASE 1 ENVIRONMENTAL REPORT EXECUTIVE SUMMARY
(VA Medical Center Memphis, Tennessee)

EXECUTIVE SUMMARY

The Memphis VA Medical Center (VAMC) is located in Memphis, Shelby County, Tennessee. The Memphis VAMC consists of 29 acres and is developed with 8 buildings and structures.

As part of the Phase I Environmental Site Assessment (Phase I ESA), Environmental Data Resources, Inc. (EDR) of Southport, Connecticut, was utilized as an information source for regulatory agency environmental database records. The subject property was listed on the following environmental databases: Resource Conservation and Recovery Act – Large Quality Generator (RCRA-LQG), Material Licensing Tracking System (MLTS), Facility Index System (FINDS), Leaking Underground Storage Tank (LUST), Underground Storage Tank (UST), HIST UST, Hazardous Materials Information Reporting System (HMIRS), and Integrated Compliance Information System (ICIS) by EDR.

Lewis Consulting Group, LLC (LCG) was retained to conduct an environmental assessment, as defined in Section 1.2 of this report, on four (4) portions of the Memphis Veterans Affairs Medical Center (VAMC) located at 1030 Jefferson Avenue, Memphis, Shelby County, Tennessee. The “Site” as defined in the task order documents, includes four parcels:

- Option A: An approximately 4.0 acre parcel located on the western portion of the VAMC campus.
- Option B: An approximately 3.4 acre parcel located on the northeastern and eastern portions of the VAMC campus.
- Option C: An approximately 2.0 acre parcel located on the southern portion of the VAMC campus.
- Option D: An approximately 5.0 acre parcel located off-site, southeast of the VAMC campus.

Any exceptions to, or deletions from, this practice are described in Section 1.4 of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property except as provided below.

Option A

- The potential presence of fuel oil tank(s), tank-like structures and large debris.
- The potential presence of on-site chlorinated solvent ground water contamination. The ground water contamination may represent a health hazard to future occupants and to workers via vapor intrusion.

Option B

- The potential presence of fuel oil tank(s).tank-like structure and large debris.

Option C

- The potential presence of fuel oil tank(s).

Option D

- The potential presence of fuel oil tank(s).

RECOMMENDATIONS

The following recommendations address the recognized environmental conditions identified in this Phase I ESA. These recommendations are based on standard industry practices regarding these potential environmental concerns. These recommendations do not take into consideration potential development plans. Sampling and sample analysis should be completed in accordance with all applicable state and federal laws and regulations.

Option A

Potential Presence of Fuel Oil Tanks

A geophysical investigation should be conducted on Option A to identify subsurface metallic anomalies. The investigation will use non-intrusive methods such as, electromagnetic (EM), magnetic (MAG), radio frequency (RF), and ground penetrating radar (GPR) techniques, as applicable. Targets identified should be marked in the field. In the event that the geophysical survey identifies drum-like structures, tank-like structures, or large debris fields, LCG recommends excavation of these targets for visual confirmation.

Potential Presence of On-Site Chlorinated Solvent Ground Water Contamination

A ground water investigation should be conducted on Option A to determine the ground water quality on-site. The investigation should include the collection of a ground water sample in accordance with TDEC regulations. The ground water sample should be analyzed for volatile organic compounds plus a ten compound library search (VOC+10) or equivalent. The potential for vapor hazard should be evaluated especially if the site will be enclosed or its use changed.

Option B

Potential Presence of Tank-like Structures and Large Debris

A geophysical investigation should be conducted on Option B to identify subsurface metallic anomalies. The investigation will use non-intrusive methods such as, electromagnetic (EM), magnetic (MAG), radio frequency (RF), and ground penetrating radar (GPR) techniques, as applicable. Targets identified should be marked in the field. In the event that the geophysical survey identifies drum-like structures, tank-like structures, or large debris fields, LCG recommends excavation of these targets for visual confirmation.

Option C

Potential Presence of Tank-like Structures and Large Debris

A geophysical investigation should be conducted on Option B to identify subsurface metallic anomalies. The investigation will use non-intrusive methods such as, electromagnetic (EM), magnetic (MAG), radio frequency (RF), and ground penetrating radar (GPR) techniques, as applicable. Targets identified should be marked in the field. In the event that the geophysical survey identifies drum-like structures, tank-like structures, or large debris fields, LCG recommends excavation of these targets for visual confirmation.

Option D

Potential Presence of Tank-like Structures and Large Debris

A geophysical investigation should be conducted on Option B to identify subsurface metallic anomalies. The investigation will use non-intrusive methods such as, electromagnetic (EM), magnetic (MAG), radio frequency (RF), and ground penetrating radar (GPR) techniques, as applicable. Targets identified should be marked in the field. In the event that the geophysical survey identifies drum-like structures, tank-like structures, or large debris fields, LCG recommends excavation of these targets for visual confirmation.