

DEPARTMENT OF VETERANS AFFAIRS



REQUEST FOR PROPOSALS No. VA-101-10-RP-0041
ENHANCED-USE LEASE DEVELOPMENT PROJECT
NY/NJ VETERANS INTEGRATED SERVICE NETWORK
VISN 3
NORTHPORT VA MEDICAL CENTER
NORTHPORT, NEW YORK

DATE OF ISSUANCE: {DATE}

DATE AND TIME PROPOSALS DUE: {DATE} at 3 pm EST

After {DATE} questions regarding this RFP may not be considered.

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 a portion of the campus of the Northport VAMC, which is a part of the New York/New Jersey Veterans Integrated Service Network, VISN 3 in the City of Northport and the State of New York.

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Except as expressly provided in the Transaction Agreements (as defined in Section 1.4) 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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REQUEST FOR PROPOSALS
ENHANCED-USE LEASE DEVELOPMENT PROJECT
NY/NJ VETERANS INTEGRATED SERVICE NETWORK
VISN 3
NORTHPORT VAMC
NORTHPORT, NEW YORK

1. EXECUTIVE SUMMARY

- 1.1** The Department of Veterans Affairs (“VA”) is issuing this Request for Proposals (“*RFP*” or “*Solicitation*”), seeking competitive proposals from private, public, and/or not-for-profit entities interested in leasing certain land for the development of approximately 20.6 contiguous acres composed of Parcel A and Parcel B (the “*EUL Site*”) located at the Northport VAMC of the NY/NJ Veterans Integrated Service Network (“*Northport VAMC*” or “*Northport Campus*”), VISN 3 in Northport, New York. (See Attachment A, Map of EUL Site). Parcel A consists of approximately 10.2 undeveloped acres. Parcel B is approximately 10.47 acres including Buildings 23, 25, 26, 27 and 90
- 1.2** This project (“*Project*”) contemplates that under its enhanced-use leasing (“*Enhanced-Use Lease*” or “*EUL*”) authority, codified at 38 U.S.C. Sections 8161-8169 (Attachment B, EUL Statute), VA will lease the EUL Site to a selected Offeror (“*Offeror*” or “*Lessee*”) for a term of up to seventy-five (75) years. The Offeror/Lessee under the EUL will, in part (subject to EUL Agreement), be authorized and responsible for financing, designing, developing, occupying, operating, and maintaining the EUL Site in accordance with a detailed development plan approved by VA (“*Development Plan*”) and shall be responsible for complying with all applicable federal, state, and local laws, codes, ordinances, and regulations. The EUL site for this Project is approximately 20.6 contiguous acres consisting of two parcels, referred to as Parcel A and Parcel B. Both parcels are within the campus of the Northport VAMC located in Northport, NY. Parcel A is approximately 10.2 acres and Parcel B is approximately 10.47 acres. VA’s objective for this RFP is to receive proposals from Offerors/Lessees offering to reutilize Parcels A and B at the EUL Site under a long-term ground lease agreement with VA. VA envisions that development of the EUL Site will entail a well-planned and coordinated endeavor to re-utilize the EUL site in a manner which will be compatible with the Northport VAMC’s ongoing mission-related activities as well as with the surrounding non-VA community.
- 1.3** Through the EUL authority of 38 U.S.C. Sections 8161-8169, VA can outlease the targeted land for a term of up to 75 years to accommodate the scope of the Project. In return for a long-term lease of the assets, the Offeror will provide “fair consideration” to VA. 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, space, and services for veterans by constructing, maintaining and operating a new Assisted Living Facility with a maximum of 200 units. While the project's market is primarily senior Veterans with some activities of daily living limitations, the project will be available to **all Veterans** who may require such units and assistance. For more details addressing the type of consideration that may be approved by the Secretary, see Section 2.4.8 of this RFP. **Occupancy must be 100% Veterans and/or Eligible Veteran Spouses.** If any units will be used for OIF/OEF temporary occupancy with families or children, the contractor must identify the method by which the appropriate taxes and contribution per pupil for the school district will be met to the satisfaction of the Northport School District and VA.

1.4 By submitting a proposal, each Offeror accepts all of the terms and conditions set forth in this RFP and its Attachments, including but not limited to the Bid Terms Agreement and the EUL Agreement (i.e., **Attachments C and D, respectively**). Any conflict (whether actual or perceived) between the terms of the Bid Terms Agreement, the EUL Agreement (collectively, the **"Transaction Agreements"**), this RFP, or provision therein shall be resolved at and in accordance with VA's sole and absolute discretion, notwithstanding any provisions of the "Disclaimer" indicating otherwise, which is included and made part of this RFP, or any other document.

1.5 This RFP may be amended or supplemented and all such amendments and supplements shall be considered part of this RFP (and references to the RFP shall include all amendments and supplements unless otherwise specified). In order to receive any amendments or supplements to this RFP, Offerors will be required to register on the transaction website,

www.va.gov/assetmanagement/enhanceduse/northport

1.6 VA reserves the right, at any time, without notice, at its sole and absolute discretion, to (a) modify, suspend, or waive any terms and conditions of this RFP; (b) waive any deficiency or irregularity in any proposal submitted; (c) reject any or all proposals; (d) extend any deadline set forth in this RFP; (e) terminate the RFP process, in whole or in part; (f) discuss any submission with the Offeror that submitted it and require the submission of additional information regarding any aspect of the Offeror's proposal; (g) 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 consideration to be paid under the EUL or otherwise; and (h) initiate further discussions and/or negotiations directly with the Offeror (after VA selects it for award), if VA believes that the type and/or amount of EUL consideration offered in the Offeror's proposal warrants further refinement and/or enhancement.

2. PROPOSED DEVELOPMENT OF EUL SITE

2.1 Location. Northport, NY is located on the North Shore of Long Island about 40 miles west of midtown Manhattan. The Northport VAMC is in the township of Huntington, New York. The address of the Northport VAMC is 79 Middleville Road, Northport, NY.

2.2 Campus Description. Northport VAMC consists of approximately 268.5 acres and is surrounded by upper-end residences, particularly along Middleville Road. The campus is bordered on the north by Middleville Road, a two-lane road, on the southeast by Meadowlark Park, and by wooded areas to the west and south. The two entry/exit points to and from the campus are Veterans Memorial Drive and Back Gate Drive. For more details of the campus see **Attachment A**. The VAMC is part of the NY/NJ Veterans Integrated Service Network (“*VISN*”) 3. Affiliated with the State University of New York Medical School at Stony Brook, Northport VAMC offers medical, surgical, psychiatric, rehabilitative and skilled nursing care to Long Island Veterans to include the support of our returning troops from Operation Enduring Freedom (“*OEF*”) and Operation Iraqi Freedom (“*OIF*”). Affiliated with the State University of New York Medical School at Stony Brook, Northport VAMC offers medical, surgical, psychiatric, rehabilitative and skilled nursing care to Long Island veterans.

2.3 The EUL Site.

- a. Description.** The EUL Site for this Project is approximately 20.6 contiguous acres consisting of two parcels, referred to as Parcel A and Parcel B. Both parcels are within the campus of the Northport VAMC located in Northport, NY. Parcel A is approximately 10.2 acres of undeveloped choice real estate – featuring gently sloping fields and mature trees. Parcel B is approximately 10.47 acres largely encumbered by four aging residential structures and one garage dating back to 1927 and 1932, all of which are listed on the National Historic Register. They are identified as Buildings 23 (6,942 SF), 25 (6,942 SF), 26 (6,942 SF), 27 (5,139 SF), and 90 (240 SF Garage). The EUL Project must be designed for and constructed & operated on Parcel B. A map depicting the Northport campus outlining the EUL Site(s) is included in **Attachment A**.
- b. Objective.** The objective of the Northport EUL Project is to establish an EUL Agreement re-utilizing Parcels A and B for a new Assisted Living Facility with a maximum of 200 units or other configuration depending upon the market potential for assisted living. The Assisted Living Facility must be designed for and constructed & operated on Parcel B. While the project’s market is primarily senior Veterans with some activities of daily living limitations, the project will be available to all Veterans and families who may require such units and assistance. **Occupancy must be 100% Veterans and/or Eligible Veteran Spouses.** If any units will be used for OIF/OEF temporary occupancy with families or children, the contractor must identify the method by which the appropriate taxes and contribution per pupil for the school district will be met to the satisfaction of the Northport School District and VA.

2.4 Development Considerations. In considering whether to submit a proposal to develop the EUL Site, Offerors should consider certain factors about the EUL Site.

2.4.1 National Historic Preservation Act.

- a. Prior to entering into an EUL for the Site, the Offeror must fulfill the requirements of the National Historic Preservation Act, 16 U.S.C. §§ 470, et seq. (“NHPA”) in conjunction with the proposed Development Plan. NHPA requires the consideration of the effects of the Project on historic properties listed in the National Historic Register and representatives of the local government a reasonable opportunity to comment on the Development Plan prior to execution of the EUL. 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 during the execution stage of the EUL. Consummation of this effort will be accomplished by VA. VA will act in concert with the Offeror when necessary in the accomplishment of historical compliance. For guidelines related to historic preservation at VA and to determine whether any asset(s) at the EUL Site are subject to historic preservation requirements, visit <http://www.va.gov/facmgt/historic/>.
- b. The EUL Project must be designed for and constructed & operated on Parcel B. Parcel B is encumbered by four aging residential structures and one garage dating back to 1927 and 1932, all of which are listed on the National Historic Register. Therefore any proposed project will require coordination with the State Historic Preservation Office (“SHPO”). Any new or renovated structure should be built in consonance with the architectural design of the Northport Campus such as building heights, facades, etc.
- c. If the offeror proposes to demolish any of the structures on Parcel B, the offeror shall include in their proposal an outline for the completion of the consultation process required by Section 106 of NHPA.

2.4.2 National Environmental Policy Act and Other Environmental Considerations.

The EUL and the Project will be subject to all applicable federal, state, and local environmental laws, codes, ordinances, and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“*CERCLA*”), 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act (“*RCRA*”), 42 U.S.C. §§ 6901, et seq.; and the National Environmental Policy Act (“*NEPA*”), 42 U.S.C. §§ 4321-4347. NEPA requires that federal agencies, including VA, avoid adverse environmental impacts to the maximum extent practical when considering major federal actions that could affect the quality of the human environment (e.g., an EUL). The NEPA analysis will be initiated upon VA’s selection of the Offeror. The Offeror will be required to provide development-specific information to support the analysis. The NEPA documentation must be completed prior to execution of the EUL. Offeror will be responsible for complying with mitigation requirements of the NEPA analysis. In addition, the Offeror will be responsible for complying with regulatory requirements for the removal of any asbestos and/or lead-containing material. Information regarding how to obtain the Phase I Environmental Site Assessment

prepared for the EUL Site can be found in **Attachment E**. Other than this Assessment and the NEPA documentation, all other required environmental studies, reports, and site assessments, and any required or appropriate remediation or abatement, as well as compliance with all applicable environmental laws, will be the responsibility of the Offeror, unless and to the extent that VA otherwise agrees at its sole and absolute discretion.

2.4.3 Infrastructure. The EUL Site is contained entirely within the Northport Campus. The Offeror's proposed development concept must include a plan to integrate the EUL Site with the Northport Campus by either utilizing the existing infrastructure on the campus or by constructing new infrastructure to service the EUL Site. The following infrastructure elements must be considered:

- a. Parking on the EUL Site.** The Offeror must provide an adequate number of parking spaces on the Site appropriate for the number of units proposed.
- b. Utilities.** The campus utility connection is located on the EUL Site. Also, there is a water line of the Suffolk County Water Authority running through the EUL Site. The Offeror's proposed development concept must include a plan for providing utilities and infrastructure needs to the EUL Site separate from and without disrupting current operations of the Northport Campus. Offeror will not be able to access VA utilities. The Offeror would need to access municipal water, gas, sewer and electric utilities.
- c. Access Roads.** Currently there are two access roads to the Northport Campus. The main entrance to the campus is at the intersection of Middleville Road and Veterans Memorial Drive, at the northwest edge of Parcel A. The secondary entrance is at the intersection of Middleville Road and Back Gate Drive at the southeast edge of Parcel B. The Offeror's proposed development concept must include a plan for constructing and maintaining the roadway(s) that will serve the EUL Site. Maintenance should include routine maintenance and other services necessary to maintain access to the EUL Site. Offeror should include a plan that provides access to the EUL Site without interfering with the operations of the medical or other services on the Northport Campus. The proposed development concept should address all of the above-mentioned items, and will be expanded to include more specifics in the Development Plan described in Section 3.
- d. Physical Security.** The Offeror shall include in their proposal an overview of the physical security that will be provided based upon the individual space requirements and tenant mix of the proposed EUL project.

2.4.4 Legal Considerations.

- a. Overview.** The Offeror is responsible for conducting its own due diligence regarding the Site including, without limitation, whether (a) the development of the Site, as contemplated by the Proposal, can be accomplished in compliance with applicable federal, state, and local requirements (including fire, life safety,

accessibility, zoning, state and local building codes, and other local land use restrictions); (b) the condition of the Site is suitable for the Offeror's contemplated use; (c) 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 VA); and (d) the contemplated use is otherwise practical and economically feasible. For example, offerors must comply with all applicable zoning codes promulgated by the Town of Huntington, New York as well as all applicable procedures required for any changes to those codes. Also, operators of assisted living facilities must obtain appropriate certificates from the State of New York Health Department.

- b. Taxes.** In accordance with the pertinent provisions of the EUL Statute (i.e., 38 U.S.C. § 8167), the Offeror during the EUL term will be subject to any and all applicable state and local taxes, fees, assessments, and special assessments legally chargeable to the EUL, the Offeror's leasehold interest, and the Offeror's underlying improvements. However, neither VA's interest in the EUL nor the United States' fee interest in the underlying property shall be subject, directly or indirectly, to any state or local laws relative to taxation, fees, assessments or special assessments.
- c. Physical Security.** The Offeror shall include in their proposal an overview of the physical security that will be provided based upon the individual space requirements and tenant mix of the proposed EUL project.
- d. Limited Title Search.** A limited title search for the EUL Site is provided at **Attachment F**. Each Offeror is responsible for conducting its own due diligence regarding the EUL Site, without limitation, whether (1) the development of the site as contemplated by the proposal, can be accomplished in compliance with applicable federal, state and local laws (including zoning, state and local building codes, and other local land use restrictions); (2) the condition of the site is suitable for the Offeror's contemplated use; (3) the necessary permits, variances special exceptions and other government actions or approvals required for the contemplated development can be reasonably obtained (at no cost or expense to the VA); and (4) the contemplated use is otherwise practical and economically feasible.
- e. Energy Conservation and Sustainable Design Requirements.** The VA Sustainable Design Manual is the guidance that defines the methodology to incorporate sustainable design on every phase of this EUL project, from proposals, goal setting, and preliminary planning, through design and construction. This EUL Project shall meet the federal mandates as required and shall be given the appropriate consideration in developing the project scope and budget as stated in the Department of Veterans Affairs' Sustainable Design and Energy Reduction Manual. <http://www.va.gov/facmgmt/Standard/energy.asp>. VA has determined that using the widely adopted U.S. Green Building Council's ("USGBC") Leadership in Energy and Environmental Design ("LEED") rating system will provide a well-known industry framework to achieve the federal

mandates. The goal of the VA for the EUL Projects is to achieve a LEED rating at the Certification Level or higher for new structures and for substantial renovation of existing structures.

Lessee shall perform all necessary work including but not limited to apply green building practice to the building design and other necessary administrative work necessary to get the building(s) of the assisted living facility a minimum of the silver certification for the Leadership in Energy and Environmental Design for Homes (LEED-H). LEED-H is the US Green Building Council's (USGBC) Green Building Rating system for homes.

Lessee shall:

- (1) Apply green building practice in the building design for the assisted living facility.
 - Determine what work needs to be accomplish to bring the Building up to minimum standards to be allowed to apply for LEEB-H silver certification.
 - Provide recommendations for the list of points that facility should gain for the project to obtain LEED-H silver certification.
- (2) Provide a report including the details of all work necessary to qualify for points the VA intends to achieve is properly performed and all necessary data to support the points being awarded is gathered.
- (3) Acquire and complete all necessary forms necessary for LEED-H certification for the assisted living facility.
- (4) Submit all necessary forms for the LEED-H certification to USGBC.

2.4.5 Prevailing Wages. Unless the Offeror can demonstrate to the satisfaction of VA in the form of a written determination or written correspondence from the U.S. Department of Labor that the Offeror or the Project is exempt therefrom, Offeror 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.

2.4.6 Handicap Accessibility. The Offeror will be required to ensure that its design, development, construction, operation, and maintenance plans and activities on the EUL Site comply in all respects with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Architectural Barriers Act of 1968, 42 U.S.C. § 4151, et seq., as amended.

2.4.7 EUL Statutory Requirements. First, under 38 U.S.C. Section 8162(a)(2)(A) and 8162(B)) of the EUL Statute (**Attachment B**), the Secretary of VA must make certain determinations before entering into an EUL, including that the

contemplated EUL will (a) contribute to VA's mission; (b) not be inconsistent with, or adversely affect VA's mission; and (c) enhance the use of the underlying property; or, under a proposed business plan, the EUL would provide consideration to be used to improve the health care for Veterans in the affected community. Second, under 38 U.S.C. § 8163, VA must provide adequate notice of and conduct a public hearing prior to entering into the proposed EUL to receive the views of the Veteran service organizations and other interested parties. The applicable public hearing was conducted by VA on September 30, 2009 at the Northport Campus. Representatives of the VA presented an overview of the EUL Program. They also allowed attendees to ask questions and express their views and concerns regarding the EUL Process and this contemplated EUL Project. A community forum was held on April 8, 2010. Third, not less than 45 days prior to entering into an EUL, the Secretary of VA must provide formal written notice to the Congressional Veterans' Affairs Committees advising of their intent to enter into the EUL

2.4.8 Compliance with VA's Requirements and EUL Consideration. In exchange for VA entering into the contemplated EUL, the Offeror (per 38 U.S.C. § 8162(b)(1)(A)(3)) will be required to provide VA with fair monetary (i.e., rent) and/or in-kind lease consideration as approved by the Secretary of VA. In order to comply with the EUL Statute, the Secretary of VA must make certain determinations, including that the use of the Site will (a) contribute to VA's mission; (b) be consistent with, or will not adversely affect VA's mission; and (c) enhance the use of the EUL Site. In this regard, Offerors should note that the EUL will provide that any activities to be conducted on the Site cannot conflict with the mission or operations of the VA healthcare facilities remaining on campus. For example, VA will not allow any illegal gambling or pornographic operations or sales of alcoholic beverages to be conducted on the EUL Site. In addition, the Secretary must find that the EUL provides for fair consideration to VA. Per the EUL Statute, such consideration may be monetary and/or in-kind, which may include the provision of goods or services as benefit to VA including development, operation, construction, repair, remodeling, maintenance, demolition and removal of vacant buildings or other physical improvements of VA facilities, or the provision of services, office, storage, or other usable space.

2.4.9 VA's Goals and Objectives. VA has the following goals and objectives for this Project:

- a. Reuse underutilized VA land and/or structures to enhance health related care for Veterans.
- b. Re-utilize Parcels A and B of the EUL Site(s) for building, operating, and maintaining a new Assisted Living Facility with a maximum of 200 units for senior Veterans and/or Eligible Veteran Spouses with some Activities of Daily Living limitations, as well as for other Veterans and/or eligible Veteran Spouses who may require such units and assistance. Offerors must design, construct, and operate the Facility on Parcel B. Appropriate support services must be addressed

under “supportive services”. The support services must be seamlessly intermeshed within the array of on-site services provided to Veterans by the Northport VAMC. **Occupancy must be 100% Veterans and/or Eligible Veteran Spouses.** If any units will be used for OIF/OEF temporary occupancy with families or children, the contractor must identify the method by which the appropriate taxes and contribution per pupil for the school district will be met to the satisfaction of the Northport School District and VA.

- c. To the maximum extent practicable, the Assisted Living Facility must be built, operated, and maintained in harmony with the surrounding upper-end residential community. The Offeror must preserve the current tree line along Middleville Road as a buffer between the EUL Site(s) and the residential area across the road. Offerors are urged to utilize creative, innovative and collaborative efforts with community, city, county and state representatives as well as with Veteran groups. This should enable the Selected Offeror to accomplish the Northport EUL project in a manner that will enhance services to veterans without diminishing the social and economic status of the surrounding community. The offerors plan to meet this requirement must be addressed under the Development Concept described under Section 4.2.3.3 of this RFP.
- d. Avoid ongoing operating costs associated with the upkeep of vacant and/or underutilized assets.

2.4.10 VA’s EUL Site Development Preference.

- a. VA requests proposals offering to redevelop the EUL Site under a long-term ground lease agreement for the purposes of building and operating a state of the art assisted living facility with the highest quality of care for Veterans and their families.
- b. The proposed development must meet VA’s requirements, goals and objectives, addressed under Sections 2.4.8 and 2.4.9 above.
- c. The proposed development must not denigrate the current congested traffic flow capacity to and from the Northport Campus.
- d. All proposals for site development will be evaluated in the context of best value to VA, addressed in Section 5.3 of this RFP.

2.4.11 EUL Site Development Preferences for In-Kind Consideration. In-kind consideration could be provided to assist Northport VA presence in addressing its capital and operational needs. 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. VA has identified the following as specific needs for in-kind consideration in order of preference:

- a. Demolish and remove Buildings 1 and 2.

- b. Refurbish the pool in Building 88 and/or construct, maintain and operate an indoor swimming pool open to all Veterans and VAMC Staff.
- c. Replace Heating System in Gym of Building 88; the gym is approximately 8,548 square feet.
- d. Design and construct additional parking lots for use by the VA staff and visitors of the Northport VAMC.
- e. Provide ancillary services for Veterans at the Northport VAMC.
- f. Other Suggestions for in-kind consideration projects are: Construct a stand-alone daycare center. Demolish Building 21. Renovate Building 11 (after Salvation Army move). Renovate Building 5. Provide Health Care Center with exercise equipment in Building 89.

2.4.12 Other Considerations. When preparing their proposals in response to this RFP, Offerors should be cognizant of the following:

- a. VA will not participate in, or allow its or the United States' interest in the EUL Site to be used as security for financing for the Project or otherwise, including without limitation, providing any kind of guaranty or act in any way as a beneficiary for a financing vehicle.
- b. In regard to any proposed Project-related financing to be obtained by the Offeror, 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 EUL upon the Offeror's failure to cure an outstanding event of default thereunder. This includes any document, to include the EUL that would prevent VA from terminating the EUL due to "cross default" arising from one or more parcels on the Property. Any proposed Project financing that does not comply with this restriction must be explicitly identified in the RFP proposal for VA's unilateral review and evaluation.
- c. The successful Offeror must establish and maintain positive relations and communications with state and local governmental authorities and the local communities during negotiations with VA and any of its representatives.
- d. The successful Offeror must integrate development activities with cultural resources and historical and environmental policy management requirements in support of the Northport VAMC mission and operations.
- e. The Offeror will be responsible for coordinating the work schedule with VA in order to minimize disruption to the Northport VAMC activities and operations. This coordination includes the work of any contractor or subcontractor that the Offeror retains in connection with the Project. Close coordination between the Offeror and VA in planning construction activities is particularly important because the Northport VAMC operates 24 hours per day, seven days per week.

- f.** Although VA will have no obligation to lease any space on the EUL Site, the EUL will include a provision granting VA certain rights of first refusal for space that becomes available on the EUL Site, throughout the term of the EUL.
- g.** Offerors should note that subject to and pursuant to per 38 U.S.C. § 8151-8153, VA has the authority to enter into contracts (i.e., sharing agreements) with health-care providers, corporations, association, partnerships, individuals, or other entities to provide for VA that entity's mutual use or exchange of "health care resources" (e.g., medical services, treatment services, rehabilitative services, and other services including those for medical space, laundry, food, and grounds maintenance), or the providing of one or more "healthcare resources" in exchange for agreed-upon monetary remuneration. In certain instances, VA may after EUL execution consider pursuing certain sharing agreements with the Selected Offeror, if it would be in the parties' mutual interests.
- h.** Offerors must comply with all applicable federal, state, and local laws, rules, and regulations to include but not limited to all applicable zoning codes promulgated by the Town of Huntington and all applicable procedures required for changes to those codes.
- i.** Before the new Assisted Living Facility is built, Offerors must obtain a Certificate of Need from the State of New York's Department of Health.
- j.** To participate in the State of New York's Medicare Program, providers must be a certified adult care facility and hold a license for a home care services agency.

3 DEVELOPMENT PLAN

3.1 Following its selection, the Offeror will be responsible for preparing a detailed Development Plan for the Project. The Development Plan will be required to contain a description of the Project and to address comprehensively all significant issues regarding its development, operation, management, and maintenance. Offeror will have ninety (90) days after notification of tentative selection 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

- (1)** The specific type of Project contemplated by the Offeror and a comprehensive plan for the redevelopment of the EUL Site.
- (2)** Project feasibility
- (3)** Plans to ensure proposed uses are compatible with VA's mission
- (4)** Fulfillment of VA requirements, goals, and objectives as defined in Sections 2.4.7, 2.4.8, 2.4.9 and 4.2.3.4

- (5) Development schedule
- (6) Development Team composition
- (7) Community awareness strategies and a community relations plan

b. Transaction Terms

- (1) Transaction Structure
- (2) Proposed entity of the Offeror that would serve as the lessee (on behalf of the Offeror) under the EUL
- (3) Proposed term of EUL (i.e., up to 75 years)
- (4) Description, timing, and structure of in-kind consideration to be provided to VA under the EUL

c. Project Financing

- (1) Financing plan, including sources of funds and any proposed tax abatements
- (2) Development budgets
- (3) 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
- (4) Performance bond – a written commitment from a surety to provide a performance bond in the appropriate amount at the EUL closing

d. Construction Plan

- (1) Drawings and site plans
- (2) Analysis of existing land use restrictions governing the EUL Site, development and land use recommendations, variances required and plans for obtaining them
- (3) Utilities, parking, traffic mitigation, and landscape plans (including plans for preserving or replacing trees currently located on the EUL Site)
- (4) Impact of proposed Development Plan on historic properties, including documentation required to comply or facilitate compliance with NHPA
- (5) Public/private entitlements
- (6) Development and construction management

e. Project Operations

- (1) Marketing and Leasing Plan

- (2) Property and asset protection (e.g., security), management, and maintenance (e.g., a funded maintenance account to cover non-routine repairs)
- (3) Supportive services plan, which outlines how services will be coordinated and managed; the plan must:
- (A) Identify an ongoing outreach plan for identifying and screening potential residents with emphasis on Veterans that ensures the facility is fully occupied
 - (B) Discuss how residents are to be involved in making facility decisions that affect their lives, including how they are to be involved in selecting supportive services, establishing personal goals, and developing plans to achieve these goals so that they achieve greater self-determination
 - (C) Include an employment plan designed to help the residents attain long-term employment
 - (D) Include a plan to minimize legal substance use in Project (Note: Use of illegal substances is prohibited)
 - (E) Clearly identify how residents are to attain self-sufficiency independent living
 - (F) Identify which supportive services are to be provided on-site and off-site, as well as who is going to provide them
 - (G) Include a realistic budget and a strategy for obtaining funding
 - (H) Include a realistic staffing plan that identifies staff qualification requirements
 - (I) Identify how the service needs of residents are to be assessed on an ongoing basis
 - (J) Discuss how residents are to be assisted in assimilating into the community through access to neighborhood facilities, activities, and services
 - (K) Discuss how and when the progress of residents toward meeting their individual goals is to be monitored and evaluated
 - (L) Discuss how and when the effectiveness of the overall project in achieving its goals is to be evaluated and how Program modifications are to be made based on those evaluations
 - (M) Discuss how the proposed Project is to be implemented in a timely fashion

- (N) The contractor shall propose innovative plans that will reduce traffic congestion associated with Northport VAMC on Middleville Road and other heavily traveled roads leading to/from the Medical Center at peak use, such as creating Assisted Employee staff shifts that are at different times than VA staff shifts.

3.2 VA recognizes that formulation of the Development Plan will require the Offeror to work closely and cooperatively with VA. VA will provide final approval and cooperate with the Offeror during the drafting process to facilitate preparation of the final Development Plan. It is anticipated that the Offeror 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 VA's review and approval and may be subject to review and comment by local government and other stakeholders.

3.3 The Offeror will be required to meet the milestones within the timeframes set forth on the Milestone Timetable and agreed to in the Bid Terms Agreement (**Attachment C, Bid Terms Agreement**), with any such extensions or modifications that VA agrees to at its discretion. If the Offeror fails to complete the Development Plan or any other milestone in a timely manner, VA shall have the right, at its discretion, to provide written notice terminating all future discussions with and rights of the Offeror under this RFP and the Bid Terms Agreement. Upon such termination, VA shall neither owe nor pay any fees, costs, expenses, or monetary penalties to the Offeror for any reason(s) regarding or stemming from this RFP and its process, and VA shall, at its discretion, be free to select another Offeror in order to further pursue the EUL and Project.

3.4 Upon the completion of the Development Plan and final approval by VA, and the completion of any other outstanding key milestones and other events required under the EUL Statute, the Offeror will enter into an EUL with VA. The EUL Agreement will be in the form contained in **Attachment D** to this RFP, with such modifications as are deemed necessary and appropriate by VA at their sole and absolute discretion. VA anticipates that the EUL will be for the lease term of up to 75 years.

4 CONTENTS AND PROCESS FOR SUBMISSION OF PROPOSALS

4.1 Submission of proposals. Offerors interested in the Project should submit a proposal in accordance with and meeting the following requirements:

4.1.1 Time and Date of Submission.

- a. Proposals must be received by {DATE} at 3:00 p.m. (Noon) Eastern Standard Time (the "**Closing Time**"). Proposals received after the Closing Time will not be considered and will be returned to the bidder.
- b. Questions regarding this RFP may be submitted in writing by emailing {EMAIL} by {DATE}. Responses will be provided by either an amendment to the RFP or through a posting on the RFP website, which can be accessed at the following location:

www.va.gov/assetmanagement/enhanceduse/northport.

After {DATE}, questions may not be considered.

- c. All Government communication regarding this RFP shall be from the Contracting Officer Dr. Maina Gakure.

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

4.1.3 Place and Manner of Submission. Proposals must be delivered to the following address:

Dr. Maina Gakure or Mr. Edward Bradley III
Office of Asset Enterprise Management (044c)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Room 275F
Washington, D.C. 20420

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

4.1.4 Packaging and Copies. Proposals must be in a sealed envelope or package with the following information conspicuously and legibly written or typed on the outside:

Offeror's name

Offeror's complete address

Name and contact information for 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 sentence must appear in the lower left hand corner of the envelope or package:

“Sealed Proposal for EUL at the Northport VAMC of the NY/NJ Veterans Integrated Service Network.”

In order to be considered, Offerors must submit one (1) original and six (6) hard copies of its proposal plus one (1) electronic working copy of the proposal on a CD ROM to VA. The entire proposal must be included on the same 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), unprotected and accessible 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). Submissions must be comprised of two separate volumes, formatted as follows:

4.2 Proposal Content

- 4.2.1 Format.** 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.
- 4.2.2 Volume I:** 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.
- 4.2.3 Volume II:** Volume II should consist of the following nine (9) sections, each of which is described below in Sections 4.2.3.1 through 4.2.3.9:

Section	Description	Page Limit
1a.	Offeror's Background and Administrative Information	5 pages
1b.	Relevant Offeror Experience, Past and Present Performance, Etc.	10 pages
2a.	Development Concept and Milestone Timetable	10 pages
2b.	VA's Requirements, Goals, and Objectives	5 pages
3.	Financial Capability and Pro Forma	10 pages
4a.	Supportive Services	10 pages
4b.	Property Maintenance and Management	10 pages
5a.	Capability and Qualifications	10 pages
5b.	Community Relations	5 pages
Total		75 pages

Pages submitted that are in excess of any page limit (including a section page limit) will, at VA's sole discretion, be discarded and not 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, catalogue cuts, as well as the Milestone Timetable and Consideration to VA, will not be included for purposes of compliance with page limits. Proposals must be typewritten in eleven (11) point font size or greater.

4.2.3.1 Section I: Offeror's Background and 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 ongoing business other than the development and operation of the Project), each partner, member, or shareholder of the Offeror (referred to herein as "*team members*").

- a. The name, Employer Identification Number, address, telephone number, e-mail address, facsimile number, Dunn and Bradstreet (DUNS) number (if available), 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;
- b. The name and relationship of the Offeror and/or team member(s), as applicable, to each entity that will provide funding and/or 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 other project funding source, or an Offeror's parent or other affiliate that is not a special purpose entity;
- c. A description of the 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;
- d. Location of organization and start-up date of operations;

- e. State whether the Offeror or team member, 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;
- f. 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) summary of its current business activity;
- g. 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 activity; 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
- h. For any Offeror or team member, as applicable, that is a sole proprietorship, provide the date of birth, current address, and a summary of current business activity.

4.2.3.2 Section II: Relevant Offeror Experience, Past Performance. For the Offeror including any "special purpose entity" Offeror, this section must include, for each "key team member," three parts: past experience and performance (Part 1), litigation and similar actions (Part 2), and description of the proposed Architectural and Engineering ("**A&E**") design firm and construction firm team that will be utilized for the Northport VAMC EUL Project (Part 3). For purposes of this section, a "**key team member**" should be considered any member that will be responsible for 20% or more of the services or fees under this proposed EUL.

a. Part 1

- (1) Offerors must have demonstrated expertise in and capacity for developing and operating an Assisted Living Facility. Offerors should show that they have experience with projects of similar size and scope to, and have completed or placed in service at least one currently-operating an assisted living facility of a size comparable to or larger than the VA project contemplated in this RFP. Offerors should possess a strong, positive reputation for reliability, service, and a commitment to serving the veteran population. Additionally, the Offeror should be familiar with and have

developed strong working relationships with community stakeholders and veteran groups.

- (2)** Concise narrative description of the Offeror's and each team member's (as applicable) relevant past experience, including (in the narrative) a description of at least four (4) projects (past or current). Specifically, this Part must include a description of at least four (4) projects on which either the Offeror or a team member has acted as a prime Offeror on projects that 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 January of 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.
- (3)** Each Offeror should also include a list of at least four (4) references (clients or stakeholders in client projects) for whom the Offeror or a team member has successfully completed relevant development projects within the past ten (10) years. Each reference should be able to assess and provide information to VA regarding performance and client or stakeholder (as applicable) satisfaction. Provide the name, title (if any), project role (if any), address, telephone number, facsimile number for each reference, and email address.
- (4)** Including a reference on this list will constitute authorization for VA to contact and discuss the Offeror's or team member's performance. Some of the factors that VA may ask references to discuss include:

 - (a)** Quality of the working relationship with the client (the tenant and/or owner);
 - (b)** Professionalism and integrity with which the Offeror or team member conducted business;
 - (c)** Responsiveness to the client's needs and expectations;
 - (d)** Level of communication;
 - (e)** Value added to the project as the result of cost savings, favorable financing, positive asset management, etc;
 - (f)** Delivery of the project within budget and on schedule;
 - (g)** Quality control of the project design and construction;
 - (h)** Type and quality of the supportive services offered; and

- (i) Other relevant aspects in the management of a project development and operation (as applicable) for a client.
- (5) Information provided in Part 1 will be used by VA to evaluate (a) the extent of the Offeror's and its team members general and key personnel experience and past performance in successfully planning for, developing, and operating assisted living facilities; (b) whether the Offeror or any of its team members demonstrates experience with redevelopment, rehabilitation, and/or adaptive reuse of assisted living facilities; and (c) any other relevant information about comparable projects performed by the Offeror or its team members.

b. Part 2

- (1) List and explain in reasonable detail the following for every member of the team:
- (a) Each instance in which the Offeror, any team member, or any principal, partner, director, or officer of the Offeror was convicted of or pleaded guilty or *nolo contendere* to a crime (other than a traffic offense);
 - (b) 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 (regardless of whether any wrongdoing was admitted or proven); and
 - (c) 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 of 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).
 - (d) Each instance within the past ten (10) years in which the Offeror, any team member, or any principal, partner, director or officer of the

Offeror, has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency.

- (e) Each instance within the past ten (10) years in which the Offeror, any team member, or any principal, partner, director or officer of the Offeror, has had one or more public transactions (federal, state, or local) terminated for cause or default.
- (f) Each material instance of litigation or a formal Alternative Dispute Resolution (“**ADR**”) process (e.g., binding arbitration) within the past ten (10) years, and involving a claim in excess of \$50,000, to which the Offeror, any team member, or any principal, partner, director or officer of the Offeror, has been a party relating to partnering and/or financial performance. For those matters involving a claim equal to or in excess of \$500,000, provide a detailed description of the litigation or ADR process.

- (2) Responses to Part 2 should include a list of the relevant actions in the text, with the required detail in an appendix to the proposal. The appendix portion of the response required by Part 2 will not be included when calculating compliance with proposal page limitations.

c. Part 3

- (1) **The A&E Design Firm:** List and explain in reasonable detail, in a narrative form, the proposed A&E firm’s and consultants’ background and experience, design philosophy, location, and number of employees. The Offeror should provide information describing past experience working with the proposed A&E firm, as well as proposed teaming structure for the EUL Project. The A&E firm should have relevant experience designing assisted living facilities.
- (2) **The Construction Firm:** List and explain in reasonable detail, in a narrative form, the proposed construction firm’s background and experience, location, number of employees, and bonding capacity. The Offeror shall provide information describing past experience working with the proposed construction firm, as well as the proposed teaming structure for the EUL Project.

4.2.3.3 Section III: Development Concept.

- a. This factor will be used to evaluate and demonstrate that the Offeror has a clear understanding of the anticipated design and construction elements of the Project. Specifically, the Offeror shall submit a detailed narrative describing the Offeror’s proposed Project concept, approach and vision, including an accurate overall description of the intended Project design and construction methodology. Offeror should place special emphasis on how its approach addresses the entire Project

and how it demonstrates a clear understanding of the scope and complexity associated with the Project. The description should 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 or renovation. It also should examine the perceived desirability of the Project from VA's perspective; the timing, value, and type of the monetary and/or in-kind consideration to be provided to VA per Sections 1.3, 2.4.7, and 2.4.8 of this RFP; and demonstrate that the Offeror has a clear understanding of how to accomplish the Project (including any proposed redevelopment, construction, and renovation activities) in a timely manner and on budget.

The Project development concept must provide a description and justification for the proposed Assisted Living Facility as well as target residents (single Veterans, Veteran families, eligible non-Veterans, etc.). The development concept description should specify the estimated number of housing units in the Project, as well as the estimated breakdown of units among the selected target population(s). Offerors should support the proposed project size and selected target population(s) by citing available market demand data and local market knowledge. The Concept should address income possibilities, which will supplement revenue streams other than income from tenants (e.g., _____, _____, _____, etc.). The Project concept shall include, but is not limited to, the following items:

- (1) Quality control plan for development and operations;
- (2) Safety plan for development and operations;
- (3) Phasing/sequencing of the Project, including detailed logic diagram with 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) Description of any proposed development, demolition, relocation, refurbishment, or renovation of the Site and/or the facilities currently located on the Site (including any historic structures or properties);
- (6) How the proposed development can be assured of being accomplished in a manner that is consistent with the federal, state and local law, codes, and ordinances, and architecturally compatible with and sensitive to the surrounding community and campus needs;
- (7) Discussion of contract management practices and how those will ensure execution of the plan as designed to private sector standards;

- (8) Proposed term of the EUL and a detailed explanation why such term is the minimum lease term required. In no event shall the term of the EUL for the Site exceed seventy-five (75) years;
- (9) EUL Site Construction and Building Design:
- (a) This section should include a narrative describing the development concept for the identified parcel(s) on the EUL site, including a design narrative for developing the entire proposed EUL Site to incorporate removal or renovation of applicable buildings. Offerors should also provide a discussion of the benefits of adaptive reuse or demolition on the existing structures.
 - (b) This section must also include a graphic depiction showing the proposed layout of the Project on the EUL site. At the Offerors discretion, such imagery should include drawings, site plans, floor plans, elevations, or perspectives of the proposed EUL Site facilities.
 - (c) The contractor shall provide the lay out for a typical unit of the proposed Assisted Living Facility. A floor and detailed description plan will identify in detail the typical unit with square feet (bedroom, bathroom, food preparation area and any other space). Any atypical units shall also be described in the same detail. The contractor is permitted to include procures and references from any other previous projects they have managed for construction or operated that would enhance their RFP Proposal. Pictures should specify what the contractor built and/or operated. If submitted, the facility must be identified.
- (10) Concept plan to integrate the EUL Site utility infrastructure with the Northport Campus. Because Offeror will not be able to tap into VA utilities, Offeror must include a plan for constructing new infrastructure to service the EUL site and a plan for either preserving or relocating existing water, telephone and fiber optic utility lines currently running through EUL Site.
- (11) Strategy to integrate the Community Services at the Northport Campus with the EUL Site.

4.2.3.4 Section IV: Financial Capability. VA will evaluate each proposal to assess the extent of the Offeror's (or its team members') experience in obtaining project financing and dealing with financing issues in other real estate projects that are comparable to the Project. Each Offeror and, in the case of a special purpose entity Offeror, each team member must provide the following:

- a. To the extent the same were prepared, for each of the past three (3) years, audited financial statements prepared by an independent certified public accountant or by an independent licensed public accountant;

- b. To the extent audited financial statements were not prepared for any of the past three (3) years, un-audited financial statements;
- c. 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 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, and 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 financial history and status, as well as this Project;
- d. 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
- e. A preliminary description of the Project's economics and finances, including the following: (1) total development costs, including hard and soft costs (including 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 team member).

4.2.3.5 Section V: Property Management and Maintenance. The Offeror will be responsible for ensuring the proper operation, management, and maintenance of the Project during the term of the EUL. Property managers should demonstrate that they have management experience with assisted living facilities with on-site supportive services. 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 assisted living facilities 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 and principle places of business, etc.) on any personnel that are proposed to be responsible for management of the Project. VA will evaluate the information provided in this section to determine the Offeror's capability to understand and address these responsibilities, notably to ensure the Project's long-term viability.

4.2.3.6 Section VI: Capability and Qualifications. The Offeror should include in this section information necessary to allow VA to assess the Offeror's and, for any special purpose entity Offeror, its 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:

- a.** The Offeror's organizational approach to executing its Project responsibilities, providing overall project coordination, and responding to VA during all phases of the Project;
- b.** 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;
- c.** A summary of the Offeror's current and projected workload for the next three (3) years as well as the past ten (10) years (or, if the Offeror is a special purpose entity, a summary of each team member's workload), expressed in terms of the annualized dollar value of the projects developed and being developed and the number of full-time staff engaged in managing project development;
- d.** A discussion of the extent to which the Offeror and, in the case of a special purpose entity Offeror, its team members are planning to commit staff and other resources to preparation of the Development Plan (described in Section 3 of this RFP) and the Project;
- e.** The identity of all key personnel (i.e., persons considered critical to the performance of services), and for each such person:
 - (1)** A description of their respective role during development of the Development Plan;
 - (2)** 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;
 - (3)** 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 a team member or, if not employed, what kind of commitment or employment offer the Offeror or team member has made and/or accepted to assure the availability of the person during preparation of the Development Plan (resumes of key personnel not currently employed by the Offeror or a team member must be accompanied by a signed and notarized statement indicating the person's permission to include the resume in the quotation package);
 - (4)** A discussion of the extent to which key personnel have worked together on other projects similar to the Project.
- f.** A discussion of the Offeror's experience and understanding of working with VA and federal, state and local governments;
- g.** A discussion of the Offeror's experience and understanding of real estate development in the State of New York;

- h. A discussion of the Offeror's experience and understanding of development, redevelopment and adaptive reuse.

4.2.3.7 Section VII: VA's Requirements, Goals, and Objectives. VA intends to evaluate the Offerors and, in the case of a special purpose entity Offeror, its team members' understanding of a realistic approach to accomplishing and complying with VA's requirements, goals, and objectives as described in Sections 2.4.7, 2.4.8 and 2.4.9 of this RFP. Offerors should include an explanation as to how the Offeror's approach will effectively accomplish and comply with the requirements, goals, and objectives of VA as part of the Project, including VA's receipt of monetary and/or in-kind consideration as described in Section 2.4.10 and 2.4.11 of this RFP.

4.2.3.8 Section VIII: Community Relations. Although community approval is not required for this Project, 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 major 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., zoning, environmental, State Historic Preservation Office ("*SHPO*"), local community, etc.). With respect to projects listed under "Section II: Relevant Offeror Experience, Past Performance, Etc.," describe any experience in managing relations with the surrounding community. (Information provided in Section II 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 Site. 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 zoning and development matters.

Offeror should demonstrate that they fully comprehend the significance and complexities of a community relations and outreach program associated with the development at the EUL Site in an area significantly dominated by residential development. Offeror should also demonstrate and understanding of the need to educate project stakeholders about the necessity for sustainable revenue in order to implement the public policy objective of enhancing services to veterans.

Offeror should outline an integrated communications strategy that will educate and inform target audiences about the development and its overall benefits. The audiences will be educated through the use of key messages by a variety of earned and paid media, as well as through community outreach.

- 4.3** The Offeror must provide a **Milestone Timetable** containing a detailed list of milestones and the time within which each milestone will be met. The milestones that must be included are the following:

- (1) The date the Offeror, after being selected for award under this RFP, will submit an outline of the Development Plan for VA's review and approval;
- (2) The dates the Offeror will submit drafts and the final version of the complete Development Plan for VA's review and approval;
- (3) The date the Offeror will be prepared to execute the EUL Agreement (see **Attachment D**) and any other transaction documentation to be executed by VA and/or the Offeror (e.g., Bid Terms Agreement);
- (4) The dates that the Offeror will obtain the necessary Project financing and any necessary permits, approvals, and variances; and
- (5) The dates that the Offeror will complete each phase of the design, development, and construction of the Project and the in-kind consideration to be provided to VA.

Note: The Milestone Timetable must provide a three (3) 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 forty-five (45) day waiting period preceding any EUL execution). The three (3) month period will be extended to include any portion of the forty-five (45) day waiting period that is not concluded at the end of the original three-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 (such as documentation providing for the mortgage or assignment of the leasehold interest), in draft form for VA's review. The Milestone Timetable must include adequate time for VA's review of all drafts and other submissions and specify proposed dates by which any VA review is to be completed. It is advisable that Offerors plan to provide VA with drafts of documents in advance of the time when the final Development Plan is submitted for VA's final review and approval.

4.4 Consideration to VA.

4.4.1 Enhanced Use Lease Consideration. The proposal must include a discussion of the consideration (both cash and in-kind) and the value of the consideration VA will receive under the EUL. 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. The proposal for the Consideration must include:

- a. **EUL lease payments.** The proposal must provide a brief supporting narrative and a schedule of lease payments to VA.

- b. Description, value and timeline of any in-kind consideration** (if applicable). The proposal must provide a description of any in-kind consideration and a schedule of the estimated value of such in-kind consideration.
 - c. Other consideration** (if applicable). The proposal must provide a schedule of any additional consideration. For example, if an income sharing arrangement is proposed, clearly specify the percentages proposed and the definition of the basis to which the percentages apply (e.g., net operating income, etc.).
- 4.4.2 Pro Forma.** The proposal must provide an integrated annual financial pro forma for Phase I redevelopment activities and EUL consideration to VA for the entire proposed lease term. The narratives accompanying the Pro Forma calculations should discuss the following:
- a. Construction timeline.** The proposal must describe the timeline of construction milestones and the corresponding schedule of percentage completion.
 - b. Construction budget.** The proposal must include the Offeror's magnitude estimate of construction costs over the timeline of the project (i.e. the construction budget timeline) as quantified in items 4.4.2(d) and 4.4.2(e) below.
 - c. Construction budget financing.** The proposal must provide a brief narrative discussion of funding for the required costs in the construction budget timeline. This discussion should be consistent with items 4.4.2(b) through 4.4.2(f) below.
 - d. Financing and source of funds.** The proposal must provide a brief narrative of all funding sources (e.g., equity provided by the Offeror, loan proceeds, net operating income generated from the EUL Site development project, etc.) used to finance the project and must provide an annual schedule of the flow of these funds. The discussion should include a description and/or documentation demonstrating the Offeror's strategy to obtain financing for this project, including anticipated costs and why this strategy was selected. The pro forma must include at minimum a statement of cash flows, consisting of all Project in- and out-flows, and including the proceeds of the debt and equity funding. It must at a minimum identify:

 - a) Equity commitments
 - b) Receipts of loan proceeds
 - c) Payments made to VA at closing
 - d) Project expenditures for construction hard costs (excluding fees paid to the Offeror)
 - e) Project expenditures for construction soft costs (excluding fees paid to the Offeror)
 - f) Project fees paid to the Offeror
 - g) Receipts of Project payments from VA (if applicable)
 - h) EUL Project lease payments to VA (if applicable)
 - i) EUL Project in-kind considerations to VA (if applicable)

- j) EUL Project revenues, expenses and net operating income
- k) EUL Project income sharing cash flows to VA (if applicable).

5 EVALUATION CRITERIA

- 5.1** Following the RFP proposal submission deadline, VA will initially review all submissions for completeness and adherence to the requirements and conditions set out in this RFP.
- 5.2** Complete and acceptable submissions will be further reviewed and evaluated by VA, ranked in order, and a “competitive range” established. Offerors whose submissions are found to be within the competitive range may be given the opportunity to make a formal presentation to VA and receive questions regarding their proposal. Based thereon, VA may ask Offerors within the competitive range to submit their Final Revised Proposal (“**FRP**”). Once submitted, VA will treat each Offeror’s FRP as a firm proposal submission that supersedes that Offeror’s proposal originally submitted. For selection purposes VA will use Federal Acquisition Regulation (“FAR”) guidance as described in VA Directive 7415 and VA Handbook 7415, Enhanced-Use Leasing Policies and Procedures.
- 5.3** The Government intends to review all factors for award in making a best value selection. After the final evaluation of the proposals, VA will select the Offeror whose proposal offers the **best overall value**. Selection will be based on an integrated assessment of the factors set forth below. Upon selection of the selected developer, the Developer will commence work on the Development Plan as outlined in Section 3 of this RFP, with the intent to execute a lease.
- 5.4** The proposals will be evaluated on the basis of the following factors that are equally weighted:
- a. Offeror’s Background and Administrative Information & Relevant Experience, Past and Present Performance
 - b. Development Concept & Ability to Meet VA’s Requirements, Goals, and Objectives
 - c. Financial Capability and Pro Forma
 - d. Supportive Services & Property Management and Maintenance
 - e. Capability and Qualifications & Community Relations
- 5.5** As part of the criteria, the Offeror will be evaluated on their design and construction teams for other relevant facilities. In particular, the Offeror shall demonstrate that the design and construction teams and firms have the level of professionalism and experience to deliver facilities in accordance with Part 3 of Section 4.2.3.2. In addition, the selected

Offeror shall provide the requested information for VA evaluation based on criteria developed by VA. The design criteria are included in Sections 2.4.8, 2.4.9 and 2.4.10, respectively.

6 MISCELLANEOUS TERMS AND CONDITIONS APPLICABLE TO THIS RFP

6.1 Website. A website has been created to provide interested parties an opportunity to learn more about this development or redevelopment opportunity and the VA EUL program. The website is located at

www.va.gov/assetmanagement/enhanceduse/northport

6.2 Questions and Information. Questions, requests for clarifications, and general information requests must be sent by email to {EMAIL}. 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. To receive all project related updates, please subscribe to updates via the website:

www.va.gov/assetmanagement/enhanceduse/northport

VA has identified {DATE(s)}, as available dates for in-person tours of the EUL Site. Offerors interested in touring the EUL Site on these dates should contact {NAME} at {PHONE} or {EMAIL}.

6.3 Authorizations by Submission of Proposal. Any and all information provided by an Offeror and its team members may be used by VA to conduct credit and background checks.

6.4 Teaming Arrangements and Special Purpose Entities. Multiple Offerors may form a 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. Constructing, maintaining and operating an assisted living facility can be a complex and challenging process, and the provision financial assistance for Veterans requires specialized expertise. Potential Offerors who do not have strong experience or skills in these areas may consider submitting proposals jointly with entities whose experience can complement their own. (Note: VA will not be involved in facilitating partnering or teaming arrangements.)

6.5 Hold Harmless. By participating in the RFP process, 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 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 as a result of such person's efforts towards and/or participation in this RFP process or the submission by such person of a proposal, and liabilities, losses, costs, and expenses (including reasonable attorney's fees

and expenses) incurred by any indemnified party (including VA) 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 VA (which may include 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 addressed in a supplement to this RFP, or otherwise 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): (a) any person that has been debarred or suspended from doing business with VA; (b) 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; (c) 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 "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; and (d) 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 the foregoing criteria.

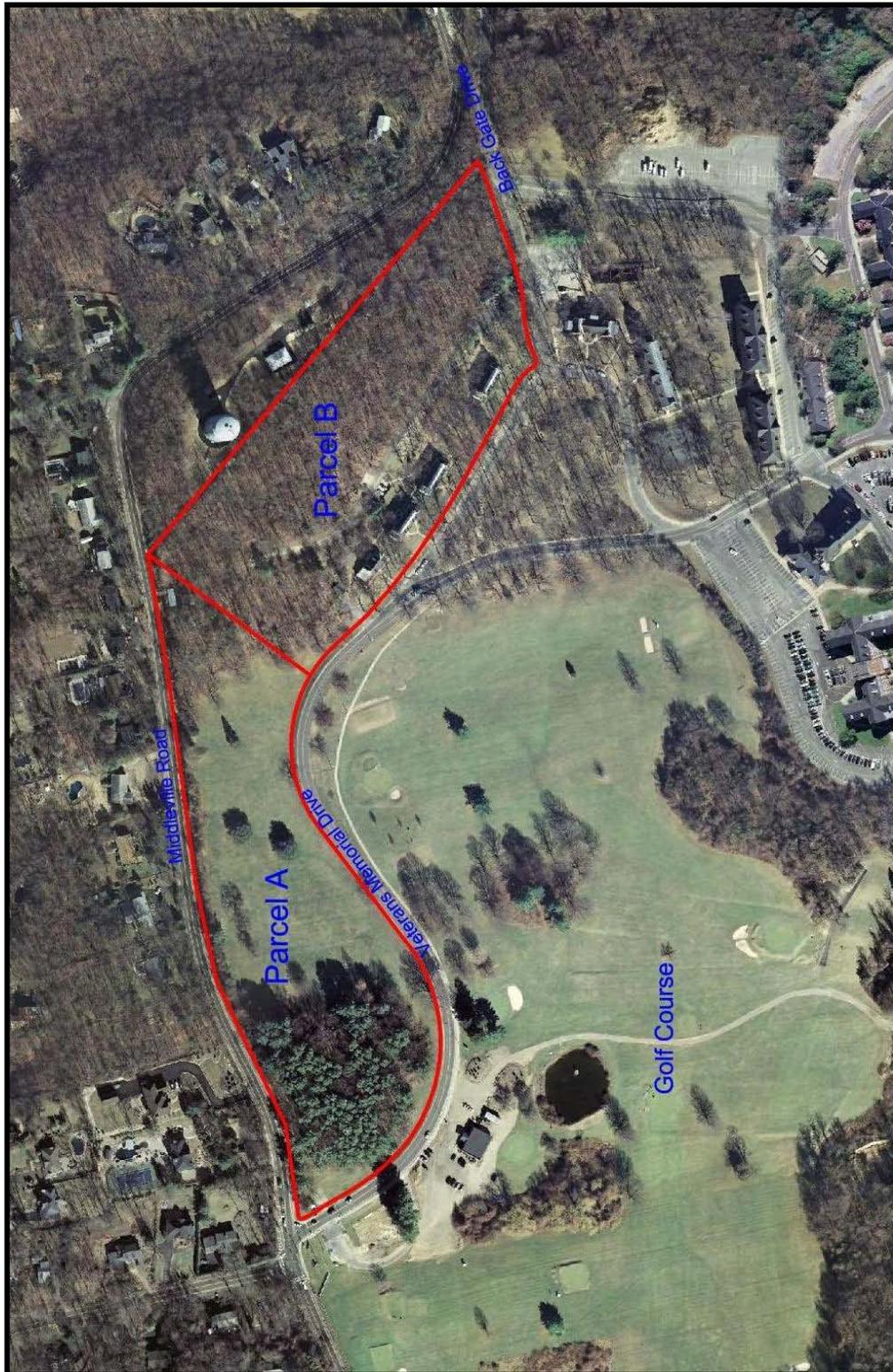
6.9 Others.

- a.** All of the information required to be provided in each proposal pursuant to Section 4 of this RFP is important to VA's analysis and evaluation of the proposal. VA may utilize all information provided in a proposal in evaluating the proposal. Neither VA 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 therein, and no legal liability with respect thereto is assumed or may be implied.
- b.** VA reserves the right to (a) update, supplement, and revise this RFP; (b) make an award under this RFP as a result of initial offers submitted; (c) reject any or all

Offers at any time prior to award and cancel this Solicitation; (d) award to other than the offer with the highest level of consideration offered; (e) independently waive informalities and minor irregularities in offers received; and (f) make an award and then enter into negotiations with a selected Offeror on the basis of initial offers received without discussions. Therefore, all initial offers should comprehensively address each of the requirements set forth herein, and contain the Offeror's best terms.

- c.** By submitting a proposal, each Offeror accepts all of the terms and conditions set forth in this RFP, and any updates, supplements and amendments thereto. Any conflict (whether actual or perceived) between different parts of this RFP, as between an Offeror and VA, shall be resolved at the sole and absolute discretion of VA.
- d.** In no event shall VA be liable for any fees, costs, or expenses associated with any of the Offeror's (or their brokers, if any) activities (e.g., preparation, discussions, clarifications, submissions, or negotiations), relating directly or indirectly to this Solicitation. Accordingly, as a condition of submitting its proposal, each Offeror hereby agrees to indemnify and hold VA harmless for any and all such fees, claims, liabilities, and costs arising in connection with this RFP and its underlying process.
- e.** Any relationship between VA and an Offeror arising from the Solicitation is subject to the specific limitations, terms, conditions, and representations expressed in this RFP. Any substantive questions or concerns to include conflicts, apparent conflicts, or any other substantive matters regarding this RFP which may arise during preparation of an Offeror's proposal should be addressed, in writing, via the dedicated email address {EMAIL}.

ATTACHMENT “A”: MAP



ATTACHMENT “B”: ENHANCED-USE LEASEING STATUTE

Enhanced Use Lease Statute

TITLE 38. VETERANS' BENEFITS
PART VI. ACQUISITION AND DISPOSITION OF PROPERTY
CHAPTER 81. ACQUISITION AND OPERATION OF HOSPITAL AND
DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE
LEASES OF REAL PROPERTY
SUBCHAPTER V. ENHANCED-USE LEASES OF REAL PROPERTY

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

§ 8161. Definitions

For the purposes of this subchapter [38 USCS §§ 8161 et seq.]:

- (1) The term "enhanced-use lease" means a written lease entered into by the Secretary under this subchapter [38 USCS §§ 8161 et seq.].
- (2) The term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

§ 8162. Enhanced-use leases

(a) (1) The Secretary may in accordance with this subchapter [38 USCS §§ 8161 et seq.] enter into leases with respect to real property that is under the jurisdiction or control of the Secretary. Any such lease under this subchapter [38 USCS §§ 8161 et seq.] may be referred to as an "enhanced-use lease". The Secretary may dispose of any such property that is leased to another party under this subchapter [38 USCS §§ 8161 et seq.] in accordance with section 8164 of this title [38 USCS § 8164]. The Secretary may exercise the authority provided by this subchapter [38 USCS §§ 8161 et seq.] notwithstanding section 8122 of this title [38 USCS § 8122], subchapter II of chapter 5 of title 40 [40 USCS §§ 521 et seq.], sections 541-555 and 1302 of title 40 [40 USCS §§ 541-555 and 1302], or any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section. The applicability of this subchapter [38 USCS §§ 8161 et seq.] to section 421(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) [unclassified] is covered by subsection (c).

(2) The Secretary may enter into an enhanced-use lease only if--

(A) the Secretary determines that--

(i) at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department;

(ii) the lease will not be inconsistent with and will not adversely affect the mission of the Department; and

(iii) the lease will enhance the use of the property; or

(B) the Secretary determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(3) The provisions of sections 3141-3144, 3146, and 3147 of title 40 [40 USCS §§ 3141-3144, 3146, and 3147] shall not, by reason of this section, become inapplicable to property that is leased to another party under an enhanced-use lease.

(4) A property that is leased to another party under an enhanced-use lease may not be considered to be unutilized or underutilized for purposes of section 501 of the Stewart B. McKinney Homeless Assistance Act [McKinney-Vento Homeless Assistance Act] (42 U.S.C. 11411).

(b) (1) (A) If the Secretary has determined that a property should be leased to another party through an enhanced-use lease, the Secretary shall select the party with whom the lease will be entered into using selection procedures determined by the Secretary that ensure the integrity of the selection process.

(B) In the case of a property that the Secretary determines is appropriate for use as a facility to furnish services to homeless veterans under chapter 20 of this title [38 USCS §§ 2001 et seq.], the Secretary may enter into an enhanced-use lease with a provider of homeless services without regard to the selection procedures required under subparagraph (A).

(2) The term of an enhanced-use lease may not exceed 75 years.

(3)

(A) Each enhanced-use lease shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in whole or in part through consideration in-kind.

(B) Consideration in-kind may include provision of goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.

(4) The terms of an enhanced-use lease may provide for the Secretary to--

(A) obtain facilities, space, or services on the leased property; and

(B) use minor construction funds for capital contribution payments.

(c)

(1) Subject to paragraph (2), the entering into an enhanced-use lease covering any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 553) [unclassified] shall be considered to be prohibited by that section unless specifically authorized by law.

(2) The entering into an enhanced-use lease by the Secretary covering any land or improvement described in such section 421(b)(2) [unclassified] shall not be considered to be prohibited under that section if under the lease--

(A) the designated property is to be used only for child-care services;

(B) those services are to be provided only for the benefit of--

(i) employees of the Department;

(ii) individuals employed on the premises of such property; and

(iii) employees of a health-personnel educational institution that is affiliated with a Department facility;

(C) over one-half of the employees benefited by the child-care services provided are required to be employees of the Department; and

(D) over one-half of the children to whom child-care services are provided are required to be children of employees of the Department.

§ 8163. Hearing and notice requirements regarding proposed leases

(a) If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct a public hearing before entering into the lease. The hearing shall be conducted in the community in which the property is located. At the hearing, the Secretary shall receive the views of veterans' service organizations and other interested parties regarding the proposed lease of the property and the possible effects of the uses to be made of the property under a lease of the general character then contemplated. The possible effects to be addressed at the hearing shall include effects on--

(1) local commerce and other aspects of the local community;

(2) programs administered by the Department; and

(3) services to veterans in the community.

(b) Before conducting such a hearing, the Secretary shall provide reasonable notice to the congressional veterans' affairs committees and to the public of the proposed lease and of the hearing. The notice shall include the following:

(1) The time and place of the hearing.

(2) Identification of the property proposed to be leased.

(3) A description of the proposed uses of the property under the lease.

(4) A description of how the uses to be made of the property under a lease of the general

character then contemplated--

(A) would--

- (i) contribute in a cost-effective manner to the mission of the Department;
- (ii) not be inconsistent with the mission of the Department;
- (iii) not adversely affect the mission of the Department; and
- (iv) affect services to veterans; or

(B) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(5) A description of how those uses would affect services to veterans.

(c) (1) If after a hearing under subsection (a) the Secretary intends to enter into an enhanced-use lease of the property involved, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intention to enter into such lease and shall publish a notice of such intention in the Federal Register.

(2) The Secretary may not enter into an enhanced use lease until the end of the 45-day period beginning on the date of the submission of notice under paragraph (1).

(3) Each notice under paragraph (1) shall include the following:

(A) An identification of the property involved.

(B) An explanation of the background of, rationale for, and economic factors in support of, the proposed lease.

(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation, together with a summary of the Secretary's evaluation of those views.

(D) A description of the provisions of the proposed lease.

(E) A description of how the proposed lease--

(i) would--

- (I) contribute in a cost-effective manner to the mission of the Department;
- (II) not be inconsistent with the mission of the Department;
- (III) not adversely affect the mission of the Department; and
- (IV) affect services to veterans; or

(ii) would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located.

(F) A description of how the proposed lease would affect services to veterans.

(G) A summary of a cost-benefit analysis of the proposed lease.

(4) [Deleted]

§ 8164. Authority for disposition of leased property

(a) If, during the term of an enhanced-use lease or within 30 days after the end of the term of the

lease, the Secretary determines that the leased property is no longer needed by the Department, the Secretary may initiate action for the transfer to the lessee of all right, title, and interest of the United States in the property. A disposition of property may not be made under this section unless the Secretary determines that the disposition under this section rather than under section 8118 or 8122 of this title [38 USCS § 8118 or 8122] is in the best interests of the Department.

(b) A disposition under this section may be made for such consideration as the Secretary determines is in the best interest of the United States and upon such other terms and conditions as the Secretary considers appropriate.

(c) Not less than 45 days before a disposition of property is made under this section, the Secretary shall notify the congressional veterans' affairs committees of the Secretary's intent to dispose of the property and shall publish notice of the proposed disposition in the Federal Register. The notice shall describe the background of, rationale for, and economic factors in support of, the proposed disposition (including a cost-benefit analysis summary) and the method, terms, and conditions of the proposed disposition.

§ 8165. Use of proceeds

(a) (1) Funds received by the Department under an enhanced-use lease and remaining after any deduction from those funds under subsection (b) shall be deposited in the Department of Veterans Affairs Medical Care Collections Fund established under section 1729A of this title [38 USCS § 1729A].

(2) Funds received by the Department from a disposal of leased property under section 8164 of this title [38 USCS § 8164] shall be deposited in the Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title [38 USCS § 8118].

(b) An amount sufficient to pay for any expenses incurred by the Secretary in any fiscal year in connection with an enhanced-use lease shall be deducted from the proceeds of the lease for that fiscal year and may be used by the Secretary to reimburse the account from which the funds were used to pay such expenses. The Secretary may use the proceeds from any enhanced-use lease to reimburse applicable appropriations of the Department for any expenses incurred in the development of additional enhanced-use leases.

(c) [Deleted]

§ 8166. Construction standards

(a) Unless the Secretary provides otherwise, the construction, alteration, repair, remodeling, or

improvement of the property that is the subject of the lease shall be carried out so as to comply with all standards applicable to construction of Federal buildings. Any such construction, alteration, repair, remodeling, or improvement shall not be subject to any State or local law relating to land use, building codes, permits, or inspections unless the Secretary provides otherwise.

(b) Unless the Secretary has provided that Federal construction standards are not applicable to a property, the Secretary shall conduct periodic inspections of any such construction, alteration, repair, remodeling, or improvement for the purpose of ensuring that the standards are met.

§ 8167. Exemption from State and local taxes

The interest of the United States in any property subject to an enhanced-use lease and any use by the United States of such property during such lease shall not be subject, directly or indirectly, to any State or local law relative to taxation, fees, assessments, or special assessments, except sales taxes charged in connection with any construction, alteration, repair, remodeling, or improvement project carried out under the lease.

[8168. Repealed]

§ 8169. Expiration

The authority of the Secretary to enter into enhanced-use leases under this subchapter [38 USCS §§ 8161 et seq.] expires on December 31, 2011.

ATTACHMENT “C”: BID TERMS AGREEMENT

Bid Terms Agreement
Enhanced-Use Lease Development Project
NY/NJ Veterans Integrated Service Network
VISN 3
Northport VA Medical Center
Northport, New York

Bid Terms Agreement

Enhanced-Use Lease Development Project NY/NJ Veterans Integrated Service Network

VISN 3

Northport VA Medical Center

Northport, New York

The United States Department of Veterans Affairs (the “VA”), through the Request for Proposals No. VA-101-10-RP-0041, dated _____, and relating to the NY/NJ Veterans Integrated Service Network, Northport VA Medical Center in Northport, New York (the “Northport Campus”), 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 Agreement (hereinafter referred to as an “EUL”) and any other documents to be executed in connection with the transaction either by the VA or the VA and the Developer (collectively, the “Transaction Documents”). The Developer has submitted a proposal to the VA 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, subject to the provisions of this Agreement, which provides for changes agreed to by VA during the approval of the Development Plan. Until such time as any changes are made 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 VA as part of the EUL. The Proposal remains in force for one hundred eighty (180) days after the Closing Time. After the one hundred eighty (180) day period has expired and prior to the issuance by the VA of a Selection Notice (as defined below), the Developer may revoke its Proposal by delivering to the VA written notice of revocation. Upon receipt by the VA of such a revocation notice, the Proposal shall be deemed to be revoked.
2. The VA 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 VA with the highest value in terms of consideration to the VA under the EUL 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 VA 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 laws (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 VA); and (iv) the contemplated use is otherwise practical and economically feasible.
5. If the Developer is chosen by the VA to prepare a Development Plan and enter into an EUL for the Site, the VA 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 VA (the "Agreed Milestone Timetable"). The VA may issue a Selection Notice that is conditional (a "Conditional Selection Notice") upon the Developer and the VA reaching agreement, within a timeframe specified in the Conditional Selection Notice, on certain matters regarding the Proposal that are not acceptable to the VA or with respect to which it requests clarification. If the VA issues a Conditional Selection Notice and the conditions set forth therein are met, the VA will then issue a Selection Notice. If the VA issues a Conditional Selection Notice and the conditions are not met, as determined by the VA in its sole and absolute discretion, then the conditional selection of the Developer may be revoked by the VA (which revocation may operate automatically and without any action on the part of the VA if the Conditional Selection Notice so provides) and the Developer shall have no rights or recourse against the VA 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 VA 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 Part 3 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 VA, shall be permitted or effective unless approved in writing by the VA. 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. Within 30 days of receipt of Selection Notice, the Developer shall submit to VA a financial plan demonstrating a detailed strategy for securing financing for the project capital and operating expenses. The plan shall be updated with the submission of the complete Development Plan and shall include the proposed mix of family and single occupancy units and any other economic mix to demonstrate financial feasibility.
8. Within five (5) Business Days of receipt from the VA of the execution form of the EUL and any other Transaction Documents, the Developer (and/or any other party thereto) shall execute and deliver the same to the VA (or its counsel, as directed by the VA).
9. The Developer understands that time is of the essence to the VA 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 VA will have the right to declare the Developer in default under this Agreement and, upon any such default, the VA 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 VA's sole and absolute discretion, if it so chooses, make an award to another developer.
10. Except for such representations and warranties of the VA as are expressly set forth in the EUL or any other Transaction Document to which the VA is a party, the VA makes no representations or warranties of any kind (whether express, implied, or arising by operation of law). Without limiting the foregoing, the VA makes no representation or warranty regarding the suitability of the Site for use of any kind.

11. The Proposal and this Agreement has been, and any and all amendments, additions, and clarifications thereto and any other documents submitted to the VA 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 VA, 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 VA 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).
12. Without limiting the indemnification and hold harmless obligation of the Developer set forth in the RFP, the Developer hereby indemnifies and holds harmless the VA 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 VA), 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 VA in connection with any action taken by the VA 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.
13. It is understood and agreed by the Developer that the VA is not obligated, and may not have the authority, to agree to any substantive change to the form of EUL or any other Transaction Documents included as part of the RFP or the structure of any transaction contemplated thereby.
14. The Developer represents, warrants, and covenants to the VA 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 VA 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 EUL 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. (i) neither the Developer nor any of its partners, members, board members or principal stockholders (as defined below) is debarred or suspended from doing business with the VA or any other federal government agency; (ii) if at any time the Developer or any of its partners, members, board members or principal stockholders is proposed to be debarred or suspended from doing business with the VA or any other federal government agency, the Developer will immediately so advise the VA in writing; (iii) neither the Developer nor any of its partners, members, board 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, board 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 "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.mipt.org/pdf/Country-Reports-Terrorism-2004.pdf>

(v) neither the Developer nor any of its partners, members, board 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 VA's Office of General Counsel, not cause or result in a violation of any federal ethics law or regulation to include, but not be 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;
- d. 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.
15. Except as is otherwise set forth in the EUL and other Transaction Documents, each of the Developer and the VA 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 VA).
16. This Agreement may be amended or modified, and the terms hereof waived, only by a written instrument signed by the VA and the Developer. No failure or delay on the part of the VA to exercise any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of the VA 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.
17. 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 VA 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.

18. 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 VA (which consent may be granted or withheld in the sole and absolute discretion of the VA), and any attempted transfer or assignment in violation of this provision shall (i) be void and of no force or effect, and (ii) constitute a material default under this Agreement and entitle the VA to exercise its rights and remedies hereunder with respect thereto.
19. 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 VA 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 VA 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 VA (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 VA's execution nor delivery of this Agreement shall be required in order for the VA to be entitled to enforce this Agreement against the Developer. The VA 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 VA, the Developer shall provide the VA with six (6) hard copies and one (1) electronic copy of the Development Plan and each other item submitted to the VA (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 VA, to the address or facsimile transmission number set forth below:

Dr. Maina Gakure or Mr. Edward Bradley III
Office of Asset Enterprise Management (044c)
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Room 275F
Washington, D.C. 20420
Facsimile No.: 202-273-9374

Items directed to the VA must also be clearly labeled with the Developer's full name and the following subject heading: "Northport VA Medical Center RFP, Bid Terms Agreement".

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 telecopy number for purposes of notice hereunder by notice hereunder to such effect to the other party.

[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 VA solely for the purposes set forth herein.

VA: United States Department of Veterans Affairs

Name: _____

Title: _____

Schedule 1

Agreed Milestone Timetable

[To be attached]

ATTACHMENT “D”: ENHANCED-USE LEASE AGREEMENT

Enhanced-Use Lease Agreement

**of
Certain Real Property and Facilities
at the
NY/NJ Veterans Integrated Service Network
VISN 3
Northport VA Medical Center
in
Northport, New York**

DATED: _____, 20__

ENHANCED-USE LEASE
of
Certain Real Property and Facilities
at the
Northport Veterans Affairs Medical Center,
Located in
Northport, New York

This Enhanced – Use Lease (EUL) (hereinafter referred to as the “Lease”), is made and entered into this the ____ day of _____, 20__, by and between the Secretary of the Veterans Affairs, an officer of the United States on behalf of the Department of Veterans Affairs (referred to hereinafter as “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 VA has jurisdiction and control of certain real property and facilities known as the Northport Veterans Affairs Medical Center, which is approximately 268.5 acres, located at 79 Middleville Road, Northport, New York 11768 (referred to hereinafter as “campus”) that provides health care services to the nation’s veterans. The property covered by this Lease consists of approximately 20.6 contiguous acres of land on the northern perimeter of the campus and improvements referred to hereinafter as the “Property”, and 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 VA 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 an Assisted Living Facility for veterans and/or their eligible spouses thereon consisting of not more than Two Hundred (200) units and supportive services, as well as vehicular parking spaces of not less than [insert #] and associated real estate, all of which are collectively referred to hereinafter as the “Facility”, for the purpose

of providing an Assisted Living Facility at the Northport VAMC to serve veterans and/or their eligible spouses; and

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

WHEREAS, the VA and Lessee agree that the Facility shall be occupied solely by eligible Veterans and/or their eligible spouses and such occupancy requirement shall be contained in the “Tenant Selection Plan” (attached as Exhibit “F”).

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 VA 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 the EUL 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”: Tenant Selection Plan
- G. Exhibit “G”: 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).

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

“Designated VA Representative” or “DVR”: means the individual of the VA 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.

“Facility”: means (a) the Facility described in the Recitals section above, which Lessee will finance, design, develop, construct, operate, and maintain in accordance with this Lease; and (b) all associated structures, improvements, utilities, fixtures, infrastructure, and any other Improvements located on the Property.

“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 34 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 EUL between the VA and Lessee.

“Leasehold Mortgage”: means each mortgage as defined in Article 20.B.2 of this Lease.

“Leasehold Mortgagee”: means each leasehold mortgagee as defined in Article 20.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 Facility in accordance with this Lease.

“Property”: means that certain real property consisting of approximately 20.6 contiguous acres located on the northern perimeter of the campus, 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 20.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.

“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.

“Veteran Spouse(s)” means someone that is or was married to a Veteran.

**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, finance, design, develop, construct, operate, and maintain an Assisted Living Facility for Veterans and/or their eligible spouses. 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 campus’s activities and operations.
 2. Lessee shall in consultation with VA, establish specific procedures, regulations, rules, and/or standards to ensure that eligible Veterans and eligible spouses are the sole occupants of the Facility receive priority admission, and ensure that Veterans receive services or any privileges, accommodations, or activities provided in as good or better a manner as all other Veterans and/or their eligible spouses on the Property or residing in the Facility; and ensure that such 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 VA [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]

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

The VA 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 VA (within thirty (30) days of receipt of any bill from the VA 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 VA.
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 VA 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 VA shall issue both such approvals to Lessee in writing. In addition, prior to the VA's approval of any and all connections to VA's distributions systems per this Paragraph 4, Lessee shall provide the VA 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 13 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 VA has jurisdiction and control of the campus, the VA 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 VA 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 VA'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 VA, the "at-cost" amount(s) (i.e., the actual cost to the VA for providing) for 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 VA during and throughout the preceding month).. Lessee's payments to the VA for such Ancillary Services shall be paid no later than thirty (30) days after receipt of any bill from the VA 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 VA as provided for in Article 23, 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 VA; **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 VA, 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 VA and to Lessee for such damages as the VA 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 VA 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 VA and Lessee from and against any and all claims, actions, losses, damages, or costs and expenses as the VA 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 VA 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 VA 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 VA and Lessee from and against any and all claims, actions, demands, losses, damages, liabilities, judgments, costs, and attorneys' fees, which the VA 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) Veterans Memorial Drive, Volunteers Way, and Back Gate Drive for general vehicular ingress and egress, and (2) the sidewalks across the campus 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 VA 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 VA, 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 VA, 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 VA 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 16 and 34 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 VA has made no representations or warranties concerning the condition of the Property, nor the fitness or suitability for any particular use or access to the Property, and the VA 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 renovation and operation of the Facility; (b) assure that all applicable federal, state, and local requirements are met during operation of the Facility (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; and (d) assure that the Facility is operated as a drug and alcohol free environment and take action promptly when this requirement is not met by occupants.
9. Prior to occupancy of the Facility 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 Town of Huntington, New York inspector or an independent inspector licensed by the State of New York to conduct an inspection of the

Facility 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 VA must receive the Certificate of Substantial Completion before Lessee may occupy or receive occupants into the Facility, 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 Facility, use all reasonable and commercial best efforts to act so as to avoid the occurrence of any action(s) contained in Article 22 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 Facility and 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 Facility 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 22.A.2.
13. Lessee will be solely responsible for any and all costs associated with the repair and maintenance of the Facility and 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 campus’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 Facility 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 Facility.

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 Historic Preservation Office (“SHPO”), and shall coordinate and work with the VA 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 VA with a copy of its audited financial statements for the Facility, 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 VA 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 Peaceful and Quiet Use 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 VA determines that the Property is no longer needed by the VA, the VA 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 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 campus, are consistent with the Property uses identified in Article 7, and would not adversely affect VA's use and occupancy of the campus. 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 VA 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 Facility (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 VA, which consent shall not be unreasonably withheld. The VA 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 VA'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 and Facility, as well as any subsequent activities of this nature on the Property, shall contain clauses indemnifying and holding the VA 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 Facility, 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 VA'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 VA shall have the right to reject such submittals. In any such instance, the VA shall, along with its objection, provide a detailed, written explanation of the reasons for rejecting the submittal. Unless the VA objects to the submitted material within such time period, approval shall be presumed. Upon receipt of any VA rejection, Lessee shall respond to the VA within ten (10) business days and identify specifically how it proposes to address each of the VA's objections. The VA shall then respond to the Lessee within ten (10) business days, and if the VA shall continue to have objections, the VA 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 VA'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 VA 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 Facility. The as-built drawings will incorporate all significant changes made over the life of the Facility. The title block shall be dated and entitled "As-Built Drawings." One electronic copy of the As-Built Drawings on CD, "AUTOCAD MEP 2010" (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 VA 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 VA 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 VA such security as the VA 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 Facility, 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 tenantable, 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 Facility'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 Facility 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 VA with its “Operations and Maintenance Plan” (i.e., Exhibit E). Such Operations and Maintenance Plan shall be subject to the VA’s review, approval, and final acceptance, which review, approval, and final acceptance shall not be unreasonably withheld, delayed, conditioned, or denied. The VA shall provide Lessee with such final acceptance in writing. The VA, 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 VA’s mission, activities, land use plans at the campus, or which it reasonably deems to be outside of the intended scope of this Lease. In the event that the VA intends to unilaterally amend provisions of the Operations and Maintenance Plan, the VA 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 VA will work with Lessee to attempt to find a mutually acceptable resolution to the concerns raised by Lessee. Upon the VA’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 VA, and Lessee or its assignee pursuant to Article 19 of this Lease.
- D. **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 VA. The Funded Maintenance Account shall be funded to the amount of \$[Insert #] per square foot per annum for the rentable area of the Facility 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 Facility unit developed as part of the Project. The financial institution holding such account shall include the VA as a recipient of all account statements.
- E. **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 Facility and any other improvements duly located on the Property that are made available for use and occupancy.
- F. **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 Facility (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.

G. 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.

H. Close Out of the Funded Maintenance Account. Within thirty (30) days following the expiration or termination of the Lease term, Lessee and the VA shall retain an architect mutually acceptable to the parties (the “Architect”) to inspect the Facility, 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 VA for any amount in excess of the amount of funds then existing in the Funded Maintenance Account.

**ARTICLE 13 - 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 VA 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 VA.

- 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 VA 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 VA 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 VA (including the United States) shall at all times also have the right to fully participate in the defense at its own expense. The VA 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 VA 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 VA 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 VA 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 VA OR AGAINST LESSEE WHICH WOULD NOT OTHERWISE EXIST.**

ARTICLE 14 - RISK OF LOSS AND INSURANCE

- A. **All Risk:** Lessee shall, in any event and without prejudice to any other rights of the VA, 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 Facility;
 - 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 VA, 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 VA 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 VA for any loss covered by insurance, nor will Lessee, if it is suffering (or about to suffer) such loss, prosecute any suit against the VA 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 VA 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 VA may reasonably require in order to protect itself and its personnel in the discharge of its duties and obligations hereunder.
- d. 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 VA 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 VA 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 VA 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 VA. Further, each such policy shall provide that the insurer shall furnish written notice to the VA 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 VA 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 casualty is the fault of, or results from negligence of Lessee, other than the results of negligence of VA 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 VA, 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 VA in accordance with Article 14.C.1 above, the VA may terminate this Lease by providing written notification to Lessee. In such event, title to the Facility and any other improvements placed on the Property shall vest in the VA without notice or further action being required on the VA's part, and the VA may undertake the repair, restoration, rebuilding, or demolishing of the Facility and any other 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 VA to repair, restore, rebuild, or demolish the Facility and any other Improvements placed on the Property, or the damaged or destroyed portion thereof. This liability includes costs incurred by the VA 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 VA 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 15 -DELIVERY, RESTORATION, AND SURRENDER

- A. **Delivery of the Property to Lessee.** Upon the Effective Date, the VA 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 VA without compensation therefore, 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 14.C.2, 22 and 23 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 VA. 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 VA, either become the property of VA without compensation therefore, or the VA may cause it to be removed and/or destroyed at the

expense of Lessee, and no claim for damages against the VA, its officers, or agents shall be created or made by or on account of such removal and/or destruction.

ARTICLE 16 - 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 (“Indemnities”) for any liability, loss, expense, damage, or cost incurred or suffered by the Indemnities 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 16.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 16.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 34 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 17 - 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 VA 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 VA.

ARTICLE 18 - NOTICES

- A. All notices, or other correspondence required under or arising from the terms of this Lease from the VA 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 VA 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, 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:

VA: 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) 273-9702

FAX: (202) 273-5585

Attn: Designated VA Representative (DVR)

Department of Veterans Affairs

Office of Asset Enterprise Management (044C2)

810 Vermont Avenue, N.W.

Washington, D.C. 20420

Phone: (202) 273-8153

Fax: (202) 273-9374

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) 273-6418

Fax: (202) 273-7624

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 19 - ASSIGNMENT AND SUBLETTING

- A. **The Lease Is Binding Upon Lessee's Successors and Assigns.** Subject to and in accordance with Article 19.F, following, 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 20 and except as set forth in Section D of this Article 19, 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 VA, which consent shall not be unreasonably or arbitrarily withheld or delayed, so long as the VA 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 VA 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 VA with the certification described in Article 19.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 VA 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 20.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 VA shall have fifteen (15) business days following written notice from Lessee to object to the proposed assignee or transferee. In the event that the VA based on the criteria in Section B above “rejects” the proposed assignee or transferee, the VA 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 VA reconsider its determination. The VA, 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 VA fails to object within said fifteen (15) day period, it shall be deemed to have waived any objection. However, if upon reconsideration, the VA 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 25 below.

- D. Notwithstanding Articles 19.B and C, but subject to Article 7, the subleasing of any part of the Facility, and any other improvements located on the Property and made available for use and occupancy, is freely permitted without the prior consent of the VA, 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 VA 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; 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 VA 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 VA, and the VA 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 VA agrees to execute any non-disturbance and attornment agreement as may be reasonably requested by Subtenant, and which the VA 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 20 - 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 VA'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 20.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 or filing of record in accordance with the provisions of Articles 22 and 23 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 VA 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 VA may, but shall not be obligated to, discharge such lien. Any amount so paid by the VA 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 VA not later than thirty (30) days following Lessee's receipt of written notice from the VA.

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 VA has consented to the financing.
2. Promptly after assigning this Lease or encumbering the Property as provided herein (i.e., Article 20.A.1 and 20.A.2 above), Lessee shall furnish the VA 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 Mortgage (“Leasehold Mortgage”). During the Lease term, Lessee also shall provide the VA 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 20.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 Facility, 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 VA 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 VA shall mail to each such Leasehold Mortgagee a duplicate copy of any and all notices that the VA may be required from time to time to serve upon Lessee pursuant to the provisions of this Lease; and no notice by the VA 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 VA 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 VA.

D. Lease Termination Protection:

1. Subject to Lessee's covenant to advise VA of each and every Leasehold Mortgagee pursuant to Article 20.B, the VA shall not agree to any mutual termination nor accept any surrender of this Lease (except upon the expiration of the Term) nor shall the VA 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 VA to terminate this Lease for such Lessee default shall be subject to and conditioned upon (a) the VA 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 20.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:

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 VA setting forth the nature of such default within which to remedy the default. 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 20.F.2 below.
 - i. 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.
 - ii. Notwithstanding anything in this Lease to the contrary except for the provisions of Article 20.F.2 below and Lessee's obligation to inform VA of each Leasehold Mortgagee pursuant to Article 20.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 VA shall immediately thereafter be permitted to terminate the Lease by issuing written notice thereof to the Lessee and each Leasehold Mortgagee identified per Article 20.B.2 of this Lease.

F. Foreclosure of Leasehold Mortgage:

1. Subject to Article 20.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 VA 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 Mortgagee shall copy and forward to the VA 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 Mortgage'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 VA.

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 VA 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 VA 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 21 – TAXES

- A. The VA's interest in this Lease, and the 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 VA 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 VA 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 VA 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 VA 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 18 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 VA 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 22 - 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 VA.

2. The Facility and related improvements are not substantially completed within [Insert #] days after the Effective Date, in a good, 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 VA 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 22, Lessee (or any permitted assignee or transferee in accordance with Articles 19 and 20) 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 VA 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 20.A, whether or not the VA exercises its right of discharge, or the failure or refusal of Lessee to make timely repayment to the VA 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. Upon Lessee default the leased land and all related improvements would revert back to VA.

ARTICLE 23 -REMEDIES FOR DEFAULT BY LESSEE

- A. Subject to Articles 20 and 25, upon the occurrence of an event of default by Lessee, the VA 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 VA may, subject to an in accordance with Articles 15, 20, and 25, immediately seek to terminate this Lease and recover its damages. Upon the VA's successful termination of the Lease, Lessee shall be immediately required pursuant to Article 15, to surrender possession of the Property, together with all improvements located thereon, to the VA, and cooperate fully and in good faith to effect an orderly and efficient transition of the Property.
- B. **No Termination for Convenience.** The VA shall have no right to unilaterally terminate this Lease for convenience.

ARTICLE 24 -EVENTS OF AND REMEDIES FOR DEFAULT BY THE VA

- A. An event of default by the VA 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 VA'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 VA is diligently attempting to cure the default.
- B. Upon default by the VA, and the VA'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 25 hereto, and/or may exercise any other right, remedy, or privilege that may be available to it under this Lease or applicable Federal, State, or local law.

ARTICLE 25 –DISPUTES

- A. Lessee and the VA 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 VA 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 VA 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 VA 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 VA shall pay interest in accordance with the Prompt Payment Act, 31 U.S.C. Section 3901, et seq.
- D. Unless and until the VA 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 26 -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.

[Signatures Commence On the Next Page]

[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: Rita Reed

Title: Acting Assistant Secretary for Management

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

[General Provisions to follow]

GENERAL PROVISIONS

ARTICLE 27 - 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 28 - 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 VA 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 28.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 VA 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 VA 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 29 -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 VA 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 VA 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 30 – 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 VA; 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 30.A above, the VA is entitled to pursue the same remedies as in a breach of this Lease. The rights and remedies of the VA 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 31 - 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, or 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 VA 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, or brokerage or contingent fee.

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

ARTICLE 32 - 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 VA, Lessee shall grant to the VA 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 VA 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 VA's written request. The VA 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 VA 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 VA 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 VA, 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 33 -LABOR PROVISIONS

Unless the Lessee can demonstrate to the satisfaction of the VA 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 34 - HAZARDOUS SUBSTANCES

A. Presence and Use of Hazardous Substances. Lessee shall not, without the VA'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 VA 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 VA's request, submit written reports to the VA 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 VA 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 VA or the VA'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 VA 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 VA has a reasonable belief that Hazardous Substances are present on the Property in violation of applicable law. If such inspection or monitoring by the VA confirms that Hazardous Substances are present and are in violation of applicable law, any and all reasonable costs incurred by the VA and associated with the VA's inspection of the Property and the VA's monitoring of Lessee's compliance with this Article, including the VA's reasonable attorney's fees and costs, shall be additional rent and shall be due and payable to the VA immediately upon demand by the VA.

B. Cleanup Costs, Default, and Indemnification. During the Lease term, Lessee shall be fully and completely liable to the VA for any and all cleanup costs, and any and all other charges, fees, and penalties (civil and criminal) imposed upon the VA 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 VA harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon the VA (as well as the VA'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 22 above, in addition to the rights and remedies set forth elsewhere in this Lease, the VA shall be entitled to the following rights and remedies:

1. At the VA'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 VA's reasonable attorney's fees and costs.

ARTICLE 35 - 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 VA, 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 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 genders. The VA 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 VA 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 VA and Lessee.
- L. Recording. This Lease shall not be recorded. The VA 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 (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 VA 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 VA 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 VA 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 of the EUL PROPERTY

[insert legal description]

EXHIBIT “B”
SITE PLAN

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

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

**[Note: To be incorporated into this lease
in accordance with Article 11.C thereof]**

EXHIBIT “F”
TENANT SELECTION PLAN

**[Note: To be incorporated into this lease
in accordance with the Recitals Section of this Agreement]**

EXHIBIT "G"**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF ENHANCED-USE LEASE ("Memorandum") is made as of the ____ day of _____, 20__, 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").

WITNESSETH:

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 New York 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 UNITED STATES DEPARTMENT OF VETERANS AFFAIRS

ENHANCED-USE LESSOR

By: _____

Name: Rita Reed

Title: Acting Assistant Secretary for Management

Pursuant to a delegation of authority dated

September 10, 2004

DISTRICT OF COLUMBIA)

CITY OF WASHINGTON)

The foregoing instrument was acknowledged before me in the City of Washington, the District of Columbia, this ____ day of _____, 20__.

Notary Public

My commission expires: _____

[INSERT NAME OF LESSEE]

Enhanced-Use Lessee

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

By: _____

[insert signatory's name]

STATE OF [Insert State])

CITY OF [Insert City])

The foregoing instrument was acknowledged before me in _____, _____,
this ____ day of _____, 20__.

Notary Public

My commission expires: _____

**ATTACHMENT “E”: THE PHASE I ENVIRONMENTAL SITE
ASSESSMENT**

Phase I Environmental Site Assessment Report
Parcels A and B
VA Medical Center
East Northport, New York

Prepared for

Management Technology Consulting Council Inc.,
Huntsville, Alabama

Under contract to Department of Veterans Affairs
Washington DC



Prepared by

ARGO Systems, LLC

1403 Madison Park Drive, Suite 205
Glen Burnie, Maryland 21061



January 2010



www.Argo-Sys.com

ARGO Systems, LLC
1403 Madison Park Drive
Suite 205
Glen Burnie, MD 21061-5613

January 12, 2010

Mr. John Cady
Management Technology Consulting Council, Inc.
4970 Corporate Drive
Suite 125C
Huntsville, AL 35805

Re: Phase I Environmental Site Assessment (ESA)
Northport VA Medical Center
East Northport, New York

Dear Mr. Cady:

ARGO Systems, LLC (ARGO) is providing an electronic submission of this Phase I Environmental Site Assessment (ESA) for the proposed Northport VA Medical Center Enhanced Use Lease project located in East Northport, New York. The Phase I ESA was completed in accordance with the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E 1527-05).

We sincerely appreciate this opportunity to provide our environmental services. If you have any questions concerning this report, please do not hesitate to call.

Sincerely,
ARGO SYSTEMS, LLC

R. D. Roop
Environmental Scientist,
Certified Environmental Professional

Attachment: Phase I ESA

EXECUTIVE SUMMARY

The subject property consists of two parcels comprising approximately 20 acres of land owned by the Department of Veterans Affairs (VA) and located in East Northport, New York. The property has been owned and used by the VA and predecessor agencies since at least 1927. In October 2009, working under contract to the VA, Management Technology Consulting, Inc. retained ARGO Systems LLC (ARGO) to perform a Phase I Environmental Site Assessment. This Phase I ESA was performed in general conformance with the American Society for Testing and Materials (ASTM) Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (Designation: E 1527-05).

This Phase I ESA included search of relevant environmental databases, on-site reconnaissance by an Environmental Professional, interviews with Northport VAMC personnel, and review of in-house documents provided by the Northport VAMC.

The environmental database records review indicated that there are no historic spills of toxic materials nearby that are expected to have affected the property. Site reconnaissance did not reveal any indications of past environmental releases or potential environmental liability issues. Physical sampling of environmental media (soil, groundwater, surface water, etc.) was not part of this Phase I ESA. Northport VAMC personnel indicated no knowledge of environmental issues at the property that would be of potential concern to developers.

This assessment revealed no recognized environmental conditions (RECs) in connection with the property. Buildings 23, 25, 26, and 27 have asbestos present. Buildings 25 and 26 contain lead-based paint (LBP), and Buildings 23 and 27 can be assumed to contain it, although no LBP data was found for these two structures. Due to the absence of RECs at the property, further investigation of environmental issues (Phase II ESA) is not recommended at this time.

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APPENDIX C: Historical Research Documentation

C-1 Historical Topographic Maps

C-2 Historical Aerial Photographs

C-3 Fire Insurance Maps

APPENDIX D: Regulatory Records Documentation

D-1 Radius Map Report

D-2 City Directory Abstract

APPENDIX E: Supporting Documentation

E-1 Interview Records

E-2 NEPA Check Report

E-3 Excerpts of Previous Asbestos and Lead Based Paint Studies

E-4 Web Soil Survey Results

LIST OF ACRONYMS

AAI	All Appropriate Inquiries
AIRS	Aerometric Information Retrieval System
AST	Aboveground Storage Tank
ASTM	American Society for Testing and Materials
CDL	Clandestine Drug Labs
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CERCLIS	CERCLA Information System
CONSENT	Superfund (CERCLA) Consent Decrees
CORRACTS	RCRA Information System-Corrective Action Sites
DOD	Department of Defense
DOT OPS	Department of Transportation, Office of Pipeline Safety
EDR	Environmental Data Resources, Inc.
ERNS	Emergency Response Notification System
ESA	Environmental Site Assessment
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act/TSCA
FINDS	Facility Index System
FTTS	FIFRA/TSCA Tracking System
FOIA	Freedom of Information Act
FUDS	Formerly Used Defense Sites
ICIS	Integrated Compliance Information System
LUCIS	Land Use Control Information System
LUST	Leaking Underground Storage Tank
MLTS	Material Licensing Tracking System
MINES	Mines Master Index File
NFRAP	No Further Remedial Action Planned (Delisted CERCLA Site)
NPDES	National Pollutant Discharge Emissions System
NPL	National Priority List

ODI	Open Dump Inventory
PADS	Polychlorinated Biphenyl Activity Database
PCB	Polychlorinated Biphenyls
RAATS	RCRA Administrative Action Tracking System
RADINFO	Radiation Information
RCRA	Resource Conservation and Recovery Act of 1976
REC	Recognized Environmental Condition
ROD	Record of Decision
SCRD	State Coalition for Remediation of Drycleaners
SHWS	State Hazardous Waste Sites
SSTS	Section Seven Tracking System
SWF/LF	Solid Waste Facilities/Landfills
TRIS	Toxic Release Inventory System
TSCA	Toxic Substances Control Act
TSD	Transporters, Storage, and Disposal
UMTRA	Uranium Mill Tailings Site
USDA	United States Department of Agriculture
USEPA	United States Environmental Protection Agency
USGS	United States Geological Survey
UST	Underground Storage Tank
VAMC	Veterans Affairs Medical Center

1. INTRODUCTION

1.1 Purpose

The purpose of the Phase I Environmental Site Assessment (ESA) is to identify, to the extent feasible pursuant to the process prescribed in American Society for Testing and Materials (ASTM) E 1527-05, recognized environmental conditions (RECs) in connection with the property. An REC is defined as the presence or likely presence of hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or material threat of a release of any hazardous substance or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. The ASTM E 1527-05 practice constitutes all appropriate inquiries (AAI) for the purpose of Landowner Liability Protections, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This report reflects the observations, information, and data collected by ARGO Systems LLC (ARGO) in October 2009. Supporting documentation is provided in the appendices as follows:

Appendix A— Figures

Appendix B— Site Photographs

Appendix C— Historical Research Documentation

Appendix D— Regulatory Records Documentation

Appendix E— Supporting Documentation

1.2 Detailed Scope of Services

ARGO prepared this Phase I ESA under ARGO Contract Number P-00015 with Management Technology Consulting Council, Inc. (MTCC), dated September 25, 2009, under Prime Contract VA101(0004B)-P-0015 with the U.S. Department of Veterans Affairs (VA). The VA has requested this study as part of their Enhanced Use Lease (EUL) program.

This Phase I ESA was performed in accordance with ASTM E 1527-05 (Standard Practice for ESAs: Phase I ESA Process) and consists of a review of current and historic activities and conditions at the property and surrounding properties, including a non-intrusive visual inspection of the property; review of local, state, and federal regulatory database records; review of available historic records; and a survey of adjacent land uses. The site reconnaissance does not address non-ASTM considerations such as vapor intrusion, drinking water quality, or radon, nor does it include sampling or chemical analysis of soils, surface water, or groundwater or an intensive examination of facility hazards (compliance audit). It should be noted that the VAMC

has their own drinking water wells and wastewater treatment facilities on-site. Where available, past asbestos and lead-based paint (LBP) surveys and/or reports were reviewed.

1.3 Significant Assumptions

The preparers of this Phase I ESA based findings and conclusions on information provided by personnel and records maintained at the Northport VAMC regarding the ownership and operations on the subject property. This information was verified by reviews of regulatory databases and research of historical records. The accuracy and completeness of information maintained in public records by agencies or other entities is assumed to be appropriate and sufficient for the purposes of this Phase I ESA, and independent verification of its validity is beyond the scope of this investigation.

1.4 Limitations and Exceptions

The findings within this ESA utilized information that was practically reviewable per ASTM E 1527-05, meaning that only relevant data relating to the subject site has been incorporated into the findings, disregarding extraordinary analysis of irrelevant data. The investigation conducted for this ESA was limited to data that was reasonably ascertainable, meaning that the information obtained was publicly available, obtainable within the cost and time constraints under the scope of services for this project, and practically reviewable. ASTM E 1527-05 was the preferred guidance for the development of this report at the request of the VA. Other applicable regulations, standards, or guidance that may be appropriate or required for determining the condition of federal real property have not been incorporated into this ESA except as specifically identified herein. Examples of regulations, standards, etc. not included in ASTM E 1527 would be the Community Environmental Response Facilitation Act of 1992 (CERFA), incorporation of Standard Classification of Environmental Condition Property Area Types, Findings of Suitability to Lease (FOSL), Findings of Suitability to Transfer (FOST), CERCLA Section 120(h), and the National Environmental Policy Act..

The property was accessible at the time of the site reconnaissance. There were no accessibility limitations.

ARGO does not warrant that there are no toxic or hazardous materials or contamination, nor does ARGO accept any liability if such are found at some future time, or could have been found if sampling or additional studies were conducted. ARGO does not assume responsibility for other environmental issues that may be associated with this subject site.

In view of the rapidly changing status of environmental laws, regulations, and guidelines, ARGO cannot be responsible for changes in laws, regulations, or guidelines that occur after the study has been completed and that may affect the subject site.

1.5 Special Terms and Conditions

The findings of this ESA are limited and based on the completeness and accuracy of the data and conditions of the site as of the dates of the onsite investigation and when publicly information was obtained as described within this report.

1.6 User Reliance

This report is for the use and benefit of, and may be relied upon by, MTCC, the Department of Veterans Affairs (VA) and any of their affiliates, and third parties authorized in writing by the VA or MTCC, including the lender(s) in connection with secured financing of the property and their respective successors and assigns. Any third party agrees by accepting this report that any use or reliance on this report shall be limited by the exceptions and limitations in this report, and with the acknowledgment that actual site conditions may change with time, and that hidden conditions may exist at the property that were not discovered within the authorized scope of the assessment. Any use by or distribution of this report to third parties, without the express written consent of ARGO, MTCC, or the VA, is at the sole risk and expense of such third party. ARGO makes no other representation to any third party except that it has used the degree of care and skill ordinarily exercised by environmental consultants in the preparation of a report and in the assembling of data and information related thereto.

2. SITE DESCRIPTION

2.1 Location and Legal Description

The subject site is hereby defined as two adjacent parcels of land, Parcel A and Parcel B, on the Northport VAMC campus. These two parcels are located on the northernmost property of the VAMC, north of Veterans Memorial Drive and Back Gate Drive. A Figure showing the site is provided in Appendix A.

2.2 Site and Vicinity General Characteristics

The VA Medical Center in Northport is located at 79 Middleville Road, East Northport, New York. The VAMC campus is bordered on the north by Middleville Road, on the southeast by Meadowlark Park, and by wooded areas to the west and south. The Town of Huntington Department of Planning stated that the property is currently federally owned and thus is not subject to local zoning criteria. However, once leased by the VA, the lessee may be required to follow local zoning rules and restrictions, depending on the intended use of the property. Parcels A and B are likely to be treated as if zoned “residential” should the VA lease them for non-hospital use.

The VA is offering two parcels of land on the Northport Campus for the EUL Program. These adjacent parcels, taken together, will be under the same lease.

2.3 Current Use of the Property

The VA owns the site and surrounding property. The VA operates the surrounding property as a medical facility for medical, surgical, psychiatric, rehabilitative, and skilled nursing services.

Two of the residential buildings on one of the proposed EUL parcels (Parcel B) are currently unoccupied (Buildings 23 and 27), while two (Buildings 25 and 26) have one occupant each. The other parcel (Parcel A) is partly maintained as a manicured lawn and trees, and is partly wooded.

2.4 Description of Onsite Structures, Roads, and Improvements

The main road of the Northport VAMC campus, Veterans Memorial Drive, is accessible via Middleville Road. At certain times, the campus is also accessible via Back Gate Drive, which is also accessed from Middleville Road. “Recovery Road,” “Medical Circle,” and “60s Blvd” are the main thoroughfares on the Northport VAMC campus. “Liberty Lane” can be used to access Parcel B from Veterans Memorial Drive.

Parcel A is approximately 10.2 acres in size, and Parcel B is approximately 10.5 acres in size. On Parcel B, there are four (4) residential structures (Buildings 23, 25, 26, and 27) which are

either vacant or semi-occupied. These structures are three-story brick buildings, sized to accommodate roughly 4-8 occupants per structure. These buildings are currently supplied with electricity, sewer, and potable water services through the VAMC. Long Island Power Authority (LIPA) supplies electricity to the VAMC. ARGO did not observe any storm drain infrastructure. There is a small parking lot to the immediate southeast of Parcel B, which is currently used by employees of the VAMC working in other buildings. There are associated structures providing electrical distribution infrastructure near the residential buildings (Buildings 205, 206, and 217), and a garage-like building (Building 90).

Parcel A mainly consists of well-maintained, landscaped lawn, with some trees and wooded areas present. There is a small strip of wooded land between Parcel A and Middleville Road. On the northern end of Parcel A, near the entrance from Middleville Road, there is an old guardhouse that is listed as being “outleased” (Building 28). This was the only structure observed on Parcel A.

A photograph log is included in Appendix B.

2.5 Current use of Adjoining Properties

The following properties, adjacent to the Northport VAMC and proposed EUL parcels, were noted:

North — North of the VAMC and Parcels A and B is Middleville Road. On the opposite side of Middleville Road is a residential neighborhood.

Northwest – Northport Middle School lies northwest of the Northport VAMC, on the opposite side of Middleville Road.

East — East of the Northport VAMC, and east of Parcel B, is land owned by the Town of Huntington, and designated as Meadowlark Park.

South — South of the Northport VAMC is land owned by the Town of Huntington, designated “Veterans Nature Study Area,” and also land owned by the Town of Huntington and Suffolk County, designated “Knolls Park.” To the immediate south of Parcel A is Veterans Memorial Drive..

West — Land to the immediate west of the Northport VAMC is part of “Knolls Park.” To the west of Parcel A is Veterans Memorial Drive.

In addition, across Veterans Memorial Drive from the proposed EUL parcels is a golf course. This golf course is on VA land, but has been leased and maintained by the American Legion

since 1994, in a mutually beneficial partnership agreement. To the immediate northeast of Parcel B is a land owned by Suffolk County on which a water tower is located.

3. SITE INFORMATION

An interview was conducted with the Chief of Engineering Service at the Northport VAMC. This person has been employed at the campus for 3 years. Information obtained from the interview was incorporated into Section 3.

3.1 Title Records

A chain-of-title report, copy of the current deed, and legal description of the property was not provided for review by the user as part of this investigation. However, it is known that the VA has owned the property since at least 1927.

3.2 Environmental Liens or Activity and Use Limitations

Because the VA has owned the property since the late 1920's, an environmental lien search was deemed to be unnecessary.

3.3 Specialized Knowledge

No specialized knowledge regarding the property was identified during this ESA. The term "specialized knowledge" means information regarding the environmental condition of the property that would not be available in public records or other sources as referenced in this report and could only be obtained from disclosure by the owner, occupants, or operators on the property from personal experience.

3.4 Valuation Reduction for Environmental Issues

Because the property has been owned by the VA since the 1920s, no property transactions have occurred which would allow for the potential for valuation reduction due to environmental issues.

3.5 Owner, Property Manager, and Occupant Information

The subject site is owned and occupied by the VA and has been since the 1920s. The subject site is used for inpatient medical, surgical, and psychiatric treatment for United States Veterans.

Property managers provided information regarding the presence of asbestos containing materials (ACM) and lead-based paint (LBP) in structures on the property.

3.6 Reason for Performing the Phase I ESA

The VA requested this assessment as part of its Enhanced Use Lease Program. The Phase I ESA was performed to describe the property's condition and identify potential environmental risk,

liability, and public health considerations associated with the property prior to planning and redevelopment of the property.

4. RECORDS REVIEW

A Radius Map report was obtained from EDR for use in preparation of this Phase I ESA report. The EDR report was obtained to fulfill the requirements pertaining to standard environmental record sources as well as supplementary information considered additional environmental records. A copy of the EDR database report is presented in its entirety in Appendix F. Additionally, explanations of the content of the databases are provided directly within the EDR report in Appendix F.

4.1 Standard Environmental Record Sources

The following required federal, state and tribal environmental databases were reviewed as part of this investigation:

Federal National Priorities List (NPL) list

Federal Proposed NPL list

Federal Delisted NPL list

Federal NPL Liens list

Federal Comprehensive Environmental Response, Cleanup, and Liability Information System (CERCLIS) list

Federal CERCLIS-No Further Remedial Action Planned (NFRAP) list

Federal Resource Conservation and Conservation Act (RCRA) Corrective Action Sites (CORRACTS) list

Federal RCRA non-CORRACTS Transporters, Storage, and Disposal (TSD) list

Federal RCRA-generator list

Federal Emergency Response Notification System (ERNS) list

Federal Institutional Controls list

Federal Engineering Controls list

State Hazardous Waste Sites (SHWS) list

State Solid Waste Facilities/Landfills (SWF/LF) list

State Underground Storage Tank (UST) list

State Leaking Storage Tank (LTANKS) list

State Historic Leaking Storage Tank (HIST LTANKS) list

State Voluntary Cleanup Program (VCP) list

Indian VCP list

State Institutional Control list

State Engineering Control list

State Restrictive Declarations (RES DECL) list

Indian LUST list

Indian UST list

State Environmental Restoration Program (ERP) list

State Brownfields Site list

Database findings indicate that there are two (2) facilities located within the ASTM recommended search distance of the subject site that are listed in the above databases.

Northport VA Medical Center is identified in the SWF/LF, RCRA-LQG, UST, and AST databases. Information contained in the EDR regulatory database report indicates that there is an active SWF/LF facility on the property, which accepts “regulated medical waste,” for “storage; treatment; disposal.” According to Northport VAMC personnel, however, this SWF/LF is not really a “landfill.” It is an onsite Medical Waste Sterilizer, and output from this sterilizer is shipped out of state for disposal. Manifests for these activities are kept onsite. RCRA wastes generated on-site have waste codes D001, D002, D008 (lead), D009 (mercury), D011 (silver), F003, P042, U010, U117, U188 (phenol), and U248. The most recent evaluation action of RCRA activities on-site was a compliance evaluation inspection on-site on 8/20/2008. No violations are noted for the SWF/LF, RCRA facility, or AST/USTs. Based on the presumption that no hazardous materials have been released from these facilities and the distance from the subject site, there is very low probability of adverse impact to the subject site.

Private Residence, 163 Middleville Road, Fort Salonga New York is identified in the LTANKS and HIST LTANKS databases. Information contained in the EDR regulatory database report indicates that there was a spill of #2 fuel oil from a tank truck on 3/2/1987. The cleanup was ceased on 3/9/1987, and is listed as meeting the standard. Due to the regulatory status of this incident being listed as “Cleanup Meets Std: True” this site is expected to have a very low probability of adverse impact to the subject site.

4.2 Additional Environmental Record Sources Local records

4.2.1 Additional Databases

The following additional federal, state, and tribal environmental databases were obtained from EDR and reviewed as part of this investigation:

Federal Department of Defense (DOD) list
Federal Formerly Used Defense Sites (FUDS) list
Federal Brownfields list
Federal Superfund (CERCLA) Consent Decrees (CONSENT) list
Federal Record of Decision (ROD) list
Federal Uranium Mill Tailings Site (UMTRA) list
Federal Open Dump Inventory (ODI) list
Registered Recycling Facility (SWRCY) list
Registered Waste Tire Storage & Facility (SWTIRE) list
Indian ODI
Torres Martinez Reservation Illegal Dump Site Locations
Local Delisted Registry Sites (DEL SHWS) list
National Clandestine Laboratory Register (US HIST CDL) list
Historical Petroleum Bulk Storage (HIST UST, HIST AST) lists
Federal CERCLA Lien Information (LIENS 2) list
Hazardous Materials Information Reporting System (HMIRS) list
State Spills Information Database (NY Spills) list
State SPILLS Database (NY Hist Spills) list
Federal Toxic Chemical Release Inventory System (TRIS) list
RCRA Non-Generators (RCRA-NonGen) list
Federal Toxic Substances Control Act (TSCA) list
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)/TSCA Tracking System (FTTS) list
Federal FTTS Inspections and Enforcements list

Federal Historical FTTS

Federal Section 7 Tracking System (SSTS) list

Federal Polychlorinated Biphenyl (PCB) Activity Database (PADS) list

Federal Radiation Information (RADINFO) list

Federal Clandestine Drug Labs (CDL) list

Federal Integrated Compliance Information System (ICIS) list

Federal Land Use Control Information System (LUCIS) list

Federal Department of Transportation, Office of Pipeline Safety (DOT OPS) Incident and Accident Data list

Federal Material Licensing Tracking System (MLTS) list

Federal Mines Master Index File (MINES) list

Federal Facility Index System (FINDS) list

Federal RCRA Administrative Action Tracking System (RAATS) list

Federal Hazardous Substance Waste Disposal Site (HSWDS) list

State Facility and Manifest (MANIFEST) data

Local E (environmental) Designation Site (E DESIGNATION) list

State National Pollutant Discharge Emissions System (NPDES) Wastewater Permitting list

State Permitting and Facility Information (AIRS) list

State Drycleaners list

Indian Reservations

State Coalition for Remediation of Drycleaners Listing (SCRD)

PCB Transformer Registration (PCB TRANSFORMER) list

Coal Ash Disposal Site (COAL ASH) list

Manufactured Gas Plants

Database findings indicate that there are three (3) facilities included within the EDR regulatory database report which are listed in these databases.

Northport VA Medical Center, is identified in the NY Spills, NY Hist Spills, FTTS, HIST FTTS, MANIFEST, ICIS, MLTS, and FINDS databases. Information contained in the EDR regulatory database report indicates that there was a spill of raw sewage on 1/3/1999 caused by heavy rains undermining a 10-inch diameter sewer pipe. The spill was listed as “closed” on 1/4/1999 and is currently reported as “Cleanup Meets Std: True.” Due to the regulatory status of the cleanup of this incident meeting the cleanup standard, the incident is expected to have a very low probability of adverse impact to the subject site.

Kaculakus, 79 Middleville Road Northport, New York is identified in the NY Spills, NY Hist Spills, and NPDES databases. Information contained in the EDR regulatory database report indicates that there was a spill of fuel oil on 11/19/1994, which was caused by a contractor disturbing an underground storage tank. This spill was listed as “closed” on 11/29/1995. Due to the regulatory status of this incident being listed as “closed” this site is expected to have a very low probability of adverse impact to the subject site.

40 Timber Point Drive, Fort Salonga New York is identified in the NY Spills and NY Hist Spills databases. Information contained in the EDR regulatory database report indicates that there was a historical stain on soil reported on 12/6/1995. The spill is identified as #2 fuel oil, and is listed as meeting the cleanup standard. Due to the regulatory status of this incident being listed as “Cleanup Meets Std: True” this site is expected to have a very low probability of adverse impact to the subject site.

4.3 Physical Setting Sources

4.3.1 Topography

Topographic features of the Northport VAMC were obtained from historical topographic maps provided by EDR, along with topographic surveys of the campus supplied by VAMC personnel. The Northport VAMC is gently rolling with a general topographic gradient downward from the center of the campus. The main Middleville Road entrance is at approximately 75 feet above mean sea level.

The campus slopes gradually upwards from the Middleville Road entrance. As a result, the elevations of the proposed EUL parcels vary from approximately 80 to 160 feet above mean sea level. The majority of Parcel A lies between ~120-130 feet above mean sea level, and the majority of Parcel B lies between ~150-160 feet above mean sea level. There are sloping sections, especially to the northeast of Buildings 23-27, where elevations exceed 180 feet in

places. The nearest surface water feature, Northport Harbor, is roughly 2 miles to the west.

4.3.2 Geology

Long Island, New York is located on the Outer Lands region of North America's Atlantic Coastal Plain. The spines of the Harbor Hill and Ronkonkoma glacial moraines, which consist of gravel and loose rock, form the bulk of Long Island. Beneath the island lie sand and gravel aquifers, from which the residents of Long Island receive the entirety of their potable water supply.

4.3.3 Soils

Review of the United States Department of Agriculture (USDA) Web Soil Survey (websoilsurvey.nrcs.usda.gov), indicates that the subject site is located in an area of varied soils. The area includes Carver and Plymouth sands 15-35% slopes, Haven loam 0-2% slopes, Haven loam 2-6% slopes, Haven loam 6-12% slopes, Riverhead sandy loam 3-8% slopes, Riverhead sandy loam 8-15% slopes, and Riverhead and haven soils, 0-8% slopes. A Soil Report from the Web Soil Survey is provided in Appendix E.

4.3.4 Wetlands and Floodplain

Identification of wetlands is beyond the scope of a Phase I ESA; however, a cursory review of information from the United States Fish and Wildlife Service's Digital Wetlands Mapper (<http://www.fws.gov/wetlands/Data/Mapper.html>) indicates that no wetlands are present on the site. Distribution of wetlands and floodplains in the surrounding area are provided in the EDR NEPACheck ® report (Appendix E).

4.4 Historical Use – Property and Adjoining Properties

The following discussions are presented for the purpose of compiling historical information on the activities that occurred on the subject site.

Based upon interviews, and a review of historical information as included in the following sections, the subject site is currently used as a Medical Center by the VA. The VA has owned the property since at least 1927.

4.4.1 Historical Topographic Maps

Historical U.S. Geological Survey topographic maps dated 1903, 1904, 1944, 1954, 1967, and 1979 were reviewed as part of this assessment. Copies of the topographic maps are presented in Appendix C1. Observations made from the reviewed aerial photographs are presented in the following table.

Year	Property Use	Adjacent Property Use
1903	No structures appear to be on the property.	There do not appear to be any structures on adjacent properties.
1904	Same as 1903.	Same as 1903.
1944	The property is in use by the VAMC at this time. Approximately 40 buildings are present.	There is a residential area to the immediate southwest of the VAMC campus. There are also some residences to the north and east of the property, although they appear only lightly developed.
1954	Same as 1944.	Little change from 1944, except that the residential area to the north, across Middleville Road, has undergone more development and many homes are now present. Also, there is now a “Filtration Plant” to the immediate east of the VAMC.
1967	Same as 1954.	Same as 1954.
1979	Same as 1967.	There has been increased residential development to the immediate southeast of the VAMC campus.

4.4.2 Aerial Photographs

Historic aerial photographs dated 1953, 1957, 1966, 1974, 1976, 1980, 1984, 1995 and 2006 were reviewed as part of this assessment. Copies of the historical photos are presented in Appendix C2. The results of this review are included in the following table.

Year	Property Use	Adjacent Property Use
1953	VAMC is in use with all or nearly all current buildings present, including those on Parcels A and B.	There are residential areas to the north and northeast. South of the campus is not visible on this photograph.
1957	Same as 1953.	Surrounding areas are becoming more heavily developed residential neighborhoods.
1966	Same as 1957.	Same as 1957.
1974	Same as 1966.	Surrounding areas are continuing to become more heavily developed residential neighborhoods.
1976	Same as 1974.	Same as 1974.
1980	Same as 1976.	Residential areas seem to be completed. Area surrounding campus appears to be densely populated suburban housing.
1985	Poor image quality makes it difficult to make observations. It can be assumed that this photo shows little change from the 1980 photo.	Poor image quality makes it difficult to make observations. It can be assumed that this photo shows little change from the 1980 photo.
1994	Same as 1980.	Same as 1980.
2006	Same as 1994.	Same as 1994.

4.4.3 Fire Insurance Maps

Records of Sanborn Fire Insurance Maps were searched for as part of this assessment. None were found.

4.4.4 Local Street Directories

Polk city directories dated 1971, 1976, 1981, 1986, 1991, 1996, 2002, and 2008 were reviewed by EDR (EDR 2009). The city directory reviews have been summarized in the discussions below.

4.4.4.1 Subject Site

Source	Date	Occupants Listed at Subject Site
Cole	1971	Property not listed
Cole	1976	Property not listed
Cole	1981	Property not listed
Cole	1986	Property not listed

Source	Date	Occupants Listed at Subject Site
Cole	1991	Property not listed
Cole	1996	Apartments
Cole	2002	Elderly Day Services on the Sound In FAA Eastern Region Northport Golf CRS Research Corp VA Fr Dept VA Medical Ctr Vtrns Affrs Med Ctr
Cole	2008	AM Vasquez kosta Agency Construction Corp Bits Limited Coleen Talt Department of Veterans Affairs Dept of Veterans Affairs Medical Cen Elderly Day Services on the Sound In Gary Gravesandy J J Ittig Nancy A Martino National Federation of Fdrl Northport Golf Club Northport VA Medical Center Paul Haberman

4.4.4.2 Adjoining Properties

Source	Date	Occupants Listed at Adjacent Sites
Cole	1971	Residences – 73, 75, 77, and 85 Middleville Rd.
Cole	1976	Residences – 73, 75, 83, and 85 Middleville Rd.
Cole	1981	Residences – 73, 83, and 85 Middleville Rd. Center Island Sprt – 75 Middleville Rd.
Cole	1986	Residences – 73, 75, 83, and 85 Middleville Rd.
Cole	1991	Residences – 73, 75, 81, 83, and 85 Middleville Rd. Vincenent Upholstery – 77 Middleville Rd.
Cole	1996	Residences –81, 83, and 85 Middleville Rd. Vincenent Manelli – 77 Middleville Rd.
Cole	2002	Residences –81, 83, and 85 Middleville Rd. Vincenent Manelli Upholstery – 77 Middleville Rd. Apartments – 75 Middleville Rd.
Cole	2008	Residences –81, 83, and 85 Middleville Rd. Vincenent Manelli Upholstery – 77 Middleville Rd. Apartments – 75 Middleville Rd.

4.4.5 Prior Environmental Reports

No prior environmental reports were available for reference during this Phase I Environmental Site Assessment.

5. SITE RECONNAISSANCE

5.1 Methodology and Limiting Conditions

An ARGO environmental professional conducted a site visit of the subject site which consisted of a thorough walkover survey of the accessible areas and interviews with facility personnel. On-site activities and/or interviews were conducted on 28 October 2009 by Mr. R.D. Roop and Mr. Derek Arnold, accompanied by:

Mr. Philip Krause, Engineer, MTCC.

ARGO interviewed the Chief of Engineering Service at the Northport VAMC; this person did not accompany ARGO during the site reconnaissance. No areas of the subject site were inaccessible. Weather conditions at the time of the assessment were overcast, with occasional showers, and temperatures in the mid-40's Fahrenheit.

The grounds of the property were observed for evidence of surface and subsurface disturbances including waste accumulations and debris, discolored soil, stressed vegetation, unusual mounds or depressions, pipes, standing water, and other indicators of potential contamination. The information obtained during the site reconnaissance was corroborated with several other sources for consistency and completeness. Data gaps, if any are identified within the findings. The subject property has been owned by the U.S. Government and has been used and managed by the VA for at least the past 82 years.

5.2 General Site Setting

The site consists of two parcels of about 10 acres each. Parcel A consists of maintained lawn and wooded area, on which sits one structure, an outleased guardhouse. Parcel B contains four individual structures, which were once used as residences, and their surrounding land. Two of the four structures on Parcel A were described by VA personnel as "semi-occupied," and the other two as unoccupied. Parcel B is partly wooded and partly a well-maintained lawn. Around the former residences, there are a number of large, mature trees, lawn, and landscaping typical for a residential area, and a road providing access to the rear of the structures.

5.3 Interior Observations

ARGO personnel did not enter the residential or guardhouse structures and made no interior observations.

5.4 Exterior Observations

The following information documents the exterior observations of the subject site:

Parcel A is largely comprised of a rolling, hilly area. This area is well-maintained due to its proximity to the VA campus' main entrance; it is the first thing visitors to the campus see when they enter at the main gate.

To the north of this open area is a strip of wooded area that is roughly 10-15 feet wide. On the other side of this strip is a fence, followed by Middleville Road.

In the grassy area of Parcel A is an unidentified soil mound, which is covered by grass. The mound has a metal access door on the top, and appears to be some sort of vault. It is roughly 5-6 feet higher than the surrounding ground.

On the western end of Parcel A, near Middleville Road, there is a roughly 350'x350' patch of wooded land.

Parcel B includes residential structures were constructed of brick, and exteriors are in fair condition. Building 23, which was noted by VA personnel to have had issues with moisture intrusion, had visible mold on the exterior wood.

The westernmost residential structure (Building 27) has an associated storage-shed type building located to its west. This was identified as Building 90.

There was a backup generator and associated 250-gallon fuel storage tank observed behind the housing structures. The tank appeared to be in good condition; however, the door to access the filling pipe was unsecured, despite having the ability to lock.

There were electrical manholes present behind the housing structures, indicating underground electrical wires.

On the northern edge of the VA property, roughly 400 feet from the housing structures, is an enclosed electrical switch station that is owned and operated by the VA. This structure is located in the wooded area close to Middleville Road. There is a sign on it, labeled "Danger: 13,200 Volts."

Aboveground storage tanks observed on the Northport VAMC campus were equipped with secondary containment structures.

No evidence of soil or concrete staining was observed during the site visit.

5.5 Interviews

Documentation of the interviews conducted as part of this investigation is contained in Appendix E.

5.6 Interview with Owner

The owner of the property is the U.S. Department of Veterans Affairs. ARGO interviewed VA personnel involved in site management, as noted in Section 4.11.

5.7 Present and Past Site Manager Interview(s)

The Chief of Engineering Service for the Veterans Affairs Medical Center in Northport was interviewed for the purposes of this investigation. Information obtained through this interview has been incorporated and referenced throughout this report.

The Chief of Engineering Service indicated that, to the best of his knowledge, he is not aware of any environmental cleanup liens against the property or of any activity and use limitations, such as engineering controls, land use restrictions, or institutional controls that are in place at the site and/or have been filed or recorded in a registry under federal, tribal, state, or local law.

The Chief of Engineering Service was questioned regarding commonly known or reasonably ascertainable information about the subject site that would help the Environmental Professional to identify conditions indicative of releases or threatened releases such as past uses of the subject site, specific chemicals that are present or once were present at the subject site, spills or other chemical releases that have taken place on the subject site, or any environmental cleanups that have taken place at the subject site.

The Chief of Engineering Service stated that he does not have any commonly known or reasonably ascertainable information regarding the subject site. He did, however, provide information regarding non-scope items asbestos and lead based paint. This information is provided in Chapter 11.

5.8 Present and Past Occupant Interview(s)

ARGO did not attempt to interview any past occupants of the subject site, as they were not reasonably available. Present Site Manager interviews (section 4.11) provided adequate information for the purposes of this Phase I ESA.

5.9 Local Government Official Interview(s)

No local government personnel were interviewed as part of this assessment as information pertaining to the subject site. Because information was available through in-person review of

documents at the site, additional local interviews were unlikely to be useful in discovery of additional RECs.

5.10 Interviews with Others

Local fire, police, emergency services, etc. departments were not contacted as part of this Phase I ESA, because the VAMC provides all of these services in-house, relying on local municipal services only for backup. Thus, these local departments were not anticipated to have any additional pertinent knowledge about issues on the subject site than the VA personnel provided to ARGO.

5.11 Other Data Sources

ARGO personnel used engineering files, design plans, and survey documents obtained from the Northport VAMC Engineering Department. These materials provided information on (1) building design and utilities for the structures located on the subject site, (2) results of prior investigations of lead-based paint and asbestos (discussed in Section 10.5), and (3) site topographic information.

6. FINDINGS

The findings presented below identify known or suspected recognized environmental conditions, known or suspected historical recognized environmental conditions, and *de minimus* conditions.

6.1 Data Gaps

A data gap is defined by ASTM E 1527-05 as a lack of or inability to obtain information required by this practice despite good faith efforts by the Environmental Professional to gather such information. Data gaps may result from the incompleteness in any of the activities required by this practice including, but not limited to, the site reconnaissance, interviews, and historical research. Failure to achieve the historical research objectives identified in the standard is termed a data failure and is a type of data gap.

No data gaps were identified.

7. OPINION

Based on the results of the assessment, no environmentally related conditions, including no RECs, Historical RECs, or *de minimus* conditions, were identified in connection with subject site.

8. CONCLUSIONS

ARGO has performed this Phase I ESA in conformance with the scope and limitations of ASTM E 1527-05 of 79 Middleville Road, East Northport, New York. Any exceptions to, or deletions from, this practice are described in Section 11. This ESA has revealed no evidence of RECs in connection with the property.

9. RECOMMENDATIONS

No further action or investigation is recommended at this time.

10. DEVIATIONS

None.

11. ADDITIONAL SERVICES

ARGO obtained additional background information regarding the site, primarily from the EDR NEPA Check Report provided in Appendix E-2.

11.1 Natural Areas

No Wilderness Areas or Wildlife Preserves are located within 1 mile of the property. Suffolk County, New York has four endangered and/or threatened species listed by the U.S. Fish and Wildlife Service. These are the Piping Plover, Roseate Tern, Seabeach Amaranth, and Sandplain Gerardia. These species utilize shore and near-shore areas, and the Northport VAMC campus is unlikely to provide suitable habitat for them.

11.2 Historic Sites

According to the Chief of Engineering Service at the Northport VAMC, there are 46 buildings on the Northport VAMC that are in the National Register of Historic Places. One mapped site was found in EDR's search of available government records within the search radius (1 mile) around the target property. Listed in the National Register of Historic Places is the "Ketchum, B., House," one building located approximately 0.5 miles east of the Northport VAMC.

11.3 Floodplain

The target parcels are not located in the 100-year nor the 500-year flood zones.

11.4 Wetlands

No areas on the target parcels appear on the National Wetlands Inventory Map.

11.5 Lead Based Paint and Asbestos

Roy F. Weston of New York, INC. performed asbestos surveys on Buildings 23, 25, 26, and 27 in 1993. Asbestos containing materials (ACM) were found to be present in each building, summarized as follows:

- Building 23: ACM were two types of pipe insulation (PI01, solid white and P102 aircell), and pipe fitting insulation (PJ01). One type of floor tile was assumed to be ACM.
- Building 25: ACM were pipe insulation (PI01, PI02, and PI03) and pipe fitting insulation (PJ01).

- Building 26: ACM were pipe insulation (PI01, PI02, and PI03) and associated pipe fittings (PJ01). Floor tiles were assumed to be ACM.
- Building 27: ACM was pipe fitting insulation (PJ01) in the basement.

Copies of these Asbestos Surveys are included in Appendix E.

In 2003, the VA conducted lead-based paint (LBP) testing on Buildings 25 and 26. LBP was found to be present in both buildings. Copies of these LBP surveys are included in Appendix E.

11.6 Radon

Radon data was collected by EDR. The property is located in an EPA Radon Zone 3 area. These areas have a predicted average indoor radon screening level of less than 2 picocuries per liter (pCi/L). High radon concentrations (4 – 20 pCi/L) have been reported in 1 of the 14 test sites recorded in the same zip code (11768).

11.7 FCC & FAA Sites

There are three FCC/FAA or cellular towers within 1 mile of the subject property. There are no airports within 1 mile of the subject property.

12. REFERENCES

The following sources of information were consulted as a part of this ESA.

ARGO Systems, Inc, 2009. Site reconnaissance by Mr. R.D. Roop and Mr. Derek Arnold. 28 October.

ASTM Standard Practice for Environmental Site Assessments: Phase I ESA Process, (ASTM E 1527-05).

CERCLA, Comprehensive Environmental Response, Compensation and Liability Act of 1980

Environmental Data Resources, Inc. (EDR), 2009. The EDR Radius Map™ Report with GeoCheck®. Inquiry 2622058.2s.

Environmental Data Resources, Inc. (EDR), 2009. The EDR Aerial Photo Decade Package. Inquiry 2622058.5.

Environmental Data Resources, Inc. (EDR), 2009. EDR NEPACheck ®. Inquiry 2622058.7s.

Environmental Data Resources, Inc. (EDR), 2009. The EDR-City Directory Abstract. Inquiry 2622058.6.

Gowrie, C. Personal communication and interview between Mr. R.D. Roop, Mr. Derek Arnold and Mr. Gowrie of the VA, October 28, 2009.

U.S. Department of Agriculture (USDA), 2008. Web Soil Survey of Suffolk County New York <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>. Accessed November 2009.

13. SIGNATURE(S) OF THE ENVIRONMENTAL PROFESSIONAL(S)

We declare that, to the best of our professional knowledge and belief, we meet the definition of an Environmental Professional as defined in Section 312.10 of 40 CFR 312. We have the specific qualifications based on education, training, and expertise to assess a property of the nature, history, and setting of the subject site. We have developed and performed the All Appropriate Inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

R.D. Roop, Certified Environmental Professional Date

Project Manager

Derek Arnold

Scientist Date

Jeff Johnson Date

Senior Technical Reviewer

13.**QUALIFICATIONS OF THE ENVIRONMENTAL
PROFESSIONAL(S)**

Robert Dickinson Roop, ARGO Systems LLC, Task Manager and Environmental Scientist

M.A. / Ecology / State University of New York / 1975

B.A. / Biology/ Hiram College / 1971

Years of relevant experience: 35

Derek Arnold, ARGO Systems, LLC, Environmental Scientist

M.S./ Civil & Environmental Engineering/ UMBC / 2009

B.S./ Biochemistry & Molecular Biology/ University of Maryland, Baltimore County / 2004

Years of relevant experience: 3

Jeffrey P, Johnson, ARGO Systems, LLC, Environmental Engineer and Chief Operation Officer

B.S. / General Engineering / U.S. Naval Academy / 1979

M.S./Administrative Science / Johns Hopkins Univ. / 1985

Years of relevant experience: 27

Appendix A

Figures

Appendix A shows one figure. The figure is an aerial image of the Northport VAMC campus. A heavy line has been added to the approximate boundary of the proposed EUL parcels. The proposed EUL parcels have been labeled as “Parcel A” and “Parcel B.”

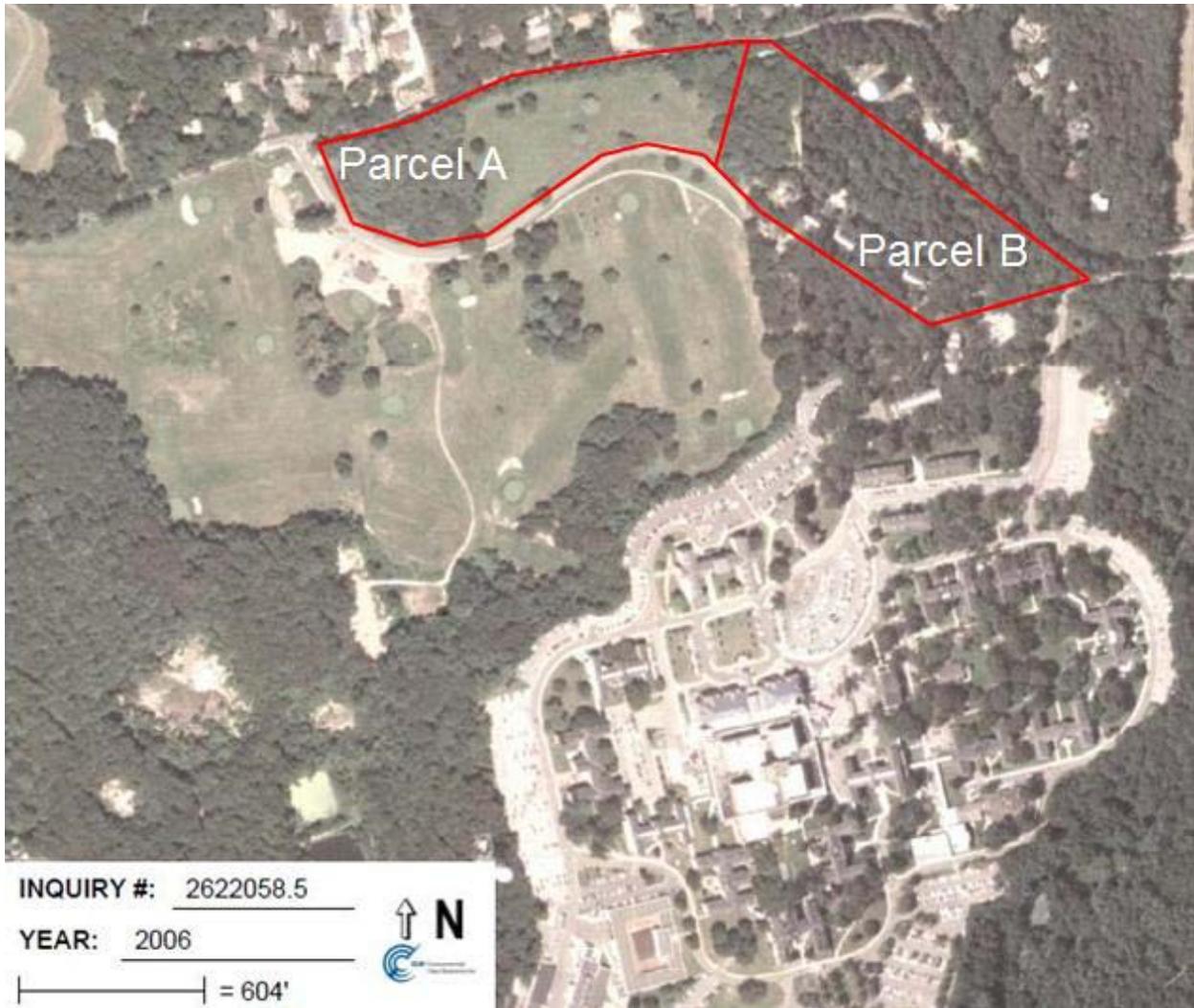


Figure 1. Northport VAMC Property, showing approximate proposed EUL areas.

Appendix B
Site Photographs

Appendix B contains photographs of the Northport VAMC proposed EUL site, taken during the site visit. Each photograph has an individualized caption, which explains what is shown in the image.

Appendix C

Historical Research Documentation

Appendix C shows historical topographic maps and historical aerial photos of the Northport VAMC and surrounding area. There are 6 historical topographic maps, one each from 1903 (1:62,500 scale), 1904 (1:125,000 scale), 1944 (1:25,000 scale), 1954 (1:24,000 scale), 1967 (1:24,000 scale) and 1979 (1:24,000 scale). There are then 9 historical aerial photos, one each from 1953 (1:500 scale), 1957 (1:750), 1966 (1:750), 1974 (1:750), 1976 (1:750), 1980 (1:750), 1985 (1:1000), 1994 (1:750) and 2006 (1:604). The final page in Appendix C is a Certified Sanborn Map (Fire Insurance) for the Northport VAMC property. This page states that fire insurance maps covering this property were not found.

Appendix C1
Historical Topographic Maps

Appendix C2
Historical Aerial Photographs

Appendix C3
Fire Insurance Maps

Appendix D

Regulatory Records Documentation

Appendix D presents the EDR (Environmental Data Resources) Radius Map report for the Northport VAMC property. This EDR report presents the results of a search of all environmentally relevant regulatory records at and near the property (within a radius of 1 mile). Included as figures are two maps that show the property and the surrounding area; the first, an “Overview Map,” shows the property and surrounding area, with 3 circles, one of radius 0.25 miles, one of radius 0.5 miles, and one of radius 1.0 miles, each with the proposed EUL parcels on the Northport VAMC property as the approximate center of the circle. Within these circles are points denoting locations where significant environmental records were found in the regulatory records search. The next, a “Detail Map,” again shows the property and displays two circles around it at 1/8 and 1/4 mile radius. The same points that were displayed on the Overview Map are again shown on the Detail Map. The rest of the report gives detailed regulatory records for each site identified in the EDR search.

The report provides a physical setting of the Northport VAMC property, along with graphs displaying topographic information for the Site and surrounding area. A soil map is provided, as well as a “Physical Setting Source Map,” which shows groundwater flow direction, location of local groundwater wells, etc. Results of radon testing in the area surrounding the property are discussed and summarized. The EDR – City Directory Abstract (Appendix D-2) summarizes information from the Cole Criss-Cross Directory for the Northport VAMC and surrounding properties. Results of this pertinent information from this EDR report are discussed in the body of this Phase I Environmental Site Assessment.

Appendix D1
Radius Map Report

Appendix D2
City Directory Abstract

Appendix E

Supporting Documentation

Appendix E includes various parts that were used to enhance the accuracy of, and reinforce the opinion of the environmental professional given in, this Phase I Environmental Site Assessment. These parts include records of an interview with the Engineering Service Manager at the Northport VAMC, a NEPA (National Environmental Policy Act) Check report from EDR, results of the USDA's Web Soil Survey for the proposed EUL parcels on the Northport VAMC property, and excerpts from old lead-based paint and asbestos studies on the buildings located on the proposed EUL parcel. The NEPA Check includes maps depicting natural areas, historic sites, flood plain, National Wetlands Inventory, and Federal Communications Commission & Federal Aviation Administration sites on and around the property. The Web Soil Survey includes an aerial image of the proposed EUL parcels at the Northport VAMC, with overlaying text and lines to depict different soil types present. The excerpts from old lead-based paint and asbestos studies provide sampling details and analytical results for lead-based paint and asbestos.

Appendix E1
Interview Records

Record of Communication/Interview Summary

Person Interviewed/Organization:	Chris Gowrie, Northport VAMC
Phone No./Email Address:	631-261-4400 x7077/christopher.gowrie@va.gov
Date and Location of Interview:	10/28/09 at Northport VAMC
Subject of Interview:	Environmental compliance status of proposed EUL property
Interviewer and Project Name:	R. D. Roop, Phase I ESA, Northport VAMC

Mr. Gowrie is the Chief of Engineering Service at the Northport VAMC. He indicated that he has been employed at the Campus for 3 years.

Mr. Gowrie also provided past internal VA documents relating to major and minor projects that have helped to shed light on historic, tribal, and environmental issues. Asbestos sampling has been conducted and is found to be present within Buildings 23, 25, 26, and 27. Lead-based paint sampling has been conducted and LBP has been found to be present in Buildings 26 and 27. Mr. Gowrie provided documents relating to asbestos sampling and management. Asbestos has been discussed earlier in this document.

Mr. Gowrie stated that the VAMC has their own power plant, located on the back side of campus, as well as their own water supply wells and wastewater treatment plant. He stated that there is a 20,000 foot natural gas line that supplies the campus, with National Grid supplying the gas. Mr. Gowrie indicated that there are 80-90 fuel oil tanks on the VAMC premises, which are inspected annually by Suffolk County. The only problem with these tanks may be their age.

Appendix E2
NEPA Check Report

Appendix E3

Excerpts from Previous Asbestos and Lead-Based Paint Studies

ZONE	OLD ZONE	FRONT YARD	REAR YARD	SIDE YARD	DET. STRUCTURE	HEIGHT
R-80	A	50'	50'	25'	10'	20'
R-40	B	50'	50'	25'	10'	20'
R-20	B1	50'	50'	20'	10'	20'
R-15	C2	30'	25'	12'	10'	20'
R-10	C2	30'	25'	12'	2'	15'
R-7	D	25'	25'	7' ¹ / ₈ '	2'	15'
R-5	E	20'	25'	5' ¹ / ₈ '	2'	15'

CERTIFICATE OF TITLE ISSUED BY
STEWART TITLE
INSURANCE COMPANY

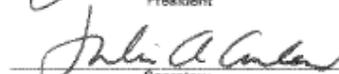
Certifies to the proposed insured named in Schedule A that an Examination of title to the premises described in Schedule A has been made in accordance with its usual procedure and agrees to issue its standard form of title insurance policy in favor of the proposed insured, covering premises described in Schedule A, in the amounts hereinafter set forth, insuring the fee and/or mortgage and the marketability thereof, after the closing of the transaction in conformance with procedures approved by the Company excepting (a) all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (b) any question or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of said policy.

This Certificate shall be null and void (1) if the fees therefore are not paid (2) if the prospective insured, his attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company (3) upon delivery of the policy. Any claim arising by reason of the issuance hereof shall be restricted to the terms and conditions of the standard form of insurance policy. If title, interest or lien to be insured was acquired by the prospective insured prior to delivery hereof, the Company assumes no liability except under its policy when issued.

Countersigned by:


Authorized Office or Agent




President

Secretary

TITLE # ST09-06250

Appendix E4
Web Soil Survey Results

ATTACHMENT “F”: LIMITED TITLE SEARCH

7600 Highway 72 West
Suite 202
Madison, AL 35758
(256) 539-1997
(256) 539-4835 Fax



INFORMATION REPORT

Stewart File: **VAMC-Northport**

Property Address:

**79 Middleville Road
Northport, New York**

This Title Information Report has been issued at the request of :

MTCC, Inc.
4970 Corporate Drive Suite 125 C
Huntsville, Alabama 35805
County/State: Suffolk, NY

Through Date: **November 15, 2009 @ 8:00 AM** and as of said date and time said search reveals:

TITLE VESTED IN:

United States of America by deed dated 2/25/26 and recorded 2/26/26 in Liber 1173, Cp. 56 from by John D. Ryan and Neittie G. Ryan.

LEGAL DESCRIPTION:

See Attached Schedule A.

TAXES:

Taxes are EXEMPT (Please see attached report).

OTHER MATTERS OF RECORD:

NOTE: No Open Mortgages found of record.
No Judgments, Liens, or Bankruptcies found of record.
No Covenants, conditions, easements, leases, agreements found of record.

ADDITIONAL EXCEPTIONS:

Anything to the contrary notwithstanding, this information report, does not attempt to set out any ownership interest in any oil, gas, and minerals, or any rights in connection therewith, and said oil, gas, and minerals interests, and all rights of entry, including the right to extract such oil, gas and mineral interests are not insured. Nothing herein shall insure against loss or damage resulting.

Unrecorded golf course lease as referred to on site map provided to this Company.

NO LIABILITY IS ASSUMED FOR THE OMISSION OF ANY INSTRUMENT WHEREIN THE LAND IS DESCRIBED INCORRECTLY OR BY STREET ADDRESS OR WHERE SAID INSTRUMENT IS INCORRECTLY INDEXED OR OMITTED FROM THE INDEX OR MISPELLED ON THE FACE OF THE INSTRUMENT AND INDEXED CORRECTLY BY THE PROBATE OFFICE. TITLE COMPANY DOES NOT CERTIFY AS TO THE MARITAL STATUS OF ANY PERSON, MALE OR FEMALE, APPEARING IN THE INSTRUMENTS IN THIS REPORT, ANY MARRIAGES NOT LICENSED IN SUBJECT COUNTY ARE NOT CONSIDERED IN THIS REPORT. TITLE COMPANY DOES NOT CERTIFY AS TO THE QUANTITY, DIMENSIONS, POSSESSION OF, OR ENCROACHMENTS ON THE LANDS DESCRIBED IN THE INSTRUMENTS HEREIN. LIABILITY IS LIMITED TO THE AMOUNT PAID FOR THIS REPORT.

Dated: September 16, 2009

104 Edwards Ave. Suite 1
Calverton, NY 11933



Sunrise Research Corp.

631-727-1308
Fax: 631-727-1309

Date: 1/5/2010

Title: STEW

Premises: MIDDLEVILLE RD

County: SUFFOLK

Town/City: Town of Huntington

District: 0400 **Section:** 060.00

Village: Northport (NOT INC)

Block: 01.00 **Lot(s):** 001.005

ZONING SEARCH

As per your request for a Zoning Search on the above premises, the following have been found:

PROPERTY IS LOCATED IN ZONE R-80.

SUNRISE RESEARCH CORPORATION DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE GOVERNMENTAL AGENCY WERE EXAMINED FOR STEWART TITLE INS CO. THE INFORMATION REPORTED ABOVE IS A TRUE AND ACCURATE ABSTRACT OF THE INFORMATION REPORTED THEREIN AND NO LIABILITY IS ASSUMED. THIS REPORT IS SUBMITTED FOR INFORMATIONAL PURPOSES ONLY.

0000000.00 0015.00 0000015.00



SCHEDULE A – CERTIFICATION

Title No.: ST09-06250
Effective Date: 11/15/2009

Proposed Insured:

Purchaser/Borrower:

Mortgagee:

Amount of Insurance:

Fee:

Mortgage:

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

TITLE VESTED IN:

Title to the fee estate or interest in the land described or referred to herein is at the effective date hereof vested in:
United States of America

Source of Title: By deed dated 2/25/26 and recorded 2/26/26 in Liber 1173, Cp. 56 made by John D. Ryan and Neittie G. Ryan, which deed covers the described premises and other premises not covered by this title commitment.

Premises described herein are known as:

79 Middleville Road
Northport, New York

County: Suffolk

Village:

Municipality: Huntington

District: 0400

Section: 060.00

Block: 01.00

Lot: 001.005

For Clearance Call:
Vincent Sabia



NEW YORK METRO
800-853-4803
212-922-1593 fax
Stewartnewyork.com

SCHEDULE A – DESCRIPTION

Title No.: ST09-06250

ALL those certain tracts, piece or parcel of land, situate, lying and being at East Northport (formerly Clay Pitts) in the Town of Huntington, County of Suffolk and State of New York, bounded and described as follows:

PARCEL NO.1

BEGINNING at a locust stake on the southerly line of the public road leading from Middleville to Vernon Valley and adjoining land now or formerly of Sarah Scudder and running thence by and with southerly line or side of said public road above mentioned the following courses and distances; South 79 degrees 36 minutes 40 seconds East, 277.95 feet to a locust stake;

THENCE North 88 degrees 53 minutes 10 seconds East 413.45 feet to a locust stake;

THENCE North 72 degrees 50 minutes 30 seconds East 384.34 feet to a locust stake;

THENCE North 68 degrees 3 minutes East 240.91 feet to a locust stake;

THENCE North 67 degrees 58 minutes 30 seconds East 201.54 feet to a locust stake;

THENCE North 87 degrees 20 minutes East 228.78 feet to a locust stake;

THENCE North 70 degrees 42 minutes 10 seconds East 210.62 feet to a locust stake;

THENCE North 61 degrees 46 minutes 30 seconds East 185.91 feet to a locust stake;

THENCE North 74 degrees 58 minutes East 132.48 feet to a locust stake;

THENCE North 82 degrees 27 minutes 30 seconds East 197.54 feet to a locust stake;

THENCE North 83 degrees 39 minutes 30 seconds East 524.43 feet to a locust stake;

THENCE North 79 degrees 2 minutes 30 seconds East 195.07 feet to a locust stake;

THENCE North 81 degrees 13 minutes 30 seconds East 258.88 feet to a locust stake;

THENCE South 67 degrees 15 minutes East 80.61 feet to a locust stake;

THENCE South 37 degrees 12 minutes 30 seconds East 246.50 feet to a locust stake;

THENCE South 30 degrees 50 minutes 30 seconds East 304.80 feet to a locust stake;

THENCE South 34 degrees 50 minutes 30 seconds East 231.48 feet to a locust stake;

THENCE South 69 degrees 22 minutes 30 seconds East 224.50 feet to a locust stake;

THENCE North 73 degrees 51 minutes 30 seconds East 283.32 feet to a locust stake;

THENCE North 88 degrees 2 minutes 30 seconds East 265.89 feet to a locust stake;

THENCE South 83 degrees 1 minute 50 seconds East 162.57 feet to a locust stake;

THENCE North 89 degrees 50 minutes 50 seconds East 49.60 feet to a locust stake adjoining land now or late of E.A. Fortune;

THENCE by land last mentioned South 7 degrees 48 minutes 10 seconds East 435.52 feet to a locust stake;

THENCE South 9 degrees 51 minutes 40 seconds East 446.93 feet to a locust stake;

THENCE South 21 degrees 16 minutes 40 seconds East partly by land last mentioned and partly by land of Kenneth McDougall 299.65 feet to a locust stake; and

THENCE by land last mentioned the following courses and distances, to-wit:

South 72 degrees 15 minutes 50 seconds West 582.62 feet with locust stake;

THENCE South 24 degrees 31 minutes 10 seconds East 168.91 feet to a locust stake;

THENCE South 17 degrees 27 minutes 10 seconds East 310.73 feet to a locust stake;

THENCE South 15 degrees 26 minutes 30 seconds East 524.84 feet to an iron spike in a white oak tree;

THENCE South 24 degrees 15 minutes 10 seconds East 658.66 feet to a stone on the westerly side of the public road from Middleville to Commack;

THENCE by and with the westerly line of said last mentioned road the following courses and distances, to-wit:

South 16 degrees 49 minutes 30 seconds West 103.33 feet to a locust stake;

THENCE South 7 degrees 4 minutes 10 seconds East 464.04 feet to a locust stake;

THENCE South 22 degrees 8 minutes 40 seconds East 571.75 feet to a locust stake; adjoining land of Katherine B. Parsons (formerly Fleet B. Ketcham);

THENCE by land last mentioned the following courses and distances, to-wit:

South 86 degrees 22 minutes West 507.30 feet to a locust stake;

THENCE South 82 degrees 26 minutes 40 seconds West 256.41 feet to a locust stake;

THENCE South 75 degrees 49 minutes 30 seconds West 90.18 feet to a locust stake;

THENCE South 60 degrees 6 minutes 50 seconds West 745.02 feet to a locust stake;

THENCE South 57 degrees 18 minutes 10 seconds West 121.40 feet to a locust stake;

THENCE South 60 degrees 15 minutes 50 seconds West 188.02 feet to land of Elbertus O. Gildersleeve;

THENCE by the land last mentioned the following courses and distances, to-wit:

South 55 degrees 00 minutes 00 seconds West 67 feet to a locust stake;

THENCE South 39 degrees 15 minutes 00 seconds West 83.00 feet to a locust stake;

THENCE South 28 degrees 45 minutes 00 seconds West 151.45 feet to a locust stake;

THENCE South 83 degrees 34 minutes 30 seconds West by the northerly line of a four acre tract reserved by Rinaldo Sammis 850.88 feet to a stake adjoining land of Richard R. Sammis;

THENCE by land last mentioned, North 14 degrees 51 minutes 30 seconds East 468 feet to stake;

THENCE along the northerly line of land last mentioned South 85 degrees 41 minutes West 1102.25 feet to land belonging to the House and Home Company and formerly owned by Israel Vail;

THENCE by land last mentioned the following courses and distances, to-wit:

North 43 degrees 30 minutes 50 seconds West 444.60 feet to a locust stake;

THENCE North 3 degrees 42 minutes 50 seconds East 170.60 feet to a locust stake;

THENCE North 7 degrees 23 minutes 20 seconds East 155.50 feet to a locust stake;

THENCE North 10 degrees 2 minutes 10 seconds East 235.98 feet to a locust stake;

THENCE North 7 degrees 46 minutes 50 seconds East 273.32 feet to a locust stake;

THENCE North 0 degrees 14 minutes 50 seconds East 358.65 feet to a locust stake;

THENCE North 2 degrees 46 minutes 50 seconds East 287.64 feet to a locust stake;

THENCE North 33 degrees 11 minutes 20 seconds West 78.10 feet to a locust stake;

THENCE North 27 degrees 4 minutes 10 seconds West 202.26 feet to a locust stake;

THENCE North 30 degrees 35 minutes West 124.74 feet to a locust stake;

THENCE North 25 degrees 15 minutes 10 seconds West 204.85 feet to a locust stake;

THENCE North 34 degrees 40 minutes 30 seconds West 94.55 feet to a locust stake;

THENCE North 24 degrees 40 minutes 20 seconds West 145.41 feet to a locust stake;

THENCE North 25 degrees 40 minutes 10 seconds West 220.32 feet to a locust stake; on the southerly line of a roadway adjoining land of Israel Vail;

THENCE by land of said Israel Vail, the following courses and distances, to-wit:

North 13 degrees 43 minutes 30 seconds West 150.95 feet to stake;

THENCE North 19 degrees 8 minutes 50 seconds West 128.75 feet to a stake;

THENCE North 2 degrees 50 minutes 10 seconds West 86.40 feet to a stake;

THENCE North 6 degrees 14 minutes 10 seconds East 277.24 feet to a stake marking the northeast corner of land of said Israel Vail;

THENCE along land last mentioned the following courses and distances, to-wit:

North 85 degrees 57 minutes West 218.23 feet to a stake;

THENCE South 89 degrees 11 minutes 30 seconds West 97.40 feet to a stake;

THENCE South 70 degrees 45 minutes 10 seconds West 138.05 feet to a stake;

THENCE North 87 degrees 14 minutes West 121.04 feet to a locust stake;

THENCE North 89 degrees 31 minutes 40 seconds West 260.36 feet to a locust stake;

THENCE North 80 degrees 21 minutes 10 seconds West 145.34 feet to a locust stake; adjoining land now or formerly of Sarah Scudder;

THENCE by land now or formerly of Sarah Scudder the following courses or distances, to-wit:

North 1 degree 22 minutes 40 seconds West 122.31 feet to a locust stake;

THENCE North 3 degrees 57 minutes 30 seconds East 159.35 feet to a locust stake;

THENCE North 16 degrees 8 minutes 40 seconds East 219.28 feet to a locust stake;

THENCE North 21 degrees 41 minutes East 218.24 feet to a locust stake;

THENCE North 12 degrees 28 minutes 40 seconds West 102.86 feet to a locust stake;

THENCE North 6 degrees 34 minutes 30 seconds West 302.58 feet to a locust stake;

THENCE North 6 degrees 44 minutes 20 seconds East 154.45 feet to a locust stake;

THENCE North 9 degrees 36 minutes 10 seconds East 99.09 feet to a locust stake at the point and place of BEGINNING.

PARCEL 2

ALL that certain tract, piece of parcel of land, situate, lying and being at East Northport (formerly Clay Pitts) in the Town of Huntington, County of Suffolk and State of New York bounded and described as follows:

BEGINNING at the southwesterly corner thereof at a locust stake driven in the ground at the intersection of the northerly line of land belonging to the L.I. Railroad Co. (Port Jefferson Branch) and the easterly line of land now or formerly of William B. Codling and running thence by land last mentioned North 15 degrees 31 minutes 10 seconds East 1174.96 feet to a stake on the southerly line of land belonging to the House and Home Company (formerly Israel Vail) and running thence by land mentioned North 73 degrees 20 minutes 40 seconds East 470.55 feet to stake;

THENCE by land last mentioned North 27 degrees 43 minutes 20 seconds West 203.60 feet to a stake adjoining land of Rinaldo Sammis;

THENCE North 85 degrees 41 minutes East by land of Rinaldo Sammis 1102.25 feet to a stake;

THENCE South 14 degrees 51 minutes 30 seconds West by land last mentioned 468 feet to a stake;

THENCE South 83 degrees 34 minutes 30 seconds West 26.83 feet;

THENCE along the westerly line of a right way 25 feet in width heretofore conveyed by Simeon T. Robbins, and wife, to Rinaldo Sammis, the following courses and distances, to-wit:

South 14 degrees 51 minutes 30 seconds West 211.84 feet;

South 41 degrees 35 minutes 50 seconds West 28.89 feet;

South 18 degrees 32 minutes West 193.74 feet;

South 11 degrees 43 minutes 40 seconds West 443.21 feet to land of the East Northport Famers Produce Manufacturing Co;

THENCE by land last mentioned South 86 degrees 59 minutes 10 seconds West 256.00 feet to a stake;

THENCE still along land last mentioned South 11 degrees 43 minutes 40 seconds West 165.00 feet to a stake on the northerly line of land belonging to the L.I. Railroad Company (Port Jefferson Branch);

THENCE South 86 degrees 59 minutes 10 seconds West by and with the northerly line of land last mentioned 1108.55 feet to the stake at the point and place of BEGINNING.

PARCEL NO. 3

ALL that certain tract, piece or parcel of land situate, lying and being at East Northport (formerly Clay Pitts) in the Town of Huntington, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly line or side of the public road leading from Middleville to Commack and adjoining land of Rinaldo Sammis and running thence South 85 degrees 22 minutes West 507.30 feet to a stake;

THENCE South 82 degrees 26 minutes 40 seconds West 256.41 feet to a stake;

THENCE South 75 degrees 49 minutes 30 seconds West 90.18 feet to a stake;

THENCE 60 degrees 6 minutes 50 seconds West 745.02 feet to a stake;

THENCE South 57 degrees 18 minutes 10 seconds West 121.40 feet to a stake;

THENCE South 60 degrees 15 minutes 50 seconds West (all of said courses and distances being along the land of said Rinaldo Sammis) 188.02 feet to a stake adjoining land of Albertus O. Gildersleeve;

THENCE by land last mentioned South 9 degrees 15 minutes 20 seconds East 1154.68 feet to a stake adjoining land now or formerly belonging to H. Sanford Ketcham;

THENCE North 64 degrees 00 minutes East 226.45 feet to a stake;

THENCE North 60 degrees 40 minutes 40 seconds East 841.77 feet to a stake;

THENCE North 65 degrees 50 minutes 20 seconds East 254.26 feet to a stake;

THENCE North 73 degrees 12 minutes 30 seconds East 241.24 feet to a stake;

THENCE North 79 degrees 24 minutes East (all of said course and distances being along land now or formerly of H. Sanford Ketcham) 135.11 feet to a stake on the westerly line or side of the aforesaid public road leading from Middleville to Commack;

THENCE North 13 degrees 58 minutes 30 seconds East 211.02 feet to a stake adjoining other land of said Katherine B. Parsons;

THENCE South 87 degrees 2 minutes West by land last mentioned 245.75 feet to a stake;

THENCE North 2 degrees 58 minutes West still along land last mentioned, 671.25 feet to a stake marking the northeast corner of said Katherine B. Parson's land;

THENCE North 87 degrees 2 minutes East 302.10 feet to a stake on the westerly line or side of the aforesaid public road leading from Middleville to Commack;

THENCE North 10 degrees 24 minutes 30 seconds West by the westerly line or side of said public road 181.31 feet to the point and place of the BEGINNING.

PARCEL NO. 4

ALL that certain tract, piece or parcel of land, situate, lying and being at East Northport, (formerly Clay Pitts) in the Town of Huntington, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point in the center line of a roadway separating the premises hereby conveyed from land heretofore conveyed by Israel Vail to the House and Home Company and running thence North 2 degrees 52 minutes 10 seconds West by land of Israel Vail 534.30 feet to a stake adjoining land of Rinaldo Sammis;

THENCE by land of said Rinaldo Sammis the following courses and distances to-wit:

South 87 degrees 14 minutes East 121.04 feet to a stake;

North 70 degrees 45 minutes 10 seconds East 138.05 feet to a stake;

North 89 degrees 11 minutes 30 seconds East 97.40 feet to a stake;

South 85 degrees 57 minutes East 218.23 feet to a stake;

South 6 degrees 14 minutes 10 seconds West 277.24 feet to a stake;

South 2 degrees 50 minutes 10 seconds East 86.40 feet to a stake;

South 19 degrees 8 minutes 50 seconds East 128.75 feet to a stake;

South 13 degrees 43 minutes 30 seconds East 150.95 feet to stake adjoining land of the House and Home Company (formerly of Israel Vail) and the center line of the roadway above mentioned;

THENCE by the center line of said roadway the following courses and distances to-wit:

North 70 degrees 31 minutes West 77.44 feet to a stake;

South 83 degrees 34 minutes 20 seconds 77.80 feet to a stake;

North 46 degrees 22 minutes 30 seconds West 139.87 feet to a stake;

South 88 degrees 32 minutes 10 seconds West 347.95 feet to a stake at the point and place of BEGINNING.

EXCEPTING so much there from as lies in the bed(s) of any road(s).

EXCEPTING so much there from as was conveyed by the United States of America by deeds recorded in Liber 7365, Cp. 515; Liber 7570, Cp. 204; Liber 8046, Cp. 74 as amended by Liber 10947, Cp. 386 and Liber 10438, Cp. 595. See copies within.

This title commitment is intended to cover District 0400, Section 060.00, Block 01.00, Lot 001.005 on the Suffolk County Land and Tax Map.

104 Edwards Ave. Suite 1
 Calverton, NY 11933
 COUNTY: SUFFOLK



Sunrise Research Corp.

631-727-1308
 Fax: 631-727-1309
 PAGE 1 of 1

The unpaid taxes, water rates, assessments and other matters relating to taxes which are properly filed and indexed liens at the date of this search are set forth below. Our policy does not insure against such items which have not become a lien up to the date of the policy or installments due after the date of the policy. Neither our tax search nor our policy covers any part of streets on which the premises to be insured abut. If the tax lots reported cover more or less than the premises under examination, this fact will be noted herein. In such cases, the interested parties should take the necessary steps to make the tax map conform to the description to be insured.

Search Date: 12/10/2009

Ass'd To: United States of America

Premises: MIDDLEVILLE RD

Tax Class: 641

Town/City: Town of Huntington

District: 0400

Section: 060.00

Acct. No.:

Acreage: 298.7

Exempt: WHOLLY 1,860,000

School District: 472604-NORTHPORT

Village: Northport (NOT INC)

Land: \$35,400.00

Total: \$1,860,000.00

Block:

Lot(s):

Exempt:

Land:

Total:

2009/2010 Town/School TAX

Full Payment	\$0.00	Year: 12/1-11/30
1 st Payment	\$0.00 Exempt	Lien: 12/1
2 nd Payment	\$0.00 Exempt	Due: 12/1, 5/1
w/o exemptions \$4,426,669.80		

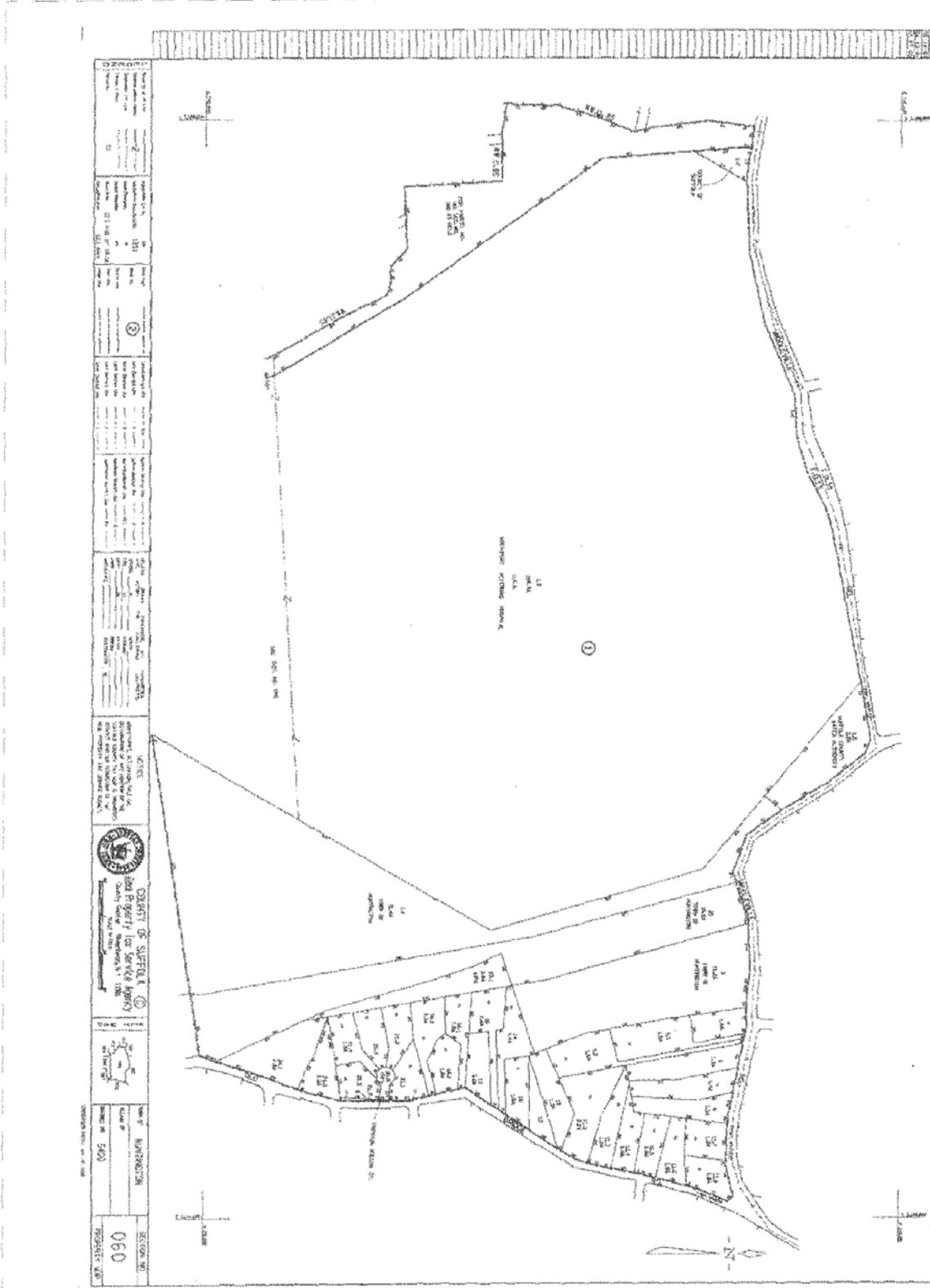
PRIOR TOWN AND SCHOOL TAXES PAID/EXEMPT

WATER AND SEWER CHARGES, IF ANY, NOT SEARCHED. THEREFORE, PLEASE REQUEST THE SELLER OR BORROWER TO PROVIDE RECEIPTED OR UNPAID BILLS.

IF PROPERTY IS TRANSFERRED, NEW OWNER MAY BE SUBJECT TO A PRO-RATA RELEVY FROM DATE OF CHANGE OF TITLE, BASED ON THE AMOUNT OF EXEMPTION RECEIVED BY THE NEW OWNER, TO WHICH THEY WERE NOT ENTITLED.

TAXES SUBJECT TO CONTINUATION PRIOR TO CLOSING

Recent payments of any open items returned on this tax search may not be reflected on the public records. Therefore please request the seller or borrower to have the receipted bills available at closing.



L11112P 50

RFC 2/26/1926

hundred and 1926, BETWEEN JOHN D. RYAN and KRITTIE G. RYAN, his wife, residing at Butte, Silver Bow County, Montana, parties of the first part, and the United States of America, party of the second part. WITNESSETH: That the said parties of the first part, in consideration of one hundred and ninety three thousand dollars (\$193,000), lawful money of the United States, paid by the party of the second part, do hereby grant and release unto the party of the second part, its successors and assigns forever,

ALL these certain tracts, pieces or parcels of land, situate, lying and being at East Northport (formerly Clay Pitte) in the Town of Huntington, County of Suffolk and State of New York, bounded and described as follows:

PARCEL NO. 1. BEGINNING at a locust stake on the southerly line of the public road leading from Middleville to Vernon Valley and adjoining land now or formerly of Sarah Soudder and running thence by and with the southerly line or side of said public road above mentioned the following courses and distances; S. 79 degrees 36'40" E. 277.95 feet to a locust stake;- thence N. 88 degrees 53'10" E. 413.45 feet to a locust stake;- thence N. 72 degrees 50'30" E. 334.34 feet to a locust stake;- thence N. 68 degrees 3' E. 240. feet to a locust stake;- thence N. 67 degrees 58'30" E. 201.54 feet to a locust stake;- thence N. 87 degrees 20' E. 228.78 feet to a locust stake;- thence N. 70 degrees 42'10" E. 214.62 feet to a locust stake;- thence N. 53 degrees 46'30" E. 185.91 feet to a locust stake;- thence N. 74 degrees 58' E. 132.48 feet to a locust stake;- thence N. 82 degrees 27' 30" E. 127.54 feet to a locust stake;- thence N. 83 degrees 39'30" E. 58. feet to a locust stake;- thence N. 79 degrees 2'30" E. 195.07 feet to a locust stake;- thence N. 81 degrees 13'30" E. 252.88 feet to a locust stake;- thence S. 67 degrees 15' E. 89.61 feet to a locust stake;- thence S. 57 degrees 12'30" E. 246. feet to a locust stake;- thence S. 30 degrees 50'30" E. 304.30 feet to a locust stake;- thence S. 34 degrees 50'30" E. 251.48 feet to a locust stake;- thence S. 69 degrees 22' 30" E. 224.50 feet to a locust stake;- thence N. 73 degrees 51'30" E. 253.32 feet to a locust stake;- thence N. 89 degrees 30" E. 265.89 feet to a locust stake;- thence S. 85 degrees 1'50" E. 102. feet to a locust stake;- thence N. 89 degrees 50'50" E. 49.60 feet to a locust stake;- adjoining land now or late of E. A. Fortuna; thence by land mentioned S. 7 degrees 48' 10" E. 435.62 feet to a locust stake; thence S. 9 degrees 51'40" E. 446.93 feet to a locust stake;- thence S. 21 degrees 16'40" E. partly by land last mentioned and partly by land of Kenneth McH. all 279.65 feet to a locust stake and thence by land last mentioned the

16
9

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degrees 40'23" W. 145.41 feet to a locust stake; thence S. 25 degrees 40' 10" W. 230.38 feet to a locust stake; on the southerly line of a roadway, thence adjoining land of Israel Vail, thence by land of said Israel Vail the following courses and distances, to-wit: N. 13 degrees 43'30" W. 150.96 feet to a stake; thence N. 19 degrees 2'50" W. 138.75 feet to a stake; thence N. 50 degrees 50' 10" W. 86.80 feet to a stake; thence E. 6 degrees 14'10" E. 277.24 feet to a stake marking the northeast corner of land of said Israel Vail; thence along land last mentioned the following courses and distances to-wit: N. 85 degrees 57' W. 218.83 feet to a stake; thence S. 89 degrees 11'30" W. 97.40 feet to a stake; thence S. 70 degrees 45' 10" W. 138.05 feet to a stake; thence N. 27 degrees 14' W. 121.84 feet to a locust stake; thence N. 89 degrees 31' 40" W. 260.36 feet to a locust stake; thence N. 80 degrees 21'10" W. 145.34 feet to a locust stake; adjoining land now or formerly of Sarah Scudder; thence by land now or formerly of Sarah Scudder the following courses and distances, to-wit: N. 1 degree 22'40" W. 122.31 feet to a locust stake; thence N. 3 degrees 27' 30" E. 159.33 feet to a locust stake; thence N. 15 degrees 5'40" E. 219.28 feet to a locust stake; thence N. 21 degrees 41' E. 218.24 feet to a locust stake; thence N. 12 degrees 22' 40" W. 102.85 feet to a locust stake; thence N. 6 degrees 34'30" W. 302.28 feet to a locust stake; thence N. 6 degrees 44' 20" E. 154.45 feet to a locust stake; thence N. 9 degrees 36' 10" E. 99.09 feet to a locust stake; at the point and place of beginning. Containing an area of 459.9 acres by survey of Frank Asbury, C.S., Huntington, N.Y., January, 1906. TOGETHER with all the right, title and interest of the partise of the first part, of, in and to so much of said public road from Middleville to Vernon Valley and the road from Middleville to Comack as adjoins the premises above described on the north and east to the center thereof respectively. PARCEL NO. 3 AND ALSO ALL that certain tract, piece or parcel of land, situate, lying and being at East Northport (formerly Clay Fitts) in the Town of Huntington, County of Suffolk, and State of New York, bounded and described as follows: BEGINNING at the southwesterly corner thereof at a locust stake driven in the ground at the intersection of the northerly line of land belonging to the L.I. Railroad Co. (Port Jefferson Branch) and the easterly line of land now or formerly of William B. Codling and running thence by land last mentioned N. 15 degrees 31' 10" E. 1174.96 feet to a stake on the southerly line of land belonging to the Home and Home Company (formerly Israel Vail) and running

Handwritten number '55' on the left margin.

L 111300

From Middletown to Comstock, thence N. 13 degrees 58' 30" E. 211.02 feet to a stake adjoining other land of said Katherine E. Parsons; thence S. 87 degrees 2' W. by land last mentioned 345.75 feet to a stake thence N. 2 degrees 58' W. still along land last mentioned 271.25 feet to a stake marking the northeast corner of said Katherine E. Parson's land; thence S. 87 degrees 2' E. 302.10 feet to a stake on the westerly line of side of aforesaid public road leading from Middletown to Comstock; thence N. 10 degrees 24' 30" W. by the westerly line or side of said public road 121.30 feet to the point and place of beginning. Containing an area of 42-14/100 acres by survey of Frank Asbury, C.E., Huntington, N.Y., January 1926.

TOGETHER with all the right, title and interest of the parties of the first part, of, in and to so much of said public road from Middletown to Comstock as adjoins the premises above described on the east to the center thereof.

PARCEL NO. 4. AND ALSO ALL that certain tract, piece or parcel of land, situated, lying and being at East Northport, (formerly Clay Pitts) in the Town of Huntington, County of Suffolk and State of New York, bounded and described as follows: BEGINNING at a point in the center line of a roadway separating the premises hereby conveyed from land heretofore conveyed by Israel Vail to the House and Home Company and running thence N. 2 degrees 52' 10" W. by land of Israel Vail 534.30 feet to a stake adjoining land of Rinaldo Sammis; thence by land of said Rinaldo Sammis the following courses and distances to wit: S. 87 degrees 14' E. 121.04 feet to a stake; S. 70 degrees 45' 10" E. 138.05 feet to a stake; S. 89 degrees 11' 30" E. 100.00 feet to a stake; S. 85 degrees 57' E. 218.23 feet to a stake; S. 6 degrees 14' 10" W. 277.24 feet to a stake; S. 2 degrees 50' 10" E. 26.40 feet to a stake; S. 19 degrees 2' 50" E. 128.75 feet to a stake; S. 18 degrees 43' 30" E. 150.25 feet to a stake adjoining land of the House and Home Company (formerly of Israel Vail) and the center line of the roadway above mentioned; thence by the center line of said roadway the following courses and distances to wit: N. 70 degrees 31' W. 77.44 feet to a stake; S. 83 degrees 34' E. 77.20 feet to a stake; N. 46 degrees 22' 30" W. 139.27 feet to a stake; S. 85 degrees 32' 10" W. 347.95 feet to a stake at the point and place of beginning. Said premises being bounded generally northerly and easterly by land of Rinaldo Sammis; southerly by the center line of the roadway separating the premises hereby conveyed from the land heretofore conveyed by Israel Vail to the House and Home Company and westerly by land of said Israel Vail and containing an area of 7-014/1000 acres by survey of Frank

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