

**CITY OF LAWRENCE, KANSAS,  
and  
DOUGLAS COUNTY, KANSAS,  
As Lessors**

**AND**

**LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY,  
As Lessee**

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**LEASE AGREEMENT**

**Dated as of January 1, 2010**

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**LEASE AGREEMENT**

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT** dated as of January 1, 2010 (the "Lease"), between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas (the "City") and **DOUGLAS COUNTY, KANSAS**, a body corporate and politic organized and existing under the laws of the State of Kansas (the "County"), as lessors, and **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a Kansas not for profit corporation ("LDCBA"), as lessee;

### WITNESSETH:

**WHEREAS**, the City is authorized pursuant to Ordinance No. 8480 (the "Ordinance") and Article 12, Section 5 of the Constitution of the State of Kansas (the "Home Rule Amendment"), to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes, and to issue general obligation bonds for the purpose of paying the cost of such facilities;

**WHEREAS**, the County is authorized pursuant to Resolution No. HR-09-12-4 (the "Resolution") and K.S.A. 19-101 (K.S.A. 19-101, the Ordinance, the Resolution and the Home Rule Amendment collectively referred to here in as the "Act") to purchase, acquire, construct, improve, equip, remodel, sell and lease certain facilities within its jurisdiction for economic development purposes; and

**WHEREAS**, pursuant to the foregoing, the City and the County desire to acquire and lease the Leased Premises to the LDCBA and the LDCBA desires to lease the Leased Premises from the City and the County, for the rentals and upon the terms and conditions hereinafter set forth; and

**WHEREAS**, pursuant to this Lease, and so long as there is no default hereunder, the parties desire that the LDCBA manage the day-to-day operations of the Leased Premises so as to encourage economic development of bioscience and technology components of the local economy.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City, the County and the LDCBA do hereby represent, covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.1. Definitions of Words and Terms.** In addition to any words and terms defined elsewhere in this Lease, the following words and terms as used in this Lease shall have the following meanings:

**"Additional Rent"** means the additional rental described in **Sections 4.1, 5.2 and 6.2** of this Lease.

**"Annual Interest Rate"** means the lesser of (a) an interest rate equal to the City's average annual investment rate for the City's idle funds for the previous calendar year plus 50 basis points, or (b) 4.00%.

**"Authorized City Representative"** means the City Manager or his or her designee.

**“Authorized County Representative”** means the County Administrator or his or her designee.

**“Authorized LDCBA Representative”** means the President of the LDCBA or his or her designee.

**“Basic Rent”** means the rental described in **Section 5.1** of this Lease.

**“Bonds”** means the City’s Taxable General Obligation Bonds (Lawrence-Douglas County Bioscience Project), Series 2010-A in the estimated principal amount of \$2,900,000.

**“Cooperation Agreement”** means that certain Cooperation Agreement between the City and the County dated as of January 1, 2010.

**“Event of Default”** means any Event of Default as described in **Section 12.1** of this Lease.

**“Expenses”** means all expenses of any kind incurred with respect to the Leased Premises and paid by LDCBA, the City or the County.

**“Full Insurable Value”** means the full replacement cost of the Leased Premises, as determined by the City and the County.

**“Lease”** means this Lease Agreement, between the City and the County, as lessors, and the LDCBA, as lessee, as from time to time amended and supplemented in accordance with the provisions of this Lease.

**“Lease Term”** means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** of this Lease.

**“Leased Premises”** means all of the real estate described in **Exhibit A** attached hereto and by this reference made a part hereof, including all buildings, structures, improvements, fixtures, machinery and equipment related thereto.

**“Leasehold Improvements”** means certain upgrades to the HVAC system on the Leased Premises and other improvements as proposed by LDCBA to the Management Committee in accordance with **Section 4.1** hereof.

**“Net Proceeds”** means, when used with respect to any insurance or condemnation award with respect to the Leased Premises, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the County) incurred in the collection of such gross proceeds.

**“Net Revenues”** means, for the period of determination, all Revenues less all Expenses.

**“Rent”** means Basic Rent and Additional Rent.

**“Revenues”** means all revenues of any kind generated by the Leased Premises and paid to LDCBA.

**Section 1.2. Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

**ARTICLE II**

**REPRESENTATIONS**

**Section 2.1. Representations by the City.** The City hereby represents and warrants that the City is a municipal corporation duly organized and validly existing under the laws of the State of Kansas. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

**Section 2.2. Representations by the County.** The County hereby represents and warrants that the County is a body corporate and politic duly organized and validly existing under the laws of the State of Kansas. The County has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the County has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

**Section 2.3. Representations by the LDCBA.** The LDCBA makes the following representations as the basis for the undertakings on its part herein contained:

(a) The LDCBA is a 501(c)(6) not for profit corporation validly existing and in good standing under the laws of the State of Kansas and duly qualified to do business in the State of Kansas.

(b) The LDCBA has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper corporate action of its Board of Directors, the LDCBA



has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the LDCBA will not conflict with or result in a material breach of any of the terms, conditions or provisions of, or constitute a material default under, any mortgage, deed of trust, lease or any other corporate restrictions or any agreement or instrument to which the LDCBA is a party or by which it or any of its property is bound, or the LDCBA's Articles of Incorporation or Bylaws or any order, rule or regulation applicable to the LDCBA or any of its property of any court or governmental body, or constitute a material default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the LDCBA under the terms of any instrument or agreement to which the LDCBA is a party.

(d) The Leased Premises will comply with all presently applicable building and zoning, health, environmental and safety ordinances and laws, and to the best of its knowledge, without independent investigation, the Leased Premises will comply with all other applicable laws, rules and regulations.

### ARTICLE III

#### GRANTING PROVISIONS

**Section 3.1. Granting of Leasehold Estate.** The City and the County hereby rent, lease and let the Leased Premises to the LDCBA, and the LDCBA hereby rents, leases and hires the Leased Premises from the City and the County, for the rentals and upon and subject to the terms and conditions herein contained.

**Section 3.2. Lease Term.**

(a) This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have an initial term commencing as of the date the City and the County take title to the Leased Premises, which date is expected to be on or about January 26, 2010, and terminating on January 31, 2035.

(b) The City and the County may terminate this Lease upon no less than five years' written notice to LDCBA.

**Section 3.3. Possession and Use of the Leased Premises.**

(a) The City and the County covenant and agree that as long as neither the City nor the County has exercised any of the remedies set forth in **Section 12.2(c)** following the occurrence and continuance of an Event of Default, the LDCBA shall have sole and exclusive possession of the Leased Premises (subject to the City's and the County's right of access and inspection pursuant to this Lease) and shall and may peaceably and quietly have, hold and enjoy the Leased Premises during the Lease Term. The City and the County covenant and agree that they will not take any action, other than expressly pursuant to **Article XII** of this Lease, to prevent the LDCBA from having quiet and peaceable possession and enjoyment of the Leased Premises during the Lease Term and will, at the request and expense of the LDCBA, cooperate with

the LDCBA in order that the LDCBA may have quiet and peaceable possession and enjoyment of the Leased Premises.

(b) Subject to the provisions of this Section, the LDCBA shall have the right to use the Leased Premises for a bioscience and technology incubator and/or graduation facility, and/or for any other purpose that is consistent with the economic development mission of the LDCBA.

(c) The LDCBA shall comply with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Leased Premises or to any adjoining public ways, as to the manner of use or the condition of the Leased Premises or of adjoining public ways. The LDCBA shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The LDCBA shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the LDCBA to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the LDCBA shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the LDCBA may refrain from complying therewith; provided, however that (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment related to such contest and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

(d) Neither the City nor the County shall be liable for any loss or damage to the property of LDCBA or any sublessee or any other personal property in or about the premises, regardless of the cause of such loss or damage.

#### **Section 3.4. Funds and Accounts; Use of Revenues and Payment of Expenses.**

(a) ***Establishment of Operating Fund; Annual Budget.*** Upon commencement of this Lease, the LDCBA shall create an Operating Fund with respect to the Leased Premises, which shall be separately accounted for and budgeted each year by the LDCBA. Annually, by each June 1, the LDCBA shall submit a budget to the Management Committee created pursuant to the Cooperation Agreement showing all expected Revenues and Expenses of the Leased Premises for the following calendar year.

(b) ***Revenues of Leased Premises; Deposit to Operating Fund.*** All Revenues generated by LDCBA from LDCBA's possession and use of the Leased Premises shall be deposited to the Operating Fund and shall be held by the LDCBA in escrow for the benefit of the LDCBA, the City and the County.

(c) ***Expenses of Leased Premises; Payment from Operating Fund.*** All moneys in the Operating Fund shall be used by the LDCBA solely and only to pay management, operation and maintenance expenses and Rent required to be paid by the LDCBA pursuant to this Lease. Any Expenses in excess of the total amount of aggregate Expenses shown in the then current budget, as approved by the Management Committee, shall require the approval of the Management Committee before such Expenses are paid from the Operating Fund. If LDCBA fails to pay any Rent when due pursuant to this agreement, the amount of any unpaid Rent shall accrue as a deficit in the Operating Fund. For purposes of approval of any budget under this **Section 3.4(c)**, the Authorized LDCBA Representative shall be considered an ex

*officio* member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the budget, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such budget.

**Section 3.5. Accounting; Reports.** On each February 1 and August 1, LDCBA shall transmit to the City and the County a report showing an accounting of all Revenues and Expenses deposited to and paid from the Operating Fund. Such semi-annual report shall also describe maintenance performed on the Leased Premises during the prior six-month period, and an estimate of maintenance to be performed on the Leased Premises, including the estimated costs thereof, during the twelve months following such report.

## ARTICLE IV

### INITIAL IMPROVEMENTS

**Section 4.1. Initial Improvements to Leased Premises.** As soon as practical after execution of this Lease, the LDCBA shall submit a plan for the Leasehold Improvements to the Management Committee for approval. Following approval, the LDCBA shall cause the Leasehold Improvements to be completed. LDCBA may submit up to \$600,000.00 of the costs of such Leasehold Improvement to the Management Committee for payment and/or reimbursement, and any costs in excess thereof shall be paid by LDCBA.

## ARTICLE V

### RENT PROVISIONS

**Section 5.1. Basic Rent.**

(a) The LDCBA covenants and agrees to pay as Basic Rent to the City and the County on each February 1 and August 1 (each, a "Rent Payment Date") beginning August 1, 2010 through and including August 1, 2014, the sum of \$12,500.00. On each Rent Payment Date thereafter, the LDCBA shall pay as Basic Rent to the City and the County the Principal Portion of Basic Rent as shown on **Schedule I** hereto plus the Interest Portion of Basic Rent. The Interest Portion of Basic Rent on each Rent Payment Date shall be determined by (a) multiplying the Cumulative Outstanding Principal Amount as shown on **Schedule I** hereto on each Rent Payment Date by the Annual Interest Rate, as determined from time to time, and (b) dividing such amount by two. The City shall give notice of the Annual Interest Rate to LDCBA and the County by January 15 of each year.

(b) All payments of Basic Rent provided for in this Section shall be paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

**Section 5.2. Additional Rent.**

(a) The LDCBA shall pay as Additional Rent the following amounts:

(1) all expenses reasonably incurred in connection with the enforcement of any rights against the LDCBA or the Leased Premises under this Lease by the City or the County, except for

such expenses as may be incurred solely as a result of the gross negligence or wrongful misconduct of the City, the County or both;

(2) an amount sufficient to reimburse the City for all expenses reasonably incurred by the City hereunder and in connection with the performance of its obligations under this Lease;

(3) an amount sufficient to reimburse the County for all expenses reasonably incurred by the County hereunder and in connection with the performance of its obligations under this Lease;

(4) all general ad valorem and personal property taxes, including any special assessments levied against the Leased Premises and/or any payments in lieu of taxes;

(5) all other payments of whatever nature which the LDCBA has agreed to pay or assume under the provisions of this Lease.

(b) Except as otherwise provided in this Section, Additional Rent shall be payable within 10 days of notice thereof from the City or the County, or by such later date specified in notice provided by the City or the County to LDCBA. All payments of Additional Rent provided for in this Section shall be paid directly to the person or entity owed, except that any payments to be made to the City or the County shall be paid directly to the City and shall be deposited and applied by the City in accordance with the provisions of the Cooperation Agreement.

### **Section 5.3. Obligations of LDCBA Absolute and Unconditional.**

(a) The obligations of the LDCBA under this Lease are intended to be absolutely net to the City and the County, and the obligations of the LDCBA under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and notwithstanding any damage to, loss, theft or destruction of, the Leased Premises or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Leased Premises, legal curtailment of the LDCBA's use thereof, the eviction or constructive eviction of the LDCBA, any change in the tax or other laws of the United States of America, the State of Kansas or any political subdivision thereof, any change in the City's or the County's legal organization or status, or any default of the City or the County hereunder, and regardless of the invalidity of any action of the City or the County, and regardless of the invalidity of any portion of this Lease.

(b) Nothing in this Lease shall be construed to release the City or the County from the performance of any agreement on its part herein contained or as a waiver by the LDCBA of any rights or claims the LDCBA may have against the City or the County under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City or the County separately, it being the intent of this Lease that the LDCBA shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent). The LDCBA may, however, at its own cost and expense and in its own name or in the name of the City or the County, prosecute or defend any action or proceeding or take any other action involving third persons which the LDCBA deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City and the County hereby agree to

cooperate fully with the LDCBA and to take all action necessary to effect the substitution of the LDCBA for the City and the County in any such action or proceeding if the LDCBA shall so request.

## ARTICLE VI

### MANAGEMENT, MAINTENANCE, TAXES AND UTILITIES

**Section 6.1. Management of the Leased Premises.** The LDCBA may, at any time during the Lease Term, employ an individual or firm to manage the Leased Premises. Such individual or firm shall have experience managing facilities such as the Leased Premises, and shall be subject to review and approval by the City and the County.

**Section 6.2. Maintenance and Repairs.** Throughout the Lease Term the LDCBA shall, at its own expense, keep the Leased Premises in as reasonably safe condition as the operation thereof will permit, and keep the Leased Premises in good repair and in good operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof. LDCBA shall not commit waste of the Leased Premises.

**Section 6.3. Taxes, Assessments and Other Governmental Charges.**

(a) The LDCBA shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against the Leased Premises, or any part thereof or interest therein (including the leasehold estate of the LDCBA therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the LDCBA, or the income therefrom or Basic Rent and other amounts payable under this Lease, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would materially encumber the City's or the County's title to the Leased Premises; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the LDCBA shall be obligated to pay only such installments thereof as become due and payable during the Lease Term; except, provided that the first and last installments thereof shall be prorated according to the Lease Term.

(b) The LDCBA shall have the right, in its own name or in the City's and the County's name, to contest the validity or amount of any tax, assessment or other governmental charge which the LDCBA is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the LDCBA, before instituting any such contest, gives the City and the County written notice of its intention so to do, (2) the LDCBA diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the LDCBA promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City and the County agree to cooperate fully with the LDCBA in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The LDCBA shall hold the City and the

County whole and harmless from any costs and expenses the City and the County may incur related to any of the above.

**Section 6.4. Utilities.** All utilities and utility services used by the LDCBA in, on or about the Leased Premises shall be paid for by the LDCBA and shall be contracted for by the LDCBA in the LDCBA's own name, and the LDCBA shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

**Section 6.5. Ad Valorem Taxes.** The City, the County and the LDCBA acknowledge that the Leased Premises shall pay general ad valorem and property taxes (including special assessments levied on account of special benefits) on real and personal property. The City, the County and LDCBA covenant that they will not voluntarily take any action which may be reasonably construed as tending to abate the levy or assessment of such ad valorem or property taxes on the Leased Premises during the Lease Term.

## ARTICLE VII

### INSURANCE

**Section 7.1. Property Insurance.** The City will obtain and shall maintain throughout the Lease Term, property insurance insuring the Leased Premises (excluding foundations), and business income (including extra expense) insurance for a period of not less than 12 months, against loss or damage resulting from perils covered by the causes of loss – special form (or the equivalent ISO form in use from time to time in Kansas). The property insurance shall be written on a replacement cost basis for the Full Insurable Value, with an agreed amount endorsement to prevent coinsurance and with deductibles not to exceed \$100,000. The insurance required pursuant to this Section shall be maintained at the LDCBA's sole cost and expense, which LDCBA shall pay to the City and the County as Additional Rent pursuant to Section 5.2(a) hereof, shall be maintained with generally recognized responsible insurance company or companies rated A(X) or better in the most current issue of Best's Insurance Reports and authorized to do business in the State of Kansas as may be selected by the City and the County. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City, the County and the LDCBA as insureds as their respective interests may appear, and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the City, the County and the LDCBA, and shall be payable to the City and the County. In the event of loss or damage to the Leased Premises, the Net Proceeds of casualty insurance carried pursuant to this Section shall be paid over and applied as provided in **Article IX** of this Lease.

**Section 7.2. Public Liability Insurance.**

(a) LDCBA shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance, or the equivalent ISO form in use from time to time in Kansas, naming the City and the County, their respective employees, and the managing agent for the Leased Premises, each as additional insured parties, insuring against claims for bodily injury, personal injury and property damage arising out of or in any way related to the use and occupancy of the Leased Premises by LDCBA or its agents, contractors, employees, servants, subtenants, licensees or concessionaires (including but not limited to coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), with a combined single limit of not less than \$1,000,000 per occurrence with a \$3,000,000 aggregate for this location and a deductible not to exceed \$100,000. The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 30 days' advance written notice to the

City, the County and the LDCBA. Such policies or copies or certificates thereof shall be furnished to the City and County. LDCBA's insurance shall provide primary coverage to the City and the County when any policy issued to the City and the County provides duplicate or similar coverage, and in such circumstance the policies of the City and the County will be excess over LDCBA's policy. If LDCBA has other locations that it owns or leases that are covered by such insurance, such policies shall include an aggregate limit per location endorsement, and such limit for the Leased Premises shall not be less than that specified above, so that losses at other properties cannot decrease the amount of insurance available for the Leased Premises below the limits specified above. In no event shall the limits of such insurance be considered as limiting the liability of LDCBA under this Lease.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

**Section 7.3. Blanket Insurance Policies.** The LDCBA may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

## ARTICLE VIII

### ALTERATION OF THE LEASED PREMISES

**Section 8.1. Additions, Modifications and Improvements of the Leased Premises.** Except as provided in **Section 4.1** hereof, and except for (i) any structural changes to the Leased Premises, (ii) any changes that affect the building systems (including, but not limited to, electrical, HVAC, or plumbing), or (iii) changes with a total cost in excess of \$200,000.00, all of which shall be subject to review and prior approval of the Management Committee, the LDCBA shall have and is hereby given the right to make such additions, modifications and improvements in and to any part of the Leased Premises as the LDCBA from time to time may deem necessary or desirable for its business purposes. All such additions, modifications and improvements shall be made at LDCBA's sole cost and expense. All additions, modifications and improvements made by the LDCBA pursuant to the authority of this Section shall (a) be made in workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Leased Premises.

**Section 8.2. Permits and Authorizations.** The LDCBA shall not do or permit others under its control to do any work on the Leased Premises related to any repair, rebuilding, restoration, replacement, modification or addition to the Leased Premises, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

**Section 8.3. Mechanics' Liens.**

(a) The LDCBA shall not do or suffer anything to be done whereby the Leased Premises, or any part thereof, may be encumbered by any mechanics' or other similar lien. Whenever and as often as any mechanics' or other similar lien is filed against the Leased Premises, or any part thereof, purporting to be for

or on account of any labor done or materials or services furnished in connection with any work in or about the Leased Premises, the LDCBA shall discharge the same of record within 90 days after the date of filing. Notice is hereby given that the City and the County shall not be liable for any labor or materials furnished the LDCBA or anyone claiming by, through or under the LDCBA upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City or the County in and to the Leased Premises or any part thereof.

(b) Notwithstanding paragraph (a) above, the LDCBA shall have the right to contest any such mechanics' or other similar lien if within said 90-day period stated above it notifies the City and the County in writing of its intention so to do and posts bond sufficient to cover such lien, and provided the LDCBA diligently prosecutes such contest, at all times effectively stays or prevents any official or judicial sale of the Leased Premises, or any part thereof or interest therein, under execution or otherwise, and pays or otherwise satisfies any final judgment enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof. The LDCBA shall hold the City and the County whole and harmless from any loss, costs or expenses the City or the County may incur related to any such contest. The City and the County shall cooperate fully with the LDCBA in any such contest.

## ARTICLE IX

### DAMAGE OR DESTRUCTION

#### Section 9.1. Damage or Destruction.

(a) If the Leased Premises shall be damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the LDCBA, as promptly as practicable, shall either repair, restore, replace or rebuild the same to as nearly as may be practicable their condition and character immediately prior to such damage or destruction, and so that upon completion of such repairs, restoration, replacement or rebuilding such Leased Premises shall be of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction. The City and the County shall have the right to review and approve the plans and specifications related to such improvement of the Leased Premises.

The Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Leased Premises shall be paid to the Building Fund and shall be applied in the following manner:

(A) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of making such temporary repairs or doing such other work, as, in the LDCBA's reasonable opinion, may be necessary in order to protect the Leased Premises pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacement or rebuilding;

(B) there shall be paid to the LDCBA from the Net Proceeds such part thereof as shall equal the cost to the LDCBA of repairing, restoring, replacing or rebuilding the Leased Premises or any part thereof;

(C) payment to the LDCBA pursuant to subdivisions (A) or (B) of this subsection (a)(ii) from such Net Proceeds shall be made to the LDCBA from time to time as the work progresses, in amounts equal to the cost of labor and material incorporated into and used in such work, the architects' and engineers' fees, and other charges in connection with such work, upon



delivery to the City and the County of a certificate of the LDCBA's architect or general contractor, as the case may be, in charge of such work, certifying: (1) that the amounts so to be paid to the LDCBA are payable to the LDCBA in accordance with the provisions of this Article and that such amounts are then due and payable by the LDCBA or have theretofore been paid by the LDCBA; (2) the progress of the work; (3) that the work has been done in accordance with the plans and specifications approved by the City and the County therefor and all insurance requirements of **Article VII** hereof; (4) that the sum requested when added to all sums previously paid out under this Article for the work does not exceed the value of the work done to the date of such certificate; (5) the estimated cost of completing the work, in reasonable detail; and (6) that the remaining Net Proceeds are sufficient to pay the estimated cost of completing the work;

(D) at the request of the City or the County, the LDCBA shall furnish to the person requesting the same, at the time of any such payment, with an official search, or other evidence reasonably satisfactory to such person, that there has not been filed with respect to the Leased Premises any mechanic's or other lien which has not been discharged of record, in respect of any work, labor, services or materials performed, furnished or supplied, in connection with the work and that all of said materials have been purchased free and clear of all security interest or other encumbrances. The City shall not pay out any such sum when the Leased Premises shall be encumbered with any such security interest or encumbrance.

(b) The insurance monies, if any, paid to the LDCBA as provided under this Article, on account of any loss or destruction to the Leased Premises, shall be held by it in trust and applied only for the purposes of repairing, reconstructing or restoring the Leased Premises or constructing new buildings and improvements and installing new machinery, equipment and fixtures thereto.

(c) If any of the insurance monies paid by the insurance company to the City or the LDCBA as hereinabove provided, shall remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease shall not have terminated, the excess shall be used by the City and the County for any purpose permitted by law. If the Net Proceeds shall be insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the LDCBA shall pay the deficiency.

(d) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the LDCBA shall remain and continue liable for the payment of all Basic Rent and Additional Rental and all other charges required hereunder to be paid by the LDCBA, as though no damage by fire or any other casualty has occurred.

(e) The City, the County and the LDCBA agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(f) The LDCBA agrees to give prompt notice to the City and the County with respect to all fires and any other casualties occurring in, on, at or about the Leased Premises.

(g) If the LDCBA shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the LDCBA may elect to terminate this Lease. In the event LDCBA elects to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic Rent, (2) pay any Additional Rent due and owing on the next Rent Payment Date, and (3) reimburse

the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The LDCBA agrees to be reasonable in exercising its judgment pursuant to this subsection (g).

(h) If the City and the County shall determine that rebuilding, repairing, restoring or replacing the Leased Premises is not practicable and desirable, the City and the County may elect to terminate this Lease. In the event the City and the County elect to terminate this Lease pursuant to this Section, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall be (1) used to prepay Basic Rent, (2) pay any Additional Rent due and owing on the next Rent Payment Date, and (3) reimburse the City and the County for all debt service paid or to be paid on the Bonds in excess of the amount of Basic Rent available therefor. All remaining Net Proceeds shall be released to the LDCBA to be used for any lawful purpose. The City and the County agree to be reasonable in exercising its judgment pursuant to this subsection (h).

(i) The LDCBA shall not, by reason of its inability to use all or any part of the Leased Premises during any period in which the Leased Premises is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City or the County or to any abatement or diminution of the rentals payable by the LDCBA under this Lease or of any other obligations of the LDCBA under this Lease except as expressly provided in this Section.

## ARTICLE X

### SPECIAL COVENANTS

#### **Section 10.1. No Warranty of Condition or Suitability by the Lessors; Exculpation and Indemnification.**

(a) The City and the County make no warranty, either express or implied, as to the condition of the Leased Premises or that it will be suitable for the LDCBA's purposes or needs. The LDCBA releases the City and the County from, agrees that the City and the County shall not be liable for and agrees to hold the City and the County harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Leased Premises or the use thereof, unless such loss is the result of the City's or the County's gross negligence or willful misconduct.

(b) The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that LDCBA has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. LDCBA further acknowledges and agrees that except as may otherwise be specifically provided herein, LDCBA accepts the Leased Premises in "as-is" condition and agrees that neither the City nor the County make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Leased Premises.

If necessary, LDCBA shall be solely responsible for all costs related to work necessary to conform the Leased Premises to the ADA.

**Section 10.2. Surrender of Possession.** Upon accrual of the City's or the County's right of re-entry because of the LDCBA's default hereunder or upon the cancellation or termination of this Lease for any reason, the LDCBA shall peacefully surrender possession of the Leased Premises to the City and the County in good condition and repair, ordinary wear and tear excepted; provided, however, the LDCBA shall have the right within 90 days prior to the termination of this Lease to remove from the Leased Premises any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and not constituting part of the Leased Premises. All repairs to and restorations of the Leased Premises required to be made because of such removal shall be made by and at the sole cost and expense of the LDCBA, and during said 90-day (or extended) period the LDCBA shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the LDCBA and which are not so removed from the Leased Premises prior to the expiration of said period shall be the separate and absolute property of the City and the County.

**Section 10.3. Lessors' Right of Access to the Leased Premises.** The LDCBA agrees that the City and the County and their duly authorized agents shall have the right to enter upon the Leased Premises Site after giving notice to the LDCBA and with appropriate advance notice so as to allow LDCBA to comply with any confidentiality agreements contained in any subleases, all (a) as may be reasonably necessary to cause to be completed the acquisition, purchase, construction, improving, equipping or remodeling provided for in **Section 4.1** hereof, (b) to perform such work in and about the Leased Premises made necessary by reason of the LDCBA's default under any of the provisions of this Lease, and (c) following an Event of Default, to exhibit the Leased Premises to prospective purchasers, lessees or trustees.

**Section 10.4. Indemnification of City and County.** The LDCBA shall indemnify and save the City and the County harmless from and against all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Leased Premises during the Lease Term, and against and from all claims arising during the Lease Term from (a) any condition of the Leased Premises caused by the LDCBA or its sublessees, (b) any breach or default on the part of the LDCBA in the performance of any of its obligations under this Lease, (c) any contract entered into in by the LDCBA or its sublessee, if any, in connection with the acquisition, purchase, construction, improving, equipping or remodeling of the Leased Premises, (d) any act of negligence of the LDCBA or of any of its agents, contractors, servants, employees or licensees, and (e) any act of negligence of any assignee or sublessee of the LDCBA, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the LDCBA; provided, however, the indemnification contained in this **Section 10.4** shall not extend to the City or the County if (i) such claim is the result of work being performed at the Leased Premises by employees of the City or the County, or (ii) such claim is the result of the City's or the County's gross negligence or willful misconduct. The LDCBA shall indemnify and save the City and the County harmless from and against all costs and expenses (except those which have arisen from the willful misconduct or gross negligence of the City or the County) incurred in or in connection with any action or proceeding brought in connection with claims arising from circumstances described in clauses (a) through (e), and upon notice from the City or the County, the LDCBA shall defend them or either of them in any such action or proceeding.

**Section 10.5. LDCBA to Maintain its Corporate Existence.** The LDCBA agrees that throughout Lease Term, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets.

## ARTICLE XI

### HAZARDOUS MATERIALS

**Section 11.1. Defined Terms.** The following words and terms, as used in this Article, shall have the following meanings:

b. **“Claim”** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

c. **“Environmental Laws”** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (“TSCA”), 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

d. **“Hazardous Materials”** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

e. **“Manage” or “Management”** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

f. **“Release” or “Released”** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as “environment” is defined in CERCLA.

g. **“Response” or “Respond”** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

**Section 11.2. LDCBA’s Obligations with Respect to Environmental Matters.** During the Term of this Agreement, (i) LDCBA shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) LDCBA shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by LDCBA in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, without prior written disclosure to and prior written approval by the City and the County; (iii) LDCBA shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, LDCBA shall not dispose of Hazardous Materials in dumpsters provided by the City and the County for tenant use; (v) LDCBA shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) LDCBA shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) LDCBA shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, LDCBA shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Leased Premises with Environmental Laws (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

**Section 11.3 Copies of Notices.** During the Term of this Lease, as extended, if applicable, LDCBA shall provide the City and the County promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Department of Health and Environment, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, LDCBA shall provide the City and the County promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

**Section 11.4 City and County’s Right to Inspect.** The City and the County and their employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to LDCBA (except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with LDCBA’s business in the Leased Premises, for the purpose of (i) determining LDCBA’s compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. The City and the County and their agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by LDCBA or its agents, employees, contractors or invitees.

LDCBA agrees to cooperate with such investigations by providing any relevant information requested by the City and the County. LDCBA may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the Management Committee's prior written consent.

**Section 11.5 Tests and Reports.** Within ten (10) days of LDCBA's receipt of a written request by the City and the County, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of Environmental Laws, in which event the City and the County hereby reserves the right to request the following described documents more often, LDCBA shall provide the City and the County with (i) copies of all environmental reports and tests obtained by LDCBA; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information ) entered into or obtained by LDCBA with respect to any Hazardous Materials; (iii) copies of any permits issued to LDCBA under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by LDCBA to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. LDCBA shall provide the City and the County with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that LDCBA complies with all Environmental Laws relating to the Leased Premises.

**Section 11.6 LDCBA's Obligation to Respond.** If LDCBA's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, LDCBA shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

**Section 11.7 City and County's Right to Act.** In the event that LDCBA shall fail to comply with any of its obligations under this Paragraphs as and when required hereunder, the City and the County shall have the right (but not the obligation ) to take such action as is required to be taken by LDCBA hereunder and in such event, LDCBA shall be liable and responsible to the City and the County for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by the City and the County in connection with such matters. LDCBA shall reimburse the City and the County immediately upon demand for all such amounts for which LDCBA is liable.

**Section 11.8 Indemnification.** Notwithstanding anything contained in this Agreement to the contrary, LDCBA shall reimburse, defend, indemnify and hold the City and the County, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

1. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually or allegedly Managed, released or disposed of on or from the Leased Premises (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or

- remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and
2. Any actual or alleged illness, disability, injury, or death of any person in any manner arising out of or allegedly arisen out of exposure to Hazardous Materials Managed or Released on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and
  3. Any actual or alleged failure of LDCBA or the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under Paragraph 11(b); and
  4. Any failure by LDCBA to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of LDCBA under this Lease shall expressly exclude any obligation for any pre-existing environmental condition prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against the City and the County for which the City and the County are entitled to indemnity hereunder, the City and the County shall notify LDCBA of such Claim or assertion of liability and thereupon LDCBA shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of LDCBA under this Paragraph shall survive any termination or expiration of this Lease.

**Section 11.9 Environmental Assessment Requirement.** LDCBA shall timely provide a Phase I environmental report of reasonable scope, form and depth (including, where appropriate, invasive soil or groundwater sampling) by a qualified environmental consultant reasonably approved by the City and the County, as to (1) any matter, to the extent such matter is attributable to events or conditions which arise during the Term, as extended, if applicable, and (2) the general environmental condition of the Leased Premises (the "Environmental Assessment"), within 60 days prior to termination or expiration of this Lease. If the Environmental Assessment is not delivered prior to such 60<sup>th</sup> day, then the City and the County may arrange for completion of same. The reasonable cost of any Environmental Assessment completed by the City and the County or LDCBA pursuant to this provision shall be paid by LDCBA or reimbursable to the City and the County by LDCBA (if completed by the City and the County) promptly upon the City and the County furnishing LDCBA with evidence of costs incurred therefor.

## ARTICLE XII

### DEFAULTS AND REMEDIES

**Section 12.1. Events of Default.** If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an "Event of Default" or "default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent for two consecutive Rent Payment Dates, upon five days written notice to the LDCBA by the City or the County or default in the due and punctual payment Additional Rent for a period of 30 days following written notice to the LDCBA by the City or the County; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the LDCBA's part to be observed or performed, and such default shall continue for 30 days after the City or the County has given the LDCBA written notice

specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the LDCBA has commenced such cure within said 30-day period, and (2) the LDCBA diligently prosecutes such cure to completion); or

(c) The LDCBA shall: (1) admit in writing its inability to pay its debts as they become due; or (2) file a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or file a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consent to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have the appointment of any trustee, receiver or liquidator made without the LDCBA's consent or acquiescence, vacated or set aside; or (5) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) be subject to any proceeding, or suffer the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, shall not be dismissed, vacated, denied, set aside or stayed within 60 days after the day of entry or commencement; or (7) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) The LDCBA shall vacate or abandon the Leased Premises, and the same shall remain uncured for a period of 60 days.

**Section 12.2. Remedies on Default.** If any Event of Default referred to in **Section 12.1** hereof shall have occurred and be continuing, then the City or the County may at the City's or County's election, then or at any time thereafter, and while such default shall continue, take any one or more of the following actions:

(a) cause all Basic Rent payable for the remainder of the term of this Lease to become due and payable;

(b) give the LDCBA written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the LDCBA's rights to possession of the Leased Premises shall cease and this Lease shall thereupon be terminated, and the City and the County may re-enter and take possession of the Leased Premises; or

(c) without terminating this Lease, re-enter the Leased Premises to take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City and the County shall use reasonable diligence to relet the Leased Premises, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the City and the County may deem advisable, with the right to make alterations and repairs to the Leased Premises, and no such re-entry or taking of possession of the Leased Premises by the City or the County shall be construed as an election on the City's or the County's part to terminate this Lease, and no such re-entry or taking of possession by the City or the County shall relieve the LDCBA of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or any of its other



obligations under this Lease, all of which shall survive such re-entry or taking of possession, and the LDCBA shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of this Lease Term, whether or not the Leased Premises shall have been relet, less the Net Proceeds, if any, of any reletting of the Leased Premises after deducting all of the City's and County's reasonable expenses in or in connection with such reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting. Having elected to re-enter or take possession of the Leased Premises without terminating this Lease, the City and the County may, by notice to the LDCBA given at any time thereafter following an Event of Default, elect to terminate this Lease on a date to be specified in such notice, which date shall be not earlier than 30 days after re-entry under (c) above, and if all defaults shall not have then been cured, on the date so specified this Lease shall thereupon be terminated. If in accordance with any of the foregoing provisions of this Article the City and the County shall have the right to elect to re-enter and take possession of the Leased Premises, the City and the County may enter and expel the LDCBA and those claiming through or under the LDCBA and remove the property and effects of both or either (forcibly if necessary) without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The City and the County may take whatever action at law or in equity which may appear necessary or desirable to collect rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the LDCBA under this Lease.

**Section 12.3. Survival of Obligations.** The LDCBA covenants and agrees with the City and County that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the LDCBA shall continue to pay the Basic Rent and Additional Rent and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease.

**Section 12.4. Performance of the LDCBA's Obligations by the City and the County.** If the LDCBA shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City or the County, may (but shall not be obligated so to do) upon the continuance of such failure on the LDCBA's part for 30 days after written notice of such failure is given the LDCBA by the City or the County, and without waiving or releasing the LDCBA from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the County and all necessary incidental reasonable costs and expenses incurred by the City or the County in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the County on demand, and if not so paid by the LDCBA, the City or the County shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the LDCBA in the payment of Basic Rent.

**Section 12.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City, the County and the LDCBA hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City, the County and the LDCBA shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 12.6. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the LDCBA of any covenant, agreement or undertaking by the LDCBA, the City and the County may nevertheless accept from

the LDCBA any payment or payments hereunder without in any way waiving City's or the County's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the LDCBA which were in existence at the time such payment or payments were accepted by the City or the County.

## ARTICLE XIII

### ASSIGNMENT AND SUBLEASE

#### **Section 13.1. Assignment; Sublease.**

(a) The LDCBA shall not have the right to assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof, except that LDCBA shall have the right to enter into subleases with such subtenants and on such terms as approved by the Management Committee. Such approval shall be handled by the Management Committee as expediently as possible under the circumstances. The Management Committee's approval of such subleases shall be evidenced by the written consent of the Authorized City Representative and the Authorized County Representative. For purposes of approval of any sublease under this **Section 13.1**, the Authorized LDCBA Representative shall be considered an *ex officio* member of the Management Committee, and shall have the right to attend all meetings of the Management Committee and advise the Management Committee with respect to the sublease, but the Authorized LDCBA Representative shall not have the right to vote on the approval of such sublease. If the Management Committee and the Authorized LDCBA Representative cannot reach a successful resolution of issues related to such sublease, the approval of such sublease shall be presented to the governing bodies of the City and the County, respectively. No sublease of the Leased Premises shall release or discharge the LDCBA from its primary liability for the payment of the Basic Rent and Additional Rent hereunder and the performance of each and all of the covenants and agreements herein contained, and its duties and obligations under this Lease shall continue as if no such sublease had been made. The LDCBA shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the County a true and correct copy of each such sublease.

(b) All subleases presented to and approved by the Management Committee shall include the provisions regarding insurance, damage or destruction of the subleased premises, hazardous materials, the Americans with Disabilities Act, indemnification and acknowledgement of this Lease in substantially the form attached hereto as **Exhibit A**. In no event shall the term of any sublease be in excess of five years for extend beyond the final term of this Lease.

**Section 13.2. Assignment of Sublease Revenues by LDCBA.** The LDCBA shall assign and pledge any rents, revenues and receipts receivable under any sublease, to the City and the County as security for payments due under this Lease.

**Section 13.3. Assignment of Revenues by County.** The County shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the City pursuant to the Cooperation Agreement as security for payments due under the Cooperation Agreement and the LDCBA hereby consents to such pledge and assignment.

## ARTICLE XIV

### AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 14.1. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of all parties hereto.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

**Section 15.1. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

- (a) To the City: City of Lawrence, Kansas  
City Hall  
6 East 6<sup>th</sup> Street  
Lawrence, Kansas 66044  
Attention: City Clerk
- (b) To the County: Douglas County, Kansas  
Douglas County Courthouse  
1100 Massachusetts Street  
Lawrence, Kansas 66044  
Attention: County Administrator
- (c) To the LDCBA: Lawrence-Douglas County Bioscience Authority  
1617 St. Andrews Drive  
Lawrence, Kansas 66047  
Attention: President

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by any party hereto shall also be given to all other parties. The City, the County and the LDCBA may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 15.2. Lessors Shall Not Unreasonably Withhold Consents and Approvals.** Wherever in this Lease it is provided that the City and the County shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City and the County shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules.

**Section 15.3. No Pecuniary Liability.** No provision, covenant or agreement contained in this Lease, or any obligation herein or therein imposed upon the City or the County, or the breach thereof, shall

constitute or give rise to or impose upon the City or the County a pecuniary liability or a charge upon the general credit or taxing powers of the City, the County or the State of Kansas.

**Section 15.4. Governing Law.** This Lease shall be construed in accordance with and governed by the laws of the State of Kansas.

**Section 15.5. Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the City, the County and the LDCBA and their respective permitted successors and assigns.

**Section 15.6. Electronic Storage.** The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

**Section 15.7. Severability.** If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 15.8. Execution in Counterparts.** This Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 15.9. City and County Sale of the Leased Premises.** The City or County may, at any time, contract to sell their respective interests in the Leased Premises. From and after such a sale, the City and County shall be released from all liability to LDCBA and its successors and assigns arising from this Lease because of any act, occurrence or omission of the City or County occurring after such sale, and LDCBA shall look solely to the City's or County's successor in connection with the same; provided however, that the City and County shall not be released from liability to LDCBA and its successors and assigns under this Lease because of any act, occurrence or omission of occurring prior to such sale, unless such liability is expressly assumed by the City's or County's successor-in-interest in and to the Leased Premises.

**Section 15.10. Limitation of City and County Liability.** Notwithstanding anything in this Lease to the contrary, the City's and County's liability under this Lease shall be limited to their respective interests in the Leased Premises.

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DOUGLAS COUNTY, KANSAS

By: Nancy Thell  
Chair of Board of County Commissioners

[SEAL]

ATTEST:

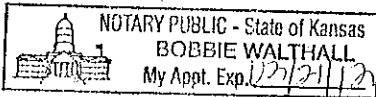
[Signature]  
County Clerk

ACKNOWLEDGMENT

STATE OF KANSAS                    )  
  ) SS.  
COUNTY OF DOUGLAS            )

On this 25 day of January, 2010, before me, the undersigned, a Notary Public, appeared **Nancy Thellman**, to me personally known, who, being by me duly sworn, did say that (s)he is the Chair of the Board of County Commissioners of **DOUGLAS COUNTY, KANSAS**, a body corporate and politic duly organized and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said County, and that said instrument was signed and sealed in behalf of said County by authority of its governing body, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



Bobbie Walthall  
Printed Name: Bobbie Walthall  
Notary Public in and for said State  
Commissioned in Douglas County

(SEAL)

My commission expires: 03/21/12

LAWRENCE-DOUGLAS COUNTY  
BIOSCIENCE AUTHORITY, INC.

By: [Signature]  
Name: E. Laverne Epp  
Title: President / Chairman

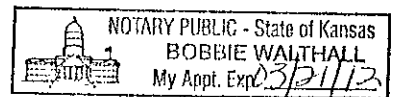
ACKNOWLEDGMENT

STATE OF KANSAS )  
 ) SS.  
COUNTY OF DOUGLAS )

On this 25 day of January, 2010 before me, the undersigned, a Notary Public, appeared E. Laverne Epp to me personally known, who, being by me duly sworn, did say that (s)he is the President / Chairman of the **LAWRENCE-DOUGLAS COUNTY BIOSCIENCE AUTHORITY, INC.**, a not for profit corporation duly authorized, incorporated and existing under and by virtue of the laws of the State of Kansas, and that the seal affixed to the foregoing instrument is the corporate seal of said organization, and that said instrument was signed and sealed in behalf of said organization by authority of its Board of Directors, and said officer acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said organization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

[Signature]  
Printed Name: Bobbie Walthall  
Notary Public in and for said State  
Commissioned in Douglas County



(SEAL)

My commission expires: 03/21/12

## EXHIBIT A

### FORM OF SUBLEASE TERMS

#### DEFINED TERMS.

“Landlord” means the LDCBA.

“Leased Premises” means that portion of the Research Laboratory Facility and the Common Areas, which are leased by LDCBA to the subtenant.

“Master Lease” means that certain Lease Agreement between the Owners and LANDLORD, dated as of January 1, 2010.

“Owners” means the City of Lawrence, Kansas (the “City”) and Douglas County, Kansas (the “County.”)

“Research Laboratory Facility” means the following described real property, to-wit: LOT 2, BLOCK ONE, IN OREAD CENTER (A REPLAT OF LOT 1B OF A LOT SPLIT OF LOT ONE, OREAD WEST NO. 8), A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS.

“Tenant” means the subtenant.

#### INSURANCE.

a. TENANT shall be solely responsible for obtaining insurance coverage for its personal property and/or trade fixtures located on the Leased Premises, business interruption coverage, leasehold coverage, or any additional insurance coverage TENANT deems necessary.

b. TENANT agrees to secure and keep in force during the term of this Agreement, at TENANT’s sole cost and expense, the following insurance policies and/or pay insurance costs as hereinafter set forth:

i. a Commercial General Liability policy with a combined single limit of not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate limit for this location and a deductible not to exceed \$100,000. The policy shall name LANDLORD, LANDLORD’s employees, LANDLORD’s managing agent for the Research Laboratory Facility (if any), the Owners and their employees and agents, and any other persons, firms or corporations designated by LANDLORD, and TENANT as insured, and shall contain a clause that the insured will not cancel or change the insurance without first giving LANDLORD and the Owners fifteen (15) days prior written notice. TENANT’s insurance shall provide primary coverage to the Owners or LANDLORD when any policy issued to the Owners or LANDLORD, as applicable, provides duplicate or similar coverage, in such circumstance the Owners’ or the LANDLORD’s policy will be excess over TENANT’s policy. The insurance shall be provided by an insurance company approved by LANDLORD and a copy of the policy or a certificate of insurance shall be delivered to LANDLORD and the Owners prior to the Effective Date and annually thereafter at least 30 day prior to the expiration date of the expiring policy. If TENANT refuses or neglects to secure and maintain insurance policies complying with the provisions of this paragraph, LANDLORD may, but shall not be required to do so, secure and maintain such insurance policies and TENANT shall pay the cost thereof to LANDLORD, as Additional Rent, upon



demand. The insurance required by this paragraph is deemed a material aspect of this Agreement. TENANT's failure to provide insurance as described herein shall be deemed a breach of this Agreement and cause for cancellation upon three (3) days written notice by LANDLORD to TENANT.

ii. Workers' compensation insurance in accordance with statutory law, and employers' liability insurance with a limit of not less than \$500,000 per occurrence, on which the LANDLORD and the Owners are named as additional insureds.

iii. Such other insurance as LANDLORD reasonably deems necessary and prudent, or as required by Owners.

#### **TOTAL OR PARTIAL DAMAGE.**

a. TENANT will promptly notify LANDLORD in writing of any event, damage or condition to which this Paragraph is or may be applicable.

b. In the event of the total destruction of the Research Laboratory Facility, so that the same cannot be occupied by TENANT, this Agreement shall terminate including TENANT's obligation to pay any further Rent hereunder. Total destruction shall mean damage that will not be repaired in 180 days.

c. In the event of partial destruction, LANDLORD may make such repairs, at LANDLORD's expense, as are necessary to place the property in substantially the same condition as prior to the destruction. If LANDLORD and the Owners determine that such repairs shall not be made, this Agreement shall terminate, including TENANT's obligation to pay any further Rent hereunder. If LANDLORD and the Owners determine that such repairs shall be made, TENANT's rent shall be proportionately reduced in the event that a portion of the Leased Premises is not fit for occupancy for a portion of the term hereof; provided, however, that in the event that the repairs cannot be substantially completed within one hundred and eighty (180) days of the date that the partial destruction first occurred, then TENANT shall have the right to terminate this Lease Agreement including all further obligations created upon it hereunder, or to continue occupying the Leased Premises with a pro-rata reduction of the rent. TENANT will assign to LANDLORD and the Owners (or to any party designated by LANDLORD and the Owners) all insurance proceeds payable to TENANT under TENANT's insurance required under this Agreement with respect to the TENANT's improvements in the Leased Premises.

d. Repair or replacement of TENANT's trade fixtures and personal property shall be at TENANT's expense, unless such expense arises as the result of an intentional, reckless or negligent act or omission of LANDLORD, its agents, employees or representatives, in which case, such expense shall be borne solely by LANDLORD.

#### **INDEMNIFICATION.**

TENANT shall hold LANDLORD and the Owners and their successors, assigns, officers, directors, employees and agents harmless from and indemnify and defend each against any and all claims, demands, actions and suits and all costs, loss, damage, liability, expense (including attorneys' fees) penalties, and fines which may arise from or be claimed against any or all of TENANT, LANDLORD, the Owners, the Leased Premises or the Research Laboratory Facility, arising directly or indirectly from (a) the use or occupancy of the Leased Premises by TENANT, or (b) the failure of TENANT to comply with any and all laws, statutes, ordinances, rules or regulations applicable to the Research Laboratory Facility or Leased Premises, or (c) any third party claims based upon TENANT's breach of warranty, covenant, liability or obligation under this Lease Agreement.

#### **HAZARDOUS MATERIALS.**

a. **Defined Terms.** The following words and terms, as used in this Paragraph 11, shall have the following meanings:

i. **"Claim"** shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (ii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

ii. **"Environmental Laws"** shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental equality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 2901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C., Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

iii. **"Hazardous Materials"** shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA, source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1901.1200 *et seq.*; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

iv. **"Manage" or "Management"** means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

v. **"Release" or "Released"** shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA.

vi. **"Response" or "Respond"** shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

b. **Tenant's Obligations with Respect to Environmental Matters.** During the Term of this Agreement, (i) TENANT shall comply at its sole cost and expense with all applicable Environmental Laws; (ii) TENANT shall not Manage, or authorize the Management of, any Hazardous Materials, except Hazardous Materials used by TENANT in the ordinary course of its business in compliance with applicable Environmental Laws on the Leased Premises, without prior written disclosure to and prior written approval by LANDLORD and the Owners; (iii) TENANT shall not take any action that would subject the Research Laboratory Facility to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) excepting *de minimis* quantities not in violation of Environmental Laws, TENANT shall not dispose of Hazardous Materials in dumpsters provided by LANDLORD for tenant use; (v) TENANT shall not discharge Hazardous Materials into drains or sewers serving the Leased Premises; (vi) TENANT shall not cause or allow the Release of any Hazardous Materials on, to or from the Leased Premises or surrounding land and (vii) TENANT shall arrange at its sole cost and expense for the lawful transportation and off-site disposal in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates. Notwithstanding the foregoing, TENANT shall be responsible only for compliance with Environmental Laws during the Term of this Agreement, as extended, if applicable, which responsibility expressly excludes compliance or causing the compliance of the Leased Premises with Environmental Laws (a) as a result of conditions in existence prior to the commencement of the Term of this Lease; or (b) as a result of a Release of Hazardous Materials from other sites onto the Leased Premises.

c. **Copies of Notices.** During the Term of this Lease, as extended, if applicable, TENANT shall provide LANDLORD promptly with copies of all summons, citations, directives, information, inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters notices of environmental liens, or Response actions in process, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Kansas Environmental Protection Agency, or other federal, state or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Leased Premises; (ii) the imposition of any lien on the Leased Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity. In addition, TENANT shall provide LANDLORD promptly with copies of all environmental studies and reports conducted in connection with the Leased Premises.

d. **Landlord's Right to Inspect.** LANDLORD and LANDLORD's employees shall have the right to enter the Leased Premises upon at least 24 hours prior notice to TENANT (except in an emergency, in which even no prior notice is required) and conduct appropriate inspections or tests, which inspections and tests shall be carried out in such a manner as will cause the least practicable interference with TENANT's business in the Leased Premises, for the purpose of (i) determining TENANT's compliance with Environmental Laws, and (ii) determining the type, kind and quantity of all products, materials and substances brought onto the Leased Premises, or made or produced therein. LANDLORD and its agents and representatives shall have the right to take samples in quantities sufficient for analysis of all products, materials and substances present on the Leased Premises including, but not limited to, samples, products, materials or substances brought onto or made or produced on the Leased Premises by TENANT or its agents, employees, contractors or invitees. TENANT agrees to cooperate with such investigations by providing any relevant information requested by LANDLORD. TENANT may not perform any sampling, testing or drilling to locate Hazardous Materials in the Research Laboratory Facility without the LANDLORD's prior written consent.

e. **Tests and Reports.** Within ten (10) days of TENANT's receipt of a written request by LANDLORD, but in no event more often than semi-annually, unless Hazardous Materials are discovered on, in or under the Leased Premises in violation of this Paragraph, as there is a violation of

Environmental Laws, in which event LANDLORD hereby reserves the right to request the following described documents more often, TENANT shall provide LANDLORD with (i) copies of all environmental reports and tests obtained by TENANT; (ii) copies of transportation and disposal contracts (and related manifests, schedules, reports and other information ) entered into or obtained by TENANT with respect to any Hazardous Materials; (iii) copies of any permits issued to TENANT under Environmental Laws with respect to the Leased Premises; (iv) copies of any and all reports, notifications and other filings made by TENANT to any federal, state, or local environmental authorities or agencies; and (v) any other applicable documents and information with respect to environmental matters relating to the Leased Premises. TENANT shall provide LANDLORD with the results of appropriate reports and tests, with transportation and disposal contracts for Hazardous Materials, with any permits issued under Environmental Laws, and with any other documents necessary to demonstrate that TENANT complies with all Environmental Laws relating to the Leased Premises.

f. **Tenant's Obligation to Respond.** If TENANT's Management of Hazardous Materials at the Leased Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, TENANT shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

g. **Landlord's Right to Act.** In the event that TENANT shall fail to comply with any of its obligations under this Paragraph as and when required hereunder, LANDLORD shall have the right (but not the obligation) to take such action as is required to be taken by TENANT hereunder and in such event, TENANT shall be liable and responsible to LANDLORD for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by LANDLORD in connection with such matters. TENANT shall reimburse LANDLORD immediately upon demand for all such amounts for which TENANT is liable.

h. **Indemnification.** Notwithstanding anything contained in this Agreement to the contrary, TENANT shall reimburse, defend, indemnify and hold LANDLORD and Owners, and their officers, directors, shareholders, employees and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs and expenses, including, without limitation, loss of rental income, loss due to business interruption and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

i. Any Hazardous Materials which, a any time during the Term, as extended, if applicable, are or were actually Managed, released or disposed of on or from the Leased Premises by TENANT (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and

ii. Any actual illness, disability, injury, or death of any person in any manner arising out of exposure to Hazardous Materials Managed or Released by TENANT on or from the Leased Premises during the Term, as extended, if applicable, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself; and

iii. Any actual failure of TENANT on the Leased Premises at any time during the Term, as extended, if applicable, to comply with all applicable Environmental Laws as required under subparagraph (b) of this [Section][Paragraph]; and

iv. Any failure by TENANT to comply with its obligations under this Paragraph.

The foregoing indemnification obligations of TENANT under this Lease shall expressly exclude any obligation for pre-existing environmental conditions prior to the Commencement Date of this Lease. In the event any Claims or other assertion of liability shall be made against LANDLORD for which LANDLORD is entitled to indemnity hereunder, LANDLORD shall notify TENANT of such Claim or assertion of liability and thereupon TENANT shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of TENANT under this Paragraph shall survive any termination or expiration of this Lease.

i. **Environmental Assessment Requirement.** TENANT shall, within 60 days of the expiration of the Lease, provide documentation in such form reasonably acceptable to LANDLORD, that the general environmental condition of the Leased Premises is in compliance with all Environmental Laws and are in at least the same condition as shown in the Phase I Environmental Assessment provided by LANDLORD to TENANT at the commencement of this Sublease Agreement. If such documentation is not delivered prior to such 60<sup>th</sup> day, then LANDLORD may arrange for completion of same. The reasonable cost of such documentation obtained by LANDLORD or TENANT pursuant to this provision shall be paid by TENANT or reimbursable to LANDLORD by TENANT (if completed by LANDLORD) promptly upon LANDLORD's furnishing TENANT with evidence of costs incurred therefor.

#### **AMERICANS WITH DISABILITIES ACT.**

The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such requirements may be unclear and may or may not apply to the Leased Premises. The parties acknowledge and agree that TENANT has been provided an opportunity to inspect the Leased Premises sufficient to determine whether or not the Leased Premises in their condition as of the date hereof deviate in any matter from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. TENANT further acknowledges and agrees that except as may otherwise be specifically provided herein, TENANT accepts the Leased Premises in "as-is" condition and agrees that neither LANDLORD nor Owners make any representation or warranty as to whether the Leased Premises conform to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Leased Premises. If required by TENANT, TENANT shall be solely responsible for all costs related to work necessary to conform the Leased Premises to the ADA.

#### **MASTER LEASE.**

a. This Agreement is and shall at all times be subject and subordinate to the Master Lease. Nothing in this Agreement shall be deemed to amend or modify any of the terms contained in the Master Lease, and to the extent any of the terms contained herein purport to grant TENANT greater rights than LANDLORD has been granted pursuant to the terms of the Master Lease, the rights herein granted shall be strictly limited so as not to exceed the rights of LANDLORD under the Master Lease.

b. TENANT agrees not to do or omit to do anything that would cause a default under the Master Lease. During the Initial Term and any renewal terms of this Agreement and for all periods subsequent for obligations which arise prior to the termination of this Agreement, TENANT does hereby expressly assume and agree to perform and comply with, for the benefit of LANDLORD, each and every

obligation of LANDLORD under the Master Lease to the extent that the same relate to the Leased Premises ("TENANT'S Assumed Obligations").

c. TENANT shall hold LANDLORD free and harmless from all liability, judgments, costs, damages, claims or demands, including reasonable attorneys' fees, arising out of TENANT'S failure to comply with or perform TENANT'S Assumed Obligations.

#### **OWNERS CONSENT.**

By signing below, the Authorized City Representative and Authorized County Representative (as defined in the Master Lease) consent to this Agreement pursuant to Section 13.1(a) of the Master Lease, but such consent shall not: (a) except for obligations of TENANT under this Agreement in favor of Owners, create privity of contract between Owners and TENANT; (b) be deemed to have amended the Master Lease in any regard; (c) be construed as a waiver of Owners' right to consent to any assignment or further sublease of the Master Lease by LANDLORD; or (d) relive LANDLORD of any of its obligations under the Master Lease.

#### **TERMINATION OF MASTER LEASE.**

TENANT agrees that in the event that (i) LANDLORD breaches any covenant or fails to satisfy any contingency set forth in the Master Lease, or (ii) Owners assert any right of cancellation or termination given to Owners under the Master Lease, and any of the foregoing events under clauses (i) and (ii) results in the cancellation or termination of the Master Lease, or (iii) the Master Lease is terminated, cancelled, or surrendered for any other reason, then this Agreement shall likewise be cancelled and terminated.

**SCHEDULE I**

<b>Schedule of Basic Rent Payments</b>
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<b>Rental Payment Date</b>	<b>Principal Portion</b>	<b>Cumulative Outstanding Principal</b>	<b>Estimated Interest Portion*</b>	<b>Estimated Total Payment</b>
8/1/2010	-	n/a	-	\$ 12,500.00
2/1/2011	-	n/a	-	12,500.00
8/1/2011	-	n/a	-	12,500.00
2/1/2012	-	n/a	-	12,500.00
8/1/2012	-	n/a	-	12,500.00
2/1/2013	-	n/a	-	12,500.00
8/1/2013	-	n/a	-	12,500.00
2/1/2014	-	n/a	-	12,500.00
8/1/2014	-	\$2,975,000.00	-	12,500.00
2/1/2015	\$55,000.00	2,920,000.00	\$59,500.00	114,500.00
8/1/2015	55,000.00	2,865,000.00	58,400.00	113,400.00
2/1/2016	55,000.00	2,810,000.00	57,300.00	112,300.00
8/1/2016	55,000.00	2,755,000.00	56,200.00	111,200.00
2/1/2017	57,500.00	2,697,500.00	55,100.00	112,600.00
8/1/2017	57,500.00	2,640,000.00	53,950.00	111,450.00
2/1/2018	57,500.00	2,582,500.00	52,800.00	110,300.00
8/1/2018	57,500.00	2,525,000.00	51,650.00	109,150.00
2/1/2019	60,000.00	2,465,000.00	50,500.00	110,500.00
8/1/2019	60,000.00	2,405,000.00	49,300.00	109,300.00
2/1/2020	62,500.00	2,342,500.00	48,100.00	110,600.00
8/1/2020	62,500.00	2,280,000.00	46,850.00	109,350.00
2/1/2021	62,500.00	2,217,500.00	45,600.00	108,100.00
8/1/2021	62,500.00	2,155,000.00	44,350.00	106,850.00
2/1/2022	65,000.00	2,090,000.00	43,100.00	108,100.00
8/1/2022	65,000.00	2,025,000.00	41,800.00	106,800.00
2/1/2023	67,500.00	1,957,500.00	40,500.00	108,000.00
8/1/2023	67,500.00	1,890,000.00	39,150.00	106,650.00
2/1/2024	70,000.00	1,820,000.00	37,800.00	107,800.00
8/1/2024	70,000.00	1,750,000.00	36,400.00	106,400.00
2/1/2025	72,500.00	1,677,500.00	35,000.00	107,500.00
8/1/2025	72,500.00	1,605,000.00	33,550.00	106,050.00
2/1/2026	75,000.00	1,530,000.00	32,100.00	107,100.00
8/1/2026	75,000.00	1,455,000.00	30,600.00	105,600.00

2/1/2027	77,500.00	1,377,500.00	29,100.00	106,600.00
8/1/2027	77,500.00	1,300,000.00	27,550.00	105,050.00
2/1/2028	82,500.00	1,217,500.00	26,000.00	108,500.00
8/1/2028	82,500.00	1,135,000.00	24,350.00	106,850.00
2/1/2029	85,000.00	1,050,000.00	22,700.00	107,700.00
8/1/2029	85,000.00	965,000.00	21,000.00	106,000.00
2/1/2030	87,500.00	877,500.00	19,300.00	106,800.00
8/1/2030	87,500.00	790,000.00	17,550.00	105,050.00
2/1/2031	92,500.00	697,500.00	15,800.00	108,300.00
8/1/2031	92,500.00	605,000.00	13,950.00	106,450.00
2/1/2032	97,500.00	507,500.00	12,100.00	109,600.00
8/1/2032	97,500.00	410,000.00	10,150.00	107,650.00
2/1/2033	100,000.00	310,000.00	8,200.00	108,200.00
8/1/2033	100,000.00	210,000.00	6,200.00	106,200.00
2/1/2034	105,000.00	105,000.00	4,200.00	109,200.00
8/1/2034	105,000.00	-	2,100.00	107,100.00
<b>Totals</b>	<b>\$2,975,000.00</b>		<b>\$1,359,850.00</b>	<b>\$4,447,350.00</b>

\* Interest rate is estimated at 4.0%. Actual interest portion will be determined pursuant to **Section 5.1** of the Lease.