

REAL PROPERTY AND PERSONAL PROPERTY LEASE

THIS LEASE AGREEMENT (“Lease”) is made and entered into this ____ day of July, 2022 by and between the city of Lexington, a Nebraska governmental entity (“Landlord”) and LEXCARES INC, a Nebraska nonprofit corporation (“Tenant”) (jointly the “Parties”).

RECITALS:

1. Landlord is the owner of 1811 Ridgeway Drive, Lexington, NE 68850, a licensed and Medicaid certified assisted living and an independent facility (Facility).
2. The current lease of the Facility will terminate on July 31, 2022.
3. The Facility has provided and will continue to provide necessary health care facilities and services to residents of the City of Lexington, Dawson County, and the surrounding area.
4. Providing quality services and operating a licensed and certified Medicaid assisted living facility and an independent living facility in compliance with all statutory and regulatory requirements are complex and expensive tasks requiring a level of expertise that is difficult for the Landlord to achieve economically.
5. A lease arrangement with an experienced and qualified health care facility operator is a more efficient and economic way to provide the facilities and services of a licensed and certified assisted living facility and an independent facility.
6. The Parties intend to expand services by applying for license and certification of the Facility as a Medicaid assisted living facility and independent living facility.
7. For each of these reasons, this Lease is reasonably necessary and of a definable advantage to the Landlord.

The Parties agree as follows:

1. **PREMISES AND TERM.** Landlord leases to Tenant the following real estate situated in Dawson County, Nebraska (“Leased Premises):

See attached Exhibit “A”

together with all improvements thereon, and all rights, easements and appurtenances thereto belonging and together with all furniture, fixtures, equipment, other personal property, and easements as described in paragraph 6, for a term of ten (10) years beginning on the 1st day of August 2022, and ending on the last day of July, 2032, upon the condition that Tenant performs all its duties and obligations as provided in this Lease and unless earlier terminated as provided in this Lease. In addition, the Tenant shall have the right to extend the Lease upon the same

terms and conditions for two (2) consecutive five (5) year periods upon giving the Landlord written notice of its intention to extend no less than one hundred eighty (180) days prior to the termination of the lease or the first Lease extension, respectively.

2. RENT.

(a) Tenant agrees to pay Landlord as rental for the real property and personal property described in this Lease, the sum of One-Hundred Thirty-Three Thousand Six-Hundred Dollars (\$133,600.00) per year. The rent shall be due in four (4) equal installments payable quarterly on the fifteenth (15th) day of the month. All sums shall be paid at the address of Landlord, or at such other place as Landlord may designate in writing.

(b) Tenant agrees to pay Landlord, as additional rent, the amount necessary to fulfill Tenant's obligation to pay real and personal property taxes on the Leased Premises as provided in paragraph 14(a). This additional rent shall be due and payable to Landlord in four (4) equal installments on the same date that the rent payment in paragraph 2(a) is due and payable.

3. POSSESSION AND QUIET ENJOYMENT. Tenant shall be entitled to possession of the Leased Premises on the first day of the lease term and shall yield possession to Landlord at the termination of this lease and any and all extensions of it. The Landlord shall grant the Tenant quiet enjoyment of the Leased Premises, in accordance with the terms of this Lease.

4. USE. Tenant shall use the premises only as a licensed and certified Medicaid assisted living facility and an independent living facility.

5. CARE AND MAINTENANCE.

(a) Landlord shall provide major repairs or replace the following: all structural components including but not limited to the roof, exterior and interior walls, foundations, sewer, water, plumbing, heating, wiring, air conditioning, together with exterior decorating and signs, parking areas, driveways, sidewalks, plate glass, windows and window glass. Landlord shall not be liable for failure to make any major repairs or replacements unless Landlord fails to do so within a reasonable time after written notice from Tenant. Landlord also shall make all major repairs, replacements, or improvements in the real property or personal property it owns that is required by any governmental law or regulation or ordered by any governmental entity with lawful authority over the use of the premises as a licensed health care facility. Major repairs or replacement are defined as those activities costing Two Thousand Five Hundred Dollars (\$2,500) or more. Tenant shall provide Landlord reasonable notice of the need for major repairs or replacement and shall assist Landlord in obtaining and completing the major repairs or

replacement. In the event of an emergency that endangers the safety, health, or welfare of the residents or staff, or that violates licensing or any applicable Medicaid certification regulations or requirements, the Tenant, on behalf of the Landlord, may contract for or order such major repairs or replacements as may be reasonably necessary to abate the emergency. Tenant shall promptly give written notice of such emergency actions to the Landlord and shall transfer management of the major repairs or replacements as soon as practicable. Tenant shall be responsible for all other repairs.

(b) Tenant shall maintain the premises in a reasonably safe, serviceable, clean, and presentable condition, and except for the major repairs and replacements provided to be made by Landlord in subparagraph (a) above, shall be responsible for all other repairs and maintenance of the premises. Tenant shall make no structural changes or alterations without the consent of Landlord, except for emergency circumstances as provided in subparagraph (a) above. Tenant agrees to remove all snow and ice and other obstructions from the parking areas and sidewalks on or abutting the premises.

6. IMPROVEMENTS, PROPERTY, AND EQUIPMENT.

(a) Landlord shall own and provide to Tenant for use on the Leased Premises the furniture, fixtures, and equipment described in Exhibit B. Thereafter, Landlord shall be responsible for all major repairs and replacement of these items. Major repairs and replacement shall mean those actions that cost Ten Thousand Dollars (\$10,000.00) or more, and Tenant shall be responsible for all other repairs, replacement, and maintenance of all items described in Exhibit B.

(b) All property owned by the Landlord, including major replacement property, and used in the operation of the Facility shall remain the property of the Landlord. All property owned or replaced by the Tenant and used in the operation of the Facility, except for property attached to the building as fixtures, shall remain the property of the Tenant and may be removed by the Tenant upon termination of the Lease.

7. UTILITIES AND SERVICES. Tenant shall pay for all utilities and services which may be used on the premises. Landlord shall be responsible to bring to the premises all necessary utilities and services, including but not limited to water services with adequate pressure for fire safety. Landlord shall not be liable for damages for any stoppage for needed repairs or improvements or arising from causes beyond the control of Landlord, provided Landlord uses reasonable diligence to resume such services as soon as possible.

8. SUPPLIES. Tenant will furnish, supply, and maintain at its own expense such supplies and consumable items as may be necessary for the continual and proper operation of a

licensed and certified Medicaid assisted living facility and an independent living facility. All the supplies and consumable items purchased by Tenant will be the property of Tenant.

9. **FEES AND CHARGES.** Tenant will not charge or extract from the public any excessive or exorbitant fees or charges. Tenant will set fees and charges at a level necessary to make the rental payments under this Lease and that, to the extent possible, are comparable to the fees and charges of other licensed and certified Medicaid assisted living facilities and independent living facilities of comparable size and scope of services in the State of Nebraska.

10. **PUBLIC RELATIONS.** Landlord will assist Tenant in determining and deciding all matters of policy pertaining to public relations and the relationship of Facility to the community. It is understood, however, that Tenant oversees the operation of the Facility and has full responsibility for its operation under the terms of this Lease.

11. **SURRENDER.** Upon the termination of this Lease, Tenant will surrender to the Landlord the Leased Premises and all property owned by the Landlord in good, clean, and useable condition, except for ordinary wear and tear or damage occurring without the fault of Tenant.

12. **ASSIGNMENT, SUBLETTING, SUCCESSOR IN INTEREST.**

No assignment of the lease or subletting by the Tenant, either voluntarily or by operation of law, shall be effective without the prior written consent of Landlord.

13. **INSURANCE.** Tenant agrees to obtain at its sole expense the following insurance policies about the Leased Premises and to provide evidence of coverage to Landlord.

(a) **Property Insurance.** Tenant shall obtain and pay for fire and extended coverage casualty insurance for the building and other improvements, including Boiler Insurance, Mechanical Breakdown and Business Personal Property on the Leased Premises. These coverages shall be underwritten on a special cause of loss form(s) and in such amounts as Landlord may, from time to time, deem reasonably necessary. The policy(ies) shall show the Tenant and the Landlord, as the insured.

(b) **Liability Insurance.** General liability, professional liability, automobile liability, workers compensation, and umbrella/excess coverage shall be provided as set forth in Exhibit C attached hereto.

(c) Tenant shall always keep all insurance described in subparagraphs (a) and (b) in force. In the event Tenant fails to pay premiums when due or otherwise keep said insurance in force, Tenant shall be in default of its insurance obligation and Landlord may, at its option,

immediately pay any delinquent premium or obtain reasonably equivalent insurance coverage as provided in this paragraph and may charge Tenant for the reasonable cost of maintaining the insurance coverage in force.

14. **REAL AND PERSONAL PROPERTY TAXES.** The Parties acknowledge that taxable real estate and personal property taxes may be assessed against the owner of the property.

(a) Taxes assessed the Landlord's ownership of the Leased Property, both real property and personal property taxes, shall be paid by the Tenant as provided in paragraph 2(b).

(b) Taxes assessed against Tenant's ownership of personal property shall be timely paid by the Tenant.

(c) Landlord agrees to allow and does hereby authorize Tenant, in its discretion and in Landlord's name, to protest or appeal any real property and/or personal property assessed tax value of any or all the Leased Premises owned by Landlord in accordance with the laws and procedures governing appeals or protests regarding the assessed tax values of real property and personal property.

15. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly, willfully, or intentionally caused by that party (or their agents, employees or invitees), except to the extent the loss is insured, and subrogation is waived under that the insured Party's liability policy.

16. **INDEMNITY.** Except for any negligent, reckless, willful, or intentional act of Landlord, Tenant will protect, defend, and indemnify Landlord from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claiming through or under Tenant.

17. **DAMAGE.** In the event of damage to the Facility, so that Tenant is unable to operate the Facility and provide services to the residents in a safe and healthful manner and in compliance with all licensing and certification regulations or otherwise reasonably conduct business on the premises, this Lease may be terminated at the option of either party. Such termination shall be affected by written notice of one party to the other within twenty days after such damage; and both parties shall thereafter be released from all future obligations hereunder. This provision does not relieve the Tenant of the obligation to care for the safety of residents in accordance with its emergency evacuation plans insofar as that may be reasonably possible. The Parties shall follow the procedures provided in paragraph 21(c), except as modifications may be

allowed by the applicable government authorities in the event of an emergency or extensive damage to the Facility.

18. **MECHANICS' LIENS.** Neither Tenant, nor anyone claiming by, through, or under Tenant, shall have the right to file any mechanic's lien against the premises. Tenant shall give notice in advance to all contractors and subcontractors who may furnish, or agree to furnish, any material, service, or labor for any improvement on the premises. Landlord shall protect Tenant's quiet enjoyment of the premises from interference caused by the filing or attempted foreclosure of a mechanic's lien filed against the Leased Premises because of Landlord's major repairs, replacement or enhancement of the Leased Premises.

19. **ENTRY ON THE PREMISES AND INSPECTION.** Landlord shall have the right to enter upon and inspect the Leased Premises during regular business hours, provided that such inspection is done in such a manner as to minimize disruption to operations and to the residents. Landlord also shall have the right to inspect any notices received by the Tenant from the State of Nebraska with regard to changes in the calculation of the basic Medicaid reimbursement system and with regard to the data necessary to calculate the number of resident days for which the rental is due.

20. **NOTICE OF EARLY TERMINATION OF THE LEASE.**

(a) **Termination by Tenant.** Tenant may terminate this lease at any time, with or without cause, upon one hundred eighty (180) days written notice to the Landlord. In the event Tenant seeks to give Landlord a notice of termination for cause, the Tenant shall give the Landlord thirty (30) days notice of default during which Landlord may cure the default. The parties may mutually agree to extend the time to cure the default. Failure to give written notice of default shall not constitute waiver of the default. Termination of the Lease by Tenant shall be subject to the Obligations Upon Notice of Termination in paragraph 21.

(b) **Termination by Landlord.** Landlord may terminate this lease for cause upon thirty (30) days written notice to the Tenant. Each of the following shall constitute default for cause by Tenant: (1) Failure to pay rent when due; (2) failure to observe or perform any other duties, obligations, agreements, or conditions imposed on Tenant pursuant to the terms of the lease, provided that the Tenant shall be given fourteen (14) days to cure the default, and provided further that the Parties may mutually agree to extend the time to cure; (3) institution of voluntary bankruptcy proceedings by Tenant; (4) institution of involuntary bankruptcy proceedings in which the Tenant thereafter is adjudged a bankrupt; (5) assignment for the benefit of creditors of the interest of Tenant under this lease agreement; and (6) appointment of a receiver for the property or affairs of Tenant. Failure to give any required written notice of a

default shall not constitute waiver of the default. Termination of the Lease by Landlord shall be subject to Obligations Upon Notice of Termination in paragraph 21.

(c) **Remedies for Default.** In the event either Party has not remedied a default in a timely manner following any required Notice of Default, the Party issuing the Notice of Default may proceed with all available remedies at law or in equity, including but not limited to Termination as provided in paragraphs (a) and (b) above.

21. OBLIGATIONS UPON NOTICE OF TERMINATION. Because the Leased Premises are a licensed health care facility, the Parties agree that the safety, health, and welfare of the residents are the prime concern in the event of Termination of the Lease, whether at the end of a term or because of early termination of the lease. In addition, the Parties acknowledge that the licensing or certification authorities, or both, may require advanced notice of both the closure of a licensed facility or the transfer the license and certification to a new operator.

(a) In the event of Termination by Tenant by failing to give the Landlord at least one hundred eighty (180) days' notice of its intent to extend the lease or by giving the Landlord one hundred eighty (180) days' Notice of Termination, then, in either event, at least ninety (90) days prior to the termination date, the Landlord shall notify the Tenant whether it will continue the operation of the Facility as a licensed and certified facility, regardless of whether the Landlord operates the Facility itself, or it is done through a lease, management agreement, or other arrangement.

(b) In the event the Landlord gives Tenant ninety (90) days Notice of Termination, in the same notice Landlord shall notify Tenant whether it will continue the operation of the Facility as licensed and certified facility, whether the Landlord operates it itself, or it is done through a lease, management agreement, or other arrangement.

(c) In the event Landlord does not timely notify the Tenant that it will continue the operation of the Facility as a licensed and certified facility, Tenant shall proceed to arrange for the transfer or discharge of all residents and shall proceed to provide the required notifications of closure to all applicable government agencies.

(d) In the event Landlord does timely notify the Tenant that it will continue the operation of the Facility as a licensed and certified facility, the Tenant agrees to cooperate in giving all required notices to applicable government authorities, to cooperate in the transition of the operations, and to assign any license and certification agreement to the Landlord or another entity as directed by the Landlord.

22. **NOTICES AND DEMANDS.** All notices shall be given to the Parties hereto at the following addresses, unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such notice shall be considered given under the terms of this lease when it is deposited in the U.S. Mail, registered, or certified, properly addressed, return receipt requested, and postage prepaid.

Notice to the Landlord:
City Manager, City of Lexington
PO Box 70
Lexington, NE 68550

Notice to the Tenant:
LEXCARES INC
President
406 E 7th Street
Lexington, NE 68550

23. **TIME OF THE ESSENCE.** Time is of the essence of this Lease.

24. **PROVISIONS BINDING.** Each covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties hereto.

City of Lexington Landlord

By: _____
Mayor

LEXCARES INC, Tenant

By: _____
President

EXHIBIT A

**LOT 1, BLOCK 1, PAULSEN'S FIRST ADDITION TO THE CITY OF LEXINGTON,
DAWSON COUNTY, NEBRASKA.**

EXHIBIT B

[LIST OF ALL FURNITURE, FIXTURES, AND MOVEABLE EQUIPMENT USED IN
OPERATION OF THE FACILITY]

EXHIBIT C

LIABILITY INSURANCE REQUIREMENTS

General Liability –

Limits of at least:

\$1,000,000 Per Occurrence
\$3,000,000 General Aggregate
\$3,000,000 Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury

- Coverage shall be provided by a standard form Commercial General Liability Policy covering bodily injury, property damage including loss of use, and personal injury.
- City of Lexington, NE, the Owner, shall be named as Additional Insured.
- Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.

Professional Liability –

Limits of at least:

\$1,000,000 Per Occurrence
\$3,000,000 General Aggregate

Automobile Liability –

Limits of at least: \$1,000,000 CSL Per Accident

- Coverage shall apply to all Owned, Hired, and Non-Owned Autos.

Workers Compensation –

Issued by an insurance company in good standing in Nebraska

Umbrella / Excess –

Limits of at least: \$1,000,000 Per Occurrence

- Policy shall provide liability coverage more than the specified Workers Compensation/Employers Liability, Commercial General Liability and Auto Liability.

Evidence of such insurance coverage in effect shall be provided to City of Lexington, NE, the Owner, in the form of an Accord certificate of insurance executed by a licensed representative of the participating insurer(s).