

**FIRST AMENDMENT AND RESTATEMENT OF
IRREVOCABLE PLEDGE AGREEMENT**

THIS FIRST AMENDMENT AND RESTATEMENT OF IRREVOCABLE PLEDGE AGREEMENT (“Agreement”) is made as of this ____ day of March, 2017 (“Effective Date”), by and between BRYAN HEALTH, a Nebraska nonprofit corporation (“**Bryan Health**”) and the COUNTY OF LANCASTER, NEBRASKA, a political subdivision of the State of Nebraska, (“**County**”). The parties hereby agree as follows:

WHEREAS, Bryan Health and the County entered into an Irrevocable Pledge Agreement as of October 4, 2016 (“Original Agreement”). This Agreement amends and modifies the Original Agreement and restates in its entirety the undersigned parties’ new agreements.

WHEREAS, the County is the owner of the property known as 2201 S. 17th Street, Lincoln, Nebraska (“**Property**”) and legally described on Exhibit A, which is attached hereto and incorporated herein by this reference;

WHEREAS, the County determined that a public sale of the Property would be set for September 8, 2016 pursuant to Neb. Rev. Stat. § 23-107.01(3);

WHEREAS, prior to the public sale, the County discovered that the City of Lincoln retained a utility easement in a vacated alley running north and south through the subject Property and the County concluded that the final closing of the sale of the Property will take place after all releases pertaining to the City utility easement are filed with the Lancaster County Register of Deeds Office;

WHEREAS, on September 8, 2016, the sale was held in the Lancaster County Hall of Justice at 575 South 10th Street, Lincoln, Nebraska and Bryan Health placed the only bid (“**Bryan Health Bid**”) of Three Million One Hundred Eight Five Thousand and No/100 Dollars (\$3,185,000.00) (“**Bid Price**”);

WHEREAS, the County successfully secured and recorded the necessary release of the City utility easement;

WHEREAS, it was subsequently discovered that the City of Lincoln owns a portion of the Property and may take the County a considerable amount of time to acquire the City's remaining interest in the Property and therefore, the County and Bryan have agreed to enter into this Agreement whereby

A. The County irrevocably pledges, among other things, not to reject the Bryan Health Bid, negotiate a contract for sale of the Property with any other party nor conduct another public sale of the Property for three (3) months from the Effective Date of this Agreement and to accept the Bryan Health Bid with reasonable promptness after the County, at its expense, acquires the City's remaining interest in the Property and files said deed with the Lancaster County Register of Deeds Office; and

B. Bryan Health irrevocably pledges, among other things, not to withdraw the Bryan Health Bid for three (3) months from the Effective Date of this Agreement and pay to the County the Bid Price within fifteen days of the County's acceptance of the Bryan Health Bid pursuant to Neb. Rev. Stat. § 23-107.01(3).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. The County irrevocably pledges to Bryan Health to perform as follows:
 - a. Not reject the Bryan Health Bid, negotiate a contract for sale of the Property with any other party nor conduct another public sale of the Property for up to three (3) months from the Effective Date of this Agreement;
 - b. Use reasonable and best efforts, at the County's expense, to secure all the releases in a written and recordable form necessary to acquire the City's remaining interest in the Property;
 - c. During the County's continued ownership period, (i) the County will not dedicate, gift, transfer, lease, grant, mortgage or convey any interest in the Property to any third party without Bryan Health's prior written consent, which consent can be withheld for any reason, except that the Development and Conditional Zoning Agreement entered into between the City of Lincoln and Lancaster County pursuant to City of Lincoln Resolution No. A-89810 and City of Lincoln Executive Order 089783 may be recorded with the Lancaster County Register of Deeds; and (ii) the County will not be in violation of any federal, state, or local law, ordinance, or regulation or requirement relating to environmental laws, hazardous materials or hazardous waste on, under, or about the Property;
 - d. During the County's continued ownership period, at the County's expense, (i) secure, maintain, repair and replace, the general current condition of the improvements and the Property and (ii) insure the Property for its full

replacement value and carry other commercially reasonable insurance policies, with terms and conditions that are normal business practice in Lincoln, Nebraska; and

- e. Accept Bryan Health Bid with reasonable promptness after the County acquires the City's remaining interest in the Property and filing said deed with the Lancaster County Register of Deeds Office; and
 - f. Close the sale of the Property with Bryan Health within fifteen (15) of the County's acceptance of the Bryan Health Bid, which acceptance will occur with reasonable promptness after the County acquires the City's remaining interest in the Property and said deed is filed with the Lancaster County Register of Deeds Office.
2. Bryan Health irrevocably pledges to the County to perform as follows:
 - a. Not withdraw the Bryan Health Bid for three (3) months from the Effective Date of this Agreement;
 - b. Pay the County the Bid Price, at Bryan Health's expense, within fifteen (15) days of the County's acceptance of the Bryan Health Bid; and
 - c. Close the sale of the Property with the County within fifteen (15) of the County's acceptance of the Bryan Health Bid.
 3. Risk of loss or damage to the Property shall rest with the County until the time of delivery of possession of the Property to Bryan Health. In the event of loss or damage to the Property or any portion thereof, this Agreement shall remain in full force and effect provided the County performs any necessary repairs or, at County's option, reduces the cash portion of the Bid Price in an amount equal to the cost of such repairs, County thereby retaining all of County's right, title and interest to any claims and proceeds County may have with respect to any casualty insurance policies or condemnation awards relating to the Property in question. In the event that the County elects to perform repairs upon the Property, the County shall use reasonable efforts to complete such repairs promptly and the closing shall be extended a reasonable time in order to allow for the completion of such repairs.
 4. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.
 5. All notices to be given with respect to this Agreement shall be in writing. Each notice may be made by personal delivery or regular United States Mail to the

parties to be notified at the addresses set forth below or at such other addresses as any party may from time to time designate in writing.

Bryan: Bryan Health
Attn: President/Chief Executive Officer
1600 South 48th Street
Lincoln, NE 68506

with a copy to: Kent Seacrest
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

County: County of Lancaster, Nebraska
Attn: Kerry Eagan
555 South 10th Street
Lincoln, NE 68508

with a copy to: Lancaster County Attorney’s Office
Attn: David A. Derbin
575 South 10th Street
Lincoln, NE 68508

- 6. All rights and remedies of the parties hereunder or in connection with this Agreement shall be cumulative and none shall be exclusive of any other remedies allowed by law.
- 7. This Agreement may be modified or amended only in writing duly authorized and executed by Bryan Health and the County.
- 8. If any noneconomic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 9. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.
- 10. Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender

“County”

Attest:

County of Lancaster, Nebraska, a political
subdivision of the State of Nebraska

By: _____
County Clerk

By: _____
Todd Wiltgen, Chair

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of March, 2017,
by Todd Wiltgen, Chair of the Board of Commissioners of the County of Lancaster, Nebraska,
on behalf of County of Lancaster, Nebraska, a political subdivision of the State of Nebraska.

(Seal)

Notary Public

Approved as to form this ____ day of March, 2017

By: _____
Deputy County Attorney for
Joe Kelly, Lancaster County Attorney

Exhibit A
Legal Description

All of Lots 8, 9, 18 and 19; the North 28.5 feet of Lots 10 and 17; and the East 65.38 feet of the South 21.5 feet of Lot 10; and the East 65.38 feet of Lots 11, 12 and 13, all in Davis's Subdivision of Lot 3 in the Southwest Quarter of Section 36, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska; together with all of the vacated North-South alley abutting Lots 8, 9, 18 and 19 and the North 28.5 feet of Lots 10 and 17 -AND- That part of the Northeast Quarter of Lot 6, "State Subdivision" of the Southwest Quarter of Section 36, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows: Commencing at the Northeast corner of said Northeast Quarter of Lot 6, "State Subdivision" of the Southwest Quarter of Section 36, said point being the centerline of platted "17th Street" and "Sewell Street"; thence on an assumed bearing of South 89 degrees 59 minutes 15 seconds West, and with the North line of said Northeast Quarter of Lot 6, "State Subdivision", 30.00 feet to a point on the West right-of-way line of "17th Street", said point also being the point of beginning; thence South 0 degrees 20 minutes 19 seconds West, 30.00 feet West of as measured perpendicular to and parallel with the East line of said Northeast Quarter of Lot 6, "State Subdivision" and with the West right-of-way line of "17th Street" 265.77 feet; thence North 88 degrees 57 minutes 31 seconds West, 98.21 feet; thence North 0 degrees 19 minutes 56 seconds East, 200.38 feet; thence North 31 degrees 06 minutes 08 seconds East, 64.23 feet; thence North 0 degrees 21 minutes 52 seconds East, 8.60 feet to a point on the North line of said Northeast Quarter of Lot 6, "State Subdivision", said point also being on the South line of Lot 13, "Davis's Subdivision" of Lot 3 in the Southwest Quarter of said Section 36; thence North 89 degrees 59 minutes 15 seconds East, with said North line of the Northeast Quarter of Lot 6, "State Subdivision" and with said South line of Lot 13, "Davis's Subdivision" 65.38 feet to the point of beginning.

Acceptance

The undersigned, Nebraska Land Title & Abstract, hereby agrees to be the closing agent for this Agreement for the sum of Four Hundred and Fifty No/100 Dollar (\$450.00).

Nebraska Land Title & Abstract

By: _____

Title: _____

Date: _____