

January 12, 2016

The Honorable Robert A. McDonald, Secretary
Department of Veterans Affairs
810 Vermont Avenue, N.W., Room 1000
Washington, DC 20420

RE: Lincoln VA Enhanced Use Lease Project (Nebraska)

Dear Mr. Secretary:

The Seniors Foundation of Lincoln (Seniors), America First Real Estate Group (America First), and Sampson Construction, want to thank you and your team for the time, commitment and dedication they have shown to the Lincoln VA Enhanced Use Lease Project. Collectively, we are the development team leading the effort to develop the Lincoln, Nebraska VA campus through the Enhanced Use Lease Program. This is a significant project for our Veterans, the senior citizens of Lincoln, the City of Lincoln and our organizations. Further, it is a significant project for the VA as it allows the VA to make use, for the benefit of Veterans on what has been determined to be excess property rather than continue to have the cost and liability of maintaining a 60-acre property that serves diminishing benefits to Veterans or the community. With the expiration of the statute authorizing this lease may be, without further congressional action, the last opportunity for the VA to be a partner in a project to transform what has been determined to be an obsolete property to a center of a major redevelopment benefiting the entire community.

We want to be clear that, the VA team, first through Alan Hackman and more recently under the guidance of Paul McPherson, has reaffirmed their commitment to the project. However, recent events, as further detailed in this letter, have us examining whether bringing this project to conclusion is prudent or realistic. We appear to be at a significant impasse. The VA and our development partnership do not agree on key items; briefly identified below and discussed in more detail further in this correspondence.

First, the success of the redeveloped campus to serve the needs of Veterans and seniors of the community is greatly enhanced by the ultimate location of the new VA Outpatient Clinic being developed and constructed on the campus. We have asked for language to be placed in the lease to allow the lease to be dissolved should we not be successful in being awarded the new clinic on the campus. We have been advised that the VA will not agree to allow such a clause be inserted into the lease.

1004 Farnam Street, Suite 400, Omaha, NE 68102
800-283-2357 / 402-444-1630 ext. 3090
www.BurlingtonCG.com



Robert McDonald, Secretary
RE: Lincoln VA Enhanced Use Lease Project (Nebraska)
January 12, 2016
Page 2 of 7

The second issue regards a recently disclosed requirement that all the development on the campus meet Leadership in Energy and Environmental Design (LEED) Silver standards. During the course of our negotiations, LEED was never disclosed as a requirement for the project. The last minute requirement of LEED has added costs that affect the economic viability of the project.

The purpose of this letter is to request the opportunity for members of our development team to travel to Washington D.C., to engage in a face to face dialogue with the VA's senior leadership with the goal of arriving at a mutual plan and resolution of the issues in the hopes we can save this project. We are suspending our current negotiations with the VA team until we have had a chance to meet face to face with the VA's senior leadership and discuss our key issues. Given the broad publicity this project has received and its importance to the community, we have kept City officials and members of our congressional delegation advised of our progress.

The Importance of the Redevelopment of the Lincoln VA Campus

As a preliminary matter, we believe that we should keep in mind that this project, with all its complexities under the Enhanced Use Lease Program, can be a model of success for what a public and private partnership is able to do; not only for our Veterans, but also for our seniors and communities. As James M. Sullivan, the Director of the Department of Veteran's Affairs Office of Asset Management testified to the congressional committee on July 29, 2014, The Enhanced Use Lease:

[P]rogram has provided significant benefits to VA in terms of annual cost savings; increased health care services for Veterans; expanded and improved facilities; substantial private investment in VA's capital facilities and infrastructure; creation of jobs; and increased tax revenues for local communities.

We agree with Director Sullivan's observation. With the vision of what the success of this project would mean to the Veterans and our community, between the Seniors Foundation and America First, we have to date:

- Expended over \$500,000 hard dollars in bringing this project to its current status;
- Obtained, in unprecedented fashion and scope from the City of Lincoln, a commitment of Tax Increment Financing in the amount of \$7.1 million for the Lincoln VA project;
- Committed to pay \$100,000 to the VA as an initial payment when the Enhanced Use lease is executed.
- Put together a Redevelopment Agreement, approved by the City of Lincoln and ratified in our Development Plan with the VA, that would result in a development in excess of \$100 million dollars.

- Obtained necessary zoning and planning approval from the City of Lincoln to make the project “development ready.”

The economic impact of redeveloping the VA Campus was assessed in a 2012, study by the University of Nebraska. The total economic impact during construction was found to be in excess of \$100 million. Ongoing activities of the new buildings would have a yearly impact of \$65.66 million. Visitors to the VA clinic would have an economic impact of \$876,000. Property taxes generated by the redevelopment would be an estimated \$681,739 annually.

Most significantly, the project will, if successful, help address a national priority of ending the crisis of Veterans experiencing homelessness, by developing a 70-unit complex housing homeless veterans. As indicated in a recent market study for the project:

In Lincoln, the total amount of Homeless Veterans between January 2014 and December 2015 is estimated to be 401. Thus, the growing demand for affordable housing by homeless Veterans in the City of Lincoln justifies the need for a new 70-unit apartment building on the VA Campus.

This is undoubtedly the type of project Director Sullivan was referring to when he testified to the congressional committee in July of 2014. The VA and the local development team should be partners in insuring the success of this project.

As with most issues, we believe that understanding the history is pertinent to how we will collectively, as parties with mutual interests in the success of the project, attempt to resolve the issues.

The History of the Lincoln VA Enhanced Use Lease Negotiation

This lease was awarded by the VA to Seniors in December of 2011, pursuant to Request for Proposal, *NO. VA-101-10-RP-0053*. In the original Request for Proposal, the development and construction of a new Veterans Affairs Outpatient Clinic was included with the parameters of the proposal. After award of the lease, the VA made the decision to segregate the process for the development of the new outpatient clinic from the awarded lease and, instead, began the process of seeking the development of a new clinic through solicitation *NO. VA-101-15-R0122*.

After a number of years of negotiations, America First and the Seniors Foundation believed in late spring/early summer of 2014, that sufficient progress had been made and that a clearly defined and authorized approach to the Lincoln VA project was in the works. In mid-summer of 2014, facts materialized that made it clear that the parties did not agree pertaining to the approach of the project. On August 27, 2014, America First and the Seniors Foundation

Robert McDonald, Secretary
RE: Lincoln VA Enhanced Use Lease Project (Nebraska)
January 12, 2016
Page 4 of 7

obtained a meeting in Washington, DC with VA senior officials to discuss the concerns. As a follow-up to the meeting, America First and the Seniors Foundation requested, By letter dated September 10, 2014, guidance and clarification from the VA on their concerns “as a condition precedent to submitting a new proposal for the [VA’s] consideration and that America First and the Seniors Foundation would “need clarification on all the above issues prior to submitting a new proposal.” By letter dated November 6, 2014, the VA responded to the request made by the Seniors Foundation and America First.

Subsequent to the VA’s response, the parties worked diligently together to put together a project proposal that all mutually agreed would meet the needs of all parties. Of important note was that the development team was under a tight deadline, pursuant to HUD VASH requirements, to preserve vouchers for the Veterans housing by conducting a ceremonial construction commencement by October 1, 2015.

On or about May 5, 2015, the parties *unofficially* arrived at an agreement regarding substantive and material financial terms. Once key financial terms were agreed to in May of 2015, the Seniors Foundation and America First, proceeded in good faith with the understanding that the final Enhanced Use Lease, for reasons discussed below, would be executed by September 30, 2015. The development partnership started the process of investing significant financial expenditures leading to completing key development components, including but not limited to the following tasks; commencing formal engagements with the City of Lincoln for land use approvals required by the City, including those allowing for tax increment financing to assist in the development of the Lincoln VA project; starting the process of obtaining tax credits that would finance the Veterans housing; and finalized the Programmatic Agreement with the VA and all necessary parties. Further, the property was submitted for consideration for the new VA Outpatient Clinic and, subsequently, we were advised by letter dated July 17, 2015, that the property is one of seven locations being considered for the clinic.

The proposed project and key development concepts were also shared with the neighborhood surrounding the proposed project. The initial development concepts were met with resistance and caused the reevaluation of the proposed plan. That reexamination exerted enormous pressure on several different fronts and also caused the tax credit application to be placed on hold until a new design could be agreed upon by the neighbors in July of 2015.

As a means of ensuring that we could meet the October 1, 2015, deadline, it was agreed to by the development team and the VA that we would have an executed lease by September 30, 2015. The parties represented had an agreement, subject to the VA’s legal review, on all substantive terms and conditions by September 17, 2015, as executed signature pages from the

Robert McDonald, Secretary
RE: Lincoln VA Enhanced Use Lease Project (Nebraska)
January 12, 2016
Page 5 of 7

Seniors Foundation had been sent to the VA to be held in escrow. We were awaiting a signature from the VA to formally execute the lease by September 30, 2015. However, on September 21, 2015, we were advised, for the first time ever after months of negotiations, that the VA would not execute the lease until such time that financing for the Veterans housing was fully secured. Further, in mid-December of 2015, we were also formally advised that LEED was going to be required as a condition of the redevelopment of the campus.

After years of significant investment of cash and time coupled with additional last minute substantive requirements to the lease by the VA, members of the America First team, as the lead developer, met with their senior management team to discuss the proposed conditions and the future of the project.

Issues to Be Resolved

The discussion that ensued involved a thorough re-evaluation of the project and its current status. It was determined that the VA's concerns regarding financing, while unfortunately late in the process, appeared to be consistent with ensuring the success of the project for the Veterans this project is designed to serve. Consistent with this vision of America First's review of the VA's position and the current status of the VA clinic procurement process, it was further concluded that the success of the entire project, including both the VASH units and the Community Based Out-patient Clinic, was paramount for the Veterans and the success of the Project. The risk of not having the Clinic located on the campus and its effect on the success of the project became a focal point of the analysis. Neither the VA nor the development team wants a project that is being designed specifically for Veterans and seniors to be in a position to fail.

Having the clinic and its services available to the VASH housing and other Veteran oriented services in America First's analysis is critical to the success of the entire project and, in all likelihood, would be the anchor for fulfilling the vision that has been created for the VA campus. The discussion that ensued involved a thorough re-evaluation and current status of the entire project. Being respectful of the necessity of the procurement process for the selection of the site for the VA Clinic, it was determined the overall success of the VASH housing portion weighs heavily on the location of the VA clinic on the same campus.

America First concluded that the lease should also contain a contingency that, if a decision is made to place the clinic on another location, America First has the ability to unwind the lease. It was concluded that, in order to make the project a success, we would be willing to grant the contingency that was requested by the VA; but in order to make the project viable, we would need to have the flexibility to review our options regarding the feasibility of the project if indeed an

Robert McDonald, Secretary
RE: Lincoln VA Enhanced Use Lease Project (Nebraska)
January 12, 2016
Page 6 of 7

essential piece for the success of the Veterans project (the clinic) would be selected for another site. The VA was advised of our position by email on September 22, 2015.

In response, we have been advised that we cannot make mention of the VA clinic as part of the lease process as doing so may make award of the clinic subject to a protest from an unsuccessful bidder. In reviewing the procurement regulations, we are trying to confirm how requesting the ability to re-evaluate the project should we not be successful in our bid for the clinic subject an award to a meritorious protest claim. It appears that the ground for a protest, in that line, may already exist as the short form lease that is currently in operation indicates that in Article 1(d): "a long term use of the Property as the facility through an Enhanced –Use Lease.....by lessee would result in the availability of a new replacement VA Community Based Out-patient Clinic, as well as a medical office building, a residential development and a retail/town center development to provide medical and other services to eligible Veterans and would permit more resources to be directed toward Veteran care." The concern that is sought to be eliminated by not granting the contingency requested is apparently already in place for someone looking for a basis to file a protest. We received an opinion regarding the matter from a former Government Services Administration attorney from Atlanta who has worked on several VA clinic procurements. She advises that such a contingency will not violate and is not prevented by the statute authorizing Enhanced Use Leases.

Further, the new substantive requirement Leadership in Energy and Environmental Design (LEED) Silver standards was not, previously divulged in the RFP, or during four years of discussions, with the development team. This last minute requirement has added financial stress to the project. Critically, we have been advised that we will be required to develop the project to the requirements of LEED Silver. We understand LEED and its importance for government owned or leased facilities. We also understand the importance of having energy efficient facilities. In our commitment to develop energy efficient facilities, we agreed with the city of Lincoln to build with LEED as our guide, if determined to be reasonable on a cost effective basis. However, the requirement for LEED certification was not something that was built into our project cost analysis. If we would have known at inception that LEED was a requirement, we would have used financial projections that reflected LEED in our financial due diligence as we were ascertaining the viability of the project and negotiating compensation to the VA.

This project has recently been burdened with several issues that are detrimental to the success of the entire project. Failure of a highly visible project that carries significant importance for the Veterans of this community would be a blow, not only to the community, but also to the Veterans this project will serve. The Seniors Foundation understands this project is an important community project; however, the risk profile for America First as the developer partner has shifted

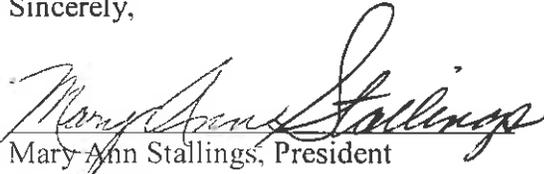
Robert McDonald, Secretary
RE: Lincoln VA Enhanced Use Lease Project (Nebraska)
January 12, 2016
Page 7 of 7

dramatically. While the Seniors Foundation continues to assess the viability of the project, including assessing the risk tolerance of other developers should America First choose not to move forward due to the current circumstances, the Seniors Foundation joins America First in requesting a meeting to resolve these issues.

America First, as a last resort, requests an audience and meeting with your senior management team to discuss how, together, we both are able to engineer a plan to meet the needs of the VA and the local development team. Both the VA and the Victory Park team have vested significant time and treasure to get this project to this juncture. We should and need to work jointly to resolve the issues.

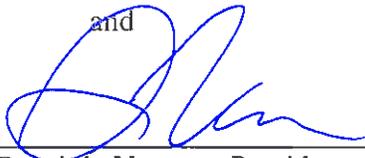
Your prompt reply is requested.

Sincerely,



Mary Ann Stallings, President
Board of Directors
The Seniors Foundation

and



Dominic Vacarro, President
America First Real Estate Group, LLC

cc: Nebraska Congressional Delegation
Mayor Chris Beutler
Ed Bradley
Paul McPherson
Don Burman
Duncan Fallon