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REGISTER OF DEEDS  
OKLAHOMA COUNTY, NE

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Temp. 12.4.01

*City 3*



City of Omaha  
Mike Fahey, Mayor

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CITY CLERK  
OMAHA, NEBRASKA

4 ea. Ground Lease k  
Memo. of Lease  
ORD #36010

Planning Department

Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 1100  
Omaha, Nebraska 68183-0110  
(402) 444-5200  
(402) 444-5150  
Telefax (402) 444-6140

Robert C. Peters  
Director

Honorable President

and Members of the City Council,

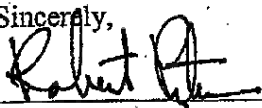
The attached proposed Ordinance brings the City of Omaha (City) into compliance with the Redevelopment Agreement as passed by the City Council on April 10, 2001 in Ordinance No. 35543, authorizing the implementation of the Gallup University Riverfront Redevelopment Agreement and requiring that the City lease certain property to Riverfront Developers, LLC (Developer).

The Redevelopment Agreement, Section 2.20, provides that after the City has completed site preparation in the future parking structure area, the City shall lease the property to the Developer for use as a parking lot to serve the Campus. The Lease Agreement shall have a rental rate of \$1.00 per year, and shall have an initial term of twenty (20) years with renewal options to extend the term for a maximum period of ninety-nine (99) years. The Lease Agreement shall be terminable by the Developer at any time and may be terminated by the City on six (6) months prior written notice to the Developer. The Lease Agreement shall only be terminated by the City if a parking structure is actually constructed. Developer may construct parking lot improvements on the leased property and shall maintain the property and shall also plant, install and maintain any landscaping. The City shall remain liable for and shall indemnify, defend and hold the Developer harmless against any loss, liability or expense whatsoever in connection with environmental matters unless caused by the Developer, its, agents, employees or invitees. If the City elects to construct a parking structure, it shall reimburse the Developer for the Developer's actual cost of constructing its parking lot improvements. The Developer shall provide the City with documentation of such cost.

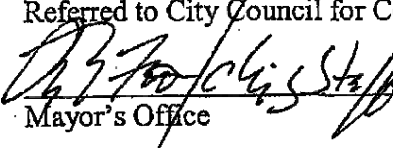
It is felt that entering into this Lease Agreement is necessary to adequately implement and complement the redevelopment project authorized by Ordinance No. 35543 and consequently should be approved for execution.

Your favorable consideration of this Ordinance will be appreciated.

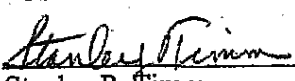
Sincerely,

  
Robert Peters *6/27/02*  
Planning Director

Referred to City Council for Consideration:

  
Mayor's Office *6-27-02*  
Date

Approved:

  
Stanley P. Timm *6/28/02*  
Finance Director *MA*

Approved:

  
Norm Jackman *6/27/02*  
Acting Public Works Director

P:\Law\7301pjm.doc

(L)

### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into by and between THE CITY OF OMAHA, NEBRASKA, a municipal corporation (the "Landlord"), and RIVERFRONT CAMPUS DEVELOPERS, LLC, a Nebraska limited liability company (the "Tenant").

#### WITNESSETH:

1. In consideration of the rents reserved and the covenants and conditions more particularly set forth in a certain Ground Lease between Landlord and Tenant dated \_\_\_\_\_, 2002 (the "Lease"), Landlord has leased to Tenant for the term hereinafter set forth, the real estate legally described as Lot 16, Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (the "Premises").

2. The initial term of the Lease shall be for twenty (20) years and shall commence on the date Landlord completes "Site Preparation" on the Premises, as defined in that certain Redevelopment Agreement dated April 19, 2001, among Landlord, Tenant, and Douglas County, Nebraska.

3. Tenant has options to extend the term of the Lease for four (4) successive additional terms, the first three (3) of which are for twenty (20) years each and the last of which is for nineteen (19) years, by giving Landlord written notice of the exercise thereof at least sixty (60) days prior to the expiration of the then current term of the Lease.

4. This Memorandum of Lease is executed pursuant to the provisions contained in the Lease and is not intended to vary the terms and conditions of the Lease. The sole purpose of this Memorandum of Lease is to give notice of the existence of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease on the dates set forth beneath their respective signatures, the latter of which shall constitute the date of this Memorandum of Lease for reference purposes.

LANDLORD:

THE CITY OF OMAHA, NEBRASKA,  
a municipal corporation

ATTEST:

[Signature]  
City Clerk

Approved as to Form

[Signature]  
Special Projects Attorney - City

By: [Signature]  
Name: Mike Fabey  
Title: MAYOR  
Date: 8/22/02

TENANT:

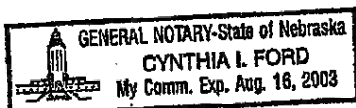
RIVERFRONT CAMPUS DEVELOPERS, LLC,  
a Nebraska limited liability company

By: Gallup, Inc., a Delaware corporation,  
Manager

By: [Signature]  
Name: James K. Fisher  
Title: CEO  
Date: 7/15/02

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on August 22, 2002, by Mike Fabey, who is the Mayor of the City of Omaha, Nebraska, on behalf of the City of Omaha, Nebraska.

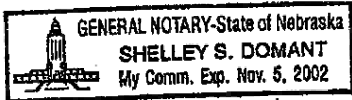


[Signature]  
Notary Public

My Commission expires: 8/16/03

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Lancaster )

The foregoing instrument was acknowledged before me on July 10<sup>th</sup>, 2002, by JAMES R. Kedge, CFO of Gallup, Inc., a Delaware corporation, as Manager of Riverfront Campus Developers, LLC, a Nebraska limited liability company, on behalf of the corporation and the limited liability company.



Shelley S. Domant  
Notary Public

My Commission expires: November 5, 2002

## GROUND LEASE

THIS GROUND LEASE (this "Lease") is made by and between THE CITY OF OMAHA, NEBRASKA, a municipal corporation, ("Landlord"), and RIVERFRONT CAMPUS DEVELOPERS, LLC, a Nebraska limited liability company ("Tenant").

### RECITALS:

(A) Landlord is the owner of Lot 16, Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (the "Premises").

(B) Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord, pursuant to Section 2.20 of that certain Redevelopment Agreement among Landlord, Tenant and Douglas County, Nebraska, dated April 19, 2001 (as heretofore and hereafter amended, the "Redevelopment Agreement").

NOW, THEREFORE, in consideration of their mutual covenants herein set forth and other good and valuable consideration, the parties hereto agree as follows:

#### Section 1. Leased Premises.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises.

#### Section 2. Term.

(A) The term of this Lease (the "Lease Term") shall initially be 20 "Lease Years" and shall commence on the date Landlord completes Site Preparation (as defined in the Redevelopment Agreement) on the Premises and notifies Tenant thereof in writing, subject, however, to early termination in accordance with paragraph (C) below. Landlord agrees to notify Tenant as soon as such Site Preparation has been completed. As soon as the commencement date has been determined, Landlord and Tenant shall execute and deliver to each other written confirmation of the commencement date of the Lease Term, which shall be in recordable form and may be in the form of an amendment to the Memorandum of Lease referred to in Section 28 hereof. Such written confirmation shall be recorded by Tenant at Tenant's expense. The term "Lease Year" shall mean a period of 12 consecutive months. The first Lease Year shall begin on the date of commencement of the Lease Term. Each succeeding Lease Year shall commence on the anniversary date of the commencement of the first Lease Year.

(B) Tenant shall have the options to extend the Lease Term for 4 successive additional periods ("Extended Terms"), the first 3 of which shall be for 20 Lease Years each and the last of which shall be for 19 Lease Years. If the option to extend the Lease Term for the first Extended Term is exercised, the first Extended Term shall commence upon the expiration of the initial 20 year Lease Term, and if subsequent options to extend the Lease Term are exercised, the next Extended Term shall commence upon the expiration of the then current Lease Term. Such options to extend the Lease Term are exercisable by Tenant by giving written notice to Landlord of the exercise of the option for the next Extended Term not later than 60 days prior to the expiration of the initial 20 year Lease Term with respect to the first Extended Term and not later

than 60 days prior to the expiration of the then current Extended Term in the case of each subsequent Extended Term. If Tenant exercises any of such options, the Lease Term shall continue after the expiration of the then current Lease Term for the Extended Term on the same conditions as are set forth herein, and references herein to the "Lease Term" shall include the Extended Term. This Lease shall be subject to early termination during any Extended Term in accordance with paragraph (C) below.

(C) Tenant shall have the right to terminate this Lease at any time by written notice to Landlord. Landlord shall have the right to terminate this Lease on 6 months prior written notice to Tenant if, and only if, Landlord is ready to construct the Parking Structure, as defined in the Redevelopment Agreement. Such notice shall set forth the date of termination. If Landlord gives notice of termination and commencement of construction of such Parking Structure is not actually commenced within 90 days after the date of termination set forth in Landlord's termination notice, or if after commencement construction is not diligently pursued to completion, then at Tenant's option, this Lease shall be reinstated. If Landlord elects to terminate this Lease pursuant to this Section 2(C), at the time of termination Landlord shall reimburse Tenant for Tenant's actual cost of constructing its parking lot improvements on the Premises. Tenant shall provided Landlord with reasonably satisfactory documentation of such costs.

### Section 3. Rent.

Tenant shall pay Landlord, as rent hereunder (the "Annual Rent"), the sum of \$1.00 per annum. Annual Rent shall be payable in advance, on or before the 10<sup>th</sup> day of each Lease Year during the Lease Term.

### Section 4. Use of Leased Premises.

Tenant may use the Premises as a parking lot to serve the Campus, as defined in the Redevelopment Agreement, and for related purposes, but for no other purpose without the express written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

### Section 5. Condition of the Leased Premises.

Landlord shall complete Site Preparation on the Premises in accordance with the terms of the Redevelopment Agreement prior to the commencement of the Lease Term. Landlord shall indemnify, defend, and hold Tenant harmless against any loss, liability, damage, claim, or expense whatsoever on account of or resulting from environmental matters, including but not limited to any environmental remediation costs and any fines, penalties, liabilities or other costs resulting from failure to comply with any environmental laws, unless caused by Tenant, its agents, employees or invitees, and from failure of Landlord to otherwise properly complete such Site Preparation.

### Section 6. Construction of Improvements and Landscaping.

(A) Tenant shall have the right to construct parking lot improvements on the Premises during the Lease Term. Such improvements shall include landscaping to the extent Tenant

deems it reasonable and appropriate. Tenant shall maintain such improvements reasonably clean and free of debris and in good condition and repair. Tenant shall plant, install and maintain any landscaping on the Premises in accordance with good practices and compatible with landscaping on the Campus, as defined in the Redevelopment Agreement.

(B) Tenant shall own any improvements to the Premises made by Tenant during the Lease Term. Tenant shall have the right, but not the obligation, to remove any such improvements prior to the expiration or termination of the Lease Term. Any damage to the Premises caused by Tenant in the removal of such improvements from the Premises shall be repaired by Tenant at its expense. Upon termination of this Lease, title to any such improvements Tenant has not removed shall vest in Landlord without charge.

Section 7. Compliance with Requirements.

Tenant, at its expense, shall promptly comply with all laws, ordinances, rules and regulations of governmental authorities regarding the construction of improvements and use of the Premises. Tenant shall also comply with the terms of the Declaration of Redevelopment Covenants recorded against the Premises pursuant to the Redevelopment Agreement.

Section 8. Waste or Nuisance.

Tenant shall not commit nor suffer to be committed any waste upon the Premises or any nuisance, and Tenant shall indemnify and hold Landlord harmless with respect to a breach of this covenant.

Section 9. Liability Insurance.

Tenant shall keep in force with an insurance company authorized to do business in the State of Nebraska, a policy of commercial general liability insurance with respect to the Premises, in which the limit of coverage shall not be less than \$1,000,000.00, combined single limit coverage for personal injury and property damage. In addition to Tenant, the policy shall also name Landlord as an additional insured. Any insurance provided for in this Section 9 may be affected by a policy or policies of blanket insurance (provided that such insurance shall furnish protection equivalent to a separate policy or policies in the amounts herein provided and will comply in all other respects with the provisions of this Lease).

Section 10. Waiver of Subrogation.

Anything in this Lease to the contrary notwithstanding, it is agreed that each party (the "Releasing Party") hereby releases the other (the "Released Party") from any liability which the Released Party would, but for this Section, have had to the Releasing Party during the Lease Term, resulting from the occurrence of any accident or occurrence or casualty which is covered by any casualty or property damage insurance being carried by the Releasing Party at the time of the occurrence, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the Released Party, its officers, agents or employees.



Section 11. Utility Charges.

Tenant shall contract in its own name and pay for all utility services used, consumed or furnished to the Premises or improvements thereon.

Section 12. Tenant's Right to Assign and Sublet.

Tenant may assign this Lease, in whole or in part, or sublet all or any part of the Premises in Tenant's sole and absolute discretion, without the consent of Landlord; provided, that such assignment is to an owner, lessee, or other user of all or part of the Campus, as defined in the Redevelopment Agreement. As a condition to any assignment of this Lease by Tenant which is permitted under this Section, the assignee thereof shall be required to execute and deliver to Landlord an agreement, in recordable form, whereby such assignee assumes and agrees with Landlord to discharge all obligations of Tenant under this Lease. Tenant shall deliver to Landlord evidence of such assignment or sublease within ten (10) business days after the effective date thereof.

Section 13. Estoppel Certificate.

Landlord and Tenant each agree, within thirty (30) days after written request by the other, to execute, acknowledge and deliver to and in favor of any party designated by the other, an estoppel certificate, in the form customarily used by such designated party, stating, among other things, (i) the commencement date of this Lease, (ii) whether this Lease is in full force and effect, (iii) whether this Lease has been modified or amended and, if so, identifying and describing any such modification or amendment, (iv) the date to which rent and any other charge has been paid, and (v) whether the party executing the estoppel certificate knows of any default on the part of the other party or has any claim against the other party and, if so, specifying the nature of such default or claim.

Section 14. Default Provisions.

(A) If the Annual Rent or any other charge payable by Tenant under this Lease shall be unpaid on the date payment is required by the terms hereof and shall remain so for a period of thirty (30) days after Landlord gives Tenant notice of such default, or if Tenant fails to perform any of the other terms, conditions, covenants and obligations of this Lease to be observed and performed by Tenant for more than thirty (30) days after Landlord gives Tenant notice of such default (it being agreed that a default, other than the failure to pay money, which is of such a character that cure thereof reasonably requires longer than said thirty (30) day period, shall be deemed cured within said period if Tenant commences the cure thereof within said thirty (30) day period and completes the same with due diligence), or if Tenant shall abandon the Premises, or if Tenant shall suffer this Lease to be taken under any writ of execution, attachment or other process of law, then Landlord shall have, in addition to its other rights or remedies allowed by law, the following immediate rights:

(1) At its option, by notice to Tenant, to terminate this Lease, and upon the service of such notice of termination, the Lease Term shall automatically terminate; or

(2) At its option, to terminate Tenant's right to possession of the Premises without terminating this Lease, in which case Tenant's obligation to pay Annual Rent hereunder shall continue. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach in the manner provided in this Section 14.

(B) Upon (i) any termination of this Lease, whether by lapse of time or by the exercise of any option by Landlord or Tenant to terminate the same or in any other manner whatsoever, or (ii) any termination of Tenant's right to possession without termination of this Lease, Tenant shall immediately surrender possession of the Premises to Landlord and immediately vacate the same. If Tenant fails to surrender possession and vacate as aforesaid, Landlord may forthwith re-enter the Premises, and repossess itself thereof as in its former estate and expel and remove Tenant and any other persons and property therefrom, in accordance with applicable law, without being deemed guilty of trespass, eviction, conversion or forcible entry and without thereby waiving Landlord's rights to rent or any other rights given Landlord under this Lease or at law or in equity.

**Section 15. Landlord's Right to Cure Defaults.**

If Tenant shall fail to perform any of the agreements or obligations on its part to be performed under this Lease, Landlord shall have the right (i) if no emergency exists, to perform the same after giving thirty (30) days' notice to Tenant, and (ii) in any emergency situation, to perform the same immediately without notice or delay. For the purpose of rectifying Tenant's defaults under Section 14, Landlord shall have the right to enter the Premises. Tenant shall on demand reimburse Landlord for the actual reasonable costs and expenses incurred by Landlord in rectifying Tenant's defaults, including reasonable attorneys' fees. Any act or thing done by Landlord pursuant to the provisions hereof shall not constitute a waiver of any such default by Tenant or a waiver of any covenant, term or condition herein contained or the performance thereof, or an eviction of Tenant by Landlord.

**Section 16. Right of Entry.**

Landlord and its employees, agents and contractors shall have the right to enter the Premises upon reasonable notice to Tenant for all lawful purposes and to whatever extent necessary or appropriate to enable Landlord to exercise all of its rights under this Lease and to carry out all of Landlord's obligations hereunder. In the event of such entry, Landlord shall use its best efforts not to interfere with Tenant's use of the Premises.

**Section 17. Surrender of Leased Premises.**

On the last day of the Lease Term or on the sooner termination thereof, Tenant shall peaceably surrender the Premises in good order, condition and repair, reasonable wear and tear and casualty excepted.

Section 18. Quiet Enjoyment.

Landlord covenants that upon payment by Tenant of the Annual Rent and other charges herein provided, and upon the performance of all the covenants, terms and conditions on Tenant's part to be performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Lease Term.

Section 19. Holding Over.

Any holding over after the expiration of the Lease Term without the consent of Landlord shall be construed to be a tenancy from year-to-year at an Annual Rent equal to the Annual Rent for the last Lease Year of the Lease Term and shall otherwise be on the terms and conditions herein specified so far as applicable. Nothing above set forth shall be construed to authorize any such holding over or to limit Landlord's remedies in the event thereof.

Section 20. Legal Expenses; Remedies Cumulative.

In case suit shall be brought because of the breach of any covenant herein contained on the part of Tenant or Landlord to be kept or performed, and a breach shall be established, the prevailing party shall be entitled to recover all expenses incurred therefor, including reasonable attorneys' fees. Landlord's and Tenant's rights and remedies shall be cumulative and may be exercised and enforced concurrently. Any right or remedy conferred upon Landlord or Tenant under this Lease shall not be deemed to be exclusive of any other right or remedy it may have.

Section 21. Waiver.

The waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Lease shall be deemed to have been waived unless such waiver be in writing signed by the party charged therewith.

Section 22. Notices and Payments.

Whenever any notice is required or permitted under this Lease, such notice shall be in writing. All notices by Tenant to Landlord shall be sent to Landlord by registered or certified mail, postage prepaid, return receipt requested, in care of the Omaha City Attorney, 1819 Farnam Street, Suite 804, Omaha, Nebraska 68183-0001, or to such other addresses as Landlord may later designate in writing. Until Landlord is notified otherwise by Tenant, all notices by Landlord to Tenant shall be deemed to have been duly given if sent by registered or certified mail, postage prepaid, return receipt requested, to Tenant at 301 South 68<sup>th</sup> Street Place, Lincoln, Nebraska 68510, attn: Ed Miller. Until otherwise notified in writing by Landlord, Tenant shall pay all rent and other sums required to be paid by it under this Lease, by check payable to the order of Landlord at its address first above stated. All notices shall be deemed effective as of the date of mailing in accordance with the foregoing provisions. However, the time period in which a response to any such notice must be given shall commence to run from the date of receipt on the return receipt of the notice by the addressee thereof. Rejection or other refusal to accept or