



# City of Grand Island

Tuesday, March 8, 2022

Council Session

## Item F-2

**#9875 - Consideration of Authorizing the Sale of land at the former Nebraska Veterans Home, to be subdivided as Lot 3 in Veterans Legacy South Subdivision, to CHI Nebraska**

Staff Contact: Jerry Janulewicz

# **Council Agenda Memo**

**From:** Jerry Janulewicz, City Administrator

**Meeting:** March 8, 2022

**Subject:** Ordinance Authorizing the Sale of Land to CHI Nebraska

**Presenter(s):** Jerry Janulewicz and Chad Nabity

## **Background**

CHI Nebraska, a Nebraska nonprofit corporation, is seeking to purchase from the City a tract of land of 13+ acres located north of Capital Avenue and immediately west of the former Nebraska Veterans Home in Grand Island. If the City Council approves the proposed subdivision of the city-owned undeveloped property, the proposed sale involves what is described as Lot Three (3) in Veterans Legacy South Subdivision for a purchase price of \$318,575.00, which is calculated at \$25,000 per acre. The price per acre is consistent with observed sales of larger-size unimproved tracts that were not located within the US Highway 281/Webb Road corridor. In addition to the cost of the land, the purchaser will be required to pay its pro-rata costs for infrastructure to include street, sewer, and water as determined through assessment districts.

The City's undeveloped land is presently leased for row crop farming rented on a cash basis. The potential sale was discussed with the tenant whose lease provides that the city reserves the right to develop any part of the leased land. If any portion of the land is developed, the tenant will be reimbursed for any production expenses and rent incurred on the ground that is developed and which the tenant is not able to harvest the crop.

The proposed purchase sale agreement provides that the city will establish covenants on its remaining lands such as to prohibit surgery centers, pharmacies, medical clinics, imaging centers, or physical therapy clinics within 300 feet of lot 3 for a period of 10 years.

In addition to the above-mentioned price, the terms of the purchase sale agreement include the following terms:

- (i) Property taxes for 2021 will be paid by the City. Real estate taxes for the calendar year of the Closing will be prorated to the Closing Date based on the latest available tax rate and assessed valuation.
- (ii) Electricity and other utility charges for which Seller is liable, if any, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing.

- (iii) City shall be responsible for the cost of (i) preparing the Deed and (ii) one-half (1/2) of the revenue stamps/transfer taxes payable in connection with recording the Deed.
- (iv) Purchaser shall pay the cost of (a) title insurance, (b) one-half (1/2) of the revenue stamps/transfer taxes, and (c) the costs of recording the deed.
- (v) Escrow fees will be evenly divided between the parties.

### **Discussion**

City Administration anticipates that proposed sale will provide a significant springboard for development of this underutilized property while reserving the land for the proposed State Veterans Cemetery and honoring the intent of the Veteran's Legacy Plan created for this property.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

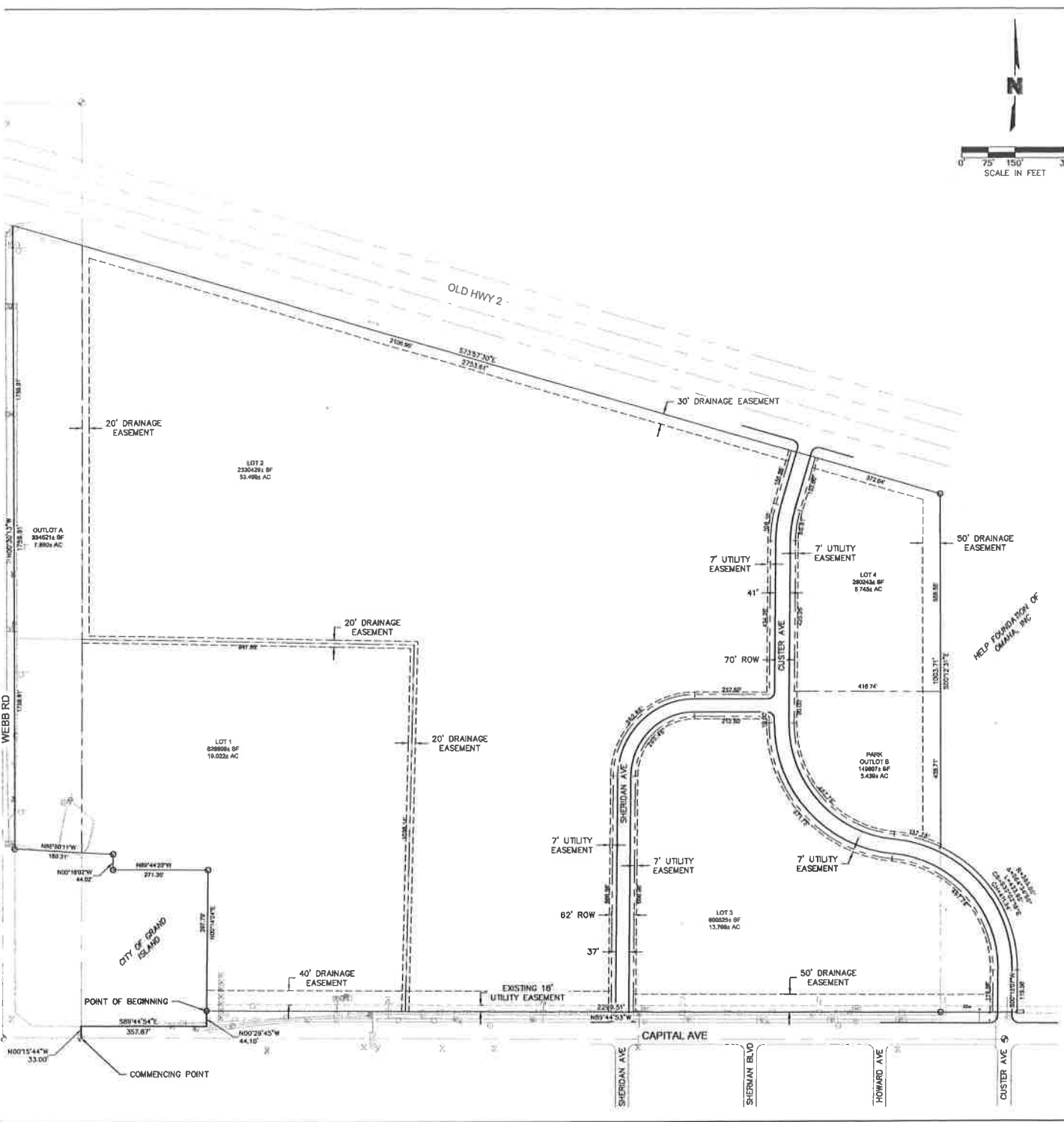
1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue


### **Recommendation**

City Administration recommends City Council approval of the Ordinance.

### **Sample Motion**

Move to approve Ordinance #9875.





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Grand Island, NE 68801  
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**LOT LAYOUT**

**VETERANS LEGACY SOUTH  
PRELIMINARY PLAN**

**GRAND ISLAND, NEBRASKA**

REV. NO.	DATE	REVISIONS DESCRIPTION	REVISIONS

drawn by: BMG

checked by: BMG

approved by: BMG

project no.: 021-6388

drawing no.: 12.17.2021

**SHEET**

**1 of 4**

## **REAL ESTATE PURCHASE AND SALE AGREEMENT**

[Lot Three (3), Veterans Legacy South Subdivision, City of Grand Island, Hall County,  
Nebraska]

This Real Estate Purchase and Sale Agreement ("**Agreement**") is entered into as of the last date on which this Agreement has been executed by both parties as indicated under the signature lines for the parties (the "**Effective Date**") by and between the City of Grand Island, a body politic and corporate and a political subdivision of the State of Nebraska ("**Seller**"), and CHI Nebraska, a Nebraska nonprofit corporation, or its assignee/nominee ("**Purchaser**").

1. **Purchase and Sale.** Contingent upon and subject to subsequent agreement of the parties hereto regarding the specific location, area, and boundaries of the Land (as hereinafter defined), Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, in accordance with the terms and conditions set forth in this Agreement and for the Purchase Price set forth in Section 2 (i) a parcel of land containing approximately thirteen (13) acres in area located in parcel # 400145363, in the south half of Section Five (5), Township Eleven (11) North, Range Nine (9) West of the 6<sup>th</sup> PM, Hall County, Nebraska, as generally depicted on Exhibit A attached hereto (the "**Land**") and any and all improvements thereon (the "**Improvements**;" together, the Land and the Improvements are referred to in this Agreement as the "**Real Property**"); (ii) all appurtenances belonging to the Real Property (items (i) through (ii), collectively, the "**Property**"). If within 60 days following the Effective Date of this Agreement the parties have been unable to agree as to the specific location, area, and boundaries of the Land to be sold, this Agreement may be terminated by either Purchaser or Seller and Purchaser's Initial Payment (as hereinafter defined) shall be returned to Purchaser and all parties shall have no further obligations hereunder except for the indemnities and restoration obligation set forth in Section 4.D.

2. **Payment of Purchase Price; Initial Payment.**

- A. The total purchase price (the "**Purchase Price**") for the Property is Three Hundred Eighteen Thousand Five Hundred Seventy-Five Dollars (\$318,575). Notwithstanding the foregoing, the final Purchase Price shall be adjusted, upwards or downwards, as applicable, based on the results of the Survey (as defined in Section 5 below), at the rate of Twenty-Five Thousand Dollars (\$25,000.00) per acre for any deviation in area of the Land from fifteen (15) acres. Within five (5) business days after the Effective Date of this Agreement, Purchaser shall deposit with First American Title Insurance Company (the "**Title Company**" and the Title

Company acting in its role as escrow agent, the “Escrow Agent”) the sum of Twenty-five thousand Dollars (\$25,000.00) by federal wire transfer of immediately available funds or by check, subject to collection (such sum, together with any interest earned thereon or any additions made thereto, collectively, the “Initial Payment”). The Initial Payment shall be held by Escrow Agent in accordance with Section 2.B. below. At the time of closing of the purchase and sale of the Property (the “Closing”), the Initial Payment shall be applied to the Purchase Price. The balance of the Purchase Price shall be due and payable in full at Closing and shall be delivered by Purchaser by federal wire transfer of immediately available funds in time for receipt by Escrow Agent not later than 3:00 p.m. Central Time on the Closing Date (as defined in Section 7 below).

- B. The Initial Payment shall be held in escrow by the Escrow Agent in a federally insured account. Any interest earned on the Initial Payment shall become part of the Initial Payment. Except as otherwise provided in this Agreement, the Initial Payment shall be applied to the Purchase Price at Closing as provided under Section 2.A. above. The Escrow Agent shall have no liability to any party in acting or refraining from acting hereunder except for willful misfeasance and shall perform such function without compensation. In the event of any dispute between the parties to this Agreement, the Escrow Agent may deposit the Initial Payment with a court of competent jurisdiction for the purpose of obtaining a determination of such controversy.

3. Condition of the Property.

- A. The Property is being sold in “AS IS,” “WHERE IS,” “WITH ALL FAULTS,” ENVIRONMENTAL OR OTHERWISE, INCLUDING BOTH LATENT AND PATENT DEFECTS, AND WITHOUT ANY REPRESENTATIONS AND WARRANTIES OF SELLER WHATSOEVER. PURCHASER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND PURCHASER RELEASES SELLER FROM AND AGAINST ANY ACTION, LOSS, DAMAGE OR OTHER CLAIM AGAINST SELLER REGARDING THE CONDITION AND USE OF THE PROPERTY. PURCHASER REPRESENTS AND WARRANTS TO SELLER THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, PURCHASER HAS ENTERED INTO THIS AGREEMENT WITHOUT RELYING UPON ANY REPRESENTATION OR WARRANTY

BY THE SELLER AS TO THE CONDITION OF THE PROPERTY; AND THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MARKETABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, DESIGN, WORKMANSHIP OR OTHERWISE GIVEN BY SELLER TO PURCHASER IN CONNECTION WITH THIS TRANSACTION EXCEPT AS MAY BE SET FORTH IN THIS AGREEMENT.

THE PURCHASER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, HAS NOT RELIED ON ANY REPRESENTATIONS, WARRANTY, PROMISE OR STATEMENT, EXPRESS OR IMPLIED, OF THE SELLER, OR ANYONE ACTING FOR OR ON BEHALF OF THE SELLER, OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND ALL MATTERS CONCERNING THE PROPERTY HAVE BEEN OR SHALL BE INDEPENDENTLY VERIFIED BY THE PURCHASER AND THE PURCHASER SHALL PURCHASE THE PROPERTY ON THE PURCHASER'S OWN PRIOR INVESTIGATION AND EXAMINATION OF THE PROPERTY (OR THE PURCHASER'S ELECTION NOT TO DO SO). It is understood and agreed that the Purchase Price has been adjusted by prior negotiation to reflect that all of the Property is sold by Seller and purchased by Purchaser subject to the foregoing.

- B. Purchaser further acknowledges and agrees that Purchaser is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller and agrees (subject to its rights to terminate this Agreement pursuant to Section 4.E. of this Agreement) to accept the Property at the Closing and waive all objections or claims against Seller (including any right or claim of contribution) arising from or related to the Property or to any hazardous materials on the Property.

4. **Inspection Period.**

- A. Purchaser, at Purchaser's sole risk and expense, may inspect the Property, and make such investigations, tests and studies of the Property as Purchaser deems appropriate, subject to the terms, conditions and limitations of this Agreement during the period of time from the Effective Date until 5:00 p.m. Central on the date that is ninety (90) calendar days following the Effective Date, time being of the essence (the "**Inspection Period**"). Purchaser shall be entitled to conduct any soil tests or other invasive tests on the Property upon prior notice to

Seller. Purchaser shall promptly deliver to Seller copies of all written inspection results, tests and studies. Such inspections, tests and other activities on the Property ("**Purchaser's Studies**"): (i) shall not unreasonably interfere with Seller's use of the Property, (ii) shall not damage the Property, (iii) shall be commercially reasonable, (iv) shall not unreasonably disturb or interfere with the use of the Property or conduct of business by Seller or any tenants (and shall be subject to the rights of tenants), and (v) shall be conducted in accordance with customary standards and industry practices and in compliance with all laws, rules, regulations and other legal requirements. Following each entry by Purchaser, Purchaser, at Purchaser's sole cost and expense, shall, to the extent of any damage to the Property caused by Purchaser's inspection, restore the Property to the same condition as its original condition prior to any of Purchaser's Studies. All such restoration shall be fully completed prior to the end of the Inspection Period, time being of the essence, and such restoration obligations shall survive any termination of this Agreement. Seller shall cooperate with Purchaser in its inspection, but shall not be obligated to incur any liability or expense in connection therewith.

- B. Purchaser acknowledges that Seller has made or will within seven (7) days following the Effective Date make available to Purchaser certain documents, files, materials, data or information relating to the Property or the transactions contemplated by this Agreement (collectively, "**Property Information**"), and Purchaser accepts that such Property Information may not be accurate or complete and that Seller has not made any independent investigation or verification of any such information. Seller makes no representation or warranty whatsoever as to the accuracy, validity or completeness of any Property Information delivered by or on behalf of Seller to Purchaser; provided, however, that Seller represents, to Seller's Knowledge, such Property Information, excluding any reports or information delivered as to the environmental condition of the Property, is not materially false or inaccurate in a material respect. As used in this Agreement, "**Seller's Knowledge**" means the actual present (and not the constructive) knowledge of Seller's officials, officers, employees, agents, and consultants and does not imply that such individuals have or should have conducted any inspection, examination or other inquiry to determine the accuracy of any representation or other statement made "to Seller's Knowledge" in this Agreement. Seller shall not be obligated (i) to collect, provide, compile, deliver, or make available any Property Information other than written material information in Seller's possession or control.



- C. Prior to entering the Property, and throughout any period that it (or any of its agents, representatives or consultants) shall enter or be present upon the Property, Purchaser shall maintain (and, as applicable, cause its agents, consultants and representatives to maintain), at its and their expense, a policy of commercial general liability insurance, with a broad form contractual liability endorsement and with a combined single limit of not less than \$2 million per occurrence insuring against any injuries or damages to persons or property that may result from such entry and from any and all activities undertaken by or on behalf of Purchaser (or its representatives) during the course thereof. All of such insurance policies shall name Seller (and any entity reasonably designated by Seller) as an additional insured. All such insurance shall be on an "occurrence form" and otherwise be in such form(s) and with such insurance company(ies) as are reasonably acceptable to Seller. Prior to its first entry upon the Property, Purchaser shall deliver to Seller a copy of such insurance policy(ies) or a certificate(s) thereof stating that Seller may rely thereon.
- D. Purchaser shall indemnify, defend and hold Seller harmless from any and all claims, liabilities, costs or expenses arising out of such inspections of and entries onto the Property, including, but not limited to, liability for personal injury (including death) and property damage caused by Purchaser, its agents, employees and consultants and from and against any and all liens or other encumbrances filed against the Property in connection with any work performed as part of Purchaser's Studies. Purchaser, at its expense, shall cause the satisfaction or discharge of record all such liens and encumbrances within ten (10) days after notice or other knowledge thereof.
- E. If Purchaser, in its sole discretion, determines that the Property is suitable to Purchaser, Purchaser may by written notice to Seller (the "**Continuation Notice**") delivered to Seller on or before 5:00 p.m. Central of the last day of the Inspection Period, elect to proceed with the Closing. In the event of such timely delivery of the Continuation Notice, time being of the essence, the parties shall proceed with the Closing in accordance with and subject to the terms of this Agreement. In the event Purchaser does not deliver the Continuation Notice in a timely manner, Purchaser shall be deemed to have elected not to proceed with the Closing, in which event the Escrow Agent shall return the Initial Payment to Purchaser, and the parties shall have no further obligations hereunder except for the indemnities and restoration obligations set forth in Section 4.D, and any other provision of this Agreement that expressly survives termination

of this Agreement. If Purchaser does timely deliver the Continuation Notice, then at the end of the Inspection Period, the Initial Payment shall be nonrefundable, except only for (i) a Seller default under Section 14 that is not cured within the period set forth in Section 14, or (ii) any other failure of any other condition precedent to Purchaser's obligation to close hereunder, or (iii) as otherwise required under the terms of this Agreement.

- F. In the event a valid remonstrance petition objecting to the sale of the Property is certified by the County Election Commissioner to the Seller, this Agreement may be terminated by either Seller or Purchaser and the Escrow Agent shall return the Initial Payment to Purchaser, and all parties shall have no further obligations hereunder except for the indemnities and restoration obligation set forth in Section 4.D. and any other provision of this Agreement that expressly survives termination of this Agreement.
- G. If this Agreement is terminated or, if Purchaser does not purchase the Property on the Closing Date (as hereinafter defined), subject only to applicable postponements of the Closing that are expressly provided for herein, Purchaser shall cause all Property Information to be either returned to Seller or at Seller's written direction to be destroyed.

5. **Title and Survey.**

- A. Seller shall convey to Purchaser and Purchaser shall accept title to the Property (subject only to the Permitted Exceptions) conveyed by the Deed (as hereinafter defined). Title shall be subject to the matters set forth below (collectively, the "**Permitted Exceptions**"): (i) matters that are disclosed in the title commitment (the "**Title Commitment**") procured by Purchaser from the Title Company which Purchaser either fails to object with respect thereto in accordance with Section 5.B below or is otherwise deemed to have waived such Objection in accordance with Section 5.C below; (ii) any state of facts (including, without limitation, those relating to physical condition or variations in location or dimension) that are disclosed by a survey of the Property procured by Purchaser (the "**Survey**") which Purchaser either fails to object with respect thereto in accordance with Section 5.B below or is otherwise deemed to have waived such Objection in accordance with Section 5.C below; (iii) all covenants, easements, reservations, restrictions, agreements and other matters that are expressly provided for or permitted by this Agreement; (iv) any and all present and future laws, regulations, restrictions, requirements, ordinances, resolutions and orders affecting the Property (including, without limitation, any of the foregoing relating to zoning, building, environmental protection

and the use, occupancy, subdivision or improvement of the Property)(collectively, “Laws”); (v) all liens for real estate taxes, special assessments, and other governmental charges and impositions not yet due and payable; (vi) all recorded subdivision agreements; (vii) subject to Purchaser’s review and approval of the executed copy, the Farm Lease between Farmers National Company (“Agent”) and City of Grand Island (“Owner”) and Mike Panowicz and Matt Panowicz (“Operator”); (viii) any other matter that is either expressly waived by Purchaser in writing, or deemed waived by Purchaser or “discharged” pursuant to the terms of this Agreement; and (ix) the standard printed exceptions and exclusions to coverage, set forth in the form of title policy utilized by the Title Company other than (A) any of such standard printed exceptions that are customarily removed with a recent survey, and the Owner’s Affidavit contemplated by Section 10.A (ii) and (B) any so-called “gap coverage” exclusion, it being a condition to the Purchaser’s obligation to close hereunder, but shall not be an obligation hereunder for Seller to cause, the Title Company to agree at the Closing to insure over said gap between the effective date of the most recent Title Commitment and the Closing, subject to any otherwise allowed Permitted Exception.

- B. If, following the Effective Date, Purchaser determines that any matter affecting title to the Property is not satisfactory to Purchaser and which is either shown on the Title Commitment or Survey, Purchaser shall have until the earlier of (i) the date that is fifteen (15) days prior to the expiration of the Inspection Period, or (ii) ten (10) business days following receipt of both the Title Commitment and Survey (the “**Title Objection Date**”) to provide written notice (the “**Title Objection Notice**”) to Seller of its objection with respect thereto (each an “**Objection**”). Purchaser shall deliver or cause to be delivered to the Seller a copy of such Title Commitment, together with legible copies of all instruments identified as exceptions therein and such Survey and any survey updates, modifications and supplements, together with any legal description of the Real Property prepared in connection therewith by the third (3rd) business day following Purchaser’s receipt of the Title Commitment or Survey, as applicable (but in any event no later than the Title Objection Date).
- C. Seller may, within five (5) business days after receipt of the Title Objection Notice, notify Purchaser in writing whether Seller elects to attempt to cure such Objections. If Seller fails to give such notice, Seller will be deemed to have elected not to attempt to cure such Objections, in which case, Purchaser shall have the right to either deliver the Continuation Notice or choose

not to deliver the Continuation Notice prior to the expiration of the Inspection Period. If Purchaser delivers the Continuation Notice, Purchaser will be deemed to have waived such Objections. If Seller elects to attempt to cure such Objections and Purchaser has not otherwise terminated this Agreement under Section 4.E., Seller shall have the right to attempt to remove, satisfy or otherwise cure each Purchaser's Objection that Seller has agreed to attempt to cure for a period of thirty (30) days following Seller's receipt of the Title Objection Notice (the "**Cure Period**"). If Seller is unable to cure such Objections prior to the expiration of the Cure Period, Seller may extend the Cure Period for an additional forty-five (45) days (or if such 45<sup>th</sup> day is not a business day, to the next following business day), for the purposes of discharging, or attempting to discharge, any Objections. Purchaser may, nevertheless, accept such title as Seller may be able to convey, without reduction of the Purchase Price or any credit or allowance against the Purchase Price and without any liability on the part of Seller.

- D. Purchaser's sole remedy with respect to any Title Objection contained in a Title Objection Notice in which Seller has not expressly agreed to attempt to cure, or which Seller has elected to cure but has failed to effect such cure on or prior to Closing, shall be to terminate this Agreement or accept title to the Property subject to such Title Objection.
- E. The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every agreement and obligation on the part of Seller to be performed under this Agreement, except those, if any, which are herein specifically stated to survive Closing. Unless otherwise stated, no obligation, liability, representation or warranty of Seller shall survive Closing.
- F. Notwithstanding anything to the contrary contained herein, unless otherwise undertaken in writing by Seller, Seller shall have no obligation to bring any action or proceeding or otherwise to incur any expense whatsoever to eliminate or modify such Objections or to cure any of the same; provided, however, that at or before Closing Seller shall be obligated to discharge or cause to be discharged the following Objections (collectively, "**Seller's Discharge Obligations**"): (A) any Objection that constitutes a mortgage that Seller voluntarily created or assumed encumbering the Property, (B) any Objection that constitutes a consensual lien that Seller voluntarily causes to be recorded against the Property after the Effective Date and (C) any Objection that constitutes a mechanic's lien of record resulting from work that Seller has

performed or caused to be performed at the Property, provided that Seller shall have the right to bond off and remove any such mechanic's lien.

6. **Conditions to Closing.**

- A. Purchaser's obligation to purchase the Property shall not be contingent or conditioned upon Purchaser's ability to obtain, or Purchaser's receipt of, financing of any kind.
- B. Purchaser's required performance under this Agreement and obligation to purchase the Property shall be contingent upon and is subject to:

i. Purchaser obtaining an appraisal of the Property (the "**Appraisal**"), which Appraisal shall indicate an appraised value of not less than the Purchase Price (the "**Appraisal Contingency**"). The cost of the Appraisal shall be borne by Purchaser. This Appraisal Contingency is a limited one and must be satisfied within the Inspection Period. In the event Purchaser is unable to satisfy the Appraisal Contingency, Purchaser may either elect to (a) deliver the Continuation Notice, in which event this Agreement shall remain in full force and effect; or (b) choose not to deliver the Continuation Notice. In the event Purchaser does not deliver the Continuation Notice in a timely manner, Purchaser shall be deemed to have elected not to proceed with the Closing, in which event, the Escrow Agent shall return to Purchaser the Initial Payment and on payment this Agreement shall have no force and effect and neither party shall have any rights against the other. If the Continuation Notice is received by Seller prior to the last day of the Inspection Period, this Appraisal Contingency shall be deemed satisfied or waived without any further affirmative action on the part of either party; and

ii. The parties' mutual agreement regarding the form of Restrictive Covenant Agreement ("**RCA**") containing restrictive covenants to run with the land concerning the use of Seller's retained land within 300 feet of the Property ("**Seller's Property**"). If the parties are unable to agree upon the terms and conditions of such restrictive covenants, Purchaser may terminate this Agreement or accept title to the Property without such restrictive covenants recorded against Seller's Property. If Purchaser elects to terminate this Agreement pursuant to this Section 6.B.ii., the Escrow Agent shall return to Purchaser the Initial Payment and on payment this Agreement shall have no force and effect and neither party shall

have any rights against the other. The restrictive covenants to be included in the RCA and recorded against Seller's Property are reflected on Exhibit D attached hereto.

C. Seller's required performance and obligation to sell the Property shall be contingent upon and subject to:

- i. Seller's compliance with the requirements of Neb.Rev.Stat. §16-202 including published public notice of the proposed conveyance of the Property and completion of the statutory remonstrance period without Seller's receipt of any remonstrance petition signed by sufficient number of registered voters objecting to the sale of the Property within the time period allowed by statute; and
- ii. The parties mutual agreement regarding the RCA and the restrictive covenants to run with the land concerning use of Seller's Property. If the parties are unable to agree upon the terms and conditions of such restrictive covenants to be included in the RCA and recorded against Seller's Property, Purchaser may terminate this Agreement or accept title to the Property without such restrictive covenants recorded against Seller's Property.

7. **Closing.** The Closing shall occur during normal business hours thirty (30) days following the later of (i) the expiration of the Inspection Period, or (ii) the expiration of the Cure Period (as the same may be extended) (the "**Closing Date**") or as agreed between the parties. Closing shall take place at the offices of the Title Company, or at such other place as the parties shall mutually agree. Purchaser agrees to conduct closing through a pre-closing, escrow or other arrangement reasonably requested by Seller to facilitate closing mechanics and to reduce or eliminate the need for Seller and its attorneys to be physically present at the Closing. TIME SHALL BE OF THE ESSENCE with respect to Purchaser's obligation to effectuate the Closing no later than the Closing Date.

8. **Prorations, Apportionments and Adjustments at Closing.**

- A. The following shall be apportioned with respect to the Property as of 12:01 a.m., on the Closing Date, as if Purchaser were vested with title to the Property during the entire day upon which the Closing occurs:
  - (i) All special assessments and all real and personal property, ad valorem taxes for the calendar year preceding the year of the Closing will be paid by the Seller. Ad valorem taxes for the

calendar year of the Closing will be prorated to the Closing Date based on the latest available tax rate and assessed valuation.

- (ii) electricity and other utility charges for which Seller is liable, if any, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing.

B. The provisions and obligations of this Section 8 shall survive the Closing.

9. **Transaction Costs.** Seller shall be responsible for the cost of (i) preparing the Deed, (ii) one-half (1/2) of the revenue stamps/transfer taxes payable in connection with recording the Deed, and (iii) releasing all liens that constitute Seller's Discharge Obligations, including recording the applicable releases. Purchaser shall pay the cost of (i) conducting its due diligence studies, including any Appraisal, Title Commitment, and Survey, as well as the cost of all endorsements, if any, required by Buyer to be issued in connection with the owner's policy of title insurance, (ii) the premium payable in connection with the issuance by the Title Company of an ALTA standard owner's policy of title insurance in the amount of the Purchase Price, and (iii) one-half (1/2) of the revenue stamps/transfer taxes. Each party shall pay its own attorneys' and consultants' fees. The parties shall share equally payment of the cost of any escrow charges. The provisions of this Section 9 shall survive closing.

10. **Closing Documents and Deliveries.**

A. At the Closing, Seller shall deliver the following:

- (i) The executed and acknowledged Warranty Deed in the form attached hereto as Exhibit B (the "Deed"), subject to the Permitted Exceptions, sufficient for recording, conveying fee simple title to the Property which Purchaser shall cause to be recorded;
- (ii) A Certificate and Indemnity, in the form attached as Exhibit C;
- (iii) An affidavit of Seller pursuant to Section 1445(b) (2) of the Internal Revenue Code of 1986, as amended, stating that Seller is not a foreign person within the meaning of such Section;
- (iv) A closing statement, executed by Seller; and
- (v) Any other documents as may be reasonably required by the Title Company.

B. At the Closing, Purchaser shall deliver the following:

- (i) The Purchase Price, in cash or immediately available funds;
- (ii) A closing statement, executed by Purchaser; and
- (iii) Any other documents as may be reasonably required by the Title Company.

11. **Representations and Warranties.**

- A. Seller represents and warrants to Purchaser as of the Effective Date and as of the date of Closing that (i) the execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller and does not require the consent of any third-party, (ii) the individual executing this Agreement on behalf of Seller has the authority to bind Seller to the terms of this Agreement, and (iii) Seller a body politic and corporate and a political subdivision of the State of Nebraska and has the power and authority to enter into and perform its obligations under this Agreement subject to the public right of remonstrance as provided by Nebraska Revised Statutes Sec. 16-202.
- B. Purchaser represents and warrants to Seller as of the Effective Date and as of the date of Closing that (i) the execution, delivery and performance of this Agreement by Purchaser have been duly authorized by all necessary action on the part of Purchaser and do not require the consent of any third-party, (ii) the individual executing this Agreement on behalf of Purchaser has the authority to bind Purchaser to the terms of this Agreement, and (iii) Purchaser is a duly organized corporation under the laws of the State of Colorado and in good standing under the laws of the State of Nebraska and has the power and authority to enter into and perform its obligations under this Agreement.
- C. Purchaser acknowledges and agrees that, except as expressly provided in this Agreement, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning or with respect to (i) the value, nature, quality, or condition of the Property, including the water, soil, and geology, (ii) the income to be derived from the Property, (iii) the suitability of the Property for any and all activities and uses that Purchaser or any tenant may conduct thereon, (iv) the compliance of or by the Property or its operation with any law, statute, ordinance, regulation, rule, policy, order or other determination of any applicable governmental authority, (v) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property, (vi) the manner or quality of the construction or materials, if any, incorporated into the Property, (vii) the manner, quality, state of repair, or lack of repair of the Property, (viii) compliance with any environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including the existence in or on the Property of hazardous materials, or (ix) any other matter with respect to the Property.



Additionally, Seller shall not be liable or bound by any statement, representation or information made or furnished by any broker or other person representing or purporting to represent Seller, other than contained herein.

12. **Environmental.** Purchaser hereby agrees to release and hold harmless Seller, its parents, subsidiaries, officers, directors, agents, affiliates, successors and assigns, from and against any and all claims, lawsuits, liabilities, losses, damages, and expenses, of any nature whatsoever, including, without limitation, personal injury, property damage, damage to natural resources, costs of environmental investigation or response (including consultants' and attorneys' fees arising by reason of any of the aforesaid) arising directly or indirectly from, out of or by reason of the release, discharge, disposal, or other presence or existence of Hazardous Materials on, above, under, or in the Property and claimed or imposed under Environmental Laws; provided, however, that Purchaser agrees to hold harmless Seller only for such aforesaid items to the extent the underlying basis for the event or circumstances giving rise to the claim, lawsuits, liabilities, losses, damages, or expenses occurred and is properly attributable to the period after the Closing; and provided further, notwithstanding anything herein to the contrary, Purchaser does not release or agree to hold harmless Seller for any of the aforesaid items to the extent the underlying cause thereof arises from or otherwise is attributable to Seller's adjacent property (or any use thereof by Seller) or any other property beyond the Property being purchased by Purchaser hereunder. The term "Hazardous Materials" means any substance or material that is regulated, defined or designated by any governmental authority, (whether federal, state, county, municipal or other local authority) as hazardous, extremely hazardous, imminently hazardous, dangerous or toxic, or as a pollutant, contaminant or toxic waste. The term "Environmental Laws" means, collectively, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. 9601 et seq., as amended; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C.A. 6901 et seq., as amended; the Clean Air Act ("CAA"), 42 U.S.C.A. 7401 et seq., as amended; the Clean Water Act ("CWA"), 33 U.S.C.A. 1251 et seq., as amended; the Occupational Safety and Health Act ("OSHA"), 29 U.S. 655 et seq.; and any other law, statute, ordinance, regulation, rule, policy, order or other determination of any governmental authority (whether federal, state, county, municipal or other local authority) imposing liability or establishing standards of conduct concerning any hazardous, toxic, radioactive, biohazardous or dangerous waste, substance or

materials, including without limitation, any regulations adopted and publications promulgated with respect thereto.

13. **Condemnation and Destruction.** Seller shall bear the risk of all loss or damage to the Property from all causes until Closing. In the event, at any time between the making of this Agreement and Closing, all or any portion of the Property is condemned by any legally constituted authority for any public use or purpose, or any portion of the Property is damaged or destroyed by whatever cause, then Purchaser may elect either to: (i) terminate this Agreement, in which event Initial Payment paid by Purchaser shall be immediately refunded by the Title Company to Purchaser, and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement; or (ii) proceed to Closing with no reduction in the Purchase Price, in which event Seller shall deliver to Purchaser at Closing a duly executed assignment of Seller's interest in all insurance proceeds payable as a result of any such fire or other casualty, if any, or all awards made and rights available as a result of the condemnation. In the event of a condemnation in which Purchaser does not elect to terminate this Agreement pursuant to the foregoing terms, then the term "**Property**" as used herein shall thereafter refer to the Property less and except any-portion thereof taken by such condemnation.

14. **Failure of Conditions; Default.** If Seller defaults under this Agreement, and such default is not cured within ten (10) business days after Seller's receipt of written notice thereof from Purchaser, Purchaser at its sole option may: (i) terminate this Agreement by written notice delivered to Seller on or before the Closing, in which event Purchaser shall be entitled to full return of the Initial Payment, (ii) waive such defaults and proceed to Closing, (iii) grant Seller an additional thirty days to cure its default or (iv) enforce specific performance of this Agreement. Purchaser hereby knowingly waives any and all right to institute any action, claim or suit for damages against Seller with respect to any default by Seller hereunder. If Purchaser defaults under this Agreement, and such default is not cured within ten (10) business days after Purchaser's receipt of written notice thereof from Seller, then Seller, as its sole and exclusive remedy, may terminate this Agreement and receive from Escrow Agent the full amount of the Initial Payment required to be deposited as full liquidated damages. Seller and Purchaser agree that upon a default by Purchaser the damages that would be sustained by Seller will be uncertain and not readily ascertainable, but agree that the amount of the Initial Payment is a

reasonable estimate of such damage. If Purchaser closes the transaction which is the subject of this Agreement with actual knowledge that any of Seller's representations made in Section 11 are not true as of the date that such representation was made or as of the Closing Date, Purchaser shall be deemed to have waived any claim for misrepresentation or breach of warranty arising with respect to such particular representation. Nothing contained in this Section 14 shall in any way limit any indemnification (and any related hold harmless and defense) obligation of Purchaser or Seller pursuant to this Agreement. This Section 14 shall expressly survive the termination of this Agreement.

**15. Limitations on Liability.**

- A. Except as expressly provided in this Agreement, Purchaser forever irrevocably releases Seller, its officials, officers, employees, representatives and agents (the "**Seller Group**") from any and all liability and claims arising out of (i) Property Information or opinions made or furnished by or on behalf of Seller (except only for any representations of Seller that are expressly set forth in this Agreement) and (ii) failure or refusal by Seller to disclose or provide Property Information or opinions.
- B. In no event whatsoever shall any official, officer, shareholder, parent, member, manager, affiliate or agent of Seller or Purchaser have any obligation or liability arising from, or in connection with, this Agreement or the transactions contemplated herein.
- C. Neither Seller or Purchaser shall be liable for any indirect, incidental, speculative, punitive, special, or consequential damages of any kind including, but not limited to, loss of revenue, loss of goodwill, loss of business opportunity, loss of profits, losses related to third-party claims or any one or more of them arising in any manner from this Agreement or the performance or nonperformance of obligations related thereto regardless of the foreseeability thereof.
- D. The provisions of this Section 15 shall survive the Closing or the earlier termination of this Agreement.

- 16. Certificate of Occupancy and Zoning.** Purchaser shall be responsible for obtaining, at Purchaser's sole cost and expense, any certificate of occupancy, zoning permit, certificate or other similar municipal approval required in connection with the sale and transfer of the Property to the Purchaser. If any work is required in order to issue such certificate(s), such

costs shall be borne by Purchaser. Seller neither makes nor has made any representation to the Purchaser about the provisions or requirements of the applicable zoning ordinances.

17. **Assignment**. Purchaser shall not have the right to assign its interest in this Agreement without the prior written consent of Seller which consent shall not be unreasonably withheld.

18. **Notices**. All notices and other communications hereunder shall be addressed to the parties as follows:

If to Seller:           City Clerk  
                              City of Grand Island  
                              100 East First Street  
                              Grand Island, NE 68802

And to:

                              City Attorney  
                              City of Grand Island  
                              100 East First Street  
                              Grand Island, NE 68802

If to Purchaser:   Common Spirit Health  
                              3400 Data Drive  
                              Rancho Cordova, CA 95670  
                              Attn: National Real Estate Services

And to:

                              CommonSpirit Health  
                              3200 N. Central Avenue, 23rd Floor  
                              Phoenix, AZ 85012  
                              Attn: Legal Team

And to:

                              CommonSpirit Health  
                              198 Inverness Drive West  
                              Englewood, CO 80112  
                              Attn: System SVP National Real Estate Services

Any notice, demand or other communication (each, a “notice”) that is given pursuant to this Agreement by either Seller or Purchaser to the other party, shall be (i) given in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth above, and (iii) delivered via either (w) hand delivery, (x) nationally recognized courier service (e.g., DHL, Federal Express, Express Mail), or (y) certified U.S. mail postage prepaid with return receipt

requested. Any such notice shall be deemed given, and effective for purposes of this Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its attorneys. Each party may, from time-to-time, designate an additional or substitute required address(es) for notices delivered to it (provided, that such designation must be made by notice given in accordance with this Section 19.

19. **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns.

20. **Governing Law.** The laws of the State of Nebraska shall govern the validity, construction, enforcement and interpretation of this Agreement.

21. **Brokers.** Purchaser represents and warrants that Purchaser has not dealt with any broker, agent, finder or similar party in connection with the transaction contemplated hereby, and Purchaser hereby indemnifies and holds harmless Seller from any liability, cost or expense (including, without limitation, reasonable attorneys' fees and costs of enforcement of the foregoing indemnity) arising out of the falsity of the foregoing representation.

Seller represents and warrants that Seller has not dealt with any broker, agent, finder or similar party in connection with the transaction contemplated hereby, and Seller hereby indemnifies and holds harmless Purchaser from any liability, cost or expense (including, without limitation, reasonable attorneys' fees and costs of enforcement of the foregoing indemnity) arising out of the falsity of the foregoing representation. The provisions of this Section shall survive the Closing or any earlier termination of this Agreement.

22. **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Neither this Agreement nor any memorandum thereof shall be recorded.

23. **Time of the Essence.** The parties hereto expressly agree that time is of the essence with respect to this Agreement.

24. **Entire Agreement.** This Agreement embodies the entire agreement of the parties with respect to the transaction herein contemplated, superseding all prior agreements and communications

whether oral or written. Any amendments hereto shall be in writing and executed by the party against whom enforcement of the modification is sought.

25. **Severability**. If any provision of this Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and be enforced to the fullest extent permitted by law.
26. **Captions**. The captions of the various Section in this Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.
27. **No Offer**. This Agreement shall be of no force or effect unless and until a fully-executed copy, signed by all parties hereto, is delivered to both Seller and Purchaser. The submission of this Agreement to Purchaser for review does not constitute an offer or option to purchase the Property.
28. **Construction**. The parties acknowledge that the parties and their attorneys have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.
29. **Terminology**. As used in this Agreement, (i) the phrase “and/or” when applied to one or more matters or things shall be construed to apply to any one or more or all thereof as the circumstances warrant at the time in question, (ii) the terms “herein” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular Section, unless expressly so stated, (iii) the term “including,” whenever used herein, shall mean “including without limitation,” except in those instances where it is expressly provided otherwise, (iv) the term “person” shall mean a natural person, a corporation, a limited liability company, and/or any other form of business or legal association or entity, and (v) the term “business day” shall mean any day other than a Saturday or Sunday or Federal holiday or legal holiday in the State in which the Property is located.
30. **Merger Provision**. All understandings and agreements heretofore had between the parties hereto with respect to the subject matter of this Agreement are merged into this Agreement (together with any and all documents executed and delivered contemporaneously herewith and therewith), which alone completely expresses their agreement, and this Agreement is entered

into after full investigation, neither party relying upon any statement or representation made by the other not embodied in this Agreement. No person or entity other than a party to this Agreement shall be entitled to rely on this Agreement, and this Agreement is not made for the benefit of any person or entity not a party hereto.

31. **Non-Business Days.** If the date of Closing, the last day of the Inspection Period, or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the State of Nebraska, then the date for Closing, the last day of the Inspection Period, or such notice or performance shall be postponed until the next business day.

32. **Patriot Act Compliance.**

- A. Seller shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administrated by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, or any other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, if applicable, on the transactions described in this Agreement. Seller is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this Agreement.
- B. Purchaser shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administrated by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, or any other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, if applicable, on the transactions described in this Agreement. Purchaser is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this Agreement.

33. **Non-Recordability.** This Agreement shall not be recorded by Purchaser, and all recordation officers are hereby directed not to record this Agreement. Any recordation by Purchaser shall be a default by Purchaser hereunder.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives,  
executed this Agreement as of the Effective Date.

“SELLER”

City of Grand Island

By: \_\_\_\_\_

Roger G. Steele, Mayor

Date: \_\_\_\_\_

“PURCHASER”

CHI Nebraska

By: Travis Messina

TRAVIS MESSINA, SYSTEM SVP, NATIONAL REAL ESTATE

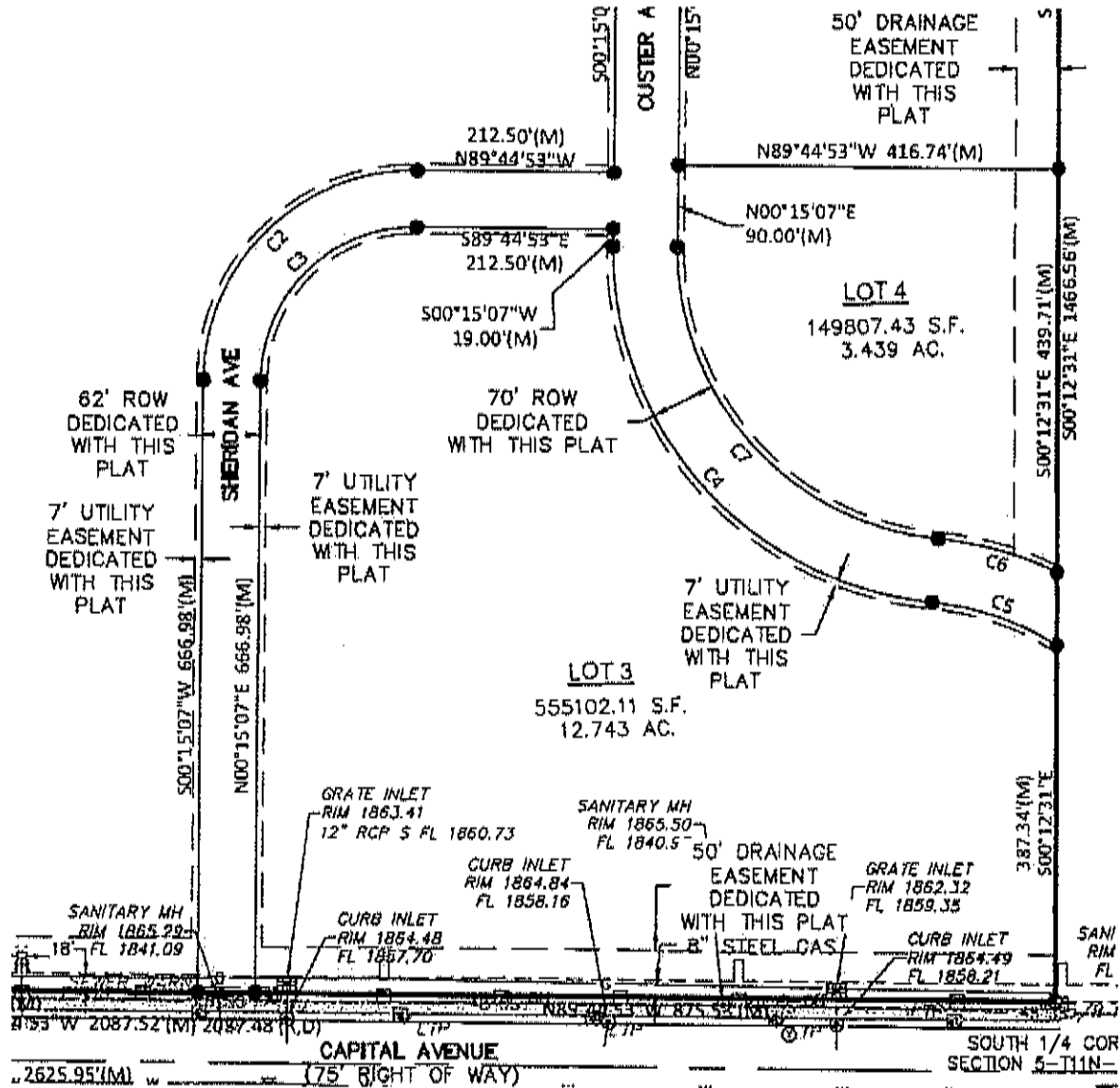
Date: 3/2/2022



## LAND

Lot Three (3) Veterans Legacy South Subdivision, City of Grand Island, Hall County, Nebraska.

Drawing below for illustrative purposes only.



**EXHIBIT B**

**Warranty Deed Form**

[To be prepared and mutually approved during the Inspection Period]

**EXHIBIT C**

**Certificate and Indemnity Form**

[To be prepared and mutually approved during the Inspection Period]

## **EXHIBIT D**

### **Restrictive Covenants on Seller's Property**

"No surgery centers, medical clinics, imaging centers, pharmacies, or physical therapy clinics shall be permitted within 300 feet of the Property for a period of ten (10) years from the Closing Date."

## ORDINANCE NO.9875

An ordinance approving a Purchase - Sale Agreement for the conveyance of property between the City of Grand Island ("City") and CHI Nebraska, a Nebraska nonprofit corporation ("Purchaser"); providing for the giving of notice of such conveyance and the terms thereof; providing for the right to file a remonstrance against such conveyance; and providing for publication and the effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. The Purchase - Sale Agreement between City and Purchaser is hereby approved and authorized with respect to City's conveyance to Purchaser the following described real estate, to wit:

Lot Three (3), Veterans Legacy South Subdivision, City of Grand Island, Hall County, Nebraska (the "Property").

SECTION 2. In consideration for such conveyance the Purchaser shall pay be Three Hundred Eighteen Thousand Five Hundred Seventy Five Dollars (\$318,575.00) cash consideration at closing. City shall be responsible for the cost of (i) preparing the Deed and (ii) one-half (1/2) of the revenue stamps/transfer taxes payable in connection with recording the Deed. Purchaser shall pay the cost of (i) title insurance, (ii) one-half (1/2) of the revenue stamps/transfer taxes, and (iii) the costs of recording the deed. Escrow fees will be evenly divided between the parties. Real estate taxes for 2022 will be prorated to the date of closing. Conveyance of the real estate above described shall be by warranty deed pursuant to the terms and conditions of the Purchase - Sale Agreement between City and Purchaser.

ORDINANCE NO. 9875 (Cont.)

SECTION 3. As provided by law, notice of such conveyance and the terms thereof shall be published for three consecutive weeks in the Grand Island Independent, a newspaper published for general circulation in the City of Grand Island. Immediately after the passage and publication of this ordinance, the City Clerk is hereby directed and instructed to prepare and publish said notice.

SECTION 4. Authority is hereby granted to the electors of the City of Grand Island to file a remonstrance against the conveyance of such within described real estate; and if a remonstrance petition against such conveyance is signed by registered voters of the City of Grand Island equal in number to thirty percent of the registered voters of the City of Grand Island voting at the last regular city election held in such City be filed with the City Council within thirty days of passage and publication of such ordinance, said property shall not then, nor within one year thereafter, be conveyed.

SECTION 5. If no remonstrance be filed against such conveyance, the Mayor may make, execute and deliver to CHI Nebraska a warranty deed for said real estate, and the execution of such deed is hereby authorized without further action on behalf of the City Council.

SECTION 6. Any ordinances or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 7. This ordinance shall be in force and take effect from and after its passage and publication in one issue of the Grand Island Independent as provided by law.

Enacted: March 8, 2022.

\_\_\_\_\_  
Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk