



City of Grand Island

Tuesday, May 24, 2022

Council Session

Item G-16

#2022-147 - Approving CHI-Nebraska Land Sale – Authorize Mayor to Execute Closing Documents

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Administrator

Meeting: May 26, 2022

Subject: CHI-Nebraska Land Sale – Approve Title Insurance Gap Indemnity

Presenter(s): Jerry Janulewicz

Background

CHI –Nebraska is requesting a title insurance gap policy as part of the closing of the sale. Gap closings are transactions where, after documents and funds are delivered, there remains an interval of time before recording of the documents. As with traditional closings, a title policy is issued insuring title typically from the date of the most recent title commitment. The title insurance company insures the “gap” between the closing table and the recording of documents. With respect to this transaction, funds will be wired to the title insurance company and we will send the deed by courier service for a closing on June 2. It will be several days thereafter before the deed is presented to the register of deeds for recording. The gap coverage insures against liens, special assessments, and other matters being recorded against the property during the gap period.

Discussion

The Buyer’s title insurance provider will not issue the gap coverage unless the City executes and delivers an “Owner’s Certification and Gap Indemnity” whereby the City agrees to indemnify the title insurance company for matters that would become an encumbrance or lien on the property during the gap period. City Council approval of the gap indemnity is required to permit its execution by the City’s Mayor on behalf of the City.

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 that the Council approve the Owner's Certification and Gap Indemnity.

Sample Motion

Move to approve the resolution for Owner's Certification and Gap Indemnity.

OWNER'S CERTIFICATION AND GAP INDEMNITY

A. The undersigned, City of Grand Island in the State of Nebraska (Owner”) which owns title to the real property located in the City of Grand Island, County of Hall, State of Nebraska (the “Property”) described in the Commitment for Title Insurance issued under Order NCS-1108782-LA2 (the “Commitment”), and in consideration of First American Title Insurance Company (the “Company”) issuing its policies of title insurance insuring an interest in the Property under said order number, hereby represents and certifies as follows:

1. That Owner is the owner of the Property and has not conveyed title to the Property to any third party and is not aware of any third party disputing the Owner’s ownership of the Property;
2. That there are no delinquent real estate taxes or unpaid current real estate taxes; nor any pending or levied assessments on the Property, including but not limited to those for trees, sidewalks, streets, sewers and water lines;
3. That Owner has not contracted for any labor to be supplied to the Property, or for any materials to be delivered thereto that might become the subject of a lien upon the Property except as shown on the attached Exhibit A, nor has Owner received any notice regarding, and does not know of any improvement, alteration or change in progress or recently completed by a tenant in or about the Property, except as shown on the attached Exhibit A. That there has not been any new construction or major repair work performed on the Property for at least One Hundred and Twenty (120) days prior to the date hereof that has not been completed and paid for in full, except as shown on the attached Exhibit A;
4. That the Owner is in sole possession of the Property, and that no other party has possession, or has a right of possession under any tenancy, lease or other agreement, written or oral, except as shown on the attached Exhibit B, and that in connection with any such possessory right, lease or other agreement, there are no rights of first refusal, rights or first offer, or options to purchase all or any portion of the Property.
5. That the covenants and restrictions, if any, shown in the Commitment have not been violated by the erection of the improvements on the Property or the use of the Property, and there are no known facts which would cause such violation, nor has Owner received any notices of any violations thereof.
6. In order to induce the Company to issue its policies of title insurance with full knowledge that the Company will rely upon the accuracy of the statements made herein, Owner hereby agrees to hold the Company harmless from and indemnify the Company against any and all loss, cost, damage or expense of every kind, including attorneys’ fees, which the Company may suffer or incur or become liable for under its said policies directly or indirectly, due to its reliance on the accuracy of the foregoing representations or in connection with its enforcement of its rights under this certificate and indemnity.

B. The Owner acknowledges and agrees as follows:

1. The Company is unwilling to issue said policy or policies until the closing instrument(s) under which the proposed insured acquires an interest in the Property is/are filed for record in the appropriate recording office(s) (the “Recording Date”);
2. The parties in the transaction have requested the Company to provide a so-called “New York Style Closing” which provides for the unconditional delivery, upon the closing, of the title policies concurrently with the delivery of the instrument(s) between the parties and the passing of consideration therefor;

3. In consideration of the Company issuing its policies without taking exception therein for matters which may arise between the most recent effective date of the Commitment (the "Effective Date") and the Recording Date, known as the "Gap Period", and which matters may constitute an encumbrance, lien or objectionable matter to or may affect said title (collectively, "Objections to Title"), the Owner agrees to promptly defend, remove, bond or otherwise dispose of any Objections to Title which may arise or be filed, as the case may be, against the Property during the Gap Period, and to hold the Company harmless from and indemnify the Company against all expenses, costs and reasonable attorneys' fees which may arise out of Owner's failure to so remove, bond or otherwise dispose of any of said Objections to Title.

Dated: _____

City of Grand Island

By: _____
Roger G. Steele, Mayor

Execution authorized by Resolution #2022- _____

Approved as to form: _____
Stacy Nonhof, Interim City Attorney

EXHIBIT A
WORK AT PROPERTY
None

EXHIBIT B
PARTIES IN POSSESSION AT PROPERTIES
RIGHTS OF FIRST REFUSAL, RIGHTS OF FIRST OFFER OR OPTIONS TO PURCHASE

None.

Drafted by and Return to:
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Attn: Paul Boppart, Esq.

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (“**Agreement**”) is executed as of _____, 2022 (the “**Effective Date**”) by CITY OF GRAND ISLAND, a body politic and corporate and a political subdivision of the State of Nebraska (“**City**”) and CHI NEBRASKA, a Nebraska nonprofit corporation (“**CHI**”).

RECITALS

WHEREAS, City is the owner of certain property more particularly described on **Exhibit A** attached hereto and made a part hereof (the “**City Property**”);

WHEREAS, CHI is the owner of that certain adjacent property more particularly described on **Exhibit B** attached hereto and made a part hereof (the “**CHI Property**”);

WHEREAS, City and CHI desire to memorialize certain restrictive covenants restricting the use of a portion of the City Property for the benefit of the CHI Property.

AGREEMENT

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and CHI hereby agree as follows:

1. Restrictive Covenant. City and CHI hereby agree and acknowledge that a portion of the City Property shall be subject to the following restrictive covenant (“**Restrictive Covenant**”) for a period of ten (10) years from the Effective Date:

“No portion of the City Property within three hundred (300) feet of the CHI Property (the “**Restricted Property**”) may be used for any of the following uses: surgery centers, medical clinics, imaging centers, pharmacies, or physical therapy clinics.”

2. Breach of Agreement. If any party having the benefit or burden of this Agreement shall fail to comply with or violate any of the provisions of this Agreement, then any other party entitled to the benefit of such provision may institute such actions or proceedings as may be available at law or in equity and are appropriate and permissible, including actions and proceedings to compel specific performance and compel payment of damages, expenses and costs. All costs and expenses, if any, of such suit or proceeding, including reasonable attorneys' fees, shall be assessed against the defaulting party. The remedies provided herein shall be cumulative and not exclusive.

3. Indemnity; Injunctive Relief.

(a) Indemnity. Any owner of a fee title interest in any portion of the Restricted Property from time to time, including the City during any period of its ownership (“**Owner**”) shall indemnify, defend, and hold harmless CHI from any and all claims, demands, liabilities, causes of action, judgements, awards, losses, penalties, fines, assessments, impositions, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, costs of expert witnesses, court costs, and other expenses of litigation) that may be suffered or incurred by CHI arising from or based on the breach or violation of the provisions of Section 1 of this Agreement by such Owner or the failure of any Owner to cause its respective tenants, subtenants, licensee or invitee to comply with Section 1 of this Agreement.

(b) Injunctive Relief. If the Restricted Property is at any time used in violation of this Agreement, the parties agree that no adequate remedy exists at law for such violation, that it would be difficult to ascertain the amount of damages that would result from such violation, and that CHI would suffer irreparable harm from such violation. Therefore, in the event of such violation, CHI may specifically enforce the terms of this Agreement and shall have the right to an injunction to prevent or restrain further violation.

4. Restrictive Covenant Runs with Land. The Restrictive Covenant and other rights and benefits under this Agreement shall run with the land for the benefit of CHI and all future owners of the CHI Property and shall be binding upon City and all future owners of the Restricted Property.

5. Applicable Law and Recording. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Nebraska and this Agreement shall be recorded in the office of the Register of Deeds of Hall County, Nebraska.

6. Written Amendment. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Hall County, Nebraska.

7. Notice. Any notice required or permitted under this Agreement shall be deemed sufficiently given and served if sent by certified mail, return receipt requested, or by overnight delivery, to the party or parties at the addresses set forth below and either party may, by written notice at any time and from time to time, designate a different address to which notice shall subsequently be sent. Notices given in accordance with the provisions of this paragraph shall be

deemed received the following day after mailing if sent by overnight delivery or the date actually received as evidenced by the return receipt if sent by certified mail.

IF TO GRANTOR: City Clerk
City of Grand Island
100 East First Street
Grand Island, Nebraska 68802

IF TO GRANTEE: CommonSpirit Health
3400 Data Drive
Rancho Cordova, CA 95670
Attn: National Real Estate Services

With a copy 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

8. Severability. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one complete document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year first above written.

CITY:

CITY OF GRAND ISLAND

By: _____
Roger G. Steele, Mayor

STATE OF NEBRASKA §
 §
COUNTY OF HALL §

This instrument was acknowledged before me on the ____ day of _____, 2022, by Roger G. Steele, the Mayor of the City of Grand Island, a body politic and corporate and a political subdivision of the State of Nebraska, on behalf of said entity.

Notary Public
State of Nebraska
My commission expires:

(STAMP)

Approved as to form: _____
Stacy Nonhof, Interim City Attorney

EXHIBIT A

Legal Description of the City Property

EXHIBIT B

Legal Description of the CHI Property

RESOLUTION 2022-147

WHEREAS, the sale of Lot 3 in Veterans Legacy South Subdivision was approved by the adoption of Ordinance No. 9875; and

WHEREAS, the terms of the purchase sale agreement included title insurance gap coverage and a restrictive covenant agreement; and

WHEREAS, the closing will require the City to execute and deliver an Owner's Certification and Indemnity and a Restrictive Covenant Agreement and may also require execution of a real estate closing statement and other related documents.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, the City's Mayor is hereby authorized to execute necessary documents for the closing of the sale of Lot 3 in Veterans Legacy South Subdivision, to include the Owner's Certification and Indemnity, the Restrictive Covenant Agreement, a real estate closing statement, and other related documents.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 24, 2022.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
May 23, 2022	☒ City Attorney