



# **City of Grand Island**

**Tuesday, July 13, 2004**

**Council Session**

## **Item I3**

**#2004-172 - Approving Memorandum of Understanding and Lease Agreement with Walnut Redevelopment and Walnut Housing LLC**

**Staff Contact: Doug Walker**

# **Council Agenda Memo**

**From:** Douglas R. Walker, City Attorney

**Meeting:** July 13, 2004

**Subject:** Memorandum of Understanding and Lease Agreement for the Redevelopment of Former Walnut Junior High School Property

**Item #'s:** I-3

**Presenter(s):** Douglas R. Walker, City Attorney

## **Background**

The City of Grand Island has been involved in negotiating a Memorandum of Understanding and a Lease Agreement wherein the City of Grand Island will lease approximately 1,000 square feet of space in the former Walnut Junior High School building that is being redeveloped by Walnut Redevelopment and Walnut Housing LLC. As part of the process of redeveloping this property, it is crucial to the developer to have tenants on the premises which will provide outreach services to the community and especially to people of various ethnic backgrounds throughout the community.

The Memorandum of Understanding provides for the various local charitable and civic organizations to use the space being leased by the city for services to people of multicultural and various ethnic backgrounds. The lease agreement is the document that formally sets forth the term of the lease and requires the City of Grand Island to lease this property for a five year period to provide space for these various organizations to provide outreach services to the community.

## **Discussion**

The city is interested in leasing the above referenced space in the former Walnut Junior High School Building because it will enable the developer to obtain the necessary tax credits to complete the development of the project. This project is essential to the redevelopment of the neighborhood surrounding it which has many residents who are from a variety of ethnic and cultural backgrounds. By leasing this space, the city will also enable various civic organizations and charitable organizations as well as the Grand Island Public Schools to provide services to the multicultural and ethnic minority communities at a location which is convenient for them to use.

The city has also been actively involved in seeking grants and other financial assistance for this project and for the organizations involved and the city has been successful in obtaining a grant to cover the majority of the lease expense for the first year of the rental agreement which would last for five years. City staff believes that the city will have a good chance of receiving further grants throughout the term of the lease for the space in the former Walnut Junior High School building. For the above referenced reasons, city administration is seeking City Council approval of the resolution authorizing the city to lease space in the former Walnut Junior High School building and for approval of the Memorandum of Understanding between the city and the various organizations which will be using the space leased by the city.

### **Alternatives**

After the public hearing it appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the resolution authorizing the city to enter into a lease for space in the former Walnut Junior High School building and authorizing the city to execute the MOU setting forth the understanding between the city and the various charitable organizations.
2. Disapprove or /Deny the resolution and the MOU regarding the space in the former Walnut Junior High School.
3. Modify the resolution and the MOU to meet the wishes of the Council
4. Table the issue

### **Recommendation**

City Administration recommends that the Council approve the resolution authorizing the city to enter into a lease for acquiring space in the former Walnut Junior High School building and also to sign the Memorandum of Understanding between the city and the various local organizations that will be using this space.

### **Sample Motion**

Approve the resolution authorizing the city to enter into a lease agreement for space in the former Walnut Junior High School building and to enter into an MOU with the organizations that will use the space.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is approved and executed on this \_\_\_\_ day of \_\_\_\_\_, 2004, by WALNUT REDEVELOPMENT, LLC/WALNUT HOUSING LTD. (Walnut), THE CITY OF GRAND ISLAND, NEBRASKA, a Municipal Corporation (City), THE GRAND ISLAND MULTICULTURAL COALITION (Coalition), THE HOUSING DEVELOPMENT CORPORATION (Development Corporation) and THE GRAND ISLAND PUBLIC SCHOOLS (Schools).

**1. Project Description.** The purpose of this Memorandum of Understanding is to state the general terms, conditions and commitments of the respective parties to support the development of the former Walnut Junior High School Building located at 504 North Elm Street, Grand Island, Nebraska. This document will outline the understanding between the various parties to this agreement to promote the redevelopment of this property into low income housing, office space for various governmental, charitable and other human service organizations to provide referral or direct services to the community and for an auditorium to house a theater for Hispanic and a variety of other cultural events.

**2. Recitals.**

WHEREAS, Walnut Redevelopment LLC is the owner of property with a street address of 504 North Elm Street in the City of Grand Island, Nebraska, which is a former school building that is in need of renovation; and,

WHEREAS, Walnut Redevelopment LLC has proposed to redevelop said school building into affordable housing, offices for providing governmental and charitable services to the community and for providing an Hispanic theater and cultural center to serve the community; and,

WHEREAS, the City of Grand Island is a Nebraska Municipal Corporation which is interested in supporting and promoting the redevelopment of the former Walnut Junior High School building and is interested in renting and using space in the building to provide some city and other governmental

services and providing office space for the Grand Island Multicultural Coalition and other such charitable and human service organizations for the benefit of the neighborhood and the community; and,

WHEREAS, the Grand Island Multicultural Coalition is interested in obtaining and utilizing space in the redeveloped Walnut Junior High School Building to provide referral and/or direct services to the Hispanic community and other individuals of various ethnic backgrounds; and,

WHEREAS, the Housing Development Corporation, a 501(c)(3) charitable corporation, proposes to obtain and utilize space in this redeveloped building to offer affordable housing services to the neighborhood residents surrounding this redevelopment project and to the Grand Island Community; and,

WHEREAS, the Grand Island Public School System proposes to obtain and utilize space in the redevelopment project to offer services to the neighborhood residents and the surrounding community to support education; and,

WHEREAS, this Memorandum of Understanding is necessary to facilitate and enable the developer of this property, Walnut Redevelopment LLC and Walnut Housing Ltd., to obtain the necessary grants and financing to complete the redevelopment project,

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Walnut Redevelopment, LLC/Walnut Housing Ltd. hereby agrees to redevelop the building formerly known as Walnut Junior High School at 504 North Elm Street, Grand Island, Nebraska, so that it provides affordable housing, office space for the delivery of governmental, charitable and human services to the community and provides an Hispanic cultural center, as well as a center for activities for people of various ethnic backgrounds, including a theater for commercial use open to the public and available to the community at reasonable rates.

2. The City will lease space in the building for the use of local government, the Multicultural Coalition and a variety of human service providers, to enhance the delivery of services to the Multicultural community in the city of Grand Island. Such space may be used on a shared basis for the implementation of services under this memorandum of understanding, commencing no later than

December 31, 2004, for a period of five (5) years, ceasing no sooner than December 31, 2009, unless an extension has been mutually agreed upon and approved by the Mayor and City Council.

3. The City may deliver services appropriate to those provided by City government, which may include but are not limited to community policing, community-based outreach programs, community development or other programs as appropriate.

4. Walnut, the City, the Multicultural Coalition, the Housing Development Corporation and the Grand Island Public School System hereby agree to work together to implement and develop a plan for delivery of governmental, educational and human services to the Grand Island community through the City office location in the former Walnut Junior High School building or theater.

5. The Coalition will use a portion of the City provided space in the former Walnut Junior High School building for the delivery of charitable services to ethnic minorities in the neighborhood surrounding the redevelopment project and the community.

6. The Housing Development Corporation will seek office space in the City provided space to deliver programming specific to their organization. This programming may include first time home owner education, tenant's rights education, information regarding rehabilitation of properties in the neighborhood, relocation services to residents to homes that will enhance quality of life, and/or other appropriate services.

7. The Grand Island Public School System will utilize the City provided space or theater in the building to deliver support services from or provide referral services to Grand Island Public Schools for children and families. Support services may include school to parent outreach programs, immunizations, health and administrative services pertinent to attendance and/or other appropriate educational services.

8. Walnut Redevelopment LLC/Walnut Housing Ltd. will make space available to the City for the services hereby required and make the auditorium/theater available for Hispanic cultural programs and a Latin theater. Nothing herein prohibits Walnut from charging reasonable rates for the space

provided. The terms of the agreement for occupancy of the Walnut building by the City will be set forth in a separate lease. In the event that Walnut and the City do not successfully negotiate the provisions of the lease, this MOU shall be null and void and shall not create any legally binding obligations on the parties hereto.

9. This document shall be binding upon the successors and assigns of the parties hereto.

10. From time to time the undersigned may jointly desire to amend the terms of this Memorandum of Understanding for any future agreement. Such consent shall not be unreasonably withheld but must be acknowledged in writing by all original parties to this Memorandum of Understanding before going into effect.

11. This agreement may be terminated by Walnut, with the agreement of the City and the other parties named in this document, if the purpose of the agreement is frustrated such that the performance of the agreement hinders or impedes the development of the building. Any party may withdraw from the agreement at the end of five (5) years from completion of construction, which shall be no later than December 31, 2009.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WALNUT REDEVELOPMENT, LLC,

By: \_\_\_\_\_, Manager

WALNUT HOUSING, LTD.,

By: \_\_\_\_\_  
Fred Hoppe, General Partner

ATTEST:

CITY OF GRAND ISLAND, NEBRASKA,  
a Municipal Corporation,

\_\_\_\_\_  
RaNae Edwards, City Clerk

By: \_\_\_\_\_  
Jay Vavricek, Mayor

GRAND ISLAND MULTICULTURAL  
COALITION

By: \_\_\_\_\_  
Steve Joel, President

HOUSING DEVELOPMENT CORPORATION  
CORPORATION, A 501(c)(3) Charitable Corp.,

By: \_\_\_\_\_  
Linda Addison, Executive Director

GRAND ISLAND PUBLIC SCHOOLS,

By: \_\_\_\_\_  
Lynn Cronk, President  
Grand Island Board of Education

(6-23-04)



## COMMERCIAL LEASE

This lease is entered into by and between:

<u>Landlord:</u>	Walnut Housing, Ltd. Walnut Redevelopment, LLC, General Partner
<u>Landlord Address:</u>	P.O. Box 6036, Lincoln, Nebraska 68506
<u>Landlord Taxpayer ID No.:</u>	
<u>Tenant:</u>	City of Grand Island, Nebraska A Municipal Corporation
<u>Signing Deadline:</u>	
<u>Start of Term:</u>	October 1, 2004, or completion of construction, certificate of occupancy
<u>End of Term:</u>	December 31, 2009
<u>Renewal of Term:</u>	Five Years
<u>Amount, Frequency and Due dates for Base Rent Payment</u> :	\$700 monthly, due in advance on the first of each month
<u>Security Deposit:</u>	n/a
<u>Property Description:</u>	Unit B, Old Walnut, a Condominium, Grand Island, Nebraska

1. OFFER: Until this lease is signed on behalf of all parties to it, it shall be construed as an offer of the signing party to the other party. Time being of the essence, this lease must be executed by all parties before the signing deadline described above to be effective.

2. PROPERTY DEFINITION: Whenever it is used in this lease, the term "the property" shall refer to the property described above including all improvements on or to it.

3. RENT: The Tenant shall pay to the Landlord the base rent for the property as listed above for the term of this lease.

4. RENTAL PAYMENT DATE: Rent for each month shall be due and payable monthly in advance on the first day of the rental month at the office of the Landlord as stated in this lease or at such other place as the Landlord shall direct.

5. SECURITY DEPOSIT: N/A

6. UTILITIES: The property shall be separately metered for electrical and gas service and the Tenant shall pay for these utility services to the premises. Landlord shall provide water, sewer and trash removal (at locations determined by Landlord).

7. REPAIRS AND MAINTENANCE: Tenant shall keep the premises in good order and repair, reasonable wear and tear excepted. Landlord shall maintain the premises. Tenant shall be responsible for those repairs caused by the actions or omissions of Tenant or its invitees.

8. GENERAL MAINTENANCE: Tenant shall keep the premises in a clean, neat and orderly condition at its own cost and expense.

9. POSSESSION: Except as provided in this lease, the Landlord shall deliver possession of the premises on or before the commencement date of this lease, subject to unavoidable delays beyond the Landlord's control. Delivery of possession prior to commencement date shall not affect the expiration date of this lease. If the premises shall not be available to the Tenant for occupancy on the first day of the term, the Landlord shall not be liable to the Tenant for damages, but a pro-rata part of the rent shall be abated until the premises are ready for occupancy. The taking of possession of the premises by the Tenant shall be conclusive evidence that the premises are in the agreed-upon condition at the commencement of the lease term.

10. USE AND UNLAWFUL USE: The Tenant shall use the premises as offices and only as offices. Tenant shall use the property for the dispersal of services for the tenants of Old Walnut and the general public which the Tenant agrees to provide. Such services may include but not be limited to first time home buyer training and first time home buyer opportunity programs, rental housing inspection and tenant's rights assistance, code compliance office, community health and dental intake, provided, however, Tenant may change services provided from the premises so long as such services reasonably respond to the needs of the lower income or multi-culturally diverse populations of Grand Island. The Tenant agrees not to commit or permit any act to be performed on the property or any omission to occur which will be in violation of any statute, regulation, or ordinance of any governmental body.

11. OTHER OCCUPANTS: The Tenant shall not disturb other occupants of the building by making any undue noise or otherwise and shall not do or permit to be done in or about the premises anything which will be dangerous to life or limb.

12. LANDLORD'S ACCESS: The Landlord, its employees, and its agents shall have access to the property at reasonable times for the purpose of inspection, cleaning, repairing, altering, or improving the premises or to exhibit the premises to prospective tenants, purchasers or others. Landlord shall give Tenant notice at least twenty four (24) hours in advance before coming into the property other than for regularly scheduled maintenance. Nothing in this paragraph shall be interpreted as requiring the Landlord to perform any such acts independent of the requirements of the other provisions of this lease. The Landlord shall also be permitted to post notice of non-responsibility for alterations, additions and repairs.

13. LANDLORD POST SIGNS: During the last 90 days of the lease, the Landlord may post signs on the walls, windows or doors advertising that the property is for rent or for sale. The Tenant shall not take any action to prevent or interfere with the placement of the signs. The Tenant shall not remove, deface or damage any such signs.

14. IMPROVEMENTS, ALTERATIONS, AND REMODELING BY TENANT. Any improvements, alterations and remodeling during the term, shall be made only with the written consent of the Landlord.

15. WARRANTIES OF TITLE AND QUIET POSSESSION. The Landlord warrants that the Landlord has full right to make this lease subject to the terms of this lease, and the

Tenant shall have quiet and peaceable possession of the premises during the term of this lease as against the acts of all parties claiming title to, or a right to the possession of, the property.

16. RESTORE PREMISES. In the event Tenant defaults or terminates this agreement, Tenant agrees to restore the premises to substantially its present condition.

17. ASSIGNMENT AND SUBLETTING. Tenant may not assign or transfer this lease or any interest in this lease or any portion of this lease without the prior written consent of Landlord in each instance. This provision shall apply to any assignment, transfer or sublease, whether by voluntary act, operation of law, or otherwise. Consent by the Landlord to one assignment or transfer of this lease or the property shall not be a waiver to Landlord's rights under this lease as to any subsequent assignment or transfer. Landlord shall not unreasonably withhold consent to assign. No assignment, transfer or sublease shall release Tenant of its obligations under this lease. Tenant may sublet the property provided, however, no sublease shall be to a tenant that are disqualified leases within the meaning of Internal Revenue Code §168(h)(1)(B)(ii).

18. COLLECTION OF RENT FROM ASSIGNEES AND SUBTENANTS. Landlord shall collect any rents for this property directly from any assignee or may collect any rents due from a subtenant and apply the amount to the rent due under this lease. No such collection shall be a waiver of the provisions of this lease.

19. LANDLORD MAY ASSIGN. Landlord's rights to assign this lease are and shall remain unqualified. No assignment by Landlord shall release Landlord of any of its obligations under this lease for any time prior to the date of the assignment but shall release Landlord of all obligations occurring after such assignment upon assumption by new owner who shall then be obligated as Landlord hereunder. It is understood that the property shall be turned into a condominium. Landlord shall transfer its interest to a new entity to facilitate the sale of tax credits associated with the construction of the building and operation as a low income tax credit project.

20. HAZARDOUS SUBSTANCE. Tenant will not use, store, keep or permit any hazardous, toxic, explosive or flammable substances on the property without the express written consent of Landlord. Nothing in this agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties.

21. EMINENT DOMAIN. If the premises are taken by any public authority under the power of eminent domain or sold to any public authority pursuant to threat of eminent domain, then division of damages shall be made as follows:

- a. The Landlord shall receive the full appraised value of the building (valued at the greater of the value with this lease or the value without this lease).
- b. The Landlord shall receive any other damages or other awards based upon considerations other than value of the building which were awarded to the Landlord.

- c. The Tenant shall receive any excess amount of any damages over the Landlord's full appraised value determined in this lease, which are awarded to the extent of the damages which Tenant has suffered for the loss of the remainder of its lease provided however Landlord shall receive all damages attributable to the Common Areas.
- d. The Landlord shall receive any excess damages based upon the value of the building.
- e. The Tenant shall receive any other damages or other awards based upon considerations other than value of the building which were awarded to the Tenant.
- f. The allocation of damages shall be mutually agreed upon by the governmental authorities exercising the power of eminent domain, by the Landlord and by the Tenant. In the event that there is not an agreement on allocation as provided in this paragraph, the parties may agree to an award of damages for the value of the building and the lease.

22. FIRE AND OTHER CASUALTY. If fire or other casualty shall render the premises untenantable, this lease shall terminate immediately and any prepayments of rent shall be refunded pro-rata by the Landlord; provided, however, that if the premises can be repaired within ninety (90) days from the date of such event, then at the Landlord's option, by notice in writing to the Tenant, mailed within thirty (30) days after such damage or destruction, this lease shall remain in full effect, but the rent for the period during which the premises are untenantable shall be abated pro-rata.

23. LIABILITY INSURANCE: The Tenant shall provide, at Tenant's expense, general liability coverage and any liability coverage which Landlord may require as a result of the particular use of the property. All insurers must be approved by and be satisfactory to Landlord. The liability limit shall be \$1,000,000 per incident \$2,000,000 aggregate.

24. HAZARD INSURANCE REQUIRED: Tenant, at its expense, may maintain insurance with respect to the improvements and personal property owned by it and located on the premises. Landlord, as part of Condominium Assessments, shall insure premises for fire and casualty and liability, however, Landlord's property and casualty insurance will not cover the Tenant's personal property located on the premises.

25. TERMS OF INSURANCE: Insurance policies maintained pursuant to this lease for property casualty or liability coverage, on which Landlord and Tenant both have an insurable interest, shall name Tenant and Landlord as insureds, as their respective interests may appear. All insurance policies in which both parties have an insurable interest maintained pursuant to this lease shall provide that there shall be no cancellation, non-renewal, termination for any reason, or modification without at least fifteen (15) days prior written notification to Landlord and Tenant. All policies of insurance required by this lease shall be delivered to and retained by Landlord and a copy of such policy shall be given to Tenant.

26. FAILURE TO RENEW OR HAVE INSURANCE COVERAGE: If any policy maintained pursuant to this lease in which landlord has an insurable interest is not renewed on or

before fifteen (15) days prior to its expiration date or if no insurance policy is in force at any time, the Landlord may procure such insurance, pay the premiums therefore and give Tenant notice of which shall be due and payable fourteen (14) days after notice is sent. If Tenant does not pay its share of the premium within fourteen (14) days after the notice is sent, then Landlord may charge interest at the rate set forth elsewhere in this agreement.

27. PROOF OF LOSS UPON DAMAGE TO PROPERTY: If any loss occurs which may be covered by insurance, Tenant will immediately notify Landlord of the loss and shall make the proof of loss within the earlier of seven (7) days or the time required under the insurance policy. If Tenant fails to make the proof of loss, the Landlord may make the proof of loss.

28. SETTLEMENT WITH INSURANCE CARRIER: If the hazard insurance carrier refuses to pay a claim or offers to settle for less than the full cost of repairs or on claims where Landlord and Tenant each have an insurable interest, the Tenant shall advise the Landlord. Tenant shall not make a settlement for less than the full cost of repair or replacement without the written consent of Landlord.

29. COLLECTION OF AN AMOUNT LESS THAN THE MONTHLY RENT: Payment by Tenant or receipt by Landlord of an amount less than the monthly rent under this lease shall be deemed to be a partial payment of the rent. No endorsement on any check shall be deemed an accord and satisfaction. Landlord may accept such payment without prejudice to Landlord's right to collect the balance of the rent.

30. SURRENDER: On the last day of the term of this lease or on the earlier termination of this lease, the Tenant shall peaceably surrender the premises in good condition and repair, reasonable wear and tear excepted, consistent with the Tenant's duty to make repairs as provided in this lease. The Tenant shall at its expense remove all of its equipment from the premises, and any property not removed shall be deemed abandoned. All alterations, additions, and fixtures, other than the Tenant's equipment and trade fixtures, which have been made or installed by either the Landlord or the Tenant on the premises shall remain as the Landlord's property and shall be surrendered with the premises as a part of the premises. Trade fixtures shall not include any structural components of any buildings.

31. FAILURE TO SURRENDER: If the premises are not surrendered at the end of the lease or on the earlier termination of the lease, the Tenant shall indemnify the Landlord against any loss or liability resulting from delay by the Tenant in surrendering the premises. The indemnification includes, but is not limited to, claims made by any succeeding Tenant founded on such delay. Any succeeding Tenant is authorized to take legal action against Tenant to recover its damages from Tenant. The provisions of this section shall survive the termination of this lease.

32. SURRENDER OF KEYS. The Tenant shall promptly surrender all keys for the premises to the Landlord at the place then fixed for payment of rent and shall inform the Landlord of combinations on any locks and safes on the premises. Surrender of keys before the end of the lease shall not terminate this lease unless Landlord Accepts the surrender of the lease in writing. In no event shall the Tenant be deemed to have abandoned the property or this lease during the term of this lease unless the Tenant first obtains the express written permission of the Landlord. The provisions of this section shall survive the termination of this lease.

33. HOLDING OVER. In the event that the Tenant remains in possession of the premises after the expiration of this lease without the execution of a new lease, Landlord may take any legal action to remove the Tenant. If the Landlord accepts a rent payment for a period of time after the end of the lease or otherwise acknowledges the tenancy, then Tenant is deemed to be occupying the premises as a Tenant from month-to-month. Any month-to-month tenancy is subject to all the conditions, provisions, and obligations of this lease. The base rent may then be adjusted by Landlord upon thirty (30) days notice.

34. DEFAULT OF TENANT. A default by Tenant under this lease shall occur if any of the following occur, but a default is not limited to the following:

- a. Any one or more rent payments due from the Tenant to the Landlord shall be and remain upon in whole or part after they are due and payable.
- b. The Tenant fails to provide insurance as required by this lease and the default continues for more than ten (10) days after notice from Landlord.
- c. The Tenant violates or defaults in any of the other covenants, agreements, stipulations or conditions herein and such violation or default shall continue for a period of thirty (30) days after written notice from the Landlord of such violation of default.
- d. If the Tenant shall become insolvent, make an assignment for the benefit of its creditors, or if a receiver is appointed for the Tenant.
- e. If any guarantor of this lease shall become insolvent, make an assignment for the benefit of its creditors, a receiver is appointed for the guarantor, file a voluntary bankruptcy proceeding or have an involuntary bankruptcy petition filed against the guarantor which is not dismissed within one hundred twenty (120) days.
- f. Abandonment of the property by the Tenant (any absence by Tenant for more than seven (7) days without notice to Landlord shall be presumed to be an abandonment).

35. LANDLORD'S REMEDIES UPON TENANT'S DEFAULT. The remedies provided in this paragraph are not exclusive and are in addition to any other remedies now or later allowed by law. Upon default of the Tenant:

- a. The Landlord may, at its option, declare this lease forfeited, the lease's term ended, have the right to re-enter the property and have the right to take possession of the property without any further obligation to Tenant. Landlord may remove all persons and property at the cost of Tenant.
- b. Landlord may instead elect to keep Tenant in possession and continue to have all rights and remedies under this lease. If Landlord elects to keep Tenant in possession, Landlord shall have the rights under subparagraph 21(a) for any future defaults or for any previous default which remains uncured.

36. TAXES. Landlord shall pay the real estate taxes upon the property.

37. INTEREST. If the Tenant fails to perform any of its promises contained in this lease, including the failure to pay rent, then any unpaid rent and any sum advanced by the Landlord under the terms of this agreement shall bear interest from the due date or the date of payment by the Landlord, respectively, to the date of payment to the Landlord by the Tenant at the rate of 7.15% per annum.

38. DEFAULT OF LANDLORD. The Landlord shall not be deemed to be in default under this agreement until the Tenant has given the Landlord written notice specifying the nature of the default and until the Landlord fails to cure the default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such a character as to reasonably require more than thirty (30) days to cure.

39. PERSONAL PROPERTY AT TENANT'S RISK. All personal property including fixtures kept, stored or maintained on the property shall be so kept, stored or maintained at the sole risk of the Tenant.

40. TENANT TO PAY FOR WORK DONE FOR TENANT. The Tenant agrees to promptly pay all sums of money in respect to labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or on behalf of the Tenant in or about the premises. Landlord agrees to finish the premises painted drywall in accordance with the plans of the building for which a building permit has been given.

41. CONSTRUCTION LIENS. The Tenant hereby agrees that the Tenant will not permit or allow any construction, mechanic's or materialman's liens to be placed on the Landlord's interest in the premises during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the Landlord's interest, the Tenant shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that the Tenant may contest any such line, provided the Tenant first posts a surety bond in favor of and insuring the Landlord in an amount sufficient to remove the lien pursuant to the terms of the Nebraska lien law.

42. NO PARTNERSHIP, JOINT VENTURE OR PINCIPAL/AGENT RELATIONSHIP CREATED. Nothing in this agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties.

43. CUMULATIVE RIGHTS. No right or remedy given in this lease to the Tenant or the Landlord is intended to be exclusive of any other right or remedy hereof provided by law. Each right and each remedy shall be cumulative and in addition to every other right or remedy given in this lease or now or hereafter existing at law or in equity or by statute.

44. TERMINATION BY LANDLORD. The Landlord and the Landlord's successor or assigns shall have the right to terminate this lease at the end of any calendar month, if such person has first given to the Tenant or the Tenant's assigns a written notice of termination at least six months prior to the date of termination. The written notice may only be given upon the

Landlord's intention to remodel, remove or demolish the building or upon the sale of the building. Only the purchaser of the building may give this notice in the event of the sale of the building and the notice must be given within thirty (30) days of closing.

45. REASONABLE CONSENT. Whenever the Landlord's or the Tenant's consent shall be required under this lease, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. The consent of Landlord or of Tenant shall be deemed to have been given, unless within twenty (20) days of the request for such approval or consent, the Landlord or the Tenant, as appropriate, notifies the requesting party that the receiving party is denying such approval or consent. The refusal must state the reasonable ground for the refusal to grant such approval or consent.

46. FURTHER ASSURANCES. In addition to any other information which may reasonably be requested, any party shall without charge, at any time and from time to time hereafter, within ten (10) days after written request from another party for the same, certify by written instrument duly executed and acknowledged to any person, firm or corporation the following information which was specified in such request:

- a. Whether this agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment.
- b. Whether this agreement is still valid.
- c. The existence of any default under this agreement.
- d. The existence of any claims or amounts owed to such party by any other party.
- e. The commencement and expiration dates of the term of this agreement.
- f. Any such certificate may be relied on by the party who requested it and by any other person, firm or corporation to whom it may be exhibited or delivered, and the contents of the certificate shall be binding on the party executing it.

47. NOTICE. If any notice is required to be given under this agreement, it may only be given in writing and delivered by mail, personal delivery, facsimile, transmission, or electronic data transmission. Delivery of notice shall be effective as follows:

- a. Delivery by any means other than mail shall be effective upon receipt.
- b. Delivery by mail may be by first class mail, certified mail or registered mail.
- c. Delivery by first class mail is complete upon the third postal business day after mailing.
- d. Delivery by certified mail or registered mail is complete upon delivery; if the certified mail is not delivered as a result of refusal to accept, then upon the date of the refusal to accept; or if there is a failure of delivery as a result of the inability of the post office to deliver after three attempts at delivery (to the last known



address as provide in this agreement ) have been made, then upon the date of the last attempt.

- e. Delivery may be made to any agent for service of process.
- f. If the party is a corporation, delivery of notice may be made to any officer. If the party is a partnership, notice may be given to any partner.

48. ADDRESSES. Each party shall supply any address changes to the other party in writing. Any party may change its address by giving notice in writing, stating its new address, to any other party as provide in paragraph 50. the newly designated address shall be that party's address for the purpose of all communications, demands, notices or objections permitted or required to be given or served under this lease.

49. SUCCESSORS AND ASSIGNS. This agreement shall be binding on and shall inure to the benefit of the parties to this agreement and their respective assigns, executors, heirs, personal representatives and successors.

50. SUBORDINATION. The Tenant agrees that at the Landlord's election, this lease shall be subordinate to any land lease, mortgages or trust deeds now on or placed on the property and to any and all advances to be made there under, and to the interest thereon, and to all renewals, replacements and extensions thereof. Tenant shall execute such subordinations as reasonably required by Landlord within ten days of request therefore. In addition, the Tenant hereby appoints the Landlord as its attorney-in-fact to execute such documents as may be required to accomplish such subordination.

51. AMENDMENT. No amendment of this agreement shall be valid unless it is in writing and is signed by the parties or by their duly authorized representatives, and unless it specifies the nature and extent of the amendment.

52. SEVERABLE PROVISIONS. Each provision, section, sentence, clause, phrase, and word of this agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this lease.

53. ENTIRE AGREEMENT. This agreement contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

54. REPRESENTATIONS. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this agreement. Neither party has relied on any verbal representations, agreements, or understandings not expressly set forth in this agreement.

55. DUPLICATE ORIGINALS. This agreement may be executed in several duplicate originals, but all copies shall be only one agreement.

56. CAPTIONS, HEADINGS OR TITLES. All captions, headings, or titles in the paragraphs or sections of this agreement are inserted for convenience of reference only and shall not constitute a part of this agreement as a limitation of the scope of the particular paragraphs or sections to which they apply.

57. WAIVER. Any waiver by any party of a default of any other party of this agreement shall not affect or impair any right arising from any subsequent default. No custom or practice of the parties which varies from the terms of this agreement shall be a waiver of any party's right to demand exact compliance with the terms of this agreement.

58. GRAMMATICAL CHANGES. The use of any particular gender in this agreement shall refer to all genders. The use of the singular of an expression may be read as the plural and the use of the plural may be read as the singular.

59. JOINT AND SEVERABLE LIABILITY. If there is more than one person liable under this agreement, the liability of each shall be joint and several.

60. NEBRASKA LAW. This agreement shall be construed and enforced in accordance with the laws of the state of Nebraska.

61. SOLDIER'S AND SAILOR'S RELIEF ACT. No party is a member of the armed forces of the United States or of any of its allies. Each party states that the Soldiers and Sailors Relief Act does not apply to him, her or it.

62. OPTION TO RENEW. Provided Tenant is not at the time of exercise in default of the lease, Tenant shall have the option to renew this lease for two additional terms of five (5) years each.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2004.

WALNUT HOUSING, LTD.,

By: \_\_\_\_\_  
Ward F. Hope, Manager  
Walnut Redevelopment, LLC,  
General Partner, Landlord

STATE OF NEBRASKA            )  
  )SS.  
COUNTY OF LANCASTER        )

The foregoing Commercial Lease was acknowledged before me on \_\_\_\_\_, 2004, by Ward F. Hoppe, Manager of Walnut Redevelopment, LLC, for the company as Landlord.

Witness my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

CITY OF GRAND ISLAND, NEBRASKA,  
a Municipal Corporation,

RaNae Edwards, City Clerk

Jay Vavricek, Mayor

Jay Vavricek, Mayor

[illegible]

Before me, a notary public qualified in said County personally came Jay Vavricek, Mayor of the City of Grand Island, Nebraska, a municipal corporation, known to me to be such officer and the identical person who signed the foregoing document and acknowledged that the foregoing signature was his voluntary act and deed pursuant to Resolution 2003-\_\_\_\_\_.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

The Commercial Lease is in due form according to law and hereby approved.

By: \_\_\_\_\_  
Dale M. Shotkoski, Assistant City Attorney

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

## RESOLUTION 2004-172

WHEREAS, the City of Grand Island has been involved in the redevelopment of the former Walnut Junior High School building at 504 North Elm Street in Grand Island; and

WHEREAS, Walnut Redevelopment LLC and Walnut Housing Ltd is interested in utilizing space in the building to provide city and other governmental services and providing office space for the Grand Island Multicultural Coalition and other such charitable and human service organizations for the benefit of the neighborhood and the community; and

WHEREAS, a Memorandum of Understanding has been prepared setting out the intent of the City of Grand Island, the Grand Island Multicultural Coalition, the Grand Island Housing Development Corporation, and the Grand Island Public Schools to utilize the building to provide such services; and

WHEREAS, a Commercial Lease Agreement has been prepared setting out the terms and conditions for the City to lease approximately 1,000 square feet of the building at a rate of \$700 per month for five years to provide first time home buyer training and first time home buyer opportunity programs, rental housing inspection and tenant's rights assistance, community health and dental intake, or other programs as appropriate; and

WHEREAS, the City Attorney has reviewed and approved the Memorandum of Understanding and the Commercial Lease Agreement for this project.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that:

1. The Memorandum of Understanding by and between Walnut Redevelopment, LLC / Walnut Housing Ltd., the City of Grand Island, Nebraska, the Grand Island Multicultural Coalition, the Grand Island Housing Development Corporation, and the Grand Island Public Schools regarding the redevelopment of the former Walnut Junior High School building into low income housing, office space for various governmental, charitable and human service organizations to provide referral or direct services to the community and for an auditorium to house a theatre for Hispanic and a variety of other cultural events is hereby approved.
2. The Commercial Lease Agreement by and between Walnut Housing, Ltd. and Walnut Redevelopment LLC, as landlords and the City of Grand Island, as tenant to lease approximately 1,000 square feet of space in the former Walnut Junior High School building at 504 North Elm Street in Grand Island at a cost of \$700 per month for five years is hereby approved.

3. That the Mayor is hereby authorized and directed to execute the above-identified documents on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 13, 2004.

---

RaNae Edwards, City Clerk