

GROUND LEASE WITH OPTION TO PURCHASE

THIS GROUND LEASE WITH OPTION TO PURCHASE ("Lease"), made as of the day of November 20, 2017, between The Meadows Apartment Homes, L.L.C., a Nebraska limited liability company (hereinafter called "Landlord"), and the City of Grand Island, a body politic and corporate and a political subdivision of the State of Nebraska (hereinafter called ("Tenant").

WITNESSETH:

Article I. The Demise

Section 1.01 The Demise.

Landlord hereby demises and leases to Tenant the real property located in the City of City of Grand Island, County of Hall, Nebraska, known and described as follows:

A TRACT OF LAND COMPRISING A PART OF THE NORTH HALF OF THE NORTHEAST QUARTER (N1/2 NE1/4) OF SECTION FOURTEEN (14), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., IN HALL COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTH HALF OF THE NORTHEAST QUARTER (N1/2 NE1/4); THENCE ON AN ASSUMED BEARING OF S01°24'11"E, SOUTH ALONG THE EAST LINE OF SAID N1/2 NE1/4, A DISTANCE OF 492.04 FEET, TO THE NORTHEAST CORNER OF LOT 2, HANOVER SECOND SUBDIVISION; THENCE S88°36'51"W, WEST ALONG THE NORTH LINE OF HANOVER SECOND SUBDIVISION, A DISTANCE OF 330.07 FEET, TO THE NORTHWEST CORNER OF LOT 2, HANOVER SECOND SUBDIVISION; THENCE N01°23'27"W A DISTANCE OF 496.86 FEET TO A POINT ON THE NORTH LINE OF SAID N1/2 NE1/4; THENCE N89°27'02"E, EAST ALONG THE NORTH LINE OF SAID N1/2 NE1/4, A DISTANCE OF 330.00 FEET, TO THE TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 163,176.08 SQUARE FEET OR 3.746 ACRES MORE OR LESS OF WHICH 0.598 ACRES ARE COUNTY ROAD RIGHT-OF-WAY.

(hereinafter called the "Land"), subject to the matters and things set forth herein.

Section 1.02 Subdivision. To facilitate effectuation of Tenant's options of purchase as hereinafter set forth, Tenant shall cause a Subdivision Plat to be prepared and submitted for

approval, at Tenant's sole cost and expense in respect to the following described parcel of real estate:

A tract of land comprising a part of the North Half of the Northeast Quarter (N1/2NE1/4) of Section Fourteen (14), Township Eleven (11) North, Range Ten (10) West of the 6th P.M., in Hall County, Nebraska, more particularly described as follows: Beginning at the northeast corner of said North Half of the Northeast Quarter (N1/2NE1/4); thence running southerly along the east line of said North Half of the Northeast Quarter (N1/2NE1/4), on an Assumed Bearing of S 00° 00' 00" E, a distance of Four Hundred Ninety Two (492.00) feet, to the northeast corner of Hanover Subdivision; thence running S 90° 00' 00" W, along the north line of Hanover Subdivision, a distance of Three Hundred Thirty (330.00) feet, to the northwest corner of Hanover Subdivision; thence running S 00° 00' 00" E, along the west line of Hanover Subdivision, a distance of Three Hundred Ninety Six (396.00) feet, to the southwest corner of Hanover Subdivision; thence running S 90° 00' 00" E, along the south line of Hanover Subdivision, a distance of Three Hundred Thirty (330.00) feet, to the southeast corner of Hanover Subdivision, and to a point on the east line of said North Half of the Northeast Quarter (N1/2NE1/4); thence running S 00° 00' 00" W, along the east line of said North Half of the Northeast Quarter (N1/2NE1/4), a distance of Four Hundred Twenty Five and Twenty Hundredths (425.20) feet, to the southeast corner of said North Half of the Northeast Quarter (N1/2NE1/4); thence running N 89° 22' 25" W, along the south line of said North Half of the Northeast Quarter (N1/2NE1/4), a distance of Seven Hundred Sixty Two and Forty Four Hundredths (762.44) feet; thence running N 00° 00' 00" E, a distance of One Thousand Three Hundred Sixteen and Eighteen Hundredths (1316.18) feet, to a point on the north line of said North Half of the Northeast Quarter (N1/2NE1/4); thence running S 89° 08' 58" E, along the north line of said North Half of the Northeast Quarter (N1/2NE1/4), a distance of Seven Hundred Sixty Two and Forty Eight Hundredths (762.48) feet to the point of beginning;

for the purpose of creating four (4) lots with access to existing public streets that shall consist of the Land, platted as two (2) lots, Tract "A" as identified in Section 25.02, and the balance of the real estate as a separate parcel remaining for such use as Landlord may hereafter determine.

Although such subdivision shall be subject to prior approval, Landlord agrees to execute such Plat and Subdivision Agreement as required and otherwise cooperate with Tenant in whatever way may be reasonably necessary to obtain subdivision approval.

TO HAVE AND TO HOLD the property above described for a term, commencing on the \_\_\_ day of \_\_\_\_\_, 2017, and ending on the 30th day of June, 2018, unless sooner terminated as hereinafter provided (hereinafter called the "Term").

Article II. Building Defined.

Section 2.01 The term "Building" as used in this Lease shall mean the buildings and improvements, including all foundations, structures, landscaping, sidewalks, curbs, driveways, parking facilities, and fixtures, to be hereafter located upon the Land and any additions thereto or replacements thereof.

Section 2.02 Building to Become the Property of Landlord. So long as this Lease remains in force, any Building constructed by Tenant on the Land shall be owned in fee simple by Tenant (Tenant to stand seized of the title for the purposes herein set forth) but upon the termination of this Lease without Tenant having given notice of the exercise of the option to purchase the Land prior to the expiration of the term of this Lease the Buildings shall become the property of Landlord in fee simple free and clear of all encumbrances, excepting only the lien of taxes, if any, assessed but not yet due and payable (for which Tenant shall remain obligated to pay to the extent that the same are allocable to the period prior to the termination of this Lease).

Section 2.03 Tenant's Covenant to Perform. This Lease is made upon the foregoing and the following covenants and conditions, each of which Tenant agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise.

Article III. Rent

Section 3.01 Amount of Rent. Tenant covenants and agrees to pay to Landlord the sum of One and No/100 Dollars (\$1.00) as rent for the Land demised for the term specified by this Lease, such rent being payable in its entirety upon the date of the commencement of such term.

Section 3.02 Place of Payment. Tenant shall pay all such rent to Landlord in lawful money of the United States at such place as Landlord shall from time to time designate by notice to Tenant.

Section 3.03 Rent to Be Without Deduction, Setoff, or Counterclaim. This Lease shall be deemed and construed to be a net Lease, and Landlord shall receive all rent and other payments

hereunder to be made by Tenant free from any charges, assessments, Impositions (as defined in Section 4.01 hereof), expenses, or deductions of any nature whatsoever. Landlord shall not be called upon to make any expenditure for the maintenance, repair, or preservation of the Building or Land or any portion thereof.

#### Article IV. Payment of Taxes, Assessments, and Other Impositions

Section 4.01 Payment of Impositions. Tenant agrees to pay or cause to be paid as additional rent, before any fine, penalty, interest, or cost is added thereto for the nonpayment thereof, all real estate taxes and other ad valorem taxes on tangible property assessments, water rates and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including but not limited to assessments for public improvements or benefits (all of which taxes, and contributions in lieu of taxes, assessments, water rates or charges, levies and other governmental charges levied or assessed against Landlord, Tenant, or the Land or Building are herein referred to as "Impositions"), which are assessed, levied, confirmed, imposed, or become a lien upon the Land or the Building or which become payable during the Term of this Lease, except as otherwise provided for in this Article IV.

Section 4.02 If by law any such Imposition is payable, or may at the option of the taxpayer be paid, in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), then Tenant shall pay the same (and any accrued interest on the unpaid balance of such Imposition) in the amount of such installments as the same respectively become due and before any fine, penalty, interest, or cost is added thereto for the nonpayment of any such installment and interest. Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Term of this Lease and a part of which is included in a period of time prior to the commencement of the term of this Lease or after the termination of this Lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed or become a lien upon the Land or upon the Building or both, or shall become payable during the Term of this Lease) be adjusted as between Landlord and Tenant at the time of the commencement of this Lease, and, again, as of the termination of this Lease, so that Landlord

shall pay that proportion of such Imposition allocable that part of the fiscal period included in the period of time before commencement and after the termination of this Lease to Tenant, and Tenant shall pay the remainder thereof. Notwithstanding the provisions in this Section 4.02, in the event that Tenant shall exercise its option to purchase the Land, Tenant shall be solely responsible for any Imposition after the termination of this Lease.

Section 4.03 With respect to any Imposition for public improvements or benefits that by law is payable in installments, Landlord shall pay the installments thereof which become due and payable prior to the commencement of the term of this Lease or subsequent to the termination of this Lease and Tenant shall pay those installments which become due and payable during the Term of this Lease. Tenant further agrees to pay all real estate taxes herein defined as Impositions upon the Building and the Land attributable to that portion thereof allocable to the term of this Lease, with the Landlord remaining responsible for the payment of those taxes allocable to any time prior to the commencement of the term of this Lease and subsequent to the date that such Lease terminates. Notwithstanding the provisions in this Section 4.03, in the event that Tenant shall exercise its option to purchase the Land, Tenant shall be solely responsible for any Imposition after the termination of this Lease.

Section 4.04 Pro-Rata Division of Impositions. In the event any Imposition, including real estate taxes and special assessments, is levied upon the whole of Landlord's land and not separately upon the Land leased hereunder, Tenant shall pay its proportionate share of the Imposition attributable to that portion thereof allocable to the term of this Lease, with the Landlord remaining responsible for the payment of those taxes allocable to any time prior to the commencement of the term of this Lease and subsequent to the date that such Lease terminates. Notwithstanding the provisions in this Section 4.04, in the event that Tenant shall exercise its option to purchase the Land, Tenant shall be solely responsible for any Imposition after the termination of this Lease.

Section 4.05 Right to Contest Impositions. Tenant shall have the right to contest the amount or validity of any Imposition upon the Land, the Building, or any part thereof by appropriate legal proceedings, but this shall not be construed in any way as modifying Tenant's covenant to pay

such Imposition at the time and in the manner as in this Article. Landlord agrees to cooperate reasonably with Tenant in any such contest but without expense to Landlord. If Tenant shall not be in default under this Lease, Tenant shall be entitled to any refund of any Imposition and penalties or interest thereon which relate to the Land and Building and have been paid by or on behalf of Tenant, or which have been paid by Landlord and for which Landlord has been fully reimbursed.

#### Article V. Insurance

Section 5.01 Insurance on Building. Tenant shall, at Tenant's sole cost and expense but for the mutual benefit of Landlord and Tenant, maintain the following insurance:

- (a) Fire and extended coverage insurance on the Building, in an amount that shall be sufficient to cover the full replacement value thereof, protecting against loss or damage by (i) fire and lightning, (ii) the risks commonly included within the term "extended coverage" (including but not limited to wind, storm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke), and (iii) vandalism and malicious mischief, all such terms as used in insurance policies from time to time issued by insurance companies licensed to do business by the State of Nebraska. Such policy or policies shall include coverage for all increases in the cost of construction or repair of the Building caused by the enforcement of any law or ordinance regulating, prohibiting, or restricting the repair or reconstruction of the Building and all costs of demolition of any undamaged portion of the Building and the value of that undamaged portion and the replacement cost of the undamaged and damaged portion.
- (b) In lieu of the above insurance coverage, Tenant may obtain "All Risk" coverage, provided only that such coverage is at least as large in amount and as broad in coverage as the foregoing and that the form of the coverage is first approved in writing by Landlord.

Section 5.02 Other Insurance to Be Carried. Tenant shall also, at Tenant's sole cost and expense but for the mutual benefit of Landlord and Tenant, maintain comprehensive general public liability and property damage insurance, protecting and indemnifying Landlord and its

officers, agents, and employees; Tenant; and others designated by Landlord, against any and all claims (including all costs and expenses of defending against the same) for bodily injury, sickness, disease, or death, or for damage or injury to or destruction of property (including loss of the use thereof) arising out of the ownership, maintenance, or use of the Building or the Land. The limits of such insurance shall be not less than \$2,000,000 in respect of bodily injury, sickness, disease, or death resulting from any one occurrence; and \$2,000,000 in respect of damage or injury to or destruction of property from any one occurrence; and an excess “umbrella” policy (providing insurance in respect of the risks above described for liability in excess of the limits specified above for such risks). The limits of the excess “umbrella” policy required hereby shall not be less than a combined single limit of \$5,000,000.

Section 5.03 Landlord as Additional Insured and Proof of Insurance. Any insurance policies required to be carried pursuant to this Article V shall name Landlord as an additional insured. A certificate evidencing the issuance of such policy or policies, together with evidence of the payment of premiums, shall be delivered to Landlord before the commencement of the Term of this Lease. Not less than ten (10) days prior to the expiration of any such policy or policies, evidence of the renewal of such policy or policies, or a new certificate, together with evidence of the payment of premiums for the renewal period or new policy, as the case may be, shall be delivered to Landlord. All such insurance shall contain an agreement by the insurance company that the policy or policies will not be cancelled or the coverage changed without ten (10) days’ prior written notice to Landlord.

## Article VI. Use of the Land and Building

Section 6.01 No Representations by Landlord—No Repairs. Tenant acknowledges that it has examined the Land and knows the condition thereof and accepts such Land in its present condition and without any representations or warranties of any kind or nature whatsoever by Landlord as to such Land’s condition or as to the use or occupancy that may be made thereof. Effective upon the commencement of the Term of this Lease, Tenant assumes the sole responsibility for the condition, operation, maintenance, and management of the Land and Building, and Landlord shall not be required at any time to furnish any facilities or services or to

make any repairs, replacements, changes (structural or otherwise), additions, or alterations to the Land, the Building, or any other property of any kind demised by this Lease.

Section 6.02 Compliance with Law. Tenant shall throughout the Term of this Lease, at Tenant's sole expense, promptly comply with all laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers thereof (whether or not the same require structural repairs or alterations) that may be applicable from time to time to the Land and the Building. Tenant shall likewise observe and comply with the requirements of all policies of public liability, fire and other types of insurance at any time in force with respect to the Building.

#### Article VII. Repairs, Maintenance and Improvements

Section 7.01 Repair of Building. Tenant shall throughout the Term of this Lease, at Tenant's sole expense, maintain the Building that Tenant intends to construct upon the Land in good condition and repair. Tenant shall promptly, at Tenant's own expense, make to and on such Building all necessary repairs, renewals, and replacements, interior and exterior, structural and nonstructural, whether made necessary or caused by fire or other cause or by ordinary wear and tear. Nothing contained in this Lease shall impose on Landlord the obligation to make any repairs or expend any monies for the maintenance of the Land or Building or any improvement located thereon or the renewal, replacement, or repair of the Building or any part thereof except for such repairs caused by the negligence of Landlord or Landlord's employees.

Section 7.02 Removal of Dangerous Conditions. Tenant shall during the Term of this Lease, at Tenant's sole expense, do all things necessary to remove any dangerous condition from time to time existing on the Land, including (without limiting the generality of the foregoing) promptly taking any appropriate measures to prevent or repair any erosion, collapse, or other unstable condition of the Land.



Article VIII. Landlord's Right to Perform Tenant's Covenants; Reimbursement of Landlord for Amounts So Expended

Section 8.01 Performance of Tenant's Covenants to Pay Money. Tenant covenants that if it shall at any time fail to pay any Impositions pursuant to the provisions of Article IV hereof; or shall fail to take out, pay for, maintain, or deliver any of the insurance policies pursuant to Article V hereof; or shall fail to make any other payment (other than rent) due hereunder, and such failure shall continue for sixty (60) days after written notice to Tenant, then Landlord may, but shall not be obligated to, and without further notice to or demand upon Tenant, pay any such Imposition, effect any such insurance coverage and pay premiums therefor, or make any other payment in such manner and to such extent as Landlord may deem desirable.

Section 8.02 Landlord's Right to Cure Tenant's Defaults. If there shall be an event of default involving the failure of Tenant to keep the Building in good condition and repair in accordance with the provisions of this Lease, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Lease, or to take any other action required by the terms of this Lease, then Landlord shall have the right, but shall not be required, to make good any such default of Tenant. Nothing herein shall imply any duty upon the part of Landlord to do any such work that Tenant is required to perform under any provision of this Lease. Landlord may, during the progress of any such work elected to be performed by Landlord on the Land or the Building, enter with contractors, agents, and servants and keep and store all necessary materials, tools, and equipment upon the Land and in the Building or any part thereof.

Section 8.03 Reimbursement of Landlord. All sums advanced by Landlord pursuant to the provisions of Sections 8.01 and 8.02 hereof shall be deemed additional rent and shall be payable by Tenant to Landlord. Such reimbursement shall be made on demand or, at the option of Landlord, may be added to any rent then due or thereafter becoming due under this Lease, as the case may be, and Tenant covenants to pay any such sum or sums and Landlord shall have (in addition to any other right or remedy) the same rights and remedies in the event of the

nonpayment thereof by Tenant as in the case of default by Tenant in the payment of any installment of rent as provided herein.

#### Article IX. New Buildings and Changes and Alterations

Section 9.01 Construction of the Building. Tenant may erect and construct upon the Land its fire station and emergency center, including all drives; parking areas; sewer, water, and electric connections; and all necessary and desirable fixtures. The Building so constructed shall not occupy any land other than the Land demised by this Lease.

Section 9.02 Approval by Landlord. Prior to the commencement of the construction of the Building or any of the work to be performed by Tenant as described in Article X hereof, Tenant shall obtain the written approval of Landlord to the final plans and specifications. Such approval shall not be withheld unreasonably.

Section 9.03 Procurement of Permits. No construction of any part of the Building nor any of the work to be performed by Tenant as described in this Article IX shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction.

Section 9.04 Control of Construction.

- (a) All work to be performed by Tenant or on Tenant's behalf shall be done promptly and in a good workmanlike manner substantially in accordance with the approved Plans and Specifications and in compliance with the building and zoning laws of the City of Grand Island.
- (b) The cost of all work performed by Tenant shall be paid promptly so that the Land and the Building shall at all times be free of liens for labor and materials supplied to Tenant.

## Article X. Damage or Destruction

Section 10.01 Repair and Replacement of Building after Damage. In the event of damage by fire or otherwise to any machinery, fixtures, or equipment that are a part of the Building, Tenant shall, within three (3) months after such damage, and as much sooner as is reasonably possible, at Tenant's sole expense (but using along with Tenant's own funds such insurance proceeds as may be available for that purpose) either repair or replace such machinery, fixtures, or equipment. In the event of damage by fire or otherwise to the Building, Tenant shall, within twelve (12) months after such damage, and as much sooner as is reasonably possible, at Tenant's sole expense (but using along with Tenant's own funds such insurance proceeds as may be available for that purpose), either repair and restore the Building as completely as possible to the condition it was in immediately prior to such damage or, if Tenant so elects, replace the Building (including all machinery, fixtures and equipment situated therein) with a building of the same general size and character as the damaged building. In either event, the repairing, restoring, or replacement shall be done in conformity with and subject to the provisions of Article IX applicable to the construction of the Building on the Land.

Section 10.02 Payment for Construction after Damage or Destruction. All insurance proceeds recovered by Landlord or Tenant on account of damage or destruction, less the costs, if any, for such recovery (including reasonable counsel fees), shall be applied to the payment of the cost of the repairing, restoring, removing, or replacing the Building.

Section 10.03 Unused Insurance Proceeds and Deposits. In the event any proceeds of insurance or sums deposited with the Landlord in connection with any restoration or rebuilding of the Building shall remain in the hands of Landlord after completion of such restoration or rebuilding, and if Tenant shall not be in default under this Lease in respect of any matter or thing, then such remaining funds shall be paid to Tenant.

## Article XI. Mechanics' Liens

Section 11.01 Discharge of Mechanics' Liens. Tenant shall not suffer or permit any mechanics' liens to be filed against the title to the Land, nor against Tenant's interest in the Land, nor against the Building or parking facilities by reason of work, labor, services, or materials supplied or claimed to have been supplied to Tenant. If any such mechanics' lien shall at any time be filed against the Land, the Building, or the parking facilities, or any part thereof, Tenant shall cause the same to be discharged of record within thirty (30) days after the date Tenant has knowledge of such filing. If Tenant shall fail to discharge such mechanics' lien within such period, then in addition to any other right or remedy Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or bonding, and in such event Tenant shall be entitled, if it so elects, to compel the prosecution of an action for the foreclosure of such mechanics' lien by the lienor and to pay the amount of the judgment, if any, in favor of the lienor with interest, costs, and allowances. Tenant shall not be required to pay or discharge any such mechanics' lien so long as Tenant shall give notice in writing to Landlord of its intention to contest the validity of such lien and shall in good faith proceed to contest the same by appropriate proceedings.

## Article XII. Covenants Against Waste and Inspection

Section 12.01 Waste. Tenant covenants not to do or suffer any demolition, waste or damage, disfigurement, or injury to the Land or the Building.

Section 12.02 Inspection of Building. Tenant shall permit the authorized representatives of Landlord to enter upon the Land and the Building or any part thereof at all times during usual business hours for the purpose of making reasonable inspections of the same.

## Article XIII. Public Utility Charges

Section 13.01 Payment of Public Utility Charges. Tenant shall pay or cause to be paid all charges for gas, electricity, light, heat, power, or telephone or other communication service used,

rendered, or supplied upon or in connection with the Land and the Building and also any charges or expenses in connection with any alterations, additions, installations, or changes required or desired in connection with the supplying or using of such utilities or services or substitutes therefor throughout the Term of this Lease.

#### Article XIV. Indemnification of Landlord

Section 14.01 General Indemnification of Landlord. Tenant agrees to protect, defend, indemnify, and save harmless Landlord and its officers, agents, and employees against and from any and all claims by or on behalf of any person, firm, or corporation arising from the conduct of the Tenant or its employees, agents, and representatives, or from any work or thing whatsoever done in or about the Building or on the Land or in or on the parking facilities. Tenant also agrees to protect, defend, indemnify, and save Landlord harmless against and from any and all claims arising during the Term of this Lease from any condition of such Building and Land.

#### Article XV. Condemnation

Section 15.01 Separate Determination of Condemnation Awards. In the event that all or any part of the Land, Building, or any leasehold or other interest in the Land shall be taken or damaged or if any part of the Building or the Land is taken or damaged by the exercise of the power of eminent domain, then (whether or not this Lease shall terminate by operation of law upon such exercise of the power of eminent domain) the amount of damages resulting to Landlord and Tenant, respectively, and to their respective interests in and to the Land and Building and in, to, and in connection with this Lease, by reason of such exercise of the power of eminent domain, shall be separately determined and computed by the court having jurisdiction, and separate awards and judgments with respect to such damages to Landlord and Tenant, respectively, and to each of their respective interests, shall be made and entered. In the event that such court shall make a single award without separately determining the respective interests of Landlord and Tenant, and if Landlord and Tenant shall not agree in writing as to their respective portions of such award within twenty (20) days after the date of the final determination by such

court of the amount thereof, Landlord and Tenant agree to submit the matter to such court on stipulation for the purpose of a judgment determinative of their respective shares.

Section 15.02 Effect of Taking on Rent. In the event that all of the Land and the Building shall be taken by the exercise of the power of eminent domain or by agreement between Landlord, Tenant, and those authorized to exercise such power or if this Lease is terminated by operation of law as a result of the exercise of such power of eminent domain, then all rent, Impositions, and other sum or sums of money and other charges provided to be paid by Tenant and related to particular periods of time shall be apportioned and paid to the date of such taking. Unless all of the Land and Building are taken by the exercise of the power of eminent domain or unless this Lease is terminated by agreement or by operation of law as a result of the exercise of such power of eminent domain, this Lease shall continue in full force and effect.

Section 15.03 Taking Temporary. In the event that all or any part of the Building and the Land shall be taken by the exercise of the power of eminent domain for governmental occupancy for a temporary period, this Lease shall not terminate and Tenant shall continue to perform and observe all of its obligations hereunder (including the obligation to pay rent as provided throughout this Lease) as though such temporary taking had not occurred except only to the extent that it may be prevented from so doing by the terms of the order of the authority that made the taking. In the event the taking for governmental occupancy is for a period entirely within the Term of this Lease, then Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent, or otherwise. If the period of governmental occupancy extends beyond the termination of this Lease, the amount of such award, after payment to Landlord therefrom of the estimated cost of restoration of the Building, shall be apportioned between Landlord and Tenant as of the date of such termination. The amount of any award payable to Tenant in either case, on account of the taking of all or any part of the Building, shall be apportioned on an annual basis during the period within the Term of this Lease to which the award is applicable. In the event of any such temporary taking for governmental occupancy, and if the court shall make a single award without separately determining the amount of the award applicable to the taking of the interest of Landlord in this Lease and in the Building, and if Landlord and Tenant shall not agree in writing as to the

proportion of such award so applicable to Landlord, then Landlord and Tenant agree to submit the matter to such court on stipulation for the purpose of a judgment determinative of such interest of Landlord.

Section 15.04 Tenant covenants that if the termination of any such governmental occupancy occurs prior to the termination of the Term of this Lease, Tenant at its sole cost and expense will restore the Building as nearly as may be reasonably possible to the condition the same was in prior to such taking.

#### Article XVI. Default Provisions

Section 16.01 Events of Default. The following events are hereby defined as "Events of Default":

- (a) The failure of Tenant to pay any installment of rent, or any other payments or deposits of money as herein provided or required, when due;
- (b) The failure of Tenant to perform any of the other covenants, conditions and agreements of this Lease on the part of Tenant to be performed and the continuance of such failure for a period of sixty (60) days after notice in writing thereof from Landlord to Tenant (which notice shall specify the respects in which Landlord contends that Tenant has failed to perform any of such covenants, conditions, and agreements).

Section 16.02 Remedies in Event of Default. If any one or more Events of Default occur, the Landlord may treat each such default as a breach of this Lease and thereupon by serving written notice on Tenant, Landlord may elect, in addition to any other remedies provided by law or in equity, one or more of the following remedies:

- (a) If an Event of Default occurs after the execution of this Lease and prior to the commencement of the construction of the Building, the parties hereby agree that this Lease shall terminate forthwith;
- (b) If an Event of Default occurs after commencement of construction of the Building, and prior to the completion of Building, Landlord shall have the right to carry out and complete the construction of the Building, and all sums so expended by the Landlord

shall be immediately payable by Tenant to the Landlord upon demand. In so completing such construction, the Landlord may depart from the plans and specifications for such Building, provided, however, that the Landlord shall not be entitled to recover from Tenant an amount in excess of the amount that would have been payable by the Tenant had the Building been completed in accordance with the plans and specifications referred to in Article IX;

- (c) If an Event of Default occurs after completion of the Building in accordance with Article IX, Landlord may terminate this Lease and the Term created hereby, in which event Landlord may forthwith repossess the Land and Building utilizing a forcible entry and detainer action or other available legal proceeding in the event that Tenant shall fail to voluntarily vacate and surrender the Land and Building to Landlord.

Section 16.03 Waivers to Be in Writing. The receipt of rent by Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions, agreements, or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease. No failure on the part of Landlord to enforce any covenant or provision herein contained, nor any waiver of any right thereunder by Landlord, unless in writing, shall discharge or invalidate such covenant or provision or affect the right of Landlord to enforce the same in the event of any subsequent breach or default. No covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing, signed by Landlord or Landlord's agent duly authorized in writing. Consent of Landlord to any act or matter must be in writing and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve Tenant from the obligation, wherever required under this Lease, to obtain the consent of Landlord to any other act or matter. The receipt by Landlord of any rent or any other sum of money or any other consideration hereunder paid by Tenant after the termination, in any manner, of the Term herein demised, shall not reinstate, continue, or extend the Term herein demised, unless so agreed to in writing and signed by Landlord.



## Article XVII. Invalidity of Particular Provisions

Section 17.01 Invalidity of Provisions. If any provisions of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

## Article XVIII. Quiet Enjoyment

Section 18.01 Quiet Enjoyment. Landlord agrees that Tenant, upon paying the rent and all Impositions and other charges herein provided for and performing all of the covenants and conditions of this Lease, shall lawfully and quietly occupy the Land during the Term of this Lease without hindrance or molestation by Landlord or any persons claiming under Landlord.

## Article XIX. Landlord's Title

Section 19.01 Title Paramount. Landlord shall have title to the Land and the remainder or residual interest in the Building paramount to all others.

Section 19.02 Tenant Not to Encumber Landlord's Interest. Tenant shall have no right or power to and shall not in any way encumber the title of Landlord in and to the Land or the remainder or residual interest in the Building. The fee simple estate of Landlord in the Land and the interest of Landlord in the Building shall not be in any way subject to any claim by way of lien or otherwise, whether claimed by operation of law or by virtue of any express or implied lease or contract or other instrument made by Tenant, and any claim to a lien or otherwise upon the Land or in the Building arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant in the Land and Tenant's interest in the Building and shall in all respects be subject to the paramount rights of Landlord in the Land and the remainder or residual interest in the Building.

## Article XX. Limitation of Liability

Section 20.01 Liability after Ouster of Tenant. In no case shall Landlord be liable under any express or implied covenant of this Lease for any damages whatsoever for Tenant's ouster by a third party.

## Article XXI. Estoppel Certificates, Subordination, and Attornment

Section 21.01 Estoppel Certificates. Landlord and Tenant each agree at any time and from time to time, so long as this Lease shall remain in effect, upon not less than ten (10) days' prior written request by the other party, to execute, acknowledge, and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, stating the modifications) and the dates to which the rent and other charges have been paid in advance, if any, and stating whether any default under the terms of this Lease is known by, or any notice of default has been served by, the party giving the certificate, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective Tenant of Landlord's fee simple interest in the Land or of Landlord's remainder interest in the Building or any mortgagee or assignee of any mortgage upon the fee of the Land or upon Landlord's remainder interest in the Building, as the case may be.

Section 21.02 Certification of Completion. If the Building has been constructed in accordance with Article IX and is acceptable to Landlord, then Landlord shall so certify within thirty (30) days after a written request by Tenant.

Section 21.03 Subordination. Tenant agrees that this Lease shall be subordinate to any mortgages or trust deeds that may hereafter be placed upon the Land and to any and all advances to be made thereunder, and to the interest thereon, and to all renewals, replacements, and extensions thereof; provided that the mortgagee or trustee thereunder shall agree to recognize Tenant's rights hereunder as long as Tenant is not in default hereunder. Tenant further agrees that upon notification by Landlord to Tenant, this Lease shall be or become prior to any mortgages or trust deeds that

may heretofore or hereafter be placed on the Land. Tenant shall execute and deliver a Subordination, Non-disturbance and Attornment Agreement or, failing to do so within ten (10) days after demand in writing, does hereby make, constitute, and irrevocably appoint Landlord as its attorney-in-fact and in its name, place, and stead so to do.

Section 21.04 Attornment. Tenant shall, upon demand, in the event of the sale or assignment of Landlord's interest in the Land or remainder interest in the Building; or in the event that any proceedings are brought for the foreclosure thereof; or in the event of an exercise of power of sale under any mortgage, trust deed, or other financing instrument made by Landlord covering the Land, attorn in writing to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

#### Article XXII. Assignment and Sublease

Section 22.01 Assignment and Sublease. Tenant shall not assign this Lease, or any interest therein, and shall not sublet the Building or Land or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person or entity to occupy or use the Building, Land or any part thereof without Landlord's prior written consent, which consent may be arbitrarily withheld.

#### Article XXIII. Remedies Cumulative

Section 23.01 Remedies Cumulative. No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Lease to Landlord may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Landlord. No delay or omission of Landlord to exercise any right or power arising from any default shall impair any such right or power, nor shall it be construed to be a waiver of any such default or any acquiescence therein.

Section 23.02 Waiver of Remedies Not to Be Inferred. No waiver of any breach of any of the covenants or conditions of this Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of the same or similar covenant or condition.

Section 23.03 Right to Terminate Not Waived. Neither the rights herein given to receive, sue for, or distrain for any rent, monies, or other payments, or to enforce any of the terms of this Lease, or to prevent the breach or nonobservance thereof, nor the exercise of any such right or of any other right or remedy shall in any way impair or toll the right or power of Landlord to terminate the Term herein granted and to terminate this Lease because of any event of default hereunder.

#### Article XXIV. Holding Over

Section 24.01 Rights Upon Holding Over. Provided Tenant does not exercise its option to purchase the Land during the Lease term, upon termination of this Lease by lapse of time, Tenant shall yield up immediate possession of the Land and the Building to Landlord. Likewise, upon termination of this Lease by reason of an Event of Default or otherwise, Tenant will at once surrender possession of the Land and Building to Landlord and remove all of Tenant's personal effects and property therefrom.

#### Article XXV. Option To Purchase

Section 25.01 Option to Purchase Land. Landlord hereby gives and grants to Tenant the exclusive right and option during the Term of this Lease to purchase the Land for the cash price of ONE HUNDRED THREE THOUSAND FIFTEEN AND NO/100 DOLLARS (\$103,015.00). As a credit to said purchase price there shall be deducted the rent paid by Tenant to Landlord during the Term of the Lease. In the event Tenant elects to exercise the option, Tenant shall deliver notice thereof in writing to Landlord during the Lease Term.

Section 25.02 Option to Purchase Additional Tract. Conditioned upon Tenant having exercised its option to purchase the Land, Landlord further gives and grants to Tenant the exclusive right and option (which must be exercised in the same manner as the exercise of the option in respect to the Land) at any time within Five (5) years following the date of the commencement of the term of this Lease, for a cash price of ONE HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED EIGHTY-TWO AND 50/100 DOLLARS (\$136,482.50) the following additional tract, hereinafter referred to as "Tract A":

A TRACT OF LAND LOCATED IN PART OF THE NORTH HALF OF THE NORTHEAST QUARTER (N1/2 NE1/4) OF SECTION FOURTEEN (14), TOWNSHIP ELEVEN (11) NORTH, RANGE TEN (10) WEST OF THE 6TH P.M., HALL COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTH HALF OF THE NORTHEAST QUARTER (N1/2 NE1/4); THENCE ON AN ASSUMED BEARING OF S89°27'02"W, WEST ALONG THE NORTH LINE OF SAID N1/2 NE1/4, A DISTANCE OF 330.00 FEET, TO THE TO THE POINT OF BEGINNING; THENCE S01°23'27"E A DISTANCE OF 496.86 FEET, TO THE NORTHWEST CORNER OF LOT 2, HANOVER SECOND SUBDIVISION; THENCE S88°36'51"W A DISTANCE OF 432.30 FEET, TO A POINT ON THE EAST LINE OF LOT 1, BLOCK 2, NEUMANN SECOND SUBDIVISION; THENCE N01°24'29"W, NORTH ALONG SAID EAST LINE OF LOT 1, BLOCK 2, NEUMANN SECOND SUBDIVISION, A DISTANCE OF 503.17 FEET, TO A POINT ON THE NORTH LINE OF SAID N1/2 NE1/4; THENCE N89°27'02"E, EAST ALONG THE NORTH LINE OF SAID N1/2 NE1/4, A DISTANCE OF 432.49 FEET, TO THE TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 216,191.54 SQUARE FEET OR 4.963 ACRES MORE OR LESS OF WHICH 0.328 ACRES ARE ROAD RIGHT-OF-WAY.

Section 25.03 Condition for Exercise of Options. The right to exercise the options hereinbefore set forth is conditioned upon the favorable performance by the Tenant of all of the covenants, conditions, and agreements required to be performed by it under this Lease, and the payment by the Tenant of all basic rent, additional rent, and other special payments as provided in this Lease to the Closing Date (hereafter defined).

## Article XXVI. Sale Conditions And Closing

Section 26.01 Purchase Price. The balance of the Purchase Price, subject only to credits as provided herein, shall be payable in cash or certified funds at the time of closing.

Section 26.02 Closing Date. The closing upon exercise of the purchase option shall be on or before thirty (30) days after the date of the notice of the election to exercise, which is herein called the "Closing Date", unless otherwise agreed by the parties hereto in writing.

Section 26.03 Continuing Effect of Lease. In the event that Tenant shall give Landlord notice of the exercise of the option to purchase, this underlying Lease shall continue until the Closing Date, and, in the event a monthly payment for rent under the terms of the Lease shall be due and payable prior to the Closing Date, such rent shall be prorated to the Closing Date.

Section 26.04 Deed.

- (a) The property shall be conveyed to Tenant by warranty deed conveying marketable title to the Land, free from all liens, encumbrances, encroachments, restrictions, or conditions against or on the property attributable to any date prior to the commencement of the term of this Lease and not approved or allowed by Tenant, and free from Landlord's remainder or residual interest in the Building.
- (b) Definition of Marketable Title. "Marketable title," for purposes of this Section, shall mean such title as will be insured by a reputable title insurance company doing business in the State of Nebraska at regular rates and showing no exceptions to title except those that shall be approved by Tenant prior to or at closing.

Section 26.05 Evidence of Title. No later than ten (10) days prior to the Closing Date, Landlord shall furnish to Tenant a title insurance commitment issued by a reputable title insurance company authorized to transact business within the State of Nebraska, which shall show marketable title to the Land to be vested in the Landlord, subject only to easements and restrictions of record.

Section 26.06 Objection to Title. Should any defects be indicated by such commitment for title insurance, then Tenant shall deliver to Landlord, no later than five (5) days prior to the Closing Date, a copy of an attorney's opinion showing such defects; and Landlord, after written notice thereof, shall endeavor to correct the same to Tenant's satisfaction within a reasonable period of time from the date Landlord receives a copy of such opinion.

Section 26.07 Procedure for Closing.

- (a) Closing of the purchase shall take place at Grand Island Abstract, Escrow & Title Company.
- (b) All special assessments levied by local or state authority against the Land prior to the Closing Date, whether payable before or after the closing, in installments or otherwise, shall be paid in full by Landlord at the closing, except to the extent they shall have been the obligation of the Tenant pursuant to the terms of the Lease. The title company settlement fee and all costs relating to title insurance, recording, and surveys shall be borne by Tenant. Landlord shall prepare the Deed at its expense. Each party shall bear the expense of its own counsel.
- (c) By reason of conveyance to Tenant as a Nebraska municipal corporation, conveyance of the Land and Tract A will be exempt from the imposition of any documentary stamp tax.

Section 26.08 Condition of the Land. Tenant, having caused the same to be constructed, is fully aware of the condition of the Building and all other improvements construction upon the Land since the date of the commencement of the Term of this Lease and has made a personal inspection and investigation of the Land and Tract A, if applicable. In that regard, Tenant acknowledges and agrees that neither Landlord nor any agent of the Landlord has made any representations or warranties of condition to Tenant other than as specifically set forth hereafter concerning environmental representations and that all such real estate is being conveyed in its "As Is" condition.

Section 26.09 Environmental Representations. Expressly limited in scope to the period during which the Landlord has owned and maintained possession of the Land and Tract A, Landlord makes the following environmental representations to the Tenant:

- (a) Landlord is unaware of any action, either threatened or commenced, by any governmental agency arising out of an alleged violation of any environmental law or regulation on or affecting the Land or Tract A.
- (b) No governmental agency has notified the Landlord of any violation of any environmental law or regulation on the Land or Tract A.
- (c) Landlord is unaware of any civil action, either threatened or commenced, arising out of any alleged environmental mishap occurring on the Land or Tract A.
- (d) Landlord is unaware of any environmental mishap on the Land or Tract A.
- (e) Landlord is unaware of the presence of any hazardous waste or hazardous substance on the Land or Tract A.
- (f) The past and present uses made by or at the direction of the Landlord in respect to the Land and Tract A do not violate any relevant federal, state, or local environmental laws or regulations related to hazardous substances.

Section 26.10 Default. In the event the Tenant shall fail to consummate the closing of the transaction after giving notice of exercise of the purchase option for any reason other than provided herein, the Landlord may utilize such legal and equitable remedies as are available to the Landlord by reason of such failure. Should the Landlord fail to consummate the closing of this transaction after Tenant's exercise of its purchase option rights, the Tenant shall be entitled to utilize such legal and equitable remedies as are available to the Tenant by reason of such failure.

Section 26.11 Broker. Landlord and Tenant each represent to each other that each has done nothing that would entitle any brokers to any claims for commissions in connection with or as a result of the transaction. Landlord and Tenant each agree to hold harmless and indemnify the other against any claims for brokerage commissions arising from its alleged acts, including reasonable attorney's fees and disbursements incurred in defense of such claims that are inconsistent with their respective representations set forth in this Section 26.11 and any attorney's fees and costs in conjunction with enforcing this provision.



Article XXVII. Modification

Section 27.01 Modification. None of the covenants, terms, or conditions of this Lease to be kept and performed by either party to this Lease shall in any manner be waived, modified, changed, or abandoned except by a written instrument duly signed, acknowledged, and delivered by the other party to this Lease.

Article XXVIII. Conveyance by Tenant to Landlord

Section 28.01 Conveyance by Tenant to Landlord. Provided Tenant has not exercised Tenant's option to purchase the Land during the Lease Term, effective upon the termination of this Lease, whether by passage of time or otherwise, Tenant, in consideration of the granting of this Lease by Landlord to Tenant, hereby grants and conveys the Building unto Landlord and Landlord's legal representatives and assigns forever, such conveyance to be free and clear of all encumbrances except easements of record and liens consented to by Tenant.

Article XXIX. Notices

Section 29.01 Manner of Mailing Notices. In every case where under any of the provisions of this Lease or if, in the opinion of either Landlord or Tenant, or otherwise, it shall or may become necessary or desirable to make or give any declaration or notice of any kind, it shall be sufficient if a copy of any such declaration or notice is sent by registered or certified mail, postage prepaid, properly addressed to Landlord as follows:

or to Tenant (as the case may be) as follows:

City Administrator  
City of Grand Island  
PO Box 1968  
Grand Island, NE 68802

Copy to:

City Attorney

City of Grand Island  
PO Box 1968  
Grand Island, NE 68802

or to such other address as either party may designate in writing from time to time.

Section 29.02 Sufficiency of Service. Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

Section 29.03 When Notice Deemed Given. Whenever a notice is required by this Lease to be given by any party hereto to the other party, the notice shall be considered as having been given on the day on which the notice was placed in the mail as provided by this Article.

#### Article XXX. Miscellaneous

Section 30.01 Singular, Plural and Gender. Any word contained in the text of this Lease shall be read as the singular or the plural and as the masculine, feminine, or neuter gender as may be applicable in the particular context.

Section 30.02 Captions. The captions of this Lease and the index preceding it are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Lease nor in any way affect this Lease.

Section 30.03 Conditions and Covenants. All of the provisions of this Lease shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.

Section 30.04 Entire Agreement. This Lease contains the entire agreement between the parties.

Section 30.05 Essence of Time. The Landlord and the Tenant each agree that time is an essential element of this Lease.

Section 30.06 Applicable Law. This Lease shall be construed and enforced in accordance with the laws of the State of Nebraska.


Section 30.07 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 30.08 Effect of Electronic Signatures. Any executed counterpart signature page containing faxed signatures and/or electronically-imaged signatures, such as .pdf files, shall constitute original signatures to this Lease and shall be admissible as evidence of the document and the signer's execution.

Section 30.09 Binding Effect. This Lease has been duly authorized by required actions taken by the Landlord and the Tenant prior to the date its execution by their duly-designated representatives and shall be binding upon and inure to the benefit of each party hereto and their successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Ground Lease with Purchase Option effective as of the date first noted above.

THE MEADOWS APARTMENT HOMES,  
L.L.C., a Nebraska Limited Liability Company  
"Landlord"

By  \_\_\_\_\_  
Raymond J. O'Connor, President

CITY OF GRAND ISLAND, NEBRASKA, a  
Nebraska Municipal Corporation, "Tenant"

By  \_\_\_\_\_  
Jeremy Jensen, Mayor

Attest:

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