

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 15, 2009 AGENDA**

Subject:	Type:	Submitted By:
LAND ACQUISITION— 7215 S. 83 RD STREET	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A public hearing has been scheduled to hear comments, support, opposition or criticism with respect to the proposed purchase of an approximately 11,000 square foot building located on approximately 1.16 acres, located at 7215 S. 83rd Street adjacent to the municipal complex. A resolution has been prepared to authorize and approve the purchase of the site and to authorize and approve the execution and delivery of the purchase agreement and earnest money.

FISCAL IMPACT

The purchase agreement identifies a price of \$435,000. Community Betterment Funds will be utilized for the purchase.

RECOMMENDATION

Approval.

BACKGROUND

The City recently became aware that the property located at 7215 S. 83rd Street in La Vista (currently adjacent to the municipal campus) was put on the market for sale. During the preparation of the Municipal Facilities Plan considerable discussion was given to pursuing opportunities to expand the area for the municipal campus to provide greater flexibility for the future expansion and/or development of municipal facilities. While nothing definite has been determined regarding how the site will be utilized, it does provide for more options when it comes to planning future facilities and improvements.

Pursuant to state statute, before purchasing an interest in real property, the acquisition must be authorized by action at a public meeting after notice and public hearing.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO AUTHORIZE AND APPROVE THE PURCHASE OF A SITE AND TO AUTHORIZE AND APPROVE THE EXECUTION AND DELIVERY OF THE PURCHASE AGREEMENT AND EARNEST MONEY.

WHEREAS, the owner of the Site located at 7215 South 83rd Street, desires to sell the Site to the City, and the City desires to purchase the Site from the owner.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council find and determine that:

- (i) A purchase agreement for the Site has been presented to the City by the owner of the Site in the form and content attached hereto as Exhibit A and incorporated herein by this reference ("Purchase Agreement"); and
- (ii) The Purchase Agreement provides for a purchase price of \$435,000 for an approximately 11,000 square foot building located on approximately 1.16 acres in addition to other terms and conditions; and
- (iii) Neb. Rev. Stat. Section 18-1755 requires that the City, before purchasing an interest in real property, authorize the acquisition by action at a public meeting after notice and public hearing; and
- (iv) The City published notice of public hearing on the proposed purchase of the Site, to be held during the regular City Council meeting on November 29, 2009; which notice is hereby approved, and public hearing was held and completed prior to consideration of this Resolution; and
- (v) Neb. Rev. Stat. Section 13-403 requires that the City, before purchasing, lease-purchasing or otherwise acquiring for consideration real property having an estimated value of \$100,000 or more, obtain an appraisal of the property from a certified real estate appraiser; and
- (vi) The City will obtain an appraisal of the Site from a certified real estate appraiser, which appraisal shall establish the Site's fair market value at an amount equal to or greater than the price stated in the Purchase Agreement attached hereto and referred to in (ii) above, and which appraisal may be accepted in a form and amount satisfactory to the City Administrator and City Attorney.

BE IT FURTHER RESOLVED, that, in consideration of the foregoing, the Mayor and City Council hereby adopt and approve the Purchase Agreement and authorize and approve the purchase of the Site for the amount and on such other terms and conditions set forth in said Purchase Agreement in a form and amount satisfactory to the City Administrator and City Attorney.

BE IT FURTHER RESOLVED, that the Mayor or his designee is hereby authorized to take such other action as is necessary or appropriate to carry out the Resolutions approved herein.

PASSED AND APPROVED THIS 15TH DAY OF DECEMBER 2009.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

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PURCHASE AGREEMENT

(This is a legally binding contract. If not understood, seek legal advice.)

Pacific Realty Commercial, LLC, d/b/a
Grubb & Ellis|Pacific Realty, Broker

Date: November 4, 2009

This Purchase Agreement ("Agreement") is entered into between Terry M. Anderson ("Seller") and Adam Marek, as Agent for an unnamed Buyer ("Buyer"). The "Effective Date" hereof shall be the date this Agreement is last executed. The undersigned Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property described as follows based on the following terms and conditions:

1. **Address:** 7215 S. 83rd St., LaVista, Sarpy County, Nebraska 68128 (an approximately 11,000 square foot building located on approximately 1.16 acres), and all adjacent land and/or adjacent property owned by Seller.
2. **Legal Description (the "Property"):** (exact legal description to be determined by survey)
(insert legal description)
3. **Personal Property:** The personal property included is as follows: All fixtures and equipment permanently attached, along with any personal property used in the operation of the Property.
4. **Conveyance:** Seller represents that they have good, valid and marketable title, in fee simple, and has the authority to enter into this Agreement and to observe and perform all of its duties and obligations herein. Seller agrees to convey title to Property to Buyer or its nominee by general warranty deed free and clear of all claims, liens and encumbrances whatsoever, including but not limited to special taxes levied or assessed, subject only to any Permitted Exceptions further defined herein or Leases identified and accepted by Buyer in accordance with Section 5 below.
5. **Encumbrances:** Seller is the only person or entity in possession or occupancy of the Property, except for tenants as disclosed to Buyer pursuant to Leases copies of which Seller shall provide to Buyer within five (5) days of the Effective Date. All service contracts, vendor contracts or third-party agreements on or related to the Property shall also be disclosed to Buyer with copies of all said contracts and agreement(s) provided to Buyer within five (5) days of the Effective Date. All said Leases, contracts and agreements shall be subject to review and approval of Buyer in its sole discretion. As a result of the transfer of title of the Property ("Closing") the Property shall be transferred and conveyed to Buyer free and clear of all claims, liens and encumbrances whatsoever, including but not limited to contracts, Leases or agreements, except those identified and accepted by Buyer, and subject only to the Permitted Exceptions defined herein.
6. **Purchase Price:** Buyer agrees to pay Seller Four Hundred Thirty Five Thousand Dollars (\$435,000) (the "Purchase Price") on the following terms: Five Thousand Dollars (\$5,000) ("Deposit") to be delivered to Title Company as escrow agent and deposited within three (3) business days after the Effective Date of this Agreement. The Title Company shall provide Buyer a receipt for said Deposit. In the event of refusal or failure of Buyer to consummate the purchase after all conditions and contingencies of said purchase as set forth in this Agreement have been fully performed within the prescribed time or waived in writing by Buyer, Seller may, at his option, retain the Deposit as liquidated damages as Seller's sole remedy for Buyer's failure to carry out this Agreement. The balance of the Purchase Price, as adjusted by the Deposit and other adjustments under this Agreement, shall be paid in immediately available funds at Closing of the sale.
7. **Property Condition:** Seller hereby represents and agrees as follows: (A) To the best of the knowledge, information and belief of Seller (i) no Hazardous Materials are presently stored or otherwise located upon or within the Property, and no part of the Property is contaminated by any Hazardous Materials, (ii) the Property has never been used as a landfill, (iii) the Property currently complies with all occupancy permits, fire regulations and building codes, and (iv) the Property has no latent defects; (B) Between the Effective Date and the Closing, Seller shall maintain the Property, including but not limited to heating, air conditioning, water heater, sewer, plumbing, electrical systems and any built in appliances or equipment, in good and working condition and repair in the ordinary course of business; (C) Between the Effective Date and the Closing, Seller shall not amend, modify, renew or terminate any of the existing Leases, or enter into any new leases or occupancy agreements without Buyer's written consent, which consent shall be in Buyer's sole discretion; and Seller shall not breach any such Lease; (D) Between the Effective Date and the Closing, Seller will promptly notify Buyer of any written notice received of any violation of any laws, ordinances, rules or administrative or judicial orders affecting or regarding the Property; and (E) Within ten (10) days of the Effective Date, Seller

shall deliver to Buyer copies of all documents in Seller's possession or control related to the Property, including but not limited to items set forth on Exhibit "A" attached hereto ("Due Diligence Materials"). All documents supplied to Buyer by Seller in accordance with Exhibit "A" shall be true, complete and correct copies of all of the documents in Seller's possession or control regarding the subject matter thereof. Due Diligence Materials and the matters and transactions they represent shall be subject to approval of Buyer in its sole discretion.

8. **Title and Survey:** Within five (5) business days of the Effective Date, Buyer shall order an ALTA Title Commitment ("Title Commitment") from Nebraska Title Company ("Title Company") and an ALTA/ACSM Survey ("Survey") from a survey company. Within fifteen (15) business days after Buyer's receipt of the Title Commitment and Survey, whichever occurs last, Buyer shall provide written notice to Seller of any matters disclosed in the Title Commitment or Survey which Buyer finds, in its sole discretion, objectionable ("Title Objections"). Seller shall then use all reasonable efforts to correct and/or cure the Title Objections within thirty (30) days after receipt of such notice (the "Cure Period"). In the event Seller is unable to cure the Title Objections to the Title Commitment or Survey, Buyer shall have the right to waive such objection(s) in its sole discretion or to terminate this Agreement with the entire Deposit returned to the Buyer. Any Title Objection that Seller is unable to cure, and that has been waived by Buyer, shall be deemed "Permitted Exception(s)". Any waiver must be in writing and signed by Buyer to be effective. Both Buyer and Seller shall be equally responsible for the cost of the Title Commitment and the Title Company's closing fee. The cost of any endorsements required by Buyer shall be the responsibility of the Buyer. The cost of the Survey shall be the responsibility of the Seller.
9. **Applicable Conditions:** Buyer's obligations under this Agreement are conditioned upon the happening of each of the following events of this Section 9. If each has not occurred within the time stated, this offer shall at Buyer's option be null and void, and any Deposit returned to Buyer, or in the alternative, Buyer shall have the option to waive or provide additional time for satisfaction of any such condition, which waiver or additional time must be provided in writing. (A) This Agreement shall not have been terminated by Buyer during the Inspection Period; (B) All of Seller's representations and warranties shall be true and accurate as of the Effective Date and through Closing; (C) Seller shall have observed and performed all of Seller's covenants and agreements; (D) Seller shall have cured and/or corrected all matters in the Title Commitment or Survey found objectionable by Buyer other than the Permitted Exceptions; (E) Buyer to obtain suitable financing, in Buyer's sole discretion, within sixty (60) days from the execution date of this agreement. In the event that suitable financing, in Buyer's sole discretion, is not obtained within sixty (60) days from the execution date of this agreement, Buyer shall have the right to extend the financing contingency period for an additional thirty (30) days by notifying Seller in writing; (F) Final walk through inspection of the Property satisfactory to Buyer in its sole discretion pursuant to Closing; (G) Approval of this Agreement and purchase of the Property by unnamed Buyer in accordance with applicable law; and (H) Satisfaction of all other conditions of this Agreement within the specified time.
10. **Inspection Period:** During the sixty (60) day period following the Effective Date ("Inspection Period"), Buyer shall have the right to conduct such inspections, reviews and investigations of the Property, including environmental assessments, as Buyer determines necessary ("Inspections"). The Inspection Period shall be automatically extended if needed to complete or obtain results of any testing or inspection commenced during the Inspection Period so long as Buyer acts with reasonable diligence. Buyer or its agents shall have reasonable access to the Property from the Effective Date through and including the Closing date. The cost of any inspections shall be the responsibility of Buyer. Buyer may terminate this Agreement at any time and for any reason during the Inspection Period by written notice. If Buyer elects to terminate this Agreement during the Inspection Period, the Deposit shall be returned to Buyer.
11. **Assessments:** Seller agrees to pay any assessments for public improvements previously constructed, or ordered or required to be constructed by the public authority, but not yet assessed. Seller is not aware of any public improvements ordered or required to be constructed but not yet constructed.
12. **Urban Taxes:** All consolidated real estate taxes which become delinquent in the year in which Closing takes place shall be treated as though all are current taxes, and those taxes shall be prorated as of date of Closing, and all prior years' taxes, interest, and other charges, if any, will be paid by Seller. All special assessments, including but not limited to greenbelt recapture taxes, whether or not payable in installments, shall be paid by Seller.
13. **Rents, Deposit and Leases, if Rented:** Seller hereby represents that no Lease or other agreement to which Seller is a party with respect to the Property is in default, except as Seller otherwise discloses in writing to Buyer within 5 days after the Effective Date of this Agreement and Buyer approves. Seller shall deliver to Buyer,

within five (5) days of the Effective Date, true, complete and correct copies of all Leases affecting the Property. Any tenant deposits and Leases shall be assigned to Buyer at Closing at no cost. All collected rents shall be prorated to date of Closing. At the option of Buyer, tenants shall attorn to Buyer as a condition of Closing and Leases shall be subordinate to any mortgage or deed of trust required by Buyer's Lender to finance Buyer's purchase of the Property. Prior to Closing, Seller shall deliver to Buyer Estoppel Certificates, instruments evidencing tenant attornment to Buyer as successor landlord under the Leases, and any other documents or instruments reasonably required by Buyer to finance or purchase the Property, in a form acceptable to Buyer and Buyer's Lender, which have been fully executed with no material modifications. Buyer and Seller shall execute joint letter(s) to all tenants reflecting the change in ownership and identifying where future rent payments are to be forwarded.

14. **Sanitary and Improvement District (S.I.D.):** Buyer understands that this property is not located within an S.I.D.
15. **Escrow Closing:** Buyer and Seller acknowledge and understand that the Closing will be handled by the Title Company and that the Broker is authorized to transfer the Deposit or any other funds it receives to said Title Company. After said transfer, Broker shall have no further responsibility or liability to Buyer or Seller for the accounting for said funds. Title Company's fee for the Closing shall be equally divided between Buyer and Seller.
16. **State Documentary Tax:** The State Documentary Tax on the deed shall be paid by Seller; all recording fees shall be paid by the Buyer.
17. **Insurance:** Any risk of loss to the Property shall be borne by the Seller until title has been conveyed to Buyer. In the event, prior to closing, the structure(s) on the Property are materially damaged by fire, explosion or any other cause, Buyer shall have the right to rescind this Agreement, and the Deposit shall be refunded to Buyer.
18. **Environmental:** Seller represents to the best of Seller's knowledge, information and belief, there are no conditions present or existing with respect to the Property which may give rise to or create Environmental Hazards or Liabilities and there are no enforcement actions pending or threatened with respect thereto. Seller represents that Seller has disclosed to Buyer all information which Seller may have relative to the use, storage or disposal of any hazardous substance or chemical or hydrocarbon product in connection with the Property.
19. **Closing and Prorations:** The Closing shall be conducted at the offices of the Title Company. The Closing shall occur within fifteen (15) days after the end of the financing contingency and Inspection Periods, or at an earlier mutually agreeable date. Title Company shall issue a general warranty deed to be executed by Seller indicating the Property is being transferred free and clear of all liens, claims and encumbrances whatsoever, including but not limited to special taxes levied or assessed, subject only to the Permitted Exceptions, and shall be responsible for the application of the Deposit and the collection and disbursement of the Purchase Price. Buyer and Seller shall execute any and all documents required by the Title Company, Buyer's lender, Buyer or Seller, including but not limited to an Assignment and Assumption of Leases, certificate of non-foreign status, and affidavits required by the Title Company. All collected rents and service contracts shall be prorated to the date of Closing. The cost of an Owners title insurance policy shall be equally divided between Buyer and Seller.
20. **Notices:** All notices or other communications required hereunder shall be in writing and shall personally be delivered or sent by registered or certified mail, return receipt requested, or delivered by a nationally recognized overnight courier service with charges pre-paid, and shall be deemed delivered on the date of delivery if via personal delivery or overnight mail or the date of receipt as noted on the return receipt if forwarded via regular mail.
21. **Assignment:** Buyer may assign this Agreement prior to Closing to another entity for the purpose of Closing.
22. **Agency:** The Broker(s) involved in this transaction is/are:

Adam Marek of Grubb & Ellis|Pacific Realty represents Buyer in this transaction.

Julia Roberts & Chris Falcone of NAI NP Dodge represent Seller in this transaction.

Both Buyer and Seller acknowledge that Buyer's Broker has compiled this Agreement from various sources, that the Broker is not an attorney, and that Buyer and Seller have been advised and requested to seek legal representation prior to their execution of this Agreement. By execution of this Agreement, Buyer and Seller waive any and all claims against Buyer's Broker in the preparation of this Agreement.

23. Broker(s) Compensation: Buyer and Seller acknowledge that Julia Roberts & Chris Falcone of NAI NP Dodge, as agents for Seller, have a listing fee of six percent (6%) of the Purchase Price; provided, however, that said fee shall be paid by Seller from the Seller's proceeds of the sale and shared equally between the Buyer's and Seller's Brokers, meaning that a fee of three percent (3%) of the Purchase Price shall be paid by Seller to Seller's Brokers and the remaining fee of three percent (3%) of the Purchase Price shall be paid by Seller to Buyer's Broker. Seller and Buyer each represent to the other that the allocation of compensation as provided herein has been discussed with, and is acceptable to, its respective Broker or Brokers. Both Buyer and Seller warrant to each other that neither of them has consulted with any broker or agent, except as referenced above, and each will indemnify the other against and hold the other harmless from any claims for fees or commissions from any other broker or agent.

24. Defined Terms: Capitalized terms not otherwise defined herein shall have the meanings set forth in this Agreement.

25. Execution Of This Agreement: This Agreement may be executed via facsimile transmission with originals to follow in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

26. Offer Expiration: This Purchase Agreement is subject to acceptance by Seller on or before November 5, 2009, 4:00 o'clock, P.M., CST.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THIS OFFER IS BASED UPON BUYER'S PERSONAL INSPECTION OR INVESTIGATION OF THE PROPERTY AND NOT UPON ANY REPRESENTATION OR WARRANTIES OF CONDITION BY THE SELLER.

WITNESS:



BUYER: Adam Marek, as Agent for an Unnamed Buyer

By: 

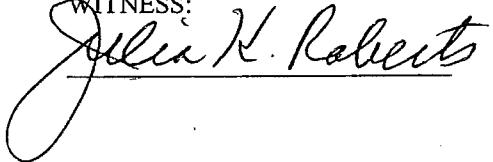
Date: 11/4/09

Printed Name & Title: Adam Marek
Address: 6464 Center St., Suite 200
City/State/Zip: Omaha, NE 68106
Telephone & Fax: 402/345-5866 & 402/763-1767
E-Mail Address: amarek@gepacificrealty.com

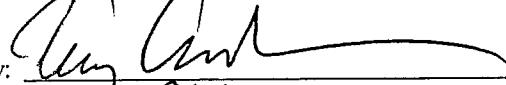
SELLER'S ACCEPTANCE:

Seller accepts the foregoing proposition on the terms stated and agrees to convey title to the Property, deliver possession, and perform all the terms and conditions set forth, and acknowledges receipt of an executed copy of this agreement except for the following modifications: _____

WITNESS:



SELLER: Terry M. Anderson

By: 

Its: owner

Date: 11-4-09

Printed Name & Title: Terry Anderson owner

Address: 11965 MASON PIZ

City/State/Zip: OMAHA NE 68154

Telephone & Fax: 680-3971 280-2244 (C)

E-Mail Address: terry.anderson@creighton.edu

BUYER'S ACCEPTANCE & RECEIPT

Buyer accepts Seller's modifications to this Agreement as set out above and acknowledges a fully executed copy of this agreement.

BUYER: _____

Date: _____

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EXHIBIT "A"
Due Diligence Materials

1. Real Estate tax bills for the current year and the last two (2) years and copies of all correspondence regarding any tax reassessment.
2. Copies of fully executed Leases and all amendments thereto.
3. Copies of fully executed service contracts, including without limitation the following:
 - a) Waste disposal
 - b) Landscape/gardening
 - c) Snow removal
 - d) Fire equipment maintenance
 - e) General maintenance (janitorial)
 - f) Security
 - g) Roof maintenance
 - h) Heating and air conditioning service and repair
 - i) Water/sewer plan
 - j) Pest control
 - k) Any and all other service contracts.
4. Copies of existing engineering and geological studies for the Property.
5. Details regarding any litigation threatened or pending against the Property and/or Seller with respect to the Property during the last three (3) years and copies of all insurance policies.
6. Copies of any existing appraisals, environmental reports, memoranda or documents with regard to the Property.
7. Copies of permits, including the following: a) Certificate of Occupancy for the Building; b) Water/sewer, and c) Certificates of Occupancy for tenant spaces.
8. An inventory of all tangible personal property owned and used in connection with operation of the Property, including without limitation: a) office equipment and furniture; b) appliances, c) maintenance equipment, tools and supplies inventory.
9. Copies of construction, engineering, architectural, and building plans and specifications for the Property.
10. Copies of existing title insurance commitments or policies and surveys.
11. Copies of such other documents, information and materials reasonably requested by Buyer.
12. Utility bills on the property for the previous twelve (12) months.

Effective Date & Deposit Receipt

The Effective Date referenced in this Agreement is _____, and Title Company hereby acknowledges receipt of a fully executed copy of the foregoing Purchase Agreement.

Title Company hereby acknowledges receipt of Deposit in the amount of \$5,000, on _____, and hereby agrees to accept, hold, and return Deposit and disburse any funds received hereunder in accordance with the provisions of the Agreement.

Nebraska Title Company

By: Holly Prenger

Date: _____

Company: Nebraska Title Company

Address: 14680 W. Dodge Rd.

City/State/Zip: Omaha, NE 68154

Phone & Fax: 402.861.9200

E-Mail Address: dswerczek@nebtitleomaha.com