

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 1, 2013 AGENDA

Subject:	Type:	Submitted By:
PURCHASE OF REAL PROPERTY - 9810 HUPP DRIVE	◆ RESOLUTION ORDINANCE RECEIVE/FILE	RITA RAMIREZ ASST. CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared authorizing the purchase of real property located at 9810 Hupp Drive and approving a purchase agreement in the amount of \$660,000.00.

FISCAL IMPACT

The FY2013/14 Lottery Fund Budget will fund the proposed purchase.

RECOMMENDATION

Approval.

BACKGROUND

The City was initially contacted by the owner of the property at 9810 Hupp Drive some time ago regarding his desire to sell. The property is located adjacent to the existing Public Works facility to the east. Negotiations have resulted in the attached purchase agreement being presented for Council approval. The acquisition of this property, which consists of a 7,200 square foot warehouse building and approximately 2 acres of land, will give the City additional capacity for its Public Works operation.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO AUTHORIZE AND APPROVE THE PURCHASE OF REAL PROPERTY, PURCHASE AGREEMENT AND FURTHER ACTIONS.

WHEREAS, the owner of 9810 Hupp Drive ("Property") desire to sell the Property to the City, and the City desire to purchase the Property from the owner.

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

- (i) A purchase agreement for the Property has been presented in 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 \$660,000 for an approximately 7,200 square foot building located on approximately two acres of land, in addition to other terms and conditions; and
- (iii) Nebraska Statutes, among other provisions, requires that the City Council, 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 Property, to be held during the regular City Council meeting on October 1, 2013; which notice is hereby approved, and public hearing was held and completed before consideration of this Resolution; and
- (v) All applicable statutory requirements related to the proposed purchase have been satisfied.

BE IT FURTHER RESOLVED, that, in consideration of the foregoing, the Mayor and City Council hereby adopt and approve the Purchase Agreement, subject to any modifications the City Administrator from time to time determines necessary or appropriate, and authorize and approve the purchase of the Property for the amount and on such other terms and conditions as set forth in said Purchase Agreement. Without limiting the foregoing, authorization to purchase the Property shall be subject to timely satisfaction of the conditions set forth in Section 9 or elsewhere in the Purchase Agreement, to the satisfaction of the City Administrator or her designee.

BE IT FURTHER RESOLVED, that the Mayor or City Administrator, or his or her designee, is hereby authorized to take all actions he or she determines necessary or appropriate to perform the Purchase Agreement or carry out the Resolutions approved herein.

PASSED AND APPROVED THIS 1ST DAY OF OCTOBER, 2013.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

K:\APPSCity Hall\13 FINAL RESOLUTIONS\13. Hupp Drive Property Purchase.Docx

PURCHASE AGREEMENT

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

Pacific Realty Commercial, LLC, d/b/a
Colliers International, Broker

Date: 9/6/13

This Purchase Agreement ("Agreement") is entered into between Silverstone Investment Properties, LLC, a Nebraska limited liability company, ("Seller") and the City of La Vista, Nebraska, ("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:** 9810 Hupp Drive, LaVista, Sarpy County, Nebraska 68128, including an approximately 7,200 square foot industrial building on approximately 86,865 square feet of land, and all related rights, improvements and appurtenances located thereon or appertaining thereto.
2. **Legal Description (the "Property"):**

Lot 1A Crossroads Addition, as surveyed, platted, and recorded in Sarpy County, Nebraska (exact legal description to be determined by survey and title commitment and policy)
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 as listed in Exhibit "A" of this Agreement.
4. **Conveyance:** Seller represents that Seller is the sole owner of the Property, has good, valid and marketable title, in fee simple, and has the authority to enter into this Agreement, sell the Property pursuant to the terms of this Agreement and observe and perform all of its duties and obligations herein. Seller agrees to convey marketable fee simple title to Property to Buyer or its nominee by general warranty deed in form and content satisfactory to Buyer and 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.
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, if any. 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. In addition, within five (5) business days after executing any additional Leases, contracts, agreements or amendments thereto, Seller shall provide copies to Buyer. All said Leases, contracts, agreements and amendments at Seller's sole cost and expense shall be consistent with and subject to this Agreement, and shall terminate, and all tenants and others in possession, control or use of any part of the Property shall vacate and remove all property from the Property, before the Closing date. 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 all contracts, Leases or agreements, subject only to the Permitted Exceptions defined herein.
6. **Purchase Price:** Buyer agrees to pay Seller Six Hundred Sixty Thousand Dollars (\$660,000) (the "Purchase Price") on the following terms: Five Thousand Dollars (\$5,000) ("Deposit") to be delivered to TitleCore, LLC, d/b/a Spence Title & Escrow, located at 210 Regency Parkway, Suite 10, Omaha, Nebraska 68114 ("Title Company") as escrow agent and deposited within five (5) business days after the Effective Date of this Agreement. The Title Company shall provide Buyer a receipt for said Deposit. The balance of the Purchase Price, as adjusted by the Deposit and other adjustments under this Agreement, shall be deposited as provided in Section 10 below and paid in immediately available funds at Closing of the sale upon satisfying all requirements of this Agreement. 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, and provided Buyer has not terminated this Agreement, Seller may, at its option, retain the Deposit as liquidated damages as Seller's sole remedy for Buyer's failure to carry out this Agreement.

7. **Property Condition:** Seller, in addition to any other representations or agreements set forth elsewhere in this Agreement, hereby represents and agrees as follows: (A) To the best of the knowledge, information and belief of Seller (without duty to investigate) (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) To the best of the knowledge, information and belief of Seller (without duty to investigate), no violations of laws, restrictive covenants, zoning or defects occurred or exist with respect to the Property; (C) Seller is not aware of any authorized or contemplated special assessments for the Property; (D) Seller is not aware of any potential, pending or threatened condemnation, litigation, insolvency or similar proceeding affecting all or any part of the Property; (E) 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 or appurtenant appliances or equipment, in good and working condition and repair in the ordinary course of business, subject to ordinary wear and tear; (F) Between the Effective Date and the Closing, Seller will promptly notify Buyer of any lawsuit, regulatory action or proceeding, or written notice received of any violation of any laws, ordinances, rules or administrative or judicial orders affecting or regarding the Property; and (G) All documents supplied to Buyer by Seller to the best of Seller's knowledge, information and belief (without duty to investigate) shall be true, complete and correct copies of all of the documents in Seller's possession or control regarding the subject matter thereof. All such representations and agreements of Seller shall survive the Closing and the Seller's conveyance of the Property to Buyer.
8. **Title and Survey:** Within ten (10) business days of the Effective Date, Seller shall furnish to Buyer an ALTA Title Commitment ("Title Commitment") from the Title Company for marketable fee simple title. Seller shall use its best efforts to induce Title Company to issue a title policy to Buyer at Closing with all standard exceptions deleted therefrom including the materialmen's lien exception, the unsettled taxes exception, and if Buyer obtains an ALTA/ACSM Survey, all standard survey exceptions. If Title Company does not delete all standard exceptions, Buyer's options, in its sole discretion, shall be as described in subsections (i) and (ii) of this paragraph below. Seller shall provide Buyer with a copy of Seller's existing survey, if any, of the Property within five (5) business days of full execution of this Agreement. Buyer may obtain a current ALTA/ACSM Survey ("Survey") from a survey company. Within fifteen (15) business days after Buyer's receipt of the Title Commitment and Survey, whichever is received last, or at any time during the Inspection Period, 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 in its sole discretion (i) to terminate this Agreement with the entire Deposit and other consideration immediately returned to the Buyer, or (ii) provided all other conditions of Closing have been satisfied, to proceed to Closing, accepting the conveyance of the Property subject to such uncured Title Objections, in which case the Title Objections shall be referred to herein as "Permitted Exception(s)". Any election of Buyer to treat an uncured Title Objection as a Permitted Exception 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 and escrow fees. 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 Buyer.
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 Agreement shall at Buyer's option terminate, and any Deposit or other amounts paid by Buyer immediately returned to Buyer, or in the alternative, Buyer shall have the option to waive in writing the condition and proceed to Closing. The applicable conditions are as follows: (A) This Agreement shall not have been terminated by Buyer during the Inspection Period or otherwise; (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) Final walk through inspection of the Property satisfactory to Buyer in its sole discretion pursuant to Closing that the Property is in the same condition on the Closing date as existing on the last day of the Inspection Period, reasonable wear and tear during the period between the last day of the Inspection Period and Closing date excepted; (F) Approval of this Agreement and purchase of the Property by the City Council of Buyer in accordance with applicable law; and (G) Satisfaction of all other conditions of this Agreement within the specified time.

10. **Inspection Period:** During the seventy-five (75) day period following the Effective Date ("Inspection Period"), Buyer shall have the right to conduct such testing, surveying, engineering, inspections, reviews and investigations of the Property and to review all information to assess the Property, including, but not limited to, determining whether or not the Property and the location and capacity of all existing utilities shall be suitable and sufficient for Buyer's intended use of the Property, a Phase I Environmental Site Assessment or other environmental assessments, studies, investigations or tests, soils reports, topographical survey, and any other data, information, documents, agreements and reports as Buyer determines necessary or appropriate to satisfy Buyer regarding the Property, intended uses and conditions and other contingencies in this Agreement, and obtain financing, ("Inspections"). Within five (5) business 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 "B" attached hereto ("Due Diligence Materials"). In addition, within five (5) business days after obtaining any additional Due Diligence Materials, Seller shall provide copies to Buyer. Buyer or its agents may enter upon the Property from the Effective Date through and including the Closing date for purposes of carrying out any Inspections. The cost of any Inspections shall be the responsibility of Buyer. Buyer, in its sole discretion, 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 held by the Title Company as escrow agent shall be immediately returned to Buyer. If Buyer has not earlier elected to terminate the Agreement, Buyer and Seller will proceed to Closing on the Property in accordance with this Agreement on the Closing date, provided the Property on the Closing date shall be in "as is" condition, meaning the Property shall be in the same condition on the Closing date as existing on the last day of the Inspection Period, reasonable wear and tear during the period between the last day of the Inspection Period and Closing date excepted. In that case, Buyer within ten (10) days after the last day of the Inspection Period shall deposit the balance of the Purchase Price with the Title Company as escrow agent, and upon that event, Seller within ten (10) days thereafter shall deposit with the Title Company as escrow agent the fully executed warranty deed for the Property in form and content satisfactory to the Buyer. The Title Company shall provide Buyer a receipt for said deposit, and Title Company shall hold the Purchase Price and warranty deed in escrow to be conveyed and delivered at Closing in accordance with this Agreement. Once Buyer deposits the balance of the Purchase Price with the Title Company, Title Company, Buyer and Seller shall be obligated to proceed with Closing in accordance with this Agreement, which obligation shall be irrevocable except as otherwise provided in this Agreement.
11. **Assessments:** Seller shall pay any assessments existing on the Property as of Closing and all assessments for public improvements previously constructed, or ordered or required to be constructed by any public authority, but not yet assessed as of Closing.
12. **Taxes:** Seller shall pay all consolidated real estate taxes relative to the Property before the year of Closing, and any related interest or other charges. Real estate taxes relative to the Property for the year of Closing shall be prorated between Buyer and Seller from January 1 of the year of Closing to the date of Closing based upon the most recent consolidated tax levy rate and Property valuation and paid in due course as required by Buyer. Buyer shall be responsible for paying any real estate taxes levied on the Property for all years following the year of Closing.
13. **Leases, if Rented:** Seller hereby represents that no Lease or other agreement to which Seller is a party with respect to the Property, if any, is in default. Seller shall deliver to Buyer, within five (5) days of the Effective Date, true, complete and correct copies of all Leases, service contracts and other agreements affecting the Property. All Leases service contracts and other agreements affecting the Property at Seller's sole cost and expense shall terminate, and all tenants and others in possession, control or use of any part of the Property shall vacate and remove all property from the Property, before the Closing date. Seller, prior to Closing, at its sole cost and expense shall control, operate and maintain the Property in good and working condition and repair, and shall be entitled to all revenues of or with respect to the Property.
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 acting as an escrow agent, and that the Buyer's Agent is authorized to transfer the Deposit or any other funds it receives to said Title Company. In such event, Title Company will deposit the money in an interest bearing account with the interest accruing to the benefit of the Seller, subject to Closing. After said transfer, Buyer's Agent shall have no further responsibility or liability to Buyer or Seller for the accounting for said funds. Title Company's fee for the escrow and 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:** This Agreement shall not be deemed to convey any title to the Property. 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, all or any part of the Property is destroyed or materially damaged, Buyer shall have the right to terminate this Agreement, and the Deposit and all other funds paid by Buyer shall be immediately refunded to Buyer by the Title Company as escrow agent.
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 Buyer. The Closing shall occur on December 31, 2015, or an earlier date selected by Seller that is at least sixty (60) days after the end of the Inspection Period, or at an earlier mutually agreeable date. Seller, to elect an earlier Closing date, must give Buyer at least thirty (30) days advance written notice of the earlier Closing date. At Closing, Seller shall deliver possession of the Property to Buyer. Title Company shall issue a general warranty deed in form and content satisfactory to Buyer, to be executed and deposited by Seller with the Title Company for delivery at Closing as provided in Section 10 above, 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 a certificate of non-foreign status, and affidavits required by the Title Company. To further specify and not limit the scope of the foregoing sentence, Seller shall execute and deliver to Buyer at Closing an Owner's Affidavit and/or other agreements acceptable to Buyer and Title Company, together with such other documentation reasonably required by Title Company, including, without limitation, a FIRPTA certification and evidence of authority of Seller to consummate the sale. All Leases and service contracts at Seller's sole cost and expense shall terminate, and all tenants and others in possession, control or use of any part of the Property shall vacate and remove all property from the Property, before 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 courier or the date of receipt as noted on the return receipt if forwarded via registered or certified mail, at the appropriate address as specified at the end of this Agreement, with a copy of any notice to Buyer also provided to:

Thomas G. McKeon
200 Regency One
10050 Regency Parkway
Omaha, NE 68114

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:

Buyer is represented by Adam Marek of Colliers International ("Buyer's Agent").
Seller is not represented by an agent.
23. **Broker Compensation:** Buyer shall pay any commission owed to Buyer's Agent in connection with this transaction.
24. **Execution Of This Agreement:** This Agreement may be executed 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. Any Exhibits referenced in this Agreement are incorporated herein by said reference.

25. **Offer Expiration:** This Purchase Agreement is subject to acceptance by Seller on or before September 10, 2013, at 4:00 o'clock, P.M., CST.
26. **No Other Proposal:** Upon full execution of this Agreement, and through and including the Inspection Period and last date thereafter for any Buyer performance hereunder, Seller shall not actively market the Property to prospective purchasers nor make, receive, or solicit offers for the sale of the Property to prospective purchasers, provided that the Seller will have the right to receive unsolicited back up offers.
27. **Entire Agreement.** This Agreement is the entire agreement between the parties covering everything agreed upon or understood in the transaction. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between Buyer and Seller, except as expressed in this contract. No change or addition shall be made to this Agreement except by written supplemental agreement signed by the parties.

WITNESS:



BUYER: City of La Vista, Nebraska
By: Brenda Gunn
Name: Brenda Gunn
Its: City Administrator
Date: 9-06-13
Address: 8116 Parkview Blvd
City, State: La Vista, NE 68128
Telephone: 402-331-4343

SELLER'S ACCEPTANCE:

Seller accepts the foregoing Agreement on the terms and conditions stated therein and agrees to convey title to the Property, deliver possession, and perform all the terms and conditions set forth in the Agreement, and acknowledges receipt of an executed copy of the Agreement.

WITNESS:



SELLER: Silverstone Investment Properties, LLC

By: Thomas P. Kellner
Name: Thomas P. Kellner
Its: President
Date: 9/6/13
SS#/Fed.ID #: 71-1026345
Address: 9810 Hupp Dr.
City, State: La Vista, NE 68128
Telephone: (402) 212-5126

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me, a Notary Public, duly commissioned and qualified in and for said County, appeared Thomas P. Kellner, personally known by me to be the President of Silverstone Investment Properties, LLC and the identical person whose name is affixed to the foregoing Seller's Acceptance of the Purchase Agreement, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said limited liability company.

WITNESS my hand and Notarial Seal this 6 day of September 2013.



Notary Public

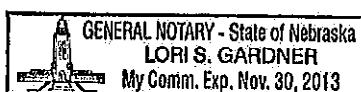


EXHIBIT "A"
PERSONAL PROPERTY CONVEYED

No personal property conveyed other than all fixtures and equipment permanently attached to the Property.

EXHIBIT "B"
Due Diligence Materials

1. Copies of existing engineering and geological studies for the Property.
2. Details regarding any litigation threatened or pending against the Property and/or Seller with respect to the Property during the last three (3) years.
3. Copies of all Phase I Environmental Site Assessment and other environmental studies, tests and reports with regard to the Property.
4. Copies of construction, engineering, architectural, and building plans and specifications for the Property.
5. Copies of existing title insurance commitments or policies and surveys.
6. Copies of all records of improvements, maintenance, repairs and replacements of or relating to the Property or any appurtenance thereof.
7. Copies of such other documents, information and materials required by this Agreement or reasonably requested by Buyer.

Effective Date & Deposit Receipt

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

Title Company as escrow agent 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, documents or instruments received hereunder in accordance with the provisions of the Agreement.

TitleCore, LLC d/b/a Spence Title & Escrow

By: _____

Date: _____

Company: _____

Address: _____

City/State/Zip: _____

Phone &Fax: _____

E-Mail Address: _____

RECEIPT

Received the sum of \$5,000.00 deposit pursuant to the terms of that certain Purchase Agreement dated on or about September 6, 2013, between, Silverstone Investment Properties, LLC, as Seller, and City of LaVista, Nebraska, as Purchaser, for property located at 9810 Hupp Drive, LaVista, Nebraska, briefly described as Lot 1A Crossroads Addition, Sarpy County, Nebraska.

Dated: September 11, 2013

TitleCore, LLC

By: A handwritten signature in black ink, appearing to read "James J. Clark".