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FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2013-32948

10/23/2013 12:38:38 PM

*Lloyd J. Dowding*

REGISTER OF DEEDS



**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS  
Steven J. Stastny, Deputy  
1210 GOLDEN GATE DRIVE, # 1230  
PAPILLION, NE 68046-2842  
402-593-5773

Record & Return to:  
Adams & Sullivan, P.C., L.L.O.  
1246 Golden Gate Drive, Suite 1  
Papillion, NE 68046

BELLEVUE ZONING DEVELOPMENT AGREEMENT

THIS ZONING DEVELOPMENT AGREEMENT (the "Agreement"), made this ~~23<sup>rd</sup>~~ day of ~~September~~ 2013 (the "Effective Date"), by and between the Applicant, Arun Agarwal, who is the Buyer of certain real property described in the attached Purchase Agreement, marked as Exhibit "A", ("the Applicant") and the City of Bellevue, a Nebraska Municipal Corporation (the "City"). For the purposes of this Agreement, Applicant and City may be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. WHEREAS, the Applicant has entered into the aforementioned Purchase Agreement to acquire legal title to the real property legally described as Lot 2, Turner's First Addition, in the Northwest ¼ of Section 15, Township 14 North, Range 13 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska (the "Parcel"), which Parcel is within the corporate limits of the City and within the City's zoning and platting jurisdiction; and,

B. WHEREAS, the Applicant has requested rezoning of the Parcel by the City from BG to BGH to allow for commercial development on the Parcel by maintaining a self-storage facility on the Parcel; and,

C. WHEREAS, in order to utilize the Parcel for the Project, the Parcel must be rezoned from BG to BGH, as defined in the City of Bellevue Zoning Ordinance (the "Zoning Ordinance"); and,

D. WHEREAS, the City is willing to conditionally rezone the Parcel from BG to BGH so long as the Parcel is not used for any other uses, as defined by the Zoning Ordinance, allowable for BGH zoning, except as provided herein; and,

E. WHEREAS, City has determined that it is in the best interest of the health, safety and welfare of the City and its residents to exercise its legislative prerogative in favor of Applicant as contemplated by paragraph B of the recitals conditioned upon Applicant establishing for its own benefit and for the mutual benefit of all future owners and occupants of the Parcel, certain privileges, covenants, terms, conditions, restrictions, and rights in, under, over and upon the Parcel together with certain mutually beneficial covenants, privileges, restrictions and obligations with respect to the use, operation and maintenance of the Parcel in addition to those matters currently of record, and notwithstanding any other right, privilege, interest of entitlement whatsoever inuring to Applicant or their successors, grantees or transferees as an owner, user or occupant of the Parcel, whether under the laws of the State of Nebraska, the City or otherwise, the same hereby being waived by Applicant to the maximum extent permitted by law; and,

F. WHEREAS, it is intended that all owners, mortgagees, beneficiaries and trustees

under trust deeds, occupants and all other persons hereafter acquiring any right, title or interest in the Parcel shall at all times enjoy the benefits of, and shall hold their interests subject to all rights, easements, privileges, covenants, terms, conditions and restrictions set forth in this Agreement, all of which shall run with the land and be binding upon the Parcel and anyone having or acquiring any rights, title or interest in or to any part thereof. All rights, easements, privileges, covenants, terms, conditions and restrictions created hereunder are declared to be in furtherance of a plan to promote and protect the cooperative use, operation and maintenance of the Parcel, the comprehensive development of the City and otherwise for the public health, safety, welfare and best interests of the City and its residents.

NOW THEREFORE, the Parties agree as follows:

1. Authority. The City has the authority to enter into this Agreement pursuant to Neb. Rev. Stat. §19-901 et. seq., as amended, and pursuant to Nebraska law.

2. Zoning. The City shall conditionally rezone the Parcel from BG to BGH.

3. Use and Development. The Parcel shall only be used and developed in accordance with the provisions of the BGH zoning district, except as otherwise restricted in this Agreement.

4. Restrictions on the Parcel. The Parcel shall not be used for the sale of used automobiles.

5. Zoning Restrictions. The Parcel shall retain conditional BGH zoning for the term of this Agreement if and only if the following conditions are satisfied:

(a) The Parcel shall be used for only those uses permitted in the BGH zoning district, and for no other use or purpose, subject to the restriction contained in this Agreement.

(b) The Applicant shall record this Agreement, at Applicant's expense, and any amendments thereto, including all exhibits, in the Office of the Register of Deeds of Sarpy County, Nebraska, against the Parcel so as to notify all persons, including future owners of the Parcel, as to the use and development restrictions placed upon the Parcel; and

(c) The Applicant shall otherwise comply with the requirements for BGH.

6. Violations and Remedies. In the event that the Applicant should violate any of the provisions of this Agreement, then, after providing the Applicant with written notice of such violation, and upon the Applicant's failure to cure such violation within ten (10) days after receipt of such notice, the City shall have the following rights:

(a) To schedule a hearing to rezone the Parcel to its prior BG zoning and, at such hearing, rezone the Parcel back to BG zoning;

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(b) To deny the approval of any additional permits or certificates with respect to the Parcel;

(c) To bring a legal action to prohibit and/or enjoin an unlawful use and/or development from continuing upon the Parcel; and

(d) To utilize any and all other remedies provided to the City by law.

7. Acknowledgement of Remedies of City. Applicant acknowledges that failure to comply with the terms of this Agreement shall cause damage to the City which may not be fully redressed by monetary damages and that the remedies provided to the City in this Agreement constitute reasonable liquidated damages clauses under Nebraska law.

8. Jurisdiction and Venue. Should the City bring any legal action pursuant to this Agreement, Applicant, including their officers, directors and employees, shall consent to personal jurisdiction in the State of Nebraska and shall consent to venue in Sarpy County, Nebraska.

9. Covenant Not to Sue or Defend. Applicant hereby represents, warrants and covenants that they shall not sue the City, nor shall they defend any proceeding brought by City, based upon (a) unlawful taking, (b) inverse condemnation, (c) standing, (d) invalidity or vagueness of this Agreement, or (e) similar claims or defenses, should the City seek to enforce any of its rights granted under this Agreement.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit and burden of the Parties hereto, and their respective successors and assigns. No right granted herein may be severed from the entirety of this Agreement except as expressly permitted by this Agreement, or by the written consent of the then interested Parties.

11. Nondiscrimination. With respect to development of the Project, neither the Developer nor the Applicant shall discriminate against any persons on account of race, national origin, sex, age, political or religious affiliations, or disability in violation of federal or state laws or local ordinances.

12. Choice of Laws. The laws of the State of Nebraska shall govern as to the interpretation, validity and effect of this Agreement.

13. Complete Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter of this Agreement.

14. Good Faith. Every representation, covenant, warranty or other obligation within this Agreement shall carry with it an obligation of good faith in its performance or enforcement.

15. Warranty. Applicant represents, covenants and warrants that the making and execution of this Agreement, and all other documents and instruments required or related hereunder, have been fully authorized by the necessary corporate and company action of Applicant and are valid, binding and enforceable obligations of the Applicant in accordance with their respective terms.

16. Modification. This Agreement may not be amended, modified or altered unless by written agreement signed by the City and Applicant.

17. Approval. This Agreement is conditional, subject to the approval of the City Council of City.

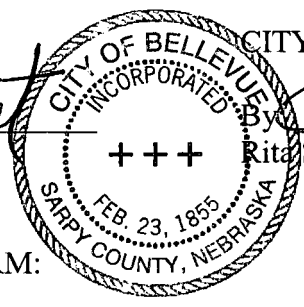
18. Running with the Land. This Agreement, including any obligations, representations, warranties and covenants shall run with the Parcel and shall be binding upon any subsequent owners of the Parcel.

WHEREFORE, the Parties have signed this Agreement as of the Effective Date.

*(Signature pages to follow.)*

ATTEST:

[Signature]  
City Clerk



CITY OF BELLEVUE

[Signature]  
Rita Sanders, Mayor

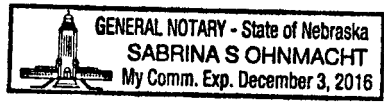
APPROVED AS TO FORM:

[Signature]  
Attorney for City of Bellevue

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF SARPY )

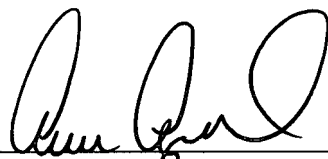
On this 23<sup>rd</sup> day of September, 2013, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Rita Sanders, Mayor of the City of Bellevue, a Nebraska Municipal Corporation, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be his voluntary act and deed on behalf of said corporation.

Witness my hand and notarial seal on the day and year last above written.



[Signature]  
Notary Public

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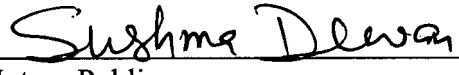


\_\_\_\_\_  
Arun Agarwal

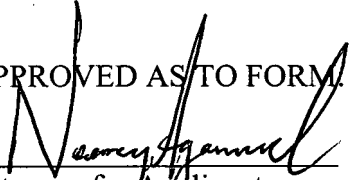
STATE OF NEBRASKA   )  
                                  ) ss.  
COUNTY OF SARPY     )

On this 30<sup>th</sup> day of September 2013, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Arun Agarwal, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal on the day and year last above written.



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

APPROVED AS TO FORM  
  
\_\_\_\_\_  
Attorney for Applicant



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**PURCHASE AGREEMENT**

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

Date: June 20, 2013

The undersigned Buyer, (Arun Agarwal and/or his assigns) agrees to purchase the Property described as follows:

- 1. Address: NEC 25<sup>th</sup> and Chandler, Bellevue, NE (both lots)
- 2. Legal Description:

LOT 2 TURNER'S FIRST ADDITION (3.72 AC) Parcel # 011561321 & Lots 1C, 1E1 & 1E3 Chandler Hills - Lots 1A Platted Parcel#010377069

- 3. Personal Property: NA

4. Conveyance: Seller represents that they have good, valid and marketable title, in fee simple, and agrees to convey title to Property to Buyer or his nominee by speciality warranty deed only free and clear of all liens, encumbrances or special taxes levied or assessed, with no exceptions subject to all building and use restrictions, utility easements not exceeding ten (10) feet in width abutting the boundary of the Property, and covenants now of record.

5. Assessments: Seller agrees to pay any assessments for public improvements previously constructed, or ordered or required to be constructed by the public authority.

6. Purchase Price: Buyer agrees to pay Two Hundred Five Thousand and No/100 Dollars (\$205,000) on the following terms: \$2,500.00 (Deposit) paid upon 48 hours after a signed contract by both parties to escrow company. In the event of refusal or failure of the Buyer to consummate the purchase, the Seller may, at his option, retain the Deposit as liquidated damages for failure to carry out the agreement of sale. Balance to be paid only as shown in the following paragraphs:

7. Contingencies: Subject to rezoning / conditional use permit; however, in no event shall it be longer than 120 days.

- 8. Taxes:

x Nebraska Urban Real Estate Taxes (Sarpy County): All consolidated real estate taxes which become delinquent in the year in which closing takes place shall be treated as though they are current and be prorated as of date of closing.

Nebraska Rural Real Estate Taxes (other than Douglas County): All consolidated real estate taxes for the year in which closing takes place (based on current assessment and tax rate) shall be prorated as of date of closing.

Iowa Urban and Rural Real Estate Taxes: A: The Seller shall pay all real estate taxes that are liens for prior years and all those real estate taxes that are due and payable on the date of closing.

B: The Seller shall pay their pro-rated share, based upon the date of closing, of the real estate taxes for the fiscal year in which closing occurs that are due and payable in the subsequent fiscal year. The Buyer shall be given a credit for such pro-ration at closing based upon the last known actual real estate taxes payable according to public record.

Local Real Estate Taxes Other than Iowa and Nebraska: Real estate taxes shall be pro-rated as is ordinary and customary in the taxing jurisdiction in which the Property is located.

9. Rents, Deposit and Leases, if Rented: Any tenant deposits and leases shall be assigned to Buyer at no cost. All collected rents shall be prorated to date of closing. All prepaid rents shall be credited to Buyer at closing. Copies of all current leases shall be provided to the Buyer at the time of closing if not earlier provided hereunder. Purchaser is not acquiring Seller's accounts receivable.

10. Surveys, Plans, Warranties, Contracts, Leases and Books and Records: Within Ten (10) days after the acceptance of this offer to purchase by all parties, Seller shall deliver to Buyer any and all surveys, site plans, Environmental reports, topographic maps, buildings plans, construction plans, roof and equipment warranties, service or maintenance contracts, and any equipment and personal property rental or lease agreements in Seller's possession. Furthermore, Buyer will cause the request for an ALTA survey to be performed which shall be reimbursed at closing by the Seller, capped at \$3,000. Further, within Ten (10) days after the acceptance of this offer to purchase by all parties, Seller shall deliver to Buyer any and all space leases or rental agreements and a corresponding rent roll reflecting tenant or renter's name, the area or unit occupied, the inception and termination dates of the lease or rental agreement, the security deposit held, any balance owing by tenant or occupant, and the complete books and financial records of the operation of the Property for the preceding three fiscal years. Should any of the foregoing or similar documents, instruments, records or agreements be in existence but not in the possession of Seller, Seller shall provide a complete and accurate list of such.

11. Inspection Period: From the date of acceptance and execution hereof by all parties, Buyer shall have one hundred (120) Days ("Inspection Period") to perform or to have performed a diligent inspection of the Property. Further, during that Inspection Period, Buyer shall determine to Buyer's sole satisfaction that the Property is suitable for Buyer's purposes, is properly zoned, adequate ingress and egress are available for Buyer's purposes. During that Inspection Period, Seller shall provide access to the Property upon 24-hour notice from Buyer and Buyer's agents, contractors, inspectors and representatives. Further, during that Inspection Period, Seller shall provide any and all materials requested by Buyer including, without limitation, materials related to as-builts and environmental reports.

Upon or prior to the conclusion of the Inspection Period, if Buyer delivers to title company in writing a notice that the results of the various inspections, determinations and document reviews are unsatisfactory Or that the property is not suitable for buyers purpose, in Buyer sole and absolute discretion, this agreement shall be null and

RECEIVED

JUL 10 2013

PLANNING DEPT.



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void, the Deposit hereunder promptly returned to Buyer without any further action needing to be performed by either buyer or seller and neither party shall have any further obligation to the other party. Should no written notice of dissatisfaction be forthcoming, the results of said inspections, determinations and reviews shall be deemed to have been satisfactory and these conditions precedent shall be deemed waived.

12. **Conveyance of Title:** Seller shall furnish a current title insurance commitment to Buyer's title company, Nebraska Title Services, as soon as practical. If title defects are found, Seller must cure them within a reasonable time. If title defects are not cured within a reasonable time period, the Buyer may rescind this agreement and the Deposit shall be refunded. Should the projected sale proceeds be sufficient, defects curable monetarily will be cured at the time of closing. Approximate closing date to be thirty (30) days immediately after the conclusion of the Inspection Period ("Closing"). Possession shall be delivered at closing. The cost of an Owners title insurance policy shall be equally divided between Buyer and Seller.

13. **Escrow Closing:** Buyer and Seller acknowledge and understand that the closing of the sale shall be managed by Nebraska Title Services, Escrow Agent, and that the Broker is authorized to transfer the Deposit or any other funds it may receive to said Escrow Agent. After said transfer, if any, Broker shall have no further responsibility or liability to Buyer or Seller for the accounting for said funds. Escrow Agent's charge for the escrow closing shall be equally divided between Buyer and Seller. Purchaser and Seller hereby agree to waive the preliminary closing settlement statement requirement.

14. **State Documentary Tax:** Seller shall pay The State Documentary Tax on the deed.

15. **Insurance:** Any risk of loss to the Property shall be borne by the Seller until title has been conveyed to the Buyer. In the event, prior to closing, the structures on the Property are damaged by fire, explosion or any other cause, Buyer shall have the right to rescind this agreement, and Seller shall then refund the Deposit to Buyer. Should Buyer elect not to rescind this agreement, Buyer shall have the option to have Seller repair the damage or the have Seller pay to Buyer the proceeds from any and all fire and extended coverage and casualty insurance claims paid or any other monetary recovery of loss. Buyer agrees to provide his own hazard insurance.

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THIS OFFER IS BASED UPON BUYER'S PERSONAL INSPECTION OR INVESTIGATION OF THE PROPERTY AND NOT UPON ANY REPRESENTATIONS, WARRANTIES OF CONDITION, THE CONTENT OF ANY DATASHEETS, ADVERTISEMENTS, PROMOTIONAL OR MARKETING MATERIALS PROVIDED BY THE SELLER OR SELLER'S AGENT. SELLER AND BUYER AGREE THAT BUYER SHALL PERFORM ITS OWN DUE DILIGENCE AND RELY SOLELY ON THE RESULTS THEREOF FOR PURPOSES OF MAKING THIS OFFER.

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_  
Seller's Initials

16. **Offer Expiration:** This offer to purchase is subject to acceptance by Seller on or before June 20th, 2013, at 4pm CST.

17. **Agency:** Arun Agarwal for Buyer, Chad Hansen (CBRE) for Seller  
Arun Agarwal, is a licensed agent in the State of Nebraska.

Buyer:

BUYER: Date: June 18, 2013

*Arun Agarwal*

RECEIPT:

RECEIVED FROM: \_\_\_\_\_ a check in the amount of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) made payable to \_\_\_\_\_ Escrow Agent, to apply to the purchase price of the Property on terms and conditions as stated. This receipt is not an acceptance of the above offer to purchase.

Nebraska Title Services

By:  
Title:

ACCEPTANCE:

Date: June 20, 2013 11 11 AM

The 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: \_\_\_\_\_

Should this Acceptance incorporate modifications constituting a counter offer, this counter offer to sell is subject to acceptance by Buyer on or before June 20, 2013, at 4:00 o'clock, P.M.

SELLER:

SELLER: \_\_\_\_\_

David Newell

BUYER RECEIPT & ACCEPTANCE

Buyer acknowledges receipt of a fully executed copy of this agreement and accepts the Counter Proposal as set out above, if any.

Date:

BUYER:

[Signature]

BUYER: \_\_\_\_\_