

## REAL ESTATE CONTRACT

THIS REAL ESTATE CONTRACT ("Contract") is entered into as of the \_\_\_\_ day of \_\_\_\_\_ ("Effective Date"), by and between **City of Aurora, a municipal corporation**, ("Seller"), and **Olive Tree Properties LLC** ("Buyer").

In consideration of the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**1. Property.** Seller hereby agrees to convey to Buyer and Buyer hereby agrees to purchase from Seller all of Seller's interest in the real property described on Exhibit A attached hereto and all improvements located thereon and all appurtenances thereto (the "Realty"), and Seller's interest, if any, in the personal property described on Exhibit B attached hereto (the "Personality"). The Realty and Personality are sometimes collectively referred to herein as the "Property". The Realty is a portion of 10-12 E. Downer Place, Aurora IL 60505, measuring approximately 7 feet wide and 65 feet long and is located on the west side of said property and adjacent to 6 E. Downer Place, Aurora IL 60505.

**2. Purchase Price.** The purchase price for the Property is **Ten and No/100 Dollars (\$10.00)** ("Purchase Price").

**Representation and Warranty.** Seller hereby warrants and represents to Buyer that Seller has the authority necessary to enter into this Contract and comply with Seller's obligations hereunder. The representation and warranty made by Seller in this Section 2 shall be true as of the Closing Date (as defined below) and shall survive the Closing of this transaction for a period of one (1) year. Buyer hereby represents and warrants to Seller that Buyer has the authority to enter into this transaction and is not a person or entity with whom U.S. persons are restricted from doing business under the regulations of the Office of Foreign Assets Control ("OFAC") of the Department of Treasury (e.g. OFAC's Specially Designated and Blocked Persons list), Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001, or the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56. The representation and warranty made by Buyer in this Section 2 shall be true as of the Closing Date and shall survive the Closing of this transaction or the earlier termination of this Contract.

**3. Title Contingency.** Promptly after the Effective Date, Seller shall deliver or cause to be delivered to Buyer a current commitment (the "Commitment") for an ALTA owner's title insurance policy for the Realty issued by a title agent selected by Seller using a nationally recognized title insurance underwriter (the "Title Company"). Buyer shall have five (5) business days after receipt of the Commitment to deliver to Seller in writing any objection to a matter shown on the Commitment which materially and adversely affects the Realty or Buyer's use of the Realty ("Title Objections"). If Buyer fails to deliver notice of Title Objections to Seller within said five (5) business day period, Buyer shall be deemed to have fully accepted the Commitment and all matters disclosed therein. If Buyer delivers notice of Title Objections to Seller within said five (5) business day period, any exceptions to title and other matters disclosed by the Commitment which are not objected to by Buyer as Title Objections shall be deemed to have been accepted by Buyer.

If Buyer delivers notice of Title Objections to Seller within said five (5) business day period, Seller shall have five (5) business days after receipt of Buyer's objection notice (the "Title Cure Period") to notify Buyer in writing what, if anything, Seller agrees to do to cure the Title Objections. Failure of Seller to respond within the Title Cure Period shall indicate that Seller elects not to cure the Title Objections. Seller shall have no obligation to cure any Title Objection or incur any expense with respect thereto. If Seller elects not to cure one or more of the Title Objections, as Buyer's sole right, Buyer shall have two (2) business days after the end of the Title Cure Period to deliver notice to Seller terminating this Contract, in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive. If Buyer does not terminate this Contract during said two (2) business day period, Buyer is deemed to have accepted any uncured Title Objections. If Seller pursues a cure and is unable to cure a Title Objection by the Closing Date, then Buyer shall have the option, as its sole right, to either terminate this Contract (in which event the earnest money shall be disbursed to Buyer and the parties shall have no further obligations hereunder except those provisions that expressly survive), or close on the purchase of the Property with no Purchase Price reduction, in which case Buyer is deemed to have accepted any uncured Title Objections and waived any rights against Seller relating thereto. Buyer shall make its election under the immediately preceding sentence within one (1) business day after Seller notifies Buyer that it was unable to cure one or more Title Objections. If Buyer does not terminate this Contract during said one (1) business day period, Buyer is deemed to have accepted any uncured Title Objections.

Notwithstanding anything to the contrary herein, the following matters shall be deemed "Permitted Exceptions" and, except for clause (e) below, Buyer shall have no right to object to any of said matters on the Commitment:

- a) municipal and zoning ordinances and agreements entered under them, agreements with any municipality regarding the development of the Realty, building and use restrictions and covenants, and State and/or Federal statutes and regulations;
- b) recorded easements for the distribution of utility and municipal services;
- c) property taxes and special assessments which are not yet due and payable at the time of the Closing;
- d) such other matters as disclosed by the Commitment and waived or accepted or deemed waived or accepted by Buyer pursuant to this Section 3;
- e) the standard or general exceptions contained in the Commitment;
- f) installments due after the Closing for assessments established pursuant to the Declaration;
- g) acts done or suffered to be done by Buyer or its affiliates or anyone claiming by, through or under Buyer or its affiliates; and
- h) encroachments by the Common Elements.

Buyer's obligation to purchase the Property is conditioned upon the Title Company being prepared to issue, at Closing, a current, standard ALTA owner's title insurance policy (or a marked-up and binding commitment therefor), without extended coverage over the printed standard or general exceptions, in the amount of the Purchase Price, insuring Buyer as the fee simple owner of the Realty as of the date of recording the deed, subject to the Permitted Exceptions ("Title Policy").

**4. No Representations or Warranties; AS-IS Condition.**

a) Buyer is hereby purchasing the Property in "AS-IS, WHERE-IS" condition and "with all faults", and agrees that it relies upon no warranties, representations or statements by Seller, or any other persons for Seller, in entering into this Contract or in closing the transactions described herein, except for the express representation and warranty set forth in Section 3 hereof. Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and the Common Elements and has waived or satisfied Buyer's title and inspection contingencies set forth in Sections 3 above. In closing and completing this transaction, Buyer will have relied exclusively upon its own inspections and reviews, and not upon any representation or warranty of Seller or its agents or employees except those expressly set forth in Section 3 above.

b) Except for the express representation and warranty set forth in Section 3 hereof, Seller makes no warranties, representations or statements whatsoever, express or implied, concerning or relating to the Property and/or the Common Elements, including without limitation: the income or expenses of the Property; zoning and building codes and other similar restrictions; availability or cost of utilities; the condition of the soils on the Property and/or the Common Elements, the environmental condition of the Property and/or the Common Elements; the presence or absence of any hazardous substances, hazardous materials, petroleum, or any substances regulated by federal, state or local law in, on or under the Property and/or the Common Elements; compliance of the Property and/or the Common Elements with any law, regulation, ordinance or similar requirement, including without limitation the Americans with Disabilities Act; or the physical condition of the Property and/or the Common Elements or any improvements thereon. Buyer acknowledges that no agents, employees, brokers or other persons are authorized to make any representations or warranties for Seller.

c) Buyer (and any party claiming through or under Buyer) hereby agrees that following the Closing, Seller shall be fully and finally released from any and all claims or liabilities against the Seller relating to or arising on account of the condition of or title to the Property and/or the Common Elements, including without limitation, any matters specifically referenced in this Contract. This Section 3(a) through (h) shall survive the Closing.

**5. Closing.** The closing of this transaction (the "Closing") shall take place on or before \_\_\_\_\_ at the offices of \_\_\_\_\_ Title Insurance Company, Aurora, Illinois or at such other time and place as may be agreed upon by Buyer and Seller. At Closing, Buyer shall deliver to the Title Company the amount of the Purchase Price, as adjusted by any prorations and closing costs provided for herein, and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Realty is located or otherwise required by the Title Company to issue the Title Policy.

At the Closing, Seller shall deliver to the Title Company a Special Warranty Deed conveying Seller's interest in the Realty to Buyer, subject only to the Permitted Exceptions and such affidavits, resolutions and other documents agreed between the parties, required for a legal conveyance of real estate in the state where the Realty is located or otherwise required by the Title Company to issue the Title Policy. All prorations required hereunder shall be computed as of 12:01 A.M. on the Closing Date. Possession of the Property shall be delivered to Buyer on the Closing Date, subject to the Permitted Exceptions. Buyer shall pay for recording the deed. Seller shall pay the title insurance premium for the Title Policy to be issued to Buyer and gap coverage charges. Buyer shall pay for all endorsement charges and the title insurance premium for any loan policy, including endorsement charges related thereto. All escrow fees and Title Company closing charges shall be shared equally by Seller and Buyer, except Buyer shall pay any escrow fees and other charges related to Buyer's loan, if any. All other closing costs, including without limitation, state, county and municipal transfer taxes and other recording fees, shall be allocated as customary in the state and municipality in which the Realty is located.

**6. Taxes.**

(a) Payment of Certain Taxes. Seller will pay in full all general real property taxes that are due and payable with respect to the Realty as of the Closing.

(b) Proration of Taxes Not Due and Payable. All general real property taxes that are levied with respect to the Realty for the year of Closing and for prior years that are not due and payable as of the Closing will be prorated between Buyer and Seller as of 12:01 A.M. on the Closing Date. If the precise amount of taxes to be prorated cannot be determined, then the proration shall be computed on the basis of the lesser of (i) the taxes set forth in the most recent ascertainable tax bills for the Realty; or (ii) an amount equal to the most recent available assessed value of the Realty multiplied by the most recent applicable total tax rate.

**7. Special Assessments; Other Prorations.** At Closing, Seller will pay all special assessments that are due and payable to any governmental body as of the Closing Date. All special assessments that are due and payable to any governmental body. After the Closing Date shall be paid exclusively by Buyer. Real estate taxes and special assessments shall not be re-prorated after the Closing, except as provided in Section 6(b) above. Prepaid expenses (including assessments and other charges levied or assessed against the Realty pursuant to the Declaration) paid by Seller shall be prorated on a per diem basis as of the Closing Date, and Seller shall receive a payment at the Closing, in addition to the Purchase Price, equal to the allocated portion of such prepaid expenses attributable to periods on and after the Closing Date.

**8. Municipal Agreements.** Seller and Buyer agree that upon Closing, Buyer will assume any and all responsibilities and obligations under all existing development agreements, declarations, escrow agreements and other agreements affecting the Property. In addition, Buyer shall comply, at Buyer's sole expense, with all requirements imposed under any such agreement or by any state, federal or local governmental entity or agency including, without limitation, any requirement to construct infrastructure, construct improvements, install sidewalks and parkway trees and landscaping, and to escrow funds, post letters of credit or any other required security in connection with the development of the Property. On or before Closing, Buyer shall, at Buyer's sole expense, replace any funds or letters of credit deposited in connection with any such

agreement or requirement. Buyer's failure to do so on or before the Closing Date shall be a default under this Contract. The parties agree that all development work is Buyer's sole responsibility and shall be performed at Buyer's sole cost and expense. Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, actions, liabilities, damages, costs and expenses, including reasonable attorneys' fees, incurred by Seller in connection with the failure by Buyer to observe or perform any of the obligations pursuant to this Section 8. Buyer and Seller agree that this paragraph shall be self-operative but, if requested by Seller, Buyer shall execute a document in recordable form evidencing the agreements set forth in this Section and Seller may record such document against the Realty at or after the Closing. To the extent Seller, any of its affiliates, or any predecessor owner of the Property is entitled to a refund of any funds (including the proceeds of any letter of credit drawn upon) or other security deposited with respect to the Property before the Closing, any such refund shall be and remain the property of Seller or its applicable affiliate, and to the extent Buyer receives any such refund before or after the Closing, Buyer shall remit such refund to Seller or its affiliate within five (5) days after Buyer's receipt thereof. Seller's rights and Buyer's obligations under this Section 8 shall survive the Closing.

**9. Condemnation.** If before the Closing, any of the Realty is condemned under the power of eminent domain, is the subject of a threatened condemnation, or is conveyed to a condemning authority in lieu of condemnation, Seller shall notify Buyer in writing of the threat, condemnation or conveyance within five (5) business days of its occurrence. Buyer shall within ten (10) days of the notice have the option of (a) proceeding with the Closing (without any reduction in the Purchase Price) and receiving the award or condemnation payment (or an assignment thereof, if the same is not received by Closing), or (b) canceling this Contract and receiving back the earnest money deposited, and the parties shall have no further obligations hereunder except those provisions that expressly survive.

**10. Indemnification.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, claims, actions, liabilities, damages, liens, costs and expenses, including reasonable attorneys' fees, incurred by Seller (or its agents, consultants or affiliates) arising out of or related to (i) any activities upon the Realty and/or the Common Elements by Buyer, its agents, contractors and employees, or (ii) the failure by Buyer to observe or perform any of its covenants, representations or obligations under this Contract. This Section 10 shall survive the Closing or termination of this Contract.

**11. Notices.** All notices required or permitted to be given hereunder shall be in writing and delivered by certified mail, postage prepaid, or by overnight delivery service, or shall be personally served or sent via facsimile with confirmation of transmission, to Buyer and Seller at the following addresses:

**BUYER:** Olive Tree Properties LLC  
7126 Roberts Ct.  
Oswego, IL 60543

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SELLER: City of Aurora  
44 E. Downer Pl.  
Aurora, IL 60507

With copies to: Joseph R. Ramos, Esq.  
340 N. Lake St.  
Aurora, IL 60506

Notices may be given on behalf of a party by their respective attorneys named above. All notices shall be deemed received either when actually received or three (3) days after posting (if mailed), one business day after deposit with the delivery service (if sent by overnight delivery), or when delivered (if personally delivered), or if sent by facsimile transmission, upon transmission as evidenced by the confirmation slip generated by the sender's facsimile machine. Either party may change the above addresses by written notice to the other.

**12. Default.** If before the Closing, Buyer defaults in the full and timely performance of any of its obligations hereunder, Seller shall be entitled to cancel this Contract and receive and retain the earnest money deposited hereunder as liquidated damages, the parties agreeing that in the event of a default hereunder before the Closing, actual damages would be impossible to calculate; provided, however, notwithstanding anything contained herein to the contrary, nothing contained in this Section 12 shall: (i) limit Seller's rights or remedies with respect to a breach or default by Buyer after the Closing of a covenant or obligation that survives the Closing; (ii) limit Seller's rights or remedies with respect to a breach or default by Buyer of a covenant or obligation that survives a termination of this Contract; or (iii) limit Buyer's indemnification obligations under this Contract, and Seller shall be entitled to any and all rights and remedies available at law and/or in equity if Buyer defaults in the full and timely payment and performance of Buyer's indemnification obligations under this Contract, or any of Buyer's covenants or obligations after the Closing that survive the Closing, or any of Buyer's covenants or obligations that survive the termination of this Contract. If Seller breaches any representation or warranty set forth in this Contract or defaults in the full and timely performance of any of its obligations hereunder, Buyer, as its sole and exclusive remedy, may elect to either terminate this Contract and receive a refund of the earnest money (in which case the parties shall have no further obligations hereunder except those provisions that expressly survive) or seek specific performance, provided that any action for specific performance must be commenced within forty-five (45) days after Buyer obtains knowledge of Seller's default. If no such action is commenced within said 45-day period, Buyer shall be deemed to have waived its right to bring or pursue an action for specific performance. Buyer hereby expressly waives, relinquishes and releases any other right or remedy available to it at law, in equity or otherwise by reason of Seller's default of its obligations hereunder, including, without limitation, any rights Buyer may have to bring an action to recover direct, consequential, punitive or any other damages.

**13. Real Estate Commissions.** Seller hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with this real estate transaction. Buyer hereby represents and warrants that it has not engaged the services of any real estate agent, broker or firm in connection with the Property or this real estate transaction. Buyer hereby agrees to defend, indemnify and hold Seller harmless from any and all loss, cost or expense

from any claim for a real estate commission made by any agent, broker or firm engaged or claiming to have been engaged by Buyer in connection with the Property or this transaction. Each party's rights and obligations under this Section 13 shall survive the Closing or any termination of this Contract.

**14. Entire Agreement.** This Contract contains the entire agreement between Seller and Buyer and there are no other terms, conditions, promises, understandings, statements or representations, express or implied, regarding the transaction contemplated hereby. This Contract may be amended only by a further written document signed by each of the parties.

**15. Assignment.** Buyer shall not have the right to assign this Contract without Seller's prior written consent which may be withheld in Seller's sole discretion. Notwithstanding the foregoing, if this Contract is assigned by Buyer hereunder, Buyer shall remain jointly and severally liable, along with the assignee, for the Buyer's obligations under this Contract. Buyer shall cause any permitted assignee to acknowledge in writing that it will be bound by all of the terms and conditions of this Contract, with said acknowledgement set forth in a form subject to Seller's reasonable approval. This Section 15 shall survive the Closing or termination of this Contract.

**16. Successors and Assigns.** Subject to Section 15 above, the provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives.

**17. Captions.** The captions of the paragraphs in this Contract have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of the provisions hereof.

**18. Severability.** If any provision of this Contract is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision(s) involved and shall not affect the validity or enforceability of the remaining provisions.

**19. Counterparts and Transmittal of Signatures.** This Contract may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Contract transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.

**20. Exculpation.** Buyer agrees to look solely to Seller's interest in the Property for the satisfaction of any liability or obligation arising under or in connection with this Contract, the transactions contemplated hereby or the documents executed pursuant hereto, or for the performance of any of the covenants, warranties or other agreements contained herein or therein, and Buyer shall not collect or attempt to collect any judgment or other amounts out of any assets of Seller other than Seller's interest in the Property. Further, Buyer agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, member, principal, parent, subsidiary or other affiliate of Seller, or any officer, director, employee, trustee, shareholder, partner, member or principal of any such parent, subsidiary or other affiliate, arising under or in connection with this Contract, the transactions contemplated hereby or the documents executed pursuant hereto. The

terms of this Section 20 shall survive the Closing and any termination of this Contract for any reason.

**21. Miscellaneous.**

a) All questions with respect to the construction or interpretation of this Contract shall be determined in accordance with the laws of the State of Illinois, without regard to conflict of law rules. Time is of the essence of this Contract.

b) If any date upon which action is required under this Contract shall be a Saturday, Sunday or legal holiday, the date for such action shall be extended to the first day after such date which is not a Saturday, Sunday or legal holiday.

c) If suit is brought by either party to this Contract to enforce the terms of this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expenses, and court costs from the non-prevailing party.

[NO FURTHER TEXT ON THIS PAGE]

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]



IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first above written.

**BUYER:**

Olive Tree Properties LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

City of Aurora

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**[TO BE INSERTED ONCE DETERMINED BY SURVEYOR]**

## **EXHIBIT B**

### **PERSONAL PROPERTY**

All personal property, if any, located on the Realty, specifically excluding any personal property owned by a former owner, present or former tenant, or other present or former occupant of the Realty or any portion thereof.