


## MEMORANDUM

**TO:** Thomas Weisner, Mayor  
**FROM:** David Hulseberg, President/CEO Invest Aurora   
**DATE:** May 3, 2016  
**SUBJECT:** Fox Valley Golf Course

This memorandum requests a one year extension to the existing agreement due to litigation that has resulted from the sale of the property.

### **BACKGROUND:**

The City of Aurora entered into a contract with ODABA Development, LLC, a Michigan Limited liability company, to sell the property commonly known as the Fox Valley Golf Course for \$5,000,000. The tenant at this property entered into litigation against the City of Aurora related the sale of the same. The courts have found in favor of the City in that action. However, as a result of that litigation terms of the existing contract are unlikely to be met.

As such, The contract has been modified in number four (4) from March 31, 2016 to March 31, 2017 and from June 30, 2016 to June 30, 2017. There are no other substantive changes to the contract.

### **RECOMMENDATION:**

It is recommended that the City extended the Commercial Real Estate Contract by one (1) year.

# **COMMERCIAL REAL ESTATE SALES CONTRACT**

(the "Contract") Fox Valley Golf Course

1. **OFFER TO PURCHASE.** ODAWA DEVELOPMENT, LLC, a Michigan limited liability company, or its assignee ("Purchaser") agrees to purchase, at a price of Five Million and 00/100 Dollars (\$5,000,000.00) (the "Purchase Price"), on the terms set forth herein, the following described real estate in the Village of North Aurora, Kane County, Illinois, from the City of Aurora, an Illinois home-rule municipality (the "Seller");

THAT PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 34, TOWNSHIP 39 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST FRACTIONAL QUARTER OF SAID SECTION 34 FOR A POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 14 MINUTES WEST ALONG THE CENTER LINE OF SAID ROAD ON QUARTER SECTION LINE 2337.6 FEET; THENCE SOUTH 88 DEGREES 13 MINUTES WEST 2690.6 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE BATAVIA BRANCH OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY; THENCE NORTH 29 DEGREES 39 MINUTES EAST ALONG SAID RIGHT OF WAY LINE 2583 FEET; THENCE NORTHEASTERLY ON A CURVE ALONG SAID RIGHT OF WAY LINE 176.5 FEET TO THE NORTH LINE OF SECTION 34; THENCE NORTH 88 DEGREES 56 MINUTES EAST ALONG SAID SECTION LINE 129 FEET TO THE POINT OF BEGINNING, IN THE TOWNSHIP OF BATAVIA, KANE COUNTY, ILLINOIS.

It is the Purchaser's intention to purchase and develop the Property, (HEREINAFTER REFERRED TO, COLLECTIVELY, AS THE "DEVELOPMENT" OR "Development").

2. **WARRANTY DEED.** The Seller agrees to sell the Property at the price and on the terms set forth herein, and to convey or cause to be conveyed to Purchaser title thereto by a recordable Warranty Deed, subject only to: (a) covenants, conditions and restrictions of record; (b) any and all accrued and unpaid real estate taxes upon the Closing Date; (c) acts of Purchaser or its authorized agents; and (d) any other matters approved in writing by Purchaser (collectively, the "Permitted Exceptions"). The Seller and the Purchaser are sometimes referred to hereafter individually as a "Party" and collectively as the "Parties."

3. **EARNEST MONEY.** Purchaser will pay Twenty Thousand and 00/100 Dollars (\$20,000.00) as earnest money within five (5) business days of the Effective Date of this Contract, to be applied to the Purchase Price and agrees to pay or satisfy the balance of the Purchase Price, plus or minus prorations, at the time of closing. The earnest money shall be held by Chicago Title Insurance Company pursuant to Earnest Money Escrow Instructions providing for a sole order escrow at the direction of the Purchaser prior to expiration of the Due Diligence Period and a joint order escrow thereafter.

4. **CLOSING.** The date of closing shall be at a time and place mutually convenient to Purchaser and Seller between March 31, 2017 and June 30, 2017, and within one-hundred twenty (120) days after Purchaser's receipt of Governmental zoning approvals, as below referenced, or on the date, if any, to which such time is extended by mutual agreement between the Parties (the "Closing Date"), at the downtown office of Chicago Title Insurance Company ("Title Company").

5. **BROKER'S COMMISSION.** Seller shall be responsible for payment of the broker commission to Land Link, LLC, arising out of the purchase of the Property, three percent (3%) of the Purchase Price in the amount of One Hundred Twenty Five Thousand and 00/100 Dollars (\$150,000.00). Said commission payments are only due and payable in the event of a closing of the transaction that is the subject of this purchase agreement. Seller and Purchaser covenant to pay, hold harmless and indemnify each other from and against any and all cost (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent claiming to represent them, respectively, with respect to this transaction.

## CONDITIONS AND STIPULATIONS

6. **DUE DILIGENCE PERIOD.** Commencing on the Effective Date of this Contract, the Seller having previously provided the Purchaser with the Records (as defined herein), and continuing for a period of ninety (90) days thereafter (the "Due Diligence Period"), Purchaser shall be granted an opportunity to review any and all property condition reports in Seller's possession, title report, existing surveys, environmental reports, real estate tax bills, zoning reports, and any other documents in connection with the operation of the Property and in the possession of or under the control of Seller (collectively, the "Records"). During the Due Diligence Period, Seller shall permit and, as may be reasonably necessary, assist Purchaser in the making of: (i) a complete physical investigation of the Property; (ii) environmental tests of the Property; (iii) investigations and copies of all Records in Seller's or its agent's possession, pertaining to Seller's ownership and operation of the Property and the current and prior use of the Property by Seller and other occupants of the Property, if any; (iv) a determination of whether the Property is properly zoned to permit the Development on the Property and the issuance of all required building permits; (v) a determination of the availability of all utilities, including natural gas, electricity, water, sanitary sewer, telephone and CATV, to the Property in such quantity necessary for the normal business activity of the development; (vi) a determination of the availability of cross easements for ingress, egress, and parking; and (vii) a determination relative to the Purchaser's ability to obtain all necessary permits and approvals required to allow the Development on the Property. In connection with such investigation, Purchaser may conduct tests on the Property, provided, however, Purchaser hereby indemnifies and holds Seller, and its officers, agents and employees, harmless from any personal injury or property damage caused thereby. Further, during the Due Diligence Period, Purchaser shall obtain approval of this Contract by Purchaser's Members.

If Purchaser determines that it is not satisfied with the results of such due diligence investigation, in its sole and absolute discretion, or Purchaser does not obtain approval from its Members, Purchaser shall give written notice of that fact to Seller within the Due Diligence Period and, thereupon, this Contract shall be terminated, and neither Seller nor Purchaser shall have any further rights or obligations hereunder and all copies of soil tests, surveys and engineering feasibility studies obtained by Purchaser shall be immediately returned to the Seller and the Earnest Money refunded to Purchaser.

7. **TITLE; SURVEY.** Seller shall deliver or cause to be delivered to Purchaser within five (5) business days after the Effective Date a title commitment for an owner's title insurance policy issued by the Title Company in the amount of the Purchase Price, covering title to the Property on or after the date hereof, showing title in the Seller subject only to the Permitted Exceptions, the general exceptions, and title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money on the Closing Date and which the Seller may so remove at that time by using the funds to be paid upon the delivery of the deed ("Title Commitment"). The Title Commitment shall be conclusive evidence of good and marketable title as therein shown as to all matters insured by the policy, subject only to the exceptions as therein stated and as stated in this Contract. The Seller shall also furnish Purchaser an affidavit of title in customary form covering the Closing Date and showing title in Seller subject only to Permitted Exceptions stated above and unpermitted exceptions or defects in the title disclosed by the survey, if any, as to which the title insurer commits to extend insurance. Seller shall, on the Closing Date, cause the Title Company to issue an owner's title insurance policy consistent with the Title Commitment in the amount of the Purchase Price. The parties agree that the Leasehold Interest on the Property is NOT a Permitted Exception and that if Seller cannot remove said leasehold interest to Purchaser's satisfaction, Purchaser's deposit and extension payments are refundable to Purchaser.

8. **PRORATIONS; TRANSFER TAXES; PLAT OF SUBDIVISION.** Prior to or on the Closing Date, Seller shall pay all general real estate taxes and all special assessments which are due and payable and approved as of the Closing Date. The amount of the current general taxes not then ascertainable shall be prorated on the Closing Date on the basis of 105% of the most recent ascertainable assessed valuation (without reduction based on vacancy), equalization factor and tax rate. All prorations shall be as of the Closing Date and are final unless otherwise provided herein. Seller shall pay the amount of any transfer stamp tax imposed by state and county law on the transfer of title, and shall furnish a completed real estate transfer declaration signed by the Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois and shall furnish any declaration signed by the Seller or Seller's agent and meet other requirements as established by any local ordinance with regard to a transfer or transaction tax; such tax required by local

ordinance shall be paid by the Party upon whom such ordinance places responsibility therefor. If such ordinance does not so place responsibility, the tax shall be paid by the Seller. Either prior to or after the Closing Date, Seller and Purchaser shall cause a plat of subdivision to be recorded and/or a petition for tax division to obtain a separate PIN for the Property. The Seller and Purchaser agree to execute, on the Closing Date, a tax proration agreement prorating the real estate taxes for periods after the Closing Date through the year in which a tax bill is issued for the Property and no other property.

9. **ZONING.** Purchaser shall obtain either (a) satisfactory evidence that the Property is zoned to permit the DEVELOPMENT of the Property in accordance with Purchaser's intended use or (b) rezoning of the Property evidenced by the valid and effective enactment by the Village of North Aurora, Illinois ("Village") of an ordinance zoning the Property (including any necessary variances) that will permit the development of the Property in accordance with Purchaser's intended use. Purchaser shall, to the extent required, obtain approval from the Village of a site plan (including any necessary subdivision approvals) that will permit development of the Property in accordance with Purchaser's intended use ("Site Plan Approval"). Purchaser shall have obtained all other governmental approvals ("Governmental Approvals") that will permit development of the Property in accordance with Purchaser's intended use. Purchaser, at its sole cost and expense, shall endeavor to satisfy this zoning contingency, obtain Site Plan Approval, if applicable, and obtain the Governmental Approvals as expeditiously as possible. Seller agrees to cooperate with and assist Purchaser in obtaining any of the foregoing items, including executing any applications, petitions, and such other instruments as Purchaser may request to effectuate Purchaser's ability to satisfy such contingencies and obtain such approvals.

10. **LEASEHOLD INTEREST.** Purchaser hereby explicitly recognizes the leasehold interest on the Property, dated February 1, 1988, and as amended from time to time (the "Leasehold Interest" attached hereto as *Group Exhibit A*). The Purchaser hereby enters into this agreement knowing that the holder of the Leasehold Interest has the "First Option to Purchase" its leased interest for a ninety (90) day period. Should the holder of the Leasehold Interest not exercise its right of first refusal to purchase the Leasehold Interest, then the Purchaser acknowledges that it purchases the Property subject to the express terms of the lease.

11. **WARRANTIES AND REPRESENTATIONS.** Seller hereby warrants and represents to Purchaser as to the following matters, each of which is so represented to be true and correct to the best of Seller's knowledge as of the date hereof:

(a) **Authority of Signatories; No Breach of Other Agreements, etc.:** This Contract has been, and all the documents to be delivered by Seller to Purchaser on the Closing Date will be, duly authorized, executed and delivered by Seller, are or will be legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms, and do not and will not on the Closing Date violate any provisions of any agreement to which Seller is a party.

(b) **Assessments:** Seller has no knowledge of any proposed or contemplated special assessments affecting the Property.

(c) **Executory Agreements:** Seller is not a party to, and the Property is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Property, other than this Contract and the Permitted Exceptions which shall be binding on Purchasers. Purchaser shall not, by reason of entering into or closing under this Contract, become subject to or bound by any agreement, contract, lease, license, invoice, bill, undertaking or understanding which it shall not have previously agreed in writing to accept.

(d) **Title Matters:** Seller has good and marketable fee simple title to the Property subject only to the Permitted Exceptions.

(e) **Pending and Threatened Litigation:** There are no pending and, to the best knowledge and belief of Seller, threatened matters of litigation, administrative action of examination, claim or demand whatsoever relating to the Property.

(f) **Eminent Domain, etc.:** There is no pending and, to the best knowledge and belief of Seller, contemplated eminent domain, condemnation or other governmental taking of the Property. The Purchaser agrees to deal directly with the Village of North Aurora to discuss the status of any such possible action, and the Seller

makes no representations as to the certainty or potential value related to any such action or the status of any such action.

(g) Accuracy of Information: To the best of Seller's knowledge, the Records and all other documents being delivered by Seller do not contain any material misrepresentations.

(h) All Required Action Taken: All action required pursuant to this Contract necessary to effectuate the transaction contemplated herein has been or will be taken promptly and in good faith by Seller and its representatives and agents.

(i) Government Obligations: There are no unperformed obligations relative to the Property outstanding to any governmental or quasi-governmental body or authority and that there are no licenses or permits necessary to the operation of the Property except as may be necessary for any construction on the Property or the operation of a business thereon.

(j) Environmental Conditions and Flood Plain. Except as set forth in the Records, Seller has received no notice and has no knowledge that the Property lies in a flood plain, was built, in whole or in part, on a land-fill or that the soil is chemically contaminated. Except as set forth in the Records, Seller has received no notice and has no knowledge that the Property is not in compliance with all applicable hazardous material statutes, environmental pollution laws or similar legislation and/or regulations. Except as set forth in the Records, Seller has received no notice of any judgments, writs, injunctions, decrees or orders outstanding with respect to the Property, and, except as set forth in the Records, Seller has received no notices from any governmental authority having jurisdiction over the Property (and Seller has no reasonable grounds for anticipating such judgments, writs, injunctions, decrees, orders or notices) relating to or concerning any violation of any environmental, pollution control or health laws or regulations regulating the use or maintenance of the Property; and, without limiting the generality of the foregoing, except as set forth in the Records, Seller has received no notice and has no knowledge that the Property and its existing and prior uses do not comply with or have at any time not complied with, or Seller is in violation of or has violated, in connection with the ownership, use, maintenance or operation of the Property, any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes licenses and permits of all governmental authorities relating to environmental matters, including, by way of illustration and not by way of limitation, (i) the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (and any amendments or extensions thereof), and the Toxic Substances Control Act, and (ii) all other applicable environmental requirements. Except as set forth in the Records, Seller has received no notice and has no knowledge that there exist any storage tanks located on or beneath the surface of the Property.

The foregoing representations of the Seller are limited solely to the time period during which Seller was the owner of the Property, and are limited to the actual knowledge of the Seller, without any requirement to do any independent or further investigation, examination or inquiry. The accuracy of the foregoing representations as of the Closing Date shall be a condition precedent to the Purchaser's obligation to close on the purchase of the Property.

12. **RISK OF LOSS**. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract.

13. **DEFAULT**. In the event of the Purchaser's default and failure to cure such default within thirty (30) days after notice from Seller, the Earnest Money shall be forfeited to the Seller as liquidated damages and not as a penalty (the Parties agreeing that the Earnest Money is a reasonable estimate of Seller's damages) as Seller's sole and exclusive remedy. In the event of the Seller's default (with respect to closing and delivery of title to the Property) and failure of Seller to cure such default within thirty (30) days after notice from Purchaser, Purchaser shall be entitled to (i) declare the Contract terminated and receive a return of the Earnest Money; or (ii) maintain an action for specific performance. In the event of a default by Seller in the completion of the Development Improvements or the Seller Improvements, Purchaser shall have all rights and remedies available in law and equity including, but not limited to, performing all such obligations and recovering from the Seller all costs and expenses so incurred. In the event that either the Seller or Purchaser is forced

to retain an attorney to enforce the terms of this Contract, the prevailing Party shall be entitled to recover all court costs and attorney's fees so incurred.

14. **TIME OF THE ESSENCE.** Time is of the essence of this Contract.

15. **AMENDMENT.** No provision of this Contract may be waived, modified, amended, discharged or terminated except by an instrument signed by the Party against whom the enforcement thereof is sought, and then only to the extent set forth in the instrument.

16. **NOTICES.** All notices herein required shall be in writing and shall be served on the Seller and Purchaser at the addresses set forth below. The mailing or delivery of a notice by (i) registered or certified mail, return receipt requested; (ii) recognized overnight courier service; or (iii) facsimile shall be sufficient service effective as of the date of mailing, delivery or transmission. Notices to Seller shall be delivered to City of Aurora, 5 E. Downer Place, Ste F, Aurora, IL 60505, Attn: Alayne Weingartz with a copy to Klein, Thorpe & Jenkins, Ltd., 20 North Wacker Drive, Suite 1660, Chicago, Illinois 60606, Attn: Jacob Karaca. Notices to the Purchaser shall be delivered to Odawa Development, LLC, Attn: Bruce Michael, 51111 West Pontiac Trail, Wixom, Michigan 49393.

17. **FIRPTA.** Seller represents that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section. Seller will furnish Purchaser on the Closing Date the Exemption Certification set forth in said Section.

18. **OPERATION OF PROPERTY.** Seller shall operate and maintain the Property in a manner that is consistent with the terms and provisions of this Contract.

19. **TAX-FREE EXCHANGE.** Seller and Purchaser, at no cost to the non-exchanger, agree to cooperate and execute documents reasonably required by the other Party to effectuate the purchase or sale of all or part of the Property as part of a tax-free exchange.

20. **COUNTERPART EXECUTION; FACSIMILE.** This Contract may be executed in any number of identical counterparts, any or all of which may contain signatures of less than all of the Parties, and all of which shall be deemed a single contract. Facsimile signatures shall be sufficient for purposes of executing and amending this Contract.

21. **DISCLOSURE.** Concurrently with execution of this Contract, Purchaser shall disclose to the Seller the names, addresses and ownership interests of all persons/entities that have an ownership interest in the Purchaser, together with such supporting documentation that may be requested by the Seller. Purchaser further agrees to notify the Seller throughout the term of this Contract of the names, addresses and ownership interests of any new owners of the Purchaser.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Contract as of the Effective Date set forth below:

<b><i>PURCHASER:</i></b>	<b><i>SELLER:</i></b>
	<b>City of Aurora, Illinois, a municipal corporation</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Dated: _____, 2016	Accepted by Seller on: _____, 2016 (the " <b><u>Effective Date</u></b> ")
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