



## Agenda Commentary

**Item Title/ Subject:** 9 Acres sale to Keaton Modi

**Staff Source:** City Manager, Steve Hewitt

**Date:** April 27, 2012

**History/Background Information:**

Last meeting you approved staff to move forward with Keaton Modi on the sale of property.

**Subject Summary:**

City Attorney has completed contract. Price of sale, \$71,000, future undeveloped land sale split 50/50 with Authority, and Construction must begin within 18 months. Note: sewer needs extended , estimated 2500 feet. Cost estimated \$75,000. Modi willing to cover \$30,000, keeping consistent with past action (White Dog). City portion covered by Economic Development Fund. City repaid by future utility billings.

**Recommendation:**

Staff recommends approval.

**Price/Cost:** Sale \$71,000 (see contract)

## COMMERCIAL REAL ESTATE PURCHASE AGREEMENT

THIS **COMMERCIAL REAL ESTATE PURCHASE AGREEMENT** ("Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Clinton, an Oklahoma municipality ("Seller"), and Keaton Modi, ("Purchaser") (Purchaser and Seller hereinafter "Party" or "Parties").

### WITNESSETH:

WHEREAS, Seller is the holder of fee simple title in and to the tract of real property more particularly described on Exhibit "A" ("Property") attached hereto.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, the Parties hereby agree as follows:

**§ 1. Property.** Purchaser agrees to purchase from Seller and Seller agrees to sell, transfer and convey to Purchaser that certain tract of Property situated in Custer County, Oklahoma, and more particularly described on Exhibit "A" attached hereto, together with all and singular the rights and appurtenances thereto in any way belonging, including all buildings and fixtures located thereon.

**§ 2. Consideration.** Subject to credits, adjustments and pro rations as hereinafter provided, the total purchase price for the Property, shall be One Hundred One Thousand and no/100 dollars (\$101,000.00) (the "Purchase Price"), payable as follows:

§ 2.01. The sum of One Thousand dollars (\$1,000.00) payable to Seller at the execution date of this Agreement by check or certified funds representing Purchaser's earnest money deposit ("Earnest Money Deposit").

§ 2.02. The sum of Seventy Thousand Dollars (\$70,000.00) (or such greater or lesser amount as may be required after credits, adjustments and prorations) payable to Seller at Closing as hereinafter specified.

§ 2.03. The sum of Thirty Thousand Dollars (\$30,000.00) shall be paid to Seller upon issuance of Purchaser's building permit.

**§ 3. Title Requirements.** Within ten (10) days after the execution hereof, Seller shall furnish Purchaser an abstract of title certified, at least to the date hereof, showing marketable title to the Property in Seller, subject only to reasonable utility easements and building restrictions of record, if any, covering the Property. Within thirty (30) days from the date the abstract is delivered to Purchaser ("Inspection Period"), Purchaser shall submit to Seller a Statement of any objections Purchaser has to the status of title. In the event objections are raised to the title by Purchaser, Seller shall have thirty (30) days after receipt of said objections within which to cure such objections and, if requested by Purchaser, to have the same abstracted at Seller's sole cost and expense. No matter shall be construed as a valid objection to title under this Agreement, unless it is so construed under the Real Estate Title Examination Standards of the Oklahoma Bar Association, where applicable.

In the event Seller is unable or unwilling to comply with or satisfy Purchaser's objections to title, Purchaser shall have the right, at Purchaser's election: (i) to waive such objection or requirement and to proceed to Closing, without any abatement of the Purchase Price, or (ii) to terminate this Agreement, whereupon Purchaser shall receive a full refund of said Earnest Money Deposit. Should Purchaser elect to terminate this Agreement, Purchaser shall do so by giving Seller written notice of the election, whereon this Agreement shall become null and void and of no further force and effect at law and in equity.

**§ 4. Property Inspections.** Purchaser shall have the right, at Purchaser's sole cost and expense, to have any and all surveys, zoning and/or other applicable land use inquiries, inspections and/or investigations as deemed sufficient by Purchaser (collectively "Property Inspections") performed on the Property after the execution hereof, in the event the results of any Property Inspection(s) performed hereunder are deemed unsatisfactory in Purchaser's sole and absolute discretion, Purchaser shall have the right, at Purchaser's election, to either: (i) terminate this Agreement by delivery of written notice to Seller, whereupon Seller shall immediately return Purchaser's Earnest Money Deposit and this Agreement shall be deemed null, void and of no further force in law, equity or otherwise; or (ii) deliver a written report of any such unsatisfactory Property Inspection results to Seller. Upon receipt of such written report, Seller shall then have thirty (30) days thereafter to either: (i) cure the unsatisfactory Property Inspection condition(s) to the satisfaction of Purchaser; or (ii) return Purchaser's Earnest Money Deposit and declare this Agreement null, void and of no further force in law, equity or otherwise.

**§ 5. Risk of Loss.** Until Closing, risk of loss to the Property, ordinary wear and tear excepted, shall be upon Seller; after Closing such risk shall be upon Purchaser.

**§ 6. Conditions of Closing.** The Parties agree that Closing shall be conditioned upon the following items:

§ 6.01. This Agreement has not been terminated pursuant to §§ 3 or 4, supra, and all other contingencies and requirements

contained in this Agreement have either been provided for, waived, or otherwise satisfied.

**§ 7. Closing.** This transaction shall be closed at City Hall, Clinton, Oklahoma, or at such other place as may be agreed upon by Purchaser and Seller, after all conditions of Closing and other requirements have been satisfied, waived or otherwise provided for on or before April 15, 2012, unless the date of Closing is accelerated or extended in a written instrument signed by Seller and Purchaser.

**§ 8. Deliveries at Closing.** At the time of Closing, Seller shall execute and deliver a good and sufficient Quit Claim Deed (the "Deed") in recordable form with sufficient revenue stamps thereon (paid by Seller), conveying all right, title and interest thereto, free and clear of all liens and encumbrances whatsoever. At the time of Closing, Purchaser shall deliver the sum due as set forth in § 2.02, supra. Purchaser shall pay the cost of recording said Quit Claim Deed. The deed of conveyance shall contain the following stipulation:

The conveyance under this contract is subject to a right of reverter to the City of Clinton, Oklahoma, upon the occurrence of any of the following event(s):

1. Purchaser fails to begin construction of La Quinta Hotel on a portion of the tract within 18 months.
2. If any of the subject property is sold as undeveloped land, any gross proceeds from the sale, shall be split 50/50 with the City.

Upon the occurrence or non-occurrence of any of the foregoing events, Seller may re-enter and take possession of the subject property.

**§ 9. Insurance, Risk of Loss and Adjustments.** Seller shall keep and maintain all insurance presently in effect on the Property until Closing, and until Closing the risk of loss of any part of the Property shall be on Seller, and Seller shall be entitled to receive all insurance proceeds therefor, whether or not possession of any part of the Property has been delivered to Purchaser.

**§ 10. Allocation.** The Parties Agree that Purchaser may reasonably allocate the Purchase Price as among the Real Property, tangible property, fixtures, fences and buildings, in a manner acceptable to the Purchaser. Purchaser's allocation hereunder shall be reflected in the Bill of Sale as provided in § 8, supra.

**§ 11. Proration of Taxes and Assessments.** All ad valorem taxes and special assessments thereon for the current year shall be prorated to date of Closing. If the amount of ad valorem taxes or special assessments for the current tax year has not been fixed by the date of Closing, the proration of such taxes shall be based upon the rate of levy for the preceding tax year.

**§ 12. Possession.** Possession of the Property shall be delivered to Purchaser at Closing.

**§ 13. Closing Costs.** Unless otherwise stated, Closing Costs shall be split. The cost of documentary revenue stamps on the Quit Claim Deed shall be paid by Seller. The cost of abstracting to the date of Closing shall be split. Any required title curative documents shall be paid for by Seller. The cost of filing the Quit Claim Deed shall be paid by Purchaser.

**§ 14. Default/Remedies.** In the event Seller fails to comply with the terms of this Agreement, Purchaser shall have the right either to recover all sums paid to Seller hereunder or to seek specific performance hereof, and the prevailing Party in any litigation shall have the right to recover all of such Party's expenses and costs incurred by reason of such litigation, including, but not limited to, attorney's fees, court costs, and costs of suit preparation. In the event that Purchaser breaches any term or condition contained herein, Seller shall retain, as liquidated damages, Purchaser's Earnest Money Deposit. In the event this Agreement is terminated by virtue of the non-fulfillment of any Condition of Closing contained in § 6, supra, or breach of any of Seller's obligations under this Agreement, Purchaser shall be entitled to a full refund of its Earnest Money Deposit.

**§ 15. Assignment.** This Agreement shall be binding upon the Parties hereto, their respective heirs, successors and assigns, but shall not be assigned by any Party hereto without the written consent of the other Party, provided, however, that Seller hereby consents to: (i) any assignment by Purchaser to any ancillary entity of Purchaser.

**§ 16. Headings.** The headings contained in this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

**§ 17. Choice of Law.** This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Oklahoma.

§ 18. **Covenants and Conditions.** The covenants, conditions, representations and warranties contained herein shall survive the date of Closing.

§ 19. **Conflicts.** This Agreement is a final expression of the intent of the Parties and shall be modified only by a duly executed written instrument.

§ 20. **Binding Effect and Special Conditions.** This Agreement and the terms, covenants and provisions hereof, shall inure to the benefit of and be binding upon the successors and permitted assigns of both Parties hereto.

§ 21. **Counterparts.** This Agreement may be executed in counter parts, each of which will be deemed an original and all of which together will constitute one instrument.

§ 22. **Severability.** If any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable under applicable law, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The remaining provisions of this Agreement shall be given effect to the maximum extent then permitted by law.

§ 23. **Forbearance; Waiver.** Failure to pursue any legal or equitable remedy or right available to a Party shall not constitute a waiver of such right, nor shall any such forbearance, failure or actual waiver imply or constitute waiver of subsequent default or breach. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such provision.

§ 24. **Authority.** Seller warrants and represents that with respect to Seller's entry into and consummation of this Agreement and the transaction contemplated hereby, all necessary approvals and authorizations required have heretofore been obtained and satisfied; Seller covenants to maintain such authority to and until Closing and agrees to furnish Purchaser with indicia of such authority upon request, including providing purchaser with any and all trust documents or other related agreements.

§ 25. **Infrastructure Improvements.** The Seller agrees, upon issuance of a notice to proceed, and payment of Thirty Thousand Dollars (\$30,000), by Purchaser, to extend water and sewer services to the subject property.

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and year first above written.

"Purchaser"

\_\_\_\_\_  
KEATON MODI

"Seller"

The City of Clinton

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

**Exhibit A**

SURFACE ONLY IN AND TO: 22-12-17 TR IN SW/4-S of I-40 420-437