



Investment Management, Inc.

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333 North Washington Avenue
Minneapolis, Minnesota 55401
(612) 373-9808 FAX (612) 349-2782

January 16, 2004

Mayor R. T. Rybak
350 South 5th Street
331 City Hall
Minneapolis, MN 55415

Hennepin County Commissioner Mark Stenglein
Hennepin County Government Center
300 South Sixth Street
Minneapolis, MN 55487

RE: Agreement for Sale of Rapid Park Property for Baseball Park

Dear Mayor Rybak and Commissioner Stenglein:

In consideration of Ten Dollars (\$10.00), passage of Resolution No. 2003 R-635 by the City of Minneapolis (the "**City**") and for other good and valuable consideration, the receipt and sufficiency of which the Seller and the City hereby acknowledge, Land Partners II Limited Partnership, a Minnesota limited partnership, and Minikahda Ministorage IV Limited Partnership, a Minnesota limited partnership (collectively, "**Seller**"), hereby offer to sell the Property (as defined herein) to a public or quasi-public authority with the power of eminent domain to which the City assigns its rights and interests under this Agreement (such assignee is referred to herein as "**Buyer**"), on an "as is, where is" basis and subject to easements, restrictions and covenants of record, upon the following terms and conditions:

1. Intended Assignment.

Seller and City expressly agree that the City is obtaining the rights to purchase the Property for the sole purpose of assigning those rights to its assignee. Wherever the term "Buyer" is used in this Agreement, it refers to the public or quasi-public authority with the power of eminent domain that accepts the assignment of the City's purchase rights under this Agreement pursuant to the terms hereof.

2. Property.

The term "**Property**" shall mean approximately eight (8) acres of land as shown generally on Exhibit A attached hereto as the "Land Partners II" property (approximately 7.8 acres of which is owned by Land Partners II Limited Partnership and approximately .2 acres of which is owned by

Minikahda Ministorage IV Limited Partnership). The Property may be used for the sole purpose of building a baseball park and related facilities (the "**Baseball Park**") thereon, but the conveyance of the land shall not contain any such use restriction. The Property includes approximately 95% of the footprint of the stadium as shown on the "Preliminary Design for the Rapid Park Site," dated February 11, 2003 and prepared by HOK Sports Facilities Group, LLC.

3. City Approvals and Financing Authority.

Before entering into any purchase agreement as provided herein for the contemplated sale, Buyer shall, with due diligence, seek approval from the City of Buyer's proposed site plan to permit development of the Property as a Baseball Park (collectively, the "**City Approvals**"). Buyer shall keep Seller informed of all formal applications and submittals made by Buyer to obtain the City Approvals, and Buyer and City agree that no approvals obtained from the City will be binding upon Seller or the Property until a closing on the sale of the Property to Buyer occurs. Buyer shall have until January 31, 2005 to obtain the City Approvals and to obtain financing authority to fund Buyer's acquisition of the Property for development of the Baseball Park (the "**Financing Authority**"); if the City Approvals and Financing Authority are not obtained by Buyer on or before January 31, 2005, this Agreement shall be null and void, except for Buyer's indemnification and hold harmless obligations set forth in Section 5 hereof. Seller reserves the right to apply for rezoning of the Property to a zoning use district that permits a Ballpark on the Property.

4. Other Sales.

Provided Buyer is proceeding with due diligence to obtain the City Approvals and the Financing Authority, Seller shall not, prior to January 31, 2005, enter into any purchase or option agreements to sell the Property to any third party, unless the third party is subject to the terms hereof. If Buyer fails to give Seller written notice on or before January 31, 2005 that it has obtained the City Approvals and the Financing Authority (the "**Notice**"), then this Section shall be null and void and Seller shall be free to sell the Property to any party without being restricted by this Section.

5. Right of Entry.

Prior to January 31, 2005, Buyer, and its officers, directors, employees, members, commissioners, agents, representatives and consultants (collectively, the "**Buyer Parties**"), shall have the right to enter the Property solely to make such inspections, surveys and drawings of the Property and complete such environmental testing, including a "Phase II" environmental analysis, as Buyer deems appropriate (the "**Permitted Uses**"), provided that (a) the Buyer Parties shall not unreasonably interfere with Seller's business operations on the Property, shall construct no improvements on the Property, shall not erect construction facilities or signage on the Property and shall promptly remove all vehicles and equipment on the Property after completion of any such inspections or inquiries, and (b) Buyer shall indemnify and hold Seller harmless from claims, actions, damages and costs, including reasonable attorneys' fees pertaining to personal injury and property damages caused by the negligence of the Buyer Parties in conducting the Permitted Uses.

Seller expressly acknowledges that the Buyer shall have no obligation to indemnify and hold Seller harmless from any claims, actions or damages pertaining to the existing soil, environmental or other conditions of the Property. Copies of any documents, surveys or reports prepared or received by Buyer as a result of such Permitted Uses shall be provided promptly to Seller.

6. Contingencies.

Buyer shall have until January 31, 2005, at its expense, to examine title, obtain a survey and conduct such other investigations of the Property as it deems appropriate, and the indemnification provisions of the "Right of Entry" section of this Agreement shall apply thereto.

7. Closing Costs.

Any purchase agreement tendered by Buyer pursuant to this Agreement shall provide that real estate taxes due and payable in the year of closing will be prorated between the parties as of the date of closing on a calendar year basis and that the balance of all special assessments levied as of January 14, 2004 shall be paid by Seller, except Seller shall not be obligated to pay and Buyer shall assume any special assessments levied which arise out of the construction of infrastructure which was necessitated in any way by the proposed Ballpark. The purchase agreement shall further provide that, if the closing of the sale of the Property occurs, Buyer shall pay the cost of its title insurance policy and the reasonable expenses of preparing the commitment shall be paid for by Seller. All other closing costs shall be apportioned between the parties pursuant to local custom.

8. Closing; Possession; Removal of Personal Property and Fixtures.

Closing on the sale of the Property shall occur no later than sixty (60) days after execution of a purchase agreement. Possession of the Property shall be granted on the day of Closing. On or before thirty (30) days following the closing, Seller shall be permitted to remove from the Property any trade fixtures, equipment and personal property located thereon.

9. Threat of Condemnation.

The purchase agreement shall include Buyer's acknowledgment that the sale of the Property has occurred "under threat of condemnation" and Buyer shall take such action as Seller reasonably requests to document such fact.

10. Purchase Agreement; Purchase Price and Offset Property.

- A. For purposes of this Agreement and any purchase agreement executed pursuant to the terms of this Agreement, the term "**Offset Property**" means and refers to those certain parcels of real estate, lying southwesterly of the Property and consisting of approximately three to four acres of property, as generally depicted on Exhibit B

attached hereto, that are owned by the City, Hennepin County (or an affiliated governmental entity) and/or the State of Minnesota.

- B. Buyer may, at its election, to be exercised no later than August 1, 2004, present a purchase agreement to Seller consistent with the terms of this Agreement, including but not limited to the following provisions of this Section 10(B). If no such purchase agreement is presented to Seller on or before August 1, 2004, then this Section 10 shall be null and void. The consideration to be paid by Buyer for the Property shall consist of cash of up to \$12,950,000 (subject to the contract for deed option available to Buyer as further described below), and delivery of title and possession to the Offset Property to Seller (or its designee) subject to the following terms and conditions:
- (i) Buyer shall cause a warranty deed for the Offset Property to be delivered to Seller (or its designee), free and clear of all liens, easements, restrictions, covenants, encumbrances and pending or levied special assessments for any public infrastructure for the Ballpark or otherwise, provided, however, that the grantor may reserve or grant for the benefit of the holder of the easement rights to the existing bikeway on the Offset Property (which existing bikeway rights shall be terminated) an easement of reasonable width for bikeway and pedestrian traffic along the boundary of the Offset Property.
 - (ii) Buyer shall deliver to Seller geotechnical and environmental reports, certified to Seller (or its designee) from reputable consultants reasonably acceptable to Seller that the soils and environmental condition of the Offset Property are acceptable to Seller in Seller's discretion.
 - (iii) Buyer shall deliver evidence to Seller that the Offset Property is zoned in conformance with the City's Comprehensive Plan and to allow for high density residential development of the Offset Property (provided, however, that if Seller has submitted a development plan for the Offset Property to the City within forty-five (45) days after Seller receives the purchase agreement from Buyer, then Buyer shall deliver to Seller, within ninety (90) days after Seller receives the purchase agreement, evidence that the City has approved Seller's development plan and all rezoning of the Offset Property necessary to permit development of the Offset Property consistent with such plan; and if such ninety (90)-day period extends beyond sixty (60) days after execution of the purchase agreement, then the closing shall be postponed accordingly). The City hereby agrees that, pursuant to Minnesota Statutes § 462.358, Subd. 3c, for a period of five (5) years from the date that fee title to the Offset Property is transferred to Seller (or its designee), no amendment to the City's Comprehensive Plan or official controls shall (without the approval of the owner of the Offset Property) apply to the Offset Property or affect the use,

development density, lot size, lot layout, or dedications or platting required or permitted by the approved development plan or allowed by the zoning then in effect with respect to the Offset Property.

- (iv) Buyer shall deliver evidence to Seller that there is public road access to the Offset Property that is reasonable and sufficient to allow development of the Offset Property as contemplated by subsection (iii) above.
- C. If the Property is sold to Buyer pursuant to a purchase agreement executed by Buyer and Seller pursuant to this Section 10, then the City and Buyer agree not to condemn any part of the Property nor any part of the Offset Property until after 2006.
- D. Title to the Property shall be delivered pursuant to limited warranty deeds, provided, however, that at Buyer's election, the purchase agreement may provide that the approximate 7.8 acres of the Property owned by Land Partners II Limited Partnership shall be purchased pursuant to a contract for limited warranty deed (the "**Contract**"), pursuant to the following terms and conditions:
- (i) At least ten percent (10%) of the cash portion of the consideration paid for the Property that is allocated to Land Partners II Limited Partnership shall be paid in cash at closing. The cash portion of the consideration paid for the Property shall be allocated as follows: 97.5% to Land Partners II Limited Partnership and 2.5% to Minikahda Ministorage IV Limited Partnership.
 - (ii) The remainder of the cash portion of the purchase price that is allocated to Land Partners II Limited Partnership shall be paid pursuant to the Contract. The Contract shall have a term of not more than fifteen (15) years; shall bear interest at a rate equivalent to the interest paid by Buyer on bonds sold by Buyer to fund similar acquisitions, but in no event less than 4½% per year; shall contain a typical "due on sale or encumbrance" provision; and shall provide for repayment of the principal amount of the contract over equal annual principal payments based upon amortization over the term of the Contract and commencing on the first (1st) anniversary of the date of Contract, provided that, at Buyer's election, the Contract may have a term of fifteen (15) years, the Contract may be "interest only" for the first three (3) years of its term, and commencing on the fourth (4th) anniversary of the date of the Contract, the principal amount of the Contract shall be repaid in equal annual installments amortized over the remaining twelve (12) years of the Contract.
 - (iii) Prior to closing, Seller shall obtain an opinion of bond counsel and such other proof as is acceptable to Seller that the interest paid on the Contract shall be exempt from state and federal income taxation, that the sale of the Property

and the acquisition of the Offset Property by Seller shall be treated as a like-kind exchange for tax purposes, and that the gain Seller realizes on the portion of the consideration paid pursuant to the Contract is recognized in installments as installment payments are received on the Contract.

- (iv) The approximate .2 acres of the Property owned by Minikahda Ministorage IV Limited Partnership will be conveyed by limited warranty deed upon payment of the cash portion of the consideration allocated to Minikahda Ministorage IV Limited Partnership.
- E. Buyer shall pay the state deed tax, if any, on the Offset Property and Seller shall pay the state deed tax, if any, on the Property.
- F. Seller shall have twenty (20) business days in its sole discretion to execute the purchase agreement presented by Buyer. If Seller fails to execute the purchase agreement (as the same may be modified through negotiations of the parties), then this Section 10 shall be null and void. If Seller executes a purchase agreement with Buyer, then this Agreement shall be null and void, except for Buyer's indemnification and hold harmless obligations set forth in Section 5 hereof.

11. Condemnation Process.

In the event Buyer and Seller do not execute a purchase agreement by the last of the dates specified therefor in this Agreement, then City or Buyer may elect within 60 days thereafter to proceed to condemn all or any portion of the Property pursuant to Minnesota Statutes, Chapter 117 as in effect at that time. Seller and Buyer agree that in any such condemnation proceeding that is initiated within said sixty (60) day period:

- A. Seller shall not contest "public purpose and necessity."
- B. Seller and Buyer shall:
 - (i) Jointly request the presiding Judge of Hennepin County District Court:
 - (a) To order the condemnation Commissioners to make an award within sixty (60) days of the appointment of the Commissioners.
 - (b) To order the parties, on appeal, if any, of the Commissioners' award to the district court, to complete all discovery within sixty (60) days after the appeal has been filed and be ready for trial within ninety (90) days after the appeal has been filed.

- (ii) In the event of any appeal thereafter to any appellate court, jointly request the appellate court for an expedited appeal and decision on the issues presented on appeal.
- C. The contents of this Agreement, any prior drafts hereof, or any discussions, negotiations, correspondence or other communication with respect to this Agreement occurring prior to the date hereof may not be introduced into evidence by Seller or Buyer or otherwise used in such proceedings to determine the value of the Property.
- D. If Buyer proceeds to condemn all or any portion of the Property within said sixty (60) day period, then the City agrees and Buyer shall agree that neither the City nor Buyer will commence prior to December 31, 2010 any condemnation action with respect to any other property currently owned by either Seller adjacent to or within reasonable proximity to the Property, except for up to 12,000 square feet for a public road that shall be constructed to provide vehicular access to the Ballpark and Seller's remaining property.

12. Condemnation By Others.

In the event any party other than Buyer commences condemnation as to any or all of the Property, this Agreement shall be null and void except for Buyer's indemnification and hold harmless obligations set forth in Section 5 hereof. Other than as provided for in this Agreement, Buyer and Seller are not waiving any rights related to Minnesota Statutes, Chapter 117.

13. Binding Agreement.

The terms of this Agreement, if approved by the City, shall be binding upon Seller and the City, except that Buyer and Seller shall not be bound by the provisions of Sections 10, 11A and 11B above until, and only if, the required number of limited partners of each Seller as set forth in the now existing partnership agreements as to each Seller vote to be bound by such Sections, which vote is anticipated to be completed within sixty (60) days of the approval of this Agreement by the City Council and Mayor of the City. This Agreement shall only be binding upon the City if the City Council and Mayor of the City approve this Agreement. In the event that the City assigns the purchase rights hereunder to a Buyer, Seller's continuing obligations hereunder shall be contingent upon Seller's receipt of a written agreement between the City and Buyer pursuant to which the City assigns such rights to Buyer and Buyer agrees to be bound by the terms hereof.

14. Termination of This Agreement.

The sections of this Agreement shall terminate as provided for in each section and in any event this Agreement shall be null and void in its entirety as of January 31, 2005 (unless such date has been extended by written agreement of Seller, Buyer and the City), except that the provisions of Section 11 hereof shall continue in effect as to any condemnation already initiated pursuant to the

Mayor R. T. Rybak
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terms of Section 11 and except that Buyer's indemnification and hold harmless obligations set forth in Section 5 hereof shall survive any termination of this Agreement.

15. Deadline for Approval by City.

The offer made by Seller herein shall be deemed revoked and shall be null and void on March 1, 2004 unless, on or before such date, this Agreement is approved by the City Council and Mayor of the City; provided, however, that Seller and the City may agree in writing to extend such approval deadline.

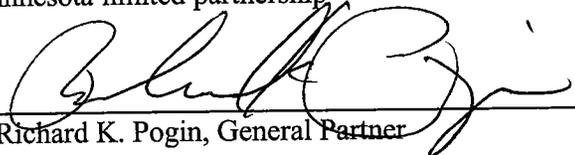
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Mayor R. T. Rybak
Commissioner Mark Stenglein
January 16, 2004

Very truly yours,

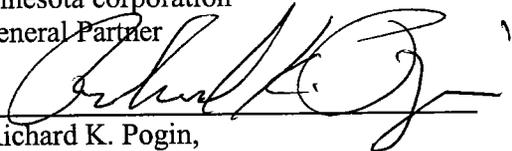
SELLER:

LAND PARTNERS II LIMITED PARTNERSHIP,
a Minnesota limited partnership

By: 
Richard K. Pogin, General Partner

MINIKAHDA MINISTORAGE IV LIMITED
PARTNERSHIP, a Minnesota limited partnership

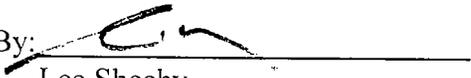
By INVESTMENT MANAGEMENT, INC.,
a Minnesota corporation
Its General Partner

By: 
Richard K. Pogin,
its Chief Financial Officer

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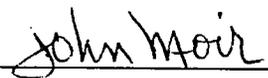
Executed this 16 day of January, 2004 (provided that this Agreement shall not be binding upon the City unless this Agreement is approved by the City Council and Mayor of the City)

CITY OF MINNEAPOLIS

By: 

Lee Sheehy
Its Director, Department of Community
Planning and Economic Development

and

By: 

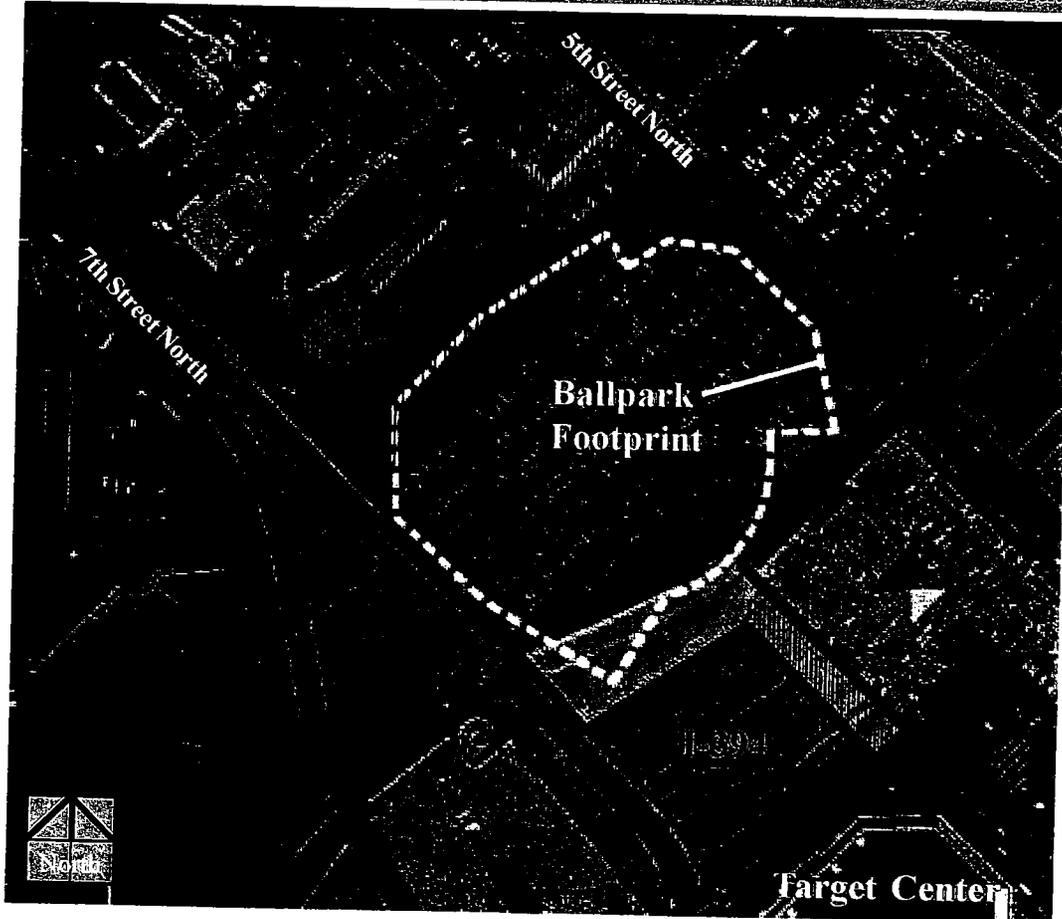
John Moir
Its City Coordinator

EXHIBIT A

PROPERTY DEPICTION

Figure 1: Site Boundaries and Ownership

Source: Land Partners II, F.O.K. Sport



Land Ownership	
Public/Other	10.5
Land Partners II	31.0
Burlington Inc.	15.0
Northwest Bank	
Site Items	
Retail Stores	20.5