

ORDINANCE NO. 5-2016

**AN ORDINANCE OF THE VILLAGE OF EVERGREEN PARK
APPROVING A REAL ESTATE SALE CONTRACT FOR THE
SALE OF THE PROPERTY LOCATED AT 3545 WEST 95TH
STREET, EVERGREEN PARK, ILLINOIS**

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Evergreen Park, Cook County, Illinois, as follows:

Section 1

That the Real Estate Sale Contract between the Village of Evergreen Park and 3545 W. 95th Street LLC for the sale of the property located at 3545 West 95th Street, in substantially the form attached hereto, is hereby approved for and on behalf of the Village. The Mayor is hereby authorized to execute the same for and on behalf of the Village.

Section 2

All statutes of the State of Illinois or any parts thereof which are in conflict with the provisions of this ordinance are hereby superseded by this ordinance enacted under the home rule power of the Village of Evergreen Park.

Section 3

This ordinance shall be immediately in full force and effect after passage and approval.

This ordinance was passed and deposited in the office of the Village Clerk of the Village of Evergreen Park this 15th day of February, 2016.



Catherine T. Aparo

CATHERINE T. APARO, Village Clerk

APPROVED by me this 15th
day of February, 2016.

James J. Sexton

JAMES J. SEXTON, Mayor

REAL ESTATE SALE CONTRACT

Seller: Village of Evergreen Park
Address: 9418 South Kedzie Avenue, Evergreen Park, IL 60805

Purchaser: 3545 W. 95th Street LLC c/o Attorney Brian Smith
Address: 5323 West 95th Street, Oak Lawn, IL 60453

Purchase Price: \$1,700,000

Earnest Money: \$25,000

Closing Date: April 15, 2016, subject to the right of the Purchaser to accelerate the Closing Date upon waiver of the Inspection Period and ten (10) days written notice to the Seller's Attorney

Property Address: 3545 W. 95th Street, Evergreen Park, IL 60805

Property: Lots 19 through 26, both inclusive, in Block 8 in Homestead Addition to Washington Heights, a Subdivision of the Northeast ¼ of Section 11, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 24-11-200-004 through -011

Contract Date: February 15, 2016

This Contract entered into by and between Seller and Purchaser as follows:

1. **AGREEMENT TO PURCHASE.** Purchaser agrees to purchase and Seller agrees to sell the Property for the Purchase Price on the terms set forth herein.
2. **CONVEYANCE.** Seller shall convey title to Purchaser by a recordable warranty deed, with release of homestead rights, subject only to: (a) covenants, easements, conditions and restrictions of record as set forth on the attached Schedule A; (b) private, public and utility easements and roads and highways; and (c) general real estate taxes not yet payable.
3. **EARNEST MONEY.** To be held by George Vlasis Realtors, Inc.
4. **CLOSING DATE.** The Closing shall occur on the Closing Date, or as otherwise mutually agreed at the office of the title insurance company, mortgage lender, or Attorney Vincent Cainkar, 6215 West 79th Street, Suite 2A, Burbank, Illinois 60459-1102. In the event that Purchaser or Seller desire to close in escrow at the title company, then Purchaser and Seller shall each pay for 50% of the escrow closing costs provided that all costs incurred due to the use of an escrow required by the Lender to Purchaser shall be the responsibility of Purchaser.

5. **CONDITION OF PROPERTY.** Seller agrees to deliver possession of the Property in the same condition as it is at the date of this Contract, ordinary wear and tear excepted. Seller shall remove all debris from the Property prior to Closing.

6. **CLOSING DOCUMENTS.** At Closing, Seller shall provide the following executed documents: (a) warranty deed; (b) affidavit of title covering the date of Closing; (c) transfer declarations required for State, County and local transfer stamps; and (d) ALTA statement.

7. **REAL ESTATE TAXES.** No tax proration shall be made at Closing. Seller shall be responsible for all of the tax year 2015 real estate taxes and for all subsequent real estate taxes accruing up to the Closing Date. The provisions of this paragraph shall survive the Closing. Seller has paid the first installment 2015 real estate taxes and shall pay the second installment 2015 real estate taxes before delinquency. If the 2016 real estate taxes up to the Closing Date are not exempted, Seller shall be responsible for the payment of the same. Purchaser shall be responsible for paying real estate taxes arising from and after the Closing Date.

8. **POSSESSION.** Seller shall deliver possession to Purchaser on the Closing Date.

9. **EVIDENCE OF TITLE.** Not less than 10 days prior to the time of Closing, a title commitment for an owner's title insurance policy in the amount of the Purchase Price naming Purchaser as the owner in fee of the property, shall be issued by Old Republic National Title Insurance Company covering title to the real estate on or after the date hereof, showing title in the intended grantor subject only to (a) the title exceptions set forth in paragraph 2 above, and (b) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of Closing and which Seller shall so remove at that time by using the funds to be paid upon the delivery of the deed (all of which are herein referred to as the permitted exceptions). The title commitment shall be conclusive evidence of good title as therein shown as to all matters insured by the policy, subject only to the permitted exceptions.

10. **SURVEY.** Seller has provided a Plat of Survey from American Surveying & Mapping Inc. and is not aware of any changes on the Property which would affect such survey. Seller shall provide an updated Plat of Survey not less than ten (10) days prior to the date of Closing which shall reflect the Property being transferred.

11. **UNPERMITTED TITLE OR SURVEY EXCEPTIONS.** If the title commitment or survey disclose unpermitted exceptions or survey matters that render the title unacceptable to Purchaser for its intended use of the property, Seller shall have 10 days from the date of delivery thereof to have the exceptions removed from the commitment or to correct such survey defects or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions or survey defects, and, in such event, the time of Closing shall be 10 days after delivery of the commitment or the time expressly specified in paragraph 4, whichever is later. If Seller fails to have the exceptions removed or correct any such defects, or in the alternative, to obtain the commitment for title insurance specified above as to such

exceptions or survey defects within the specified time, Purchaser may terminate this Contract or may elect, upon notice to Seller within 5 days after the expiration of the 10-day period, to take title as it then is with the right to deduct from the purchase price liens or encumbrances of a definite or ascertainable amount. If Purchaser does not so elect, this Contract shall become null and void without further action of the parties.

12. **TRANSFER TAXES.** No transfer taxes are due as this sale is exempt therefrom.

13. **CASUALTY.** The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract.

14. **DEFAULT.** If this Contract is terminated without Purchaser's fault, the earnest money shall be returned to Purchaser, but if the termination is caused by Purchaser's fault, then at the option of Seller and upon notice to Purchaser, the earnest money shall be forfeited to Seller to be retained by Seller as liquidated damages. In the event of default, the earnest money escrowee shall be given notice by the nondefaulting party requesting payment of the earnest money by reason of default. If either Seller or Purchaser by written notice objects to the disposition within 10 days after receiving a copy of the notice provided to the escrowee, then the parties agree that the escrowee shall retain possession thereof until mutual agreement or order of court. The escrowee may deposit the funds with the Clerk of the Circuit Court by filing an interpleader action, the cost of which, including reasonable attorneys fees, shall be reimbursed to the escrowee out of the earnest money. If no objection is served within the 10 days, then the escrowee shall pay the earnest money as requested.

If Seller fails to perform in accordance with the terms of this Agreement or if any of Seller's representations, covenants or warranties contained in this Agreement shall not be true, complete and correct, at Purchaser's option and as Purchaser's sole and exclusive remedy, either: (a) the Earnest Money shall be returned to Purchaser and Purchaser shall be entitled to receive as liquidated damages from Seller an amount equal to Purchaser's actual out-of-pocket expenses, in an amount not to exceed the sum of \$25,000, it being agreed between the parties hereto that the actual damages to Purchaser in such event are impractical to ascertain and such amount is a reasonable estimate thereof and shall be and constitute valid liquidated damages (at which time this Agreement shall be null and void and neither party shall have any rights or obligations under this Agreement except for those rights and obligations which by their terms expressly survive any such termination); (b) Purchaser may elect to proceed to Closing, without affecting its rights and remedies; or (c) Purchaser may sue for specific performance of Seller's obligations to execute and deliver to Purchaser the documents required to close on the transaction contemplated hereunder.

15. **DELAY.** Time is of the essence of this Contract.

16. **NOTICE.** All notices herein required shall be in writing and shall be served on the attorney for each party at the following e-mail addresses: Notice to Seller shall be made to: Vincent Cainkar, Attorney, 6215 West 79th Street, Suite 2A, Burbank, IL 60459, vcainkar@aol.com. Notice to Purchaser shall be made to: Brian Smith, Attorney, 5323 West 95th Street, Oak Lawn, IL 60453, briansmith@lawofficeofbriansmith.com.

17. **RESPA.** Purchaser and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Real Estate Settlement Procedures Act of 1974. In the event that either party shall fail to make appropriate disclosure when asked, such failure shall be considered a breach on the part of said party.

18. **IRS SECTION 1445 COMPLIANCE.** Seller represents that he 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. Upon request, Purchaser shall also comply at Closing with any filing requirements.

19. **WARRANTIES.** Seller hereby excludes any and all warranties, express or implied (including, without limitation, any implied warranty of merchantability, habitability, or fitness for a particular purpose), with respect to the Property, as the Property is being purchased as is.

20. **ENTIRE CONTRACT.** This Contract constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior understandings and agreements. No representations, warranties, undertakings or promises, whether oral, implied or otherwise, made by either Seller or Purchaser to the other, shall be of any force or effect unless expressly stated herein or unless mutually agreed to in writing signed by both Seller and Purchaser. All amendments and supplements hereto, if any, shall be in writing executed by both Seller and Purchaser.

21. **ASSIGNMENT.** Purchaser does not have the right to assign this Contract without the prior written consent of Seller provided that Purchaser can assign this Contract to any legal entity controlled by Purchaser including a land trust or limited liability company.

22. **STRICT COMPLIANCE.** Any failure by either party to insist upon strict performance by the other party of any of the provisions of this Contract shall not be deemed a waiver of any of the provisions hereof, irrespective of the number of violations or breaches that may occur, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon strict performance by the other of any and all of the provisions of this Contract.

23. **GOVERNING LAW.** The provisions of this Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois.

24. **REPRESENTATIONS.** Purchaser acknowledges that it has not relied upon any oral or written representations concerning any matter relating to the Property or concerning any other matter connected with or related to the provisions of this Contract, except as otherwise specifically provided herein.

25. **ZONING.** Seller represents that the Property is zoned "C" Commercial District. The permitted uses in the "C" Commercial District include: Offices and Clinics of Doctors of Medicine, Dentists, Osteopaths, Chiropractors, Optometrists, Podiatrists, and Other Health Practitioners. Based upon Purchaser's representation that a medical group is the intended user of the Property, such use would be a permitted use under the Evergreen Park Zoning Code.

26. **APPROVALS.** This Contract is subject to the approval of Purchaser by the passage of an ordinance.

27. **REAL ESTATE BROKERS.** Both Purchaser and Seller state that the only real estate brokers employed by either of them in connection with the sale of the Property is George Vlasis Realtors, Inc. and Cavelle Realtors, both of whom shall be paid a real estate commission of 2.0% out of the closing proceeds.

28. **INSPECTION OF PROPERTY.** Purchaser shall have the right to terminate this Contract for any reason by giving written notice to Seller on or prior to April 1, 2016 (the "Inspection Period"), and in such event, the Earnest Money shall be returned to Purchaser. Within 5 days after the Contract Date, Seller shall provide Purchaser with copies of all surveys, preliminary plat or site plan drawings, environmental reports, engineering and soil boring test reports, government "review" letters, and any other documents in Seller's possession or reasonably available to Seller regarding the Property. At all times during the term of this Agreement, Seller grants to Purchaser, and those persons designated by Purchaser, the right to enter upon the Property in order to inspect the Property and to make soil borings and engineering and environmental tests and studies to determine the feasibility of Purchaser's proposed development of the Property. Purchaser shall use all reasonable efforts to minimize any damage to the Property and, in the event any portion of the Property is disturbed or altered by virtue of Purchaser's investigations, Purchaser shall promptly, at its sole cost and expense, restore the Property to substantially the same condition that existed prior to such disturbance or alteration. Purchaser shall indemnify, defend and hold Seller harmless from and against any and all loss, cost, liability or expense, including without limitation attorney fees and court costs, arising out of or resulting from the entry onto the Property by Purchaser or Purchaser's designees; this provision shall survive termination of this Agreement. During the Inspection Period, Purchaser shall obtain any necessary appraisal or financing required to proceed with the Closing. IN THE ABSENCE OF WRITTEN NOTICE PRIOR TO EXPIRATION OF THE INSPECTION PERIOD, THIS PROVISION SHALL BE DEEMED WAIVED BY PURCHASER, AND THIS CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT.

29. **SECTION 1031 EXCHANGE.** Purchaser may structure the acquisition of the Property as a like-kind exchange under Internal Revenue Code Section 1031 at Purchaser's sole cost and expense.

30. **REPRESENTATIONS AND WARRANTIES.** In order to induce Purchaser to enter into this Contract, Seller covenants, represents and warrants, as the case may be, with and to Purchaser as follows:

- (i) The Property is zoned so that a medical office building is a permitted use;
- (ii) At the execution hereof and at all times thereafter through the time of the Closing, Seller will own the Property free and clear of all liens, claims, encumbrances, and rights of others except for those matters described in Paragraph 2. Except for this Contract, Seller is not a party to any contract, lease, agreement or commitment to

sell, convey, lease, assign, transfer or otherwise dispose of any portion or portions of the Property;

- (iii) Between the date of the execution of this Contract and the Closing, Seller shall not negotiate or enter into any contracts, agreements or leases pertaining to the Property which would survive the Closing Date and be binding upon Purchaser or the Property;
- (iv) The Property (a) has never been used as a landfill or a waste dump, (b) does not contain any underground tanks, and (c) does not contain any hazardous substance or hazardous waste, as said terms are used in any applicable federal, state or local law, ordinance, code, statute, rule, requirement or regulation;
- (v) Seller has received no notice of, and to Seller's best knowledge there does not exist, any violation of any law, ordinance, code, statute, rule, requirement or regulation applicable to the Property or its use;
- (vi) The Property is not the subject of any condemnation or eminent domain proceeding and there is no threat of the same;
- (vii) Neither the Property nor Seller (to the extent the same would affect the Property in any manner whatsoever) is involved in any litigation or other dispute;
- (viii) There are no parties in possession of or with a right to occupy the Property, other than Seller;
- (ix) The Property is not taxed as a part of a larger parcel of land and constitutes or is comprised of one or more *separate* tax parcels for real estate tax purposes, such that the tax identification numbers which identify the Property for tax purposes do not include any additional land; and
- (x) The Property is not in a flood plain which would require flood hazard insurance.

The covenants, representations and warranties made by Seller in this Contract shall be deemed remade as of the Closing Date and shall survive Closing.

If, prior to Closing, any representation or warranty made by Seller in this Contract is discovered to be or becomes untrue, Purchaser shall have the right to terminate this Contract, whereupon the Earnest Money shall be promptly returned to Purchaser. The provisions of this paragraph shall not survive the Closing.

31. HAZARDOUS MATERIALS. Seller has not caused or allowed the generation, treatment, storage, disposal, or release of hazardous materials at or upon the Property except in accordance with local, state and federal statutes and regulations.

The term "Hazardous Materials" shall mean any substance material, waste, gas or particulate matter which is regulated by any local governmental authority, the State of Illinois, or the United States Government, including, but not limited to, any material or substance which is: (a) defined

as a "hazardous waste", "hazardous material," hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of Illinois law; (b) petroleum; (c) asbestos; (d) polychlorinated biphenyl; (e) radioactive material; (f) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251, et seq. (33 U.S.C. 6901, et seq. (42 U.S.C. 6903); or (g) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, et seq. (42 U.S.C. 9601). The term "Environmental Laws" shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

Seller represents and warrants that during the period of time that Seller has owned or operated the Property: (a) neither the Property nor any part thereof is or has been in breach of any Environmental Laws, and (b) the Property is free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached and such breach was caused by any action or inaction whether known or unknown on the part of Seller or Seller's representatives (collectively, a "Breach", and if such Breach gives rise to or results in liability (including, but not limited to, a response action, remedial action or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Seller shall promptly take any and all remedial and removal action as required by law to clean up the Property, mitigate exposure to liability arising from, and keep the Property free of any lien imposed pursuant to, any Environmental Laws as a result of such Breach.

Seller agrees to indemnify, defend and hold harmless Purchaser and its grantees from and against any and all debts, liens, claims, causes of action administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Purchaser and its grantees as a result of (a) any Breach, or (b) any matter, condition or state of fact involving Environmental Laws or Hazardous Materials ("Other Environmental Issue") which existed on or arose prior to the Closing Date but, not earlier than when the Seller owned or controlled the Property, and which failed to comply with (i) the Environmental Laws in effect as of the Closing Date or (ii) any existing common law theory based on nuisance or strict liability in existence as of the Closing Date, regardless of whether or not Seller has knowledge of same as of the Closing Date.

SELLER

PURCHASER

James J. Sexton, Mayor

Manager

SCHEDULE A

1. Encroachment of the fence located mainly on the land onto the public-right-of way south and adjoining by approximately 2.6 feet, as shown on plat of Survey Number 1301214 prepared by American Surveying & Mapping, Inc. dated November 11, 2014.
2. Rights, if any, of public and quasi-public utilities in the land as disclosed by Survey Number 1301214 prepared by American Surveying & Mapping, Inc. dated November 11, 2014 depicting overhead wires.
3. Driveway easement to be dedicated over Lots 16 through 22 for the mutual benefit of the owners of those lots at locations mutually agreeable to the Seller and Purchaser.