

**ORDINANCE NO. 20-2014**

**AN ORDINANCE OF THE VILLAGE OF EVERGREEN PARK  
APPROVING A REAL ESTATE SALE CONTRACT WITH DR.  
HAMDI M. KHILFEH FOR THE PROPERTY AT 2955 WEST  
95<sup>TH</sup> 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 Dr. Hamdi M. Khilfeh for the property located at 2955 West 95<sup>th</sup> 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of the State of Illinois or any parts thereof which are in conflict with the provisions of this ordinance are hereby superseded by this ordinance enacted under the home rule power of the Village of Evergreen Park.

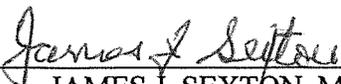
**Section 3**

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 15<sup>th</sup> day of September, 2014.

  
CATHERINE T. APARO, Village Clerk

APPROVED by me this 15<sup>th</sup>  
day of September, 2014.

  
\_\_\_\_\_  
JAMES J. SEXTON, Mayor

## REAL ESTATE SALE CONTRACT

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

**Purchaser:** Dr. Hamdi M. Khilfeh  
**Address:**

**Purchase Price:** \$500,000

**Earnest Money:** \$20,000

**Closing Date:** December 15, 2014, 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:** 2955 W. 95<sup>th</sup> Street, Evergreen Park, IL 60805

**Property:** See legal description in attached Policy Number OX09220400 issued by Old Republic National Title Insurance Company

**P.I.N.** 24-12-104-043 and 24-12-104-050

**Contract Date:** September 15, 2014

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

1. **AGREEMENT TO PURCHASE.** The Purchaser agrees to purchase and the Seller agrees to sell the Property for the Purchase Price on the terms set forth herein. All fixtures and equipment shall be transferred by Bill of Sale to Purchaser and shall be included in the Purchase Price.

2. **CONVEYANCE.** The Seller shall convey title to the 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 B from Policy Number OX09220400 issued by Old Republic National Title Insurance Company; (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 Louis F. Cainkar, Ltd. in their attorney escrow account for the mutual benefit of the parties.

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 the Purchaser or Seller desire to close in escrow at the title company, then the 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 the Purchaser shall be the responsibility of the 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 prorations shall be made at Closing. The Seller has applied for an exemption for real estate taxes for a portion of the 2014 tax year and shall be responsible for payment of all 2013 and prior year real estate taxes which are not exempted. The Purchaser shall be responsible for all real estate taxes arising for any period subsequent to the Closing Date. The provisions of this paragraph shall survive the Closing.

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 the 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 the 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 Landmark Engineering Corporation dated as of March 24, 2008 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.

11. **UNPERMITTED TITLE OR SURVEY EXCEPTIONS.** If the title commitment or survey disclose unpermitted exceptions or survey matters that render the title unacceptable to the Purchaser for its intended use of the property, the 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

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paragraph 4, whichever is later. If the 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, the Purchaser may terminate this Contract or may elect, upon notice to the 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 the 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 the Purchaser, but if the termination is caused by the Purchaser's fault, then at the option of the Seller and upon notice to the Purchaser, the earnest money shall be forfeited to the Seller to be retained by the 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 the 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.

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 parties at the addresses following their signatures. The mailing of a notice by certified mail, return receipt requested, shall be sufficient service. In the alternative, notice may be provided by facsimile transmission to the attorney for any party. Notice to the Seller shall be made to: Vincent Cainkar, Attorney, 6215 West 79<sup>th</sup> Street, Suite 2A, Burbank, IL 60459, [vcainkar@aol.com](mailto:vcainkar@aol.com). Notice to the Purchaser shall be made to:

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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.

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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 the Seller provided that Purchaser can assign this Contract to any legal entity controlled by the Purchaser.

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. **ENVIRONMENTAL CONDITIONS.** Seller has tendered a Phase I Environmental Site Assessment dated January 28, 2014 prepared by Aspen Environmental Services, Inc. for the Property.

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

27. **REAL ESTATE BROKERS.** Both Purchaser and Seller state that the only real estate broker employed by either of them in connection with the sale of the Property is Louis D. Cavelle of Cavelle Realtors. The Seller shall be responsible for paying a full commission as set forth in an agreement with Cavelle Realtors upon the closing of the Property.

28. **INSPECTION OF PROPERTY.** Within 10 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

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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. In the event that any inspection or test shows conditions which are not acceptable to the Purchaser, in its sole and unilateral discretion, then Purchaser shall have the right to terminate this Contract by giving written notice to the Seller on or prior to November 15, 2014 (the "Inspection Period"). 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. **MORTGAGE CONTINGENCY.** This Contract is contingent upon Purchaser securing prior to or at Closing a fixed rate mortgage loan permitted to be made by a U.S. or Illinois savings and loan association, bank, or other authorized financial institution, in the amount of not less than \$375,000, with an interest rate not to exceed 6.00% per year, amortized over at least 20 years, payable monthly, loan fee not to exceed 3.00%, plus appraisal and credit report fee, if any, and otherwise on such terms and conditions as are acceptable to Purchaser (the "Loan"). If Purchaser is unable to obtain the Loan during the Inspection Period, Purchaser shall have the right to either proceed with Closing or terminate this Contract by providing Seller with written notice thereof, and upon such termination the Earnest Money shall be returned to Purchaser. IN THE ABSENCE OF WRITTEN NOTICE PRIOR TO EXPIRATION OF THE INSPECTION PERIOD, THIS MORTGAGE CONTINGENCY PROVISION SHALL BE DEEMED WAIVED BY PURCHASER, AND THIS CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT.

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;

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- (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 (i) has never been used as a landfill or a waste dump, (ii) does not contain any underground tanks, and (iii) 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.

**SELLER**

**PURCHASER**

  
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 James J. Sexton, Mayor

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 Dr. Hamdi M. Khilfeh

*September 5, 2014*



## OWNER'S POLICY OF TITLE INSURANCE

Policy Number **OX09220400**

Issued by Old Republic National Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

### COVERED RISKS

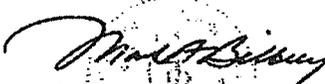
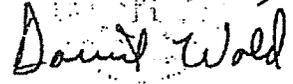
SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

Issued through the Office of:  
Old Republic National Title Insurance  
20 South Clark Street, Suite 2000  
Chicago, IL 60603  
Phone: 866-969-5010

Authorized Signature

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY  
A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By  President  
Attest  Secretary

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6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
  7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
  8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
  9. Title being vested other than as stated in Schedule A or being defective
    - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
    - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      - (i) to be timely, or
      - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
  10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.
- The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.



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**SCHEDULE A**

**First Suburban Title, Inc**  
15418 S. Harlem Avenue  
Orland Park, IL 60462  
Phone: 708-614-7777

File No.: TQ001888

Policy No.: OX09220400

**Address Reference:** 2955 West 95th Street  
Evergreen Park, IL 60805

**Amount of Insurance:** \$400,000.00  
**Date of Policy:** January 31, 2014

**1. Name of Insured:**

Village of Evergreen Park

**2. The estate or interest in the Land that is insured by this policy is:**

Fee Simple

**3. Title is vested in:**

Village of Evergreen Park

**4. The Land referred to in this Policy is located in the County of Cook, State of Illinois, described as follows:**

**PARCEL 1:**

**THE WEST 60 FEET OF THAT PART OF LOT 7 INCLUDED IN THE NORTH 216 FEET OF THE NORTHWEST 1/4 OF SECTION 12 (EXCEPTING FROM SAID NORTH 216 FEET THAT PORTION OCCUPIED BY THE PUBLIC FOR 95TH STREET AND EXCEPTING THEREFROM THAT PART THEREOF DEDICATED FOR PUBLIC ALLEY) IN KING ESTATE SUBDIVISION IN EVERGREEN PARK, BEING THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.**

**PARCEL 2:**

**THE EAST 75 FEET OF LOT 81 (EXCEPTING THEREFROM THE WEST 24.66 FEET OF THE SOUTH 51 FEET THEREOF) ALSO THE WEST 1 FOOT OF THE EAST 76 FEET OF**

**THE SOUTH 17 FEET OF THE NORTH 75 FEET OF LOT 81 IN FRANK DELUGACH'S BEVERLY TERRACE, BEING A SUBDIVISION OF LOTS 8 AND 9 IN KING ESTATE SUBDIVISION IN EVERGREEN PARK, BEING THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.**

**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. General real estate taxes for the year(s) 2013, 2014 and subsequent years.  
Permanent Index Number: 24-12-104-043-0000 (Volume number 243)  
Note: The first estimated installment of the 2012 taxes in the amount of \$2,121.54 is paid.  
Note: The second final installment of the 2012 taxes in the amount of \$1,946.14 is paid  
Note: The taxes for the year(s) 2013 and 2014 are not yet due and payable.
2. General real estate taxes for the year(s) 2013, 2014 and subsequent years.  
Permanent Index Number: 24-12-104-050-0000 (Volume number 243)  
Note: The first estimated installment of the 2012 taxes in the amount of \$1,282.36 is paid.  
Note: The second final installment of the 2012 taxes in the amount of \$1,159.73 is paid  
Note: The taxes for the year(s) 2013 and 2014 are not yet due and payable.
3. Encroachment of bituminous pavement located on the subject land over and onto the land West and adjoining a distance of 0.4 feet, more or less, as disclosed by survey dated March 2, 2008 made by Landmark Engineering Corp.
4. Adverse encroachment of the building located mainly on the land East and adjoining, over and onto the subject land a distance of 0.7 feet, more or less, as disclosed by survey dated March 2, 2008 made by Landmark Engineering Corp.

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## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
  - (i) The term "Insured" also includes
    - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to an Insured by its conversion to another kind of Entity;
    - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
      - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
      - (2) if the grantee wholly owns the named Insured.
      - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
      - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
  - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE

- (a) The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

### 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state,

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to the extent possible, the basis of calculating the amount of the loss or damage.

**5. DEFENSE AND PROSECUTION OF ACTIONS**

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

- (a) **To Pay or Tender Payment of the Amount of Insurance.**

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) **To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.**
  - (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
  - (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the

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Company up to the time of payment and that the Company is obligated to pay.  
Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

**8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
- (i) the Amount of Insurance; or
  - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
- (i) the Amount of Insurance shall be increased by 10%, and
  - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

**9. LIMITATION OF LIABILITY**

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

**11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

**12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

**13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.  
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

**14. ARBITRATION**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant

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to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

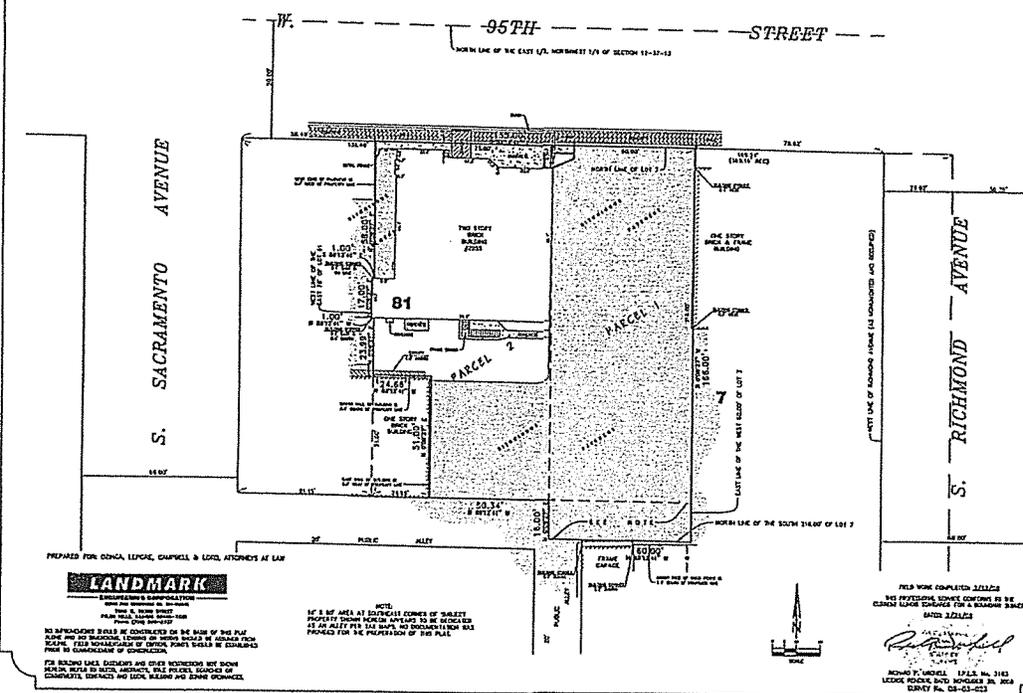
- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.  
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499.

PLAT OF SURVEY

PARCEL 6  
THE WEST 75 FEET OF THIS PART OF LOT 7 DESCRIBED IN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.  
PARCEL 7  
THE WEST 75 FEET OF LOT 7 (EXCEPTING THEREFROM THE WEST 34.84 FEET OF THE SOUTH 10 FEET THEREOF) AND THE WEST 4 FEET OF THE EAST 75 FEET OF THE SOUTH 10 FEET OF THE WEST 75 FEET OF LOT 7 IN FRANK S. GARDNER'S DEEDLY MAP, BEING A SUBDIVISION OF LOTS 6 AND 7 IN SAID EAST 1/4 QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.



PREPARED FOR CONCA, LEMKE, CAMPBELL & LOZZI, ATTORNEYS AT LAW

**LANDMARK**  
SURVEYING & ENGINEERING  
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*Richard P. Mitchell*  
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