

ORDINANCE NO. 23-51

AN ORDINANCE AUTHORIZING EXECUTION OF A REAL ESTATE SALE AGREEMENT  
AND PURCHASE OF REAL PROPERTY  
(304 HILL STREET & 309 JACKSON STREET, EAST DUNDEE, ILLINOIS)

NOW, THEREFORE, BE IT ORDAINED, by the President and Board of Trustees of the Village of East Dundee, Kane and Cook Counties, Illinois, as follows:

**SECTION 1:** The President and Board of Trustees of the Village find as follows:

- A. The Village of East Dundee (the "Village") is a home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois.
- B. The State of Illinois has adopted tax increment financing pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, *et seq.*, as amended from time to time (the "TIF Act").
- C. Pursuant to its powers and in accordance with the TIF Act, and pursuant to Ordinance Nos. 08-34, 08-35 and 08-36, adopted June 16, 2008, and as amended by Ordinance Number 18-28 on September 10, 2018, the Downtown Tax Increment Financing District (the "TIF District") was formed as a TIF district, for a twenty-three (23) year period. Ordinance Nos. 08-34, 08-35, 08-36 and 18-28 are incorporated herein by reference.
- D. Pursuant to and in accordance with the TIF Act and the Ordinances establishing the TIF District, the Corporate Authorities of the Village are empowered under Sections 4(c) and 3(q)(2) of the TIF Act, 65 ILCS 5/11-74.4-4(c) and 3(q)(2), to purchase real property within the TIF district, using TIF District funds, in furtherance of the Redevelopment Plan and Project for the TIF District, including for the acquisition of the "Subject Property," as defined in Section I.E. below.
- E. BIG KAHUNA CORPORATION, an Illinois corporation (the "Seller"), is the owner of the real estate and appurtenances attached thereto for the properties located at 304 Hill Street and 309 Jackson Street, East Dundee, Illinois (collectively, the "Subject Properties").
- F. The Village desires to acquire the Subject Properties in furtherance of the Redevelopment Plan and Project for the TIF District.
- G. It is the desire of the Seller to convey the Subject Properties to the Village on the terms set forth in the "Real Estate Purchase and Sale Agreement," and its accompanying Exhibits, attached hereto as **EXHIBIT A** and made a part hereof (the "Agreement").

- I. It is in the best interest of the Village to acquire the Subject Properties, to ensure that redevelopment within the TIF District continues.

**SECTION 2:** Based upon the foregoing, the Village President, Village Clerk and Village Administrator are hereby authorized and directed to purchase the Subject Properties pursuant to the terms and conditions set forth in the Agreement. The Village President or Village Administrator are further authorized and directed to execute and deliver such other instruments, including the Agreement, in a form finalized and approved by the Village Administrator and Village Attorney, and the Village Administrator and Village Attorney are also authorized to make any final changes to the terms and conditions of the Agreement as may be necessary or convenient to consummate such purchase.

**SECTION 3:** This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

**ADOPTED** this 4th day of December 2023, pursuant to a roll call vote as follows:

AYES: Mahony, Kunze, Brittin and Saviano

NAYS: None

ABSENT: Treiber and Sauder

**APPROVED** this 4th day of December 2023, by the Village President of the Village of East Dundee, and attested by the Village Clerk, on the same day.



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Village President

**APPROVED and FILED** in my office this 4<sup>th</sup> day of December 2023 and published in pamphlet form in the Village of East Dundee, Kane and Cook Counties, Illinois.

ATTEST:



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Katherine Dill  
Village Clerk

**EXHIBIT A**

**REAL ESTATE PURCHASE AND SALE AGREEMENT**

(attached)

## **REAL ESTATE PURCHASE AND SALE AGREEMENT**

**THIS REAL ESTATE PURCHASE AND SALE AGREEMENT** (“*Agreement*”) is made and entered into as of \_\_\_\_\_, 2023 (Purchaser will fill in the date after the Village Board gives its approval) (the “*Effective Date*”) by and between the **VILLAGE OF EAST DUNDEE**, an Illinois home-rule municipal corporation (“*Purchaser*”), and **BIG KAHUNA CORPORATION, an Illinois corporation** (“*Seller*”). In consideration of the recitals and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser (collectively, the “*Parties*”) agree as follows:

### **Section 1. Recitals.**

**A. Parcel.** The Seller owns fee simple title to certain real property consisting of two parcels commonly known as 309 Jackson Street, East Dundee, Illinois, which parcel is legally described on *Exhibit A* attached hereto (“*Parcel 1*”) and 304 Hill Street, East Dundee, Illinois, which parcel is also legally described on *Exhibit A* (“*Parcel 2*”) Collectively, Parcel 1 and Parcel 2 are referred to as “*Parcels*”.

**B. Property Description.** Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, (i) the Parcels, (ii) the improvements thereon, (iii) all easements, tenements, riparian rights, hereditaments, privileges and appurtenances that run with or are appurtenant to the Parcels, whether or not of record, (iv) the use of all appurtenant and assignable rights-of-way, if any, abutting, adjacent to, contiguous to, or adjoining the Parcels, and (v) all licenses, permits and franchises issued by any government authority relating to the development, use, or operation of the Parcels, running to or in favor of Seller (collectively, the “*Property*”), subject to this Agreement.

**Section 2. Incorporation of Recitals.** The Recitals are incorporated into this Agreement.

### **Section 3. Purchase and Sale; Purchase Price.**

**A. Purchase Price.** Seller shall sell the Property to Purchaser, and Purchaser shall purchase the Property from Seller, subject to the terms of this Agreement. The purchase price for the Property is \$378,000 (“*Purchase Price*”).

**B. Earnest Money.** There shall be no earnest money deposit.

**C. Balance of Purchase Price.** Purchaser shall pay the Purchase Price, plus or minus prorations, credits, and adjustments as provided in this Agreement, at the Closing through a Closing Escrow (defined in Section 10 below) by wire transfer in accordance with wire instructions provided by the Chicago Title Insurance Company (“*Title Company*”).

### **Section 4. Parties’ Preliminary Obligations and Rights.**

**A. Seller’s Deliveries.** Within five (5) business days after the Effective Date, Seller shall deliver to Purchaser and Purchaser’s attorney copies of all of the following pertaining to the Property in its possession or control: (i) any and all unrecorded leases, tenancies, licenses, easements, and

occupancy rights, all amendments thereto, and all correspondence and notices related thereto; (ii) existing survey(s) of the Property; (iii) any environmental reports, including Phase I and Phase II reports, soil testing or other reports or documents related to proposed development of the Property or; (iv) any and all notices and correspondence regarding compliance with laws, including environmental and zoning laws; (v) all contracts and services agreements binding on the Property and (vi) any unrecorded easements, licenses, or other rights to occupy or use the Property (collectively “***Seller’s Deliveries***”). Seller shall deliver a cover letter with Seller’s Deliveries certifying that true, complete, and correct copies of all of Seller’s Deliveries have been delivered to Purchaser and its attorneys.

**B. Title Commitment.** Purchaser obtained commitments from the Title Company to issue to Purchaser at Closing an ALTA Owner’s Title Insurance Policy (2006 version) (i) in the amount of the Purchase Price, (ii) with the following endorsements: an extended coverage endorsement over all standard exceptions (1-6) of Schedule B Part II of the Title Commitment defined below (“***Schedule B***”), Access Endorsement to Jackson Street and Hill Street, Location Endorsement and an Encroachment Endorsement, if any encroachments are shown on the Survey, (iii) insuring good, marketable, and insurable title to the Property, and (iv) with coverage over any “gap” period, all subject only to the Permitted Exceptions (as defined in Section 5.B.3) (the “***Title Policy***”). Seller will pay the cost for the Title Policy with the aforementioned endorsements and any other endorsements it requests. The Purchaser has obtained the following preliminary title commitments No. CCHI2303337LD and No. CCHI2303336LD for the Property (“***Title Commitments***”). Title Commitments will be combined into one title commitment at a later date. The current Title Commitments are attached to and incorporated as **Exhibit B** to this Agreement. Seller agrees to use these Title Commitments (which will be combined into one at a later date).

**C. Surveys and Plats.** Within 30 days of the Effective Date the Seller will obtain an ALTA/NSPS standard survey (“***Survey***”) of the Property, that (a) is prepared by a surveyor approved by Purchaser, (b) will be certified in favor of Seller, Purchaser and the Title Company, (c) complies with all requirements of the Title Company that are conditions to the removal of the survey exception from the standard printed exceptions in the Title Commitments, (d) contains a certification as to the total acreage of the Property, (e) includes the Table A Items 1, 2, 3, 4, 8, 11 and 19 (in the amount of \$1,000,000), and (f) is provided to Purchaser in digital format in NAD 83 State Plane Coordinates, and the surveyor shall provide six hard copies of the Survey to Purchaser. Seller will pay the cost for the ALTA Survey.

**D. Environmental Assessment.** Beginning on the Effective Date, Purchaser may cause to be performed one or more (i) environmental assessments, reviews, or audits, including without limitation a Phase I site assessment, of or related to the Property, (ii) tests or borings of the soil on the Property, (iii) asbestos testing of any improvements located on the Parcels, and (iv) other investigations or analyses concerning the environmental and physical condition of the Parcels (collectively, “***Environmental Assessments***”). At Seller’s request, Purchaser shall provide a copy of any completed Environmental Assessment to Seller.

## **Section 5. Due Diligence Period.**

**A. Period and License.** During the period that begins on the Effective Date and ends on the ninetieth (90<sup>th</sup>) day after the Effective Date (“***Due Diligence Period***”), Purchaser may conduct such investigations, inspections, reviews, and analyses of or with respect to the Property as Purchaser

desires (“**Due Diligence Activities**”). The Due Diligence Activities may include, without limitation, reviews of Seller’s Deliveries, the Title Commitments, the ALTA Surveys, and the Environmental Assessments. Seller hereby grants to Purchaser a license during the Due Diligence Period, for the use of Purchaser and its agents and contractors, to conduct Due Diligence Activities on the Property at any time upon 1 day’s prior notice to Seller.

## **B. Review of Title Commitments and Surveys.**

**1. Identification of Unpermitted Exceptions and Commitment to Cure.** Upon the later of (i) one hundred twentieth (120<sup>th</sup>) day after the Effective Date and (ii) the 10th business day following Purchaser’s receipt of the Title Commitments **and** the Surveys, Purchaser shall send written notice (“**Title Objection Notice**”) identifying any matter identified in such Title Commitments or Surveys that Purchaser determines, will adversely affect Purchaser’s intended redevelopment of the Property, (the “**Unpermitted Exceptions**”), and the Seller commits, at Seller’s cost, to (a) cure or remove the Unpermitted Exception or (b) cause the Title Company to insure over the Unpermitted Exceptions (“**Commitment to Clear Exceptions**”). Notwithstanding the process identified in this Section 5.B.1, the following are Unpermitted Exceptions, whether or not identified by Purchaser, that Seller must cure, and not merely insure over, prior to or at the Closing, and that Seller will be deemed to commit to cure in the Commitment to Clear Exceptions, whether or not Seller identifies them therein (collectively, the “**Must Cure Exceptions**”): (i) each mechanics’, materialmen’s, repairmen’s, contractors’ or other lien that encumbers the Property, unless the lien arises from the acts of Purchaser, (ii) each mortgage, security deed, and other security instrument that encumbers the Property, (iii) all past due Real Estate Taxes (defined in Section 10.F) applicable to the Property, (iv) each judgment against Seller that may constitute a lien against the Property, and (v) title exceptions shown in Schedule B Part II as follows will be removed from the Title Commitments and Owner’s Policies: 1 through and including for Parcel 1: 7, C-8, D-10, G-11, B-12, A-13, H-14, I-15, E-16, F-17 and Parcel 2: 7, 8, 9, E-11, A-12, C-13, I-14, J-15, D-16, G-17, H-18, B-19 .

**2. Seller’s Compliance with Commitment to Clear Exception.** At least 10 days prior to Closing, Seller shall deliver to Purchaser updated Title Commitments, showing that all Unpermitted Exceptions that Seller committed to clear in the Commitments to Clear Exceptions have been cleared. If it fails to do so, then Purchaser, at any time, may either (i) proceed with the Closing and deduct from the Purchase Price the amount reasonably necessary to clear the Unpermitted Exceptions that Seller committed to, but failed to, clear, in which case Purchaser will be deemed to have accepted the uncleared or uninsured Unpermitted Exception and shall accept Seller’s Deed at Closing subject to the uncleared or uninsured Unpermitted Exceptions or (ii) terminate this Agreement.

**3. Permitted Exceptions.** Any matter of record shown in the Title Commitments that are (i) not objected to by Purchaser in a Title Objection Notice or (ii) are not defined in Section 5.B.1 as an Unpermitted Exception or a Must Cure Exceptions or (iii) are an uncleared or uninsured Unpermitted Exception that is deemed accepted by Purchaser pursuant to Section 5.B.2, is a “**Permitted Exception.**”

**4. Effect of Termination.** In the event of a termination pursuant to Section 5.B.2, neither party shall have any claim or obligation under this Agreement, except (i) if Seller caused an

Unpermitted Exception by a willful or wrongful act or omission, then Purchaser may pursue any and all remedies available at law or in equity and (ii) for those rights, liabilities, and obligations that expressly survive the termination of this Agreement.

**C. Review of Environmental Assessments; Environmental Work.**

- (i) **Remediation Notice.** If Purchaser determines through its review of an Environmental Assessment, that there exists within the Property a condition that (a) may require environmental clean-up, remediation, or (in the case of underground and above ground storage tanks (collectively, “*Storage Tanks*”)) removal, and (b) may adversely affect Purchaser’s intended redevelopment of the Property (an “*Environmental Condition*”), then, before the end of the Due Diligence Period, Purchaser may send Seller either (a) a written notice terminating this Agreement, in which event neither party shall have any further liability to the other or (b) a written notice describing all clean-up work, remediation work, and removal of Storage Tanks that is required with respect to the Property (collectively, the “*Environmental Work*”) in reasonable detail and requesting that Seller either (1) perform or cause to be performed the described Environmental Work before the Closing or (2) provide Purchaser with a credit at Closing (the “*Remediation Credit*”) for the costs and expenses of the Environmental Work (a “*Remediation Notice*”).
- (ii) **Seller’s Obligation to Complete Environmental Work; Remediation Notice Response.** With respect to a Remediation Notice timely submitted during the Due Diligence Period, then within 5 business days after receiving the Remediation Notice, Seller shall provide Purchaser with a written notice (a “*Remediation Notice Response*”) stating whether Seller (a) will comply with Purchaser’s request to perform the Environmental Work before the Closing or provide a Remediation Credit at the Closing or (b) declines to perform the Environmental Work before, or provide the Remediation Credit at, the Closing. If Seller does not timely provide a Remediation Notice Response, it will be deemed to have declined to either perform the Environmental Work or provide a Remediation Credit. If Seller declines to perform the Environmental Work before the Closing or provide the requested Remediation Credit, then Purchaser may terminate this Agreement.
- (iii) **Performance of Environmental Work.** If Seller elects to complete Environmental Work in response to a Remediation Notice, then Seller, at its own expense, shall hire a reputable and competent contractor selected by the Parties to complete the Environmental Work before the Closing.

**D. Purchaser’s Right to Terminate.** In addition to its termination rights pursuant to Section 5.B, not later than the last day of the Due Diligence Period (the “**Approval Deadline**”), Purchaser may deliver to Seller a written notice stating that, based on the results of the Due Diligence Activities, the Property are not suitable for Purchaser’s intended uses, as determined by Purchaser in

its sole and absolute discretion, and that Purchaser has elected to terminate this Agreement (“**Termination Notice**”).

**E. Restoration.** If a Due Diligence Activity damages the Parcels, and Purchaser does not acquire the Property, then Purchaser shall restore the Parcels to a condition that is substantially the same as its condition prior to the performance of such Due Diligence Activity.

**Section 6. Representations and Warranties.**

**A. General Representations and Warranties.** Seller, represents and warrants to Purchaser that, as of the date hereof and as of the date of Closing:

- (i) Seller has not entered into any agreements or granted any options pursuant to which any third party has the right to acquire all or any portion of the Property or any interest therein;
- (ii) there are not now and will not be at Closing, any leases, tenancies, licenses, concessions, franchises, options or rights of occupancy or purchase, service, maintenance, or other contracts that which will be binding upon Purchaser or the Property after the Closing;
- (iii) the Property is not affected by or subject to: (a) any pending or, to the best of Seller’s knowledge, threatened condemnation suits, or similar proceedings, (b) other pending or, to the best of Seller’s knowledge, threatened claims, charges, complaints, petitions, or unsatisfied orders by or before any administrative agency or court, or (c) any pending or, to the best of Seller’s knowledge, threatened claims, suits, actions, complaints, petitions, or unsatisfied orders by or in favor of any party whatsoever;
- (iv) to the best of Seller’s knowledge, there are no threatened requests, applications, or proceedings to alter or restrict the zoning or other use restrictions applicable to the Property;
- (v) to the best of Seller’s knowledge, there are no unrecorded easements, liens, or encumbrances affecting the Property;
- (vi) Seller has received no written notice of, and to the best of Seller’s knowledge, there is not any violation of any law, ordinance, order, regulation, or requirement, including, but not limited to, building, zoning, environmental, safety, and health ordinances, statutes, regulations, and requirements issued by any governmental body or agency having jurisdiction over the Property;
- (vii) to the best of Seller’s knowledge and except as disclosed in the Environmental Assessments there has not been (a) any use of the Property for the generation, storage or disposal of any (1) asbestos, (2) petroleum, (3) explosives, (4) radioactive materials, wastes or substances, or (5) any substance defined as “hazardous substances” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42. U.S.C. 9601, *et seq.*, the Hazardous Materials Transportation Act (49 U.S.C. 1802), the Resource Conservation



and Recovery Act (42 U.S.C. 6901), or in any other Applicable Law (as defined in 14.D.2) governing environmental matters (“Environmental Laws”) (collectively, “Hazardous Materials”), and the use of the Property has been in compliance with all Environmental Laws, (b) there are not any Hazardous Materials present on the Property, (c) the Property is currently in compliance with all Environmental Laws; and (d) there are currently no Storage Tanks on the Property and any Storage Tanks formerly located on the Property were removed in compliance with all Environmental Laws;

- (viii) except as disclosed in Seller’s Deliveries, Seller has received no written notice of (a) any pending or threatened action or proceeding arising out of the presence of Hazardous Materials on the Property or (b) any alleged violation of any Environmental Laws;
- (ix) Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986;
- (x) Seller has the requisite power and authority to enter into and perform the terms of this Agreement and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary trustee, executory, and individual action and authority, do not violate any agreement to which Seller is a party, and no other proceedings on Seller’s part are necessary in order to permit Seller to consummate the transaction contemplated hereby; and
- (xi) Neither Seller nor any of its affiliates have (a) commenced a voluntary case, or had entered against them a petition, for relief under any applicable law relative to bankruptcy, insolvency, or other relief for debtors, (b) caused, suffered, or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator, or similar official in any federal, state, or foreign judicial or non-judicial proceeding to hold, administer, and/or liquidate all or substantially all of their respective assets, (c) had filed against them any involuntary petition seeking relief under any applicable law relative to bankruptcy, insolvency, or other relief to debtors, or (d) made a general assignment for the benefit of creditors.
- (xii) each person executing this Agreement on behalf of Seller is fully authorized to do so and, by doing so, to bind Seller to its obligations under this agreement.

At Purchaser’s request, the Seller, shall reconfirm all representations and warranties set forth in this Section 6 as true, accurate, and complete on and as of Closing.

**B. Survival; Indemnification.** Seller’s representations and warranties shall survive Closing. Seller agrees to indemnify, hold harmless, and defend Purchaser, from and against any and all claims, demands, losses, liens, costs, expenses (including reasonable attorneys’ fees and court costs), damages, liabilities, judgments, or decrees of any kind or nature which, directly or indirectly, are caused by, result from, arise out of, or occur in any manner in connection with any material inaccuracy in Seller’s representations or warranties contained herein.

**Section 7. Seller's Covenants and Agreement.** Seller covenants and agrees with Purchaser from the Effective Date until the Closing:

- (i) Seller shall not make, enter into, grant, amend, extend, renew or grant any waiver or consent under any lease, tenancy, easement, license or other agreement allowing the use or occupancy of all or any portion of the Property, without Purchaser's prior written consent,
- (ii) Seller shall not enter into or amend any contracts, agreements or undertakings that will be binding upon Purchaser or the Property, without Purchaser's prior written consent,
- (iii) Seller shall not create, or allow the creation of, any encumbrance on the title of the Property, without Purchaser's prior written consent (except for any Permitted Exceptions),
- (iv) Seller shall not take any action, directly or indirectly, to encourage, initiate, or engage or participate in discussions or negotiations with any third party concerning a potential sale of all or any portion of, or any interest in, the Property,
- (v) Seller shall promptly inform Purchaser of any developments which would cause any of its representations or warranties contained in this Agreement to be no longer materially accurate,
- (vi) Seller, at its own expense, and before Closing, shall completely remove all materials, equipment, signs, personal property, garbage and debris located at or on the Property in accordance with all Applicable Laws (as defined in Section 14.D.(ii)),
- (vii) Seller, at its own expense, and before Closing, shall complete all Environmental Work which it has agreed to perform in accordance with Section 5.C above, and
- (viii) Seller shall continue to maintain and keep the Property in its current condition, use commercially reasonable efforts to comply with all Applicable Laws materially affecting it, and pay taxes and mortgage payments on it as they become due.

**Section 8. Bulk Sales/Illinois Income Tax Withholding.**

At least 20 days prior to the Closing, Purchaser shall, with Seller's full cooperation, notify the Illinois Department of Revenue (the "***Department***") and the Illinois Department of Employment Security ("***IDES***") of the intended sale of the Property and request the Department and IDES to make a determination as to whether Seller has an assessed, but unpaid, amount of tax, penalties, or interest under 35 ILCS 5/902(d) or 35 ILCS 120/5j or under the Section 2600 of the Illinois Unemployment Insurance Act (collectively the "***Bulk Sale Act***"). At or prior to the Closing, Seller shall deliver to Purchaser evidence that the sale of the Property to Purchaser hereunder is not subject to, and does not subject Purchaser to liability under the Bulk Sale Act ("***Release***"). Five business days prior to the Closing, Seller shall deliver to Purchaser evidence that the sale of the Property to Purchaser hereunder is not subject to, and does not subject Purchaser to liability under the Bulk Sale Act (collectively, "***Release***"). Purchaser may, at the Closing, deduct

and withhold from the proceeds that are due Seller the amount necessary to comply with the withholding requirements imposed by the Bulk Sale Act, provided that such amounts are deposited in escrow at Closing and released to Seller upon obtaining a release from the Department or otherwise satisfying any amounts due under the Bulk Sale Act. Seller shall indemnify, defend and hold harmless Purchaser, and its commissioners, officers, employees, agents, successors and assigns, harmless from any and all obligations, liabilities, claims, demands, losses, expenses, or damages arising from Seller's failure to (i) provide any required notice of its sale of the Property to the appropriate state, county, or municipal governmental authorities, (ii) pay any and all taxes and other amounts due in connection with its ownership, operation or sale of the Property, or (iii) otherwise comply with any bulk sales laws of the State of Illinois or Kane County. The foregoing indemnity shall survive the Closing Date.

**Section 9. Conditions Precedent to Closing.**

Purchaser's obligation to close is subject to each and all of the following conditions being satisfied by Seller, or waived in writing by Purchaser (the "Closing Contingencies"):

- (i) all of Seller's representations and warranties contained in this Agreement, must be materially true and correct on the date hereof and as of the Closing Date,
- (ii) Seller must have timely performed all of its obligations under this Agreement,
- (iii) all conditions precedent to Purchaser's obligation to close on the transaction contemplated in this Agreement must have been satisfied or waived as of the Closing Date,
- (iv) Seller must have delivered all items required to be delivered by Seller pursuant to Section 10.C, and
- (v) the Title Company has issued or is irrevocably committed to issue the Title Policies.

Purchaser may inspect the Property within forty-eight (48) hours prior to the Closing Date to determine whether the Closing Contingencies have been satisfied. If a Closing Contingency is not satisfied because of a default by Seller, Purchaser will have all of its rights under Section 14.E.1.

**Section 10. Closing.**

**A. Conveyance and Possession.** At Closing, Seller shall convey fee simple title to the Property to Purchaser by delivery of Seller's warranty deed ("*Seller's Deed*") in recordable form conveying fee simple title to the Property, subject only to Permitted Exceptions. Seller shall deliver the Property to Purchaser in its condition as of the Effective Date, except to the extent that Seller has agreed to perform, and has completed, Environmental Work, and except for ordinary wear and tear.

**B. Time, Place; Closing Escrow.**

- (i) Time. The Closing will occur (i) no later than the 30<sup>th</sup> day following the later of (a) the expiration of the Due Diligence Period and (b) the completion of any Environmental Work that Seller is required, or has agreed, to complete or

provide a Remediation Credit for; or (ii) on another date mutually agreed to in writing by the Parties (the “**Closing Date**”).

- (ii) Place. The Closing will be at the office of the Title Company at 10 S. LaSalle St., Chicago, Illinois or 500 Skokie Blvd, Suite 290, Northbrook, Illinois. The Parties need not physically attend a Closing.
- (iii) Closing Escrow. On or before the Closing, Purchaser and Seller shall establish an escrow in the usual form of deed and money escrow agreement then in use by Title Company with such changes made as may be necessary to conform with the provisions of this Agreement (a “**Closing Escrow**”). The Closing will be a “New York” style closing.

**C. Seller Closing Deliveries.** At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following, in each case, fully executed (as applicable), in form and substance satisfactory to Purchaser:

- (i) evidence reasonably satisfactory to the Title Company of the authority of Seller to consummate the Closing, to the extent such authority is not apparent in the documents recorded when Seller acquired title to the Property,
- (ii) Seller’s Deed and other instruments of transfer and conveyance transferring the Property, free of all liens other than the Permitted Exceptions including a Plat Act Affidavit or compliance with the Illinois Plat Act,
- (iii) to the extent required by the Title Company, a “gap” undertaking in customary form and substance for the “gap” period” through the applicable Closing Date or the date of recording, as the case may be,
- (iv) a current form of ALTA Statement in customary form and substance as required by the Title Company,
- (v) a counterpart to the closing statement,
- (vi) real estate transfer declarations or exemptions required by Applicable Laws,
- (vii) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction, including any instrument, assurance or deposit required for the Title Company to insure over Unpermitted Exceptions in such form, terms, conditions and amount as may be required by the Title Company,
- (viii) a non-foreign affidavit sufficient in form and substance to relieve Purchaser of any and all withholding obligations under Section 1445 of the Internal Revenue Code,
- (ix) a signed Pro Forma title policy.

- (x) an Affidavit of Title in a form acceptable to Purchaser,
- (xi) a bill of sale (with general warranty of title),
- (xii) Releases from the Department, IDES and Kane County, pursuant to Section 8, and
- (xiii) a release of liens from all real estate brokers, finders and salespersons, if any, with respect to this Agreement.

**D. Purchaser's Closing Deliveries.** At Closing, Purchaser shall deliver or cause to be delivered to Seller the following, in each case, fully executed (as applicable) and in form and substance reasonably satisfactory to Seller:

- (i) the Purchase Price, subject to the credits and other adjustments contemplated herein,
- (ii) a counterpart to the closing statement,
- (iii) to the extent required by the Title Company, a "gap" undertaking in customary form and substance for the "gap" period" through the applicable Closing Date or the date of recording, as the case may be,
- (iv) a current form of ALTA Statement in customary form and substance as required by the Title Company,
- (v) real estate transfer declarations or exemptions required by Applicable Laws,
- (vi) all other documents, certificates, forms and agreements required by this Agreement or Applicable Law or customarily required by the Title Company, in order to close the transaction,
- (vii) Certified copies of the ordinances, and resolutions, associated with this Agreement, as required and

**E. Closing.** At Closing, **Seller** shall pay (i) the cost of the Title Policies and the endorsements identified in 4.B.(ii) or requested by Purchaser, (ii) the cost of the Surveys, (iii) 50% of the Title Company's closing fees related to such Closing, (iv) Seller's attorneys' fees related to such Closing, and (v) the Remediation Credit, if any, applicable to Environmental Work completed prior to such Closing. **Purchaser** shall pay (i) 50% of the Title Company's closing fees related to such Closing, (ii) 100% of the costs incurred in recording the Seller's Deed, and any other document required to be recorded by any entity providing funding to Purchaser, (iii) any costs incurred in connection with Purchaser's Due Diligence Activities related to the Due Diligence Period, and (iv) Purchaser's attorneys' fees related to such Closing.

**F. Prorations.** All ad valorem, special tax roll, or other real estate taxes, charges, and assessments, including special assessments and special service area taxes, affecting the Property (collectively, "**Real Estate Taxes**") shall be prorated on an accrual basis and on a per diem basis to

and including the Closing Date, disregarding any discount or penalty and on the basis of the fiscal year of the authority levying the same. If any Real Estate Taxes are assessed against the Property as of Closing Date, then Seller shall give to Purchaser a credit at the Closing based on 115% of the last tax bill and the Parties agree that when the actual Real Estate Tax bill is issued that they will re-prorate the amount due. The Parties agree to sign the Tax Reproration Agreement attached as Exhibit C. All water, sewer, and other utility charges, if any, shall be prorated as of Closing.

**G. Restrictions.** Purchaser agrees that if a parking facility is constructed at the property, the purchaser will not be permitted to charge vehicles to park in such facility, for a period of 5 years, starting on the date of the execution of the purchase and sales agreement. An agreement encapsulating these two restrictions will be separately executed by the parties prior to closing.

**Section 11. Casualty; Condemnation.** Promptly upon learning thereof, Seller shall give Purchaser written notice of any condemnation by an entity other than Purchaser, damage or destruction of the Property occurring prior to the Closing. If prior to the Closing all or a material portion of the Property is condemned, damaged or destroyed by an insured casualty, Purchaser shall have the option of either (i) applying the proceeds of any condemnation award or payment under any insurance policies (other than business interruption or rental loss insurance) toward the payment of the Purchase Price to the extent such condemnation awards or insurance payments have been received by Seller, receiving from Seller an amount equal to any applicable deductible under any such insurance policy and receiving an assignment from Seller of Seller's right, title and interest in any such awards or payments not theretofore received by Seller, or (ii) terminating this Agreement by delivering written notice of such termination to Seller and Escrowee within ten (10) business days after Purchaser has received written notice from Seller of such material condemnation, damage or destruction. If, prior to the Closing, a portion of the Property is condemned, damaged or destroyed and such portion is not a material portion of the Property, the proceeds of any condemnation award or payment and any applicable deductible under any insurance policies shall be applied toward the payment of the Purchase Price to the extent such condemnation awards or insurance payments have been received by Seller and Seller shall assign to Purchaser all of Seller's right, title and interest in any unpaid awards or payments. For purposes of this Section 11, the term "material portion" shall mean greater than ten percent (10%) of the value of the Property or an absence of reasonable access to the Property. If the damage or destruction arises out of an uninsured risk, Seller shall elect, by written notice within ten (10) days of the occurrence of such damage or destruction either to terminate this Agreement or to close the transaction contemplated hereby with a reduction of the Purchase Price equal to the costs of repairing the Property, as reasonably estimated by an engineer engaged by Seller and reasonably acceptable to Purchaser.

**Section 12. Brokers.** Seller and Purchaser each represents and warrants to the other that it knows of no broker or other person or entity who has been instrumental in submitting or showing the Property to Purchaser. If any broker or other person asserts a claim against Purchaser for a broker's commission, finder's fee, or similar payment in connection with the transactions contemplated in this Agreement, then Seller shall indemnify and hold harmless the Purchaser from and against any damage, liability or expense, including costs and reasonable attorneys' fees that Purchaser incurs because of such claim.

**Section 13. Patriot Act.**

A. **Definitions.** All capitalized words and phrases and all defined terms used in the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) ("*Patriot Act*") and in other statutes and all orders, rules and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001, and the USA FREEDOM Act dated June 2, 2015 are collectively referred to as the "Patriot Rules" and are incorporated into this Section.

B. **Representations and Warranties.** Purchaser and Seller hereby represent and warrant, each to the other, that each and every "person" or "entity" affiliated with each respective party or that has an economic interest in each respective party or that has or will have an interest in the transaction contemplated by this Agreement or in any property that is the subject matter of this Agreement or will participate, in any manner whatsoever, in the purchase and sale of the Property is, to the best of Purchaser's or Seller's knowledge:

- (i) not a "blocked" person listed in the Annex to Executive Order Nos. 12947, 13099 and 13224,
- (ii) in full compliance with the requirements of the Patriot Rules and all other requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("*OFAC*"),
- (iii) operated under policies, procedures and practices, if any, that are in compliance with the Patriot Rules and available to each other for review and inspection during normal business hours and upon reasonable prior notice,
- (iv) not in receipt of any notice from the Secretary of State or the Attorney General of the United States or any other department, agency or office of the United States claiming a violation or possible violation of the Patriot Rules,
- (v) not listed as a Specially Designated Terrorist or as a blocked person on any lists maintained by the OFAC pursuant to the Patriot Rules or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of the OFAC issued pursuant to the Patriot Rules or on any other list of terrorists or terrorist organizations maintained pursuant to the Patriot Rules,
- (vi) not a person who has been determined by competent authority to be subject to any of the prohibitions contained in the Patriot Rules, and

- (vii) not owned or controlled by or now acting and or will in the future act for or on behalf of any person or entity named in the Annex or any other list promulgated under the Patriot Rules or any other person who has been determined to be subject to the prohibitions contained in the Patriot Rules.

C. **Mutual Notice; Termination.** Each party covenants and agrees that in the event it receives any notice that it or any of its beneficial owners or affiliates or participants become listed on the Annex or any other list promulgated under the Patriot Rules or indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, the party that receives such notice shall immediately notify the other (the “*Non-Blocked Party*”) and the effect of the issuance of a notice pursuant to the Patriot Rules is that the Non-Blocked Party may elect to either: (i) obtain permission from OFAC to proceed with the Closing, in which case, the Closing Date shall be delayed until such permission is obtained, or (ii) send written notice to the other party terminating this Agreement, in which event the Parties shall have no further rights or obligations under this Agreement, except for those rights, liabilities or obligations that survive a termination of this Agreement.

#### **Section 14. General Provisions.**

A. **Integration; Modification.** This Agreement constitutes the entire agreement between the Parties pertaining to the Property and supersedes all prior agreements, understandings, and negotiations pertaining thereto. This Agreement may be modified only by a written amendment or other agreement that is lawfully approved and executed by the Parties.

B. **Further Actions.** The Parties shall execute all documents and take all other actions consistent with this Agreement that are reasonably necessary to consummate the transactions contemplated in this Agreement.

C. **Confidentiality.** Parties shall keep all negotiations, information, and documents related to this Agreement (including without limitation any appraisals or financial information) (collectively, “*Negotiation Information*”), strictly confidential and shall not disclose (and shall cause its attorneys consultants, and agents not to disclose) Negotiation Information to any third party, without the other party’s prior written consent, which consent may be granted or withheld. The obligations of this Section will survive Closing or the termination of this Agreement. Nothing in this Section will be deemed to prohibit disclosure of any information that is generally available to the public or is required to be disclosed pursuant to the Illinois Freedom of Information Act (140 ILCS 5/1 *et seq.*).

#### **D. Interpretation.**

- (i) Presumption. There is no presumption that this Agreement is to be construed for or against Seller or Purchaser, or either party as the principal author of the Agreement. Instead, this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.
- (ii) Compliance with Applicable Laws; Governing Law. In performing their obligations under this Agreement, the Parties shall comply will all applicable federal, state, and local statutes, regulations, requirements,



ordinances, and other laws (“*Applicable Laws*”). The internal laws of the State of Illinois, without regard to its conflict of laws rules, shall govern the interpretation of this Agreement.

- (iii) Headings and Exhibits. The Section headings in this Agreement are used as a matter of convenience and do not define, limit, construe or describe the scope or intent of the text within such headings. The following Exhibits attached hereto are incorporated herein as an integral part of this Agreement:

Exhibit A: Legal Description of Property  
Exhibit B: Title Commitment  
Exhibit C: Tax Reproration Agreement

- (iv) Non-Waiver. Except as expressly provided in this Agreement, the mere failure by a party to insist upon the strict performance of any obligation of this Agreement or to exercise any right or remedy related to a default thereof shall not constitute a waiver of its rights. If a party waives a right under this Agreement, that waiver shall not be deemed a waiver of any other right.
- (v) Severability. If any provision of this Agreement is invalid or unenforceable against any party under certain circumstances, then this Agreement will be deemed to be amended by deleting such provision. This Agreement will be enforceable, as amended, to the fullest extent allowed by Applicable Laws and so long as the amendment does not result in a failure of consideration.
- (vi) Time. Time is of the essence in the performance of this Agreement. If any date upon which action is required under this Agreement is a Saturday, Sunday, or legal holiday, the date will be extended to the first business day after such date that is not a Saturday, Sunday or legal holiday.

## **E. Enforcement.**

### **1. Default.**

**a. Purchaser Default.** If Purchaser fails to perform an obligation under this Agreement, and does not, within 5 days after receiving written notice from Seller of such failure, either (i) cure such failure or (i) if such failure cannot reasonably be cured within 5 days, commence and diligently pursue a cure for such failure, then Purchaser will be in default of this Agreement and Seller may terminate this Agreement as its sole and exclusive remedy.

**b. Seller Default.** If (i) Seller fails to perform an obligation under this agreement or (ii) any representation or warranty made by Seller hereunder is untrue when made or becomes materially untrue as the result of an act or omission of Seller, and Seller does not, within 5 days after receiving written notice from Purchaser of such failure, either (i) cure such failure or take action to cause such representation or warranty to become materially true or (ii) if such failure cannot reasonably be cured within 5 days or if such action cannot reasonably be completed within 5 days, commence and diligently pursue a cure for such failure or such action, then Seller will be in default

of this Agreement and Purchaser may (i) terminate this Agreement or (ii) pursue any other remedy available at law or equity, including without limitation an action for specific performance. Without limiting Purchaser's rights under the preceding sentence, if (i) a representation or warranty made by Seller becomes materially untrue, but not as the result of an act or omission of Seller, or (ii) a Closing Contingency is not satisfied, then Purchaser may terminate this Agreement.

**2. Successors and Assigns.** This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns.

**3. Prevailing Party Attorney Fees.** In any litigation filed to enforce this Agreement, the prevailing Party will be entitled to recover from the other Party its reasonable attorney's fees, litigation expenses, and court costs at trial and on appeal that are incurred in such litigation.

**4. Venue.** Venue for any litigation concerning the enforcement of this Agreement will be in the Circuit Court of Kane County, Illinois, or the Federal District Court for the Northern District of Illinois, Eastern Division.

**F. Execution of Agreement.**

**1. Board Approval Required.**

(a) Effectiveness; Irrevocable Offer. Purchaser acknowledges that (1) this Agreement is not effective until it is approved by Purchaser's Village Board in accordance with Applicable Laws and executed by the Purchaser's Village President, (2) by executing this Agreement and delivering it to Purchaser, Seller has made an offer to Purchaser to enter into this Agreement, (3) such offer may be accepted by the lawful approval of the Agreement by Purchaser's Village Board, and (4) that such offer is irrevocable until November 16, 2023.

(b) Consideration. Seller acknowledges that Purchaser's good faith consideration of this Agreement and Seller's irrevocable offer, is adequate consideration for Seller's agreements in this Section.

**2. Counterparts and Effectiveness.** The Parties may execute this Agreement in multiple counterparts, all of which taken together will constitute a single Agreement binding on the Parties, notwithstanding that the Parties are not signatories to the same counterpart. This Agreement will be deemed fully executed, and effective as of the Effective Date, when each party has executed at least one counterpart. Any signature of a party to this Agreement that is sent by that party to the other party via a telefax transmission or via an email transmission in a PDF format shall be deemed a binding signature hereto. Each party shall deliver an original signature to the other party upon the other party's request.

**3. Representations and Warranties.** Purchaser and Seller its successors and assigns represents and warrants to each other that (i) or it has the requisite power and authority to enter into and perform the terms of this Agreement,

(ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby (a) have been duly authorized by all necessary action and authority and (b) do not violate any agreement to which it is a party, and (iii) no other proceedings on its part are necessary in order to permit him, her, or it to consummate the transactions contemplated hereby, and (iv) the person executing this Agreement on its behalf, is fully authorized to execute this Agreement, and, by doing so, to bind or it to the obligations under this Agreement.

**G. Notices.** Notices under this Agreement must be delivered (i) personally, (ii) by overnight delivery by a nationally recognized courier service, or (iii) by email, with the notice also being sent personally, by overnight delivery as set forth above, or by regular U.S. mail. Notices under this agreement must be sent to the following addresses or to such other or further addresses as a party may hereafter designate by notice:

To Seller: Big Kahuna Corporation  
c/o Roger Shelton, President  
2230 Chapel Road  
Barrington Hills, IL 60010

With a copy to: \_\_\_\_\_

To Buyer: Village of East Dundee  
120 Barrington Avenue  
East Dundee, Illinois 60118  
Attn: Erika Storlie, Village Administrator  
Email: [estorlie@eastdundee.net](mailto:estorlie@eastdundee.net)

With a copy to: Elrod Friedman LLP  
325 N. LaSalle St. Suite 450  
Chicago, Illinois 60654  
Attn: Kelley A. Gandurski / Megan R. Cawley  
Email: [Kelley.Gandurski@ElrodFriedman.com](mailto:Kelley.Gandurski@ElrodFriedman.com) /  
[megan.cawley@ElrodFriedman.com](mailto:megan.cawley@ElrodFriedman.com)

Any notice shall be deemed given upon actual receipt. Nothing in this Section will be deemed to invalidate a notice that is actually received, even if it is not given in strict accordance with this Section.

**H. Time of Essence.** Time is of the essence to this Agreement and to all dates and time periods set forth herein.

**[SIGNATURE PAGE FOLLOWS]**

The undersigned execute this Agreement on the dates next to their signatures and acknowledge that this Agreement will become effective as of the Effective Date.

**SELLER:**

**BIG KAHUNA CORPORATION**

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

Name: Roger Shelton  
President

Date Seller executed: \_\_\_\_\_, 2023

**PURCHASER:**

**VILLAGE OF EAST DUNDEE,**  
an Illinois municipal corporation



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

Name: Jeffrey Lyman  
Title: Village President

**ATTEST:**

By: Katherine Diehl

Name: Katherine Diehl  
Title: Village Clerk

Date Purchaser executed: \_\_\_\_\_, 2023

**EXHIBIT A**

**LEGAL DESCRIPTION OF PARCELS**

**(To be confirmed with the Title Company and Surveyor)**

PARCEL 1: 309 JACKSON STREET, EAST DUNDEE, ILLINOIS:

LOT 8 IN BLOCK 2 OF EAST DUNDEE, IN THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 23,  
TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE  
VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS

PIN: 03-23-320-006

PARCEL 2: 304 HILL STREET, EAST DUNDEE, ILLINOIS:

LOTS 3 AND 4 AND LOT 5 (EXCEPT THE WEST 30 FEET) IN BLOCK 2 OF THE PLAT  
OF DUNDEE, IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS.

PIN: 03-23-320-001

**EXHIBIT B**  
**TITLE COMMITMENTS**

# ALTA COMMITMENT FOR TITLE INSURANCE

issued by:



CHICAGO TITLE  
INSURANCE COMPANY

Commitment Number:

**CCHI2303337LD**

## NOTICE

**IMPORTANT - READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

## COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment Conditions, Chicago Title Insurance Company, a Florida corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within one hundred eighty (180) days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

## Chicago Title Insurance Company

By:

Michael J. Nolan, President

Attest:

Marjorie Nemzura, Secretary

Countersigned By:

Michael J. Nolan  
Authorized Officer or Agent

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**Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:**

ORIGINATING OFFICE:	FOR SETTLEMENT INQUIRIES, CONTACT:
Chicago Title Insurance Company 10 South LaSalle Street, Suite 3100 Chicago, IL 60603 Main Phone: (312)223-4627 Email: chicagocommercial@ctt.com	Chicago Title and Trust Company 10 South LaSalle Street, Suite 3100 Chicago, IL 60603 Main Phone: (312)223-4627 Main Fax: (312)223-3018

**Order Number: CCHI2303337LD**

**Property Ref.:** Elrod - 309 Jackson, East Dundee, IL

### SCHEDULE A

1. Commitment Date: June 16, 2023

2. Policy to be issued:

(a) ALTA Owner's Policy 2021

Proposed Insured: Purchaser with contractual rights under a purchase agreement with the vested owner identified at Item 4 below

Proposed Amount of Insurance: \$50,000.00

The estate or interest to be insured: Fee Simple

(b) ALTA Loan Policy 2021

Proposed Insured: Lender with a contractual obligation under a loan agreement with the Proposed Insured for an Owner's Policy

Proposed Amount of Insurance: \$10,000.00

The estate or interest to be insured: Fee Simple

3. The estate or interest in the Land at the Commitment Date is:

Fee Simple

4. The Title is, at the Commitment Date, vested in:

Big Kahuna Corporation

5. The Land is described as follows:

LOT 8 IN BLOCK 2 OF EAST DUNDEE, IN THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF EAST DUNDEE, KANE COUNTY, ILLINOIS

**END OF SCHEDULE A**

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**SCHEDULE B, PART I  
REQUIREMENTS**

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
6. Be advised that the "good funds" of the title insurance act (215 ILCS 155/26) became effective 1-1-2010. This act places limitations upon the settlement agent's ability to accept certain types of deposits into escrow. Please contact your local Chicago Title office regarding the application of this new law to your transaction.
7. Effective June 1, 2009, pursuant to Public Act 95-988, satisfactory evidence of identification must be presented for the notarization of any and all documents notarized by an Illinois notary public. Satisfactory identification documents are documents that are valid at the time of the notarial act; are issued by a state or federal government agency; bear the photographic image of the individual's face; and bear the individual's signature.
8. **The Proposed Policy Amount(s) must be increased to the full value of the estate or interest being insured, and any additional premium must be paid at that time. An Owner's Policy should reflect the purchase price or full value of the Land. A Loan Policy should reflect the loan amount or value of the property as collateral. Proposed Policy Amount(s) will be revised and premiums charged consistent therewith when the final amounts are approved.**

**END OF SCHEDULE B, PART I**

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## SCHEDULE B, PART II EXCEPTIONS

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

### General Exceptions

1. **Rights or claims of parties in possession not shown by Public Records.**
2. **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.**
3. **Easements, or claims of easements, not shown by the Public Records.**
4. **Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.**
5. **Taxes or special assessments which are not shown as existing liens by the Public Records.**
6. **We should be furnished a properly executed ALTA statement and, unless the land insured is a condominium unit, a survey if available. Matters disclosed by the above documentation will be shown specifically**
7. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
- C 8. Note for additional information: the County Recorder requires that any documents presented for recording contain the following information:
  - A. The name and address of the party who prepared the document;
  - B. The name and address of the party to whom the document should be mailed after recording;
  - C. All permanent real estate tax index numbers of any property legally described in the document;
  - D. The address of any property legally described in the document;
  - E. All deeds should contain the address of the grantee and should also note the name and address of the party to whom the tax bills should be sent.
  - F. Any deeds conveying unsubdivided land, or, portions of subdivided and, may need to be accompanied by a properly executed "plat act affidavit."

In addition, please note that the certain municipalities located in the County have enacted transfer tax ordinances. To record a conveyance of land located in these municipalities, the requirements of the transfer tax ordinances must be met. A conveyance of property in these cities may need to have the appropriate transfer tax stamps affixed before it can be recorded.

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**SCHEDULE B, PART II  
EXCEPTIONS**  
(continued)

This exception will not appear on the policy when issued.

- J 9. Taxes for the year 2022 and 2023.
- Taxes for the year 2023 are not yet due or payable.
- Taxes for the first installment year 2022, amounting to \$647.06 are paid of record. .
- Taxes for the final installment year 2022, amounting to \$647.06 are not delinquent before September 1, 2023.
- Permanent Index Number: 03-23-320-006.
- D 10. Note: The land lies within a county which is subject to the Predatory Lending Database Act (765 ILCS 77/70 et seq. as amended). A Certificate of Compliance with the act or a Certificate of Exemption therefrom must be obtained at time of closing in order for the Company to record any insured mortgage. If the closing is not conducted by the company, a certificate of compliance or a certificate of exemption must be attached to any mortgage to be recorded.
- Note: for Cook, Kane, Will and Peoria counties, the act applies to mortgages recorded on or after July 1, 2010.
- G 11. Please be advised that our search did not disclose any open mortgages of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.
- B 12. Existing unrecorded leases and all rights thereunder of the lessees and of any person or party claiming by, through or under the lessees.
- A 13. The Company should be furnished a statement that there is no property manager employed to manage the Land, or, in the alternative, a final lien waiver from any such property manager.
- H 14. For each policy to be issued as identified in Schedule A, Item 2; the Company shall not be liable under this commitment until it receives a designation for a Proposed Insured, acceptable to the Company. As provided in Commitment Condition 4, the Company may amend this commitment to add, among other things, additional exceptions or requirements after the designation of the Proposed Insured.
- I 15. The Company will require the following documents for review prior to the issuance of any title insurance predicated upon a conveyance or encumbrance by the corporation named below:
- Name of Corporation: Big Kahuna Corporation

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**SCHEDULE B, PART II**  
**EXCEPTIONS**  
(continued)

- (a) A Copy of the corporation By-laws and Articles of Incorporation
- (b) An original or certified copy of a resolution authorizing the transaction contemplated herein
- (c) If the Articles and/or By-laws require approval by a 'parent' organization, a copy of the Articles and By-laws of the parent
- (d) A current dated certificate of good standing from the proper governmental authority of the state in which the entity was created

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

E 16. Note for information (Endorsement Requests):

All endorsement requests should be made prior to closing to allow ample time for the company to examine required Documentation.

Note: before any endorsements can be approved, we should be informed as to the land use and as to what type of structure is on the land.

(This note will be waived for the policy,)

F 17. Informational Note:

To schedule any closings in the Chicago Commercial Center, please call (312)223-2707.

**END OF SCHEDULE B, PART II**

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**COMMITMENT CONDITIONS****1. DEFINITIONS**

- a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
  - b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
  - c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
  - d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
  - e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
  - f. "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
  - g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
  - h. "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
  - i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
  - j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.
2. If all of the Schedule B, Part I-Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
  3. The Company's liability and obligation is limited by and this Commitment is not valid without:
    - a. the Notice;
    - b. the Commitment to Issue Policy;
    - c. the Commitment Conditions;
    - d. Schedule A;
    - e. Schedule B, Part I-Requirements;
    - f. Schedule B, Part II-Exceptions; and
    - g. a counter-signature by the Company or its issuing agent that may be in electronic form.

**4. COMPANY'S RIGHT TO AMEND**

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

**5. LIMITATIONS OF LIABILITY**

- a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
  - i. comply with the Schedule B, Part I-Requirements;
  - ii. eliminate, with the Company's written consent, any Schedule B, Part II-Exceptions; or
  - iii. acquire the Title or create the Mortgage covered by this Commitment.
- b. The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.

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(continued)

- e. The Company is not liable for the content of the Transaction Identification Data, if any.
- f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I-Requirements have been met to the satisfaction of the Company.
- g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

**6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM**

- a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.
- c. This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- d. The deletion or modification of any Schedule B, Part II-Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- e. Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

**7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.

**8. PRO-FORMA POLICY**

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

**9. CLAIMS PROCEDURES**

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

**10. CLASS ACTION**

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

**11. ARBITRATION**

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Amount of Insurance is Two Million And No/100 Dollars (\$2,000,000.00) or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

**END OF CONDITIONS****1031 EXCHANGE SERVICES**

**If your transaction involves a tax deferred exchange, we offer this service through our 1031 division, IPX1031. As the nation's largest 1031 company, IPX1031 offers guidance and expertise. Security for Exchange funds includes segregated bank accounts and a 100 million dollar Fidelity Bond. Fidelity National Title Group also provides a 50 million dollar Performance Guaranty for each Exchange. For additional information, or to set-up an Exchange, please call Scott Nathanson at (312)223-2178 or Anna Barsky at (312)223-2169.**

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AMERICAN  
LAND TITLE  
ASSOCIATION



**EXHIBIT C**

**TAX REPRORATION AGREEMENT**

The undersigned, **Big Kahuna Corporation, an Illinois corporation** (jointly “Seller”), and the **Village of East Dundee, an Illinois home-rule municipal corporation**, (the “Village”), under a certain real estate sale contract dated \_\_\_\_\_, 2023 for the purchase and sale of property commonly known as the 309 Jackson Street, East Dundee, Illinois and 304 Hill Street, East Dundee, Illinois (collectively referred to as the “Property”), hereby agree the parties will reproporate the 2022 and 2023 real estate taxes assessed or imposed upon the Property on the basis of the actual 2022 and 2023 year tax bill. Seller agrees to remain in good standing with the State of Illinois and to have adequate funds on hand to comply with this agreement.

Seller agrees that Seller will promptly pay to Purchaser within thirty (30) days after receipt of a copy of the actual second installment real estate tax bill any increase, if any, between the actual tax bill and the amount credited to Purchaser at Closing. Purchaser agrees that Purchaser will promptly pay to Seller within thirty (30) days after receipt of a copy of the actual real estate tax bill any decrease, if any, between the actual tax bill and the amount credited to Purchaser at the Closing. Note that the 2023 real estate taxes will be prorated to the date of Closing. Any collection expenses, including court costs and reasonable attorney's fees, shall be paid by the party owing the money after the foregoing 30-day time period has elapsed.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**SELLER:**

**PURCHASER:**

**Big Kahuna Corporation, an Illinois corporation**

**Village of East Dundee,  
An Illinois municipal corporation**

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\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

