

ORDINANCE NO. 1456

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the acquisition by eminent domain of certain property in the City of Des Moines; describing the public convenience, use and necessity of such property; providing for the condemnation, appropriation, and taking of such land, including the mode of payment of cost of acquisition; and directing the City Attorney to prosecute such action in King County Superior Court.

WHEREAS, there exists in the City of Des Moines certain properties legally described in section 1 of this ordinance, and

WHEREAS, the City Council of the City of Des Moines intends to acquire by the payment of "fair market value" the following properties because they seek to construct a correctional facility to be known as the SCORE Facility located at the southwest corner of the intersection of South 208th Street and 18th Avenue South (vacated) in Des Moines, Washington ("Property") as envisioned at the time of the creation of the South Correctional Entity Facility Public Development Authority which includes as Member Cities Auburn, Burien, Des Moines, Federal Way, Renton, SeaTac, and Tukwila, Washington, and

WHEREAS, the City Council finds that acquisition of the properties described in section 1 is critical to the construction and maintenance of the SCORE Facility, a south King County regional correctional facility that will provide correctional services to the above described Member Cities, and it is in the public interest to acquire such properties for public health, safety, welfare and transportation needs, and

WHEREAS, the City of Des Moines, Washington is authorized by chapter 70.48 RCW to contract for, establish and maintain correctional facilities in furtherance of public safety and welfare, and

WHEREAS, pursuant to RCW 8.12.030 the City is empowered to condemn land and property for jails, and

WHEREAS the Port of Seattle and the State of Washington currently have no plans for the property needed for the SCORE Facility, and

WHEREAS, based on the foregoing, the City Council finds that the only alternative available for acquisition of the following properties or portions thereof may be by eminent domain; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Legal description. The real properties that are the subject of this ordinance are legally described in Exhibit A attached hereto.

(See also Exhibit B the First American Title Report.)

Sec. 2. Public use necessity. The public convenience, use, and necessity demand the acquisition of the real property described in section 1 herein for the SCORE Facility and for use by the public as a regional correctional facility.

Sec. 3. Condemnation of property. All lands, rights, privileges, and other property lying within the limits of the

real property described in section 1 herein are hereby condemned, appropriated, taken and damaged for the purposes described in section 2 herein, only after just compensation has been made, or paid into the court for the owner thereof in a manner provided by law.

Sec. 4. Costs of acquisition. The costs of the acquisition provided for by this ordinance shall be paid by the SCORE Public Development Authority Fund of the City of Des Moines, or such other funds of the City of Des Moines as may be provided by law.

Sec. 5. Authority of City Attorney. The City Attorney is hereby authorized and directed to begin and prosecute the actions and proceedings in a manner provided by law to condemn, take, damage, and appropriate the real property necessary to carry out the provisions of this ordinance. In conducting such condemnation proceedings, the City Attorney is hereby authorized to enter into stipulations for the purpose of minimizing damages.

Sec. 6. Severability - Construction

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 7. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines, Washington this 26th day of March, 2009 and signed in authentication thereof this 26th day of March, 2009.


M A Y O R

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk

Published: March 31, 2009

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1456, Adopted March 26, 2009.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to the acquisition by eminent domain of certain property in the City of Des Moines; describes the public convenience, use and necessity of such property; provides for the condemnation, appropriation, and taking of such land, including the mode of payment of cost of acquisition; and directs the City Attorney to prosecute such action in King County Superior Court.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: March 30, 2009

EXHIBIT A
Ordinance No. 1456

SCORE Condemnation: Legal Description

THAT PORTION OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST AND THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 22 NORTH, RANGE 4 EAST AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 4;

THENCE N 00°59'32" E ALONG THE WEST LINE OF SAID SECTION 4 A DISTANCE OF 30 FEET TO THE NORTHERLY MARGIN OF SOUTH 208TH STREET AND THE TRUE POINT OF BEGINNING;

THENCE S 88°26'00" E ALONG SAID NORTHERLY MARGIN 783.31 FEET;

THENCE S 1°34'00" W 60.00 FEET;

THENCE S 11°44'38" W 364.86 FEET;

THENCE S 12°17'19" E 36.31 FEET;

THENCE S 10°36'35 E 239.57 FEET;

THENCE N 88°23'25" W 772.38 FEET;

THENCE N 01°05'50" E 30.04 FEET;

THENCE N 86°04'44" W 354.24 FEET;

THENCE N 00°49'57" E 300.82 FEET;

THENCE S 85°47'29" E 192.68 FEET;

THENCE N 01°05'50" E 353.86 FEET TO THE NORTHERLY MARGIN OF SAID 208TH STREET;

THENCE S 85°30'23" E ALONG SAID NORTHERLY MARGIN 163.05 FEET;

THENCE N 00°59'32" E 5.96 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: THE BOUNDARIES OF THE ABOVE WRITTEN LEGAL DESCRIPTION ARE DEPICTED ON SURVEY AS RECORDED UNDER KING COUNTY AUDITOR'S FILE NO. 20090210900003.

Exhibit B
Ord. 1456



First American

First American Title Insurance Company
818 Stewart St, Ste 800
Seattle, WA 98101
Phn - (206)728-0400 (800)826-7718
Fax -

Title Team One
Fax No. (866) 904-2177

Pat Fullerton
(206) 615-3055
pfullerton@firstam.com

Jennifer Salas
(206) 615-3011
jsalas@firstam.com

Tina Kotas
(206) 615-3012
tkotas@firstam.com

SUBDIVISION GUARANTEE

LIABILITY	\$	1,000.00	ORDER NO.:	4209-1309697
FEE	\$	350.00	TAX \$	31.50
			YOUR REF.:	

First American Title Insurance Company
a Corporation, herein called the Company

Subject to the Liability Exclusions and Limitations set forth below and in Schedule A.

GUARANTEES

KPFF Consulting Engineers

herein called the Assured, against loss not exceeding the liability amount stated above which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

LIABILITY EXCLUSIONS AND LIMITATIONS

1. No guarantee is given nor liability assumed with respect to the validity, legal effect or priority of any matter shown therein.
2. The Company's liability hereunder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurance herein set forth, but in no event shall the Company's liability exceed the liability amount set forth above.
3. This Guarantee is restricted to the use of the Assured for the purpose of providing title evidence as may be required when subdividing land pursuant to the provisions of Chapter 58.17, R.C.W., and the local regulations and ordinances adopted pursuant to said statute. It is not to be used as a basis for closing any transaction affecting title to said property.

Dated: November 21, 2008 at 7:30 A.M.



Issued by

First American Title Insurance Company
818 Stewart St, Ste 800, Seattle, WA 98101
Title Officer: Pat Fullerton
Phone: (206)728-0400
FAX:

Exhibit B

**Amended Subdivision Guarantee
SCHEDULE A**

The assurances referred to on the face page are:

- A. Title is vested in:
- Port of Seattle, a Washington municipal corporation, as to Parcels A, B, C, D and F; and State of Washington, as to Parcels E, G and H
- B. That according to the Company's title plant records relative to the following described real property (including those records maintained and indexed by name), there are no other documents affecting title to said real property or any portion thereof, other than those shown below under Record Matters.

The following matters are excluded from the coverage of this Guarantee:

1. Unpatented Mining Claims, reservations or exceptions in patents or in acts authorizing the issuance thereof.
2. Water rights, claims or title to water.
3. Tax Deeds to the State of Washington.
4. Documents pertaining to mineral estates.

DESCRIPTION:

Parcel A:

Lots 1 through 4, inclusive, Cordell Tracts, according to the plat thereof filed in Volume 64 of Plats, page 70, records of King County, Washington.

Together with the Southeast quarter of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 8, Township 22 North, Range 4 East, W.M., in King County, Washington.

Except the South 30 feet herein.

Parcel B:

Lots 1 through 12, inclusive, Block 1, Glen Echo Addition, according to the plat thereof filed in Volume 53 of Plats, page 91, records of King County, Washington.

Except that portion of said Lot 10 conveyed to King County by Deed under Recording No. 4554396 for street right of way.

Parcel C:

Lots 1 through 13, inclusive, Block 2, Glen Echo Addition, according to the plat thereof filed in Volume 53 of Plats, page 91, records of King County, Washington.

Except that portion of said Lot 10 conveyed to King County by Deed under Recording No. 4579511 for street right of way.

Parcel D:

Lots 1 through 10, inclusive, Block 3, Glen Echo Addition, according to the plat thereof filed in Volume 53 of Plats, page 91, records of King County, Washington.

Parcel E:

Lot 11, Block 3, Glen Echo Addition, according to the plat thereof filed in Volume 53 of Plats, page 91, records of King County, Washington.

Except that portion lying within State Route 509.

Parcel F:

Lots 20, 21, 22 and 23, Block 3, Glen Echo Addition, according to the plat thereof filed in Volume 53 of Plats, page 91, records of King County, Washington.

Except that portion of said Lot 23 conveyed to the State of Washington by Deed under Recording No. 7108040295 for State Route 509.

Parcel G:

Lot 24, Block 3, Glen Echo Addition, according to the plat thereof filed in Volume 53 of Plats, page 91, records of King County, Washington.

Except that portion lying within State Route 509.

Parcel H:

Lot 25, Block 3, Glen Echo Addition, according to the plat thereof filed in Volume 53 of Plats, page 91, records of King County, Washington.

Except that portion lying within State Route 509.

APN: 175300-0010-05, 278240-0005-07, 278240-0065-04, 278240-0130-05, 278240-0180-04, 278240-0225-01, 278240-0245-07 and 278240-0250-09

RECORD MATTERS:

1. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 175300-0010-05, are exempt.
Affects: Parcel A and other properties

We note Special Charges for the year 2008 in the amount of \$130.65 have been paid in full.

2. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 278240-0005-07, are exempt.
Affects: Parcel B

We note Special Charges for the year 2008 in the amount of \$130.35 have been paid in full.

We note the legal description on the King County Tax Rolls fails to except portion conveyed for street.

3. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 278240-0065-04, are exempt.
Affects: Parcel C

We note Special Charges for the year 2008 in the amount of \$130.50 have been paid in full.

We note the legal description on the King County Tax Rolls fails to except portion conveyed for street.

4. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 278240-0130-05, are exempt.
Affects: Parcel D

We note Special Charges for the year 2008 in the amount of \$130.35 have been paid in full.

5. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 278240-0180-04, are exempt.
Affects: Parcel E

6. DELINQUENT SPECIAL CHARGES regarding Tax Account No. 278240-0180-04 for the years of 1998 through 2008, inclusive, in a total amount of \$1,011.81, plus interest and penalty are owing.
Affects: Parcel E

7. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 278240-0225-01, are exempt.
Affects: Parcel F

We note Special Charges for the year 2008 in the amount of \$130.19 have been paid in full.

8. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 278240-0245-07, are exempt.
Affects: Parcel G

9. DELINQUENT SPECIAL CHARGES regarding Tax Account No. 278240-0245-07 for the years of 1998 through 2008, inclusive, in a total amount of \$1,011.81, plus interest and penalty are owing.
Affects: Parcel G
10. Liability, if any, for pro-rata portion of **Real Property** taxes which are carried on the King County Tax Rolls, as tax account no. 278240-0250-09, are exempt.
Affects: Parcel H
11. DELINQUENT SPECIAL CHARGES regarding Tax Account No. 278240-0250-09 for the years of 1998 through 2008, inclusive, in a total amount of \$1,011.81, plus interest and penalty are owing.
Affects: Parcel H
12. Taxes which may be assessed and extended on any subsequent roll for the tax year 2008, with respect to new improvements and the first occupancy which may be included on the regular assessment roll and which are an accruing lien not yet due or payable.
13. Reservations and exceptions, including the terms and conditions thereof:
Reserving: Minerals
Reserved By: Weyerhaeuser Timber Company
Recorded: December 3, 1906
Recording Information: 441681 (V. 548, P. 232)

We note no examination has been made regarding the transfer or taxation of the reserved rights.
Affects: Parcels B, C, D, E, F, G and H
14. Any and all offers of dedication, conditions, restrictions, easements, fence line/boundary discrepancies, notes and/or provisions shown or disclosed by Short Plat or Plat Glen Echo Addition recorded in Volume 53 of Plats, Page(s) 91.
Affects: Parcels B, C, D, E, F, G and H
15. Any and all offers of dedication, conditions, restrictions, easements, fence line/boundary discrepancies, notes and/or provisions shown or disclosed by Short Plat or Plat Cordell Tracts recorded in Volume 64 of Plats, Page(s) 70.
Affects: Parcel A

16. Easement, including terms and provisions contained therein:
Recording Information: 4589316
For: Drainage
Affects: Lots 1, 2 and 3, Block 3, within Parcel D

17. Covenants, conditions, restrictions and/or easements; but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, family status, or national origin to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes:
Recording Information: 4589317
Affects: Parcels B, C, D, E, F, G and H

18. Relinquishment of all existing and future rights to light, view and air, together with the rights of access to and from the State Highway constructed on lands conveyed by instrument:
Recorded: August 4, 1971
Recording No.: 7108040295
In favor of: The State of Washington
Affects: Lot 23, Block 3, within Parcel F

INFORMATIONAL NOTES

- A. Any sketch attached hereto is done so as a courtesy only and is not part of any title commitment or policy. It is furnished solely for the purpose of assisting in locating the premises and First American expressly disclaims any liability which may result from reliance made upon it.

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurance are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A) (C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A) (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay

any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in action or proceeding, securing evidence, obtaining witnesses, prosecuting, defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the Loss or Damage. All information designated as confidential by the Assured 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 Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

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

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim Assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The Liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage Assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance Assured against by this Guarantee.

8. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter Assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any 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 therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. Payment of Loss.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies. If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

14. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at 2 First American Way, Bldg. 2, Santa Ana, CA. 92707.