

NO FEE DOCUMENT

**Recording requested by and  
When recorded, mail to:**

County of Santa Barbara  
Housing and Community Development  
123 East Anapamu Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
Attn: Deputy Director

NO FEE DOCUMENT PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTION 27383

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**COUNTY REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

This County Regulatory Agreement and Declaration of Restrictive Covenants (this “Agreement”) is made as of this \_\_\_\_ \_\_, 20\_\_\_\_\_, by and between the County of Santa Barbara, a political subdivision of the State of California (the “County”), and Housing Authority of the City of Santa Barbara, 808 Laguna St., Santa Barbara, California, 93101, a California Nonprofit Organization, (the “Owner”).

**RECITALS**

A. The Owner is under contract to acquire title to a parcel of real property located at 536 West Pedregosa Street, Santa Barbara, California, Assessor Parcel 043-132-016 as more particularly described in Exhibit A (the “Property”) upon which the Owner intends to utilize the existing triplex apartment building thereon as permanent housing for three homeless families.

B. Owner has received a grant from County in the amount of One Million One Hundred Thousand Dollars (\$1,100,000) to provide financing for the Project (the “County Grant”), including acquisition of the Property.

D. As further consideration for this funding and to further the interests of the County, the Owner has agreed to enter into and record this Agreement. The purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, the ownership, and management of the Project. The covenants in this Agreement are intended to run with the land and be binding on the Owner and its successors and assigns in the Property.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, the Owner and the County hereby agree as follows:

**1. DEFINITIONS**

All initially capitalized terms in this Agreement shall have the definition ascribed to such terms in the County Grant Agreement. Some of the following terms are defined in the County Grant Agreement and repeated here for convenience of reference. Where such terms are not defined in the County Grant Agreement, the following terms have the meanings and content set forth in this section wherever used in this Agreement or attached exhibits.

1.0 **“ANNUAL INCOME”** means the definition of Annual Income as more particularly defined at 24 CFR 5.609 - 612.

1.1 **“AREA MEDIAN INCOME”** means the area median income for the Santa Barbara/Santa Maria/Lompoc Primary Metropolitan Statistical Area, as determined from time to time by the United States Department of Housing and Urban Development (“HUD”) pursuant to the United States Housing Act of 1937, as amended, or such other method of median income calculation applicable to the County that HUD may hereafter adopt in connection with said Act.

1.2 **THIS SECTION INTENTIONALLY LEFT BLANK.**

1.3 **“COUNTY GRANT”** means the grant in the amount of One Million One Hundred Thousand Dollars (\$1,100,000) made by the County to the Owner to finance certain development costs of the Project pursuant to the County Grant Agreement.

1.4 **“COUNTY GRANT AGREEMENT”** is the grant agreement executed by and between the Owner and the County, setting forth the terms and conditions governing the County grant.

1.5 **THIS SECTION INTENTIONALLY LEFT BLANK.**

1.6 **“COUNTY GRANT DOCUMENTS”** are collectively the County Grant Agreement and this Regulatory Agreement as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.7 **THIS SECTION INTENTIONALLY LEFT BLANK.**

1.8 **“HOMELESS”** has the same meaning as defined in Section 578.3 of Title 24 of the Code of Federal Regulations.

1.9 **“COUNTY-ASSISTED UNIT”** means the Three (3) units on the Property designated by the Owner as units with restricted occupancy and rents pursuant to and subject to the requirements of this Agreement. A unit shall not be considered a County-Assisted Unit until the Unit has been made available for occupancy.

1.10 **“COUNTY”** is the County of Santa Barbara, a political subdivision of the State of California, and its authorized representatives, officers, officials, directors, employees, and agents.

1.11 **“OWNER”** means Housing Authority of the City of Santa Barbara, a California Nonprofit Organization.

1.12 **“PROJECT”** means the acquisition, renovation, operation and management of the Property and the improvements thereon according to the terms of the County Grant Agreement.

1.13 **“PROPERTY”** means the real property located at 536 West Pedregosa Street, Santa Barbara, California, Assessor Parcel 043-132-016, as more particularly described in Exhibit A attached hereto and incorporated herein, including the improvements constructed thereon pursuant to the County Grant Agreement.

1.14 **THIS SECTION INTENTIONALLY LEFT BLANK.**

1.15 **“QUALIFYING RENT”** means the total monthly charges for rent, which shall not exceed 30% of the tenant’s gross annual income, as published annually by the U.S.Department of Housing and Community Development (HUD) for the Santa Maria/Santa Barbara Metropolitan Statistical Area. Occupants’ share of the cost of utilities must be included in the maximum rent. If the tenant pays for utilities and services (excluding telephone), then the Qualifying Rent shall be reduced by the maximum monthly allowance for utilities and services using the annual HUD Utility Schedule Model or other annual utility schedule as determined by the County.

1.16 **THIS SECTION INTENTIONALLY LEFT BLANK.**

1.17 **“TENANT”** means an individual occupying a Unit that meets the definition of Homeless.

1.18 **“TERM”** means the period of time during which the County-Assisted Units must meet the affordability requirements, as described in Section 2.2 of this Regulatory Agreement.

1.19 **“UNIT”** means a housing unit in the Project.

## **2. TERM AND COMPLIANCE**

2.1 **COMPLIANCE WITH COUNTY GRANT DOCUMENTS.** The Owner’s actions with respect to the Property and the use of funds from the County Grant shall at all times be in full conformity with all of the requirements of the County Grant Documents, including but not limited to the insurance requirements contained therein.

2.2 **TERM OF AGREEMENT.** This Agreement shall commence on the date that the three (3) units comprising the Project are occupied by qualified Tenants and terminate twenty (20) years from the date that the last unit is occupied by a qualified Tenant. The requirements of this Agreement shall apply throughout the Term without regard to the term of any loan or mortgage or any transfer of ownership of the Property.

## **3. PROJECT OCCUPANCY AND RENTS**

3.1 **OCCUPANCY OF PROJECT.** The three (3) Units in the Project shall be designated as County-Assisted Units. The County-Assisted Units must be occupied, or reserved for occupancy, by qualifying Homeless families.

3.2 **COUNTY UNITS.** The Owner shall limit for the full Term of this Agreement the three (3) County-Assisted Units to qualifying Homeless families at Qualifying Rents that do not exceed the maximum rental charges for each County-Assisted Unit as set forth in Section 1 above and Section 3.3 below.

The Borrower shall maintain and operate the County-Assisted Units so as to provide decent, safe, and sanitary housing.. Optional services provided must be available to all residents under the same terms and conditions.

3.3 **MAXIMUM RENTAL CHARGES.**

A. Maximum rental charges for the County-Assisted Units shall not exceed the Qualifying Rent as defined above in Section 1.15.

B. The Qualifying Rent for each County-Assisted Unit shall be set by the Borrower at the time of initial occupancy of the Project. Annual increases in Qualifying Rents shall be calculated based on the change in Area Median Income published annually by HUD. At least sixty (60) calendar days prior to increasing Qualifying Rents on any County-Assisted Unit on the Project, Owner shall submit to the County for review and approval a written request for such increase. Tenants of County-Assisted Units shall be given at least thirty (30) days written notice prior to any increase in Qualifying Rents, consistent with state law. County shall approve such request if the increased Qualifying Rents will comply with all applicable requirements.

3.4 **THIS SECTION INTENTIONALLY LEFT BLANK.**

3.5 **INCOME CERTIFICATION.**

The Annual Income levels and other qualifications of applicants for County-Assisted Units shall be certified by Owner no earlier than sixty (60) calendar days prior to the qualifying household's expected occupancy of a County-Assisted Unit and recertified annually thereafter by the Owner.

A. Initial Annual Income Verification. Before the qualifying homeless family occupies a County-Assisted Unit, the Owner shall verify that the Annual Income provided in an Annual Income certification is accurate by taking both of the following steps as a part of the verification process:

- (1) Third Party Verification: All third parties (e.g., employer, Social Security Administration, public assistance agency, etc.) are contacted to provide information to verify Annual Income. Written requests and responses are required; and
- (2) Review of Documents: The qualifying Tenant provides documents verifying their Annual Income (e.g., pay stubs, tax returns, etc.). These documents must then be retained in the Project files.
- (3) Owner shall follow the income verification process described at 24 CFR 5.609 – 512.

B. Annual Income Recertification. At the time of lease renewal or pursuant to an annual schedule adopted by the Owner, and no later than the one-year anniversary of the initial Annual Income verification and annually thereafter, Owner shall recertify the Annual Income of each Tenant occupying a County-Assisted Unit using the method as described in Section 3.5.A, above.

#### **4. LEASING THE PROJECT.**

4.1 **TENANT LEASES.** The Owner shall execute a written lease with Tenants of County-Assisted Units for a term of at least one year, unless the Owner and the Tenant mutually agree to a shorter period. A lease may not be for a period less than thirty (30) days. The Tenant lease and any changes thereto must be approved by County.

A. The Owner shall include in leases for all County-Assisted Units provisions which provide that a qualifying household is subject to annual certification of Annual Income and that the tenancy of the qualifying household shall be terminated as soon as possible in accordance with state law. The Owner shall include in all leases for County-Assisted Units provisions which prohibit the qualifying household from subleasing the County-Assisted Unit.

B. In addition to executing a lease for a County-Assisted Unit, the Owner shall require that each qualifying Homeless family leasing a County-Assisted Unit execute a declaration of intent to occupy which shall require the qualifying household to occupy the County-Assisted Unit as their primary residence.

C. The lease for each County-Assisted Unit shall not contain any of the following prohibited provisions:

1. *Agreement to be sued.* Agreement by the Tenant to be sued, to admit guilt or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease;

2. *Treatment of property.* Agreement by the Tenant that the Owner may take, hold or sell personal property of qualifying Tenant members without notice to the Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Tenant concerning disposition of personal property remaining in the HEAP-Assisted Unit after the Tenant has moved out of the HEAP-Assisted Unit. The Owner may dispose of this personal property in accordance with State law;

3. *Excusing Owner from responsibility.* Agreement by the Tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

4. *Waiver of notice.* Agreement of the Tenant that the Owner may institute a lawsuit without notice to the Tenant;

5. *Waiver of legal proceedings.* Agreement by the Tenant that the Owner may evict the Tenant or qualifying Tenant without instituting a civil court proceeding in which the Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

6. *Waiver of a jury trial.* Agreement by the Tenant to waive any right to a trial by jury;

7. *Waiver of right to appeal court decision.* Agreement by the Tenant to waive the Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

8. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the Tenant to pay attorney's fees or other legal costs even if the Tenant wins in a court proceeding by the Owner against the Tenant. The Tenant, however, may be obligated to pay costs if the Tenant loses.

D. Owner shall not terminate the tenancy or refuse to renew the lease of a Tenant of a County-Assisted Unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. To terminate or refuse to renew the tenancy, the Owner shall serve written notice upon the Tenant specifying the grounds for the action at least thirty (30) days prior to termination of tenancy.

#### **4.2 THIS SECTION INTENTIONALLY LEFT BLANK.**

4.3 **SECTION 8 CERTIFICATE HOLDERS.** The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by such prospective Tenants.

4.4 **NONDISCRIMINATION.** During the performance of this Agreement, the Owner and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identity, gender expression, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), genetic information, marital status, military and veteran status, and denial of medical and family care leave or pregnancy disability leave. The Owner and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Owner or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Owner and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

### **5. PROPERTY MANAGEMENT**

**5.1 MANAGEMENT RESPONSIBILITIES.** The Owner is responsible for all management functions with respect to the Project, including without limitation the selection of qualifying tenants, certification and recertification of qualifying tenant Annual Income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The County shall have no responsibility over management of the Project. The Owner shall submit to the County for its approval its proposed Property manager. The Owner may only remove and/or replace the Property manager with the prior written consent of the County which consent shall not be unreasonably withheld.

**5.2 APPROVAL OF MANAGEMENT POLICIES.** The Owner shall submit its written management policies with respect to the Project to the County for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement, as may be amended from time to time.

**5.3 INSPECTION AND RECORDS.** The Owner shall maintain records which clearly document the Owner's performance of its obligations to operate the Property under the terms of this Agreement. The Owner shall submit all requested records to the County within ten (10) business days of the County's request. The Owner shall permit the County to enter and inspect the Property for compliance with Owner's obligations under this Agreement upon twenty-four (24) hours advance notice of such visit by the County to the Owner or the Owner's Property manager and to Tenants of any Units.

**5.4 COMPLIANCE MONITORING.** The Owner shall operate the Property in full compliance with this Agreement and the regulations at 24 CFR Part 576, and 24 CFR Part 578.47, in effect on the date the County Grant is executed by all parties, and as may be amended from time to time, and shall remain in compliance therewith throughout the Term of this Agreement. The Owner shall permit the County to conduct compliance monitoring, including performing on-site records review and inspections of the Property, as required by regulation or reasonably requested by County.

**5.5 ANNUAL REPORT.** The Owner shall submit to the County a report in a form approved by County for the preceding period of January 1st through December 31st, containing the information requested by County so as to allow the County to determine the Owner's compliance with this Agreement. The report shall be submitted annually no later than March 1<sup>st</sup>, and shall include, at a minimum: (i) an Annual Financial Statement as defined in Section 1.1 of the County Grant Agreement, (ii) a report on the occupancy of the Project, (iii) a report on the physical condition of the Project, (iv) a report on the general management of the Project, (v) for each County-Assisted Unit, the rent and Annual Income of the tenant in occupancy. The report shall also state the date the tenancy commenced for each County-Assisted Unit and such other information as the County may be request.

Within thirty (30) days after receipt of a written request, Owner shall submit any other information or completed forms requested by the County in order to comply with reporting requirements of the State of California, or the County. The County shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to the Project or any Unit to determine compliance with this Agreement.

**5.6 FEES, TAXES, AND OTHER LEVIES.** The Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Property, and shall pay such charges prior to delinquency.

**5.7 PROPERTY TAX EXEMPTION.** The Owner shall not apply for a property tax exemption for the Property under any provision of law other than California Revenue and Taxation Code Section 214(g) without the County's prior written consent. County acknowledges Owner will be applying for a property tax exemption for the property and hereby provides its consent.

**5.8 MAINTENANCE OF EXISTING STRUCTURES.** Owner shall maintain all buildings on the Property in good condition, in good repair and in a decent, safe, sanitary, habitable and tenantable condition. All Units in the Project must meet the standards set out in 24 CFR 92.251(f)(2) throughout the Term of this Agreement. Owner shall not cause or permit any violations of any laws, ordinances, regulations, covenants, conditions, restrictions, or equitable servitudes as they pertain to improvements, alterations, maintenance or demolition on the Property. County shall have no responsibility over maintenance of the Property.

## **6. GENERAL PROVISIONS**

**6.1 SUBORDINATION.** This Agreement shall be senior and not be subordinate to any deed of trust, note, agreement and/or to any other obligations of County concerning the Property and may be subordinated in priority only as to liens and encumbrances otherwise approved in writing by the County in its sole and absolute discretion.

**6.2 DEFAULT AND REMEDIES.** In the event of any breach of any agreement or obligation under this Agreement by the Owner, the County shall provide written notice to the Owner of such breach. The Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the County determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. If the Owner fails to perform a timely cure of the specified breach, the County may proceed with any or all of the following remedies upon the Owner's failure to cure:

A. Bring an action in equitable relief seeking the specific performance by the Owner of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

B. Enter upon, take possession of, and manage the Property and the Project, either in person, by agent, or by a receiver appointed by a court, and collect any rents, income, deposits, or reserves and apply them to operate the Property;

C. After notice provided for herein, make such repairs or replacements to the Property and Project as are necessary and provide for payment thereof; or

D. Pursue any other remedy provided under the County Grant Documents or allowed at law or in equity.



**6.3 EVENT OF DEFAULT.** In the event that the Project fails to meet the affordability requirements included in this Agreement for the Term of the Agreement, this shall constitute an Event of Default under Section VI.F.1.e of the County Grant Agreement.

**6.4 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No official elected or appointed, officer, director, employee or agent of the County shall be personally liable to the Owner for any obligation created under the terms of this Agreement.

**6.5 INSURANCE AND INDEMNITY.** Owner shall comply with the insurance and indemnification provisions set forth in Exhibit F to the County Grant Agreement and incorporated herein by this reference.

**6.6 GOVERNING LAW.** This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

**6.7 AGREEMENT CONTROLS.** In the event that any provision of this Agreement and that contained in any other Loan Document conflict, the terms of this Agreement shall control.

**6.8 TIME.** Time is of the essence in this Agreement.

**6.9 CONSENTS AND APPROVALS.** Any consent or approval of the County required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the County.

**6.10 NOTICES, DEMANDS AND COMMUNICATIONS.** Formal notices, demands and communications between the Owner and the County shall be sufficiently given and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of the Owner and the County as follows:

**County:** County of Santa Barbara  
Housing and Community Development  
123 E Anapamu Street, Room 202  
Santa Barbara, CA 93101  
Attn: Deputy Director

With copy to: Office of County Counsel  
County of Santa Barbara  
105 E Anapamu Street, 2nd Floor  
Santa Barbara, CA 93101  
Attention: County Counsel

**Owner:** The Housing Authority of the City of Santa Barbara  
808 Laguna Street  
Santa Barbara, CA 93101

Attention: Executive Director

**6.11 BINDING UPON SUCCESSORS.** This Agreement shall be recorded and all provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of the Owner, and the County, and shall run with the land for the full Term of this Agreement, regardless of any assignment, payment, prepayment, expiration, extinguishment of the County Grant, or any conveyance or transfer of the Property or portion thereof.

**6.12 RELATIONSHIP OF PARTIES.** The relationship of the Owner and the County during the term of this Agreement is solely that of County and borrower and shall not be construed as a joint venture, equity venture, or partnership.

**6.13 WAIVER.** Any waiver by the County of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of the Owner or to pursue any remedy allowed under this Agreement, the County Grant Documents, or applicable law. Any extension of time granted to the Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of Owner's obligations under this Agreement. Consent by the County to any act or omission by the Owner shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

**6.14 AMENDMENTS AND MODIFICATIONS.** Any amendment to or modification of this Agreement must be in writing, and shall be made only if executed by both the Owner and the County.

**6.15 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

*Signatures appear on following page. No further text appears here.*

IN WITNESS WHEREOF, County and Borrower have caused this Agreement to be executed by their respective duly authorized officers.

**ATTEST:**

**COUNTY:** County of Santa Barbara, a political subdivision of the State of California

**APPROVED AS TO ACCOUNTING FORM:**  
BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
George Chapjian  
Community Services Director

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

**APPROVED AS TO FORM:**  
MICHAEL GHIZZONI  
COUNTY COUNSEL

**OWNER:** Housing Authority of the City of Santa Barbara, a California Nonprofit Organization

By: \_\_\_\_\_  
Deputy County Counsel

By: \_\_\_\_\_  
Robert Fredericks  
Executive Director/CEO

**APPROVED AS TO FORM:**  
RISK MANAGEMENT

By: \_\_\_\_\_  
Ray Aromatorio, ARM, AIC  
Risk Manager

State of California  
County of Santa Barbara

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_ and \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California  
County of Santa Barbara

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_ and \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit A

Legal Description of the Property