Accepting Office:
Address:
OR: Filing Reference:

# INDEMNITY AGREEMENT I
## (Mechanics' Liens)

THIS INDEMNITY AGREEMENT (this "Agreement") is made and entered into this _____ _____, _____, by _____ , hereinafter (individually and collectively, the "Indemnitor"), *in favor of* First American Title Insurance Company, a California corporation and its agents and employees (collectively "First American Title Insurance Company ").

## R E C I T A L S:

A. Indemnitor is the owner of, and/or has, either directly or indirectly, an interest in, the Property or in a transaction involving the Property.
B. Construction of certain improvements has or will commence on the Property.
C. In connection with a contemplated transaction involving the Property, First American Title Insurance Company has been requested to issue one or more Title Policies in respect to the Property insuring against loss by reason of Mechanics' Liens.
D. In connection with future transactions, First American Title Insurance Company may issue one or more Title Policies insuring against Mechanics' Liens and if First American Title Insurance Company , at its sole discretion, elects to so issue a Title Policy for the Property, it will do so in material reliance on each of the covenants, agreements, representations and warranties of Indemnitor set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

## A G R E E M E N T:

**1. DEFINITIONS:** As used herein, the following terms shall have the following meanings:

| TERM: | DEFINITION: |
|---|---|
| **Construction:** | Any and all work, construction and/or replacement or segregation of materials which may give rise to the right for liens to be filed against the Property under the applicable statutes and/or equitable laws of the State. |
| **Construction Costs:** | All costs, fees, expenses and/or obligations for labor, materials and/or services for or in connection with, the Construction. |
| **Effective Date:** | The date this Agreement becomes effective in accordance with Paragraph 3 below. |
| **Mechanics' Liens** | All liens or rights to lien existing against the Property or which subsequently attach or are claimed against the Property due to Construction. |
| **Policy Date:** | The date of issuance of a Title Policy for the Property. |
| **Property:** | That certain real property as described on **Exhibit A** attached hereto and incorporated herein by reference. |
| **State:** | The state in which the Property is located. |
| **Title Policy(ies):** | Policy or policies of title insurance issued by First American Title Insurance Company with respect to the Property insuring against loss or damage due to Mechanics' Liens. |

**2. REPRESENTATIONS, WARRANTIES AND COVENANTS.** As of the Effective Date, Indemnitor shall be deemed to represent, warrant and covenant to First American Title Insurance Company as to the Property that (a) all sums due and owing for Construction on the Property have been paid or will be paid promptly and in full before the respective times for filing Mechanics' Liens affecting the Property; (b) Indemnitor has funds sufficient to pay all Construction Costs applicable to the Property; and (c) there are no Mechanics' Liens or potential


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Mechanics' Liens against the Property except as previously specified by Indemnitor in writing to First American Title Insurance Company. All representations, warranties and covenants contained herein are material to First American Title Insurance Company decision to issue a Title Policy for the Property.

**3. EFFECTIVE DATE.** Delivery of this Agreement by Indemnitor to First American Title Insurance Company shall **not** be deemed acceptance of this Agreement by First American Title Insurance Company or a commitment to issue a Title Policy for the Property. First American Title Insurance Company has no duty to Indemnitor to accept this Agreement or, in the future, to agree to issue a Title Policy for the Property. Upon acceptance of this Agreement by First American Title Insurance Company as evidenced by the issuance of a Title Policy, this Agreement shall remain in effect as long as First American Title Insurance Company has any possible liability under any Title Policy issued at any time in reliance on this Agreement. First American Title Insurance Company may rely on this Agreement to issue Title Policies at any time without notice to or further consent by Indemnitor.

**4. MULTIPLE INDEMNITORS.**

**4.1 Joint and Several.** If there is more than one Indemnitor under this Agreement, all of the obligations contained in this Agreement shall be the joint and several obligations of each and every Indemnitor. Each Indemnitor shall be fully liable to First American Title Insurance Company even if another Indemnitor is not liable for any reason, including the failure of such Indemnitor to execute this Agreement.

**4.2 Waiver and Release.** First American Title Insurance Company has the right, in its sole and absolute discretion and without notice to or consent by Indemnitor, to (a) waive any provision of this Agreement as it relates to any Indemnitor, at any time or from time to time, without providing the same or similar waiver for the benefit of any other Indemnitor, and/or (b) release any Indemnitor from any or all obligations under this Agreement at any time or from time to time, without releasing any other Indemnitor.

**5. INDEMNIFICATION OBLIGATIONS.**

**5.1. Payment of Construction Costs.** Indemnitor covenants and agrees that all Construction Costs on the Property shall be paid promptly and in full before the respective times for filing Mechanics' Liens affecting the Property.

**5.2. Indemnity.** In addition to any other rights or remedies available to First American Title Insurance Company, at law or in equity, Indemnitor agrees to pay, protect, defend, indemnify, hold and save harmless First American Title Insurance Company from and against any and all liabilities, claims of liability, obligations, losses, costs, charges, expenses, causes of action, suits, demands, judgments and damages of any kind or character whatsoever, including, but not limited to, reasonable attorneys' fees and costs (including appellate fees and costs) incurred or sustained by First American Title Insurance Company, and actual attorneys' fees and costs awarded against First American Title Insurance Company , directly or indirectly, by reason of, or arising under any Title Policy relating to Mechanics' Liens, or in any other action at law or in equity under any theory of recovery as a result of the existence of Mechanics' Liens.

**5.3. Duty to Notify First American Title Insurance Company.** In the event that (a) Indemnitor is in any manner notified of a claim which could affect the interests of First American Title Insurance Company under a Title Policy relating to Mechanics' Liens, or (b) any action is filed at law or in equity or any judicial or non-judicial proceeding (including arbitration) is commenced against the Property relating to Mechanics' Liens, Indemnitor agrees to promptly notify First American Title Insurance Company in writing of such claim, action or proceeding as soon as possible of Indemnitor's acquisition of knowledge thereof but, in no event, later than seven (7) days from receipt of said knowledge.

**5.4. Rights and Obligations.** Upon the filing of any action at law or in equity or the assertion of any claim, cause of action or judicial or non-judicial proceeding relating to Mechanics' Liens, or at any other time which First American Title Insurance Company shall, in its opinion, deem it reasonable to protect itself or its insured(s) under a Title Policy, First American Title Insurance Company shall have the right, but not the obligation, (a) to take such action as First American Title Insurance Company deems reasonable to protect its interest and that of its insured under any Title Policy, and/or (b) to demand that Indemnitor, at Indemnitor's sole cost and expense, promptly do, one or more of the following:

(a) Cause a properly executed release of the Mechanics' Lien to be filed of record in the proper governmental office.

(b) Cause to be recorded with respect to the Mechanics' Lien a bond releasing the Property from the effect of the Mechanics' Lien, should such bond be available and effective in removing the effect of such Mechanics' Lien from the Property as a matter of law.

(c) In situations where affirmative legal action or proceedings at law or in equity are necessary to discharge, eliminate, or remove the Mechanics' Lien with respect to the Property, Indemnitor shall cause (1) counsel selected by First American Title Insurance Company to institute such action or proceeding as is necessary to discharge, eliminate or remove the Mechanics' Liens as to



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the Property; and (2) such counsel to deliver to First American Title Insurance Company a written representation in a form reasonably satisfactory to First American Title Insurance Company that such counsel (i) has accepted employment as counsel to commence and vigorously prosecute to conclusion such action or procedure, (ii) will promptly undertake any and all steps reasonably necessary to diligently prosecute such action, and (iii) will keep informed as to the status of such action or procedure as reasonably requested by First American Title Insurance Company, at no cost or expense to First American Title Insurance Company. Indemnitor may object to First American Title Insurance Company choice of counsel for reasonable cause.

(d) If an action or proceeding concerning the Mechanics' Lien is instituted by a third party, Indemnitor shall cause (1) such action or proceeding to be timely defended and resisted by counsel selected by First American Title Insurance Company which counsel will protect First American Title Insurance Company and any and all insured(s) to whom First American Title Insurance Company may have possible liability as a result of the issuance of a Title Policy; and (2) such counsel to deliver to First American Title Insurance Company a written representation, in a form reasonably satisfactory to First American Title Insurance Company to the effect that such counsel (i) has accepted employment as counsel to defend any such action or resist any such proceeding, (ii) will promptly undertake any and all reasonable steps to protect First American Title Insurance Company and its insured(s), and (iii) will keep informed as to the status of such action or procedure as reasonably requested by First American Title Insurance Company, at no cost or expense to First American Title Insurance Company. Indemnitor may object to First American Title Insurance Company choice of counsel for reasonable cause.

(e) If the payment of a sum of money will discharge, eliminate or remove the effect of the Mechanics' Lien as to the Property, Indemnitor shall pay such sum as is sufficient to discharge, eliminate or remove the Mechanics' Lien in a manner legally sufficient to effect the release of the Mechanics' Lien of record and shall deliver documents to First American Title Insurance Company, in a form reasonably satisfactory to First American Title Insurance Company .

(f) Indemnitor shall take such action with respect to the Mechanics' Lien as First American Title Insurance Company shall, in its discretion, authorize Indemnitor in writing to undertake, provided that any such authority shall not be a waiver by First American Title Insurance Company to require Indemnitor at any time to comply with the foregoing subparagraphs of this Paragraph above, within ten (10) days of First American Title Insurance Company written revocation of authority to take action other than that under any other subparagraphs of this Paragraph, and demand that Indemnitor comply with any other subparagraphs of this Paragraph.

**5.5. Interest.** Indemnitor agrees that any sums which might be advanced or incurred by First American Title Insurance Company pursuant to this Agreement or by its exercise of any rights hereunder shall be repaid by Indemnitor to First American Title Insurance Company within ten (10) days of Indemnitor's receipt of First American Title Insurance Company written demand, together with interest thereon at four percent (4%) above the reference rate as charged by Bank of America as of the date such sum was advanced by First American Title Insurance Company and continuing until it is repaid in full, but in no event, shall such rate of interest exceed the lesser of: (a) ten percent (10%) per annum, or (b) the maximum rate permitted by law.

**5.6. Determination of Coverage.** Any determination of coverage by First American Title Insurance Company shall be conclusive evidence that the matter is within the Title Policy coverage as to the Mechanics' Liens for purposes of this Agreement. If First American Title Insurance Company accepts the defense of a matter within the Title Policy as to the Mechanics' Liens with a reservation of rights, all costs, damages, expenses and legal fees incurred by First American Title Insurance Company shall be deemed within the terms and obligations of Indemnitor under this Agreement even if the matter is subsequently determined by a court to not be within the Title Policy as to the Mechanics' Liens.

**6. REMEDIES.** Indemnitor specifically acknowledges that upon any default by any Indemnitor under this Agreement after demand by First American Title Insurance Company, First American Title Insurance Company shall have the right to exercise any and all remedies available at law, in equity or under this Agreement against any and all of the Indemnitors, including, but not limited to, injunctive relief, specific performance, damages, self-help and/or resort to any collateral held by First American Title Insurance Company to secure the obligations of Indemnitor under this Agreement.

**7. SUBROGATION AND SUBORDINATION.** Indemnitor hereby unconditionally grants to First American Title Insurance Company any and all rights of subrogation Indemnitor may have with respect to the Mechanics' Liens and agrees to promptly execute any documents with respect to the Mechanics' Liens or any other matter relating to this Agreement request by First American Title Insurance Company with respect to such right of subrogation and to deliver same to First American Title Insurance Company. Indemnitor hereby subordinates any and all



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debts owed to any Indemnitor from any other Indemnitor to the obligations owed to First American Title Insurance Company under this Agreement.

**8. FINANCIAL INFORMATION.** Each Indemnitor represents and warrants to First American Title Insurance Company as of the date of delivery of the financial statements that the statements delivered to First American Title Insurance Company with respect to that Indemnitor: (a) were prepared in accordance with generally accepted accounting principles ("GAAP") unless otherwise noted therein; (b) are true, complete and correct in all material respects; (c) disclose all material financial information regarding Indemnitor; (d) fairly represent and present the financial condition and operations of Indemnitor; (e) if said statements were not prepared in accordance with GAAP, no GAAP statements and/or audited financial statements exist; and (f) since the date of the financial statements delivered to First American Title Insurance Company , there has been no material adverse change in the financial condition, operations, assets, liabilities, properties or business prospects of Indemnitor.

Each Indemnitor agrees to promptly notify (but in no event later than ten (10) days after Indemnitor learns, by any means, of such event) First American Title Insurance Company in writing of any event which would reasonably be anticipated to, or which, in any event, would materially alter or in any material respect change said financial condition, operations, assets, liabilities, properties or business prospects. Upon request by First American Title Insurance Company, each Indemnitor further agrees to deliver to First American Title Insurance Company current financial statements and that by delivery of same, such Indemnitor shall be deemed to make all the same representations and warranties as to the new financial statements as set forth herein above except as otherwise disclosed in writing to First American Title Insurance Company concurrently with the delivery of the financial statements. Each Indemnitor hereby specifically grants to First American Title Insurance Company and its agents, representatives, and professionals, the right, at any time and from time to time, at the sole cost and expense of Indemnitor, to (a) examine the books, accounts, records and property of Indemnitor pertaining to the financial condition of Indemnitor, (b) furnish to First American Title Insurance Company for examination and copying all such books, accounts, records and other pertinent information, and/or (c) provide such further assurances as may be reasonably demanded by First American Title Insurance Company . In the event of more than one Indemnitor, each Indemnitor shall independently comply with this paragraph.

**9. WAIVERS AND COVENANTS.** In the event that Indemnitor is indemnifying First American Title Insurance Company with respect to a Property which is not directly owned by Indemnitor, Indemnitor understands and agrees that First American Title Insurance Company has no obligation to secure an indemnity from the owner(s) of the Property ("Owner"). Indemnitor agrees that the validity of this Agreement and the obligations of Indemnitor hereunder shall in no way be terminated, affected, limited or impaired by reason of (a) the assertion by First American Title Insurance Company of any rights or remedies which it may have under any other indemnity agreement or against any person or entity obligated thereunder or against the Owner, (b) First American Title Insurance Company failure to exercise, or delay in exercising, any such right or remedy or any right or remedy First American Title Insurance Company may have hereunder or in respect to this Agreement, (c) the commencement of a case under the Bankruptcy Code by or against the Owner or any person or entity obligated under the law or any other indemnity agreement, or (d) Indemnitor owning less than the entire interest in the Property. Indemnitor further covenants that this Agreement shall remain and continue in full force and effect as to any Title Policies issued at any time by First American Title Insurance Company with respect to the Property and that First American Title Insurance Company shall not be under a duty to protect, secure, insure, or enforce any rights it may have under any indemnity agreement or any other right against any third party, and that other indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done or suffered without notice to, or further consent of, Indemnitor. First American Title Insurance Company may, at its option, proceed directly and at once, without notice, against any Indemnitor to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against the Owner or any other person or entity. Indemnitor hereby waives and relinquishes (a) any right or claim of right to cause a marshalling of any Indemnitor's assets; (b) all rights and remedies accorded by applicable law to indemnitors or guarantors, except any rights of subrogation which Indemnitor may have, provided that the assurances and obligations provided for hereunder shall not be contingent upon the existence of any such rights of subrogation; (c) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (d) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice or demand; (e) any defense based upon and election of remedies by First American Title Insurance Company, including without limitation an election to proceed in a manner which has impaired, eliminated or otherwise destroyed Indemnitor's rights of subrogation and reimbursement, if any, against the Owner or any third party; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (g) the defense of



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the statute of limitations in any action hereunder or in any action for the collection or performance of any obligations covered by this Agreement; (h) and any duty on the part of First American Title Insurance Company to disclose to Indemnitor any facts First American Title Insurance Company may now or hereafter know about the Owner, since Indemnitor acknowledges that Indemnitor is fully responsible for being and keeping informed of the financial condition of the Owner and of all circumstances bearing on the risk of nonperformance of any obligations covered by this Agreement.

**10. NOTICE.** Any notices, demands or communications under this Agreement between Indemnitor and First American Title Insurance Company shall be in writing, shall include a reasonable identification of the Property together with First American Title Insurance Company order number, and may be given either by personal service, by overnight delivery, or by mailing via United Stated mail, certified mail, postage prepaid, return receipt requested, addressed to each party as set forth on the signature page of this Agreement. If the address for First American Title Insurance Company is not completed on the signature page, notice to First American Title Insurance Company shall be given to First American Title Insurance Company State office. All notices given in accordance with the requirements in this Paragraph shall be deemed to be received as of the earlier of actual receipt by the addressee thereof or the expiration of ninety-six (96) hours after depositing same in the United States Postal System.

**11. MISCELLANEOUS.**

**11.1. No Waiver.** No delay or omission by First American Title Insurance Company in exercising any right or power under this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by First American Title Insurance Company of a breach of any of the covenants, agreements, restrictions, obligations or conditions of this Agreement to be performed by the Indemnitor shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, obligations or conditions under this Agreement. Furthermore, in order to be effective, any waiver must be in writing executed by First American Title Insurance Company .

**11.2. No Third Party Beneficiaries.** This Agreement is only between Indemnitor and First American Title Insurance Company , and is not intended to be, nor shall it be construed as being, for the benefit of any third party.

**11.3. Partial Invalidity.** In any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extend permitted by law.

**11.4. Modification or Amendment.** Any alteration, change, modification or amendment of this Agreement or any documents incorporated herein, in order to become effective, shall be made by written instrument executed by all parties hereto.

**11.5. Execution in Counterpart.** This Agreement and any modification, amendment or supplement to this Agreement may be executed by Indemnitor in several counterparts, and as so executed, shall constitute one Agreement binding on all Indemnitors, notwithstanding that all Indemnitors are not signatories to the original or the same counterpart.

**11.6. Qualification; Authority.** Each individual executing this Agreement on behalf of an Indemnitor which is an entity, represents, warrants and covenants to First American Title Insurance Company that (a) such entity is duly formed and authorized to do business in the State, (b) such person is duly authorized to execute and deliver this Agreement on behalf of such entity in accordance with authority granted under the organizational documents of such entity, and (c) such entity is bound under the terms of this Agreement.

**11.7. Merger of Prior Agreements and Understandings.** This Agreement and other documents incorporated herein by reference contain the entire understanding and agreement between the parties relating to the obligations of the parties with respect to Mechanics' Liens for future transactions involving the Property and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, shall be of no force or effect.

**11.8. Other.** This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. This Agreement shall be interpreted in accordance with the laws of the State and Indemnitor hereby agrees to submit to the jurisdiction of any state or federal court of First American Title Insurance Company choosing having competent jurisdiction, and to make no objection to venue therein should any action at law or in equity be necessary to enforce or interpret this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court costs. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. The recitals set forth hereinabove are



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incorporated into this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others wherever and whenever the context so dictates. This Agreement shall inure to the benefit of and bind the personal representatives, successors and assigns of the parties hereto.

**12. <u>SECURITY.</u>** Indemnitor has or will provide security for this Agreement to First American Title Insurance Company as follows:

| | |
|---|---|
| [ ] **None at this time** | [ ] **Letter of Credit Agreement with Sight Draft Form** |
| [ ] **Security Agreement*** (Non Cash) | [ ] **Control Agreement** |
| [ ] **Security Agreement*** (Cash) | [ ] **Deed of Trust** |
| [ ] **Security Agreement** (Letter of Credit) | [ ] **Mortgage** |

***** Requires a UCC Financing Statement to be executed and filed.

A breach by an obligor, pledgor or debtor under any of the foregoing documents as well as any documents which may be referenced in such documents shall be deemed a breach by Indemnitor under this Agreement. Unless otherwise agreed in writing, any sums held by First American Title Insurance Company as security may be held by First American Title Insurance Company in its general accounts and not deposited into an interest bearing account. Indemnitor understands that as a result of maintaining its accounts with a financial institution and its on-going banking relationship with the specific financial institution, First American Title Insurance Company may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from the financial institution ("collateral benefits"). Indemnitor agrees that any and all such collateral benefits shall belong solely to First American Title Insurance Company and First American Title Insurance Company shall have no obligation to account to Indemnitor for the value of any such collateral benefits. If the funds are deposited into a special interest bearing account, all such interest shall be added to and retained in the account as part of the security for First American Title Insurance Company . Any such interest earned shall be attributed for tax purposes to the Indemnitor depositing same.
(**Note:** If security is to be taken, additional forms must be executed. *Please be advised that additional documents may be needed to perfect a personal property security interest. Please follow directions on said forms as to additional requirements or consult your local underwriter.)*

**13. <u>ESTOPPEL.</u>** *NOTWITHSTANDING ANY POSSIBLE DIFFERENCE IN THE PARITY OF THE PARTIES HERETO, INDEMNITOR UNDERSTANDS THAT FIRST AMERICAN TITLE INSURANCE COMPANY IS UNDERTAKING A RISK SIGNIFICANTLY GREATER THAN THAT UNDERTAKEN IN THE NORMAL COURSE OF PROVIDING TITLE INSURANCE POLICIES AND RELATED SERVICES BY ENTERING INTO THIS AGREEMENT AND ISSUING POLICIES OF TITLE INSURANCE IN RELIANCE ON THIS AGREEMENT, AND, THEREFORE, INDEMNITOR HEREBY DECLARES ITS WILLINGNESS TO ENTER INTO THIS AGREEMENT AND TO INDUCE FIRST AMERICAN TITLE INSURANCE COMPANY TO ACCEPT THIS AGREEMENT, REALIZING THAT INDEMNITOR'S BEST INTEREST, IN THE OPINION OF INDEMNITOR, IS BEING SERVED THEREBY.*

## <u>NOTICE</u>:
## THIS AGREEMENT CONTAINS PROVISIONS WHICH PERSONALLY OBLIGATE INDEMNITOR.
## IT IS STRONGLY RECOMMENDED THAT INDEMNITOR CONSULT LEGAL COUNSEL PRIOR TO EXECUTING THIS AGREEMENT.

**INDEMNITOR[1]:**

_____ _____

[1] *All persons/entities executing this Agreement shall be deemed named parties to this Agreement as if their name also appeared in the introductory paragraph on page 1.*



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**Social Security or Tax ID No. _____**

**Notice Address: _____**

_____

_____

**Social Security or Tax ID No. _____**

**Notice Address: _____**

_____

_____

**ADDRESS FOR NOTICE TO FIRST AMERICAN TITLE INSURANCE COMPANY :** (If this information is not completed, please see Paragraph 10.)

**Notice Address:**

**Notice Address:**



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# EXHIBIT A

## DESCRIPTION OF PROPERTY

**Order No. (REQUIRED)**

Street Address: _____, _____

Legal Description:
**FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

A.P.N. _____



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