



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 160774

Introduced September 15, 2016

Councilmember Squilla

**Referred to the
Committee on Public Property and Public Works**

AN ORDINANCE

Authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to accept an assignment of an easement agreement pertaining to property along the Delaware River bounded by North Delaware Avenue, Penn Treaty Park, the Delaware River and Shackamaxon Street (extended to the Delaware River), commonly known as 1143-51 Delaware Avenue, Philadelphia, PA, under certain terms and conditions.

SECTION 1. The Commissioner of Public Property, on behalf of the City of Philadelphia, is authorized to accept an assignment of the easement agreement attached as Exhibit "A" of this Ordinance.

SECTION 2. The City Solicitor is authorized to review and approve all documents necessary to complete the acquisitions authorized by this Ordinance. The City Solicitor is further authorized to include in those documents provisions that the City Solicitor deems necessary and desirable to protect the interests of the City.

City of Philadelphia

BILL NO. 160774 continued

EXHIBIT "A" Easement Agreement

Prepared By:

Dennis H. Bower, Esq.
Saul Ewing LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102

SRS00238
Record & Return to:
SearchTec, Inc
314 N. 12th Street
Ste# 100
Philadelphia, Pa. 19107
215-963-0888 ext# 2107

OPA No.: 88-4018964

GRANT OF EASEMENT

THIS GRANT OF EASEMENT (“**Agreement**”) is made as of the 28th day of April, 2014, between 3RD FED BANK, a Pennsylvania Banking Institution, f/k/a Third Federal Bank (“**Grantor**”) and the DELAWARE RIVER WATERFRONT CORPORATION, a Pennsylvania non-profit corporation, formerly known as Penn’s Landing Corporation (“**Grantee**”).

BACKGROUND

A. Grantor is the fee simple owner of a certain parcel of land commonly known as 1143-51 Delaware Avenue, Philadelphia, PA, and legally described in Exhibit A, attached hereto and incorporated herein (the “**Property**”).

B. Grantee is a 501(c)3 nonprofit corporation.

C. Grantor and Grantee now desire to enter into this Agreement for the purpose of a public recreation path, as more fully described herein, within the area depicted on Exhibit B-1 and legally described in Exhibit B-2, both of which are attached hereto and made a part hereof (the “**Recreation Path Easement Area**”) located on the Property, upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Agreement and other good and valuable consideration, and intending to be legally bound Grantor and Grantee hereby agree as follows:

1. **Grant of Public Recreation Easement.**

a. Grantor hereby grants and conveys to Grantee, its successors and assigns, a perpetual fifty (50) foot easement, right and privilege of (a) Grantee and its designees, including, without limitation, the general public, to cross over and upon the Recreation Path Easement Area for purposes of biking, rollerblading, skating, walking, jogging, cross-country skiing, and other leisure or recreational activities, and (b) Grantee and its designees to improve

the Recreation Path Easement Area with surfaced or non-surfaced pathways (including, without limitation, bikeways and walkways), seating, plantings, waste baskets, signage, lighting, drinking fountains (including subsurface rights for the installation of pipes and utilities), and shade-providing structures; and, further, to maintain, replace, remove, reconstruct, and repair the same from time to time, including, without limitation, the right to trim, cut and remove such grass, tree branches, roots, shrubs, plants, trees and vegetation within or effecting the Recreation Path Easement Area and the view of the Delaware River from the Recreation Path Easement Area.

b. If the Recreation Path Easement Area is not accessible, or hereafter becomes inaccessible, from a public street, Grantor hereby grants to Grantee and its designees the easement, right and privilege of ingress to and egress from the Recreation Path Easement Area over and across the Property by means of driveways and parking lots, if such exist, and otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to the Grantor.

c. Grantee shall comply with all federal, state and local laws, rules, regulations, building codes and requirements in the exercise of the rights granted pursuant to this Agreement.

d. Grantee shall promptly repair any damage to the Property resulting from the exercise of the rights granted to it pursuant to this Agreement.

e. Grantee shall reasonably delineate the Recreation Path Easement Area such that the Recreation Path Easement Area shall be distinguishable from the remainder of the Property.

2. Rights of Grantors. Nothing herein shall be construed to limit or restrict in anyway Grantor's right to further develop or construct improvements on the Property, except that Grantor shall not erect or construct any building, fence, structure, or other obstruction under, on or above the Recreation Path Easement Area or that would block the view of the Delaware River from the Recreation Path Easement Area. Grantor hereby reserves the right to install underground utilities beneath the Recreation Path Easement Area; provided, however, that Grantor shall use commercially reasonable efforts to minimize the resulting disruption to the use and enjoyment of the Recreation Path Easement Area; and provided further that Grantor shall promptly repair any damage to improvements located on or under the Recreation Path Easement Area caused thereby.

3. Property Maintenance.

a. Maintenance. By way of background, the Property is as of the date of this Agreement vacant and unused. The parties desire that the Grantee will perform certain maintenance of the Property, so long as the Property remains vacant and unused (other than for the Public Recreation Path). Accordingly, the parties have agreed to the following: until the earlier of (i) the Development Date (defined below); or, (ii) ten (10) years from the date of this agreement, Grantee shall provide Maintenance Services (defined below) for the entire Property at the sole cost and expense of Grantee.

b. Definitions.

(i) **"Maintenance Services"** means only the mowing of the grass and removing litter with reasonable frequency. By way of clarification, although the Property may be used in advance of the Development Date (for instance, one-time events, such as a showing for prospective purchasers or rental for a carnival), the Maintenance Service does not include preparation for, or cleaning up after, any such use of the Property.

(ii) **"Development Date"** means the earliest of (i) Grantor's, its successors or assigns, commencement of development of the Property (including, without limitation, activities preparatory thereto, such as installing fencing); (ii) the use of the Property for any Non-Temporary Use more frequently than once every three months; (iii) the request by Grantor, its successors or assigns, that Grantee discontinue the Maintenance Services; or (iv) the sale or transfer of the Property by Grantor to an unrelated third party.

(iii) **"Non-Temporary Use"** means any use intended to last longer or actually lasting longer than one week.

c. License. Grantor hereby grants Grantee a license to enter the Property to perform the Maintenance Services.

4. Insurance. Grantee shall maintain at all times commercial general liability insurance against claims for personal injury, including bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Nothing herein, or in this Agreement, shall waive or amend any defense or immunity (such as, by way of example, sovereign immunity), if any, which Grantee, its officers, agents, or employees may have under law.

5. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and shall run with the land.

6. Notice. Any notices required or permitted to be given under this Agreement shall be given in writing and shall be delivered by (a) hand delivery, (b) commercial overnight courier that guarantees next day delivery and provides a receipt, or (c) US Mail return receipt required.

and such notices shall be addressed as follows:

If to Grantor:

3RD Fed Bank
Attn: Kent Lufkin, President & CEO
3 Penn Trail
Newtown, PA 18940

If to Grantee:

The Delaware River Waterfront Corporation
121 N. Columbus Boulevard
Philadelphia, PA 19106
Attn: Vice President for Operations and Development

or to such other address as any party may from time to time specify in writing to the other parties. Any notice shall be effective only upon receipt (or refusal by the intended recipient to accept delivery). Any notice which is received on a Saturday, Sunday or a legal holiday, or after 5:00 p.m. prevailing local time at the place of receipt, shall be deemed received on the next business day.

7. Transfer Tax. All local and state realty transfer taxes, if any, arising in connection with the recording of this Grant of Easement shall be paid by Grantee.

8. Miscellaneous.

a. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

b. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

c. EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT.

d. The section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained in this Agreement. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter.

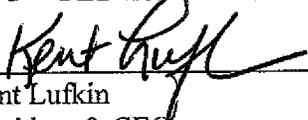
e. This Agreement may be amended or modified only by a written instrument signed by the particular parties effected thereby.

f. If any provision of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

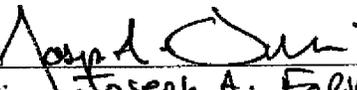
(signature page follows)

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement intending to be legally bound.

GRANTOR: 3RD FED BANK f/k/a Third Federal Bank

By: 
Kent Lufkin
President & CEO

GRANTEE: DELAWARE RIVER WATERFRONT CORPORATION

By: 
Name: Joseph A. Forkin
Title: VICE PRESIDENT

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF BUCKS :

On this 28th day of April, 2014, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Kent C. Lufkin, who acknowledged him/herself to be a President & CEO of 3rd Fed Bank, a _____, and that he/she as such general partner, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the general partnership by him/herself as general partner.

In Witness Whereof, I hereunto set my hand and official seal.

Regina Bayard [SEAL]
Notary Public



My Commission Expires:

March 26, 2018

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF Philadelphia :

On this 5 day of May, 2014, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Joseph Fortin, who acknowledged him/herself to be the Vice President of Delaware River Waterfront Corp., and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by him/herself as such officer.

In Witness Whereof, I hereunto set my hand and official seal.

Gina Angela DiBiase [SEAL]
Notary Public

My Commission Expires:

November 24, 2014

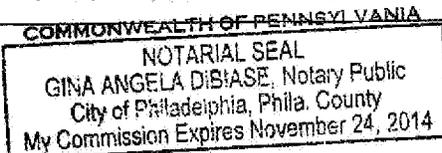


EXHIBIT "A"
[Legal Description of Property]

PREMISES "A"

ALL THAT CERTAIN lot or piece of ground and wharf with the buildings and improvements thereon erected.

SITUATE on the Southeasterly side of Delaware Avenue (also known as Christopher Columbus Boulevard) and. Southwesterly side of former Marlborough Street, (47 feet 6 inches wide-stricken and vacated by Ordinance of Council 9/29/1982, Confirmed by Board of Surveyors 7/5/1983, Reserved as a Right-of-Way for Drainage, Water Main & Public Utility Purposes) in the Fifth (formerly part of the Eighteenth) Ward of the City of Philadelphia, Commonwealth of Pennsylvania, bounded and described in accordance with a Plan of Property by Allen J. Bommentre Jr., Surveyor &. Regulator of the Third Survey District dated 4/12/2005 Job. No, 2005-100, as follows, to wit:

BEGINNING at a point formed by the intersection of the Southeasterly side of Delaware Avenue (140 feet wide) (also known as Christopher Columbus Boulevard) with the Southwesterly side of former Marlborough Street (47 feet 6 inches wide); thence extending South 20 degrees 49 minutes 27 seconds East, along the said Southwesterly side of former Marlborough Street, the distance of 280.992 feet to the Bulkhead line of the Delaware River (established by the Secretary of War September 10, 1940), thence continuing South 20 degrees 49 minutes 27 seconds East, along the said Southwesterly side of former' Marlborough Street, the distance of 589.306 feet to a point on the Pierhead line of the Delaware River (established by the Secretary of War September 10, 1940); thence extending South 54 degrees 04 minutes 10 seconds West, along the Pierhead line, the distance of 57.397 feet to a point; thence extending North 23 degrees 18 minutes, 27 seconds West, the distance of 589.344 feet to a point on the aforesaid Bulkhead line of the Delaware River thence continuing North 23 degrees 18 minutes 27 seconds East, the distance of 288.04 feet to a point on the Southeasterly side of Delaware Avenue (also known as Christopher Columbus Boulevard); thence extending North 63 degrees 51 minutes 33 seconds East, along the said Southeasterly side of Delaware Avenue (also known as Christopher Columbus Boulevard) the distance of 93.833 feet to the first mentioned point and place of beginning.

BEING KNOWN AS 1143-51 N. Delaware Avenue, a/k/a 1143-51 North Christopher Columbus Boulevard.

BEING the same premises which Bateman Brothers Lumber Company, Inc., a Delaware corporation, by Deed dated February 24, 1994 and recorded April 25, 1994 in the County of Philadelphia in Deed Book VCS 556 Page 515 conveyed unto Pier 53 North, Inc., a Pennsylvania Corporation, in fee.

AND BEING the same premises which Pier 53 North, Inc., a Pennsylvania corporation, by Deed dated November 2, 2005 and recorded December 1, 2005 in the County of Philadelphia as Document ID #51327070, conveyed unto 1143 NCCB Associates, LP, a Pennsylvania limited partnership, in fee.

EXHIBIT "B-1"
[Plan of Recreational Path Easement Area]

ATTACHED

EXHIBIT "B-2"
[Legal Description of Recreational Path Easement Area]

PROPOSED 50 FEET BUFFER EASEMENT LEGAL DESCRIPTION

ALL THAT CERTAIN PARCEL OR TRACT OF LAND, SITUATE IN THE FIFTH (FORMERLY PART OF THE EIGHTEENTH) WARD OF THE CITY OF PHILADELPHIA, COMMONWEALTH OF PENNSYLVANIA, AS SHOWN ON A PLAN ENTITLED "PLAN OF SURVEY AND TOPOGRAPHY" BY RODRIGUEZ CONSULTING, DATED JANUARY 06, 2014, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHEASTERLY SIDE OF DELAWARE AVENUE (140 FEET WIDE ON CITY PLAN - LEGALLY OPEN) (ALSO KNOWN AS CHRISTOPHER COLUMBUS BOULEVARD) WITH THE SOUTHWESTERLY SIDE OF FORMER MARLBOROUGH STREET (47 FEET 6 INCHES WIDE - STRICKEN AND VACATED BY ORDINANCE OF COUNCIL 9/29/1982, CONFIRMED BY BOARD OF SURVEYORS 7/5/1983, RESERVED AS A RIGHT-OF-WAY FOR DRAINAGE, WATER MAIN & PUBLIC UTILITY PURPOSES), THENCE SOUTH 20°49'27" EAST ALONG THE SAID SOUTHWESTERLY SIDE OF FORMER MARLBOROUGH STREET THE DISTANCE OF 371.723 FEET TO THE POINT AND PLACE OF BEGINNING;
THENCE FROM SAID POINT OF BEGINNING: 1) CONTINUING ALONG THE SAID SOUTHWESTERLY SIDE OF FORMER MARLBOROUGH STREET SOUTH 20°49'27" EAST FOR A DISTANCE OF 51.749 FEET TO A POINT,
THENCE, 2) MORE OR LESS ALONG A TOP OF BANK LINE OF DELAWARE RIVER SOUTH 14° 04' 30" WEST FOR A DISTANCE OF 65.969 FEET TO A POINT,
THENCE, 3) CONTINUING MORE OR LESS ALONG THE SAID TOP OF BANK LINE SOUTH 79° 18' 59" WEST FOR A DISTANCE OF 36.193 FEET TO A POINT,
THENCE, 4) LEAVING AFORESAID TOP OF BANK AND CONTINUING NORTH 23° 18' 27" WEST FOR A DISTANCE OF 51.111 FEET TO A POINT,
THENCE, 5) NORTH 79° 18' 59" EAST FOR A DISTANCE OF 15.446 FEET TO A POINT,
THENCE, 6) NORTH 14° 04' 30" EAST FOR A DISTANCE OF 52.344 FEET TO A POINT,
THENCE, 7) NORTH 54° 04' 56" EAST FOR A DISTANCE OF 31.520 FEET TO THE POINT AND PLACE OF BEGINNING;

CONTAINING WITHIN SAID BOUNDS AN AREA OF 5,025.40 SQUARE FEET (0.1154 ACRES) MORE OR LESS.

BOOK NO. PAGE NO.

[] []

**PHILADELPHIA REAL ESTATE
TRANSFER TAX CERTIFICATION**

DATE RECORDED: []
CITY TAX PAID: []

Complete each section and file in duplicate with Recorder of Deeds when (1) the full consideration/value is/is not set forth in the deed, (2) when the deed is with consideration, or by gift, or (3) a tax exemption is claimed. If more space is needed, attach additional sheet(s).

A. CORRESPONDENT — All inquiries may be directed to the following person:

NAME: **Joseph A. Forkin** TELEPHONE NUMBER: []
 AREA CODE: **215** **629-3221**
 STREET ADDRESS: **121 North Columbus Boulevard** CITY: **Philadelphia** STATE: **PA** ZIP CODE: **19106**

B. TRANSFER DATA

GRANTOR(S)/LESSOR(S): **3rd Fed Bank** DATE OF ACCEPTANCE OF DOCUMENT: []
 GRANTEE(S)/LESSEE(S): **Delaware River Waterfront Corporation**
 STREET ADDRESS: **3 Penn Trail** CITY: **Newtown** STATE: **PA** ZIP CODE: **18940**
 STREET ADDRESS: **121 North Columbus Boulevard** CITY: **Philadelphia** STATE: **PA** ZIP CODE: **19106**

C. PROPERTY LOCATION

STREET ADDRESS: **1143-51 North Delaware Avenue** CITY, TOWNSHIP, BOROUGH: **Philadelphia**
 COUNTY: **Philadelphia** SCHOOL DISTRICT: **Philadelphia** TAX PARCEL NUMBER: **88-4018964**

D. VALUATION DATA

1. ACTUAL CASH CONSIDERATION: **\$1.00**
 2. OTHER CONSIDERATION: **\$0.00**
 3. TOTAL CONSIDERATION: **\$1.00**
 4. COUNTY ASSESSED VALUE: **\$2,100,000.00**
 5. COMMON LEVEL RATIO FACTOR: **1.00**
 6. FAIR MARKET VALUE: **\$2,100,000.00**

E. EXEMPTION DATA

1A. PERCENTAGE OF EXEMPTION: **100.0**
 1B. PERCENTAGE OF INTEREST CONVEYED: []

2. Check Appropriate Box Below for Exemption Claimed

- Will or intestate succession (NAME OF DECEDENT: [] (ESTATE FILE NUMBER): [])
- Transfer to Industrial Development Agency.
- Transfer to agent or straw party. (Attach copy of agency/straw party agreement).
- Transfer between principal and agent. (Attach copy of agency/straw trust agreement). Tax paid prior deed \$ []
- Transfers to the Commonwealth, the United States, and Instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (Attach copy of resolution).
- Transfer from mortgagor to a holder of a mortgage in default. Mortgage Book Number [] Page Number []
Mortgagee (grantor) sold property to Mortgagor (grantee) (Attach copy of prior deed).
- Corrective deed (Attach copy of the prior deed).
- Other (Please explain exemption claimed, if other than listed above.) **Section 19-1405(19) - See Exhibit A.**

Under penalties of law or ordinance, I declare that I have examined this Statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

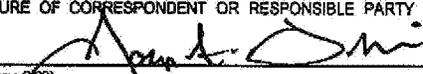
SIGNATURE OF CORRESPONDENT OR RESPONSIBLE PARTY:  DATE: **5/5/2014**

Exhibit A

The Grantee is a Pennsylvania nonprofit 501(c)(3) organized exclusively for the benefit of the City of Philadelphia ("City") and its citizens. Grantee is governed by a sixteen (16) person Board of Directors that is appointed by the Mayor of the City and is considered a "Component Unit" of the City for financial reporting purposes.

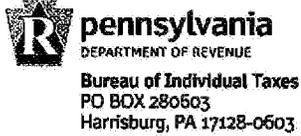
Grantee's articles of incorporation state that "[T]he fundamental purpose of [Grantee] is to design, develop and manage the central Delaware River waterfront in Philadelphia between Oregon and Allegheny Avenues. [Grantee] intends to transform the central Delaware River waterfront into a vibrant destination location for recreational, cultural, and commercial activities for the residents and visitors of Philadelphia."

In fulfillment of the Grantee's mission, the Easement granted hereby is for the purpose of a public recreation path along the Delaware River waterfront that is intended, ultimately, to extend from Oregon Avenue, in Philadelphia, to Allegheny Avenue, in Philadelphia.

The Easement was donated by the Grantor to the Grantee for no consideration whatsoever. The Easement grants no access or other rights beneficial solely to the remainder of the parcel it encumbers.

The Easement is not intended to generate revenue and is otherwise limited to the purposes set forth in the easement (e.g., biking, rollerblading, skating, walking, jogging, etc.).

Accordingly, the Easement has no actual monetary worth to the Grantor or Grantee.



REALTY TRANSFER TAX STATEMENT OF VALUE

See reverse for instructions.

RECORDER'S USE ONLY

Table with 2 columns: Recorder's Use Only, Date Recorded

Complete each section and file in duplicate with Recorder of Deeds when (1) the full value/consideration is not set forth in the deed, (2) the deed is without consideration or by gift, or (3) a tax exemption is claimed.

A. CORRESPONDENT - All inquiries may be directed to the following person:

Name: Joseph A. Forkin Telephone Number: 215-629-3221

Mailing Address: 121 North Columbus Boulevard City: Philadelphia State: PA ZIP Code: 19106

B. TRANSFER DATA

Grantor(s)/Lessor(s): 3rd Fed Bank Mailing Address: 3 Penn Trail City: Newtown State: PA ZIP Code: 18940

C. Date of Acceptance of Document

Grantee(s)/Lessee(s): Delaware River Waterfront Corporation Mailing Address: 121 North Columbus Boulevard City: Philadelphia State: PA ZIP Code: 19106

D. REAL ESTATE LOCATION

Street Address: 1143-51 North Delaware Avenue City, Township, Borough: Philadelphia County: Philadelphia School District: Philadelphia Tax Parcel Number: 88-4018964

E. VALUATION DATA - WAS TRANSACTION PART OF AN ASSIGNMENT OR RELOCATION? [] Y [X] N

Table with 3 columns: 1. Actual Cash Consideration (1.00), 2. Other Consideration (+0.00), 3. Total Consideration (= 1.00), 4. County Assessed Value (2,100,000.00), 5. Common Level Ratio Factor (X 1), 6. Fair Market Value (= 2,100,000.00)

F. EXEMPTION DATA

Table with 3 columns: 1a. Amount of Exemption Claimed (2,100,000.00), 1b. Percentage of Grantor's Interest in Real Estate (100%), 1c. Percentage of Grantor's Interest Conveyed Easement

Check Appropriate Box Below for Exemption Claimed.

- Will or intestate succession.
Transfer to a trust.
Transfer from a trust.
Transfer between principal and agent/straw party.
Transfers to the commonwealth, the U.S. and instrumentalities by gift, dedication, condemnation or in lieu of condemnation.
Transfer from mortgagor to a holder of a mortgage in default.
Corrective or confirmatory deed.
Statutory corporate consolidation, merger or division.
Other (Please explain exemption claimed.) 61 Section 91.193(b)(21) - See Exhibit A.

Under penalties of law, I declare that I have examined this statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party: [Signature] Date: 5/5/2014

FAILURE TO COMPLETE THIS FORM PROPERLY OR ATTACH REQUESTED DOCUMENTATION MAY RESULT IN THE RECORDER'S REFUSAL TO RECORD THE DEED.

Exhibit A

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