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*Attorneys for Appellant*

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**OFFICE OF THE LAND USE APPEAL AUTHORITY  
IN AND FOR GRAND COUNTY, STATE OF UTAH**

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SANDSTONE COTTAGES, LLC, a Utah  
limited liability company;

Appellant,

vs.

GRAND COUNTY UTAH,

Respondent.

**ADMINISTRATIVE APPEAL**

Hearing Officer: Craig Call

Appellant Sandstone Cottages, LLC, by and through counsel, hereby submits this  
Administrative Appeal of Respondent Grand County Utah's ("County") decision, and states as  
follows:

**STATEMENT OF THE ADMINISTRATIVE APPEAL**

Appellant Sandstone Cottages, LLC ("Appellant") is a Utah housing developer, and is  
currently undertaking a project (the "Project") in Grand County under the County's High Density  
Housing Ordinance ("HDHO"). The Project plan calls for 42 HDHO units. In June 2019,  
Appellant submitted to the County an application to develop the Project, which initially consisted

of 40 HDHO units. The County gave preliminary approval for this Project. As a part of its approval, the County required that Appellant enter into a development agreement (“2019 Development Agreement”, attached hereto as **Exhibit 1**<sup>1</sup>) that was governed by the *Rules and Regulations for High Density Housing Overlay Developments*, which were passed and imposed by the County under the guise of rulemaking.

In June 2020, Appellant submitted to the County an application to add two more HDHO units to the Project (for a total of 42 HDHO lots). The County Commission has recommended that the County Council<sup>2</sup> approve the two additional HDHO units of the Project. As a condition of developing the 42 HDHO units in the Project under the HDHO, the County required Appellant to enter into another development agreement (“2020 Development Agreement”, attached hereto as **Exhibit 2**), wherein Appellant agreed to accept and operate under certain “Rules and Regulations” promulgated by the County that were currently in place regarding the operation and ownership of the HDHO properties.

To date, Appellant has expended significant funds and effort on the Project over the course of many months. Appellant has requested and received from the County preliminary approvals of the Project.

Later on March 2, 2021, the County Commission adopted an amended *Rules and Regulations for High Density Housing Overlay Developments* (the “New Rules”, attached as

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<sup>1</sup> Although Exhibit 1 is not executed, this is believed to be the final version of the 2019 Development Agreement.

<sup>2</sup> At some point, the County changed the names of the County Commission and County Council. The County now refers to the County Council as the County Commission, and the County Commission as the Planning Commission. Appellant refers to these government bodies in the Petition as they are referred to in the record.

**Exhibit 3).** These New Rules amount to a complete turn-around in an important aspect of what is permitted in the HDHO. The County is now imposing these New Rules on developments already underway, and in some measure approved, including the Project. The Project and these other developments, however, are “vested” under the Utah County Land Use Management and Development Act (“CLUDMA”), which dictates that vested developments cannot be subject to new rules passed following vesting. Accordingly, imposing these New Rules on the Project and these other vested developments is a violation of CLUDMA. Vesting is a property right in Utah, and terminating a vested property right is a taking under the United States and Utah constitutions. These New Rules severely impact the financial and practical viability of the Project. Appellant therefore brings this action to appeal the County’s adoption of the New Rules and to prevent the County from imposing the New Rules on the Project.

Additionally, these New Rules conflict with the plain language of existing County ordinances, and are therefore illegal. On this basis, Appellant brings this action to appeal the passage and enforcement of these New Rules.

Moreover, the County has required developers, including Appellant, to agree to unilateral development agreements in order to develop, which is a violation of Utah land use law and contract law. In the process, the County has repudiated and refused to honor or comply with the existing and fully executed Development Agreements with Appellant. Under Utah common law, this amounts to a breach of contract.

In sum, Appellant brings this administrative appeal to receive an order from the Hearing Officer declaring that the New Rules are illegal and were enacted contrary to law, that the

County violated Appellant's constitutional and statutory rights, and that the County is in breach of the Development Agreements.

### **PARTIES, JURISDICTION, & VENUE**

1. Appellant Sandstone Cottages, LLC is a Utah limited liability company with its registered office in Salt Lake County, State of Utah.
2. Appellant's Project is located in Grand County, Utah.
3. Respondent Grand County is a County of the State of Utah.
4. This hearing officer has jurisdiction pursuant to Grand County Code Section 9.13 *et seq.* and Utah Code Ann. §§ 17-27a-701.
5. Venue is proper pursuant to Grand County Code Section 9.13 *et seq.*
6. This action is timely pursuant to Grand County Code 9.13.2.

### **STATEMENT OF FACTS**

7. Appellant is a home developer that is currently developing the Project within Grand County.
8. The County has received and accepted all of Appellant's applications for the Project, and Appellant has paid all associated fees. These accepted applications for the Project are complete and include applications to develop properties under the County's HDHO.
9. In or about June 2019, Appellant submitted to the County a high-density housing overlay and preliminary plat application for the Project, and paid all associated fees.
10. At this time, the Project consisted of approximately 40 HDHO units.
11. On or about July 2, 2019, the County Staff recommended approval with conditions of the high-density housing overlay and preliminary plat application for the Project.

12. On or about July 2, 2019, the County Commission gave preliminary plat approval for the Project, adopted the HDHO to apply to the Project and designated the Project as HDHO-10 zone:

**L. Adopting proposed ordinance to apply the High Density Housing Overlay 10 District (HDHO-10) to Sandstone Cottages, located at 3058 and 3060 Spanish Valley Drive (Zacharia Levine, Community and Economic Development Director)**

**Motion** by Council Member Morse to adopt proposed ordinance to apply the High Density Housing Overlay 10 District (HDHO-10) to Sandstone Cottages, located at 3058 and 3060 Spanish Valley Drive, and authorize the Chair to sign all associated documents. Motion seconded by Council Member Wells carries 6-0.

13. As a part of developing the Project, the County required that Appellant enter into the 2019 Development Agreement.

14. Nearly a year later, in or about June 2020, Appellant submitted to the County an application to add two more HDHO units to the Project (for a total of 42 HDHO lots) and paid all associated fees.

15. On June 22, 2020, the County Staff recommended approval of the two additional HDHO units of the Project:

**STAFF RECOMMENDATION:** Approve

*Comments (optional):* The applicant has an existing 40-lot HDHO-10 approved subdivision at this location with approving Ordinance 592 from July 2nd, 2019. The plan has not changed substantially except for the addition of two units.

16. The County Staff further stated:

This application contemplates an additional two units for an approved HDHO-10 development. The HDHO-10 has been applied to the property with Ordinance 592, on July 2nd, 2019 . The new master plan in this application shows an added 2 units to the earlier layout, which are within the same HDHO-10 density allowance but which necessitate a new approving ordinance. The applicant has gone through extensive engineering review and is at final plat stages for the 42 lot subdivision. Planning staff has no reservations regarding the additional two units. 34 units will be deed restricted.

17. After reviewing the County Staff report and holding a public hearing, the County Commission recommended that the County Council approve the two additional HDHO units of the Project:

**Motion and Vote: (2:44:00 min)** Commissioner Walker moved to send a favorable recommendation to the County Council to approve the master plan of Sundance - 42 Lot HDHO Application at 3058 and 3060 Spanish Valley Drive contingent on approval of the development agreement before plat approval . Motion seconded by Commissioner Walston.

**Discussion:** Commissioner Walker states that there is grey area when amending a master plan that has already been approved. Commissioner Willis agrees and suggests Staff reports clearly identify all changes between a previously approved master plan and an update that is under consideration.

**Vote:** Motion passed 6-0 with Commissioners Walston, Nelson, Walker, O'Brien, Willis and Campbell voting aye.

18. As a condition of developing the Project under the HDHO, the County required Appellant to enter into the 2020 Development Agreement, wherein Appellant agreed to accept and operate under certain “Rules and Regulations” promulgated by the County that were currently in place regarding the operation and ownership of the HDHO properties.

19. On June 29, 2020, Appellant and the County entered into the 2020 Development Agreement.

20. Since accepting Appellant's application to add two more HDHO units to the Project, the County has approved Appellant's construction drawings and engineering plans for the 42 HDHO units within the Project.

21. Subsequent to executing the Development Agreements, the County Commission met, considered, and adopted the New Rules, which are an amendment to the "Rules and Regulations" that govern development of the Project under the HDHO.

22. The County claims that these New Rules were passed through an administrative process.

23. Upon information and belief, these New Rules were passed using a legislative process, including required public hearings, a recommendation by the Planning Commission, and a vote to adopt by the County legislative body.

24. The New Rules purported to limit *ownership* of all units built under the HDHO to persons that meet certain qualifications. In effect, the New Rules prohibit ownership of any of the HDHO units by employers, corporations, or investors who may offer residence to qualified individuals. Ownership is restricted only to those individuals that qualify to live in the units.

25. The High Density Housing Ordinance, contained within the County Land Use Code, contains no such restriction on ownership and contemplates by its plain language that only residents need to be qualified individuals, and owners may be separate entities.

26. Following adoption of the New Rules, the County has required, as a condition of further development approvals, that Appellant enter into and execute a new development agreement (attached hereto as **Exhibit 4**), governed by the New Rules.



27. The parties have already entered into the 2019 and 2020 Development Agreements governing the development of the HDHO units in the Project.

28. By word and deed, the County has indicated that Appellant may not proceed with the Project unless it enters into a new development agreement governed by the New Rules.

29. By word and deed, the County has repudiated the existing 2019 and 2020 Development Agreements and does not intend to comply with existing and binding Development Agreements.

### **FIRST CLAIM FOR RELIEF**

(The County's Enactment of the New Rules is Illegal)

30. Appellant hereby incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

31. The New Rules directly conflict with the plain language of the Grand County Land Use Code, Section 4.7.

32. The New Rules purported to limit ownership of all units built under the HDHO to persons that meet certain qualifications. In effect, the New Rules prohibit ownership of any of the HDHO units by employers, corporations, or investors who may offer residence to qualified individuals. Ownership is restricted only to those individuals that qualify to live in the units.

33. The High Density Housing Ordinance, contained within the County Land Use Code, contains no such restriction on ownership and contemplates by its plain language that only residents need to be qualified individuals, and owners may be separate entities.

34. The HDHO Ordinance makes clear that “HDHO lots and units may be owner-occupied or renter-occupied as long as the *residents* meet the occupancy and active employment requirements...” Land Use Code Section 4.7.4(A) (emphasis added).

35. Moreover, the plain language of the Grand County Ordinance contemplates that the units might be rented to qualified individuals *by a person, firm, entity or corporation*: “Without limiting the generality of the foregoing, it shall also be a Class C misdemeanor for any person, firm, entity, or corporation to sell or rent an HDHO lot or unit to a household not qualified under this section.” Grand County Land Use Code, Section 4.7.11.

36. Accordingly, the passage of the New Rules is an illegal act, in that it conflicts with the plain language of the applicable ordinances.

37. In addition, although the County claims that it enacted the New Rules through an administrative act, the County’s enactment was clearly a legislative act undertaken using the County’s legislative discretion in that it involved general policy decisions and laws of general applicability, as set forth in the Utah Supreme Court’s decision in *Baker v. Carlson*, 2018 UT 59 (2018).

38. For these reasons, the Hearing Officer should enter an order that the New Rules are illegal because they directly conflict with the plain language of the Grand County Land Use Code, Section 4.7 and were enacted contrary to law.

**SECOND CLAIM FOR RELIEF**  
(Violation of Utah Code Ann. § 17-27a-508)

39. Appellant hereby incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

40. Utah Code Ann. § 17-27a-508 of the CLUDMA, commonly known as the Utah Vesting Rule, states as follows:

*(1) (i) An applicant who has submitted a complete land use application, including the payment of all application fees, is entitled to substantive review of the application under the land use regulations:*

*(A) in effect on the date that the application is complete; and*  
*(B) applicable to the application or to the information shown on the submitted application.*

41. Further, CLUDMA defines “Land Use Regulation” as “a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land.” Utah Code Ann. § 17-27a-103(36) (Emphasis added).

42. Accordingly, under the Utah Code, Appellant is entitled to review and approval of its land use applications for the Project under the ordinances that were in effect on the date that the application was submitted.

43. Appellant submitted its initial a high-density housing overlay and preliminary plat application for the Project in or about June 2019. Appellant submitted its supplemental application (adding two more HDHO units to the Project) for the Project in or about June 2020.

44. The County’s New Rules were adopted on March 2, 2021, after the date that Appellant’s applications were submitted and complete, and vested. Therefore, the New Rules are not applicable to Appellant’s applications and cannot govern the Project.

45. Vested development rights in Utah are constitutionally-protected property rights.

46. The County’s conduct in requiring that Appellant abide by its New Rules, after Appellant had vested property rights in the previous rules, constitutes an illegal taking of Appellant’s vested property rights under the Utah Constitution and United States Constitution.

47. The County has deprived and continues to deprive Appellant of its right to be free from a taking of its property without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 22 of the Utah State Constitution.

48. Accordingly, the Hearing Officer should enter an order declaring the County has violated Appellant's statutory and constitutional rights, and that the County cannot impose the New Rules on the Project.

**THIRD CLAIM FOR RELIEF**  
(Breach of Contract)

49. Appellant hereby incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

50. The County and the Appellant entered into a valid, binding 2019 and 2020 Development Agreements that were governed by laws in effective at that time of execution.

51. The County has breached the Development Agreements by repudiating and refusing to perform under the Development Agreements and requiring Appellant to enter into a new development agreement as a condition of approval for the Project.

52. The County's repudiation of and refusal to perform under the Development Agreements amounts to a breach of contract under Utah common law.

53. As a direct and proximate result of the County's breach of the 2019 and 2020 Development Agreements, Appellant has been damaged and will continue to suffer damages.

54. Accordingly, the Hearing Officer should enter an order declaring that the County violated the 2019 and 2020 Development Agreements, which is valid and binding on the County

## **CONCLUSION**

For these reasons, Appellant respectfully requests that the Hearing Officer enter an order (i) declaring that the New Rules are illegal; (ii) reversing and vacating the County's enactment of New Rules; (iii) declaring that the County's enactment of the New Rules was a legislative act; (iv) declaring that the County violated Appellant's statutory and constitutional rights; and (v) declaring that the County is in breach of the 2019 and 2020 Development Agreements.

DATED: March 31, 2021

**DURHAM JONES & PINEGAR**

By: /s/ Brent N. Bateman  
Brent N. Bateman  
Tyler R. Cahoon

*Attorneys for Appellant*

# **Exhibit 1**

**NOTICE TO TITLE COMPANY:**  
SECTION 4 HEREIN REQUIRES  
EACH DEED OF CONVEYANCE  
INCLUDE THE DEED RESTRICTION  
SET FORTH IN SECTION 4.2

**DEVELOPMENT AGREEMENT  
AND DEED RESTRICTION  
HIGH DENSITY HOUSING OVERLAY DISTRICT**  
*Pursuant to Grand County Code Section 4.7*

This DEVELOPMENT AGREEMENT AND DEED RESTRICTION (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2019 (the “**Effective Date**”) by and between \_\_\_\_\_, a Utah limited liability company with its principal place of business located at \_\_\_\_\_ (“**Owner/Developer**”), and Grand County, a political subdivision of the State of Utah (“**County**”).

**Recitals**

- A. WHEREAS, Owner/Developer owns that certain property situated in Grand County, Utah, as more particularly described in Exhibit A (the “Property”), which is attached hereto and incorporated herein by this reference.
- B. WHEREAS, Owner/Developer has requested Grand County to apply the High Density Housing Overlay District (the “HDHO District Application”) to the Property to take advantage of the Development Standards and other Development Incentives set forth in Section 4.7 of the Grand County Land Use Code (“Section 4.7”).
- C. WHEREAS, the Grand County Council has, in the exercise of its legislative discretion and following all required public hearings, approved the application of the HDHO District to the Property pursuant to the terms and conditions herein and provided that no fewer than eighty percent (80%) of the units developed on the Property are deed restricted for Primary Residential Housing for Actively Employed Households, as defined in Section 4.7.3 of the Grand County Code (the “Code”).
- D. WHEREAS, pursuant to the authority of Utah Code §17-27A-102(1)(b) and Section 4.7, as amended, the Parties desire to enter into this Agreement for the purpose of formalizing certain obligations of Owner/Developer with respect to the Property, and such other matters as the County and the Owner/Developer have agreed as particularly set forth below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, including approval of the application of the HDHO District to the Property, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** Unless otherwise defined herein, all capitalized terms used in this Agreement shall have those meanings assigned in Section 4.7 of the Grand County Code.
2. **COVENANT TO COMPLY WITH SECTION 4.7.** In consideration of the application of the HDHO District to the Property, and specifically the Development Standards set forth in Code Section 4.7.5, Owner/Developer hereby covenants and agrees to strictly comply with the provisions, duties, and obligations of Section 4.7 of the Code, which provisions, duties, and obligations are integrated herein by this reference.
3. **ADDITIONAL TERMS AND CONDITIONS.** Reserved.
4. **DEED RESTRICTION.**
  - 4.1. At least eighty percent (80%) of all Lots or Units developed on the Property (each a "HDHO Lot or Unit"), shall be deed restricted for Primary Residential Occupancy for Actively Employed Households consistent with Section 4.7 of the Code, as the same may be amended from time to time.
  - 4.2. Each deed of conveyance for an HDHO Lot or Unit shall include the following Deed Restriction:

The Property shall be used for Primary Residential Housing for Actively Employed Households as required by Grand County Land Use Code, Section 4.7, High Density Overlay Districts Overlay, as amended, in perpetuity. The Property is further subject to the Development Agreement recorded in the real property records of Grand County, Utah on \_\_\_\_\_ (Date) at Entry No. \_\_\_\_\_.

Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Deed Restriction by a record owner of any HDHO Lot or Unit.
  - 4.3. Each HDHO Lot or Unit is required to have and maintain those minimum standards of physical condition set forth in Exhibit B, Minimum Standards, to Section 4.7 of the Code, which Minimum Standards are integrated herein by this reference. Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Section by a record owner of any HDHO Lot or Unit in Grand County.
  - 4.4. Owner/Developer shall include the deed restriction contained in Section 4.2 of this Agreement, above, in each and every deed of original conveyance of an HDHO Lot, and each deed of conveyance thereafter shall include the same.



- 4.5. Owner/Developer shall include the deed restriction contained in Sections 4.2 and 4.3 of this Agreement, above, in each and every deed of original conveyance of an HDHO Lot or Unit, and each deed of conveyance thereafter shall include the same.

## **5. DEFAULT.**

- 5.1. Violation or breach of any provision of this Agreement, or Section 4.7 of the Code, as amended, shall constitute an Event of Default. Upon the occurrence of any Event of Default, the County shall provide written notice by certified mail, postage prepaid, to the defaulting owner at the address on file with the Grand County Assessor's office, which notice shall be effective as of the date of deposit in the United States Mail. The defaulting owner shall have thirty (30) days to remedy the Event of Default, after which time the County may enforce all remedies available to it under this Agreement, Section 4.7 of the Code, or Utah law including specific performance and monetary fines pursuant to Section 5.2 herein.
- 5.2. Unless otherwise provided for in Section 4.7 of the Code, as amended, in the event an Event of Default is not cured under Section 5.1 above, fines in the amount of \$50 per day shall accrue until the Event of Default is cured. The County reserves the right to seek judicial enforcement of these fines, including a judgment lien and foreclosure.

## **6. MISCELLANEOUS.**

- 6.1. Owner/Developer hereby waives any defenses, rights or remedies that it might otherwise assert against the County in connection with: (i) the application of the rule against perpetuities to this Agreement; or (ii) any claim that the covenants in this Agreement recorded against the HDHO Lots and Units are not covenants running with the land upon the Property. This waiver shall be binding upon and inure to the benefit of the successor and assigns of the Owner/Developer and the County.
- 6.2. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of any of the foregoing Agreement shall be invalid or prohibited under applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions in this Agreement.
- 6.3. If any party shall take or defend against any action for any relief against another party arising out of this Agreement, the prevailing party in such action or defense shall be entitled to reimbursement by the other party for all costs including, but not limited to, reasonable attorneys' fees and court costs incurred by the prevailing party in such action or defense and/or enforcing any judgment granted therein, all of which costs shall be deemed to have accrued upon the commencement of such action and/or defense and shall be paid whether or not such action or defense is prosecuted to judgment. Any judgment or order entered in such action or defense shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.

- 6.4. This Agreement shall be governed by and construed under Utah law.
- 6.5. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the parties.
- 6.6. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not, govern, limit or aid in the construction of any terms or provisions contained herein. Further, whenever the context so requires herein, the neuter and gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
- 6.7. Except for legislative changes of Section 4.7 of the Code which are incorporated herein, this Agreement may be amended only upon written amendment executed by both Parties, recorded in the real property records of Grand County, Utah; provided, however, that all material terms and provisions, including the percentage of HDHO Lots or Units, may not be amended or modified without reapplication to the County.
- 6.8. This Agreement shall be recorded by Owner/Developer prior to recordation of a final plat or issuance of a building permit for any unit within a site plan approved hereunder, as required by Section 4.7 of the Code.

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

COUNTY: Grand County  
A political subdivision of the State of Utah

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Chair, Grand County Council

ATTEST:

\_\_\_\_\_  
County Clerk

Owner/Developer:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH                    )  
  ) ss  
COUNTY OF GRAND            )

On \_\_\_\_\_, 2019, \_\_\_\_\_ (name), as \_\_\_\_\_ (title) of \_\_\_\_\_ (entity name), a Utah \_\_\_\_\_ (entity type), appeared before me and acknowledged and swore to me that the foregoing Agreement was signed on behalf of \_\_\_\_\_ (entity name) by authority of its Articles of Organization [OR Incorporation] and Operating Agreement [OR Bylaws].

NOTARY PUBLIC

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**Exhibit A**  
**Real Property**  
**Legal Description**

# **Exhibit 2**

NOTICE TO TITLE COMPANY:  
SECTION 3 HEREIN REQUIRES  
EACH DEED OF CONVEYANCE  
INCLUDE THE DEED RESTRICTION  
SET FORTH IN SECTION 3.2

**DEVELOPMENT AGREEMENT  
AND DEED RESTRICTION  
HIGH DENSITY HOUSING OVERLAY DISTRICT  
*Pursuant to Grand County Code Section 4.7***

This DEVELOPMENT AGREEMENT AND DEED RESTRICTION (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of JUNE 2020 (the “**Effective Date**”) by and between Sandstone Cottages, LLC, a Utah limited liability company with its principal place of business located at 7585 S. Union Park Ave., Ste 200, Midvale, UT 84047 (“**Owner/Developer**”), and Grand County, a political subdivision of the State of Utah (“**County**”).

**Recitals**

- A. WHEREAS, Owner/Developer owns that certain property situated in Grand County, Utah, as more particularly described in *Exhibit A* (the “Property”), which is attached hereto and incorporated herein by this reference.
- B. WHEREAS, Owner/Developer has requested Grand County to apply the High Density Housing Overlay District (the “HDHO District Application”) to the Property to take advantage of the Development Standards and other Development Incentives set forth in Section 4.7 of the Grand County Land Use Code (the “Code”).
- C. WHEREAS, the Grand County Council has, in the exercise of its legislative discretion and following all required public hearings, approved the application of the HDHO District to the Property pursuant to the terms and conditions herein and provided that no fewer than eighty percent (80%) of the units developed on the Property are deed restricted for Primary Residential Housing for Actively Employed Households, as defined in Section 4.7.3 of the Code.
- D. WHEREAS, pursuant to the authority of Utah Code §17-27A-102(1)(b) and Section 4.7, as amended, the Parties desire to enter into this Agreement for the purpose of formalizing certain obligations of Owner/Developer with respect to the Property, and such other matters as the County and the Owner/Developer have agreed as particularly set forth below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, including approval of the application of the HDHO District to the Property, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** Unless otherwise defined herein, all capitalized terms used in this Agreement shall have those meanings assigned in Section 4.7 of the Code.
2. **COVENANT TO COMPLY WITH CODE.** In consideration of the application of the HDHO District to the Property, and specifically the Development Standards set forth in Code Section 4.7.5, Owner/Developer hereby covenants and agrees to strictly comply with the provisions, duties, and obligations of Section 4.7 of the Code, which provisions, duties, and obligations are integrated herein by this reference.
3. **DEED RESTRICTION.**
  - 3.1. At least eighty percent (80%) of all Lots or Units developed on the Property shall be deed restricted for Primary Residential Occupancy for Actively Employed Households consistent with Section 4.7 of the Code, as amended.
  - 3.2. Owner/Developer shall include the following deed restriction in each and every deed of original conveyance of an HDHO Lot or Unit, and each deed of conveyance thereafter shall include the same:

The Property shall be used for Primary Residential Housing for Actively Employed Households as required by Grand County Land Use Code, Section 4.7, High Density Overlay Districts Overlay, as amended, in perpetuity. The Property is further subject to the Development Agreement and Master Plan recorded in the real property records of Grand County, Utah on \_\_\_\_\_ (Date) at Entry Nos. \_\_\_\_\_ and \_\_\_\_\_.

Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Deed Restriction by a record owner of any HDHO Lot or Unit.
  - 3.3. Each HDHO Lot or Unit is required to have and maintain those minimum standards of physical condition set forth in Exhibit B, Minimum Standards, to Section 4.7 of the Code, which Minimum Standards are integrated herein by this reference.
  - 3.4. Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Agreement or Section 4.7 of the Code by a record owner of any HDHO Lot or Unit in Grand County.
4. **DEFAULT.**

- 4.1. Violation or breach of any provision of this Agreement, or Section 4.7 of the Code, as amended, shall constitute an Event of Default. Upon the occurrence of any Event of Default, the County shall provide written notice by certified mail, postage prepaid, to the defaulting owner at the address on file with the Grand County Assessor's office, which notice shall be effective as of the date of deposit in the United States Mail. The defaulting owner shall have thirty (30) days to remedy the Event of Default, after which time the County may enforce all remedies available to it under this Agreement, Section 4.7 of the Code, or Utah law including specific performance and monetary fines pursuant to Section 4.2 herein.
- 4.2. Unless otherwise provided for in Section 4.7 of the Code, as amended, in the event an Event of Default is not cured under Section 4.1 above, fines in the amount of \$50 per day shall accrue until the Event of Default is cured. The County reserves the right to seek judicial enforcement of these fines, including a judgment lien and foreclosure.

5. **MISCELLANEOUS.**

- 5.1. Owner/Developer hereby waives any defenses, rights or remedies that it might otherwise assert against the County in connection with: (i) the application of the rule against perpetuities to this Agreement; or (ii) any claim that the covenants in this Agreement recorded against the HDHO Lots and Units are not covenants running with the land upon the Property. This waiver shall be binding upon and inure to the benefit of the successor and assigns of the Owner/Developer and the County.
- 5.2. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of any of the foregoing Agreement shall be invalid or prohibited under applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions in this Agreement.
- 5.3. If any party shall take or defend against any action for any relief against another party arising out of this Agreement, the prevailing party in such action or defense shall be entitled to reimbursement by the other party for all costs including, but not limited to, reasonable attorneys' fees and court costs incurred by the prevailing party in such action or defense and/or enforcing any judgment granted therein, all of which costs shall be deemed to have accrued upon the commencement of such action and/or defense and shall be paid whether or not such action or defense is prosecuted to judgment. Any judgment or order entered in such action or defense shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.
- 5.4. ~~This Agreement shall be governed by and construed under Utah law.~~
- 5.5. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the parties.



- IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

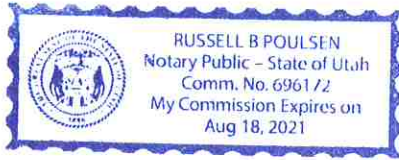
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Chair, Grand County Council


On \_\_\_\_\_, 202\_, \_\_\_\_\_, as Chair of the Grand County Council, appeared before me and acknowledged and swore to me that the foregoing Agreement was signed on behalf of Grand County by authority of its Policies and Procedures.

OWNER/DEVELOPER: SANDSTONE COTTAGES

STATE OF UTAH )  
 ) ss  
COUNTY OF SALT LAKE )

On 20th, 2020, STEVE BRADBURY (name), as MANAGER (title) of SANDSTONE COTTAGES (entity name), a Utah LLC (entity type), appeared before me and acknowledged and swore to me that the foregoing Agreement was signed on behalf of SANDSTONE COTTAGES (entity name) by authority of its Articles of Organization and Operating Agreement.



  
\_\_\_\_\_  
NOTARY PUBLIC

**Exhibit A**  
**Real Property**  
**Legal Description**

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# **Exhibit 3**

**GRAND COUNTY**  
**RULES and REGULATIONS**  
**for**  
**HIGH DENSITY HOUSING OVERLAY DEVELOPMENTS**  
*Effective March 2, 2021*

**WHEREAS**, the legislative body of Grand County has approved the application of the High Density Housing Overlay (“HDHO”) to those HDHO developments approved pursuant to Grand County Ordinance No. 591 (2019) as codified in the Grand County Land Use Code (“LUC”) in Section 4.7;

**WHEREAS**, Grand County created the HDHO to provide decent, safe and affordable housing in Grand County, Utah for local residents contributing to the workforce;

**WHEREAS**, as a condition of approval and subject to LUC Section 4.7.6(B), the Lots and Units particularly described in the attached ***Exhibit A*** are deed restricted for Primary Residential Housing for Actively Employed Households in perpetuity; and

**WHEREAS**, Grand County has delegated management of the HDHO program to the Housing Authority of Southeastern Utah (“HASU”), a non-profit organization incorporated in 1994 to administer affordable housing programs for Grand County and San Juan County (as used herein, Grand County shall include its designee, HASU).

**SECTION 1. PURPOSE**

A. Rules and Regulations. These Rules and Regulations shall provide instructions and guidance to the County and HASU when applying the provisions of LUC Section 4.7 to HDHO Developments. All terms not defined herein shall have the meaning assigned them in LUC Section 4.7.

B. Qualified Ownership Required. LUC Section 4.7, and specifically 4.7.11, requires all HDHO Lots and Units to be sold to Households who qualify thereunder. Temporary lapses in local employment or leaves of absence shall be addressed pursuant to the provisions in Section 3 below.

C. Purpose. Subject to LUC Section 4.7 and these Rules and Regulations, the purpose of the HDHO is to facilitate housing for local residents working in Grand County who maintain their primary residence in Grand County. These Rules and Regulations shall be applied to HDHO Developments in a manner which supports this purpose.

## SECTION 2. QUALIFIED HOUSEHOLD

A. Qualified Household. The ownership, use, and occupancy of HDHO Lots and Units shall be limited to qualified Actively Employed Households (hereafter “Qualified Household”), as set forth in LUC Section 4.7 and herein.

1. *Household, defined.*

i. The definition of Actively Employed Households shall not be construed to prohibit a familial financial partner who co-signs a loan with an adult who meets the criteria set forth in LUC Section 4.7.3.

ii. So long as the owner of a business or entity with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), either the owner or the business or entity may own the HDHO Lot or Unit.

iii. The definition of “owner’s representative” in LUC Section 4.7.3(A)(2) shall be construed to include Directors of a non-profit organization. Accordingly, so long as a majority of the Directors of a non-profit organization with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), the non-profit organization may own the HDHO Lot or Unit.

2. *Continuing Obligation*. Once an Owner is approved as a Qualified Household, as required by LUC Section 4.7.11, the occupants of the HDHO Lot or Unit shall satisfy the definition of a Qualified Household at all times as required by LUC Section 4.7 and these Rules and Regulations.

3. *Duty of Notification*. Each Owner and renter shall notify the County prior to any change in ownership and occupancy of their HDHO Lot or Unit, which change shall be pre-approved by the County pursuant to Section 3 herein. Any failure to pre-qualify a new owner or occupant shall be the sole liability of the owner or renter.

4. *Ownership by Grand County*. Grand County may purchase and own the HDHO Lot and/or Unit.

## SECTION 3. APPLICATION PROCEDURE

A. Application Required. Each Owner and renter of an HDHO Lot or Unit shall apply for approval as a Qualified Household on written applications, kept on file with HASU, at least thirty (30) days prior to purchase or lease of an HDHO Lot or Unit.

B. Application Approval. Once HASU determines eligibility, it shall provide written acknowledgement of the same.

C. Notifications Required. Each Owner and renter shall notify HASU prior to any change in ownership or occupancy of their HDHO Lot or Unit or their employment status, which change shall be pre-approved by HASU.

1. *Lapses of Employment.*

i. Temporary lapses of employment of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Lapses of employment lasting more than three (3) months shall be reported to HASU by the owner or renter and require HASU approval to ensure continuing eligibility of the occupant.

2. *Leaves of Absence.*

i. Temporary leaves of absence of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Extraordinary leaves of absence for specialized education, care-giving of a family member, religious or charitable work, or military service, lasting not more than two (2) years, where the owner or renter can demonstrate a commitment to returning to Grand County and otherwise complying with LUC Section 4.7.3(M), may be granted by HASU in advance. In the event of approval, the owner may rent the HDHO Lot or Unit to a Qualified Household during the extraordinary leave of absence.

D. Renewal. HASU will contact each owner and renter on an annual basis to re-qualify the Household. Each owner and renter shall submit a written affidavit that attests to their qualifications and any additional requested documentation required by HASU that proves the same.

E. Denials or Revocation. HASU may deny an Application or revoke a prior determination of eligibility if the occupant does not continue to qualify as a Qualified Householder under LUC Section 4.7.3 and these Rules and Regulations. If HASU denies or revokes an Application or prior determination of eligibility, that determination shall be referred to the Grand County Planning and Zoning Director for Final Decision.

F. Change in Eligibility. Once an Owner is approved as a Qualified Household, a change in the owner's eligibility status shall not constitute a violation hereunder for the period of time the owner continues to own the HDHO Lot or Unit so long as the occupant continues to qualify as a Qualified Household.

## SECTION 4. SALE OF UNITS

- A. Sale of Units, generally. An owner may sell an HDHO Lot or Unit For Sale By Owner or with a licensed Utah realtor. If an HDHO Lot or Unit is occupied during the Listing Period, the occupant must be a Qualified Household.
- B. Notification upon Listing. The owner shall notify the County when an HDHO Lot or Unit is listed for sale, when it goes under contract, and when it sells for the purposes of qualifying the potential or new owner.
- C. Prequalification of Owners. It is advisable for potential buyers of HDHO Lots and Units to request pre-approval as a Qualified Household pursuant to Section 3 above while a sale is pending, at least thirty (30) days and preferably sixty (60) days before closing.

## SECTION 5. APPEAL AND ENFORCEMENT

- A. Conflict. In the event of conflict between these Rules and Regulations and LUC Section 4.7, LUC Section 4.7 shall control.
- B. Appeal. A person adversely affected by a denial or revocation of the Grand County Planning and Zoning Director may appeal such Final Decision within thirty (30) days of the County's written decision pursuant to the process set forth in Chapter 1.16 of Grand County's General Ordinances.
- C. Violation, Defined. Any default under LUC Section 4.7, the Deed Restrictions recorded against the HDHO Development, or these Rules and Regulations, including fraud or misrepresentation by an Owner of an HDHO Lot or Unit, shall constitute a violation of County Ordinance.
- D. Investigation and Enforcement. Grand County shall oversee enforcement of LUC Section 4.7 and these Rules and Regulations. Possible violations of the same shall be investigated and enforced under Chapter 1.16 of the General Grand County Ordinances.
- E. Grand County Remedies. An Owner shall cure a Violation or shall sell the HDHO Lot or Unit to a Qualified Household.

ADOPTED by the Grand County Commission on March 2, 2021 in open session of a public meeting.

**GRAND COUNTY COMMISSION**

ATTEST:

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Mary McGann, Chair

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Quinn Hall, Clerk/Auditor



# **Exhibit 4**

NOTICE TO TITLE COMPANY:  
SECTION 3 HEREIN REQUIRES  
EACH DEED OF CONVEYANCE  
INCLUDE THE DEED RESTRICTION  
SET FORTH IN SECTION 3.2

***[This FORM is provided as a courtesy only.]***

***Developer shall not rely on this form as it may not be suitable for a particular parcel of property or development, and may not be approved by the Grand County Planning Commission or the Grand County Council.***

***Developer or Subdivider is responsible for creating and finalizing a Development Agreement pursuant to Grand County Code Section 4.7.8.] – DELETE PRIOR TO SUBMISSION***

**DEVELOPMENT AGREEMENT  
AND DEED RESTRICTION  
HIGH DENSITY HOUSING OVERLAY DISTRICT  
*Pursuant to Grand County Code Section 4.7***

This DEVELOPMENT AGREEMENT AND DEED RESTRICTION (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 202\_\_ (the “**Effective Date**”) by and between \_\_\_\_\_, a Utah limited liability company with its principal place of business located at \_\_\_\_\_ (“**Owner/Developer**”), and Grand County, a political subdivision of the State of Utah (“**County**”).

**Recitals**

- A. WHEREAS, Owner/Developer owns that certain property situated in Grand County, Utah, as more particularly described in ***Exhibit A*** (the “Property”), which is attached hereto and incorporated herein by this reference.
- B. WHEREAS, Owner/Developer has requested Grand County to apply the High Density Housing Overlay District (the “HDHO District Application”) to the Property to take advantage of the Development Standards and other Development Incentives set forth in Section 4.7 of the Grand County Land Use Code (the “LUC”).
- C. WHEREAS, the Grand County Commission has, in the exercise of its legislative discretion and following all required public hearings, approved the application of the HDHO District to the Property pursuant to the terms and conditions herein and provided that no fewer than eighty percent (80%) of the units developed on the Property are deed restricted for Primary Residential Housing for Actively Employed Households, as defined in LUC Section 4.7.3 and subject to the County’s HDHO Rules and Regulations on file with the County.
- D. WHEREAS, pursuant to the authority of Utah Code §17-27A-102(1)(b) and LUC Section 4.7, as amended, the Parties desire to enter into this Agreement for the purpose of formalizing certain obligations of Owner/Developer with respect to the Property, and

such other matters as the County and the Owner/Developer have agreed as particularly set forth below.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, including approval of the application of the HDHO District to the Property, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** Unless otherwise defined herein, all capitalized terms used in this Agreement shall have those meanings assigned in LUC Section 4.7 .
2. **COVENANT TO COMPLY WITH CODE.** In consideration of the application of the HDHO District to the Property, and specifically the Development Standards set forth in LUC Section 4.7.5 and the enforcement provisions set forth in LUC Section 4.7.11, Owner/Developer hereby covenants and agrees to strictly comply with the provisions, duties, and obligations of LUC Section 4.7 , which provisions, duties, and obligations are integrated herein by this reference.
3. **DEED RESTRICTION.**
  - 3.1. At least eighty percent (80%) of all Lots or Units developed on the Property shall be deed restricted for Primary Residential Occupancy for Actively Employed Households consistent with Section 4.7 of the Code, as amended (the “HDHO Lots and/or Units”).
  - 3.2. An HDHO Lot or Unit may not be sold or rented to a household not qualified under Section 4.7 (High Density Overlay Districts Overlay) of the Grand County Land Use Code (“LUC”).
  - 3.3. Each HDHO Lot or Unit is required to have and maintain those minimum standards of physical condition set forth in Exhibit B, Minimum Standards, to LUC Section 4.7 of the Code, which Minimum Standards are integrated herein by this reference.
  - 3.4. Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Agreement or LUC Section 4.7 by a record owner of any HDHO Lot or Unit in Grand County.
  - 3.5. Owner/Developer shall include the following deed restriction in each and every deed of original conveyance of an HDHO Lot or Unit, and each deed of conveyance thereafter shall include the same:

An HDHO Lot or Unit may not be sold or rented to a household not qualified under Section 4.7 (High Density Overlay Districts Overlay) of the Grand County

Land Use Code ("LUC").

The Property shall be used for Primary Residential Housing for Actively Employed Households as required by LUC Section 4.7, in perpetuity.

The Property is further subject to a Development Agreement and Master Plan recorded against the Property in the real property records of Grand County, Utah and HDHO Rules and Regulations on file with Grand County.

Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Deed Restriction by a record owner of any HDHO Lot or Unit.

3.6.

#### **4. DEFAULT.**

- 4.1. Violation or breach of any provision of this Agreement, or LUC Section 4.7, including but not limited to LUC Section 4.7.11, as amended, shall constitute an Event of Default. Upon the occurrence of any Event of Default, the County shall provide written notice by certified mail, postage prepaid, to the defaulting owner at the address on file with the Grand County Assessor's office, which notice shall be effective as of the date of deposit in the United States Mail. The defaulting owner shall have thirty (30) days to remedy the Event of Default, after which time the County may enforce all remedies available to it under this Agreement, LUC Section 4.7, or Utah law including specific performance and monetary fines pursuant to Section 4.2 herein.
- 4.2. Unless otherwise provided for in LUC Section 4.7, as amended, in the event an Event of Default is not cured under Section 4.1 above, fines in the amount of \$50 per day shall accrue until the Event of Default is cured. The County reserves the right to seek judicial enforcement of these fines, including a judgment lien and foreclosure.

#### **5. MISCELLANEOUS.**

- 5.1. Owner/Developer hereby waives any defenses, rights or remedies that it might otherwise assert against the County in connection with: (i) the application of the rule against perpetuities to this Agreement; or (ii) any claim that the covenants in this Agreement recorded against the HDHO Lots and Units are not covenants running with the land upon the Property. This waiver shall be binding upon and inure to the benefit of the successor and assigns of the Owner/Developer and the County.
- 5.2. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of any of the foregoing Agreement shall be invalid or prohibited under applicable law, such provisions shall

be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions in this Agreement.

- 5.3. If any party shall take or defend against any action for any relief against another party arising out of this Agreement, the prevailing party in such action or defense shall be entitled to reimbursement by the other party for all costs including, but not limited to, reasonable attorneys' fees and court costs incurred by the prevailing party in such action or defense and/or enforcing any judgment granted therein, all of which costs shall be deemed to have accrued upon the commencement of such action and/or defense and shall be paid whether or not such action or defense is prosecuted to judgment. Any judgment or order entered in such action or defense shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment.
- 5.4. This Agreement shall be governed by and construed under Utah law.
- 5.5. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the parties.
- 5.6. Paragraph or section headings within this Agreement are inserted solely for convenience of reference and are not intended to, and shall not, govern, limit or aid in the construction of any terms or provisions contained herein. Further, whenever the context so requires herein, the neuter and gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
- 5.7. Except for legislative changes of LUC Section 4.7 which are incorporated herein, this Agreement may be amended only upon written amendment executed by both Parties, recorded in the real property records of Grand County, Utah; provided, however, that all material terms and provisions, including the percentage of HDHO Lots or Units, may not be amended or modified without reapplication to the County.
- 5.8. This Agreement shall be recorded by Owner/Developer prior to recordation of a final plat or issuance of a building permit for any unit within a site plan approved hereunder, as required by LUC Section 4.7 .

IN WITNESS WHEREOF, this Agreement is effective as of the date first written above.

COUNTY: Grand County  
A political subdivision of the State of Utah

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Mary McGann,  
Chair, Grand County Commission

STATE OF UTAH )

COUNTY OF GRAND ) ss  
)

On \_\_\_\_\_, 202\_, **Mary McGann** as Chair of the Grand County Commission , a Utah political subdivision, appeared before me and acknowledged and swore to me that the foregoing Agreement was signed on behalf of Grand County by authority of its Policies and Procedures and Utah law.

\_\_\_\_\_  
NOTARY PUBLIC

Owner/Developer:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH )  
) ss  
COUNTY OF GRAND )

On \_\_\_\_\_, 202\_, \_\_\_\_\_ **(name)**, as \_\_\_\_\_ **(title)** of \_\_\_\_\_ **(entity name)**, a Utah \_\_\_\_\_ **(entity type)**, appeared before me and acknowledged and swore to me that the foregoing Agreement was signed on behalf of \_\_\_\_\_ **(entity name)** by authority of its Articles of Organization [**OR Incorporation**] and Operating Agreement [**OR Bylaws**]. – *CHOOSE APPROPRIATE INFO HIGHLIGHTED AND DELETE REST PRIOR TO SUBMISSION*

\_\_\_\_\_  
NOTARY PUBLIC

**Exhibit A**  
**Real Property**  
**Legal Description**