

Prepared by & Return to:
PHFA-Legal Division
211 North Front Street, P.O. Box 8029
Harrisburg, Pennsylvania 17105-8029
717-780-3846

PIN / ID Number: _____

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TC _____

PENNSYLVANIA HOUSING FINANCE AGENCY
INDENTURE OF RESTRICTIVE COVENANTS
FOR LOW INCOME HOUSING TAX CREDITS
AND TAX CREDIT ASSISTANCE PROGRAM

THIS INDENTURE, dated this ____ day of _____, 2009, by and between _____, a Pennsylvania _____, with a principal place of business at _____ ("Owner"),

AND

PENNSYLVANIA HOUSING FINANCE AGENCY, a public corporation and government instrumentality of the Commonwealth of Pennsylvania, with principal offices at 211 North Front Street, Harrisburg, Pennsylvania 17101 (the "Agency"),

WITNESSETH:

WHEREAS, the Agency has been designated by the Governor of the Commonwealth of Pennsylvania as the housing tax credit agency for the Commonwealth of Pennsylvania for the allocation of low income housing tax credit dollars pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, Owner holds title to property located at _____, _____ County, Pennsylvania, **as more fully described in Exhibit A attached hereto and made a part hereof**, known as _____ (the "Development"); and

WHEREAS, based upon Owner's representations, Owner has received, pursuant to Section 42 of the Code, an allocation of low income housing tax credit dollars for the

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Development from the Agency (the "Tax Credits") which allocation is subject to Owner executing, delivering and recording in the official land deed records of the county in which the Development is located this Indenture that creates certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Development as set forth herein; and

WHEREAS, the Agency has agreed to provide a loan in the amount of _____ (\$ _____) from funds made available through the American Recovery and Reinvestment Act of 2009 ("ARRA") under the Tax Credit Assistance Program ("TCAP"), which Owner desires to borrow from the Agency, subject to the terms and conditions set forth herein, the requirements of the Low Income Housing Tax Credit Program set forth in Section 42 of the Internal Revenue Code, as amended, and the regulations, notices and rulings promulgated in accordance thereto, ARRA and TCAP guidelines, as amended and modified from time to time by the U.S. Department of Housing and Urban Development, and is prepared to lend to Owner up to the full amount of said loan to finance the construction of the Development; and

WHEREAS, Owner under this Indenture, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Development shall be and are covenants running with the Development for the term stated herein and binding upon all subsequent owners of the Development for such term.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
DEFINITIONS

All words and phrases defined in Section 42 of the Code and in the Regulations (as such term is herein defined) pertaining thereto promulgated by the U.S. Department of Treasury or the U.S. Department of Housing and Urban Development shall have the same meanings in this Indenture.

ARTICLE II
OWNER'S REPRESENTATIONS AND WARRANTIES

- A. The development will be constructed, financed, operated and managed in a manner which is fundamentally and materially consistent with the representations and certifications set forth in the original application in which the Agency made an allocation to the development.
- B. Owner is and shall continue to be duly organized and existing under the laws of the Commonwealth of Pennsylvania as the type of entity it represents itself to be and authorized to perform the activities contemplated by the Development financing.

- C. All statements and representations made by Owner to the Agency in connection with the low income housing tax credits or relating to the Development were true and correct in all material respects when made by Owner.
- D. Owner has and shall continue to have good and marketable title to the Development.
- E. Owner acknowledges that the Development is and shall remain low income residential rental property, in accordance with Section 42 of the Code and the regulations (proposed, temporary and final), which shall include, but are not limited to compliance monitoring regulations, promulgated by the United States Treasury Department thereunder, as well as all public rulings, notices, procedures, announcements and bulletins issued by the Internal Revenue Service (collectively, the "Regulations"), for the term of this Indenture. Owner will not knowingly take or permit to be taken any action which would, either directly or indirectly, subject Owner or the Development to non-compliance with Section 42 of the Code, the Regulations or ARRA.
- F. During the term of this Indenture, Owner agrees and warrants that each low income unit is and will remain suitable for occupancy.
- G. Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Indenture are paramount and controlling as to the rights and obligations set forth, and supersede any other requirements in conflict herewith.
- H. The Agency issued the allocation of tax credits based upon the Owner's representation that \$_____ of the developer's fee will be used to provide social supportive services or committed as an internal rental subsidy to subsidize rents for tenants below 20% of the area median income.
- I. The Agency issued the allocation of tax credits based upon the Owner's representation that an amount of funds equal to the increased equity raised from the additional developer's fee in the amount of \$_____ will be committed as an internal rental subsidy to subsidize rents for the _____ units set aside as accessible housing to persons with disabilities. The units will be marketed to and affordable to tenants who need the accessible features and whose incomes are at or below 20% of the area median income. In the event there are no eligible tenants to rent said accessible units, the units will then be rented to the lowest income households requiring the accessible features and the tenant's portion of the rent shall be affordable based on the tenant's income level.
- J. The Agency issued the allocation of tax credits based upon the Owner's representation that an amount of funds equal to the increased equity raised from the additional developer's fee in the amount of \$_____ will be committed as an internal rental subsidy to subsidize rents for the _____ units set aside for tenants whose incomes are at or below 40% of area median income.

- K. The Agency issued the allocation of tax credits based upon the Owner's representation that an amount of funds equal to the increased equity raised from the additional developer's fee in the amount of \$_____ will be committed as an internal rental subsidy to subsidize rents for the _____ units set aside as accessible housing to persons with disabilities which will be marketed and affordable to tenants who need the accessible features and whose incomes are at or below 20% of the area median income and the _____ units set aside for tenants whose incomes are at or below 40% of area median income. In the event there are no eligible tenants to rent said accessible units, the units will then be rented to the lowest income households requiring the accessible features and the tenant's portion of the rent shall be affordable based on the tenant's income level.
- L. During the term of this Indenture, Owner shall provide supportive services to tenants for the duration of the compliance period, pursuant to a certain supportive services plan submitted to the Agency in connection with the allocation of tax credits.
- M. _____ units in the development must be made available to persons who need accessible features of the units.
- N. If applicable, for the term of this Indenture, the Development shall continue to be in compliance with Section 42(h)(5)(A-C).
- O. Owner (or any successors or assigns thereto) shall not displace, evict or terminate an existing tenant of any residential unit subject to this Indenture and included in the applicable fraction (other than for good cause) in accordance with the Code and/or Regulations or make an increase in the gross rent with respect to a low income unit not otherwise permitted by the Code. Furthermore, Owner shall continue to comply with any and all applicable Code, Regulations or technical advice of the IRS with respect to such tenancy.
- P. Units in the development with accessible features shall be available to persons requiring such features during the first 30 days of rent up. Thereafter, Owner has established a policy to allow the units to be occupied by persons who need the accessible features to the greatest extent feasible and said policy has been incorporated in the lease provisions. Furthermore, the policy and lease shall provide that in the event an accessible unit is occupied by a person not requiring such features, the tenant agrees to move to a comparable unit without such accessible features.
- Q. Owner shall submit information including, but not limited to unit amenities, household size, household income and move in information and any ongoing unit vacancies in a secure and timely manner in a form proscribed by the Agency. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to Agency such additional reports as Agency may deem necessary to ensure compliance with the requirements of the Regulations and this Indenture.

ARTICLE III
RENTAL RESTRICTIONS

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Extended Use

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Pursuant to its application for low income housing tax credits with the Agency, Owner represents, warrants and covenants throughout the term of this Indenture:

- A. The applicable fraction (as defined in Section 42(c)(1) of the Code) shall be at least _____% and shall continue to comply during the term of this Indenture with Section 42(h)(6)(B)(i).
- B. Owner hereby certifies that a minimum of _____ units will be available and affordable to tenants at or below 50 percent of median income.
- C. Owner hereby certifies that the total tenant paid rent received by the Owner for _____ units may not exceed the rents established for units at 50% of median income. In the event the Owner receives subsidies for rent from any source (including, without limitation, project-based, tenant based or internal rent subsidy programs), Owner certifies that upon expiration or termination of the subsidy the tenant paid portion of the rent may not exceed the 50% of area median income tax credit rent.
- D. In accordance with Section 42(g)(1) of the Code, Owner has elected the Minimum Set-Aside Requirement to be _____ percent of the units at _____ percent of median income.
- E. The Agency allocated tax credits based upon the Owner's representation that _____ units in the Development will be set aside as accessible housing to persons with disabilities, which shall be affordable to households with income at or below 20% of area median income ("extremely low income"). This covenant means that Owner shall take all necessary steps to market all accessible units to households where a member needs the accessible features of the unit and the rent shall be affordable to households with extremely low income. In the event there is no eligible extremely low income household identified for an accessible unit, Owner shall rent the unit to the lowest income households requiring the accessible features and the tenant's portion of the rent shall be affordable based on the tenant's income level. If there is no household needing the accessible features, the Owner may rent the unit to another eligible household. However, the Owner must make the accessible unit available and affordable to the next qualified extremely low income household needing the accessible features (as soon as a vacancy arises at the property allowing the nondisabled household to be relocated to a comparable unit). Owner hereby certifies that it will make every effort to reach this designated tenant population and, to that end, shall comply with the updated and amended protocols and policies established by the Agency with regard to the accessible units, including the procedures set forth in the Agency's Accessible Unit Policy, as amended from time to time, incorporated herein by reference.

ARTICLE IV
TERM OF INDENTURE

- A. Except as otherwise provided herein, the term of this Indenture (consistent with Section 42(h)(6)(D) of the Code) shall begin on the first day of the compliance period specified in

Section 42 of the Code and shall terminate thirty (30) years after the first day of the Compliance Period (such period being herein referred to as the "Compliance Period" or the "Extended Use Period");

- B. Notwithstanding paragraph A above, Owner shall comply with the requirements of Section 42 relating to the Compliance Period, provided, however, the Compliance Period for any building that is part of the Development shall terminate on the date the Development is acquired by foreclosure or transferred by a deed or other instrument in lieu of foreclosure unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with Owner a purpose of which is to terminate such Compliance Period.
- C. For a period of three (3) years from the date of termination of the Extended Use Period made pursuant to Paragraph B above, Owner (or any successors or assigns thereto) shall not displace, evict or terminate an existing tenant of any residential unit subject to this Indenture and included in the applicable fraction (other than for good cause) or increase the gross rent above the maximum allowed under Section 42 of the Code with respect to such units.

ARTICLE V
OWNER'S COVENANTS

- A. Owner further acknowledges and agrees that this Indenture shall inure to the benefit of all prospective, present and former low income tenants or occupants of the Development who meet the income limitation applicable to the Development under Section 42(g) of the Code as third party beneficiaries who, either individually or collectively, shall have the right to enforce Article III and Article V.C. of this Indenture in any tribunal in the Commonwealth of Pennsylvania.
- B. Owner shall not discriminate on the basis of race, creed, color, gender, age, handicap, marital status, national origin, status as a holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937, family status or religion, in the lease, sale, rental, use or occupancy of the Development or in connection with the employment or application for employment of persons for the operation and management of the Development or in connection with any improvements to be erected thereon or in connection with maintenance of the Development.
- C. If Owner becomes aware of any situation event or condition that would result in non-compliance with Section 42 of the Code, the Regulations or ARRA, Owner shall promptly submit written notice thereof to the Agency.
- D. Owner, for itself, its successors and assigns, agrees that the terms, conditions and restrictions of this Indenture shall be covenants running with the land, and that in any deed of conveyance of the Development or any part thereof, said terms, conditions and restrictions shall be incorporated by reference to this Indenture and the record hereof as fully as the same are contained herein for the Compliance Period as defined herein.

- E. Subject to the requirements of Section 42 of the Code and this Indenture, Owner may sell, transfer or exchange the entire Development at any time, but, unless the Compliance Period has terminated in accordance with Article V hereof, Owner (and its successors and assigns) shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Development or any interest therein that such acquisition is subject to the requirements of this Indenture and to the requirements of Section 42 of the Code and Regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Development or any low income portion of the Development.
- F. Owner agrees to notify the Agency in writing of any sale, transfer or exchange of the Development.
- G. The Agency may at any time during the term of this Indenture seek to enforce all material representations made by the Owner at any time.

ARTICLE VI
OWNER INTEGRITY

A. Definitions for this article are as follows:

- (1) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth and/or Agency.
 - (2) Consent means written permission signed by a duly authorized officer or employee of the Commonwealth and/or Agency, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth and/or Agency shall be deemed to have consented by virtue of execution of this Indenture.
 - (3) Owner means the individual or entity that has entered into this Agreement with Agency, including directors, officers, partners, managers, key employees, and owners of more than five percent (5%) interest.
 - (4) Financial interest means ownership of more than a five percent (5%) interest in any business or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - (5) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- B. Owner shall maintain the highest standards of integrity in the performance of this Indenture and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth and/or Agency.

- C. Owner shall not disclose to others any confidential information gained by virtue of this Indenture.
- D. Owner shall not, in connection with this or any other Indenture with the Commonwealth and/or Agency, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth and/or Agency.
- E. Owner shall not, in connection with this or any other Indenture with the Commonwealth and/or Agency, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth and/or Agency.
- F. Except with the consent of the Commonwealth and/or Agency, neither Owner nor anyone in privity with it shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Indenture except as provided therein.
- G. Except with the consent of the Commonwealth and/or Agency, Owner shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this Development.
- H. Owner, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify Agency in writing.
- I. Owner, by execution of this Indenture and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these provisions.
- J. Owner shall, upon request of the Office of Inspector General or any state or federal agency or authority, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records of Owner concerning, and referring to this Indenture, or which are otherwise relevant to the enforcement of these provisions.

ARTICLE VII
OWNER RESPONSIBILITY

- A. Owner certifies that it is not currently under suspension or disbarment by the Commonwealth, any other state, or the federal government.
- B. If Owner enters into any contracts or subcontracts under this Indenture with contractors or subcontractors who are currently suspended or debarred by the Commonwealth or who become suspended or debarred by the Commonwealth during the term of this Indenture or

any extensions or renewals thereof, Agency and/or the Commonwealth shall have the right to require Owner to terminate such contracts or subcontracts.

- C. Owner agrees that it shall be responsible for reimbursing the Commonwealth for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General or any state or federal agency or authority relating to an investigation of Owner's compliance with the terms of this Indenture or any other agreement between Owner and the Commonwealth which results in the suspension or debarment of Owner.

ARTICLE VIII
NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of this Agreement, Owner and all contracts to which the Owner is a party, shall comply with the following:

- A. Owner and contractor shall not discriminate against nor intimidate any employee, applicant for employment, independent owner, or any other person for the manufacture of supplies, performance of work, or any other activity because of race, color, religious creed, ancestry, handicap, national origin, age, or sex. Owner and contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Owner shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- B. Owner and contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.
- C. Owner and contractor shall send each labor union or workers' representatives with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Owner.
- D. The Owner, contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- E. It shall be no defense to a finding of noncompliance with this Nondiscrimination/Sexual Harassment Clause that Owner had delegated some of its employment practices to any union,

training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Owner was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

- F. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Owner will be unable to meet its obligations under this nondiscrimination clause, Owner shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- G. Owner shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Owner's noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and all money due or to become due under this Agreement may be forfeited. In addition, Owner may be declared temporarily ineligible for further Agency or Commonwealth contracts and Agency may proceed with debarment or suspension and may place the Owner in the Contractor Responsibility File and other sanctions may be imposed and remedies invoked.
- H. Owner and contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the contracting agency and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment clause. If Owner does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Department of General Services' Bureau of Contract Administration and Business Development.
- I. Owner and contractor shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.
- J. Owner and contractor shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract, so that such provisions will be binding upon each subcontractor.
- K. Owner obligations under this clause are limited to Owner's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

ARTICLE IX
ENFORCEMENT OF PROVISIONS

- A. Upon violation of any of the provisions of this Indenture by Owner, Agency, at its option, may treat the violation as an Event of Default under the Open-End PHFA Mortgage and Security Agreement and PHFA Note, both of even date herewith and entered into between

Owner and Agency (hereinafter referred to as “Mortgage” and “Note”, respectively), and may exercise any of its rights and remedies provided for in the Mortgage and Note. The Agency may also take any other action it deems desirable or necessary to ensure the proper operation and financial viability of the Development and Agency may apply to any court, State or Federal, for specific performance of this Indenture, for an injunction against any violation of this Indenture, or for such other relief as may be appropriate, since the injury to Agency arising from a default under any of the terms of this Indenture would be irreparable and the amount of damage would be difficult to ascertain.

- B. Owner acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Indenture are to assure compliance of the Development and Owner (and its successors and assigns) with Section 42 of the Code and the Regulations. Owner in consideration for receiving the Tax Credits or additional Credits (if any) for the Development, hereby agrees and consents that the (i) Agency, the Commonwealth of Pennsylvania and/or the United States of America shall be entitled to enforce specific performance by Owner, its successors and assigns, of its obligations under this Indenture in any tribunal in the Commonwealth of Pennsylvania for any and all breach of the conditions and restrictions hereof or material representations made by Owner at any time, and in addition to all other remedies provided by law or in equity, and (ii) the tenants, either individually or collectively, shall be entitled to enforce specific performance by Owner, its successors and assigns, of Article III of this Indenture in addition to all other remedies provided by law or in equity with regard to any breach of said Article III.

ARTICLE X
MISCELLANEOUS

- A. This Indenture shall not be amended without the prior written agreement of the parties hereto.
- B. The Agency or its agents or assigns shall have the right of entry and inspection of the Development and shall have access to inspection and reproduction of all records, books and accounts for the Development during regular business hours.
- C. The invalidity of any clause, part or provision of this Indenture shall not affect the validity of the remaining portions thereof.
- D. This Indenture and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania and, where applicable, the laws of the United States of America.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be signed on the date first written above.

ATTEST (WITNESS)

_____,
a _____

_____ By: _____

Title: _____

_____ By: _____

Title: _____

ATTEST (WITNESS)

PENNSYLVANIA HOUSING FINANCE AGENCY

_____ By: _____

COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF _____ :

On this, the _____ day of _____, 2009, before me, the undersigned officer, personally appeared _____, who being sworn according to law, deposes and states that he/she/they is/are the _____ of _____, a _____, General Partner of _____, a _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they, being authorized to do so, executed the same for the purpose therein contained, and desires the same to be recorded as such

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF DAUPHIN :

On this, the ___ day of _____, 2009, before me, the undersigned officer, personally appeared _____, who acknowledged her/himself to be an authorized officer of PENNSYLVANIA HOUSING FINANCE AGENCY, a public corporation and government instrumentality created by the Commonwealth of Pennsylvania (35 P.S. Section 1680.101 et seq., as amended), and acknowledged that s/he as such authorized officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, and desires the same to be recorded as such.

Notary Public

I hereby certify that the principal place of business and complete post office address of the within-named Agency is, and after recordation this Indenture should be returned to:

Pennsylvania Housing Finance Agency
Attention: Legal Division
211 North Front Street
P. O. Box 8029
Harrisburg, Pennsylvania 17105-8029

Please mail this Indenture to the above post office address.

By: _____
Agent for Pennsylvania Housing Finance Agency

COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF _____ :

RECORDED on this ____ day of _____, 2009, in the Office of the Recorder of Deeds in and for said County, in Deed Book Volume _____, Page _____.

Recorder of Deeds