



# Rancho Santa Fe FOUNDATION

INSPIRED GIVING ~ CLOSE TO HOME AND AROUND THE WORLD

## The Charitable Real Estate Fund ("CREF")

### Gift Acceptance Policies, Procedures, and Guidelines

Established in 2007  
by  
The Rancho Santa Fe Foundation

*For the purpose of...*

***Helping donors become impactful philanthropists through  
gifts of real estate***

[www.rsffoundation.org](http://www.rsffoundation.org)

Approved May 2007



**Rancho Santa Fe**  
**FOUNDATION**  
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# **The Charitable Real Estate Fund**

## *Gift acceptance Policies, Procedures, and Guidelines*

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# Charitable Real Estate Fund

*A Supporting Organization of*  
The Rancho Santa Fe Foundation

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## *Introduction*

Practical considerations have historically limited Rancho Santa Fe area donors and their professional advisors to gifting traditional assets such as cash and marketable securities when making charitable contributions. Considerable wealth is held in real estate, and related or auxiliary tangible personal property. Property contributed by donors, to either use such assets to directly accomplish a charitable purpose, or to liquidate such assets and to use the proceeds therefrom for charitable purposes, gives this asset significant charitable potential. However, the complexities, costs, and liability issues surrounding gifts of real estate have typically restricted its use.

The Charitable Real Estate Fund (CREF), which gains public charity status by virtue of its affiliation with the Rancho Santa Fe Foundation (Foundation), is managed by a separate board of directors comprised of local leaders in the real estate profession, who may also serve on the Foundation's Board of Directors. The CREF Board oversees the process that converts commercial and residential property into charitable dollars. Each potential gift of real estate is unique and will be evaluated on a case-by-case basis according to the policies and standards set forth herein.

By generously volunteering their time and expertise, the Directors of the CREF are providing a highly beneficial and unique community service. Their involvement ensures a streamlined process, reduces transactional costs, avoids undue complications and risks, and helps to maximize the value upon sale. In order to focus on this role, the CREF Directors ask that the Foundation manage the day-to-day operations of the Charitable Real Estate Fund. All inquiries regarding potential gifts of real estate should be made directly to the Foundation.

The Foundation has chosen to sponsor this program in order to encourage and ease the transfer of real estate assets to support effective philanthropy to nonprofit organizations and the entire community.

## **I. *Guidelines for Reviewing Gifts of Real Property***

It is the goal of the CREF to find a way to accept every offered property. This, however, may not be possible in situations where ownership of a particular property would pose an unacceptable level of risk. Gifts offered to the CREF will be evaluated using the following process:

- The Executive Director, Christy Wilson, will collect preliminary information from a prospective donor (Appendix C), including the intended charitable beneficiary.
- Decision to accept gifts must be based on recorded approval from a majority of the CREF's board.
- If the gift is accepted, the appropriate board members will advise on decisions relating to managing and marketing the property.
- Decisions to sell accepted property must be approved by a majority of the CREF's board.
- Upon sale, the net proceeds will be put to the intended charitable purpose as soon as possible.

The following is the more detailed set of guidelines which will be used for all real property acquisitions prior to acceptance and recording of any documents:

### **A. Minimum Asset Value and Suitability Requirements for Gifts of Property**

1. The minimum net fair market value for a gift of real estate should be \$400,000.
2. The CREF board will consider gifts only if the current and anticipated use of the property is legal, ethical, and contributes to benefit and well-being of the community and its citizens.
3. The intended charitable use of the net sale proceeds must not generate a liability to CREF or the Foundation.

### **B. Mortgaged and Other Debt Encumbered Real Estate**

Property subject to a mortgage may be considered for acceptance by the CREF board of directors on a property-by-property basis. When real property is accepted subject to a mortgage, the mortgage should be current, transferable without loan acceleration, may be paid off without substantial penalty, and will only be accepted following the CREF approval. Prior to its acceptance, a clearly established method for the payment of the debt will be determined while the CREF is holding the donated property prior to its ultimate sale.

Note: Donors of real estate gifts subject to mortgage indebtedness may realize a reduction in tax benefits, including possible taxable income under the "bargain sale" rule.

### **C. Appraisal**

A qualified MAI (designation as a Member of the Appraisal Institute) or other such certified appraisal as may be required by the IRS is to be provided by the donor in order to satisfy the tax deductibility for the donor of the real estate gift. The IRS requires the qualified appraisal be as of a date not more than 60 days prior to the date of the gift.

#### **D. Environmental Review and Requirements**

No interests in real property, whether outright, in trust, by bequest, as a secured interest, or otherwise, will be accepted by or on behalf of the CREF without first complying with the following:

1. A Phase I environmental review, or other such assessment as may be deemed appropriate by the CREF's board, will be performed on every potential real property asset prior to acceptance by the CREF. In some cases, an environmental review will need to be performed by the person or firm approved by the CREF as an approved consultant. Each environmental review will be reviewed and approved by the CREF.
2. If the environmental review indicates areas of significant concern, an approved consultant will perform additional investigation(s), including Phase II or Phase III audits and/or other remediation.
3. Tests for radon may be required.
4. An endangered species report may be required by the CREF, depending on location of property and amount of vegetation thereon.
5. If the above procedures disclose measurable risk of liability, the real property will not be accepted.
6. All contracts for environmental audits will be reviewed by the staff and the Board of the CREF.
7. The donor is expected to pay for all environmental audits.

#### **E. Survey**

A survey by a registered land surveyor within the preceding 12 months is required before taking title.

#### **F. Title Search and Title Insurance**

The donor is responsible for providing clear marketable title showing that title to the property is free and clear of liens and encumbrances (subject to section I.B, above) to the property, as evidenced by title insurance and to the satisfaction of the CREF. A current title commitment including copies of all recorded documents must be received and approved by the CREF for all proposed gifts of real property prior to transfer of title. Donor will provide a title insurance binder when property is transferred.

In addition, a review will be made of any potential governmental or regulatory actions and/or special assessments that could adversely affect the value and marketability of the proposed gift real estate.

**G. Owner’s Affidavit**

An owner’s affidavit in a form approved by the CREF may be required for real property acquisitions.

**H. Salability of the Proposed Real Estate Gift**

Qualified real estate professionals must give a favorable opinion of the prospect of selling the proposed gift of real property at an appropriate price within an acceptable period.

**I. Real Property Taxes and Other Carrying Costs**

The donor will be required to provide evidence that all real property taxes and other carrying costs are current. Donors will be required to pay or prorate the taxes and other carrying costs for the year of the donation.

**J. Leases**

The following conditions are required for commercial property subject to leases: the leases must have a good payment history, not be in default, and must be assignable by landlord. Credit checks may be made on existing tenants. The CREF will not accept real property if credit history problems pose an unreasonable liability or risk.

Following approval to accept the proposed gift of real estate, the leases will be assigned to the CREF and all deposits, advance rents, and other monies will be transferred to the CREF or otherwise accounted for as required.

**K. General Warranty Deed**

Title will be transferred to the CREF by a grant deed or general warranty deed unless otherwise agreed to in writing. Legal counsel and/or legal staff will review all deeds prior to transfer.

**L. Special Deed Covenants**

The CREF must approve any special deed covenants.

**M. Operating Capital Reserves**

Donors of real property **may** be required to fund in advance operating reserves for taxes, insurance, mortgage payments, and all other holding and carrying costs expected to be incurred by the CREF until the real property is liquidated.

**It is the intent of the CREF to work to ensure that the donated property is properly maintained and operated, including operations at a cash flow neutral basis.**

**Should the CREF Board decide to incur additional liability to cover operating expenses, approval/acknowledgement will be obtained from the Foundation’s Executive Committee before proceeding.**

Donations of real estate designated for split-interest purposes may require some additional gifts of cash and/or marketable securities to provide adequate operating capital while the donated real property is in the process of being sold.

**N. Unsolicited Deeds**

Unsolicited deeds will not be accepted. Upon the receipt of unsolicited deeds, the CREF will notify the grantor in writing that the real property has not been accepted and will not be accepted until all requirements of the acceptance policy are met. The Foundation may elect to pay some or all of the usual donor costs and expenses.

**O. Government Regulation**

All applicable governmental and regulatory commission regulations, such as zoning ordinances, building codes, conservation acts, etc., shall be in compliance prior to the CREF's acceptance of the real estate.

**P. Payment of Transfer Costs**

Transfer costs including survey, appraisal, taxes, title insurance, environmental review, closing attorney's fees, etc., shall be paid by the donor.

**Q. Tax Review**

Prior to CREF accepting any gift of real property or an interest in real property, the prospective donor shall obtain at his expense a review of the tax consequences of the donation and of any subsequent sale, lease, joint venture, partnership or other conveyance or use of the property.

1. If the property is an income producing property, the Fund shall require the following documents or information:
  - i. whether the donated property is "dealer" property (such as lots in a subdivision);
  - ii. whether the subject property is debt-financed; and
  - iii. if the subject property is debt-financed, (1) the outstanding note, deed of trust or mortgage; (2) the date that the debt was incurred; (3) the adjusted basis; and (4) the donor's holding period for the property.
2. If the documents or information provided pursuant to section 1 above indicate any adverse tax consequences (e.g., subject the Fund to unrelated business taxable income ["UBIT"]), the CREF board shall have the authority to hire an outside tax attorney, at the prospective donor's expense, for the purposes of determining the tax consequences associated with accepting the gift and with any contemplated use or conveyance of the property.

**R. Due Diligence**

Prior to acceptance of real estate gifts by the CREF, designated representatives will analyze the real property, including a site visit, and will review all documentation required, taking into consideration time constraints of the donor. The proposed gift of real property will be reviewed by the CREF, and will include but not be limited to the following:

1. Marketability and potential sale of the proposed real estate gift within a two-year period.

2. The condition of any improvements located on the real property.
3. The qualified appraisal, survey, title report, environmental report(s), and other related due diligence documents.
4. Review of the market area of the property for potential problems that could affect the salability of the potential gifted property.
5. The current and potential zoning, land use, and any concurrency issues for the real property.
6. The holding potential and resale potential.
7. Projected costs and net proceeds associated with holding the real property for resale.
8. Other considerations specific to the acceptance of the real property.

**S. Selling Price of Donated Property**

The CREF reserves the absolute right to sell donated real estate for what it deems to be a marketable and appropriate value.

**II. SPECIAL TYPES OF ACQUISITIONS**

In addition to the requirements as outlined above in Part I, the following types of real property require additional review prior to acquisition:

**A. Real Property Given to Establish Charitable Remainder Trusts (CRT)**

1. Real property will be only accepted to establish net income charitable remainder unitrusts or charitable remainder FLIP unitrusts. Mortgaged property will not be acceptable for gifts to a CRT. Per IRS rules, mortgaged property inside a charitable remainder trust will result in adverse tax consequences and reduce the financial benefits available for the donor.
2. Additional gifts of cash and/or marketable securities will be required for gifts of real estate to a charitable remainder unitrust to provide adequate operating funds while the donated real property is in the process of being sold.

**B. Gift of Remainder Interest in Personal Residence or Ranch/Farm (Life Estate Reserved)**

1. The Donor must have clear title to the primary personal residence or ranch/farm, and such property must be free of all liens and encumbrances.



2. The fair market value of the primary residence or ranch/farm should exceed \$400,000 and must be supported by a qualified MAI appraisal that meets IRS guidelines and be obtained at the donor's expense.
3. The value of the charitable remainder interest in the personal residence or ranch/farm should equal or exceed 25% of the fair market value of the property.
4. The donor must agree in writing to retain total responsibility for all estate taxes, insurance and property upkeep and maintenance throughout the term of the life estate interest and to bear the costs of remedial action, if necessary, to correct any adverse environmental conditions. The donor must agree to provide the CREF continuing proof of insurance coverage against casualty perils and payment of annual property taxes.
5. The donor must grant access to the site for environmental testing, site visits, survey and related purposes.

**C. Real Property Given to Fund Charitable Gift Annuities**

Using real property to fund a charitable gift annuity is problematic and can only be considered in limited circumstances and at steep discounts. However, gifts of real estate may readily be made to establish a charitable remainder trust. (See A above)

**D. Time Share Units**

The CREF will not accept time-share units as gifts.

**E. Interest in a Partnership**

The CREF will not accept partnership interests as gifts.

**III. PROCEDURES FOR THE MANAGEMENT AND SALE OF REAL PROPERTY**

**A. Property management**

**1. Property with current management**

If donated real estate has an existing property manager which is acceptable to the CREF, it is the policy of the CREF to retain, whenever possible, the existing property manager while the gifted property is held by the CREF.

**2. Property without a current property manager**

The authority to appoint a new property manager will be given to the CREF.

**B. Listing property for sale**

**1. Donated real estate referred by real estate professional**

It is the policy of the CREF that real property which is donated by a donor as a direct result of a referral from a real estate professional will be listed for sale with

the referring real estate professional, providing that professional is fully qualified, is licensed and in good standing and has an acceptable marketing plan approved by the CREF.

**2. All other donated real estate**

When selecting a listing company for donated property, which has not been referred to the CREF by a real estate professional, the CREF shall take into consideration the following:

- i. Type of property (residential, commercial, undeveloped land, etc.)
- ii. Location (county, etc.)
- iii. Qualifications of potential agents knowledgeable in the specific market.
- iv. Marketing proposals from a limited number of qualified agents.

An appropriate listing company shall be selected and approved by the CREF Board.

**C. Possibility of Single Member LLC (SMLLC).**

CREF may determine that it is prudent to transfer real property (and particularly operating real estate, i.e., where there are lessees and/or commercial operations on the property) to a SMLLC, in addition to obtaining liability insurance, in order to manage liability risks.

**IV. EXPENSES ASSOCIATED WITH THE RECEIPT, MANAGEMENT AND SALE OF DONATED REAL ESTATE**

- A.** The donor will be responsible for the payment of all costs associated with the transfer of gifted real estate as outlined in Part I. above unless alternative arrangements have been approved by the CREF board of directors.
- B.** All income and expenses incurred by the CREF directly associated with the evaluation, retention, management and sale of the donated real property shall be accounted for by the individually named fund holding such donated real estate within the CREF. Such income and expenses may include, but are not limited to, rental income, title search, appraiser's fee, insurance, security, environmental clean-up, real estate taxes, property management, property repair and maintenance needed to sell or maintain the property, debt service (mortgage payments) and prior debts levied against the property, and the real estate commission for the sale of the property.
- C.** Upon acceptance of the donated property, a one-time administrative fee, set forth below shall be assessed toward the operating and administrative costs of accepting the gift, including staff services. The **minimum** acceptance fee, no matter the amount of the gift, is \$5,000. Although the Directors of the CREF serve in a volunteer capacity, and the CREF seeks to offer its services to all donors and nonprofits in the greater Rancho Santa Fe area at a low cost, the CREF

is a separate legal entity from the Foundation and has ongoing expenses associated with its operations.

### **Administrative Fee Schedule**

1 <sup>st</sup>	\$1,000,000 of Asset Value	1.5%
2 <sup>nd</sup>	\$1,000,000 of Asset Value	1.0%
3 <sup>rd</sup>	\$1,000,000+ of Asset Value	0.5%

## APPENDIX A

### DONOR RESPONSIBILITIES FOR PROPOSED GIFTS OF REAL ESTATE THE CHARITABLE REAL ESTATE FUND

- A. A qualified MAI (designation as a Member of the Appraisal Institute) or other such certified appraisal as may be required by the IRS is to be provided by the donor in order to satisfy the tax deductibility for the donor of the real estate gift. The IRS requires the qualified appraisal be as of a date not more than 60 days from the date of the gift. Following the transfer of title when property is gifted, the IRS requires the donor to submit Form 8283 (“Non-cash Charitable Contributions”). See Treas. Reg. 1.170A-13(a). The CREF will not establish or corroborate the value of any property for the purpose of substantiating the donor’s income tax charitable deduction.
- B. The donor may be asked to provide a current environmental audit satisfactory to the CREF. No property will be accepted if there is a likelihood of significant liability.
- C. The donor is responsible for providing clear marketable title showing that title to the property is free and clear of liens and encumbrances to the property (except for the following: current real estate taxes, restrictions of record that do not affect marketability of title, and mortgages approved by the CREF), as evidenced by title insurance and to the satisfaction of the CREF. A current title commitment including copies of all recorded documents must be received and approved by the CREF for all proposed gifts of real property prior to transfer of title. Donor will provide a title insurance binder when property is transferred.
- D. The donor is responsible for the preparation of the deed and other instruments that are required to transfer the gift of property to the CREF. The CREF will review all transfer instruments prior to acceptance.
- E. Prior to acceptance of the property, the CREF and the donor must agree in writing on arrangements for paying expenses associated with the property, such as real estate taxes, utilities, insurance, and maintenance costs. Generally, the CREF will not advance funds for the payment of such expenses.
- F. Donors will be encouraged to discuss contemplated bequests of real estate with the CREF before finalizing their wills. Property that is bequeathed to the CREF will be evaluated in accordance with this Policy and Procedure prior to acceptance of any gifts of real estate.
- G. The donor may be required to indemnify the CREF in writing against liabilities associated with the property. The CREF will assist in the preparation of the indemnification agreement.

## **APPENDIX B**

### **DONOR EXPECTATIONS FROM THE CHARITABLE REAL ESTATE FUND**

- A. The volunteer professionals serving on the CREF Board will adhere to the Conflict of Interest Policy adopted by the Foundation and will operate in strict accordance with all guidelines and expectations of the IRS and the Foundation.
- B. The CREF will work to ensure that the donated property is properly maintained and operated, including operations on a cash flow neutral basis.
- C. The CREF will authorize the sale of donated property at what it determines to be a fair price.
- D. The CREF will conduct all its affairs in a confidential and professional manner, with integrity, and to the highest legal, financial, and governance expectations for nonprofits.
- E. Proceeds from the sale of donated property will be available for charitable use and distribution as soon as possible after the sale.
- F. Documentation will be provided to the donor detailing relevant financial and accounting information such as sales price, associated fees, expenses, and other cost factors that relate to the net charitable proceeds generated by the gift.

## APPENDIX C

### PROPERTY REVIEW CHECKLIST THE CHARITABLE REAL ESTATE FUND

1. Exact legal name of donor/owner and federal identification number or social security number, address, contact person, phone number, email address.

#### **Property ownership**

- a. Sole owner
  - b. Tenants by the entirety (husband & wife)
  - c. Joint tenancy (w/right of survivorship)
  - d. Tenancy in common
  - e. Community property
  - f. Other (owned by trust, etc.)
2. Legal description of property.
  3. Location of property.
  4. Evidence of title, such as title examination and report, title insurance commitment, and schedule describing any liens, encumbrances, or title matters affecting the property.
  5. Construction drawings and description of any buildings or other structures located on the land.
  6. Current survey (within previous 12 months) by a registered land surveyor showing location of all structures, easements, and encumbrances appearing in recorded documents.
  7. Information regarding mortgages, if any.
  8. Existing zoning status.
  9. Description of any prior uses of the property.
  10. Description of uses of surrounding property, with specific disclosure of any wells, septic or sewer, storage tanks or other environmental factors affecting the property.
  11. Disclosure of any contemplated or anticipated condemnations, right-of-ways-taking or other actions by municipalities that may affect the subject property.
  12. A copy of any previous Phase I environmental reports on the property. For some properties a current Phase I may be required.
  13. Radon tests information.

14. Copy of MAI appraisal showing the fair market value of the property current within sixty days and any current broker's opinion of value.
15. Disclosure of amount of existing real estate taxes, insurance premiums, and other costs attributable to owning the property.
16. Copy of deed
17. Maps, aerial photos and other documentation for the property.
18. If income producing property, provide tenant rent roll, copies of all leases, management and service contracts, and two-years of operating history.
19. Will donor cover ongoing expenses for taxes, insurance, assessments, maintenance, grass cutting, security, utilities, and other expenses until disposal of property?
20. Draft of Seller's Real Estate Disclosure Certificate Appendix D.
21. Draft of proposed Grant Deed or Warranty Deed conveying title from proposed donor to the CREF.
22. Assessed value and copy of current assessment or appraisal district tax records.
23. Donor's primary motivation and intent for donating the property?
24. How and when the property was acquired? (Bought, inherited, gift, exchange, etc.)
25. Tax basis of the property
  - A. Cost Basis
  - B. Current Basis
26. Disposition Status –**There should not be prearranged buyers!**
  - A. Is the property currently listed for sale with a real estate professional?
  - B. Does anyone have an option to purchase the property or a right of first refusal?
27. Please indicate by **checking in the appropriate box** your awareness of any condition or problem that may affect the title or marketability of the property.



<b>I. Title/Zoning</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
A. Title	_____	_____	_____
B. Zoning variances, violations or special permits	_____	_____	_____
C. Restrictions or easements	_____	_____	_____
D. Property entitlements (if gift includes structure)	_____	_____	_____
<b>II. Condition of Building</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
A. Foundations/slab	_____	_____	_____
B. Basement Water/dampness/sump pump	_____	_____	_____
C. Roof leaks	_____	_____	_____
D. General Structure	_____	_____	_____
E. UFFI (formaldehyde insulation)	_____	_____	_____
F. Asbestos	_____	_____	_____
G. Lead paints	_____	_____	_____
H. Termites/ants/other pests	_____	_____	_____
J. Swimming pool	_____	_____	_____
K. Radon	_____	_____	_____
L. Building systems			
1. Plumbing	_____	_____	_____
2. Electrical	_____	_____	_____
3. Heating	_____	_____	_____
4. Air conditioning	_____	_____	_____
5. Hot water	_____	_____	_____
6. Water supply	_____	_____	_____
7. Sewage; type	_____	_____	_____
8. Other fixtures	_____	_____	_____
<b>III. Environmental</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
A. History of property			
1. Property has prior or current use for industrial, commercial, agricultural, manufacturing, waste disposal or any other non-residential purposes.	_____	_____	_____
B. Condition of property			
1. Stressed or denuded vegetation or unusual barren areas	_____	_____	_____
2. Discoloration, oil sheens, or foul/unusual odors in water	_____	_____	_____
3. Storage drums	_____	_____	_____
4. Above or underground storage tanks, vents or filler pipes	_____	_____	_____
5. Evidence of oil or other chemicals in soil	_____	_____	_____
6. Evidence of PCBs	_____	_____	_____
7. Evidence of toxic air emissions	_____	_____	_____
8. Any debris or dumped/discarded items or materials onsite	_____	_____	_____

<b>III. Environmental (continued)</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
C. Adjacent properties			
1. Properties adjacent or close to subject property have conditions requiring "yes" answer to any questions in III (A) or (B) above	_____	_____	_____
D. Flood plain/wetlands/drainage	_____	_____	_____
E. Endangered plants or wildlife	_____	_____	_____

**IV. Additional Information pertaining to Sections I through III**

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**ACKNOWLEDGEMENTS**

Owner(s) hereby acknowledge that the information provided herein is true and accurate to the best of my (our) knowledge.

OWNER: \_\_\_\_\_ DATE: \_\_\_\_\_  
           (signature)

BY: \_\_\_\_\_  
       (print name)

ITS: \_\_\_\_\_  
       (title)

**Please return to:**  
**Rancho Santa Fe Foundation**  
**The Charitable Real Estate Fund**  
**P.O. Box 811**  
**Rancho Santa Fe, California 92067**  
**858-756-6557**  
**858-756-6561 (fax)**

**Appendix D**

**REAL PROPERTY DISCLOSURE CERTIFICATE**

As grantor(s) of that real property in \_\_\_\_\_ County, State of \_\_\_\_\_, known as \_\_\_\_\_

\_\_\_\_\_, and conveyed to the Charitable Real Estate Fund by grant deed, I/we represent and certify that to the best of my/our knowledge:

1. The property and all operations thereon comply with applicable environmental laws, regulations, and court or administrative orders;
2. There are no pending or threatened private or governmental claims, or judicial or administrative actions relating to environmental impairment on the property; and
3. There are no areas on the property where hazardous or toxic substances have either been released, disposed of, or found, other than those that are disclosed below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The property complies with all applicable city, county, state and federal restrictions covering threatened or endangered species or other limiting regulations regarding future land use (including wetlands regulations).
5. There are no debts, liens or other encumbrances against the property other than those listed on Exhibit B of the Preliminary Title Report issued by:

OWNER: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_