

# FACT SHEET

## Broadband Infrastructure Program

### *Federal Interest Documentation Requirements*

This document is intended to provide general guidance on the Federal Interest documentation requirements as they pertain to Federal financial assistance awards under the Broadband Infrastructure Program (BIP) of the National Telecommunications and Information Administration (NTIA). This guidance is not a substitute for the terms and conditions of a specific BIP award, including those found in the Notice of Funding Opportunity, the Department of Commerce Financial Assistance Standard Terms and Conditions, applicable Federal regulations such as Title 2, Part 200 of the Code of Federal Regulations (CFR), and any Special Award Conditions. Should this fact sheet and any BIP award terms conflict, the terms and conditions of a specific BIP award shall apply.

## Overview of the Federal Interest

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The Department of Commerce's uniform standards governing the management and disposition of real property, equipment, and intangible property acquired or improved, in whole or in part, under a Federal financial assistance award are set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (Uniform Administrative Requirements). The Department of Commerce adopted the Uniform Administrative Requirements through 2 CFR § 1327.101. The Uniform Administrative Requirements are incorporated into the terms and conditions of all BIP awards. Under these regulations, each recipient and subrecipient of a BIP award holds all real property, equipment, and intangible property that are acquired or improved, in whole or in part, with a BIP award (BIP Property) in trust for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR § 200.316. This trust relationship exists throughout the duration of the useful life of the BIP Property, as determined by NTIA in accordance with the BIP Useful Life Schedule, during which time NTIA retains an undivided equitable reversionary interest in the BIP Property (Federal Interest). The amount of the Federal Interest is computed as the percentage of the then current fair market value of the BIP Property attributable to NTIA's participation in the BIP project. See 2 CFR § 200.311(c); 200.313(e).

During the duration of the Federal Interest, the BIP recipient or subrecipient shall not:

- Sell, lease, transfer, assign, convey, hypothecate, mortgage, or otherwise convey any interest in the BIP Property without the prior written approval of the Grants Officer.
- Use the BIP Property for purposes other than the purposes for which the award was made without the prior written approval of the Grants Officer.
- Fail to comply with Federal laws and regulations, Department of Commerce policies, Executive Orders, and Office of Management and Budget (OMB) requirements that are incorporated into the terms and conditions of the award.

Under the terms and conditions that govern BIP awards, recipients and subrecipients must execute and record certain documentation of the Federal Interest.

## Scope of the Federal Interest Documentation Requirement

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Each recipient or subrecipient of a BIP award must execute and file in the appropriate office(s) documentation of the Federal Interest with respect to the acquisition or improvement, in whole or in part, of BIP Property (hereinafter referred to as “Covered BIP Property”). See 2 CFR § 200.316. The documentation of the Federal Interest must be acceptable in form and substance to NTIA. The obligations of the recipient or subrecipient with respect to the Covered BIP Property remain in effect for the entire useful life of the Covered BIP Property. Failure to properly and timely file and maintain such documentation of the Federal Interest may result in appropriate enforcement action under a BIP award, including, but not limited to, disallowance of the costs of acquisition or improvement by NTIA. Recipients or subrecipients are not required to document or record evidence of the Federal Interest in previously acquired real or personal property that is donated to the project as a recipient, subrecipient, or third party in-kind matching contribution to the extent that such property is not subsequently improved under a BIP award. The requirements to document and record evidence of the Federal Interest in Covered BIP Property apply equally to recipients and subrecipients of BIP awards. Each BIP award recipient should ensure that its subrecipient monitoring plans include appropriate implementation of these requirements.

## Documentation of the Federal Interest for Covered BIP Property

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Discussed below are the approaches for documenting the Federal Interest in real property, fixtures, equipment and/or intangible personal property. Also discussed below are the: (i) timing requirements for the recording or filing of the applicable Federal Interest documentation; (ii) requirement for an attorney certification pertaining to the execution and recording or filing of the applicable Federal Interest documentation; and (iii) requirements for the submission of the Federal Interest documentation to NTIA/BIP, all of which apply to Covered BIP Property regardless of character.

In some cases, applicable state or local laws may vary from the general approaches described herein. In such cases, the recipient or subrecipient should ensure that it complies with any additional or different requirements of state or local law, and should describe its compliance with these requirements in its attorney certification. If the recipient or subrecipient has existing secured lending relationships where a dragnet-type clause in existing lending documents purports to encumber subsequently acquired property, then the recipient may need to consult its loan documents to ensure that the Federal Interest in the BIP Property would be in a first, unsubordinated lien position, and may need to obtain any required consents from its lender. Recipients or subrecipients should contact their counsel regarding the preparation and filing of the relevant documents and then follow up with the assigned BIP FPO if further guidance is needed.

## Real Property

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To document the Federal Interest in Covered BIP Property consisting of real property, the recipient or subrecipient must prepare and properly record a “Covenant of Purpose, Use, and Ownership” (Covenant). The Covenant differs from a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest to NTIA. Rather, pursuant to the Covenant, the recipient or subrecipient acknowledges

that it holds title to the Covered BIP Property in trust for the public purposes of the BIP financial assistance award and agrees, among other commitments, that it will repay the Federal Interest if it disposes of or alienates an interest in the Covered BIP Property, or uses it in a manner inconsistent with the public purposes of the BIP award, during the useful life of the Covered BIP Property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the Covered BIP Property during its useful life and that NTIA retains an undivided equitable reversionary interest in the Covered BIP Property to the extent of its participation in the BIP project, i.e., the Federal Interest.

Attachment A to this guidance provides a suggested sample form to use for the Covenant to record notice of the Federal Interest in real property.

## Fixtures and Personal Property

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To the extent that the Covered BIP Property consists of fixtures or personal property other than supplies (both tangible, such as equipment, or intangible, such as licenses or permits), the recipient or subrecipient must record UCC-1 forms with the appropriate state office in accordance with that state’s codification of the Uniform Commercial Code (UCC), Article 9 (for personal property not affixed to land) and/or recorded in the real property records of the jurisdiction where the real property is located if for assets fixed to the land. The recipient or subrecipient should consult the law of the state where the asset is located to determine whether it should be classified as real or personal property.

UCC forms may differ slightly from state to state. These forms are usually available from an attorney, a bank’s loan department, or an office supply store. They may also be available online in some states. Attached to this guidance as Attachment B is the NTIA/BIP information that recipients and subrecipients should use when completing a UCC-1 financing statement, as well as a sample UCC-1 form containing such information.

## Summary of the Federal Documentation Requirements for Covered BIP Property Consisting of Real Property vs. Fixtures and Personal Property

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The matrix on the following page summarizes the Federal Interest documentation requirements associated with the common items of Covered BIP Property.

Type of Covered BIP Property	Approach to Documenting the Federal Interest
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<p>Real Property (land and improvements, structures, appurtenances, except movable machinery and equipment)</p>	<ul style="list-style-type: none"> <li>• Properly executed and recorded Covenant of Purpose, Use, and Ownership; in the case of land leases, easements, rights-of-way, or other non-fee simple interests in real property, the recipient's interest should be as long as the useful life of any property deployed or installed thereon, unless other terms acceptable to NTIA have been approved in writing by the Grants Officer. The recipient must ensure that either the associated agreement acknowledges the Federal Interest in the property, which should provide for a right of assignment if the recipient fails to act in accordance with the terms and conditions of the BIP award, or that a covenant that acknowledges the Federal Interest is recorded.</li> <li>• The recipient or subrecipient should consult applicable state law to determine whether a particular asset should be classified as either real or personal property.</li> </ul>
<p>Fixtures (personal property so affixed to the land that it is legally considered part of the realty)</p>	<ul style="list-style-type: none"> <li>• UCC filed in the jurisdiction where the real property is located, renewed as necessary for as long as the useful life of the fixture; in the case of land leases, easements, rights-of-way, or other non-fee simple interests in real property, the recipient's interest must be as long as the useful life of the fixture deployed or installed thereon, unless other terms acceptable to NTIA have been approved in writing by the Grants Officer. The recipient must ensure that either the associated agreement acknowledges the Federal Interest in the property, which should provide for a right of assignment if the recipient fails to act in accordance with the terms and conditions of the BIP award, or that a covenant that acknowledges the Federal Interest is recorded.</li> <li>• The recipient or subrecipient should consult applicable state law to determine whether a particular asset should be classified as either real or personal property.</li> </ul>
<p>Personal Property, both tangible and intangible</p>	<ul style="list-style-type: none"> <li>• UCC-1 filed in the central filing office as directed under the State's Uniform Commercial Code, Article 9, noting the Federal Interest in the personal property, renewed as necessary for as long as the estimated useful life of the property, as determined by NTIA in accordance with the BIP Useful Life Schedule; or if another legal filing scheme preempts the UCC, then in accordance with such requirements. In the case of capital leases of personal property, including, where applicable, indefeasible right-of-use agreements, the recipient must ensure that either the associated agreement acknowledges the Federal Interest in the property, which should provide for a right of assignment if the recipient fails to act in accordance with the terms and conditions of the BIP award, or that a UCC-1 that acknowledges the Federal Interest is recorded.</li> <li>• The recipient or subrecipient should consult applicable state law to determine whether a particular asset should be classified as either real or personal property.</li> </ul>

## Timing Requirements

Documentation of the Federal Interest is to be perfected and recorded/filed in accordance with state and/or local law concurrent with or as soon as reasonably possible following any purchase, lease, or other acquisition or improvement of Covered BIP Property, but in any event not later than closeout of the grant and before any sale or lease of the property. The recipient must account for any real or personal property acquired or improved with Federal funds as part

of the award closeout procedures. See 2 CFR §§ 200.311; 200.313; 200.315; and 200.344, as applicable.

The recipient or subrecipient shall execute and record all documentation necessary to maintain the Federal Interest for the useful life of the Covered BIP Property. If the BIP grant award is amended to include additional or materially different Covered BIP Property, the recipient or subrecipient is required to file additional UCC-1 documentation regarding such Covered BIP Property and to amend any existing filings. New and/or amended UCC-1 documentation must be retained in the recipient's or subrecipient's grant files and provided to NTIA as soon as reasonably possible following such new or amended filings.

A recipient or subrecipient must also timely file continuation statements for personal property for the duration of the Federal Interest under the terms of the award. In most states, the amended financing statement is referred to as a UCC-3 and may be used to reflect the continuation of the Federal Interest. The recipient or subrecipient should normally follow the same filing procedures for filing additional UCC-1 or UCC-3 forms as it did with the initial UCC-1, unless circumstances have substantially changed. The recipient or subrecipient should first consult with its counsel if it has any questions and then follow up with its assigned BIP FPO if further guidance is needed. UCC-3 and other continuation statement forms must be retained in the recipient's grant files and provided to NTIA as soon as reasonably possible following such filings.

## Attorney Certification

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The recipient or subrecipient must obtain a certification from counsel, licensed by the state within which the filings were made, that the Covenant and/or UCC documentation, as applicable, has been properly executed and recorded or filed (as the case may be) in accordance with state law. A sample Attorney's Certification is attached to this guidance as Attachment C, which may be used for this purpose.

## Federal Interest Documentation

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The recipient or subrecipient must provide the Grants Office with: (1) a copy of the instruments reflecting the documentation of the Federal Interest, specifically the recorded Covenant(s) and/or the filed UCC documents with the recording or filing stamp and information clearly visible; and (2) the attorney certification(s) described above. The recipient or subrecipient should submit this documentation via email to [ugam@nist.gov](mailto:ugam@nist.gov), with the award number and "Federal Interest" referenced in the subject line. The recipient or subrecipient must maintain in their grants files copies of the instruments reflecting the documentation of the Federal Interest, specifically the recorded Covenant(s) and/or the filed UCC documents with the recording or filing stamp and information clearly visible.

## Frequently Asked Questions

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*For purposes of determining the amount of the Federal Interest, may a recipient or subrecipient designate certain facilities as purchased or constructed solely with Federal funds and certain other facilities as purchased or constructed solely with matching non-Federal funds?*

No. The amount of the Federal Interest on a particular piece of real or personal property acquired or improved with funds made available through a BIP financial assistance award is

computed as the percentage of the then current fair market value of the property that is attributable to NTIA's participation in the BIP project. For previously acquired real or personal property that is contributed to the project as a recipient, subrecipient, or third party in-kind matching contribution, recipients and subrecipients are not required to document or record evidence of the Federal Interest in such property to the extent that such property is not subsequently improved under the BIP award.

*For purposes of determining the pendency of the Federal Interest, may a recipient or subrecipient use its existing regulatory or financial depreciation schedule to measure the useful life of BIP Property?*

No. NTIA will determine the useful life of BIP Property in accordance with the BIP Useful Life Schedule.

## Additional Resources

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For additional information pertaining to the Federal Interest or to the security interest requirement, please refer to the following resources:

- Notice of Funding Opportunity, Broadband Infrastructure Program (May 19, 2021), available at: [NTIA Broadband Infrastructure Grant Program NOFO.Final\\_.pdf \(doc.gov\)](#)
- Department of Commerce Financial Assistance Standard Terms and Conditions (November 12, 2020), available at: [DOC Standard Terms and Conditions - 12 November 2020 PDF\\_0.pdf \(commerce.gov\)](#)
- Title 2, Part 200, Subpart D of the Code of Federal Regulations, Post Federal Award Requirements, available at: [eCFR :: 2 CFR Part 200 Subpart D -- Post Federal Award Requirements](#)
- Broadband Infrastructure Program website (including the BIP Useful Life Schedule), available at: [Broadband Infrastructure Program | BroadbandUSA \(doc.gov\)](#)
- *In re Joliet-Will County Community Action Agency*, 847 F.2d 430 (7th Cir.1988)

## Attachment A: SAMPLE Covenant of Purpose, Use, and Ownership Form

### Covenant of Purpose, Use, and Ownership

THIS COVENANT OF PURPOSE, USE, AND OWNERSHIP (hereinafter called "Covenant") dated this \_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter with its successors and assigns called "Recipient"); and the National Telecommunications and Information Administration, U.S. Department of Commerce, whose address is 1401 Constitution Avenue, NW, Room 4887, Washington, DC 20230 (hereinafter with successors and assigns called "NTIA").

### RECITALS

WHEREAS, Recipient submitted an application to NTIA for financial assistance under the Broadband Infrastructure Program ("BIP"), pursuant to the Consolidated Appropriations Act, 2021, Public Law 116-260, 134 Stat. 1182 (hereinafter the "Act"); and

WHEREAS, by Offer of Award, dated \_\_\_\_\_, NTIA offered to Recipient a financial assistance award designated as Award No. \_\_\_\_\_ (the "Award") in the amount of \$\_\_\_\_ (hereinafter "Award Amount") to assist in financing \_\_\_\_\_ (hereinafter called "Project"); and

WHEREAS, to execute such project, Recipient has acquired or improved real property in whole or in part with funds made available through the Award [or applicable real property interest] described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements called the "Property"); and

WHEREAS, on \_\_\_\_\_, Recipient accepted the Award by signing Form \_\_\_\_\_ (together with all documents attached thereto or incorporated therein, the "Award Agreement") issued in connection with the Project and pertaining to the Award Number, thereby binding itself and making itself subject to the terms and conditions contained in the Award Agreement including, without limitation, the applicable requirements of Title 2, Part 200 of the Code of Federal Regulations (CFR), and the terms of the Broadband Infrastructure Program Notice of Funding Opportunity (May 19, 2021), as applicable; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, *inter alia*, that Recipient holds title to the Property in trust for the public purposes of the Project, and may not sell, lease, transfer, convey, hypothecate, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), such alienation and use being prohibited by Title 2, Part 200 of the CFR, as applicable, and the Award Agreement, without the prior written approval of the BIP Grants Officer, or his/her designee or successor (hereinafter called "Grants Officer"); and

WHEREAS, under the authority of the Act and the Award Agreement, Recipient may not use the Property for purposes other than Project Purposes and may not lease, sell, transfer, convey, mortgage, or hypothecate or otherwise alienate the Property to any party without prior

written approval from the Grants Officer, unless NTIA is repaid its Federal Interest in the Property, as defined and more particularly described herein; and

WHEREAS, Recipient, as owner of all or part of the Property, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property in the jurisdiction where the Property is located so as to constitute notice to all persons of the restrictions contained herein on title and use of the Property for the benefit of the public purposes of the Project; and

WHEREAS, the \_\_\_\_\_ located at \_\_\_\_\_ is the proper office to record this Covenant:

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by NTIA and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both NTIA and Recipient, Recipient hereby covenants and agrees as follows:

1. For purposes of this Covenant, the useful life of the Property shall be determined by NTIA in accordance with the BIP Useful Life Schedule.
2. Recipient agrees that for the useful life of the Property, Recipient will not lease, sell, transfer, convey, hypothecate, mortgage, or otherwise alienate any interest in the Property, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Grants Officer. However, such approval may be withheld until such time as the Recipient first pays to NTIA the Federal Interest (as hereinafter defined) in the Property as provided in Title 2, Part 200 of the CFR, as applicable. The Federal Interest is that percentage of the then current fair market value of the Property attributable to the NTIA participation in the Project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal Share excludes the value of the Property attributable to acquisition or improvements before or after NTIA's participation in the Project and not included in Project costs. As of the date of this Covenant, it is hereby agreed that NTIA's percentage participation in the Project is [*this percentage is equal to the Federal share ratio under the BIP award*] (XX%) percent.
3. Recipient further covenants that in the event NTIA permits the Property to be used for purposes other than the Project Purposes, or if the Property is sold, leased, transferred, conveyed, hypothecated, mortgaged, or otherwise alienated, Recipient will compensate the Federal Government for the Federal Interest in the Property. Such Federal Interest shall be and is hereby made a charge and lien of the first priority against the Property until fully satisfied.
4. Recipient further agrees that, as a condition of accepting the disbursement of any portion of the Award Amount, Recipient shall provide NTIA with evidence that it has executed and placed on record against the Property this Covenant and shall provide the Grants Officer with evidence of such recording. NTIA will in its sole discretion determine whether this Covenant is satisfactory and may require an opinion of counsel for the Recipient that: (i) the Covenant is valid and enforceable according to

its terms; (ii) the Covenant has been properly recorded; and (iii) that there is no lien or encumbrance on or pertaining to the Property superior to the Covenant.

5. Recipient further agrees that whenever the Property is sold, leased, or otherwise conveyed, Recipient or the transferor shall add to the instrument of conveyance a covenant of purpose, use, and ownership. NTIA will, in its sole discretion, determine whether such covenant is satisfactory. In connection with any such transfer, NTIA may require an opinion of counsel for the Recipient or for the transferor that the covenant is valid and enforceable according to its terms and has been properly recorded.
6. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the Federal Interest expressed herein.
7. This Covenant shall run with land.
8. This Covenant shall be construed in a manner consistent with the terms and conditions of the Award Agreement and applicable regulations; *provided, however*, that if there is a conflict, the terms and conditions of the Award Agreement shall control.

IN WITNESS WHEREOF, the Recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to NTIA. (The appropriate acknowledgement must be included for recording in Recipient's jurisdiction.)

Recipient: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A: Legal Description of Property  
Exhibit B: BIP Schedule of the Useful Life of the Property

## Attachment B: UCC-1 Information and SAMPLE “Schedule A” Equipment List

Recipients and subrecipients should complete the UCC-1 using the following information:

Field	Description
Debtor	<ul style="list-style-type: none"> <li>Enter the name and address of the recipient or subrecipient organization that will hold the property.</li> </ul>
Secured Party	<ul style="list-style-type: none"> <li>NTIA/BIP Room 4887 U.S. Department of Commerce 1401 Constitution Avenue, NW Washington, DC 20230</li> </ul>
Collateral	<ul style="list-style-type: none"> <li>Enter the following text in the space to describe the collateral: “Certain equipment (the Equipment) acquired or improved, or to be acquired or improved, under NTIA/BIP Grant Award #XXXXX by [Recipient/Subrecipient], including but not limited to the items identified in “Schedule A,” the project’s equipment list, which is attached hereto and incorporated herein by reference. Recipient/Subrecipient holds the Equipment in trust for the benefit of the NTIA Broadband Infrastructure Program (BIP). The Federal Government retains an undivided equitable reversionary interest in each item of the Equipment for the useful life thereof, as determined by NTIA in accordance with the BIP Useful Life Schedule.”</li> <li>Attach to the UCC-1 a list of the personal property acquired or improved with BIP grant funds in the format shown in Attachment B to this guidance. This list should agree with the approved equipment list for the project from the award document.</li> </ul>
Signature	<ul style="list-style-type: none"> <li>If a signature is required in the state where the document is to be filed, the document should be signed as the “Debtor” by an authorized representative of the recipient or subrecipient organization that will hold the property.</li> </ul>
Filing	<ul style="list-style-type: none"> <li>Once the UCC-1 is properly prepared, it should be filed in accordance with Article 9 of the state’s Uniform Commercial Code, which may mean with the office of a Secretary of State or other filing agency in the state where the recipient or subrecipient is legally organized. A UCC-1 for personal property to be affixed to land should be filed with the lien records of the local jurisdiction where the land is located.</li> </ul>

# SAMPLE

## Schedule A: Equipment List

Recipient Name  
 Recipient Address  
 NTIA/BIP Award No. XXXXX

Quantity	Description	Manufacturer and Model Number	Serial Number(s)	Unit Cost	Price	Tag Number	Date of Acquisition	Useful Life (Per BIP Useful Life Schedule)
3 <i>(example)</i>	4 Port 10/100/1000 Switch	Cisco ME 3400G-2-CS-A	6500748 6500749 6500750	\$xxxx	\$xxxx	101 102 103	10/15/2022	10 years
List additional item(s) as necessary								

## Attachment C – SAMPLE Attorney Certification

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RE: [Covenant of Purpose, Use, and Ownership and/or UCC-1 Form(s)]

NTIA BIP Grant No. \_\_\_\_\_

Pursuant to 28 U.S.C. § 1746, I hereby certify as follows:

I am legal counsel at \_\_\_\_\_.

I am licensed to practice law in the State of \_\_\_\_\_, having been a license holder of said state and in good standing since \_\_\_\_\_.

[For Covenants] Attached hereto is a certified copy of that document entitled “Covenant of Purpose, Use, and Ownership” reflecting that this document was filed in the \_\_\_\_\_ on \_\_\_\_\_, bearing the recording data evidencing that this document is recorded as [insert recording data, e.g., instrument number, book and page number, etc.] and consists of \_\_\_\_ recorded pages as certified by \_\_\_\_\_ of \_\_\_\_\_.

[For UCC-1 Forms] Attached hereto is a certified copy of UCC-1 form(s) reflecting that this document was filed in the \_\_\_\_\_ on \_\_\_\_\_, bearing the following filing information [insert filing data, e.g., instrument number, etc.] and consists of \_\_\_\_\_ recorded pages as certified by the Secretary of State of \_\_\_\_\_.

I certify that this [insert document type(s)] has/have been validly executed and properly recorded as noted above.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
[Attorney name and title]

[Attorney address and phone number]