

ELECTRONIC RECORDING AGREEMENT

THIS AGREEMENT, dated _____, is between the Recorder of Deeds for Cass County, Missouri, (“Recorder”) and _____ (“Company”), with Office located at _____ and submitting through _____ Company’s designated submission service provider whose offices are located at _____.

IN CONSIDERATION of each party’s performance of their respective obligations under the terms and conditions of this agreement, the parties agree as follows:

- 1. BACKGROUND AND PURPOSE OF AGREEMENT** – Recorder desires to offer the recording of real property documents by electronic means providing for the receiving and transmitting of documents electronically in substitution for conventional paper documents and to assure that transactions are not legally invalid or unenforceable as a result of the use of available electronic technologies, to the mutual benefit of the parties of the transactions. The Recorder has entered into an agreement with Mobilis Technologies, LLC for the provision of electronic recording software which allows the Recorder to accept documents electronically submitted for recording.
- 2. TERMINOLOGY** – For purposes of this Agreement, “Electronic Recording” is defined to be the electronically based submission of documents from Company to Recorder and electronically based receipt of confirmation of recording from Recorder to Company based on the level of automation and structure of the transaction and is characterized by three different levels of Electronic Recording further described in this agreement. When used in this agreement, the term Company or Company representative includes without limitation the Company itself as a legal entity and as well as a Company appointed or designated submission service provider, and all Company officers, agents, members, and employees of the Company, including those of its designated submission service provider. The term Recorder shall include the elected recorder of deeds, and all deputies and employees of the elected recorder of deeds. In the content of Company’s obligation to defend and indemnify Recorder, the term Recorder shall mean the recorder of deeds, and the government of Cass County, Missouri, in general, and all their officials, directors, agents, and employees. When the term defend and indemnify is used, it shall be broadly construed to mean that the Company shall either provide the Recorder with a legal defense at its own expense, or in the event the Recorder elects to provide its own defense, than to reimburse the Recorder for the expense of defense, which includes all costs of litigation or alternative dispute resolution procedures which are incurred in conducting a legal defense, including reasonable attorney’s fees and litigation expenses which are payable for the defense, as well as the costs of any settlement agreed upon by Company and Recorder, or the cost of judgment and interest thereon entered against the Recorder.
- 3. PROGRAM ELIGIBILIY** – Attorneys, full service banks, mortgage bankers, title insurance companies and other trusted entities may submit real property records for Electronic Recording. Electronic Recording mandates a close working relationship as well as mutual trust between the Recorder and the Company. All parties of the Electronic Recording transaction shall seek to operate and maintain a secure recording system that safeguards parties to recordation from deceit, fraud and forgery. This Agreement further outlines the procedures and rules for the trusted relationship between the Recorder and Company to facilitate a safe and secure Electronic Recording relationship. A submitter can choose to enter into an agreement with any approved electronic submission software vendor, but all documents will be electronically delivered to the Recorder through Mobilis Technologies’ EPICPortal. Separate, but complimentary, agreements shall be in place between Mobilis Technologies, LLC and both the Recorder and the Company, addressing the EPICPortal participation in this process. Participation in the electronic Recording program is voluntary and the Company agrees to abide by the terms and conditions of this agreement as a condition to program participation. There will be no added fees or costs of any kind charged by the Recorder for Electronic Recording aside from those authorized by Missouri law pertaining to recording documents, but the Company will be required to meet Recorder requirements in order to record electronically.
- 4. LEVELS OF RECORDING** – Electronic Recording may be provided on the basis of three levels as mutually agreed upon by Recorder and Company as follows:

Level 1 – Submitting organizations transmit scanned images of original ink signed documents to the Recorder. The Recorder completes the recording process in the same way as paper using the imaged copy as the source document. An electronic recording endorsement is returned to the organization in the form of a label or printing process in order for the submitting organization to append that information to the original paper document.

Level 2 – Submitting organizations transmit scanned images of original ink signed documents along with electronic indexing information to the recorder. The Recorder performs an electronic examination of the imaged documents and indexing data, and then completes the recording process using the imaged copy and electronic indexing information. The electronic version of the recorded document is returned electronically to the submitting organization along with the electronic recording data.

Level 3 – Submitting organization transmits documents, which have been created, signed and notarized electronically along with the electronic indexing information. Electronic signatures must comply with Uniform Electronic Transactions Act, Sections 432.200 to 432.295 RSMo and E-Sign specifications. The CO UNT performs an electronic examination of the electronic documents and indexing information then completes the recording process. The electronic version of the recorded document and electronic recording data is returned to the submitting organization.

- 5. PROGRAM PARTICIPATON REQUIREMENTS** – The Electronic Recording program is defined by the requirements attached to this Agreement. Attachment A defines the technical specifications including format, transmission protocols, and security requirements for recording documents electronically. Company agrees to provide the transmission to the Recorder following the specifications outlined in Attachment A. Company understands that the specifications may change from time to time. In the event changes to the specifications are required, the Recorder will provide a written notice to the Company, and Company will comply with new specifications within a reasonable timeframe. Attachment B contains the document and indexing specifications for the Electronic Recording program. For each document, the Recorder’s specific document code is provided along with the required indexing information. Any Recorder’s specific editing rules may also be described in this attachment. Attachment C contains the hours of operation for the Electronic Recording program. No party shall be liable for any failure to process transactions and documents pertaining to them when such failure results from any act of nature or extraordinary event beyond the party’s reasonable control (including, without limitation, any mechanical, electronic, or communications failure which prevents the parties from transmitting or receiving the electronic recording transactions). If the system used by the Recorder results in delays or power failures interfere with the normal course of business, the Recorder will notify the Company within a reasonable timeframe with a choice of using a courier service or waiting until the problem has been remedied. Attachment D provides the payment options supported for the Electronic Recording program.
- 6. RECORDER RESPONSIBILITIES** – Subject to limitations set forth below, Recorder shall endeavor to protect the integrity of the Electronic Recording process through ongoing monitoring of documents received and recorded through Electronic Recording. Recorder shall test and maintain Electronic recording software and hardware required to operate the Electronic Recording capability. However, it is agreed that Recorder shall not be liable to Company or its customers for any damages resulting from software or equipment failure. Recorder shall endeavor to institute reasonable security procedures to authenticate verbal communications with Company representatives and shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal manual process. However, nothing in this agreement shall be construed to require the Recorder to monitor or review the content of documents submitted for electronic recording except for review to determine acceptability under the Recorder’s recording and/or formatting requirements.
- 7. COMPANY RESPONSIBILITIES** – Company acknowledges that Electronic Recording permits it to prepare, sign and/or transmit in electronic format documents and business records and such documents or records shall be considered as the “original” record of the transaction in substitution for, and with the same intended effect as, paper documents, and, in the case that such documents bear a digital or electronic signature, paper documents bearing handwritten signatures. Company shall ensure that only original documents are used to create the electronic documents. Company shall be diligent in ensuring that documents submitted for Electronic Recording have been checked before submission for errors, omissions, scanning defects, illegible areas, and other deficiencies that would affect the Recorder’s ability to record the document and the public notice to be created thereby. Company shall ensure that all security measures and credentials implemented by Company representatives are protected and shall implement and maintain rigorous password requirements and protection. Company assumes all legal liability and responsibility for documents submitted through unique credentials provided to Company for the purposes of engaging in Electronic Recording and it shall be the obligation of Company at it’s own expense to defend and indemnify Recorder against any claim or cause of action asserted by anyone against the Recorder as a result of a breach of

security caused by or resulting from Company failure to implement and maintain security measures with respect to Electronic Recording conducted through the Recorder. Company further represents and agrees that by use of electronic or digital certificates to sign documents, Company intends and represents to Recorder that all such documents are authentic for all purposes as fully as if paper versions of the documents have been manually signed. By use of electronic or digital certificates to sign documents, Company warrants to Recorder the genuineness of those electronic signatures affixed to any documents transmitted by it for Electronic Recordation and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document. By use of digital certificates to seal electronic files containing images of original paper documents or documents bearing manual signatures, Company shall recognize and treat such sealed images for all purposes as fully as the original paper documents and agrees it shall be the obligation of Company to defend and indemnify Recorder against any claim or cause of action asserted or made against Recorder resulting from any failure or neglect of Company or its representatives to comply with quality control procedures for assuring the accuracy and completeness of the electronic files. The Company and its representatives warrant to Recorder that records submitted to Recorder for Electronic Recordation shall be accurate and complete and acknowledge responsibility for the content of the documents submitted through the Electronic Recording program. Company hereby agrees to defend and indemnify at its own expense Recorder against any claim, cause of action, or other dispute which arises as a result of Company or its representatives' initiation or processing of an electronic transaction unless such action is a direct result of any act or omission of Recorder. Further, Company shall be solely responsible for any and all costs of the system or services provided by a third party to Company that enables Company to meet the Electronic Recording program requirements under this agreement. Company shall be responsible at its own expense for coordinating and correcting all technical problems and issues with respect to Company participation in the Electronic Recording program. It is further understood and agreed that Recorder will not be liable for any breach of security, fraud or deceit in the conduct of the transaction, by company or any person under the supervision or control of company or its representatives, and company at its own expense agrees to defend and indemnify Recorder against any claim or cause of action pertaining to any claim or damages against Recorder as a result of such breach of security, fraud, or deceit.

- 8. LIMITATIONS OF LIABILITY** – Except as expressly set forth herein, neither the County nor the Recorder shall be liable to the other for any special incidental, exemplary or consequential damages arising from or as a result of any delay, omission, or error in the Electronic Recording transmission or receipt of documents. Neither the County nor the Recorder shall be liable for any failure to perform processing of the transactions and documents where such failure results from any act of God or other cause beyond the party's reasonable control including, without limitation, any mechanical, electronic, or other communications failure which prevents the parties from transmitting or receiving the Electronic Recording transactions.
- 9. TERMINATION**- Any party may terminate this Agreement for any reason by providing 30 days written notice of termination. Further, Recorder may terminate this agreement immediately for any cause with notice of termination given to Company as soon as reasonably practicable in the event Recorder determines there has been material breach of any term or condition of this agreement or breach of security warranting immediate termination of services.
- 10. CHANGES IN TECHNOLOGY** – The Recorder and Company acknowledge that the electronic recording process is an emerging technology and that State and National standards will continue to evolve. To further the technology and the electronic recording process, the Recorder and Company will, as needed, discuss changes and additions to this Agreement and systems operated hereunder. However, Recorder reserves the right to implement amendments to this agreement or attachments to it with notice to Company. In the event Company disagrees with such changes and cannot comply with them, its sole recourse shall be to terminate this agreement and discontinue use of Electronic Recording services provided under this agreement.
- 11. NO WAIVER OF IMMUNITY** – The parties hereto understand and agree that the Recorder, and the government of Cass County, Missouri, in general, and all their officials, deputies, directors, agents and employees, are relying on, and do not waive or intend to waive any provisions of governmental, sovereign, or official immunity by entering or carrying out this agreement as provided by the Missouri common law or statute or Constitution otherwise available to the Recorder and the government of Cass County, Missouri, in general, and their officials, deputies, directors, agents and employees.
- 12. SEVERABILITY** – In the event any portion of this agreement is found to be unlawful or unenforceable, the remaining terms and conditions of this agreement shall remain in full force and effect between the parties.

13. THIRD PARTIES – The provisions of this agreement are not intended to be for the benefit of any person or entity which is not a party to this agreement or not specifically mentioned in this agreement as a person or entity intended to benefit from this agreement, and no such person or entity shall obtain any rights under any provision of this agreement or shall by reason of any provision under this agreement make any claim against any named party to it or person mentioned in it.

14. MISCELLANEOUS – The section captions in this agreement are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof. This agreement shall be construed and enforced in accordance with the laws of the State of Missouri . This agreement constitutes the entire agreement between the parties and any prior written or oral agreements are without affect. This agreement expressly replaces and entirely supersedes any previous agreements between the parties, oral or written. Any addenda or amendments to this agreement must be in writing and executed by the parties.

IN WITNESS WHEREOF the parties or their duly authorized representatives have executed this agreement to be effective on the date first above written or the last date listed below, whichever occurs later, but in the event dates below are blank or incomplete, then the date first above written shall be the effective date.

Agreed and Accepted:

_____ (COMPANY)

Approved As To Form:

By: _____
(Type or print name under signature)

Title: _____

Date: _____

Sandra A. “Sandy” Gregory
Cass County Recorder of Deeds

Date: _____

Gary L. Mallory,
Cass County Presiding Commissioner

Date: _____

Attachment A – Technical Specifications

Format of the Transmitted File

The PRIA format standard will be used. Images will be in multi-page Group IV TIFF format.

Returned File Format

PRIA file format standard will be used.

Images will be in multi-page Group IV TIFF format.

Imaging Standards

Document images will be captured as multi-page Group IV TIFF images.

Documents will be scanned at 300dpi.

Documents will be scanned in portrait mode.

Pages will be scanned and submitted correctly oriented.

Scanned documents will be legible. Legible in this instance means a clear, readable image – including signatures and notary seals – and in which all portions of each page are captured.

Document font size must meet standardization requirements.

Margins that do not meet standardization requirements will be recorded as a non-standard document.

DOCUMENTS THAT FAIL TO MEET THESE REQUIREMENTS WILL NOT BE ACCEPTED FOR ELECTRONIC RECORDING.

Attachment B – Documents and Indexing Specifications

Eligible Document types

All document types sized 8 ½" x 11" or smaller will be acceptable, with the following exceptions:

1. Military Discharges
2. Certified documents

RECORDER Specific Document Type Coding

Documents should be identified using County specific “Document Types”. It is the Recorder’s intention to not reject documents based on incorrect document types. Rather the Recorder will correct the document type as part of the acceptance process.

Indexing Fields for each Document Code

All documents submitted will require the minimum index fields:

Document Type and/or

Number of Pages

Estimated Recording fee

The following fields shall be required:

First Grantor

First Grantee

Specific Editing requirement for each Document Code

Document Imaging Quality Control Standards

Scanned documents will be legible. Legible in this instance means a clear, readable image – including signatures and notary seals – and in which all portions of each page are captured. Submitters will be responsible for the clarity and brightness of the image.

Notary Requirements per Document

It is the responsibility of the **COMPANY** to confirm that notary signatures and seals are present on all documents that require them.

Inked notary seals are strongly recommended, in place of embossed notary seals which require “darkening” by the **COMPANY** prior to submittal.

Attachment C – Service Offering

Hours of Operation

Documents may be submitted at any time during the week.

Documents will only be processed on those days and hours that the **RECORDER** Office is open to the public for business.

Documents will not be processed on **RECORDER** holidays, weekends, “snow days”, etc. or in the event of network or equipment failure. **RECORDER** will attempt to notify **COMPANY** of any disruption in service.

Processing Schedules and Turnaround Timeframe

RECORDER shall process electronically submitted documents during normal business hours on normal business days. In matters where time of delivery is a disputable matter, the Electronic Recording system shall be considered the authoritative source of delivery time.

Effectiveness of Recording

Notwithstanding the above, **COMPANY** understands and acknowledges that, a document submitted electronically shall not be considered as “delivered” to the **RECORDER** for purposes of Section 59.400, RSMo until such time as it is processed in accordance with the foregoing.

Return Options

Submitted documents that are accepted for recording will be provided to the **COMPANY** in electronic format after acceptance. Confirmation of acceptance and recordation will be provided to the **COMPANY** in electronic format after recordation is complete. This confirmation will include the document image and **RECORDER** indexing data. **RECORDER** reserves the right to make changes to the index at a later date.

Submitted documents that are rejected will be returned to the **COMPANY** in electronic format after rejection, along with a description of the reason(s) for rejection.

Attachment D – Payment Options

Payment Options

ACH, daily charge or escrow accounts are acceptable as the form of payment. **COMPANY** will be responsible for maintaining adequate funds to enable e-Recording.

Requirements for each:

Escrow Accounts

Escrow account must be in place in advance of any submissions.

Documents will not be accepted if an escrow account does not have sufficient funds.

RECORDER Charge

Documents will not be accepted for RECORDER charge accounts which are in a delinquent status.

ACH

Documents will not be accepted for ACH which are in a delinquent status.

Reporting and Reconciliation

RECORDER will be responsible for maintaining and reconciling their receipts.

COMPANY will be responsible for submitting account information with each document batch, and for reconciling their records. **COMPANY** file number may be transmitted for **COMPANY** reconciliation purposes.

Exception Handling

Any discrepancy in fees discovered by **RECORDER** after document recordation will be corrected by **RECORDER** within five business days and **COMPANY** will be provided with a notification of the error.

Any discrepancy in fees discovered by **COMPANY** after document acceptance must be brought to the counties attention within 30 days of recordation.