

ELECTRONIC RECORDING MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, dated 01-24-12, is between eRecording Partners Network (ePN) and Tom Green County Clerk ("County") located in San Angelo, Tx.

ePN offers a national electronic recording service to function as a trusted third party for Title Insurance Companies, Attorneys, Mortgage Bankers, Full Service Banks and other trusted entities to submit electronic documents to government entities for recording.

County desires to offer recording of real property documents by electronic transmission in substitution for conventional paper based documents and to assure that transactions are not legally invalid or unenforceable as a result of the use of available electronic technologies for the mutual benefit of the parties of the transactions.

For purposes of this Memorandum of Understanding, *Electronic Recording* is defined based on the level of automation and structure of the transaction. The three levels of automation are as follows:

- Level 1 Submitting organizations transmit scanned image copies of ink signed documents to the county. The County 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 ink signed documents along with electronic indexing information to the county. The County 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 organizations transmit "Smart" documents which are a single object containing the electronic version of the document in such a way that enables the electronic extraction of data from the object. Smart documents are required to be signed and notarized electronically. The Smart document is endorsed electronically by the county and returned in Smart document format to the submitting organization.

Program Eligibility

Title Insurance Companies, Attorneys, Mortgage Bankers, Full Service Banks and other trusted entities may directly or through a trusted third party provider submit real property records for electronic recording. Electronic Recording mandates a close working relationship as well as mutual trust between the County and the submitting entity. All parties of the Electronic Recording transaction desire to operate and maintain a secure recording system that safeguards parties to recordation from deceit, fraud and forgery. This Memorandum of Understanding outlines the procedures and rules for the trusted relationship between ePN and the County to facilitate a safe and secure Electronic Recording relationship.

Participation in the Electronic Recording program is voluntary and the decision to do so is a business judgment.

There will be no added fees or costs of any kind charged by the County for Electronic Recording.

County Requirements

The Electronic Recording Program of the County is defined by the requirements attached to this Memorandum of Understanding.

- **Attachment A** contains the document and indexing specifications for the Electronic Recording program. For each document, the County specific document code is provided along with the required indexing information. Any County specific editing rules will also be described in this attachment. ePN acknowledges that County will reject and return any transactions that do not meet the document and indexing specifications.
- **Attachment B** contains the processing schedules and hours of operation for the Electronic Recording Program. Neither party 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 communications failure which prevents the parties from transmitting or receiving the electronic recording transactions. If the County system causes delays or power failures that interfere with the normal course of business, the County will notify ePN with a choice of using a courier service or waiting until the problem has been remedied.
- **Attachment C** provides the payment instructions for the Electronic Recording program. This form provides the account information for ePN to deposit payments via ACH into the County bank account.

ePN Responsibilities

ePN acknowledges that Electronic Recording permits them to prepare, sign and/or transmit in electronic formats documents and business records and the document 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.

By use of electronic or digital certificates to sign documents, ePN intends to be bound to those documents for all purposes as fully as if paper versions of the documents had been manually signed.

By use of electronic or digital certificates to sign documents, ePN intends to be bound by those electronic signatures affixed to any documents and such electronic signature shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

General Terms

The County will not incur any liability for the information electronically transmitted by ePN. Should a dispute or legal action arise concerning an electronic transaction, the County will be held harmless and not liable for any damages.

The County will not incur any liability for any breach of security, fraud or deceit as a result of Electronic Recording. Neither ePN nor the County 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.

ePN and the County will attempt in good faith to resolve any controversy or claim arising out of or relating to Electronic Recording through either negotiation or mediation prior to initiating litigation.

Either party may terminate this Memorandum of Understanding for any reason by providing 30 days written notice of termination.

Agreed and Accepted:

eRecording Partners Network

Jerry Lewallen
Name: Jerry Lewallen
Title: President
Date: 12/15/2011

County TOM GREEN, TX
MA Brown
Name: **Michael D. "Mike" Brown**
Title: **Tom Green County Judge**
Date: **JAN 24 2012**

Elizabeth McGill

Elizabeth McGill
County Clerk
Tom Green County, Texas



Attachment A

Document and Indexing Specifications

Attachment B

Processing Schedules and Hours of Operation

Attachment C

Payment Instructions

**Authorization Agreement for Direct Deposits
(ACH CREDITS)**

County County ID Number (TAX ID)

I (We) hereby authorize eRecording Partners Network LLC, herein after called COMPANY, to initiate CREDIT entries and/or correction entries to our CHECKING SAVINGS account (select one) indicated below at the depository named below, herein after called DEPOSITORY.

Depository Name Branch

City State

Bank Transit / ABA Number Account Number

This authorization is to remain in full force until ePN has received written notification from me (or either or us) of its termination in such manner as to afford ePN and DEPOSITORY reasonable opportunity to act upon it.

NAME(S) Title

Signature Date

****To be retained in ePN File until termination****
02/2010

ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement"), dated 1-24, 2012 is made by and between Tom Green County, ("County") and **eRecording Partners Network, LLC** ("Company").

WHEREAS, County provides recording, copying and various other services to the public based on fees and costs as prescribed by Texas Statutes;

WHEREAS, Company and Company employees and/or agents periodically require the services provided by County's real estate recording office;

WHEREAS, Company desires a more efficient and effective means of paying for the services obtained from County; and

WHEREAS, Company desires to create an escrow account, accessible by County, to pay the fees and costs associated with any services provided to Company by County's real estate recording office including but not limited to the costs necessary to place documents of record in County's real estate recording records; and

WHEREAS, County is willing to create an escrow account in which Company may periodically deposit funds for the purpose of allowing County to automatically deduct the fees and costs associated with any services provided to Company by County's real estate recording office including but not limited to the costs necessary to place documents of record in County's real estate recording records;

NOW, THEREFORE, County and Company agree as follows:

1. County hereby agrees to establish, at no cost to and for the benefit of Company, a non-interest bearing escrow account ("Account") to be used from time to time by County at Company's sole direction for the payment of any charges, costs or fees incurred by Company for any services rendered by County including but not limited to the costs necessary to place documents of record in County's real estate recording records.
2. Upon the execution of this Agreement, Company shall provide County with the sum of \$500.00 which is to serve as the initial deposit in the Account.
3. County will provide Company a means to deposit additional funds into Account in an amount and at times as Company, in its sole discretion, deems appropriate. County will notify Company by telephone, facsimile, or e-mail as provided in Paragraph 16 when such additional amounts have been deposited and are available for Company's use.
4. County will notify Company by telephone, facsimile, or e-mail as provided in Paragraph 16 hereof, if at the end of any business day, funds available in Account

are equal to or less than \$100,00. County will further notify Company of any discrepancies in fees discovered by County after documents have been accepted for recording. Any necessary adjustments will be credited or charged to Account within two (2) business days of County's notification.

5. County is only permitted to make deductions from Account upon the instructions of the authorized Company personal ("Authorized Personnel") listed on the attached Exhibit A. Upon receipt of instructions from Authorized Personnel, County shall deduct the funds so authorized from Account to pay for the fees and costs associated with any services provided to Company by County's real estate recording office including but not limited to the costs necessary to place documents of record in County's real estate recording records.

It is Company's sole responsibility to notify County of any modification to the list of Authorized Personnel by sending a written notice of such modification to County at least seven (7) days in advance of any such modification. If an expedited modification is required, Company may contact County by telephone, facsimile, or e-mail as provided in Paragraph 16 hereof with the modifications needed. Company will confirm any expedited modification request by sending County written confirmation of its expedited request. An Authorized Personnel modification request, whether made by telephone or in writing, is not valid until Company receives written confirmation from County that the requested Authorized Personnel modification has been incorporated. Such written confirmation is valid if received in an e-mail or by facsimile.

6. Company shall maintain adequate funds in its escrow account to ensure timely processing of service transactions. The full amount due, including all recording fees and taxes, must be available in Account before documents will be recorded or services provided by County. If the Account does not contain enough funds to cover the full amount due, the documents will be rejected or service will be denied. Company will be notified of any documents rejected or services denied in the same manner and time frames as is currently customary for County.
7. On the 1st day of each month, County will provide Company with a statement reflecting all activity in the Account pertaining to the preceding month.
8. The fees and costs associated with any services provided to Company by County's real estate recording office, including but not limited to the costs necessary to place documents of record in County's real estate recording records, will be the same as if payment was rendered to County without the benefit of Account.
9. If the Company desires to close the Account, Company must provide County with written notice of Company's intention to do so. Upon receipt of such notice, County will close the Account no later than seven (7) business days after receipt of said notice and forward any remaining balance in Account to Company.

The County retains the right to close Account at any time and for any reason in its sole discretion. Company shall be given at least seven (7) business days written notice of County's intention to do so. Upon the closing of Account, any remaining balance in Account will be returned to the Company at the address listed herein.

This agreement will remain in full force and effect until cancelled in writing by either party.

10. It is the sole responsibility of Company to maintain the privacy of the Account assigned to the Company. County is not responsible for any unauthorized usage of the Account.

County will not disclose any information concerning either Account or any transactions for which funds in Account have been used for payment to any person or entity, other than those County employees having a need to know, without first obtaining Company's written permission to do so. County must provide Company with notice of any governmental, judicial or administrative order or proceeding to compel the disclosure of Account information or any transaction information for which funds in Account have been used for payment, as promptly as the circumstances of such order or proceeding reasonably permit.

11. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
12. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of law provisions. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs (including, without limitation, all such fees, costs and expenses incident to appeals), and all expenses (including taxes), even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party may be entitled. In the event this Agreement is breached, any and all disputes must be settled in a court of competent jurisdiction located in the State of Texas.

Alternatively, County and Company may, by mutual written consent, agree to use Alternative Dispute Resolution (ADR) to resolve all issues in controversy under this Agreement prior to proceeding with any formal litigation. If either party refuses an offer for ADR, that party shall inform the other party in writing of the reason(s) for such refusal. If ADR is used, an agreement should be reached by the

parties on the alternative procedures and terms to be used in lieu of formal litigation and participation in the process shall include officials of both parties who have the authority to resolve the issue in controversy.

13. County and Company agree that this Agreement sets forth the entire agreement between the parties hereto, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by both the County and Company.
14. Company agrees that its sole remedy against County for any loss of funds in Account shall be limited to, the recovery of the funds proved to be lost. Except in the case of gross negligence or intentional misconduct, Company expressly waives any and all claims for consequential damages due to loss of the funds against County whether for negligence, misfeasance or nonfeasance of duty in office, or any other cause of action arising out of the conduct of the County, its officials, agencies or personnel with respect to Account. It is expressly understood that Account is strictly for the convenience and benefit of Company. No third party shall be entitled to rely upon the existence of Account, the terms of this Agreement, or the application of any funds deposited hereunder to its benefit or look to County for recovery of any claim by virtue of or relating to this agreement. Company shall further indemnify County for claims of any third party to any funds deposited hereunder, or their application in favor of any third party.
15. This contract shall not be assigned without the consent of the County.
16. All notices required or permitted under this Agreement will be deemed sufficient if given by telephone and then immediately confirmed in writing by facsimile, mail or email to the facsimile number, address or email address specified below:

If to County: Tom Green County Clerk
124 W. Beauguard
San Angelo, TX 76903 Ph 325-659-6552
Fax 325-659-3251
gary.monico@co.tom-green.tx.us

If to Company: eRecording Partners Network Ph.# 888-325-3365
Pam Trombo X 11240
400 Second Ave S, Minneapolis, MN 55401

Written notices or written confirmation of notices delivered and received by telephone will be effective on the third (3rd) business day following the date such notice was dispatched in writing by facsimile, mail or email to the facsimile number, address or email address provided herein.

17. Company and County mutually represent that each is authorized by law, its governing by-laws or other organizational or administrative rules to enter into this

Agreement; and that the person executing this Agreement is authorized to do so and to bind the organization thereby.

IN WITNESS WHEREOF, The parties have duly executed and delivered this Agreement on the date set forth above, to be effective as of the 24 day of January 2012

e Recording Postness Network, LLC

Company, a _____ corporation
By: [Signature]
Its: President

Tom Green County, Texas (State)
By: [Signature]
Michael D. Brown
Its: County Judge
[Signature]



Elizabeth McGill
County Clerk
Tom Green County, Texas

EXHIBIT A
(AUTHORIZED PERSONNEL LIST)

County is authorized to make deductions from Account pursuant to the instructions of the following company personnel: