

1 **MEMORANDUM OF UNDERSTANDING BETWEEN**

2 **THE COUNTY OF SANTA CRUZ**

3 **AND**

4 **[Sender Name]**

5  
6 THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and  
7 executed as of this \_\_ day of \_\_\_\_\_, 20\_\_, by and between the COUNTY  
8 OF SANTA CRUZ, COUNTY RECORDER (hereinafter referred to as "RECORDER"),  
9 and the \_\_\_\_\_, a  
10 \_\_\_\_\_ (hereinafter  
11 referred to as "SENDER").

12 The purpose of this MOU is to outline the agreement and procedures required to  
13 record documents electronically in RECORDER's County (the "COUNTY"). The  
14 responsibilities established by this MOU are intended to assure that the Electronic  
15 Recording Delivery System ("ERDS"), as implemented and maintained by the California  
16 Electronic Recording Transaction Network Authority ("CERTNA") is secure and that  
17 ERDS operating procedures are sufficient to assure the continuing security and lawful  
18 operation of the ERDS as provided for in the Electronic Recording Delivery Act of 2004  
19 ("ERDA"), set forth at California Government Code section 27390 et seq., and  
20 regulations promulgated thereunder, set forth at California Code of Regulations  
21 ("CCR"), Title 11, Division 1, Chapter 18, Articles 1 through 9.

22  
23 NOW, THEREFORE, RECORDER and SENDER hereby agree as follows:

24 **ARTICLE I -- DEFINITIONS**

25 Terms defined in Government Code Section 27390 and/or California Code of  
26 Regulations Section 999.108 shall have the same meaning when used in this MOU.

27 **ARTICLE II – GENERAL DUTIES AND RESPONSIBILITIES**

28 A. SENDER acknowledges that it is a voluntary participant in ERDS.

1                   B. If SENDER is one of the types of entities described in Government  
2 Code section 27391(b), or an authorized agent of such an entity, then SENDER is  
3 authorized under this MOU to deliver to RECORDER for recording, and return to the  
4 party requesting recording, a digitized electronic record that is an instrument affecting a  
5 right, title, or interest in real property.

6                   C. If SENDER is one of the types of entities described in Government  
7 Code section 27397.5(b), or an authorized agent of such an entity, then SENDER is  
8 authorized under this MOU to deliver to RECORDER for recording, and return to the  
9 party requesting recording, a digital or digitized electronic record that is an instrument of  
10 reconveyance, substitution of trustee, or assignment of deed of trust.

11                   D. SENDER is wholly responsible for the scanning, transmission, and  
12 submission of documents. SENDER agrees to abide by the procedures for ERDS as set  
13 forth by CERTNA and RECORDER. RECORDER shall provide a copy of the current  
14 procedures to SENDER. CERTNA and RECORDER each reserves the right to modify  
15 its own procedures at any time, and a copy of any revised procedures will be provided  
16 to SENDER.

17                   E. SENDER shall mail recorded documents to applicable parties together  
18 with a copy of a recorded electronic document to the address specified in the  
19 instructions for mailing upon completion of recording pursuant to Government Code  
20 Section 27391(d).

21                   F. All hardware and software used by SENDER in the ERDS scanning and  
22 submitting process and any additional uses for the scan/submit stations must be  
23 approved by RECORDER prior to installation.

24                   G. SENDER shall provide to RECORDER guidelines for any specific  
25 software/hardware configuration required to install ERDS on SENDER's network. The  
26 SENDER shall provide, at no cost to RECORDER or CERTNA, any and all specific  
27 software/hardware identified as required by SENDER.

1 H. Access to the ERDS software, scan, and transmission process shall be  
2 governed by an authentication system approved by CERTNA and RECORDER. All  
3 administrative access to the authentication system shall be restricted to RECORDER  
4 employees and CERTNA employees only. SENDER and any agents of SENDER shall  
5 not perform any authentication administration.

6 I. SENDER agrees to notify RECORDER of system users who leave  
7 employment of SENDER or who change office locations. RECORDER shall delete or  
8 modify security access for those individuals.

9 J. SENDER-controlled remote access to the ERDS system shall be  
10 provided to CERTNA and RECORDER for system administration and maintenance  
11 purposes.

12 K. SENDER shall provide CERTNA and RECORDER with physical access  
13 during normal business hours to all of SENDER'S hardware and software interacting  
14 with the ERDS system.

15 L. SENDER shall provide first-level technical support to its users for the  
16 ERDS hardware and software. SENDER agrees to perform basic maintenance of its  
17 hardware on a regular basis.

18 M. CERTNA retains ownership of the ERDS software and is responsible  
19 for any modifications, upgrades, or enhancements. RECORDER shall provide  
20 SENDER access to ERDS on an as-is basis. SENDER may remit suggestions for  
21 enhancements to CERTNA or RECORDER for consideration. CERTNA alone has final  
22 authority on the functionality, enhancements, or upgrades of the ERDS software.

23 N. SENDER is expressly prohibited from making any software/hardware  
24 modification to the ERDS system without written consent of CERTNA.

25 O. CERTNA or RECORDER may terminate access to ERDS, or any part  
26 thereof, or may terminate access of any authorized submitter, or any authorized staff, at  
27 any time it deems it necessary to protect ERDS, to protect the public interest, to protect  
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1 the integrity of public records, or to protect homeowners or real property owners from  
2 financial harm. No cause of action or liability against the RECORDER or CERTNA or  
3 any government agency shall arise from any decision of the RECORDER or CERTNA  
4 to terminate or deny access of any person or entity to ERDS.

5 P. SENDER and Agent, if any, shall be limited to those privileges granted  
6 by RECORDER. The SENDER and Agent are strictly prohibited from submitting ERDS  
7 payloads on behalf of another SENDER or Agent except as provided for in this MOU. In  
8 no event shall shared user accounts be issued or ERDS authentication credentials be  
9 shared. In the event that RECORDER or CERTNA determines that any provisions or  
10 procedures have been or are imminently in danger of being violated, RECORDER or  
11 CERTNA may revoke immediately and without prior notice all electronic submission  
12 privileges of SENDER and Agent.

### 13 ARTICLE III – TECHNICAL REQUIREMENTS

14 A. SENDER and Agent (if any) hereby certify that all users, equipment  
15 (owned by Sender or Agent), and software interacting with the ERDS shall meet all  
16 requirements as set forth in the ERDA and associated regulations, including but not  
17 limited to the followings:

18 1. Scanner Requirements

- 19 i. See county-specific requirements set forth in guidelines provided by  
20 RECORDER.

21 2. Payloads

- 22 i. Type 1 and Type 2 Instruments.  
23 ii. The ERDA refers to two types of instruments that may be delivered  
24 and, when applicable, returned as digital electronic records and/or  
25 digitized electronic records. For the purposes of an ERDS, these  
26 instruments are categorized as “Type 1” and “Type 2.” As defined  
27  
28

1 in Cal. Code of Regs. § 999.109(26), a “Type 1” instrument is an  
2 instrument affecting a right, title, or interest in real property, and a  
3 “Type 2” instrument is an instrument of reconveyance, substitution  
4 of trustee, or assignment of deed of trust. Type 1 and Type 2  
5 documents shall NOT be mixed within a single payload.

6 iii. The content of Type 1 and Type 2 instruments shall be as follows:

7 1. Type 1 Instruments: those affecting a right, title, or interest in  
8 real property, shall be delivered as digitized electronic  
9 records.

10 2. Type 2 Instruments: instruments of reconveyance,  
11 substitution of trustee, or assignment of deed of trust, shall  
12 be delivered as digitized electronic records or digital  
13 electronic records.  
14

15 B. Additional specifications shall be set forth in Attachment A hereto,  
16 which is hereby incorporated by reference. Attachment A shall include specifications for  
17 the following:

- 18 1. File Type
- 19 2. DPI
- 20 3. Index Information
- 21 4. Priority Levels Available
- 22 5. Submission Cut-Off Times
- 23 6. Support Procedure and Contact Information

24 In the event Attachment A does not list File Type, the File Type is assumed to be TIFF.

25 In the event Attachment A does not list DPI, the DPI is assumed to be 300.

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27 ARTICLE IV – MANDATORY PROVISIONS PER CCR

1                   A. Pursuant to CCR 999.138, RECORDER shall ensure that all endpoints  
2 are secure. Workstations used to submit, retrieve, or, when applicable, return ERDS  
3 payloads shall be protected from unauthorized use and access. At a minimum,  
4 SENDER's and/or SENDER's Agents' workstations shall meet all of the following  
5 requirements:

- 6                   1. Anti-malware software configured to start on system boot-up.
- 7                   2. Operating system software with the most up-to-date patches and  
8                   hot-fixes.
- 9                   3. Host based firewall configured to restrict inbound and outbound  
10                  connections.

11 Installed applications shall be limited to the purpose of performing the necessary  
12 operational needs of the recording process as defined by RECORDER. SENDER shall  
13 ensure that all of SENDER's Agents comply with the provisions of this paragraph A.

14                   B. Pursuant to CCR 999.131 and 999.146(b), RECORDER shall establish  
15 ERDS operating procedures.

16                   C. Pursuant to CCR 999.142, ERDS access shall be controller by  
17 RECORDER using a role-based access control system. RECORDER shall also be  
18 responsible for controlling the assignment of user accounts and identity credentials.

#### 19                   ARTICLE V – GENERAL PROVISIONS

20                   A. In the performance of the MOU, SENDER shall act in an independent  
21 capacity and not as an officer, employee, or agent of RECORDER or CERTNA.

22                   B. SENDER or designee (AGENT) must respond to RECORDER or  
23 CERTNA inquiries within one (1) business hour.

24                   C. No AGENT shall be a computer security auditor or a vendor of ERDS  
25 or any other electronic recording delivery system.

26                   D. SENDER shall notify the COUNTY in writing, of any change in mailing  
27 address within ten (10) business days of the change.

1           E. SENDER shall not enter into any subcontract for services covered by  
2 this MOU without first obtaining written approval from RECORDER. Any subcontract  
3 shall be subject to the same terms and conditions as this MOU. SENDER shall be fully  
4 responsible for the performance and payment of any subcontractor's contract.

5           F. Without the prior written consent of the RECORDER, this MOU shall  
6 not be assigned by SENDER either in whole or in part.

7           G. This MOU is intended by the parties hereto as a final expression of  
8 their understanding with respect to the subject matter hereof and supersedes any and  
9 all prior or contemporaneous MOUs or understandings or contracts. This MOU may be  
10 changed or modified only upon the written consent of the parties hereto. Any alteration,  
11 variation, modification, amendment or waiver of the provisions of this MOU shall be  
12 valid only when reduced to writing and signed by the parties hereto.

13           H. SENDER shall ensure that it has all necessary licenses and permits  
14 required by applicable federal, state, and local laws, ordinances, rules and regulations.  
15 The SENDER shall maintain these licenses and permits in effect for the duration of this  
16 MOU. SENDER will notify RECORDER immediately of any loss or suspension of any  
17 such licenses and permits. Failure of SENDER to maintain all required licenses and  
18 permits constitutes a material breach of this MOU and in the event of any such failure  
19 RECORDER may immediately terminate this MOU and pursue all other available  
20 remedies.

21           I. In the event of a problem or potential problem that could impact the  
22 quality or quantity of work, services, or the level of performance under this MOU, the  
23 SENDER shall notify the RECORDER within one (1) working day, in writing and by  
24 telephone.

25           J. SENDER shall not offer (either directly or through an intermediary) any  
26 improper consideration such as, but not limited to, cash, discounts, service, the  
27 provision of travel or entertainment, or any items of value to any officer, employee or  
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1 agent of RECORDER or CERTNA in an attempt to secure favorable treatment  
2 regarding this MOU. The RECORDER, by written notice, may immediately terminate  
3 any MOU if it determines that any improper consideration as described in this paragraph  
4 was offered to any officer, employee or agent of the RECORDER or CERTNA with  
5 respect to the proposal and award process. This prohibition shall apply to any  
6 amendment, extension or evaluation process once an MOU has been awarded.  
7 SENDER shall immediately report any attempt by a RECORDER officer, employee or  
8 agent to solicit (either directly or through an intermediary) improper consideration from  
9 SENDER. The report shall be made to CERTNA or to the supervisor or manager  
10 charged with supervision of the employee or to the RECORDER's County  
11 Administrative Office.

12 K. No news releases, advertisements, public announcements or  
13 photographs arising out of this MOU or the SENDER's relationship with RECORDER  
14 may be made or used without prior written approval of the RECORDER.

15 L. This MOU shall be governed by the laws of the State of California.

16 M. The RECORDER and CERTNA shall each have the absolute right to  
17 review and audit any aspect of the ERDS system, security, all records, books, papers,  
18 documents, and other pertinent items as requested, and shall have absolute right to  
19 monitor the performance of SENDER in the delivery of services provided under this  
20 MOU. SENDER shall give full cooperation, in any auditing or monitoring conducted.  
21 SENDER shall cooperate with RECORDER and CERTNA in the implementation,  
22 monitoring and evaluation of this MOU and comply with any and all reporting  
23 requirements established by RECORDER and CERTNA. All records pertaining to  
24 services under this MOU shall be available for examination and audit by RECORDER  
25 and CERTNA representatives for a period of one year.

26 N. The SENDER agrees to indemnify, defend and hold harmless  
27 RECORDER and CERTNA, their authorized officers, employees, agents and volunteers  
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1 from any and all claims, actions, losses, damages and/or liability arising from  
2 SENDER's acts, errors or omissions and for any costs or expenses incurred by  
3 RECORDER or CERTNA on account of any claim therefor, except where such  
4 indemnification is prohibited by law.

5 O. SENDER is responsible for the accuracy and completeness of the  
6 recording transactions. RECORDER and CERTNA are expressly not liable for damages  
7 resulting from the recording or ERDS transactions or processes.

8 P. SENDER shall carefully monitor and control use of the system,  
9 ensuring compliance with procedural safeguards. SENDER assumes full responsibility  
10 for any malicious act that harms, damages or has a damaging effect to the  
11 RECORDER's system or databases. RECORDER and CERTNA assume no liability for  
12 electronically transmitted records that do not adhere to Government Code section  
13 27201. RECORDER and CERTNA assume no liability for any information transmitted  
14 electronically by a SENDER.

15 Q. RECORDER and CERTNA assume no liability for any breach of  
16 security, fraud, or deceit as a result of ERDS. In the event of fraud impacting the value  
17 of or title to real estate, SENDER bears the financial responsibility for transactions in  
18 which the SENDER engages. This responsibility lies with the SENDER notwithstanding  
19 contrary waiver and/or disclaimer language that may be present in any title insurance  
20 policy, escrow instruction, or other document pertaining to the real estate transaction  
21 associated with said fraud.

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ARTICLE VI – NOTICES AND REPORTS

Any notice or report desired to be served by either party upon the other shall be addressed, personally delivered, or mailed to the respective parties as set forth

below:

RECORDER: Carol Sutherland, Assistant Recorder  
701 Ocean Street, Room 230  
Santa Cruz, CA 95060

SENDER:

\_\_\_\_\_  
CONTACT NAME

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street/ Mailing Address

\_\_\_\_\_  
City, ST Zip

AGENT (if any):

\_\_\_\_\_  
CONTACT NAME

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street/ Mailing Address

\_\_\_\_\_  
City, ST Zip

ARTICLE VII – TERM AND TERMINATION

A. This MOU shall take effect on the date it is signed by the RECORDER and shall continue in force and effect until terminated hereunder.

B. Either party may terminate this MOU for any reason by serving the other party with prior written notice of at least fifteen (15) business days.

C. Upon termination, all ERDS software and/or equipment owned by RECORDER or CERTNA must be returned to its owner within thirty (30) days of termination.

D. In addition to other termination provisions contained herein, in the event that RECORDER determines that SENDER’S performance of its duties or other terms of

1 this MOU are deficient in any manner, RECORDER may notify SENDER of such  
2 deficiency in writing or orally, provided written confirmation is provided five (5) days  
3 thereafter. SENDER shall remedy any deficiency within forty-eight (48) hours of such  
4 notification, or RECORDER may, at its option, terminate this MOU immediately upon  
5 written notice.

6 IN WITNESS WHEREOF, the parties hereto have executed this MOU as  
7 of the day and year first above written.

8 RECORDER

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

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11 SENDER:

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

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16 Agent (if any):

17 Name of Agent;

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

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