

**MEMORANDUM OF UNDERSTANDING
BETWEEN SANTA FE COUNTY AND
THE CORPORATION SERVICE COMPANY**

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "Agreement") is entered on this 19th day of April 2016, by and between Santa Fe County, a political subdivision of the state of New Mexico, and the Corporation Service Company, a Delaware Corporation, registered and authorized to do business in the State of New Mexico (hereinafter referred to as "Authorized Filer").

WHEREAS, this Agreement is entered into pursuant to the Uniform Real Property Electronic Recording Act, NMSA 1978, Section 14-9A-1 through 14-9A-7; and 1.11.2 NMAC; and

WHEREAS, this Agreement establishes the terms and conditions of participation in the Santa Fe County Clerk's electronic filing and recording program; and

WHEREAS, the Santa Fe County Clerk (the Clerk) is authorized to receive qualifying documents for filing and recordation in the Clerk's official records; and

WHEREAS, Authorized Filer facilitates for its customers the electronic recording of documents with governmental entities; and

WHEREAS, this Agreement sets forth the requirements for electronically recording documents with the Clerk.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES as follows:

1. ELECTRONIC RECORDATION OF DOCUMENTS WITH THE SANTA FE COUNTY CLERK

A. Documents: Attached as Exhibit A to this Agreement is a list of the documents permitted to be filed electronically with the Clerk. This list may from time to time be amended by the Clerk without amendment to this Agreement but with notice to the Authorized Filer. Authorized Filer shall require each of its customers (a Submitter) to enter into a separate agreement with the Authorized Filer that includes the following terms and covenants:

- i. Submitter agrees that electronic documents or attachments shall be considered an "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, digitized, or electronic signature, as paper documents bearing handwritten signatures.

- ii. By using electronic digitized signatures or digital certificates to sign documents, Submitter 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.
- iii. Submitter attests to the accuracy, authenticity, and completeness of the records, including signatures and notary seals, and acknowledges responsibility for the content of the documents regardless of how submitted to the Authorized Filer and/or the government recording office (Santa Fe County Clerk). In the event of a dispute or legal action concerning a transaction, Submitter agrees hold the government recording office harmless, and as such the government recording office and such the government recording office shall not to be liable for any damages to Submitter.
- iv. Submitter shall record only original documents bearing original signatures and acknowledgements.
- v. All documents and data submitted by Submitter shall comply with the current county, state, and federal laws and standards for the recording jurisdiction where submitted including requirements for indexing purposes.

B. Review: Authorized Filer agrees to be diligent in ensuring that all documents prior to submittal for electronic recording have been checked for errors, omissions, scanning defects, illegible areas and other deficiencies that would affect the Clerk's ability to record the documents.

C. Notification of submittal: The Clerk shall issue to the Authorized Filer an electronic or other written notification, which will include the date and time of receipt, that the electronic document has been received by the Clerk.

D. Notification of rejection: Electronic documents submitted for recordation shall be rejected by the Clerk if the documents fail to comply with the following: 1) image or file-format specifications and security requirements set forth in 1.11.2 NMAC; 2) New Mexico statutes; or 3) any requirements established by the Clerk for electronic recording of real property records.

E. Transmissions: Documents shall be transmitted through an electronic recording delivery system. Authorized Filer shall visually inspect each instrument or document prior to transmitting to ensure compliance with existing statutory recording requirements and 1.11.2 NMAC. Authorized Filer shall comply with transmittal sheet requirements set forth in Subsection C of 1.11.2.12 NMAC.

F. Liabilities and responsibilities of Authorized Filer: Pursuant to 1.11.2.11 NMAC, Authorized Filer shall implement security procedures for all electronic filing transmissions and shall be responsible for maintaining the security of the system within its office. Authorized Filer shall be responsible for keeping its encryption key secure and for establishing internal controls to assure the security of the private key is not compromised. Authorized Filer shall immediately notify the Clerk of any compromise of security.

G. Clerk's right and responsibilities: The Clerk reserves the right to refuse and return any instrument or document that does not meet requirements for electronic recording. Neither the Clerk nor the County of Santa Fe shall be liable for any failure to perform processing of the transactions and documents when such failure results from any act of God, terrorism, or other cause beyond the parties reasonable control, including but not limited to, any mechanical, electronic, or other communications failure that prevents the parties from transmitting or receiving electronic documents. The Clerk has no responsibility for any failure in technology or software at any point of contact. The Clerk shall not be liable to the Authorized Filer or its customers for any damage resulting from software or equipment failure. The County Clerk shall apply the same level of diligence in handling documents submitted electronically as those submitted non-electronically or through the manual process. However, nothing in this Agreement shall be construed to require the Clerk to monitor or review the content of documents submitted for electronic recording except for review to determine acceptability pursuant to the Clerk's requirements.

2. FEES AND PAYMENT

Fees for recording documents electronically are established at NMSA 1978, Sections 14-8-15. Fees for electronic recording are collected through an electronic payment system, automated clearing house (ACH). Documents must be accompanied by the appropriate fees at the time of recording. The method is subject to standards and fees set by the Electronic Recording Commission and the Clerk.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon execution by all parties, become effective on July 1, 2016 and shall terminate on June 30, 2017, unless earlier terminated pursuant to paragraph 4 below. The parties may extend the term of this Agreement by notice to the other party and by an instrument in writing executed by the parties. In no event shall the term of this Agreement exceed four years from July 1, 2016.

4. TERMINATION

The Clerk, at her sole discretion, may terminate this Agreement immediately in the event the Clerk determines there has been a breach of any term or condition of this Agreement or breach of security, warranting immediate termination. Pursuant to 1.11.2.10 NMAC, should Authorized Filer fail to take immediate corrective and remedial action for any security compromise, the Clerk may terminate this Agreement immediately and revoke Authorized Filer's privilege to file

electronically. Nonpayment of fees by Authorized Filer is also grounds for immediate termination.

Either the Clerk or the Authorized Filer may terminate this Agreement without cause by providing 30 days prior written notice to the other party.

5. LIABILITY

It shall be the obligation of the Authorized Filer at its own expense to defend and indemnify the Clerk against any claim or cause of action asserted by anyone against the Clerk as a result of a breach of security caused by or resulting from the Authorized Filer's failure to implement and maintain security measures with respect to electronic recording.

6. INSURANCE

A. General Conditions. Authorized Filer shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. Authorized Filer shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Authorized Filer; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. Authorized Filer shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), Authorized Filer shall increase the maximum limits of any insurance required herein.

7. AMENDMENT

This Agreement shall not be altered, changed, or amended except by an amendment executed in writing signed by the parties.

8. ENTIRE AGREEMENT

This Agreement incorporates all agreements, covenants and understanding between the parties hereto. No prior agreement, covenants or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

9. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. Authorized Filer shall comply with all applicable laws, ordinances, and obligations.

B. This Agreement shall be construed in accordance with the ordinances of the County of Santa Fe and the substantive laws of the State of New Mexico, without regard to its choice of law rules. The Authorized Filer and Santa Fe County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico located in Santa Fe County.

10. NOTICES AND CONTACTS

All notices required to be given to the Clerk under this Agreement shall be mailed to:

Santa Fe County
Santa Fe County Attorney
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-0276

and,

Santa Fe County Clerk
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-0276

All notices required to be given to the Authorized Filer under this Agreement shall be mailed to:

Corporation Service Company
2711 Centerville Road
Wilmington, DE 19808
Attn: General Counsel

Contact information of the Authorized Filer, as required by 1.11.2.10 NMAC, is as follows:

Administrative and Information technology contact person: Wayne Crabtree, 919N 1000W, Logan, UT 84321; telephone: (435) 755-9837; e-mail: wayne.crabtree@csc.global.com

11. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Authorized Filer hereby irrevocably appoints Prentice Hall Corporation System as its general agent for acceptance of services, and its agent upon whom process and writs in any action or proceedings arising out of or related to this Agreement may be served. Authorized Filer acknowledges and agrees that service upon its designated agent shall have the same effect as though Authorized Filer were actually and personally served within the state of New Mexico.

12. NEW MEXICO TORT CLAIMS ACT

No provisions of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or the Santa Fe County Clerk or the public employees at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 *et seq.*

13. NO THIRD-PARTY BENEFICIARIES

This Agreement is not intended to and does not create any rights in any persons not a party hereto.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the dates written below.

Katherine Miller
Katherine Miller,
Santa Fe County Manager

5.23.16
Date

Approved as to form

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

5-20-16
Date

Finance Department

Carole H. Jaramillo
Carole H. Jaramillo
Finance Director

5/22/16
Date

CORPORATION SERVICE COMPANY

Jennifer K. B. [Signature]
(signature and title)

7/30/16
Date

Jennifer Kenton VP
(print name and title)

