Clear Form

COMMONWEALTH OF VIRGINIA

Fairfax Circuit Court

4110 Chain Bridge Road
Fairfax, Virginia 22030-4048

703-246-2770 TDD 703-352-4139

JOHN T. FREY
Clerk Of Circuit Court

GERARDA M. CULIPHER
Chief Deputy

Electronic Filing Agreement
Business

This agreement is made between Fairfax Circuit Court Clerk's Office (hereafter "Clerk's Office") and _____, (hereafter "Filer") having its principal place of business at _____ _____. The parties hereto enter into this agreement, pursuant to §17.1-258.2 et. seq. and §55-142.10 et. seq. of the Code of Virginia, for the purpose of granting Filer the right to electronically record land record documents with the Clerk's Office and to establish a method of payment for such filings. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **FILING/RECORDING ELECTRONIC DOCUMENTS**. Filer may electronically submit land record documents for recordation using the electronic filing systems (hereafter "EFS") listed at http://www.fairfaxcounty.gov/ courts/circuit/efs.htm. Once a document has been successfully recorded, a copy of the document and a receipt will be returned electronically to Filer's desktop within the EFS.

2. **DAYS AND HOURS OF OPERATION**. The Filer shall be able to access the EFS at any time except as follows:
    a. For periods of preventative maintenance;
    b. For such other periods of remedial maintenance as may be required; and
    c. Clerk's Office and County management reserve the right to reduce the EFS service level during unusual circumstances such as, but not limited to, "brown-outs," emergency production requirements mandated by law or to accommodate County production requirements, intrusions against security regulations, and adverse operational impacts beyond the control of the Clerk's Office, Fairfax County or the Commonwealth of Virginia.

3. **AGREEMENT TO PAY**. Filer agrees to pay such recordation taxes, recording fees and clerk's fees assessed by the Code of Virginia in accordance with the fee schedule provided at http://www.fairfaxcounty.gov/ courts/circuit/efs.htm. The taxes and fees specified in the Recordation Taxes and Fees document are those currently in effect in the Code of Virginia and

are subject to change. Any legislative changes, additions or deletions shall automatically become a part of this Agreement as of the effective date of said legislative changes. Fees will be collected by the Clerk's Office by automatic Automated Clearing House (ACH) debit transactions. Payment is due immediately. If the Clerk's Office does not receive payment within three business days of receipt of a recorded document, in addition to any other remedies available under the law, no future documents submitted by Filer will be accepted by the automated system or over the counter, until the account has been paid in full.

4. **NOTARIZATION AND ACKNOWLEGEMENT**. Land record documents shall comply with the requirements for notarization pursuant to §17.1-258.4B, §47.1-et. seq. and §55-118.3 of the Code of Virginia. "If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable laws, is attached to or logically associated with the signature or record." Section § 59.1-489 of the Code of Virginia.

5. **SERVICES**.
   a. The Clerk's Office or its agents will provide the Filer with access to an EFS capable of accepting and recording the land record document types outlined at http://www.fairfaxcounty.gov/ courts/circuit/efs.htm.

   b. The Clerk's Office, its employees or agents will assume responsibility for:

      1. Providing the Filer with the Fairfax Circuit Court EFS on a secure website at http://ccr.fairfaxcounty.gov/efs/elogin.aspx

   c. The Clerk's Office will provide the Filer with limited consultation, via telephone or email, on specific problems that arise in the use of the EFS. However, the Clerk's Office does not guarantee consultation results nor warrant or represent that all errors or problems will be corrected.

   d. The Clerk's Office will perform system setup to establish a corporate account with a system administrator and new individual user accounts, including the User ID and initial password for each. It is the responsibility of the Filer to change his/her password the first time signing-on to the EFS.

   e. The Clerk's Office will deactivate corporate and user accounts as requested or deemed appropriate.

   f. The Clerk's Office will retain data from successfully recorded documents on the EFS for a 30 day period. This will allow the Filer to download copies of the recorded document, receipt and related information. After 30 days, this information will be cleared to make additional storage available to all customers.

6. **NOTIFICATION OF SUBMISSION OF ELECTRONIC DOCUMENTS FOR RECORDATION**. The Clerk's Office will provide three notifications to the Filer, including when the electronic document has been received, but not recorded; when the document is ready for processing; and when the document has been recorded. Said notifications will include the date and time of each.

7. **REJECTION OF DOCUMENTS**. Electronic documents submitted for recordation through the EFS will be rejected if they fail to meet the image or file format specifications or security requirements of the EFS, for failure to comply with the requirements as otherwise provided in the Code of Virginia, or for failure to meet the standards established by the Clerk's Office for electronic documents or submissions that contain an electronic virus. If an electronic document is rejected, an electronic notification of rejection will be provided to the Filer.

8. **TIME OF RECORDATION OF ELECTRONIC DOCUMENTS**. Electronic documents received by the Clerk's Office are deemed recorded as of the date and time stated on the electronically recorded document, not the date and time of receipt by the Clerk's Office. The Clerk's Office will provide an electronic notification of recordation to the Filer.

9. **INDEXING REQUIREMENTS**. Filer agrees to abide by the indexing requirements as published by the Clerk's Office. The current indexing requirements are available at http://www.fairfaxcounty.gov/ courts/circuit/efs.htm and are incorporated by reference herein. The indexing requirements are compatible with those established by the Property Recording Industry Association (hereafter "PRIA") for file formatting.

10. **APPLICATION OF VIRGINIA LAW**. The parties agree that, unless otherwise specified herein, the following provisions of Virginia law shall apply including, but not limited to, the Virginia Uniform Electronic Transactions Act, the Virginia Uniform Real Property Electronic Recording Act (hereafter "URPERA") and the Virginia Mortgage Satisfaction Act.

    The parties further agree that this agreement is governed by the Virginia Information Technologies Agency's (hereafter "VITA") Virginia Real Property Electronic Recording Standard.

11. **EFFECTIVE DATE**. This Agreement is effective upon execution by both parties as evidenced by the later of the dates reflected below, and shall be effective for an initial term of one year.

12. **AUTOMATIC RENEWAL**. This Agreement shall automatically renew for a term of one year, unless either party gives a written notice to the other at least fifteen (15) days in advance of the end of the initial or renewal term of this Agreement.

13. **CONTACTS FOR CLERK'S OFFICE**. The Information Technology contact in the Clerk's Office is ccrhelp@fairfaxcounty.gov or 703-246-2366.

14. **RESPONSIBILITIES OF FILER**.
    a. The Filer has the responsibility for obtaining a valid VIP token from VeriSign and providing the Clerk's Office with the valid VIP token ID number. The Filer will establish internal controls to assure that the security of the VIP token is not compromised and to certify compliance as part of the Electronic Filing Agreement as otherwise provided herein. If the security of the VIP token is compromised, the Filer has the responsibility of promptly notifying the Clerk's Office's Information Technology Help Desk (703-246-2366) who will discontinue use of the compromised VIP token. The Filer will obtain a replacement VIP token and notify the Clerk's Office of the revised VIP token ID number in order to have access restored to the EFS. The Filer will address the breach of internal controls to prevent a similar occurrence in the future. If Filer fails to take immediate corrective and remedial action for any such compromise, the Clerk's Office may revoke the Filer's privileges to file electronically. If the compromise of security occurs within the EFS, the Clerk's Office or its vendor, as appropriate, will promptly

address the compromise of security and the breach of internal controls to prevent a similar occurrence in the future. For purposes of this Agreement, "compromise of security" shall mean when the security of the VIP token could be used by someone other than the authorized user for the Filer or could be used for purposes not permitted by this Agreement.

b. It is the responsibility of the Filer to notify the Clerk's Office immediately upon the termination or resignation of an authorized user. It is also the responsibility of the Filer to approve Individual User applications prior to submission to the Clerk's Office.

c. It is the responsibility of the Filer to purchase the computer hardware and software and/or make any modifications to their existing equipment or internet access which is necessary to effect access to the EFS.

d. The Filer is responsible for assuring the proper use, management and supervision of the machines and programs, audit controls, operating methods, office procedures and for establishing the necessary controls over access to the system.

e. The Filer is responsible for the payment of all fees incurred through or from its location(s), computer(s) and accounts, whether said access is authorized or unauthorized, and all other obligations under this agreement.

f. Information accessed from the EFS is for the use of the Filer in the ordinary course of its business.

g. The Filer is responsible for ensuring that use of the EFS is conducted in a proper and legal manner. If there are allegations of a crime or if Filer is charged and convicted of a crime, including but not limited to, a violation of the Virginia Computer Crimes Act (§18.2-152.1 of the Code of Virginia), arising out of its use of the system, the Clerk's Office shall have the right to terminate this agreement immediately. This shall not be construed as prohibiting the Clerk's Office from pursuing any other remedy available to it for such breach.

15. **SYSTEM SAFEGUARDS**. Filer shall carefully monitor and control use of the system, ensuring compliance with procedural safeguards. Filer assumes full responsibility for any malicious act that harms, damages or has a damaging effect to the Clerk's Office's and/or County's system or databases.

16. **BREACH OF SECURITY AND FRAUD**. Clerk's Office and County assume no liability for any breach of security, fraud, or deceit as a result of the EFS. In the event of fraud impacting the value of or title to real estate, Filer bears the financial responsibility for transactions in which the Filer engages. This responsibility lies with the Filer notwithstanding contrary waiver and/or disclaimer language that may be present in any title insurance policy, escrow instruction, or other document pertaining to the real estate transaction associated with said fraud.

17. **LIMITATION OF LIABILITY**.
    a. The Filer hereby relieves, releases, indemnifies and holds harmless the Clerk, deputy clerks, employees or agents from liability for any and all damages resulting from interrupted service of any kind. The Filer further relieves and releases the County of Fairfax, its Board of Supervisors, officers, employees, and agents from liability for any and all damages resulting from interrupted service of any kind.

b. The Filer hereby relieves, releases, indemnifies, and holds harmless the County of Fairfax, its Board of Supervisors, officers, employees, and agents of any liability for any and all damage resulting from incorrect data or any other misinformation accessed from this service. The Filer relieves, releases, indemnifies, and holds harmless the Clerk, deputy clerks, employees or agents of liability for any and all damages resulting from incorrect data or any other misinformation accessed from this service.

c. The Filer agrees that the Clerk, deputy clerks, employees or agents shall not be liable for negligence or lost profits, resulting from any claim or demand against the Filer by any other party.

d. No action, regardless of form, arising out of the transactions under this Agreement, may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for nonpayment may be brought at any time permitted by law.

e. The Filer agrees that the Clerk, deputy clerks, employees or agents' liability hereunder for damages, regardless of the form of action, shall not exceed One Thousand Dollars ($1,000.00).

f. In no event will the Clerk, deputy clerks, employees or agents be liable for consequential damages even if the Clerk's Office has been advised of the possibility of such damages.

g. It is acknowledged by the Filer that the County of Fairfax, its Board of Supervisors, officers, employees or agents are not a party to this Agreement and that the County shall incur no liability hereunder.

h. This Agreement creates no rights or privileges that are enforceable by anyone not a party to this Agreement.

i. Nothing in this Agreement shall be construed as waiving the sovereign or governmental immunity of the Clerk of the Court, the County of Fairfax, the Board of Supervisors, or their respective officers, deputy clerks, employees or agents.

18. **ENTIRE AGREEMENT**. Except as expressly provided otherwise herein, this Agreement represents the entire agreement between the parties.

19. **EXTERNAL LINKS TO DOCUMENTS**. The documents referred to in the body of this Agreement are an integral part of this Agreement and reference to this Agreement shall be deemed to include all the documents.

20. **MODIFICATION**. This Agreement will be automatically modified by any future statutory changes and by future modifications to VITA's Virginia Real Property Electronic Recording Standard (hereafter "VRPERS"). Absent statutory changes, modifications to the VRPERS or as otherwise provided herein, no modification of this Agreement will be valid unless in writing and signed by both parties.

21. **RATES, FEES AND TERMS MAY CHANGE**. The Clerk's Office may change the Agreement terms, at any time for any reason. If the Clerk's Office changes the terms of the Agreement, Filer will receive notice and have the right to terminate this Agreement.

22. **SEVERABILITY**. If any provision (or part thereof) of this Agreement is found to be invalid, then it shall be stricken and have no effect. The remaining provisions shall continue in full force and effect.

23. **GOVERNING LAW**. This Agreement shall be construed and governed by the laws of the Commonwealth of Virginia.

24. **TERMINATION**.
    a. Either party may terminate this Agreement without cause with 15 days written notice to the other party. Filer remains responsible for payment of fees for the filing and recordation of documents prior to the effective date of termination.

    b. This Agreement may be terminated immediately by the Clerk's Office for Filer's failure to comply with the terms of this Agreement or breach of agreement.

    c. This Agreement shall be terminated immediately if the Board of Supervisors of Fairfax County fails to appropriate and continue funding for the services provided under this Agreement. Filer acknowledges that the Clerk's Office has no control over the amount of appropriations, if any, that the Board of Supervisors will provide for continuation of the services under this Agreement.

    d. This Agreement may be terminated as otherwise specified.

25. **NO WARRANTIES/RELEASE OF LIABILITY**. Absent gross negligence or willful misconduct, Filer agrees to release the Court, the Clerk of Court, Fairfax County, and the Fairfax County Board of Supervisors from any liability in connection with the electronic filing and recordation of documents under this Agreement. Filer understands that there are no warranties, express or implied, in connection with such transactions.

26. **ASSIGNMENT**. Filer agrees not to assign any right or interest in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date specified below:

Signed:

_____
Authorized Signatory for Filer

_____
Title

Date: _____

Signed:

_____
JOHN T. FREY
Clerk, Fairfax Circuit Court

Date: _____

City/County of: _____

State of: _____

I, _____, a Notary Public, do hereby certify that on this _____ day of

(Name of Notary)
_____, 20___, _____ personally appeared before me
(Name of Subscriber)
and swore and acknowledged that the statements contained herein are true and correct.

My Commission Expires: _____ _____

Notary Public

Registration Number: _____
(Required in Virginia)

_____
Print or Type Name & Phone Number of Notary

CONTACTS FOR FILER. Filer shall provide the Clerk's Office with an Administrative Contact (an individual familiar with the process of executing and filing land records documents) and a Technical Contact (an individual familiar with the Filer's computing environment and capable of resolving any technical issues):

Administrative Contact Name:_____

a. Phone Number:_____
b. Fax Number:_____
c. Mailing Address:_____
d. E-mail Address:_____
e. Other Contact Number(s):_____

Technical Contact Name:_____

a. Phone Number:_____
b. Fax Number:_____
c. Mailing Address:_____
d. E-mail Address:_____
e. Other Contact Number(s):_____

Designated Corporate Administrator(s) – One (1) is required:

1. _____
2. _____
3. _____
4. _____

Filer shall complete an individual agreement for the Corporate Administrator.

AUTHORIZED USER(S)

It is the Filer's responsibility to notify the Clerk's Office immediately upon the termination or resignation of an authorized user.

Primary Contact: _____ Phone: _____

Primary Contact E-Mail Address: _____

Billing Street Address: _____

Billing City/State/Zip: _____

It is requested that the following individuals be authorized users pursuant to this agreement (use additional pages if necessary). The individual application for each user is attached (including the Corporate Administrators):

Authorized Users:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

Additional authorized users can be added by having the individual complete an application and an agreement. The completed documentation should be sent to the Clerk's Office on letterhead requesting that the individual be added to your company's list of authorized users.

The completed application and agreement should be sent to:

Fairfax Circuit Court
Attn: IT Department (EFS) – Suite 322
4110 Chain Bridge Road
Fairfax, Virginia 22030

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