

BULK USER AGREEMENT

This **BULK USER AGREEMENT** (“Agreement”) is entered into this ___ day of _____ 20____ by and between _____ the (“Company”), and the Recorder of _____ County, Indiana (the “County Recorder” or “County”). Both shall be referred to as the “Parties,” and each, a “Party” throughout this Agreement.

RECITALS

WHEREAS, I.C. § 36-2-7-10.1 describes the process by which Company may purchase Bulk Form copies of Recorded Documents from County Recorder in Bulk Form for a fee;

WHEREAS, I.C. § 36-2-7-10.1(g) requires Company to enter into a contract with County Recorder and the County Recorder’s designee in order to receive Bulk Form copies of Recorded Documents from County Recorder; and

WHEREAS, Company desires to obtain Recorded Documents in Bulk Form from the County Recorder for uses permitted under, and subject to, I.C. § 36-2-7-10.1 and this Agreement.

NOW, THEREFORE, to induce the County Recorder to enter into this Agreement and to sell the Bulk Form copies to the Company, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1: Definitions. The following terms defined under I.C. § 36-2-7-10.1 and used in this Section 1 apply to this Agreement:

(a) “Bulk Form” means an aggregation of (i) copies of all recorded documents received by the County Recorder for recording in a calendar day, week, month or year; (ii) the Indices for finding, retrieving, and viewing all recorded documents received by the County Recorder for recording in calendar day, week, month, or year; or (iii) both subdivisions (i) and (ii). The term includes Recorded Documents that have been appropriately watermarked by the County Recorder.

(b) “Bulk User” means an individual, a corporation, a partnership, a limited liability company, or an unincorporated association that receives Bulk Form pursuant to a contract with the County Recorder.

(c) “Copy” means a reproduction, including an image of a Recorded Document or Indices created by: (i) duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage; or (ii) reproducing on microfilm

(d) “Indices” means all of the indexing information used by the County Recorder for finding, retrieving, and viewing a Recorded Document.

(e) “County Ordinance” means an ordinance passed by the county executive that establishes: (i) the fee a County Recorder may charge for Bulk Form copies; and (ii) the format by which the County Recorder will provide Bulk Form copies of Recorded Documents.

(f) “Permitted Use” means the utilization or access to data and information contained in Bulk Form copies by the Company, or a customer of the Company, for purposes collateral or incidental to the ordinary course of business of the Company.

(g) “Prohibited Use” means selling, offering for sale, advertising for sale, soliciting a purchase of, loaning, giving away, allowing subscription service to (whether by electronic or physical access), or otherwise transferring, providing, or allowing the transfer of Bulk Form copies for commercial purposes to a third party, whether the copies are in bulk form or individual copies or images.

(h) “Recorded Document” means a writing, a paper, a document, a plat, a map, a survey, or anything else received at any time for recording or filing in the public records maintained by the County Recorder or the County Recorder’s designee.

(i) “Terminable offense” means: (i) engaging in a Prohibited Use; (ii) engaging in the unauthorized access to Recorded Documents; (iii) engaging in the unauthorized alteration of Recorded Documents; (iv) non-compliance with any of the provisions of this Agreement; (v) Company’s failure to disclose, or entering into an agreement with an Indiana county recorder, when the Company has had a previous Bulk Form copy contract terminated by another Indiana county recorder after July 1, 2017 because the party failed to comply with the contract; (vi) Company’s failure to disclose, or entering into an agreement with an Indiana county recorder after July 1, 2017, when a person who has a majority or controlling interest in the Company engaged in conduct resulting in the termination of a contract with another Indiana county recorder because the party failed to comply with the contract; or (vii) any conduct prohibited by IC 36-2-7-10.1(g) & (j), as amended.

Section 2: Term and Termination.

(a) The term of this Agreement (“Term”) commences upon the date fully executed by the Parties (“Effective Date”) and continues for a period of one (1) year unless and until terminated as provided under this Agreement. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods, unless either Party notifies the other Party in writing of its intent not to renew this Agreement not less than thirty (30) days prior to the expiration of the current term.

(b) Either Party may terminate this Agreement prior to the expiration date as follows:

(1) **Breach.** Upon a Party’s knowledge of a material breach by the other Party, such Party shall provide notice to the breaching Party and an opportunity to cure the breach or end the violation within ten (10) days of the date of the written notice. The non-breaching Party may terminate this Agreement if the breaching Party fails to cure the breach within the ten (10) day period; provided, however, that in no case shall a party be given more than two (2) cure periods during the term of this Agreement or any renewal term. If a Party determines that the other Party has committed a material breach and a cure is not possible, the non-breaching Party may immediately terminate the Agreement upon written notice

to the breaching Party. Company's commission of a Terminable Offense during the term of this Agreement is a material breach purposes of this section (b)(1).

(2) **Without cause.** Either Party may terminate this Agreement without any reason upon giving the other Party at least thirty (30) days' written notice.

(3) **Effect of Termination.** County shall immediately cease providing Bulk Form copies requested by the Company once all the termination procedures have been met.

Section 3: Payment. In exchange for Bulk Form copies requested by the Company and provided by the County Recorder, or its designee, Company agrees to pay for Bulk Form copies subject to the following:

Section 3.1. Rates. Pursuant to I.C. § 36-2-7-10.1(d), a County Recorder shall charge a minimum of \$.10 per image for a recorded document unless the County establishes a higher fee by County Ordinance that does not exceed \$.20 per image. The County's rates for the provision of Bulk Form copies to Company shall be as follows as indicated by the accompanying checkmark:

County to check one

Section 3.1.1. Statutory minimum (IC § 36-2-7-10.1(d))

Ten cents (\$.10) per page for a Recorded Document, including the index of the instrument number or book and page, or both, for retrieving the Recorded Document.

Ten cents (\$.10) per Recorded Document for a copy of the other Indices used by the County Recorder for finding, retrieving, and viewing a Recorded Document as requested.

Section 3.1.2. By County Ordinance (IC § 36-2-7-10.1(e))

_____ cents (\$.____) per page for a Recorded Document, including the index of the instrument number or book and page, or both, for retrieving the Recorded Document.

_____ cents (\$.____) per Recorded Document for a copy of the other Indices used by the County Recorder for finding, retrieving, and viewing a Recorded Document as requested.

If applicable, County Recorder's Ordinance establishing a higher fee is hereby attached and incorporated into this Agreement as Exhibit _____.

Section 3.2. Payment. County, or the County's designee, shall notify Company in writing of the amount due and owing prior to submitting images to the Company and demanding

payment. For purposes of this Agreement, County, or designee, shall require payment from Company as follows:

County to check one

- Company shall remit the entire amount due prior to County's provision of images in response to Company's request. Company shall remit payment to County, or designee, in full no later than thirty (30) days following the date of the County's notification of the amount due under Section 3.2. County, or designee, shall have no obligation to complete the request if the Company fails to provide payment within the timelines specified herein.
- County, or designee, shall submit the requested Bulk Form copies to the Company and submit an invoice to the Company to be paid as specified thereunder. Company shall make payment in full within thirty (30) days of the date of the invoice. County reserves the right to take appropriate legal action, including the termination of this Agreement, due to Company's failure to comply with this paragraph.

Section 4. Delivery. Upon satisfaction of the payment provision selected in Section 3, the County Recorder, or designee, shall prepare the requested Bulk Form copies for transmission to Company. In preparing the bulk form copies, County Recorder, or designee, may also apply a watermark that identifies the documents as not eligible for resale. Such watermark shall read as follows:

This document is provided for the sole use of _____, and except as provided for in I.C. § 36-2-7-10.1(h), shall not be resold pursuant to I.C. § 36-2-7-10.1. Official copies may be obtained at the County Recorder's office.

Company agrees only to accept bulk form copies bearing the aforementioned watermark when applied.

Section 5: Representations, Warranties, and Covenants. The Company hereby represents, warrants, and covenants as follows:

- (a) The Company is a "Bulk User."
- (b) The Bulk Form copies are being purchased solely for the use and benefit of the Company in its ordinary course of business;
- (c) The Bulk Form copies are not being purchased for, on behalf of, in conjunction with, or in cooperation with any officials, employees, affiliates, subsidiaries, divisions, joint ventures or business alliances of the Company;
- (d) The Company will not engage in any Prohibited Use of the Bulk Form copies.

- (e) That an Indiana County Recorder has never terminated a bulk user agreement between the Company, or an individual with a majority or controlling interest in the Company, and said county as a result of Company's or such individual's material breach of such agreement. Company agrees to immediately report the termination of any bulk user agreement between Company and an Indiana county recorder that occurs after the Effective date in writing to the County, including the reasons for such termination(s). For purposes of this subsection (e), the term Company includes the Company's agents, affiliates, or subsidiaries, as currently named or under any previous legal name.

Section 6: Prohibited Acts. Notwithstanding anything to the contrary in this Agreement, the Company, its agents, affiliates, employees, representatives, and associates shall not engage in any Prohibited Use of Bulk Form copies or Recorded Documents obtained from Bulk Form copies. In accordance with I.C. § 36-2-7-10.1(g) & (i), the provisions of this Section 6 shall survive the expiration or earlier termination of this Agreement indefinitely.

Section 6.1. Title Company/Title Plant. Notwithstanding any provision of this Agreement, a Bulk User meeting the requirements of I.C. § 36-2-7-10.1(h) may engage in conduct consistent with that subsection without violating the terms of this Agreement. A party who believes that it meets that definition shall submit a certificate of authority, licensure, or other evidence to the County, or designee, within fifteen (15) days of executing this Agreement. A party who fails to provide this supporting documentation within this period shall not be treated as a Title Company or Title Plant for purposes of this Agreement or I.C. § 36-2-7-10.1(h).

Section 7: Survival. The provisions of Sections 5 and 6, as well as any other provision that must survive in order to give proper effect to its intent, shall survive the expiration or earlier termination of this Agreement for the period specified in the applicable provision or, if no period is specified, for a period of twelve (12) months after such expiration or termination.

Section 8: Parties in Interest. This Agreement is made solely for the benefit of the Company and the County Recorder, and no other party shall acquire or have any right, title or interest hereunder or by virtue hereof.

Section 9: Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

Section 10: Governing Law and Jurisdiction. This Agreement is governed by the laws of the State of Indiana. The Parties agree that any lawsuit, action or proceeding arising out of or relating to this Agreement shall be instituted in the courts of the State of Indiana in each case located in the County of _____ only, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Section 11: Severability. If any term or provision of this Agreement is held or deemed to be invalid, illegal or unenforceable as applied in any particular case, or in any particular jurisdiction, because it conflicts with any provisions of any constitution, statute, rule or public policy, or any other reason, the invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable the term or provision in

any other jurisdiction. Any change in law that conflicts with an obligation in this Agreement shall supersede such obligation and control.

Section 12: Entire Agreement. This Agreement, including and together with all related attachments and exhibits, constitutes the Parties' sole and entire agreement regarding the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding the subject matter.

Section 13: Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement, if the party sending the facsimile, e-mail or other means of electronic transmission has received express confirmation that the recipient party received the Agreement (not merely an electronic facsimile confirmation or automatic e-mail reply).

Section 14: Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

Section 15: Indemnification. Company agrees to indemnify, and hold harmless the County Recorder, its agents, officials, and employees from all third party claims and suits relating to Recorded Documents, including court costs, attorney's fees, and other expenses caused by any act or omission of the Company, its agents, officials, and employees in the performance of the Agreement or as a result of any breach thereof.

Section 16. Notice to Parties. Any notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by facsimile or by certified or registered overnight mail, first class postage prepaid, return receipt requested, or by prepaid overnight delivery service such that proof of delivery will be obtained, and shall be addressed as set forth below or to such other address as may be specified in a prior written notice to the other party:

- | | | | |
|-----|------------------------------|-----|------------------------------|
| (1) | If to County Recorder | (2) | If to Bulk User |
| | «Name» | | «Name» |
| | «Address1» | | «Address1» |
| | «City», «State» «PostalCode» | | «City», «State» «PostalCode» |

Such notice shall be deemed to be given on the date it is hand delivered, faxed or deposited in the overnight mail, as stated above. A notice shall be deemed to have been given personally to a party if it is handed to the representative of the party to whom the notice must be addressed or if left at his or her office located at the street address to which a notice would be mailed.

Section 17. No Waiver. No waiver of one or more of the provisions of this Agreement or the failure to enforce any provision of this Agreement by either party shall be construed as a waiver of any subsequent breach of this Agreement, nor a waiver of the right at any time thereafter to require strict compliance with all of its terms.

Section 18. **Modification.** No modifications, amendments, or supplements to this Agreement shall be effective for any purpose unless duly recorded in writing and signed by authorized representatives of all parties to this Agreement or their successors or assigns.

SIGNATURE PAGE FOLLOWS

