

# **E-Recording**

PRESENTED TO  
FORT WORTH MORTGAGE BANKER'S ASSOCIATION  
OCTOBER 18, 2006

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**TABLE OF CONTENTS**

|      |  |   |
|------|--|---|
| I.   | THE PROBLEM .....  | 1 |
| II.  | E-RECORDING.....   | 1 |
| A.   | What is e-recording?.....  | 1 |
| B.   | How easy can it be? .....  | 1 |
| C.   | SB 335-Texas adoption of the Uniform Real Property Electronic Recording Act..... | 1 |
| D.   | The "Need for Speed" .....   | 4 |
| 1.   | Inception date for mechanic liens .....  | 4 |
| a.   | The "early start".....   | 4 |
| b.   | Affidavit of Commencement.....   | 5 |
| c.   | Exorcisms for "early starts".....  | 5 |
| 2.   | Avoidable technical exceptions for lenders.....                                  | 5 |
| E.   | Who is "Doing It <u>NOW</u> ".....   | 5 |
| F.   | Authorized Texas e-filers.....   | 5 |
| G.   | How to "Get Hooked Up" .....   | 5 |
| 1.   | Directly to county.....  | 6 |
| a.   | No additional fee charged by the county.....                                     | 6 |
| b.   | Memorandum of Understanding (MOU).....   | 6 |
| c.   | Filing fees in the various counties.....   | 6 |
| d.   | Hardware and software requirements.....  | 6 |
| e.   | An account to daily ACH.....   | 6 |
| 2.   | Directly to vendor.....  | 6 |
| 3.   | Directly to vendor aggregator.....   | 6 |
| H.   | Costs.....   | 6 |
| III. | CONCLUSION .....   | 7 |

Exhibit A Map of Texas Counties Presently E-Recording

Exhibit B Sample P&P Closing Instructions With Bar Coded E-Record Transmittal Page

Exhibit C E-Recorded Deed of Trust Sample

Exhibit D Electronic Recording Memorandum of Understanding

Exhibit E P&P E-Recording Guide

## **E-RECORDING**

### **I. THE PROBLEM**

Regular methods of recording real property documents depend upon too many people and take too much time.

### **II. E-RECORDING**

#### **A. What is e-recording?**

First...what is it not. This is not about SMART documents (objects containing the electronic version of the document in such a way that enables the electronic extraction of data from the objects). This is not about MISMO (the Mortgage Industry Maintenance Organization, a non-profit subsidiary of the Mortgage Bankers Association [MBA]). This is not about E-Sign (the Electronic Signatures in Global and National Commerce Act). It is really not about UETA (Uniform Electronic Transactions Act). **THIS IS MUCH SIMPLIER.** This is about an easier way to record documents originally created and signed on PAPER. This is about the “dummy paper docs” we use every day. Even I understand e-recording. It is FUN. It is EASY!!! It makes you look smart to your clients. Let me explain.

#### **B. How easy can it be?**

It can be as easy as you handle it now. If your lender closes the transactions with a title co instruct the title company to e-record per their own capability and if not capable immediately return signed notarized recordable documents to yourself (attorney) or your client (lender) to scan and send 1)directly to county (see details below), 2)directly to e-recorder vendor (see details below), or 3)to vendor aggregator (see details below). Once scanned and sent, the county (varies slightly from county to county) returns image of recorded document with recording information either “same day” or next day if after a certain cutoff period ie 3pm. You are recorded. No original to wait for. See Exhibit C-E-Recorded Deed of Trust Sample.

C. SB 335-Texas Adoption of the Uniform Real Property Electronic Recording Act effective September 1, 2005.

Arguably SB 335 was not needed to authorize county clerks to open their real property records to e-recordings. The passage of UETA in Texas effective January 1,2002 did that. See (SB 393):

Link: <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=77&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00393&VERSION=5&TYPE=B>

However, with the passage of Uniform Real Property Electronic Recording Act the unanswered questions have been answered. All systems are go!!!

#### **AN ACT**

relating to the recording of electronic documents.

BE IT ENACTED BY THE  
LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 3, Property Code, is amended by adding Chapter 15 to read as follows:

#### **CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

Sec. 15.001. SHORT TITLE. This chapter may be cited as the Uniform Real Property Electronic Recording Act.

Sec. 15.002. DEFINITIONS. In this chapter:

(1) "Document" means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the real property records maintained by a county clerk.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by a county clerk in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Paper document" means a document that is received by a county clerk in a form that is not electronic.

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS. (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement

is satisfied by an electronic document that complies with the requirements of this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Sec. 15.005. RECORDING OF DOCUMENTS. (a) A county clerk who implements any of the functions described by this section shall act in compliance with rules adopted by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, and standards established by the Texas State Library and Archives Commission under Section 15.006.

(b) A county clerk may:

(1) receive, index, store, archive, and transmit electronic documents;

(2) provide for access to, and for search and retrieval of, documents and information by electronic means;

(3) convert paper documents accepted for recording into electronic form;

(4) convert into electronic form information recorded before the county clerk began to record electronic documents;

(5) accept electronically any fee or tax that the county clerk is authorized to collect; and

(6) agree with other officials of a state, a political subdivision of a state, or the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(c) A county clerk who accepts electronic documents for recording shall:

(1) continue to accept paper documents; and

(2) place entries for paper documents and electronic documents in the same index.

Sec. 15.006. UNIFORM STANDARDS.

(a) The Texas State Library and Archives Commission by rule shall adopt standards to implement this chapter.

(b) To keep the standards and practices of county clerks in this state in harmony with the

standards and practices of recording offices in other jurisdictions that enact a law that is substantially similar to this chapter and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact a law that is substantially similar to this chapter, the Texas State Library and Archives Commission, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards shall consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) the views of interested persons and governmental officials and entities; and

(4) the needs of counties of varying size, population, and resources.

Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Except as otherwise provided by this chapter, Chapter 195, Local Government Code, and the rules adopted by the Texas State Library and Archives Commission under that chapter apply to electronic documents filed in accordance with this chapter.

SECTION 2. Section 191.009, Local Government Code, is amended to read as follows:

Sec. 191.009. ELECTRONIC FILING AND RECORDING.

(a) A county clerk may accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195. [Such an instrument is an electronic record, as defined by Section 43.002, Business & Commerce Code.]

(b) An electronic document or other instrument that is filed electronically in compliance with the rules adopted under Chapter 195 is considered to have been filed in compliance

with any law relating to the filing of instruments with a county clerk.

(c) For purposes of this section:

(1) an instrument is an electronic record, as defined by Section 43.002, Business & Commerce Code; and

(2) "electronic document" has the meaning assigned by Section 15.002, Property Code.

SECTION 3. Section 195.001, Local Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "Electronic document" has the meaning assigned by Section 15.002, Property Code.

SECTION 4. Sections 195.002 through 195.007 and Section 195.009, Local Government Code, are amended to read as follows:

Sec. 195.002. ADOPTION OF RULES.

(a) The commission shall adopt rules by which a county clerk may accept electronic documents and other instruments by electronic filing and record electronic documents and other instruments electronically under Section 191.009.

(b) The rules must provide for:

(1) the electronic filing with and recording by the county clerk of:

(A) real property records; and

(B) except for records maintained under Section 192.006, other instruments filed with and recorded by the county clerk as determined by the commission;

(2) the means by which an electronic document or other instrument may be electronically transmitted to a county clerk for filing;

(3) the means by which a county clerk may electronically record an electronic document or other instrument filed electronically;

(4) requiring that the means adopted under Subdivision (2) or (3) be generally available, nonproprietary technology; and

(5) security standards to prevent the filing and recording of fraudulent electronic documents or other instruments or alteration of electronic documents or other instruments that were previously filed and recorded electronically.

(c) Rules adopted by the commission under this section that permit the use of digital signatures in the electronic filing of electronic documents or other instruments with the county clerk must be, to the extent practicable, consistent with rules governing digital signatures adopted by the Department of Information Resources under Section 2054.060, Government Code~~[-as added~~

~~by Chapter 528, Acts of the 75th Legislature, Regular Session, 1997].~~

(d) Before adopting or amending a rule under this section, the commission shall consider the recommendations of the Electronic Recording Advisory Committee established under Section 195.008.

(e) Notwithstanding Sections 43.017 and 43.018, Business & Commerce Code, a county clerk may accept any filed electronic record, as defined by Section 43.002, Business & Commerce Code, or electronic document and may electronically record that electronic document or record if the filing and recording of that electronic document or record complies with rules adopted by the commission under this section.

Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY.

The following persons may file electronic documents or other documents electronically for recording with a county clerk that accepts electronic filing and recording under this chapter:

(1) an attorney licensed in this state;

(2) a bank, savings and loan association, savings bank, or credit union doing business under laws of the United States or this state;

(3) a federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;

(4) a person licensed to make regulated loans in this state;

(5) a title insurance company or title insurance agent licensed to do business in this state; or

(6) an agency of this state.

Sec. 195.004. NOTICE OF CONFIRMATION.

(a) A county clerk that accepts electronic filing and recording under this chapter shall confirm or reject an electronic filing of an electronic document or other instrument not later than the first business day after the date the electronic document or other ~~an~~ instrument is filed. Notice under this section must be made:

(1) by electronic means if possible; or

(2) if notice under Subdivision (1) is not possible, by telephone or electronic facsimile machine.

(b) If the county clerk fails to provide notice of rejection within the time provided by Subsection (a), the electronic document or other

instrument is considered accepted for filing and may not subsequently be rejected.

Sec. 195.005. TIME ELECTRONIC DOCUMENT OR OTHER INSTRUMENT CONSIDERED FILED OR RECORDED. An electronic document or other instrument that is recorded electronically under this chapter is considered to be recorded in compliance with a law relating to the recording of electronic documents or other instruments as of the county clerk's business day on which the electronic document or other instrument is filed electronically. An electronic document or other instrument filed electronically under this chapter must be recorded as timely as an instrument filed by any other means.

Sec. 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or record an electronic document or other instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an electronic document or other instrument electronically under this chapter.

Sec. 195.007. ACCESS TO ELECTRONIC DOCUMENT OR OTHER INSTRUMENT RECORDED ELECTRONICALLY.

(a) An electronic document or other instrument filed or recorded electronically must be available for public inspection in the same manner and at the same time as an instrument filed or recorded by other means.

(b) The county clerk shall provide a requestor, as defined by Section 552.003, Government Code, of an electronic document or other instrument filed or recorded electronically under this chapter with electronic copies of the electronic document or other instrument in a form that is capable of being processed by the use of technology that is generally available and nonproprietary in nature. The county clerk shall provide the copies to the requestor at the cost of producing the copies in accordance with Section 552.262, Government Code.

Sec. 195.009. FILING. For purposes of this chapter, an electronic document or other instrument is filed with the county clerk when it is received by the county clerk, unless the county clerk rejects the filing within the time and manner provided by this chapter and rules adopted under this chapter.

#### SECTION 5.

(a) The change in law made by this Act applies only to a document that is filed for recording on or after the effective date of this Act. A document that is filed for recording before the

effective date of this Act is covered by the law in effect at the time the document was filed, and that law is continued in effect for that purpose.

(b) A rule adopted before the effective date of this Act by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, applies to an electronic document filed for recording in accordance with Chapter 15, Property Code, as added by this Act, on or after the effective date of this Act.

SECTION 6. This Act takes effect September 1, 2005.

D. The "Need for Speed"

1. Inception date for mechanic liens

a. The "early start".....

Sounds like something good, but it is far from that!

**This section of my article is bolded on purpose. I believe it to be the most important portion of the paper. If you don't have time to read any of the rest of it, please help your lender clients understand when their interim construction loan take effect against the liens of subcontractors. We are talking about "lien priority" and not "lien validity". Help them understand, that if labor is performed or materials are delivered before the bank's lien is RECORDED, not signed at the title company, all laborers and materialmen coming before or after the deed of trust RECORDING will have a superior lien to the bank's. Some banks, with the best of intentions, perform "clear lot" inspections either the day of or the day after closing. This is better than a stick in the eye, but does not help at all if work starts 2 days after closing and the bank's deed of trust is recorded the third day after closing. A day late can be more than a dollar short. To be safe (and remember the bank normally only has the protections of a interim construction binder which is only some evidence of lien validity, but no assurance regarding lien priority) the bank should not allow "work to be performed" or "materials to be delivered" until evidence of the deed of trust RECORDING is in hand. The Court in *First Federal Savings and Loan Association of Beaumont v. Stewart Title Company and Stewart Title Guaranty Company*, 732 S.W. 2<sup>nd</sup> 98 (Tex. App. 1987) said it best:**

**"Under this case, if the fact finder below finds that First Federal's deed of trust was actually filed for public record before the slabs were commenced or before any other permanent improvements that were ultimately incorporated into the houses were commenced then their deeds of trust liens are first and superior to the mechanics' or materialmen's**

**liens that had their inception subsequent to the recording dates of the two deeds of trust.**

**If ,however, on the other hand, the mechanic's, materialmen, craftsmen, and laborers, in our case, actually started, in a visible way, the slabs which apparently—though not conclusively—seemed to have been put in place and completed as much as a week prior to the time that First Federal's deeds of trust liens actually were recorded in the public records, then they have priority. And, under the so-called "relation-back theory" , it has been argued by eminent, scholarly writers that the Texas courts have almost uniformly held that, for the purposes of determining lien priorities, each contractor or subcontractor or any holder of a valid mechanic's lien or materialman's lien attaches to the improved property at a time called "the inception of lien". TEX. PROP. CODE ANN. Sec 53.154 (Vernan1984).**

If I were a betting man, and I am, I would bet that at least a few construction starts get started a little before the construction deed of trust gets recorded ☺.

b. Affidavit of Commencement

I am aware of Property Code Sec. 53.124 and the option of the original contractor and owner to jointly file an affidavit within 30 days of the actual commencement of construction/delivery of materials to establish "prima facie evidence" of the actual commencement date, but come on. That might work on the gazillion dollar deals, but not in the world that I live in. I send out a ton of them; one in every package, but the typical builder and owners that I see do not come back after closing with their completed ready to be recorded Affidavit of Completion, nor do any residential lenders that I know require them as a condition for subsequent advance. In today's very competitive lending market few (probably closer to none) residential construction lenders see the value if they are only creating rebuttable "prima facie evidence".

c. Exorcisms for "early starts".....

Are "early starts" curable? We don't have the time (and I certainly don't have the expertise) to go much into "early start" cures. Let me just say, based upon my observations, the whole hocus pocus routine appears more like an exorcism than a Texas Property Code procedure. The magic spell varies from grand master underwriter to grandmaster underwriter and has apparently been handed down through the ages from grandmaster to grandmaster with little written

documentation. Some favor lien waivers. Some like subordinations. Some require original contractor termination and rehiring. Some (with a wink and a smile) only want lender indemnification (ha!). But at the end of the day (if that day is before the job is complete, accepted by owner and the insurer has "satisfactory evidence to Company that all bills for labor and materials have been paid in full") then they ALL MUST issue the mortgagee title policy with the following exception (emphasis):

**P-8. Issuance of Policies Prior to Completion of Improvements**

**"Any and all liens arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements placed, or to be placed, upon the subject land. However, the Company does insure the Insured against loss, if any, sustained by the Insured under this Policy if such liens have been filed with the County Clerk of \_\_\_\_\_ County, Texas, prior to the date hereof."**

If there later is an "early start" problem, I think the lender is up the creek without a paddle. The only uncertainty is whether the lender ends up going up the creek. He certainly has no paddle.

2. Avoidable technical exceptions for lenders

One of the largest technical exceptions a lender has are missing recorded liens and title policies that lag behind because lien recording information is not yet available.

E. Who is "Doing it NOW"

1. Counties in Texas

Denton County was first county in Texas to e-record in January 2004. Tarrant County came on line shortly thereafter in late February of 2004, followed by Fort Bend and Williamson Counties. Dallas County came on line in November 2005. To date 11 counties in Texas accept e-recordings. Many are scheduled to come on line very soon. See the map on Exhibit A.

F. Authorized filers

See Texas Local Government Code § 195.003 in III B above. Includes Texas attorneys, certain Texas lenders, Texas title companies and agencies of state.

G. How to "Get Hooked Up"

1. Directly to county

The cheapest, not necessarily the easiest, way to e-record is to hook up directly with the county or their appointed agent. Hart InterCivic was Denton and Tarrant Counties direct vendor. Through Hart InterCivic you can send directly to Denton and Tarrant



## **E-Recording**

Counties. There is some testing and qualification required and you must write your own “wrapper” containing the required “electronic indexing information” per that county’s specs. That “wrapper” computer interface is your responsibility to create and maintain.

- a. No additional fee charged by the county § 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or record an instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an instrument electronically under this chapter.

- b. Memorandum of Understanding (MOU)  
Sample Tarrant County MOU is attached as Exhibit D.

Link to setting up Tarrant County MOU:

<http://www.co.tarrant.tx.us/ecountyclerk/cwp/view.asp?A=735&Q=437048>

- c. Hardware and software requirements  
A \$200 scanner that can create a 300x300 dpi TIFF image, internet connection, and internet Explorer 5+.

- d. Write “wrapper” for each transmitted image per that county’s specs  
This is the hard part if your IT team is you.

- e. An account to daily ACH from  
Ooch! They are going to debit your account via ACH on the day the filing fees are incurred. No credit. Cash and carry only.

2. Directly to vendor  
These are probably not all of vendors that provide e-recording services, but certainly the ones we have had an opportunity to look at.

Various vendors (in alphabetical order):

-ACS: <https://www.erxchange.com/erx/>

-Hart InterCivic:

<http://www.hartintercivic.com/innerpage.php?pageid=94>

-Image-X:

<http://www.imagexx.com/products/erecording/default.htm>

-Ingeo: <http://www.ingeo.com/default.asp>

-Landata: <http://www.landata.com/>

-Simplifile: <http://simplifile.com>

Transaction and annual subscriptions vary. The normal payment method is daily ACH. **Not all of them interface with all the counties that e-record.**

3. Directly to vendor aggregator

We are one. There may be others, but if there were I wouldn’t tell you. Although we contracted directly with Tarrant County some time ago, we decided early on not to compete with the vendors tying directly to each county, but instead tie in to each of the vendors that are hooked up with each of the counties. Not being our core business, we are more interested in a broader platform at a higher price (\$10 per transaction) rather than hooking up directly with 254 Texas counties. We don’t require annual subscriptions. We’ll invoice you at the end of every month via email with a detailed transaction billing. Our “wrapper screens” are very simple. All a Texas attorney needs is a \$200 scanner and computer with internet access. You can impress all your friends and clients. It is FUN AND EXCITING. YOU CAN PLAY, TOO. All you have to do is if the property is in a county that e-records tell them to **JUST E-RECORD IT!**

### ***Sample E-Recording Closing Instruction***

#### **eRecording by Settlement Agent**

Electronically record deed of trust and all other recordable documents immediately after required execution and notarization. Forward electronically recorded images and recording information to [lender’s e-mail address]. If you are not set up to e-record on your own, then immediately after all recordable documents are executed and notarized:

- a) put the document to be recorded in proper page order and orientation;
- b) place the applicable (see document title on top of the voucher) e-Recording Voucher in front of the applicable document to be e-recorded;
- c) scan the document(s) with e-Recording Voucher(s) as the cover page(s). Scan at 300 dpi to a TIFF image;
- d) e-mail the file to [eRecording@ppdocs.com](mailto:eRecording@ppdocs.com);
- e) if not net funded by Lender, collect from the appropriate parties only the regular filing fees and remit to Lender. P&P will bill Lender for its convenience fee (fee in excess of the actual filing fee charged by P&P for P&P to record) and filing fees post closing;
- f) Return the original deed of trust to Lender. Return any original deed to the purchaser;
- g) P&P eRecording Services will e-record the documents and return the stamped image and

## **E-Recording**

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recording information to Settlement Agent and Lender. DO NOT ALSO REGULARLY RECORD THE DEED OF TRUST.

### **eRecording by Lender**

DO NOT REGULARLY RECORD THE DEED OF TRUST

Immediately after all the recordable documents are executed and notarized return all recordable documents via courier to Lender with other original loan documents requested in the closing instructions. If not net funded by Lender, collect from the appropriate parties only the regular filing fees and remit to Lender. P&P will bill Lender its convenience fee and filing fees post closing. Upon receipt, Lender will e-record the documents using P&P e-Recording Services. P&P e-Recording Services will send copies of the stamped images and recording information to Settlement Agent and Lender.

[Optional condition/instruction: **The loan draw to close this loan and any subsequent loan draw will not be advanced by Lender until Lender has recording evidence of its lien and subsequent to receiving that recording information Lender has performed a satisfactory "clear lot" inspection of the Property to confirm that neither labor has been performed or materials have been delivered to the Property prior to Lender's lien being recorded.**]

H. PP e-Recording Guide

See Exhibit E.

Link: <https://www.ppdocs.com/erecording.aspx>

## **IV. CONCLUSION**

E-Recording is efficient, easy and affordable. There is not a good reason to continue recording real property records by express mail and couriers.

A map of Texas with its county boundaries and names labeled. Fifteen counties are highlighted in red: Bexar, Brewster, Comal, Dallas, Denton, El Paso, Fort Bend, Harris, Hidalgo, Kinney, Loving, Maricopa, Pecos, Tarrant, and Webb. The map shows the state's irregular shape, including the Panhandle and the Gulf Coast. County names are printed in black text within their respective boundaries. The highlighted counties are distributed across the state, from the northern Panhandle to the southern tip and from the western border to the eastern coast.

To Settlement Agent:

**Blue Suede Title**

**1234 Cobbler Lane**

**Memphis, TX 77777**

Attn: **Johnny B. Goode**

GF No:

Phone No.: **(888) 555-2222**

Fax No.: **(888) 555-3333**

Email: **jbg@bluesuedetitle.com**

From Lender:

**Heritage Bank**

**2310 Interstate 20 West, Suite 100**

**Arlington, TX 76017**

Attn: **Dave Sheehan**

Phone No.: **(817) 461-5500**

Fax No.: **(817) 856-6060**

Email: **dave@ppdocs.com**

**Loan # 8675309**

## Loan Closing Instructions

### SECTION I: LOAN INFORMATION

Borrower(s): **Platinum Homes of Dallas/Fort Worth, L.P., a Texas limited liability partnership**

Seller(s): **Legacy Investments, LLC**

Closing Date: **August 02, 2006**

Document Expiration Date:

Property Address: **4656 Chancellor Court**

1st Payment Date: **September 02, 2006**

**Fort Worth, TX 76132**

Final Payment Date: **August 02, 2007**

Loan Amount: **\$200,000.00**

Attorney's Invoice No.: **6-08-0069**

Loan Type: **First Lien-Other-Builder Interim**

**SECTION II: LOAN FEES AND ESCROWS** Settlement agent fees are provided as an estimate. Final settlement fees must comply with applicable federal laws, rules and regulations; and any applicable state laws or local ordinances.

A. Fees Paid at Closing: The following fees must be indicated on the HUD-1 Settlement Statement. Collect same unless indicated as "POC" (Paid Outside Closing). Show all "POC's" as such on the HUD-1 Settlement Statement:

| HUD Line # / Description    | Paid To               | Borrower (\$) | Seller (\$) | Others (\$) |
|-----------------------------|-----------------------|---------------|-------------|-------------|
| 801 Origination Fee         | Heritage Bank         | 2,000.00      |             |             |
| 803 Appraisal Fee           |                       | 50.00 POC     |             |             |
| 805 Inspection Fee          | Heritage Bank         | 125.00        |             |             |
| 816 Flood Certification Fee |                       | 12.00         |             |             |
| 1107 Attorney's Fee         | PeirsonPatterson, LLP | 75.00         |             |             |

B. Per Diem Interest and Escrows:

Per Diem Interest is **Not Applicable**. Do not collect per diem interest.

C. Issuance of Separate Checks: Lender requires the issuance of additional separate checks for the following, which have not been deducted from the loan proceeds.

**\*PeirsonPatterson, LLP: \$75.00 Attorney's Fee.**

### SECTION III. LOAN DOCUMENTS

We are enclosing the following documents in connection with the above-referenced loan. Do not allow anyone to execute the loan documents before the date indicated on the Note. All papers must be signed as the legal documentation has been typed. All documents requiring execution in the presence of a notary public shall be so executed, and this notary shall complete the proper notary acknowledgment and affix the proper seal to such documents. If there is any question as to the identity of the person executing any document, the responsibility of determining that person's identity is that of the notary public and the Settlement Agent. No corrections, erasures, changes or substitutions may be made to the documents without Lender's prior written approval. Such documents are conditionally delivered to Settlement Agent only for loan settlement and should under no circumstances leave Settlement Agent's possession or control except for delivery to Lender unless Settlement Agent is in receipt of written instructions otherwise from Lender. Powers of Attorney are not allowed unless specifically approved in writing by Lender. If you have information that the typed names are incorrect, please contact Lender immediately. Please follow the respective instructions for the disposition of each document.

Attorney Invoice (Generic). Return with payment to Attorney.

Loan Closing Instructions. Originals to be signed by Settlement Agent and returned to Lender.

HUD-1A Settlement Statement. Borrower(s) must sign. Return Original to Lender. Give Borrower(s) one (1) copy.

Promissory Note. Borrower(s) must sign original. Return original and three (3) certified copies to Lender. Give Borrower(s) one (1) copy.

Short Form Deed of Trust, Security Instrument and Financing Statement. The indicated Grantor(s) must sign Original Short Form Deed of Trust, Security Instrument and Financing Statement. Obtain acknowledgements and file original. After recording, return original and three (3) certified copies to Lender. Give Borrower(s) one (1) copy.

Deed: General (V.L. to extent of). The law firm of PeirsonPatterson, LLP. has prepared the enclosed draft deed to be used in this transaction. If consistent with the agreement between Seller and Borrower, it can be used. If another deed is used, send that deed to PeirsonPatterson, LLP for their review and approval. Deed must be executed, notarized, filed and returned to Borrower(s). Return two (2) certified copies to Lender with closing package. Give Seller(s) and Borrower(s) each a copy after completion.

Attorney Representation Notice and Document Correction Agreement. Borrower(s) and Seller(s) must sign. Return Original to Lender. Give Borrower(s) and Seller(s) one (1) copy.

## **SECTION IV. ADDITIONAL REQUIREMENTS**

### Title Policy / Interim Binder Requirements.

**Mortgagee Title Policy Binder on Interim Construction Loan (T-13) ("Interim Binder")** - to be issued in favor of Lender in accordance with the terms, conditions, coverages and exceptions set forth in the Commitment for Title Insurance ("Commitment") previously issued by Settlement Agent and its Underwriter and delivered to Lender in connection with this loan transaction, subject however, to the various deletions, changes, corrections, endorsements and other revisions thereto required by Lender which are listed below, all of which are to be reflected in a revised Commitment to be issued and delivered to Lender prior to the date of Closing. The Interim Binder (which shall be issued by Settlement Agent and its Underwriter and delivered to Lender not later than 10 days after the date of Closing) shall insure Lender that the lien(s) securing this loan is/are valid first lien(s) on the fee simple title to the real property described in the Commitment and as described in the Deed of Trust and other of the Loan Documents listed above and delivered herewith;

**Lender's Requirements.** Lender makes the following requirements ("Requirements") in connection with the issuance of the revised Commitment and the Interim Binder, each such Requirement being equally applicable to both such forms when prepared and issued unless one or more of the following Requirements specifies to the contrary:

- \* The "insured" named in Schedule A must read: "[Lender's name as appearing in the Note] and each successor in ownership of the indebtedness secured by the insured mortgage except a successor who is an obligor under the provision of Section 12(c) of these Condition and Stipulations;"
- \* The "Effective Date" on Schedule A must be the date the Deed of Trust is recorded;
- \* Fee simple title to the real property described in the Deed of Trust must be shown by the Binder to be vested in Borrower;
- \* There can be no exception for reversionary rights of any kind in Schedule B;
- \* There can be no exceptions in Schedule B for "parties in possession;"
- \* Item 3 of Schedule B must be modified to read "and subsequent assessments, for prior years due to change in land usage or ownership," and must except only to taxes, assessments and stand-by fees for the current calendar year (if taxes for the current year are due and payable when the Closing occurs) and subsequent years, not yet due and payable;
- \* All curative matters in Schedule C of your Commitment shall be resolved to your satisfaction and not carried on as exceptions in the Binder;

**eRecording by Settlement Agent.** Electronically record deed of trust and all other recordable documents immediately after required execution and notarization. Forward electronically recorded images and recording information to dave@heritagebank.com. If you are not set up to e-record on your own, then immediately after all recordable documents are executed and notarized:

- a) put the document to be recorded in proper page order and orientation;
- b) place the applicable (see document title on top of the voucher) e-Recording Voucher in front of the applicable document to be e-recorded;
- c) scan the document(s) with e-Recording Voucher(s) as the cover page(s). Scan at 300 dpi to a TIFF image;
- d) e-mail the file to eRecording@ppdocs.com;
- e) if not net funded by Lender, collect from the appropriate parties only the regular filing fees and remit to Lender. P&P will bill Lender for its convenience fee (fee in excess of the actual filing fee charged by P&P for P&P to record) and filing fees post closing;
- f) Return the original deed of trust to Lender. Return any original deed to the purchaser;
- g) P&P eRecording Services will e-record the documents and return the stamped image and recording information to Settlement Agent and Lender. DO NOT ALSO REGULARLY RECORD THE DEED OF TRUST.

### eRecording by Lender. DO NOT REGULARLY RECORD THE DEED OF TRUST

Immediately after all the recordable documents are executed and notarized return all recordable documents via courier to Lender with other original loan documents requested in the closing instructions. If not net funded by Lender, collect from the appropriate parties only the regular filing fees and remit to Lender. P&P will bill Lender its convenience fee and filing fees post closing. Upon receipt, Lender will e-record the documents using P&P e-Recording Services. P&P e-Recording Services will send copies of the stamped images and recording information to Settlement Agent and Lender.

**Record Prior to First Draw.** The loan draw to close this loan and any subsequent loan draw will not be advanced by Lender until Lender has recording evidence of its lien and subsequent to receiving that recording information Lender has performed a satisfactory "clear lot" inspection of the Property to confirm that neither labor has been performed or materials have been delivered to the Property prior to Lender's lien being recorded.

**Borrower's HUD-1 Settlement Statement.** Three (3) certified copies. The Borrower(s) cannot receive any credit against the Sales Price for repairs or any other matter(s) without Lender's specific approval. Must reflect the name and address, including zip code of the Borrower(s), the Lender and the Settlement Agent.

**Lot Survey (New Construction Only).** A Survey of the Lot prepared by Licensed Professional land Surveyor must be provided at Closing. A copy of such Survey is required in Lender's office prior to funding.

**"As Built" Final Survey.** Collect sufficient funds from the Borrower to furnish an "as built" survey upon completions of the improvements.

**Inspection Prior to Funding.** Prior to any construction draws being funded, Lender requires that the Property be inspected by a duly authorized agent of the Lender to verify that construction has not commenced. If a construction draw is to be paid, please notify Lender immediately after execution of the documents so that a post-closing site inspection may be conducted.

**Contractor Documentation.** Provide a Certificate of Corporate Existence and Good Standing of Contractor issued by the Secretary of State and Comptroller of Public Accounts.

**Borrower Documentation.** Provide a Certificate of Corporate Existence and Good Standing of Borrower issued by the Secretary of State and Comptroller.

**Builder's Risk Insurance.** The insurance must provide 100% coverage of the proposed Improvements and must contain the standard mortgagee clause in the name of the Lender as a named insured.

**Workers Compensation and General Commercial liability insurance.** Provide Lender with written verification of Workers Compensation and General Commercial liability insurance with premiums prepaid at or prior to Closing.

**Building Permit.** Obtain copies of all required building permits. No construction draws may be paid unless the applicable permit is in hand.

**Consent of Architectural Control Committee.** If the restrictions affecting the Property require the consent of an Architectural Control Committee, such consent must be obtained in writing and forwarded to Lender before construction commences.

Payment and Performance Bond. Provide evidence to Lender that Borrower(s) have obtained and prepaid premium on a payment and performance bond in the face amount of not less than the loan amount.

Other Items:

**\*BORROWER(S) MUST COMPLETE SOCIAL SECURITY NUMBER(S) OR TAX ID NUMBER ON ANY APPLICABLE DOCUMENTS.**

**SECTION V: LOAN FUNDING**

**All papers must be signed as the legal documentation has been typed. If you have information that the typed names or other factual information are incorrect, please contact Lender immediately.** All fees and charges required to be paid and known by Settlement Agent must be reflected on the Settlement Statement. The Settlement Statement must be faxed to Lender for approval prior to Closing. After Lender approval, no charges or fees can be added to the Settlement Statement with lender's written consent. The loan must close and fund by the Document Expiration Date indicated on page one of these Instructions. Do not file the Deed of Trust prior to Lender's funding authorization. The Closing of this loan is contingent upon the Sales Price captioned herein being true and correct. Should you have information indicating a lesser Sales Price or any secondary financing not shown above, do not close this loan and contact Lender immediately.

**\*Prior to Funding, Title Company MUST fax the Documents/Funding Conditions on Lender's Funding Checklist to Lender for review and approval. (if loan IS NOT subject to 3 Day)**

**\*Immediately after closing contact Dave Sheehan at (817) 461-5500 between the hours of 9:00 a.m. and 5:00 p.m. before depositing any check/draft/wire transfer will be available upon receipt and approval of original documents.**

**\*The loan will be funded within 24 hours after the complete closed package is received and approved by Lender.**

\*

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SUBJECT TO ANY LIMITATIONS IMPOSED BY PROCEDURAL RULE P-35 OF THE BASIC MANUAL OF TITLE INSURANCE IN THE STATE OF TEXAS, THE UNDERSIGNED AS AUTHORIZED AGENT FOR SETTLEMENT AGENT HEREBY ACKNOWLEDGES RECEIPT OF AND AGREES TO FOLLOW ALL THE TERMS AND REQUIREMENTS CONTAINED IN THESE CLOSING INSTRUCTIONS, AND THE REVISED COMMITMENT FOR TITLE INSURANCE ISSUED FOR THIS LOAN WHICH ARE INCORPORATED HEREIN BY REFERENCE PRIOR TO THE REQUEST FOR LOAN FUNDING, UNLESS OTHERWISE AUTHORIZED HEREIN. THIS ACKNOWLEDGEMENT DOES NOT OTHERWISE IMPLY A CERTIFICATION OR GUARANTY OF FACT, INSURANCE COVERAGE OR CONCLUSION OF LAW.

Blue Suede Title

By:

\_\_\_\_\_  
(Settlement Agent Signature)

[ORIGINAL SIGNATURE, NOT STAMP, REQUIRED AND A CONDITION OF FUNDING.]

# eRECORDING VOUCHER

Heritage Bank

2310 Interstate 20 West, Suite 100, Arlington, TX 76017 Phone: (817) 461-5500

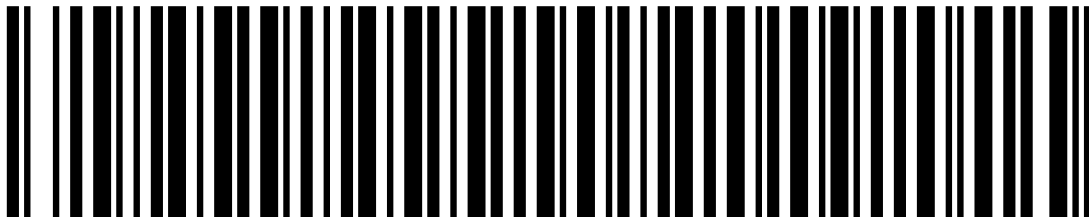
DATE: 08/02/06

Loan # 8675309

BORROWER(S): Platinum Homes of Dallas/Fort Worth, L.P., a Texas limited liability partnership

PROPERTY ADDRESS: 4656 Chancellor Court Fort Worth, TX 76132

## Short Form Deed of Trust, Security Instrument and Financing Statement



6-08-0069-2282

Scanned by: \_\_\_\_\_

Phone #: \_\_\_\_\_

### Instructions:

1. Write your name and phone number in the space provided.
2. Place the executed document behind this cover sheet. One document for each cover sheet.
3. Scan the document at 300 dpi to a TIFF file.
4. Email the file to [eRecording@ppdocs.com](mailto:eRecording@ppdocs.com).
5. Return originals to Lender.

After recording return to:

Lender dave@heritagebank.com

Settlement Agent \_\_\_\_\_

# eRECORDING VOUCHER

Heritage Bank

2310 Interstate 20 West, Suite 100, Arlington, TX 76017 Phone: (817) 461-5500

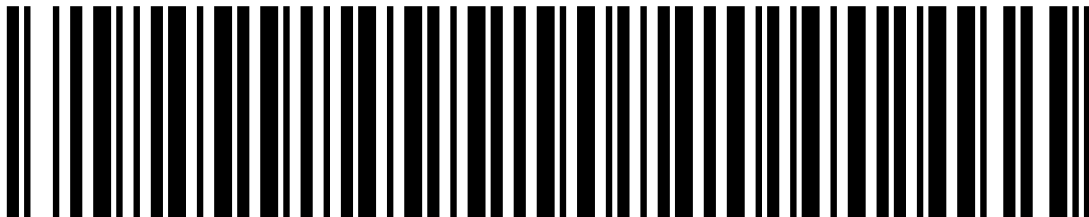
DATE: 08/02/06

Loan # 8675309

BORROWER(S): Platinum Homes of Dallas/Fort Worth, L.P., a Texas limited liability partnership

PROPERTY ADDRESS: 4656 Chancellor Court Fort Worth, TX 76132

Deed: General (V.L. to extent of)



6-08-0069-2313

Scanned by: \_\_\_\_\_

Phone #: \_\_\_\_\_

Instructions:

1. Write your name and phone number in the space provided.
2. Place the executed document behind this cover sheet. One document for each cover sheet.
3. Scan the document at 300 dpi to a TIFF file.
4. Email the file to [eRecording@ppdocs.com](mailto:eRecording@ppdocs.com).
5. Return originals to Lender.

After recording return to:

Lender dave@heritagebank.com

Settlement Agent \_\_\_\_\_



|   |  |  |
|---|--|--|
| <b>Electronically Recorded</b>  |  | Tarrant County Texas                             |
| Official Public Records   |  | 2005 Mar 03 02:16 PM                             |
| RECORDATION REQUESTED BY:   |  | Fee: \$ 28.00                                    |
| TEXASBANK<br>Fort Worth Ridgmar<br>2525 Ridgmar Blvd<br>Fort Worth, TX 76116-4524 |  | Submitter: ACS INC                               |
| <i>Suzanne Henderson</i><br>Suzanne Henderson                                     |  | <b>D205061130</b>                                |
| WHEN RECORDED MAIL TO:  |  |  |
| TEXASBANK<br>Ridgmar<br>PO Box 121459<br>Fort Worth, TX 76116                     |  |  |
| SEND TAX NOTICES TO:  |  |  |
| James A. Park<br>Gayle Womack<br>4709 5th Ave<br>Fort Worth, TX 76110             |  |  |
|   |  | SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY |

**DEED OF TRUST**

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THIS DEED OF TRUST is dated March 3, 2005, among ~~James A. Park~~ and ~~Gayle L. Park~~ ~~Womack~~, whose address is ~~4709 5th Ave~~, Fort Worth, TX 76110 ("Grantor"); TEXASBANK, whose address is Fort Worth Ridgmar, 2525 Ridgmar Blvd, Fort Worth, TX 76116-4524 (referred to below sometimes as "Beneficiary"); and Vernon Bryant, whose address is 2525 Ridgmar Blvd, Fort Worth, TX 76116 (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Grantor conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; and all easements, rights of way, and appurtenances; all water and water rights; and all other rights, royalties, and profits relating to the real property, including without limitation such rights as Grantor may have in all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Tarrant County, State of Texas:

Lot ~~8~~, Block ~~88~~, Wedgwood, an Addition to the City of Fort Worth, Tarrant County, Texas, according to the Plat recorded in Volume 388-13, Page 35, Plat Records, Tarrant County, Texas.

The Real Property or its address is commonly known as ~~4709~~ Wedgmont Cir N, Fort Worth, TX 76133.

Grantor hereby absolutely assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**GRANTOR'S REPRESENTATIONS AND WARRANTIES.** Grantor warrants that: (a) this Deed of Trust is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Deed of Trust and to hypothecate the Property; (c) the provisions of this Deed of Trust do not conflict with, or result in a default under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower on a continuing basis information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

**GRANTOR'S WAIVERS.** Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Borrower shall pay to Lender all Indebtedness secured by this Deed of Trust as it becomes due, and Borrower and Grantor shall strictly perform all their respective obligations under the Note, this Deed of Trust, and the Related Documents.

**PURPOSE OF LOAN.** The Note in the amount of \$72,692.01 represents, in part or in whole, cash or other financial accommodations advanced or committed by Lender to Borrower on March 3, 2005 at Grantor's request, of which Grantor hereby acknowledges receipt.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

D205061130

## Exhibit D

### ELECTRONIC RECORDING MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** is between Suzanne Henderson, Tarrant County Clerk, ("**CLERK**"), Tarrant County ("**COUNTY**"), Hart InterCivic, Inc. ("**ELECTRONIC RECORDING PROVIDER**"), and \_\_\_\_\_ ("**COMPANY**") with offices at \_\_\_\_\_.

Tarrant County desires to offer the recording of real property documents by electronic means providing for the receiving and transmitting of documents electronically 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, to the mutual benefit of the parties of the transactions.

For purposes of this Memorandum of Understanding, *Electronic Recording* is defined to be the electronically based submitting of documents from **COMPANY** to **COUNTY** and electronically based receipt of confirmation of recording from **COUNTY** to **COMPANY** based on the level of automation and structure of the transaction and is characterized by four different levels of automation and structure 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 documents which have been created, signed and notarized electronically along with the electronic indexing information. Electronic signatures must comply with UETA and E-Sign specifications. The county performs an electronic examination of the electronic documents and indexing information then completes the recording process using the electronic documents. The electronic version of the recorded document and electronic recording data is returned to the submitting organization.

Level 4 -- 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, 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**, **COMPANY**, AND **ELECTRONIC RECORDING PROVIDER**. 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 the parties involved in Electronic Recording in order 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 although **COMPANY** will be required to meet **COUNTY** requirements in order to record electronically.

### **County Requirements**

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

*Attachment A* defines the technical specifications including format, levels of recording supported, transmission protocols, and security requirements of the electronic records required by COUNTY. Company agrees to provide the transmission to the COUNTY following the specifications outlined. Company understands that the specifications may change from time to time. In the event changes to the specification are required, the COUNTY will provide a written notice to the Company within a reasonable timeframe.

*Attachment B* 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.

*Attachment C* contains the processing schedules and hours of operation for the Electronic Recording Program. No party shall be liable for any failure to perform processing of the transactions and documents where such failure results from any act of Nature 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 interfere with the normal course of business. By this agreement, COUNTY is assuming no contractual liability whatsoever for any failure to record any document, delay in recording any document, or for the quality or content or lack thereof of any document presented for recording.

*Attachment D* provides the payment options supported for the Electronic Recording program.

### **County Responsibilities**

**COUNTY** shall attempt to protect the integrity of the Recordation process through ongoing monitoring of documents received and recorded through Electronic Recording means.

**COUNTY** shall work with **ELECTRONIC RECORDING PROVIDER** and **COMPANY** to install, configure, and administer necessary infrastructure components to facilitate Electronic Recording.

**COUNTY** shall test and maintain Electronic Recording software and hardware required to operate the Electronic Recording capability. COUNTY, however, shall be held harmless and not liable for any damages resulting from software or equipment failure and assumes no contractual liability for any damages whatsoever via any part of this document.

**COUNTY** shall institute security to authenticate verbal communications with.

**COUNTY** shall apply the same level of diligence in handling documents submitted electronically as those submitted through the normal manual process.

#### **Electronic Recording Provider Responsibilities**

**ELECTRONIC RECORDING PROVIDER** is responsible for providing, supporting, and maintaining Electronic Recording Software and internal Recording Software to **COUNTY**.

**ELECTRONIC RECORDING PROVIDER** shall ensure that Electronic Recording Software is secure and that once documents are received, that they remain immutable until such time as they are recorded. Limited to software executable and not the network environment provided by the **COUNTY**.

**ELECTRONIC RECORDING PROVIDER** shall work with **COMPANY**, and **COUNTY** to resolve issues encountered in the Electronic Recording process that are within the scope of the **ELECTRONIC RECORDING PROVIDERS** software.

**ELECTRONIC RECORDING PROVIDER**, through the Electronic Recording software, shall maintain an audit trail of documents received, ID received from, dates and times received, receipts receipt to **COMPANY** received, receipts transmitted, and any errors encountered.

#### **Company Responsibilities**

**COMPANY** shall work to insure that all security measures and credentials implemented are protected. **COMPANY** assumes all responsibility for documents submitted through unique credentials provided to **COMPANY** for the purposes of engaging in Electronic Recording.

**COMPANY** shall be diligent in ensuring that documents submitted for Electronic Recording have been checked before submission, for errors, omissions, scanning defects, illegible areas, and other deformities that would impact the validity of the document.

**COMPANY** 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 **COMPANY** 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, **COMPANY** 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.

By use of digital certificates to seal electronic files containing images of original paper documents or documents bearing manual signatures, **COMPANY** shall recognize such sealed images for all purposes as fully as the original paper documents and shall be responsible for any failure by Users to comply with quality control procedures for assuring the accuracy and completeness of the electronic files.

The **COMPANY** and or its' employees attest to the accuracy and completeness of the electronic records and acknowledge responsibility for the content of the documents submitted through the Electronic Recording Program. **Should a dispute or legal action arise concerning an electronic transaction, the COUNTY will be held harmless and not liable for any damages.**

**COMPANY** is responsible for receiving receipt of documents recorded by **COUNTY** insuring that the source of the receipt is known to be the **COUNTY**. **COMPANY** is responsible for forwarding these documents to **COUNTY** insuring that the source of the documents is known to be the **COMPANY** who has been authenticated and that the documents to be recorded pass from **COMPANY** to **COUNTY** without modification. **COMPANY** must maintain an audit trail of all activity, available to **COUNTY** or **ELECTRONIC RECORDING PROVIDER**, at their request, to resolve issues or investigate potential fraudulent activity. The audit trail must contain, at a minimum, submitter ID, submitted content at point of receipt from **COMPANY**, submitted content as at point of delivery to **COUNTY**, dates and times submitted, size, and checksum.

**COMPANY** is responsible for supporting any technical issues associated with Electronic Recording. **COMPANY** shall work, in good faith, with **ELECTRONIC RECORDING PROVIDER**, and **COUNTY** to resolve issues with the Electronic Recording process.

**COMPANY** shall provide end user support to both **ELECTRONIC RECORDING PROVIDER** and **COUNTY** through which problems or issues can be reported and addressed. In the event that problem is determined to be with the Electronic Recording software and not the infrastructure provided the **COMPANY** shall work to resolve issues with **COUNTY** and **ELECTRONIC RECORDING PROVIDER**.

**COMPANY** is solely responsible for any and all costs of the system or services that enables **COMPANY** to meet the Electronic Recording Program requirements.

**COMPANY** is responsible for coordinating all technical problems and issues through **COUNTY**.

#### **General Understandings**

**COUNTY** will not incur any liability for the information electronically transmitted by the **COMPANY** to **COUNTY**.

**COUNTY** will not incur any liability for any breach of security, fraud or deceit as a result of Electronic Recording.

Neither the **COUNTY**, nor **COMPANY**, nor **ELECTRONIC RECORDING PROVIDER** 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.

The **COUNTY** and **COMPANY** 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.

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

The **COUNTY**, **ELECTRONIC RECORDING PROVIDER** and **COMPANY** acknowledges that the electronic recording process is an emerging technology and that State and National standards will continue to evolve. To further the technology and the electronic recording process, the **COUNTY** and **COMPANY** will meet once at 30 days and again at 120 days to discuss changes and additions to this Memorandum of Understanding.

**Agreed and Accepted:**

**TARRANT COUNTY**

\_\_\_\_\_  
Suzanne Henderson, County Clerk

Date: \_\_\_\_\_

\_\_\_\_\_  
County Administrator's Office

Date: \_\_\_\_\_

**HART INTERCIVIC, INC.**

\_\_\_\_\_

Date: \_\_\_\_\_

**[COMPANY]**

\_\_\_\_\_

Date: \_\_\_\_\_

## Attachment A

### Technical Specifications

#### Format of the transmitted File

***PRIA file format standard will be used. Images will be in multi- page Group IV TIFF format. The can work with the ELECTRONIC RECORDING PROVIDER and COUNTY to provide additional fields (extensions) to the current PRIA standard.***

#### Communications Protocol and Options

##### ***TCP/IP, HTTP and HTTPS***

#### Security Framework

***Encryption will be 128bit file and image encryption. SSL and user login/password will be employed. User passwords will be changed on a quarterly basis.***

#### Returned File Format

***PRIA file format standard will be used. Images will be in multi-page Group IV TIFF format.***

#### Levels of Electronic Recording Supported

##### ***Level 2 and 3***

#### Electronic Signatures and Use of Digital Certificates

***The use of Electronic Signatures and Digital Certificates will not be used at this time. However, COUNTY reserves the right to revisit this at a later date with COMPANY. COMPANY acknowledges that Electronic Signatures and Digital Certificates will be used in the future and will work with COUNTY to accommodate their use.***

#### Imaging Standards

***Documents will be scanned at 200dpi.  
Documents will be scanned in portrait mode.  
Document images will be captured as multi- page Group IV TIFF images.  
Scanned documents will be legible. Legible in this instance means a clear, readable image – including signatures and notary seals – and in which all portions of each page are captured.  
Document font size must meet PRIA minimum standards.***

## **Attachment B**

### **Documents and Indexing Specifications**

Documents shall be accepted for filing according to the provisions of Texas law and PRIA standards.



## Attachment C

### Service Offering

#### Hours of Operation

***Documents may be submitted at any time during the week. Documents will only be processed on those days and hours that the COUNTY Recording Office is open to the public for business. Documents will not be processed on COUNTY holidays, weekends, "snow days", etc., or in the event of network or equipment failure. COUNTY will attempt to notify COMPANY of any disruption in service.***

#### Processing Schedules

***Documents received prior to 3PM will be processed the same business day. Documents received after 3PM may be processed the next working day.***

#### Turnaround Timeframe

***Documents received prior to the times listed above will be processed (accepted or rejected) at those times.***

#### Alternative Delivery Options

***There are no other electronic delivery options at this time.***

#### Return to Options

***Submitted documents that are accepted for recording will be provided to the COMPANY in electronic format after acceptance. Confirmation of acceptance and recordation will be provided to the COMPANY in electronic format after recordation is complete. This confirmation will include the document image and COUNTY indexing data. COUNTY reserves the right to make changes to the index at a later date.***

***Submitted documents that are rejected will be returned to the COMPANY in electronic format after rejection, along with a description of the reason(s) for rejection.***

***Initially, reasons for rejections will be tabulated and discussed at 30 days and 120 days with the COMPANY.***

#### Service Help Contact Information

##### **COUNTY RECORDING CONTACTS:**

***Paul Seaberry***

***817-884-1061***

***Pseaberry@tarrantcounty.com***

##### **COMPANY BUSINESS CONTACT:**

***[company name]***

***[name]***

***[telephone number]***

***[email address]***

**COMPANY TECHNICAL CONTACT:**

*[company name]*

*[name]*

*[telephone number]*

*[email address]*

**COUNTY eRECORDING VENDOR:**

*Hart Intercivic, Inc*

*Giuseppe Ferrigno*

*800-223-4278*

*gferrigno@hartic.com*

## Attachment D

### Payment Options

#### Payment Options

***Escrow accounts are acceptable as the form of payment. Accounts will be summarized on a monthly basis. COMPANY will be responsible for maintaining adequate funds to enable e-Recording.***

Requirements for each:

***Escrow account must be in place in advance of any submissions.***

#### Account Setup Procedures

***Upon execution on the MOU, the COMPANY will submit funds in an amount no less than \$100.00 for initial deposit in the escrow account. COMPANY paying by ACH must contact Tarrant County Clerk Accounting to establish account. The CLERK will provide electronic deposit instructions necessary for funds settlement.***

ACH Payments:

***COMPANY agrees to settle account daily by submitting collections via ACH to the Tarrant County Clerk bank account. Company will provide all necessary reports in connection with ACH transactions.***

#### Reporting and Reconciliation

***COUNTY will be responsible for maintaining and reconciling their receipts. Documents will not be accepted if adequate funds are not available by escrow account balance. COMPANY will be responsible for submitting account information with each document batch, and for reconciling their records. COMPANY file number may be transmitted for COMPANY reconciliation purposes.***

#### Exception Handling

***Any discrepancy in fees discovered by COUNTY after document acceptance will be corrected by COUNTY within five county business days and COMPANY will be provided with a notification of the error.***

## **Exhibit E**

### **e-Recording available through PeirsonPatterson, LLP ([www.ppdocs.com](http://www.ppdocs.com)).**

PeirsonPatterson, LLP (Arlington) has teamed up with leaders in the e-Recording industry allowing title companies and lenders the ability to electronically file and receive recording verification of real estate filings. The process now only takes a couple hours, instead of days or weeks. This service is available to any entity authorized to submit documents for recording in the perspective county.

### **What is recording?**

Recording is the act of entering deeds, mortgages, easements, and other written instruments that affect title to real property into the public record. The purpose of recording is to give notice, to anyone who is interested, of the various interests that parties hold in a particular property. Recording determines the legal priority of instruments that affect title to a particular property.

### **What is "e-Recording"?**

"e-Recording" is the same as traditional recording with one big difference. Instead of a person physically delivering or mailing the executed documents to the recording entity (County Clerk) and then waiting a long period of time before getting the recording information, the documents are delivered - with specific indexing data – electronically over the Internet. This allows the recording entity to assign the recording information in a timelier manner and return an image of the recorded documents with their recording information.

### **How does "e-Recording" work?**

- After closing, the executed and notarized documents are scanned by either the title company or lender at 200dpi in TIFF or PDF format.
- Complete the required County indexing information via the e-Recording portal on [www.ppdocs.com](http://www.ppdocs.com).
- The scanned documents are uploaded to [www.ppdocs.com](http://www.ppdocs.com) via HTTP protocol.
- The indexing information and scanned documents are submitted to the appropriate County.
- County records the document and returns an electronically stamped copy in a couple hours or less.

### **Who can use "e-Recording"?**

Title insurance companies, mortgage bankers, full service banks, attorneys and other approved parties to record documents affecting the title to real property in the respected county are eligible to record documents electronically.

### **What type of documents are eligible for "e-Recording"?**

The type of documents available for e-Recording vary by county. See the table below for an overview. However, some counties will allow additional types of documents to be e-Recorded. Electronically recorded instruments have not been fully embraced by large lenders. It is recommended that you contact your investor to verify that they will accept electronically recorded instruments.

### **How much does "e-Recording" cost?**

You can e-Record your documents for the cost of the County's filing fees plus a \$10 convenience fee. PeirsonPatterson, LLP will bill you monthly for all filing fees and convenience charges for that month.

## Exhibit E

Current list of Counties accepting e-Recordings for real estate transactions.

| State | County    | Deeds | Mortgages | Releases | Assignments | Availability |
|-------|-----------|-------|-----------|----------|-------------|--------------|
| Texas | Bexar     | Y     | Y         | Y        | Y           | Now          |
|       | Brazoria  | Y     | Y         | Y        | Y           | Now          |
|       | Collin    | Y     | Y         | Y        | Y           | Now          |
|       | Dallas    | Y     | Y         | Y        | Y           | Now          |
|       | Denton    | Y     | Y         | Y        | Y           | Now          |
|       | Fort Bend | Y     | Y         | Y        | Y           | Now          |
|       | Hidalgo   | Y     | Y         | Y        | Y           | Now          |
|       | Nueces    | Y     | Y         | Y        | Y           | Now          |
|       | Parker    | Y     | Y         | Y        | Y           | Now          |
|       | Tarrant   | Y     | Y         | Y        | Y           | Now          |
|       | Webb      | Y     | Y         | Y        | Y           | Now          |

**Guide to the PeirsonPatterson, LLP Online  
Electronic Recording System  
A guide to recording documents online**



## Exhibit E

### E-Recording Homepage:

- Once you are logged into ppdocs.com click on the "E-Recording" link. This will take you to the PPDocs.com E-Recording Homepage.
- This screen shows all active transactions. A transaction contains one or more documents to be recorded, their indexing information, their associated parties, and the legal description. Each transaction will be grouped into one of four categories: Drafted, Sent, Recorded, and Rejected. Each category is summarized as follows:
  - Drafted – The transaction has been started and information may have been entered, but it has not yet been sent to the county recorder.
  - Sent – The transaction has been sent to the county recorder and is waiting to be recorded.
  - Recorded – The transaction has been recorded by the county recorder.
  - Rejected – The transaction has been sent to the recorder but it has been rejected. Possible reasons for rejection include an invalid document image (not signed, unreadable, missing pages, incorrect size) or missing important indexing information. If one of your transactions has been rejected, you can open it and click on the "Rejection Information" link to determine the cause. Once the cause of the rejection has been rectified you can send the transaction again.
- You can delete a drafted or rejected transaction by checking the box next to the transaction name and clicking the "delete selected" button at the bottom of the table.
- Sent and recorded transactions cannot be deleted. You can archive a recorded transaction by selecting it and clicking the "Archive Transaction" button.
- Click on the "Search" link to search for transactions by certain criteria.
- To begin a new transaction click on the link that says "New Transaction"

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About Home Casefile Manager **E-Recording** Setup Logout

**Options**

- New Transaction
- Search
- Billing Report

**Drafted Transactions**

| Transaction Name              | Last Updated | Type | County |
|-------------------------------|--------------|------|--------|
| No active transactions found. |              |      |        |

Delete Selected

**Rejected Transactions**

| Transaction Name                            | Last Updated           | Type      | County  |
|---|------------------------|-----------|---------|
| <input type="checkbox"/> Alviar-Titus       | 1/10/2006 9:41:55 AM   | Refinance | Tarrant |
| <input type="checkbox"/> BONITA GRAND HOMES | 1/9/2006 2:59:53 PM    | Refinance | Denton  |
| <input type="checkbox"/> Drumb              | 1/5/2006 4:39:27 PM    | Refinance | Denton  |
| <input type="checkbox"/> 4200 Buckingham    | 12/28/2005 11:39:11 AM | Refinance | Tarrant |

Delete Selected

**Recorded Transactions**

| Transaction Name | Last Updated | Type | County |
|------------------|--------------|------|--------|
|------------------|--------------|------|--------|

## Exhibit E

### Adding a new E-Recording Transaction:

1. After clicking the "New Transaction" link, choose the county you want to record in and the transaction type. The list of allowable documents to record is based on the transaction type you choose here.
2. Now enter a name for this transaction. You may use whatever unique name you like
3. Click the "Add Transaction" button.

The screenshot shows a web browser window titled "Add New E-Recording Transaction - Microsoft Internet Explorer". The address bar displays "https://www.ppdocs.com/online/PPERRecord/AddTrans.aspx". The page header for "peirsonpatterson, llp Attorneys at Law" includes navigation links: "About", "Home", "Casefile Manager", "E-Recording", "Setup", and "Logout". A left sidebar contains an "Options" menu with a "Search" button. The main content area is titled "Add A New E-Recording Transaction" and contains the following form fields:

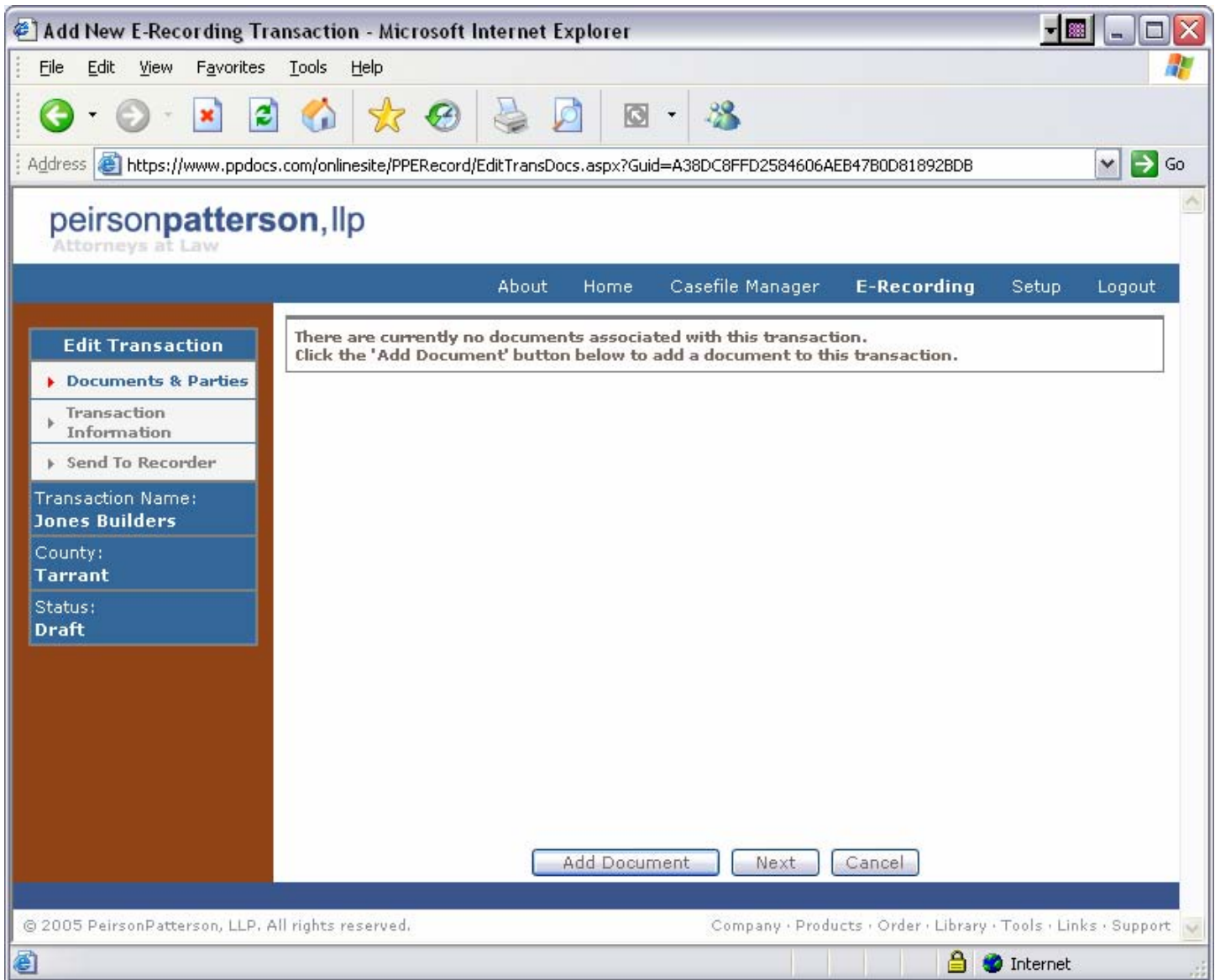
|                  |                |
|------------------|----------------|
| County           | Tarrant, TX    |
| Transaction Type | Assignment     |
| Transaction Name | Jones Builders |

Below the form fields is a button labeled "Add Transaction!". The browser's status bar at the bottom shows "Done" and "Internet".



## Exhibit E

4. The "Documents & Parties" screen shows the scanned documents that have been added to the transaction. As well as the Grantors and Grantees associated with each document.
5. Click the "Add Document" button to add a new scanned image.



### Exhibit E

6. A popup window will appear prompting you for document information.
7. Select the type of document in the Document Name list.
8. Enter the number of pages of the document.
9. Enter the execution date of the document.
10. Click on the browse button and open the scanned image of the document on your computer. The scanned image must be in .pdf or .tif format.
11. Once all the fields are complete click the "Add Document" button.

**Document Information - Microsoft Internet Explorer**

**Add New Document**

**Document Name** Assignment Of Deed Of Trust \*

**Number of Pages** 8 \*

**Execution Date** 01/10/2006 \*

**Filename** C:\jonesbuilders.tif Browse... \*

- File must be of type '\*.tif' Or '\*.pdf'.
- Document image must be legible.
- Document image must be upright.
- Document image must not have missing or blank pages.
- Document image must be signed and notarized.
- Document image must be smaller than 2000 KB.

**Add Document** **Cancel**

\* = Required Field

Done Internet

## Exhibit E

12. You will now see your document in list of transaction documents.
13. Under the Actions column you are given options to open the document, edit its properties, remove it from the list, or add parties to it.
14. At least one grantee and one grantor are required for each document.
15. Click the "Add Parties" button to add a new party.

**Add New E-Recording Transaction - Microsoft Internet Explorer**

File Edit View Favorites Tools Help

Address <https://www.ppdocs.com/online/PPERecord/EditTransDocs.aspx?Guid=A38DC8FFD2584606AEB47B0D81892BDB> Go

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About Home Casefile Manager **E-Recording** Setup Logout

**Edit Transaction**

- Documents & Parties
- Transaction Information
- Send To Recorder

Transaction Name:  
**Jones Builders**

County:  
**Tarrant**

Status:  
**Draft**

**Document #1**

| Name                        | Execution Date | Pages | Actions                         |
|-----------------------------|----------------|-------|---------------------------------|
| Assignment Of Deed Of Trust | 1/10/2006      | 8     | Open  Edit  Remove  Add Parties |

**Parties** No parties added to this document

Next Cancel

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Internet

## Exhibit E

16. A popup window will appear prompting you for the party information:

The screenshot shows a web browser window titled "Party Information - Microsoft Internet Explorer". Inside the browser is a form titled "Add New Transaction Party". The form contains the following fields and controls:

- Party Type:** Radio buttons for "Grantee" (selected) and "Grantor".
- Capacity:** A text input field.
- Entity Type:** Radio buttons for "Organization" (selected) and "Individual".
- Company Name:** A text input field.
- Address 1:** A text input field.
- Address 2:** A text input field.
- County:** A text input field.
- Company Alias:** A text input field.
- City:** A text input field.
- State:** A dropdown menu.
- Zip:** A text input field.
- Alias Type:** A dropdown menu.

Below the form are two buttons: "Add Party" and "Cancel". At the bottom left, there is a red asterisk followed by the text "= Required".

17. Select the party type. If you have two parties of the same type they will need to be added separately. For example if there are two or more grantees, each will have to be added separately.
18. Select whether the party is an individual or organization and complete all required fields.
19. When you click "Add Party", the screen will disappear, and you will see your party added to the document on the table.
20. Once all required parties are added click "Next" to go to the "Transaction Information" screen.

## Exhibit E

**Add New E-Recording Transaction - Microsoft Internet Explorer**

File Edit View Favorites Tools Help

Address <https://www.ppdocs.com/onsite/PPERRecord/EditTransInfoAdv.aspx> Go

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About Home Casefile Manager **E-Recording** Setup Logout

**Edit Transaction**

- Documents & Parties
- Transaction Information**
- Send To Recorder

Transaction Name: **Jones Builders**

County: **Tarrant**

Status: **Draft**

**Form Tips**

The subdivision(addition) name of the property

**Transaction Summary** Show Advanced

Reference Information

Billing Reference Number

Associated Documents

Book (Volume) Type  Instrument Number

Volume Number  Page Number

Recording Date  Original Mortgage Date

**Transaction Legal Description**

Lot Number  Block Number

Subdivision Name

Next Cancel

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Done Internet

21. The Transaction Information screen allows you to enter additional information about the transaction. The billing reference number will be shown on your monthly invoice with this transaction. Associated Information may be required by some counties for certain documents. Complete the Associated Documents section if your document refers to another document that has already been recorded.
22. The Legal Description section contains information about the legal description of the property associated with the transaction. In most cases the lot number, block number, and subdivision name are required.
23. Some counties may require additional information about the transaction. If you click on the "Advanced" button you will be taken to an advanced version of this screen that allows you to enter consideration amounts and more detailed property information.
24. Click next to continue to the "Send To Recorder" screen.

## Exhibit E

25. Enter your email address in the "Return To Address" field, check the box to agree to the legal terms, and click the "Send To Recorder" button.
26. If there are any problems with your transaction you will get an error message stating what needs to be corrected. Once corrections are made you can go back to this screen and send the transaction again
27. If there are no errors you will get a message saying the transaction has been sent.

**Add New E-Recording Transaction - Microsoft Internet Explorer**

File Edit View Favorites Tools Help

Address <https://www.ppdocs.com/online/PPERRecord/Send.aspx> Go

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About Home Casefile Manager **E-Recording** Setup Logout

**Edit Transaction**

- Documents & Parties
- Transaction Information
- Send To Recorder**

Transaction Name:  
**Jones Builders**

County:  
**Tarrant**

Status:  
**Draft**

**Send Transaction to Recorder**

Return To Address:

By clicking on the following button the information in this transaction will be sent to the recording office for this transaction. You will be charged the recording fee charged by this county as well as a \$5.00convenience charge. If this transaction is rejected by the county, you can return to edit any problems with the transaction and resubmit. You will not be charged for rejected transactions.

☒ I agree to these terms.

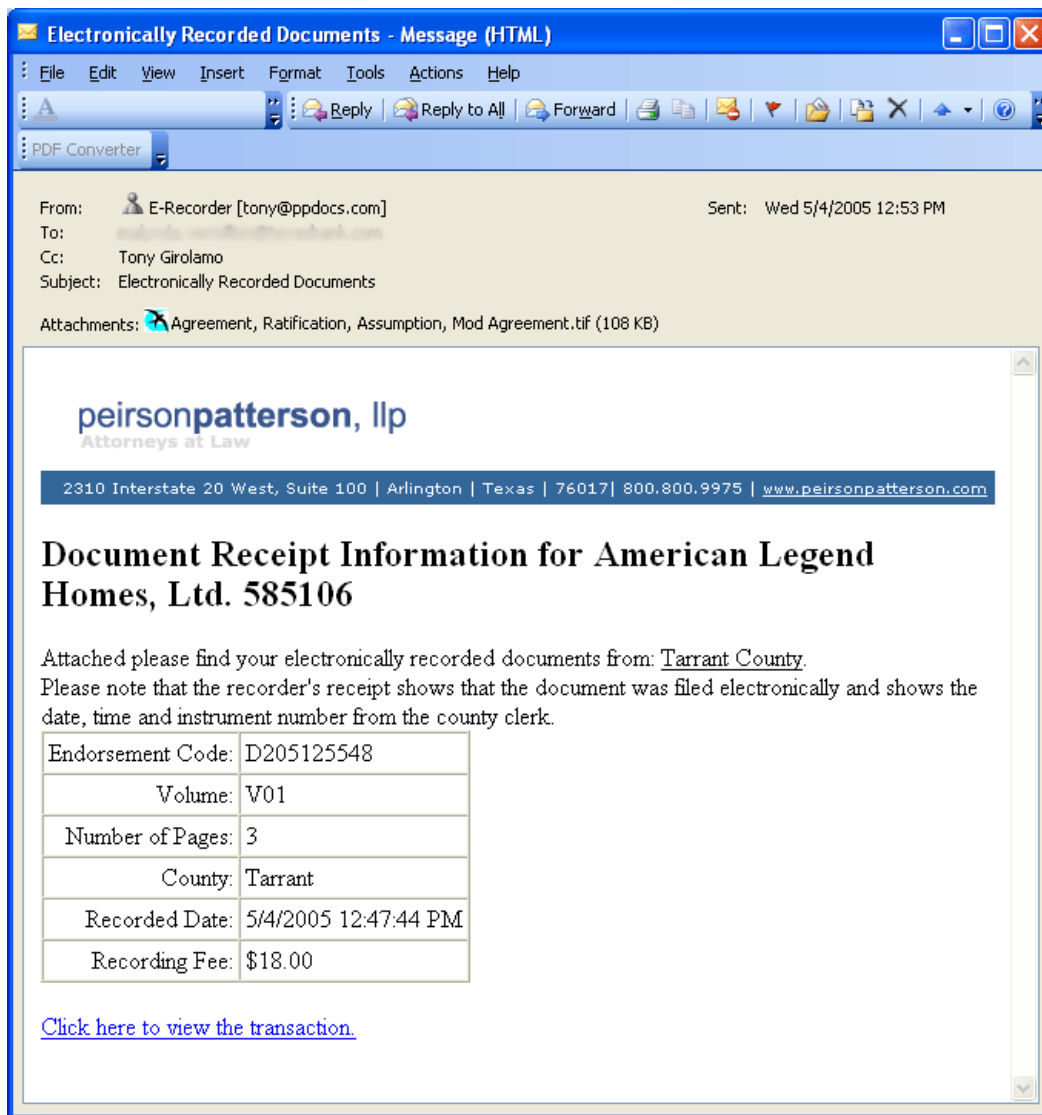
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Done Internet



## Exhibit E

28. Once the transaction has been recorded by the county you will get an email with the recording information and the recorded document image.
29. You will be billed monthly for all successfully recorded documents.



If you have any other questions or need any additional help recording documents, please call 817-461-5500 and ask for "support".