

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE KERN COUNTY ASSESSOR-RECORDER AND  
\_\_\_\_\_, SUBMITTER**

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and executed as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the KERN COUNTY ASSESSOR-RECORDER (hereinafter referred to as "RECORDER"), and \_\_\_\_\_, (hereinafter referred to as "SUBMITTER").

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

NOW, THEREFORE, RECORDER and SUBMITTER hereby agree as follows:

**ARTICLE I – DEFINITIONS**

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

**ARTICLE II – GENERAL DUTIES AND RESPONSIBILITIES**

A. SUBMITTER acknowledges that it is a voluntary participant in ERDS.

B. If SUBMITTER is one of the types of entities described in Government Code section 27391(b), or an authorized agent of such an entity, then SUBMITTER is authorized under this MOU to deliver to RECORDER for recording, and return to the

1 party requesting recording, a digitized electronic record that is an instrument affecting a  
2 right, title, or interest in real property.

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

8 D. SUBMITTER is wholly responsible for the scanning, transmission, and  
9 submission of documents. SUBMITTER agrees to abide by the procedures for ERDS as  
10 set forth by CERTNA and RECORDER, and by those regulations set forth at California  
11 Code of Regulations, Title 11, Division 1, Chapter 18, Articles 1 through 9.  
12 RECORDER shall provide a copy of the current Standard Operating Procedures related  
13 to the ERDS workstation to SUBMITTER. CERTNA and RECORDER each reserves  
14 the right to modify its own procedures at any time, and a copy of any revised  
15 procedures shall be provided to SUBMITTER.

16 E. SUBMITTER shall securely affix a copy of the first page of each  
17 electronically recorded document to the corresponding original document as a cover  
18 page thereto, and shall return said document to applicable parties at the address  
19 specified in the instructions for mailing in the document pursuant to Government Code  
20 27361.6.

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

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

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

6 I. SUBMITTER agrees to notify RECORDER of system users who leave  
7 employment of SUBMITTER or who change office locations in writing within five (5)  
8 business days. RECORDER shall delete or modify security access for those individuals.

9 J. SUBMITTER shall provide to CERTNA and RECORDER controlled  
10 remote access to the ERDS system for system administration and maintenance  
11 purposes.

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

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

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

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

26 O. CERTNA or RECORDER may terminate access to ERDS, or any part  
27 thereof, or may terminate access of any authorized submitter, or any authorized staff, at

1 any time it deems it necessary to protect ERDS, to protect the public interest, to protect  
2 the integrity of public records, or to protect homeowners or real property owners from  
3 financial harm. No cause of action or liability against the RECORDER or CERTNA or  
4 any government agency shall arise from any decision of the RECORDER or CERTNA  
5 to terminate or deny access of any person or entity to ERDS.

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

### 14 **ARTICLE III – TECHNICAL REQUIREMENTS**

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

#### 19 1. Scanner Requirements

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

#### 22 2. Payloads

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

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

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

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

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

14 B. Additional specifications shall be set forth in Attachment A hereto,  
15 which is hereby incorporated by reference. SUBMITTER and Agent, if any, agree that  
16 all users, equipment (owned by SUBMITTER or Agent, if any), and software interacting  
17 with the ERDS shall meet all of the additional specifications set out in Attachment A.  
18 Attachment A shall include specifications for the following:

19 1. File Type

20 2. DPI

21 3. Index Information

22 4. Priority Levels Available

23 5. Submission Cut-Off Times

24 6. Support Procedure and Contact Information

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

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

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**ARTICLE V – GENERAL PROVISIONS**

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

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

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

D. SUBMITTER shall notify the RECORDER in writing, of any change in mailing address within ten (10) business days of the change.

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

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

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

H. SUBMITTER shall ensure that it has all necessary licenses and permits required by applicable federal, state, and local laws, ordinances, rules and regulations. The SUBMITTER shall maintain these licenses and permits in effect for the duration of this MOU. SUBMITTER shall notify RECORDER immediately of any loss or suspension of any such licenses and permits. Failure of SUBMITTER to maintain all required

1 licenses and permits constitutes a material breach of this MOU and in the event of any  
2 such failure RECORDER may immediately terminate this MOU and pursue all other  
3 available remedies.

4 I. In the event of a problem or potential problem that could impact the  
5 quality or quantity of work, services, or the level of performance under this MOU, the  
6 SUBMITTER shall notify the RECORDER within one (1) working day, in writing and by  
7 telephone.

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

22 K. No news releases, advertisements, public announcements or  
23 photographs arising out of this MOU or the SUBMITTER's relationship with  
24 RECORDER may be made or used without prior written approval of the RECORDER.

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

26 M. The RECORDER and CERTNA shall each have the absolute right to  
27 review and audit any aspect of the ERDS system, security, all records, books, papers,



documents, licenses and permits required by applicable federal, state, and local laws, ordinances, rules and regulations, and other pertinent items as requested, and shall have absolute right to monitor the performance of SUBMITTER in the delivery of services provided under this MOU. SUBMITTER shall give full cooperation, in any auditing or monitoring conducted. SUBMITTER shall cooperate with RECORDER and CERTNA in the implementation, monitoring and evaluation of this MOU and comply with any and all reporting requirements established by RECORDER and CERTNA. All records pertaining to services under this MOU shall be available for examination and audit by RECORDER and CERTNA representatives for a period of two (2) years.

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

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

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

Q. RECORDER and CERTNA assume no liability for any breach of security, fraud, or deceit as a result of ERDS. In the event of fraud impacting the value

of or title to real estate, SUBMITTER bears the financial responsibility for transactions in which the SUBMITTER engages. This responsibility lies with the SUBMITTER notwithstanding contrary waiver and/or disclaimer language that may be present in any title insurance policy, escrow instruction, or other document pertaining to the real estate transaction associated with said fraud.

#### **ARTICLE VI – NOTICES AND REPORTS**

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

RECORDER: KERN COUNTY ASSESSOR-RECORDER  
1655 CHESTER AVENUE  
BAKERSFIELD, CALIFORNIA 93301

SUBMITTER:

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

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

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

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City, State, Zip Code

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AGENT (if any):

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CONTACT NAME

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Company Name

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Street/Mailing Address

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City, State, Zip Code

**ARTICLE VII – TERM AND TERMINATION**

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

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

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

D. In addition to other termination provisions contained herein, in the event that RECORDER determines that SUBMITTER’S performance of its duties or other terms of this MOU are deficient in any manner, RECORDER may notify SUBMITTER of such deficiency in writing or orally, provided written confirmation is provided five (5) business days thereafter. SUBMITTER shall remedy any deficiency within forty-eight (48) business hours of such notification, or RECORDER may, at its option, terminate this MOU immediately upon written notice.

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

RECORDER:

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

JAMES W. FITCH, ASSESSOR-RECORDER

SUBMITTER:

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

Agent (if any):

Name of Agent:\_\_\_\_\_

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

1 **ATTACHMENT A**

2 **ADDITIONAL SPECIFICATIONS**

3 All users, equipment (owned by SUBMITTER or Agent, if any), and software interacting  
4 with, and documents and/or files submitted through the ERDS in Kern County shall  
5 meet all of the following additional specifications:

- 6 1. **FILE TYPE:** All electronically submitted image file types shall be  
7 TIFF (Tagged Image File Format).
- 8 2. **DPI:** All TIFF images shall be scanned at 300 DPI (Dots Per Inch).
- 9 3. **INDEX INFORMATION:** The following index information fields shall  
10 be required to be completed on the CERTNA system:  
11 a) Primary Reference (Order Number)  
12 b) Dependency (Dependent or Independent)  
13 c) Document Type  
14 d) File Name  
15 e) Page Count
- 16 4. **PRIORITY LEVELS AVAILABLE:** The only priority level available  
17 shall be 8:00 AM.
- 18 5. **SUBMISSION CUT-OFF TIMES:** The cut-off time, or deadline for  
19 submitting electronic documents for "live" recording on the same  
20 business day shall be 3:00 PM. After this time, all documents shall  
21 be either allocated, or recorded "live" on the following business day,  
22 as specified by SUBMITTER.
- 23 6. **SUPPORT PROCEDURE AND CONTACT INFORMATION:**  
24 a) SUBMITTER and Agent, if any, must try to resolve every  
25 recording and/or technical issue first within their own office.  
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1 b) If the SUBMITTER and Agent, if any, is unable to resolve the  
2 issue, they may then contact the RECORDER for further assistance  
3 with the telephone numbers to be provided.

4 c) If the issue must be further addressed by technical support, the  
5 RECORDER shall refer the call to the RECORDER's IT staff.

6 d) If the RECORDER's IT staff are unable to resolve the issue, it  
7 shall contact CERTNA's staff directly on behalf of the RECORDER  
8 and/or SUBMITTER and Agent, if any.

9 e) General recording questions and/or recording rejection questions  
10 should be directed to the RECORDER's Recording Clerks at the  
11 telephone numbers to be provided.

12 7. **ELECTRONIC RECORDING HOURS:**

13 a) Electronic Recording Hours shall be 8:00 AM to 3:00 PM on  
14 each business day.

15 b) Manual Recording Hours shall be 8:00 AM, each business day,  
16 and from 8:00 AM until 2:00 PM on each final business day of the  
17 week and/or month.

18 8. **REDACTION:** SUBMITTER and Agent, if any, shall not submit any  
19 documents electronically which contain a Social Security Number  
20 (SSN), unless all SSN's have been truncated as required by Civil  
21 Code 1798.89.

22 9. **RECORDING REQUIREMENTS:** SUBMITTER and Agent, if any,  
23 shall only submit scans of original documents electronically which  
24 meet all of the same requirements for the submission of original  
25 paper documents. Every document submitted shall include a  
26 Preliminary Change of Ownership Report ("PCOR") when required  
27 by law or local ordinance. SUBMITTER and Agent, if any, shall

1 either shred or return the original PCOR with the original document  
2 upon recording; the Kern County Assessor's Office ("ASSESSOR")  
3 will accept an electronic image of a PCOR through the ERDS in lieu  
4 of the original. At least once every business week, SUBMITTER  
5 and Agent, if any, shall deliver to ASSESSOR any exclusion or  
6 exemption form for all documents submitted electronically.

7 10. **EQUIPMENT REQUIREMENTS:** SUBMITTER and Agent, if any,  
8 shall be required to provide the following in order to participate in  
9 the ERDS with CERTNA and RECORDER:

10 a) A scanner that is able to produce 300 DPI TIFF images with  
11 good quality, as deemed acceptable by RECORDER.

12 b) Single purpose workstation—the workstation shall be dedicated  
13 to the sole use and function of submitting electronic documents to  
14 RECORDER.

15 c) The workstation shall be secured physically, as RECORDER  
16 deems acceptable.

17 d) The workstation operating system shall be Windows XP or later,  
18 with additional recommendations and requirements as provided by  
19 CERTNA and RECORDER.

20 e) RECORDER and CERTNA reserve the right to make additional  
21 recommendations and requirements of equipment as it deems  
22 necessary in the future.

23 11. **SECURITY REQUIREMENTS:** SUBMITTER and Agent, if any,  
24 shall implement the following security requirements on its ERDS  
25 workstation:

26 a) Anti-malware software configured to start on system boot-up.

- 1 b) Microsoft operating system software with the most up-to-date  
2 patches and hot-fixes.
- 3 c) Host-based firewall configured to restrict inbound and outbound  
4 connections.
- 5 d) Internet Explorer, the version of which is to be determined by  
6 CERTNA and RECORDER.
- 7 e) The workstation shall be scanned for security vulnerabilities with  
8 publicly available software, as recommended by RECORDER, and  
9 any issues shall be resolved.
- 10 f) CERTNA requires Internet HTTP Ports 80 and 443 on the  
11 dedicated workstation.
- 12 g) The workstation shall automatically lock the screen after ten (10)  
13 minutes of inactivity.
- 14 h) All Tokens and passwords issued by CERTNA shall be kept  
15 strictly secure and shall not be shared.
- 16 i) All passwords shall change every one (1) to thirty (30) days, with  
17 a history of ten (10), and shall be at least seven (7) characters with  
18 complexity, as required by CERTNA and RECORDER.
- 19 j) The workstation shall be equipped with audit logging to track  
20 successful and failed log-ins for security purposes for a period of  
21 two (2) years.
- 22 k) SUBMITTER and Agent, if any, shall follow all hardening rules  
23 provided by manufacturers of software allowed on its ERDS  
24 workstation for maximum security.
- 25 l) SUBMITTER and Agent, if any, shall take any other steps to  
26 ensure the overall security of its ERDS workstation.
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1 m) RECORDER and CERTNA reserve the right to make additional  
2 recommendations and requirements for security as it deems  
3 necessary in the future.

4 12. **REMITTANCE OF PAYMENT:** SUBMITTER and Agent, if any,  
5 agrees to and guarantees that it shall remit punctual payment in full  
6 for each recording day's fees by no later than the morning of the  
7 following business day. Recording fees include Documentary  
8 Transfer Tax fees, Copy fees, and any other fees incurred by  
9 SUBMITTER and Agent, if any, during the normal course of  
10 business with the RECORDER during each business day.

11 13. **METHOD OF REMITTANCE OF PAYMENT:** RECORDER and  
12 SUBMITTER and Agent, if any, shall establish by mutual consent  
13 the method of payment by SUBMITTER and Agent, if any, to the  
14 RECORDER for all recording fees; either by electronic payments,  
15 or by traditional means.

16 14. **CONTINGENCIES:** In the event that a catastrophe renders  
17 SUBMITTER and Agent, if any, unable to submit documents  
18 electronically due to a power outage, earthquake, or other  
19 unforeseen disaster, RECORDER shall accept original paper  
20 documents manually from SUBMITTER and Agent, if any, in lieu of  
21 electronic submission until such inability is remedied. SUBMITTER  
22 and Agent, if any, shall resume electronic submissions as soon as  
23 possible.

## DECLARATION

I, \_\_\_\_\_, do hereby acknowledge and declare that I have reviewed the California statutes (copies of which are attached hereto as Exhibits “A”, “B”, “C” and “D”) that define a title insurer, an underwritten title company, an institutional lender, and a government entity and on that basis hereby represent and warrant that, to the best of my knowledge and belief, \_\_\_\_\_ (Company Name), on whose behalf authorization as a “Client” is sought, falls within the statutory definition indicated by my checkmark set forth below:

- ☐ a **title insurer** (Cal. Insurance Code Section 12340.4) or
- ☐ an **underwritten title company** (Cal. Insurance Code 12340.5) or
- ☐ an **institutional lender** (Cal. Financial Code Section 50003) or
- ☐ a **government entity** (Cal. Government Code Section 27391).

The undersigned hereby declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_ (Company Name)

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

Name (Print or Type): \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

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

## **EXHIBIT 'A'**

### **California Insurance Code Section 12340.4:**

"Title insurer" means any company issuing title policies as insurer, guarantor or indemnitor.

"Domestic title insurer" means any title insurer organized under the laws of this state.

"Foreign title insurer" means any title insurer organized under the laws of any other jurisdiction.

## **EXHIBIT 'B'**

### **California Insurance Code Section 12340.5:**

"Underwritten title company" means any corporation engaged in the business of preparing title searches, title examinations, title reports, certificates or abstracts of title upon the basis of which a title insurer writes title policies.

## **EXHIBIT ‘C’**

### **California Financial Code Section 50003:**

(a) “Annual audit” means a certified audit of the licensee’s books, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards.

(b) “Borrower” means the loan applicant.

(c) “Buy” includes exchange, offer to buy, or solicitation to buy.

(d) “Commissioner” means the Commissioner of Business Oversight.

(e) “Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a licensee under this division, whether through voting or through the ownership of voting power of an entity that possesses voting power of the licensee, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds 10 percent or more of the voting power of a licensee or of an entity that owns, controls, or holds, with power to vote, 10 percent or more of the voting power of a licensee. No person shall be deemed to control a licensee solely by reason of his or her status as an officer or director of the licensee.

(f) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(g) “Engage in the business” means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. “Engage in the business” also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

(h) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(i) “In this state” includes any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state (whether from inside or outside this state and whether the offer was made inside or outside the state).

(j) “Institutional investor” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or

political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurance company, or subsidiary or affiliate of one of the preceding entities, doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit-sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) A corporation or other entity with outstanding securities registered under Section 12 of the federal Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation or entity, provided that the purchaser represents either of the following:

(A) That it is purchasing for its own account for investment and not with a view to, or for sale in connection with, any distribution of a promissory note.

(B) That it is purchasing for resale pursuant to an exemption under Rule 144A (17 C.F.R. 230.144A) of the Securities and Exchange Commission.

(5) An investment company registered under the Investment Company Act of 1940; or a wholly owned and controlled subsidiary of that company, provided that the purchaser makes either of the representations provided in paragraph (4).

(6) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law or an affiliate or subsidiary of that person.

(7) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person is acting within the scope of authority granted by that license or an affiliate or subsidiary controlled by that broker or dealer, in connection with a transaction involving the offer, sale, purchase, or exchange of one or more promissory notes secured directly or indirectly by liens on real property or a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, and the offer and sale of those securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(8) A licensed real estate broker selling the loan to an institutional investor specified in paragraphs (1) to (7), inclusive, or paragraph (9) or (10).

(9) A business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 or a small business investment company licensed by the United States

Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

(10) A syndication or other combination of any of the foregoing entities that is organized to purchase a promissory note.

(11) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of securities representing undivided interests in, or rights to receive payments from or to receive payments primarily from, a pool of financial assets held by the trust or business entity, provided that all of the following apply:

(A) The business entity is not a sole proprietorship.

(B) The pool of assets consists of one or more of the following:

(i) Interest-bearing obligations.

(ii) Other contractual obligations representing the right to receive payments from the assets.

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancement for the assets.

(C) The securities will be either one of the following:

(i) Rated as “investment grade” by Standard and Poor’s Corporation or Moody’s Investors Service, Inc. “Investment grade” means that the securities will be rated by Standard and Poor’s Corporation as AAA, AA, A, or BBB or by Moody’s Investors Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings with “+” or “—” designation or other variations that occur within those ratings.

(ii) Sold to an institutional investor.

(D) The offer and sale of the securities is qualified under the California Corporate Securities Law of 1968 or registered under federal securities laws, or exempt from qualification or registration.

(k) “Institutional lender” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(4) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law.

(l) “Law” means the California Residential Mortgage Lending Act.

(m) “Lender” means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions.

(n) “Licensee” means, depending on the context, a person licensed under Chapter 2 (commencing with Section 50120), Chapter 3 (commencing with Section 50130), or Chapter 3.5 (commencing with Section 50140).

(o) “Makes or making residential mortgage loans” or “mortgage lending” means processing, underwriting, or as a lender using or advancing one’s own funds, or making a commitment to advance one’s own funds, to a loan applicant for a residential mortgage loan.

(p) “Mortgage loan,” “residential mortgage loan,” or “home mortgage loan” means a federally related mortgage loan as defined in Section 3500.2 of Title 24 of the Code of Federal Regulations, or a loan made to finance construction of a one-to-four family dwelling.

(q) “Mortgage servicer” or “residential mortgage loan servicer” means a person that (1) is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans.

(r) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(s) “Net worth” has the meaning set forth in Section 50201.

(t) “Own funds” means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on a lender’s financial statements, whether secured or unsecured, or (2) a lender’s affiliate’s cash, corporate capital, or warehouse credit lines at commercial banks or other sources that are liability items on the affiliate’s financial statements, whether secured or unsecured. “Own funds” does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of that loan.



(u) “Person” means a natural person, a sole proprietorship, a corporation, a partnership, a limited liability company, an association, a trust, a joint venture, an unincorporated organization, a joint stock company, a government or a political subdivision of a government, and any other entity.

(v) “Residential real property” or “residential real estate” means real property located in this state that is improved by a one-to-four family dwelling.

(w) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(x) “Service” or “servicing” means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

(y) “Sell” includes exchange, offer to sell, or solicitation to sell.

(z) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(aa) For purposes of Sections 50142, 50143, and 50145, “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

## **EXHIBIT ‘D’**

### **California Government Code Section 27391 (b):**

(b) Upon system certification, a county recorder may enter into a contract with a title insurer, as defined in Section 12340.4 of the Insurance Code, underwritten title company, as defined in Section 12340.5 of the Insurance Code, institutional lender, as defined in paragraph (1), (2), or (4) of subdivision (j) of Section 50003 of the Financial Code, or an **entity of local, state, or federal government** for the delivery for recording, and return to the party requesting recording, of a digitized electronic record that is an instrument affecting a right, title, or interest in real property. The contract may provide for the delivery of documents by an agent. However, the agent shall not be a vendor of electronic recording delivery systems.