

MOWER COUNTY RECORDER'S WEB SUBSCRIPTION AGREEMENT

THIS AGREEMENT is between the COUNTY OF MOWER, a political subdivision of the State of Minnesota ("COUNTY"), and (insert full legal name and mailing address)

("SUBSCRIBER");

The parties hereto agree as follows:

1. SUBSCRIPTION

COUNTY hereby grants to SUBSCRIBER a nonexclusive, nontransferable, limited license to access public land record information provided by COUNTY, including but not limited to land records, index information, images of recorded documents and Torrens Certificates of Title ("Information"). Access shall be through a web application developed pursuant to the authority contained in Minnesota Statutes § 375.85, including but not limited to any computer programs, applications, web applications, utilities, middleware, hardware, and/or other related technology ("Application") (The integration of the Information and Application may collectively be referred to herein as the "System"). As applicable, references herein to SUBSCRIBER shall include SUBSCRIBER's personnel, including but not limited to directors, officers, employees, subcontractors, partners, personnel, volunteers and all other agents and representatives directly or indirectly connected to SUBSCRIBER or performing services on behalf of SUBSCRIBER, as well as SUBSCRIBER'S parents, subsidiaries and affiliates and their personnel (hereinafter collectively referred to as "Personnel"). SUBSCRIBER agrees that it will be responsible for any breach of this Agreement by Personnel.

2. PASSWORDS

Only Personnel performing under a written agreement which acknowledges the individual's obligations hereunder may be authorized to use the System. SUBSCRIBER shall identify authorized users eligible to receive an access password to the Application. SUBSCRIBER shall safeguard, protect and keep private and secure all access passwords given to SUBSCRIBER for use by its Personnel. Neither SUBSCRIBER nor SUBSCRIBER'S Personnel shall release passwords to any unauthorized individual. SUBSCRIBER agrees to be responsible for any and all damages caused as a result of unauthorized use of the access password(s) by any authorized or unauthorized individual.

Each authorized user shall be assigned a unique password. Only the identified authorized users may use their assigned password. SUBSCRIBER shall immediately notify COUNTY of Personnel no longer employed or affiliated or acting on behalf of SUBSCRIBER, whereupon COUNTY shall inactivate applicable passwords. New Personnel must get a new password.

Sharing a password is a violation of this Agreement for which COUNTY may immediately terminate this Agreement without any refund of the subscription fee.

3. TERMS AND CONDITIONS OF USE

COUNTY reserves the right to change, amend or modify any and all Terms of Use without notice to SUBSCRIBER. Any such change, modification or amendment shall be effective upon posting on COUNTY's internet site. By accessing and continued use of the Application and/or Information, SUBSCRIBER agrees to be bound and abide by the then current Terms of Use.

SUBSCRIBER is solely responsible for accessing the System, retrieving applicable information and managing the information including the costs of accessing, retrieving and storing the same (as applicable).

SUBSCRIBER shall acquire no right, title or interest in the Application or any Information. SUBSCRIBER may use the Application and Information exclusively for SUBSCRIBER's internal business which may include internal searching and referencing. SUBSCRIBER shall establish and maintain safeguards against unauthorized access to Information.

Neither the Information, the Application nor any portion thereof may be copied, downloaded, stored, published, transmitted, transferred, sold or otherwise used, in any forms or means, except (1) as expressly permitted herein; (2) with the COUNTY's prior written permission; or (3) if not otherwise expressly prohibited by this Agreement, as allowed by the Fair Use Provision of the United States Copyright Act, 17 U.S.C. § 107, and the Minnesota Data Practices Act, Minn. Stat. Ch. 13. SUBSCRIBER shall not download nor store the Information in a searchable database except as provided by the terms of this Agreement. SUBSCRIBER shall not sell or license the Information (including printouts of the Information) to third parties or use substantial portions of the COUNTY's database as material offered for sale or license. The COUNTY acknowledges that the SUBSCRIBER's "regular course of business" includes using the Information in the preparation of title searches, title work, title abstracts, and title insurance; all of which will be prepared and/or furnished for resale to the subscriber's customers. Such regular course of business use of the Information is the permitted use of the Information pursuant to the terms and conditions of this Agreement.

SUBSCRIBER shall not access the Information by any means other than the Application including but not limited to scraping, robots, wanderers, crawlers, spiders, etc. (as those terms are understood in the information technology community).

COUNTY reserves the right, in its sole discretion, to suspend or terminate SUBSCRIBER's access to the Application and Information at any time for any reason without prior notice or liability.

4. RESERVATION OF RIGHTS

SUBSCRIBER acknowledges and agrees that the System is a creative selection, coordination, arrangement and/or method of arrangement which is identified as being subject to copyright and/or patent protection. As between the parties, SUBSCRIBER agrees that COUNTY owns and

reserves all rights, protection and benefits afforded under intellectual property law, including but not limited to copyright, patent, trade secret and other laws related to proprietary rights. SUBSCRIBER will abide by all relevant laws, rules, regulations and decisions which afford protection to COUNTY for the same.

By subscribing hereunder, SUBSCRIBER acknowledges and agrees that (i) it has requested enhanced remote access from COUNTY, within the meaning of Minn. Stat. § 13.03, subd. 3(b), to certain data developed, generated, compiled and stored by COUNTY; (ii) the Information, both in its raw and enhanced form, contemplated and provided to SUBSCRIBER pursuant to this Agreement has commercial value within the meaning of Minn. Stat. § 13.03, subd. 3(d); (iii) the System is a creative selection, coordination, arrangement and/or method of arrangement of data which is identified as being subject to copyright and/or patent protection; (iv) the Application is developed computer software under Minn. Stat. § 375.85; and (v) access to both the Information and the Application has been enhanced in order to provide this service because COUNTY does not provide the public internet access to the Application or the Information or the Application's functionality, the System is available beyond normal COUNTY business hours, COUNTY has had to develop the technological means to provide remote access that is different and unique in comparison to how data is stored and accessed in the normal course of its governmental operations and the Information has been enhanced to a format that allows secure access through a web-based application.

5. FEEES FOR ACCESS AND SERVICE.

As payment for the System, SUBSCRIBER shall pay the amounts set forth in Exhibit 1.

COUNTY reserves the right to change, amend or modify any and all pricing terms pursuant to applicable law. Any such change, modification or amendment shall be effective for the next billing period after the change is sent to SUBSCRIBER. By accessing and continued use of the Application and/or Information, SUBSCRIBER agrees to be bound and abide by the then current pricing terms.

6. PAYMENT

Accounts will be bill on the first of the month for the previous month. Payment is due by the 15th of the following month. Late payments may result in cancellation of subscription. If a payment is not received by the 1st of the next billing cycle, the account will be closed. A **\$100.00 deposit** is due when the contract is signed. Charges are exclusive of sales, use and other taxes, which are the responsibility of the SUBSCRIBER. SUBSCRIBER shall arrange and be responsible for its own internet, ISP and other connection and communication charges.

7. PRIVACY STATEMENT: TENNESSEN WARNING

SUBSCRIBER acknowledges and agrees that to facilitate service and access to data, under Minn. Stat. § 13.05, subd. 12, SUBSCRIBER has agreed to provide certain identifying information. SUBSCRIBER further acknowledges and agrees that any such information is provided voluntarily and that COUNTY may not require disclosure, but that refusal to disclose means that the requested access to the Information through the Application cannot be provided.

COUNTY respects the privacy of its subscribers. Therefore, except as provided herein, COUNTY does not intend to monitor, edit, or disclose the content of any email or other communication with COUNTY through the System unless necessary in the course of normal maintenance and operation of the System, or unless required to do so by law or in the good faith belief that such action is necessary to (i) comply with the law or comply with legal process served on COUNTY such as MN data practices act (ii) protect or defend the rights or property of COUNTY, including but not limited to administration of the terms of this Agreement; or (iii) to further legitimate law enforcement investigations or efforts. SUBSCRIBER remains solely responsible for the information provided through the System, regardless of the content of the information.

All personal information collected by COUNTY is on a voluntary basis through data entry by SUBSCRIBER, System functionality or use of a registration form completed by SUBSCRIBER. COUNTY logs IP addresses, passwords, usage and other data related to SUBSCRIBER's use of the System for system administration, operation, troubleshooting, compliance, contract administration and other COUNTY business related purposes. Generally, this information is collected through "traffic data" and may entail the use of IP addresses, passwords, other numeric codes used to identify your computer, web logs, request/response data or other data tracking SUBSCRIBER's Application and Information activity.

8. DATA PRACTICES

SUBSCRIBER, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. SUBSCRIBER agrees to defend, indemnify and hold harmless the COUNTY, its officials, officers, agents, employees, and volunteers from any claims resulting from SUBSCRIBER's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. SUBSCRIBER agrees to promptly notify COUNTY if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. The terms of this section shall survive cancellation or termination of this Agreement

9. DISCLAIMERS AND LIMITATION OF LIABILITY

COUNTY IS PROVIDING THE APPLICATION AND INFORMATION ON AN AS-IS BASIS WITH NO SUPPORT WHATSOEVER. THERE IS NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR PARTICULAR USE, NO WARRANTY OF NON-INFRINGEMENT, NO WARRANTY REGARDING THE USE OF THE INFORMATION OR THE RESULTS THEREOF AND NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

WITHOUT LIMITING THE FOREGOING, COUNTY DOES NOT WARRANT THE PERFORMANCE OF THE APPLICATION, THE CODE, COMPUTERS OR COMPUTER SYSTEMS RELATED TO THE APPLICATION, THE COMMUNICATION OR CONNECTION TO THE APPLICATION, THAT THE APPLICATION WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE APPLICATION IS FREE OF HARMFUL CODE. SUBSCRIBER fully understands and

agrees that (i) the Application is subject to errors, omissions, delays or interruptions; and (ii) COUNTY may modify or change the Application or Information in a manner that may impact or restrict SUBSCRIBER's access. In any such event, the COUNTY will not be liable for the cost of such changes or damages which may be sustained by SUBSCRIBER.

WITHOUT LIMITING THE FOREGOING, COUNTY DOES NOT WARRANT THE ACCURACY, COMPLETENESS, TIMELINESS OR THE CORRECT SEQUENCING OF THE INFORMATION OR THAT DEFECTS WILL BE CORRECTED. SUBSCRIBER fully understands and agrees that, except for COUNTY's proprietary documents (i) the Information is provided by third-parties; (ii) COUNTY merely records and stores the Information; and (iii) COUNTY is not responsible for the content of the Information. SUBSCRIBER fully understands and agrees that the Information is subject to errors, omissions, delay or interruptions, including but not limited to (i) delays, errors or omissions in the receipt of the Information, (ii) changes, adjustments, corrections or modifications of the Information and (iii) that COUNTY may make modifications, changes and/or adjustments to the Information at any time and without notice to SUBSCRIBER.

IN NO EVENT SHALL COUNTY BE LIABLE FOR ACTUAL, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT, LOSS OF BUSINESS OR ANY OTHER FINANCIAL LOSS OR ANY OTHER DAMAGES EVEN IF THE COUNTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. COUNTY'S SOLE LIABILITY AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DAMAGES RELATED TO THIS AGREEMENT OR FOR ANY BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LIABILITY FOR APPLICATION OR INFORMATION NONPERFORMANCE, ERRORS OR OMISSIONS, SHALL BE LIMITED TO RESTORING OR CORRECTING THE APPLICATION OR INFORMATION AS IS REASONABLY POSSIBLE UNDER THE PERTINENT CIRCUMSTANCES.

SUBSCRIBER agrees to defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of SUBSCRIBER, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of SUBSCRIBER to perform any obligation under this Agreement.

10. TERMINATION

A. There shall be deemed to be a breach of this Agreement:

- (1) If SUBSCRIBER defaults, breaches or fails to comply with any term or condition, duty or obligation, expressly or impliedly contained herein.
- (2) If SUBSCRIBER fails to use, control and safeguard the Information or any password; or-
- (3) If SUBSCRIBER sells, assigns, shares, otherwise transfers this Agreement, the Application, the Information, any passwords, or any other rights, duties or obligations hereunder or attempts to do any of the aforesaid or permits any of the aforesaid to be done by anyone.

B. In the event of SUBSCRIBER's breach of this Agreement, as herein defined:

- (1) COUNTY may immediately cancel this Agreement.
 - (2) SUBSCRIBER shall be liable for all costs, damages and losses incurred by COUNTY on account of said breach and/or also in canceling or terminating this Agreement.
 - (3) All sums due and to become due hereunder, at COUNTY's option, shall become payable forthwith; and-
 - (4) COUNTY may also enforce specific performance of the applicable covenants of this Agreement by appropriate legal proceedings, as well as any other remedy herein provided. Should any legal proceedings be instituted by COUNTY to recover any monies due or to become due hereunder, and/or to recover other damages sustained by COUNTY on account of such breach, SUBSCRIBER shall pay a reasonable sum as attorney's fees as ordered by the court.
- C. In the event SUBSCRIBER fails to duly and promptly perform any of its obligations under the provisions of this Agreement, COUNTY, at its option, may immediately, or any time thereafter, perform the same for the account of SUBSCRIBER without waiving such default, and any amount paid or expense or liability incurred by COUNTY in such performance, together with interest thereon at the highest maximum rate permitted by applicable law until paid by the SUBSCRIBER to COUNTY, shall be payable by SUBSCRIBER upon demand.
- D. This Agreement may be cancelled with or without cause by either party giving thirty (30) days' prior written notice thereof to the other party. In the event of cancellation without cause by SUBSCRIBER, COUNTY shall not be obligated to refund any Subscription fees paid.
- E. Upon expiration or termination of this Agreement, SUBSCRIBER shall, automatically and without further action by COUNTY, terminate and extinguish SUBSCRIBER's right to access or use the Application and the Information. Unless otherwise directed by COUNTY, SUBSCRIBER shall return or irretrievably destroy the passwords.
- F. Pursuant to COUNTY's written permission, SUBSCRIBER may continue to use duly accessed Information after expiration of the term of this Agreement solely in the regular course of SUBSCRIBER'S internal business which may include internal searching, referencing and displaying of the Information. Upon said written permission, SUBSCRIBER shall use, possess, safeguard and control the Information in compliance with the terms of this Agreement and COUNTY may exercise all rights and remedies herein in addition to any other right or remedy available by law, statute, rule and/or equity.
- G. This Agreement, System access and all passwords may be immediately terminated by COUNTY if, in the sole discretion of COUNTY, SUBSCRIBER fails to comply with any term or condition of this Agreement.

11. RIGHTS AND REMEDIES

No right or remedy of COUNTY hereunder shall be exclusive of any other right or remedy herein or by law, statute or equity provided, but each shall be cumulative and in addition to every other right or remedy, and shall be deemed to be continuing, none of which shall be exhausted by being exercised on one or more occasion and may be enforced concurrently or from time to time.

SUBSCRIBER acknowledges and agrees that unauthorized disclosure or use of the Application and/or Information or any part thereof could cause irreparable harm and significant injury to COUNTY, which may be difficult to measure with certainty or to compensate through damages. Accordingly, SUBSCRIBER agrees that COUNTY may seek and obtain against SUBSCRIBER and/or any other person or entity injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other equitable or legal remedies which may be available.

12. OTHER TERMS AND CONDITIONS

- A. No oral agreement, guarantee, promise, condition, representation or warranty shall be binding; all prior conversations, agreements or representations related hereto are integrated herein, and no modification hereof shall be binding unless in writing and signed by COUNTY.
- B. This Agreement shall be governed by and construed under the laws of the State of Minnesota. Mower County shall be the appropriate venue and jurisdiction for any litigation arising hereunder, except that venue and jurisdiction in the Federal Courts shall be in the appropriate Federal Court within the State of Minnesota. If any provision is held invalid, illegal, or unenforceable, the remaining provisions will not be affected.
- C. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of joint ventures or co-partners between the parties hereto or as constituting SUBSCRIBER as the agent, representative or employee of COUNTY for any purpose or in any manner whatsoever.
- D. COUNTY's failure to insist upon strict performance of any covenant, agreement or stipulation of this Agreement or to exercise any right herein contained shall not be a waiver or relinquishment of such covenant, agreement, stipulation or right unless the COUNTY consents thereto in writing. Any such written consent shall not constitute a waiver or relinquishment of the future of such covenant, agreement, stipulation or right.
- E. SUBSCRIBER may not transfer or assign any rights or interest in this Agreement, in whole or in part, to any other person or entity, including but not limited to any other person/entity that acquires, directly or indirectly any interest in SUBSCRIBER. The COUNTY reserves the right to cancel this Agreement immediately upon such an occurrence or to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to assure the full performance of this Agreement.
- F. SUBSCRIBER and COUNTY intend that this Agreement will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

- G. By executing this Agreement and subscribing to this service, SUBSCRIBER becomes a party to this Agreement and is legally bound by all of its terms and conditions, without exception. In subscribing to this service, SUBSCRIBER has voluntarily provided certain information that allows COUNTY to identify and contact SUBSCRIBER. Failure to keep SUBSCRIBER's contact information current may result in discontinuance of service.
- H. This document is a legally binding contract. SUBSCRIBER represents that it has actual authority to enter into this Agreement to bind the respective entities or person with whom it is legally associated to the terms and conditions herein contained. Prior to entering this Agreement SUBSCRIBER has the right to seek advice from legal counsel. By entering into this Agreement, SUBSCRIBER represents that it has either sought such legal advice or knowingly and voluntarily waived its right to obtain such advice prior to entering into this Agreement.
- I. All items that are referenced or attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail. Except as provided otherwise herein, any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties.
- J. Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to COUNTY shall be sent to:

Mower County Recorder
 201 1st ST NE Suite 11
 Austin MN 55912

Notices to SUBSCRIBER shall be sent to:

(Name)

(Address)

(Phone)

(Email Address- where the bill will be sent)

User Name _____ Password _____

SUBSCRIBER APPROVAL

By: _____ Dated: _____

Title: _____

The person signing this Agreement on behalf of SUBSCRIBER has full authority to bind said SUBSCRIBER to the terms and conditions contained herein.

MOWER COUNTY RECORDER APPROVAL

By: _____ Dated: _____
County Recorder

EXHIBIT 1

MOWER COUNTY WEB SUBSCRIPTION AGREEMENT

RecordEASE Web Fee Schedule

Monthly Subscription Fee*	\$30.00 per individual user
Search Fee	\$0.50 per search
View Recorded Documents	\$1.50 per document
View Certificates of Title (Torrens)	\$2.50 per certificate (coming soon)
View Tract Card	\$2.50 per tract

*The monthly subscription fee is charged whether or not the system is accessed during the month.