

ARTICLE XVII. DIGITAL IMAGES OF RECORDED DOCUMENTS--OFFICE OF THE CLERK AND RECORDER

Sec. 2-361. Digital images--Recorded documents.

(a) The office of the clerk and recorder is authorized by statute and this ordinance to receive, preserve, index, maintain, store, reproduce, and make available publicly recorded documents, as defined below, by electronic processes, including digital images.

(b) Various persons and entities, including title companies, desire more efficient and effective access to and copies of all recorded documents available by digital imagery technology, and the office of the clerk and recorder desires to recover the incremental costs of providing all recorded documents available by digital imagery technology, along with a reasonable portion of the costs associated with building and maintaining of the computer system containing the digital imagery technology.

(c) When and where such recorded documents are available by digital imagery technology, it is the policy of the City and County of Denver to make such large volumes of recorded documents available in accordance with the provisions of this article and any technical specifications, procedures, and requirements that may be established by the office of the clerk and recorder and the Denver office of information technology.

(d) It is likewise the policy of the City and County of Denver that individual recorded documents, when provided in digital imagery form on a property-by-property basis, will be available for free to the public through computers provided by the office of the clerk and recorder or over the internet, at such time and in such manner as determined by the office of the clerk and recorder and the Denver office of information technology.

(e) As used in this article, "recorded documents" are real estate instruments and related documents that are filed for public record with the office of the clerk and recorder. Recorded documents do not include:

- (1) Documents regarded as confidential under law, including T1000 declarations as provided in sections 39-14-101 and 102 of the Colorado revised statutes;
- (2) Ordinances and other city business documents collected and kept by the city clerk in accordance with city ordinances;
- (3) Marriage licenses or marriage license applications; or
- (4) Documents and records collected and kept by the public trustee, unless said documents or records are recorded with the office of the clerk and recorder.

(Ord. No. 355-04, § 1, 6-1-04)

Sec. 2-362. Fees.

(a) All hard copies of recorded documents, whether or not stored as digital images, shall be subject to the charges provided in section 30-1-103 of the Colorado Revised Statutes.

(b) For digital images of recorded documents to be filed in an impending single calendar month, a subscription charge of one thousand five hundred dollars (\$1,500.00) a month, paid quarterly in advance, for server access to the recorded documents (typically available on line within seven (7) business days of receipt) or copies of digital video discs ("DVD's") of the recorded documents (available when DVD's are produced and copied), subject to the license agreement terms set forth in section 2-363 below and the technical specifications, procedures, and requirements established by the office of the clerk and recorder and the Denver office of information technology.

(c) For currently existing digital images of recorded documents, a service charge of five cents (\$0.05) per digital image, paid in advance, for digital image copies to be provided by the means specified by the office of the clerk and recorder, subject to the license agreement terms set forth in section 2-363 below and the technical specifications, procedures, and requirements established by the office of the clerk and recorder and the Denver office of information technology.

(Ord. No. 355-04, § 1, 6-1-04)

Sec. 2-363. License required.

(a) Upon approval of an application signed and submitted for a license, the submitting person or entity ("licensee") acknowledges that the licensee is subject to, and agrees to comply with, the terms and conditions of the license set forth in this section and in the technical specifications, procedures, and requirements established by the office of the clerk and recorder and the Denver office of information technology.

(b) All licenses issued under this article shall be subject to the following terms and conditions:

(1) The recorded documents provided in digital form were created and filed with the office of the clerk and recorder by persons or entities not under the control or direction of the office of the clerk and recorder or the City and County of Denver (collectively, the "city"). The recorded documents are accepted by the licensee "as is," with any and all faults. The city makes no representations, guarantees or warranties as to the content, accuracy, correctness, completeness, legibility or legality of the recorded documents.

(2) The licensee accepts "as is," with any and all faults, the digital imagery form of the recorded documents, whether obtained by access through a server or by DVD's. The city makes no representations, guarantees or warranties as to the accuracy, correctness, completeness, or legibility of the digital imagery form of the recorded documents. Furthermore, the city expressly disclaims all warranties of merchantability and all warranties of fitness for a particular purpose. The licensee uses and relies upon the digital images of recorded documents at the licensee's own risk.

(3) The licensee agrees not to trademark, copyright, or patent any recorded documents or the software program(s) by which the recorded documents are stored, transferred, or made viewable, unless said programs are completely separate from, and in no way are derived from or dependent upon, the programs by which the city stores, transfers, or makes viewable recorded documents.

(4) The licensee represents and affirms that it has the legal authority, including any required licenses, to utilize any hardware or software necessary for the storage, transfer, and viewing of recorded documents as provided by the city and that it has not and will not engage in any illegal or inappropriate actions to acquire, utilize, manipulate, modify, or misappropriate hardware or software necessary for the storage, transfer, and viewing of recorded documents. The licensee agrees not to use any hardware or software in a manner that could damage or otherwise result in harm to the city's computer systems in accessing or transferring recorded documents from the city or that could damage or otherwise result in harm to third parties' computers systems in accessing or transferring recorded documents provided by the city.

(5) The licensee agrees that it will not alter in any fashion the contents of recorded documents from that provided in their digital imagery form. All recording information, including reception number, recording date, and county of recording, must be left in tact and legible in any reproduction or resizing of the recorded documents.

(6) If the licensee remarkets or conveys to third persons the recorded documents, whether in the digital imagery form provided by the city or in another form, the licensee agrees that it will not make any representation that the city certifies or approves the copies of the recorded documents provided by the licensee to third parties. Only copies of recorded documents certified by the office of the clerk and recorder may be self-authenticating in a court of law.

(7) The licensee shall defend, release, indemnify and save and hold harmless the city and its officers, agents and employees from any and all claims, damages, demands, liabilities, losses, actions, suits, costs, expenses, legal fees, judgments, causes of action, or other legal, equitable or administrative proceedings of any kind whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, which in any way result from, are connected with, or arise out of, directly or indirectly, the actions or omissions of the licensee in connection with any use of recorded documents or the digital imagery technology obtained by the licensee from the city or in connection with any illegal or inappropriate actions by or on behalf of the licensee in violation of paragraphs (1) through (6) above, whether such use or action is authorized or unauthorized, by the licensee or any other person or entity acting for or through the licensee, including actions or omissions of the licensee's officers, employees, agents, representatives, invitees, licensees, consultants, or any other individuals obtaining access to the recorded documents in a digital imagery form provided by the city.

(8) The right to access or acquire recorded documents in digital imagery form shall be subject to the

type of license obtained by the licensee and the availability of the recorded documents in digital imagery form. The office of the clerk and recorder will make every reasonable effort to make available on a timely basis the digital images of recorded documents to which a licensee is entitled under the specific license issued; however, no specific assurances are made in this regard. In the event that server access should become unavailable, the office of the clerk and recorder will provide, if possible, the recorded documents by means of DVD's, if so requested by the licensee.

(9) If the licensee discovers a problem with a recorded document or its digital imagery form, the licensee should promptly notify the office of the clerk and recorder. If the office of the clerk and recorder determines that there is a problem and that it has the ability and authority to correct or otherwise resolve the problem, a corrected or improved form of the digital image of the recorded document will be provided to the licensee free of charge.

(10) All costs for obtaining access to the server, including any hardware, software, or telecommunication equipment, shall be the sole expense of the licensee. The licensee is solely responsible for contracting with a telecommunication provider and paying for any telecommunication services required for access to the server. The city reserves the right to modify its computer systems and telecommunication equipment. Notice will be given to the licensee, along with an opportunity for the licensee to modify or upgrade any hardware, software, or telecommunication equipment, at the licensee's sole expense.

(11) All rights, title and interest in the server, its software, hardware, and telecommunication equipment, including any software, hardware, and telecommunication equipment installed or provided by the licensee, are and shall continue to be the exclusive property of the city. The license does not create or vest in the licensee any rights or title to the server or any aspect of its software, hardware, or telecommunication equipment.

(12) A license may be terminated by either the city or the licensee upon thirty (30) days notice, unless the city terminates the license for a substantive violation of the terms and conditions in this section or failure to pay the fees prescribed in section 2-362 above.

(13) The fees or the terms and conditions in this article are subject to change upon adoption of any ordinance modifying the fees or the terms and conditions. The city will make every reasonable effort to notify the licensee of a pending change at least thirty (30) days in advance.

(14) A license is not transferable and not exclusive. No third party shall be a beneficiary of, or hold any rights under, the license.

(15) The license is governed by the laws of the State of Colorado and the City and County of Denver.

(Ord. No. 355-04, § 1, 6-1-04)

Secs. 2-364--2-370. Reserved.