

1 **BY AUTHORITY**

2 ORDINANCE NO.
3 SERIES OF 2012

COUNCIL BILL NO. CB12-0287
COMMITTEE OF REFERENCE:
Government & Finance

5 **A BILL**

6 **For an ordinance regarding policy, fees and license requirements for electronic**
7 **records services provided to the public by the office of the clerk and recorder.**

9 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

10 **Section 1.** That Article XVII (Electronic Records Services – Office of the Clerk & Recorder) in Chapter
11 2 (Administration) of the Revised Municipal Code shall be and hereby is hereby repealed and re-
12 enacted, in whole, to read as follows:

13 **~~ARTICLE XVII. DIGITAL IMAGES OF RECORDED DOCUMENTS~~**
14 **~~–OFFICE OF THE CLERK & RECORDER~~**

15
16 **~~Sec. 2-361. Digital images – recorded documents.~~**

- 17
18 ~~(a) — The office of the clerk and recorder is authorized by statute and this ordinance to receive, preserve,~~
19 ~~index, maintain, store, reproduce, and make available publicly recorded documents, as defined below,~~
20 ~~by electronic processes, including digital images.~~
- 21
22 ~~(b) — Various persons and entities, including title companies, desire more efficient and effective access to~~
23 ~~and copies of all recorded documents available by digital imagery technology, and the office of the~~
24 ~~clerk and recorder desires to recover the incremental costs of providing all recorded documents~~
25 ~~available by digital imagery technology, along with a reasonable portion of the costs associated with~~
26 ~~building and maintaining of the computer system containing the digital imagery technology.~~
- 27
28 ~~(c) — When and where such recorded documents are available by digital imagery technology, it is the policy~~
29 ~~of the city and county of Denver to make such large volumes of recorded documents available in~~
30 ~~accordance with the provisions of this article and any technical specifications, procedures, and~~
31 ~~requirements that may be established by the office of the clerk and recorder and the Denver office of~~
32 ~~information technology.~~
- 33
34 ~~(d) — It is likewise the policy of the city and county of Denver that individual recorded documents, when~~
35 ~~provided in digital imagery form on a property by property basis, will be available for free to the~~
36 ~~public through computers provided by the office of the clerk and recorder or over the internet, at such~~
37 ~~time and in such manner as determined by the office of the clerk and recorder and the Denver office of~~
38 ~~information technology.~~
- 39
40 ~~(e) — As used in this article, “recorded documents” are real estate instruments and related documents that are~~
41 ~~filed for public record with the office of the clerk and recorder. Recorded documents do not include: 1)~~
42 ~~documents regarded as confidential under law, including T1000 declarations as provided in sections~~
43 ~~39-14-101 and 102 of the Colorado revised statutes; 2) ordinances and other city business documents~~
44 ~~collected and kept by the city clerk in accordance with city ordinances; 3) marriage licenses or~~
45 ~~marriage license applications; or 4) documents and records collected and kept by the public trustee,~~

1 unless said documents or records are recorded with the office of the clerk and recorder.
2

3 **Sec. 2-362. Fees.**
4

5 (a) — All hard copies of recorded documents, whether or not stored as digital images, shall be subject to the
6 charges provided in section 30-1-103 of the Colorado revised statutes.
7

8 (b) — For digital images of recorded documents to be filed in an impending single calendar month, a
9 subscription charge of fifteen hundred dollars (\$1500) a month, paid quarterly in advance, for server
10 access to the recorded documents (typically available on line within seven (7) business days of receipt)
11 or copies of digital video discs (“DVD’s”) of the recorded documents (available when DVD’s are
12 produced and copied), subject to the license agreement terms set forth in section 2-363 below and the
13 technical specifications, procedures, and requirements established by the office of the clerk and
14 recorder and the Denver office of information technology.
15

16 (c) — For currently existing digital images of recorded documents, a service charge of five cents (\$0.05) per
17 digital image, paid in advance, for digital image copies to be provided by the means specified by the
18 office of the clerk and recorder, subject to the license agreement terms set forth in section 2-363 below
19 and the technical specifications, procedures, and requirements established by the office of the clerk and
20 recorder and the Denver office of information technology.
21

22 **Sec. 2-363. License required.**
23

24 (a) — Upon approval of an application signed and submitted for a license, the submitting person or entity
25 (“licensee”) acknowledges that the licensee is subject to, and agrees to comply with, the terms and
26 conditions of the license set forth in this section and in the technical specifications, procedures, and
27 requirements established by the office of the clerk and recorder and the Denver office of information
28 technology.
29

30 (b) — All licenses issued under this article shall be subject to the following terms and conditions:
31

32 (1) — The recorded documents provided in digital form were created and filed with the office of the
33 clerk and recorder by persons or entities not under the control or direction of the office of the
34 clerk and recorder or the city and county of Denver (collectively, the “city”). The recorded
35 documents are accepted by the licensee “as is”, with any and all faults. The city makes no
36 representations, guarantees or warranties as to the content, accuracy, correctness,
37 completeness, legibility or legality of the recorded documents.
38

39 (2) — The licensee accepts “as is”, with any and all faults, the digital imagery form of the recorded
40 documents, whether obtained by access through a server or by DVD’s. The city makes no
41 representations, guarantees or warranties as to the accuracy, correctness, completeness, or
42 legibility of the digital imagery form of the recorded documents. Furthermore, the city
43 expressly disclaims all warranties of merchantability and all warranties of fitness for a
44 particular purpose. The licensee uses and relies upon the digital images of recorded documents
45 at the licensee’s own risk.
46

47 (3) — The licensee agrees not to trademark, copyright, or patent any recorded documents or the
48 software program(s) by which the recorded documents are stored, transferred, or made
49 viewable, unless said programs are completely separate from, and in no way are derived from

1 or dependent upon, the programs by which the city stores, transfers, or makes viewable
2 recorded documents.

3
4 (4) — ~~The licensee represents and affirms that it has the legal authority, including any required~~
5 ~~licenses, to utilize any hardware or software necessary for the storage, transfer, and viewing of~~
6 ~~recorded documents as provided by the city and that it has not and will not engage in any~~
7 ~~illegal or inappropriate actions to acquire, utilize, manipulate, modify, or misappropriate~~
8 ~~hardware or software necessary for the storage, transfer, and viewing of recorded documents.~~
9 ~~The licensee agrees not to use any hardware or software in a manner that could damage or~~
10 ~~otherwise result in harm to the city's computer systems in accessing or transferring recorded~~
11 ~~documents from the city or that could damage or otherwise result in harm to third parties'~~
12 ~~computers systems in accessing or transferring recorded documents provided by the city.~~

13
14 (5) — ~~The licensee agrees that it will not alter in any fashion the contents of recorded documents from~~
15 ~~that provided in their digital imagery form. All recording information, including reception~~
16 ~~number, recording date, and county of recording, must be left in tact and legible in any~~
17 ~~reproduction or resizing of the recorded documents.~~

18
19 (6) — ~~If the licensee remarkets or conveys to third persons the recorded documents, whether in the~~
20 ~~digital imagery form provided by the city or in another form, the licensee agrees that it will not~~
21 ~~make any representation that the city certifies or approves the copies of the recorded~~
22 ~~documents provided by the licensee to third parties. Only copies of recorded documents~~
23 ~~certified by the office of the clerk and recorder may be self authenticating in a court of law.~~

24
25 (7) — ~~The licensee shall defend, release, indemnify and save and hold harmless the city and its~~
26 ~~officers, agents and employees from any and all claims, damages, demands, liabilities, losses,~~
27 ~~actions, suits, costs, expenses, legal fees, judgments, causes of action, or other legal, equitable~~
28 ~~or administrative proceedings of any kind whatsoever, of or by anyone whomsoever, regardless~~
29 ~~of the legal theory(ies) upon which premised, which in any way result from, are connected~~
30 ~~with, or arise out of, directly or indirectly, the actions or omissions of the licensee in~~
31 ~~connection with any use of recorded documents or the digital imagery technology obtained by~~
32 ~~the licensee from the city or in connection with any illegal or inappropriate actions by or on~~
33 ~~behalf of the licensee in violation of paragraphs (1) through (6) above, whether such use or~~
34 ~~action is authorized or unauthorized, by the licensee or any other person or entity acting for or~~
35 ~~through the licensee, including actions or omissions of the licensee's officers, employees,~~
36 ~~agents, representatives, invitees, licensees, consultants, or any other individuals obtaining~~
37 ~~access to the recorded documents in a digital imagery form provided by the city.~~

38
39 (8) — ~~The right to access or acquire recorded documents in digital imagery form shall be subject to~~
40 ~~the type of license obtained by the licensee and the availability of the recorded documents in~~
41 ~~digital imagery form. The office of the clerk and recorder will make every reasonable effort to~~
42 ~~make available on a timely basis the digital images of recorded documents to which a licensee~~
43 ~~is entitled under the specific license issued; however, no specific assurances are made in this~~
44 ~~regard. In the event that server access should become unavailable, the office of the clerk and~~
45 ~~recorder will provide, if possible, the recorded documents by means of DVD's, if so requested~~
46 ~~by the licensee.~~

47
48 (9) — ~~If the licensee discovers a problem with a recorded document or its digital imagery form, the~~
49 ~~licensee should promptly notify the office of the clerk and recorder. If the office of the clerk~~

1 and recorder determines that there is a problem and that it has the ability and authority to
2 correct or otherwise resolve the problem, a corrected or improved form of the digital image of
3 the recorded document will be provided to the licensee free of charge.
4

5 ~~(10) All costs for obtaining access to the server, including any hardware, software, or~~
6 ~~telecommunication equipment, shall be the sole expense of the licensee. The licensee is solely~~
7 ~~responsible for contracting with a telecommunication provider and paying for any~~
8 ~~telecommunication services required for access to the server. The city reserves the right to~~
9 ~~modify its computer systems and telecommunication equipment. Notice will be given to the~~
10 ~~licensee, along with an opportunity for the licensee to modify or upgrade any hardware,~~
11 ~~software, or telecommunication equipment, at the licensee's sole expense.~~
12

13 ~~(11) All rights, title and interest in the server, its software, hardware, and telecommunication~~
14 ~~equipment, including any software, hardware, and telecommunication equipment installed or~~
15 ~~provided by the licensee, are and shall continue to be the exclusive property of the city. The~~
16 ~~license does not create or vest in the licensee any rights or title to the server or any aspect of its~~
17 ~~software, hardware, or telecommunication equipment.~~
18

19 ~~(12) A license may be terminated by either the city or the licensee upon thirty (30) days notice,~~
20 ~~unless the city terminates the license for a substantive violation of the terms and conditions in~~
21 ~~this section or failure to pay the fees prescribed in section 2-362 above.~~
22

23 ~~(13) The fees or the terms and conditions in this article are subject to change upon adoption of any~~
24 ~~ordinance modifying the fees or the terms and conditions. The city will make every reasonable~~
25 ~~effort to notify the licensee of a pending change at least thirty (30) days in advance.~~
26

27 ~~(14) A license is not transferable and not exclusive. No third party shall be a beneficiary of, or hold~~
28 ~~any rights under, the license.~~
29

30 ~~(15) The license is governed by the laws of the state of Colorado and the city and county of Denver.~~
31

32 **ARTICLE XVII. ELECTRONIC RECORDS SERVICES**
33 **- OFFICE OF THE CLERK & RECORDER**
34

35 **Sec. 2-361. Electronic records services.**
36

37 (a) Under Denver charter section 8.1.2, the clerk and recorder for the city and county of Denver is
38 delegated the authority to perform, among other things, all acts and duties of a clerk and recorder,
39 public trustee and city clerk (collectively referred to as the "clerk") as provided accordingly by Charter,
40 ordinance, the Colorado Constitution, and state statute.
41

42 (b) This authority includes the acts and duties of the clerk to accept, preserve, organize, maintain, store,
43 reproduce, and make publicly available certain documents, including, but not limited to: 1) recorded
44 deeds, deeds of trusts and other instruments and plats affecting real property title; 2) property
45 foreclosure filings and documents and releases of deeds of trust; and 3) adopted city ordinances,
46 approved city contracts, and certain other official city documents and bonds (collectively referred to as
47 "clerk documents").
48

- 1 (c) State statutes, ordinances and other legal authority allow for the clerk to accept, preserve, organize,
2 maintain, store, reproduce, and make publicly available such clerk documents by electronic means and
3 in an electronic format.
4
- 5 (d) Various persons and entities, including title companies, mortgage lenders and attorneys, desire more
6 efficient and effective means to file, access and obtain clerk documents electronically, and in particular
7 with respect to large volumes of such clerk documents and better search capabilities for such clerk
8 documents through electronic means.
9
- 10 (e) The city has made a sizeable investment, largely through taxpayer dollars, in building, maintaining and
11 operating the computer systems necessary to provide for more efficient and effective electronic means
12 to file, access and obtain clerk documents. The city and the clerk desire to recover the incremental costs
13 of providing such service by electronic means, along with a reasonable portion of the costs associated
14 with building, maintaining and operating the computer system in which the clerk documents are stored.
15
- 16 (f) When and where such clerk documents are available by electronic means, it is the policy of the city and
17 county of Denver and the clerk to make such clerk documents available in accordance with the
18 provisions of this article and other applicable law, the requirements and criteria established by the clerk
19 and any technical specifications, procedures, and restrictions that may be established.
20
- 21 (g) It is likewise the policy of the city and county of Denver and the clerk that individual recorded
22 documents, when provided by electronic means on a property-by-property basis or a small batch basis,
23 will be available for free for public viewing through computers provided by the clerk or over the
24 internet or other electronic means, at such time and in such manner as determined by the clerk.
25

26 **Sec. 2-362. Definitions.**
27

28 As used in this article, the following terms and phrases have the meaning indicated unless the context clearly
29 requires a different meaning:
30

- 31 (a) “*City*” means the city and county of Denver, including the clerk and any department or agency
32 responsible for the city’s computer systems.
33
- 34 (b) “*Clerk*” means the clerk and recorder for the city and county of Denver as such office is established
35 and authorized under part 1 of article viii of the Denver charter including the performance of the acts
36 and duties of the clerk and recorder, public trustee and city clerk.
37
- 38 (c) “*Electronic*” or “*electronically*” means or pertains to technological systems having electrical, digital,
39 magnetic, wireless, optical, electromagnetic, or similar capabilities including but not limited to the use
40 of digital imagery, software and/or the internet.
41
- 42 (d) “*Electronic records services*” mean any services that the clerk provides or agrees to participate in
43 which involve electronic records or documents or the electronic processing of records or documents.
44
- 45 (e) “*Fees*” mean such fees and charges as the clerk adopts by schedule that are reasonable and necessary to
46 recover the incremental costs of providing electronic record services or converting paper public trustee
47 documents to electronic records form, along with a reasonable portion of the costs associated with
48 building, maintaining and operating the city’s computer system in which public trustee documents and
49 recorded documents are stored, including software licensing and design costs. Fees do not include any

1 fees or surcharges prescribed by state statute or other legal authority which must be paid in addition to
2 any fees assessed under this article.

3
4 (f) “*Public trustee documents*” mean those submitted forms, deeds of trust, evidence of indebtedness,
5 affidavits, certificates, notices, records, court orders, deeds, and other documents and papers that the
6 public trustee is required to receive, generate, process or maintain: 1) for foreclosures under article 38
7 of title 38 of the Colorado revised statutes; or 2) for the release of deeds of trust under part 1 of article
8 39 of title 38 of the Colorado revised statutes.

9
10 (g) “*Recorded documents*” mean recorded deeds, deeds of trusts and other instruments and plats affecting
11 real property title that are filed for public record with the clerk acting as clerk and recorder. Recorded
12 documents do not include: 1) documents regarded as confidential under law, including but not limited
13 to T1000 declarations as provided in sections 39-14-101 and 102 of the Colorado revised statutes and
14 military records protected from disclosure under the Colorado open records act; 2) ordinances,
15 contracts and other city business documents collected and kept by the city clerk in accordance with city
16 ordinances; 3) marriage license applications protected from disclosure under the Colorado open records
17 act; or 4) public trustee documents, unless said they are recorded with the clerk and recorder.

18
19 (h) “*Technology requirements*” mean all specifications, requirements and procedures applicable to the
20 city’s computer systems.

21
22 **Sec. 2-363. Public trustee documents.**

23
24 (a) Bulk public trustee documents. Attorneys, title companies, mortgage lenders, investors, data miners
25 and other persons and entities with a substantial interest in accessing and using large segments of the
26 public trustee documents available through the city’s computer systems have made extensive use of
27 these systems for the purpose of gathering and utilizing the information for various profitable purposes
28 and sometimes for the purpose of generating new electronic data based on this information and making
29 this new data available for sale or other profitable uses. The clerk is authorized to set, adopt and collect
30 fees for electronic records services for bulk public trustee documents. Permits or authorizations, in
31 accordance with the requirements and criteria adopted by the clerk and subject to technical
32 requirements, shall refer to and incorporate the terms and conditions set forth in sub-sections 2-365(b)
33 and (c).

34
35 (b) Electronic releases of deeds of trust. Releases of deeds of trusts involve a specific set of public trustee
36 documents and a process specified in section 38-39-102 of the Colorado revised statutes (“releases”).
37 Certain private entities offer a specialized service to title companies, mortgage lenders, and other
38 financial services providers for conducting releases electronically (“release servicers”). Subject to the
39 release servicers 1) acceding to and complying with any permit required and rules adopted by the clerk;
40 2) complying with, and requiring their customers to comply with, the requirements of section 38-39-
41 102 of the Colorado revised statutes; 3) using the release forms specified by the clerk; 4) paying on a
42 daily basis the prescribed statutory fees for releases and providing such accountings and payment
43 reports as the clerk deems appropriate; and 5) providing ready access and passwords to the internet
44 sites where the release servicers initiate and process the electronic releases, the clerk may elect to
45 participate in the release services provided by the release servicers. Permits or authorizations, in
46 accordance with the requirements and criteria adopted by the clerk and subject to technical
47 requirements, shall refer to and incorporate the terms and conditions set forth in sub-section 2-365(b).
48 All filings of executed release forms with the clerk and recorder shall be in conformance with the
49 requirements of sub-section 2-364(b) pertaining to e-recordings.

- 1 (c) Electronic conversion of paper public trustee documents. In order to more effectively and efficiently
2 process public trustee documents submitted for foreclosure, the clerk is authorized to set, adopt and
3 collect fees to cover the reasonable costs of scanning and electronically converting paper public trustee
4 documents to the electronic system and software used by the clerk for public trustee foreclosures.
5

6 **Sec. 2-364. Recorded documents.**
7

- 8 (a) Bulk recorded documents. Attorneys, title companies, mortgage lenders, investors, data miners and
9 other persons and entities with a substantial interest in accessing and using large segments of the
10 recorded documents available through the city's computer systems have made extensive use of these
11 systems for the purpose of gathering and utilizing the information for various profitable purposes and
12 sometimes for the purpose of generating new electronic data based on this information and making this
13 new data available for sale or other profitable uses. The clerk is authorized to set, adopt and collect fees
14 for electronic records services for bulk recorded documents. Permits issued and regulated by the clerk,
15 in accordance with the requirements and criteria adopted by the clerk and subject to technical
16 requirements, shall refer to and incorporate the terms and conditions set forth in sub-sections 2-365(b)
17 and (c).
18

- 19 (b) E-recordings. The process for accepting filings and recording recorded documents are set forth in part 4
20 of article 10 of title 30 of the Colorado revised statutes, with specific authorization for the clerk and
21 recorder to accept electronic filings for recording set forth in section 30-10-405.5 of the Colorado
22 revised statutes (collectively the "recording process"). The clerk and technology services have
23 established a computer system and methodology for performing electronic recordings that comports
24 with the prescribed recording process ("e-recording"). Certain private entities and individuals wish to
25 access and utilize e-recording available through the clerk ("e-recording users"). Subject to 1) the e-
26 recording users acceding to and complying with any permit required and rules adopted by the clerk; 2)
27 complying with, and requiring their customers to comply with, the recording process; and 3) paying on
28 a daily basis the prescribed statutory fees for the recording process and providing such accountings and
29 payment reports as the clerk deems appropriate, the clerk may elect to provide e-recording services to
30 e-recording users. The clerk is authorized to set, adopt and collect fees for electronic records services
31 for e-recording. Permits or authorizations, in accordance with the requirements and criteria adopted by
32 the clerk and subject to technical requirements, shall refer to and incorporate the terms and conditions
33 set forth in sub-sections 2-365(b) and (d).
34

35 **Sec. 2-365. Permit terms and conditions.**
36

- 37 (a) For those electronic record services that require a permit or authorization, as determined by the clerk,
38 the party receiving the services (the "permittee") shall sign or electronically execute a permit or
39 authorization ("permit"), to be approved by the clerk, acknowledging the permittee's obligation to
40 comply with the terms and conditions of the permit as specified in this article and to conform with
41 technical requirements included in the permit. The clerk may specify other terms and conditions, as
42 appropriate, in the permit.
43

- 44 (b) Group 1 terms and conditions:
45

- 46 (1) The permit is governed by the laws of the state of Colorado and the city and county of Denver
47 including the terms and conditions specified in sections 2-363, 2-364 and 2-365 and the
48 requirements and criteria set by the clerk for electronic records services ("applicable law").

- 1 (2) The permit is not transferable and not exclusive. No third party shall be a beneficiary of, or
2 hold any rights under, the permit issued to the permittee. At the same time, the issuance of the
3 permit shall not preclude the clerk from issuing the same or similar permits to other permittees.
4
- 5 (3) No rights, title or interests on the part of the permittee shall be established or shall be
6 recognized in any electronic records services under this article, in any electronic form of a
7 public trustee document or a recorded document (unless otherwise specified under applicable
8 law), or any part of the city's computer systems.
9
- 10 (4) One type of permit issued by the clerk shall not entitle a permittee to obtain another form of
11 permit issued by the clerk or to exercise such rights under the other form of permit. For
12 example, a permit for bulk public trustee documents does not entitle the permittee to bulk
13 recorded documents.
14
- 15 (5) The clerk and any other city department or agency with authority over the city's computer
16 systems shall have the exclusive right to control, monitor, regulate and establish procedures and
17 restrictions applicable to the permittee's right to access and use electronic records services
18 under this article or any part of the City's computer systems.
19
- 20 (6) All permits are subject to immediate suspension or revocation, as the clerk deems appropriate,
21 for failure by the permittee to pay prescribed fees and failure to comply with applicable permit
22 terms and conditions and with applicable law.
23
- 24 (7) The clerk may suspend or revoke any permit and/or any electronic records service, without
25 cause and at the clerk's reasonable discretion, upon thirty (30) days prior written notice to the
26 permittee and may so suspend or revoke immediately in the event of an emergency
27 necessitating such action.
28
- 29 (8) The continuing provision of electronic records services is subject to the consistent and faithful
30 payment of any fees set and adopted by the clerk for such electronic records services. The clerk
31 may specify accounting and reporting requirements on the part of permittees to assure that fees
32 are fully paid. Fees are subject to change as determined by the clerk, but every reasonable effort
33 will be made to provide thirty (30) days prior written notice to the permittee of any fee change.
34
- 35 (9) The permittee represents and warrants that it has the legal authority, including any required
36 licenses or approvals, to utilize any electronic hardware, software or communications system
37 necessary for processing, preserving, storing, receiving, transferring, filing, viewing or
38 reproducing any public trustee document or recorded document and that it has not engaged, and
39 will not engage, in any illegal or inappropriate actions, including but not limited to violations of
40 copyright, patent, trademark or proprietary rights of third parties or in the unlawful acquisition,
41 utilization, manipulation, modification or misappropriation of any electronic hardware,
42 software or communications system necessary for the processing, preserving, storing, receiving,
43 transferring, filing, viewing or reproducing of public trustee documents or recorded documents.
44
- 45 (10) The permittee represents and warrants that it will take no action nor fail to take any action that
46 could result in damage or otherwise result in harm to the city's computer systems or a third
47 party's computer system with respect to electronic records services.
48

1 (11) All costs for electronic records services, including any hardware, software and communication
2 systems, shall be the sole expense of the permittee. The city reserves the right to modify its
3 computer and communication systems as the city deems appropriate. Notice will be provided to
4 the permittee as soon as reasonably possible of pending city modifications to its computer and
5 communication systems in order that the permittee can modify or upgrade its hardware,
6 software or communication systems at the permittee's sole expense.
7

8 (12) The permittee represents and warrants that it shall defend, release, indemnify and save and hold
9 harmless the city and its officers, agents and employees from any and all claims, damages,
10 demands, liabilities, losses, actions, suits, costs, expenses, legal fees, judgments, causes of
11 action, or other legal, equitable or administrative proceedings of any kind whatsoever, of or by
12 anyone whomsoever, regardless of the legal theory(ies) upon which premised, which in any
13 way result from, are connected with, or arise out of, directly or indirectly, the actions or
14 omissions of the permittee in connection with any use of public trustee documents and/or
15 recorded documents or exercise of the electronic records services by the permittee or in
16 connection with any illegal or inappropriate actions in violation of this article or the permit,
17 whether such use, action or omission is authorized or unauthorized by the permittee or any
18 other person or entity acting for or through the permittee, including uses, actions or omissions
19 of the permittee's officers, employees, agents, representatives, invitees, licensees, consultants,
20 or any other individuals or entities.
21

22 (13) Nothing in this article or any permit issued by the clerk is intended, nor shall be construed, to
23 modify or waive those immunities and protections that the city and the clerk have under
24 Colorado law with respect to the performance of charter or statutory duties in accepting,
25 processing, recording, storing or reproducing of recorded documents, nor shall this article or
26 any permit issued by the clerk be construed or interpreted to create any financial liabilities on
27 the part of the city or clerk in favor of the permittee.
28

29 (c) Group 2 terms and conditions:
30

31 (1) The originals of many of the public trustee documents and the recorded documents are
32 generated by third parties not under the control or direction of the clerk. The city makes no
33 representations, guarantees or warranties as to the content, accuracy, correctness, completeness,
34 legibility or legality of such public trustee documents or recorded documents. These public
35 trustee documents and recorded documents are accepted by the permittee "as is", with any and
36 all faults.
37

38 (2) The electronic form of all public trustee documents and recorded documents, whether generated
39 by the clerk or by third parties, are accepted by the permittee "as is", with any and all faults.
40 The city makes no representations, guarantees or warranties as to the accuracy, correctness,
41 completeness, legibility or legality of the electronic form of these public trustee documents or
42 recorded documents. Furthermore, the city expressly disclaims all warranties of merchantability
43 and all warranties of fitness for a particular purpose. The permittee uses and relies upon the
44 electronic form of public trustee documents and recorded documents at the permittee's own
45 risk.
46

47 (3) The permittee represents and warrants that it will not alter in any fashion the contents of any
48 public trustee document or recorded document obtained in electronic form from the clerk. All
49 official markings, including but not limited to recording information made by the clerk and

1 recorder and cancellation or deficiency notes made by the public trustee, must be left intact and
2 legible in any reproduction or resizing of the public trustee document or recorded document.

3
4 (4) If the permittee remarkets or conveys to third persons the public trustee documents or recorded
5 documents, or distills or summarizes information obtained from the public trustee documents or
6 recorded documents into a new data compilation for sale or transfer to third persons, the
7 permittee shall not make any representation to the third persons that the city or the clerk
8 certifies or approves the copies or the new data compilation provided by the permittee to the
9 third persons. Only true copies of public trustee documents or recorded documents certified by
10 the clerk may be self-authenticating in a court of law.

11
12 (5) A permittee shall not remarket, sell, or convey to third persons, in bulk, the recording index
13 records generated by the clerk in electronic form. The clerk reserves the sole right to market,
14 sell or convey bulk recording index records electronically generated by the clerk. If the
15 permittee remarkets or conveys to third persons specific recorded documents, the electronic
16 form of the recording index records directly related to those recorded documents may be
17 conveyed with the recorded documents. However, if fifty percent (50%) or more of the
18 recording index records electronically generated by the clerk during any given time period are
19 remarketed, sold or conveyed to third persons, the permittee shall be in violation of this
20 provision.

21
22 (6) The right to access or acquire public trustee documents or recorded documents in electronic
23 form shall be subject to the type of permit obtained by the permittee and the availability of the
24 public trustee documents or recorded documents in electronic form. The clerk will make every
25 reasonable effort to make available on a timely basis the electronic form of such documents
26 which the permittee is expecting under its permit; however, no specific assurances are made in
27 this regard. In the event that the electronic form of such documents should be temporarily
28 unavailable or unavailable by the typical electronic means, the clerk may provide the
29 documents by alternative means, if so requested by the permittee and subject to the permittee
30 paying any extraordinary costs incurred by the clerk in providing the documents by alternative
31 means.

32
33 (7) The permittee acknowledges and concurs that the city and the clerk have the right to market or
34 sell the electronic forms of public trustee documents or recorded documents, and that the
35 permittee shall not undertake any action to prevent or prohibit the city and the clerk from
36 marketing and selling electronic forms of public trustee documents or recorded documents.

37
38 (8) If the permittee discovers a problem with a public trustee document or recorded document or its
39 electronic form, the permittee should promptly notify the clerk. If the clerk determines that
40 there is a problem and that it has the ability to correct or otherwise resolve the problem, a
41 corrected public trustee document or recorded document will be provided to the permittee in
42 electronic form free of charge.

43
44 (d) Group 3 terms and conditions:

45
46 (1) The e-recording by the city of recorded documents shall be on “as is” basis, with any and all
47 faults in the city’s e-recording system. The city makes no representations, guarantees or
48 warranties as to the accuracy, correctness, completeness, legibility or legality of the electronic
49 form of these recorded documents or the e-recording system. Furthermore, the city expressly

1 disclaims all warranties of merchantability and all warranties of fitness for a particular purpose.
2 The permittee files and relies upon the city’s e-recording of recorded documents at the
3 permittee’s own risk.
4

- 5 (2) All recorded documents submitted by the permittee for e-recording by the clerk must be in an
6 electronic format and filed by the electronic means specified by the clerk and in accordance
7 with technical requirements. Any e-recorded documents not meeting these requirements may be
8 rejected by the clerk.
9
- 10 (3) Unless otherwise expressly provided by statute, all recorded documents must have been
11 originally hard-copy documents, executed with “wet” signatures, and then optically imaged to
12 preserve a complete, legible, and accurate reproduction of the original. Any incomplete,
13 illegible or altered recorded documents will not be accepted by the clerk through e-recording.
14
- 15 (4) The right to e-record shall be subject to the type of permit obtained by the permittee and the
16 functional availability and capacity of the city’s computer systems with respect to e-recording.
17 The clerk will make every reasonable effort to make available on a timely basis the e-recording
18 services which the permittee is expecting under its permit; however, no specific assurances are
19 made in this regard.
20
- 21 (5) The permittee exercising e-recording acknowledges and concurs that the city and the clerk have
22 the right to market or sell the electronic forms of recorded documents e-recorded or otherwise
23 filed for recording by the permittee, and that the permittee shall not undertake any action to
24 prevent or prohibit the city and the clerk from marketing and selling electronic forms of public
25 trustee documents or recorded documents.
26
- 27 (6) If the permittee discovers a problem with a recorded document that the permittee has e-
28 recorded with the clerk, the permittee should promptly notify the clerk. If the clerk determines
29 that there is a problem and that it has the ability to correct or otherwise resolve the problem, a
30 corrected recorded document will be provided to the permittee in electronic form free of
31 charge.
32
- 33 (7) The permittee shall participate in and support any reasonable testing, verification or problem
34 resolution of e-recording systems or practices that the clerk may specify or as provided by
35 technical requirements. The permittee shall comply with all security protocols and standards.
36
37

1 COMMITTEE APPROVAL DATE: April 25, 2012
2 MAYOR-COUNCIL DATE: May 1, 2012
3 PASSED BY THE COUNCIL: _____, 2012
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____, 2012
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012
10 PREPARED BY: Patrick A. Wheeler – Assistant City Attorney DATE: May 3, 2012
11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6
14 of the Charter.
15 Douglas J. Friednash, Denver City Attorney
16 BY: _____, Assistant City Attorney DATE: _____, 2012