

AGREEMENT

Access to St Joseph County Recorder's Real Estate Records

The undersigned customer, wishes to contract for the provision of services from the Recorder's Office of St Joseph County, herein after referred to as "Recorder", for on-line access to a number of real estate databases called "LAREDO" provided Recorder through an agreement with Fidlar Software. Customer wishes to use the Internet gateway made available by the Recorder of St Joseph County as a service of that office.

Terms and Conditions

1. This agreement sets forth the terms and conditions under which the Recorder will provide services to Customer.
2. Recorder reserves the right to withdraw any service or services without consulting Customer prior to withdrawing such service, and shall have no liability whatsoever to Customer in connection with deletion or interruption of any such service.
3. Customer acknowledges that it has read this Agreement and agrees that it is the complete and exclusive Agreement between the parties, superseding all other communications, oral or written. This agreement may be modified only by written amendment signed by the parties, except as otherwise provided for in this paragraph. Recorder shall be entitled to announce online or in writing, changes to the network, to the services provided, to the prices, or other changes which changes shall constitute modifications to this agreement once announced. In the event Customer disagrees with such changes or such pricing, Customer upon written notice, shall have the right upon receipt of such notice, to terminate it's participation in this agreement.
4. Conditions of Use.
 - A. Hours of Service: Service will be provided to Customer, on a non-guaranteed basis seven days per week (Sunday through Saturday), twenty-four (24) hours per day, excluding scheduled maintenance as designated from time to time by Recorder at its sole discretion.
 - B. Recorder will establish a customer account and number, and will issue a password to Customer in order to access those databases requested and available. Customer is responsible for preserving the secrecy of its password and for insuring that access to the service and use of its password are controlled by it and that in those instances where Customer feels that the password is compromised, that notification to Recorder and a request of change of password shall immediately be given.

- C. Copyright and Ownership of Information: Customer agrees to comply with any copyright notices or other limitations on use which are applicable to the services, databases, or other information provided by Recorder. Customer also agrees that the access to Recorder's databases is for Customer's own use and that reproduction, resale, or retransmission of information retrieved from the databases to any third party, is strictly prohibited without written permission by the Recorder for such additional use, subject to the terms and conditions herein. Customer agrees that it shall not sell, distribute, reproduce, market or in any way re-use such information received through this Agreement as independent "stand-alone" information without express written consent of the Recorder and Customer shall not acquire any proprietary rights to such information.
- D. Customer warrants and agrees that customer shall not data scrape/web scrape/data harvest web harvest or data mine or anything similar to any system used, maintained or owned by the Recorder. A "data scrape/web scrape/data harvest/web harvest or data mining" occurs when a computer program has extracted data from a human-readable out-put coming from another program. A breach of this paragraph shall result in a revocation of this Agreement. Furthermore, Customer agrees that it will not be issued access to the Recorder's information for a minimum of one (1) year if this provision is violated. Customer agrees that any data scrape/web scrape/data harvest/web harvest or data mining may be viewed as theft and may be punishable under the laws of the State of Indiana or any other applicable law, federal or otherwise.
- E. Both Recorder and Customer agree that it would be impractical and extremely difficult to ascertain the amount of actual damages caused by a material breach of this Agreement. Therefore, the Recorder and Customer agree that, in the event the Customer has breached this Agreement, Customer shall pay to the Recorder the amount of \$10,000.00 in liquidated damages for each breach. For the purposes of this Agreement, a breach shall be defined as the sale, distribution, reproduction, marking, or reuse or unauthorized access of any single document or of the information obtained herein. Each document sold, distributed, reproduced, reused or acquired without proper authorization constitutes a separate breach. The Recorder and Customer further agree that this liquidated damages provision represents reasonable compensation for the loss which would be incurred by the Recorder due to any such breach. The Customer also agrees that nothing in this section is intended to limit the Recorder's right to obtain injunctive or other relief as may be appropriate.
5. Availability of databases: The index records are available beginning January 1, 1977 through the day before the last working day in the Recorder's office upon which the Customer requests such information. Working days are Monday

through Friday except for County designated holidays. Document images are available beginning January 1, 1977 on all documents filed thereafter.

6. Limitations of Liability

- A. The databases are not to be relied on to be a true and complete record but rather a working copy of work in progress subject to error, omission and further modifications.
- B. The remedies set forth in this agreement are exclusive and in no event shall the Recorder or St Joseph County, its Commissioners, agents or employees, be liable for special, indirect, incidental, or consequential damages, including, but not limited to, loss of income, loss of revenue, whether such damages arises out of breach of contract, negligence, strict liability, or any other theory of liability. Such damages shall in any event be limited to the charges paid for the previous month by customer for the services in connection with which a claim of liability is asserted or imposed. Customer specifically understands and recognized that the system by which these services are offered is experimental and may experience problems of various kinds resulting in an inability to provide such services.
- C. Customer agrees that Recorder, St Joseph County, Commissioners, or officers, agents or employees, will not be liable for any claim or demand of any nature or kind whether asserted against the Recorder or against Customer by any third party, arising out of the services or materials provided or use of the same. Customer agrees to indemnify and hold Recorder, St Joseph County, Commissioners and its officers and agents harmless from claims of third parties arising out of the Customer's use of the services or materials provided pursuant to this Agreement.
- D. Recorder shall not be liable for or deemed to be in default for any delays or failure in performance or interruption of service resulting directly from any cause or circumstances beyond its reasonable control, including problems with or delays caused by its database providers or by other providers.
- E. No action or suit, regardless of form other than an action for payments due Recorder, arising out of the transactions pursuant to this agreement may be brought by either party more than one year after the cause of the action accrues.

7 Warranty

- A. Recorder makes no warranties, express or implied, including but not

limited to implied warranties of merchantability or fitness for any particular purpose. While Recorder and its suppliers strive for accuracy and completeness of data and services furnished pursuant to this agreement, no warranty or representation is made or implied as to such.

- B. Customer warrants that it is aware and will comply with all applicable federal, state, or other laws with regard to access to or use of any and all information, databases, programs, or other products to which access is provided by or through Recorder.
- C. Customer shall not in any way enhance, alter the public records accessed, or disclose any confidential information contained thereon.

8. Rates Charged

- A. Customer upon request for services, (a minimum of three months) will pay to the Recorder, the following monthly sum in advance, as set forth in the rate schedule for access for one terminal for the plan selected:

	PLAN	MONTHLY CHARGE	OVERAGE
I.	0-250 minutes	\$50.00 per month	.20 per minute
II.	251-1000 minutes	\$100.00 per month	.15 per minute
III.	1001-3000 minutes	\$200.00 per month	.12 per minute
IV.	3001-6000 minutes	\$300.00 per month	.10 per minute
V.	Unlimited	\$500.00 per month	.00 per minute

If under an unlimited plan Customer wishes to connect additional terminals, that Customer may do so at a charge of One Hundred Dollars (\$100.00) per Terminal for up to four (4) additional terminals.

Each time a Customer selects "print" in Laredo, the Customer shall be charged a fee of \$1.00. The parties agree that the \$1.00 charge is a reasonable fee based on the capital investment and necessary maintenance required to make Laredo accessible to its users. The \$1.00 charge shall apply regardless of whether the Customer prints a hard copy of saves the record to an electronic file.

- B. The Customer will receive a billing statement at the beginning of each month due the tenth (10th) of that month, for services to be received for the next month plus any charges for overage minutes incurred. Customer shall make all checks and original subscriptions payable to the St. Joseph County, and mailed to Recorder's Office, Third Floor, County-City Building, 227 West Jefferson Blvd, South Bend, IN 46601. Upon the termination of service, customer will receive a pro-rated refund of any unused daily usage, which was prepaid. If payment has not been received by Recorder before the start of the usage month, service will be terminated to Customer.
- C. If any circumstances establishes a past due account with the Customer, the past due invoices will be subject to a delinquency charge of 1.5 percent per month of the amount in the arrears or the legal limit, whichever is less.

Customer agrees to pay all cost of collection of delinquent accounts including reasonable attorney fees.

- D. Accounts will be considered past due after 60 days and thereafter interest will be assessed as per section C. Accounts will be considered delinquent after 90 days and the Recorder shall have the right to terminate service.

9. General Conditions

- A. Waiver. The waiver, modification, or failure to insist on any of these terms or conditions one or more times by Recorder shall not void, waive, or modify any of the other terms or conditions in this Agreement, nor be construed as a waiver or relinquishment of Recorder's right to performance of any such term or terms in the future.
- B. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual written consent and execution of the parties.
- C. No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.
- D. Severability. If any provision or part of the Agreement shall be declared illegal, void, or unenforceable, the remaining provisions shall continue in full force and effect.
- E. Governing Laws. This Agreement shall be governed by and construed according to the laws of the State of Indiana as such laws are applied to contracts made and to be performed entirely in Indiana, and all action hereunder shall be brought in a state court of competent jurisdiction in Indiana and in no other jurisdiction.
- F. Assignment. Customer shall not subcontract any computer data access rights of the Customer made available under this Agreement. This agreement is not assignable or transferable by Customer and any attempted assignment or transfer by Customer shall be null and void and of no force or effect. Recorder may assign this Agreement and/or the payments due to Recorder without notice or requirement for Customer's permission or approval.
- G. Recorder and Customer, respectively, bind themselves, their partners, successors, assignees, and legal representatives of the other party to the Agreement and to the partners, successors, assignees, and legal representatives or such other party with respect to all covenants of this

Agreement.

10. Pursuant to Indiana Code 22-9-1-10, neither the COUNTY or the CUSTOMER nor any of its contractors or subcontractors shall discriminate against any employee or applicant for employment, to be employed in the performance of any work under this Agreement with respect to hire, tenure, terms or conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

11.

A. Termination With Cause

This Agreement may be terminated by the Recorder, with cause, without prior written notice, upon its reasonable belief that cause exists. "Cause" as used in this section includes any violation of law relating to use of the data and information provided through this Agreement or violation of any terms of this Agreement, including but not limited to data scrape/web scrape/data harvest/web harvest or data mine. Termination shall not relieve a party of its obligation incurred prior to the effective date of the termination. The Recorder reserves the right to prohibit Subscriber from entering into another agreement for a minimum of one (1) year when Subscriber's prior agreement is terminated with cause.

B. Termination Without Cause

This Agreement may be terminated by either party, without cause, upon thirty (30) days' written notice, starting on the first (1st) of a month. Termination shall not relieve a party of its obligation incurred prior to the effective date of the termination.

Date: _____

Customer Signature

Printed Name and Address

Customer e-mail address _____

Customer telephone number _____

Indicate plan you are contracting for: I, II, III, IV, V (Unlimited), Unlimited plus additional terminals

Please state your reasons for needing this service

Date:

Recorder's Signature

Date:

ST JOSEPH COUNTY COMMISSIONERS

District 1

District 2

District 3