

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

**RESOLUTION NO. 2015-29**

**A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE SUBMITTER LICENSE AGREEMENT WITH SIMPLIFILE L.C., FOR E-RECORDING SERVICES; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the recording of documents with the Miami Dade County Clerk's Office is a requirement for liens, variances and other formal actions of the Village; and,

WHEREAS, the current process requires that the documents to be recorded must either be delivered in person to the Miami Dade County Clerk's Office, or sent via US mail, both which take up time and employee resources; and,

WHEREAS, the Miami Dade County Clerk's Office accepts e-recording of official records through approved vendors, providing for the electronic submission of documents to be recorded with a 24-hour turnaround time for completion.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA.

**Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

**Section 2.** The Village Commission of the Village of Biscayne Park authorizes the Village Manager to execute the Submitter License Agreement with Simplifile, L.C., for e-recording services. The agreement, in substantial form, is attached and incorporated by reference into this resolution as exhibit 1.

**Section 3.** This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 5<sup>th</sup> day of May, 2015.

**The foregoing resolution upon being  
put to a vote, the vote was as follows:**

Mayor Coviello: Yes  
Vice Mayor Jonas: Yes  
Commissioner Anderson: Yes  
Commissioner Ross: Yes  
Commissioner Watts: Yes

1  
2  
3  
4   
5 \_\_\_\_\_  
6 David Coviello, Mayor

7 Attest:

8  
9   
10 \_\_\_\_\_  
11 Maria C. Camara, Village Clerk

12  
13 Approved as to form:

14  
15   
16 \_\_\_\_\_  
17 John J. Hearn, Village Attorney  
18

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

# Submitter License Agreement

---

THIS SUBMITTER LICENSE AGREEMENT (this "Agreement") is made effective <sup>May 5, 2015</sup> ~~February 2nd, 2015~~ between SIMPLIFILE LC, a Utah limited liability company, located at 4844 North 300 West, Suite 202, Provo, Utah, 84604 ("Simplifile"), and Village of Biscayne Park located at 640 NE 114th St, Biscayne Park, Florida, 33161 ("Submitter").

## RECITALS:

A. Simplifile has developed and is the owner of software and other proprietary technology currently known as the Simplifile Electronic Recording System ("System") that (1) is used in the electronic submission and receipt of documents over the Internet to recipients such as county recorders ("Receivers"), and (2) enables the electronic transfer and payment of fees via electronic funds transfer or Automated Clearing House ("ACH").

B. System can be used by licensed document Submitters to create or scan, package, print, and submit to Receivers, and track the status of submitted documents.

C. Submitter desires to use the System to submit documents electronically to Receivers and has requested that Simplifile grant Submitter the right and license to use the System for that purpose.

D. Simplifile desires to grant to Submitter a non-exclusive right and license to use the System on the terms and conditions set forth in this Agreement.

E. This Agreement contains the Parties' entire agreement concerning all matters addressed herein.

## AGREEMENT:

NOW THEREFORE, in consideration of the mutual terms, conditions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### Section 1. License.

(a) *Grant of License.* Simplifile grants to Submitter, and Submitter accepts, a non-exclusive license to use the System for the sole purpose of submitting documents for recording to Receivers, receiving recorded/rejected documents back from Receivers, and paying the related fees to the appropriate party. The grant of the License and this Agreement shall be effective upon the parties' full execution and delivery of this Agreement and Simplifile's receipt of fees, if any, owed under said Agreement.

(b) *Access to System. Support Services.* Throughout the term of the License, Simplifile will use its best efforts to make the System available to Submitter and will provide access to the System for Submitter's authorized users. Simplifile will also use its best efforts to support Submitter in its use of the System by providing telephone and e-mail support twelve (12) hours each business day from 6:00 a.m. to 6:00 p.m. Mountain Time, excluding holidays and weekends.

(c) *Limitations on License.* Submitter shall not assign, convey or attempt to convey any right to use the System to anyone else. Submitter shall designate who is authorized to use the System on behalf of Submitter, and will assure that System is used only by those authorized users. Authorized users may only be designated employees or agents of the Submitter. Submitter is responsible for all users and agrees to ensure that said users abide by the terms of this agreement at all times. Submitter's use of the System shall be limited to the physical location(s) per this Agreement and authorized users. Submitter has the right to add/delete/change authorized users at any time.

(d) *No Document Storage.* The License does not require Simplifile to permanently store document images. Simplifile does not provide any legally binding storage of document images and may at any time, in its sole discretion and without any notice whatsoever, discontinue access to any documents stored in the System.

Section 2. Initial Term; Renewals. The initial term of this Agreement is one year. Thereafter, this Agreement shall be deemed automatically renewed for successive one-year terms upon Submitter's payment to Simplifile of the Annual License fee Renewal as noted in Section 4 below, or until cancelled in writing. Submitter can cancel the Agreement at any time by notifying Simplifile to close their Submitter account. Upon cancellation, any fees for recordings successfully submitted and recorded, but not yet billed, will be immediately due and payable to Simplifile.

Section 3. Ownership; Intellectual Property Rights. The System is licensed, but not sold. This Agreement gives Submitter only the license to use the System as provided herein, and does not convey to Submitter any ownership rights in the System. Instead, Simplifile alone owns all worldwide rights, title, and interest in and to the System and all worldwide patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, and any other intellectual property rights therein. Simplifile's rights in and to the System are protected by copyright, patent and other intellectual property laws and treaties. Simplifile holds the Submitter harmless from any patent or infringement claims by others against Simplifile's System.

Section 4. Fees. Submitter shall pay the following fees under this Agreement:

Services	Description	Fee
Year 1 License and Support (per physical location)	License fee – year 1	\$0 per license
Annual Renewal of a Current License System and Support (per physical location)	License fee Renewal	\$0 per license
Document Submission Fees	Submission fee for each document recorded using the System.	\$2.00 per document
Dishonored charges fees	Processing fee for dishonored ACH charges or other payments.	\$25 per item
Receiver fees, if any. (recording, taxes, non-conforming, e-recording, rejection, etc)	Any/all additional fees charged by others for e-recording processing.	Exact cost only. Simplifile does not control or add to receiver fees, if any.

\* a list of Receivers who charge additional fees can be provided as updated, upon request by Submitter at any time.

Section 5. Payments. Submitter shall immediately pay all fees due through the use of the System. The payment of all fees will be made to Simplifile's account by ACH with no processing charge to Submitter unless other payment arrangements have been approved by Simplifile (non-ACH payment arrangements may incur additional fees).

Section 6. Submitter's Electronic Recording Requirements. Submitter's use of the System shall be subject to the following additional requirements:

(a) *Legal Compliance*. Submitter is responsible for the legality and recordability of all documents submitted through Simplifile. Transaction logs of package submission details will be made available to the Receiver at the time a document is presented for recording and such audit logs will be made available for downloading to both the Receiver and Submitter.

(b) *Original Documents*. Submitter warrants that any document submitted into the System for recording is a true, exact, complete and unaltered copy of the originating paper document or electronic document. Simplifile and the Receivers shall be entitled to rely on such warranty for all purposes. Submitter shall not submit any document for electronic recording through the System that is not an original document.

(c) *Indemnification*. <sup>To the extent permitted by law,</sup> Submitter shall indemnify and hold harmless the Receiver and Simplifile from any claims, actions, causes of action, damages, fees (including attorneys' fees) and costs attributable to Submitter's non-compliance with recording requirements. Receiver and Simplifile do not assure or insure the validity or recordability of any documents submitted. Submitter does not hold Simplifile or Receiver responsible for the accuracy, validity, insurability, or other purpose of any submission. This provision shall continue in effect notwithstanding termination of this Agreement. eff

Section 7. Warranties.

(a) *Limitation on Damages*. To the maximum extent legally permitted Simplifile provides the System AS IS AND WITH ALL FAULTS. Simplifile disclaims any and all other warranties and conditions, whether express, implied or statutory, including, without limitation, any implied warranties or conditions of merchantability, of fitness for a particular purpose, of lack of viruses, of accuracy or completeness of responses, and of negligence or lack of workmanlike effort all with regard to the System and the provision of or failure to provide Support Services.

(b) *Exclusion of Certain Damages*. In no event shall Simplifile be liable for (and Simplifile hereby disclaims any and all liability for) any special, incidental, indirect, or consequential damages whatsoever arising out of or in any way related to Submitter's License hereunder or Submitter's use of or inability to use the System.

Section 8. Confidentiality In this section "Protected Information" shall refer to information about the System and its application or use; any confidential or proprietary information or trade secrets that one Party discloses to the other Party; and information which is marked by either Party as "proprietary." Parties shall use the Protected Information only for the purposes expressly allowed by this Agreement; and shall not at any time, directly or indirectly, disclose, use or reproduce or authorize anyone else to disclose, use or reproduce, any of the Protected Information. In addition to the foregoing, Simplifile shall be entitled to full protection for Protected Information under the Utah Uniform Trade Secrets Act, unfair competition law, common law or otherwise. Submitter and Simplifile expressly agree to refrain from, and to not undertake in any way, any direct or indirect reverse engineering efforts in connection with each other's System.

Section 9. Termination.

(a) *Default.* Simplifile may terminate this Agreement if Submitter defaults in any payment, requirement, or other obligation under this Agreement and fails to cure such default within ten days after written notice from Simplifile. Submitter may terminate at any time, upon full payment owed, simply by asking Simplifile to close the account. If the account goes unused by Submitter for a period of 1 year, Simplifile may disable the account. Submitter can reinstate said account, if disabled, upon request.

(b) *Unpaid Fees.* Termination of the License, for any cause whatsoever, shall in no manner interfere with, affect or prevent the collection by Simplifile of any and all sums of money due to Simplifile under this Agreement. Simplifile reserves the right to immediately suspend a License due to non-payment of outstanding fees.

Section 10. General Provisions. The following provisions also are integral to this Agreement:

(a) *Binding Agreement.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) *Severability.* The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement. Each section shall survive independent of each other section of this Agreement.

(c) *Amendment.* This Agreement may not be modified except by an instrument in writing signed by the parties.

(d) *Interpretation.* This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. Venue of any action or proceeding hereunder shall be in the District Court in and for ~~Utah County, Utah~~ *Miami-Dade County, Florida.*

(e) *Attorneys' Fees.* In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

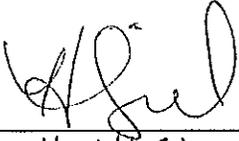
(f) *Notice.* All notices shall be in writing and delivered by first class mail addressed to the parties at their address above or other address as designated from time to time.

(g) *Relationship.* This Agreement shall not be deemed to create a partnership between Simplifile and Submitter in their respective businesses or otherwise, nor cause them to be considered joint venturers or members of any joint enterprise. Submitter's relationship to Simplifile shall be that of licensee and not that of employee, agent, partner or joint venturer.

Effective the date first written above.

SUBMITTER:

Village of Biscayne Park

By:   
Name: Heidi Siegel  
Office/Capacity: Village Manager  
Date: May 5, 2015

SIMPLIFILE:

SIMPLIFILE LC, a Utah limited liability company

By: MD Pappas  
Name: MD Pappas  
Office/Capacity: Regional Sales Manager  
Date: 6/22/15