Resolution No. 02-2016

RESOLUTION
VILLAGE OF GILBERTS

A Resolution authorizing a license agreement between the Village of Gilberts and Simplifile which allows the Village to electronically record documents with the Kane County Recorder's Office

Be it Resolved by the President and Board of Trustees of the Village of Gilberts, Kane County, Illinois that:

Section 1:

The Village of Gilberts hereby authorizes the Village President and Village Clerk to execute a license agreement between the Village of Gilberts and Simplifile and such documents as are necessary and convenient to effectuate the license agreement to allow the Village to electronically record documents with the Kane County Recorder's office here by attached hereto and made a part hereof as Exhibit A as approved.

Section 2:

This resolution shall be in full force and in effect from and after its passage and approval pursuant to law.

Passed this 23rd day of Feb., 2016 by a roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Dan Corbett	✓			
Trustee Elissa Kojzarek			✓	
Trustee Nancy Farrell			✓	
Trustee Dave LeClercq	✓			
Trustee Lou Hacker			✓	
Trustee Guy Zambetti	✓			
President Rick Zirk	✓			

APPROVED THIS 23rd DAY OF Feb., 2016

Village President, Rick Zirk

SEAL OF THE VILLAGE OF GILBERTS INCORPORATED 1890 ILLINOIS (SEAL)

ATTEST: Debra Meadows
Village Clerk, Debra Meadows

Published: _____

simplifile

SUBMITTER LICENSE AGREEMENT

THIS SUBMITTER LICENSE AGREEMENT (this "*Agreement*") is made effective June 23rd, 2014 between **SIMPLIFILE LC**, a Utah limited liability company, located at 4844 North 300 West, Suite 202, Provo, Utah, 46140 ("*Simplifile*"), and **The Village of Gilberts** located at 87 Galligan Road, Gilberts, IL 60136 ("*Customer*").

RECITALS:

A. Simplifile has developed and is the owner of software and other proprietary technology currently known as the "Simplifile Electronic Recording System" (the "*System*") that (1) is used in the electronic submission and receipt of documents over the Internet, sometimes in integration with various document preparation, electronic closing and land records management systems; and (2) enables the electronic transfer and payment of document recording fees via electronic funds transfer or Automated Clearing House ("*ACH*").

B. The System can be used by (1) licensed document submitters ("*Submitters*") to create or scan, package, print, submit to Receivers and track the status of submitted documents over the Internet; and (2) document receivers such as county recorders (who have agreed by contract to accept and record/file qualifying documents that are electronically received through use of the System) ("*Receivers*") to receive, queue, review, cashier, stamp, retrieve, print, forward and return documents to their Submitters over the Internet.

C. Customer desires to use the System for the purpose of submitting documents electronically to Receivers, and has requested that Simplifile grant Customer the right and license to use the System for that purpose.

D. Simplifile desires to grant to Customer 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 the License (defined below) and the other matters addressed herein, and supersedes all negotiations, proposals or prior agreements between the parties concerning such matters.

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 Customer, and Customer accepts, a non-exclusive license (the "*License*") to use the System for the sole purposes of recording, filing or otherwise submitting (collectively, "*recording*") documents with Receivers and transferring the related recording/filing/submission fees (collectively, "*Recording 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 the annual subscription fee specified on attached exhibit "A" ("*Exhibit "A"*") for each of Customer's physical locations where the System will be accessed or used.

(b) *Access to System; Support*. Throughout the term of the License,

(i) Access. Simplifile will make the System available to Customer on its web server

(**www.simplifile.com**) and, upon Customer's completion of the online registration at that site, will provide password access to the System for Customer's Designated Submitters (defined below); and

(ii) Support. Simplifile will support Customer in its use of the System by providing the services (the "*Support Services*") described on attached exhibit "B" ("*Exhibit "B"*").

(c) *Limitations on License*. Customer shall not assign, rent, lease, sell or otherwise convey or attempt to convey any right to use the System to anyone else. Customer shall designate to Simplifile in writing in the System the person(s) ("*Designated Submitters*") who are authorized to submit documents for recording through the System on behalf of Customer, and will assure that the System is used only by those Designated Submitters. Customer's use of the System shall be limited to the physical location(s) for which subscription/renewal fees have been paid, and such use shall be effected only by Customer's Designated Submitters from time to time.

(d) *No Document Storage*. The License does not include any right to temporarily or 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 Customer's payment to Simplifile of the then-annual subscription fee under Exhibit "A".

Section 3. **Ownership; Intellectual Property Rights**. **The System is licensed, but not sold. This Agreement gives Customer only the license to use the System as provided herein, and does not convey to Customer 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.

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

(a) *Subscription/Renewal Fee*. The subscription fee (upon Simplifile's initial grant of the License hereunder) or the renewal fee (upon any renewal of this Agreement) specified on Exhibit "A". The subscription fee is due and payable contemporaneously with Customer's execution and delivery of this Agreement to Simplifile. Renewal fees are due and payable on or before each anniversary of this Agreement.

(b) *Submission Fee*. The per document submission fee (the " *Submission Fee* ") specified on Exhibit "A".

(c) *Recording/Filing Fee*. All Recording Fees required by the Receiver in connection with the recording of a document by Customer, together with any processing fees charged to Simplifile by the Receiver or its agents in connection with such recording.

(d) *Dishonored Charges Fee*. A fee ("*NSF Fee*") for dishonored payments from Customer as specified on Exhibit "A".

Section 5. **Payments**. Contemporaneously with a successful recording through the System, Customer shall pay all Recording Fees, any recording processing fees charged by the receiving county or its agents, and all Submission Fees to Simplifile and/or to the County. The payment of all such fees that are required to be paid to or through Simplifile will be made to Simplifile's account by the ACH component of the System with no processing charge to Customer, unless other payment arrangements

requested by Customer have been pre-approved in writing by Simplifile. (Any such alternate payment arrangements may be subject to additional fees for the License and for recordings through the System).

(a) *Customer's Designation of Payment Source*. Using the System's Account Management Utility, Customer will designate an account or accounts from which payments of fees are to be drawn. Customer hereby expressly grants permission to Simplifile to draw against funds in the designated account for the payment of Recording Fees and Submission Fees due from Customer.

(b) *Dishonored Payments*. If an ACH charge is dishonored for any reason, then Customer shall pay an NSF Fee. In its sole discretion, Simplifile may suspend Customer's License to use the System in the event of dishonor of any payment of a subscription/renewal fee, a Recording Fee, a Submission Fee or an NSF Fee.

Section 6. **Customer's Electronic Recording Requirements**. In addition to Customer's other obligations under this Agreement, Customer's use of the System shall be subject to the following requirements:

(a) *Legal Compliance*. Customer shall become informed of and fully compliant with any and all applicable federal, state, county or local laws, ordinances, rules and regulations regarding recording/filing and/or electronic recording/filing of documents by Customer using the System.

(b) *Original Documents*. Customer represents, warrants, covenants and certifies that the electronic image of each and every original paper document (the "*Originating Paper Document*") electronically recorded by or through Customer's use of the System is and shall be a true, exact, complete and unaltered copy of the Originating Paper Document. Simplifile and the Receivers shall be entitled to rely on such warranty for all purposes. Customer shall not submit any document for electronic recording through the System that is not an original document.

(c) *Legal Right*. Customer shall have the legal right to file for recording each and every document submitted for electronic recording through the System.

(d) *Retention of Originals*. Customer shall retain the Originating Paper Document during the time that such document is being electronically recorded through the System.

(e) *Permanent Mark*. Customer shall place a permanent mark on the first page of the Originating Paper Document after the original electronic document has been recorded through the System, stating that the Originating Paper Document has been electronically recorded and displaying the recording entry number, date and time assigned by the Receiver.

(f) *Indemnification*. Customer shall indemnify, defend and hold harmless the Receiver, Simplifile, and their respective officers, employees and agents of and from any and all claims, actions, causes of action, proceedings, damages, fees (including reasonable attorney's fees) and costs arising from or attributable to Customer's manner of complying or non-compliance with any of the foregoing requirements. This provision shall continue in effect notwithstanding any termination of this Agreement.

Section 7. **Warranties; Limitation on Damages**.

(a) *Express Warranties*. Simplifile makes the following express warranties to Customer:

(i) Best Knowledge. All certifications through the System of originality, identity of Customer and unaltered state of documents will be made to the best of Simplifile's knowledge and belief.

(ii) Audit Logs. Audit logs of all information relied upon by Simplifile in making said certifications 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 Customer.

(b) *Disclaimer of All Other Warranties*. To the maximum extent legally permitted, and subject to Simplifile's express warranties under section 7(a) above, Simplifile and its suppliers provide the System and the Support Services **AS IS AND WITH ALL FAULTS** . Simplifile hereby **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, of results, and of lack of negligence or lack of workmanlike effort, all with regard to the System and the provision of or failure to provide Support Services. The entire risk as to the quality of or arising out of use or performance of the System and Support Services, if any, remains with Customer.

(c) *Exclusion of Certain Damages*. To the maximum extent permitted by applicable law, **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 Customer's License hereunder, Customer's use of or inability to use the System, or Simplifile's provision of or failure to provide Support Services.

Section 8. **Confidentiality**. In this section, the term " *Protected Information* " shall refer to the following (except as the same is generally known in the public domain prior to the date of this Agreement or may become common knowledge within the public domain or industry after the date of this Agreement): (a) information about the System and its applications; (b) any other confidential or proprietary information or trade secrets that Simplifile discloses to Customer; and (c) information which is marked by Simplifile as "proprietary."

During the term of the License and thereafter, Customer (x) shall use, review, examine, discuss, inspect, obtain and hold all Protected Information obtained from or on behalf of Simplifile in trust and confidence; (y) shall use the Protected Information only for the purposes expressly allowed by this Agreement; and (z) 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 or any matter relating to any aspect of the Protected Information.

Customer shall not disclose any Protected Information to any of Customer's employees or agents unless such person first executes and delivers a confidentiality and non-disclosure agreement in favor of Simplifile. Upon the termination of the License, Customer shall return to Simplifile all Protected Information, in any form. 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.

Further, Customer expressly agrees to refrain from, and to not undertake in any way, any direct or indirect reverse engineering efforts in connection with the System.

The covenants in this section shall survive any termination of the License.

Section 9. **Termination**.

(a) *Default*. Among other available remedies, Simplifile may terminate this Agreement if Customer defaults in any payment or other obligation under this Agreement and fails to cure such default within ten days after written notice from Simplifile.

(b) *Bankruptcy*. In the event of any adjudication of bankruptcy, appointment of a receiver, assignment for benefit of creditors, liquidation or levy of execution involving Customer, the License shall thereupon terminate automatically.

(c) *Waiver*. The exercise of the right of termination shall not impose any liability on Simplifile by reason of termination and shall not have the effect of waiving any damages to which Simplifile might otherwise be entitled.

(d) *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. Upon termination of the License for any reason, Customer's payments required hereunder, but not yet due, shall become immediately due and payable.

Section 10. **Further Actions**. At any time after the date hereof, if any further action if necessary or desirable to carry out the purposes of this Agreement, Customer shall take such further action (including, without limitation, executing and delivering further documents) as Simplifile may reasonably request.

Section 11. **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) *Captions*. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) *Counterparts* This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) *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.

(e) *Waiver of Breach*. Any waiver by either party of any breach of any kind or character whatsoever by

the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(f) *Cumulative Remedies*. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

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

(h) *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 Fourth District Court in and for Utah County, Utah. This Agreement is the result of negotiations and collaborative drafting between sophisticated businesspeople, and shall not be construed against any party hereto as the "drafter" of this Agreement.

(i) *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.

(j) *Notice*. Except as otherwise specified herein, all notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses shown above or at such other address(es) as may be designated by a party from time to time in writing.

(k) *Time of Essence*. Time is the essence of this Agreement.

(l) *Electronic Execution and Delivery*. Any party may execute and deliver this Agreement through electronic means such as facsimile or e-mail transmission, with the same legal effect as manual execution and physical delivery of this Agreement.

(m) *Relationship*. This Agreement shall not be deemed to create a partnership between Simplifile and Customer in their respective businesses or otherwise, nor cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any person or entity unless expressly otherwise provided. Customer's relationship to Simplifile shall be that of licensee and not that of employee, agent, partner or joint venturer. As a licensee, Customer shall have no right, power or authority (a) to enter into any agreement on behalf of Simplifile; (b) to incur any expense or other obligation for which Simplifile would or might be responsible; (c) to accept engagements on behalf of Simplifile; or (d) in any other way to bind Simplifile.

(n) *Force Majeure*. Simplifile shall not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, riot, act of God or governmental action.

(o) *Exhibits*. The terms and provisions of the attached exhibits are hereby incorporated in this Agreement by reference.

DATED effective the date first written above.

CUSTOMER:

The Village of Gilberts

By: Debra Meadows

Name: Debra Meadows

Office/Capacity: Village Clerk

Date: July 15, 2014

SIMPLIFILE:

SIMPLIFILE LC, a Utah limited liability company

By: _____

Name: _____

Office/Capacity: _____

Date: _____

WST/D/496676.2

Exhibit "A" Submitter License Agreement

Subscription & Submission Fee Schedule*

Services	Description	Fee
Annual License System and Support (per physical office location)	Concurrent Licenses	**$0 per license**
Annual Renewal of a Current License System and Support (per physical office location)	Renewal of Concurrent Licenses	**$0 per license**
Document Submission Fees	Submission fee for each document submitted to a Receiver using the System. In addition, any recording processing fees charged by the receiving county or its agents may be passed on to the Customer by Simplifile.	**$2.00 per document**
Dishonored charges fees	Processing fee for dishonored ACH charges	$25 per item

* The fees specified on this schedule are subject to modification by Simplifile upon notice to Customer in connection with any renewal of this Agreement.

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Exhibit "B" to Submitter License Agreement

SYSTEM/SOFTWARE SUPPORT*

Simplifile will provide the following support to Customer for its use of the System:

1. **Application Processing**. Simplifile will provide a web application to assist Customer in applying for a license to use the System.

2. **Account Management Utility**. Simplifile will provide a secure Account Management Utility at its web site for Customer's use in managing its account. The Account Management Utility will include:

(a) Management of user roles, passwords and logon user identification requirements;

(b) Selection of options to control the operation of the System by Customer;

(c) Management of bank accounts used for electronic payment of subscription/renewal, submission and recording fees; and

(d) Management of electronic recording options in relation to Submitters' requirements to record documents using the System, including, without limitation, the attachment of indexing data relating to recorded documents.

3. **Telephone and E-mail Support**. Telephone and e-mail support will be provided twelve (12) hours each business day from 6:00 a.m. to 6:00 p.m., Mountain Time. Business days do not include holidays or weekends.

* The support services specified on this schedule are subject to modification by Simplifile upon notice to Customer in connection with any renewal of this Agreement.

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