



# VILLAGE OF BENSENVILLE

## Village Board

President  
Frank Soto

## Trustees

John Adamowski  
Morris Bartlett  
Patricia A. Johnson  
Martin O'Connell  
Oronzo Peconio  
Henry Wesseler  
Village Clerk  
JoEllen Ridder

## Village Manager

Michael Cassady

## Village of Bensenville, Illinois

### BOARD OF TRUSTEES

### MEETING AGENDA

**6:30 P.M. Tuesday, June 8, 2010**

**Bensenville Village Hall, 12 S. Center Street, Bensenville IL 60106**

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. PUBLIC COMMENT (3 minutes per person with a 30 minute meeting limitation)
- V. APPROVAL OF MINUTES

May 25, 2010 – Board of Trustees

- VI. WARRANT – June 08, 2010 #10/29 - \$ 1,065,530.36

### VII. CONSENT AGENDA – CONSIDERATION OF AN “OMNIBUS VOTE”

1. *Resolution Approving an Equipment Lease Agreement with American Capital Financial Services, Inc. and an Equipment Maintenance Agreement with Digital Copier Supercenter, LLC Contingent on Village Attorney Review and Approval*
2. *Resolution Authorizing the Annual DuPage Metropolitan Enforcement Group Fair Share Contribution for Amended Fiscal Year 2010*
3. *Resolution Authorizing a Contract with Wendy Nussbaum, LCPC for the Bensenville Teen Center for the Period June 1, 2010 Through May 31, 2011*
4. *Resolution Authorizing the Payment for the Annual Northeast DuPage Youth and Family Services Contribution for Amended Fiscal Year 2010*
5. *Resolution Authorizing an Intergovernmental Agreement Between the Village of Bensenville and Bensenville Elementary School District No. 2*
6. *Ordinance Amending Title 3, Chapter 3, of the Bensenville Village Code to Provide for a Class G License*
7. *Ordinance Amending Title 6 Chapter 4, “Weeds; Plants,” of the Bensenville Village Code*

8. *Ordinance Amending Ordinance No. 26-2010 Concerning Adoption of the Revised Organizational Chart and Amending the Bensenville Village Code in Accordance with the Organizational Chart*
9. *Ordinance Granting a Conditional Use Permit and Variances from the Village Zoning Code to Auto Truck, Inc./Mobil Equipment Warehousing Co. at 1160 and 1200 North Ellis Street, Bensenville, Illinois*
10. *Ordinance Denying a Conditional Use Permit for Property at 120 East Green Street, Bensenville, Illinois, Amigo Tire, Applicant*

#### VIII. REPORTS OF STANDING COMMITTEES

- A. Community and Economic Development Committee
  1. *Ordinance Granting a Conditional Use Permit and Variance From the Village Zoning Code to Earth Incorporated at 1102 North Ellis Street, Bensenville, Illinois*
- B. Infrastructure and Environment Committee – No Report
- C. Administration, Finance and Legislation Committee – No Report
- D. Public Safety Committee – No Report

#### IX. INFORMATION ITEMS

- A. PRESIDENT'S REMARKS
- B. VILLAGE MANAGER'S REPORT
  - Presentation by the National Guard*
- C. CORRESPONDENCES AND ANNOUNCEMENTS

#### X. UNFINISHED BUSINESS

#### XI. NEW BUSINESS

#### XII. EXECUTIVE SESSION

- A. Review of Executive Session Minutes [5 ILCS 120/2 (C)(21)]
- B. Personnel [5 ILCS 120/2(C)(1)]
- C. Collective Bargaining [5 ILCS 120/2 (C)(2)]
- D. Property Acquisition [5 ILCS 120/2(C)(5)]

E. Litigation [5 ILCS 120/2(C)(11)]

XIII. MATTERS REFERRED FROM EXECUTIVE SESSION

XIV. ADJOURNMENT

**Please Note** - The Village of Bensenville is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations in order to allow them to observe and/or participate in this meeting, or who have questions regarding the accessibility of this meeting or the facilities, are requested to contact Village Hall (630-766-8200) at least 3 days prior to the meeting to allow the Village of Bensenville to make reasonable accommodations for those persons.

### **Village of Bensenville**

2 South Center Street ♦ Bensenville, IL 60106

Phone: 630-766-8200 ♦ Fax: 630-594-1105

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**Village of Bensenville**  
**Board Room**  
**12 South Center Street**  
**Bensenville, Illinois 60106**  
**Counties of DuPage and Cook**

**DRAFT**

**MINUTES OF THE VILLAGE BOARD OF TRUSTEES MEETING**

**May 25, 2010**

**CALL TO ORDER:** 1. President Soto called the meeting to order at 6:40 p.m.

**ROLL CALL:** 2. Upon roll call by Village Clerk, JoEllen Ridder, the following Board Members were present:

Adamowski, Bartlett, Johnson, O'Connell, Peconio, Wessler

Absent: None.

A quorum was present.

*President Soto made a request to move the Presidential Remarks to the beginning of the meeting agenda. There were no objections from the Board.*

**PRESIDENTS  
REPORT:**

Brendan McLaughlin, Executive Director of the O'Hare Noise Compatibility Commission presented to the Board and Residents an overview of the ONCC and its role in terms of securing residential soundproofing. Aaron Frame, Assistant Commissioner and Maria Gutierrez, Assistant to the Commissioner both of the City of Chicago's Department of Aviation made a presentation explaining the criteria used to determine which residents are eligible for soundproofing and how the process occurs.

President Soto read a proclamation into the record in honor of Victory Auto Wreckers.

President Soto read a proclamation into the record in honor of the 30<sup>th</sup> anniversary of Castle Towers.



**DRAFT**

**PUBLIC**

**COMMENT:**

Pete Gallagher – Bensenville Chamber of Commerce

Mr. Gallagher thanked the Village Board on behalf of the Bensenville Chamber of Commerce for their recognition of Victory Auto Wreckers and other businesses in town.

Mark Keane – 912 Hillside Drive

Mr. Keane is upset regarding a recent violation he received at his home. Village staff was directed to help resolve the issue with Mr. Keane.

**APPROVAL OF  
MINUTES:**

3. The May 11, 2010 Village Board Meeting minutes were presented.

Motion:

Trustee Peconio made a motion to approve the minutes as presented. Trustee Johnson seconded the motion.

All were in favor.

Motion carried.

**WARRANT NO.  
10/28:**

4. President Soto presented Warrant No. 10/28 in the amount of \$2,099,208.98.

Motion:

Trustee Adamowski made a motion to approve the warrant as presented. Trustee Johnson seconded the motion.

**ROLL CALL:**

AYES: Adamowski, Bartlett, Johnson, O'Connell, Peconio, Wessler

NAYS: None

Motion carried.

Motion:

5. Trustee Johnson made a motion to set the Consent Agenda as presented. Trustee Bartlett seconded the motion.

All were in favor.

Motion carried.

**DRAFT**

Minutes of the Village Board Meeting  
May 25, 2010 Page 3

**Ordinance No.**

**47-2010:**

**Ordinance Granting a Conditional Use Permit to Allow Outdoor Storage at 1025 Industrial Drive, Bensenville, Illinois. (Consent Agenda)**

**Ordinance No.**

**48-2010:**

**Ordinance Granting a Conditional Use Permit to Allow an Indoor Athletic Facility at 1090 Industrial Drive, Premier Wrestling. (Consent Agenda)**

**Resolution No.**

**R-33-2010:**

**Resolution Authorizing Professional Service Agreement with Baxter & Woodman Inc. for the Recalculation of Local Industrial Pretreatment Limits. (Consent Agenda)**

**Resolution No.**

**R-34-2010:**

**Resolution Authorizing Professional Service Agreement with Baxter & Woodman Inc. for Management of the Industrial Pretreatment Program. (Consent Agenda)**

**Motion:**

Trustee Peconio made a motion to approve the Consent Agenda as presented. Trustee Johnson seconded the motion.

**ROLL CALL:**

AYES: Adamowski, Bartlett, Johnson, O'Connell, Peconio, Wesseler

NAYS: None

Motion carried.

**Ordinance No.**

**49-2010:**

6. Village President, Frank Soto, gave the summarization of the action contemplated in **Ordinance No. 49-2010** entitled **An Ordinance Amending and Restating Title 9 of the Bensenville Village Code.**

**Motion:**

Trustee Johnson made a motion to adopt the ordinance as presented. Trustee Peconio seconded the motion.

**ROLL CALL:**

AYES: Adamowski, Bartlett, Johnson, O'Connell, Peconio, Wesseler

NAYS: None

Motion carried.

DRAFT

Minutes of the Village Board Meeting  
May 25, 2010 Page 4

**Resolution No.  
R-35-2010**

7. Village President, Frank Soto, gave the summarization of the action contemplated in **Resolution No. R-35-2010** entitled **A Resolution Approving the Execution of a Purchase Order with CDW for Computer Equipment.**

Motion: Trustee Johnson made a motion to approve the resolution as presented. Trustee O'Connell seconded the motion.

**ROLL CALL:** AYES: Adamowski, Bartlett, Johnson, O'Connell, Peconio  
NAYS: None  
ABSTAINED: Wesseler  
Motion carried.

**Resolution No.  
R-36-2010**

8. Village President, Frank Soto, gave the summarization of the action contemplated in **Resolution No. R-36-2010** entitled **A Resolution Approving a Three Year Microsoft Enterprise Agreement.**

Motion: Trustee Peconio made a motion to approve the resolution as presented. Trustee O'Connell seconded the motion.

**ROLL CALL:** AYES: Adamowski, Bartlett, Johnson, O'Connell, Peconio, Wesseler  
NAYS: None  
Motion carried.



**DRAFT**

**Ordinance No.  
50-2010:**

9. Village President, Frank Soto, gave the summarization of the action contemplated in **Ordinance No. 50-2010** entitled **An Ordinance Amending The Bensenville Village Code Title 3 – Chapter 3 – Section 5 – Liquor Regulations**. (Increasing the number of Class F licenses from four to five)

**Motion:** Trustee Peconio made a motion to adopt the ordinance as presented. Trustee O'Connell seconded the motion.

**ROLL CALL:** AYES: Adamowski, Bartlett, Johnson, O'Connell, Peconio, Wesseler

NAYS: None

Motion carried.

**MANAGERS  
REPORT:**

In absence of Village Manager, Michael Cassady, Deputy Village Manager, Denise Pieroni informed the Village Board that the 2010 vehicle license applications have been mailed and will be on sale June 1, 2010 and must be displayed by June 30, 2010.

**ADJOURNMENT:** Trustee Johnson made a motion to adjourn the meeting. Trustee Bartlett seconded the motion.

All were in favor.

Motion carried.

President Soto adjourned the meeting at 8:15 p.m.

JoEllen Ridder  
Village Clerk

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville this \_\_\_\_ day, June 2010

**TYPE:** Resolution **SUBMITTED BY:** Andrew Schaeffer **DATE:** 5/25/2010

**DESCRIPTION:** Approving lease/purchase agreement (to include maintenance) with new vendor for printers/copiers

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	Financially Sound Village	<input type="checkbox"/>	Enrich the lives of Residents
<input type="checkbox"/>	Quality Customer Oriented Services	<input type="checkbox"/>	Major Business/Corporate Center
<input type="checkbox"/>	Safe and Beautiful Village	<input type="checkbox"/>	Vibrant Major Corridors

**COMMITTEE ACTION:** IT Committee recommendation to be presented at Board meeting following committee review of this matter at a 5:30 p.m. meeting on June 8. **DATE:** 6/08/2010

**BACKGROUND:** The Village entered into a printer/copier lease contract with US Bank and Illinois Paper Copier in October 2008. This was a 6 year contract which included 40+ printers, supplies (minus staples and paper) and maintenance. The cost/month is \$9,500. The Village's attorneys have determined that the 2008 contract exceeded the maximum duration allowed for such leases and as such is null and void. As a result of this determination, Prescient, on behalf of the Village, has been evaluating alternative options. Based on this evaluation, a significant cost savings to the Village, assuming a new provider is approved, is anticipated.

Prescient solicited price proposals from two additional providers Digital Office Solutions and Digital Copiers. For comparability purposes, each provider was asked to provide pricing on the same configuration (in terms of number of printers/copiers and terms of the maintenance agreement – number of copies included and supplies) that was included in the contract approved in 2008. The price proposals submitted by each of these vendors are attached and are nearly identical comparisons (only difference is printer models).

**KEY ISSUES:** Printer hardware with current lease is costing the Village significant dollars (\$9,500/month versus the \$7,728 and \$3,911 /month solutions proposed by Digital Office Solutions and Digital Copiers, respectively). There are also other issues with the current configuration that can be addressed through this change (for example, currently the unit in the lower level produces more copies per minute than is necessary but does not do color nor does it provide the finishing options that are needed for certain projects).

**ALTERNATIVES:** (Each includes same # of printers/copiers & the same terms relative to the maintenance agreement).

1. Renegotiate Lease with US Bank to bring it into compliance with state statute in terms of duration (currently paying \$9,500/month until 10/2014 and based on past discussions between US Bank and the attorney representing the Village, would not anticipate a willingness to reduce this cost)
2. Digital Office Solutions = \$7,728/month @ 48 months
3. Digital Copiers = \$3,910.63/month @ 48 months (Additionally Village to own all equipment at end of lease)

**RECOMMENDATION:** Conditioned on a positive recommendation from the IT Committee, adopt resolution providing for the lease/purchase of this printer/copier equipment and service contract through Digital Copiers at a cost of \$3,910.63/month subject to the Village Attorney review and acceptance of the new contract.

**BUDGET IMPACT:** The CY Budget currently includes \$114,000 to cover the cost of the October 2008 contract for printers/copiers. Providing for the new provider effective at the end of July will result in a CY savings of \$22,000. Annual savings thereafter will be \$66,000, equating to a four-year savings of nearly \$270,000. On top of the savings in the first 4 years, the Village will own all 40+ printers at the end of the 4 year lease. After year 4, it is recommended to continue a maintenance and supply agreement for an additional 4 years @ approximately \$1,500/month (based on the representations made the Digital Copiers and past experience of staff members the proposed equipment should last 8 years before needing to be replaced). The cost savings at that point will be even greater due to the elimination of the monthly lease payments.

**ACTION REQUIRED:** Board action on Resolution.



[illegible]



# **DCS** DIGITAL COPIER Supercenter

The Premier Supplier of Discount Copiers Nation-Wide

1462 Elmhurst Rd. Elk Grove Village, IL 60007. 847-952-7100. 847-952-7105 Fax [www.digitalcopiers.org](http://www.digitalcopiers.org)

## *The Premier Supplier of Discount Copiers Nationwide!*

Hello Andrew,

Based on the attached bid you provided to Neil, please review our formal bid/quote. This e-mail can serve as a formal document that our bid follows the exact configuration that was provided to us, in the attached e-mail from the Village of Bensenville. Please note there is one exception, the model on the bid KM 4120DN is not a model Kyocera manufactures, therefore we substituted the KM 4020DN. We do request that you afford us the opportunity to resubmit our bid in any amended format, if you so prefer. After review, please advise a suggested course of action in reference to, follow up, and scheduling onsite introductions.

DCS and the entire staff thank you for the opportunity to be your provider, and welcome any suggestions you are in a position to offer, so we can earn the distinction, of being your vendor of choice.

- (7) KM 1128MPF
- (1) KMC 1020MPF
- (1) Ricoh MPC 7500- Includes Booklet Maker, Hole Punch & Large Capacity Tray
- (2) KM 3035 SPF
- (7) Ricoh 3260C - Includes 7 Hole Punch Systems for Multi Position Stapler Finishers
- (10) KM 5400DN
- (12) KM FS-3920DN
- (1) KM 4020DN
- (1) HP 4250

### Full Service & Supply Agreement:

4 years or 6,400,000 impressions b&w full service and supplies with the exception of paper. Overages .006 per copy. All systems covered.

4 years or 480,000 impressions color full service and supplies with the exception of paper. Overages .05 per copy. All systems covered.

48 Month Lease: \$3,910.63 /Per Month. (Lease includes equipment and service & supply agreement) (\$1 End of Lease Buy-Out)

Payment Breakdown: \$1,361.32 Full Service & Supply Maintenance Agreement  
\$2,549.34 Equipment

Includes: Delivery, network installation, and key operator training included.

Thank you,

Maggie Samaan  
Digital Copier Supercenter  
(866) 343-3444  
847-952-7100  
847-952-7105 Fax  
[www.digitalcopiers.org](http://www.digitalcopiers.org)

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION APPROVING AN EQUIPMENT LEASE AGREEMENT WITH  
AMERICAN CAPITAL FINANCIAL SERVICES, INC. AND AN EQUIPMENT  
MAINTENANCE AGREEMENT WITH DIGITAL COPIER SUPERCENTER, LLC  
CONTINGENT ON VILLAGE ATTORNEY REVIEW AND APPROVAL**

WHEREAS, the VILLAGE OF BENSENVILLE (hereinafter the "Village") is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the Village is empowered to make all contracts and to undertake other acts as necessary in the exercise of its statutory powers pursuant to the Illinois Municipal Code, 65 ILCS 5/2-3-8; and

WHEREAS, the Village is specifically empowered to enter into an equipment lease for a period not to exceed 5 years as authorized by the affirmative vote of two-thirds of the corporate authorities pursuant to the Illinois Municipal Code, 65 ILCS 5/11-76-6; and

WHEREAS, the Village is not satisfied with the current monthly rental expense associated with its use of certain copier and printer equipment owned by U.S. Bank; and

WHEREAS, the Village has obtained price proposals from multiple entities, including U.S. Bank, for the purpose of entering a new equipment lease and maintenance agreement; and

WHEREAS, the Village has obtained a price proposal from Digital Copier Supercenter, LLC that is acceptable to the Village and that represents a significant cost savings to the Village which is in the best interests of the Village and its Citizens. A copy of the price proposal submitted by Digital Copier Supercenter, LLC is attached hereto and incorporated herein by reference as Exhibit "A;" and

WHEREAS, for these reasons, the Village has determined that it is reasonable, necessary, and desirable to enter into a four year equipment lease agreement with American Capital Financial Services, Inc. attached hereto and incorporated herein by reference as Exhibit "B" and



a maintenance agreement with Digital Copier Supercenter, LLC attached hereto and incorporated herein by reference as Exhibit "C" (hereinafter the "Agreements") contingent on the review and approval of the Village Attorney; and

WHEREAS, if the Village Attorney does not approve of the Village entering into any of the Agreements, for any reason, the Village is not authorized to enter into said agreements without further Village Board action.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

SECTION ONE: The recitals set forth above are incorporated herein and made a part hereof.

SECTION TWO: Upon the affirmative vote of two-thirds of the corporate authorities and upon the review and approval of said Agreements by the Village Attorney, the Village Manager is hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Village Clerk is hereby authorized to attest thereto, the Agreements attached hereto and incorporated herein by reference as Exhibits B and C, with reasonable modifications as approved by the Village Attorney.

SECTION THREE: If the Village Attorney does not approve of the Village entering into any of the said agreements, for any reason, the Village is not authorized to enter into said agreements without further Village Board action.

SECTION FOUR: This Resolution shall take effect immediately upon its passage and approval as provided by law.



PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois this 8th day of June, 2010.

APPROVED:

\_\_\_\_\_  
Frank Soto, Village President

ATTEST:

\_\_\_\_\_  
JoEllen Ridder, Village Clerk

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

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Proposed Printer	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
RICOH MP	
8000	
KM 3035SPF	
KM 3035SPF	
KM 3035SPF	
RICOH 3260C	
RICOH 3260C	
RICOH 3260C	
RICOH 3260C	
RICOH 3260C	
KM C5400DN	
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KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 1128MFP	
KM 4120DN	
KM 1128MFP	
HP 4250	
Service	2,450.00
Equipment	5,278.00
All Printers	\$7,728.00



# American Capital Financial Services, Inc.

Agreement No. \_\_\_\_\_

## MASTER LEASE AGREEMENT

THIS MASTER LEASE AGREEMENT is entered into and effective this (day) \_\_\_\_\_ day of (month) \_\_\_\_\_, (year) \_\_\_\_\_, between American Capital Financial Services, Inc., an Illinois corporation having an address at 2015 Ogden Avenue, #400, Lisle, Illinois 60532 ("Lessor") and \_\_\_\_\_, a(n) \_\_\_\_\_ corporation having its chief executive offices at \_\_\_\_\_ ("Lessee").

### 1. LEASE

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the equipment described in one or more Schedules entered into by Lessee and accepted by Lessor concurrently with the execution of this Master Lease Agreement by the parties or subsequent thereto. Each Schedule shall constitute a separate lease on the terms herein and therein set forth, and shall be deemed to incorporate this Master Lease Agreement by reference. The term "Lease" as used herein shall refer to an individual Schedule entered into pursuant to this Master Lease Agreement. To the fullest extent possible each Schedule entered into under this Master Lease Agreement shall be construed to be consistent with the terms and conditions of this Master Lease Agreement. However, in the event that the terms or conditions of any Schedule is stated to supersede the terms and conditions of this Master Lease Agreement or can not be interpreted consistently with the terms and conditions of this Master Lease Agreement, the superseding terms or conditions or inconsistent terms or conditions of such Schedule shall govern but all other terms and conditions of this Master Lease Agreement shall be deemed to remain in full force and effect. Each Schedule shall constitute a separate, distinct, and independent lease and contractual obligation of Lessee. All of the items of equipment on a Schedule shall be referred to collectively as the "Equipment" and separately as a "Unit" or "Item." The mere execution of this Master Lease Agreement shall not obligate Lessee to lease any item of Equipment from Lessor or Lessor to lease any item of Equipment to Lessee. Such obligation shall only be evidenced by a Schedule duly executed by Lessor and Lessee. A Schedule signed by Lessee constitutes an irrevocable offer by Lessee to lease from Lessor the Equipment set forth on such Schedule on the terms and conditions set forth in the Master Lease Agreement and such Schedule and such offer shall be deemed irrevocable until and unless rejected by Lessor but shall not be binding upon Lessor until and unless such Schedule is accepted by an officer of Lessor as evidenced by such officer's signature on such Schedule.

### 2. TERM

- (a) Each Lease shall include an "Installation Term" and a "Base Term." The Installation Term for each Item shall commence on its "Installation Date." If the Item is to be self-installed by Lessee, its Installation Date shall be the date of its delivery to Lessee. If the Item is to be installed by a third party, its Installation Date shall be the date on which the third party responsible for installing the Item certifies that the Item has been installed and placed in good working order. The Installation Term shall end on the last day of the month immediately preceding the "Base Term Commencement Date." The Base Term Commencement Date shall be the first day of the calendar month following the Installation Date of the last Item to be installed. The Base Term shall commence on the Base Term Commencement Date and continue thereafter for the number of months set forth in the Schedule. Unless otherwise specified in the applicable Schedule, the Lease term shall continue after the expiration of the Base Term until and unless terminated as provided herein. As to any Item to be installed by a third party, notwithstanding the fact that its Installation Term may begin after delivery of the Item to Lessee, all obligations of Lessee under the Lease, other than the obligation to pay rent, shall commence upon the delivery of the Item to Lessee.
- (b) A Lease may be terminated as of the last day of the last month of the Base Term or the last day of any month thereafter, by written notice given by either party to the other not more than nine months nor less than six months prior to the date of termination designated in such notice which date must be the last day of a calendar month. If the Lease is not so terminated at the end of the Base Term and other rental amounts are not specified in the applicable Schedule or mutually agreed upon by the parties in writing, the Base Monthly Rental specified in the applicable Schedule shall continue to be due and payable by Lessee during the remaining term of the Lease. Any notice of termination given may not be revoked without the written consent of the other party. Lessee hereby grants Lessor a right of first refusal for the financing of the equipment, which Lessee is obtaining to replace the Equipment to be terminated.

### 3. RENTAL PAYMENTS

- (a) The rental amount payable to Lessor by Lessee for each Item will be as set forth in the applicable Schedule(s). As rent for Equipment, Lessee shall pay Lessor the sum of (i) Base Monthly Rental per month, payable in immediately available funds and in advance on the Base Term Commencement Date and on the first day of each month thereafter so long as the Lease has not been terminated in accordance with its terms, and (ii) on the Base Term Commencement Date, an amount equal to 1/30<sup>th</sup> of the Base Monthly Rental for each Item times the number of days which have elapsed from the Installation Date of that Item to the Base Term Commencement Date of the Lease.
- (b) Any payment due under the Lease which is past due for more than five (5) days shall be immediately payable to Lessor along with a charge of ten percent (10%) of the amount of the delinquent payment for each thirty (30) day period or portion thereof that such amount remains delinquent, to the extent permitted by applicable law. The provisions of this Section 3(b) shall not diminish or impair the rights of Lessor set forth in Section 16 below but shall be in addition thereto, and the acceptance by Lessor of any sums called for by this Section 3(b) shall not constitute a waiver by Lessor of any event of default.

### 4. TAXES

During the term of each Lease, Lessee shall be responsible for and promptly report, file, pay and indemnify, and hold Lessor harmless with respect to any and all Taxes, as hereinafter defined. The term "Taxes" as used herein shall mean all taxes, fees and assessments, of any nature whatsoever, assessed or levied by any foreign, federal, state or local government or taxing authority, and/or any penalties, fines or interest thereon, which are imposed during the term of the Lease against or upon the Equipment, its use, operation, or ownership, the Lease or the rentals or receipts due under the Lease, or

penalties arising from the failure to file a return with respect to the Equipment or Lease, but shall not include any federal or state taxes based upon or measured by the net income of the Lessor. Lessee will, upon request by Lessor, submit to Lessor written evidence of Lessee's payment of all Taxes due hereunder. To the extent permitted by law, Lessee shall be agent for Lessor in the filing and payment of Taxes; if such agency is not permitted under law, and Lessee so notifies Lessor thereof in writing, Lessor shall file such tax returns relating to such Taxes and Lessor shall remit the amount thereof, and Lessee shall simultaneously reimburse Lessor promptly upon demand for the amount of such Taxes.

### 5. NET LEASE

Each Lease is a net lease, it being the intention of the parties that all costs, expenses and liability associated with the Equipment, its leasing purchase, the Lease, and the titling, financing, and documentation of the foregoing shall be borne by Lessee unless expressly agreed to the contrary in the Lease. Lessee's duty to pay all obligations hereunder, including but not limited to rent, shall be absolute and unconditional and shall not be subject to any abatement, deferment, reduction, setoff, defense, counterclaim or recoupment for any reason whatsoever and such agreement is for the benefit of Lessor and its assignees. Except as may be otherwise expressly provided herein, the Lease shall not terminate, nor shall such obligations of Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, or obsolescence of, the Equipment or any Unit thereof from any cause whatsoever, or the interference with the use thereof by any private person, corporation or governmental authority, or as a result of any war, riot, insurrection or Act of God. It is the express intention of Lessor and Lessee that all rent and other sums payable by Lessee hereunder shall be, and continue to be, payable in all events throughout the term hereof. The Lease shall be binding upon the Lessee, its successors and assignees and shall inure to the benefit of Lessor and its successors and assignees, and all references to Lessor shall include such successors and assignees.

### 6. INSTALLATION, RETURN, AND USE OF EQUIPMENT

- (a) Upon delivery of the Equipment to Lessee, Lessee shall pay all transportation, installation, rigging, packing, insurance and any other charges relating to the Equipment including, but not limited to all charges relating to the procurement, delivery, installation and documenting of the Equipment and the Lease. In the case of a sale and leaseback transaction, Lessee shall, upon the request of Lessor, certify the date the Equipment was first put into use. Lessee will provide the required electric current and other environmental requirements specified by the manufacturer of the Equipment and use and maintain the Equipment in a manner that will not void the manufacturer's warranties or any applicable maintenance agreements. No accessories or attachments may be used by Lessee to operate any Unit unless the same meets the specifications of the manufacturer. Lessee agrees that it will not use or install, or permit the use or installation of the Equipment until it has executed and delivered all documents required to be executed and delivered pertaining to the Equipment, taken all other actions required by the Lease and the Lessor to commence using the Equipment and obtained all required consents of the Lessor.
- (b) Subject to Lessee's compliance with the terms of the lease Lessee shall, at all times during the term of the Lease, be entitled to unlimited use of the Equipment. Lessee will at all times keep the Equipment in its sole possession and control. The Equipment shall not be moved from the location stated in the Lease without the prior written consent of Lessor and in no event shall the Equipment be moved outside the continental United States. Any time during the term of the Lease and upon the written request of Lessor, Lessee shall at Lessee's sole expense certify to Lessor (i) the location of the Equipment, (ii) the serial numbers, features, additions to or other characteristics of the Equipment and (iii) eligibility of the Equipment for standard maintenance. Lessee will comply with all laws, regulations, and ordinances, and all applicable requirements of the manufacturer of the Equipment, which apply to the physical possession, use, operation, condition, and maintenance of the Equipment. Lessee agrees to obtain all permits and licenses necessary for the operation of the Equipment.
- (c) Provided Lessee shall have first obtained the prior written consent of Lessor, Lessee may, at its own expense, make alterations in or add attachments including upgrades to the Equipment, provided such alterations, attachments or upgrades do not decrease the value of the Equipment or interfere with the normal and satisfactory operation or maintenance of the Equipment or with Lessee's ability to obtain and maintain the maintenance contract required by Section 7 hereof. During the term of the Lease and provided Lessee is not in default, all such alterations, attachments, or upgrades shall be the property of Lessee. No liens, encumbrances or interest may be granted by Lessee in such attachments, alterations or upgrades which would impair Lessor's rights, title and interest in the Equipment. Provided the attachment, alteration or upgrade is easily removable, then at the option of Lessee (provided Lessee is not in default and upon Lessor's consent), Lessee shall, prior to the termination of the Lease and at its sole expense, remove such alterations, attachments or upgrades and restore the Equipment to its original condition and, if it fails to do so, such alteration, attachment or upgrade shall become the property of the Lessor.
- (d) Lessee shall, at the termination of the Lease, at its sole expense, de-install, pack and return the Equipment to Lessor at such location within the continental United States as shall be designated by Lessor, subject to the requirements of Sections 6 (c) and 7, in the same operating order, repair, condition and appearance as of the Installation Date, reasonable wear and tear excepted, with all current engineering changes prescribed by the manufacturer or a maintenance contractor approved by Lessor ("Maintenance Organization") incorporated therein. Lessee shall execute a certificate with respect to the de-installation of any Equipment or Items thereof, which shall describe the de-installed Equipment or Items thereof according to quantity, machine description and serial number and shall certify that Lessee has performed all



of its obligations as provided herein. Until the return of the Equipment to Lessor in the condition required by the Lease, Lessee shall be obligated to pay the Base Monthly Rental and all other sums due hereunder. Upon redelivery to Lessor, Lessee shall arrange and pay for such repairs (if any) as are necessary for the manufacturer or Maintenance Organization to accept the Equipment under a maintenance contract as its then standard rates.

## 7. MAINTENANCE AND REPAIRS

During the term of the Lease, Lessee shall, at its sole expense, keep the Equipment in good working order, repair, appearance and condition and make all necessary additions, adjustments and repairs thereto and replacements thereof necessary to keep the Equipment in good working order, within manufacturer warranty specifications and acceptable for applicable maintenance programs, all of which additions, adjustments, repairs and replacements shall become the property of Lessor. Lessee shall not use or permit the Equipment to be used for any purpose for which, in the opinion of the manufacturer or Maintenance Organization, the Equipment is not designed or intended or which would void the manufacturer's warranties or applicable maintenance agreements. Without limiting the generality of the foregoing, and except as the same may be covered by warranties, if any, issued by the manufacturer of the Equipment, Lessee shall, during the term of this Lease, maintain in full force and effect a maintenance contract with the manufacturer or Maintenance Organization covering the Equipment. Lessee shall furnish Lessor with a copy of such maintenance contract (or warranty) or supplements thereto upon request.

## 8. OWNERSHIP, LIENS AND INSPECTIONS

- (a) Lessee shall affix and maintain tags, decals or plates to the Equipment indicating ownership and title to the Equipment in Lessor (or its assignees) and Lessee shall not permit the removal or concealment of such tags. Lessee shall keep the Equipment free from any marking or labeling which might be interpreted as a claim of ownership thereof by Lessee or any party other than Lessor or its assignees. Upon reasonable notice to Lessee, Lessor, its agents and assignees shall have free access to the Equipment at reasonable times for the purpose of inspection and for any other purposes contemplated by the Lease, subject to the reasonable security requirements of Lessee.
- (b) Lessee shall execute and immediately deliver such instruments, including Uniform Commercial Code financing statements, as are required by Lessor to be filed to evidence Lessor's interest in the Equipment or the Lease. Lessor may by written notice to Lessee indicate that the ownership interest in the Equipment is held by a party other than Lessor. Lessor and Lessee hereby agree, and Lessee hereby represents for the benefit of Lessor and its assignees, that the Lease is intended to be a "true lease" as the term is commonly used in the applicable Uniform Commercial Code and the Internal Revenue Code, as amended. Lessee agrees that it will not directly or indirectly take any action or file any returns or other documents inconsistent with the foregoing. Lessee has no interest in the Equipment except as expressly set forth in the Lease, and that interest is a leasehold interest. Lessee represents and warrants that the description of the Equipment as set forth on each document executed by Lessee in connection with each Schedule is true, complete and accurate including features, models and serial numbers.
- (c) Lessee shall keep the Lease and the Equipment free and clear of all liens, levies, charges, encumbrances and claims (collectively "Liens"), including, without limitation, any Liens of the holders of any interest in the real estate on which the Equipment is located or of any personal property to which it is connected, and will, prior to installation of the Equipment or at any time upon Lessor's request, obtain and deliver to Lessor a waiver of any such Liens as to the Equipment in recordable form. It is expressly understood that all of the Equipment shall be and remain personal property, notwithstanding the manner in which the same may be attached or affixed to realty, and Lessee shall do all acts and enter into all agreements necessary to assure Lessor that the Equipment remains personal property and that the respective interests of Lessor and its assignees are protected and preserved. Lessee shall not permit any Equipment to be installed in or with, or used, stored or maintained with, any personal property in such manner or under such circumstances that any Equipment might be or become an accession to or confused with such other personal property. Lessee shall not permit any Equipment to be installed in or on, or used, stored or maintained with, any real property in such a manner or under such circumstances that any person might acquire any rights in any Equipment by reason of such Equipment being deemed to be real property or a fixture thereon.
- (d) Lessee shall not assign the Lease or any of its rights hereunder or sublease any of the Equipment or grant any rights to the Equipment without the prior written consent of Lessor. No permitted assignment or sublease shall relieve Lessee of any of its obligations hereunder and Lessee agrees to pay all costs and expenses Lessor may incur in connection with such sublease or assignment. Lessee hereby grants to Lessor the right of first refusal on any sublease or grant of Lessee's rights to the Equipment except as expressly set forth herein, Lessee may not assign, transfer, sublease, hypothecate or otherwise convey any of its rights or obligations in and under any Lease.

## 9. DISCLAIMER OF WARRANTIES

- (a) LESSEE ACKNOWLEDGES THAT AS OF THE DATE OF THE DELIVERY CERTIFICATE IT HAS INSPECTED AND ACCEPTED THE EQUIPMENT AND THAT LESSOR HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OR PERFORMANCE OF THE EQUIPMENT, ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WITH RESPECT TO PATENT INFRINGEMENTS OR THE LIKE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE EQUIPMENT IS LEASED "AS IS," AND LESSOR SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED. LESSOR SHALL HAVE NO LIABILITY TO LESSEE FOR ANY CLAIM, LOSS OR DAMAGE OF ANY KIND OR NATURE WHATSOEVER INCLUDING THE ACTIVE OR PASSIVE NEGLIGENCE OR STRICT LIABILITY OF LESSOR, NOR SHALL THERE BE ANY ABATEMENT OF RENTAL FOR ANY REASON INCLUDING CLAIMS ARISING OUT OF OR IN CONNECTION WITH (i) THE DEFICIENCY OR INADEQUACY OF THE EQUIPMENT FOR ANY PURPOSE, WHETHER OR NOT KNOWN OR DISCLOSED TO LESSOR, (ii) ANY DEFICIENCY OR DEFECT IN THE EQUIPMENT, (iii) THE USE OR PERFORMANCE OF THE EQUIPMENT, OR (iv) ANY LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSS OR DAMAGE, WHETHER OR NOT RESULTING FROM ANY OF THE FOREGOING. LESSEE ACKNOWLEDGES AND

CONFIRMS THAT IT HAS SELECTED THE EQUIPMENT IN ITS SOLE DISCRETION, AND THAT PRIOR TO THE EXECUTION OF ANY SCHEDULE, IT SHALL HAVE EITHER HAVE ENTERED INTO AND ASSIGNED TO LESSOR THE CONTRACT(S) PURSUANT TO WHICH THE EQUIPMENT SUBJECT TO SUCH SCHEDULE IS BEING ACQUIRED OR SHALL HAVE RECEIVED A COPY OF EACH SUCH CONTRACT. IT IS THE AGREEMENT AND INTENTION OF THE PARTIES THAT THIS LEASE IS A FINANCE LEASE WITHIN THE MEANING OF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.

- (b) For the term hereof, Lessor assigns to Lessee (to the extent possible), and Lessee may have the benefit of, any and all manufacturer's warranties, service agreements and patent indemnities, if any, with respect to the Equipment; provided, however, that Lessee's sole remedy for the breach of any such warranty, indemnification or service agreement shall be against the manufacturer and not against Lessor, nor shall any such breach have any effect whatsoever on the rights and obligations of either party with respect to the Lease.

## 10. ASSIGNMENT

- (a) Lessor may assign to a successor lessor, lender or purchaser, and Lessee hereby consents to the assignment of, all or any part of the Lessor's right, title and interest in and to the Lease and the Equipment. In the event that Lessor transfers or assigns, or retransfers or reassigns, to a third party (the "Assignee") all or part of Lessor's interest in the Lease, the Equipment and/or any or sums payable hereunder, whether as collateral security for any loans or advances made or to be made to Lessor by such Assignee or otherwise, Lessee, upon receipt of notice of any such transfer or assignment and instructions from Lessor, shall, if so instructed pay and perform its obligations hereunder to Assignee (or to any other party designated by Assignee). Lessee's obligations hereunder with respect to Assignee shall be absolute and unconditional and not be subject to any abatement, reduction, recoupment, defense, offset or counterclaim for any reason, alleged or proven, including, but not limited to, defect in the Equipment, the condition, design, operation or fitness for use thereof or any loss or destruction or obsolescence of the Equipment or any part thereof, the prohibition of or other restrictions against Lessee's use of the Equipment, the interference with such use by any person or entity, any failure by Lessor to perform any of its obligations herein contained, any insolvency or bankruptcy of Lessor, or for any other cause, whether similar or dissimilar to the foregoing. Upon transfer or assignment, Lessee shall, promptly upon request of Lessor, submit to Lessor such documents and certificates as may be reasonably required by Assignee to secure and/or complete such transfer or assignment, including but not limited to the documents set forth in Section 15(c).
- (b) In the event of any such assignment or transfer, Lessee shall:
  - (1) send to Assignee as well as Lessor copies of any notices which are required hereunder to be sent to Lessor;
  - (2) not permit the Lease to be amended, modified or terminated without the prior written consent of the Assignee;
  - (3) not look to Assignee to perform any of Lessor's obligations hereunder; and
  - (4) acknowledge the reliance of Assignee upon Lessee's covenants, warranties and representations herein, and shall, if requested, restate directly to Assignee such representations, warranties and covenants and shall make such other representations, warranties and covenants to Assignee as may be reasonably required to give effect to the assignment.
- (c) Anything herein to the contrary notwithstanding, Lessor shall not make an assignment or transfer to any Assignee who shall not agree that, so long as Lessee is not in default hereunder, including but not limited to, a default in the payment of rent to Assignee pursuant to a notice of assignment, such Assignee shall take no action to interfere with Lessee's quiet enjoyment and use of the Equipment in accordance with the terms of the Lease.
- (d) Lessee shall not assign or sublease its rights under any Lease without the express written consent of Lessor, which consent may be withheld at Lessor's sole discretion. Any attempt by Lessee to assign or sublease its rights or any Equipment subject to any Lease without Lessor's prior written consent shall be void and of no force or effect.

## 11. QUIET ENJOYMENT

Lessor covenants that so long as Lessee is in compliance with all of the terms and conditions of all of its Leases, Lessee will quietly possess the Equipment subject to and in accordance with the provisions of each applicable Lease.

## 12. INDEMNIFICATION

- (a) Lessee hereby agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its respective agents, successors and assignees, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, or expenses (including legal fees and expenses) of any kind and nature whatsoever which may be imposed upon, incurred by or asserted against Lessor or its respective agents, successors, or assignees, in any way relating to or arising out of (i) the Lease or any document contemplated hereby, (ii) the performance or enforcement of any of the terms hereof, (iii) the manufacture, purchase, acceptance, rejection, return, ownership, lease, disposition, installation, delivery, possession, use, condition or operation of the Equipment, or any accident in connection therewith (including, without limitation, those claims based on latent and other defects, whether or not discoverable, or claims based on strict liability in tort, or any claim for patent, trademark or copyright infringement). At the request of Lessor, Lessee shall undertake to defend, at Lessee's expense, Lessor and its assignees, in any claim, action or suit covered by this indemnification.
- (b) All of Lessor's rights and benefits arising from the indemnities contained in Section 12(a) shall survive the expiration or other termination of the Lease and such indemnities are expressly made for the benefit of, and shall be enforceable by Lessor, its agents, successors and assignees.

## 13. RISK OF LOSS, IRREPARABLE DAMAGE

- (a) Lessee hereby assumes and shall bear the entire risk of loss or damage, whether or not insured against, of the Equipment from any and every cause whatsoever as of the date the Equipment is delivered to Lessee. No loss or damage to the Equipment or any part thereof



shall impair any obligation of Lessee under the Lease, which shall continue in full force and effect.

- (b) In the event of loss or damage of any kind to any Item, Lessee shall use all reasonable efforts to place the Item in good repair, condition and working order to the satisfaction of Lessor within 90 days of such loss or damage, unless the manufacturer determines that such Item has been irreparably damaged, in which case Lessee shall, within 10 days of the manufacturer's determination of irreparable loss, make its election to either pay Lessor the Stipulated Loss Value for the irreparably damaged Item or replace the irreparably damaged Item, all as hereinafter provided. To the extent that the Item is damaged but not irreparably damaged and Lessee is entitled, pursuant to the insurance coverage, to obtain proceeds from such insurance for the repair of the Item, Lessee may arrange for the disbursement of such proceeds to pay the cost of repair, provided, however, no disbursement shall occur until Lessee has the written consent of Lessor therefore.
- (c) In the event that Lessee elects to pay Lessor the Stipulated Loss Value for the irreparably damaged Item, Lessee shall (i) pay such amount (computed as of the first day of the month following the determination of the irreparable damage by the manufacturer) to Lessor on the first day of the month following the election by Lessee as provided in (b) above, (ii) pay all Base Monthly Rental for the Equipment up to the date that the Stipulated Loss Value is paid to Lessor; and (iii) arrange, with the consent of Lessor, for the disposition of the irreparably damaged Item with the insurance company paying the proceeds relating to the irreparably damaged Item. If not all the Equipment is irreparably damaged, the original price of the irreparably damaged Item shall be multiplied by the applicable percentage based on the period the Lease has been in effect to compute the Stipulated Loss Value therefore, and the Base Monthly Rental for the undamaged Equipment remaining due (after payment of the Stipulated Loss Value for the irreparably damaged Item) shall be that amount resulting from multiplying the original Base Monthly Rental by the ratio of the original list price of the undamaged Equipment divided by the original list price for all the Equipment prior to the damage.
- (d) In the event Lessee elects to replace the irreparably damaged Item, Lessee shall continue all payments under the Lease without interruption, as if no such damage, loss or destruction had occurred, and shall replace such irreparably damaged Item, as provided herein, paying all such costs associated therewith. Lessee shall within 20 days following the date of determination of irreparable damage by the manufacturer, effect the replacement by replacing the irreparably damaged Item with replacement equipment (as hereinafter defined), so that Lessor has good and valid title thereto. The "Replacement Item" or "Replacement Equipment" shall have a fair market value at the time of such replacement equal to the then fair market value of the Equipment or Items thereof for which replacement is made, and anticipated to have fair market value at the expiration of the Base Term equal to the fair market value which the Equipment or Items thereof for which replacement is made would have had at the end of the Base Term, and be the same type and of at least equal capacity to the Equipment for which the replacement is being made. Upon delivery, such Replacement Equipment shall become subject to all of terms and conditions of the Lease. Lessee shall execute all such documents necessary to effect the foregoing.
- (e) Lessee shall reimburse Lessor for any net loss, recapture or unavailability of any depreciation or accelerated cost recovery deductions plus taxes due as a result of such recapture, loss or unavailability arising out of or related to the destruction and replacement of the Equipment ("Indemnification Amount"). The Indemnification Amount shall be payable no later than the date of installation of and payment for the Replacement Equipment. Provided that if Lessee has paid the Stipulated Loss Value for the irreparably damaged Item, no payment of an Indemnification Amount will be required.
- (f) For the purpose of the Lease, the term "fair market value" shall mean the price that would be obtained in an arm's-length transaction between an informed and willing buyer-user under no compulsion to buy or lease and an informed and willing seller-lessor under no compulsion to sell or lease. If Lessor and Lessee are unable to agree upon fair market value, such value shall be determined, as Lessee's expense, in accordance with the foregoing definition, by three independent appraisers, one to be appointed by Lessee, one to be appointed by Lessor and the third to be appointed by the first two appraisers.

#### 14. INSURANCE

During the term of the Lease and thereafter until the Equipment is returned to Lessor or otherwise disposed of by Lessor, Lessee, at its own expense, shall insure the Equipment against all risks and in such amounts as Lessor may reasonably require (but never less than the Stipulated Loss Value specified in the applicable Schedule) with insurers acceptable to Lessor, and shall maintain a loss payable endorsement in favor of Lessor and its assignees affording to Lessor such additional protection as Lessor shall reasonably require. Lessee shall also maintain comprehensive public liability insurance in an amount, on terms and with an insurer satisfactory to Lessor, naming Lessor and its assignees as additional insured. All such insurance shall provide that it may not be terminated, canceled or altered without at least 30 days' prior written notice to Lessor and its assignees. Coverage afforded to Lessor shall not be rescinded, impaired, or invalidated by any act or neglect of Lessee. Lessee hereby waives, on Lessee's behalf and on behalf of any insurance carriers of Lessee, any claim, which Lessee might otherwise have against Lessor from any risk required to be insured against by Lessee hereunder. Lessee hereby irrevocably appoints Lessor as its attorney in fact with full power to negotiate, prosecute, settle and/or compromise all claims or actions under or pursuant to said insurance policies, and to execute in the name of Lessee any proofs of claim or loss, and to endorse the name of Lessee on any settlement, draft or check. Lessee agrees to supply to Lessor, upon its request evidence of insurance as required herein. THE PROCEEDS OF ANY FIRE, EXTENDED COVERAGE, THEFT OR OTHER INSURANCE PROVIDING COVERAGE OF RISK OF LOSS OR DAMAGE TO THE EQUIPMENT SHALL BE PAYABLE SOLELY TO LESSOR, AND SHALL BE CREDITED BY LESSOR TO THE PAYMENT OF THE OBLIGATIONS OF LESSEE HEREUNDER. If Lessee shall have made payment to Lessor of the Stipulated Loss Value consequent to the destruction of an Item, Lessee shall remit to Lessee any such insurance proceeds relating to such Item up to an amount equal to the Stipulated Loss Value for such Item.

#### 15. REPRESENTATIONS AND WARRANTIES OF LESSEE, FINANCIAL STATEMENTS

- (a) Lessee represents and warrants to Lessor and its assignees (i) that the execution and

performance of the Lease was duly authorized and that upon execution hereof by Lessee and Lessor, the Lease

will be in full force and effect and constitute a valid obligation binding upon and enforceable against Lessee in accordance with its terms; (ii) the Equipment covered by the Lease is accurately described in the Lease and all documents relating thereto; (iii) that Lessee is in good standing in its jurisdiction of incorporation and in any jurisdiction(s) in which any of the Equipment is to be located; (iv) that no consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other government authority or agency is required with respect to the execution, delivery and performance by the Lessee of the Lease or, if any such approval, notice, registration or action is required, it has been obtained; (v) that the entering into and performance of the Lease will not violate any judgment, order, law or regulation applicable to Lessee or any provision of Lessee's Articles of Incorporation or By-Laws or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or upon the Equipment pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound; (vi) there are no actions, suits or proceedings pending, or to the knowledge of Lessee, threatened, before any court or administrative agency, arbitrator or governmental body which will, if determined adversely to Lessee, materially adversely affect its ability to perform its obligations under the Lease or any related agreement to which it is a party; (vii) that aside from the Lease there are no additional agreements between Lessee and Lessor relating to the Equipment; (viii) that any and all financial statements and other information with respect to Lessee supplied to Lessor at the time of execution of the Lease and any amendments hereto, are true and complete. The foregoing representations and warranties shall survive the execution and delivery of the Lease and any amendments hereto and shall upon the written request of Lessor, be made to Lessor's assignees; and (viii) Lessee is an organization of the type set forth in the Schedule, is organized in the state identified in the Schedule and such state has assigned Lessee the corporate file or other identification number set forth in the Schedule.

- (b) Prior to and during the term of the Lease, Lessee will furnish Lessor, when reasonably available, with Lessee's audited financial statements. If Lessee is a subsidiary of another company, Lessee shall supply such parent's financials and guarantees as are acceptable to Lessor. Lessee shall also provide Lessor with such other statements concerning the Lease and the condition of the Equipment as Lessor may from time to time reasonably request.
- (c) Upon Lessor's request, Lessee shall, with respect to each Lease, deliver to Lessor (i) a certificate of the secretary or assistant secretary of Lessee referring to the resolutions (specific or general) authorizing the transactions contemplated herein; (ii) an incumbency certificate certifying that the person signing the Lease holds the office he purports to hold and has authority to sign on behalf of Lessee; (iii) an opinion of Lessee's counsel with respect to the representations in Section 15(a) (i) through (vii) above; (iv) an agreement with Lessor's assignee with regard to any assignment as referred to in Section 10; (v) the purchase documents if Lessee has sold or assigned its interest in the Equipment to Lessor; (vi) an insurance certificate pursuant to Section 14 hereof; and (vii) a delivery certificate in a form acceptable to Lessor and duly executed by Lessee. Failure by Lessee to deliver any of these documents when due shall operate at Lessor's option, to continue the Installation Term for the Lease, thereby delaying the Base Term Commencement Date thereof, to increase the Base Monthly Rental to recover costs incurred by Lessor consequent to the delay, or to terminate the Lease as provided in Section 16.

#### 16. DEFAULT, REMEDIES

- (a) Time is of the essence in all Leases entered into under this Master Lease Agreement.
- (b) The following shall be deemed events of default under the Lease:
- (1) Lessee fails to pay any installments of rent or other charge within five (5) days of the written notice thereof from Lessor; or
  - (2) Except as expressly permitted herein, Lessee attempts to remove, sell, encumber, or sublease or fails to insure (pursuant to Section 14 hereof) any of the Equipment, or fails to deliver documents required of Lessee under the Lease; or
  - (3) Any representation or warranty made by Lessee (or on its behalf) in the Lease or any document supplied in connection therewith is misleading or inaccurate in any material respect; or
  - (4) Lessee fails to observe or perform any of the other obligations required to be observed or performed by Lessee hereunder within 30 days of Lessee's first knowledge thereof; or
  - (5) Lessee (or for purposes of this subsection, any guarantor of any of Lessee's obligations hereunder) ceases doing business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts as they become due; files a voluntary petition in bankruptcy; is adjudicated a bankrupt or an insolvent; files a petition seeking for itself any reorganization, arrangement, composition, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting or fails to deny the material allegations of a petition filed against it in any such proceeding; consents to or acquiesces in the appointment of a trustee, receiver, or liquidator for it or of all or any substantial part of its assets or properties, or if it or its trustee, receiver, liquidator or shareholders shall take any action to effect its dissolution or liquidation; or
  - (6) If within 30 days after commencement of any proceedings against Lessee seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within 30 days after the appointment (with or without Lessee's consent) of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated.
- (c) Upon the happening of any event of default, Lessor may declare the Lessee in default and such declaration shall apply to all Leases between Lessor and Lessee except as specifically excepted therefrom by Lessor in such declaration. Lessee hereby authorizes Lessor at any time thereafter to enter any premises where the Equipment may be and take possession thereof. Lessee shall, without further demand, forthwith pay Lessor an amount which is equal to any unpaid amount due on or before Lessor declared the Lease to be in default, plus as liquidated



damages for loss of a bargain and not as a penalty, an amount equal to the Stipulated Loss Value for the Equipment computed as of the date Lessor declares the Lease in default, together with interest, as provided herein, plus all attorney and court costs incurred by Lessor relating to the enforcement of its rights under the Lease. In the event of default, at the request of Lessor and to the extent requested by Lessor, Lessee shall immediately comply with the provisions of Section 6(d) of this Master Lease Agreement. Lessor may sell the Equipment at private or public sale, in bulk or in parcels, with or without notice, without having the Equipment present at the place of sale; or Lessor may lease, otherwise dispose of or keep idle all or part of the Equipment, subject however, to any obligation to mitigate damages imposed by law; and Lessor may use Lessee's premises for any or all of the foregoing. The proceeds of sale, lease or other disposition, if any, of the Equipment shall be applied (1) to all Lessor's costs, charges and expenses incurred in taking, removing, holding, repairing and selling, leasing or otherwise disposing of the Equipment including attorney fees; then (2) to the extent not previously paid by Lessee, to pay Lessor the Stipulated Loss Value for the Equipment and all other sums owed by Lessee under the Lease, including any unpaid rent and indemnities then remaining unpaid hereunder; then (3) to reimburse to Lessee any such sums previously paid by Lessee as liquidated damages; (4) any surplus shall be retained by Lessor, Lessee shall pay deficiency in (1) and (2) forthwith. The exercise of any of the foregoing remedies by Lessor shall not constitute a termination of the Lease unless Lessor so notifies Lessee in writing. Lessor may also proceed by appropriate court action, either at law or in equity to enforce performance by Lessee of the applicable covenants of the Lease or to recover damages for the breach hereof.

- (d) The waiver by Lessor of any breach of any obligation of Lessee shall not be deemed a waiver of any future breach of the same or any other obligation. The subsequent acceptance of rental payments hereunder by Lessor shall not be deemed a waiver of any such prior existing breach at the time of acceptance of such rental payments. The rights afforded Lessor under Section 16 shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for herein or now or hereafter existing in law (including all the rights of a secured party under the Uniform Commercial Code) or in equity and Lessor's exercise or attempted exercise of such rights or remedies shall not preclude the simultaneous or later exercise of any or all other rights or remedies. Lessee shall reimburse Lessor and its assignees for all costs and expenses (including reasonable attorney fees) incurred by Lessor and its assignees in enforcing any such rights.
- (e) In the event Lessee shall fail to perform any of its obligations hereunder, then Lessor, in addition to all of its rights and remedies hereunder, may perform the same, but shall not be obligated to do so, at the cost and expense of Lessee. In any such event, Lessee shall promptly reimburse Lessor for any such costs and expenses incurred by Lessor.

#### 17. GENERAL

- (a) Each Lease (including this Master Lease Agreement as incorporated therein, the applicable Schedule and all documents executed pursuant thereto) shall be deemed to have been made and delivered in the State of Illinois and shall be governed in all respects by the laws of such state, exclusive of its choice of law rules. Any and all court proceedings arising from or relating in any manner to any Lease shall be brought in, and only in, a United States Federal Court having jurisdiction in DuPage County, Illinois or an Illinois state court sitting in DuPage County, Illinois. Each party hereby consents to the exercise of jurisdiction by such courts and irrevocably waives any objection that such party may now or later have based on venue or forum non conveniens with respect to any action initiated in such courts. In the event that

Lessor commences any proceedings for nonpayment of rent or other charges due hereunder, Lessee will not interpose any counterclaim of any nature or description in any such proceedings. This shall not, however, be construed as a waiver of Lessee's rights to assert such claims in any separate action brought by Lessee.

- (b) Each Schedule (including this Master Lease Agreement) constitutes the entire and only agreement between Lessee and Lessor with respect to the Equipment subject thereto and other subject matter thereof. The covenants, conditions, terms and provisions thereof may not be waived or modified orally and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings or agreements or any other communication between the parties. A Lease may not be amended or discharged except by a subsequent written agreement entered into by duly authorized representatives of Lessor and Lessee.
- (c) All notices, covenants or requests desired or required to be given hereunder shall be in writing and shall be delivered in person or sent by registered or certified prepaid mail, return receipt requested, or by courier service to the address of the other party set forth on the first page hereof or to such other address as such party shall have designated by proper notice.
- (d) Each Lease may be executed in one or more counterparts, each of which shall be deemed an original, but there shall be a single executed original of each Lease which shall be marked "Original" (and for the purposes hereof shall be referred to as the "Original"); all other counterparts shall be marked "Duplicate." To the extent, if any, that a Lease constitutes chattel paper (as such term as defined in the Uniform Commercial Code) no security interest in the Lease may be created through the transfer or possession of any counterpart other than the Original.
- (e) Section headings are for convenience only and shall not be construed as part of the Lease. All consents required to be obtained in the Lease shall be submitted in writing, setting forth such facts as Lessor may require.
- (f) The prevailing party in a lawsuit shall be entitled also to recover all attorney, court and related legal expenses.
- (g) If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not effect the other terms or provisions hereof or the whole of this Master Lease Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
- (h) Lessee shall comply with all laws, regulations and orders of any governmental agency, which relate to the installation, use, possession or operation of the Equipment.
- (i) Lessor may upon written notice to Lessee inform Lessee that certain items supplied to Lessee are leased to Lessor and are supplied to Lessee hereunder as a sublease. Lessee agrees to execute and deliver such acknowledgements and assignments in connection therewith as are reasonably required.
- (j) The obligations of Lessor hereunder shall be suspended to the extent that is hindered or prevented from complying therewith because of labor disturbances, including strikes and lockouts, Acts of God, fires, storms, accident, failure to deliver any Unit of Equipment, governmental regulations or interference or any cause whatsoever not within the sole control of Lessor.

IN WITNESS WHEREOF, the parties have executed this Master Lease Agreement on the date first above written.

#### LESSOR:

American Capital Financial Services, Inc.

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

#### LESSEE:

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



# DCS DIGITAL COPIER Supercenter

The Premier Supplier of Discount Copiers Nation-Wide

1462 Elmhurst Rd. Elk Grove Village, IL 60007. 847-952-7100. 847-952-7105 Fax [www.digitalcopiers.org](http://www.digitalcopiers.org)

## *The Premier Supplier of Discount Copiers Nationwide!*

This Agreement for Maintenance, effective is by and between Digital Copier Supercenter, a corporation, with its principal office at 1462 Elmhurst Rd. Elk Grove Village, IL 60007 D.C.S., and \_\_\_\_\_.

WHEREAS, Client finds that the Company is willing to perform service hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, Client finds that the Company is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Client's business.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

### 1. SERVICES.

1.1 Included: Services to Client. Contract provider shall provide the following

A. **INCLUDES: Toner, Consumables, Parts and labor for repairs and preventative maintenance of the purchased equipment.**

B. Four-hour response on all service calls placed before 12 pm. (average)

C. An acknowledgement of the service call by a technician with an E.T.A

Please give call as soon as you put in your spare toner of any color or as soon as a low toner warning appears. This will assure no down time.

Excludes paper & staples

### 2. PAYMENT AND INVOICING TERMS.

2.1 Payment for Services. The Company will be paid as follows:

**Rates From \$.085 to \$.125 per full color page per month. To billed monthly on the 1<sup>st</sup> of every month, quarterly, or yearly.**

The terms are fully negotiable and are based on actual volume.

Overage billed at \$.080-\$.125 per page color and \$.009-.019 black and white. Rate varies by machine brand and volume growth.

This contract covers either a CPC (Cost per Click/pay for what you use) or a yearly volume of xxxxxx b&w prints/copies and xxxxx color prints/copies. After 1 year or the allowed volume is reached the customer may chose to renew the contract. If machine has been under continuous contract approval is guaranteed for four consecutive renewals at an increase of no more than 10%.

2.2 Reimbursable Costs. Client shall reimburse the Company all costs incurred in connection with the Services rendered. Reimbursable costs include, but are not limited to delivery of the purchased equipment, and any damage related to abuse, and or negligence. In the event of abused equipment the customer is responsible for all costs associated with the service call i.e. parts, labor, and travel charges. The customer is also responsible for any damage due to non-approved supplies Local travel expenses are included in the cost of the Agreement. All extraordinary travel expenses must receive Client's approval. The Company shall provide to Client substantiation of Reimbursable Costs incurred.

2.3 Invoicing. (a) Invoices will submitted monthly by the Company for payment by Client or yearly pre-pay. Payment is due upon receipt and is past due seven (7) business days from receipt of invoice. If Client has any valid reason for disputing any portion of an invoice, Client will so notify the Company within seven (7) calendar days of receipt of invoice by Client, and if no such notification is given, the invoice will be deemed valid. The portion of the Company's invoice that is not in dispute shall be paid in accordance with the procedures set forth herein.

(b) A finance charge of 1.5% per month on the unpaid amount of an invoice, or the maximum amount allowed by law, will be charged on past due accounts. Payments by Client will thereafter be applied first to accrued interest and then to the principal unpaid balance. Any attorney fees, court costs, or other costs incurred in collection of delinquent accounts shall be paid by Client. If payment of invoices is not current, the Company may suspend performing further work.

### 3. CHANGES

Client may, with the approval of the Company, issue written directions within the general scope of any Services to be ordered. Such changes (the "Change Order") may be for additional work or the Company may be directed to change the direction of the work covered by the Task Order, but no change will be allowed unless agreed to by the Company in writing.

3.2 Modification and Waiver. Waiver of breach of this Agreement by either part shall not be considered a waiver of any other subsequent breach.

4. Independent Contractor. The Company is an independent contractor of Client.

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5. Non-solicitation of Employees. During and for one (1) year after the term of this Agreement, Client will not solicit the employment of, or employ the Company's personnel, without the Company's prior written consent.

3. Cooperation. Client will cooperate with the Company in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Client agrees that the Company's performance is dependent on Client's timely and effective cooperation with the Company. Accordingly, Client acknowledges that any delay by Client may result in the Company being released from an obligation or scheduled deadline or in Client having to pay extra fees for the Company's agreement to meet a specific obligation or deadline despite the delay.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written.

Date: \_\_\_\_\_

[Client]

By: \_\_\_\_\_

Title: \_\_\_\_\_





TYPE: Resolution SUBMITTED BY: F. Kosman DATE: 6/2/10

DESCRIPTION: Resolution to Pay the Annual DUMEG Fairshare Contribution

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

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**COMMITTEE ACTION:**

**DATE:**

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**BACKGROUND:**

The Village through its police department has been a member of the DuPage Metropolitan Enforcement Group (DUMEG), a drug enforcement task force, for over 20 years. The Village can either participate by assigning an officer to the task force or by contributing financially. For at least the last 10 years, the Village has been a financially contributing member. The financial contribution is determined by the DUMEG Policy Board and has been set at \$520 per officer. Therefore, the contribution is \$17,680.

**KEY ISSUES:**

The task force is able to address the drug problem that we experience locally in the context of a larger and more comprehensive countywide response. The task force provides our department with valuable resources such as manpower, technical equipment, and expertise that are required to successfully complete narcotic investigations.

The task force has worked often with our investigators during this past year. During 2009, the task force was involved in ten (10) incidents in Bensenville. Of that number, four (4) cases were initiated in Bensenville. Bensenville officers referred five (5) cases to the task force. Based on the incidents, a total of three (3) people were arrested. The task force arrested five (5) Bensenville residents in and outside of Bensenville.

Additional benefits of being in the task force is that in 2010 two officers spent two week temporary assignments with the task force and gained valuable experience in narcotics investigations, two officers attended a two day training class offered by the task force, a task force agent spoke at a neighborhood watch meeting, and the task force gave the police department a 2005 Mitsubishi Endeavor SUV that has been designated for use in this department's investigations unit.

**ALTERNATIVES:**

1. Approve a Resolution to Pay the Fair Share Contribution.
2. Discretion of the Board.

**RECOMMENDATION:**

Staff recommends approval of the Resolution. This involvement in the task force is an efficient use of resources in this labor intensive and highly specialized area of law enforcement.

**BUDGET IMPACT:**

The not to exceed \$17,680 is within the budgeted amount for FY10, 11040360-571010

**ACTION REQUIRED:**

Motion to approve a Resolution authorizing the Village Manager to execute a purchase order for the fair share contribution to the DuPage Metropolitan Enforcement Group.



**Resolution No. R- -2010**

**Authorizing the Payment for the Annual Du Page Metropolitan Enforcement  
Group Fair Share Contribution for Amended Fiscal Year 2010**

BE IT RESOLVED by the President and Board of Trustees of the Village  
of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

That the Village Manager is authorized to execute a purchase order for the  
Fair Share contribution to the Du Page Metropolitan Enforcement Group in the  
not to exceed amount of \$17,680.

PASSED AND APPROVED by the President and Board of Trustees of the  
Village of Bensenville, Illinois, this \_\_\_\_\_ day of June, 2010.

APPROVED:

\_\_\_\_\_  
Frank Soto  
Village President

ATTEST

\_\_\_\_\_  
JoEllen Ridder  
Village Clerk

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_



# DU PAGE METROPOLITAN

Narcotics and Dangerous Drugs

## ENFORCEMENT GROUP

May 10, 2010

Chief Frank Kosman  
Bensenville Police Department  
100 N. Church Road  
Bensenville, IL 60106

Dear Chief Kosman:

As approved by the DuPage MEG Policy Board your "Fair Share" contributions for FY2011 to DuPage MEG is \$17,680.00.

This figure is based upon \$520 per authorized officer, as approved by the DuPage MEG Policy Board.

Please send your contribution directly to DUMEG by July 15, 2010 so that proper budgeting for FY11 may be implemented.

If you have any questions regarding your contribution, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Pavelchik".

Chief Robert J. Pavelchik  
Chairman, DuPage MEG

DUMEG

P.O. BOX 162 • CLARENDON HILLS, ILLINOIS 60514-0162

630 - 325 - 4784

FAX: 630 - 325 - 4762

TYPE: Resolution

SUBMITTED BY: F.Kosman

DATE: 3-17-2010

**DESCRIPTION:** Recommendation to Approve a Resolution to Authorize the Village Manager to Execute a Contract with Wendy Nussbaum, LCPC, to Administer the Bensenville Teen Center from June 2010 to June 2011

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input type="checkbox"/>	<i>Financially Sound Village</i>	<input checked="" type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

-----  
**COMMITTEE ACTION:**

**DATE:**  
-----

**BACKGROUND**

The Village has supported an after school crime prevention program, the Teen Center, for over 20 years. The program provides after school activities for middle school students. The current location for the teen center is 320 W. Green Street. For the last several years, Wendy Nussbaum has been contracted to administer the program. The current Director of the Teen Center is Dana Pavlu. She has one assistant and two interns. The summer hours are Monday through Thursday from 12:00 PM to 4:00 PM. During the summer, from 12:00 PM to 1:00 PM on Mondays through Fridays, a free lunch program is administered to the teens also. During the school year, the teen center is open from 3:00 PM to 7:00 PM during the week.

**KEY ISSUES:**

The Teen Center provides a positive intervention behavior program to Bensenville teens that complement to District 2's curriculum. These activities reduce the rates of involvement of risky behavior by teens that often develops in unsupervised venues. Teens utilized the Teen Center this past school year with an average attendance of 8 to 12 teens per day in April. A special promotion for 5<sup>th</sup> and 6<sup>th</sup> graders to attend was done at the end of the month and the numbers of teens who came to the Teen Center increased dramatically to 27 and then 40.

**ALTERNATIVES:**

1. Approval of the resolution authorizing the execution of the agreement.
2. Discretion of the Board

**RECOMMENDATION:**

The new Director, Dana Pavlu, has invigorated the program which is expected to grow even more in the upcoming year. The Police Department recommends the approval of the resolution.

**BUDGET IMPACT:**

The cost of the contract has been included in the current fiscal year's budget.

**ACTION REQUIRED:**

Motion to Approve the adoption of the resolution.



RESOLUTION NO. R- -2010

A RESOLUTION AUTHORIZING A CONTRACT WITH WENDY NUSSBAUM, LCPC  
BENSENVILLE TEEN CENTER

BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

That the Contract with Wendy Nussbaum,' LCPC, for services related to the Bensenville Teen Center, in the not-to-exceed amount of \$56,000.04 (\$4667.67 per month) and governing the period from June 1, 2010 through May 31, 2011, which the Contract is attached hereto and made a part hereof, is hereby approved. The Village Manager is authorized to execute said contact, and any other documentation necessary to consummate same.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois this \_\_\_\_\_ day of June, 2010.

APPROVED:

\_\_\_\_\_  
Frank Soto  
Village President

ATTEST:

\_\_\_\_\_  
JoEllen Ridder  
Village Clerk

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

## **Contract for the Bensenville Teen Center Between the Village of Bensenville and Wendy Nussbaum**

The Village of Bensenville agrees to enter into a contract with Wendy Nussbaum for the purposes of staffing and administrating the Bensenville Teen Center from June 2010 to June 2011.

Wendy Nussbaum agrees to provide two staff members for up to a total of 45 hours per week with administrative support for up to 4 hours per week. Mrs. Nussbaum agrees to operate the Bensenville Teen Center in accordance with the following:

### **a. Hours**

The Teen Center will be open on school attendance days from 3 PM to 7 PM, Monday through Friday for a total of 20 hours per week. Staff will be available for meetings and/or additional time within the junior high for up to three hours per week. The remaining 2 hours per week will be used for preparation and planning time. Staff may adjust hours of operation during the duration of the contract with permission of the village.

The Teen Center will offer programming on eight additional non-school days during the school year.

Summer attendance hours will be flexible to fit programming needs including field trips and "Music in the Park." The Center will be open a minimum of 15 hours per week. In August, the Center will be closed to youth for one week to allow for preparation and programming by staff for the upcoming school year.

### **b. Attendance**

Any youth residing in Bensenville and attending middle school will be eligible to attend the Teen Center with guardian approval. Each youth must agree to adhere to a "Code of Conduct," listing Teen Center rules.

### **c. Programming**

The philosophy of the Teen Center will be to provide structured activities that will promote individual growth. The programming at the Center will have three components: Clinical, Educational and Recreational:

The Clinical component will include therapeutic activities directed by program staff, including self-esteem building, learning to work as a team, problem-solving, community-involvement, etc. Staff will refer appropriate youth to individual or family counseling, provided through Northeast DuPage Family and Youth Services at no cost to the family. All clinical components will be supervised by a Licensed Clinical Professional Counselor.

Educational components will include informal tutoring will occur by staff and time for homework will be worked into the schedule. Staff will pursue the use of volunteers, including peers, high school students or adults to increase tutoring services.

Recreational components will include in house activities such as pool, ping pong etc as dictated by the equipment provided by the village of Bensenville. However, a large portion of recreation will be provided through the Edge Ice Arena and the Redmond Complex. Staff will coordinate the use of these facilities with village employees. The village will be responsible to provide instructors for the different activities, while staff provides supervision. These opportunities may include rock climbing, swimming, soccer, softball, ice-skating, etc.

#### **d. Transportation**

Youth who attend the Center will be responsible for his own transportation to and from the Center. Center staff will work with the village and with parents to arrange transportation to and from any field trips.

#### **e. Insurance**

Wendy Nussbaum agrees to provide professional liability insurance and workman's compensation for staff under her employ at the Bensenville Teen Center. The village of Bensenville will be responsible for all other insurance directly related to the program.

#### **f. Cost of Contract**

The contractual cost of the Teen Center to the Village of Bensenville will be \$56,000 (\$4666.67 per month) for the duration of the contract.

The Village of Bensenville will be responsible for all other reasonable costs directly related to the Teen Center, including but not limited to food, activities, transportation and maintenance.

The Village of Bensenville agrees to provide office space, a computer with internet access, telephone access and a cellular phone to one Teen Center staff member. Teen Center staff will use the village's Director of Communications and Marketing to design mass produced written communications regarding the Teen Center, including flyers, brochures, press releases, etc.

#### **g. Additional Responsibilities**

The Village of Bensenville agrees that any additional responsibilities to Wendy Nussbaum or her staff outside of this contract may result in a higher rate of reimbursement or a reduction of hours of operation for the Teen Center. If the Village desires additional duties to be performed, Mrs. Nussbaum will be contacted and an additional agreement may be reached.



Mrs. Nussbaum retains the administrative control over employees hired to staff the Teen Center and will work diligently with Teen Center staff and Village staff to resolve any differences that may arise.

This contract will be in effect from June 1, 2010 through May 31, 2011.

_____	Wendy	_____
Nussbaum, LCPC		Date

_____	Village of	_____
Bensenville Representative		Date

TYPE: Resolution SUBMITTED BY: F. Kosman DATE: 6/02/10

DESCRIPTION: Resolution to Pay the Annual Northeast DuPage Youth and Family Services (NEDYFS) Contribution

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

**COMMITTEE ACTION:**

**DATE:**

**BACKGROUND:**

The Village through its police department has been a member of this intergovernmental social service agency for the last 28 years. The other current members are Addison and Itasca. The annual contribution is \$18,875 which is the same as last year.

**KEY ISSUES:**

The social service agency provides 24-hour crisis intervention services. By sharing the cost, the member municipalities are able to provide this beneficial service more efficiently. The service agency receives a state grant for about \$85,000 to administer the crisis intervention for runaway and "at risk" youths and to counsel the "at risk" adolescents with mental health issues. In addition to crisis intervention, the social service agency provides counseling services at no cost to needy Bensenville families that the police department refers for counseling. This provides the opportunity for families that may otherwise not have access to such services.

During 2009, the agency provided about 1428 service hours of crisis intervention, consulting, and referrals for Bensenville residents. I have attached a copy of their 2009 Annual report for your review.

**ALTERNATIVES:**

1. Approve a Resolution to Pay the Annual Contribution.
2. Discretion of the Board.

**RECOMMENDATION:**

Staff recommends approval of the Resolution. Based on the proposed fiscal year's payment, the estimated hourly cost would be about \$13.22 for the counseling services. This is a very competitive price for the professional service.

**BUDGET IMPACT:**

The not to exceed amount of \$18,875 is within the budgeted amount for the amended FY10 budget. 11040341-532100

**ACTION REQUIRED:** Motion to approve a resolution authorizing the Village Manager to execute a purchase order for the contribution to the NEDYFS for the not to exceed amount of \$18,875.



Resolution No. R-

Authorizing the Payment for the Annual Northeast DuPage Youth and Family  
Services Contribution for Amended Fiscal Year 2010

BE IT RESOLVED by the President and Board of Trustees of the Village  
of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

That the Village Manager is authorized to execute a purchase order for the  
contribution to the Northeast DuPage Youth and Family Services in the not to  
exceed amount of \$18,875.

PASSED AND APPROVED by the President and Board of Trustees of the  
Village of Bensenville, Illinois, this \_\_\_\_\_ day of June, 2010.

APPROVED:

\_\_\_\_\_  
Frank Soto  
Village President

ATTEST

\_\_\_\_\_  
JoEllen Ridder  
Deputy Village Clerk

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**Northeast DuPage Family and Youth Services  
(NEDFYS)**

- I. About Us**
- II. History**
- III. Philosophy**
- IV. Agency Structure**
- V. Current Staff**
- VI. Collaborative Relationships**
- VII. Funding**
- VIII. Community Utilization**
- IX. Contact Information**



# Northeast DuPage Family and Youth Services (NEDFYS)

## I. About Us

Northeast DuPage Family and Youth Services (NEDFYS) is a community-based social services agency located within the Addison Police Department. NEDFYS serves residents of the villages of Addison, Bensenville and Itasca. All services are available at no cost to any individual residing within the participating communities.

NEDFYS offers the following services:

- **Crisis Intervention** through the Police Departments: (24 hour on-call service to assist police with social service emergencies.)
- **Counseling:** Individual, family and marital counseling is provided under the supervision of a Licensed Clinical Professional Counselor.
- **Referrals:** NEDFYS assists individuals to access other social service agencies as needed (food pantries, senior services, legal services, PADs, etc.)
- **Financial Assistance:** NEDFYS offers limited financial assistance for housing, utilities and food. (This service is currently available to Addison residents only.)
- **Employee Assistance:** Any employee of the participating villages is eligible to receive counseling regardless of his/her residency.
- **Training and Technical Assistance:** NEDFYS provides training and technical assistance to police departments, community members and counseling interns on social service issues.

## **Northeast DuPage Family and Youth Services (NEDFYS)**

### **II. History**

NEDFYS was originally organized in 1976 as a result of an intergovernmental agreement between the communities of Bensenville, Wood Dale, Addison and Itasca as well as the Township of Addison. Begun as an employee assistance program, the social services were quickly expanded to offer services to all residents of Addison Township. At that time the agency was called Addison Township Family and Youth Services. The agency was originally staffed by Mr. Marty Nash, a full-time employee of the Village of Addison.

In April 1984, NEDFYS became a founding member of the DuPage Youth Services Coalition (DYSC.) DYSC was a "mini-consortium" comprised of nine local agencies and was formed to seek a Child Welfare License and to secure state funding. This funding allowed NEDFYS to provide the following services specifically to youth who had runaway from home: 24-hour crisis intervention, individual and family counseling, advocacy and shelter care placements. This funding was available under Illinois Senate Bill 1500, Comprehensive Community Based Youth Services (CCBYS.)

In 1998, Marty Nash, the original director retired. The decision was made at that time to move from a full-time village employee to a part-time contractual agreement. The original contract was awarded to Wendy Nussbaum, who had been a part-time counselor and crisis worker. Soon after that, due to financial concerns, the Township of Addison left the intergovernmental agreement and the agency name was changed to Quad Community Social Services.

In 2007, the agency was incorporated and was awarded 501 (c) (3) status. This allowed the agency to "stand alone" and to apply for different types of grants in line with the agency purpose. To commemorate these changes, the participating police departments voted to once again change the agency name. The new name became Northeast DuPage Family and Youth Services (NEDFYS.)

In 2009, NEDFYS was awarded two additional Department of Human Services Grants, Unified Delinquency Intervention Services (UDIS) and Communities for Youth (CFY.) These new grants allow the agency to work with two additional populations of youth, youth on intensive probation and truant youth.



## Northeast DuPage Family and Youth Services (NEDFYS)

### III. Philosophy

*NEDFYS is committed to providing low cost, high quality social services to community residents who might not otherwise be able to afford them.*

Because of its subjectiveness, "high quality social services" can be difficult to define. NEDFYS believes it is built on the following three concepts:

- **Respect** for the individual, the family and the community:

NEDFYS respects the cultural and socio-economic diversity of the community and its residents. NEDFYS adjusts its programs and strategies for intervention to meet the emerging needs of its clients and the community. The agency responds to identified gaps in services by being creative and flexible.

NEDFYS honors the strengths that its clients possess and supports the personal growth and responsibility of individuals and within families.

NEDFYS recognizes its connections to other agencies and collaborates with them to improve the quality of life in the community. NEDFYS recognizes its responsibility to the police departments in particular and works closely with them to achieve the best possible outcomes in emergency situations.

- **Knowledgeable and Skilled Staff**

Staff members at NEDFYS have a commitment to continuing professional development through training, education, and supervision. Issues with which staff members are unfamiliar are addressed through consultation or referral to others who possess the particular expertise required.

- **Best Practices**

NEDFYS chooses best practice program models for the creation of positive change in individuals and families. Foremost in its consideration when choosing an approach is whether the practice is "evidence-based", having demonstrated its efficacy through rigorous scientific study. NEDFYS currently has clinicians trained in *Functional Family Therapy* (FFT), a Blueprint ® program that has been shown to significantly reduce recidivism among youth with juvenile justice involvement, and *Washington Aggression Interruption Training* (WAIT), an outcome-based anger management program for youth. The next program that NEDFYS plans to implement is *Step Up*, a program designed to effect change in youth with domestic battery charges.

**Northeast DuPage Family and Youth Services  
(NEDFYS)**

**IV. Agency Structure**

NEDFYS was incorporated on 5/1/2007. It achieved its 501 (c) (3) status on December 17, 2007. It is further classified as a Public Charity.

NEDFYS is managed by its Board of Directors. According to its bylaws, the Board is comprised of not less than four (4) or more than fifteen (15) qualified members. The police chief of each participating community will appoint at least one member to the Board of Directors. The treasurer for the Village of Addison will also serve as the treasurer of the agency Board of Directors.

The current Board Members are listed below:

**Timothy P Hayden**

3 Friendship Plaza  
Addison, IL 60101  
(630)543 3080  
[THayden@addison-il.org](mailto:THayden@addison-il.org)

**Frank J Kosman**

100 N Church Rd.  
Bensenville, IL 60106  
(630)350 3455  
[fkosman@bensenville.il.us](mailto:fkosman@bensenville.il.us)

**Scott E Heher**

540 West Irving Park Rd.  
Itasca, IL 60143  
[sheher@itasca.com](mailto:sheher@itasca.com)

**Roseanne M Benson**

1 Friendship Plaza  
Addison, IL 60101  
(630)543 4100  
[RBenson@addison-il.org](mailto:RBenson@addison-il.org)



## Northeast DuPage Family and Youth Services (NEDFYS)

### V. Current Staff

- a. **Robert Baechle, LCPC:** Rob is a licensed counselor who works mainly out of the Itasca Police Department. He started with the agency in 1998 as an intern and continued on part-time. Rob is trained in *Functional Family Therapy*. He works primarily with youth and their families. He also is responsible for the Employee Assistance Program. Rob's full-time job is Program Manager at the DuPage County Health Department.
- b. **Vanessa Bressani, MA:** Vanessa completed her internship at the agency in June of 2008. During her internship, she started an ESL support program at Fenton High School where she worked with Spanish-speaking students. Vanessa is currently the Violent Crime Victim's Assistance program manager and is trained in the *Washington Aggression Interruption Training*.
- c. **Lois Dresselhaus, BA:** Lois joined the NEDFYS staff as office manager in September of 2009. She has lived and worked in Latin America for 21 years and enjoys interacting with Spanish speakers on an almost daily basis on the job. She keeps information flowing to the staff, does the monthly DYSC billing, and keeps track of clients served.
- d. **Christal Ireland, LCPC:** Christal joined the staff in December, 2009 to begin work as the "Step-Up" coordinator. She will work with juvenile perpetrators of domestic violence and their families. Christal has a successful private practice and has done significant work with the DuPage County Probation Department.
- e. **Jessica Lopez, BA:** Jessica graduated from Northern Illinois in May of 2009 with a double major in Spanish Language and Sociology. She joined the agency in November 2009 to begin the Unified Delinquency Intervention Services (UDIS) program. Jessica works with juveniles who are on probation for serious offenses.
- f. **Jaclyn Messerges, BA:** Jaclyn completed her initial internship at NEDFYS in August 2009 and joined the staff as the crisis worker in September 2009. She carries the pager and responds to all crisis calls, Monday through Friday. Jackie fills her "spare" time coaching gymnastics and completing her master's degree.
- g. **Wendy Nussbaum, LCPC:** Wendy is the Executive Director for the Agency. Wendy completed her internship in 1986 under Marty Nash and was appointed Executive Director in 1998. Wendy is trained in Functional Family Therapy, but currently her time is mostly spent on Administrative duties. Wendy also serves as Leadership Agent for DYSC.

**Northeast DuPage Family and Youth Services  
(NEDFYS)**

- h. Vivica Odell, MSW:** Viv joined the agency in June 2007 to be the Intern Coordinator for all the counseling students. Viv is responsible to hire and oversee all the interns from various colleges and master's level programs.
- i. Dana Pavlu, LCSW:** Dana brings a wealth of experience working with juveniles to the agency. She previously supervised IDHS programs at another DYSC agency. In June, Dana and her husband had a baby boy and Dana decided to work part-time. Dana supervises the UDIS program and works with the Bensenville Teen Center.
- j. Interns:** NEDFYS has worked with interns from the following schools: Aurora University, Adler School of Professional Psychology, Benedictine University, Jane Addams School of Social Work, Loyola University, Lewis University, National Louis University and Wheaton College Graduate School. All interns have been working on a Master's Degree.



## Northeast DuPage Family and Youth Services (NEDFYS)

### VI. Collaborative Relationships

NEDFYS recognizes the value of collaborating with other community agencies to eliminate duplication of services and provide the best possible services.

NEDFYS is a member of the following collaborations:

- a. *DuPage Youth Services Coalition (DYSC)*: The members include Wheaton Youth Outreach, NCO, Center for Family Services and NEDFYS. Its purpose is to provide crisis intervention services and counseling services to "at risk" youth.
- b. *Bensenville Youth Coalition (BYC)*: Members include Bensenville Library, Bensenville Park District, Bensenville Teen Center, the Village of Bensenville, Blackhawk Middle School, the Bensenville Police Department, Fenton High School and NEDFYS. Its purpose is to provide quality programming for Bensenville youth.
- c. *Models for Change, DuPage*: Members include representatives from DuPage County Juvenile Probation, DuPage County State's Attorney, DuPage County Public Defender, DYSC, DuPage County Health Department, DuPage County Juvenile Detention, Addison Police Department, IDCFS, IDHS, NEDFYS. Its purpose is to improve the effectiveness of the juvenile justice system.
- d. *Illinois Collaboration on Youth*: Members include youth agencies across the state. Its purpose is to examine and lobby for legislation affecting youth.
- e. *Itasca Safe Communities America*: Members include various Itasca agencies, including NEDFYS. Its purpose was to achieve recognition from the World Health Organization as providing programming to keep Itasca residents free from accidents or injury. Itasca was one of the first communities nationwide to achieve this status.

## **Northeast DuPage Family and Youth Services (NEDFYS)**

### **VII. Funding**

**NEDFYS receives its funding through local and state grants. In FY10, the agency also received some American Recovery and Reinvestment Act funds, channeled through its state grants.**

**NEDFYS receives its local grant from the participating police departments and their villages. The amount of each grant is calculated using a formula based upon population. This funding allows for an on-call worker, 24 hours per day, seven days per week to respond to social service-related calls at the police department. These calls range from suicide assessments to mental health crises to domestic incidents. The participating police departments can request an on-call counselor at any point. The funds also cover general operating costs and counseling for non-DYSC clients.**

**A significant portion of agency funding comes through three state grants (CCBYS, UDIS and CFY) which are administered by the DuPage Youth Services Coalition (DYSC.)**

- CCBYS funds are to be used to work with youth ages 11-17 that have run away from home or are otherwise determined to be at risk to enter the juvenile justice system. Each adolescent is assessed with the Youth Assessment Screening Instrument (YASI) to determine risk level. In FY09 NEDFYS had an obligation to perform 76 hours of service to this population each month. In FY10, one of the DYSC agencies closed, which meant NEDFYS' service area increased to cover additional territory within DuPage County. Currently NEDFYS serves 13 police stations, including Addison, Bensenville, Burr Ridge, Elmhurst, Hanover Park, Hinsdale, Itasca, Lombard, Oakbrook, Oakbrook Terrace, Roselle, Villa Park and Wood Dale. Because of the increase in funding, NEDFYS is obligated to perform 112 hours of service to this population each month. NEDFYS will receive approximately \$85,000 in FY10 for this grant.**
- UDIS funds are to be used to work with youth who have committed at least two serious offenses or one very serious offense. These youth are at great risk of sent DoC. This program is new to NEDFYS in FY10. The UDIS work is expected to be much more intense than CCBYS work. NEDFYS hired its first full-time worker to work with this population. The anticipated work load is 120 hours per month. NEDFYS will receive approximately \$70,000 in FY10 for this grant.**
- CFY funds are to be used with youth who have been referred to the Regional Office of Education (ROE) for truancy issues. The state approached DYSC to ask if the participating agencies would**



## **Northeast DuPage Family and Youth Services (NEDFYS)**

work with youth at risk of being detained in the Youth Home for truancy issues. DuPage County is one of the few counties who still detain status offenders, putting the state at risk for reduced federal funding. NEDFYS will receive \$20,000 in FY10 for this grant.

NEDFYS also receives several smaller grants to perform a specific purpose:

- a. Violent Crime Victim's Assistance: follow-up services specifically for victims referred by the police department. (\$15,000)
- b. Salvation Army Funds (\$800)
- c. DYSC Executive Leadership Agent Grant. (\$6,000)

### **FINANCIAL PICTURE:**

FY10 has been a "rollercoaster" year for NEDFYS and its funding. In June, 2009, the agency was notified that there would be a 27% cut in funding. In July, Center for Family Services, another DYSC agency closed its doors, allowing for its state funding to be reallocated. Furthermore, the cuts were restored, increasing NEDFYS' CCBYS funding from the potential of \$41,610 to \$85,000.

Later in July, DHS approached DYSC with the possibility of absorbing the UDIS services which had been provided by Center for Family Services. Only two of the three remaining DYSC agencies elected to be providers, increasing NEDFYS' share of the grant to \$70,000.

In August, DHS notified DYSC that a significant portion of one of these two grants would be funded with American Recovery and Reinvestment Act funds (commonly known as stimulus money.) With this news came an onslaught of reporting requirements and paperwork. The good news was to be that this money would come through to the agencies quickly.

At the same time, DHS also asked that the DYSC agencies begin to work with truants. The idea was to be that these kids would get one more opportunity to work out whatever issues were keeping them out of school, before being sent to the youth home.

By the end of August, NEDFYS felt that their financial picture was very strong, but knew that the cash reserves would begin to run out if state funds did not come through quickly. In the fall, the board treasurer asked the participating villages to increase their contributions in order to provide a greater reserve for the agency.

**Northeast DuPage Family and Youth Services  
(NEDFYS)**

In December, NEDFYS received its first state money for FY10, approximately \$7000. Because the agency had increased its services to include these new programs (UDIS and CFY,) the reserves were dwindling even more quickly. By the end of January 2010, the situation was dire and plans to lay off staff were made. Fortunately, a \$23,000 payment was received and the agency could remain open. The agency is anticipating additional payments in the immediate future.



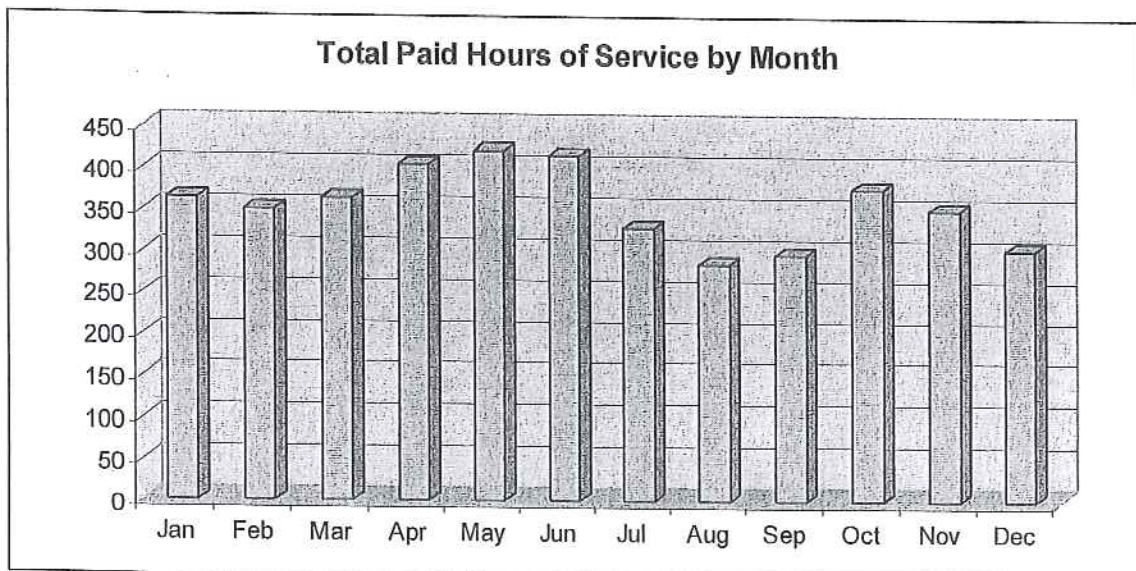
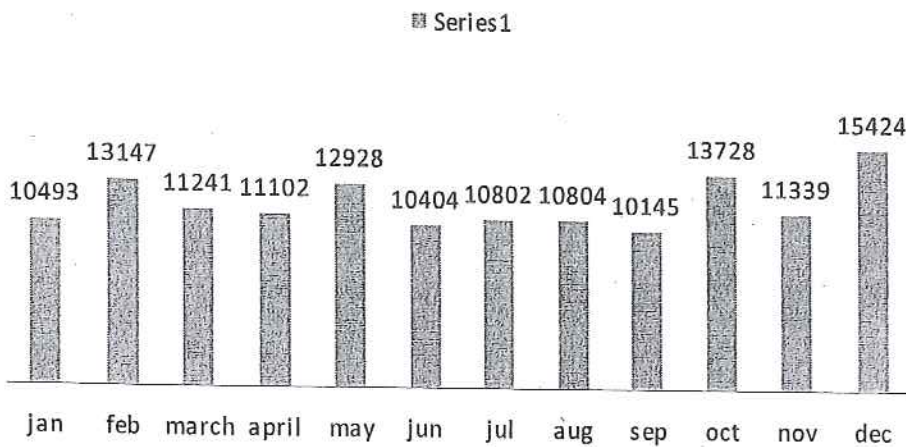
# Northeast DuPage Family and Youth Services (NEDFYS)

## VIII. Community Utilization

### A. Agency Overall Statistics

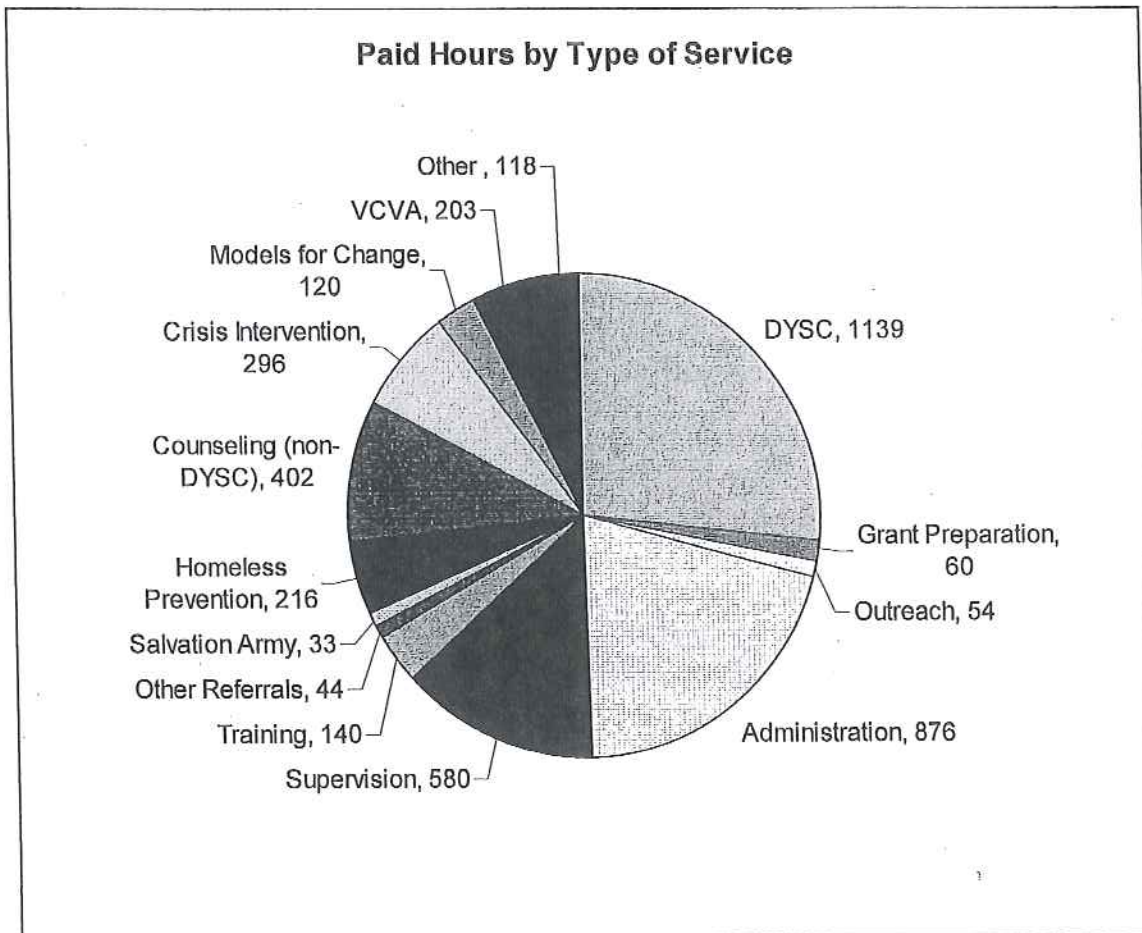
In 2008, NEDFYS provided 4281 paid hours of service to the participating communities. Approximately 600 additional hours of services were provided by the counseling interns for a total of 4881 hours of service.

### Contractual personnel \$ per month



The total cost of services during 2009 was **\$141,556**. The total number of paid service hours was **4735**. Based on these statistics, an hour of social services costs **\$29.89**, well below the average cost of \$65 per hour.

## Northeast DuPage Family and Youth Services (NEDFYS)



NEDFYS provided a total of 4735 paid hours of service, as well as approximately 1200 unpaid hours from interns in 2009 .



TYPE: Resolution SUBMITTED BY: F. Kosman DATE: 6/02/10

DESCRIPTION: Resolution to Approve an Intergovernmental Agreement Between the Village of Bensenville and Bensenville Elementary School District No. 2

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

-----  
**COMMITTEE ACTION:**

**DATE:**  
-----

**BACKGROUND:**

Bensenville School District #2 will be meeting in reference to the attached intergovernmental agreement with the Village for having a school resource officer assigned to the district for the upcoming school year. The intergovernmental agreement is the same as last year's except that the personnel costs have been updated.

**KEY ISSUES:**

In summary, the intergovernmental agreement includes the following provisions:

- The agreement would be for one year and could be cancelled by either party with a 60-day notice.
- The officer would be assigned as the resource officer for the School District for days that the schools are in session or about 179 days per year.
- The officer's shift will be 8 hours per day usually during the school day but could be adjusted as required.
- The school district will be responsible for 70% of the officer's annual salary and benefits.
- The school district will be responsible for 70% of the officer's annual equipment costs.
- In total, District 2's reimbursement cost to the Village is \$70,547 for the upcoming school year.

**ALTERNATIVES:**

1. Approve a Resolution to Authorize the Intergovernmental Agreement.
2. Discretion of the Board.

**RECOMMENDATION:**

The school and the police department have been satisfied with the Officer Kevin Banks' performance in this role these past 3 years. Both staffs recommend that he fill this position for the upcoming school year.

**BUDGET IMPACT:**

When not assigned to the school, the officer would be assigned to either patrol or investigations depending on what best met the needs of the department at that time. The position was included in this fiscal year's budget.

**ACTION REQUIRED:** Motion to approve a resolution authorizing the Village President to execute the Intergovernmental agreement.

**RESOLUTION NO. R-**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
VILLAGE OF BENSENVILLE AND BENSENVILLE ELEMENTARY SCHOOL  
DISTRICT No. 2**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of Du Page and Cook, Illinois, as follows:

That the Village President is authorized to execute and the Village Clerk or Deputy Clerk to attest to an intergovernmental agreement, as attached hereto, between the Village of Bensenville and the Bensenville Elementary School District No. 2 for the assignment of one police officer to Blackhawk Middle School during the 2010/2011 school year.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this \_\_\_\_\_ day of June, 2010.

APPROVED:

\_\_\_\_\_  
Frank Soto  
Village President

ATTEST:

\_\_\_\_\_  
JoEllen Ridder  
Village Clerk

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_



INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN  
THE VILLAGE OF BENSENVILLE AND BENSENVILLE  
ELEMENTARY SCHOOL DISTRICT No. 2

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois ("the Village"), and the BOARD OF EDUCATION OF BENSENVILLE ELEMENTARY SCHOOL DISTRICT NO. 2, DuPage county, Illinois ("the School District").

*WITNESSETH:*

WHEREAS, Article VII, Section 10 of the Illinois Constitution provides that units of local government and school districts may contract to share services through intergovernmental agreements; and

WHEREAS, the Illinois Intergovernmental Cooperation Act (5/ILCS 220/1, et seq.) provides that public agencies may share powers through intergovernmental agreements; and

WHEREAS, the Village is a unit of local government (as defined in Article VII, Section 10 of the Illinois Constitution) and a public agency (as defined in Section 2 of the Illinois Intergovernmental Cooperation Act), and the School District is a school district (as identified in Article VII, Section 10 of the Illinois Constitution) and a public agency (as defined in Section 2 of the Illinois Intergovernmental Cooperation Act); and

WHEREAS, the School District desires to have a police officer (hereinafter referred to as a "Resource Officer") posted at Blackhawk Middle School during the school year; and

WHEREAS, the Village has determined it to be appropriate to provide the services of a Resource Officer at Blackhawk Middle School;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Village and School District agree as follows:

1. Payment:

- a. The School District hereby agrees to reimburse the Village for 70% of the annual salary and benefits of one Resource Officer, and the School District hereby agrees to reimburse the Village for 70% of the annual equipment costs of one Resource Officer, as itemized in attached Exhibit A. The annual salary, benefits, and equipment costs hereinafter are collectively referred to as "Annual Costs."
- b. The School District agrees to submit payment for its reimbursement obligations relating to Annual Costs, as follows: During each school year,

said payment for the school year shall be made in advance, in four equal installments, on September 1, November 1, January 1, and March 1.

- c. In addition, the School District hereby agrees to reimburse the Village for the following additional expenditures, as itemized in the attached Exhibit B:  
(1) 70% of the cost of the Resource Officer's annual uniform allowance. Uniform costs are hereinafter referred to as "Additional Expenditures."
  - d. Additional Expenditures shall be invoiced to the School District by the Village. Upon receipt by the School District of an invoice for an Additional Expenditure, the School District shall reimburse the Village within 30 (thirty) days of receipt of said invoice.
2. SERVICES: The Village shall assign one Resource Officer to Blackhawk Middle School during the scheduled school year. The Resource Officer shall be assigned to Blackhawk Middle School from 9:00 AM until 5:00 PM on all days of student attendance and three additional in-service days, for a total of 179 days. If the School District needs the Resource Officer adjust his or her hours to meet a specific need such as to testify at student discipline or expulsion hearings, the Resource Officer's hours shall be adjusted accordingly. There shall be no additional charge to the School District for the change.
3. INDEMNIFICATION:
  - a. The Village agrees to indemnify, defend, and hold harmless the School District and its board members, employees, volunteers, and agents, from and against any claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and expenses (including reasonable attorney fees), arising from or caused by, in whole or in part, the intentional or negligent acts or omissions of the Village or the Resource Officer or any other employee, volunteer or agent of the Village, except to the extent that such claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and/or expenses arise from or are caused by the intentional or negligent acts or omissions of the School District or its employees, volunteers or agents.
  - b. The School District agrees to indemnify, defend, and hold harmless the Village and its board members, employees, volunteers, and agents, from and against any claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and expenses (including reasonable attorney fees), arising from or caused by, in whole or in part, the intentional or negligent acts or omissions of the School District or any other employee, volunteer or agent of the School District, except to the extent that such claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and/or expenses arise from or are caused by the intentional or negligent acts or omissions of the Village or the Resource Officer or any other employee, volunteer or agent of the Village.
  - c. The Village and the School District are not limiting or waiving any rights or available defenses, including those under the Tort Immunity Act.



4. PURPOSE/EMPLOYMENT: The overall purpose of the Resource Officer shall be to assist other school officials in maintaining a proper educational environment for the School District's students. However, the Resource Officer is and shall remain an employee of the Village, and shall be supervised through the Police Department. All activities of the Resource Officer shall be undertaken as an employee of the Village, pursuant to all applicable laws and Police Department rules and regulations.
5. ADDITIONAL SERVICES: The posting of a Resource Officer does not relieve the Village from providing such police protection or police services as may be necessary from time to time in exercise of its police power for protection of health, safety, and welfare of the public.
6. ENTIRE AGREEMENT: This instrument contains the entire Agreement between the parties, and no statements, promises, or inducements made by either party that is not contained within the body of this written Agreement shall be valid or binding; and this Agreement may not be modified or amended, except in writing signed by the parties and endorsed hereon.
7. NOTICES: For purposes of notice, the addresses of the parties are as follows:

If to the Village: Village Manager  
Village of Bensenville  
12 S. Center St.  
Bensenville, IL 60106

With copies to: Chief of Police  
Bensenville Police Department  
100 N. Church Rd.  
Bensenville, IL 60106

If to the School District: Superintendent  
Bensenville Elementary School  
District No. 2  
210 S. Church Rd..  
Bensenville, IL 60106

With Copies to: Dawn M. Hinkle  
Canna and Canna, Ltd.  
10703 West 159<sup>th</sup> St.  
Orland Park, IL 60467

8. GOVERNING LAW: It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Illinois, both as to interpretation and performance.
9. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Illinois, the validity of the remaining portion or provisions shall not be affected and the rights and obligations of the parties

shall be enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

10. EFFECTIVE DATE/TERMINATION: This Agreement shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and shall continue in force and govern all transactions between the parties hereto for one (1) year or until cancelled or terminated by either party; but it is agreed that either party shall have the privilege to cancel and annul this Agreement for any reason or no reason sixty (60) days after providing the other party by written notice by registered mail or personal delivery of notice to the other party evidencing the intention to terminate this Agreement.

IN WITNESS WHEREOF, the Village and the School District have caused this Agreement to duly executed on the dates set forth below.

VILLAGE OF BENSENVILLE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Village President

Attest:

\_\_\_\_\_  
Village Clerk

BOARD OF EDUCATION OF BENSENVILLE  
ELEMENTARY SCHOOL DISTRICT NO. 2

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_



ADDITIONAL EXPENDITURES FOR RESOURCE OFFICER

2009 –2010 Uniform Cost for Resource Officer - \$600

70% of Uniform Cost for Resource Officer: \$420

EXHIBIT A

COST OF RESOURCE OFFICER

2010-2011 Annual Salary and Benefits of Resource Officer - \$93,515

70% of Annual Salary and Benefits of Resource officer - \$65,461

2009-2010 Annual Equipment Cost (squad car) of Resource Officer - \$6666

70% of Equipment Cost for Resource Officer - \$4,666

EXHIBIT B



## VILLAGE OF BENSENVILLE

**TYPE:** Ordinance **SUBMITTED BY:** Denise Pieroni **DATE:** June 3, 2010

**DESCRIPTION:** Ordinance amending, Chapter 3 providing for a Class G License

### **SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	Financially Sound Village	<input type="checkbox"/>	Enrich the lives of Residents
<input type="checkbox"/>	Quality Customer Oriented Services	<input type="checkbox"/>	Major Business/Corporate Center
<input type="checkbox"/>	Safe and Beautiful Village	<input checked="" type="checkbox"/>	Vibrant Major Corridors

**COMMITTEE ACTION:** Public Safety Committee recommendation to be presented at Board meeting following committee review of this matter at a 6:00 p.m. meeting on June 8. **DATE:** 06/08/2010

**BACKGROUND:** The proposed amendment addresses two issues raised last year. The first related to the area covered under the liquor license within which liquor can be served. Based on our research, the licensed premise is the area within the building and does not normally include outside areas. The second related to the periodic use of adjacent public right-of-way to expand outdoor areas of restaurants and to allow for the serving of alcohol within these areas. The ordinance as proposed provides for a separate license for outdoor areas subject to certain criteria including the requirement that the indoor facility holds either an "A", E-1 or E-2 liquor license (a stand-alone liquor license for an outdoor eating area would not be allowed.), the area be fenced and that access to the area be through the building. Additionally, it allows the liquor commissioner the opportunity to approve the use of the adjacent right-of-way to expand the outdoor area, subject to a certain limitations including a maximum of 15 events per year with a maximum duration for each event of three (3) days. In that this license would be only available to someone already holding either a Class A, E-1 or E-2 license, a lower fee for this license (\$100.00) is proposed.

**KEY ISSUES:** The proposed ordinance services to clarify area covered under the other classes of licenses. It also provides for the opportunity for a restaurant to expand its business to include an outside area subject to its meeting certain conditions. It also provides the Village with a more effective way to address issues in that it could deny the "G" license without impacting the primary license held by the establishment. Last year, the Two Chiefs restaurant was allowed to expand its outdoor seating area during Music in the Park. The method by which this was accomplished was somewhat cumbersome and required more direct involvement by the Village. The concept of providing more outdoor seating opportunities at local restaurants, however, did work well.

#### **ALTERNATIVES:**

- Retain current regulations/provision
- Discretion of the Committee.

**RECOMMENDATION:** Conditioned on a positive recommendation from the Public Safety Committee, adopted Ordinance amending Code to provide for a "G" liquor license.

**BUDGET IMPACT:** Minimal impact. Additional direct revenues for the license fee will be generated. Additionally an increase in sales tax revenues generated by the increased sales at local restaurants is projected.

**ACTION REQUIRED:** Board on adoption of an amendment to the Code relative to Chapter 3.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 3, CHAPTER 3, OF THE *BENSENVILLE VILLAGE CODE* TO PROVIDE FOR A CLASS G LICENSE**

WHEREAS, the Village of Bensenville ("Village") is a municipality duly organized and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and is authorized to provide for the licensing of the sales and service of alcoholic beverages within its boundaries pursuant to the Liquor Control Act of 1934, 235 ILCS 5/1-1 *et seq.*; and

WHEREAS, the Village has received requests and inquiries from restaurants holding Village liquor licenses whether outdoor private seating areas, such as patios, court yards, and decks, constituting part of the premises and utilized for restaurant purposes may be used for the sales and service of alcoholic beverages; and

WHEREAS, the use of such outdoor private seating areas for sales and service of alcoholic beverages poses the possibility of disruption to adjacent and nearby properties from noise and other activities associated with the consumption of alcoholic beverages; and

WHEREAS, the class A, E-1, and E-2 Licenses, as presently provided for, do not contain provisions to address such problems; and

WHEREAS, according, to allow for the use outdoor private seating areas of restaurants to be used for sales and service of alcoholic beverages, it is appropriate that a special class of license be provided for to control and alleviate the possible disruption to adjacent and nearby properties.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, assembled in a duly noticed regular meeting:

**SECTION ONE:** The foregoing recitals hereby incorporated by reference as if fully set forth.

**SECTION TWO:** Title 3, Chapter 3, Section 3-3-1, of the *BENSENVILLE VILLAGE CODE* is hereby amended to add the definition of "OUTDOOR AREA" as follows:

**OUTDOOR AREA:** Any area or structure of the licensed premises or, if authorized by the local liquor control commissioner, public right-of-way, not wholly within a building or other structure having a solid roof, wall, floor, closable doors, including but not limited to, areas or structures such as porches, patios, pavilions, summerhouses, courtyards, gangways, and decks, even though they may be partially walled or roofed, fenced, screened with lattice or mesh, or otherwise semi-enclosed.



**SECTION THREE:** Title 3, Chapter 3, Section 3-3-5, of the *BENSENVILLE VILLAGE CODE* is hereby amended to add Section G. as follows:

G. Class G.

Class G. No business, whether licensed or not, shall sell or serve alcoholic beverages in any outdoor area of the premises, unless it shall have been issued a Class G in accordance with this section.

1. A class G license shall be issued only to persons legally holding a class A, E-1, or E-2 license provided for under this Chapter 3. Every class G license shall expire at the time of the associated class A, E-1, or E-2 license, regardless of when issued.

2. Every outdoor area must meet the following requirements to be eligible for the issuance of a class G license:

a. The outdoor area must be under the possession of the same person who is the holder of the associated class A, E-1, and E-2 license, and of no other or additional person, for the entire period for which class G license is issued.

b. The outdoor area must be cordoned off completely, such as by a wall or fence, at least 30" high so as to physically prevent access to the area from outside of it.

c. Except for an emergency exit, ingress and egress to the outdoor area shall be only from a building which is part of the premises licensed under the associated class A, E-1, and E-2 license, and no person, including employees of the licensee, shall access the area in any other fashion.

d. Notwithstanding Section 3-3-13 or any other provisions of this Chapter, no outdoor area shall be used for the sales, service, or consumption of alcoholic beverages after 11:00 PM and before 8:00 AM on Monday through Saturday or after 10:00 PM and before 12:00 noon on Sunday.

e. All sales, service, and consumption of alcoholic beverages in an outdoor area shall be with meals and at booths or table with chairs suitable for dining. There shall be no bar or sales or service of alcoholic beverages from a bar in any outdoor area.

f. There shall be no more than 4 seats per 50 square feet in any outdoor area.



3. Upon written application of any holder of a G license to the local liquor control commissioner, the local liquor control commissioner may grant such license holder permission to temporarily use a portion of any Village sidewalk, street, or other public right-of-way adjacent to and abutting the licensed premises for the sales, service, and consumption of alcoholic beverages from the licensed premises. Such sales, service, and consumption of alcoholic beverages on a Village sidewalk, street, or other public right-of-way shall comply with all of the requirements of paragraph 2. a. through e. and paragraph 4 of this subsection G. Additionally, as a condition of the use of any sidewalk, street, or other public right-of-way for sales, service, and consumption of alcoholic beverages, the license holder shall present the local liquor control commissioner with a certificate of insurance or such other proof of coverage for dramshop liability as shall satisfy the commissioner which names the village as an additional insured for the period of such use. No holder of a G license shall be granted permission to use a Village sidewalk, street, or other public right-of-way for sales, service, and consumption of alcoholic beverages as provide for herein more than fifteen (15) times in one calendar year and for no more than three (3) days at any one time. Any suspension or revocation of a G license shall automatically effect a suspension or revocation of any permission under this paragraph for the use of a Village sidewalk, street, or other public right-of-way for sales, service, and consumption of alcoholic beverages. Further, such permission may be suspended or revoked as provided for in this Chapter 3 independently of a class G or any class of license held by the license holder.

4. In addition to the foregoing requirements, the village president, in the exercise of his powers as local liquor control commissioner, may impose such additional requirements on the issuance of any class G license with respect to light and noise from the outdoor area.

5. Any class G license may be suspended or revoked as provided for in this Chapter 3 independently of the associated class A, E-1, and E-2 license.

6. The annual license for a class G license shall be one hundred dollars (\$100.00).

7. There shall be no more than eight (8) class G licenses issued and outstanding at any one time.

**SECTION EIGHT:** That all other ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, expressly repealed.

**SECTION NINE:** This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_\_ day of June 2010.

\_\_\_\_\_  
Frank Soto, Village President

ATTEST:

\_\_\_\_\_  
Jo Ellen Ridder, Village Clerk

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

TYPE: Motion SUBMITTED BY: S. Viger DATE: 06.08.10

**DESCRIPTION:**

Motion regarding the approval of an amendment to Title Six, Chapter 4 Weeds; Plants

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

-----  
**COMMITTEE ACTION:** New

DATE: 06.08.10  
-----

**BACKGROUND**

We have long had an issue with unkempt properties in the Village. The recent spike in foreclosed and vacant properties has exacerbated the problem in all areas of the Village. Also, Section 11-20-7 of the Illinois Municipal Code, authorizing municipalities to enter upon private property, cut or remove overgrown grass and weeds or other nuisance plants, and lien the property if the costs thereof are not paid, was amended effective March 10, 2010, to impose additional notice requirements, necessitating the amendment of the current Ordinance to provide for those requirements. Additionally, the nuisance plants declared in the current Ordinance dates from 1905 and needs updating.

A copy of the current Code Section is attached. The draft Ordinance will be distributed on Monday 06.07.10.

**KEY ISSUES:**

Establishment of a legally defensible, but prompt, process to allow the Village to enter properties and cut non-compliant grass and weeds, etc., and lien the property to recoup Village costs, consistent with the requirements of State statute, and of an itemization of current species of plants, trees, and shrubs or greenery conditions on property that constitute a nuisance to the safety and comfort of Village residents.

**ALTERNATIVES:**

Approve the draft Ordinance as presented.

Approve the draft Ordinance with altered or additional conditions.

Deny the draft Ordinance.

**RECOMMENDATION:**

Staff respectfully recommends approval of the draft ordinance as submitted.

**BUDGET IMPACT:**

N/A

**ACTION REQUIRED:**

Motion approving the proposed amendment to existing Code.



## Chapter 4 WEEDS; PLANTS

### 6-4-1: NUISANCE DECLARED:

Any weeds such as jimson, burdock, ragweed, thistle, cocklebur or other weeds of a like kind found growing in any lot or tract of land in the Village are declared to be a nuisance, and it shall be unlawful to permit any such weeds to grow or remain in any such place. (1976 Code § 11.03)

### 6-4-2: WILLOW TREES, OSAGE HEDGES:

The planting of willow trees on the streets and alleys in the Village is hereby prohibited.

All willows standing in the streets and alleys of the Village, or along the margin thereof, also all osage orange hedges standing anywhere on the street line along any property are hereby declared a public nuisance<sup>1</sup>. (Ord. 104, 4-7-1905)

The Public Works Director shall notify all property owners who have willows or osage hedges along any streets in the Village to remove the same within thirty (30) days after notification, otherwise the Village shall remove them at the expense of the property owner. (Ord. 104, 4-7-1905; amd. Ord. 2-2000, 2-1-2000)

### 6-4-3: HEIGHT RESTRICTION:

It shall be unlawful for anyone to permit any weeds, grass or plants, other than trees, bushes, flowers or other ornamental plants to grow to a height exceeding twelve inches (12") anywhere in the Village, and any such plants or weeds exceeding such height are declared to be a nuisance. (1976 Code § 11.03)

### 6-4-4: REMOVAL NOTICE:

It shall be the duty of the chief code enforcement officer to serve or cause to be served a notice upon the owner or occupant of any premises on which weeds or plants are permitted to grow in violation of this Section and to demand the abatement of the nuisance within ten (10) days. (1976 Code § 11.03; amd. Ord. 44-98, 7-21-1998)

### 6-4-5: ABATEMENT BY VILLAGE:

If the owner, tenant, agent or person in charge of the premises fails to cut, destroy and remove weeds within the time prescribed after notice, then the Village may enter upon the premises, and, if necessary, grade and remove debris to make the premises accessible and then proceed to cut, destroy and remove weeds at the expense of the owner of the premises on which said weeds are growing. Express authority to enter upon said premises and to cut, destroy and remove weeds is hereby conferred upon the Village. The Village shall submit a statement to the owner, tenant, agent or person in charge of the premises for all reasonable costs and charges incurred in connection with the performance of the services rendered therein. (1976 Code § 11.03)

### 6-4-6: COSTS, LIEN UPON PREMISES:

A. Lien: Charges for grading, removing debris and destruction of weeds shall be a lien upon the premises. Whenever a bill for such charges remains unpaid for sixty (60) days after it has been rendered, the Clerk may file with the Recorder of Deeds of DuPage or Cook Counties a statement of lien claim. This statement shall contain a legal description of the premises, the expenses and costs incurred by the Village and the date the weeds were cut, and a notice that the Village claims a lien for this amount. Notice of such lien claim shall be mailed to the owner of the premises if his address is known. Failure of the Clerk to record such lien claim or to mail such notice, or the failure of the owner to receive such notice shall not affect the right to foreclose the lien for such charges as provided in subsection B of this Section.

B. Foreclosure Of Lien: Property subject to a lien for unpaid weed-cutting charges shall be sold for nonpayment of the same and the proceeds of such sale shall be applied to pay the charges after deducting costs, as is the case in the foreclosure of statutory liens. Such foreclosure shall be in equity in the name of the Village.

The Village Attorney shall institute such proceedings, in the name of the Village, in any court having jurisdiction over such matter, against any property for which such bill has remained unpaid sixty (60) days after it has been rendered. (1976 Code § 11.03)

**Footnotes** - Click any footnote link to go back to its reference.

**Footnote 1:** See Chapter 2 of this Title.

**TYPE:** Ordinance **SUBMITTED BY:** Denise Pieroni **DATE:** June 8, 2010

**DESCRIPTION:** An Ordinance Amending a Prior Ordinance Regarding Restructuring The Organization Chart and Titles in the Village Code

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

**COMMITTEE ACTION:**

**DATE:**

**BACKGROUND:** This Ordinance is an amendment to Ordinance No. 26-2010. Upon adoption of Ordinance 26-2010, the Village was notified by Sterling Codifiers, its official codifier of the Village Code, that the deletions and title amendments required by Ordinance No. 26-2010 would affect 280 pages of the Village Code, and would result in substantial cost to the Village. Staff recommends adoption of this Ordinance which will result in the same restructuring goals but not require the vast amount of page changes as required by Ordinance No. 26-2010 as this Amending Ordinance changes the titles and states that in all respects the positions and departments shall henceforth be known as the new titles without actually calling for changes in the titles throughout the Code.

**KEY ISSUES:**

**ALTERNATIVES:**

**RECOMMENDATION:** Staff and the Village Attorney recommend this amendment to the Code for the reasons set forth herein.

**BUDGET IMPACT:**

**ACTION REQUIRED:** Board consideration of this Ordinance.



**ORDINANCE NO.**

**AN ORDINANCE AMENDING ORDINANCE NO. 26-2010**

**CONCERNING ADOPTION OF THE REVISED ORGANIZATIONAL CHART AND  
AMENDING THE *BENSENVILLE VILLAGE CODE* IN ACCORDANCE WITH THE  
ORGANIZATIONAL CHART**

**WHEREAS**, on March 16, 2010, the Village Board of the Village of Bensenville ("Village") approved and adopted Ordinance No. 26-2010 "Adopting a New Revised Organizational Chart and Amending the *Bensenville Village Code* In Accordance With The Organizational Chart;" and

**WHEREAS**, Ordinance No. 26-2010 required the renaming of various Village departments and department officials; and

**WHEREAS**, the Village has been notified by its official codifier that the required renaming will affect numerous sections of the Village Code, at substantial cost to the Village; and

**WHEREAS**, to avoid said cost, staff deems it reasonable and necessary to recommend that the Village Board adopt this amendatory ordinance which will effect the amendments but at a decreased codification cost to the Village.

**NOW, THEREFORE, BE IT HEREBY ORDAINED**, by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

**SECTION ONE:** That the foregoing recitals are incorporated herein by reference as if fully set forth.

**SECTION TWO:** That the Organizational Chart and amendments to the *Bensenville Village Code* as set forth in Ordinance No. 26-2010 remain in full force and effect.

**SECTION THREE:** That, instead of deleting references to the title of "Assistant Village Manager" and replacing said titles in all references in the Village Code to new titles, the Village Code shall be amended to state as follows:

I. Title 1, Administrative. Chapter 13, Department of Public Works:

Whenever the phrase "Assistant Village Manager for Public Works, Purchasing, Engineering and Capital Projects" is used, it shall henceforth refer to, and this position shall be known as "Director of Public Works."

II. Title 1, Administrative. Chapter 14, Community Development Department:

Wherever the phrases "Community Development Department" and "Community Development Director" are used, these phrases shall henceforth refer to, and this department and department head shall be known as "Department of Community and Economic Development" and "Director of Community and Economic Development."



III. Title 4, Police Regulations, Chapter 1, Police Department:

Wherever the phrase "Police Chief/Assistant Village Manager for Public Safety" in Title 4, Chapter 1, and all sections thereunder, and elsewhere in the Village Code, this phrase shall henceforth refer the phrase "Police Chief."

**SECTION FIVE:** All ordinances and resolutions in conflict herewith are repealed to the extent of said conflict. This Ordinance is in full force and effect from and after passage and publication according to law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this 8th day of June, 2010.

\_\_\_\_\_  
Frank Soto, President

ATTEST:

\_\_\_\_\_  
JoEllen Ridder  
Village Clerk

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**TYPE:** Ordinance **SUBMITTED BY:** S. Viger **DATE:** 06.08.10

**DESCRIPTION:**

Ordinance granting a Conditional Use Permit (CUP) to allow Outdoor Storage and variances at the former Auto Truck site at 1160 – 1200 N. Ellis in an existing I – 2 Light Industrial District.

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

---

**COMMITTEE ACTION:** Community & Economic Development **DATE:** 05.18.10

---

**BACKGROUND:**

Auto Truck had occupied the property in question since 1980. They expanded to a new site out of town and when the sale of the Ellis Street site fell through began seeking a new buyer/lessee for the property. To date they have been unsuccessful in finding a lessee who could/would wait for the CUP and to incur the up front cost of paving the site. After several proposed users did not go forward, the applicant met with the staff to seek an approval of the CUP and variances as short term relief. The belief is that if the relief is granted a user could be found to occupy the property and after two years time, the variance would become null and void. At that time either the use would need to cease or the site would need to come into compliance with the village's codes and requirements. Staff has worked with the applicant viewing the question as an economic development and development/zoning issue. Ultimately staff thought it best to bring the site back into productive use with the safeguards found in the conditions.

**KEY ISSUES:**

Whether the application as presented meets the approval criteria found in the Zoning Ordinance for the Conditional Use Permit and variances and if the proposed use is in the best interest of the Village as a whole and will not be detrimental to the local environs of the property in question.

**ALTERNATIVES:**

Approve the Ordinance as presented.  
Approve the Ordinance with altered or additional conditions.  
Remand the request to the CDC for further deliberation.  
Deny the Ordinance.

**RECOMMENDATION:**

The staff respectfully requests that the Committee approve the Conditional Use Permit. At their May 10, 2010 Public Hearing the CDC voted unanimously (6 – 0) to recommend that the Village President and Board of Trustees approve the CUP and variances with conditions. At their May 18, 2010 meeting the Community & Economic Development Committee voted unanimously (4 – 0) to approve the requests.



**BUDGET IMPACT:**

N/A

**ACTION REQUIRED:**

Ordinance approving the Finding of Fact and Conditional Use Permit and variances for 1160 – 1200 N. Ellis Street.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT AND VARIANCES  
FROM THE VILLAGE ZONING CODE TO AUTO TRUCK, INC./MOBILE EQUIPMENT  
WAREHOUSING CO. AT 1160 AND 1200 NORTH ELLIS STREET, BENSENVILLE,  
ILLINOIS**

**WHEREAS**, Auto Truck, Inc./Mobile Equipment Warehousing Co. (the "Applicant") has filed an application seeking a conditional use permit to allow for outdoor storage of trucks and trailers, pursuant to Section 10-9B-3 of *The Village of Bensenville Zoning Ordinance* ("Zoning Ordinance"), and for variances from the requirements of: 1) Section 10-11-2G2 of the Zoning Ordinance to allow outdoor storage on a non-approved surface; 2) Section 10-9B-3 of the Zoning Ordinance to allow outdoor storage that is non-screened; and 3) from Section 10-12-2 of the Zoning Ordinance to increase the area allowed for outdoor storage, at properties commonly known as 1160 and 1200 North Ellis Street, and legally described in Exhibit "A," attached hereto and incorporated herein by reference (the "Subject Properties"), a copy of said application being attached hereto as Exhibit "B" and incorporated herein by reference; and

**WHEREAS**, Notice of Public Hearing with respect to the conditional use and variances sought by Applicant was published on or about April 24, 2010, in the *Daily Herald*, being a newspaper having general circulation within the Village of Bensenville (the "Village"), all as required by the statutes of the State of Illinois and the ordinances of the Village; and

**WHEREAS**, pursuant to said Notice, the Community Development Commission of the Village of Bensenville conducted a Public Hearing on May 10, 2010, all as required by the statutes of the State of Illinois and the ordinances of the Village; and,

**WHEREAS**, the Community Development Commission, pursuant to said Public Hearing, made Findings of Fact as to the granting of the conditional use permit and the requested variances as set out in the Staff Report and adopted a recommendation that the conditional use permit and the requested variances be granted subject to the following conditions as recommended in the Staff Report:

- 1) With regard to the conditional use permit, that: a) the Subject Properties be utilized only in accordance with the site plan submitted as part of the application and prepared by WareMalcomb dated 05-06-2010, with the elimination of the four western-most truck/trailer parking spaces, one in each of the four east-west rows; b) that the



Applicant shall notify the Village in writing of the date on which the outdoor storage use is established; c) the outdoor storage condition use permit shall be in effect for only twenty four months following the date on which it is established; and d) by the date on which the outdoor storage use is established, stormwater inlet protection shall be installed, together with any other Best Management Practices identified by the Village's Director of Public Works, at all catch basin sites.

- 2) With regard to the variances, that the three variances requested and recommended to be granted shall be conditions of the conditional use permit granted herein and shall expire of their own accord with the expiration of the conditional use permit; and

**WHEREAS**, the Community Development Commission forwarded its recommendations, including its Findings of Fact, to the Village Board's Economic & Community Development Committee on May 18, 2010, which concurred in the recommendations made therein as are attached hereto as Exhibit "C" and incorporated herein by reference; and

**WHEREAS**, the Community & Economic Development Commission then forwarded its recommendation, along with that of the Community Development Commission, to the President and Board of Trustees on or about June 8, 2009; and

**WHEREAS**, the President and Board of Village Trustees have considered the matter herein and have determined that the granting of certain of the relief requested is consistent with the Zoning Ordinance and the orderly and harmonious development of the Village, subject to the recommended conditions to the conditional use permit and variances.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, duly assembled at a regular meeting, as follows:

**SECTION ONE:** That the forgoing recitals are hereby incorporated by reference as if fully set forth herein.

**SECTION TWO:** That the Subject Properties is currently zoned under the Zoning Ordinance as I-2 Light Industrial District, which zoning classification shall remain in effect subject to the conditional use permit and zoning variances granted herein.

**SECTION THREE:** That the Approval Criteria for a Conditional Use in the Staff Report, attached to the recommendations of the Community Development Commission in Exhibit "C" and adopted by the Community Development Commission as its Finding of Facts as to the Conditional

Use permit herein, are hereby adopted by the President and Board of Trustees as and for their findings of fact.

**SECTION FOUR:** That, pursuant to Section 10-9C-3 of the Zoning Ordinance, a conditional use permit is granted to allow for outdoor storage of trucks and trailers on the Subject Properties on the conditions that: 1) the Subject Properties be utilized only in accordance with the site plan submitted as part of the application and prepared by WareMalcomb dated 05-06-2010, with the elimination of the four western-most truck/trailer parking spaces, one in each of the four east-west rows; 2) that the Applicant shall notify the Village in writing of the date on which the outdoor storage use is established; and 3) the outdoor storage conditional use permit shall be in effect for only twenty four months following the date on which it is established and shall expire of its own accord without notice or further action of any kind to effect such being required by the Village; 4) for the duration of the conditional use, the Subject Properties shall be and meet the requirements of a "zoning lot," as defined in Section 10-2-3 of the *Bensenville Village Code*; and 5) by the date on which the outdoor storage use is established, stormwater inlet protection shall be installed, together with any other Best Management Practices identified by the Village's Director of Public Works, at all catch basin sites on the Subject Properties.

**SECTION FIVE:** That the Approval Criteria for the variances requested in the Staff Report, attached to the recommendations of the Community Development Commission in Exhibit "C" and adopted by the Community Development Commission as its Findings of Fact as to the variances requested herein, are hereby adopted by the President and Board of Trustees as and for their Findings of Fact.

**SECTION SIX:** That, pursuant to Sections 10-3-3 and 10-16-4 of the Zoning Ordinance, variances are granted from the requirements of: 1) Section 10-11-2G2 of the Zoning Ordinance to allow outdoor storage on a non-approved surface; 2) Section 10-9B-3 of the Zoning Ordinance to allow outdoor storage that is non-screened; and 3) from Section 10-12-2 of the Zoning Ordinance to increase the area allowed for outdoor storage. These three variances are granted on the condition that they shall be conditions of the conditional use permit granted herein and shall expire of their own accord with the expiration of the conditional use permit without notice or further action of any kind to effect such being required by the Village.

**SECTION SEVEN:** That all requirements of the Zoning Ordinance shall be applicable except as allowed by the conditional use permit and variances granted under this Ordinance.

**SECTION EIGHT:** That the terms and conditions set forth herein are deemed to be a fundamental element of the relief granted under this ordinance, and are intended by the Village and the Applicant to run with the Subject Properties and be binding upon any and all successors in interest to the Applicant.

**SECTION NINE** That all other ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, expressly repealed.

**SECTION TEN:** This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of June 2010.

\_\_\_\_\_  
Frank Soto, Village President

ATTEST:

\_\_\_\_\_  
Jo Ellen Ridder, Village Clerk

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_



Exhibit "A"

LEGAL DESCRIPTION

CDC Case # 2010 – 12 1160 - 1200 N. Ellis Street.

The Legal Description is as follows:

PARCEL 1

LOT 1 IN AUTO TRUCK, INC. ASSESSMENT PLAT OF PART OF LOTS 6 AND 7 IN DEVON FIVE ACRE FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER AND PART OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO A PLAT THEREOF RECORDED DOCUMENT NUMBER R92-240550 AND CORRECTED BY CERTIFICATE OF CORRECTION RECORDED AS DOCUMENT R93-027543, IN DU PAGE COUNTY, ILLINOIS.

PARCEL 2

LOTS 6 AND 7 IN DEVON FIVE ACRE FARMS, BEING A SUBDIVISION OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER AND PART OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT LOT 1 IN AUTO TRUCK, INC. ASSESSMENT PLAT OF PART OF LOTS 6 AND 7 IN DEVON FIVE ACRE FARMS, AFORESAID), IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 03 – 02 – 102 – 031, -032, -033

EXHIBIT "B"

COMMUNITY DEVELOPMENT DEPARTMENT  
APPLICATION FOR APPROVAL OF CONDITIONAL USE,  
REZONING OR VARIANCE

Village of Bensenville Acct. # 2010-12

Development Name: 1200 N. VILLAGE Date of Submission: \_\_\_\_\_

A. OWNER:

AUTO TRUCK, INC. / POPPLE, E. COLLIER, V. SHELTON, C.  
Name Corporation (if applicable)

1420 BREWSTER GREEN BLVD.  
Street

PAKISTAN IL. 60103  
City State Zip Code

GAGE F. CLIVER 630.860.5600  
Contact Person Telephone Number

N/A  
If Owner is a Land Trust, the names and addresses of the beneficiaries of the Trust.

B. APPLICANT:

SAME AS ABOVE  
Name Corporation (if applicable)

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Contact Person Telephone Number

\_\_\_\_\_  
Relationship of Applicant to subject property

C. ACTION REQUESTED (Check applicable):

Rezoning from \_\_\_\_\_ to \_\_\_\_\_

✓ Conditional Use for OUTDOOR STORAGE

✓ Variance for: outdoor storage not on an approved surface  
outdoor storage not screened  
increase the area allowed as outdoor storage

from \_\_\_\_\_ to \_\_\_\_\_

Any additional requests which are being processed with the rezoning, special use or variance (if requesting a preliminary/final planned unit development or subdivision plat use other form):

Is this development within the Village limits?

✓ Yes \_\_\_\_\_ No, requesting annexation

\_\_\_\_\_ Under review by another governmental agency and requires review due to 1.5 mile jurisdiction requirements.

D. DEVELOPER'S STAFF:

Attorney: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Builder: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Developer: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Engineer: \_\_\_\_\_ Telephone Number: \_\_\_\_\_



E. PROJECT DATA:

1. Location: 1700 N. FLUKE STREET
2. Property Index Number(s) (PIN): 03-02-102-031, -032, -033
3. General description of the site: FLAT, IMPROVED WITH TWO STRUCTURES  
28,000 ± 42,000 S.F. 50% SITE IS COVERED.
4. Existing zoning and land use of the site: I-2 LIGHT INDUSTRIAL  
DUSTY
5. Acreage of the site: 9.15 AC.
6. Character of surrounding area:

	Zoning	Existing Land Use	Jurisdiction
North:	<u>I-2</u>	<u>LABORATORY</u>	<u>BRADSHAWVILLE</u>
East:	<u>I-2</u>	<u>JP</u>	<u>JP</u>
South:	<u>I-2</u>		
West:	<u>HA</u>	<u>INDUSTRIAL</u>	<u>LEV</u>

7. List any controlling agreements (annexation agreements, Village Ordinances, site plans): PLANS

8. Response Letter. On a separate sheet of paper state why your request should be approved based on the applicable "Approval Criteria" as set forth in the attached Section 10-3-5 (Approval Criteria for zoning Map Amendment), Section 10-3-3-B (Approval Criteria for Variances) or Section 10-3-4-C (Approval Criteria for Conditional Uses).

Re: 1160 – 1200 Ellis Avenue, Bensenville, commonly known as Auto truck, Inc.

The request for variances are to allow the referenced site to continue to use the existing gravel base for trailer storage, not to install additional screening, and to increase the area allowed for outdoor storage from 25% to 50%. The request is based on today's extremely difficult market conditions and the proven loss of interest of viable lessees due to the city requirements, which are restrictions for their intended use. Pleased refer to the enclosed marketing brochure.

The prior use for 40 years allowed storage of up to 400 tractor vehicles as well general outside storage on the existing gravel base with the existing screening. See A on brochure. The existing screening – see B – runs along the middle of the sight and along the north and south sides and well blocks the view from the street and the neighbors and this screening has been adequate for the past 40 years. The amount of parking area for the up to 400 vehicles is about 50% of the 9.75 acre site – see C – again the use for the last 40 years.

To fully grasp the extremely difficult market conditions of today we need to review briefly the recent sale history. In March, 2007 the site went under contract to AMB Corporation for redevelopment to a 175,000 state-of-the art warehouse/distribution facility, similar to 1120-1140 Ellis Avenue. Auto Truck, based on that pending purchase, pursued a new facility out west and concluded that transaction with the intent to perform a 1031 exchange. The market collapse of late 2008 terminated the AMB purchase so Auto Truck then has been carrying two properties the past 16 months as finding a new buyer for 1160 – 1200 Ellis has been very, very challenging in today's new world economy where credit is almost unattainable.

We have received lease offers from Atlas SN Freight, Amerifreight, and Quality Truck Repair the past 90 days. The interest from the three is leasing one of the buildings for light truck maintenance and trailer storage of up to 150 trailers on the gravel surface. Note that the neighbor to the south has that many stored trailers today on gravel. In our response to all three, ownership has structured an early termination provision of a lease to keep open the sale, the main goal of ownership. The rent payment is very, very helpful to Auto Truck as they pursue a buyer.

What stops the lease interest is the Village requirement to pave the gravel area where the trailers will be stored, as well as the additional expense of screening. The 25% coverage allowed is a major restriction as well for then only a few acres can then be used for trailer storage, a main driver of the current market interest and value.

As all who read this fully understand, the extremely difficult economic times limit the number of prospects there are in the market. To date, with great luck, the Auto Truck property has attracted the interest from three lessees, all who have made offers and all who have, to date, gone away when the city requirements to lease today the subject

property are known. If those requirements can be relaxed, potential then for a lease to be closed, providing economic relief to ownership, with the ultimate goal of selling.



EXHIBIT "C"

Village of Bensenville  
Board Room  
12 South Center Street  
DuPage and Cook Counties  
Bensenville, IL, 60106

MINUTES OF THE COMMUNITY DEVELOPMENT COMMISSION

May 10, 2010

**CALL TO ORDER:** The meeting was called to order at 7:30 p.m.

**ROLL CALL :** Upon roll call, the following Commissioners were present:  
Markowski, Janowiak, Ramirez, Ventura, Moruzzi, Weldon  
Absent: None.  
A quorum was present.

**Public Hearing:** CDC Case Number 2010- 12  
**Petitioner:** Auto Truck Inc/ Mobile Equipment Warehouse  
**Location:** 1200 N. Ellis Street  
**Request:** Conditional Use Permit; Outdoor Storage, Variances, Approved surface, area for outdoor storage and screening.

Gage McCotter, CFO for Auto Truck Group, and Brian Carroll, Senior Vice President for Grubb & Ellis, were both present and sworn in by Chairman Markowski. The property is currently vacant and has been for the past year. Mr. McCotter and Mr. Carroll are seeking to rent the property with the possibility of selling. The majority of interested renters have been freight forwarding companies that will use the outdoor storage. The current owners are responsible for the fencing on the property. The fences on the north, south, and east side are currently screened. The fence on the west side is currently another properties fence and is not screened. The current lot is unpaved. It will cost over a million dollars to pave and provide the necessary stormwater detention facilities.

The owners can not currently afford to repave the lot. Staff recommends approval for a twenty four month conditional use and variances upon the date of rental. There was no public comment.

**Motion:** Commissioner Ventura made a motion to approve the facts and findings for CDC case #2010-12. Commissioner Moruzzi seconded the motion.

**Roll Call:** Ayes: Markowski, Janowiak, Ramirez, Ventura, Moruzzi, Weldon

Nays: None

All were in favor.

Motion carried.

Motion:

Commissioner Ventura made a motion to approve CDC case # 2010-12, Auto Truck, Inc/Mobile Equipment Warehouse located at 1160 & 1120 N Ellis Street for a conditional use permit; outdoor storage, variances, approved surface, area for outdoor storage and screening with the addition of the following:

- The property be utilized only in accordance with the site plan
- Property owners shall notify the Village in writing of the date the outdoor storage use is established.
- The approval of the outdoor storage shall only be valid for twenty four months from the date of establishment.
- The variances identified are to be conditions of the conditional use permit and shall expire.
- Installation of stormwater inlet protection and their proper maintenance.
- A lockbox be installed on the gate.

Commissioner Moruzzi seconded the motion.

Roll Call:

Ayes: Markowski, Janowiak, Ramirez, Ventura, Moruzzi, Weldon

Nays: None

All were in favor.

Motion carried.

---

Chairman  
Community Development Commission



**TYPE:** Ordinance **SUBMITTED BY:** S. Viger **DATE:** 06.08.10

**DESCRIPTION:**

Ordinance denying a Conditional Use Permit to allow Motor Vehicle Repair (Minor) and a variance to reduce the required parking located at 120 E. Green Street in an existing C-2 Highway Commercial District.

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input checked="" type="checkbox"/>	<i>Vibrant Major Corridors</i>

---

**COMMITTEE ACTION:** Community & Economic Development **DATE:** 05.18.10

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**BACKGROUND:**

The property at 120 E. Green has been somewhat of an oddity for quite a while. It is improved with a masonry "garage" that was originally constructed for the contractor who resided in the brick bungalow to contain his commercial vehicles. Since that time the home has been rented and the garage has been used as a private garage. Countless complaints regarding the use of the garage for motor vehicle repair have been investigated. The applicant has not been a part of these complaints. There is no parking currently available on the site; the applicant suggested utilizing six spaces (the required number per Code) at the vacant Evergreen restaurant across the alley on an interim basis until finances would allow a proper parking lot to be constructed east of the "garage".

**KEY ISSUES:**

Whether the application as presented meets the approval criteria found in the Zoning Ordinance for the Conditional Use Permit, and that the proposed use is in the best interest of the Village as a whole.

**ALTERNATIVES:**

- Approve the Ordinance as presented.
- Approve the Ordinance with altered or additional conditions.
- Remand the request to the CDC for further deliberation.
- Deny the Ordinance.

**RECOMMENDATION:**

The staff respectfully requests that the Committee deny the Conditional Use Permit and variance. At their May 10, 2010 Public Hearing the CDC voted unanimously (6 – 0) to recommend that the President and Board of Trustees deny both the Conditional Use Permit and the variance. The Community & Economic Development Committee unanimously (4 – 0) voted to deny the request at their May 18, 2010 meeting. A "yes" vote votes to deny the request.

**BUDGET IMPACT:**

N/A

**ACTION REQUIRED:**

Motion to approve the Ordinance which denies the requested Conditional Use Permit.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE DENYING A CONDITIONAL USE PERMIT FOR PROPERTY  
AT 120 EAST GREEN STREET, BENSENVILLE, ILLINOIS, AMIGO TIRE,  
APPLICANT**

**WHEREAS**, on or about December 22, 2009, Joel Linares d.b.a. Amigo Tire Shop (the "Applicant") filed an application seeking a conditional use permit to allow the operation of minor motor vehicle repair business, pursuant to *The Village of Bensenville Zoning Ordinance* ("Zoning Ordinance"), at property commonly known as 120 East Green Street, and legally described in Exhibit "A," attached hereto and incorporated herein by reference (the "Subject Property"), a copy of said application being attached hereto as Exhibit "B" and incorporated herein by reference; and

**WHEREAS**, Notice of Public Hearing with respect to the conditional use sought by Applicant was published on or about January 22, 2010, in the *Bensenville Press*, being a newspaper having general circulation within the Village of Bensenville (the "Village"), all as required by the statutes of the State of Illinois and the ordinances of the Village; and

**WHEREAS**, pursuant to said Notice, the Community Development Commission of the Village of Bensenville conducted a Public Hearing beginning on February 8, 2010, and continued to certain dates thereafter, all as required by the statutes of the State of Illinois and the ordinances of the Village; and,

**WHEREAS**, the Community Development Commission, following said Public Hearing, adopted a motion denying approval of a Finding of Fact that would support the granting of the proposed conditional use permit, based upon a determination that there is not adequate available parking for such business; that the use would have negative effects of noise, glare, odor, dust, waste disposal, blockage of light or air or other adverse environmental effects not characteristic of the historic use of the property or permitted uses in the district; that the proposed use would not fit harmoniously with the character of existing permitted uses in its environs; and that the use is not in harmony with any other elements of compatibility to the conditional use in its proposed location; and,

**WHEREAS**, based upon its denying approval of a Findings of Fact that would support the granting of the proposed conditional use permit, the Community Development

Commission adopted a motion recommending a denial of the proposed conditional use permit,

**WHEREAS,** the Community Development Commission forwarded its recommendations, including its Findings of Fact, to the Village Board's Economic & Community Development Committee on May 18, 2010, which concurred in the recommendations made therein as are attached hereto as Exhibit "C" and incorporated herein by reference; and

**WHEREAS,** the Economic & Community Development Committee then forwarded its recommendations, along with that of the Community Development Commission, to the President and Board of Trustees on or about June 8, 2010; and

**WHEREAS,** the President and Board of Village Trustees, having considered the matter herein and the Community Development Commission's recommendation that the application for the conditional use be denied, have determined the Community Development Commission's findings with respect to the application to be appropriate and the denial of the application accordingly proper,

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, duly assembled at a regular meeting, as follows:

**SECTION ONE:** That the forgoing recitals are hereby incorporated by reference as if fully set forth herein.

**SECTION TWO:** That the Subject Property is currently zoned under the Zoning Ordinance as C-2 Highway Commercial District, but with an RS-5 Single Family District abutting the property on the south and an RS-5 Single Family District to the west.

**SECTION THREE:** That the Proposed Findings of Fact, attached to the recommendations of the Community Development Commission in Exhibit "C" and adopted by the Community Development Commission as its finding of facts for recommending denial of application, are hereby adopted by the President and Board of Trustees as and for their Findings of Fact.

**SECTION FOUR:** That, pursuant to Sections 10-3-4C and 10-7B- 3 of the Zoning Ordinance, a conditional use permit to allow for the operation of a minor motor

vehicle repair business on the Subject Property located at 120 East Green Street is hereby denied.

**SECTION FIVE:** That all other ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, expressly repealed.

**SECTION SIX:** This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of June 2010.

\_\_\_\_\_  
Frank Soto, Village President

ATTEST:

\_\_\_\_\_  
Jo Ellen Ridder, Village Clerk

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_



Exhibit "A"

**LEGAL DESCRIPTION**

CDC Case # 2010 - 08 120 E. Green Street

The Legal Description is as follows:

Lot 1 in Block 10 of the Bauckes Resubdivision of Lots 10 and 11 of Breitman's Addition to Bensenville a subdivision in Sections 13 and 14, Township 40 North, range 11, East of the Third principle Meridian, in Du Page County, Illinois

EXHIBIT "B"

COMMUNITY DEVELOPMENT DEPARTMENT  
APPLICATION FOR APPROVAL OF CONDITIONAL USE,  
REZONING OR VARIANCE

Village of Bensenville Acct. # \_\_\_\_\_

Development Name: PRUGO TIRE SHOP Date of Submission: 12-22-09

A. OWNER:

LEOPOLD MURDZA  
Name Corporation (if applicable)

120 E. GREY ST  
Street

BENSONVILLE ILL 60106  
City State Zip Code

LEOPOLD MURDZA 1-630-201-3214  
Contact Person Telephone Number

If Owner is a Land Trust, the names and addresses of the beneficiaries of the Trust.

B. APPLICANT:

JOEL LINARES  
Name Corporation (if applicable)

2920 N LINDER AVE  
Street

CHICAGO IL 60641  
City State Zip Code

JOEL LINARES (312) 301 9928  
Contact Person Telephone Number

PROPOSED TENANT  
Relationship of Applicant to subject property

C. ACTION REQUESTED (Check applicable):

Rezoning from \_\_\_\_\_ to \_\_\_\_\_

☒ Conditional Use for Motor Vehicle Repair, Minor

Variance for \_\_\_\_\_

from \_\_\_\_\_ to \_\_\_\_\_

Any additional requests which are being processed with the rezoning, special use or variance (if requesting a preliminary/final planned unit development or subdivision plat use other form):

NONE

Is this development within the Village limits?

☒ Yes ☐ No, requesting annexation

☐ Under review by another governmental agency and requires review due to 1.5 mile jurisdiction requirements.

D. DEVELOPER'S STAFF:

Attorney: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Builder: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Developer: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Engineer: \_\_\_\_\_ Telephone Number: \_\_\_\_\_



E. PROJECT DATA:

1. Location: 120 E. GREEN ST
2. Property Index Number(s) (PIN): 03-13-315-015
3. General description of the site: SOUTH SIDE OF GREEN STREET  
BETWEEN MAY AND ROSE STREET
4. Existing zoning and land use of the site: C-2 Highway (Commercial)
5. Acreage of the site: 0.113 ACRES
6. Character of surrounding area:

	Zoning	Existing Land Use	Jurisdiction
North:	<u>C-2</u>	<u>GARAGE</u>	<u>BENSENVILLE</u>
East:	<u>C-2</u>	<u>SINGLE FAMILY RESIDENT</u>	<u>BENSENVILLE</u>
South:	<u>RS-5</u>	<u>SINGLE FAMILY RESIDENT</u>	<u>BENSENVILLE</u>
West:	<u>C-2 &amp; RS-5</u>	<u>RESTAURANT &amp; PARKING LOT</u>	<u>BENSENVILLE</u>

7. List any controlling agreements (annexation agreements, Village Ordinances, site plans): NONE
8. Response Letter. On a separate sheet of paper state why your request should be approved based on the applicable "Approval Criteria" as set forth in the attached Section 10-3-5 (Approval Criteria for zoning Map Amendment), Section 10-3-3-B (Approval Criteria for Variances) or Section 10-3-4-C (Approval Criteria for Conditional Uses).

December 22, 2009

Dear Town hall of Bensenville,

I Joel Linares, would like to open Amigo tire shop in 120 E. green street Bensenville and would like to ask the village to consider giving me the business license.

This shop will not create any traffic to the town, neither it wont create any garbage, noise, odor, or blockage of light or air or any other environmental issues. The tire shop will not disturb the neighborhood in any way. It wont effect any other business all ready existing. In other hands it will be another helpful business to the community. This would benefit the community because it would be closer to their neighborhood/ town. Other factors would be a progression to my family and I believe to the town.

With these reason's I'm hoping that you will give the opportunity to open this business.

Sincerely,  
Joel Linares

EXHIBIT "C"

Village of Bensenville  
Board Room  
12 South Center Street  
DuPage and Cook Counties  
Bensenville, IL, 60106

MINUTES OF THE COMMUNITY DEVELOPMENT COMMISSION

May 10, 2010

**CALL TO ORDER:** The meeting was called to order at 7:30 p.m.

**ROLL CALL :** Upon roll call, the following Commissioners were present:  
Markowski, Janowiak, Ramirez, Ventura, Moruzzi, Weldon  
Absent: None.  
A quorum was present.

**Public Hearing:** CDC Case Number 2010-08  
**Petitioner:** Amigo Tire  
**Location:** 120 E. Green Street  
**Request:** Conditional Use Permit; Motor Vehicle Repair; Minor

Chairman Markowski opened the public hearing in regards to 120 E. Green Street. The petitioners for Amigo Tire were not present. Staff has recommended denial of the conditional use permit for minor motor vehicle repair. There was no public comment.

**Motion:** Commissioner Ventura made a motion to deny the finding and facts in regards to Amigo Tire located at 120 E. Green Street. Commissioner Janowiak seconded the motion.

**Roll Call:** Ayes: Markowski, Janowiak, Ramirez, Ventura, Moruzzi, Weldon  
Nays: None  
All were in favor.  
Motion carried.

**Motion:** Commissioner Ventura made a motion to deny CDC case #2010-08, Amigo Tire located at 120 E. Green Street for a



conditional use permit; motor vehicle repair; minor. Commissioner Weldon seconded the motion.

Roll Call: Ayes: Markowski, Janowiak, Ramirez, Ventura, Moruzzi, Weldon

Nays: None

All were in favor.

Motion carried.

---

Chairman  
Community Development Commission

**TYPE:** Ordinance **SUBMITTED BY:** S. Viger **DATE:** 06.08.10

**DESCRIPTION:**

Ordinance granting a Conditional Use Permit to allow Outdoor Storage and a Variance for an existing non – compliant yard for Earth Inc. located at 1102 N. Ellis Street.

**SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:**

<input type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

---

**COMMITTEE ACTION:** Community & Economic Development **DATE:** 02.23.10

---

**BACKGROUND:**

Earth Inc. has operated at this location or many years. Staff had approached the company about the need for a Conditional Use Permit for their outdoor storage of trucks & trailers. As the staff report indicates in past years a concrete crushing operation caused the Village great concern. However that use has been removed.

**KEY ISSUES:**

Whether the application as presented meets the approval criteria found in the Zoning Ordinance for the Conditional Use Permit and Variance. The staff review indicated a number of property maintenance issues including the lack of a fire alarm in the building. The applicant received a permit to install a fire alarm on 04.26.10; no inspections have been requested to date. A "Letter of Intent" covering other property maintenance issues has been received and is attached to the Ordinance as Exhibit "D". Both the Director of Public Works and Village Engineer do not consider "asphalt grindings" to be an approved surface, and no variance was requested, therefore the Ordinance requires the paving of the site in accordance with Code.

**ALTERNATIVES:**

Approve the Ordinance as presented.  
Approve the Ordinance with altered or additional conditions.  
Remand the Ordinance to the CDC for further deliberation.  
Deny the Ordinance.

**RECOMMENDATION:**

The staff respectfully requests that the Committee approve the Conditional Use Permit and variance. At their February 8, 2010 Public Hearing the CDC voted unanimously (7 – 0) to recommend approval of the variance to the President and Board of Trustees. At a Special Meeting held 02.23.10 the Community & Economic Development Committee voted 3 – 1 to approve the requests. The item was tabled at the March 23, 2010 Village Board meeting as the applicant was not present. At the May 11, 2010 Village Board meeting the item was removed from the table and subsequently continued.

**BUDGET IMPACT:**

N/A

**ACTION REQUIRED:**

Approval of the attached Ordinance.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT AND VARIANCE  
FROM THE VILLAGE ZONING CODE TO EARTH INCORPORATED AT 1102 NORTH  
ELLIS STREET, BENSENVILLE, ILLINOIS**

**WHEREAS**, Itasca Bank & Trust, Trust #10771 (the "Applicant"), has filed an application seeking a conditional use permit to allow for outdoor storage of trucks, trailers, and construction equipment pursuant to Section 10-9B-3 of *The Village of Bensenville Zoning Ordinance* ("Zoning Ordinance"), and for a variance from the minimum yard requirements of: Section 10-9B-4B of the Zoning Ordinance, at property commonly known as 1102 North Ellis Street, and legally described in Exhibit "A," attached hereto and incorporated herein by reference (the "Subject Property"), a copy of said application being attached hereto as Exhibit "B" and incorporated herein by reference; and

**WHEREAS**, Notice of Public Hearing with respect to the conditional use and variance sought by Applicant was published on or about January 22, 2010, in the *Bensenville Press*, being a newspaper having general circulation within the Village of Bensenville (the "Village"), all as required by the statutes of the State of Illinois and the ordinances of the Village; and

**WHEREAS**, pursuant to said Notice, the Community Development Commission of the Village of Bensenville conducted a Public Hearing on February 8, 2010, all as required by the statutes of the State of Illinois and the ordinances of the Village; and,

**WHEREAS**, the Community Development Commission, pursuant to said Public Hearing, made Findings of Fact as to the granting of the conditional use permit and the requested variances as set out in the Staff Report and adopted a recommendation that the conditional use permit and the requested variance be granted subject to the following conditions as recommended in the Staff Report:

- 1) With regard to the conditional use permit, that: a) the Subject Property be utilized only in accordance with the site plan submitted as part of the application; b) the Subject Property shall have appropriate paving for outdoor storage as required by Code; and c) all property maintenance issues to be brought into Code Compliance and inspected by the Village.

- 2) With regard to the variance, that the variance requested and recommended to be granted shall be a condition of the conditional use permit granted herein and shall expire of their own accord with the expiration of the conditional use permit; and

**WHEREAS**, the Community Development Commission forwarded its recommendations, including its Findings of Fact, to the Village Board's Economic & Community Development Committee on February 23, 2010, which concurred in the recommendations made therein as are attached hereto as Exhibit "C" and incorporated herein by reference; and

**WHEREAS**, the Community & Economic Development Commission then forwarded its recommendation, along with that of the Community Development Commission, to the President and Board of Trustees on or about March 23, 2010; and

**WHEREAS**, the President and Board of Village Trustees have considered the matter herein and have determined that the granting of certain of the relief requested is consistent with the Zoning Ordinance and the orderly and harmonious development of the Village, subject to the recommended conditions to the conditional use permit and variances.

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, duly assembled at a regular meeting, as follows:

**SECTION ONE:** That the forgoing recitals are hereby incorporated by reference as if fully set forth herein.

**SECTION TWO:** That the Subject Property is currently zoned under the Zoning Ordinance as I-2 Light Industrial District, which zoning classification shall remain in effect subject to the conditional use permit and zoning variance granted herein.

**SECTION THREE:** That the Approval Criteria for a Conditional Use in the Staff Report, attached to the recommendations of the Community Development Commission in Exhibit "C" and adopted by the Community Development Commission as its Finding of Facts as to the Conditional Use permit herein, are hereby adopted by the President and Board of Trustees as and for their findings of fact.

**SECTION FOUR:** That, pursuant to Section 10-9B-3 of the Zoning Ordinance, a conditional use permit is granted to allow for outdoor storage of trucks, trailers and construction equipment on the Subject Property on the condition that: 1) the Subject Property be utilized only in accordance with the site plan submitted as part of the application; 2) the Subject Property shall



have appropriate paving for outdoor storage as required by Code; 3) all property maintenance issues to be brought into Code Compliance and inspected by the Village; and 4) the property maintenance items identified through the Village staff inspection of the Subject Property be corrected in accordance with the timeframes found in the "Letter of Intent" dated May 24, 2010, attached hereto as Exhibit "D" and incorporated herein by reference, excluding, however, the use of asphalt grindings and gravel overlay, which is not an approved surface by the Village, with all outdoor storage, parking and driving areas instead to be paved in accordance with Village Code requirements subject to a standard building permit and inspections requirements, including storm water management requirements.

**SECTION FIVE:** That the Approval Criteria for the variance requested in the Staff Report, attached to the recommendations of the Community Development Commission in Exhibit "C" and adopted by the Community Development Commission as its Findings of Fact as to the variances requested herein, are hereby adopted by the President and Board of Trustees as and for their Findings of Fact.

**SECTION SIX:** That, pursuant to Section 10-3-3 of the Zoning Ordinance, a variance is granted from the requirements of: Section 10-9B-4 to reduce the required rear yard from 20' to approximately 2.61'. This variance is granted on the condition that it shall be a condition of the conditional use permit granted herein and shall expire of their own accord with the expiration of the conditional use permit without notice or further action of any kind to effect such being required by the Village.

**SECTION SEVEN:** That all requirements of the Zoning Ordinance shall be applicable except as allowed by the conditional use permit and variance granted under this Ordinance.

**SECTION EIGHT:** That the terms and conditions set forth herein are deemed to be a fundamental element of the relief granted under this ordinance, and are intended by the Village and the Applicant to run with the Subject Properties and be binding upon any and all successors in interest to the Applicant.

**SECTION NINE** That all other ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, expressly repealed.

**SECTION TEN:** This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.



**PASSED AND APPROVED** by the President and Board of Trustees of the Village of Bensenville, this \_\_\_\_ day of June 2010.

\_\_\_\_\_  
Frank Soto, Village President

ATTEST:

\_\_\_\_\_  
Jo Ellen Ridder, Village Clerk

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**Exhibit "A"**  
**LEGAL DESCRIPTION**

CDC Case No. CDC 2010 - 06  
1102 N. Ellis Street.

The Legal Description is as follows:

Parcel 1: The west 191.00 feet of Lot 11 in Devon 5 Acre farm, being a Subdivision of the west half of the west half of the northeast quarter and part of the east half of the northwest quarter of Section 2, Township 40 North, Range 11 East of the Third Principal Meridian according to a Plat thereof Recorded June 10, 1947 and amended by a Certificate of Correction recorded August 13, 1947 as Document 526985, in Du Page County, Illinois

And

Parcel 2: Lot 1 of Thorndale Distribution Park in Bensenville, Unit No. 3, being a Subdivision of part of the south half of Section 2, Township 40, North, Range 11, East of the Third Principal Meridian, according to a Plat thereof Recorded October 31, 1984, as Document R84-88004, in Du Page County, Illinois

## EXHIBIT "B"

COMMUNITY DEVELOPMENT DEPARTMENT  
APPLICATION FOR APPROVAL OF CONDITIONAL USE,  
REZONING OR VARIANCE

JAN - 6 2010

Village of Bensenville Acct. # 2010-06

COMMUNITY DEVELOPMENT

Development Name: N/A Date of Submission: 8-21-09A. OWNER: Itasca Bank & Trust #10771

Name

Corporation (if applicable)

Street

City

State

Zip Code

Contact Person

Telephone Number

If Owner is a Land Trust, the names and addresses of the beneficiaries of the Trust.

B. APPLICANT:

Name

Corporation (if applicable)

Street

City

State

Zip Code

Contact Person

Telephone Number

Relationship of Applicant to subject property



C. ACTION REQUESTED (Check applicable): *See answer to question #8*

Rezoning from \_\_\_\_\_ to \_\_\_\_\_

Conditional Use for *subdivision*

Variance for \_\_\_\_\_  
from \_\_\_\_\_ to \_\_\_\_\_

Any additional requests which are being processed with the rezoning, special use or variance (if requesting a preliminary/final planned unit development or subdivision plat use other form):

*No*

Is this development within the Village limits?

☒ Yes ☐ No, requesting annexation

☐ Under review by another governmental agency and requires review due to 1.5 mile jurisdiction requirements.

D. DEVELOPER'S STAFF:

Attorney: *N/A* Telephone Number: \_\_\_\_\_

Builder: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Developer: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Engineer: *✓* Telephone Number: \_\_\_\_\_

## E. PROJECT DATA:

1. Location: 1102 N. Ellis Ave., Bensenville
2. Property Index Number(s) (PIN): 03-02-102-055 / 03-02-304-001
3. General description of the site: 2 acres w/ 5,000 sq. ft. Garage / office facility
4. Existing zoning and land use of the site: Truck parking  
Truck & equipment maintenance & outside storage
5. Acreage of the site: Approx. 2 acres
6. Character of surrounding area:

	Zoning	Existing Land Use	Jurisdiction
North:	<u>Warehousing</u>	<u>Office &amp; Truck</u>	<u>Parking</u>
East:			
South:			
West:			

7. List any controlling agreements (annexation agreements, Village Ordinances, site plans): unknown
8. Response Letter. On a separate sheet of paper state why your request should be approved based on the applicable "Approval Criteria" as set forth in the attached Section 10-3-5 (Approval Criteria for zoning Map Amendment), Section 10-3-3-B (Approval Criteria for Variances) or Section 10-3-4-C (Approval Criteria for Conditional Uses).

*Earth Inc.*

810 North Arlington Heights Road  
Suite #1  
Itasca, IL 60143  
Office 630.285.9800\*\*Fax 630.285.9821  
[Earthinc@aol.com](mailto:Earthinc@aol.com)

RECEIVED

JAN - 5 2010

January 4, 2010

COMMUNITY DEVELOPMENT

RESPONSE LETTER

Village of Bensenville  
12 S. Center Street  
Bensenville, Illinois 60106

To Whom it May Concern:

I am an owner of the realty located and commonly known as 1102 North Ellis Avenue, Bensenville, Illinois 60106. I have owned this property, with my brother, George, for 33 years. At this location, Earth, Inc., operates a repair garage, truck and equipment maintenance facility and also has offices and outside truck parking spaces. These facilities are for the use and benefit of our company, only.

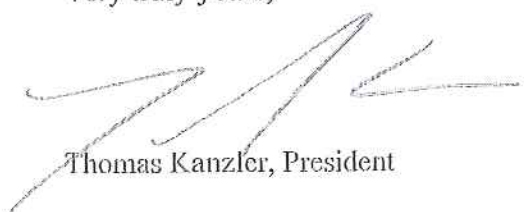
The request for a zoning variance is being made so as to continue our ongoing operations in conformance with the Village zoning requirements. There will be no impact in the granting of this variance on either the types or volumes of traffic coming in and out of our facility, as we have been making use of this facility in a like-kind manner for many years. We do not anticipate any change nor effect upon noise, glare, odor, dust, waste disposal, blockage of light or air or any other adverse environmental effect upon the presently allowable usages in this area.

Since this area is principally used for commercial and industrial purposes, our on-going usage will fit in harmoniously with the existing character of the presently allowable usages. It should not, in any manner, have any adverse effect on property values or the character of the neighborhood, and will not require any change in the usage of existing community facilities or services, nor generate any new demand for new services or facility usage. No change(s) upon existing development(s) will occur by this request from our company.

Our company's long standing contribution as a viable taxpaying entity will continue to provide benefits to the Village and the proposed usage will continue to contribute to the general welfare of its citizens. Without this variance, Earth, Inc. could be forced to relocate its business operations. For these reasons, we are seeking a variance.

Thank you.

Very truly yours,



Thomas Kanzler, President

TK/msh





EXHIBIT "C"

## COMMUNITY DEVELOPMENT COMMISSION

### STAFF REPORT

**HEARING DATE:** February 8, 2010  
**CASE #:** 2010-06  
**PROPERTY:** 1102 N. Ellis Street  
**PROPERTY OWNER  
& APPLICANT:** Itasca Bank & Trust #10771  
**ACREAGE:** Approximately 2.45 acres  
**PIN NUMBERS:** 03- 02 - 102 -25 & 03 - 02 - 304 - 001  
**REQUEST:** Conditional Use Permit to allow Outdoor Storage

#### SURROUNDING LAND USE:

	Zoning	Land Use	Jurisdiction
Site	I-2	Industrial	Village of Bensenville
North	I-2	Industrial	Village of Bensenville
South	I-2	Industrial	Village of Bensenville
East	I-2	Industrial	Village of Bensenville
West		Vacant Industrial	Elk Grove Village

#### SUMMARY:

In past years a concrete crushing operation was located on the property, which the Village sought to have removed. Currently the property is improved with a 5,000 square foot structure; the balance of the site is open. The site is accessed from North Ellis Street via a recorded access easement. Trucks have been parked/stored on the property for a number of years; the Conditional Use Permit seeks to bring the use in compliance with the Village's Zoning Ordinance.

## DEPARTMENT COMMENTS:

Public Works: No comments received.

Finance: No comment received.

Police: The cement crushing business was the long standing issue at this location. I am not aware of any other law enforcement or traffic issue that would be impacted by the granting of this Conditional Use Permit is acceptable to the Village.

Inspectional Services: Inspectional Services has inspected the property in question and Identified a number of property maintenance issues. They have met with the owner and have an agreement from the owner to implement all of the necessary upgrades.

### Community & Economic Development:

1. The Site Plan indicate truck spaces at 11' x 60', Village Code requires 14' x 60' if approved the striping plan will need to adhere to the Village requirements of 14' x 60'. The 840 sqft space would allow 31 trucks to be stored on site not the 39 indicated.
2. As the CDC is aware the maximum allowable outdoor storage in the I - 2 Light Industrial District is 25%, the petitioner is seeking to utilize the full amount to park 31 vehicles.
3. The site is not visible from the public street.
4. Any approval shall include the condition that the property be properly maintained and any paving repairs identified by Village staff shall be corrected.

## APPROVAL CRITERIA FOR CONDITIONAL USE PERMITS:

The Community Development Commission shall not recommend approval of the Conditional Use Permit without determining that the request meets the following approval criteria and making certain findings of fact. Staff has reviewed the request and recommends the following Findings of Fact:

Traffic - There will be no increase in traffic flow, other than that caused by the existing businesses.

Environmental Nuisance - The parking of trucks and trailers should not cause any additional environmental nuisance.

Neighborhood Character - The property is located in an industrial area, the establishment of truck and trailer storage area should not have a detrimental effect on the character of the neighborhood.

Use of Public Services & Facilities - There are adequate facilities to serve the entire property.

Public Necessity - The proposed use at this particular location is necessary to provide a facility which is in the interest of public convenience, and which will contribute to the general welfare of the community.

## APPROVAL CRITERIA FOR VARIANCES:

The Community Development Commission shall not recommend nor shall the Village Board grant a variance unless it shall make findings based upon the evidence presented to it in each specific case that:

### Special Circumstances --

The subject property is a land-locked industrial property; the structure in question was erected many years ago.

### Hardship or Practical Difficulties --

The building has been in existence for many years, the variance would be acknowledging a situation that the Village has "lived with" for quite some time.

### Circumstances Related to the Property --

The special circumstances and hardship of the subject property relate only to the physical character of the land or buildings, such as dimensions, topography or soil conditions.

### Not Resulting from the Applicant's Action --

The special circumstances and practical difficulties or hardships that are the basis for the variance have not resulted from any act, of the applicant.

### Preserves the Rights Conferred by the District --

The variance as requested is necessary for the applicant to enjoy a substantial property right possessed by other properties in the same zoning district and does not confer a special privilege ordinarily denied to such other properties.

### Necessary for the Use of the Property --

The grant of a variance is necessary not because it will increase the applicant's economic return, although it may have this effect, but because without a variance the applicant will be deprived of reasonable use or enjoyment of, or reasonable economic return from, the property.

### Will not Alter the Local Character --

The granting of the variance will not alter the essential character of the locality nor substantially impair environmental quality, property values or public safety or welfare in the vicinity.

### Consistent With Title And Plan --

The granting of a variance will be in harmony with the general purpose and intent of this Title and of the general development plan and other applicable adopted plans of the Village, as viewed in light of any changed conditions since their adoption, and will not serve in effect to substantially invalidate or nullify any part thereof.

### Minimum Variance Needed --

The variance approved is the minimum required to provide the applicant with relief from undue hardship or practical difficulties and with reasonable use and enjoyment of the property.



## RECOMMENDATIONS:

Staff recommends the approval of the requested Conditional Use Permit and the above Findings of Fact for Outdoor Storage at 1102 N. Ellis Street, subject to the following conditions:

1. That the property be developed in substantial compliance with an amended site plan approved by Village staff with the proper truck space size depicted.
2. The property shall have appropriate paving for the outdoor storage as required by Code.
3. All property maintenance issues to be brought into Code compliance and inspected by the Village.

Respectfully Submitted

Department of Community & Economic Development

# 1102 N. ELLIS STREET BENSENVILLE, ILLINOIS

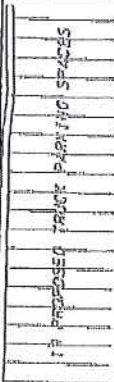
8' HIGH FENCING  
(PROPOSED)4' x 4' CONCRETE  
BARRIER BLOCKS10 PROPOSED TRUCK  
PARKING SPACESPROPOSED  
GATE

STREET

1" = 100 FEET

40' EASEMENT FOR ROAD  
PER DOCUMENT 5226904' x 4' CONCRETE  
BARRIER BLOCKS  
(PROPOSED)10 PROPOSED TRUCK  
PARKING SPACES

LOT 1

4' x 4' CONCRETE  
BARRIER BLOCKS8' HIGH  
CONCRETE  
BLOCKS

## BUILDING

FOOTPRINT:	5,093±	S. F.
OFFICE:	1,689±	S. F.
WAREHOUSE:	3,404±	S. F.
PERCENTAGE OFFICE:	33.16%	

PROPOSED 9' x 18' PARKING SPACES FOR OFFICE: 9  
 ( 5 x 1,689± = 8,445± )  
 9 x ( 9' x 18' ) = 1,458 S. F.

PROPOSED 9' x 18' PARKING SPACES FOR WAREHOUSE: 2  
 ( 5 x 3,404± = 1,702± )  
 2 x ( 9' x 18' ) = 324 S. F.

PROPOSED OUTDOOR STORAGE: 26,006± S. F.  
 ( .25 x 104,023± S. F. )

TRUCK PARKING SPACES 60' x 11' = 660 S. F.  
 26,006± / 660 = 39.40 OR 39 TRUCK SPACES

660

09/01/2009

NO CONVEYING BUILDING EXHIBIT W/304 EX. 17.18

Village of Bensenville  
Board Room  
12 South Center Street  
DuPage and Cook Counties  
Bensenville, IL, 60106

**MINUTES OF THE COMMUNITY DEVELOPMENT COMMISSION**

February 8, 2010

**CALL TO ORDER:** The meeting was called to order at 7:30 PM

**ROLL CALL :** Upon roll call, the following Commissioners were present:  
Markowski, Gibbs, Janowiak, Ramirez, Moruzzi, Ventura, Weldon  
Absent: None  
A quorum was present.

**Public Hearing:** CDC Case Number 2010-06  
**Petitioner:** Earth Inc.  
**Location:** 1102 N. Ellis Street  
**Request:** Conditional Use Permit; Outdoor Storage & Yard Variance

Bruce Larsen and Thomas Kanzler were both present and sworn in by Chairman Markowski. Earth Inc has been in Bensenville for thirty years. They would like to park their company trucks on their property. A portion of the property is currently paved, the other portion is gravel. Earth Inc feels that with the new paving, it will help with the Village flooding issues. Earth Inc has a recorded access agreement with JAM Trucking. There is currently barb wire in the fencing and exit lights that need to be replaced, all property maintenance issues will be taken care of. They are currently working with the Village on their violations. The new pavement will be striped and maintained annually. Staff recommends approval. There was no public comment.

**Motion:** Commissioner Weldon made a motion to approve a conditional use permit; outdoor storage & yard variance. Commissioner Ventura seconded the motion.

**Roll Call:** Ayes: Markowski, Ramirez, Janowiak, Moruzzi, Ventura, Weldon, Gibbs

Nays: None

Motion carried.



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Chairman  
Community Development Commission

EXHIBIT "D"

*Earth Inc.*

810 North Arlington Heights Road  
Suite #1  
Itasca, IL 60143  
Office 630.285.9800\*\*\*Fax 630.285.9821  
[Earthinc@aol.com](mailto:Earthinc@aol.com)

May 24, 2010

Via Email Only [terowe@bensenville.il.us](mailto:terowe@bensenville.il.us)

Mr. Tom Crowe

Re: 1102 N. Ellis Avenue, Bensenville, Illinois

Dear Mr. Crowe:

As you are aware, Earth, Inc. has applied for a conditional use permit to allow outside storage upon the real property located at and commonly known as 1102 North Ellis Avenue. This letter, in conjunction with your inspection of the premises relating to our application for the conditional use permit, is the status of repairs and remedial services that remain outstanding.

We have procured a permit for fire alarm upgrades (permit #100231), which have either been corrected or are in process, including all fire alarms, exit ways, fire extinguishers and flammable storage failures previously noted on your report. The anticipated completion date is August 30, 2010. The vending machines will be removed, which delimits this issue. As the ground is no longer frozen, we are initiating exterior cleanup and weed removal, including all drums and batteries. Portions of the damaged fence will be repaired and the concrete blocks will be relocated, as directed. All of these items will also be completed by August 30, 2010.

As our conditional use permit application states, we have proposed asphalt grindings for our parking surface, which can best handle the substantial weight of our trucks and heavy duty equipment. The asphalt grinding will permit drainage during heavy rains and prohibit flooding upon the property as occurs on the adjacent paved parking lots, which runs off into this intersection year after year. This process will be completed by August 15, 2010.

The majority of the parking in the front of our building is hard surface, either concrete or asphalt. It also will be overlaid by gravel, which further protects against the heavy equipment being taken in and out of our repair shop. Our fire extinguishers will be recertified in June 2010. We are removing the top level of concrete blocks and will so complete by August 30, 2010. The damaged siding over the large shop door will be completed by August 30, 2010. The damaged bumpers in the front of the building will be replaced on or before August 30, 2010. We shall install ADA parking spaces, as per Code, by August 30, 2010. All washrooms will have GFI outlets, within five (5) feet of water and all outlets and switches will be covered by August 30, 2010. Lastly, all flammables will be stored in a true fire sealed cabinet per NFPA Code, by August 30, 2010.

*Earth Inc.*

810 North Arlington Heights Road  
Suite #1  
Itasca, IL 60143  
Office 630.285.9800\*\*\*Fax 630.285.9821  
[Earthinc@aol.com](mailto:Earthinc@aol.com)  
Mr. Tom Crowe  
May 24, 2010  
Page 2

I hope this addresses all issues raised on your inspection checklist in conjunction with our conditional use permit application. Thank you.

Very truly yours,

Bruce Larson