

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL MEETING  
AUGUST 21, 2012 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
Resolution authorizing execution of a settlement agreement	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Motion <input type="checkbox"/> Discussion Only	Enza Petrarca Village Attorney

**SYNOPSIS**

A resolution has been prepared authorizing execution of a Settlement Agreement between Robert E. Bailiff, and all others similarly situated and the Village of Downers Grove.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2011-2018 include *Exceptional Municipal Services*.

**FISCAL IMPACT**

The final cost of the settlement will not be known until the end of the claim period.

**RECOMMENDATION**

Approval on the August 21, 2012 consent agenda.

**BACKGROUND**

This case involved class action lawsuit challenging the imposition of a \$30.00 administrative booking fee on all arrestees when posting bail or bond for any criminal, Village ordinance or bookable arrest. After several months of negotiations the parties have reached a proposed settlement. It is recommended that the case be settled on a "claims-made basis", which requires each class member to make a specific claim for the funds they can receive pursuant to the settlement. Any class member charged a booking fee between May 18, 2009 and May 18, 2011 may elect to file a claim form and may be eligible for a \$15 reimbursement. The final dates for filing claims have not yet been finalized. All claims will be processed in-house by staff. Staff is recommending approval of this settlement agreement.

In the upcoming months, staff will be presenting a revised administrative booking fee ordinance for Council consideration.

**ATTACHMENTS**

Resolution  
Agreement

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

**A RESOLUTION AUTHORIZING A CLASS ACTION SETTLEMENT AGREEMENT**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Class Action Settlement Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and Robert E. Bailiff, and all others similarly situated (the “Plaintiffs”), in connection with the imposition of an administrative booking fee, Case No. 11-3335 as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Attorney, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Village Attorney shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

<b>Robert E. Bailiff, and all others similarly</b>	)	
<b>situated,</b>	)	
	)	<b>No. 11-3335</b>
<b>Plaintiffs,</b>	)	
<b>v.</b>	)	
	)	<b><u>JURY DEMAND</u></b>
<b>Village of Downers Grove,</b>	)	
<b>Defendant.</b>	)	

**CLASS ACTION SETTLEMENT AGREEMENT**

Subject to Court approval as provided for herein, this Class Action Settlement Agreement (the "Agreement") is entered into effective as of \*\*\*\*\*, 2012, by and between (a) Robert E. Bailiff ("Plaintiff") on behalf of himself and the "Settlement Class," as defined herein, and (b) the Village of Downers Grove ("Defendant"). Plaintiff, the Settlement Class, and Defendant are referred to collectively herein as the "Parties."

**RECITALS**

WHEREAS, Defendant had in force an ordinance, Village Ordinance 17.3.2, that permits the imposition of an administrative fee of thirty dollars (\$30.00) on all arrestees who post bail or bond after an arrest (the "Booking Fee"). Since on or about May 18, 2011, the Defendant no longer imposes the Booking Fee;

WHEREAS, on or about May 18, 2011, Plaintiff filed a lawsuit in the United States District Court for the Northern District of Illinois Eastern Division in the case captioned *Robert E. Bailiff and all others similarly situated v. Village of Downers Grove*, Case No. 11-cv-03335 (the "Class Action Complaint"). Plaintiff alleges that the imposition of the Booking Fee violates Plaintiff's and the Settlement Class' civil rights guaranteed under the due process clause of the Fourteenth Amendment and brings claims against Defendant pursuant to 42 U.S.C. §§ 1983 and 1988 seeking declaratory and injunctive relief and damages.

WHEREAS, Defendant has denied and continues to deny each and every allegation of wrongdoing made in the Class Action Complaint and disclaims any liability whatsoever to Plaintiff and/or the Settlement Class, but wishes to avoid further litigation costs and the uncertainties of litigation, and to amicably resolve the issues relating to the Class Action Complaint;

WHEREAS, Plaintiff, through "Class Counsel," as defined herein, has conducted an investigation of the law, facts and issues relevant to this action. Class Counsel has also participated in informal discovery in this action. Class Counsel has fully analyzed and evaluated the relative merits of the Parties' claims and defenses and the impact thereof on the claims of the

Settlement Class. Without conceding in any way the defenses or denials asserted by Defendant, Plaintiff and Class Counsel have concluded, subject to Court approval, that the compromise set forth in this Agreement is fair, reasonable and adequate, that the relief is well within the range of possible outcomes, and that the compromise set forth in this Agreement is in the best interests of the Settlement Class. The individuals designated as Class Members were identified through the Defendant's good faith efforts;

WHEREAS, Without admitting any liability or wrongdoing of any kind, or conceding in any way the defenses or denials asserted by Defendant, and in consideration of: (i) the benefits Plaintiff and Class Members will receive from the Agreement; (ii) the risks of litigation; and (iii) the expense and length of time necessary to pursue this action through a trial and the appeals that may follow, and based upon the investigation described above, the Parties have agreed to settle this case on the terms and conditions set forth in this agreement;

NOW, THEREFORE, in consideration of the recitals set forth above, which recitals are by this reference incorporated into this Agreement, and their mutual promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I** **DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

1.01 Actions. As used herein, "Actions" means all claims or causes of action between the Defendant and Class Members.

1.02 Agreement. As used herein, "Agreement" means this Class Action Settlement Agreement, including the Exhibits hereto.

1.03 Booking Fee. As used herein, "Booking Fee" means the thirty dollar (\$30.00) administrative fee imposed under Village Ordinance 17.3.2.

1.04 Claim Form. As used herein, "Claim Form" means the Claim Form and IRS Form W-9 attached to this Agreement as Exhibit \*\*\* as shall be approved by the Parties and the Court, by which a Class Member may make a claim.

1.05 Claim Deadline. As used herein, "Claim Deadline" means sixty (60) days after the Notice Date.

1.06 Claims Period. As used herein, "Claims Period" means the period of time commencing on the Notice Date and expiring sixty (60) days later.

1.07 Class Action Complaint. As used herein, the "Class Action Complaint" means the lawsuit filed in the Court captioned *Robert E. Bailiff and all others similarly situated v. Village of Downers Grove*, Case No. 11-cv-03335.

1.08 Class Counsel. As used herein, “Class Counsel” means Vincent DiTommaso of the firm DiTommaso Lubin, P.C. 17W220 22<sup>nd</sup> Street, Suite 410, Oakbrook Terrace, Illinois 60181 and James Shedden of the firm Schad, Diamond and Shedden, P.C., 332 S. Michigan Avenue, Suite 1000, Chicago, Illinois 60604.

1.09 Class Member. As used herein, “Class Member” means any individual who meets the definition of “Settlement Class” and has not been excluded from the Settlement Class and the Agreement through the procedures set forth in Section 3.04 herein.

1.10 Class Notice. As used herein, “Class Notice” means the Mailed Notice and Publication Notice as set forth in Section 3.03 herein.

1.11 Class Period. As used herein, “Class Period” means the period commencing \*\*\*\* and terminating on the Effective Date.

1.12 Class Representative. As used herein, “Class Representative” means only the named Plaintiff in the Class Action Complaint, Robert E. Bailiff.

1.13 Court. As used herein, “Court” means the United States District Court for the Northern District of Illinois, Eastern Division.

1.14 Defendant. As used herein, “Defendant” means the Village of Downers Grove.

1.15 Defendant Counsel. As used herein, “Defendant Counsel” means Johnston Greene LLC, 542 S. Dearborn Street, Suite 1100, Chicago, IL 60605.

1.16 Effective Date. As used herein, “Effective Date” means the first date on which all of the following have occurred: (a) the Order and Final Judgment approving this Agreement has been entered by the Court; and (b) the time has expired within which review or appeal of the Order and Final Judgment may be taken, without any review or appeal having been taken therefrom, or if such review or appeal is taken, such review or appeal shall have been finally determined (subject to no right of further review or appeal) by the highest court before which such review or appeal is sought and allowed, and such review or appeal shall have been resolved in such manner as to permit the consummation of the Agreement in accordance with all of its terms and provisions.

1.17 Mailed Notice. As used herein, “Mailed Notice” means the notice to be mailed pursuant to Section 3.03 in a format substantially similar to Exhibit \*\*\*, attached to this Agreement, as shall be approved by the Parties and the Court.

1.18 Maximum Fund. As used herein, “Maximum Fund” means the \*\*\*\*\* dollars (\$\*\*\*\*) set aside with the Claims Administrator as the maximum total fund for payment to Class Members.

1.19 Notice Date. As used herein, "Notice Date" means the date that the Settlement Administrator mails the Court-approved Class Notice to all Class Members, using the last known address reasonably obtainable from Defendant's records as verified by the Settlement Administrator.

1.20 Parties. As used herein, the "Parties" means the Plaintiff, the Settlement Class, and Defendant.

1.21 Plaintiff. As used herein, "Plaintiff" means Robert E. Bailiff on behalf of himself and the Settlement Class.

1.22 Publication Notice. As used herein, "Publication Notice" means the notice to be published pursuant to Section 3.03 in a format substantially similar to Exhibit \*\*\*, attached to this Agreement, as shall be approved by the Parties and the Court.

1.23 Reimbursement Period. As used herein, "Reimbursement Period" means \*\*\*\*\* through \*\*\*\*\*.

1.24 Released Party. As used herein, "Released Party" means Village of Downers Grove and its past, present and future employees, elected and appointed officials, officers, directors, partners, agents, debt collectors, attorneys, insurers, brokers, contractors, servants, affiliates, subsidiaries, departments, divisions, predecessors, representatives, successors and/or assigns.

1.25 Releasors. As used herein, "Releasors" means the Class Representative, each and all Class Members, and each and all of their respective agents, heirs, administrators, executors, predecessors, successors, assigns, estates, guardians, trustees, representatives and beneficiaries, or any of them, including any person or entity acting on behalf of, or at the direction of, any of them; provided that such persons or entities have not opted out in accordance with the terms of the Agreement and the requirements of the Court.

1.26 Settled Claims. As used herein, "Settled Claims" means any and all past and present claims for relief, causes of action, counterclaims or crossclaims, suits, petitions, demands in law or equity, or any allegations of liability or damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest or expenses that have been, or arising out of the claims asserted in this action or in any other action, court, arbitration, tribunal or administrative body against the Released Parties, which are based upon, arise out of, are related to, or in any way connected with, directly or indirectly, in whole or in part, the claims and allegations in the Class Action Complaint.

1.27 Settlement Administrator. As used herein, "Settlement Administrator" means Village of Downers Grove 801 Burlington Avenue, Downers Grove, Illinois, 60515, and its agents.

1.28 Settlement Class. As used herein, "Settlement Class" means:

All individuals who, on or after May 18, 2009, were deprived of their property pursuant to Downers Grove Municipal Ordinance 17.3.2 without being provided the constitutionally guaranteed due process of law.

1.29 Settlement Fairness Hearing or Hearing. As used herein, the “Settlement Fairness Hearing” or “Hearing” means the hearing at or after which the Court will make its final decision whether to approve this Agreement as fair, reasonable, and adequate.

## **ARTICLE II** **BENEFITS TO THE PARTIES**

2.01 Benefits to the Class Representatives and the Class. The benefits provided to the Class Representatives and Class Members under and in accordance with this Agreement consist of the monetary relief and Class Representative Fees as set forth in Section 2.03 herein.

2.02 Monetary Relief. Each Class Member is eligible to receive a maximum monetary benefit of not more than fifty (50) percent of the amount of the Booking Fee that the Class Member actually paid to Defendant. Accordingly, in no event will the total monetary benefit to the Class Member be more than fifteen dollars (\$15.00) per Booking Fee imposed.

Payment to Class Members is to be made on a “claims-made basis.” As such, any Class Member desiring a monetary benefit must complete a Claim Form and mail it to the Settlement Administrator, postmarked no later than sixty (60) days after the Notice Date (“Claim Deadline”). Within sixty (60) days following the Effective Date, the Settlement Administrator shall mail each Class Member who timely submitted a valid claim his/her monetary benefit. It is expressly agreed and acknowledged that Defendant shall have no responsibility or liability for either the distribution of any monetary relief or the determination of the amount each Class Member is to receive. Any amount of potential monetary class relief that is unclaimed or not paid out to the Settlement Class by the Settlement Administrator shall revert back to the Defendant as set forth in Section 2.05 herein.

2.03 Class Representative Fees. Within sixty (60) days following the Effective Date, Defendant shall pay to DiTommaso & Lubin a check in the amount of two thousand, five hundred dollars (\$2,500.00), which DiTommaso & Lubin will distribute to the Class Representative. This award is made to the Class Representative for the time and effort undertaken in and risks of pursuing this litigation, including the risk of liability for the Parties’ costs of suit. This award is the exclusive relief available to the named Class Representative.

2.04 Attorneys’ Fees and Expenses. Subject to Court approval, within thirty (30) days following the Effective Date, Defendant shall pay to DiTommaso & Lubin a check in the amount of fifty-five thousand dollars (\$55,000.00) in fees and, subject to proof thereof, a maximum of one thousand, five hundred dollars (\$1,500.00) in litigation costs. DiTommaso & Lubin will distribute the Attorneys’ Fees and Expenses among Class Counsel.

2.05 Reversion. To the extent that the total claims validly made by Class Members at the maximum rates identified in Section 2.02 (a) and (b) do not reach one hundred percent (100%) of the Maximum Fund, any difference remaining in the Maximum Fund shall revert back to the Defendant and/or shall remain the property of Defendant on the one hundred twentieth (120th) day following the Effective Date.

2.06 Costs of Administration. Defendant will pay the costs of class administration, including, but not limited to, notice to Class Members by direct mail notice and notice by publication, as set forth in Section 3.03 herein.

### **ARTICLE III** **PRELIMINARY APPROVAL AND NOTICE**

3.01 Approval Order. On or before \*\*\*\*\*, the Parties shall apply to the Court for an Approval Order which shall, among other things:

- (a) find that the Claim Notice and Claim Form satisfies the requirements of both the Federal Rules of Civil Procedure and due process and Order that it be disseminated to the Class;
- (b) find that the timing, form, content and method of disseminating the proposed notice to Class Members satisfies the requirements of both the Federal Rules of Civil Procedure and due process;
- (b) preliminarily find that this Agreement is fair, reasonable and adequate to the Class Members; and
- (c) set a date for the Settlement Fairness Hearing.

3.02 Denial of Approval Order. If the Court enters an Order denying the application for an Approval Order with the contents specified above, and if all Parties do not agree jointly to appeal such ruling, this Agreement shall terminate without any further action by any Party and the Parties will return to their respective positions without waiver of any claim or defense as if this Agreement was never reached.

3.03 Class Notice. Within thirty (30) days following the Court's entry of an Approval Order (or as directed by the Court), the Settlement Administrator will mail the Court-approved Mailed Notice and Claim Form to all Class Members, postage-prepaid by first-class United States mail, using the last known address reasonably obtainable from Defendant's records as verified by the Settlement Administrator. If the Settlement Administrator is unable to effectuate individual notice, the Parties agree that Publication Notice, as provided below, is the best notice practicable to notify Class Members or Class Members' estates of this action. Any returned Mailed Notice shall be re-mailed if a new address is indicated on the return envelope. In addition to the individual Mailed Notice, within fourteen (14) days of the Notice Date, the Settlement Administrator will also publish a Publication Notice in each of the following



manners: (1) in the Village Corner; (2) on the Defendant's website; and (3) on the Defendant's local cable access channel, DG T.V. The Parties agree that notification by these means is the best notice practicable and is reasonably calculated to apprise Class Members of the pendency of this litigation.

3.04 Class Member Opt-Out Rights.

(a) In addition to such other matter as the Court may require, the Class Notice shall apprise Class Members of the pendency of the proposed Agreement to settle the litigation and of the material terms of the Agreement (in summary form) and that any Class Member who wishes to be excluded from the proposed Settlement Class and the Agreement may exclude himself or herself by stating in writing that he or she chooses to "opt-out" and mailing this statement to the Settlement Administrator.

(b) The statement requesting exclusion from the proposed Settlement Class and the Agreement must be post marked no later than thirty (30) days after the Notice Date and must sufficiently identify the person requesting the exclusion. The request for exclusion shall include the person's name, and address. A request for exclusion shall not be effective unless it is sent within the time and in the manner described in this paragraph.

(c) Any Class Member choosing to be excluded from the Agreement in accordance with the foregoing provisions of this paragraph will not receive any of the benefits of this Agreement if it is approved and shall not be bound by any terms therein. If a Class Member does not exclude himself/herself, he/she will be bound by the terms of this Agreement, if it is approved, including the release and covenant not to sue provisions hereof, and will be included in, and bound by, any order of judgment entered pursuant to the Agreement.

(d) The Settlement Administrator, together with Class Counsel and Defendant's Counsel, shall prepare a list of the persons who have validly excluded themselves from the Settlement Class and shall file that list with the Court at least ten (10) business days prior to the Settlement Fairness Hearing. If more than 10% of Class Members identified exclude themselves from the Settlement Class, then Defendant, at its sole discretion, may terminate this Agreement upon the filing of a Notice to Terminate Settlement Agreement with the Court, at least three (3) business days before the Settlement Fairness Hearing, setting out the events upon which the exercise of this option is based. Defendant's right to exercise this option shall be waived if no such notice is filed pursuant to these terms. If the Agreement is terminated by Defendant pursuant to this provision, the Parties will return to their respective positions without waiver of any claim or defense as if this Agreement was never reached.

3.05 Right to Object. In addition to such other matters as are set forth above, the Class Notice shall apprise Class Members of their right to object. Any Class Member who wishes to object to any terms of the Settlement and who has not excluded himself/herself from the Class may file a written objection with the Clerk of the Court. Objections must be postmarked within thirty (30) days of the Notice Date, and copies of all papers filed with the Court must be served on Class Counsel and Defendant's Counsel. Class Members who wish to make an oral statement in opposition to the approval of the Agreement are required to state in their written objection

their intention to appear before the Court at its Settlement Fairness Hearing. Persons who intend to object to the Agreement and desire to present evidence at a Settlement Fairness Hearing must include in their written objections the identity of the witnesses who they may call to testify and must attach true copies of exhibits they intend to offer into evidence at the Settlement Fairness Hearing. All objections must contain the following: (i) the objector's name, address, telephone number, and year(s) the Booking Fee was imposed on them; (ii) ; the factual basis and legal grounds for the objection; and (iii) the signature of the individual that is objecting.

**ARTICLE IV**  
**FINAL APPROVAL OF SETTLEMENT**

4.01 Order and Final Judgment. No later than seven (7) days before the Settlement Fairness Hearing, or as otherwise directed by the Court, the Parties will petition the Court for an Order and Final Judgment which will:

(a) find that the Class Notice to Class Members satisfies the requirements of due process, the Federal Rules of Civil Procedure, and other law;

(b) find that the Agreement is fair, reasonable, and adequate to the Class, and that each Class Member (except those who excluded themselves from the Class in a timely and proper manner in accordance with the procedures set forth in Section 3.04 of this Agreement) shall be bound by the Agreement, including the release and covenant not to sue contained herein, and conclude that this Agreement should be, and is, approved;

(c) award attorneys' fees and expenses to Class Counsel, as described in Section 2.04;

(d) dismiss, on the merits and with prejudice, all claims in this case against Village of Downers Grove, and permanently enjoin each and every Class Member who has not opted-out of the Settlement Class in a timely and proper manner from bringing, joining, and/or continuing to prosecute against any Released Party any Settled Claims for which a release and covenant not to sue is being given hereunder, and enter final judgment thereon; and

(e) retain jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation, and enforcement of this Agreement.

4.02 Disapproval. This Agreement is expressly conditioned upon final approval by the Court. If the Court disapproves or sets aside this Agreement or any material part hereof for any reason, or holds that it will not enter or give effect to an Order and Final Judgment in the form described herein, or holds that the entry of an Order and Final Judgment or any material part thereof should be overturned or modified in any material way, then:

(a) if all Parties do not agree jointly to appeal such ruling, or if either Party in their sole and absolute discretion does not agree within thirty (30) days of such ruling to modifications to this Agreement and/or Order in question, this Agreement shall terminate and the

Parties shall return to their respective positions and the litigation will continue as though no settlement had been reached; or

(b) if all Parties do agree jointly to appeal such ruling, and if the Order in question or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, and if either Party in their sole and absolute discretion does not agree within thirty (30) days of such termination of appeal proceeding to modifications to this Agreement and/or the Order in question as directed on appeal, this Agreement shall terminate and the Parties shall return to their respective positions and the litigation will continue as though no settlement had been reached.

**ARTICLE V**  
**RELEASE, COVENANT NOT TO SUE AND WAIVER OF**  
**DEFENDANT FROM CLASS MEMBERS**

5.01 Release. Upon the Effective Date, and in consideration of the benefits and other consideration set forth above, Releasors shall automatically and without further action or notice be deemed to have released and forever discharged Released Parties from any and all Settled Claims, unless such Class Members timely and properly request exclusion from the Settlement Class in accordance with the procedures established in Section 3.04 herein (“Release”).

5.02 Covenant Not To Sue. Upon and after the Effective Date, each Releasor automatically and without further action or notice covenants not to commence, maintain, or assert against Released Parties or any of them, either directly or indirectly, derivatively, on their own behalf of the Settlement Class or any other alleged class or any other person or entity, any Settled Claims (“Covenant Not to Sue”).

5.03 Waiver. Class Members and Defendant expressly understand and acknowledge that it is possible that unknown losses or claims exist or might come to exist or that present losses may have been underestimated in amount, severity or both, Plaintiff and Defendant explicitly took that into account in entering into this Agreement. A portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiff and Defendant, with the knowledge of the possibility of such unknown claims, was given in exchange for a full accord, satisfaction, release and discharge of all such claims (“Waiver”).

5.04 Nothing in this Release, Covenant Not to Sue and Waiver shall preclude any action to enforce the terms of this Agreement.

5.05 Releasors are hereby deemed to agree and acknowledge that the provisions of this Release, Covenant Not to Sue and Waiver together constitute an essential term of the Agreement and will be included in the Order and Final Judgment entered by the Court.

5.06 Except as provided hereinabove, upon the Effective Date, the Release, Covenant Not to Sue and Waiver contained in this Article shall automatically and without further action or notice become the valid and enforceable release, covenant, and waiver of each Releasor.

**ARTICLE VI**  
**MISCELLANEOUS**

6.01 Termination. Upon any termination of this Agreement as provided for herein, this Agreement shall become null and void. In such event, the above-styled action may continue, but this Agreement and all papers or information of any kind (including methodologies, documents (including the terms thereof), or related discussions), notwithstanding the form thereof, submitted or provided by or on behalf of any Party in connection with this Agreement or the settlement process, or testimony concerning same, shall be returned to that Party without retention by any other Party of copies, abstracts, or notes and except to the extent such material or information is legally and independently developed in future discovery proceedings, shall not be offered or submitted in evidence or used, referred to, cited, presented or otherwise involved for any purpose in any proceeding; and any and all orders entered pursuant to or in connection with this Agreement shall be vacated. The Parties producing such papers or information shall maintain and preserve all documents, information or papers of any kind as it relates to individuals not meeting the definition of "Class Member" and as required by statute or law. The Parties' entry into this Agreement and the provision by the Parties of any documents or information, in whatever form, pursuant to this Agreement or in connection with the settlement process shall not constitute a waiver of work-product, settlement, or any other privilege and is without prejudice in any way to that Party's position on any substantive, procedural or other issues in this action including, in the event this Agreement terminates, the Party's freedom to utilize and develop any methodologies, calculations and documents in connection with this litigation.

6.02 Counterparts. This Agreement may be executed in one or more counterparts, and if so executed, the various counterparts shall be and constitute one instrument for all purposes and shall be binding on the Party that executed it, provided however, that no Party shall be bound unless and until all Parties have executed this Agreement. For convenience, the several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

6.03 Binding Effect. Each and every term of this Agreement shall (according to its terms) be binding upon and inure to the benefit of the Class Members, all of their successors and personal representatives, Defendant, all of their predecessors, and the other Released Parties, which persons and entities are intended beneficiaries of this Agreement. This Agreement shall be binding upon and confer a benefit to, and the Parties expressly intend for this Agreement to apply to and confer a benefit to, any third party lender holding a loan debt of any Class Member. Upon the terms of this Agreement being fully complied with, this Agreement shall be binding upon those individuals who were deprived of their property pursuant to Downers Grove Municipal Ordinance 17.3.2 without being provided the constitutionally guaranteed due process of law.

6.04 Publicity and Advertising. Class Counsel, Plaintiff and Class Members represent and warrant that they will not cause, seek or encourage any publicity relating to the Agreement of this action or the terms thereof (other than the provision of Class Notice in accordance with this Agreement and any other element of notice that may be ordered by the Court). Class

Counsel agrees not to use the name of the Village of Downers Grove, the terms of the Agreement, this Agreement and the settlement amounts in any form in advertising, speeches and/or other publications.

6.05 Amendment. This Agreement shall not be amended or modified orally. This Agreement may only be amended or modified, without the consent or approval of any non-signatory, by a writing signed by all signatories hereto. Class Members have authorized Class Counsel to make any and all changes to this Agreement and to sign any and all amendments and modifications on their behalf.

6.06 Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notice and hearings are subject to approval and change by the Court with the approval of the Parties, or by agreement of the Parties. All time periods shall be calculated in accordance with Federal Rule of Civil Procedure 6(a).

6.07 Limitation of Agreement. This Agreement may not be relied upon for any purpose by, and does not create any rights in, any person who is not a Class Member, Releasor or Released Party.

6.08 Not a Penalty. The Parties agree that all payments made by Defendant pursuant to this Agreement do not constitute and shall not be considered the payment of a fine or penalty.

6.09 State Law. This Agreement shall be interpreted in accordance with the laws of the State of Illinois, without regard to its rules of choice of law.

6.10 Communications. All requests, demands, claims and other communications hereunder shall: (i) be in writing; (ii) be delivered personally, by confirmed courier delivery, by electronic mail or by facsimile; (iii) be deemed to have been duly given on the date received; and (iv) be addressed as set forth below:

As agent for the receipt of communications, Plaintiff and the Class Members appoint:

If to the Plaintiff or the Class:

Vincent L. DiTommaso  
DiTommaso & Lubin, P.C.  
17 W. 220 22<sup>nd</sup> St., Ste. 410  
Oakbrook Terrace, IL 60181  
Facsimile: 630.333.0333  
[vdt@ditommasolaw.com](mailto:vdt@ditommasolaw.com)

If to the Defendant:

Iain Johnston  
Gabrielle D'Adamo  
542 S. Dearborn Street, Ste. 1100

Chicago, IL 60605  
Facsimile: (312) 341-0700  
[johnston@johnstongreene.com](mailto:johnston@johnstongreene.com)  
[gdadamo@johnstongreene.com](mailto:gdadamo@johnstongreene.com)

Any Party may change the address to which requests, demands, claims or other communications are to be delivered by giving the other Party written notice of the change.

6.11 Entire Agreement. This Agreement (including the Exhibits hereto) constitutes the full and entire agreement between the Parties with regard to the subject matter hereof, and supersedes any prior promises, representations or warranties (oral or otherwise) made by any person. No Party shall be liable or bound to any other Party for, or has relied on any other Party with respect to, any prior or contemporaneous representation, promise or warranty (oral or otherwise) except for those expressly set forth in this Agreement.

6.12 No Admission. Plaintiff, Class Members and Defendant agree that this Agreement, and any negotiations, communications or proceedings in connection herewith, are not, and shall not be construed or invoked by anyone as an admission of liability or wrongdoing on the part of Defendant or as an admission as to the validity of any claim asserted against Defendant. Neither this Agreement (including the Exhibits hereto), nor any orders or documents contemplated herein or related hereto, nor any of the terms hereof or thereof shall be offered or received in evidence in any proceeding as an admission of liability or wrongdoing on the part of Defendant or its predecessors. Defendant expressly disclaims and denies any wrongdoing whatsoever and states that it has entered into this Agreement solely to avoid the inconvenience and expense of protracted and costly litigation.

6.13 Covenants of Class Counsel. Class Counsel has the authority to execute this Agreement on behalf of the Class Representative. The undersigned Class Counsel expressly acknowledge that the following conduct would constitute a conflict of interest with the interests of the Settlement Class, which they represent herein, and with the positions taken herein as to the fairness and reasonableness of this Agreement: the representation of any individual who meets the definition of Class Member (i) who challenges or intends to challenge in any way the Agreement; or (ii) who elects to be excluded from the Settlement Class and who does not participate in the Agreement.

6.14 No Waiver. The failure of any Party to enforce at any time any provision of this Agreement shall not be construed as a waiver of such provision or any other provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of any Party to enforce that provision or any other provision. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other breach.

6.15 Headings. The headings in this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

6.16 Ambiguity Not to Be Construed Against Any Party. For the purpose of construing or interpreting this Agreement, the Agreement is deemed to have been drafted equally by all Parties and shall not be construed strictly for or against any Party.

This Agreement is being executed by the undersigned as of the date indicated:

Dated: \_\_\_\_\_, 2012

**CLASS COUNSEL ON BEHALF OF ALL CLASS MEMBERS,**

\_\_\_\_\_  
**Vincent L. DiTommaso**

**ROBERT E. BAILIFF**

\_\_\_\_\_  
**Robert E. Bailiff**

**VILLAGE OF DOWNERS GROVE**

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

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

**If you paid a jail intake/booking fee to the Village of Downers Grove under Village Ordinance 17.3.2 for being arrested you may benefit from a class action settlement.**

*The United States District Court for the Northern District of Illinois – Eastern Division authorized this notice. This is not a solicitation from a lawyer.*

If you are a member of the class described herein, submit a claim form (by [DATE] as determined by the postmark of the mailing or date of personal service), and if the Court approves this settlement, you will be entitled to a share of the Settlement Funds described in this notice.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SEND IN A CLAIM FORM</b>	By sending in the claim form enclosed with this notice, postmarked by <u>(DATE)</u> , you will be entitled to receive a share of your respective Settlement Fund.
<b>DO NOTHING BUT STAY IN THE SETTLEMENT</b>	By doing nothing, you will stay in the settlement but will not receive the settlement benefits. You will be giving up legal claims against the Defendant.
<b>EXCLUDE YOURSELF</b>	You will receive no benefits, but you will not be giving up your right to sue the Defendant.
<b>OBJECT</b>	Write to the Court about why you don't like the settlement and appear at the fairness hearing.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the settlement.

**These rights and options and the deadlines to exercise them are explained below.**

**QUESTIONS? CALL (630) 333-0000, ext. 12,  
TO SPEAK TO AN ATTORNEY REPRESENTING THE CLASS.**



1. Why did I get this notice?

Class Counsel believes that the Defendant deprived class members of their property when Defendant charged class members a jail intake/booking fee.

You received this notice because you have a right to know about a proposed settlement of a class action lawsuit brought against the Village of Downers Grove (“Defendant”).

2. What is this lawsuit about?

The lawsuit claims that the Defendant violated the civil rights of arrestees when it collected the jail intake/booking fee without providing a way to contest the fee.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, Robert E. Bailiff), sued on behalf of a group (or a “class”) of people who have similar claims. The court determined that this case should be treated as a class action.

4. Why is there a settlement?

The Court has not decided that the Plaintiff or the Defendant should win this case. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial and the people in the class will get compensation.

5. How do I know if I am a part of the settlement?

If you paid a jail intake/booking fee pursuant to Village Ordinance 17.3.2 at anytime between May 18, 2009 to May 18, 2011, you are a class member.

**YOUR BENEFITS UNDER THE SETTLEMENT**

6. What can I get from the settlement?

If you return the claim form at the end of this notice, postmarked by [DATE], you will be entitled to receive a share the Settlement Fund. Class members who submit valid and timely claim forms will receive a share of the fund as follows:

**QUESTIONS? CALL (630) 333-0000, ext. 12,  
TO SPEAK TO AN ATTORNEY REPRESENTING THE CLASS.**

If you paid a booking fee between May 18, 2009 and May 18, 2011 under Village Ordinance 17.3.2 you will be entitled to up to a 50% refund of each of the jail intake/booking fee(s) that you actually paid to Defendant. Accordingly, in no event will you be entitled to more than \$15.00 per booking fee imposed.

**7. When will I receive these benefits?**

You will receive these benefits within sixty (60) days after the settlement has been finally approved and the time to appeal that approval to a higher court has expired.

**8. I want to be a part of the settlement and receive these benefits. What do I do?**

You need to return the claim form enclosed with this notice to the address provided on the form. It must be postmarked by [DATE].

**9. What am I giving up to receive these benefits?**

By remaining in the class, all of the Court's orders will apply to you, and you give Defendant a "release." A release means you cannot sue or be part of any other lawsuit against Defendant about the claims or issues in this lawsuit ever again. Even if you do not return a claim form, you will be a member of the class unless you exclude yourself.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to receive the benefits of the settlement, but you want to keep your right to sue the Defendant on your own over the claims in this case, then you must take steps to get out. This is called excluding yourself.

**10. How do I get out of the settlement?**

To exclude yourself from the settlement, you must send a letter by mail stating that you want to be excluded from *Robert E. Bailiff, and all others similarly situated v. Village of Downers Grove*, Case No. 11-CV-3335 (United States District Court for the Northern District of Illinois – Eastern Division). Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request so that it is postmarked **no later than [DATE]**, and send to the following address:

**Enza Petrarca, Esq.**

**QUESTIONS? CALL (630) 333-0000, ext. 12,  
TO SPEAK TO AN ATTORNEY REPRESENTING THE CLASS.**

**Village Attorney  
Village of Downers Grove  
801 Burlington Ave  
Downers Grove, IL 60515  
bookingfeeclaim@downers.us**

You must also send a copy of your request for exclusion to DiTommaso♦Lubin, 17W 220 22<sup>nd</sup> Street, Suite 410, Oakbrook Terrace, Illinois 60181. Be sure to include your name and number of the case. DO NOT SEND A REQUEST FOR EXCLUSION TO THE COURT.

**11. If I exclude myself, do I still receive benefits from this settlement?**

No, you will not receive anything resulting from the settlement of this case, but you will have the right to sue the Defendant over the claims raised in this case, either on your own or as a part of a different lawsuit. If you exclude yourself, the time you have in which to file your own lawsuit (called the “statute of limitations”) will begin to run again. You will have the same amount of time to file the suit that you had when this case was filed.

### **THE LAWYERS REPRESENTING YOU**

**12. Do I have a lawyer in this case?**

The Court has approved Vincent L. DiTommaso of DiTommaso♦Lubin to represent the class. He is called “Class Counsel.” You will not be charged for this lawyer; however, they will be paid by the Defendant in an amount approved by the Court. If you want to be represented by your own lawyer, you may hire one at your own expense. If you choose to hire your own lawyer, he or she must file an appearance by [DATE].

**13. How will the lawyers be paid?**

Class Counsel will seek approval from the Court for attorneys’ fees of \$55,000 and expenses up to a maximum of \$1,500.00. The attorneys’ fees and expenses will be paid by Defendant to Class Counsel, separate from the Settlement Fund.

The Defendant has also agreed to pay \$2,500.00 to the Class Representative, Plaintiff Robert E. Bailiff for serving as the class representative, subject to Court approval.

These payments will be separate from the Settlement Fund and will not be paid out of the Settlement Fund.

**QUESTIONS? CALL (630) 333-0000, ext. 12,  
TO SPEAK TO AN ATTORNEY REPRESENTING THE CLASS.**

## CLASS COUNSEL'S VIEWS ABOUT THE SETTLEMENT

### 14. Is this a fair settlement?

The claims asserted on behalf of the class against Defendant are under the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §§ 1983 and 1988.

In both an individual action and a class action, the person or class bringing the claim may recover any actual damages suffered and punitive damages. The person bringing the suit can also recover attorney's fees and the expenses of prosecuting the suit, if it is successful.

In this case, the Settlement Fund will be created which will provide recovery to the class members. Attorney's fees and costs to Class Counsel and additional compensation to the Class Representative will be paid separately and not out of the Settlement Fund. To create the funds, Defendant will contribute \$[AMOUNT].

Class Counsel has conducted an investigation of the law, facts and issues relevant to this action. Class Counsel has also participated in informal discovery in this action. Class Counsel has fully analyzed and evaluated the relative merits of the Parties' claims and defenses and the impact thereof on the claims of the Settlement Class. Without conceding in any way the defenses or denials asserted by Defendant, but because the outcome of any lawsuit is never certain and courts have viewed the constitutionality of jail intake/booking fees differently – for example, one court viewed a town's jail intake/booking fee to not be a violation of the constitution – Plaintiff and Class Counsel have concluded, subject to Court approval, that the settlement is fair, reasonable and adequate, that the relief is within the range of possible outcomes, and that the settlement is in the best interests of the Settlement Class. The individuals designated as Class Members were identified through the Defendant's good faith efforts.

### 15. What is the Defendant's view of this settlement?

By settling this lawsuit, Defendant is not admitting that it has done anything wrong. Defendant expressly denies the claims asserted in the Litigation, and denies all allegations of wrongdoing and liability, including the Fourteenth Amendment to the United States Constitution.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

### 16. How do I tell the Court that I don't like the Settlement?

QUESTIONS? CALL (630) 333-0000, ext. 12,  
TO SPEAK TO AN ATTORNEY REPRESENTING THE CLASS.

If you're a class member, you can object to the settlement. In order to object to the settlement or any part of the settlement, you must send a letter (or legal brief) stating that you object and the reasons why you think the Court should not approve the settlement. You must include the name and number of the case: *Robert E. Bailiff, and all others similarly situated v. Village of Downers Grove*, Case No. 11-CV-3335, your name, address, telephone number and your signature. If you are objecting to the settlement, you are not required to, but may appear at the Fairness Hearing (explained below in answer to question no. 17).

You must mail your objection so that it is postmarked no later than [DATE] to:

Thomas G. Bruton  
Clerk of the Court  
United States District Court  
For the Northern District of Illinois – Eastern Division  
Everett McKinley Dirksen United States Courthouse  
219 South Dearborn Street  
Chicago, IL 60604

You must also send a copy of your objection to DiTommaso♦Lubin, 17W 220 22<sup>nd</sup> Street, Suite 410, Oakbrook Terrace, Illinois 60181. Be sure to include the name and number of the case. If you have made a written objection to the proposed settlement then you do not need to appear at the Fairness Hearing for your objection to be considered.

### **THE FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend if you wish, but you are not required to do so, unless you intend to object.

#### **17. Where and when is the fairness hearing?**

The Court will hold a fairness hearing on [DATE] at [TIME] a.m. in the courtroom of Magistrate Judge Sheila Finnegan, Room 2220 of the United States District Court for the Northern District of Illinois – Eastern Division Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604. The purpose of the hearing will be for the Court to determine whether the proposed settlement is fair, reasonable and adequate and in the best interests of the class and to determine the appropriate amount of compensation for the Class Counsel. At that hearing the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement, and the Court will consider any objections and arguments even if you do not appear at the fairness hearing.

The hearing may be postponed to a later date without notice.

**QUESTIONS? CALL (630) 333-0000, ext. 12,  
TO SPEAK TO AN ATTORNEY REPRESENTING THE CLASS.**

You are not required to come to the Fairness Hearing. Any written objection you make will be considered even if you do not attend the Fairness Hearing.

### GETTING MORE INFORMATION

#### 18. How do I get more information?

You can call Vincent L. DiTommaso at DiTommaso Lubin, 17W 220 22<sup>nd</sup> Street, Suite 410, Oakbrook Terrace, Illinois 60181, one of the firms representing the class, at (630) 333-0000 x12, if you have any questions. Before doing so, please read this full notice carefully. You can also send an email to: [vdt@ditommasolaw.com](mailto:vdt@ditommasolaw.com) or obtain information through their website at [www.nationwideconsumerrights.com](http://www.nationwideconsumerrights.com).

#### 19. What if I have a new address?

If this notice was sent to you at your current address, you do not have to do anything more to receive further notices concerning this case. However, if this Notice was forwarded to you, or if it was otherwise sent to you at an address that is not current, you should immediately send a letter to the Class Administrator at

Enza Petrarca, Esq.,  
Village Attorney  
Village of Downers Grove  
801 Burlington Ave  
Downers Grove, IL 60515  
[bookingfeeclaim@downers.us](mailto:bookingfeeclaim@downers.us)

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

**QUESTIONS? CALL (630) 333-0000, ext. 12,  
TO SPEAK TO AN ATTORNEY REPRESENTING THE CLASS.**

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

*Robert E. Bailiff, and all others similarly situated v. Village of Downers Grove* , Case No. 11-CV-3335  
(United States District Court for the Northern District of Illinois – Eastern Division)

**CLAIM ELECTION FORM**

To be eligible for benefits under this settlement, you must:

1. Complete all parts of this Claim Election Form; sign the Claim Election Form; and send the Claim Election Form to the Settlement Administrator at the address below.

**CLAIMS MUST BE POSTMARKED BY [DATE] TO  
RECEIVE SETTLEMENT BENEFITS**

2. Be a member of one of the Class described in the Notice of Class Action Settlement that you received.

**Please type or print legibly in ink.**

**CLASS MEMBER NAME AND ADDRESS**

<b>CLASS MEMBER NAME AND ADDRESS</b>			
First Name of Claimant	Middle Name/Initial	Last Name	Aliases (Other Names By Which You Are Known)
Current Street Address			
Apartment No. (if any)	City	State	Zip Code
Prior Street Address (in last two years)			
Apartment No. (if any)	City	State	Zip Code

**PLEASE ANSWER THE FOLLOWING QUESTION:**

Did you pay a jail intake/booking fee to the Village of Downers Grove at anytime between May 18, 2009 to May 18, 2011?

Yes  / No

*If your answer to this question is NO, you are not a member of the settlement class and therefore not eligible to receive benefits under this settlement. (DO NOT CONTINUE)*

*If your answer to this question is YES, you are a member of the Settlement Class. (CONTINUE)*

**ALL CLASS MEMBERS CLAIMING BENEFITS MUST COMPLETE AND SIGN BELOW**

Check one:

I am the above-identified class member

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Claimant

**MAIL COMPLETED CLAIM ELECTION FORM TO THE SETTLEMENT ADMINISTRATOR AT THE ADDRESS BELOW. FAILURE TO RETURN THIS FORM BY [date] WILL RESULT IN DENIAL OF BENEFITS, BUT YOU WILL STILL BE BOUND BY THE SETTLEMENT.**

**Settlement Administrator:**

**Enza Petrarca, Esq.  
Village Attorney  
Village of Downers Grove  
801 Burlington Ave  
Downers Grove, IL 60515  
bookingfeeclaim@downers.us**