

**CITY OF BLOOMINGTON
COUNCIL MEETING AGENDA
109 E. OLIVE
MONDAY, OCTOBER 22, 2012, 7:00 P.M.**

- 1. Call to order**
- 2. Pledge of Allegiance to the Flag**
- 3. Remain Standing for a Moment of Silent Prayer**
- 4. Roll Call of Attendance**
- 5. Recognition/Appointments**
 - A. Oath of Office for Police Patrol Officers: David Ashbeck, Jared Johnson, Bradley Massey and Luke Maturer**
 - B. Appointments: Amy Davis to Beautification Committee and Sherry Galbreath Cultural District Commission**
 - C. Barbara J. Adkins – ICMA 25 Years of Service Award**
- 6. “Consent Agenda”**
 - A. Council Proceedings of Council Proceedings of October 8, 2012, Work Session Minutes of October 8, 2012 and Executive Session Minutes of May 29, 2012. (Recommend that the reading of the minutes of the previous Council Proceedings of Council Proceedings of October 8, 2012, Work Session Minutes of October 8, 2012 and Executive Session Minutes of May 29, 2012, be dispensed with and the minutes approved as printed.)**
 - B. Bills and Payroll. (Recommend that the Bills and Payroll be allowed and the orders drawn on the Treasurer for the various amounts as funds are available.)**

- C. **Economic Development Strategic Plan and Incentive Policy. (Recommend that the Economic Development Strategic Plan and Incentive Guideline be approved and the Resolutions adopted.)**
- D. **Extension of Fuel Agreement for Fleet Vehicles and Equipment. (Recommend that the Fuel Purchasing Agreement with Evergreen FS be extended for one (1) year, and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- E. **Client Agreement between Vision Service Plan, Inc. (VSP) and the City of Bloomington for Employee Vision Benefit. (Recommend that the contract renewal be approved and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- F. **Client Agreement between Blue Cross/Blue Shield of Illinois (Blue Cross) and the City of Bloomington (City) for Third Party Administrator (TPA) Services and Individual Stop Loss (ISL) Insurance for the Employee and Retiree Preferred Provider Organization (PPO) Health Plans; Client Agreement between Health Alliance Medical Plans (HAMP) and the City for Employee and Retiree Health Maintenance Organization (HMO) Plan Option; Client Agreement between Blue Cross and the City for TPA Services for the Employee and Retiree Dental Plan: Client Agreement between Clemens and Associates for Broker Services. (Recommend that the Client Agreements be approved and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- G. **Client Agreement between MetLife and the City for Employee Life Insurance and Accidental Death and Dismemberment (AD&D) Insurance and Retiree Life Insurance. (Recommend that the Client Agreements be approved and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- H. **AccuMed Ambulance Billing Contract. (Recommend that the unit prices from AccuMed, for Ambulance Billing Services be accepted, and the Mayor and City Clerk be authorized to execute the necessary documents.)**

7. Regular Agenda”

- A. **Consent to Assignment of Indoor Football Lease at U.S. Cellular Coliseum. (Recommend that the consent to the assignment be approved and that the Mayor and City Clerk be authorized to execute the consent.) (15 minutes)**
- B. **Text Amendment to Chapter 6. Alcoholic Beverages, Additional License Classifications. (Liquor Commission recommends to the City Council that the Text Amendment be approved and the Ordinance passed.) (45 minutes)**

- C. Application of Setinthebar, d/b/a Gat's Jazz Cafe, located at 424 N. Main St., for a TAS liquor license, which will allow the sale of all types of alcohol by the glass for consumption on the premises seven (7) days week. (The Liquor Commission recommends that a TAS liquor license for Setinthebar, Inc., d/b/a Gat's Jazz Cafe, located at 424 N. Main St., be created, contingent upon compliance with all applicable health and safety codes with the following conditions: 1.) the establishment will be run as a Jazz Cafe; not a traditional tavern - the Commission reserves the right to modify this condition to insure compliance; 2.) the business will be committed to the promotion of live jazz music and commits to stay with the jazz music theme, as opposed to other forms of music; 3.) the hours of operation of the business will be Sunday through Thursday from 11:00 a.m. until 10:00 p.m. and Friday and Saturday from 11:00 a.m. until 12:00 a.m.; 4.) the tables and chairs will not be removed from the premise so as to maintain a close, intimate Jazz Cafe atmosphere at all times; 5.) food, as shown on the sample menu or substantially similar and comprehensive menu will be served up until one hour prior to closing with continued work towards establishing a full kitchen with a vaster meal type menu; 6.) marketing house events which for a set price, reserves a table for entertainment viewing and provides certain food and drink for one price; and 7.) with all of these conditions, there was confidence that a successful Jazz Cafe will be established at 424 N. Main St. which will add to the Downtown's quality of life and the area as a whole without adding to the issues cited by the Downtown Entertainment Task Force (DETF).) (30 minutes)**

- 8. Mayor's Discussion**
- 9. City Aldermen's Discussion**
- 10. Adjournment**
- 11. Notes**

FOR COUNCIL: October 22, 2012

SUBJECT: Appointments to the Beautification Committee and Cultural District Commission.

RECOMMENDATION/MOTION: That the Appointments be approved.

BACKGROUND: I ask your concurrence in the appointment of Amy Davis of 501 S. Clayton Street, Bloomington 61701 to the Beautification Committee. Her 4 year term will begin October 22, 2012.

I ask your concurrence in the appointment of Sherry Galbreath of 3 Mallard Court, Bloomington 61704 to the Cultural District Commission. Her 4 year term will begin October 22, 2012.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Kathryn Buydos
Executive Assistant

Stephen F. Stockton
Mayor

Attachments: Attachment 1. Beautification Committee Roster
Attachment 2. Cultural District Commission Roster

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			

Bloomington Beautification Committee

Category	Staff/Chair	Title	First Name	Last Name	Street	City	Zip	Expiration	Appointment Date	Year First Appt	Attendance Last 12 Meetings
Beautification Committee			Tammi	Winters	1120 S. Low St	Bloomington	61701	04/30/10	09/01/07	2007	9
Beautification Committee			Martha	Burk	904 S. Clinton	Bloomington	61701	04/30/13	01/11/10	2010	9
Beautification Committee			Patricia	Morin	1405 N Clinton Blvd	Bloomington	61701	04/30/15	08/22/11	2011	
Beautification Committee			Marlene	Gregor	107 W Market St	Bloomington	61701	04/30/15	08/22/11	2011	
Beautification Committee			Josh	Barnett	2322A Rainbow Ave	Bloomington	61704	04/30/15	08/22/11	2011	
Beautification Committee			Valerie	Dumser	809 W. Washington	Bloomington	61701	04/30/16	09/24/12	2012	
Beautification Committee			VACANT								
Beautification Committee			Anne	Driskell	1228 Bancroft Dr	Bloomington	61704	04/30/15	09/12/11	2011	
Beautification Committee			Sue	Floyd	608 N Lee	Bloomington	61701	04/30/13	01/11/10	2010	9
Beautification Committee			Julie	Morton	204 W. Tanner St	Bloomington	61701	04/30/10	09/01/07	2007	4 of 8
Beautification Committee			Marti	DuLac	24 Stonehedges	Bloomington	61704	04/30/11	04/01/04	2004	5 of 7
Beautification Committee	Ex-officio		Wade	Abels	503 E. Emerson St	Bloomington	61701				
Beautification Committee	Ex-officio		Jan	Lauderman	4 Oxford Ct	Bloomington	61704				
Beautification Committee	Chair		Stan	Cain	10 Barley Circle	Bloomington	61704	04/30/10	04/01/90	1990	12

Beautification Committee	Staff		Jeff	Hindman	Parks & Recreation						
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Number of Vacancies
1

Number of Applications on file
5

Number of Expired Board Members
4

Request for reappointments:
Stan Cain emailed a request (12/19/2011) that Tammi Winters, Julie Morton, Marty DuLac and Stan Cain be reappointed.

Notes
4 year terms
12 members, 2 ex-officio members
Number Mayor Appoints: 12
Type: Internal
City Code:
Required by code - State or City: No
Meets the 4th Thurs of each month at 7:00pm - Blm Library Community Room

Cultural District Commission

10/16/2012 11:12 AM KB

Category	Staff/Chair	Title	First Name	Last Name	Street	City	Zip	Expiration	Appointment Date	Year First Appt	Attendance Last 12 Meetings
Cultural District Commission			Matthew	Giordano	511 S. Mercer Ave	Bloomington	61701	04/30/15	02/13/12	2012	3 (of 5)
Cultural District Commission			Dr. Curtis	Trout	1104 S Fell	Normal	61761	04/30/15	05/11/09	2009	9
Cultural District Commission			Mike	Kerber	406 N Linden	Bloomington	61701	04/30/13	12/14/09	2009	7
Cultural District Commission			Alex	Cardona	9697 Windgate Dr	Bloomington	61705	04/30/13	04/30/10	2010	8
Cultural District Commission			VACANT								
Cultural District Commission			Vicki Lynn	Tilton	200 W. Monroe, #501	Bloomington	61701	04/30/15	06/25/12	2012	1 (of 2)
Cultural District Commission	Chair		Jim	Waldorf	1603 E. Washington St	Bloomington	61701	04/30/14	04/30/08	2005	11
Cultural District Commission			Anne	Boyden	7 Country Club Place	Bloomington	61701	04/30/15	05/11/09	2008	10
Cultural District Commission			Carole	Ringer	110 Hawthorne Lake Dr	Bloomington	61704	04/30/13	04/30/10	2010	6
Cultural District Commission			Karen	Schmidt	409 E. Grove	Bloomington	61701	04/30/14	05/01/08	2008	10
Cultural District Commission			Carol	Baker	1515 N. Linden	Bloomington	61701	04/30/15	04/27/09	2003	10
Cultural District Commission			Bruce	Bergethon	13 Brookshire Dr	Bloomington	61704	04/30/14	04/30/08	2008	9
Cultural District Commission			Judy	Markowitz	326 Vista Dr	Bloomington	61701	04/30/15	05/11/09	2006	9
Cultural District Commission			Roger	Elliott	212 Doud Dr.	Normal	61761	04/30/13	04/30/10	2007	10
Cultural District Commission	Staff		John	Kennedy							
Cultural District Commission	Staff		Joel	Aalberts							

Attendance last updated: 10/12/12

Number of Vacancies	0
Number of Applications on file	1
Number of Expired Board Members	8
Request for reappointments:	
Joel Aalberts emailed (5/15/12) a request to reappoint Curtis Trout, Anne Boyden, Carol Baker, and Judy Markowitz.	

Notes
3 year terms
14 members
Number Mayor Appoints: 14
Type: Internal
City Code: Chapter 2: Section 81
Required by code - State or City: No
Meets the 2nd Thurs of each month at 7:30am at the Creativity Center

em'd Joel & Jim to reappoint Curtis, Anne, Carol, Judy, Jim, Roger, Karen, Bruce (or to update their expiration dates) - the Mayor is ready to make reappointments.

FOR COUNCIL: October 22, 2012

SUBJECT: Council Proceedings of October 8, 2012, Work Session Minutes of October 8, 2012 and Executive Session Minutes of May 29, 2012

RECOMMENDATION/MOTION: That the reading of the minutes of the previous Council Proceedings of October 8, 2012, Work Session Minutes of October 8, 2012 and Executive Session Minutes of May 29, 2012 be dispensed with and the minutes approved as printed.

BACKGROUND: The Council Proceedings of October 8, 2012, Work Session Minutes of October 8, 2012 and Executive Session Minutes of May 29, 2012 have been reviewed and certified as correct and complete by the City Clerk.

In compliance with the Open Meetings Act, Council Proceedings must be approved within thirty (30) days after the meeting or at the Council’s second subsequent regular meeting whichever is later.

In accordance with the Open Meetings Act, Council Proceedings are made available for public inspection and posted to the City’s web site within ten (10) days after Council approval.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Tracey Covert
City Clerk

David A. Hales
City Manager

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			

FOR COUNCIL: October 22, 2012

SUBJECT: Bills and Payroll

RECOMMENDATION/MOTION: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

BACKGROUND: The list of bills and payrolls will be posted on the City's website on Thursday, October 18, 2012 by posting via the City's web site.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Total disbursements information will be provided via addendum.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Patti-Lynn Silva
Director of Finance

David A. Hales
City Manager

(ON FILE IN CLERK'S OFFICE)

Attachment: Attachment 1. Bills and Payroll on file in the Clerk's office. Also available at www.cityblm.org

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			

FOR COUNCIL: October 22, 2012

SUBJECT: Economic Development Strategic Plan and Incentive Guideline

RECOMMENDATION/MOTION: That the Economic Development Strategic Plan and Incentive Guideline be approved and the Resolutions passed.

BACKGROUND: With the recent economic recession, the City of Bloomington lost sources of revenue critical to the day-to-day operation of our community. Now, in an attempt to minimize losses and provide citizen's with the same high level of services and overall quality of life, the City is proposing the implementation of a more aggressive, proactive and business-friendly approach to economic development.

The Bloomington community is fortunate to have successful and rooted businesses like State Farm to maintain its foundation, and prosperous economic development organizations like the Economic Development Council of the Bloomington-Normal Area (EDC) to assist in the attraction of new industries. Despite these factors, the cost of City services continues to rise and individual tax payers can no longer afford to share the burden. As such, it is imperative that the City expand upon the business tax base. Given that forty (40) percent (%) of the City's General Fund dollars are generated by sales taxes and twenty (20) percent (%) are generated by property taxes, the City should strive to compliment the EDC's efforts by actively collaborating in the development process and leading the charge toward retail retention and expansion.

Per the Council's direction, and in accordance with one of the action items for 2012, Staff has prepared the enclosed Economic Development Strategic Plan and Incentive Guideline. These documents emphasize retail development and contain a secondary focus for collaborative efforts with the EDC. Throughout the short and long term, the City's Economic Development Office will focus on the community's image and its reputation within the business community; it will serve to facilitate municipal processes pertinent to business and create a cultural shift whereby the City utilizes a customer-service approach when dealing with local enterprises.

The enclosed Strategic Plan and Incentive Guideline are inclusive of feedback received at the City Council Work Session on September 10 and also various pieces of correspondence received from several local groups and residents. By taking a proactive approach, the attached documents reflect a community approach to economic development.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Economic Development Council of the Bloomington-Normal Area (meetings held on 7/11 & 8/30), McLean County Chamber of Commerce (meeting held on 9/19 & 9/20), Downtown Bloomington Business Association (9/12 & 10/9), Downtown Bloomington Property Owners Association (9/12 & 10/9), Bloomington-Normal Area Convention & Visitor's Bureau (9/12), Center for Emerging Entrepreneurs (9/12), West Bloomington Revitalization Project (9/12), Bloomington-Normal Association of Realtors (9/13), Bloomington-Normal Area Home Builders

Association (9/21) and various developers include CBL Properties (9/21), Snyder Companies (9/21) and Shirk companies (9/21).

FINANCIAL IMPACT: While the adoption of the proposed resolutions poses no direct financial impact, indirectly, the Economic Development Office will work to execute the Strategic Plan and Incentive Guideline in such a way so as to increase the municipal commercial tax base and relieve the burden on individual tax payers.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Justine Robinson
Economic Development Coordinator

David A. Hales
City Manager

Attachments: Attachment 1. Strategic Plan Resolution
Attachment 2. Incentive Guideline Resolution
Attachment 3. Strategic Plan
Attachment 4. Incentive Guideline

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			

RESOLUTION NO. 2012 - _____

**A RESOLUTION ADOPTING AN ECONOMIC DEVELOPMENT STRATEGIC PLAN
POLICY**

WHEREAS, the City of Bloomington seeks to enhance the economic viability of its community and its residents through the use of economic development practices and collaboration with other economic development organizations; and

WHEREAS, when evaluating projects in relation to economic development, the City of Bloomington will reference the following goals and objectives:

- (1) Initiate retail retention and recruitment efforts that will expand the commercial tax base in such a way so as to enhance municipal operations and relieve the burden on individual taxpayers;
- (2) Actively collaborate with the Economic Development Council, McLean County Chamber of Commerce, Center for Emerging Entrepreneurs, Small Business Development Center, Central Illinois SCORE and other economic development organizations of the Bloomington-Normal area to promote capital investment and job creation;
- (3) Establish a downtown Bloomington strategy and relevant priorities;
- (4) Consider the ramifications of economic development decisions when planning for public services and facilities;
- (5) Improve the financial viability of properties and programs owned, managed or funded by taxpayer dollars;
- (6) Enhance the overall quality of life of the citizens of the City of Bloomington in order to promote economic growth;
- (7) Ensure that investment in economic development will add economic value and increase employment within the City; and

WHEREAS, the purpose of the Economic Development Strategic Plan Policy is to provide a catalyst for commercial development and improve the socioeconomic status of the City of Bloomington and its residents; and

WHEREAS, the City of Bloomington has determined that the Economic Development Strategic Plan Policy is in the best interest of the municipality and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS, that:

The City of Bloomington Economic Development Strategic Plan Policy, attached, is hereby adopted and approved; and be it further

RESOLVED, that the City Clerk of Bloomington shall attest the same after signature of the Mayor.

ADOPTED this 22nd day of October, 2012.

APPROVED this ___rd day of October, 2012.

APPROVED:

Stephen F. Stockton
Mayor

ATTEST:

Tracey Covert
City Clerk

RESOLUTION NO. 2012 - _____

**A RESOLUTION ADOPTING AN ECONOMIC DEVELOPMENT INCENTIVE
GUIDELINE**

WHEREAS, the City of Bloomington may, at its discretion, provide financial or in-kind assistance to new or existing development through the use of incremental and other revenues accrued by the City; and

WHEREAS, the Economic Development Council of the Bloomington-Normal area will assist developers in seeking financing and incentives available through alternate, non-municipal programs; and

WHEREAS, when evaluating opportunities for financial assistance, the City of Bloomington will reference the following goals and objectives:

- (1) Economic incentives considered by the City of Bloomington must provide a distinct financial return to the City;
- (2) Economic incentives considered by the City of Bloomington must be initiated by a formal application process;
- (3) Economic incentives considered by the City of Bloomington should be derived from new incremental revenue sources unless the “but for” theory is proven and the City will benefit from a distinct financial return;
- (4) Economic incentives considered by the City of Bloomington must be of an appropriate amount and extend over an appropriate amount of time as related to the proposed project;
- (5) Economic incentives considered by the City of Bloomington will be provided on a project basis;
- (6) Economic incentives considered by the City of Bloomington will be subject to a development agreement inclusive of performance based measurements and appropriate claw back provisions;
- (7) Economic incentives considered by the City of Bloomington will be subject to conformity with applicable State and Federal provisions;
- (8) Economic incentives considered by the City of Bloomington will not be considered on a retroactive basis; and

WHEREAS, the purpose of the Economic Development Incentive Guideline is to assist in attracting and retaining high quality development that is compatible with the long-range goals

expressed in the Strategic Plan; land uses as outlined in the Comprehensive Land Use Plan, and certain priority areas as outlined in the Target Area Map; and

WHEREAS, the City of Bloomington has determined that the Economic Development Incentive Guideline is in the best interest of the municipality and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS, that:

The City of Bloomington Economic Development Incentive Guideline, attached, is hereby adopted and approved; and be it further

RESOLVED, that the City Clerk of Bloomington shall attest the same after signature of the Mayor.

ADOPTED this 22nd day of October, 2012.

APPROVED this ___rd day of September, 2012.

APPROVED:

Stephen F. Stockton
Mayor

ATTEST:

Tracey Covert
City Clerk

Economic Development Strategic Plan

PURPOSE: The purpose of this policy is to provide a catalyst for commercial development wherein the policy, related goals and objectives will serve to improve the socioeconomic status of the City of Bloomington and its residents.

Ultimately the efforts outlined below should serve enhance the citywide Comprehensive Plan and provide an economic perspective for critical questions such as:

- What are the priorities for City economic development?
- What is the role of retail development in the City’s overall economic development strategy?
- What are the priorities for recruiting new “good” jobs near workers? For retaining/expanding existing businesses?
- What is the appropriate mix of land use types in the City to meet these goals – economic, fiscal, social, environmental, etc.?
- How can mixed use development be promoted in the City, particularly as part of multifamily developments?
- What type of nonresidential development is worth incentivizing from both an economic and fiscal perspective?
- What can the City do from a land use planning perspective to support economic development efforts?

GENERAL POLICY: The City of Bloomington seeks to enhance the economic viability of its community and its residents through the use of Economic Development practices and collaboration with other Economic Development Organizations.

GOALS: The City of Bloomington will reference the following goals and objectives when evaluating projects in relation to Economic Development.

1. Retail Retention & Recruitment:

Initiate retail retention and recruitment efforts that will expand the commercial tax base in such a way so as to enhance municipal operations and relieve the burden on individual tax payers.

Objectives:

- a. Assist existing retail businesses with operational and expansion strategies in order to secure the foundation and stimulate growth of current retailers.
- b. Exercise efforts to attract and recruit commercial retailers so as to improve upon shopping center occupancy rates and encourage revitalization of older commercial properties.
- c. Engage the community’s twenty (20) largest sales tax sources on a semi-annual basis to gather commentary on the current business environment and identify trends in business productivity and municipal services.
- d. Participate in networking opportunities sponsored by organizations like the International Council of Shopping Centers and the McLean County Chamber of Commerce whereby relationships can be forged and productive dialogue can be initiated with retail

professionals including leasing agents, brokers, managing companies and business and property owners.

2. Regional Economic Development Efforts:

Actively collaborate with the Economic Development Council of the Bloomington-Normal Area (EDC), McLean County Chamber of Commerce, Center for Emerging Entrepreneurs (CEE), Small Business Development Center (SBDC), Central Illinois SCORE and other regional economic development organizations to promote capital investment and job creation.

Objectives:

- a. Assist in the EDC in the Executive Pulse business retention survey program in an effort to facilitate the retention and expansion of existing local businesses and start-up of new businesses, especially where retail job creation and retention are a top priority.
- b. Coordinate with the EDC to host an annual BN by the Numbers focused on retail trends. Event should be held in the second quarter and should include a private session with retailers, EDC and City Staff to be followed by the public, formal presentation and discussion.
- c. Serve as a conduit through which current and start-up businesses become aware of programs sponsored by local economic development organizations.
- d. Contribute to efforts that will promote and market the City of Bloomington to outside businesses for the purpose of business recruitment.
- e. Collaborate and provide information for the Location One Information System (LOIS), which maintains a supply of commercial and industrial sites useful for new and expanding businesses looking to locate or remain in the City of Bloomington.
- f. Encourage regular updates of inventories of land utilization, land demand and suitable properties for residential, industrial, commercial, public facility and agricultural use.

3. Downtown Development:

Establish Downtown Bloomington Strategy and relevant priorities

Objectives:

- a. Work cooperatively with the Downtown Bloomington Association (DBA) and Downtown Property Owners to construct a list of economic development priorities and timelines for Council consideration and adoption.
- b. Research opportunities that, when implemented, will result in innovative funding sources suitable for the DBA and downtown improvements.

4. Public Services & Facilities:

Consider the ramifications of economic development decisions when planning for public services and facilities.

Objectives:

- a. Work with public service providers to deliver the services and facilities necessary to support a high quality of life and attract business investment.
- b. Review land use and permitting procedures to assure that regulatory processes are understandable, predictable, and can be accomplished within reasonable time periods in a manner that meets or exceeds state statutory requirements.
- c. Examine, evaluate and enforce City Codes intended to assist business owners and improve the climate for commercial activity.
- d. Plan for a diversity of ready-to-build sites with sufficient support infrastructure and services needed to meet the demand for commercial and industrial growth.

5. City Properties:

Improve the financial viability of properties and programs owned, managed or funded by taxpayer dollars.

Objectives:

- a. Encourage local businesses partnerships that provide financial support and enhance the overall quality of life of the citizens of the City of Bloomington.
- b. Work with City Departments to identify solutions that, when implemented, will result in City funding being reduced or eliminated when appropriate.

6. Quality of Life:

Enhance the overall quality of life of the citizens of the City of Bloomington in order to promote economic growth.

Objectives:

- a. Identify community retail leakage and surplus opportunities through surveys, social media and other mediums applicable for public input
- b. Publish a retail environment report wherein leakage, surplus, community demand and sales tax trends are referenced.
- c. Encourage a range of commercial retail and service businesses to meet local resident needs and serve visitors to the City of Bloomington.
- d. Encourage commercial and industrial developments that incorporate innovative applications and demonstrate an ability to conserve natural resource and/or protect or enhance environmental quality.
- e. Support local efforts to improve and market visitor services.
- f. Provide for siting and development of quality residential neighborhoods.
- g. Encourage development of human and social service facilities that create job opportunities, meet community needs, and maintain the City's quality of life. These include, but are not limited to, healthcare, education, transportation and other services for persons with special needs.

7. Prosperous Community:

Ensure that investment in economic development will add economic value and increase employment within the City.

Objectives:

- a. Increase the commercial and industrial tax base by actively working towards initiatives that positively impact business taxes including, but not limited to, property taxes, sales taxes, food and beverage taxes and hotel/motel taxes.
- b. Provide normal and customary incentives to new and existing businesses that locate within the City and create jobs.
- c. Carefully scrutinize requests for non-customary assistance or incentives to ensure a favorable return on any City investment and minimize risk to City taxpayers.

Economic Development Incentive Guideline

PURPOSE: The purpose of this policy is to assist in attracting and retaining high quality development that is compatible with the long-range goals expressed in the Strategic Plan and land uses outlined in the Comprehensive Land Use Plan. Furthermore, it serves to stimulate development within certain priority areas as outlined in the Target Area Map, wherein enhanced incentive tools and levels may be deemed necessary. It is important to note that a guideline is intended to provide a recommended practice that allows some discretion or leeway in its interpretation, implementation or use, depending on the circumstances surrounding the particular project being evaluated.

GENERAL POLICY: The City of Bloomington may, at the City's discretion, provide financial or in-kind assistance to new or existing development through the use of incremental and other revenues accrued by the City. The Economic Development Council of the Bloomington-Normal Area will assist developers in seeking financing and incentives available through alternate, non-municipal, programs.

GOALS: The City of Bloomington will reference the following goals and objectives when evaluating opportunities for financial assistance.

1. Strategic Use of Incentives:

Economic incentives considered by the City must provide a distinct financial return to the City.

Objectives:

- a. Developer will be required to provide either an affidavit to support their “but for” claim or proof of a competing incentive offer from a location outside of McLean County.
- b. Careful consideration will be given in order to evaluate the financial situation of the developer and attest to the legitimacy, or lack thereof, of said affidavit.
- c. If a financial return is not identified, other types of incentives can be considered so long as the direct result of the incentive is the encouragement of development and the City's goals and objectives are met.

2. Incentive Application Process:

Economic incentives considered by the City must be initiated by the formal application process.

Objectives:

- a. Requests for economic development assistance must be in the form of a completed Application.
- b. Applications must be accompanied by detailed financial information that demonstrates the anticipated revenue that the project is expected to generate and also includes a ‘sources and uses statement’.
- c. Information of a detailed financial nature will be regarded as proprietary and will remain confidential.

3. Incentive Sources and Uses:

Economic incentives considered by the City should be derived from new incremental revenue sources unless the ‘but for’ theory is proven and the City will benefit from a distinct financial return.

Objectives:

- a. For projects that are requesting sales or property tax rebate incentives, only those City revenues which are directly accrued on an annual basis by the proposed project, will be considered for use to assist in the development or redevelopment activities and costs.
- b. Incremental revenues are those which annually result from the proposed project in excess of current City revenues being generated from the project site or area.
- c. Projects that involve relocation of an existing activity from one location to another within the boundaries of Bloomington-Normal should be accompanied by a testimonial whereby the affected business’ operations would not continue ‘but for’ the alternate location.
- d. The redevelopment of an existing activity shall have the incremental revenue generation amount based upon the amount in excess of the revenue previously accruing to the City at the existing location.

4. Incentive Guidelines:

Economic incentives considered by the City of Bloomington must be of an appropriate amount and extend over an appropriate amount of time as related to the proposed project.

Objectives:

- a. Normally, not more than 20% of the total project cost will be supported by incentive revenues.
- b. Total project cost is the cost of development of the project including all land, site, and public infrastructure, and building and site amenity costs necessary to constitute an operating commercial or industrial project.
- c. Financial assistance will not normally exceed 50% of the incremental City revenue to be generated by retail commercial uses and will be limited to a 5 year period.
- d. In those instances when City funds are provided at the beginning of the project, assistance will not normally exceed 10% of the total project cost and funds will be subject to reimbursement within three (3) years of the date of completion.
- e. For those projects where a competing offer is provided, the proposed incentive will be evaluated against the criteria found herein.

5. Incentive Limitations:

Economic incentives considered by the City of Bloomington will be provided on a project basis.

Objectives:

- a. For multi-phase projects, or those having multiple buildings, assistance will be provided based on the overall development program and channeled through a single development agreement with the prime developer.
- b. No separate financial incentives or assistance to owners or developers of parcels that are sub-components of the primary project will be provided.

6. Incentive Terms and Agreements:

Economic incentives considered by the City of Bloomington will be subject to a development agreement inclusive of performance based measurements and appropriate claw back provisions.

Objectives:

- a. All project assistance from the City will be provided based on a negotiated development project agreement between the City and the developer and is subject to performance based measurements as adopted by the City Council.
- b. The agreement will contain a cost recovery process whereas in the event that the assisted project fails prior to the completion of the period covered by the incentive, claw back measurements will ensue to ensure recovery of assistance.

7. State and Federal Regulations:

Economic incentives considered by the City of Bloomington will be subject to conformity with applicable State and Federal provisions.

Objectives:

- a. All projects for which City financial assistance is requested (except those within the TIF District) will be required to conform to all local, state and federal regulations and shall meet all of the stipulations and requirements therein.
- b. Projects proposed within a TIF Districts shall be subject to the provisions of the Illinois Tax Increment Allocation Redevelopment Act (TIF Act, 65 ILCS 5/11-74, 4-1), as amended.

8. Incentives for Future Development:

Economic incentives considered by the City of Bloomington will not be considered on a retroactive basis.

Objectives:

- a. No assistance will be provided to any project for expenditures incurred prior to the adoption of the ordinances required to implement the project.

DUE CONSIDERATION: In addition to the policies set forth above, the following provisions should be noted by any applicant/developer seeking economic development financial assistance from the City of Bloomington:

- a. The adoption of these policies by the City Council in the form of a resolution should not be construed to mean that the provision of financial incentives is inherently approved for any applicant and/or project that may be able to comply with the policies as set forth herein. Each project will be approached as an entity to be independently evaluated.
- b. The City reserves the right to amend, modify, or withdraw these policies; revise any requirement of these policies; require additional statements, sworn affidavits or other information from any applicant/developer, to negotiate or hold discussions with any applicant/developer/and or project which does not completely conform to the policies as set forth above, to waive any nonconformity with these policies, to eliminate these policies in

whole or in part, if the City deems it is in its best interest to do so, and to waive any timetables established by ordinance, resolution or motion.

- c. Submission of an application for economic development assistance that complies with the spirit and intent of these policies does not commit the City to approval of the development/redevelopment project associated with said application.
- d. The City may exercise the foregoing rights at any time without notice and without liability to any applicant, developer and/or project or any other party for its expenses incurred in the preparation of an application for economic development assistance. The preparation of any such application and related costs associated with responding to the City in its review of such application shall be the sole responsibility of the applicant/developer.

FOR COUNCIL: October 22, 2012

SUBJECT: Extension of Fuel Agreement for Fleet Vehicles and Equipment

RECOMMENDATION/MOTION: That the Fuel Purchasing Agreement with Evergreen FS be extended for one (1) year, and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: In 1999, the City fuel contract was let out for bid and awarded to Evergreen FS for a three (3) year period. From 2002 to 2008, the contract was extended in two (2) year intervals after checking with other vendors to see if the current vendor was competitive. On February 11, 2008, Council approved an extension with Evergreen FS until April 30, 2009. On December 9, 2008, a bid package was let out for the City's annual fuel purchase and only one (1) bid package was returned. At the January 12, 2009 Council meeting, the bid was opened and staff recommended the bid be awarded to Evergreen FS from May 1, 2009 to December 31, 2010 with four (4), one (1) year renewal options. On October 25, 2010 the 1st of four (4), one (1) year renewal options was approved by City Council. Staff emphasized the best time to purchase fuel as January and February.

Evergreen FS is the only known vendor that can meet all of the current contract specifications. These services include, bulk fuel transport to the bulk tank at the Public Works fuel station, deliveries to various smaller fuel tanks at the parks, golf courses, emergency generators, and to fire apparatus at working fires. It also includes a fuel card to purchase fuel from local FS stores when the Public Works Department fuel station is out of service for maintenance. Operates and maintains a local tank farm with the ability to deliver fuel from the tank farm to the City in the event of a natural or manmade disaster. The City used this service last winter during the big snow event when bulk fuel transports could not deliver fuel. Evergreen FS offers a fuel risk management program that allows schools (a total of 18 in the area) and municipalities (Bloomington Normal Public Transit and Town of Normal participated last year) to pool their fuel purchases for volume discounts and guaranteed fuel costs. Evergreen FS provides fuel storage tank sampling and testing with storage tank maintenance recommendations at no charge to the City on an annual basis.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2013 Budget has appropriated \$1,730,000 for gasoline and diesel fuel for City vehicles and equipment. The \$1,730,000 is budgeted in the Fleet Management division of Public Works in line item 10016310-71070.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed by:

Reviewed by:

Jim Karch, PE CFM
Director of Public Works

Patti-Lynn Silva
Director of Finance

Barb Adkins
Deputy City Manager

Financial reviewed by:

Recommended by:

Tim Ervin
Budget Manager

David A. Hales
City Manager

Attachments: Attachment 1. Fuel Strategy Report

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			

Fuel Report

City of Bloomington Fuel Strategy

Purchase 50% of yearly fuel in the Evergreen FS Risk Management Program.

Take delivery of fuel 50% of monthly use each month. Buy the remaining 50% each month.

Decide when to use Program fuel and when to buy fuel off the market each month based on fuel prices and trends for the month. Get signed agreement from all agencies that buy fuel from the City to participate in the City's Fuel Strategy Program.

What Contracting is:

Hedging or contracting fuel is ordering fuel in advance on a monthly basis at a predetermined price based on projections of the oil futures market with the expectation that the price will increase above what you paid based on previous years trends.

Advantages of Contracting:

1. The ability to purchase fuel under market value.
2. The ability to budget fuel line items and know that it will stay in budget.
3. Takes the emotion aspect out of fuel purchasing.
4. Gives the City a clear strategy for fuel purchasing.

Disadvantages of Contracting:

1. No guarantee that the City will save money.
2. Locked into prices if cost of fuel drops.

Risk Management Program

The goal of this program is to reduce risk by locking in fuel prices during a time frame that historically offers fuel oil prices that are at a low point for the year. This program pools fuel from multiple users to get a volume discount.

Users must be enrolled by mid November to participate and receive fuel from February 1st to January 30th of the following year. Evergreen takes the total gallons enrolled in the program and buys equal amounts of fuel on select trading days from December 1st thru January 30th for each month of the year. The product price is averaged and applied to each month plus applicable State and Federal taxes, and \$.02 Transport or \$.15 Tank Wagon per gallon as per our current contract with Evergreen FS.

Other agencies that use Risk Management Program

District 87, Unit 5, Olympia, Heyworth, Clinton, Fieldcrest, Town of Normal

This past year most of the Risk Managers placed 50% of their gallons in this program and left the other 50% to purchase at market price which allows for diversity in their fuel purchases. This strategy works well as there are periods when the market price is lower than the contract price, this allows for a lower average price for the month. Currently the contract price on the Risk Manager Program is averaging lower than the market price. Although the hope is that the program price is better than the market price as an average, the main objective is to remove the

wide swings of the fuel prices throughout the year, and allow us to budget more accurately and consistently.

Other agencies fuel strategies

Decatur Buys fuel on the spot market and calls to get 3 quotes price based on OPIS (Oil Pricing Information Service).

Peoria Contracts with Tri-Star for bulk and United fuels for tank wagon, price based on OPIS.

Contract with Evergreen FS

Services with FS

- Contracting

- Tank wagons fuel working fire trucks, tank farm in town

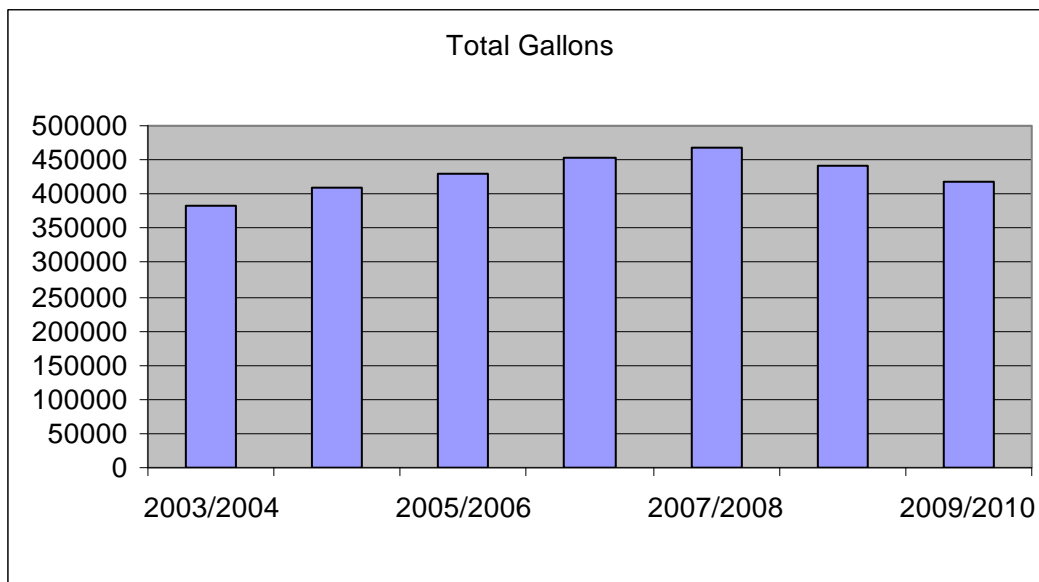
- Bio Diesel purity

- Tank sampling water, microbes

- Market updates daily

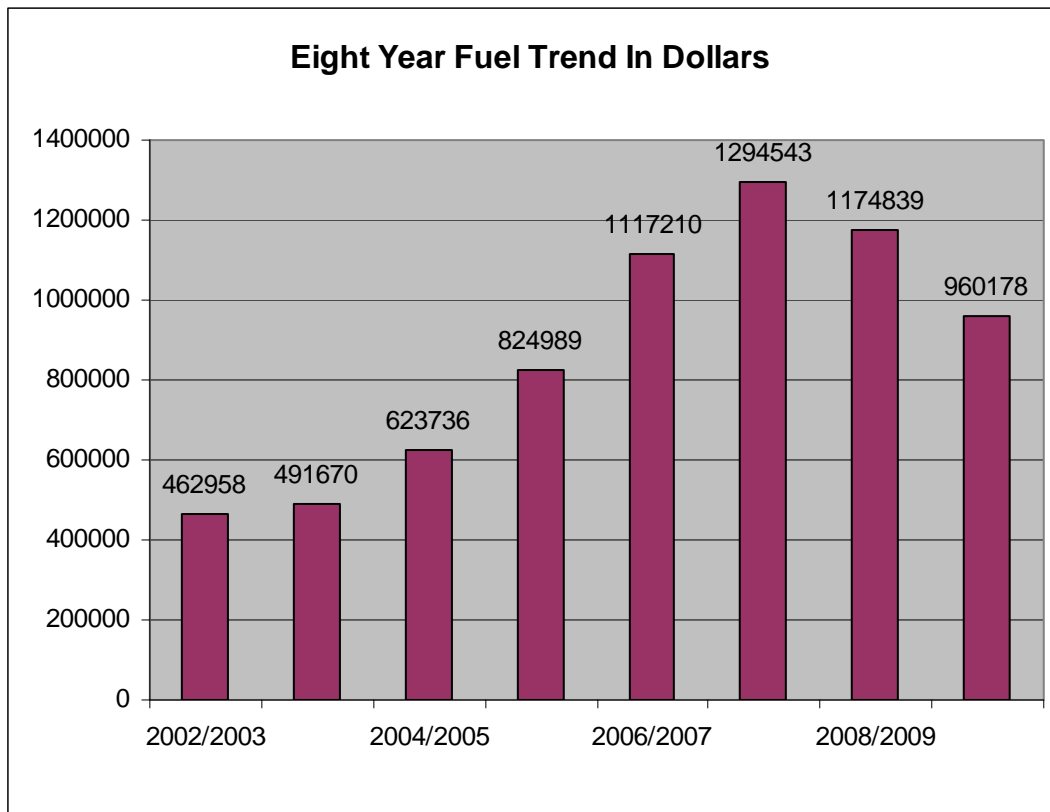
Fuel Usage

Fuel use for the City of Bloomington had increased each year until peaking in Fiscal Year 2007/2008 at 466,775 gallons. In Fiscal Year 2008/2009 usage decreased 26,331 gallons or 5.64%. In the last Fiscal Year 2009/2010 fuel usage decreased 21,108 gallons or 4.79%.. This is a total decrease of 47,439 gallons or 10.16% from our peak usage.



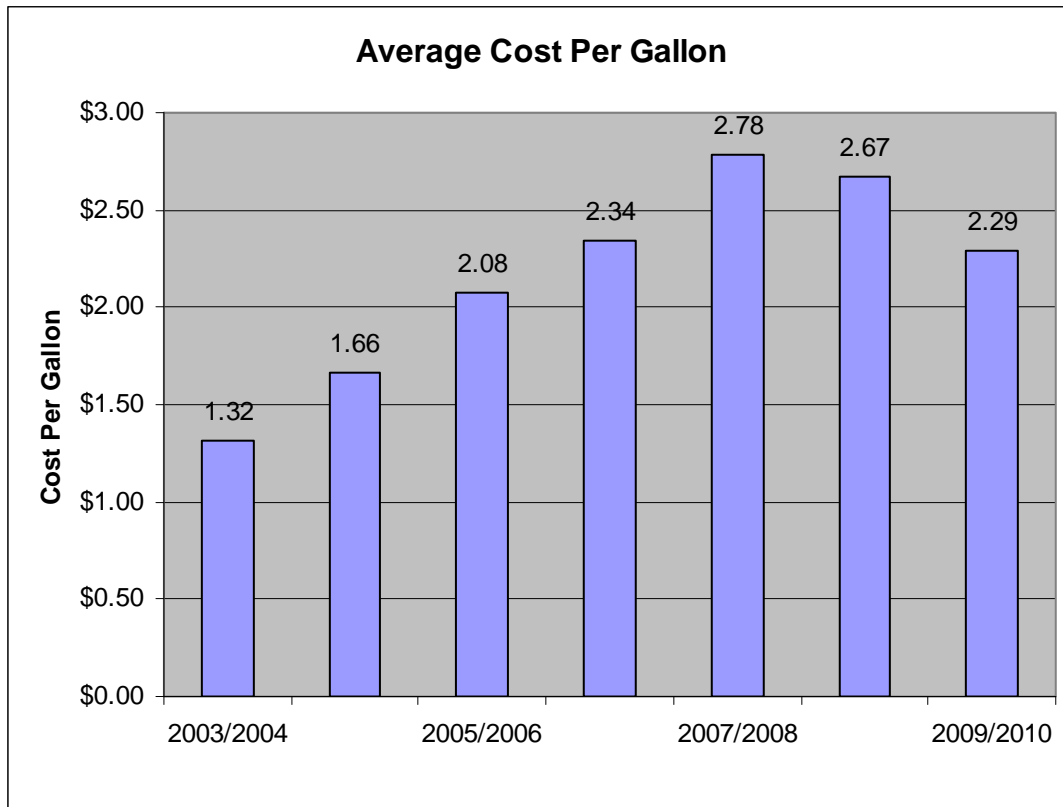
Fuel cost

The City of Bloomington's fuel cost increased each year until FY 2007/2008 when we paid a total of \$1,294,543. In FY 2008/2009 we paid \$119,704 less or 9.24% and in FY 2009/2010 we paid \$214,661 less or 18.27%. This has been a decrease of \$334,365 or 25.82% in the last 3 years.



Fuel cost per gallon

In our Fiscal Year 2007/2008 our average cost per gallon peaked at \$2.78 per gallon. In Fiscal Year 2008/2009 the City's cost per gallon peaked at \$4.20 for diesel in June. The lowest cost per gallons was \$1.27 for no lead in December for an average of \$2.67 per gallon. This is a \$.11 decrease or 4% from the previous year. In FY 2009/2010 we paid an average of \$.38 less per gallon or 14.23%. This is a decrease of \$.49 per gallon or 17.62% in the last 3 years.

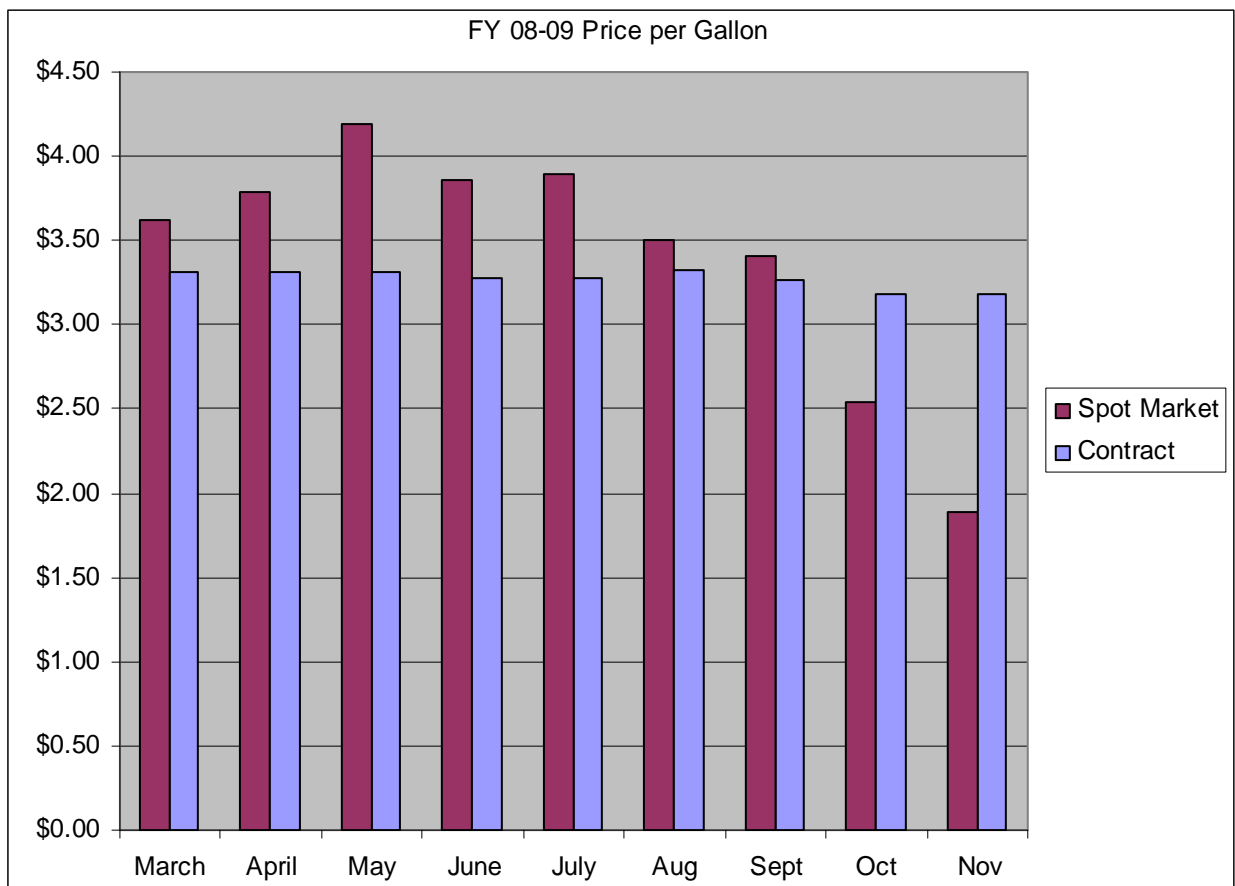


City of Bloomington contracted fuel FY 2008/2009 - Diesel Fuel Only

In Fiscal Year 2008/2009 City of Bloomington bought fuel on contract. As shown on the chart below for an average year this was working well. Then as the recession hit and the price for a barrel of oil dropped from a high of \$147 in July to a low of \$34 a barrel in December we were upside down on our contracts. Even with this situation we were still able to save \$36,219 and come in under budget.

We used the strategy of 50% bought on contract and 50% bought on the Spot Market. This allowed us to pay an average cost per gallon lower than what was budgeted. Evergreen FS sold more contracts at above \$4.00 per gallon than they did when fuel was at \$3.31 a gallon.

Those are the situations when people fear that the price will continue to go up and are trying to mitigate their losses. This is when emotions drove buying decisions rather than sound business practices based on multi year trends and averages.



City of Bloomington did not contract fuel FY 2009/2010

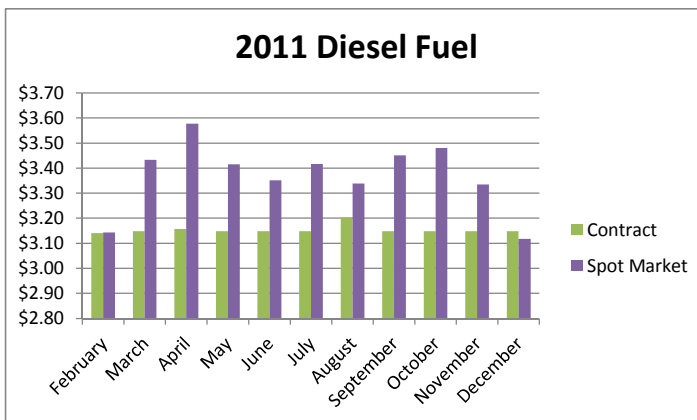
There was \$1,133,000 budgeted for fuel this year and the City spent \$962,247. This was 15.1% under budget. The City's fuel cost was 14.5% lower this year than last year.

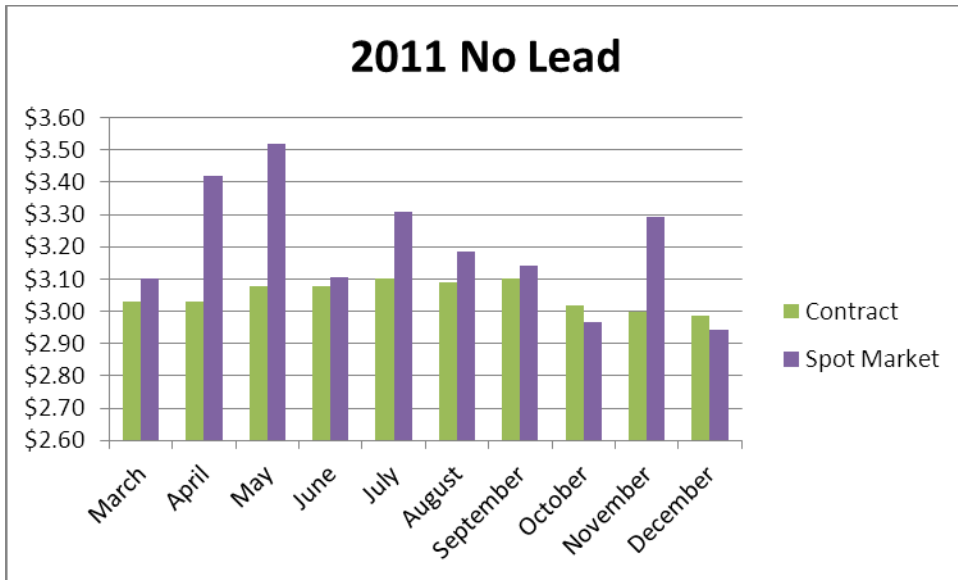
City of Bloomington for FY11 did not contract for fuel

There was \$1,267,000 budget for fuel this year and the city spent \$1,179,433 this was 7% under budget. The City spent \$217,186 more this year over last. This was a 22% increase. In this fiscal year the City put into place a Risk Management Fuel Purchasing Strategy.

City of Bloomington contracted fuel FY 12

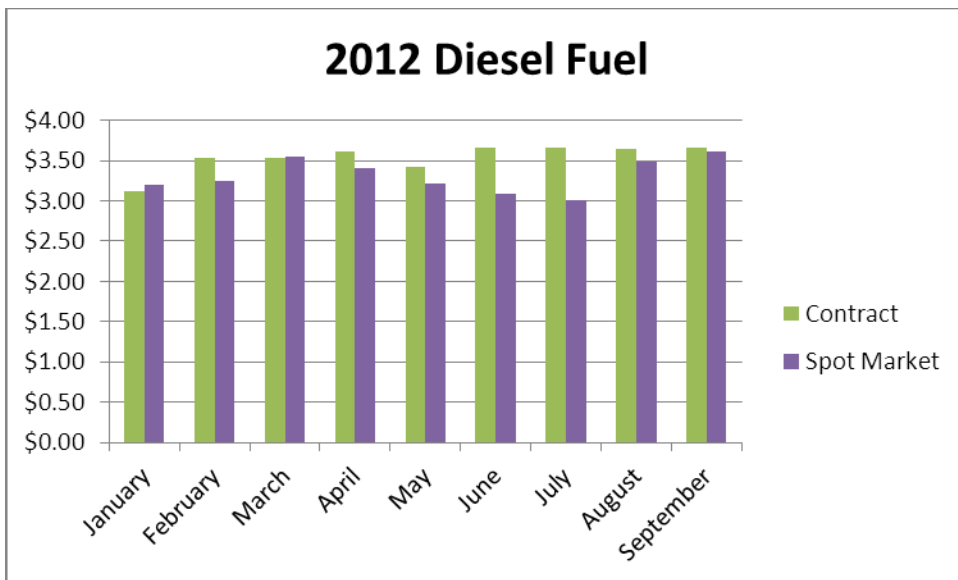
There was \$1,679,516 budget for fuel this year and the city spent \$1,592,000 this was 5% under budget. The City spent \$412,567 more this year over last. This is a 35% increase. Using the City's Fuel Purchasing Strategy the city saved \$16,459 over the open market cost.

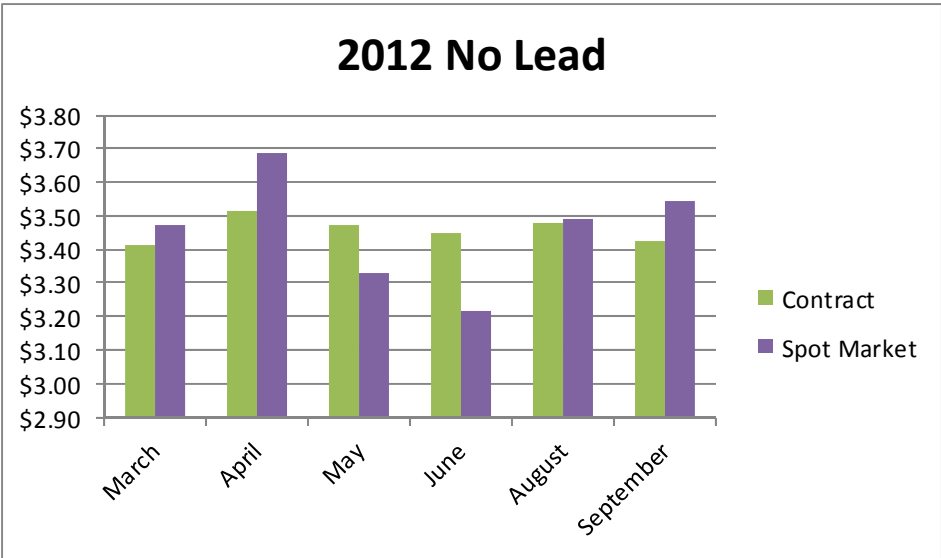




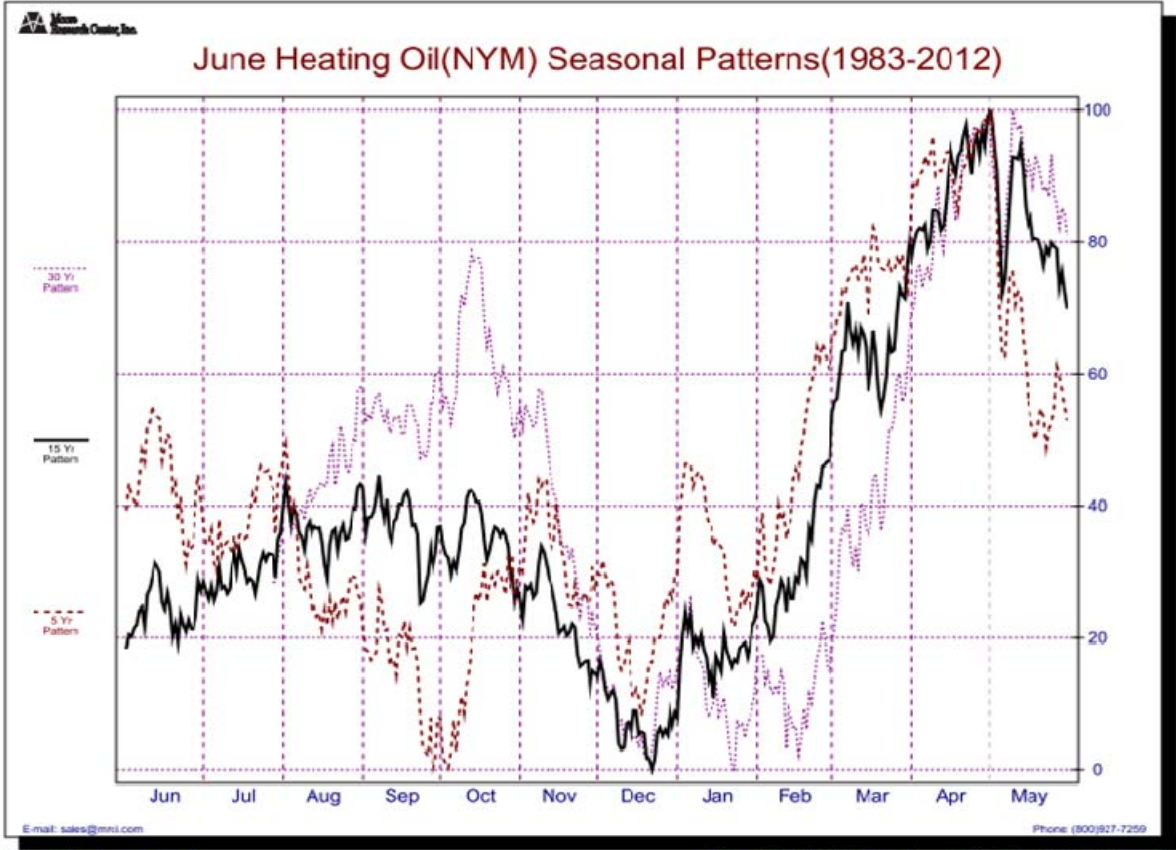
City of Bloomington contracted fuel FY 2013

There is \$1,749,661 budgeted for fuel this fiscal year. As of September 30, 2012 the City has spent \$638,692.48. This is 36.5% of the budgeted amount. Using the City's Fuel Purchasing Strategy the City has spent \$14,224 over the open market cost. At this time fuel is 5.1% under budget for this time period.





Historical Fuel price trends over the last 25 years indicate that fuels should be purchased in the months of December thru January for the following year as shown on the chart below. In Fiscal Year 2010 China had overtaken the United States as the World leading energy consumer. As the World economy continues to improve, crude oil costs will increase and fuel prices should fall back into their normal patterns.



SUBJECT: Client Agreement between Vision Service Plan, Inc. (VSP) and the City of Bloomington for Employee Vision Benefit

RECOMMENDATION/MOTION: That the contract renewal be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: The City obtains its employee and retiree vision benefit from Vision Service Plan, Inc. (VSP). This is a fully insured plan which means that the insurance company holds the risk that the premiums will cover expenses and profit. The City accesses this plan through Heartland Healthcare Coalition (HHC) which is a purchasing cooperative of forty-four (44) local and regional employers representing more than 365,000 covered lives.

Through the HHC arrangement the City is able to obtain this benefit with a slight reduction in premiums despite a rather high utilization rate. In the City’s 2011 renewal with VSP, there was a 4.35% reduction in premiums and a small improvement in benefits. The term of the agreement presented here is January 1, 2013 through December 31, 2014 with a two-year rate guarantee. The rates in the proposed agreement as compared to the prior renewal are shown below. The City shares the premium 50%-50% with employees while retirees pay 100% of their own premiums.

	<u>Single</u>	<u>Employee + 1</u>	<u>Family</u>
Jan. 2011 – Dec. 2012	\$8.05	\$12.80	\$17.54
Jan 2013 – Dec. 2014	\$8.07	\$12.83	\$17.59

A sample contract is attached. The final contract will include the terms outlined in the renewal letter, Option 5 which provides for the current benefit level.

VSP has provides strong network of local and national providers, benefits that don’t require claim forms and excellent employee web support. This past summer VSP brought their mobile vision clinic to Bloomington and, with the help of local optometrists, provided free eye exams and glasses to uninsured and underserved individuals (see attached article).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: The FY 2013 budget for this benefit totals \$100,833 and may be found within the employee and retiree health insurance fund divisions 60200250 and 60280250. During the FY 2013 budget process staff estimated that the City’s cost for the vision benefit would increase by 6% in January 2012 and \$40,533 was budgeted for the City’s share of this expense. As a result of the relatively flat premium, it is estimated the City’s cost for the vision benefit will be approximately \$39,800 for the current fiscal year or a savings of about \$730 from the budgeted expense. Savings of about \$730 are estimated from FY 2013 budgeted expense.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed by:

Laurie Wollrab, MBA, PHR
Compensation and Benefit Manager

Emily Bell, IPMA – CP
Director – Human Resources

Legal review by:

Recommended by:

Rosalee Dodson
Assistant Corporation Counsel

David A. Hales
City Manager

Attachments: Attachment 1. VSP Renewal Letter
Attachment 2. Sample Contract
Attachment 3. Pantagraph Article – July 25, 2012

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			



August 15, 2012

Laurie Wollrab
Compensation & Benefit Manager
City of Bloomington
109 East Olive Street
Bloomington, IL 61702

RE: January 1, 2013 VSP Renewal, Contract #12059032

Dear Laurie:

As you have been a valued customer of VSP since January 1, 1997 we hope your members have enjoyed a positive outcome with all aspects of our services. Your VSP plan expires on December 31, 2012. We are pleased to offer the following renewal options.

VSP reviewed city of Bloomington's program and developed rates based on the experience of the vision care program. These fees are outlined on page two. We consider many factors when determining fees, such as utilization, claim frequency, retention and trends.

We've enhanced the contact lens benefit by separating the contact lens exam (fitting and evaluation) from material coverage. This new benefit design allows members to use their full contact lens allowance toward contact lenses and provides both standard and premium fit contact lens wearers a covered-in-full contact lens exam after a copay that will never exceed \$60.

Group Name:	City of Bloomington
Group Number:	12059032
Renewal Period:	48 Months
Current Plan Design:	Signature Plan B – (12/12/24) 12 Months Exam & Lens, 24 Months Frame
Current In-Network Allowances:	\$130 Retail Frame Allowance (RFA) / Elective Contact Lens (ECL)
Current Copayments:	\$10 Exam / \$10 Materials
Current Rates:	\$8.07 / \$12.83 / \$17.59
Renewal Options / Costs:	See 2 nd Page for Options

To renew this contract and maintain continuous service, please sign the following and return it to me, or you can fax it to 314-997-3434. VSP produces the plan document upon receipt of the renewal confirmation. Please file this letter with the VSP contract as it serves as the notice of renewal.

We appreciate your business and value our relationship with the City of Bloomington.

Cordially,

Polly Claney
Sr. Account Executive

Authorized Signature / Renewal option #

Cc: Jerry Custer, Heartland Healthcare Coalition



City of Bloomington VSP January 1, 2013 Renewal Options

Copsys & RFA/ECL	Options	Signature Rates 3-Tier		
\$10/10, RFA / ECL \$130	1.	\$ 8.93	\$14.20	\$19.47
\$10/10, RFA / ECL \$150	2.	\$ 9.45	\$15.02	\$20.60
\$10/25, RFA / ECL \$130	3.	\$ 8.52	\$13.56	\$18.58
\$10/25, RFA / ECL \$150	4.	\$ 9.04	\$14.38	\$19.71
		Choice Rates 3-Tier		
\$10/10, RFA / ECL \$130	5.	\$ 8.05	\$12.80	\$17.54
\$10/10, RFA / ECL \$150	6.	\$ 8.51	\$13.53	\$18.55
\$10/25, RFA / ECL \$130	7.	\$7.68	\$12.22	\$16.74
\$10/25, RFA / ECL \$150	8.	\$ 8.15	\$12.96	\$17.77

Above rates are based on a Plan B (12/12/24) frequency and are guaranteed for forty-eight (48) months.

Rates include the Heartland Healthcare Coalition discount.

VISION SERVICE PLAN OF ILLINOIS, NFP
3333 QUALITY DRIVE
RANCHO CORDOVA, CALIFORNIA 95670

GROUP VISION CARE POLICY

Group Name CITY OF BLOOMINGTON, ILLINOIS
Policy Number 12059032
State of Delivery ILLINOIS
Effective Date JANUARY 1, 2013
Policy Term FORTY-EIGHT (48) MONTHS
Premium Due Date FIRST DAY OF THE MONTH

SAMPLE

In consideration of the statements and agreements contained in the Group Application and in consideration of payment by the Group of the premiums as herein provided, VISION SERVICE PLAN OF ILLINOIS, NFP ("VSP") agrees to insure certain individuals under this Group Vision Care Policy ("Policy") for the benefits provided herein, subject to the exceptions, limitations and exclusions hereinafter set forth. This Policy is delivered in and governed by the laws of the state of delivery and is subject to the terms and conditions recited on the subsequent pages hereof, including any Exhibits or state-specific Addenda, which are a part of this Policy.

James M. McGrann, Secretary

VISION SERVICE PLAN OF ILLINOIS, NFP
GROUP VISION CARE POLICY
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SAMPLE

**VISION SERVICE PLAN OF ILLINOIS, NFP
GROUP VISION CARE POLICY**

I.

DEFINITIONS

The key terms in this Policy are defined:

1.01. ADDITIONAL BENEFIT RIDER: The document, attached as Exhibit C to this Policy (if applicable), which lists selected vision care services and vision care materials which a Covered Person is entitled to receive under this Policy.

Additional Benefits are only available when purchased by Group in conjunction with a Plan Benefit offered under Exhibit A.

1.02. ADMINISTRATIVE SERVICES PROGRAM: A group vision care plan whereby Group pays VSP for the Plan Benefits in addition to a monthly administrative fee.

1.03. BENEFIT AUTHORIZATION: Authorization from VSP identifying the individual named as a Covered Person of VSP, and identifying those Plan Benefits to which Covered Person is entitled.

1.04. CONFIDENTIAL MATTER: All confidential information concerning the medical, personal, financial or business affairs of Covered Persons obtained while providing Plan Benefits hereunder.

1.05. COORDINATION OF BENEFITS: Procedure which allows more than one insurance plan to consider Covered Person's vision care claims for payment or reimbursement.

1.06. COPAYMENTS: Those amounts required to be paid by or on behalf of a Covered Person for Plan Benefits which are not fully covered, and which are payable at the time services are rendered or materials provided.

1.07. COVERED PERSON: An Enrollee or Eligible Dependent who meets VSP's eligibility criteria and on whose behalf premiums have been paid to VSP, and who is covered under this Policy.

1.08. ELIGIBLE DEPENDENT: Any legal dependent of an Enrollee of Group who meets the criteria for eligibility established by Group and approved by VSP in Article VI of this Policy under which such Enrollee is covered.

1.09. EMERGENCY CONDITION: A condition, with sudden onset and acute symptoms, that requires the Covered Person to obtain immediate medical care, or an unforeseen occurrence calling for immediate, non-medical action.

1.10. ENROLLEE: An employee or member of Group who meets the criteria for eligibility specified under VI. ELIGIBILITY FOR COVERAGE.

1.11. **EXPERIMENTAL NATURE**: Procedure or lens that is not used universally or accepted by the vision care profession, as determined by VSP.

1.12. **EVIDENCE OF COVERAGE**: A summary of the Policy provisions, prepared by VSP and provided to Group for distribution to Enrollee.

1.13. **GROUP**: An employer or other entity which contracts with VSP for coverage under this Policy in order to provide vision care coverage to its Enrollees and their Eligible Dependents.

1.14. **GROUP APPLICATION**: The form signed by an authorized representative of the Group to signify the Group's intention to have its Enrollees and their Eligible Dependents become Covered Persons of VSP.

1.15. **GROUP VISION CARE Policy (also, "The Policy")**: The Policy issued by VSP to a Group, under which its Enrollees or members, and their Eligible Dependents are entitled to become Covered Persons of VSP and receive Plan Benefits in accordance with the terms of such Policy.

1.16. **VSP NETWORK DOCTOR**: An optometrist or ophthalmologist licensed and otherwise qualified to practice vision care and/or provide vision care materials who has contracted with VSP to provide vision care services and/or vision care materials on behalf of Covered Persons of VSP.

1.17. **NON-VSP PROVIDER**: Any optometrist, optician, ophthalmologist, or other licensed and qualified vision care provider who has not contracted with VSP to provide vision care services and/or vision care materials to Covered Persons of VSP.

1.18. **PLAN or PLAN BENEFITS**: The vision care services and vision care materials which a Covered Person is entitled to receive by virtue of coverage under this Policy, as defined in the Schedule of Benefits (Exhibit A) and, if applicable, the Additional Benefit Rider (Exhibit C), attached hereto.

1.19. **RENEWAL DATE**: The date when the Policy shall renew, or terminate if proper notice is given.

1.20. **SCHEDULE OF BENEFITS**: The document, attached as Exhibit A to this Policy, which lists the vision care services and vision care materials which a Covered Person is entitled to receive under this Policy.

1.21. **SCHEDULE OF PREMIUMS**: The document, attached hereto as Exhibit B, which states the payments to be made to VSP by or on behalf of a Covered Person to entitle him/her to Plan Benefits.

II.

TERM, TERMINATION, AND RENEWAL

2.01. Plan Term: This Policy is effective on the Effective Date and shall remain in effect for the Policy Term. At the end of the Policy Term, the Policy shall renew on a month to month basis unless either party notifies the other in writing, at least sixty (60) days before the end of the Policy Term, that such party is unwilling to renew the Policy. If such notice is given, the Policy shall terminate at 11:59 p.m. on the last day of the Policy Term unless the parties agree to renewal of the Policy. If the Policy continues on a month to month basis after the Policy Term, either party may terminate the Policy upon thirty (30) days advance written notice to the other party.

If VSP issues written renewal materials to Group at least sixty (60) days before the end of the Policy Term and Group fails to accept the new terms and/or rates in writing prior to the end of the Policy Term, this Policy shall terminate at 11:59 p.m. on the last day of the Policy Term. Termination of coverage by VSP under this Policy shall be limited to the following reasons: 1) non-payment of premiums, 2) fraud or misrepresentation or, 3) violation of minimum participation requirements.

2.02. Early Termination Provision: The premium rate payable by Group under this Policy is based on an assumption that VSP will receive these amounts over the full Policy Term in order to cover costs associated with greater vision utilization that tends to occur during the first portion of a Policy Term. If Group terminates this Policy before the end of the Policy Term or before the end of any subsequent renewal terms, for any reason other than material breach by VSP, then Group will remain liable to VSP for the lesser amount of any deficit incurred by VSP or the payments which Group would have paid for the remaining term of this Policy, not to exceed one year. A deficit incurred by VSP will be calculated by subtracting the cost of incurred and outstanding claims, as calculated on an incurred date basis with a claim run-out not to exceed six months from the date of termination, from the net premiums received by VSP from Group. Net premiums shall mean premiums paid by Group minus any applicable retention amounts and/or broker commissions. Group agrees to pay VSP within thirty-one (31) days of notification of the amount due.

III.

OBLIGATIONS OF VSP

3.01. Coverage of Insureds: VSP will enroll coverage for each eligible Enrollee and his/her Eligible Dependents, if dependent coverage is provided, all of whom shall be referred to upon enrollment as "Covered Persons." To institute coverage, VSP may require Group to complete, sign and forward to VSP a Group Application along with information regarding Enrollees and Eligible Dependents, and all applicable premiums. (Refer to VI. ELIGIBILITY FOR COVERAGE for further details.)

Following the enrollment of the Covered Persons, VSP will provide Group with Member Benefit Summaries and a copy of the Evidence of Coverage, with Exhibits, for distribution to Covered Persons. Such Member Benefit Summaries and Evidence of Coverage will summarize the terms and conditions set forth in this Policy.

3.02. Provision of Plan Benefits: Through its VSP Network Doctors (or through other licensed vision care providers where a Covered Person is eligible for, and chooses to receive Plan Benefits from an Non-VSP Provider), VSP shall provide Covered Persons such Plan Benefits listed in the Schedule of Benefits (Exhibit A) or, if applicable, Additional Benefit Rider (Schedule C) attached hereto, subject to any limitations, exclusions, or Copayments therein stated. Benefit Authorization must be obtained prior to a Covered Person obtaining Plan Benefits from a VSP Network Doctor. When a Covered Person seeks Plan Benefits from a VSP Network Doctor, the Covered Person must schedule an appointment and identify himself as a VSP Covered Person so the VSP Network Doctor can obtain Benefit Authorization from VSP. VSP shall provide Benefit Authorization to the VSP Network Doctor to authorize the provision of Plan Benefits to the Covered Person. Each Benefit Authorization will contain an expiration date, stating a specific time period for the Covered Person to obtain Plan Benefits.

VSP shall issue Benefit Authorizations in accordance with the latest eligibility information furnished by Group and the Covered Person's past service utilization, if any. Any Benefit Authorization so issued by VSP shall constitute a certification to the VSP Network Doctor that payment will be made, irrespective of a later loss of eligibility of the Covered Person, provided Plan Benefits are received prior to the Benefit Authorization expiration date.

VSP shall pay or deny claims for Plan Benefits provided to Covered Persons, less any applicable Copayment, within a reasonable time but not more than thirty (30) calendar days after VSP has received a completed claim, unless special circumstances require additional time.

WARNING, LIMITED BENEFITS WILL BE PAID WHEN NON-VSP PROVIDERS ARE USED.

When Covered Persons elect to utilize the services of an Non-VSP Provider for a covered service in non-

emergency situations, benefit payments for services from such Non-VSP Provider are not based upon the amount billed. The basis of the benefit payment will be determined according to the Policy's Non-VSP Provider fee schedule. COVERED PERSONS CAN EXPECT TO BE LIABLE FOR MORE THAN THE COPAYMENT AMOUNT DEFINED IN THE ATTACHED SCHEDULE OF BENEFITS OR ADDITIONAL BENEFITS RIDER (if applicable) AFTER THE PLAN HAS PAID ITS REQUIRED PORTION.

When payment is made to the Non-VSP Provider, the provider may bill Covered Persons for any amount up to the billed charges after the Plan has paid its portion of the bill. VSP Network Doctors have agreed to accept discounted payments for services with no additional billing to the Covered Person other than Copayments, co-insurance and any amounts for non-covered services and/or materials. Covered Persons may obtain further information about the participating status of providers and information on out-of-pocket expenses through vsp.com, or by calling VSP's Customer Service Department at 1-800-877-7195.

Should claim payment exceed 30 days, VSP will pay interest to the VSP Network Doctor at the rate of 9% per year from the 30th day after receipt of a complete claim to the date of late payment. Reimbursement to Enrollees for services received from a Non-VSP Provider will be pursuant to the Reimbursement Schedule, if any, attached to the Schedule of Benefits or Additional Benefit Rider.

3.03. Provision of Information to Covered Person: Upon request, VSP shall make available to Covered Persons necessary information describing Plan Benefits and how to use them. A copy of this Policy shall be placed with Group and also will be made available at the offices of VSP for any Covered Persons. VSP shall provided Group with an updated list of VSP Network Doctors' names, addresses, and telephone numbers for distribution to Covered Persons twice a year. Covered Persons may also obtain a copy of the VSP Network Doctor directory through VSP's Customer Service Department's toll-free telephone line, VSP's website at www.vsp.com, or by written request.

3.04. Preservation of Confidentiality: VSP shall hold in strict confidence all Confidential Matters and exercise its best efforts to prevent any of its employees, VSP Network Doctors, or agents, from disclosing any Confidential Matter, except to the extent that such disclosure is necessary to enable any of the above to perform their obligations under this Policy, including, but not limited to sharing information with medical information bureaus, or complying with applicable law. Covered Persons and/or Groups that want more information on VSP's Confidentiality Policy may obtain a copy of the policy by contacting VSP's Customer Service Department or VSP's website at www.vsp.com.

3.05. Emergency Vision Care: When vision care is necessary for Emergency Conditions, Covered Persons may obtain Plan Benefits by contacting a VSP Network Doctor or Non-VSP Provider. No prior approval from VSP is required for Covered Person to obtain vision care for Emergency Conditions of a medical nature. However, services for medical conditions, including emergencies, are covered by VSP only under the Acute EyeCare and Supplemental Primary EyeCare Plans. If Group has not purchased one of these plans, Covered Persons are not covered by VSP for medical services and should contact a physician under Covered Persons' medical insurance plan for care. For emergency conditions of a non-medical nature, such as lost, broken or stolen glasses, the Covered Person should contact VSP's Customer Service Department for assistance. Reimbursement and eligibility are subject to the terms of this Policy.

3.06. Coordination of Benefits:

(a) Applicability:

This Coordination of Benefits ("COB") provision applies to This Plan when an Enrollee or the Enrollee's covered dependent has vision care coverage under more than one Plan. For the purposes of this COB provision, "Plan" and "This Plan" are defined below. If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of This Plan are determined before or after those of another plan. The benefits of This Plan shall not be reduced when, under the order of benefit determination rules, This Plan determines its benefits before another plan; but may be reduced when, under the order of benefits determination rules, another plan determines its benefits first. The above reduction is described in the section "Effect on the Benefits of This Plan."

(b) Definitions:

1. "Plan" is any of the following that provides benefits for vision care:
 - a. Group vision care insurance;
 - b. Vision care coverage under a governmental plan, or coverage required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act (42 U.S.C.A. 301 et seq.), as amended from time to time).

Each contract or other arrangement for vision coverage under (1) or (2) is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

2. "This Plan" is the part of the group contract that provides benefits for vision care expenses.
3. "Primary Plan/Secondary Plan:" The order of benefit determination rules state whether This Plan is a Primary Plan or Secondary Plan as to another plan covering the person. When This Plan is a Primary Plan, its benefits are determined before those of the other plan and without considering the other plan's benefits. When This Plan is a Secondary Plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits. When there are more than two plans covering the person, This Plan may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a different plan or plans.
4. "Allowable Expense" means a necessary, reasonable and customary item of expense for vision care; when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made.
5. "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under This Plan, or any part of a year before the date this COB provision or a similar provision takes effect.

SAMPLE

(c) Order of Benefit Determination Rules:

General: When there is a basis for a claim under This Plan and another plan, This Plan is a Secondary Plan that has its benefits determined after those of the other plan. However, if the other plan has rules coordinating its benefits with those of This Plan, and both those rules and This Plan's rules, as outlined below, require that This Plan's benefits be determined before those of the other plan, This Plan is a Primary Plan.

Rules: This Plan determines its order of benefits using the first of the following rules that applies:

1. Non-Dependent/Dependent: The benefits of the plan that covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan that covers the person as a dependent. However, if the person is also a Medicare beneficiary, Medicare is secondary to the plan covering the person as a dependent and primary to the plan covering the person as other than a dependent, for example a retired employee.
2. Dependent Child/Parents not Separated or Divorced: Except as stated in Subsection 3. below, when This Plan and another plan cover the same child as a dependent of different person, called "parents," the benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year ("birthday rule"). However, if both parents have the same birthday, the benefits of the plan that covered the parents longer are determined before those of the plan that covered the other parent for a shorter period of time. If the other plan does not have the birthday rule described above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

3. Dependent Child/Separated or Divorced: If two or more plans cover a dependent child of divorced or separated parents, benefits for the child are determined as follows: First, the plan of the parent with custody of the child; then, the plan of the spouse of the parent with the custody of the child; and finally, the plan of the parent not having custody of the child. However, if the specific terms of a court decree state that one of the parents is responsible for the health care expense of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the Secondary Plan. This paragraph does not apply with respect to any Claim Determination Period or Plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.
4. Dependent Child/Joint Custody: If the specific terms of a court decree state that the parents shall share joint custody, without stating that one of the parents is responsible for the vision care expenses of the child, the plans covering the child shall follow the order of benefit determination rules outlined in paragraph 2., above.
5. Active/Inactive Employee: The benefits of a plan that covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan that covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this Rule is ignored.
6. Continuation coverage: If a person whose coverage is provided under a right of continuation pursuant to federal or state law also is covered under another plan, the following shall be the order of benefit determination: First, the benefits of a plan covering the person as an employee, member or subscriber (or as that person's dependent); second, the benefits under the continuation coverage. If the other plan does not contain the order of benefits determination described within this subsection, and if, as a result, the plans do not agree on

the order of benefits, this requirement shall be ignored.

7. Longer/Shorter Length of Coverage: If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the Plan which covered that person for the shorter term.

(d) Effect On The Benefits Of This Plan:

When This Section Applies: This section applies when, in accordance with the "Order of Benefit Determination Rules," This Plan is a Secondary Plan as to one or more other plans. In that event the benefits of This Plan may be reduced under this section. Such other plan or plans are referred to as "the other plans" as stated below.

Reduction In This Plan's Benefits: The benefits of This Plan will be reduced when the sum of the benefits that would be payable for the Allowable Expense under This Plan in the absence of this COB provision, and the benefits that would be payable for the Allowable Expenses under the other plans in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made, exceeds those Allowable Expenses in a Claim Determination Period. In that case, the benefits of This Plan will be reduced so that they and the benefits payable under the other plans do not total more than those Allowable Expenses. When the benefits of This Plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of This Plan.

(e) Right To Receive And Release Needed Information:

Certain facts are needed to apply these COB rules. VSP has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. VSP need not tell, or get the consent of, any person to do this. Each person claiming benefits under This Plan must give VSP any facts it needs to pay the claim.

(f) Facility Of Payment:

A payment made under another plan may include an amount which should have been paid under This Plan. If it does, VSP may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under This Plan. VSP will not have to pay that amount again.

(g) Right of Recovery:

If the amount of the payments made by VSP is more than it should have paid under this COB provision, it may recover the excess from one or more of the persons it has paid or for whom it has paid, from insurance companies or from other organizations.

IV.

OBLIGATIONS OF THE GROUP

4.01. Identification of Eligible Enrollees: An Enrollee is eligible for coverage under this Policy if he/she satisfies the enrollment criteria specified in Paragraph 6.01(a) and/or as mutually agreed to by VSP and Group. By the Effective Date of this Policy, Group shall provide VSP with eligibility information, in a mutually agreed upon format and medium, to identify all Enrollees who are eligible for coverage under this Policy as of that date. Thereafter, Group shall supply to VSP by the 15th day of each month, eligibility information sufficient to identify all Enrollees to be added to or deleted from VSP's coverage rosters for the next month. The eligibility information shall include designation of each Enrollee's family status if dependent coverage is provided. Upon VSP's request, Group shall make available for inspection records regarding the coverage of Covered Persons under this Policy.

4.02. Payment of Premiums: By the first day of each month, Group shall remit to VSP the premiums payable for the next month on behalf of each Enrollee and Eligible Dependents, if any, to be covered under this Policy. The Schedule of Premiums incorporated in this Policy as Exhibit B provides the premium amount for each Covered Person. Only Covered Persons for whom premiums are actually received by VSP shall be entitled to Plan Benefits under this Policy and only for the period for which such payment is received, subject to the grace period provision below.

VSP may change the premiums set forth in Exhibit B (Schedule of Premiums) by giving Group at least sixty (60) days advance written notice. No change will be made during the Policy Term unless there is a change in the Schedule of Benefits and/or Additional Benefits Rider (if applicable), or there is a material change in Policy terms or conditions, provided any such change is mutually agreed upon in writing by VSP and Group.

Notwithstanding the above, VSP may increase premiums during a Policy Term by the amount of any tax or assessment not now in effect but subsequently levied by any taxing authority, which is attributable to premiums VSP received from Group.

4.03. Grace Period: Group shall be allowed a grace period of thirty-one (31) days following the premium payment due date to pay premiums due under this Policy. During said grace period, this Policy shall remain in full force and effect for all Covered Persons of Group. VSP will consider late payments at the time of Policy renewal. Such payment may impact Group's premium rates in future Policy Terms.

If Group fails to make any premiums payment due by the end of any grace period, VSP may notify Group that the premiums payment has not been made, that coverage is canceled and that Group is responsible for payment for all Plan Benefits provided to Covered Persons after the last period for which premiums were paid in full, including the grace period

through the effective date of termination. Group shall also be responsible for any legal and/or collection fees incurred by VSP to collect amounts due under this Policy.

4.04. Distribution of Required Documents: Group shall distribute to Enrollees any disclosure forms, Policy summaries or other materials required to be given to Policy subscribers by any regulatory authority. Such materials shall be distributed by Group no later than thirty (30) days after the receipt thereof, or as required under applicable law.

4.05. Converting to an Administrative Services Program: Due to the cyclical nature of vision care, in the event Group wishes to convert its method of funding from a risk program to an Administrative Services Program, an appropriate level of reserve will need to have been established.

Upon conversion to an Administrative Services Program, for vision care begun on and after the effective date of conversion, all claims will be paid through the Administrative Services Program.

SAMPLE

V.
OBLIGATIONS OF COVERED PERSONS UNDER THE POLICY

5.01. **General**: By this Policy, Group makes coverage available to its Enrollees and their Eligible Dependents, if dependent coverage is provided. However, this Policy may be amended or terminated by agreement between VSP and Group as indicated herein, without the consent or concurrence of Covered Persons. This Policy, and all Exhibits, Riders and attachments hereto, constitute VSP's sole and entire undertaking to Covered Persons under this Policy.

As conditions of coverage, all Covered Persons under this Policy have the following obligations:

5.02. **Copayments for Services Received**: Where, as indicated in Exhibit A (Schedule of Benefits) and Exhibit C (Additional Benefit Rider), Copayments are required for certain Plan Benefits, Copayments shall be the personal responsibility of the Covered Person receiving the care and must be paid at the time services are rendered. Amounts that exceed Plan allowances, annual maximum benefits, options reimbursements, or any other stated Plan limitations are not considered Copayments but are also the responsibility of the Covered Person.

5.03. **Obtaining Services from VSP Network Doctors**: Benefit Authorization must be obtained prior to receiving Plan Benefits from a VSP Network Doctor. When a Covered Person seeks Plan Benefits, the Covered Person must select a VSP Network Doctor, schedule an appointment, and identify himself as a Covered Person so the VSP Network Doctor can obtain Benefit Authorization from VSP. Should the Covered Person receive Plan Benefits from a VSP Network Doctor without such Benefit Authorization, then for the purposes of those Plan Benefits provided to the Covered Person, the VSP Network Doctor will be considered a Non-VSP Provider, and the benefits available will be limited to those for a Non-VSP Provider, if any.

5.04. **Submission of Non-VSP Provider Claims**: If Non-VSP Provider coverage is indicated in Exhibit A (Schedule of Benefits) or Exhibit C (Additional Benefit Rider) when purchased by Group, written proof (receipt and the Covered Person's identification information) of all claims for services received from Non-VSP Providers shall be submitted by Covered Persons to VSP within three hundred sixty-five (365) days of the date of service. VSP may reject such claims filed more than three hundred sixty-five (365) days after the date of service. Failure to submit a claim within this time period, however, shall not invalidate or reduce the claim if it was not reasonably possible to submit the claim within such time period, provided the claim was submitted as soon as reasonably possible and in no event, except in absence of legal capacity, later than one year from the required date of three hundred sixty-five (365) days after the date of service.

5.05. **Complaints and Grievances**: Covered Persons shall report any complaints and/or grievances to VSP at the address given herein. Complaints and grievances are disagreements regarding access to care, quality of care, treatment or service. Complaints and grievances may be submitted to VSP verbally or in writing. A Covered Person may

submit written comments or supporting documentation concerning his/her complaint or grievance to assist in VSP's review. VSP will resolve the complaint or grievance within thirty (30) days after receipt, unless special circumstances require an extension of time. In that case, resolution shall be achieved as soon as possible, but not later than one hundred twenty (120) days after VSP's receipt of the complaint or grievance. If VSP determines that resolution cannot be achieved within thirty (30) days, VSP will notify the Covered Person of the expected resolution date. Upon final resolution, VSP will notify the Covered Person of the outcome in writing.

5.06. Claim Denial Appeals: If, under the terms of this Policy, a claim is denied in whole or in part, a request may be submitted to VSP by Covered Person, or Covered Person's authorized representative, for a full review of the denial. Covered Person may designate any person, including his/her provider, as his/her authorized representative. References in this section to "Covered Person" include Covered Person's authorized representative, where applicable.

a) Initial Appeal: The request must be made within one hundred eighty (180) days following denial of a claim and should contain sufficient information to identify the Covered Person for whom the claim was denied, including the VSP Enrollee's name, the VSP Enrollee's Member Identification Number, the Covered Person's name and date of birth, the provider of services and the claim number. The Covered Person may review, during normal working hours, any documents held by VSP pertinent to the denial. The Covered Person may also submit written comments or supporting documentation concerning the claim to assist in VSP's review. VSP's response to the initial appeal, including specific reasons for the decision, shall be provided and communicated to the Covered Person as follows:

Denied Claims for Services Rendered: within thirty (30) calendar days after receipt of a request for an appeal from the Covered Person.

b) Second Level Appeal: If the Covered Person disagrees with the response to the initial appeal of the claim, the Covered Person has a right to a second level appeal. Within sixty (60) calendar days after receipt of VSP's response to the initial appeal, the Covered Person may submit a second appeal to VSP along with any pertinent documentation. VSP shall communicate its final determination to the Covered Person in compliance with all applicable state and federal laws and regulations and shall include the specific reasons for the determination.

c) **Other Remedies:** When the Covered Person has completed the appeals process stated herein, additional voluntary alternative dispute resolution options may be available, including mediation or arbitration. Group should advise Covered Person to contact the U.S. Department of Labor or the state insurance regulatory agency for details. Additionally, under the provisions of ERISA (Section 502(a)(1)(B)) [29 U.S.C. 1132(a)(1)(B)], Covered Person has the right to bring a civil action when all available levels of review of denied claims, including the appeals process, have been completed, the claims were not approved in whole or in part, and Covered Person disagrees with the outcome.

5.07. **Time of Action:** No action in law or in equity shall be brought to recover on the Policy prior to the Covered Person exhausting his/her grievance rights under this Policy and/or prior to the expiration of sixty (60) days after the claim and any applicable invoices have been filed with VSP. No such action shall be brought after the expiration of three (3) years from the last date that the claim and any applicable invoices were submitted to VSP, in accordance with the terms of this Policy.

5.08. **Insurance Fraud:** Any Group and/or person who intends to defraud, knowingly facilitates a fraud, or submits an application, or files a claim with a false or deceptive statement, is guilty of insurance fraud. Such an act is grounds for immediate termination of the Policy for the Group or individual that committed the fraud.

SAMPLE

VI.

ELIGIBILITY FOR COVERAGE

6.01. Eligibility Criteria: Individuals will be accepted for coverage hereunder only upon meeting all requirements set forth below.

a) Enrollees: To be eligible, a person must:

1. currently be an employee or member of Group, and
2. meet the coverage criteria mutually agreed upon by Group and VSP.

b.) Eligible Dependents: If dependent coverage is provided, the persons eligible for dependent coverage are specified on the attached Schedule of Benefits and Additional Benefit Riders (if applicable).

If a dependent, unmarried child prior to attainment of the prescribed age for termination of eligibility becomes, and continues to be, incapable of self-sustaining employment because of mental or physical disability, that Eligible Dependent's coverage shall not terminate so long as he remains chiefly dependent on the Enrollee for support and the Enrollee's coverage remains in force; PROVIDED that satisfactory proof of the dependent's incapacity can be furnished to VSP within thirty-one (31) days of the date the Eligible Dependent's coverage would have otherwise terminated and at such other times as VSP may request proof, but not more frequently than annually.

6.02. Documentation of Eligibility: Persons satisfying the coverage requirements under either of the above criteria shall be eligible if:

a) for an Enrollee, the individual's name and Member ID Number have been reported by Group to VSP in the manner provided hereunder; and

b) for changes to an Eligible Dependent's status, the change has been reported by the Group to VSP in the manner provided herein. As stated in paragraph 4.01 above, VSP may elect to audit Group's records to verify eligibility of Enrollees and dependents and any errors. Subject to the terms of paragraph 4.03 above, only persons on whose behalf premiums have been paid for the current period shall be entitled to Plan Benefits hereunder. If a clerical error is made, it will not affect the coverage a Covered Person is entitled to under this Policy.

6.03. Retroactive Eligibility Changes: Retroactive eligibility changes are limited to sixty (60) days prior to the date notice of any such requested change is received by VSP. VSP may refuse retroactive termination of a Covered Person if Plan Benefits have been obtained by, or authorized for, the Covered Person after the effective date of the requested termination. As stated in Section 4.01 herein, Group agrees to provide timely eligibility changes to VSP.

6.04. Change of Participation Requirements, Contribution of Fees, and Eligibility Rules: Composition of the Group, percentage of Enrollees covered under the Policy, and Group's contribution and eligibility requirements, are all material to VSP's obligations under this Policy. During the term of this Policy, Group must provide VSP with written notice of changes to its composition, percentage of Enrollees covered, contribution and eligibility requirements. Any change which materially affects VSP's obligations under this Policy must be agreed upon in writing between VSP and Group and may constitute a material change to the terms and conditions of this Policy for purposes of paragraph 4.02. Nothing in this section shall limit Group's ability to add Enrollees or Eligible Dependents under the terms of this Policy.

6.05. Change in Family or Employment Status: In the event Group is notified of any change in a Covered Person's family status [by marriage, the addition (e.g., newborn or adopted child) or deletion of Dependent , etc.] or employment status, Group shall provide notice of such change to VSP via the next eligibility listing required under Paragraph 4.01. If notice is given, the change in the Covered Person's status will be effective on the first day of the month following the change request, or at such later date as may be requested by or on behalf of the Covered Person. Notwithstanding any other provision in this section, a newborn child will be covered during the thirty-one (31) day period after birth, and an adopted child will be covered for the thirty-one (31) day period after the date the Enrollee or the Enrollee's spouse acquires the right to control that child's health care. To continue coverage for a newborn or adopted child beyond the initial thirty-one (31) day period, the Group must be properly notified of the Enrollee's change in family status and applicable premiums must be paid to VSP.

VII.

CONTINUATION OF COVERAGE

7.01. **COBRA:** The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires that, under certain circumstances, health plan benefits available to an Enrollee and his or her Eligible Dependents be made available to said persons upon termination of that Enrollee's employment, or termination of the relationship between said Enrollee and his or her dependents. If, and only to the extent, COBRA applies to the parties to this Policy, VSP shall make the required COBRA continuation coverage available.

SAMPLE

VIII.

ARBITRATION OF DISPUTES

8.01. Dispute Resolution: Any dispute or question arising between VSP and Group involving the application, interpretation, or performance under this Policy shall be settled, if possible, by amicable and informal negotiations, allowing such opportunity as may be appropriate under the circumstances for fact-finding and mediation. If any issue cannot be resolved in this fashion, it shall be submitted to arbitration where permitted by state law.

8.02. Procedure: Arbitration hereunder shall be conducted pursuant to the Rules of the American Arbitration Association subject to the provisions of Section 10.06 of this Policy. Such Rules, the enforcement thereof, and enforcement of the arbitrator's decision shall be governed by applicable laws.

8.03. Choice of Law: If any matter arises in connection with this Policy which becomes the subject of arbitration or legal process, the law of the State of delivery of the Policy shall be the applicable law.

SAMPLE

IX.

NOTICES

9.01. **Notice:** Any notices required to be given under this Policy to either Group or VSP shall be in written format. Notices sent to Group will be sent to the address or email address shown on the Group Application. Notices sent to VSP shall be sent to the address shown on this Policy. Notwithstanding the above, any notices may be hand-delivered by either party to an appropriate representative of the other party. The party effecting hand-delivery bears the burden to prove delivery was made, if questioned.

SAMPLE

X.

MISCELLANEOUS

10.01. Entire Policy: This Policy, the Group Application, the Evidence of Coverage, and all Exhibits, Riders and attachments hereto, constitute the entire agreement of the parties and supersedes any prior understandings and agreements between them, either written or oral. Any change or amendment to the Policy must be approved by an officer of VSP and attached hereto to be valid. No agent has the authority to change this Policy or waive any of its provisions. Communication materials prepared by Group for distribution to Enrollees do not constitute a part of this Policy.

10.02. Indemnity: VSP agrees to indemnify, defend and hold harmless Group, its shareholders, directors, officers, agents, employees, successors and assigns from and against any and all liability, claim, loss, injury, cause of action and expense (including defense costs and legal fees) of any nature whatsoever arising from the failure of VSP, its officers, agents or employees, to perform any of the activities, duties or responsibilities specified herein. Group agrees to indemnify, defend and hold harmless VSP, its members, shareholders, directors, officers, agents, employees, successors and assigns from and against any and all liability, claim, loss, injury, cause of action and expense (including defense costs and legal fees) of any nature whatsoever arising or resulting from the failure of Group, its officers, agents or employees to perform any of the duties or responsibilities specified herein.

10.03. Liability: VSP arranges for the provision of vision care services and materials through agreements with VSP Network Doctors. VSP Network Doctors are independent contractors and are responsible for exercising independent judgement. VSP does not itself directly furnish vision care services or supply materials. Under no circumstances shall VSP or Group be liable for the negligence, wrongful acts or omissions of any doctor, laboratory, or any other person or organization performing services or supplying materials in connection with this Policy.

10.04. Assignment: Neither this Policy nor any of the rights or obligations of either of the parties hereto may be assigned or transferred without the prior written consent of both parties hereto except as expressly authorized herein.

10.05. Severability: Should any provision of this Policy be declared invalid, the remaining provisions shall remain in full force and effect.

10.06. Governing Law: This Policy shall be governed by and construed in accordance with applicable federal and state law. Any provision that is in conflict with, or not in conformance with, applicable federal or state statutes or regulations is hereby amended to conform with the requirements of such statutes or regulation, now or hereafter existing.

10.07. Gender: All pronouns used herein are deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity(ies) of the person(s) may require.

10.08. Equal Opportunity: VSP is an Equal Opportunity and Affirmative Action employer.

10.09. Communication Materials: Communication materials created by Group which relate to this vision care Policy must adhere to VSP's Member Communication Guidelines distributed to Group by VSP. Such communication materials may be sent to VSP for review and approval prior to use. VSP's review of such materials shall be limited to approving the accuracy of Plan Benefits and shall not encompass or constitute certification that Group's materials meet any applicable legal or regulatory requirements, including but not limited to, ERISA requirements. In the event of any dispute between the communication materials and this Policy, the provisions of this Policy shall prevail.

SAMPLE

EXHIBIT A

SCHEDULE OF BENEFITS VSP Choice Plan

GENERAL

This Schedule lists the vision care benefits to which Covered Persons of VISION SERVICE PLAN OF ILLINOIS, NFP ("VSP") are entitled, subject to any applicable Copayments and other conditions, limitations and/or exclusions stated herein. If Plan Benefits are available for Non-VSP Provider services, as indicated by the reimbursement provisions below, vision care benefits may be received from any licensed eye care provider whether VSP Network Doctors or Non-VSP Providers. This Schedule forms a part of the Policy or Evidence of Coverage to which it is attached.

VSP Network Doctors are those doctors who have agreed to participate in VSP's Choice Network.

When Plan Benefits are received from VSP Network Doctors, benefits appearing in the VSP Network Doctor Benefit column below are applicable subject to any applicable Copayments and other conditions, limitations and/or exclusions as stated below. When Plan Benefits are available and received from Non-VSP Providers, the Covered Person is reimbursed for such benefits according to the schedule in the Non-VSP Provider Benefit column below, less any applicable Copayment. The Covered Person pays the provider the full fee at the time of service and submits an itemized bill to VSP for reimbursement. Discounts do not apply for vision care benefits obtained from Non-VSP Providers.

ELIGIBILITY

The following are Covered Persons under this Policy:

- Enrollee.
- The legal spouse of Enrollee.
- Any child of Enrollee, including any natural child from the date of birth, legally adopted child from the date of placement for adoption with the Enrollee, or other child for whom a court or administrative agency holds the Enrollee responsible.

Dependent children are covered up to the end of the month they turn age 26.

A dependent, unmarried child over the limiting age may continue to be eligible as a dependent if the child is incapable of self-sustaining employment because of mental or physical disability, and chiefly dependent upon Enrollee for support and maintenance.

See schedule below for Plan Benefits, payments and/or reimbursement subject to any Copayment(s) as stated:

COPAYMENT

The benefits herein are available to each Covered Person subject only to payment of the applicable Copayment by the Covered Person. Plan Benefits received from VSP Network Doctors and Non-VSP Providers require Copayments. Covered Persons must also follow Benefit Authorization Procedures.

There shall be a Copayment of \$10.00 for the examination payable by the Covered Person at the time services are rendered. If materials (lenses, frames or Necessary Contact Lenses) are provided, there shall be an additional \$10.00 Copayment payable at the time the materials are ordered. The Copayment shall not apply to Elective Contact Lenses.

PLAN BENEFITS

SERVICE OR MATERIAL	VSP NETWORK DOCTOR BENEFIT		FREQUENCY
Eye Examination	Covered in full*		Available once each 12 months**
<p>Complete initial vision analysis: includes appropriate examination of visual functions and prescription of corrective eyewear where indicated.</p> <p>*Less any applicable Copayment. **Beginning with the first date of service.</p>			

SERVICE OR MATERIAL	VSP NETWORK DOCTOR BENEFIT		FREQUENCY
Lenses			Available once each 12 months**
Single Vision	Covered in full *		
Bifocal	Covered in full *		
Trifocal	Covered in full *		
Lenticular	Covered in full *		
<p>Plan Benefits for lenses are per complete set, not per lens.</p> <p>*Less any applicable Copayment. **Beginning with the first date of service.</p>			

SERVICE OR MATERIAL	VSP NETWORK DOCTOR BENEFIT		FREQUENCY
FRAMES	Covered up to Plan Allowance*		Available once each 24 months**
<p>Benefits for lenses and frames include reimbursement for the following necessary professional services:</p> <ol style="list-style-type: none"> 1. Prescribing and ordering proper lenses; 2. Assisting in frame selection; 3. Verifying accuracy of finished lenses; 4. Proper fitting and adjustments of frames; 5. Subsequent adjustments to frames to maintain comfort and efficiency; 6. Progress or follow-up work as necessary. <p>*Less any applicable Copayment. **Beginning with the first date of service.</p>			

SERVICE OR MATERIAL	VSP NETWORK DOCTOR BENEFIT		FREQUENCY
NECESSARY CONTACT LENSES			Available once each 12 months**
Professional Fees and Materials	Covered in full *		
<p>*Less any applicable Copayment **Beginning with the first date of service.</p> <p>Necessary Contact Lenses are a Plan Benefit when specific benefit criteria are satisfied and when prescribed by Covered Person's VSP Network Doctor or Non-VSP Provider. Prior review and approval by VSP are not required for Covered Person to be eligible for Necessary Contact Lenses.</p> <p>Necessary Contact Lenses are provided in lieu of all other lens and frame benefits available herein.</p> <p>When contact lenses are obtained, the Covered Person shall not be eligible for lenses again for -- months and frames for -- months.</p>			

SERVICE OR MATERIAL	VSP NETWORK DOCTOR BENEFIT		FREQUENCY
CONTACT LENSES			
Elective	Elective Contact Lens fitting and evaluation*** services are covered in full once every 12 months**, after a maximum \$60.00 Copayment.		Available once each 12 months**
	Materials Up to \$130.00		
<p>*Less any applicable Copayment. **Beginning with the first day of the Benefit Period. ***15% Discount applies to VSP Network Doctor's usual and customary professional fees for contact lens evaluation and fitting.</p> <p>Contact Lenses are provided in lieu of all other lens and frame benefits available herein.</p> <p>When contact lenses are obtained, the Covered Person shall not be eligible for lenses and frames again for 12 months.</p>			

SERVICE OR MATERIAL	VSP NETWORK DOCTOR BENEFIT	NON-VSP PROVIDER BENEFIT	FREQUENCY
Low Vision			
Professional services for severe visual problems not correctable with regular lenses, including:			
Supplemental Testing	Covered in full (Includes evaluation, diagnosis and prescription of vision aids where indicated.)	Up to \$125.00*	*
Supplemental Aids	75% of amount up to \$1000.00*	75% of amount up to \$1000.00*	*
<p>*Maximum benefit for all Low Vision services and materials is \$1000.00 every two (2) years.</p> <p>Low Vision benefits secured from Non-VSP Providers (if covered) are subject to the same time and Copayment provisions described above for VSP Network Doctors. The Covered Person should pay the Non-VSP Provider's full fee at the time of service. Covered Person will be reimbursed an amount not to exceed what VSP would pay a VSP Network Doctor for the same services and/or materials.</p> <p>THERE IS NO ASSURANCE THAT THE AMOUNT REIMBURSED WILL COVER 75% OF THE PROVIDER'S FULL FEE.</p>			

SAMPLE

EXCEPTIONS

Some brands of spectacle frames may be unavailable for purchase as Plan Benefits, or may be subject to additional limitations. Covered Persons may obtain details regarding frame brand availability from their VSP Network Doctor or by calling VSP's Customer Care Division at (800) 877-7195.

PATIENT OPTIONS

This Plan is designed to cover visual needs rather than cosmetic materials. When a Covered Person selects any of the following extras, the Plan will pay the basic cost of the allowed lenses or frames, and the Covered Person will pay the additional costs for the options.

- Optional cosmetic processes.
- Anti-reflective coating.
- Color coating.
- Mirror coating.
- Scratch coating.
- Blended lenses.
- Cosmetic lenses.
- Laminated lenses.
- Oversize lenses.
- Polycarbonate lenses.
- Photochromic lenses, tinted lenses except Pink #1 and Pink #2.
- Progressive multifocal lenses.
- UV (ultraviolet) protected lenses.
- Certain limitations on low vision care.

NOT COVERED

There are no benefits for professional services or materials connected with:

- Orthoptics or vision training and any associated supplemental testing.
- Corneal Refractive Therapy (CRT)
- Orthokeratology (a procedure using contact lenses to change the shape of the cornea in order to reduce myopia).
- Refitting of contact lenses after the initial (90-day) fitting period.
- Plano lenses (lenses with refractive correction of less than $\pm .50$ diopter).
- Two pair of glasses in lieu of bifocals.
- Replacement of lenses and frames furnished under this Policy that are lost or broken, except at the normal intervals when services are otherwise available.
- Medical or surgical treatment of the eyes.
- Corrective vision treatment of an Experimental Nature.
- Plano contact lenses to change eye color cosmetically.
- Artistically-painted contact lenses.
- Contact lens insurance policies or service contracts.
- Additional office visits associated with contact lens pathology.
- Contact lens modification, polishing, or cleaning.
- Costs for services and/or materials exceeding Plan Benefit allowances.
- Services or materials of a cosmetic nature.
- Services and/or materials not indicated on this Schedule as covered Plan Benefits.

**REIMBURSEMENT SCHEDULE
NON-VSP PROVIDERS**

**LIABILITY OF COVERED PERSONS FOR PAYMENT
REIMBURSEMENT PROVISIONS**

When a Covered Person choose to receive services from a Non-VSP Provider, services and/or materials may be secured from any duly-licensed optometrist, ophthalmologist and/or dispensing optician. The Covered Person should pay the Provider's fee in full. VSP will reimburse the Covered Person in accordance with the following schedule.

THERE IS NO ASSURANCE THAT THE AMOUNT REIMBURSED WILL BE SUFFICIENT TO PAY THE COST OF SERVICES OR MATERIALS IN FULL.

AVAILABILITY OF SERVICES UNDER THIS REIMBURSEMENT SCHEDULE ARE THE SAME AS THOSE DESCRIBED FOR VSP NETWORK DOCTOR ON THE SCHEDULE OF BENEFITS OR ADDITIONAL BENEFITS RIDER TO WHICH THIS SCHEDULE IS ATTACHED. SERVICES OBTAINED FROM NON-VSP PROVIDER ARE IN LIEU OF SERVICES FROM A VSP NETWORK DOCTOR.

VSP IS UNABLE TO REQUIRE NON-VSP PROVIDERS TO ADHERE TO VSP'S QUALITY STANDARDS.

ADDITIONAL DISCOUNTS AS DESCRIBED ON THE SCHEDULE OF BENEFITS OR ADDITIONAL BENEFIT RIDER TO WHICH THIS SCHEDULE IS ATTACHED ARE NOT AVAILABLE FROM NON-VSP PROVIDERS.

SCHEDULE OF ALLOWANCES

PLAN BENEFITS

SERVICE OR MATERIAL	NON-VSP PROVIDER BENEFIT	FREQUENCY
Eye Examination	Up to \$ 45.00*	Available once each 12 months.**
Lenses		Available once each 12 months.**
Single Vision	Up to \$ 30.00*	
Bifocal	Up to \$ 50.00*	
Trifocal	Up to \$ 65.00*	
Lenticular	Up to \$ 100.00*	
Frames Frame allowance may be applied towards non-prescription sunglasses for post PRK, LASIK, or Custom LASIK patients.	Up to \$ 70.00*	Available once each 24 months**
Contact Lenses		Available once each 12 months.**
Elective	Up to \$ 105.00	
Necessary	Up to \$ 210.00*	
*Less any applicable Copayment. **Beginning with the first date of the Benefit Period.		

Exhibit B

VISION SERVICE PLAN OF ILLINOIS, NFP (VSP)
SCHEDULE OF PREMIUMS
VSP Choice Plan

VISION SERVICE PLAN OF ILLINOIS, NFP ("VSP") shall be entitled to receive premiums for each month on behalf of each Enrollee and his/her Eligible Dependents, if any, in the amounts specified below.

- \$ 8.05 Per month for each eligible Enrollee without dependents
- \$ 12.80 Per month for each eligible Enrollee with one eligible dependent
- \$ 17.54 Per month for each eligible Enrollee with two or more eligible dependents

NOTICE: The premium under this Policy is subject to change upon renewal (after the end of the initial Policy Term or any subsequent Policy Term), or upon change of the Schedule of Benefits or a material change in any other terms or conditions of the Policy.

SAMPLE

EXHIBIT C

ADDITIONAL BENEFIT RIDER
DIABETIC EYECARE PROGRAM

GENERAL

This Rider lists additional vision care benefits to which Covered Persons of VISION SERVICE PLAN OF ILLINOIS, NFP ("VSP") are entitled, subject to any applicable Copayments and other conditions, limitations and/or exclusions stated herein. Plan Benefits under the Diabetic Eyecare Program ("DEP") are available to Covered Persons who have been diagnosed with Type 1 diabetes and specific ophthalmological conditions. The Diabetic Eyecare Program does not cover medical treatment for Covered Persons with diabetic or any other medical conditions.

PROCEDURES FOR OBTAINING DIABETIC EYECARE PROGRAM SERVICES

Covered Person's VSP Network Doctor will provide services under the DEP as needed following Covered Person's routine VSP Plan eye examination. No referrals or authorizations are required for services provided under the DEP.

ELIGIBILITY

Covered Persons under this Program are the same as stated on the VSP Plan Schedule of Benefits associated with this Rider.

COPAYMENT

A Copayment of \$20.00 is required for each Ophthalmological Service and Office Visit under the DEP, and is paid to the Network Doctor at the time of service. Other Copayments may apply to services under Covered Person's VSP Plan. Refer to the VSP Plan Schedule of Benefits associated with this Rider.

PLAN BENEFITS

SERVICE*	VSP NETWORK DOCTOR BENEFIT	BENEFIT FREQUENCY†	NON-VSP PROVIDER BENEFIT**
Ophthalmological services and Office Visits	Covered in full, less \$20.00 Copayment	Once every 12 months	Up to current Non-VSP Provider Schedule of Allowances
Gonioscopy	Covered in full	Once every 12 months	
Extended Ophthalmoscopy	Covered in full	Once every 6 months*	
Fundus Photography	Covered in full	Once every 6 months*	

COVERED SERVICES (The following list is current as of [7/1/08] and is subject to change without notice.)	
Description	Procedure Code
Ophthalmological services	92002, 92004, 92012, 92014
Office Visits	99201 - 99205, 99211 - 99215
Gonioscopy	92020
Extended Ophthalmoscopy	92225, 92226
Fundus Photography	92250
*Service and/or diagnosis limitations apply, or certain procedures require special handling. VSP Network Doctors must consult the <i>VSP Provider Reference Manual</i> for details before rendering services.	
†Benefit frequency periods begin on the date of the first Ophthalmological Service or Office Visit.	
<u>**Non-VSP Provider Benefits are available only to Covered Persons whose Group has purchased this option, or where such benefits are required by the laws of Covered Person's state of residence. Covered Persons should contact their Group, or VSP Customer Service at (800) 877-7195 before obtaining services from Non-VSP Providers.</u>	

EXCLUSIONS AND LIMITATIONS OF BENEFITS

The DEP covers diabetic eyecare evaluation services only. There is no coverage provided under the Plan for the following:

1. Costs associated with securing frames, lenses or any other materials.
2. Orthoptics or vision training and any associated supplemental testing.
3. Surgical procedures, including Laser or any other form of refractive surgery, and any pre- or post-operative services.
4. Pathological treatment of any type for any condition.
5. Any eye examination required by an employer as a condition of employment.
6. Insulin or any medications or supplies of any type.
7. Services and/or materials not included in this Rider as covered Plan Benefits.

DIABETIC EYECARE PROGRAM DEFINITIONS

Diabetes	A disease where the pancreas has a problem either making, or making and using, insulin.
Type 1 Diabetes	A disease in which the pancreas stops making insulin.
Type 2 Diabetes	A disease in which the pancreas makes insufficient insulin or can't efficiently use it.
Fundus Photography	Taking photos of the inside of the eye that show the optic nerve and retinal vessels.
Extended Ophthalmoscopy	A method of examining the posterior of the eye, including a true drawing of the retina accompanied by an interpretation and plan.
Gonioscopy	Use of a special contact lens to look at the eye's aqueous drainage area.



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VISION

Mobile vision care clinic stops in Bloomington

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STEVE SMEDLEY

Optometrist Michelle Willenbring of Rieger Eyecare, Ltd. in Normal, examines 8 year-old Thomas Gutuo f Bloomington in the VSP Vision Care mobile eye clinic on Wednesday July 25, 2012. (The Pantagraph/STEVE SMEDLEY)

Buy Now

July 25, 2012 4:50 pm • By Paul Swiech | pswiech@pantagraph.com

(0) Comments

BLOOMINGTON — Thomas Gutu's wish was granted Wednesday in a 45-foot-long mobile vision clinic parked outside Western Avenue Community Center.

"You're getting glasses," Dr. Michelle Willenbring told the 8-year-old Bloomington boy after giving him a comprehensive eye exam. "Isn't that exciting?"

"I've always wanted to have glasses," Thomas, who will be a third-grader at Fox Creek Elementary School, told Willenbring. "I've never worn glasses before."

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Thomas said school has been "hard" for him because he has had trouble seeing the front of the classroom. Willenbring's exam confirmed that the boy is nearsighted and his vision is weaker in his left eye than his right eye.

"He has struggled in school and I hope things go better for him now that we know what's going on," said his mother, Amanda Gutu. Because the Gutu family doesn't vision insurance, Thomas hadn't had an eye exam since kindergarten.

The Gutus' experience illustrated the purpose of the VSP Vision Care mobile vision clinic.

"We are providing free eye exams and glasses — if needed — to uninsured and underserved clients," said Lori Fanning, VSP mobile clinic operations manager.

VSP is a California-based vision insurance provider, and its charitable outreach program is Vision Care. Three mobile clinics are "eye doctors' offices on wheels" that crisscross the country providing eye care to U.S. citizens whose family income is not more than 200 percent of the federal poverty level, who are not enrolled in another vision insurance plan and who haven't received a VSP exam in the past year.

VSP wanted to bring its mobile clinic to Bloomington-Normal and contacted State Farm Insurance Cos., who referred VSP to Western Avenue Community Center, said State Farm spokeswoman Holly Anderson.

"We serve a lot of disadvantaged people ages 2 to 90 with various programs and there's always a need (for vision care) due to lack of insurance or employment," said Amy Cottone, executive director of the center at 600 N. Western Ave. "Bringing this service to the people was a great opportunity. And the timing, just before school, is beneficial for students."

Eligible individuals were identified by various human services organizations and 35 people received eye exams by optometrists Willenbring and Dr. Terri Rieger, with assistance from four VSP employees.

"I think it's wonderful, for people like us, to have this community service," Amanda Gutu said.

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**ITEM 6F. CLIENT AGREEMENT EMPLOYEE AND
RETIRE HEALTH INSURANCE PPO/HMO, DENTAL
PLAN, BROKER SERVICES**

**THIS ITEM WILL BE AVAILABLE ON
FRIDAY, OCTOBER 19, 2012**

SUBJECT: Client Agreement between MetLife and the City for Employee Life Insurance and Accidental Death and Dismemberment (AD&D) Insurance and Retiree Life Insurance

RECOMMENDATION/MOTION: That the Client Agreements be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: The City offers group term life and AD&D to its full-time employees and to the retirees remaining on its health insurance plans. The death benefit varies between \$5,000 and \$50,000 depending on the employee group. Retirees have a life benefit (no AD&D) of \$5,000 or \$2,500 depending on age. The City pays 100% of the cost for this benefit.

Lincoln Financial Group is the City’s current vendor for this benefit. The City’s insurance agent, Mr. Sauder, received quotes from seven (7) firms. The best quote was from MetLife which matched the current benefit levels for a cost of \$37,203 or \$8,424 (18.5%) below Lincoln’s. The companies quoted on the same enrollment and benefit levels. MetLife is offering a two year rate guarantee with the following rates:

	2012 Rates	2012 Total	2013 Renewal	2013 Total
Lincoln Financial				
Life Insurance	\$.18/\$1000		\$.20/\$1000	
AD&D	\$.03/\$1000	\$41,639.40	\$.03/\$1000	\$45,627
Total	\$.21/\$1000		\$.23/\$1000	
MetLife				
Life Insurance			\$.154/\$1000	
AD&D	NA	NA	\$.027/\$1000	\$37,203
Total			\$.181/\$1000	

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: A total of \$41,138 is budget for group life insurance within the employee and retiree health insurance fund divisions 60200290 and 60280290 for FY 2013. The MetLife pricing would save \$1,462 in this fiscal year assuming the same enrollment level.

Respectfully submitted for Council consideration.

Prepared by:

Reviewed by:

Laurie Wollrab, MBA, PHR
Compensation and Benefit Manager

Emily Bell, IPMA – CP
Director of Human Resources

Legal review by:

Financial review by:

Rosalee Dodson
Assistant Corporation Counsel

Patti-Lynn Silva
Director of Finance

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. MetLife Proposal

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			



City of Bloomington

Basic Life, Basic AD&D

Proposal produced on October 15, 2012
This quote is valid for 90 days from date of proposal

City of Bloomington Rate Summary

Coverage	Participating Lives	Covered Volume	Rates	Annual Premium
EDB/3yr/corrected life 1873038				
Basic Life <i>(per \$1,000 of Covered Volume)</i>	718	\$16,777,500		\$31,005
All Active Full Time Classified Staff	144	\$6,720,000	\$0.154	
All Active Full Time Union Excluding Police Unit	315	\$7,862,500	\$0.154	
All Active Full Time Police Unit 21	99	\$495,000	\$0.154	
All Retirees	140	\$700,000	\$0.154	
All Active Full Time Sergeants and Lieutenants	20	\$1,000,000	\$0.154	
Rates are guaranteed from January 1, 2013 - December 31, 2015				
Basic AD&D <i>(per \$1,000 of Covered Volume)</i>	578	\$16,077,500		\$5,209
All Active Full Time Classified Employees	144	\$6,720,000	\$0.027	
All Active Full Time Classified Staff	315	\$7,862,500	\$0.027	
All Active Full Time Police Unit 21	99	\$495,000	\$0.027	
All Active Full Time Sergeants and Lieutenants	20	\$1,000,000	\$0.027	
Rates are guaranteed from January 1, 2013 - December 31, 2015				

Summary of Benefits

Life / AD&D Insurance – EDB/3yr/corrected life

Basic Life	
All Active Full Time Classified Staff (20 Hours)	<ul style="list-style-type: none"> • 1 times pay to a maximum of \$50,000 • A minimum benefit of \$5,000 • Medical Evidence Level: \$50,000 • Reduces by: 50% at Age 70 • Extended Death Benefits • Conversion and Portability are included in this quote • Accelerated Benefit Option: 24 months or less to live, up to 80.0% of coverage, to a maximum of \$500,000
All Active Full Time Union Excluding Police Unit (20 Hours)	<ul style="list-style-type: none"> • Flat \$25,000 • Medical Evidence Level: \$25,000 • Reduces by: 50% at Age 70 • Extended Death Benefits • Conversion and Portability are included in this quote • Accelerated Benefit Option: 24 months or less to live, up to 80.0% of coverage, to a maximum of \$500,000
All Active Full Time Police Unit 21 (20 Hours)	<ul style="list-style-type: none"> • Flat \$5,000 • Medical Evidence Level: \$5,000 • Reduces by: 50% at Age 70 • Extended Death Benefits • Conversion and Portability are included in this quote • Accelerated Benefit Option: not included
All Retirees (20 Hours)	<ul style="list-style-type: none"> • Flat \$5,000 • Medical Evidence Level: \$5,000 • Reduces by: 50% at Age 70 • Conversion and Portability are included in this quote • Accelerated Benefit Option: not included
All Active Full Time Sergeants and Lieutenants (20 Hours)	<ul style="list-style-type: none"> • Flat \$50,000 • Medical Evidence Level: \$50,000 • Reduces by: 50% at Age 70 • Extended Death Benefits • Conversion and Portability are included in this quote • Accelerated Benefit Option: 24 months or less to live, up to 80.0% of coverage, to a maximum of \$500,000

Basic AD&D	
All Active Full Time Classified Employees (20 Hours)	<ul style="list-style-type: none"> • 100% of the Basic Life benefit. • Extended Death Benefits • Portability is included in this quote
All Active Full Time Classified Staff (20 Hours)	<ul style="list-style-type: none"> • 100% of the Basic Life benefit. • Extended Death Benefits • Portability is included in this quote
All Active Full Time Police Unit 21 (20 Hours)	<ul style="list-style-type: none"> • 100% of the Basic Life benefit. • Extended Death Benefits • Portability is included in this quote
All Active Full Time Sergeants and Lieutenants (20 Hours)	<ul style="list-style-type: none"> • 100% of the Basic Life benefit. • Extended Death Benefits • Portability is included in this quote

	Rate per \$1,000 of Covered Volume	Est Volume	Est Monthly Premium	Est Annual Premium
Basic Life				
All Active Full Time Classified Staff	\$0.154	\$6,720,000	\$1,035	\$12,419
All Active Full Time Union Excluding Police Unit	\$0.154	\$7,862,500	\$1,211	\$14,530
All Active Full Time Police Unit 21	\$0.154	\$495,000	\$76	\$915
All Retirees	\$0.154	\$700,000	\$108	\$1,294
All Active Full Time Sergeants and Lieutenants	\$0.154	\$1,000,000	\$154	\$1,848
Rates are guaranteed from January 1, 2013 - December 31, 2015 (36 months)				
Basic AD&D				
All Active Full Time Classified Employees	\$0.027	\$6,720,000	\$181	\$2,177
All Active Full Time Classified Staff	\$0.027	\$7,862,500	\$212	\$2,547
All Active Full Time Police Unit 21	\$0.027	\$495,000	\$13	\$160
All Active Full Time Sergeants and Lieutenants	\$0.027	\$1,000,000	\$27	\$324
Rates are guaranteed from January 1, 2013 - December 31, 2015 (36 months)				

Plan Features and Limitations

Portability: Option to continue term insurance under a different policy when coverage terminates. Minimums, maximums, and other conditions apply.

Total Control Account (TCA):

- Death claim proceeds paid via the TCA Settlement Option - an interest-bearing account with draft-writing privileges
- Relieves beneficiaries of the need to make immediate decisions about what to do with a lump-sum check, while giving them the flexibility to access funds as needed and earn interest on the proceeds as they assess their financial situation
- Provides full and immediate access to the death proceeds
- Principal and interest earned are guaranteed by the financial strength and claims paying ability of the Metropolitan Life Insurance Company
- Beneficiary receives a draftbook, along with a Customer Agreement and other materials describing the Account
- Unlimited draft writing privileges
- No charges for processing TCA drafts, no monthly maintenance fees, and no charge for ordering additional TCA drafts
- Accountholders receive periodic statements itemizing account activity and a free **Life Advice** newsletter
- Information about the TCA is available electronically through MetLife's easy to use eSERVICE web site
- Customer Service Representatives specially trained to provide service to beneficiaries are available through a special toll-free number
- At their convenience, Accountholders are able to touch or speak their requests into the phone such as, "hear account balance", "get recent transactions", and "order drafts."

Subject to state law, and/or group policyholder direction, the TCA is provided for all Life and AD&D benefits of \$5,000 or more. The TCA is not insured by the Federal Deposit Insurance Corporation or any government agency. The assets backing the TCA are maintained in the Metropolitan Life Insurance Company (MetLife) general account and are subject to MetLife's creditors. MetLife bears the investment risk of the assets backing the TCA, and expects to receive a profit. Regardless of the investment experience of such assets, the interest credited to Total Control Accounts will never fall below the guaranteed minimum rate. Guarantees are subject to the financial strength and claims paying ability of MetLife.

Accelerated Benefits Option: If included, the minimum that can be accelerated is \$20,000.

The definition of earnings used to define benefits will be **Basic Monthly Earnings + Commissions.**

Extended Death Benefit Disability Provision: Group life coverage is extended for one year after termination of employment for an employee meeting the contractual definition of total disability. No further premium payment for that employee is required. The onset of the disability must occur prior to age 60 and must last continuously until the date of death. If the employee was covered for less than one year at the onset of the disability, the extension equals the length of coverage plus 31 days.

Enrolling in the Plan:

- A statement of health will need to be submitted by employees who:
 - Request coverage amounts during their initial 31-day enrollment that exceed the stated MEOI level.
 - Apply for coverage more than 31 days after they are first eligible (late entrants).
 - Have indicated a medical condition on their enrollment form.

Benefit Increases:

- Employees who experience a pay increase that generates a benefit, for the first time, which exceeds the stated MEOL level, will have to submit a statement of health.
- Basic Life: Employees, Actively at Work, who are participating in the plan and want to increase their coverage by any amount will have to submit a statement of health.

The coverage will be subject to a contestability clause in accordance with the law.

No eligible individual may be covered more than once under this plan. If a person is covered as an employee, he/she cannot be covered as a spouse or dependent. If an employee and spouse are employed by the same employer, their eligible dependents may be insured as dependents of only one employee.

Table of Covered Losses for AD&D

Covered Loss	Basic AD&D
Life	100%
Hand	50%
Foot	50%
Arm	75%
Leg	75%
Sight of One Eye	50%
Combination of a Hand, Foot, and/or Eye	100%
Thumb & Index Finger on the Same Hand	25%
Speech and Hearing	100%
Speech	50%
Hearing	50%
Paralysis of Both Arms and Both Legs	100%
Paralysis of Both Legs	50%
Paralysis of the Arm & Leg on Either Side of the Body	50%
Paralysis of One Arm or Leg	25%
Brain Damage	100%
Coma	1% monthly up to 60 months
* Maximum Amount payable for all cover Losses sustained in one accident is capped at 100% of the Full Amount	
Additional Covered Losses	
Covered Loss	Basic AD&D
Air Bag Use	5% up to \$10,000
Seat Belt Use	10% up to \$25,000
Common Carrier	100% of Full Amount

Limitations and Exclusions	
Limitations	<ul style="list-style-type: none"> The Accidental Death & Dismemberment loss must occur within 365 days after the date of the accident and be a direct result of bodily injury sustained from that accident, independent of other causes.
Exclusions	<p>Accidental Death & Dismemberment insurance does not include payment for any loss which in any way results from or is caused by or contributed to by:</p> <ul style="list-style-type: none"> physical or mental illness or infirmity, or the diagnosis or treatment of such illness or infirmity; infection, other than infection occurring in an external accidental wound; suicide or attempted suicide; intentionally self-inflicted injury; active duty service in the armed forces of any country or international authority, except the United States National Guard; any incident related to: 1) travel in an aircraft as a pilot, crew member, flight student or while acting in any capacity other than as a passenger; 2) travel in an aircraft for the purpose of parachuting or otherwise exiting from such aircraft while it is in flight; 3) parachuting or otherwise exiting from an aircraft while such aircraft is in flight except for self preservation; 4) travel in an aircraft or device used for testing or experimental purposes; by or for any military authority; or for travel or designed for travel beyond the earth's atmosphere; committing or attempting to commit a felony; the voluntary intake or use by any means of: 1) any drug, medication or sedative, unless it is: taken or used as prescribed by a Physician, or an "over the counter" drug, medication or sedative, taken as directed; 2) alcohol in combination with any drug, medication, or sedative; or 3) poison, gas, or fumes; war, whether declared or undeclared; or act of war, insurrection, rebellion, riot; driving a vehicle or other device while intoxicated as defined by the laws of the jurisdiction in which the vehicle or other device was being operated.

Highlights
Broker Commissions included in the rate: Flat 10.00%
Expected Participation: 100%
Employee Contributions: 0%
Situs is ILLINOIS
Financial Arrangement: Non-retrospectively Experience Rated
Final rates will be based on actual enrollment and contribution levels.
Submit complete enrollment materials by the 15 th of the month preceding the effective date to ensure prompt Underwriting review.
Benefits terminate at retirement for: Basic Life <ul style="list-style-type: none"> All Active Full Time Classified Staff All Active Full Time Union Excluding Police Unit All Active Full Time Police Unit 21 All Active Full Time Sergeants and Lieutenants Basic AD&D
AD&D Benefits terminate when the corresponding Life Benefits terminate.
Actively at Work MetLife's standard contract requires that employees be Actively at Work on the effective date of the plan in order to be eligible for coverage. For those employees who satisfy the Actively at Work provision, coverage will commence on the plan effective date. For those employees not Actively at Work, coverage will become effective once they return to active status. Medical evidence of insurability may be required to commence coverage when the individuals return to active work.

Underwriting Assumptions

PlanSmart* - PlanSmart is a multifaceted program, offered at no additional cost, which enables you to provide your employees with access to a range of financial and retirement education resources through on-site workshops, with optional personal consultations and decision-support assistance.

Retirewise - Retirewise is an in-depth program consisting of a four-part series of workshops that deliver objective information covering a broad spectrum of retirement issues from Estate Planning to Tax Planning. Each workshop is delivered by a locally based financial professional.

Available to those enrolled in Life Insurance coverages:

Delivering the Promise[®] (*DTP*) - DTP provides valuable support and assistance at the time of a claim. Specialists help beneficiaries and their families identify eligible benefits, file insurance and annuity claims, and identify local resources, including grief counseling services and government agencies.

Available to those enrolled in the Basic Life coverage:

Transition Solutions - Transition Solutions is an educational program that provides the support your employees need to make informed decisions when faced with a loss or reduction in coverage, for any reason. In addition to the outreach from a qualified professional, MetLife offers a limited record-keeping process for sending standardized letters to your employees, notifying them of their coverage continuation and conversion options.

*Certain conditions apply. Please discuss with your MetLife representative to determine if this program is right for your company.

If insurance coverage is provided, it will be governed by the terms and conditions of the insurance policy and applicable law. If administrative services are provided, they are governed by the terms and condition of the administrative services agreement and by applicable law.

If MetLife is requested to duplicate contractual provisions from the prior carrier, such provisions must be compatible with all MetLife's standards.

MetLife reserves the right to change its quoted rates and or fees at any time before the effective date. After the effective date, rate and or fees are subject to the terms and conditions of the policy and or administrative services agreement.

Only those eligible persons residing in the United States may be covered. Any others must be approved by MetLife.

SIC Code: 9111

INTERMEDIARY AND PRODUCER COMPENSATION NOTICE

MetLife enters into arrangements concerning the sale, servicing and/or renewal of MetLife group insurance and certain other group-related products ("Products") with brokers, agents, consultants, third-party administrators, general agents, associations, and other parties that may participate in the sale, servicing and/or renewal of such Products (each an "Intermediary"). MetLife may pay your Intermediary compensation, which may include base compensation, supplemental compensation and/or a service fee. MetLife may pay compensation for the sale, servicing and/or renewal of Products, or remit compensation to an Intermediary on your behalf. Your Intermediary may also be owned by, controlled by or affiliated with another person or party, which may also be an Intermediary and who may also perform marketing and/or administration services in connection with your Products and be paid compensation by MetLife.

Base compensation, which may vary from case to case and may change if you renew your Products with MetLife, may be payable to your Intermediary as a percentage of premium or a fixed dollar amount. In addition, supplemental compensation may be payable to your Intermediary. Under MetLife's current supplemental compensation plan, the amount payable as supplemental compensation may range from 0% to 7% of premium. The supplemental compensation percentage may be based on: (1) the number of Products sold through your Intermediary during a prior one-year period; (2) the amount of premium or fees with respect to Products sold through your Intermediary during a prior one-year period; (3) the persistency percentage of Products inforce through your Intermediary during a prior one-year period; (4) a fixed percentage of the premium for Products as set by MetLife. The supplemental compensation percentage will be set by MetLife prior to the beginning of each calendar year and it may not be changed until the following calendar year. As such, the supplemental compensation percentage may vary from year to year, but will not exceed 7% under the current supplemental compensation plan.

The cost of supplemental compensation is not directly charged to the price of our Products except as an allocation of overhead expense, which is applied to all eligible group insurance products, whether or not supplemental compensation is paid in relation to a particular sale or renewal. As a result, your rates will not differ by whether or not your Intermediary receives supplemental compensation. If your Intermediary collects the premium from you in relation to your Products, your Intermediary may earn a return on such amounts. Additionally, MetLife may have a variety of other relationships with your Intermediary or its affiliates that involve the payment of compensation and benefits that may or may not be related to your relationship with MetLife (e.g., consulting or reinsurance arrangements).

More information about the eligibility criteria, limitations, payment calculations and other terms and conditions under MetLife's base compensation and supplemental compensation plans can be found on MetLife's Web site at www.metlife.com/brokercompensation. Questions regarding Intermediary compensation can be directed to ask4met@metlifeservice.com, or if you would like to speak to someone about Intermediary compensation, please call (800) ASK 4MET. In addition to the compensation paid to an Intermediary, MetLife may also pay compensation to your MetLife sales representative. Compensation paid to your MetLife sales representative is for participating in the sale, servicing, and/or renewal of Products, and the compensation paid may vary based on a number of factors including the type of Product(s) and volume of business sold. If you are the person or entity to be charged under an insurance policy or annuity contract, you may request additional information about the compensation your MetLife sales representative expects to receive as a result of the sale or concerning compensation for any alternative quotes presented, by contacting your MetLife sales representative or calling (866) 796-1800.

L0611185224 [exp1213] [All States]

L0612262163[exp1112][All Territories]

FOR COUNCIL: October 22, 2012

SUBJECT: AccuMed Ambulance Billing Contract

RECOMMENDATION/MOTION: That the unit prices from AccuMed, for Ambulance Billing Services be accepted, and the Mayor and City Clerk be authorized to execute the necessary documents.

BACKGROUND: In 2005, the Bloomington Fire Department under direction from City Council upgraded its service level from Basic Life Support (BLS) to Intermediate Life Support (ILS). During this upgrade a decision was made to begin charging for Emergency Medical Services by those using the service. The intent was to collect on insurance and other eligible benefits available for healthcare (such as Medicare and Medicaid) and to offset some of the expense with this change in service since the existing BLS service was provided free of charge.

Within 9 months of this transition, the local Advanced Life Support (ALS) provider, Lifeline Mobile Medics, ceased operations in the community. Again, under direction of the Council, the Bloomington Fire Department trained and hired personnel and transitioned into ALS service to the community. The collection of revenue from EMS billing was designed to defer part of the cost associated with the move from BLS to ALS service.

When the decision to charge for service was made, research into the best means to bill for service was investigated. Due to the complexity of healthcare billing, including legal requirements, State and Federal guidelines for Medicare and Medicaid billing, recordkeeping and ongoing training and compliancy issues, the decision was made to outsource the billing as opposed to hiring staff, acquiring hardware, software and know how to internally provide this service. A team of City Staff that included three members of the Fire Department (Deputy Chief of Administration, Training Officer, Administrative Assistant), two members of Finance, and one member each from IS, Legal, and Purchasing was established. A total of 8 reviewed the RFP, and then reviewed all RFP's responses received. From those, interviews were conducted with the top three vendors and one was chosen. This process involved over 160 hours of staff time.

In addition to evaluating vendor bids for qualifications and compliance with the City's RFP requirements, the Evaluation Committee scoring criteria measured the following elements unique to EMS billing operations: Compliance Record and Compliance Resources; Relative Experience; Services Offerings (including cost free consultation services); Customer Services Approach; Recovery Success; and Fee. Based on the evaluation criteria, AccuMed Billing prevailed by a significant margin in the formal bidding process and has delivered exceptional service and results to Bloomington since.

Compliance with Medicare Law continues to be assigned the greatest priority and weighting as we monitor overall EMS billing effectiveness. This is because EMS providers like Bloomington have been targeted for State and Federal fraud and abuse audits.

Compliance is the focus of Federal and State regulatory entities and strict adherence to Medicare Law is necessary to maintain licensure, avoid fraud and abuse convictions and or criminal punishment. These regulatory agencies have, through fines and litigation, collected over 4.1 billion dollars in 2011, and prosecutions for fraud are up 157% over the past 5 years. Medicare Recovery Audit Contractors have already identified just under \$400 million in overpayments during the first quarter of 2012.

As supported by AccuMed's internal compliance resources, including oversight of Bloomington's conformity to federal and state billing regulation, the City of Bloomington has maintained a perfect compliance record. As supported by AccuMed's cost free consultation services, Bloomington is able to adjust and remain compliant with evolving regulation.

With and through Finance, we closely monitor AccuMed's recovery performance, which continues to produce at expected levels, consistent with similar EMS Systems, with like payor mix (demographics), charge strategy, data capture methods and collection policies.

Of significant interest, two recent case studies are relevant: The Town of Normal is also an AccuMed client. In August 2012, the Town of Normal studied this same issue and renewed a contract with AccuMed for five years at the reduced rate of 6.5%. Also in August 2012, Leroy Ambulance Service initiated a formal bidding process and selected AccuMed. The Leroy Ambulance Service billing rate is 6.75%. Leroy Ambulance found AccuMed to be both the most qualified and competitive amongst the bidders. Again however, pricing is simply one variable to consider when selecting the most qualified, result engineered billing vendor. Lastly, in the course of on-going benchmarking with other communities, we have concluded that in addition to qualifications, AccuMed delivers the results (recovery); customer service; compliance and resources at a price point which would best position AccuMed to prevail in a formal bidding environment.

Therefore, it is the recommendation of Fire and Finance to execute an addendum to replace the expired Agreement with AccuMed. The recommended Term is 5 years at a rate of 6.0%, along with a credit of \$15,035.39. The credit represents the 14.28% price reduction between the current fee of 7.00% to the new fee of 6.00%, retroactive to January 1, 2012.

Using actual 2012 Bloomington recovery data, over the 5-year Term, the proposed 14.28% price reduction along with the retroactive credit will equate to a \$115,271.32 cost reduction to the City.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: In FY 2013, the City's Budget for revenue for basic and advanced ambulance service was \$3,922,795 million. The receivables generated for this service are recognized in object code 10015210-54910. In FY 2013, the City's Budget appropriated \$124,390 for billing and collection services for ambulance billing. The payments paid by the City for AccuMed to process the ambulance billings are expended from object 10015210-70643.

Respectfully submitted for Council consideration.

Prepared by:

Legal review by:

Michael Kimmerling
Fire Chief

J. Todd Greenburg
Corporation Counsel

Financial review by:

Recommended by:

Patti-Lynn Silva
Finance Director

David A. Hales
City Manager

Attachments: Attachment 1. AccuMed Agreement

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			

**THIRD AMENDMENT TO
BILLING SERVICE AGREEMENT**

AccuMed: AccuMed Billing, Inc. a Michigan corporation P.O. Box 212 Riverview, MI 48192	Customer:	City of Bloomington 310 N. Lee Street Bloomington, Illinois 61701
Phone: (734) 479-6300	Contact:	Chief Michael Kimmerling
Facsimile: (734) 479-6319	Phone:	309-434-2500
	Facsimile:	
	Effective Date:	November 1, 2012

THIS THIRD AMENDMENT is made by and between AccuMed and Customer.

1. AMENDMENT. AccuMed and Customer hereby agree that the Billing Service Agreement with an Effective Date of February 1, 2005 and the First Amendment thereto which had an Effective Date of June 1, 2006 and the Second Amendment thereto which had an Effective Date of March 1, 2008 (the "Agreement") be and the same hereby is amended as hereinafter set forth. With the exception of the provisions of the Agreement specifically or by necessary inference amended hereby, all of the provisions of the Agreement shall remain in full force and effect.

2. TERM. The provisions of Section 2 of the Agreement shall be read and interpreted so that the Initial Term as defined therein shall commence on February 1, 2005 and shall end on October 31, 2017. At the end of Initial Term, this Agreement shall renew for additional one (1) year terms until canceled by either party, by giving to the other written notice of such cancellation not more than ninety (90) days nor less than thirty (30) day's prior to the expiration of the current term.

3. PAYMENT AND COLLECTION. The provisions of section 4 A. of the Agreement shall be amended to read:

A. In full payment for AccuMed's services provided herein, Customer agrees to pay the following amounts:

An amount equal to six (6.0%) percent of the amount collected each month for EM Services until this Agreement is terminated

A one-time credit in the amount of \$15,035.39 shall be issued to Customer to reflect the price differential of 7.00% to 6.00% from January 2012 to November 1, 2012.

All other provisions of Section 4 of the Agreement shall remain in full force and effect. .

ACCEPTANCE:

ACCUMED BILLING, INC.

BY: _____

NAME: _____

DATE: _____

ACCEPTANCE:

CITY OF BLOOMINGTON

BY: _____

NAME: _____

DATE: _____

SUBJECT: Consent to Assignment of Indoor Football Lease at U.S. Cellular Coliseum

RECOMMENDATION/MOTION: That the consent to the assignment be approved and that the Mayor and City Clerk be authorized to execute the consent.

BACKGROUND: For the reasons set forth in the attached memo by John Butler, Manager of Central Illinois Arena Management, Inc., James R. Morris, d/b/a Roar, L.L.C. and Roar Football, L.L.C. desires to assign the lease for Indoor Football to Hockey Sensation, L.L.C.

As you are aware, Sandra Hunnewell is the primary owner of Hockey Sensation, L.L.C. A provision of the Indoor Football lease is that CIAM and the City will not “unreasonably withhold” their consent to assignment of the lease. The staff concurs with the recommendation of Mr. Butler.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by:

Recommended by:

Todd Greenburg
Corporation Counsel

David A. Hales
City Manager

Attachments: Attachment 1. Letter from John Butler – October 15, 2012
Attachment 2. Assignment and Assumption – October 12, 2012
Attachment 3. Football License Agreement – January 9, 2012

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			



To: Mayor Stockton
City Manager Hales
Members of the City Council
City of Bloomington

From: John Butler, President
Central Illinois Arena Management

Monday, October 15, 2012

This past summer, with the announcement of Mr. Morris's interest in selling the football team, CIAM began the process of assisting the ownership group with identifying prospective owners, while re-evaluating the current landscape of Indoor Football. With the constant changes in minor league sports, CIAM regularly reviews what factors affect the overall success rate of our tenants. We were able to present that information to prospective buyers. After many discussions, Sandra Hunnewell, owner of the Bloomington Blaze hockey team agreed to purchase the football team from Mr. Morris and join a league that will best represent the Bloomington market.

The ownership team will have four distinct advantages owning both the Blaze Hockey Team and the EDGE Indoor Football Team. First, they have a full-time staff dedicated to selling and marketing both the hockey and football teams year-round. With an overall operation of 10 full-time staff members, they will be able to effectively market both teams throughout the region. Second, there is a significant cost saving benefits both on the administrative side as well as the team operations side when there is a combined effort from both teams. Thirdly, they will have access to a wider fan base to effectively cross promote both teams and provide corporate partners more "bang for their buck". Lastly, the ownership group will be able to establish a strong stable front, building up brand identity and fan loyalty within the surrounding community.

The Bloomington EDGE Football Team will be joining the Champions Professional Indoor Football league, (CPIFL) next season. The 10-team league will be considered a premier professional league based along the Midwestern United States, including teams located in Illinois, Missouri, Iowa, Nebraska and Oklahoma. The caliber of play and the talent pool in the CPIFL will be very strong, with an emphasis on recruiting football players on a local and regional basis.

Hockey Sensations, L.L.C. has met all of the financial requirements of the CPIFL and has been accepted as a member of the league pending the approval of the license agreement with the City of Bloomington. The Assignment Agreement of the Indoor Football License Agreement between James R. Morris, d/b/a Roar, L.L.C. and Roar Football, L.L.C. as Assignor and Hockey Sensation, L.L.C. as the Assignee, has been duly executed by all parties and delivered to city staff, pending approval by the City Council of Bloomington.

**ASSIGNMENT AND ASSUMPTION
OF
INDOOR FOOTBALL LICENSE AGREEMENT
-U.S. CELLULAR COLISEUM**

This Assignment and Assumption is dated October 12, 2012 by and between Roar, L.L.C. and Roar Football, L.L.C., an Illinois Limited Liability Company as Assignor and Hockey Sensations, L.L.C. as Assignee.

This is the Assignment of the Indoor Football License Agreement as described in an Asset Purchase Agreement dated October 12, 2012 between Assignor as Seller and Assignee as Buyer for the sale and purchase of the Bloomington Edge Football team assets.

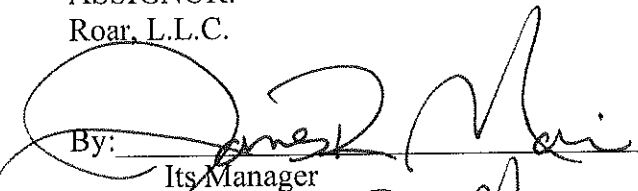
Therefore pursuant to the terms of the Asset Purchase Agreement, Ten Dollars (\$10.00) in hand paid, the mutual promises herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor does hereby sell, assign, transfer, convey and deliver to Assignee, its successors and assigns all its right, title and interest as Licensee in, to and under of Indoor Football License Agreement dated January 9, 2012 by and among the City of Bloomington, Illinois (the City), Central Illinois Arena Management, Inc., (the Operator), (the City and Operator jointly as Licensor thereunder) and Assignor as Licensee thereunder (the Football License), intending hereby to convey all of its right, title and interest therein, subject only to the consent of the Operator and the consent of the City.
2. Assumption. Assignee hereby assumes, undertakes and agrees to discharge in accordance with all the terms of and to the full extent provided in the Football License all obligations and liabilities of the Licensee arising on or after October 12, 2012 and to hold Assignor harmless from all liabilities to the City and Operator arising from the Football License.
3. Mutual Release. Upon execution and delivery of this Assignment and Assumption Agreement, the Operator and City release the Assignor and the Assignor releases the Operator and the City from all claims of every nature the City and Operator may have against the Assignor as Licensee under the Football License Agreement and all claims of every nature the Assignor as Licensee may have against the City and Operator (jointly the Licensor) under the Football License Agreement.

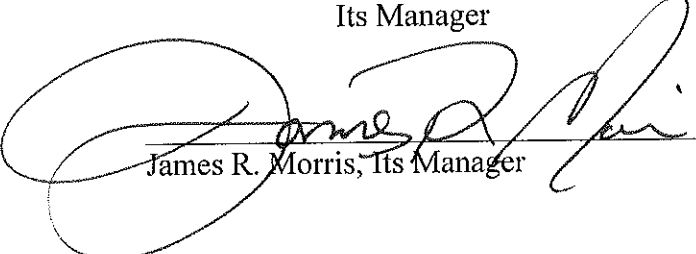
This Assignment and Assumption shall inure to the benefit and be binding upon the successors and assigns of the Assignor and Assignee.

In witness thereof, Assignor and Assignee have caused this Assignment and Assumption Agreement to be duly executed and delivered as of the date first set forth above.

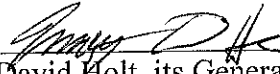
ASSIGNOR:
Roar, L.L.C.

By: 
Its Manager
Print Name JAMES R. MORRIS
Print Title MA PRESIDENT

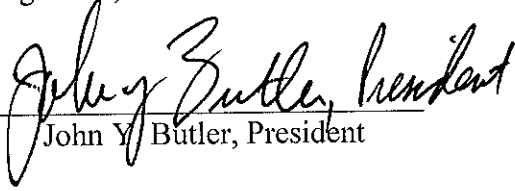
Roar Football, L.L.C.
By: Roar Entertainment & Sports, L.L.C.
Its Manager


James R. Morris, Its Manager

ASSIGNEE:
Hockey Sensations, L.L.C.

By: 
David Holt, its General Manager

Central Illinois Arena
Management, Inc.

By: 
John Y. Butler, President

City of Bloomington

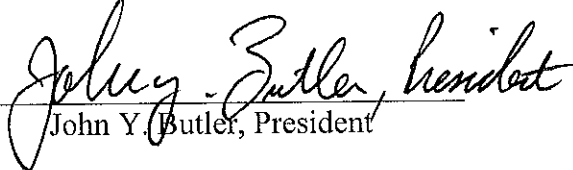
By: _____
Stephen F. Stockton, Mayor

CONSENT

Central Illinois Arena Management, Inc., Operator under the Football License Agreement, pursuant to paragraph 21F hereby consents to the Assignment and Assumption of the Football License Agreement as described herein.

Dated this 12th day of October, 2012

Central Illinois Arena Management, Inc.

By: 
John Y. Butler, President

CONSENT

The City of Bloomington, the City under the Football License Agreement, pursuant to paragraph 21F hereby consents to the Assignment and Assumption of the Football License Agreement as described herein.

Dated this ___ day of _____, 2012

City of Bloomington

By: _____
Stephen F. Stockton, Mayor

INDOOR FOOTBALL LICENSE AGREEMENT

-U.S. Cellular Coliseum

THIS INDOOR FOOTBALL LICENSE AGREEMENT (this "Agreement") is made and entered into this 9th day of January, 2012, by and among the City of Bloomington, Illinois (the "City"), Central Illinois Arena Management, Inc., an Illinois Corporation (the "Operator"), and ROAR, LLC, an Illinois limited liability company (the "Licensee" or, where the reference may indicate, the "Licensee" as hereinafter further defined). City and Operator are sometimes hereinafter jointly referred to as the "Licensor."

WITNESSETH:

WHEREAS, the City has developed and is the owner of the U.S. Cellular Coliseum at 101 South Madison Street, Bloomington, McLean County, Illinois, (the "Coliseum" as hereinafter defined) for use for public purposes and gatherings, including, but not limited to, the exhibition of sports contests, such as indoor football, hockey and entertainment and educational events;

WHEREAS, the Operator operates the Coliseum on behalf of the City pursuant to a Development and Management Agreement with the City dated October 10, 2005 (the "Management Agreement").

WHEREAS, the Licensee is a member of a professional indoor football league, or the "League," as hereinafter defined, which conducts indoor football games, including Pre-Season Games, Regular Season Games, and Play-Off Games, together the "Games," as a league of member clubs/teams.

WHEREAS, Licensee desires to conduct Games as a member of a League in the Coliseum;

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

1. DEFINITIONS.

As used in this Agreement each of the terms defined in this section shall have the following meaning ascribed to it, unless the context otherwise requires:

- A. "Change in Ownership of Licensee" means any change, transfer, sale or assignment, direct or indirect, of any like, kind or nature of Licensee Owners or Licensee equity interests of ten (10%) percent or more over any consecutive period of twenty-four (24) months.

- B. “**Coliseum**” means the U.S. Cellular Coliseum located at 101 South Madison Street, Bloomington, McLean County, Illinois 61701.
- C. “**Coliseum Advertising**” means any advertising in or regarding the U.S. Cellular Coliseum or any event to be performed at or in the Coliseum, excluding On-Field Advertising or Indoor Football Advertising, as hereinafter defined.
- D. “**Coliseum Premises**” means that part of the Coliseum necessary for the proper exhibition of professional indoor football, including but not limited to, the seating and access thereto, the playing surface, locker rooms and ticket sales facilities.
- E. “**Concessions**” means the business of selling food and drinks (alcoholic and non-alcoholic), excluding catering, as are commonly sold at professional indoor football Games.
- F. “**Future League Requirements**” means additional requirements, if any are developed in the future, regarding the maintenance and operation of a facility for the play of games in the League in addition to or replacing those currently set forth in the League Constitution, By-Laws, Regulations and League Policies, as amended (the “League Rules”).
- G. “**Gross Concession Revenues**” means revenues from all food and beverage sales, less refunds, all applicable sales and other use taxes and less discounted or complimentary food and beverage items.
- H. “**Home Game**” means any Pre-Season Game, Regular Season Game or Play-Off Game scheduled by the League and/or the Licensee to be played as a home game and/or played by the Licensee as a home game during each Indoor Football Season during the Term.
- I. “**Indoor Football Advertising**” means any advertising in or regarding the team, the Games, the League, or otherwise regarding professional indoor football.
- J. “**Indoor Football Season**” means the period from the opening of the Pre-Season Games (as hereinafter defined) to and including the last Play-Off Game as set forth in each annual schedule established by the League during the Term of this Agreement.
- K. “**League**” means any professional organization of at least eight (8) professional member teams holding a minimum of fourteen (14) Regular Season Games, including at least seven (7) Home Games for each member team; having in place a bona fide system of rules and procedures to ensure fair play and competition; and making reasonable measures to protect the safety of the players.
- L. “**Licensee Owners**” means any individual, human shareholders, members, economic interest owners, managers, or anyone with the right to share in the profits or losses of the Licensee, including the shareholders or members of any business entity owning an interest in Licensee.

- M. **"Membership"** means all of the rights, privileges and powers now or hereafter granted by the League, or any successor league in name or otherwise or any league that shall be approved in writing by Licensor, regarding the ownership and/or operation of the Licensee including, without limitation, the right to conduct professional indoor football Games in and about Bloomington, Illinois, in accordance with the League Rules now in effect or as changed during the Term, as hereinafter defined, of this Agreement.
- N. **"On-Field Advertising"** means advertising associated with field boards, field surface, electronic messages, players' uniforms and equipment, and players' benches during Home Games played at the Coliseum. On-Field Advertising does not include any other Coliseum Advertising.
- O. **"Play-Off Game"** means any one of a series of Home Games scheduled by the League after the close of each Regular Season during the Term to determine the ultimate champion of the League for such season.
- P. **"Premium Seats/Suites"** means seating other than general admission seating, i.e. seats contained in the suites ("Suites") and seats designated as club seats ("Club Seats") in the Coliseum and on the Coliseum Premises.
- Q. **"Pre-Season Games"** means any Game (except intra-squad games) played by the Licensee prior to the first Regular Season Game during each Season during the Term.
- R. **"Regular Season"** means the period from the opening of the Regular Season Games (as hereinafter defined) to and including the last regularly scheduled Regular Season Game as set forth in each annual schedule established by the League during the Term of this Agreement, but exclusive of any Pre-Season Games and Play-Off Games.
- S. **"Regular Season Games"** means each Game played by Licensee as part of the Regular Season during the Term.
- T. **"Term"** means the Initial Term and any Renewal Terms, each as hereinafter defined, of this Agreement.
- U. **"Ticket Revenue"** means gross revenues from the sale of general admission tickets and Premium Seats/Suites tickets, but excluding any premium amounts for the use of Premium Seats/Suites.

2. GRANT OF LICENSE; PREMISES.

- A. Licensor hereby grants to Licensee the right to use and occupy, and Licensor shall make available to Licensee, the Coliseum Premises, all upon the terms and conditions set forth herein (the "License"). Licensee hereby agrees to, and shall, use the Coliseum to hold and present all Home Games as contemplated by this Agreement. Provided however, Licensee shall be allowed to hold one home game at an alternate location acceptable and approved by Operator.

- B. City represents and warrants that it owns and will own the Coliseum and has the right and power to grant the rights referred to herein.
- C. Licensor shall retain the right to cause the interruption of any Game, practice, or other performance in the interest of public safety and to likewise cause the termination of such Game, practice, or other performance when in the sole judgment of Licensor such act is necessary in the interest of public safety.
- D. Should it become necessary in the judgment of Licensor to evacuate the premises because of adverse weather, a bomb threat or for other reasons of public safety Licensee will peaceably vacate the premises in a timely and orderly manner. Once Licensor has declared that the facility is safe to re-enter, Licensee will be granted use of the facility for sufficient time following evacuation to complete presentation of activity without additional rental charge providing such time does not interfere with another building commitment. If in the sole judgment of the Licensor it is not possible to complete the presentation of the activity, Licensor charges shall be forfeited, prorated, or adjusted at the sole discretion of the Licensor based on the situation and the Licensee hereby waives any claim for damages or compensation from the Licensor.
- E. Licensee agrees not to interfere in any way with the ordinary use by others of any portion of the Coliseum not expressly covered by this Agreement. Licensee agrees that during the Term of this Agreement, other events will be scheduled and held in those parts of the Coliseum not herein licensed to Licensee, and Licensor shall have the right to use and occupy, or to grant to third parties the right to use and occupy, the Coliseum and any portion thereof, so long as such other events do not unreasonably interfere with the License herein granted to Licensee.

3. TERM AND OPTION TERM.

- A. Initial Term. The initial term of this Agreement shall be for a period equal to the completion of two (2) full Seasons being the 2012 and the 2013 Indoor Football Seasons (the "Initial Term").
- B. Licensee's Renewal Option Terms. Licensee shall have the right and option to extend the Term of the Agreement for an additional Indoor Football Season (the "Renewal Option"), by notifying Licensor in writing by no later than March 1, 2013 of its intent to exercise such Renewal Option (the "Renewal Notice"). In the event Licensee fails to timely give the Renewal Notice, this Agreement shall terminate at the end of the second season, unless the parties otherwise extend the Term by written agreement.
- C. Licensor and Licensee can mutually agree to a revised Agreement anytime during the term of this Agreement. All subsequent amendments and modifications shall be by written agreement signed by all parties hereto.

4. DUTIES OF LICENSEE. Licensee shall:

- A. Pay to the Operator the License Fee defined in Section 9 of this Agreement.

B. Upon execution of this Agreement, provide to City and Operator in writing the following:

- ✓ 1. A certificate of the Licensee's good standing from the State of its business formation licensing/registration and a copy of the Certification or Articles of Organization/Incorporation.
- ✓ 2. Disclose the names and full addresses of Licensee Owners who hold ten percent (10%) or more of an ownership or voting interest in the Licensee. The obligation to disclose shall be continuing and Licensee shall disclose to Licensor any and all changes in the Licensee Owners no later than thirty (30) days after the effective date of the change. All changes in Licensee Owners shall comply with Section 21F herein.
3. If Licensee is a limited liability company, disclose whether Licensee is member or manager-managed, and identify the name and address of the manager or managing members. If Licensee is a corporation, disclose the names and addresses of each member of its board of directors.
- ✓ 4. Provide a copy of the operating agreement or bylaws of the Licensee's business entity (as may apply) whether Licensee is a corporation or a limited liability company.

✓ C. Hold and maintain at all times a debt-free and legally valid membership in a League and conform at all times to League rules (whether or not the League enforces its rules). Licensor shall have a right to require Licensee to submit upon ten (10) days written notice written proof of its compliance with this provision. Licensee shall provide Licensor at least thirty (30) days written notice prior to withdrawing from or joining any League. If joining a League or upon any League modifications Licensee shall promptly deliver to Operator all of the following: a written copy of the League application, membership, owner rules, and by-laws. Licensor shall have a right to approve or deny all League changes; such approval shall not be unreasonably withheld.

D. Except as provided in Section 2.A. above, play all League scheduled Home Games at Coliseum.

✓ E. Employ and maintain a team staff including, but not limited to, a professional general manager, a marketing/sales manager, coach, assistant coaches, trainers, medical staff, office staff, marketing staff, game staff (including, but not limited to, referees/officials, time keepers, score keepers, and announcers), and such other full time staff as would be reasonable and customary to maintain a professional indoor football team in the League. Licensee shall provide to Licensor by December 1st, of each year a list of all staff with title and contact information. Licensee shall promptly notify Licensor in writing of subsequent changes to the staff and the list.

F. At Licensee's expense, provide the following:

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1. Team equipment, supplies, uniforms, and other locker room items;
 2. Team operating expenses including but not limited to travel, food, beverage, and lodging;
 3. Staff parking permits for non-game day parking (8:00 a.m. to 5:00 p.m., Monday through Friday);
- G. Reimburse Licensor for any reimbursable expenses under this Agreement;
- H. Operate the team with sound business practices, including adequate capitalization, and maintaining current accounts payable in good standing with vendors. Licensee shall provide to Licensor an operating budget by December 1st of each year of the Term;
- I. Market and promote at its expense the Home Games pursuant to the terms of Section 6 herein;
- J. Provide pre-game, post-game and intermission entertainment activities;
- K. As provided in Section 10 herein, Licensee shall have the exclusive right to sell only Team Related Merchandise and indoor football related novelties ("Team Related Merchandise") during any Home Game at the Coliseum and shall retain one hundred percent (100%) of the proceeds derived from such sales;
- L. Provide twenty (20) full season tickets to Operator with locations of seats to be mutually agreed upon;
- M. Provide and comply with the insurance terms pursuant to Section 16 herein;
- N. Secure in advance, prior to commencement of the Term and at its sole expense, (a) all licenses and permits that may be required or in connection with the use of the Coliseum for the Games and (b) all licenses required by any performing arts societies, such as ASCAP and/or BMI, for music or other works to be utilized or displayed in connection with the Games. Licensee shall do all other acts necessary to comply with all laws and requirements of all public authorities and all rules and regulations of Licensor and the League in connection with the presentation of the Games.

5. DUTIES OF LICENSOR.

- A. Except and otherwise specifically provided herein, Licensor shall provide or cause to be provided the following, the costs of which shall be borne by Licensor:
1. The Coliseum, including the general concourse area, public address systems and such other parts or areas of the Coliseum as may be necessary for Licensee to present and

produce (if applicable) the Games, the costs of which shall be included within the License Fee;

2. Electricity and other utilities for lighting, heating, air conditioning and other services used in conjunction with the Games, practices, and other use of the Coliseum by Licensee, and the set up and removal related thereto;
 3. Cleaning and janitorial service during and after Games, practices, and other uses of the Coliseum by the Licensee. Provided however, Licensor shall monthly clean the home team locker room area but Licensee shall otherwise keep the home team locker room and area in a clean, neat and tidy condition on a day to day basis.
 4. All necessary support services including, but not limited to, all ancillary staff necessary to hold the Games and practices at the Coliseum, including game staff (one spotlight operator, ushers, doormen, ticket sellers and takers, one sound technician, one ribbon board operator, one scoreboard supervisor) security guards, change over and set up crew, heating and air conditioning superintendent, and one telephone operator for the day or evening of each Game;
- B. Licensor shall provide the following "Licensee Exclusive Use Areas": Licensee locker rooms, showers, toilets, coach's office, trainer's room, equipment room, visiting team locker rooms, showers and toilets. Licensee shall have the exclusive right to use and occupy the Licensee Exclusive Use Areas on any day in which Licensee is hosting a Home Game or practice.
- C. In addition to providing the Licensee's Exclusive Use Area Licensee shall be provided with an office for the head coach.
- D. Licensor shall make available to Licensee during each Indoor Football Season on the day of each Home Game thirty (30) parking spaces in the Hermes Equipment Lot for the Licensee's players, on-field and off-field officials and related personnel.
- E. Licensor shall provide goal posts, field boards, benches, and netting.
- F. Licensee agrees that if Licensor provides storage for the football field and pads when they are not in use, that Licensor may use the football field and pads at its discretion and after notice to Licensee for other Coliseum events, holding Licensee harmless therefrom. If, however, Licensee provides its own storage off site for the football field and pads, then Licensor may use the football field and pads upon payment of any agreed usage fee.
- G. Upon request of Licensee, Licensor may provide from time to time as a reimbursable expense and pursuant to a written acknowledgement additional equipment including sound and video equipment, sound and video personnel, food and beverage catering, additional personnel and services, additional production crew, use of suites or club seat or concession area, off schedule field changeovers and other services. All shall

be at the standard rental/labor/staff rates to be determined in Licensor's sole discretion and paid by Licensee as a reimbursable expense.

6. MARKETING AND PROMOTION.

A. Licensee at its expense shall provide all necessary personnel and shall use its best efforts supported by an adequate staff to market, promote, and sell individual game, season and group tickets for the Home Games, but excluding club seats and suites. Licensee shall provide to Licensor by December 1st of each year of the Term a written marketing plan for the upcoming season.

B. Advertising

1. All advertisements for the Games shall be developed by Licensee (including, but not limited to, all Indoor Football and On-Field Advertising, publicity material, promotions material, press releases, posters, flyers and handbills) and shall be produced at the sole cost and expense of Licensee.
2. Without the prior written approval of Licensor, which approval may be withheld in Licensor's sole discretion, Licensee shall not permit any commercial banner, signage, advertisement or promotional announcement to be posted or made within the Coliseum or adjacent grounds. Licensee shall not permit or contract for any advertising with or on behalf of any competitor of the United States Cellular Corporation, Pepsi or Coliseum exclusive partners.
3. Licensee shall make mention of the name "U.S. Cellular Coliseum" as the site of the Games in connection with all advertising or promotion thereof. All promotional materials shall contain the standard "U.S. Cellular Coliseum" logo positioned full width across the bottom. However, Licensee must submit to Licensor for review and approval all such uses of the U.S. Cellular Coliseum name prior to dissemination of any promotional materials, which approval shall not be unreasonably withheld or delayed.

7. BROADCASTING. Licensee shall have the right to broadcast Home Games, whether by radio, television, internet or other media, subject to League rules, all costs of which (including broadcast equipment costs) shall be borne by Licensee.

8. ADVERTISING AND SPONSORSHIPS.

A. Without the prior written approval of Licensor, which approval may be withheld in Licensor's sole discretion, Licensee shall not permit any commercial banner (interior or exterior), signage, advertisement or promotional announcement to be posted or made within the Coliseum or adjacent grounds. Licensee shall not permit or contract for and sponsorship with or on behalf of any competitor or United States Cellular Corporation, Pepsi, or Coliseum exclusive partners.

- B. Subject to the other provisions of this Section 8, Licensee shall have the right to sell Indoor Football and On-Field Advertising for the Home Games. All revenues generated from the sale by Licensee of such Indoor Football and On-Field Advertising shall be retained by Licensee, provided that all such sales shall be subject to the prior written approval of Licensor, with the exception of the U.S. Cellular Coliseum logo to be presented on the field and on the video board. Licensor hereby retains the right to sell Indoor Football and On-Field Advertising for the Home Games, for which Licensor shall receive a commission of seven and one-half percent (7.5%) on gross sales revenues from such sales. Provided however, all sales shall be subject to prior written approval of Licensee. All remaining revenues shall be paid to Licensee at the time of settlement in accordance with Section 11 herein. In addition to Licensee's right to sell On-Field Advertising, Licensor shall continue to use the electronic message boards to promote other events and sponsors during the Home Games.
- C. Except for existing contracts with State Farm Insurance and Busch Media, Licensee shall not sell or receive any sales proceeds from the sale of Coliseum Advertising.
- D. Licensee understands that United States Cellular Corporation ("U.S. Cellular") is the "Official Wireless Provider" of the Coliseum, and hereby agrees that Licensee shall not sell and Licensor expressly prohibits the sale of any advertising or sponsorship or co-sponsorship to any manufacturer, seller, distributor, or dealer of telecommunications services or telecommunications equipment, other than U.S. Cellular, unless waived in writing by U.S. Cellular.
- E. Licensee understands that Pepsi-Cola General Bottlers, Inc., d/b/a Pepsi Americas ("Pepsi") is the "Official Soft Drink" provider of the Coliseum, and hereby agrees that Licensee shall not sell and Licensor expressly prohibits the sale of any advertising or sponsorship or co-sponsorship to any manufacturer, seller, distributor, or dealer of any non-alcoholic beverages, other than Pepsi, unless waived in writing by Pepsi.
- F. All sponsorships of the Games presented pursuant to the provisions of this Agreement (including but not limited to, all advertising, publicity material, promotions material, press releases, posters, flyers, handbills and radio and television commercials) shall be submitted by Licensee to Licensor for its prior approval before use, which approval shall not be unreasonably withheld.

9. LICENSE FEE; PARKING AND FACILITY FEES; SUITE AND CLUB SUITE TICKETS. In consideration of the License granted herein and Licensor's agreement to perform its duties as established herein Licensee shall pay Licensor the following (collectively the "License Fee"):

- A. Rental fee of \$6,000 per game, subject to (unless withdrawn by Licensor or Operator on a year to year basis) the "Attendance Incentive Credit" defined in Subparagraph B below (the "Base License Fee");

B. Subject to an annual review at the end of each Indoor Football Season by Licensee and Operator and Operator's right at the end of the second Indoor Football Season in the Initial Term to withdraw the Attendance Incentive Credit, Licensor shall reduce or allow as credit against the Base License Fee, as follows:

Number of Fans in Attendance*	Attendance Incentive Credit	Base per Game License Fee
0 – 2,999	\$0	\$6,000.00
3,000 – 3,499	\$500.00	\$5,500.00
3,500 – 3,999	\$1,000.00	\$5,000.00
4,000-4,499	\$2,000.00	\$4,000.00
4,500-4,999	\$3,000.00	\$3,000.00
5,000 - 5,499	\$4,000.00	\$2,000.00
5,500 – 5,999	\$5,000.00	\$1,000.00
6,000 or over	\$6,000.00	0

* As determined by actual turnstile attendance figures but including a maximum of seven hundred complimentary tickets per Home Game to be maintained by Licensor for each Home Game. A complimentary ticket is one for which Licensee received no value or payment.

C. A parking fee of fifty cents (\$0.50) per ticket sold to each Home Game, except that no Parking Fee shall be due for the first seven hundred (700) tickets per Home Game.

D. A facility fee of fifty cents (\$0.50) per ticket sold to each Home Game, except that no Facility Fee shall be due for the first seven hundred (700) full, partial and club seat tickets per Home Game;

E. All suite revenue (suite fee and suite ticket) shall go to Licensor, provided however, Licensor shall pay Licensee the sum of one thousand two hundred dollars (\$1,200.00) for each full suite season ticket (total 14 full season tickets per suite) sold and the sum of six hundred dollars (\$600.00) for each half suite season ticket (total 7 half season tickets per suite) sold. Said sum shall be paid pro rata after each game as provided in paragraph 11C herein.

F. Licensor shall retain all Coliseum Club seat membership annual dues and a commission of seven and one-half percent (7.5%) for each Coliseum Club season ticket sold by Licensor (ninety-two and one-half percent (92.5%) to Licensee).

G. Intentionally omitted.

H. At each Home Game Licensee shall have the use of two or four Party Suites, that being either two suites with fifty (50) seats or four suites with (25) seats. Licensee shall receive all revenue from the Party Suites. Said sums shall be paid after each game as provided in paragraph 11C herein.

- I. At each Home Game Licensee shall have the use of the Goal Line Cove at the West end of the Coliseum, with maximum capacity of eighteen (18). Licensee shall receive all revenue from the Goal Line Cove. Said sums shall be paid after each game as provided in paragraph 11C herein.
- J. Licensor may make available from time to time, in its sole discretion non-leased suites at selected Home Games for Licensee's use. Such shall be available only if the Party Suites, Field Box and group areas are sold out. With respect to such non-leased suites Licensor shall receive a minimum of five dollars (\$5.00) per ticket for each suite ticket sold. All such requests shall be made through and coordinated with the Coliseum Director of Premium Seating.

10. MERCHANDISING AND CONCESSIONS.

- A. Concessions. Licensor specifically and exclusively reserves to itself and its concessionaires the right to sell, and all proceeds from the sale of food, refreshments and beverages, including catering and suite concessions, parking privileges and all other concessions at the Games and practices (except as otherwise provided for merchandising in Subsection 10B herein). Licensee shall not sell or distribute, whether or not on a complimentary basis, any food, beverage or other non-Team merchandise concessions and shall have no right to operate a food or beverage concession during the Games, practices, or other Team events. The Gross Concession Revenue from the sales of concessions and catering sales, at each Home Game shall be divided as follows: 90% to Licensor and 10% to Licensee.
- B. Merchandising, Raffles, Games of Chance. With respect to team merchandise concessions, raffles, and games of chance (including but not limited to "Fling a Football" and the "50/50 raffle"), Licensee shall sell such team merchandise, raffles, and games of chance, and retain all proceeds from the sale thereof after deduction of applicable taxes and city licenses and inspections charges, as applicable. Licensee shall provide all labor and staff required by it for all team merchandise, concessions, raffles, and games of chance. Licensee shall insure against and bear the risk of damage, theft or other losses of such merchandise, raffle tickets, or cash proceeds, whether or not such merchandise, raffle tickets, or cash proceeds is in the possession or control of Licensor at the time of such loss, and shall be responsible for all freight and transportation of such merchandise, raffle tickets, or other game of chance items of play to and from the Coliseum. Licensee shall obtain all required licenses from the City of Bloomington and the State of Illinois for operating raffles or games of chance, and shall provide Operator with a copy of such licenses, prior to implementing or soliciting payments for any such raffles or games of chance. Licensee shall implement procedures and shall make its best efforts to ensure that any such raffles or games of chance are operated in a fair and equitable manner.
- C. Parking. Licensor shall retain 100% of parking fee revenue.

11. FEE/REIMBURSEMENT SETTLEMENTS.

- A. Licensor shall keep such records as will accurately reflect ticket, concession, and suite revenue for each Game along with records of all reimbursable expenses.
- B. Between February 1 and February 15 preceding each Indoor Football Season Licensee and Operator shall preliminarily review and account to one another for the reimbursable expenses, club and suite ticket revenue, list and split of shared sponsorships, and commissions for the upcoming Indoor Football Season (the "Initial Preliminary Settlement").
- C. Within five (5) business days after each Home Game Licensee and Operator shall conduct a preliminary settlement/account for fees, reimbursables, expenses, concession/catering and commissions due to each party for the Home Game ("Game Settlement"). The Base License Fee (subject to the Attendance Incentive Credit, if applicable), the Parking Fee, the Facility Fee and the Video Production Fee shall be payable to Licensor at the Game Settlement. The pro rata share of Licensee's suite and club seat proceeds shall be paid to Licensee, provided however such sums may be offset by any sums due Licensor by Licensee.
- D. Within 30 days after the last Home Game or the close of the Indoor Football Season, whichever occurs last, Licensee and Operator shall submit to the other written and itemized final settlements/accounting of fees, reimbursables, expenses, commissions, and any other sums which remain due to the other (the "Final Settlement"). All sums due to either Licensee or Licensor shall be paid within ten (10) days after the Final Settlement.
- E. Licensee shall have no right of set off.
- F. To secure payment of the License Fee, reimbursable expenses, liquidated damages, commissions, and sums due Licensor from Licensee, Licensee hereby grants to Licensor a security interest in all Licensee's property, including without limitation, all equipment, supplies, furniture, fixtures, sales proceeds, accounts, general intangibles, instruments, deposit account, commercial tort claims, investment property, inventory, chattel paper, cash proceeds, deposits, letters of credit rights, and contracts of the Licensee. Provided however upon delivery of the Letter of Credit described in paragraph 14,B the Security Interest shall be released.

12. COLISEUM USE/OCCUPANCY.

- A. Licensor reserves the right and Licensee accepts the right of Licensor to adjust and reschedule the time and date of one (1) scheduled Home Game per season, subject to League approval. Licensor will exercise its right to reschedule only when, in its sole discretion, the date is needed for a large show or concert. Licensor shall give Licensee at least sixty (60) days notice of any Game date adjustments and substitute best available time and date.
- B. Licensor shall provide to Licensee free of charge a minimum of thirty (30) practice dates for Licensee's exclusive use of the playing surface beginning two weeks

before the first Home Game through the last Regular Season Game or Play-Off Game, whichever is later. The exact dates shall be based upon the Coliseum events schedule, on Tuesday through Friday with a maximum of three (3) hours per day.

13. TICKET SALES AND BOX OFFICE SERVICES.

- A. During the Term hereof, all admittance into the Coliseum shall be by ticket only. Tickets to the Home Games shall be issued on a reserved seating basis unless otherwise specified in writing by Licensor.
- B. Licensor shall control and be the primary box office for all ticket sales, except group sales. Licensor shall approve in advance Licensee's use of any outside ticket service or outlet for its group ticket sales. Licensor shall not permit tickets or passes in excess of the seating capacity of the Coliseum to be sold or distributed.
- C. Intentionally Omitted
- D. Licensor shall have the right to offer tickets at its ticket office and all of its regular outlets or special outlets. Licensor shall cause Ticketmaster to furnish ticketing services for the Home Games, and Licensor shall act as the custodian of all revenue from the sale of tickets sold. Such revenues shall not be released to Licensee until settlement, in accordance with Section 11 herein. Payment of all "inside charges" or similar charges imposed by Ticketmaster upon the event promoter or venue shall be the sole responsibility of Licensor. Licensee may request that ticket sales privileges be extended to additional outlets, and if approved in writing by Licensor, Licensee shall assume all responsibility for collection of funds from such outlets and shall be liable to Licensor for all fees of tickets cosigned or sold through such outlets.
- E. All general admission and full/partial season tickets shall be sold at the prices established by Licensee. Licensee shall notify Licensor in writing by November 1st of each year the general admission and season ticket prices to be charged for the upcoming season. Licensor shall establish prices for facility fees, club seat and suite tickets and licenses.
- F. Licensee shall have the right to review the seat allocation for all reporters, critics, reviewers and other working press personnel which have been made by Licensor.

14. OTHER AGREEMENTS.

- ✓ A. Licensee may cancel this Agreement or relocate its Home Games to another facility by paying the following in liquidated damages to Licensor:
 - 1. If written notice before August 1st for season that begins in the next following calendar year - \$30,000.00

X

2. If written notice between August 1st and November 30th for season that begins in the next following calendar year - \$60,000.00
3. Any cancellation after November 30th for the season that begins in the next following calendar year - \$90,000.00
4. Provided however, Licensee shall not be responsible for the liquidated damages described in this Section 14 if the League fails, dissolves, ceases to exist, temporarily halts an Indoor Football Season or no longer has at least eight (8) professional member teams.

✓ B. Licensee shall provide Licensor, from a bank acceptable to Licensor, an irrevocable Letter of Credit, guaranteeing Licensee's performance and payment of all sums due Licensor under this Agreement. The Letter of Credit shall be in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Licensor as beneficiary; and shall be irrevocable and non-modifiable during the term of this Agreement, including any extensions thereof. The terms of the Letter of Credit shall allow the Licensor to draw on the Letter of Credit for the payment of any sums due Licensor under this Agreement and which remain due after Final Settlement described in Section 11 or after notice of default as described in Sections 18 and 19 herein.

15. COMPLIANCE WITH LAWS.

- A. Licensee shall abide by, conform to and comply with, and shall cause every person under its direction or control who is connected with the performance of any aspect of this Agreement to fully abide by, conform to and comply with all applicable laws, rules, regulations and ordinances of the United States of America, the State of Illinois, the City of Bloomington (including their income, sales, payroll and withholding tax laws), and their respective agencies, as well as all rules and regulations of Licensor for the use, occupancy and operation of the Coliseum, as they may be amended from time to time by Licensor for the safe, orderly, proper and efficient operation of the Coliseum. If Licensee is controlling any sale or distribution of tickets, Licensee will comply with all federal, state and municipal laws, statutes, ordinances or regulations relating to the payment of taxes or charges on tickets, admissions or reservations, and make returns and pay all such taxes or charges immediately when due, provide evidence of its compliance to Licensor upon request, and indemnify Licensor against all liability, claim, loss or payment of any kind by reason of Licensee's failure or omission to comply with any such law or regulation and/or to pay all or any such taxes or charges. Licensee shall advise all exhibitors offering goods for sale that applicable sales tax must be filed designating that such sales were made in the Coliseum.
- B. Licensee shall not use or attempt to use any part of the Coliseum for any use or proposed use which would be contrary to law, common decency or good morals or otherwise improper or detrimental to the reputation of Licensor. Licensor shall have the right, acting in its sole and exclusive reasonable discretion, to determine a breach of this provision by Licensee and to exercise its remedies pursuant to this Agreement, including voiding the Agreement.

- C. Licensee agrees not to discriminate against any employee or any applicant for employment for any reasons prohibited by law, and further agrees not to discriminate against any person relative to admission, services or privileges offered to or enjoyed by the general public for any reason prohibited by law.
- D. Licensee acknowledges that, in the event Licensor believes and requests in writing, in its sole discretion, that any of the athletes or other team staff members that are subject of the Home Games may be "non-resident aliens" (as defined in Section 7701 (b)(1)(B) of the United States Internal Revenue Code ("IRC")), then Licensor shall have the right, notwithstanding any provision of this Agreement to the contrary, to withhold up to thirty percent (30%) of any amounts owed by Licensor to Licensee hereunder, for purposes of remitting such amounts to the United States Treasury in compliance with IRC Section 1441; provided, however, Licensor shall not withhold any amounts in the event either (i) Licensee provides to Licensor prior to the Home Games a written certification, in a form acceptable to Licensor in its sole discretion, that there are no "non-resident aliens" (as defined under the IRC) performing at the Home Games, and Licensor has no reasonable basis to believe otherwise, or (ii) such athletes or other team staff members have, prior to the Home Games, entered into a Central Withholding Agreement ("CWA") with the IRS and withholding agent, and Licensor has been provided with a copy of the CWA prior to the Home Games.
- E. In the event that any minor or foreign national is scheduled to appear in a Game which is the subject of this Agreement, Licensee shall, in advance of such Game, obtain all necessary employment certificates and other permits and authorizations as may be required by any governmental authority.
- F. Licensee recognizes that the Home Games are subject to the provisions of Title III of the Americans with Disabilities Act, 42 U.S.C. 12181 – 12189, (the "ADA"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Coliseum, together with the common areas inside, and accepts such access, common areas, and other conditions of the Coliseum as adequate for Licensee's responsibilities under the ADA. Licensee shall be responsible for ensuring that the Coliseum complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration, insofar as Licensee modifies, rearranges or sets up in the Coliseum in order to accommodate Licensee's usage. Licensee shall be responsible for any violations of the ADA that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Coliseum in order to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with a Home Game are in compliance with the ADA.
- G. Licensee shall not breach any agreements with third parties including its vendors.
- H. Licensee will not violate any League rules, bylaws, regulations, or membership agreements, whether or not the League enforces such violations.

16. INSURANCE.

- A. Licensee shall obtain, at its own cost and expense, Commercial General Liability Insurance in the name of Licensee which shall insure all operations of Licensee contemplated by this Agreement and the contractual assumption of liability reflected by this Agreement, including but not limited to the following: premises operations, products/completed operations, personal and advertising injury, contractual liability, independent contractors, broad form property damage, and personal injury. Such insurance shall be written with a limit of at least \$1,000,000 per occurrence/\$1,000,000 aggregate and an Excess Umbrella Policy with limits of \$5,000,000 that follows form with the primary coverage, for bodily injury and property damage liability, personal injury liability and coverage for all acts and/or omissions of any employees, agents, players, performers, contractors or sub-contractors retained by Licensee. Such insurance shall be endorsed to be primary to and not contributory with any coverage of Operator or the City of Bloomington, which may be applicable to the claim. Licensee shall also cause the required policy of insurance to be endorsed to include Operator, the City, and their officers, directors, agents and employees as additional insureds with respect to the operations and obligations contemplated by this Agreement.
- B. Licensee shall also maintain, at its own cost and expense, Workers' Compensation Insurance pursuant to the requirements of Illinois law, covering its players, performers, other employees, and any contractors or subcontractors of Licensee who do not provide certificates of insurance evidencing workers' compensation coverage of their employees, whose services are contemplated by this Agreement.
- D. Licensee shall also maintain, at its own cost and expense, Automobile Liability Insurance with a combined single limit of \$1,000,000 if utilizing automobiles, vans, trucks, or other motor vehicles in or around the Coliseum.
- E. All insurance policies maintained by Licensee pursuant to this Agreement shall be written with companies licensed to conduct business in the State of Illinois and having at least an A rating in the most recent A.M. Best's Manual.
- F. CERTIFICATES OR BINDERS EVIDENCING INSURANCE REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE PROVIDED TO LICENSOR NOT LESS THAN THREE (3) DAYS PRIOR TO LICENSEE COMMENCING ANY OPERATIONS OR ACTIVITIES PURSUANT TO THIS AGREEMENT. The policies shall also provide, and the certificates shall so note, that the coverages may not be canceled or that a major change in coverage may not be implemented without at least thirty (30) days' prior written notice given to Licensor. If the Licensor initially provides binders, it shall provide certificates evidencing the required coverage within thirty (30) days thereafter.
- G. LICENSOR SHALL HAVE THE ABSOLUTE RIGHT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO LICENSEE IF LICENSEE DOES NOT

DELIVER TO LICENSOR THE CERTIFICATE OR CERTIFICATES OF INSURANCE REQUIRED HEREUNDER. IN THE EVENT OF SUCH TERMINATION BY LICENSOR, THERE SHALL BE NO FURTHER LIABILITY OF ANY KIND OR NATURE WHATSOEVER BY LICENSOR TO LICENSEE, AND LICENSOR SHALL RETAIN THE RIGHT TO PROCEED WITH A LEGAL ACTION AGAINST LICENSEE TO RECOVER ANY AND ALL DAMAGES AND/OR LOSS OF PROFITS SUSTAINED BY LICENSOR BY REASON OF LICENSEE'S DEFAULT HEREUNDER INCLUDING THE LIQUIDATED DAMAGES PROVIDED FOR IN SECTION 14. HEREIN.

- H. In the event that Licensee fails to procure and present the aforesaid insurance, Licensor shall have the right, but not the obligation, to do so on Licensee's behalf and at Licensee's expense and shall be entitled to reimbursement for the costs thereof as part of the License Fee due and payable hereunder.

17. INDEMNITY.

- A. Licensee hereby agrees to indemnify, defend, save and hold harmless Operator, the City of Bloomington, and their aldermen, trustees, directors, officers, employees, representatives, and agents, and any of their successors or assigns, from and against any and all claims, suits, actions, losses, injuries, damages, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees and expenses and costs of investigation (whether or not litigation occurs) incurred in connection therewith, occasioned with, arising or alleged to arise from, wholly or in part, (i) any breach of this Agreement by Licensee, or (ii) the exercise by Licensee of the privileges herein granted or the provision by City or Operator of materials, equipment or services in connection therewith or (iii) the negligent acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensee or any of its agents, owners, officers, directors, members, managers, representatives, contractors, exhibitors, employees, servants, players, guests, or invitees, participants or athletes appearing in the Games (including support personnel in connection with the presentation of the Games), persons assisting Licensee (whether on a paid or voluntary basis) or any person admitted to the Coliseum by Licensee, during the Term or any other time while the Coliseum (or any part thereof) is used by or are under the control of Licensee, excepting that Licensee's obligation to indemnify, defend, save and hold harmless Operator shall not extend to any claims for damages or expenses which arise from Operator's gross negligence or willful misconduct. The provisions of this paragraph shall survive any expiration or termination of this Agreement.
- B. Licensor, Operator and the City of Bloomington hereby agrees to indemnify, defend, save and hold harmless Licensee and any of Licensee's successors or assigns, from and against any and all claims, suits, actions, losses, injuries, damages, liability, costs and expenses, including, without limitation, reasonable attorney's fees and expenses and cost of investigation (whether or not litigation occurs) incurred in connection therewith, occasioned with, arising or alleged to arise from, wholly or in part, (i) any breach of this Agreement by Licensor, Operator, or the City of Bloomington or (ii) the

negligent acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensor, Operator or City of Bloomington or any of its agents, owners, officers, directors, members, manages, representatives, contractors, exhibitors, employees, servants, guests, or invitees, or any personnel provided in connection with the presentation of the games, persons assisting Licensor, Operator or City of Bloomington (whether on a paid or voluntary basis) or any person admitted to the Coliseum by Licensor, Operator or City of Bloomington during the Term or any other time while the Coliseum (or any part thereof) is uses by or are under the control of Licensor or Operator, excepting that the Licensor's or Operator's obligation to indemnify, defend, save and hold harmless Licensee shall not extend to any claims for damages or expenses which arise from Licensee's gross negligence or willful misconduct. The provisions of this paragraph survive any expiration or termination of this Agreement.

18. DEFAULT. A party shall be in default under this Agreement if:

- A. Such party shall default in the performance or fulfillment of any covenant, term, requirement or condition contained herein on its part to be performed or fulfilled and such party shall fail to cure such default within twenty (20) days for any monetary default or thirty (30) days for any non-monetary default, after such party has been served with written notice of such default or thereafter without the written consent of the Operator, fails to diligently prosecute such cure of a non-monetary default within a reasonable time;
- B. Failure to pay the License Fee, reimbursable expenses or liquidated damages or any part thereof when due shall be a monetary default;
- C. Such party makes a general assignment for the benefit of creditors, takes the benefit of any insolvency act or files a voluntary petition in bankruptcy;
- D. An involuntary petition in bankruptcy is filed against such party or a receiver or trustee is appointed for such party's property and such filing or appointment is not dismissed within ten (10) days;
- E. Licensee fails to maintain its Membership during the Term.
- F. Licensee fails to perform any term, condition or obligation of it under this Agreement.
- G. Licensor or Operator fails to perform any term, condition or obligation of it under this Agreement.

19. REMEDIES ON DEFAULT.

- A. In the event of a default under this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default and the defaulting party shall be liable for all reasonable losses and damages incurred as a result of the default including incidental and consequential damages and lost profits, or the liquidated damages specified in Section 14 herein, if applicable. If the defaulting party shall not cure said

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default within twenty (20) days of written notice for a monetary breach and thirty (30) days of written notice for a non-monetary breach, the non-defaulting party, at its option, shall have the non-exclusive right to (i) cancel this Agreement without further notice thereof to Licensee, (ii) sue Licensee for legal or equitable relief, and/or (iii) pursue any other remedy allowed hereunder or under applicable law; provided, however, in the event the Licensor may suffer irreparable harm as a result of the Licensee's breach, then Licensor shall not be required to give written notice to Licensee, or to wait any period of time before pursuing any remedies hereunder or under applicable law.

- B. In addition to the remedies provided elsewhere herein, in the event of a default or breach by Licensee, Licensor shall recover from Licensee its costs of collection and litigation, including reasonable attorney's fees and expenses and costs of investigation (whether or not litigation occurs). Similarly, in addition to the remedies provided elsewhere herein, in the event of a default or breach by Licensor, Licensee shall recover from Licensor its costs of collection and litigation, including reasonable attorney's fees and expenses and costs of investigation (whether or not litigation occurs).
- C. Any default or breach by Licensee under this Agreement consisting of a failure to make payment when due shall incur interest at the rate of one percent (1%) per month from the date payment was due and until paid, compounded monthly.

20. LOSS OF USE OF COLISEUM AND FORCE MAJEURE.

- A. In the event any Coliseum building structure or improvement is damaged by fire, earthquake, acts of God, the elements or other casualty covered by the insurance maintained by Licensor, and if such damage is covered by such insurance and the insurance proceeds are adequate to repair, replace and restore such damage, and such insurance proceeds are made available to Licensor for such repair, replacement or restoration, Licensor shall be obligated to repair, replace and restore the damage in a good and workmanlike manner in accordance with all applicable laws, rules and regulations if such restoration would be practical considering the then remaining balance of the Term. In the event Licensor shall fail to restore the damage so that the Coliseum shall be suitable for playing Indoor Football Games within nine (9) months after commencement of such restoration work, other than by reason of Force Majeure, Licensee may terminate this License by giving written notice to that effect to Licensor before such restoration is completed within thirty (30) days after said nine (9) month period. In the event Licensee terminates this Agreement under the aforesaid provisions, Licensee shall be relieved of all obligations arising or required to be performed by Licensee on and after the date of the damage. All sums to be credited to Licensee shall be paid and the Term shall be deemed to have ended as of the date of the damage. If this Agreement is not terminated, all the rents and other sums otherwise payable for the period of non-use by Licensor or Licensee to the other shall abate during the period of non-use by Licensee, and Licensee shall have the right during such period of non-use to play its games elsewhere either within or outside of the City of Bloomington, Illinois.

- B. In the event any Coliseum building, structure or improvement is damaged by the casualties referred to in above, and the proceeds of insurance maintained by the Licensor are inadequate to pay the restoration costs, Licensor shall deliver to Licensee written notice, within eight (8) months after such damage, indicating whether Licensor proposes to make the required repairs, replacements and restorations, at Licensor's expense. If the notice delivered by Licensor to Licensee indicates that Licensor does not propose to make the repair, replacement or restoration, or if the Licensor fails to deliver to Licensee any notice of intent hereunder, or if Licensor shall fail to restore the damage so that the Coliseum shall be suitable for playing Indoor Football Games within nine (9) months after commencement of such restoration work, other than by reason of Force Majeure, Licensee may terminate this Agreement by giving written notice to Licensor to that effect prior to completion of such restoration within thirty (30) days after either receiving notice of Licensor's intent not to restore, or the expiration of said eight (8) month period without having received any notice from Licensor, or after such nine (9) month period as the case may be. In the event of such termination, Licensee shall be relieved of all obligations arising or required to be performed by Licensee after the date of the occurrence of the damage and this Agreement shall be deemed to have ended as of the date of such damage; provided, however, that Licensor and Licensee, as the case may be, shall pay forthwith to the other any amounts outstanding which arose before the date or occurrence of the damage under this Agreement.
- C. If any event occurs whereby Licensor's performance hereunder is materially hampered, whether before or during the Term, as a result (wholly or in part) of any cause not entirely within Licensor's control and which it could not by reasonable diligence have avoided, such as destruction or damage to the Coliseum or unfitness of the Coliseum for occupancy as a result of fire or other Act of God, riot, labor strike, work stoppage, refusal to work, lock-out, slow-down, picketing, boycott, or any other concerted activities, whether engaged in by employees or non-employees of Licensor, national or local emergency, terrorist act, calamity or other cause not entirely within Licensor's control (each a "Licensor Force Majeure"), Licensor's performance under this Agreement shall be suspended for the period of the Licensor Force Majeure, and Licensor shall return to Licensee any advance payment made by Licensor for the affected period without any further liability or obligation on the part of Licensor which arises out of such suspension.
- D. If any event occurs whereby Licensee's performance hereunder is materially hampered, whether before or during the Term, as a result (wholly or in part) of any cause not entirely within Licensee's control and which it could not by reasonable diligence have avoided (each a "Licensee Force Majeure"), then, without limiting Licensor's rights as a result of the occurrence of the Licensee Force Majeure, Licensor shall have the option, without liability, to suspend the engagement for the Home Game for the duration of such Licensee Force Majeure, by giving Licensee written notice thereof.
- E. Upon removal or cessation of the Licensor Force Majeure or Licensee Force Majeure, as applicable, the parties' respective rights and obligations hereunder shall be reinstated for any and all subsequent sessions of the Home Game remaining in the Term.

21. MISCELLANEOUS.

- A. This Agreement shall be subordinate to the Management Agreement.
- B. The parties recognize the City of Bloomington as a party or a third-party beneficiary of this Agreement.
- C. The Licensor reserves and shall always have the right at all times to enter the Coliseum Premises (including, without limitation thereto, any Licensee Exclusive Use Areas) at reasonable times and upon reasonable prior notice to Licensee (except that no notice shall be required in the event of emergency condition) for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the Coliseum and the Coliseum Premises or to inspect the operations conducted thereon. In the event that such entry or inspection by the Licensor discloses that the Coliseum Premises are not in a safe or satisfactory condition and, if the maintenance of such area is Licensee's responsibility under this Agreement, the Licensor shall have the right to cause Licensee to correct (at Licensee's cost) any unsafe or unsatisfactory condition created by the Licensee or by the Licensee's occupancy of the Coliseum Premises or by any other team playing in any Home Game with the Licensee in the Coliseum. Licensee shall have the right to inspect the Coliseum Premises at reasonable times and from time to time (and on an emergency basis, where appropriate) and to cause Licensor to correct any unsafe condition if such unsafe condition is such unsafe condition is the responsibility of Licensor to correct.
- D. This Agreement reflects the entire agreement between the parties respecting the subject matter hereof and supersedes any and all prior agreements, Letters of Intent, understandings or commitments, written or oral, between the parties hereto. This Agreement may only be modified or amended by a subsequent written agreement signed by both parties hereto. No changes, alterations, additions or deletions to the printed contents of this Agreement shall be effective without the signature or initials of each party to the Agreement at the location of each change, alteration, addition, or deletion.
- E. Notices by Licensor and Licensee to each other shall be deemed duly given if (i) delivered personally with a signed receipt evidencing such deliver, (ii) transmitted by telecopier with confirmation of transmission, (iii) mailed by certified mail, return receipt requested, postage prepaid, or (iv) delivered by duly recognized air courier service to the following addresses:

Licensee: ROAR, LLC
James R. Morris
211 North Williamsburg Drive
Bloomington, IL 61704

City: City of Bloomington
Attn: City Manager
109 East Olive Street
Bloomington, IL 61701

Operator: Central Illinois Arena Management, Inc.
Attn: John Butler
101 S. Madison
Bloomington, IL 61701

With a Copy to: Mr. William A. Mueller, Jr.
Mueller & Reece, LLC
202 N. Center St, Ste 1
Bloomington, IL 61701

Any notice or notices given by (i) hand delivery shall be delivered upon receipt, (ii) overnight express mail service shall be deemed delivered one business day after being sent, and (iii) U.S. Mail shall be deemed delivered three (3) days after mailing.

- F. Licensee shall not transfer or assign any of its rights or obligation under this Agreement nor shall there be any Change in Ownership of Licensee without the advance written consent of City and Operator.
- G. This Agreement is entered into in the State of Illinois, County of McLean, and, in the event of any controversy or litigation whatsoever, shall be subject to the sole venue and jurisdiction in the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois and governed by and construed in accordance with the laws of the State of Illinois, without regard to its principles of conflicts of laws.
- H. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument.
- I. Licensor shall have the right to eject from the Coliseum, without any liability therefore to Licensee, persons engaging in objectionable behavior, even if they are paying ticket holders or other invitees of Licensee and/or Licensor.
- J. Licensee shall look solely to Licensor for performance and for payment and satisfaction of any obligation or claim arising out of or in connection with this Agreement, and Licensee hereby covenants that it shall not assert any claim against or look to the United States Cellular Corporation or Pepsi or any of their officers, directors, employees, or representatives for satisfaction of any such obligation or claim.
- K. The relationship between Licensor and Licensee is that of independent contractors and not agents or employees. Under no circumstances shall this license be considered a contract of partnership or joint venture. Neither party shall be liable for any of the debts, accounts, obligations or other liabilities of the other party, its agents or employees, and

neither party shall have any authority to obligate or bind the other party in any manner except as may be expressly provided herein.

- L. Licensors shall not be liable in any way for any acts and/or omissions of any third party, including, without limitation, any ticket agency used by Licensor in connection with the sale of tickets for any Home Game.
- M. No waiver shall be effective unless in writing and executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver in respect of any subsequent breach or default, whether similar or dissimilar in nature, unless expressly so stated in writing.
- N. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- O. No provision of this Agreement shall be construed against or interpreted to the disadvantage of a party by any court, arbitrator, mediator or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision. If any words or phrases in the Agreement shall have been stricken or otherwise eliminated, whether or not any words or phrases have been added, this Agreement shall be construed as if the words so stricken or eliminated were never included in the Agreement and no implication or reference shall be drawn from the fact that said words or phrases were so stricken or eliminated. No term or condition of this Agreement shall amend, alter or modify any term or condition of the Development and Management Agreement dated October 5, 2005.
- P. Notwithstanding anything to the contrary in this Agreement or otherwise, any improvement, maintenance, repair, replacement, equipment or other thing resulting from or by reason of any Future League Requirements shall be at the sole cost and expense of Licensee, even though Licensor might otherwise be obligated therefore under the provisions of this Agreement. Such cost shall be advanced by Licensee to Licensor prior to Licensor performing any such maintenance, repair or, replacement or providing any such equipment.
- Q. The undersigned authorized representative of Licensee represents and warrants to Licensor that it has the full right, power and authority to execute and enter into and perform this Agreement and that all formalities and consents required under its Operating Agreement have been performed and received.

IN WITNESS WHEREOF, intended to be legally bound, this Agreement is executed as a sealed instrument by Licensor, Operator and Licensee, and the parties have caused this Agreement to be executed as of the day and year first above written.

ROAR, LLC

CITY OF BLOOMINGTON

By: 

Its Manager

Print Name

Print Title

Jim P. Poiri
PRESIDENT

By: 

Its

Print Name

Print Title

Mayor
Stephen F. Ostockton
Mayor

CENTRAL ILLINOIS ARENA
MANAGEMENT, INC.

By: 

Its

Print Name

Print Title

President
John Y. Butler
President

FOR COUNCIL: October 22, 2012

SUBJECT: Text Amendment to Chapter 6. Alcoholic Beverages, Additional License Classifications

RECOMMENDATION/MOTION: The Liquor Commission recommends to the City Council that the Text Amendment be approved and the Ordinance passed.

BACKGROUND: The Bloomington Liquor Commissioner Steve Stockton called the Liquor Hearing to order to address the Text Amendment regarding the creation of a class “E”, Entertainment and “Q”, Qualified restaurant. Present at the hearing were Liquor Commissioners Stephen Stockton, Richard Buchanan, Marabeth Clapp, Steve Petersen, Mark Gibson, and Geoffrey Tompkins; George Boyle, Asst. Corporation Counsel, Clay Wheeler, Asst. Police Chief, and Tracey Covert, City Clerk

Commissioner Stockton opened the liquor hearing to address the proposed Text Amendment. He noted that the Commission held a Work Session on September 18, 2012 and a Public Hearing on September 20, 2012.

George Boyle, Asst. Corporation Counsel, addressed the Commission. The draft ordinance had been prepared based upon these two (2) meetings. He noted that the language addressed an application for an “A”, All types of alcohol, license. He offered to draft additional language which would address a “B”, Beer & wine only, license/application. He had removed language from the previous drafts which addressed floor space and occupancy. He cited Chapter 6. Alcoholic Beverages, Section 4 C. Conditions of Creation. He added his intention to add the proposed class E and Q license classification into Section 7. Classification.

He added that language regarding ineligibility for a class E if eligible for an “R”, Restaurant and/or Q had also been removed.

Commissioner Stockton questioned language regarding a cover charge for the class E. Mr. Boyle noted that based upon the Commission’s two (2) previous meetings on this subject no conclusion had been reached regarding a cover charge.

Commissioner Stockton recommended that the Commission take a few moments to review the proposed text amendment language.

Commissioner Buchanan addressed the cover charge issue. He noted that this would be a new concept for the City. He added the sale of nonalcoholic items and the City’s current definition of tangible items. He questioned where cover charges would fall. Mr. Boyle noted that this was his first attempt at ordinance language. The current language included all revenue derived from the business.

Commissioner Stockton addressed the cover charge issue. Revenue would include alcohol and non alcohol sales. He believed that a cover charge should be required for a class E liquor license. This was an important issue and would be included in the computation of the ratio of alcohol versus non alcohol sales. He restated the belief that there should not be any additional tavern liquor licenses in the Downtown.

Commissioner Tompkins supported the addition of a statement regarding the class E and the cover charge requirement. He recommended that this text amendment be sent on to the Council. There were applications pending. The City needed to move forward on this item.

Commissioner Stockton also added that in order to be eligible for a class E, the applicant could not be eligible for a class R and/or Q. Mr. Boyle restated same and affirmed Commissioner Stockton's statement. He cited the percentage of alcohol sales for each - sixty percent (60%) for an E license and seventy percent (70%) for a Q license.

Commissioner Gibson expressed his opinion that currently the Commission was unsure if establishments holding an R license truly meet the fifty-one percent (51%) or greater food sales criteria. He expressed his concern regarding enforcement as both the E and Q classifications listed a percentage of alcohol sales. He saw this as added complexity. He did not believe that these two (2) classifications would address Downtown issues. He restated his concerns regarding enforcement and management of these proposed classifications.

Commissioner Stockton noted that the Downtown Entertainment Task Force (DETF) had raised other issues. He cited alcohol sales training for servers/sellers. He suggested that an R licensed establishment might file a simple form at year end renewal. The Commission/City did not have the resources to audit each R licensed establishment. As Commissioner, there were R licensed establishments that have been required to provide receipts. He could not recall a single true audit being conducted during his tenure on the Commission. The City would need to retain a skilled auditor. If the City received questions/complaints, then an investigation is begun. He restated that a simple one (1) page form could be designed which would require the license holder to certify that the business was eligible for an R liquor license.

Commissioner Clapp noted that the DETF had met on Monday, October 8, 2012. The issue was control. She recommended that the Commission review the DETF's latest comments. Commissioner Stockton recommended that this item be added to the Commission's October 19, 2012 meeting. Commissioner Clapp added that the DETF added specificity and provided positive direction. Commissioner Stockton directed that the Commission be provided with copies of same.

Commissioner Gibson questioned if the DETF addressed the Commission's concerns. He noted that Alderman Karen Schmidt chaired the DETF. There needed to be joint perspective. The Commission and the DETF needed to be in alignment with each other. The efforts by each group needed to be coordinated. The Commission has responsibilities.

Commissioner Stockton noted that the Council expected a Text Amendment regarding these two (2) license classifications on their October 22, 2012 meeting agenda. The Council may return

the proposal back to the Commission. He added that the DETF had made its final recommendations in June 2011. The Commission had continued to work on this group's recommendations. The DETF has continued to meet and refine its recommendations. The Commission needed to move forward on this issue. He noted that there was at least one (1) pending Downtown application that might benefit from the Q license classification.

Commissioner Stockton expressed his comfort level with the proposed Text Amendment. The Commission would see how the Council responded to same.

Commissioner Buchanan noted the various expectations of the Commission, Council and DETF. He expressed his willingness to support the draft ordinance.

Commissioner Stockton questioned the Commission's comfort level. He noted that this was a general concept which could be fine tuned in the future.

Commissioner Petersen noted the complexity due to the legal language. He questioned if the definitions could be simplified. The draft ordinance was well written. He appreciated Commissioner Stockton's and Mr. Boyle's efforts on same. He questioned where these two (2) classifications might fit in the Downtown. Commissioner Stockton provided the following examples: Castle Theater, located at 209 E. Washington St., - class E and Elroy's located at 102 W. Washington St., - class Q. Commissioner Petersen added that the class EA2 might be a good fit for the Castle Theater. Commissioner Stockton responded affirmatively.

Commissioner Buchanan noted that he considered existing licensed establishments when reviewing the proposed text amendment.

Commissioner Gibson questioned the US Cellular Coliseum's, (USCC), license classification. He added that he did not believe that the USCC was a restaurant or a tavern. He added his belief that the Commission was establishing a new standard. Commissioner Stockton restated that if an establishment was eligible for an R license than it was not eligible for an E license. (*BMIA Concessions, LLC holds an RAS license at the USCC.*) Commissioner Buchanan viewed the USCC as a unique venue. He did not believe that there would be another similar facility located in the City. Commissioner Stockton noted that the Commission could consider what other cities with similar venue have done. Currently, the City has three (3) major classes, R, Restaurant, T, Tavern, and P, Packaged. The R and T addressed on premise consumption and the P addressed off premise consumption. The proposed E and Q classifications would address special circumstances and the presence of eighteen to twenty (18 - 20) year olds. He added that the Q addressed when an establishment operated as a restaurant during the day and had a different atmosphere at night, i.e. tavern.

Commissioner Gibson expressed his confusion. He cited Reality Bites, located at 414 N. Main St., as an example. This establishment currently held an R license. He questioned why it would not be classified as a Q license. Commissioner Tompkins noted the earlier closing hour for class Q establishments.

Commissioner Gibson cited bowling alleys and entertainment venues as examples of an E license. He restated his belief that the USCC should be an E licensed establishment. The City needed to have an option for the USCC. He was attempting to understand the difference. Commissioner Stockton restated his belief that the USCC qualified for an R license. This building was unique.

Commissioner Petersen questioned the EA1 classification. Mr. Boyle acknowledged that the USCC might fit under this classification with the exception that only those eighteen (18) years and older were permitted on the premise. Commissioner Stockton restated his belief that the USCC was a restaurant. Mr. Boyle noted the definition of restaurant, (See Chapter 6. Alcoholic Beverage, Section 7A. Classification, (13) and (14). He cited sales of tangible items which excluded services and rentals. He believed that the USCC could be addressed by the City. Commissioner Stockton added that cover charges would be included as revenue for a class E license.

Commissioner Buchanan expressed his opinion that these two (2) proposed classes provided something between the current class R and T. The proposed text amendment was needed and would be modified and enhanced over time.

Commissioner Petersen questioned the application of the class Q. Commissioner Stockton cited establishments that served lunch. If the business held a class T liquor license then no one under twenty-one (21) years of age was allowed on the premise. Commissioner Petersen noted that the class Q had an earlier closing hour.

Commissioner Stockton addressed the class E which stated that no alcohol could be served or consume on premise after 12 midnight Monday through Friday, or 1:00 a.m. on Saturday and Sunday. The class Q stated that “restricted” periods for alcohol service were the earlier of 1.) one hour after the “qualified food service” ends; 2.) 10:00 p.m. for A, All types of alcohol, licensed establishments or 3.) 11:00 p.m. for B, Beer and wine only, licensed establishment. There was no requirement to close at an earlier hour. Mr. Boyle acknowledged that he did not include an earlier closing hour for the class Q. Commissioner Stockton noted that if an establishment qualified for an R license, it is allowed to sell alcohol until closing time. Under the class Q, the percentage of sales from alcohol was limited to seventy percent (70%). Individuals under the age of twenty-one, (21), were not permitted on the premise during “restricted” hours.

Commissioner Clapp noted that the establishment could remain open until the close of business hours. Commissioner Stockton believed that a class Q establishment should also have an earlier closing time. Commissioner Petersen expressed his opinion that Elroy’s, located at 102 W. Washington St., would not apply for a class Q. Commissioner Stockton noted that Elroy’s has a number of options: class T, which it currently holds, class R which it has been approved for, or class Q if approved by the Council.

Commissioner Petersen questioned the closing time for the class Q. Commissioner Stockton cited the September 20, 2012 *Initial Draft - for Preliminary Discussion Purposes Only, Restrictions on Hours of Operation*. Alcohol service/consumption would stop at 12 midnight on

Monday through Friday, and at 1:00 a.m. on Saturday and Sunday. He recommended that this language be included in the proposed draft ordinance. He restated that to be eligible for a class E and establishment could not be eligible for a class R and/or Q. He restated the closing time for a class Q.

Jay Balmer, 16 Fountain Lake Ct., addressed the Commission. He noted that he had not seen the most recent draft of the proposed ordinance. He believed that the proposed class E and Q were contradictory. He noted that liquor sales were supposed to be ancillary of the business. At sixty to seventy percent, (60 - 70 %), liquor sales would be the primary revenue source. He expressed his opinion that additional restrictions were needed.

Commissioner Stockton noted that the percentage of alcohol sales was greater than a class R license. He added that other privileges had been taken away. Mr. Balmer questioned the verification process. As a member of the DETF, he had attended their meetings. Liquor distributors were required to provide sales information to the state by law. He noted the relationship between sales taxes and alcohol sales. The City should require written documentation as proof. He did not believe that additional man hours would be required. In addition, he recommended that the Commission continue this discussion regarding the class E and Q as the recommendations were vague in his opinion.

Daniel Rolph, 1027 Maple Hill Rd., #2, Six Strings' owner/operator and license holder, addressed the Commission. He noted that the statement submitted to the state was an ILST - 1. He recalled when the discussion of the class E license started. He noted the challenge of operating a business with limited hours, i.e. twelve (12) hours per week. He recommended that the City have a liquor license. The Commission would manage the parameters. Each license would be designed to address the individual license holder. This approach would provide flexibility. He added that the highest profit hour was the last hour of business.

Commissioner Stockton noted that Mr. Rolph has strayed from the proposed text amendment. Mr. Rolph stated that currently there were a variety of license types with a variety of parameters. He acknowledged that there were management issues. Commissioner Stockton summarized that Mr. Rolph's recommendation was for the City to have a single liquor license which would be controlled by various conditions placed upon each establishment.

Motion by Commissioner Tompkins, seconded by Commissioner Buchanan that the proposed amended text amendment, (additional language to address to be eligible for a class E the business could not be eligible for a class R and/or Q and closing hour for class Q), be approved and forwarded on to the Council for their October 22, 2012 meeting.

Motion carried, (viva voce).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The Commission held a Work Session on September 18, 2012 and a Public Hearing on September 20, 2012. In addition, the Agenda for the October 9, 2012 Meeting of the Liquor Commission was placed on the City's web site. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT: None.

Respectfully,

Stephen F. Stockton
Chairman of Liquor Commission

Attachments: Attachment 1. Ordinance
Attachment 2. Work Session Minutes of September 18, 2012
Attachment 3. Public Hearing Minutes of September 29, 2012

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Stearns				Alderman McDade			
Alderman Mwilambwe				Alderman Anderson			
Alderman Fazzini				Alderman Schmidt			
Alderman Sage				Alderman Fruin			
Alderman Purcell							
				Mayor Stockton			

ORDINANCE NO. 2012-

AN ORDINANCE AMENDING BLOOMINGTON CITY CODE CHAPTER 6

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bloomington, Illinois:

SECTION 1. That a portion of Bloomington City Code Chapter 6, Section 1, be amended to read as follows (additions are indicated by underlining; deletions are indicated by strikeouts):

SEC. 1 DEFINITIONS.

Unless the context otherwise requires, the following terms as used in this Article shall be construed according to the definition given below.

Alcohol. “Alcohol” means the product of distillation of any fermented liquor, whether rectified or diluted, Whatever may be the origin thereof, and includes synthetic ethyl alcohol. It does not include denatured alcohol or wood alcohol. (Ordinance No. 2004 - 2)

Alcoholic Liquor. Any spirits, wine, beer, ale or other liquid containing more than one-half of one percent of alcohol by volume, which is fit for beverage purposes. (Ordinance No. 2004-2)

Beer. “Beer” means a beverage obtained by the alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops in water, and includes among other things, beer, ale, stout, lager beer, porter and the like. (Ordinance No. 2004 - 2)

Change of Ownership. The term “change of ownership” means:

- (1) a change in the form of ownership, e.g. from an individual or partnership or to a corporation or from a partnership to an individual;
- (2) a change from an individual to a partnership or a change in a partnership such as the addition or deletion of any partner; or
- (3) in a corporation, the transfer of over 5% of the stock thereof except for corporations listed on a national stock exchange in which event the transfer of a controlling interest or over 50% of the stock thereof. (Ordinance No. 2004 - 2)

Club.

(1) A patriotic or veterans’ society organized under the laws of the United States or the State of Illinois; and

(2) A corporation organized under the laws of the United States or the State of Illinois but not pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquors kept, used and maintained by its members through the payment of annual dues and owning, hiring or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and provided with suitable and adequate kitchen and dining room space and equipment and maintaining a sufficient number of servants and employees for cooking, preparing and serving food and meals for its members and guests; PROVIDED that such club files with the Mayor at the time of its application for a license under this Ordinance two (2) copies of a list of names and residences of its members and similarly files within ten (10) days of the election of any additional member, his name and address; and PROVIDED FURTHER, that its affairs and management are conducted by a Board of Directors, Executive Committee, or similar body chosen by the members at their annual meeting and that no member or any officer, agent, or employee of the club is paid, or directly or indirectly receives in the form of salary or other compensation any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at any annual meeting by the members or by its Board of Directors or other governing body out of the general revenue of the club and which:

- (i) is affiliated with a national club or organization and/or clubs or organizations in all 50 states; or
- (ii) maintains eating, golf and swimming facilities on club premises for the use of members and their guests; or
- (iii) was chartered as a not-for-profit corporation prior to December 5, 1933 and regularly and routinely restricts admittance to the premises to members of the club and their guests. (Ordinance No. 2004 - 2)

Common Area: A segregated physical space in an E2 licensed establishment, such as a lobby or restrooms, in which no alcoholic beverages may be allowed, purchased or consumed, notwithstanding that the common area may be part of the licensed premises.

Fortified Wine. “Fortified Wine” means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, when fortified by the addition of alcohol or spirits, as above defined. (Ordinance No. 2004 - 2)

Hotel. Every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which twenty-five (25) or more rooms are used for sleeping accommodations of such guests and having one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or buildings in connection therewith and such building or buildings, structure or

structures being provided with adequate and sanitary kitchen and dining room equipment and capacity. (Ordinance No. 2004 - 2)

Keg. Any metal, wooden, plastic, paper or other container designed to hold four (4) or more gallons of liquid and actually containing any amount of alcoholic liquor. (Ordinance No. 2009-49)

Licensee/License Holder. The individual or organized licensee or license holder and any officer, associate, member, representative, agent or employee of a licensee or license holder. (Ordinance No. 2004-2)

Original Package. A bottle, flask, jug, can, barrel, keg or other receptacle or container whatsoever used, corked, or capped, sealed and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor, except a bottle or can containing 12 ounces or less of beer shall not be considered an original package unless grouped or fastened in a receptacle containing no less than six such bottles or cans. (Ordinance No. 2004 - 2)

Resident of the City. Any person living in the City for a period of not less than one calendar year. (Ordinance No. 2004 - 2)

Qualified Food Service: Service of food items at a class Q (Qualified Restaurant) licensed establishment from a comprehensive menu that includes a selection of hot and cold food items from at least four of the following categories: appetizers, salads, sandwiches, entrées and desserts. Said food service shall be available for consumption at all seating locations at a Q licensed premises during required dining hours.

Restaurant. Any public place kept, use, maintained, advertised and held out to the public as a place where meals are served, and where meals are actually and regularly served, without sleeping accommodations, such space being provided with adequate and sanitary kitchen and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. (Ordinance No. 2004 - 2)

Restricted Period: A period of time at a Q (Qualified Restaurant) licensed establishment during which only persons 21 years of age and older are allowed on the premises. Restricted periods shall begin the earlier of: (a) one hour after “qualified food service” ends; (b) 10:00 P.M. for any premises that is licensed to serve all types of alcohol; or (c) 11:00 P.M. for any premises that is licensed to serve beer and wine only.

Retail Grocery Convenience Store. Any place kept, used, maintained, advertised and held out to the public as a place where at least five (5) of the following seven (7) categories of products can be purchased at retail: dairy products, baked goods, frozen foods, groceries, snack foods, health and beauty aids, and where a maximum of fifteen percent (15%) of the total public selling space is devoted to the display of alcoholic beverages offered for sale. “Public selling space” includes all of the area between the floor and ceiling of the premises which is open, accessible, and/or visible to members of the general public, including the interior of any cooler or other refrigeration units or storage cases accessible and/or visible to the general public and

any area with restricted public access, such as the area behind sales counters, from which sales are made to members of the general public. (Ordinance No. 2004-2)

Retail Sale. The sale for the use or consumption and not for resale. (Ordinance No. 2004 - 2)

Sale. The term “sale” means any transfer or exchange in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether as principal, proprietor, agent, servant, or employee, and includes, but is not limited to, all of the following acts when done for consideration:

- (1) the selling of liquor;
 - (2) the giving away of liquor;
 - (3) the dispensing of liquor;
 - (4) the providing of mix, ice, water or glasses for the purpose of mixing drinks containing alcoholic liquor for consumption on the same premises;
 - (5) the pouring of liquor;
 - (6) the providing of “setups” containing alcoholic liquor;
 - (7) the storage of any alcoholic beverage.
- (Ordinance No. 2004 - 2)

Separate Viewing Area: A separate physical space in an E2 establishment in which no alcoholic beverages are allowed and that is separated from the main premises by adequate supervision, doors and barriers sufficiently solid and high to assure that persons under the age of 21 years may not leave the separate viewing area to enter into other areas of the licensed premises where alcoholic beverages are being served or consumed.

Setup Establishment. The term “setup establishment” means any establishment not holding a Class A, B or C liquor license, which engages in any of the activities described in the definition of Sale of this Chapter. (Ordinance No. 2004 - 2)

Single Serving Size. An original package that contains forty (40) ounces or less of alcoholic liquor. (Ordinance No. 2004 - 2)

Spirits. “Spirits” means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances. (Ordinance No. 2004 - 2)

To Sell. “To Sell” includes to keep or expose for sale and to keep with intent to sell. (Ordinance No. 2004 - 2)

Unfortified. Wine. “Unfortified Wine” means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables containing sugar, excluding such beverages when fortified by the addition of alcohol or spirits, as above defined. (Ordinance No. 2004 - 2)

Wine, Beer and Spirits Tasting. A supervised presentation of beer, wine or spirits products to the public, offered free of charge or for a fee, in which small quantities of beer, wine or spirits are served for consumption on the premises as a sample of the product being sold by the license holder and which meets the following conditions:

- A. Samples of beer are offered in amounts of 2 ounces or less, samples of wine are offered in amounts of 1 ounce or less and samples of spirits are offered in amounts of ½ ounce or less.
- B. A maximum of two tastings may be conducted during any week.
- C. Each tasting shall have a maximum duration of four hours. (Ordinance No. 2012-16)
- D. No tasting shall take place after 9:00 o’clock p.m.
- E. All samples shall be poured by the licensee, an employee of licensee or a licensed Registered Tasting Representative.
- F. No tastings shall occur at premises of license holders with a GPB or GPA license. (Ordinance No. 2011 - 02)

SECTION 2. That a portion of Bloomington City Code Chapter 6, Section 7A, be amended to read as follows (additions are indicated by underlining; deletions are indicated by strikeouts):

SEC. 7A CLASSIFICATION.

All licenses shall be classified as follows:

(1) Class “CA” (Clubs - All Types of Alcoholic Liquor) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises of Clubs as the same are herein defined. (Ordinance No. 1992 - 102)

(2) Class “CB” (Clubs - Beer and Wine Only) primary licenses authorize the retail sale on the specified premises only of beer and wine for consumption only on the premises. (Ordinance No. 1992 - 102)

(3) Class “EA1” (Entertainment 1 - All Types of Alcoholic Liquor) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. No establishment shall be issued an EA1 license that would otherwise qualify for a Q or R class license. EA1 licenses shall be issued and renewed only if the Liquor Commissioner believes the licensee will have and maintain gross revenue from sales of alcohol or legal gambling on the premises not exceeding 60% of all revenue derived from the establishment. EA1 licenses shall be issued where the principal activity on the premises is either:

(a) Live entertainment, other than sexually-oriented performances as defined in Section 33 of this Chapter; and

(b) Live recreation, other than legal gambling and customer dancing, for which a separate charge is made or the space provided for which is specialized and consumes a majority of the floor space of the licensed premises (such as bowling or volleyball).

Persons aged 18 and over are allowed in all areas of the licensed premises; however, persons under the age of 18 shall not be allowed on the licensed premises unless accompanied by a parent or guardian as set forth elsewhere in this Chapter.

No alcohol may be served or consumed on the premises after 12 midnight Monday through Friday, or 1:00 a.m. on Saturday and Sunday.

(4) Class “EA2” (Entertainment 2, Restricted) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. No establishment shall be issued an EA2 license that would otherwise qualify for a Q or R class license. EA2 licenses shall be issued and renewed only if the Liquor Commissioner believes the licensee will have and maintain gross sales on the premises of all types of alcoholic liquor or legal gambling in an amount not exceeding 70% of all revenue derived from the establishment, and where the principal activity on the licensed premises is live entertainment, other than sexually-oriented performances as defined in Section 33 of this Chapter. EA2 licenses shall require the licensee to have “separate viewing areas” for persons aged 18 to 20 years which shall be closed and vacated no later than 12 midnight on Monday through Friday and 1:00 A.M. on Saturday and Sunday. Persons aged 18 to 20 years are allowed only in “separate viewing areas” or in “common areas” of the licensed premises as those terms are defined in Section 1 of this Chapter. Persons under 18 years of age are not allowed anywhere in the licensed premises except when accompanied by a parent or legal guardian as set forth elsewhere in this Chapter.

(5) Class “EB1” (Entertainment 1 – Beer and Wine Only) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. No establishment shall be issued an EB1 license that would otherwise qualify for a Q or R class license. EB1 licenses shall be issued and renewed only if the Liquor Commissioner believes the licensee will have and maintain gross revenue from sales of alcohol or legal gambling on the premises not exceeding 60% of all revenue derived from the establishment. EB1 licenses shall be issued where the principal activity on the premises is either:

- (a) Live entertainment, other than sexually-oriented performances as defined in Section 33 of this Chapter; and
- (b) Live recreation, other than legal gambling and customer dancing, for which a separate charge is made or the space provided for which is specialized and consumes a majority of the floor space of the licensed premises (such as bowling or volleyball).

Persons aged 18 years and over are allowed in all areas of the licensed premises; however, persons under the age of 18 years shall not be allowed on the licensed premises unless accompanied by a parent or guardian as set forth elsewhere in this Chapter.

No alcohol may be served or consumed on the premises after 12 midnight Monday through Friday, or 1:00 A.M. on Saturday and Sunday.

(6) Class “EB2” (Entertainment 2, Restricted) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. No establishment shall be issued an EB2 license that would otherwise qualify for a Q or R class license. EB2 licenses shall be issued and renewed only if the Liquor Commissioner believes the licensee will have and maintain gross sales on the premises of all types of alcoholic liquor or legal gambling in an amount not exceeding 70% of all revenue derived from the establishment, and where the principal activity on the licensed premises is live entertainment, other than sexually-oriented performances as defined in Section 33 of this Chapter. E2 licenses shall require the licensee to have “separate viewing areas” for persons aged 18 to 20 years which shall be closed and vacated no later than 12 midnight on Monday through Friday and 1:00 A.M. on Saturday and Sunday. Persons aged 18 to 20 years are allowed only in “separate viewing areas” or in “common areas” of the licensed premises as those terms are defined in Section 1 of this Chapter. Persons under 18 years of age are not allowed anywhere in the licensed premises except when accompanied by a parent or legal guardian as set forth elsewhere in this Chapter.

~~(3)~~ (7) Class “F” primary licenses authorize the activities enumerated in Section 1 (2) through (7) of this Chapter. (Ordinance No. 1992 - 102)

~~(4)~~ (8) “GPA” (Convenience Store - All Types of Alcohol) primary licenses authorize the retail sale of all types of alcoholic liquor only in the original package for consumption off of the premises at retail grocery convenience stores, as those premises are defined in Section 1(g) of this Code, at which motor vehicle fuels are sold. (Ordinance No. 1992 - 102)

~~(5)~~ (9) “GPB” (Convenience Store - Beer and Wine Only) primary licenses authorize the retail sale of beer and wine only in the original package for consumption off of the premises at retail grocery convenience stores, as those premises are defined in Section 1(j) of this Code, at which motor vehicle fuels are sold. (Ordinance No. 1992 - 102)

~~(6)~~ (10) “LA” (Limited - All Types of Alcoholic Liquor) primary licenses authorize the retail sale of all types of alcoholic liquor by civic, charitable, fraternal, educational, patriotic, festival and/or religious organizations on premises in nonresidential locations for a maximum

period of sixty (60) days with the following conditions. Only civic, charitable, fraternal, educational, patriotic and/or religious organizations which have been in active and continuous existence for a period of one (1) year prior to the date of making the application or those which are incorporated under the laws of the State of Illinois will be eligible to receive an “LA” license. No organization shall be issued more than three (3) LA licenses in any twelve (12) month period. The license shall only apply to catered functions and special events sponsored by the organization. (Ordinance No. 2008 - 34)

~~(7)~~ (11) “LB” (Limited - Beer and Wine Only) primary licenses authorize the retail sale of beer and wine of alcoholic liquor by civic, charitable, fraternal, educational, patriotic, festival and/or religious organizations on premises in nonresidential locations for a maximum period of sixty (60) days with the following conditions. Only civic, charitable, fraternal, educational, patriotic and/or religious organizations which have been in active and continuous existence for a period of one (1) year prior to the date of making the application or those which are incorporated under the laws of the State of Illinois will be eligible to receive an “LB” license. No organization shall be issued more than three (3) “LB” licenses in any twelve month period. (Ordinance No. 2008 - 34)

~~(8)~~ (12) Class “MA” (Motel/Hotel Rooms - All Types) primary licenses authorize the retail sale of alcoholic beverages of all types from locked containers in rented motel and hotel rooms for consumption on the premises. The license holder may provide key(s) to registered guests for the locked container(s) in rooms rented by them provided they are over 21 years of age and no one under that age who is not the spouse or child (natural, adopted or foster) of a registered guest will be staying in the room, during the rental period. (Ordinance No. 1992 - 102)

~~(9)~~ (13) Class “B” (Motel/Hotel Rooms - Beer and Wine Only) primary licenses authorize the retail sale only of beer and wine from locked containers in rented motel and hotel rooms for consumption on the premises. The license holder may provide key(s) to registered guests for the locked container(s) in rooms rented by them provided they are over 21 years of age and no one under that age who is not the spouse or child (natural, adopted or foster) of a registered guest will be staying in the room during the rental period. (Ordinance No. 1992 - 102)

~~(10)~~ (14) Class “O” (Outdoor) - authorizes the retail sale of alcoholic liquor by any person holding a Class R license upon a sidewalk designated in a sidewalk cafe permit adjacent to the licensed premises during the hours of 9:00 a.m. to 12:00 o’clock midnight, Monday through Saturday, and 12:00 noon to 12:00 o’clock midnight on Sunday, provided that a valid sidewalk cafe permit has been issued, pursuant to Article IX of Chapter 38. During the times when alcoholic liquor may be served under the Class O license, the licensee shall: (1) Not allow or permit any customer, employee or other person to remove alcoholic liquor from the area designated in the sidewalk cafe permit or the service premises of the licensee. (2) Not serve, allow or permit any person to be served, be in possession of, or consume alcoholic liquor in the area designated in the sidewalk cafe permit unless that person is utilizing the seating which has been provided in accordance with the site plan approved with the sidewalk cafe permit. (3) Comply with all requirements set forth in Article IX of Chapter 38. (4) Provide table service, which shall include food service, in the sidewalk cafe area during the hours when alcoholic liquor is permitted to be served. The sidewalk cafe area shall be subject to all provisions of this

chapter as though the sidewalk cafe area was part of the licensee's service premises during the times permitted by this section for alcoholic liquor sales. Prior to the issuance of a Class O license the licensee shall provide proof of dram shop insurance. The policy shall name the City of Bloomington as an additional insured, and will indemnify and hold it harmless from any action, proceeding or claim of liability asserted against it as a result of the operation of a sidewalk cafe. Failure by the licensee to maintain the insurance required by this section shall result in the revocation of the license. (Ordinance No. 2011 - 31)

~~(14)~~ (15) Class "PA" (Package Sales - All Types of Alcoholic Liquor) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor only in original packages for consumption only off of the premises and for consumption if beer and wine on the premises in conjunction with a beer and wine tasting as defined in Section 1. (Ordinance No. 2006 - 89)

~~(12)~~ (16) Class "PB" (Package Sales - Beer and Wine Only) primary licenses authorize the retail sale on the specified premises only of beer and wine in the original packages for consumption only off of the premises and for consumption on the premises in conjunction with a beer and wine tasting as defined in Section 1. (Ordinance No. 2006 - 89)

(17) Class "QA" (Qualified Restaurant - All Types of Alcoholic Liquor) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. "QA" licenses shall be issued and renewed only if the Liquor Commissioner believes the licensee will have and maintain gross sales on the premises of all types of alcoholic liquor in an amount not greater than 70% of all revenue derived from the establishment. The holder of a QA license shall maintain sufficient bar or table seating for all customers on the premises. Licensees shall provide "qualified food service" on the premises from the time of opening until the earlier of closing, or 8:00 P.M., or such other time as expressly set forth in the license. Persons of all ages may be allowed on the premises during hours of "qualified food service" and for up to one hour after the cessation of that service; however, the licensee may, at its option, prohibit admission of persons under 21 years of age to the premises at all or selected times. No persons under the age of 21 years shall be allowed in the licensed establishment after the hour of 10:00 P.M. No alcohol may be served or consumed on the premises after 12 midnight on Monday through Friday, or after 1:00 A.M. on Saturday and Sunday.

(18) Class "QB" (Qualified Restaurant – Beer and Wine Only) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. "QA" licenses shall be issued and renewed only if the Liquor Commissioner believes the licensee will have and maintain gross sales on the premises of all types of alcoholic liquor in an amount not greater than 70% of all revenue derived from the establishment. The holder of a QA license shall maintain sufficient bar or table seating for all customers on the premises. Licensees shall provide "qualified food service" on the premises from the time of opening until the earlier of closing, or 8:00 P.M., or such other time as expressly set forth in the license. During hours of "qualified food service" the Q license allows persons of all ages to be permitted on the premises, however, the licensee may, at its option, prohibit admission of persons under 21 years of age at selected or at all times. No persons under the age of 21 years

shall be allowed in the licensed establishment after the hour of 11:00 P.M. No alcohol may be served or consumed on the premises after 12 midnight on Monday through Friday, or after 1:00 A.M. on Saturday and Sunday.

~~(13)~~ (19) Class “RA” (Restaurant - All Types of Alcoholic Liquor) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. “RA” licenses shall be issued and renewed only if the Liquor Control Commissioner believes the licensee will have and maintain gross sales on the premises of all types of alcoholic liquor in an amount less than the gross sales of all types of tangible items, excluding services and rentals. (Ordinance No. 1992 - 102)

~~(14)~~ (20) Class “RB” (Restaurant - Beer and Wine Only) primary licenses authorize the retail sale on the specified premises only of beer and wine for consumption only on the premises. “RB” licenses shall be issued and renewed only if the Liquor Commissioner believes that the licensee will have and maintained sales on the premises of beer and wine in an amount less than the gross sales of all types of tangible items, excluding services and rentals. (Ordinance No. 1992 - 102)

~~(15)~~ (21) Class “S” (Sunday) secondary licenses issued to the holder of any primary license described herein (except Class “W” which is valid on Sunday) extend the authority of primary licenses to Sunday hours as specified in Section 20 of this Chapter. (Ordinance No. 1992 - 102)

~~(16)~~ (22) “SA” (Secondary Premises - All Types of Alcohol) authorizes the retail sale of all types of alcoholic liquor by the current holder of a TA, TB, RA, RB, PA or PB license at nonresidential public premises other than the premises covered by the existing license at locations and on days approved by the Liquor Commissioner. All of the terms and conditions of the license holder's primary license shall extend to and apply to the license issued. The license holder must submit proof of adequate Dram Shop Insurance covering the premises licensed under the “SA” license prior to being issued such license. Any violation of the terms of the “SA” license shall be considered a violation of the license holder's primary license and shall subject the license holder to penalties and/or sanctions directed at the primary license. (Ordinance No. 2007 - 19)

~~(17)~~ (23) “SB” (Secondary Premises - Beer and Wine Only) authorizes the retail sale of beer and wine by the current holder of a TA, TB, RA, RB, PA or PB license at nonresidential public premises other than the premises covered by the existing license at locations and days approved by the Liquor Commissioner. All of the terms and conditions of the license holder's primary license shall extend to and apply to the license issued. The license holder must submit proof of adequate Dram Shop Insurance covering the premises licensed under the “SB” license prior to being issued such license. Any violation of the terms of the “SB” license shall be considered a violation of the license holders primary license and shall subject the license holder to penalties and/or sanctions directed at the primary license. (Ordinance No. 2007 - 19)

~~(18)~~ (24) Class “SPA” (Seasonal Performance – All Types of Alcohol)

(a) Authorizes by secondary license the retail sale of all types of alcoholic liquor at a performance venue designated by the Liquor Commissioner for a specified season by the holder of a current TA, TB, RA, RB, PA or PB license. This license may be issued at the discretion of the Liquor Commissioner. All of the terms and conditions of the license holder's primary license shall extend to the issued seasonal performance license. The license holder must submit proof of adequate Dram Shop insurance covering the premises licensed under the SPA license prior to being issued such license. Any violation of the terms of the SPA license shall be considered a violation of the license holder's primary license and shall subject the license holder to penalties and/or sanctions directed at the primary license.

(b) As used in this and in the succeeding subsection, the term "season" shall mean a defined span of time, not less than 30 days and no more than 1 year, during which a given venue hosts 4 or more performances per month. The length of the performance season for a given venue shall be as defined herein, or as otherwise designated by the Liquor Commissioner.

(c) The term "season" as applied to the Bloomington Center for the Performing Arts shall mean the period of time from August 1 through May 31 of the succeeding year.

(d) The term "season" as applied to the Illinois Shakespeare Festival performed at Ewing Manor shall be the period from June 1 through August 31. (Ordinance No. 2009 - 71)

~~(19)~~ (25) Class "SPB" (Seasonal Performance – Beer and Wine Only) authorizes by secondary license the retail sale of beer and wine at a performance venue designated by the Liquor Commissioner for a specified season by the holder of a current TA, TB, RA, RB, PA or PB license. This license may be issued at the discretion of the Liquor Commissioner. All of the terms and conditions of the license holder's primary license shall extend to the issued seasonal performance license. The license holder must submit proof of adequate Dram Shop insurance covering the premises licensed under the SPB license prior to being issued such license. Any violation of the terms of the SPB license shall be considered a violation of the license holder's primary license and shall subject the license holder to penalties and/or sanctions directed at the primary license. (Ordinance No. 2009 - 71)

~~(20)~~ (26) Class "TA" (Tavern - All Types of Alcoholic Liquor) primary licenses authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. (Ordinance No. 2009 - 71)

~~(21)~~ (27) Class "TB" (Tavern - Beer and Wine Only) primary licenses authorize the retail sale on the specified premises only of beer and wine for consumption only on the premises. (Ordinance No. 2009 - 71)

~~(24)~~ (29) Class "W" (Catering) primary licenses authorize the holder thereof to provide catering services to private parties pursuant to Section 8 of this Chapter provided, however, that a Class "W" license does not authorize the sale of alcoholic beverages. An additional Sunday license shall not be required. (Ordinance No. 2009 - 71)

SECTION 3. The City Clerk shall be, and she is hereby directed and authorized to publish this Ordinance in pamphlet form as provided by law.

SECTION 4. This Ordinance is enacted pursuant to the authority granted to the City as a home rule unit by Article VII, Section 6 of the 1970 Illinois Constitution.

SECTION 5. This Ordinance shall take effect immediately upon passage and approval.

PASSED this 22nd day of October, 2012.

APPROVED this _____ day of October, 2012.

APPROVED:

STEPHEN F. STOCKTON
Mayor

ATTEST:

TRACEY COVERT
City Clerk

WORK SESSION
Liquor Commission
September 18, 2012

Commission Present: Steve Stockton, Rich Buchanan, Marabeth Clapp, Steve Petersen, and Geoffrey Tompkins.

Commission Absent: Mark Gibson.

Staff Present: George Boyle, Asst. Corporation Counsel, and Tracey Covert, City Clerk.

The Work Session was called to order at 11:40 a.m. Commission Stockton stated that there would not be any motions. He introduced the topic – Proposed Entertainment “E” and Qualified Restaurant “Q” license classifications. He had prepared an Initial Draft for Preliminary Discussion Purposes Only. This draft did not represent a finished product. This meeting provided the Commission with the opportunity to discuss same. He presented the time line. The Public Hearing was scheduled for Thursday, September 20, 2012. He hoped that the final draft would appear on the Commission’s October 9, 2012 meeting agenda. The goal was to place a Text Amendment to Chapter 6. Alcoholic Beverages on the City Council’s October 22, 2012 meeting agenda.

Commissioner Buchanan expressed his opinion that the Commission would have to work hard to achieve this goal.

Commissioner Tompkins recommended that the final language be drafted after the September 20, 2012 Public Hearing and the Text Amendment be placed on the Council’s October 8, 2012 meeting agenda. Commissioner Stockton expressed his preference for the October 22, 2012 Council meeting. He wanted the final draft to be put out for the Commission’s and the public’s review. The focus would be on the Council’s October 22, 2012. He hoped the Commission had reviewed the draft document.

Commissioner Stockton address the current class “R”, Restaurant and “T”, Tavern liquor licenses. The Commission has used these two (2) license classifications and added conditions as modifications to address specific neighborhoods. He noted that there were some applications where these two (2) classifications did not fit. He cited bowling alleys, the Castle Theater located at 209 E. Washington; Elroy’s located at 102 W. Washington St., and the US Cellular Coliseum (USCC) located at 101 S. Madison St., as examples. Conditions have been used to tailor a liquor license to its location. The Commission has heard that there should be no conditions. Others have called for new classifications with additional specificity.

Commissioner Buchanan noted the variety of neighborhoods throughout the City. Conditions were needed to make liquor licenses acceptable.

Commissioner Stockton expressed his opinion that conditions may still be necessary in some instances. The City was growing. The Downtown represented a unique entertainment district. The City was also a college town. There needed to be places for individuals ages eighteen to

twenty, (18 – 20), years old to go. He addressed the E classification which would require separate areas with a “no alcohol” zone. He cited the USCC’s family area as an example. In addition, the Q classification meant that the establishment would qualify for an R liquor license. Currently, an R license required that the business’ accounting show less than fifty percent (50%) liquor sales. He noted that there currently were R licensed establishments whose atmosphere was similar to a tavern. The Q license classification meant that the establishment would operate as a restaurant during the day. At night, there would be additional restrictions. He cited no one under twenty-one (21) years of age as an example. He cited the City of Champaign which allows under twenty-one (21) year olds to be present in taverns. He would not support same.

Commissioner Clapp questioned how other cities with coliseum type venues had issued liquor licenses. Commissioner Stockton noted that the applicant selected the license classification at the time of application. He added that the family seating at the USCC was located in the northwest corner of the building.

Commissioner Petersen questioned which Downtown liquor license holders might apply for a class E or Q liquor license. Commissioner Stockton cited Laugh Comedy Club located at 108 E. Market St., as a potential class E. The license holder’s plan called for a bouncer as the means for separating the patrons by age. The draft proposal called for a physical barrier. A staff person could be called away from a doorway. No one would be aware of same. The Castle Theater had two (2) separate floors.

Commissioner Buchanan added that no alcohol was sold and/or consumed in the balcony. He cited the years of experience on the Commission. He cited existing liquor licenses holders as examples. He noted various issues addressed by the Commission: USCC’s private suites, bowling alleys, Laugh Comedy Club, and hotels/motels. He addressed the Qualifying Factors for a class E. He questioned the rationale for the “no more than sixty/seventy percent (60 – 70%) of all revenues . . . derived from alcoholic beverage sales or legal gambling”. He added the Town of Normal’s claim that it did not have any taverns. The Town requires an establishment to have a functioning kitchen. He noted the Council’s concerns regarding T liquor licenses.

Commissioner Stockton noted that one of the Qualifying Factors for the class E would be the percentage of alcohol sales.

Commissioner Clapp questioned if the sixty percent (60%) was aimed at bowling alleys and the seventy percent (70%) was aimed at Laugh Comedy Club.

Commissioner Stockton noted that the percentages were more liberal than that of an R license classification, (fifty percent/50%). The class E addressed establishments that offered live entertainment. He cited a jazz club as an example. He added that class E might have a cover charge in addition to liquor sales.

Commissioner Tompkins added that an applicant/license holder could decide to be more restrictive. He restated that the percentage of liquor sales for restaurants was fifty percent (50%). The class E would encourage businesses that did not offer a full kitchen. He cited entertainment venues.

Commissioner Petersen requested the basic description of a class R versus a class T.

George Boyle, Asst. Corporation Counsel, addressed the Commission. He cited Chapter 6. Alcoholic Beverages, Section 7A. Classification, (13) "RA" and (14) "RB". A class R addressed gross sales for tangible items other than services and rentals. He read the description/definition for an RA, (Restaurant, All types of alcohol).

Commissioner Stockton cited the Commission's ability to audit a license establishment. The Commission generally started with the business' atmosphere. The next step would be to request the business' receipts. A review was generally conducted after a citizen complaint.

Mr. Boyle questioned if gross sales for the class E license included all items. He cited charges for live performances.

Commissioner Clapp believed that the class E should include all revenue produced. She noted Laugh Comedy Club's request to allow eighteen (18) year olds and over. She questioned if the revenue from increase ticket sales had been encouraging. Commissioner Petersen expressed his opinion that Laugh was trying to establish additional revenue.

Commissioner Stockton addressed Qualifying Factor 1. "Live entertainment . . . cover charge. .". He cited a jazz club with a cover charge as an example. The class E would be less restrictive than an R license. He directed the Commission to the Definitions – Separate viewing area. The definition included a solid barrier and no alcohol sales. The percentage of sales for alcohol was higher than a class R.

Commissioner Buchanan addressed the cost of admission. He did not want to encourage liquor sales. He did not want an E establishment to become a tavern. Commissioner Stockton cited a bowling alley with a lounge as an example of a class E.

Commissioner Tompkins questioned establishments without a separate viewing area. He suggested that ticket sales could act as a controlling factor to allow for individuals under twenty-one (21) years of age. Commissioner Buchanan expressed his concern that the result might be a higher percentage of alcohol sales. Commissioner Tompkins noted that the principal activity of the business would be live entertainment. Commissioner Buchanan cited undesirable consequences by allowing a higher percentage of alcohol sales. Commissioner Buchanan suggested that a cover charge be mandatory.

Commissioner Stockton restated the Qualifying Factors which included a cover charge and the Definition for a "Separate viewing area". He acknowledged the concern that Downtown taverns might apply for an E liquor license.

Commissioner Buchanan addressed the Laugh Comedy Club. He did not believe that it would turn into a high volume tavern.

Commissioner Stockton readdressed the E license classification which included live entertainment, cover charge, no alcohol sales after midnight during the week and 1:00 a.m. on weekends in addition to a limit on the percentage of sales from alcohol.

Commissioner Buchanan cited the E license classification and the Jazz Café with seventy percent (70%) alcohol sales. He questioned the Council's willingness to approve same.

Commissioner Stockton questioned the possibility of a jazz club turning into a college bar.

Commissioner Buchanan noted the concern rose regarding what a business actually does/becomes.

Commissioner Petersen requested a definition of the T license classification. Commissioner Stockton cited the sale of alcohol by the glass. Commissioner Petersen noted that the percentage of alcohol sales would be different from an R license.

Commissioner Clapp expressed her support for the idea of a separate viewing area. She also supported the idea of a percentage of alcohol sales.

Mr. Boyle informed the Commission that the City had received request for live entertainment/recreation. He referred the Commission to the definition of an R license classification. He questioned if the percentage of alcohol sales for an E should be lower. The City could also amend its definition of an R license.

Commissioner Buchanan noted the proposed new classifications addressed establishments that were not a restaurant. The R classification would be applied to restaurants.

Commissioner Clapp addressed a true E venue. She stressed the separate viewing area. She noted the number of eighteen to twenty (18 – 20) years present in the community.

Mr. Boyle noted the impact upon small venues. He questioned the ability to implement same.

Commissioner Stockton noted that minors were present in an R establishment. A T environment was not appropriate for underage persons. The key issue was to determine where the line was. These establishments would not be an R and also not be a T. He restated key factors: the percentage of alcohol sales, live entertainment, cover charge, and an earlier closing time. An E establishment would be a place for young adults, (eighteen to twenty year olds), to be present. He encouraged the Commission to think beyond the Downtown.

Commissioner Clapp expressed her opinion that there would be a limited marketplace.

Commissioner Buchanan noted that there would be a business decision regarding an E versus an R versus a T. He believed that a jazz café would fit the E license classification.

Commissioner Stockton questioned that if the goal was to attract the college crowd. He cited the example of a live, local, popular band. The establishment would have a cover charge. He

questioned if there would be room to allow underage persons. He questioned if rock bands would qualify.

Commissioner Clapp expressed her concern regarding the number of underage persons in the Downtown. She believed that they would find a way to consume alcohol. Commissioner Buchanan noted that individuals/college students start consuming alcohol prior to coming Downtown.

Commissioner Petersen stated that the E classification would fit the Castle Theater. He noted that Gat's Jazz Café planned to offer live entertainment. The applicant did not want to have a cover charge and did not want anyone under twenty-one (21) years of age present. He added that the Q classification meant that the establishment would be an R during the day and a T at night.

Commissioner Buchanan added that the class E was not intended for an establishment that qualified as an R or a Q. He questioned if an establishment could qualify as an E and a Q.

Commissioner Clapp expressed her interest in looking for issues with this proposal. She questioned if an R could become an E.

Commissioner Stockton cited Downtown taverns with rock bands and a minimum cover charge. He noted that seating was required. An E license would require live entertainment, a cover charge and seating for all.

Commissioner Buchanan did not believe that the Commission could address every situation. The Commission would do the best job possible to meet the deadline. He cited the application for Sidetracked located at 907 E. Oakland Ave. He noted the number of conditions which made the application cost prohibitive.

Commissioner Stockton noted his interest in gapping holes. He encouraged the Commission to image a rock band with a minimum cover charge and a large number of underage persons (college students) versus a live jazz club with a minimum cover charge. These would be different venues. One would offer seating for its patrons versus standing room only. The Commission could limit the size of the venue, i.e. address occupancy. He restated that the class E required seating.

Commissioner Tompkins questioned the percentage of seating.

Commissioner Buchanan noted that the Commission was attempting to create license categories which would allow for viable businesses. In addition, these categories would avoid the closing time for taverns.

Commissioner Stockton added that the classification would apply city wide. He did not want to add to the load in the Downtown at closing time. Closing time was an issue in the Downtown. In addition, he did not want to create and/or allow eighteen to twenty (18 – 20) year olds in a tavern atmosphere.

Commissioner Clapp noted that size could be used and/or percentage of alcohol sales. She cited sixty percent (60%) as an example. The cover charge would be limited to what the market would bear.

Commissioner Stockton cited a percentage of the fire code/occupancy could be used. Other options included square feet per person and/or occupancy, or the lesser of one of these options. He offered to review the draft document based upon the Commission's feedback at this meeting.

Commissioner Clapp suggested that the Commission addressed items/things that could not be done.

Mr. Boyle directed the Commission to Chapter 6. Alcoholic Beverages, Section 33. Entertainment.

Commissioner Stockton readdressed seating and/or venue size. He cited bowling alleys as an example. He noted that youth were present. He cited Gill St. Sports Bar & Restaurant located at 3002B Gill St., which offered volleyball. There would be establishments which qualified for an R and/or a Q. The Q would allow for the automatic change from an R during the day to a T at night. No underage individuals should be present at night. He cited Elroy's, located at 102 W. Washington St., as an example. The establishment would qualify an R during the day and become more restrictive at night.

Commissioner Buchanan expressed his opinion that the Q classification was more straightforward. The Public Hearing would not address every situation. He questioned what the Commission would present at the Public Hearing.

Commissioner Stockton expressed his interest in public feedback.

Mr. Boyle addressed Gat's Jazz Café and the kitchen issue. He read from the Definition of Qualified food service.

Commissioner Stockton addressed a jazz café versus a rock band. One would offer seating the other would be standing room only. He believed that a jazz café in the Downtown would be desirable. He did not want another establishment offering rock music. He also did not believe that this was desired.

Commissioner Clapp noted that an R was allowed to stay open later than a Q.

Commissioner Stockton stated Gat's Jazz Café's goal for a full kitchen. The current budget did not support same.

Commissioner Petersen expressed his opinion that Elroy's and Gat's Jazz Café were not a mirror of one another. He added that there needed to be some restrictions.

Commissioner Buchanan stated that the Commission was a fact finding body. Gat's Jazz Café would not be a tavern. The Commission could not create a classification for a jazz café.

Commissioner Tompkins added that a Q license classification meant that the establishment could be a restaurant and/or an entertainment venue.

Commissioner Stockton encouraged the Commission to focus on the end result. He addressed the vision for the Downtown. He questioned what the Commission wanted to see, believed was acceptable and/or would enhance same.

Commissioner Buchanan restated that a jazz café would not be a college bar. The Commission had seen establishments morph into something else due to revenue concerns. The Commission needed to determine what it wanted to encourage and/or discourage.

Commissioner Stockton addressed a jazz café. The patrons would be seated. There would be a substantial menu available. Individuals would be drinking alcoholic beverages. There would be jazz performed live. It would be a nice addition to the Downtown. If late at night it turned into something else that would not be what the City wanted. The Commission had a vision. The key question was how to insure this shared vision and continue same.

Commissioner Clapp noted that applicants had been specific. A key issue had been the lack of follow up by the Commission.

Commissioner Buchanan cited how Gat's Jazz Café had narrowed down the application. He believed the proposed conditions were enforceable.

Commissioner Stockton added that there had been some intervention by the Commission. He cited Main St. Grill, located at 517 N. Main St., as an example. He added that conditions have been placed upon various liquor licenses. The Commission had also added conditions.

Commissioner Clapp cited follow up, license holder audits. She addressed the Downtown Entertainment Task Force (DETF) report.

Commissioner Stockton noted that the Commission could fine tune the definition of a kitchen. It must offer more than bar food.

Commissioner Buchanan addressed the need for the Commission to have more autonomy and control. The Commission should be enabled with appropriate legal advice to address compliance issues. The Commission had created conditions. He cited the example of taverns in residential neighborhoods. The Commission could put applicants under oath. He noted the Commission's efforts at liquor hearings to ensure compliance.

Commissioner Clapp noted that the applicants needed to live up to their promises when they become license holders.

Commissioner Tompkins expressed his opinion that the Commission had enforcement authority.

Mr. Boyle cited Chapter 6. Alcoholic Beverages, Section 3. Number of Licenses Limited – Applications, (o) and Section 4. Disqualification for License (p), which addressed false statements and testifying before the Commission.

Commissioner Stockton expressed his opinion that the Commission had the authority to address willful misrepresentation. There were times when the applicant's business plan did not work out. Mr. Boyle addressed the term willful and an applicant's ownership information. He specifically cited economic conditions.

Commissioner Buchanan suggested that the Commission be more proactive with the license holders.

Commissioner Clapp noted that some of the Commission's conditions were substantive.

Commissioner Stockton cited his concern regarding the late night environment in the Downtown. He cited the load placed upon the Downtown and City services. The Q classification could be amended. The kitchen language could be addressed.

Commissioner Buchanan noted the progress made and the work done on these two (2) proposed classifications.

Commissioner Stockton questioned attendance for Thursday's Public Hearing. Commissioners Buchanan, Clapp and Tompkins stated their intention to attend. Commissioner Stockton encouraged all to attend same.

Commissioner Buchanan expressed his concern regarding terminology.

Commissioner Stockton noted that Commissioner Clapp served on the DETF. Commissioner Clapp noted areas of movement. She cited transportation and cleanliness. She noted the DETF's belief that the Commission needed to follow up on license conditions.

Commissioner Stockton added that the DETF cited the need for an E license classification. Commissioner Clapp did not recall any discussion regarding same. She noted the DETF's frustration at what occurred in the Downtown at closing time. She cited noise, behavior, ordinance violations, (OV), property damage, etc. She questioned the Police Department's interest in these two (2) proposed classifications. The Commission needed to hear law enforcement's focus. She questioned the Police Department's overall sense of this proposal.

Commissioner Stockton acknowledged that a minority was creating issues in the Downtown. He cited the crowd size. He noted the following issues: fighting, vandalism, public urination, noise, etc. Police officers use subjectivity, i.e. discretion. These issues were common in college communities.

Commissioner Clapp cited the interest of Downtown residents. The City needed to gain better control over negative issues. She stated that the T license classification had become the scapegoat. The issue was various behaviors. Commissioner Clapp cited other issues such as

noise and vandalism. She expressed her opinion that there needed to be better controls in the Downtown.

Commissioner Tompkins believed that there had been a specific mandate.

Mr. Boyle addressed the proposed Text Amendment to address litter in the Downtown. It would require license holders to clean up around taverns.

Commissioner Tompkins left the meeting at 1:25 p.m.

Commissioner Buchanan did not believe that the solution would be to close all taverns. The Downtown was an entertainment district. He noted the cost for the Downtown detail, (police presence). He questioned the cost for same versus the dollar value of the OV that were written.

Commissioner Petersen informed the Commission of his experience attending a wedding in St. Louis, MO at the Landings. The streets were closed to vehicular traffic. The police department cleared the area.

Commissioner Buchanan cited flash mobs. Mr. Boyle noted that the Police Department had come across various groups of underage juveniles hanging out in the Downtown.

Commissioner Stockton added that this was the reason the Commission was considering new license classifications. The Commission needed to provide clarity. The discussion needed to address how to make the existing Downtown environment different. The City was a college town with over 28,000 college students who needed somewhere to go. At this time, the Downtown was it. He noted the state's Liquor Control Commission's 4th Annual College Town Summit Task Force which will be held on October 17, 2013 in Springfield.

Commissioner Clapp stated that the City was not the college town. There was a mix of individuals. Commissioner Stockton restated that there were enough students present to be a college town.

There being no further business the meeting adjourned at 1:30 p.m.

Respectfully submitted,

Tracey Covert
City Clerk

PUBLIC HEARING
Liquor Commission
September 20, 2012

Commission Present: Steve Stockton, Rich Buchanan, Marabeth Clapp, Steve Petersen, Mark Gibson, and Geoffrey Tompkins.

Staff Present: George Boyle, Asst. Corporation Counsel, Clay Wheeler, Asst. Police Chief, and Tracey Covert, City Clerk.

The Public Hearing was called to order at 4:06 p.m. Commissioner Stockton made introductory remarks. He encouraged those present to stay on topic and address the proposed “E”, Entertainment and “Q”, Qualified license classifications. He noted that currently the City only had two (2) on premise license classifications, “R”, Restaurant and “T”, Tavern. The distinction between the two (2) was the percentage of sales from alcohol. If the percentage exceeded fifty percent (50%) then the T license applied. The public hearing would address other proposed classifications. He noted the City of Springfield which had numerous license classifications. The goal was not to make liquor license classifications more complex. He cited the Castle Theater located at 209 E. Washington St., Laugh Comedy Club located at 108 E. Market St., and jazz cafes as examples of E establishments. The Commission was attempting to customize license classifications to meet business types. The Downtown Entertainment Task Force, (DETF), recommended the creation of additional license classifications. There had been discussions by the DETF and Commission. Today, the public hearing would address a discussion by the license holders and the public. He noted recent activities. He cited Laugh Comedy Club which offered a separate viewing area for individuals under the age of twenty-one (21). He also cited Gat’s Jazz Café as a possible “Q” license classification. The Council would have to approve a Text Amendment which would create additional license classifications. An initial presentation was to the Commission at their July 10, meeting. A Work Session was held on September 18, 2012. An updated Initial Draft for Preliminary Discussion Purposes Only had been prepared and distributed for the Public Hearing. A key question was the need for additional license classes and if the Commission was on the right track.

Commissioner Stockton addressed the proposed E. He read from the handout. He cited the purpose “to serve alcohol as a collateral service”. Entertainment venues would allow underage persons on the premises. He cited bowling alleys as an example.

Commissioner Petersen arrived at 4:15 p.m.

It was not desirable to allow underage persons to be present in a tavern. The Commission needed to determine where to draw the line. An E license would apply to entertainment venues and allow eighteen to twenty (18 – 20) year olds to be present. He addressed and reviewed the qualifying factors for an E1 and E2 license.

He encouraged those present to envision an environment where eighteen to twenty (18 – 20) year olds would be present with adults drinking alcoholic beverages. He restated that underage individuals should not be present in a tavern environment. He questioned if there were any

concerns regarding venues hosting rock music. The E license also address venues offering recreation such as bowling, volleyball, etc. The E2 license would allow a higher percentage of alcohol sales than an E1.

Clay Wheeler, Asst. Police Chief, arrived at 4:22 p.m.

Commissioner Stockton added that the E2 addressed live entertainment with a separate viewing area. No alcohol sales and/or consumption would be allowed in the underage area. He cited the Castle Theater's balcony as an example. The balcony served as a physical barrier. Eighteen to twenty (18 – 20) year olds were allowed in the balcony. He added that E venues would also have an earlier closing hour. The goal was to have underage individuals out of the Downtown before closing time.

Commissioner Stockton read and reviewed the Restrictions on ages allowed on the premises for the E1 and E2. He stressed the hours of operation for alcohol service and the earlier closing time, (one hour earlier – weekdays at midnight and weekends at 1:00 a.m.). He read and reviewed Optional restrictions which addressed occupancy including posting same. He read and reviewed Definitions. He welcomed comments/questions regarding the E license classification. He added that the Commission did not operate a tavern and/or restaurant.

Bruce Johnson, 212 N. Center St., addressed the Commission. He questioned curfew. Commissioner Stockton noted that under state law there was curfew. In addition, there were restrictions on driving licenses based upon age.

Clay Wheeler, Asst. Police Chief, addressed the Commission. Curfew applied to individuals under the age of eighteen (18). It was not applicable to this discussion.

Tom Hubbard, 1902 Marzel Dr., addressed the Commission. He stated that he had read the handout and described it as a can of worms. He added his belief that the Council had requested a moratorium on liquor licenses.

Commissioner Stockton addressed the term moratorium. The Council had requested that the Commission show restraint. There was an informal moratorium in the Downtown's north end. He cited Laugh Comedy Club located at 108 E. Market St. There were a number of conditions placed upon this liquor license. He added that Elroy's located at 102 W. Washington St. might qualify as a class Q. Elroy's appeared to be a restaurant during the day and a tavern at night. He noted a condition placed upon some liquor licenses which stated that after a certain hour tavern rules apply.

Mr. Hubbard addressed the "separate viewing area". He called this term a distortion. He added his opinion that any tavern could become an E. Commissioner Stockton cited the Castle Theater located at 209 E. Washington St. It offered separate viewing area, i.e. balcony. There was also separate access to the balcony.

Mr. Hubbard added that the Commission required tavern license holders to have kitchen and offer food service. He cited the expense of same. Commissioner Stockton noted that the

Commission encouraged food service. Food offerings impacted liquor consumption. It was not required. An R license required a kitchen.

Mr. Hubbard cited a negative impact upon existing businesses. He restated that the Commission was opening a can of worms.

Commissioner Stockton noted the college student population. The City did not want to be Champaign, IL. He cited the Castle Theater again which offered a separate viewing area for individuals under the age of twenty-one (21).

Commissioner Tompkins did not see a proliferation of E license applications. He cited the earlier closing time.

Mr. Hubbard stated his opposition to allowing minors to be present where adults were drinking. He added that the Commission had the wrong perception of the Castle Theater.

Nancy Isaacson, 212 N. Center St., addressed the Commission. She questioned what other similar cities were doing. She also questioned if there were other models the City could follow.

Commissioner Stockton noted that the state's Liquor Control Commission would convene a summit on October 17, 2012 for communities with colleges. He cited establishments that have used a wristband system. He noted physical separation, i.e. balcony. He questioned the communities' willingness to consider college students as young adults.

Commissioner Buchanan stated the Commission's intention to place a proposed Text Amendment on its October 9, 2012 meeting agenda. The Commission would forward its recommendation on to the Council for consideration at their October 22, 2012 meeting. He planned to reach out to other Central Illinois cities and raise this issue. He added his interest would be in success stories.

Commissioner Stockton reminded those present that the Town of Normal does not have taverns. All of its sale by the glass establishments were restaurants.

Butch Thompson, 2512 Yorktown, addressed the Commission. He questioned the Qualifying factors for the E1 and E2. Commissioner Stockton stated the Commission's intention to avoid an E establishment becoming a tavern. There should be customer interest in the entertainment being offered. He believed that there should be a minimum cover charge.

Mr. Thompson cited Daddios located at 527 N. Main St. as an example. Daddios could provide separate restrooms and meet the fire codes. He believed that with an appropriate cover charge revenue would split 60/40, (cover charge - sixty percent/60% and alcohol sales - forty percent/40%). Daddios could close at 1:00 a.m. Commissioner Stockton noted that under the current code the only classification available was a T.

George Boyle, Asst. Corporation Counsel, noted that for an R liquor license less than fifty percent (50%) of gross revenue - for tangible items - could be from liquor sales.

Mr. Thompson stated his intention to be like the Castle Theater. He added that based upon the number of eighteen to twenty (18 – 20) year olds in the community, he could make up for the loss of one (1) hour of liquor sales. Daddios would be open from 8:00 p.m. until 1:00 a.m. He believed that financially with an appropriate cover charge he would make up for the last hour of liquor sales. Commissioner Stockton questioned the separate viewing area.

Commissioner Petersen stated that there would be a financial gain with eighteen to twenty (18 – 20) year olds paying a cover charge. Mr. Thompson stated that this is what was happening in other college towns. The eighteen to twenty (18 – 20) year olds were willing to pay cover charges. He addressed this proposal as a business man. He expressed his interest in a level playing field. He did not believe that the City was interested in E liquor licenses on the 500/600 blocks of N. Main St.

Commissioner Petersen cited occupancy issues.

Commissioner Stockton noted that there was interest in reducing the number of taverns in the Downtown. There were individuals whose preference was no alcohol sales/consumption in the Downtown. He acknowledged that there were extreme views. He readdressed the idea of separate viewing areas. There were 28,000 college students and the majority of them were under the age of twenty-one (21). He questioned the harm. He noted that there was not a perfect answer.

Commissioner Buchanan encouraged Mr. Thompson to remain engaged in the process. Commissioner Stockton added that the Commission needed license holders to find the flaws.

Commissioner Clapp noted that there were a number of variables. The Commission needed to define the environment (venue), capacity (occupancy), cover charge (dollar figure), and hours (business). The Commission needed to determine what it wanted or did not want in/for the Downtown.

Mr. Johnson encouraged the Commission to give thought to any increase in the number of liquor licenses in the Downtown. He specifically cited the impact upon City services such as refuse. Commissioner Clapp acknowledged that this should be also be a major component.

Commissioner Stockton expressed his opinion that the E classification would result in less people consuming alcohol. He acknowledged that there were issues with vandalism, public urination and fighting in the Downtown. Individuals have been injured. The E classification would result in a different mixture of people. He noted that some people consume alcohol before coming Downtown. An earlier closing time would disperse the load by staggering departure times.

Bruce Meeks, 1402 S. Wright, addressed the Commission. He had attended the Commission's monthly meetings. He understood the bar business. He believed that discourse was needed between the Commission and Council. The DETF had recommended that there be a moratorium on taverns in the 500/600 blocks of N. Main St. No official action has been taken by the Council. He recommended that there be a joint meeting of the Commission and Council. He

noted that the City of Springfield limited the number of liquor licenses. He questioned why the DETF had been given so much authority. The City was holding back business. He cited the fact that Gat's Jazz Café had been approved twice by the Commission.

Commissioner Stockton noted that no one who served on the Council was present at the public hearing. The Commission/Council would have the option of holding a Work Session on October 22, 2012 prior to the Council meeting. He added that the question of Council members attending Board/Commission meetings had been raised, (Open Meetings Act).

Mr. Meeks recommended that the Commission move quickly on these two (2) license classification. He restated his belief that this public hearing should have been a joint meeting. Commissioner Stockton cited a letter sent to the City by the Attorney General's Office. He restated that there was the ability to hold a Work Session prior to the Council's October 22, 2012 if needed.

Commissioner Clapp noted that the DETF addressed the density of taverns in certain areas of the Downtown. The DETF encouraged that taverns be located in other areas of the City. She noted that there was no moratorium on taverns.

Mr. Boyle noted that the Commission should consider location as part of the application process. A liquor license was different. The City had established a number of controls. The City has the ability to limit the number liquor licenses.

Mr. Meeks believed that there was a disconnect between the Commission and Council. He added that it appeared that the Council believed that there was a moratorium. Commissioner Stockton noted that the Council approved a tavern liquor license for Laugh Comedy Club, located at 108 E. Market St. He added that Laugh did not appear to be a tavern (college bar). In addition, Eleven, located at 105 W. Front St., was also granted a tavern liquor license by the Council.

Mr. Meeks questioned other cities' liquor ordinances. The Commission needed to drill down into other cities' liquor ordinances. He also included video gaming in this effort. Marlene Gregor, 107 W. Market St., addressed the Commission. She cited testimony before the Commission when Judy Markowitz was Mayor. She added her belief that there was a moratorium on Downtown taverns. Commissioner Stockton noted that previous Councils cannot bind the current one. He restated that there was no formal moratorium on Downtown taverns. There was no interest in additional college bars in the Downtown. There had not been any issues at the Laugh Comedy Club. The City needed to try something different in an effort to change the Downtown. He cited Gat's Jazz Café as an example. He added his interest in a jazz club. He acknowledged the risk that it might morph into just another Downtown bar.

Ms. Gregor stated that the issue with Gat's Jazz Café was the location. Gat's Jazz Café needed to find another location. She cited the warehouse district located south of the Downtown as an example. The City could establish a TIF, (Tax Increment Financing), District. The City would be able to provide better control in this area. She stated her belief in the Downtown. Commissioner Stockton addressed the topic of issuing capital. He noted the investments made in

the Downtown, (public and private funds). Ms. Gregor noted that the City would need to offer incentives, (TIF District, grants). There were too many liquor establishments in the Downtown at this time. The Commission needed to show courage and have a vision for the Downtown. Commissioner Stockton stated that the Commission had discussed the warehouse district in the past due to its proximity to the US Cellular Coliseum.

Mr. Hubbard expressed his opinion that these license classifications were being hurried. He claimed that he had not been notified. The Commission needed to invite the established liquor license holders to a private meeting. He recommended that the E and Q license classifications be postponed. In six (6) months, there would be a new Mayor, Council and Commission. Commissioner Stockton noted that the DETF has questioned the lack of action by the Commission.

Commissioner Petersen questioned if any DETF members were present at the public hearing. Jerimiah Liebendorfer, Police Patrol Officer, addressed the Commission. He served on the DEFT. In his role, he addressed public safety. He expressed his support for a growing City. He added that he was not a resident.

Jerry Kanta, 7851 Buttercup, Weldon, addressed the Commission. He reminded them that his liquor license application had been laid over until the Commission's November 13, 2012 meeting. He hoped to qualify for an E liquor license. He did not see any connection between his application and the E classification. Commissioner Stockton stated that the E classification would not allow gambling. He added that the Council had reservations regarding gaming parlors. He noted that EEK Enterprises, LLC was the City's first application for a video gaming parlor. He added his belief that there would be a separate text amendment to address video gaming parlors.

Commissioner Buchanan stated that the Commission was aware of Council's concerns. Mr. Kanta, as the applicant, had been straight forward with the Commission. He acknowledged that the Commission had laid over the application.

Mr. Boyle recommended that the Commission return to the publish agenda topics.

Commissioner Stockton addressed the class Q. He noted that Elroy's, located at 102 W. Washington St., had been approved for a change of classification from a tavern to a restaurant. He noted that there were eighteen to twenty, (18 – 20), year olds who were employed in the Downtown. They would be permitted into licensed establishments with an "R" or a "Q" license. The Commission needed to establish the percentage of liquor sales to qualify for a class Q. A Q establishment would become a tavern at a certain hour. A class Q must also offer table seating. The Commission might need to work with the McLean County Health's Department's, (MCHD), Environmental Health Division to define a "Qualified food service". He reviewed the definition of "Qualified food service" as listed on the Initial Draft – for Preliminary Discussion Purposes Only, Rev. Sept. 20, 2012. He stressed that during the restricted period no minors would be allowed in the premise. The Commission might also want to set occupancy limits.

Ms. Gregor encouraged the Commission to contact the MCHD. She believed that there were a number of restrictions and regulations. Commissioner Stockton noted that before a liquor license can be issued the MCHD must grant its approval. Ms. Gregor questioned if these proposed classification would be available beyond the Downtown. She believed that they should be applied throughout the City. She added that when a restaurant turned into a tavern there issues such as noise, etc.

Pat Fruin, 903 N. Linden, #113, Normal, owner/operator of Flinger's Pizza, 608 N. Main St., addressed the Commission. He questioned if every R license would be converted into a Q license. Commissioner Stockton responded negatively. A Q license would be an option. Mr. Fruin saw the Q license classification as being more bar friendly. Commissioner Stockton restated that a Q license addressed establishments that were a restaurant by day and a tavern by night. He noted that the key was an environment suitable for youth.

Mr. Thompson expressed his opinion that Normal had a separate closing hour for underage persons. Commissioner Stockton could not address this item. If no food was being served no underage persons would be allowed on the premise.

Commissioner Buchanan stated that the establishment must have a kitchen. Commissioner Stockton noted that the Commission has the authority to establish and set rules when to allow underage individuals.

Mr. Meeks addressed the issue of food service and added that the Commission needed feedback from the MCHD. He noted that there were food service operator's licenses. Commissioner Stockton agreed that the Commission needed input from the MCHD.

Mr. Fruin noted that a food sanitation permit was issued to an individual and not a business.

Mr. Meeks expressed his opinion that a food service operator's license was issued by the state. The Commission needed a better definition of the Q classification. He questioned the cost to the City to audit a class R establishment. He recommended that the Commission establish an accounting and audit structure for class R establishments. Commissioner Stockton stated that the Commission did not conduct annual audits. The Commission relied upon complaints, observations. The Commission can examine sales tax receipts and purchasing receipts. Mr. Meeks recommended that the Commission be more proactive. The Commission should mandate monthly financial reports. Commissioner Stockton cited the annual liquor renewal process. The license holder certifies that they are qualified for the license classification. Mr. Meeks believed that the Q classification was too intrusive. He noted the percentage of alcohol sales. Commissioner Stockton noted that a percentage of alcohol sales applied to the R license classification. He acknowledged that the Commission could be more proactive. He questioned at what level. He noted that perhaps more than the annual renewal was needed.

Mr. Meeks questioned the definition of "Qualified food service". Commissioner Buchanan cited personnel observations as a Commissioner. There was no 100% enforcement. Observation was important. Mr. Meeks expressed his belief that a business could not determine the percentage of

alcohol sales prior to the establishments opening. Commissioner Gibson stated that this was part of the application process.

Commissioner Stockton suggested that a City employee could be assigned liquor code enforcement. He questioned if this was the best use of City finances.

Commissioner Stockton returned to the issue of percentages for alcohol sales for the proposed class E1, E2 and Q.

Mr. Meeks expressed his opinion that sixty percent (60%) was too high. He compared live entertainment versus gambling. Commissioner Stockton stated that video gambling was a separate issue which would be addressed with different language. He noted that the Q classification would allow alcohol sales in excess of fifty percent (50%).

Mr. Thompson acknowledged that his lack of understanding. Commissioner Stockton noted that a cover charge would be counted as revenue. Mr. Thompson recommended a five dollar (\$5) cover charge. Commissioner Stockton expressed his opinion that the cover charge should be ten dollars (\$10) or higher.

Commissioner Gibson expressed his opinion that the percentage should be the driving factor not the cover charge. A cover charge should be required but the Commission should not specify an amount. Mr. Thompson noted that the cover charge was used to pay the band. Commissioner Stockton acknowledged the Commission's interest in license holder's comments. Mr. Thompson expressed his interest in the Q classification. He believed that Elroy's would be a good fit. The percentage of alcohol sales could be left at fifty percent (50%). Commissioner Stockton noted that the draft would allow sixty percent (60%) alcohol sales. Mr. Thompson recommended that the Commission set the time when no underage individuals should be present. There should be no relationship to the kitchen hours.

Ms. Gregor addressed the Commission. She had hosted a meeting on Wednesday, September 19, 2012 at the Gregor Gallery, located at 311 N. Main St. Residents, property owners and business owners attended same. She believed that there were twenty (20) individuals who resided in the 300 and 400 blocks of N. Main St. She had prepared a handout for the Commission. She recommended the following: 1.) no future liquor licenses in the Downtown; 2.) the need for a safe environment; 3.) Downtown surveillance cameras; 4.) additional police presence; 5.) prosecution of law violators; 6.) clean up the 600 block of N. Main St.; 7.) authorized full kitchens; and 8.) BASSETT, (Beverage Alcohol Sellers and Servers Education and Training), training for all liquor servers. She stated that over serving of alcohol occurred in the Downtown. She cited property damage. Good enforcement was needed.

Commissioner Stockton stated that whether the E and Q license classifications moved forward or not there were issues in the Downtown. He believed that action was needed to address some of them.

There being no further business the meeting adjourned at 6: 05 p.m.

Respectfully submitted,

Tracey Covert
City Clerk

FOR COUNCIL: October 22, 2012

SUBJECT: Application of Setinthebar, d/b/a Gat's Jazz Cafe, located at 424 N. Main St., for a TAS liquor license, which will allow the sale of all types of alcohol by the glass for consumption on the premises seven (7) days week

RECOMMENDATION/MOTION: The Liquor Commission recommends that a TAS liquor license for Setinthebar, Inc., d/b/a Gat's Jazz Cafe, located at 424 N. Main St., be created, contingent upon compliance with all applicable health and safety codes with the following conditions: 1.) the establishment will be run as a Jazz Cafe; not a traditional tavern - the Commission reserves the right to modify this condition to insure compliance; 2.) the business will be committed to the promotion of live jazz music and commits to stay with the jazz music theme, as opposed to other forms of music; 3.) the hours of operation of the business will be Sunday through Thursday from 11:00 a.m. until 10:00 p.m. and Friday and Saturday from 11:00 a.m. until 12:00 a.m.; 4.) the tables and chairs will not be removed from the premise so as to maintain a close, intimate Jazz Cafe atmosphere at all times; 5.) food, as shown on the sample menu or substantially similar and comprehensive menu will be served up until one hour prior to closing with continued work towards establishing a full kitchen with a vaster meal type menu; 6.) marketing house events which for a set price, reserves a table for entertainment viewing and provides certain food and drink for one price; and 7.) with all of these conditions, there was confidence that a successful Jazz Cafe will be established at 424 N. Main St. which will add to the Downtown's quality of life and the area as a whole without adding to the issues cited by the Downtown Entertainment Task Force (DETF).

BACKGROUND: The Bloomington Liquor Commissioner Stephen Stockton called the Liquor Hearing to order to hear the application of Setinthebar, Inc., d/b/a Gat's Jazz Cafe, located at 424 N. Main St., requesting a TAS liquor license which would allow the sale of all types of alcohol by the glass for consumption on the premises seven (7) days week. Present at the hearing were Liquor Commissioners Stephen Stockton, Richard Buchanan, Steve Petersen, and Geoffrey Tompkins; George Boyle, Asst. Corporation Counsel, Bob Wall, Asst. Police Chief, and Tracey Covert, City Clerk; and James Gaston, owner/operator and Applicant representative, and Jim Bass, Applicant's attorney.

Commissioner Stockton opened the liquor hearing and requested that the Applicant address this request. James Gaston, owner/operator and Applicant representative, and Jim Bass, Applicant's attorney, addressed the Commission. It was described as the same request with possible conditions upon the license. Mr. Bass noted that the Council's vote, 4 to 5. The application was turned down by one (1) vote. A list of proposed conditions had been provided to the Commission. In addition, there was a statement of intent. It was noted that the business needed to be profitable. It had been Mr. Gaston's dream to operate a Jazz Cafe.

Commissioner Stockton noted Mr. Gaston's background. He added that for a number of years concerns had been expressed regarding the number of Downtown "T", Tavern, liquor licenses. He noted recent comments from the Council regarding same. He added that there was an

informal moratorium on tavern liquor licenses in the Downtown. He cited Laugh Comedy Club located at 108 E. Market St. as an example of a Downtown T liquor license with conditions. Concerns had been raised that this establishment would become another Downtown tavern. The Applicant needed to convince the Commission, Council, and citizens that safeguards were present to insure that Gat's Jazz Cafe would not become another Downtown tavern. He read the list conditions submitted by Mr. Gaston. Another issue was a sufficient operations plan.

Mr. Bass noted that the tables would not be removed at anytime. He believed that the strongest argument to support this application was the closing hours. Gat's Jazz Cafe would not be just another Downtown tavern. Gat's Jazz Cafe would not be a young person's tavern. Commissioner Stockton acknowledged the weekend closing time: midnight. He questioned what would happen at the Jazz Cafe from 11:00 a.m. until the music started. Mr. Gaston stated that the Jazz Cafe would not be just a tavern. It would be a cafe that served food, coffee and cocktails.

Commissioner Stockton noted that the Commission needed to understand his vision. Mr. Bass stated that a sample menu had been provided. Mr. Gaston planned to work towards a full kitchen.

Commissioner Petersen questioned if the Cafe would serve lunch. Mr. Gaston stated that the Cafe would serve upscale appetizers, hors d'oeuvres and tapas.

Commissioner Tompkins stated that he had never seen such onerous, burdensome conditions. This Cafe would be an outstanding venue. He believed that Mr. Gaston was a quality applicant and that he would make this business a success. He questioned what the City wanted the Downtown to be. Mr. Gaston should be given a fair chance to operate this business.

Commissioner Petersen noted that the Commission recommended this application to the Council. The Council did not approve it. He questioned what was needed for the Council to change its mind.

Commissioner Tompkins restated that Mr. Gaston provided the list of conditions. The Commission could include any of them or none of them. Commissioner Stockton stated that a number of conditions had been placed upon a number of Downtown establishments. Commissioner Tompkins described these conditions as onerous and burdensome. Mr. Gaston would comply with the rules. Mr. Gaston would have everything to loose.

Commissioner Petersen questioned who drafted the conditions. Mr. Gaston noted himself with the assistance of his attorney. Commissioner Petersen described the situation as unfortunate. The Downtown was volatile. He described the conditions submitted as good. Mr. Bass restated that there was not a commitment to install a full kitchen. It was a goal with no set date. He noted Mr. Gaston appearance before the Commission. He addressed Mr. Gaston's past experience. There were individuals present at the hearing who wanted to address the Commission. Mr. Gaston had experience in the liquor business and with jazz music.

Commissioner Stockton noted that the Council did not approve this application without conditions. Commissioner Tompkins noted that the Commission could include the list of conditions provided by the Applicant.

Commissioner Stockton reviewed the list. He described the first condition as a general statement. Mr. Bass added that there would be a jazz piano on weekdays. Mr. Gaston added that there would be live music only during certain hours. There would be jazz music at all times. The decor would have a jazz theme. He restated his commitment to jazz. Commissioner Stockton questioned the hours for live performance. Mr. Gaston noted the in the evening: weekdays - 6:00 until 9:00 p.m. and weekends - 7:00 until 11:00 p.m. Commissioner Stockton noted that during other business hours recorded jazz music would be played. He noted that the Cafe would be open for lunch.

Mr. Gaston added that there would be a jazz brunch available on Sundays. He did not plan to be open every Sunday. He stressed that he knew what he wanted the business to be, a jazz club. There would be no reason to remove the tables.

Commissioner Stockton questioned if food would be available one (1) hour prior to the Cafe's closing. Mr. Bass noted that the menu submitted was a sample. Similar items might be offered.

Commissioner Buchanan questioned logistics. Mr. Gaston stated that if approved a kitchen would be established which would not require a hood. Commissioner Buchanan stated that a full scale kitchen was not needed to open. Mr. Gaston responded affirmatively.

Linda Gaston, Applicant's spouse, addressed the Commission. The food would be prepared ahead of time and served cold. There would not be a hood and/or fryers in the kitchen. The food preparation area would be simple.

Commissioner Stockton questioned if the menu would attract a lunch crowd. Mrs. Gaston noted the community's conservative food tastes. The Cafe would offer quality items. She believed that the community would be willing to try an offering of different food. Between lunch and dinner, coffee, tea, desserts and snacks would be available.

Commissioner Stockton questioned condition 6. Mr. Gaston cited Friday/Saturday night events with live music. Food, a bottle of wine and a reserved table would be available for a set price. Commissioner Stockton noted that the goal of this type of event would be to bring people in for the full experience. The business was being called a cafe and food would be offered. He questioned if non alcoholic beverages would be available for sale. He also questioned if the Cafe would use a cover charge. He questioned if the Applicant had considered an R liquor license. He questioned the financial model.

Mr. Gaston described the Cafe as a place for adults. He wanted to discourage young persons. A T liquor license would mean that no one under twenty-one (21) years of age would be admitted. Mr. Bass added that there was unsurety about a commitment to fifty-one percent (51%) non alcohol sales. A full scale kitchen was not affordable at this time. A cafe was different than a tavern. It would not be a typical tavern.

Commissioner Stockton questioned the percentage of sales from alcohol. Mr. Gaston believed that initially the Cafe would sell more liquor than food. He restated that there would not be a full scale kitchen. He added that percentages were unknown at this time. He had done a limited study of the demographics.

Commissioner Buchanan expressed his concern that this application had been cast in with the idea of what a Downtown tavern was and conclusions were made. He believed that persons who would frequent the Cafe would do so for the jazz and its ambiance. He hoped Mr. Gaston would bring in quality performers. He believed that these customers would support the Cafe's food offerings. Mr. Gaston restated his intention to create a complete jazz package, (music, decor, menu, etc.). Commissioner Buchanan described the typical customer as a jazz enthusiast. He questioned anticipated liquor sales. Mr. Gaston cited cocktails and wine.

Commissioner Petersen recommended that condition 6 change the word specials to events and remove the second appearance of the word specials.

Commissioner Stockton addressed the proposed "E", Entertainment, and "Q", Qualified liquor license classifications. A "Q" liquor license would be between an R and T liquor license. It would allow for a higher percentage of alcohol sales.

Commissioner Stockton opened the hearing to public input.

Susan Heiser, Crossroads, 428 N. Main St., addressed the Commission. She served as a volunteer at Crossroads. She addressed her concerns regarding the expansion of liquor establishments into the 400 block of N. Main St. Crossroads had been at its locations for seventeen (17) years. She cited the addition of First Fridays to the Downtown. She expressed her hope for more retail establishments in the Downtown. It was exciting to be a part of the Downtown. She had hoped for a new business to replace Twin City Consignments. More people in the Downtown would be good for Crossroads. She added her preference for an R as oppose to a T liquor license. She added her concern regarding compatibility. She cited the Downtown Entertainment Task Force, (DETF), report which recommended no expansion of liquor licenses on this block. She restated her opposition to this application. She believed that people liked to eat and shop in the Downtown. A jazz club would be something different and interesting. She described the request for a T liquor license as a stunner.

Commissioner Stockton reviewed the proposed list of conditions. He requested Ms. Heiser's feedback to same. He added that there were restaurants that morphed into taverns. Ms. Heiser stated that Reality Bites, located at 414 N. Main St., held an R liquor license. She stated that there was a difference between a restaurant and a tavern. She was not comfortable with a T application. She expressed concern regarding food sales. Commissioner Stockton noted the essence of Ms. Heiser's objections. He questioned if there was an acceptable percentage. Ms. Heiser stated that the Cafe would be located next door. Alcohol would be served through out the day. She restated her belief that the establishment would be a restaurant.

Commissioner Buchanan expressed his concern regarding the reliance upon the liquor license classification, R versus T. The key issue should be what it is and what it is intended to be. He

acknowledged the risk that the marketplace would decide. He noted Mr. Gaston's intentions. The business needed to be viable financially. He did not believe that one could take comfort or be concerned about an R versus a T license classification. Ms. Heiser noted that she could not address the future.

Commissioner Stockton noted that a T liquor license can be more restrictive based upon conditions. He recommended that individuals be careful when comparing a T versus an R. Ms. Heiser stated her belief that the City verified the balance sheets for each R licensed establishment on an annual basis.

Commissioner Petersen questioned enforcement of conditions which have been placed upon a liquor license. He addressed his concerns.

Commissioner Tompkins assured those present that as a Liquor Commissioner that the Commission and citizens would watch the Jazz Cafe's operations. He encouraged those present to think about the possibilities. He believed that the Jazz Cafe would create a synergy. He hoped that those present would place their trust and belief in the Commission. He hoped the City would grant Mr. Gaston the opportunity.

Ms. Heiser stated that the issue was not about Mr. Gaston. It was about the business and its compatibility with Crossroads. She informed the Commission that four (4) other Crossroad volunteers had attended the hearing with her.

Commissioner Stockton thanked Ms. Heiser for attending and sharing her comments with the Commission. He readdressed Laugh Comedy Club located at 108 E. Market St. It held a T liquor license with conditions. There had been no complaints with this business. It was not a typical T. He noted the belief that there was an unofficial moratorium on Downtown taverns. A jazz cafe would be something different than a college bar. The Downtown needed to offer something different. He cited his willingness to support a jazz club. A key concern was how to arrive there and insure it happens. Mr. Gaston had explained what he planned to attempt in the Downtown.

Bruce Meeks, 1402 Wright, addressed the Commission. He cited his attendance at Council meetings. He expressed his opinion that the Commission had reached the right decision. There was a problem with the word taverns. He noted that the DETF's report and its recommendations had not been put into ordinance form and/or adopted as an official policy by the City. Individuals seemed to believe that the DETF has promised them something. There had been no formal action taken by the Council. A moratorium on Downtown taverns had not been adopted. He expressed support for recommending this application for a T liquor license without conditions. The Downtown needed a transition. He believed that this business had the ability to generate sales taxes. He noted recent Council discussions regarding leakage. This appeared to be a viable business. The City's alcoholic beverage ordinance was antiquated. This application should be expedited to the Council. The Council would be asked to consider an Enterprise Zone for the Downtown.

Commissioner Tompkins noted that the DETF's report called for a tavern moratorium in the 500 and 600 blocks of N. Main St. The Commission has stayed within this recommendation. It was a sad day when there was opposition to a jazz cafe.

Commissioner Stockton added that the Council appeared interested in a moratorium which was wider than the DETF report specified. The Commission had attempted to focus on taverns in the Downtown's south end.

Willie Brown, 3208 Dorset Ct., addressed the Commission. He was a life long resident of the City and a Crossroads customer. He noted the concerns raised regarding the word "tavern". This would be a jazz cafe. The clientele would be different. The Jazz Cafe would offer high end cocktails, appetizers and jazz. Customers would come to eat, drink and listen to the jazz music. He noted the Downtown's college bars and taverns. He believed that the City would continue to have college bars. He was familiar with Mr. Gaston. The Jazz Cafe would be locked down with conditions. Mr. Gaston was willing to accept same. He encouraged the Commission to move forward. The Jazz Cafe would attract the proper clientele. It would offer something different to the Downtown. It would be located in the 400 block of N. Main St. Mr. Gaston and his investors were willing to accept the conditions. The Jazz Cafe would not be an additional load upon the Police Department. He noted that Laugh Comedy Club located at 108 E. Market St. was working with conditions. He questioned if he would be willing to go forward with the Jazz Cafe with all of the conditions proposed. He added his support of this application.

Doug Lane, 213 Vale, addressed the Commission. He had known Mr. Gaston for twenty-two (22) years. He informed the Commission of his eleven (11) years of experience at Rosie's Pub located at 106 E. Front St. It took hard work to build a reputation. He believed that a jazz club could be successful in the Downtown. He noted the planned decor and pricing for the Jazz Cafe. He cited Mr. Gaston's dedication to the business plan. He encouraged the Commission to grant Mr. Gaston the opportunity. He stated his support for this application. He also was a Crossroads' customer.

Kevin Stearns, ADDRESS, addressed the Commission. He addressed Mr. Gaston's character and his relationship with Mr. Gaston. They had known each other since the second grade. He noted their mutual interest in sports and music. Mr. Gaston was well liked and respected throughout the community. Mr. Gaston was a musician, entertainer and small business owner. He noted their collaboration on a local talent search project. He had also been involved in a fundraising project at Heartland Community College for the Tsunami. They had worked together on a three (3) day wheelchair billiards tournament. He described Mr. Gaston as a catalyst. He had been dedicated to entertainment and the betterment of the community. The Jazz Cafe would not add to Downtown issues. It would create something unique. He encouraged the Commission to give Mr. Gaston the opportunity. He expressed his faith and confidence in Mr. Gaston. He was looking forward to the Jazz Cafe. It would offer a bit of sophistication to the Downtown and enhance other businesses. He thanked the Commission for the opportunity to address them.

Marlene Gregor, 107 W. Market, addressed the Commission. She added that she had addressed the Commission at the first hearing for the Jazz Cafe. She liked the concept of a jazz club. She

preferred a hot lunch. The license classification needed to be an R. She added that there needed to be other considerations. As a Downtown resident, she offered a different point of view. The location was wrong. A jazz club should not be located in the 400 block of N. Main St. She cited the 600 block of N. Main St. as an alternative. She encouraged the Commission to visit the property to view its exterior and interior. The building's first restaurant rehabilitation happened in 1981. She had served on a number of Downtown organizations. Her goal was a moratorium on Downtown taverns. She cited damage to her property's awnings and flowers over the weekends. She addressed the New Urbanism. Diversity was good and the Downtown residents were a strong component.

Trish Stiller, 305 W. Monroe, addressed the Commission. She introduced herself as the Downtown Business Association's, (DBA), Executive Director. She made a brief statement. She thanked the Commission for the time to address them. She expressed her concern for the Downtown's health. A jazz club would be a great addition to the Downtown. She recommended that the applicant consider an R component. She cited support for the comments made by Ms. Heiser, (Crossroads). She added her concern regarding spillover. She believed those in attendance at the hearing were more educated about the application. An earlier closing hour had alleviated some of her concerns. She questioned who would watch and enforce these conditions. The Downtown was for all. She wanted to protect the integrity of the Downtown and move forward. She questioned the urgency and believed that a better fit could be found. The bottom line was that the Commission had been presented with a proposal. She noted the length of this hearing.

Commissioner Stockton noted that Ms. Stiller believed that the best fit for the 400 block of N. Main St. would be a restaurant. Ms. Stiller noted the emphasis placed on an R versus a T liquor license. An R liquor license was more palatable.

Commissioner Stockton stated that there was another group looking at the area for a restaurant. Ms. Stiller added the increased demand for residential space. She cited quality of life. The Downtown offered dining, shopping and entertainment. Commissioner Stockton added that conditions were placed upon liquor licenses to address personal concerns raised by Downtown residents. Ms. Stiller stated that her interest in the Downtown went beyond her employment. The Downtown was her neighborhood. She walked to work. Commissioner Stockton questioned if Ms. Stiller had been speaking for herself or on behalf of the DBA. She responded that her comments were personal statements.

Commissioner Tompkins expressed his opinion that Mr. Gaston would be true to his word. The Jazz Cafe would enhance the Downtown. Ms. Stiller cited past experience. If a Downtown liquor license holder found the business to not be financially viable, then the business plan was changed. Commissioner Tompkins hoped that Ms. Stiller would believe that this would be a jazz club which would benefit the Downtown. Ms. Stiller noted that as the DBA's Executive Director there were many development opportunities. She noted the Downtown's south end and the former Montgomery Wards building. She described Mr. Gaston's proposal as admirable. As the DBA's Executive Director, she must listen to every voice.

Commissioner Buchanan stated that Ms. Stiller's comments were interesting and credible. He noted his experience on the Commission. Some licensed establishment's business plans did not work out. Many of these businesses did not last. He also noted that there were R licensed establishments that become a T. He cited late night as an example of when this was likely to occur. Ms. Stiller noted that her concerns regarding business plans addressed T licensed establishments.

Commissioner Stockton noted that there were no comments from the Police Department.

Commissioner Buchanan cited the Commission's deliberation on this application. He noted the Commission's function and role. He believed that a good job had been done on this application.

Commissioner Stockton hoped that the Commission would pull together a recommendation that might be successful before the Council. He noted that the Council supported the Laugh Comedy Club located at 108 E. Market St. He believed that this would be a true jazz club and the applicant had provided the Commission with a reasonable degree of certainty. The Commission had spent time on the details. The Commission had a number of alternatives: 1.) reject this location for a liquor license; 2.) grant a T liquor license with suitable conditions; 3.) grant an R liquor license with earlier closing hours; and 4.) lay this item over until the "Q", Qualified, license classification is available. He questioned if there was a win-win position for the City and the Applicant. He also questioned the Applicant's willingness to wait for a new liquor license classification. Finally, the Commission could approve a T liquor license with conditions. He added that the Commission could present a preferred recommendation to the Council with alternatives. He cited the Council's 4 to 5 vote on July 9, 2012. He hoped that conditions with alternatives might give this application the chance to be supported by the Council.

Commissioner Tompkins cited Eleven located at 105 E. Front St. This establishment had exceeded the Commission and Council's expectations. The Commission would watch the Jazz Cafe. He did not want the City micro managing the Applicant. Commissioner Stockton recalled Sidecar's application which would have been located at 907 E. Oakland Ave.

Commissioner Petersen expressed his willingness to support a motion which included conditions. The Commission had heard from the Applicant. He believed that Mr. Gaston was sincere. The Commission had heard from those in support of and in opposition to this application. He questioned condition enforcement. The Commission would be placing faith in the business plan.

Commissioner Tompkins noted that enforcement would be done by the Commission, Police Department, Corporation Counsel Office, and the Mayor.

Commissioner Petersen questioned the Applicant's willingness to accept an "R" license classification. He also questioned if the Council would be more willing to create same.

Commissioner Stockton reviewed the revised conditions. He added that the Commission could 1.) present the Council with alternatives; 2.) lay this item over for the propose "Q", Qualified, license classification; 3.) change the classification from a T to an R for a certain period of time. The Jazz Cafe may need to have cover charges.

Commissioner Buchanan believed that it would take a year for development of the “Q”, Qualified, license classification. He expressed his support for a “T” liquor license with conditions.

Motion by Commissioner Petersen, seconded by Commissioner Buchanan to call for the question.

Ayes: Commissioner Stockton, Buchanan, Petersen and Tompkins.

Motion carried.

Motion by Commissioner Tompkins, seconded by Commissioner Buchanan that the application of Setinthebar, Inc., d/b/a Gat’s Jazz Cafe, located at 424 N. Main St., requesting a TAS liquor license which allows the sale of all types of alcohol by the glass for consumption on the premises seven (7) days a week be approved with the following conditions: 1.) the establishment will be run as a Jazz Cafe; not a traditional tavern - the Commission reserves the right to modify this condition to insure compliance; 2.) the business will be committed to the promotion of live jazz music and commits to stay with the jazz music theme, as opposed to other forms of music; 3.) the hours of operation of the business will be Sunday through Thursday from 11:00 a.m. until 10:00 p.m. and Friday and Saturday from 11:00 a.m. until 12:00 a.m.; 4.) the tables and chairs will not be removed from the premise so as to maintain a close, intimate Jazz Cafe atmosphere at all times; 5.) food, as shown on the sample menu or substantially similar and comprehensive menu will be served up until one hour prior to closing with continued work towards establishing a full kitchen with a vaster meal type menu; 6.) marketing house events which for a set price, reserves a table for entertainment viewing and provides certain food and drink for one price; and 7.) with all of these conditions, there was confidence that a successful Jazz Cafe will be established at 424 N. Main St. which will add to the Downtown’s quality of life and the area as a whole without adding to the issues cited by the DETF.

Motion carried, (viva voce).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph on August 6, 2012 in accordance with City Code. In accordance with City Code, approximately ninety-one (91) courtesy copies of the Public Notice were mailed on August 7, 2012. In addition, the Agenda for the August 14, 2012 Meeting of the Liquor Commission was placed on the City’s web site. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT:

Respectfully,

Stephen F. Stockton
Chairman of Liquor Commission

Motion: _____

Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Anderson				Alderman Purcell			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			