Village Board

Village President
Frank DeSimone

Trustees
Rosa Carmona
Ann Franz
Agnieszka "Annie" Jaworska
McLane Lomax
Nicholas Panicola Jr.
Armando Perez

Village Clerk
Nancy Quinn

Village Manager
Evan K. Summers

BENSENVILLE
GATEWAY TO OPPORTUNITY

Village of Bensenville, Illinois
VILLAGE BOARD
SPECIAL BOARD OF TRUSTEES MEETING AGENDA
7:05 PM April 17, 2018
Or Immediately Following the Committee of the Whole Meeting

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENT (3 minutes per person with a 30 minute meeting limitation)

V. APPROVAL OF MINUTES

VI. WARRANT

VII. **CONSENT AGENDA – CONSIDERATION OF AN "OMNIBUS VOTE"**

VIII. **REPORTS OF STANDING COMMITTEES**

A. Community and Economic Development Committee – No Report

B. Infrastructure and Environment Committee – No Report

C. Administration, Finance and Legislation Committee

1. *Resolution of the Village of Bensenville, DuPage and Cook Counties, Illinois Approving a Custody Account Control Agreement between Northern Trust Company, Old Second National Bank and the Village of Bensenville*

D. Public Safety Committee – No Report

E. Recreation and Community Building Committee – No Report

F. Technology Committee – No Report

IX. **REPORTS OF VILLAGE OFFICERS:**

A. PRESIDENT'S REMARKS:

B. VILLAGE MANAGER'S REPORT:

C. VILLAGE ATTORNEY'S REPORT:

X. UNFINISHED BUSINESS

XI. NEW BUSINESS

XII. EXECUTIVE SESSION

A. Review of Executive Session Minutes [5 ILCS 120/2 (C) (21)]
B. Personnel [5 ILCS 120/2 (C) (1)]
C. Collective Bargaining [5 ILCS 120/2 (C) (2)]
D. Property Acquisition [5 ILCS 120/2 (C) (5)]
E. Litigation [5 ILCS 120/2 (C) (11)]

XIII. MATTERS REFERRED FROM EXECUTIVE SESSION

XIV. ADJOURNMENT

TYPE:	SUBMITTED BY:	DEPARTMENT:	DATE:
Resolution	Amit Thakkar	Finance	April 17, 2018

DESCRIPTION:

Resolution of the Village of Bensenville, DuPage and Cook Counties, Illinois Approving a Custody Account Control Agreement between Northern Trust Company, Old Second National Bank and the Village of Bensenville

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

x	*Financially Sound Village*		*Enrich the lives of Residents*
x	*Quality Customer Oriented Services*		*Major Business/Corporate Center*
	Safe and Beautiful Village		*Vibrant Major Corridors*

COMMITTEE ACTION:

Due to the time sensitivity of this item, it is being presented at a Special Board Meeting this evening.

DATE:

N/A

BACKGROUND:

The Village has a banking agreement with ABC Bank which is being bought by Old Second Bank. This agreement formally puts the Custodial Agreement with the Northern Trust Company (Intermediary) and the Old Second National Bank (Debtor) to secure and collateralize the Village of Bensenville (Secured Party). The Village normally maintains $2,000,000+ at any given time with ABC Bank for day to day operations. Any amount up to $250,000 is covered by the FDIC insurance while any amount above $250,000 has to be collateralized. This agreement puts the mechanism of collateralization in place between the Old Second Bank and the Village of Bensenville.

KEY ISSUES:

a) The Village does banking with the ABC Bank.
b) The Village maintains $2,000,000 or more at any given time with ABC Bank.
c) The FDIC covers up to $250,000 and any amount above the same has to be collateralized.
d) The ABC bank has been bought out by Old Second bank and we need to have a collateral and custodian agreement with ABC Bank during the transition period.

ALTERNATIVES:

Discretion of the Board.

RECOMMENDATION:

Staff recommends the approval of the Resolution of the Village of Bensenville, DuPage and Cook Counties, Illinois Approving a Custody Account Control Agreement between Northern Trust Company, Old Second National Bank and the Village of Bensenville.

BUDGET IMPACT:

None.

ACTION REQUIRED:

Approval of the Resolution of the Village of Bensenville, DuPage and Cook Counties, Illinois Approving a Custody Account Control Agreement between Northern Trust Company, Old Second National Bank and the Village of Bensenville.

ATTACHMENTS:

Description	Upload Date	Type
Agreement	4/11/2018	Backup Material
Resolution	4/12/2018	Cover Memo

CUSTODY ACCOUNT CONTROL AGREEMENT

This Agreement ("this Agreement"), dated as of March 16, 2018, is by and among:

The Northern Trust Company, as intermediary ("Intermediary"); Old Second National Bank as debtor ("Debtor"); and Village of Bensenville as secured party ("Secured Party").

PREAMBLE:

For valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties agree:

1. **PLEDGE ACCOUNT.** Intermediary maintains securities custody account number 17-52668 for Debtor (together with any successor or replacement account(s), individually and collectively, the "Pledge Account"). The term "Collateral" means the Pledge Account and any securities, security entitlements, financial assets and other assets now or hereafter held in the Pledge Account, but in each case not including interest and dividends even if such amounts are held inside the Pledge Account. The Pledge Account assets may contain only assets which in Intermediary's opinion are eligible under applicable rules of the Depository Trust Company, Federal Reserve Banks and any other parties holding any Collateral for Intermediary itself.

2. **SECURITY INTEREST.** Debtor hereby grants to Secured Party a continuing security interest in the Collateral as security for the payment and performance of deposit or other obligations of Debtor to Secured Party, now existing or hereafter arising, including future advances (the "Obligations"). If Debtor has or later executes a separate pledge or like agreement granting a security interest in the Collateral to Secured Party with respect to the Obligations, such separate agreement shall govern as between Debtor and Secured Party only; this Agreement shall govern as to the rights and duties of Intermediary as to the Collateral and shall prevail over any such separate agreement to the extent of any inconsistency. Intermediary is not responsible for, and makes no representation or warranty with respect to, the validity, attachment, perfection, priority, or enforceability of Secured Party's security interest in the Collateral.

3. **ADDITIONS, RELEASES AND REPLACEMENTS.**

(a) **Additions:** By Debtor's execution of a DCS Custody/Safekeeping Pledge Instruction substantially in the form of Exhibit A, or such other form Intermediary may substitute therefor upon notice to the other parties or may accept from time to time in its sole discretion (each, an "Instruction"), directing transfer of a security described therein from another account of Debtor not subject to this Agreement (the "Main Account") to the Pledge Account, Debtor shall be deemed to have agreed and confirmed that such security is Collateral hereunder and to have granted Secured Party a security interest in such security pursuant hereto.

(b) **Releases:** By Debtor's execution of an Instruction directing transfer of a security described therein from the Pledge Account to the Main Account, Debtor shall be deemed to have requested that such security be released as Collateral. Any such release referenced in the just-previous sentence will take effect at such time as Intermediary has received written notice in form satisfactory to Intermediary from Secured Party agreeing to such release.

(c) **Substitutions:** From time to time Debtor may deliver to Intermediary both an Instruction agreeing and confirming that a security is pledged and an Instruction requesting a release of another security as Collateral. If, as determined by Intermediary in its sole discretion, the then newly-pledged security has a carrying value at least equal to the carrying value of the security to be released (substituted

for), then upon receipt of both such Instructions the security requested to be released shall be deemed released and the security requested to be pledged shall be deemed pledged hereunder.

(d) **No Other Withdrawals**: Except as provided herein, Debtor may not withdraw any Collateral.

4. **DEFAULT.** Intermediary agrees to comply with all entitlement orders originated by Secured Party as to the Collateral without further consent by Debtor. Without limiting the foregoing, Intermediary will at Secured Party's expense sell, transfer or otherwise dispose of the Collateral promptly after receipt of appropriate written direction to do so from Secured Party (each, a "Sale Order"), and will remit any and all proceeds of any such transaction as Secured Party directs in writing.

5. **INTEREST, DIVIDENDS, AND VOTING.** Debtor shall receive and may retain and transfer interest and dividends on the Collateral; such amounts are not Collateral. Unless Debtor directs otherwise all such interest and dividends shall be automatically transferred out of the Pledge Account to the Main Account. Debtor shall continue to have voting rights with respect to the Collateral.

6. **MISCELLANEOUS.** The account agreement between Debtor and Intermediary covering the Main Account (including any disclosures, exhibits and amendments from time to time) shall be deemed to apply to the Pledge Account. This Agreement shall prevail to the extent of any conflict or inconsistency over such account agreement between Intermediary and Debtor pertaining to the Pledge Account. All parties agree to the terms and conditions set forth on Exhibit B attached hereto and incorporated herein by reference.

7. **ONLINE ACCESS.** Intermediary shall provide Secured Party with direct access to Pledge Account information through the Intermediary's "Northern Trust Passport" system, or any system substituted therefor by Intermediary (collectively, the "Passport System"). Secured Party acknowledges receipt of a copy of the current Northern Trust Passport Transaction Processing Terms and Conditions (the "Passport Terms"), and agrees to be bound by and abide by the terms thereof as fully as Debtor; however, Secured Party will not be able to effect any transactions, and will have information-only access.

(Signature Page Follows)

Dated this 16th day of March, 2018.

DEBTOR:

Old Second National Bank

By: Stan C. Faries

Print Name Stan C. Faries

Title Senior Vice President & Treasurer

Notice address & information:

37 S. River St.
Aurora, IL 60506

Fax No. 630-966-2421

SECURED PARTY:

Village of Bensenville

By: _____

Print Name Evan K Summers

Title Village Manager

Notice address & information:

12 S Center Street
Bensenville, IL 60106

Fax No. 630-350-3434

INTERMEDIARY:

THE NORTHERN TRUST COMPANY

By: _____

Print Name Daniel J. Pedersen

Title Vice President

Attention: DCS Custody/Safekeeping Services
50 South LaSalle
Chicago, IL 60603

EXHIBIT A

Northern Trust DCS Custody/Safekeeping Pledge Instruction

Date: _____

Account Name: _____

Transfer from Custody/Safekeeping Main Account: 17-_____

Transfer to Custody/Safekeeping Pledge Account: 17-_____

Or

Transfer from Custody/Safekeeping Pledge Account: 17-_____

Transfer to Custody/Safekeeping Main Account: 17-_____

CUSIP: _____ **Par/Original Face:** _____

Security Description: _____

Rate: _____ **Maturity Date:** _____

Name: _____

Signature: _____

Email Address: _____

Phone Number: _____ **FAX Number:** _____

Fax completed instruction to 312-630-8107

EXHIBIT B

MISCELLANEOUS TERMS INCORPORATED BY REFERENCE INTO CUSTODY ACCOUNT CONTROL AGREEMENT

8. **USE OF PASSPORT SYSTEM.** Secured Party acknowledges that data supplied via the Passport System is supplied as a convenience to Secured Party and that any information provided by Intermediary via the Passport System is and will be subject not only to the disclaimers set forth elsewhere herein but also to the Passport Terms, any amendments and replacements thereto or thereof, and any other disclosures and/or agreements previously, now or hereafter furnished by Intermediary to Debtor, or agreed to with Intermediary by Debtor, without notice to Secured Party, as fully as if Secured Party itself had been furnished such disclosures or entered into such agreements. In particular, Secured Party acknowledges that Passport System data is unaudited, subject to change and may not be available every business day.

9. **OTHER INFORMATION.** Intermediary will provide Secured Party such other information concerning the Collateral as Secured Party may request, at Secured Party's expense. Intermediary shall not be required to produce or mail statements on the Pledge Account.

10. **TERMS.** Terms defined in the Uniform Commercial Code of the State of Illinois, as amended from time to time (the "UCC"), shall have the same meanings in this Agreement as in the UCC, unless such terms are otherwise defined herein. However, no amendment to the UCC adopted after the date hereof shall limit any rights of Intermediary or Secured Party hereunder. This Agreement shall be governed by the internal law of the State of Illinois. As used in this Agreement, unless otherwise specified: the term "person" includes both natural persons and organizations; the term "including" means "including without limitation;" the term "days" means "calendar days"; and terms such as "herein," "hereof" and words of similar import refer to this Agreement as a whole. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the others. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to sections or provisions without reference to the document in which they are contained are references to this Agreement. Intermediary agrees to treat all property credited to the Pledge Account, and all other rights of Debtor against Intermediary arising out of the Pledge Account, including any free credit balances, as "financial assets" under the UCC.

11. **NO DIRECT HOLDINGS**. The Pledge Account may not hold securities registered in the name of, payable to the order of, or specially indorsed to Debtor.

12. **SUBORDINATION.** Intermediary subordinates in favor of Secured Party any security interest, lien or right of setoff Intermediary may have, now or in the future, against the Collateral, except that Intermediary will retain its prior lien on the Collateral to secure payment for the Collateral.

13. **INTERMEDIARY RESPONSIBILITY**.

(a) Intermediary will not be liable to Debtor for complying with a Sale Order, entitlement order or other direction originated by Secured Party, even if Debtor notifies Intermediary that Secured Party is not legally entitled to issue the Sale Order, entitlement order, or other direction. Intermediary need not investigate whether Secured Party is entitled to give a Sale Order, entitlement order, or other direction.

(b) Intermediary shall not be: (i) deemed to have knowledge of an event that would entitle Secured Party to exercise default remedies hereunder until it has received a Sale Order from Secured Party; (ii) responsible for the use that Debtor or Secured Party makes of any withdrawn assets or funds; or (iii) required to monitor the value of or provide valuations of the Collateral. Intermediary shall not be subject to nor obliged to recognize any other agreement governing the rights or duties of the other parties hereto even though reference thereto may be made in this Agreement.

(c) Intermediary may disregard any and all notices or instructions received from any source except only such notices or instructions as are specifically provided for in this Agreement. If Intermediary believes in good faith that any property held pursuant to this Agreement is subject to any order, judgment, decree, injunction, notice of levy or other request for transfer of funds from a tax authority, or other judicial or administrative process (individually and collectively, "Government Order(s)"), Intermediary may comply with any such Government Order without liability to any person, even though: (i) such Government Order may later be cancelled, released, reversed, modified, vacated or the like; and (ii) Intermediary has received contrary directions from the other parties hereto.

(d) Intermediary shall not be responsible for any losses incurred in, or tax or other consequences of, liquidating securities or other property to satisfy a Sale Order, or in taking any other action permitted to Intermediary hereunder.

(e) Intermediary shall be fully protected in relying without investigation upon any notice, demand, certificate or other document it in good faith believes to be genuine, as to the truth and accuracy of the statements made therein, the identity and authority of the persons executing the same and the validity of any signature thereon. Intermediary may consult inside or outside counsel of its own choosing regarding its duties in connection herewith, and reliance on the advice of such counsel shall fully protect Intermediary.

(f) Intermediary shall not be liable for any act taken or omitted by it under this Agreement in good faith and in the exercise of its own best judgment. Intermediary shall not be: (i) liable to any person for punitive, special, indirect or consequential damages of any kind, even if advised of the possibility thereof; or (ii) responsible for any delay in performance, or non-performance, of any obligation hereunder to the extent that the same is due to circumstances beyond its control or constituting force majeure at law or in equity, including equipment or communication malfunction.

14. **ENTIRE AGREEMENT.** This Agreement is the entire agreement, and supersedes any prior agreements and contemporaneous oral agreements, of the parties concerning its subject matter. No amendment hereto or waiver of a right hereunder will be binding unless it is in writing and signed by the party to be charged.

15. **INDEMNITY. DEBTOR AGREES TO INDEMNIFY INTERMEDIARY, ITS OFFICERS, DIRECTORS EMPLOYEES, AND AGENTS AGAINST ALL CLAIMS, LOSSES, LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS), ARISING OUT OF THIS AGREEMENT, EXCEPT TO THE EXTENT SUCH ARE CAUSED BY INTERMEDIARY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT. SECURED PARTY AGREES TO INDEMNIFY INTERMEDIARY, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AGAINST ALL CLAIMS, LOSSES, LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) ARISING OUT OF ITS ACTIONS PURSUANT TO THIS AGREEMENT, EXCEPT TO THE EXTENT SUCH ARE CAUSED BY INTERMEDIARY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT.**

16. **MISCELLANEOUS**. To the extent a provision hereof is unenforceable, this Agreement will be construed as if the unenforceable provision were omitted. This Agreement shall bind and inure to the benefit of the parties and their respective heirs, trustees (including successor and replacement trustees), executors, personal representatives, successors and assigns, except that neither Debtor nor Intermediary may transfer or assign any rights or obligations hereunder without the prior written consent of Secured Party. This Agreement may be executed in two or more counterparts, and by each party on separate counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

17. WAIVER OF JURY TRIAL RIGHTS; DISPUTE RESOLUTION.

(a) DEBTOR, SECURED PARTY AND INTERMEDIARY HEREBY IRREVOCABLY AGREE THAT ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN OR JURISDICTION OVER COOK COUNTY, ILLINOIS. THE PARTIES HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN OR HAVING JURISDICTION OVER SUCH COUNTY AND STATE, AND HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT THEY OR ANY OF THEM MAY HAVE TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG DEBTOR, SECURED PARTY AND/OR INTERMEDIARY ARISING OUT OF THIS AGREEMENT, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ACCORDANCE WITH THIS SECTION, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(b) Notwithstanding (a) of this Section, the dispute resolution provisions of the account agreement (including any providing for arbitration) governing the Main Account and (as provided herein) also the Pledge Account shall apply as to any disputes between Debtor and Intermediary only which pertain to the Main Account and/or the Pledge Account.

(c) NO PARTY HERETO MAY SEEK OR RECOVER PUNITIVE DAMAGES IN ANY PROCEEDING BROUGHT UNDER OR IN CONNECTION WITH THIS AGREEMENT.

18. **NOTICES.** For purposes of this Section "Business Day" means a day on which Intermediary is open for the usual conduct of banking business at its main office in Chicago, Illinois. Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing addressed to the respective party as set forth below, may be personally served, faxed, sent by overnight courier service, or mailed by certified or registered mail, return receipt requested, and shall be deemed to have been given: (a) if delivered in person on a Business Day, when delivered and receipt is acknowledged therefor in writing; (b) if delivered by fax, on the date of transmission if transmitted on a Business Day before 1:00 P.M. (Chicago, Illinois time); (c) if delivered by reputable overnight courier, the Business Day on which such delivery is made by such courier; or (d) if sent by certified or registered mail, five Business Days after being deposited in the mail. Notices shall be addressed or sent as set forth in the main portion of this Agreement. Any party hereto may change any of the above information by notice given in accord with this section.

19. **TERMINATION**. Secured Party may terminate this Agreement by notice to Intermediary and Debtor. Debtor may terminate this Agreement only with the express prior written consent of Secured Party in form satisfactory to Intermediary. Intermediary may terminate this Agreement and close the

Account on at least thirty days' prior notice to Secured Party and Debtor, whereupon Intermediary shall transfer all Collateral to Secured Party or as Secured Party directs in writing. The Sections hereof entitled "INTERMEDIARY RESPONSIBILITY" and "INDEMNITY" will survive any termination of this Agreement.

20. **AUTHORIZATION.** Secured Party and Debtor shall each provide Intermediary with resolutions, incumbency certificates and other documents, as and in such form as Intermediary may require from time to time, to evidence the authority of persons to act on their respective behalves hereunder. Intermediary may rely without inquiry on any such items until it has received replacements, revocations or modifications thereof and has had a reasonable opportunity to act thereon. Each party represents and warrants to the other parties that the execution, delivery and performance of this Agreement by the officer of such party who signs this Agreement have been duly authorized, and that this Agreement is an obligation of such party enforceable against such party in accord with its terms, except as such enforceability may be limited by bankruptcy, insolvency and other laws affecting creditors' rights generally, and by equitable principles, whether applied at law or in equity.

[END OF EXHIBIT B TO CUSTODY ACCOUNT CONTROL AGREEMENT]

RESOLUTION NO_____

Resolution Approving a Custody Account Control Agreement between Northern Trust Company, Old Second National Bank and the Village of Bensenville Village of Bensenville, DuPage and Cook Counties, Illinois

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

WHEREAS, the VILLAGE is empowered to make all agreements, contracts, and engagements and to undertake other acts as necessary in the exercise of its statutory powers; and

WHEREAS, it is sometimes necessary, in furtherance of its statutory functions, for the VILLAGE to contract for various services required by the VILLAGE; and

WHEREAS, ABC Bank currently provides banking services for the VILLAGE and has recently been acquired by the Old Second National Bank; and

WHEREAS, during a transition period to ensure proper functioning and security of the VILLAGE'S financial assets, a Custody Account Control Agreement is necessary; and

WHEREAS, for this purpose, the VILLAGE has determined that the agreement between The Northern Trust Company as intermediary, Old Second National Bank as debtor and the Village of Bensenville as the secured party will enter into a Custody Account Control Agreement which can be executed by the Village Manager which is attached hereto and incorporated herein by reference as Exhibit "A."

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

SECTION ONE: The Village Manager is hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Village Clerk is hereby authorized to attest thereto, the Agreement attached hereto and incorporated herein by reference as Exhibit "A."

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

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois this ____ day of _____ 2018.

APPROVED

_____
Frank DeSimone, Village President

ATTEST:

_____
Nancy Quinn, Village Clerk

Ayes: _____

Nays: _____

Absent: _____