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DATE: May 16, 2012

TO: Stewart Diamond

FAX NO.: (312) 782-0943

FROM: Ken Florey

MATTER: College of DuPage v. Village of Glen Ellyn

MESSAGE: Please see the attached with regard to the above-referenced matter.

THIS FACSIMILE TRANSMISSION IS INTENDED AND RESTRICTED FOR USE BY ABOVE ADDRESSEE ONLY. IT MAY CONTAIN CONFIDENTIAL AND PRIVILEGED INFORMATION, EXEMPT FROM DISCLOSURE UNDER FEDERAL OR STATE LAW. IN THE EVENT SOME OTHER PERSON OR ENTITY RECEIVES THIS FACSIMILE, SAID RECIPIENT IS HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR DUPLICATION OF THE FACSIMILE TRANSMISSION OR ITS CONTENTS IS PROHIBITED. IF YOU SHOULD RECEIVE THIS FACSIMILE TRANSMISSION IN ERROR, PLEASE CALL US IMMEDIATELY (COLLECT), AND RETURN THE ENTIRE FACSIMILE TRANSMISSION BY U.S. MAIL. THANK YOU.

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

COLLEGE OF DUPAGE,

Plaintiff,

v.

VILLAGE OF GLEN ELLYN,  
MARK PFEFFERMAN, in his official  
capacity as President of the Village of  
Glen Ellyn, and STEVE JONES, in his  
official capacity as Village Manager  
of the Village of Glen Ellyn,

Defendants.

Case No.: 2010 CH 003510



RE-NOTICE OF MOTION

TO: Mr. Stewart Diamond, Esq.  
Ancel, Glink, Diamond, Bush,  
DiCianni & Krafthefer, PC  
140 S. Dearborn St. #600  
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(312) 782-0943 (Fax)

PLEASE TAKE NOTICE that on May 21, 2012, at 9:00 a.m., or as soon thereafter as  
counsel may be heard, counsel for the Plaintiff shall appear before the Honorable Hollis Webster or  
any judge sitting in his stead, in Room 2008 of the Circuit Court of DuPage County Courthouse, 505  
North County Farm Road, Wheaton, Illinois, and present the **MOTION TO ENFORCE  
MEDIATION AGREEMENT**, served herewith.

COLLEGE OF DUPAGE

By: \_\_\_\_\_  
One of the Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 (1999). I certify that the statements set forth herein are true and correct. The undersigned, on oath, states that he/she served this Notice and pleading(s) on the attorney(s) by U.S. Mail and facsimile delivery on May 16, 2012.



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Kenneth M. Florey

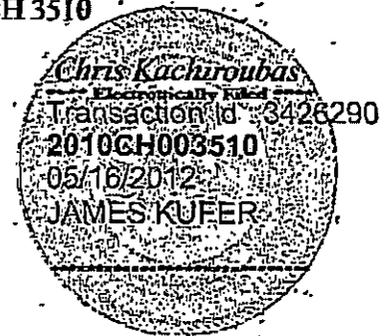
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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
STATE OF ILLINOIS, COUNTY OF DUPAGE

COLLEGE OF DUPAGE )  
 )  
 Plaintiff-Counter Defendant, )  
 )  
 v. )  
 )  
 VILLAGE OF GLEN ELLYN, MARK )  
 PFEFFERMAN, in his official capacity as )  
 President of the Village of Glen Ellyn, and )  
 STEVE JONES, in his official capacity as )  
 Former Village Manager of the Village of )  
 Glen Ellyn, )  
 )  
 Defendants-Counter Plaintiffs, )

Case No. 10 CH 3510



MOTION TO ENFORCE MEDIATION AGREEMENT

NOW COMES Plaintiff - Counter Defendant, COLLEGE OF DUPAGE ("College"), by and through its attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd. and Fuchs & Roselli, Ltd., and for its *MOTION TO ENFORCE THE MEDIATION AGREEMENT*, states as follows:

1. The College and Village of Glen Ellyn ("Village") had been vigorously battling a series of issues over jurisdiction, building permits, signage, water detention, lighting, parking, and easements, to name a few, for many years and at a significant expenditures of legal fees by both sides. With the adept assistance and wisdom of this Court, the College and Village reached a mediated settlement by which the Village released the College from all prior disputes, claims and controversies and agreed to transfer regulatory control over these issues to the County of DuPage. A copy of the Mediation Agreement is attached hereto and incorporated herein as Exhibit 1. The County, *via* an intergovernmental agreement ("IGA") between the County, College and Village, graciously agreed to accept this jurisdiction provided that the College

engaged in the County's zoning process. A copy of the IGA is attached hereto and incorporated herein as Exhibit 2. The College readily agreed and is currently proceeding through the County's zoning approval process. Finally, intergovernmental peace appeared to be in sight.

2. Unfortunately, peace with the Village is proving to be elusive as during the College's zoning application hearings before the County, Village officials have inserted themselves as overzealous advocates opposing the College by writing letters, organizing opposition, making phone calls and testifying against the College's zoning application at two public hearings. A copy of the Village's letters to Paul Hoss in the DuPage County Department of Economic Development and Planning are attached as Exhibit 3. A copy of the transcript of the Village's testimony before the County Zoning Board of Appeals is attached hereto as Exhibit 4. The Village complains of the same issues which it did during the litigation such as building permits, signage, water detention, lighting, parking, and easements despite having released the College from all such claims and effecting a complete and total transfer of jurisdiction over all building and zoning matters to the County.

3. The IGA and Mediation Agreement provide that the County is to assume administrative and regulatory control over the College's campus as if the College campus was unincorporated property in DuPage County and that the Village is to relinquish administrative and regulatory control.

4. It has only been a few months since the Mediation Agreement was signed, but instead of stepping away from confrontation and settling into a post-Mediation Agreement/IGA role that allows the County and the College to work cooperatively in their own land use administrative processes, the Village has been using its administrative and departmental resources in an effort re-litigate the same issues that were so carefully resolved in the mediation.

Such conduct places the parties' new and fragile settlement agreements in jeopardy in a way that cannot and should not be countenanced inasmuch as such tactics are active steps being taken by the Village to directly interfere in the County's proceedings and to foment public opposition to the College's requests to the County. **The next County ZBA hearing is scheduled for Monday evening May 21<sup>st</sup>.**

5. For example, in the letter dated May 10, 2012, the same day as the County Zoning Board of Appeals meeting concerning the College's zoning requests, the Village's Planning and Development Director, Staci Hulseberg, submitted a seven page single spaced letter to Paul Hoss at the DuPage County Department of Economic Development and Planning, requesting that the County "consider" certain matters of concern to the Village. In reality, the letter was a request that the County take action to deny and otherwise circumscribe several College zoning requests based on matters the Village deemed a concern. For example, the Village did "strongly encourage the County to hold off on acting on any [parking] requests" until an updated parking study is submitted by the College. Further the Village did "encourage the County to only grant minimal allowances [for signs]."

6. Many of the "concerns" expressed by the Village involve College buildings or improvements existing prior to the date of the Mediation Agreement and are therefore matters that are inappropriate for the Village to continue to argue about because of the release and transfer of regulatory control to the County as provided in the Mediation Agreement.

7. The May 10, 2012 letter of the Village contains a litany of other claimed zoning and land use issues that the Village frequently raised when it attempted to assert jurisdictional control over the College, but which issues are now no longer appropriate for the Village to raise because of the jurisdictional transfer that occurred as a result of the Mediation Agreement.

8. Further, in a letter dated May 2, 2012, sent one day before a College preliminary plat presentation to the DuPage County Plat Committee, Village Planner Michele Stegall forwarded to Paul Hoss at the DuPage County Department of Economic Development and Planning, a list of "concerns" about the College's plat and then asked for action on the plat to be postponed to allow the Village time for additional review. Representatives of the Village subsequently appeared at the May 3, 2012 preliminary plat hearing before the DuPage County Plat Committee and raised these and other "concerns."

9. The "concerns" listed and raised by the Village are matters that relate to Village jurisdiction and regulation and are no longer applicable or valid because of the jurisdictional transfer that occurred as a result of the Mediation Agreement and IGA. Like its correspondence of May 10, 2012, and appearance before the Zoning Board of Appeals, the Village's correspondence and subsequent appearance at the preliminary plat hearing are nothing more than attempts to co-opt County processes so that the Village can assert its regulatory will through County administrative mechanisms. This is a clear cut violation of the Mediation Agreement. The Village's request for a postponement so that it can review the plat clearly demonstrates that the Village has not relinquished its quest to act as the regulator, even though it plainly transferred this role to the County in the Mediation Agreement. For all practical purposes, the Village is acting as the regulator in violation of the Mediation Agreement.

10. Further, while the Village is certainly entitled to communicate with its residents, several recent press releases by the Village raise further questions about Village's motives in doing so. Press releases of May 1 and 2, 2012, seem designed to incite concern among citizens by inaccurately stating that the County is required to "notify the Village of all future plans on the campus," by not giving more detail about the College's plans, and by overemphasizing that the

Village is "able to comment and voice concerns at the public meetings." Copies of the press releases are attached hereto as Exhibit 5.

11. The purpose of the Mediation Agreement was for the Village to step away as regulator and for third party DuPage County to step in at the invitation of the College and the Village. The Village now wants to regulate by co-opting the County's administrative processes. These actions clearly violate the spirit if not letter of the Mediation Agreement and should not be allowed.

WHEREFORE the College of DuPage respectfully requests that this Honorable Court enforce the Mediation Agreement so that the purposes of the parties' hard fought resolution are not further frustrated or jeopardized by the Village's current course of conduct, and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

COLLEGE OF DUPAGE



By: \_\_\_\_\_  
One of Its Attorneys

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