

RESOLUTION NUMBER 28-05

A RESOLUTION AUTHORIZING THE EXECUTION OF THE AGREEMENT BETWEEN THE VILLAGE OF EAST DUNDEE AND APET FOR THE PRIVATE USE OF WELL

WHEREAS, the Village of East Dundee is a home rule unit of local government under and pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, has the authority to exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, it is deemed necessary and desirable for the Village of East Dundee to enter into the Agreement with APET, INC. for the private use of well.

NOW THEREFORE BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

Section One. That the Village of East Dundee adopts and approves and the President be and he is hereby authorized and directed to sign and the Village Clerk is directed to attest to the execution of the Agreement with APET, INC. for the private use of well, a copy of which Agreement is attached hereto and made a part hereof.

Section Two. Severability. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section Three. Repeal. If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

Section Four. Publication. This Resolution shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

Adopted this 17th day of October, 2005, pursuant to a roll call vote as follows:

AYES: Ruffulo, VanOstenbridge, O'Leary, Gorman

NAYES: None

ABSENT: Carlini

Approved by me this 17th day of October, 2005.



JERALD BARTELS, President

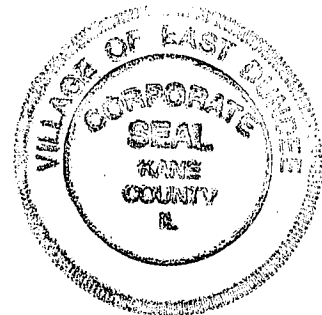
Published in pamphlet form this 7th day of November, 2005, under the authority of the President and Board of Trustees.

ATTEST:



NIKKI GILES, Village Clerk

Recorded in the Village Records on November 7th, 2005.



**AGREEMENT BETWEEN THE VILLAGE
OF EAST DUNDEE AND APET
FOR THE PRIVATE USE OF WELL**

THIS AGREEMENT ("Agreement") is made and entered into on October 17, 2005, between the VILLAGE OF EAST DUNDEE, an Illinois Municipal Corporation, 120 Barrington Street, East Dundee, Illinois 60118 (herein the "Village"), and APET INC. (herein the "APet"), herein sometimes collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, it is in the best interest of the Village and APet to enter into this Agreement and undertake to perform the obligations herein provided; and

WHEREAS, APet is the occupant of certain lands legally described in Exhibit "A" (the "Property") located in Kane County, Illinois; and

WHEREAS, APet wishes to utilize a private well located on the Property to be owned and maintained by APet as a source of water supply for its commercial wholesale tropical fish sales business, at its sole cost and expense; and

WHEREAS, the Village President and Board of Trustees of the Village, after due and careful consideration, have concluded that the approval of this Agreement and the terms and conditions hereinafter set forth will promote sound planning, increase the taxable value of property within the Village, promote, enhance and serve the best interests and general welfare of the Village and its citizens; and

WHEREAS, the Village is entering into this Agreement pursuant to: (i) its authorities as a home rule unit of local government under and pursuant to Section 6 of Article VII of the State of Illinois Constitution; and (ii) the exercise of its general police powers.

NOW, THEREFORE, it is hereby mutually agreed by and between the Village and APet as follows:

1. **RECITALS.** The recitals set forth above are deemed to be a material part of this Agreement and are hereby incorporated by this reference.
2. **OBLIGATIONS OF APET.** Upon execution of this Agreement, the Village and APet agrees as follows:
 - A. **Private Well.** The "Private Well" to be constructed, operated and used by APet is to provide a non-potable water source for the supply of water for

APet's commercial wholesale tropical fish sales business located within the Property. The Village approves this Agreement for the construction and utilization of the Private Well on the Property, and to remove from the Village public water supply system the burden of supplying the large quantities of water needed by APet in the normal course of its business operation. The Village agrees that APet may continue to utilize such well after its construction for that purpose and for so long as may be necessary to support APet's business. The location, design, and the aquifer of the Private Well on the property is to be subject to the approval of the Village engineer, which approval shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the preceding, it is hereby deemed to be a reasonable condition for initial approval and continuing operation of such well that that the Village determine in its sole discretion, from time to time, that neither the pumping rate nor the depth of the Private Well significantly impact any public water system well.

- B. Construction and Operation. The APet shall be responsible for all costs and expenses of connecting its Private Well, including but not limited to the construction of all necessary pipes, valves, meters and structures ("Facilities"), isolating such system from the public water supply system and the costs of all Village inspections. Prior to the construction of any Facilities, the APet shall submit its plans for any such construction to the Village. APet shall not proceed with such construction until it has received written approval of its plans including the location, design and the aquifer from the Village, which approval shall not be unreasonably withheld, delayed or conditioned. There shall be no cross-connections of any form between the Facilities and the Village public water supply system. During the term of this Agreement and as an express condition of this Agreement, APet shall grant to the Village, upon reasonable notice, except that notice shall not be required in case of emergency, the right to enter upon its property and to view, inspect and test all parts of the Facilities and the sanitary sewer meter provided below.
- C. Removal of Structures. In the event APet ceases to use such Private Well for the purposes set forth herein, or APet or any successor in interest ceases the use of the Property for a commercial wholesale tropical fish distribution business, the Private Well placed on the property by APet, at its sole cost and expense, shall be formally abandoned and capped and all ancillary equipment removed. Upon such abandonment, this Agreement shall terminate.
- D. Payments to the Village. APet will be responsible for having the Private Well metered to the satisfaction of the Director of Public Works or his designee. The Village shall read the water usage from the Private Well and invoice APet according to the schedule of water usage billing in force from time to time, at the rate of Seventy-Five Cents (\$0.75) per One Thousand gallons of usage, which stipulated fee shall be fixed and not increased by

the Village. Such fees are in part to compensate the Village for loss of revenue that would be available to the public if APet were connected to the Village's public water supply system.

E. Sewer Meter. APet shall install a meter meeting the specifications of the Village Director of Public Works or his designee, on the sanitary sewer service line in a manhole placed between the APet primary occupied structure and the sanitary sewer main. This meter will be read from time to time and APet will be invoiced according to the schedule of Sanitary Sewer charges in force from time to time.

f. Domestic Water Service. Water service to the principle structure for domestic consumption and for the fire suppression system shall be connected to the Village's water system including but not limited to all water for human consumption and waste (i.e. water fountains, toilets, hand washing sinks, etc.) This service shall be metered and billed pursuant to Village code.

3. **INDEMNIFICATION.** To the fullest extent permitted by law, APet will defend, indemnify and hold the Village, its officers and employees harmless from all claims arising from or in connection with (1) the conduct, use, ownership, or management of the well; (2) any act, omission or negligence of APet or any of APet's partners, assignees, officers, officials, agents, employees, invitees, lessees or contractors of APet arising from the construction or use of the Private Well, except to the extent of any negligent or wrongful act or omission of the Village.

4. **CAPTIONS.** The captions used herein have been utilized for convenience only and are not intended to modify or limit in any way the provisions hereof.

5. **PRIOR AGREEMENTS.** Except as otherwise provided in this Agreement, this Agreement shall supersede any and all prior Agreements, whether oral or written, between the parties hereto and may only be amended by a written instrument executed by both APet and the Village or their authorized agents.

6. **COOPERATION.** The parties agree to cooperate with one another and to perform such functions as are necessary or required by law to effectuate this Agreement.

7. **PERFORMANCE.** The parties' obligations to perform under the terms of this Agreement are specifically conditioned upon the performance of all acts required of the parties by law. This Agreement represents the complete understanding of both parties.

8. **TERM.** This Agreement shall remain in full force and effect until it expires pursuant to the terms of paragraph 2.(C) above.

9. **MISCELLANEOUS.**

A. Time is of the essence. Time is of the essence of this Agreement.

- (1) Written Demands. All notices, demands, and requests required or permitted under this Agreement shall be in writing.
- (2) Notices. All notices, demands, and requests required or permitted hereunder shall be deemed to have been properly made on the day of service if served personally, and on the second day following mailing if sent by United States Certified Mail, postage prepaid, return receipt requested, addressed as follows:

If to the Village:

Village of East Dundee
120 Barrington Avenue
East Dundee, IL 60118

If to APet:

APET INCORPORATED
299 Beeline Drive
Bensenville, IL 60106

END OF AGREEMENT SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

VILLAGE OF EAST DUNDEE, an Illinois Municipal Corporation	APET, INC. an Illinois corporation
By: <i>Jerald Bartels</i>	By: <i>[Signature]</i>
JERALD BARTELS, President	Mark Shilkus, CEO
ATTEST:	ATTEST:
By: <i>Nikki Giles</i>	By: <i>Wayne Pearson</i>
NIKKI GILES, Village Clerk	Wayne Pearson, President

Instrument Prepared By:

John E. Regan
 Early, Collison, Tousey, Regan, Wlodek & Morrow
 2400 Big Timber Road
 Suite 201A
 Elgin, IL 60123
 (847) 6987-6770

T:\A.WORDPERFECT\EASTDUND\2005 AGREEMENTS\APet Well Ag. 09-11-2005.rtf

EXHIBIT "A"

THE PROPERTY LEGAL DESCRIPTION

Lot 24 of the Praire Lakes First Resubdivison

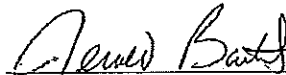
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NAYES: None

ABSENT: Carlini

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JERALD BARTELS, President

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NIKKI GILES, Village Clerk

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