

Agenda
Village of Glen Ellyn
Village Board Workshop
Monday, May 10, 2010
7:00 p.m.
Galligan Board Room
Glen Ellyn Civic Center

1. Call to Order
2. Public Comments?
3. Further Meeting Enhancements – President Pfefferman **(Page 2)**
4. Economies of Scale – Recreation Director Pekarek **(Page 3-5)**
5. 196 Brandon Avenue Fence in right-of-way (continued discussion) –
Planning and Development Director Hulseberg **(Pages 6-20)**
6. Core Services Results Discussion – Village Manager Jones
7. Other items?
8. Adjournment

Board Workshop
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Introduction:

Several changes to public board sessions (or processes relating to same) occurred in 2009 and 2010 by the past or present board. Customers, elected officials and/or village management members have suggested further enhancements. We will discuss these on April 26th, time permitting.

Please inform Steve and Mark if there are other related items to discuss. To clarify, this request and this discussion are open to all elected officials and members of village management.

Board Meeting Format/Information Changes – 2009, 2010

- Board packets delivered Wednesday before discussion
- Board packets posted on village website
- All non-closed sessions of the board begin with welcome, introduction
- Pre-board meetings eliminated in favor of two additional board workshops
- All non-closed sessions of board are televised*
- All non-closed sessions of village board are available for viewing on village website
- Workshop discussions are held in board room at dais*
- Non for profit groups have opportunity to lead the Pledge
- Correspondence agenda item changed to Village Recognition including service dates, employee and commissioner hirings and thank yous in case of resignation
- Consent agenda items are starred if verbal presentation
- Village Management subject matter expert identified for each agenda item
- Village Board member making motion identified for each agenda item
- Press conference

***Items mentioned for discussion by our customers, village management or the village board:**

- **Improving audio quality and etiquette of broadcast** (sound quality, people speaking into mics, number of mics in board room etc.)
- **Changing the configuration for workshop broadcasts in boardroom:** With the caveat that no elected official or village trustee's back is to the audience, is there a way for the board to sit in less formal, "eye to eye," non-dais setting during board workshops?

Additional proposal:

- Use the first 30 minutes of village board workshop on third Monday of the month to **meet jointly with a village commission or committee** to define goals/expectations of commission/board/liaison as they relate to that commission and answer questions/strategize. Hear direct communication of ideas and concerns from commission. Show gratitude for the commission's work.

Other items?

Board Workshop
5/10/10
(H)



To: President & Village Board
From: Steve Jones, Village Manager
Date: May 5, 2010
Re: **Economies of Scale**

A handwritten signature in blue ink, appearing to be "S. Jones", with a long horizontal line extending to the right.

Background

During our budget process the Village President requested that the Recreation Department, Public Works Department and Facilities Maintenance Division look at potential economies of scale regarding the day-to-day activities and services. Director Pekarek took the lead on this effort and has prepared a memo identifying several areas of follow up and discussion.

Issues

This is a matter for presentation only at this time.

Action Requested

n/a

Attachments

- Memo from Matt Pekarek

Memorandum

APRIL 6, 2010

TO: STEVE JONES, VILLAGE MANAGER

FROM: MATT PEKAREK, RECREATION DIRECTOR *Matt Pekarek*

RE: FY 2010-11 PURCHASING ECONOMIES

The following is a recap of various efforts being made to lower the cost of purchases through interdepartment efforts. Originally, you asked Joe Caraci, Harold Kolze and myself to explore ways that we might be able to save money by combining purchasing efforts in six areas including printing. I have added similar efforts involving other departments.

Printing - Major printing purchases include an annual water quality report produced by Public Works, a newsletter produced by Recreation 4-5 times annually and golf score cards produced by Recreation. On March 19, I emailed the specs for the items purchased by Recreation to Kristen Schrader for inclusion in a printing RFP that she is preparing.

Trees - For several years I coordinated a joint sealed bid purchase of trees for Public Works and Recreation. After about five years of sealed bidding I determined that the sealed bid process was not the most cost effective way to purchase trees. The sealed bid process was cumbersome because our two departments had differing requirements. Public Works requires that trees be locally available for field selection, whereas Recreation accepts non-local trees within the appropriate growing zone. The sealed bid process prevented us from taking advantage of the lowest market prices via substitution, because DPW usually requires specific tree species for the parkway tree program while Recreation can choose from various species that meet our needs. Furthermore, delivery fees are a significant part of the cost of a tree purchase and must be managed when splitting a tree purchase among multiple vendors. Today Recreation purchases trees by obtaining competitive quotes to determine price and market availability and makes purchasing decisions based on what is available in the market. Tree purchase volume has decreased in recent years as department properties have matured and spending has been reduced. Public Works purchases trees after obtaining competitive quotes.

Flowers - Public Works and Recreation purchases annual flowers three times a year. Recreation makes small purchases Early Spring and Fall; the Spring purchase is the largest - about 700 flats. Recreation is trying a new grower in 2010. We left our previous grower because in recent years we were dissatisfied with the quality of the stock provided. I have assembled information on our 2010 purchase and am forwarding that information to Joe Caraci under separate cover to see if we might be able to lower the cost of purchasing flowers. Recreation will place an order for Spring 2011 in December 2010.

Fuel - Public Works purchases fuel in large quantities for delivery at the Reno Center. Recreation purchases fuel in much smaller quantities for delivery at the Maintenance Building and Clubhouse. Both departments use Bell Fuels as a primary supplier. Public Works pays a much lower per gallon delivery fee by virtue of a larger delivery size. Facilities Maintenance purchases fuel for back up generators once every 2 or 3 years, a frequency that is not worth involving in a joint purchasing effort. In recent years, Recreation has lowered it's fuel delivery cost by about \$200 per year by reducing the number of deliveries required during the outdoor growing season. Joe Caraci will negotiate with Bell Fuels to determine if they will extend Public Work's high volume delivery fee to Recreation and see what changes Recreation would have to make to get a lower price.

Uniforms - On March 11, Joe Caraci emailed every department the list of six uniform vendors used by Public Works uses. Finance already combines purchases with Public Works when buying shirts for water meter readers. Facilities Maintenance gets their uniforms from two vendors also used by Public Works - Michael's

Uniform Company and Aramark Uniforms. Joe asked each department using these uniform vendors to get back to him with the items typically purchased, to see if we can save money by consolidating purchases. Planning does not use uniforms. Police reported that they have a variety of special needs. Recreation does not buy from any of the vendors shared by Public Works and Facilities Maintenance. The Golf Division negotiates our largest uniform expenditure, a golf shirt for use by golf and food service staff, among several apparel vendors. The Grounds Division purchases t-shirts for use by the grounds crew and kitchen staff. The Grounds Division buys crew rain slickers and coveralls sporadically as needed. A handful of Grounds staff receive work boots, jeans and other specialized gear purchased in small quantities as needed. Food Service supplies aprons through a linen service. Purchases are spread over a number of vendors who we have identified as being cost effective for a particular item. Recreation does not regularly spend a significant amount of money with any single vendor. We do not expect that there are potential purchase savings that would outweigh the cost of devoting more staff time to those purchases. We will share purchasing information and try to find opportunities to negotiate lower prices or consolidate purchases further.

Janitorial Supplies - Facilities Maintenance spends about \$1,000 monthly purchasing janitorial and rest room supplies for all Village buildings except those in Recreation. Facilities Maintenance Manager Harold Kolze oversees these purchases, relying on 16-years of experience operating his own building maintenance business. His main vendor is Unique Supply. He uses Jon-Don for some floor cleaning products. Recreation spends about \$6,000 a year on paper and chemical products. The Food Division does the purchasing, monitoring prices from both general and specialty suppliers. Many of these suppliers require large minimums to make a delivery. I will share with Harold Kolze a list of major items, prices and vendors for these items. Harold will review that list and identify ways that we might economize. Harold and Food Service Manager Mike Atkins will work together to implement any joint purchasing efforts.

Copy Paper - Last week Personnel Analyst Danamarie Izzo notified me of a drop in the price of copy paper from the Village's primary supplier. Previously a staff position shared between Finance and Administration had coordinated the purchase of copy paper. For the last year, Recreation has purchased copy paper separately from the Civic Center, checking prices from major vendors when making two annual purchases. I compared the new price from Garvey Office Products with the today's price from the last vendor we used in November 2009 and found that we would save \$1.60 a year purchasing from Garvey. I will add Garvey to our list of vendors, but I do not think that we should increase the amount of staff time spent purchasing copy paper.

Credit Card Processing - Recreation is nearing the end of a three year contract for credit card processing services. This contract has reduced our processing costs to about \$65,000 a year. We will likely change or at least review our service provider when we change Point-Of-Sale systems in the near future. At the same time, changes to banking regulations (PCI Compliance Regulations) call for upgraded security requirements in all aspects of credit card handling, possibly impacting our selection of a service provider. Finance accepts a much smaller volume of credit card payments. When Recreation seeks proposals for credit card processing, Director of Golf Jeff Vesevick will coordinate with Finance so that we also obtain proposals for their work as well.

Holiday Lights - Public Works provides outdoor holiday lights through an installation contractor. Recreation orders holiday lights from Wal-Mart (100 strands at \$1 each) and installs them in-house. We do not feel that we can help each lower these expenses.

Sales Tax - Joe Caraci and I discussed situations where a contractor employed by the Village might be able to take advantage of the Village's exemption from state sales tax and pass those savings along to the Village. This opportunity might exist in certain negotiated purchases where the contractor is not familiar with performing work for governmental units.

cc: Management Team, et al. mentioned above

MEMORANDUM

Board Workshop
5/10/10
(5)

TO: Steve Jones, Village Manager

FROM: Staci Hulseberg, Planning and Development Director *sh*

DATE: May 4, 2010

FOR: May 10, 2010 Village Board Workshop

SUBJECT: 196 Brandon Avenue – Private Fence in Public Right-of-Way Policy Discussion

Background: At the April 19, 2010 Workshop meeting, the Village Board reviewed the request by Jennifer Iarrobino, owner of property located at 196 Brandon Avenue, to install a fence in the right-of-way along the corner-side of her home on Greenfield Avenue. The subject property is located at the southwest corner of Greenfield Avenue and Brandon Avenue in the R2 Residential District.

At the April 19 meeting, the Village Board requested the following additional information in order to further evaluate the request:

- A cost estimate from the Village Attorney to prepare the license agreement,
- A survey of how surrounding communities handle similar situations, and
- An example of a license agreement.

Please find attached Attorney Diamond's response to my request for a cost estimate, a few sample license agreements, and a surrounding community survey. The estimated legal cost for the preparation of the license agreement would be \$250. If the Village Board were to allow a right-of-way vacation and require fair market compensation for the land, additional costs would be required including reimbursing the Village for an appraisal and providing the Village with the actual value of the right-of-way.

We contacted the Community Development Directors in adjacent municipalities. In all of the five communities we spoke with, none have either issued a license agreement or vacated right-of-way for a private property fence. The majority also said they would discourage such a request. Carol Stream had been presented with a request similar to this and the request was declined.

Regarding the third point above, please find attached copies of a Wheaton license agreement for a private subdivision sign, a Glen Ellyn license agreement for tables and chairs in the public right-of-way, and a Winfield license agreement for a driveway in the right-of-way.

Issues: The Village has never either vacated public right-of-way or entered into a license agreement with a single-family homeowner to allow the installation of a private property fence in the public right-of-way. If the Village were to sell or vacate a portion of the right-of-way as requested, this would result in an uneven right-of-way line along Greenfield Avenue. Public Works previously expressed concern regarding uneven right-of-way lines or private property structures in the right-of-way which could restrain the Village when widening roadways, planting street trees, performing utility maintenance, or completing sidewalk work. There is also a concern regarding setting a precedent for future requests.

Recommendation: The team continues to recommend that the Village not begin to allow private fences in the right-of-way due to the concerns raised above.

Village Board Action: It is requested that the Village Board decide whether or not it would be in favor of entering into a license agreement or vacating a portion of the right-of-way to the owner in order to accommodate the installation of a private fence in the existing parkway. If the Board is in favor of vacating a portion of the public right-of-way, feedback is requested on whether the Village should be compensated for the fair market value of the land.

Attachments:

- Response email from Stewart Diamond
- Surrounding community survey email from Alex Thorpe
- Three license agreement examples

cc: Stewart Diamond, Village Attorney
Joe Carracci, Public Works Director
Michele Stegall, Village Planner
Alex Thorpe, Planning Intern
Jennifer and Joe Iarrobino, 196 Brandon Avenue

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Staci Hulseberg

From: Diamond, Stewart [SDiamond@ancelglink.com]
Sent: Thursday, April 29, 2010 4:32 PM
To: Staci Hulseberg
Subject: RE: 196 Brandon Avenue

It should take only an hour to draft a license agreement for the fence. I would utilize the form which I previously prepared for restaurants which use Village rights-of-way for tables and chairs. One difference would relate to the period of time the owner of the fence would be given to remove it if the municipality decided it wanted to cancel the license. If the owner failed to remove it within the specified period of time, we would be able to remove it and the owner would be required to pay us within 30 days the full cost of removal and disposal. We would not be responsible for any damage to the fence. If we were required to sue to collect our money and won the landowner would be required to pay our legal fees. I would also modify the agreement to deal with the difference in circumstance.

Stewart H. Diamond
Partner
**Ancel, Glink, Diamond, Bush,
DiCianni & Krafthefer, P.C.**
140 South Dearborn Street, 6th Floor
Chicago, IL 60603
(P) (312)782-7606 Ext. 9109
(F) (312)782-0943
www.ancelglink.com

From: Staci Hulseberg [mailto:shulseberg@glenellyn.org]
Sent: Wednesday, April 28, 2010 10:43 AM
To: Diamond, Stewart
Subject: 196 Brandon Avenue

Stewart,

At the April 19 Village Board Workshop meeting, the Village Board discussed the request of a homeowner on this property to place a private property fence in the ROW (corner-side yard). The Board considered either a potential ROW vacation or a license agreement for this request. At the meeting, the Board requested I obtain additional information for a further discussion of the Board on this issue at an upcoming meeting. One of the items the Board requested was an estimate of cost from you to prepare the license agreement for the fence. Also, do you have a form of such an agreement I can share with the Village Board? They wanted to see some of the typical language that might be included in such an agreement. Thanks much.

Staci Hulseberg

From: Alex Thorpe
Sent: Friday, April 30, 2010 2:20 PM
To: Staci Hulseberg
Cc: Michele Stegall
Subject: fence in ROW issue

Staci,

Below are the results from the phone survey of the Community Development Directors about the fence in ROW issue.

Lombard: Bill Heniff – 630-620-3599:

They have not been approached with this issue. If they were, they would only consider this situation for public benefit only. Staff would discourage the request. Also, they have never vacated land or entered into license agreement for a private fence.

Wheaton: Jim Kozik – 630.260.2008

They have done license agreements with older properties regarding private properties building in the public ROW, however never for a fence. Recently, they have entered into license agreements with properties regarding subdivision signs (attached). They have not vacated any land for a situation like this. They do not necessarily discourage this sort of request; however they do not encourage it either (his words). He also doesn't feel that entering into license agreement sets a precedent.

Glendale Heights: Marty Olsen: 630.260.6030

Haven't dealt with this situation; however if they were he would lean more in terms of a license agreement rather than vacating a portion of the property. He also feels that getting just compensation would make the situation more complex and sets a dangerous precedent.

On a side note: Marty requested that we email about the final outcome of this situation since they haven't deal with it before. He is very interested.

Carol Stream: Robert Glees – 630-871-6231

They have had this request before, but would not allow "under any circumstances." However, if under some absolute necessary situation (were the board agreed) they would vacate a portion of the property, not enter into a license agreement.

Downers Grove: Tom Dabareiner: 630-434-5514

They currently have a few fences in the ROW – typically will allow the fence to remain if it has been there for some time. However, if it is a new request then they would not allow it. Also, they vacate whole portions of the property not just portions.

Let me know if you have any questions.

Alex Thorpe
Village of Glen Ellyn
Planning and Development Department
(ph)630-547-5248
(fax) 630-547-5370

Sample

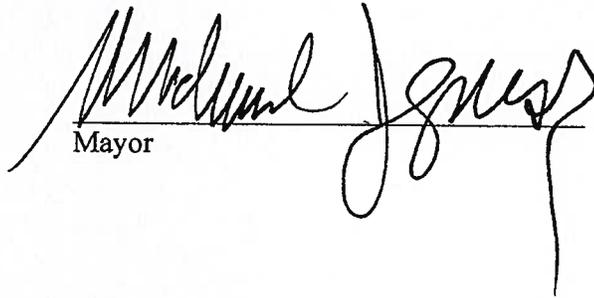
RESOLUTION R-81-09

**A RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN
CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT**

**SUBDIVISION IDENTIFICATION SIGNS
STONEHEDGE SUBDIVISION**

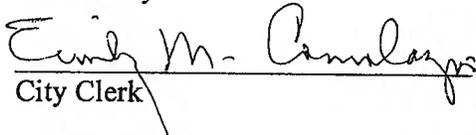
BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated December 7, 2009, between the City of Wheaton and the Stonehedge Community Homeowners Association, Wheaton, Illinois, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 7th day of December, 2009.



Mayor

Attested by:



City Clerk

Roll Call Vote

Ayes: Councilman Levine
Councilman Mouhelis
Mayor Gresk
Councilman Prendiville
Councilman Scalzo
Councilman Sues
Councilwoman Corry

Nays: None

Absent: None

Motion Carried Unanimously

**CONSTRUCTION, LICENCE AND INDEMNIFICATION
AGREEMENT**

**SUBDIVISION IDENTIFICATION SIGNS
STONEHEDGE SUBDIVISION**

THIS CONSTRUCTION, LICENSE AND INDEMNIFICATION AGREEMENT, made and entered into this 7th day of December, 2009, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and the Stonehedge Community Homeowners Association ("SCHA").

WITNESSETH

WHEREAS, the City is in possession, control and owns the public rights-of way at Cromwell Drive near its intersection with Butterfield Road, and at the intersection of Orchard and Brighton Drive, (jointly the "Subject Properties") which lie within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, the SCHA is seeking to erect a subdivision identification sign within the Subject Properties; and

WHEREAS, the SCHA acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of the Subject Properties.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and the Stonehedge Community Homeowners Association as follows:

- 1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.
- 2.) The SCHA, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby granted license to erect and maintain subdivision identification signs on the Subject Properties in strict conformance with the plans entitled "Stonehedge Community Homeowners Association Proposed Entrance Signs – Wheaton, Illinois Sheet A-1 dated 9/25/09 and revised 10/27/09 and Sheets A-2 and A-3 dated 9/25/09, which are attached hereto and incorporated herein as if fully set forth.
- 3.) Upon completion, of the installation of the signs, SCHA shall maintain the signs in good condition and repair. If the SCHA fails to maintain the signs as required by this paragraph, the City shall have the right but not the obligation to repair or remove one or both of the signs and SCHA shall become liable to the City for all costs and expenses associated with their repair or demolition. If the City undertakes any legal activity to requesting or requiring SCHA to maintain or demolish the one or both of the signs based on lack of maintenance pursuant to this section SCHA shall be liable to the City for its attorney's fees and expenses. If SCHA elects to light or otherwise electrify the sign it shall be responsible to reimburse the City for the electrical costs and expenses.
- 4.) The City retains the right to enter the Subject Properties for any purpose. If the City performs work or activities on the Subject Properties, the SCHA shall restore one or both of them at their sole cost and expense. In the case of public emergency, if it is deemed necessary by the City shall have the right to damage or immediately demolish either sign without any liability.

5.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the SCHA in writing at least ninety (90) days prior to termination.

6.) Upon termination of this Agreement, the City may destroy, demolish or remove either sign which has been placed within the Subject Properties by the SCHA without any liability.

7.) To the greatest extent permitted under Illinois law, SCHA shall defend, indemnify and hold the City harmless from any and all claims, actions, causes of action, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and experts fees which arise or may be caused by the negligence of the SCHA, or SCHA agents, as a result of the design, construction, maintenance, use or abandonment of either sign or appurtenances described herein.

8.) This Agreement is a license and not an easement. It does not establish a leasehold or other interest in real estate. Should any court of competent jurisdiction rule that this agreement establishes an easement or leasehold it shall be temporary and terminate five business days after such ruling.

9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall proceed all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written Agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

10.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

11.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the SCHA.

IN WITNESS WHEREOF, the Corporate authorities and the SCHA have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

Attested by:

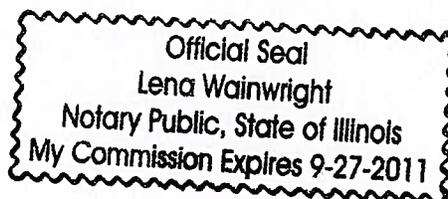
Emily M. Connelley
City Clerk

Michael Jensen
Mayor, City of Wheaton

Bruce Mitroff
Stonehedge Community Homeowners Association
BRUCE MITROFF, PRESIDENT

Attested by:

Lena Wainwright



Sample

LICENSE AGREEMENT

This Agreement, made and entered into as of this ____ day of _____, 2010, effective the ____ day of _____, 2010, by and between the Village of Glen Ellyn ("Licensor") and Einstein and Noah Corporation ("Licensee") pertaining to the property located at 443 North Main Street, Glen Ellyn, Illinois 60137.

1. **Purpose:** Licensor hereby grants to Licensee, and Licensee hereby accepts, a license to (a) install, maintain and operate for the term hereof, a maximum of five (5) tables and ten (10) chairs to be located on the sidewalk and the right-of-way in front of 443 North Main Street, the licensed area, (b) maintain a trash receptacle in accordance with the standards contained below, and (c) install and maintain landscape planters in accordance with the standards contained below and with the following terms, covenants and conditions.

2. **Terms:** This Agreement shall expire January 31, 2011, or the date the insurance required hereunder expires, whichever comes first. This Agreement may be renewed only through the action of the Village Board of the Village of Glen Ellyn. Licensee may terminate this Agreement immediately by providing written notice to Licensor. Licensor may terminate this Agreement at any time during the term of this Agreement by notifying Licensee of this intention at least 7 days prior to the termination date.

3. **Rent and License Fee:** For the purposes of this license, no rent will be paid by Licensee to Licensor. A fee of \$50.00 has been paid by Licensee to Licensor for the issuance of this License Agreement.

4. **Permits and Licenses:** Licensee, at its sole effort and expense, shall conform to the Village Code and DuPage County Health Department regulations.

5. **Installation of Street Furniture:**

a. **Tables and Chairs:** Licensee is permitted to locate on the sidewalk portion of the Main Street right-of-way immediately in front of the property at 443 North Main Street five (5) tables and ten (10) chairs daily. The table tops will not exceed 29 inches in diameter. Tables and chairs may be located on the sidewalk during the hours of operation of Einstein Brothers Bagels, but shall be located so that a five-foot wide east to west passage is maintained at 443 North Main Street. Licensee shall allow restaurant patrons to dine on tables and chairs in the licensed area described above but at no time provide sales and service outside the restaurant. At a minimum, the public right-of-way shall be cleaned each day.

b. **Trash Receptacle:** Licensee shall maintain the trash receptacle located in proximity to the tables and chairs in a neat and orderly manner, and the Licensor shall ensure that a garbage hauling firm removes the trash from the receptacle on a regular schedule. However, it shall be the responsibility of Licensee to empty the receptacle more frequently, if necessary. Licensor is the owner of the trash receptacle. In order to ensure that the trash receptacle is properly maintained, Licensee shall provide five hundred dollars (\$500.00) as a Garbage Cash Escrow Deposit to be held by the Village during the term of this License Agreement and while the tables and chairs are located on the public sidewalk. In the event that the Village finds that the trash is overflowing, the Village will send personnel to empty the container. An expense of fifty dollars (\$50.00) to empty the trash

container will be assessed to Licensee each time the trash is emptied by the Village, and that amount will be deducted from Licensee's Garbage Cash Escrow Deposit. The Village will notify Licensee each time funds are deducted from the Escrow Deposit. If the Escrow becomes depleted, the Village will send notice to Licensee that the license agreement is terminated, in accordance with Paragraph 8 of this Agreement, and the tables and chairs must be removed from the public sidewalk immediately. When the tables and chairs are removed from the public sidewalk for the season, the Village will return any remaining funds from the Garbage Cash Escrow Deposit to Licensee.

c. **Landscape Planters:** Licensee shall install and maintain a minimum of two (2) landscape planters, planted with live flowering annuals and/or perennials, located on or over the public right-of-way immediately in front of the property at 443 North Main Street. The planters shall contain a minimum total of 432 square inches (3 square feet) of planted landscaping. The planters shall be a minimum of 10 inches in height, shall not exceed 30 inches in height and shall be constructed of metal, terra cotta, masonry, wood or similar materials; plastic planters shall be prohibited. The planters shall be placed up against the building in a location that does not obstruct the public right-of-way and sidewalk. At all times, a minimum 5-foot wide pathway on the sidewalk shall remain free and clear. Licensee shall replace dead landscape plants as needed to maintain the planters in a clean and neat manner and shall water plants on an as-needed basis.

d. **Bike Rack:** Licensor provided a bike rack in the vicinity of 443 North Main Street, and Licensee reimbursed Licensor for the cost of the bike rack. Licensor is the owner of the bike rack.

6. **Maintenance:** Licensee shall agree to maintain the licensed area and the nearby sidewalk in a clean, healthy and attractive condition. If Licensee ceases to so maintain the licensed area and the nearby sidewalk, Licensor may require Licensee to pay for additional cleanup costs. Further, Licensor may, upon notice as set forth below, terminate this agreement and require the permanent removal of the tables and chairs from the licensed area in advance of the expiration date of this Agreement.

7. **Removal:** Upon the expiration or the termination of this License, Licensee shall remove the tables and chairs from the licensed area. Further, each evening, no later than one half-hour following the close of business at Einstein Brothers Bagels, Licensee shall remove the tables and chairs from the licensed area. The hours the tables and chairs may be located on the sidewalk are:

Monday - Friday	5:00 a.m. to 5:30 p.m.
Saturday - Sunday	6:00 a.m. to 4:30 p.m.

8. **Termination:** If Licensee fails in any respect to perform any agreements, covenant or obligation in this License, then and in such event, Licensor, after providing at least 7 days' written notice to Licensee, may terminate this License Agreement or may cure such failure or default, on behalf of and at the expense of Licensee.

9. **Notice:** Notice hereunder shall be in writing and effected either by personal delivery or by depositing the same in an official U.S. mail receptacle as certified mail, return receipt requested, postage paid, addressed to:

If to Licensor:
Village Manager
Village of Glen Ellyn
535 Duane Street
Glen Ellyn, IL 60137

If to Licensee:
Susan Scheuermann, Real Estate Services
Einstein and Noah Corporation
555 Zang Street, Suite 300
Lakewood, CO 80228

or to such other address as either party may from time to time designate. Any notice given under this Agreement shall be in writing and deemed received when personally delivered or, if mailed, three days after placing same in an official U.S. mail receptacle.

10. **Assignment**: Licensee may not assign or transfer this License without prior written consent of Licensor. Any attempted assignment or transfer in violation of this paragraph shall be void and confer no rights upon any third person.

11. **Defend and Hold Harmless**: Licensee shall be required to hold harmless Licensor, its officers, employees and independent contractors from any claim or demand or damage to property or injury including death to persons which arise out of in any way the exercise by Licensee of its rights under this License. Licensee shall be required to pay for the cost of defense and hold harmless Licensor, its officers, employees and independent contractors against any judgment and to pay any settlement arising out of such claim or demand, including but not limited to, the full costs of the defense of Licensor, its employees, officers and independent contractors through the employment of experts approved by the parties defended, provided, however, that such approval shall not be unreasonably withheld.

12. **Liability Insurance**: Licensee shall purchase and maintain comprehensive general liability insurance of \$2 million each occurrence, providing occurrence coverage for Licensee from claims for damages because of bodily injury, death of any person, or property damage resulting from the use of the public right-of-way. Licensor shall be named, by endorsement, as an additional insured on the policy. The policy of insurance and certificates thereof shall contain provision or endorsement that the coverage reported will not be canceled, materially changed, or renewal refused, until at least 30 days prior written notice shall be given by certified mail to the insured and Licensor. Licensee shall deliver a duplicate of the policy or certificate of insurance acceptable to Licensor prior to the execution of this Agreement by the Village Board.

13. **Miscellaneous**:

a. This Agreement constitutes the entire understanding of the parties and supersedes any prior written or oral negotiations or understandings.

b. It is the intention of the parties hereto that this License shall be construed and enforced in accordance with the laws of the State of Illinois.

c. If any provision of this License is held invalid or unenforceable, the remainder of this License shall not be affected thereby, and each other provision of this License shall be valid and enforceable to the fullest extent permitted by law.

d. Licensee shall pay any expenses incurred by Licensor in defending the validity of its right to enter into a License Agreement for the use of sidewalk premises by a private party.

DATED as of the date first set forth above.

LICENSOR:

Village President
Village of Glen Ellyn
535 Duane Street
Glen Ellyn, Illinois 60137

LICENSEE:

Susan Scheuermann, Real Estate Services
Einstein and Noah Corporation
555 Zang Street, Suite 300
Lakewood, CO 80228

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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RIGHT-OF-WAY ENCROACHMENT LICENSE
FOR THE PROPERTY COMMONLY KNOWN AS
27W120 WILLIAMS STREET, WINFIELD, ILLINOIS 60190
(DRIVEWAY INSTALLATION)

This Agreement made this _____ day of _____, 20__, by and between the Village of Winfield, an Illinois Municipal Corporation ("LICENSOR") and _____ and _____ ("LICENSEE").

WITNESSETH

WHEREAS, the LICENSOR is the holder of title to right-of-way depicted upon Exhibit A attached hereto and incorporated herein;

WHEREAS, LICENSEE desires to continue to utilize the private gravel access drive currently installed on the right-of-way or to construct a driveway that will be installed on the LICENSEE'S property and the LICENSOR'S right-of-way and which either option will thereby encroach upon the LICENSOR'S right-of-way, which is depicted in Exhibit A and which is subject to review and approval by the LICENSOR as noted herein;

WHEREAS, the LICENSOR is willing to permit the LICENSEE to use a portion of said right-of-way for the ingress/egress to the LICENSEE'S residence; and

WHEREAS, if a new driveway will be constructed that will be used for said ingress/egress, it shall be constructed in accordance with all plans, specifications, and requirements approved by the LICENSOR including but not limited to all applicable local, state, and national codes, and including obtaining all necessary building permits and paying all applicable fees.

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED AND OTHER GOOD AND VALUABLE CONSIDERATION RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, IT IS AGREED BY THE PARTIES AS FOLLOWS:

- 1) The foregoing recitals are incorporated herein as if fully set forth.
- 2) LICENSEE expressly warrants and represents that it is the legal title holder in fee simple of the real estate legally described below (hereinafter the "PROPERTY").
- 3) **The current gravel access drive measures _____ (_____) wide from edge to edge by _____ feet (_____) long from the edge of pavement at East Street to the rear edge of the gravel drive.** LICENSOR agrees to allow LICENSEE to continue to utilize and maintain the private gravel access drive currently installed on the right-of-way, **but the current drive shall not be expanded from its current dimensions.** As an alternative the LICENSOR agrees to allow LICENSEE to construct a driveway that will

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(DRIVEWAY INSTALLATION) (PAGE 2 / 4)

partially encroach on the LICENSOR'S right of way. LICENSEE agrees that the driveway will be built in accordance with all plans, specifications, and requirements approved by the LICENSOR, including all necessary building permits and paying all applicable fees. **Any new driveway that is constructed shall be located within the confines of the existing gravel driveway area.**

- 4) LICENSEE expressly agrees to permit the LICENSOR to remove the improvement either temporarily or permanently by any means necessary if the LICENSOR finds it necessary, in its sole discretion, to perform any work or maintenance in the right-of-way. LICENSEE understands that the removal may cause damage to the driveway for which the LICENSOR shall not, in any way, be held responsible. The LICENSOR shall endeavor to minimize any damages to the driveway. If the LICENSOR determines that permanent removal is necessary or desirable, then this license shall immediately terminate.
- 5) LICENSEE agrees to indemnify, hold harmless and defend LICENSOR, its officers, employees and agents from and against any and all claims, demands, costs, fees and causes of action for any injury to persons or damage to property arising out of or connected with LICENSEE'S use of the right-of-way or the encroachment permitted by this license, or arising out of LICENSOR'S removal of the encroachment pursuant to section 4 above.
- 6) The rights and obligations agreed to and granted herein are granted solely to the LICENSEE and shall not be assigned to any other party, except to subsequent purchasers of the property legally described herein.
- 7) This license is revocable at will by the LICENSOR. Should the license be revoked, LICENSEE agrees to remove all items installed in the right-of-way within forty-five (45) days of written notification from the LICENSOR, weather and contractor availability permitting. Should a contractor be unavailable, the LICENSEE shall provide written notification from the contractor to the LICENSOR showing the date in which the work shall be completed. Such time period may be extended at the sole discretion of the LICENSOR. All costs for removal shall be borne by the LICENSEE. Should the LICENSEE fail to comply with the request for removal, the LICENSOR may remove the items installed in the right-of-way and such items shall become the property of the LICENSOR. All costs incurred by the LICENSOR for such removal shall be reimbursed by the LICENSEE immediately upon receipt of a request for reimbursement from the LICENSOR. Should this license be revoked, the Village will ~~endeavor~~ **allow** ~~to work with~~ the LICENSEE to ~~determine whether~~ **utilize** another portion of the LICENSOR'S property ~~may be utilized~~.
- 8) No interest in the land is conveyed by this Agreement.
- 9) This agreement will be recorded with the Office of the Recorder for DuPage County by the LICENSOR and the LICENSEE shall be responsible for all fees incurred as a result of recording this document.

27W120 WILLIAMS STREET, WINFIELD, ILLINOIS 60190
(DRIVEWAY INSTALLATION) (PAGE 3 / 4)

- 10) The LICENSEE agrees to pay all normal fees and charges that would be assessed for the activities to take place as a result of this license. Such fees may include, but shall be not be limited to, building permit and inspection fees.
- 11) All costs incurred by the LICENSOR related to the execution of this agreement shall be borne by the LICENSEE and the LICENSEE shall pay such costs within fifteen (15) days of the LICENSOR'S invoice for the same.
- 12) Any contractor working for the LICENSEE shall carry all insurance coverage required by law or which would normally be expected for this type of a business and proof of these levels of coverage shall be provided to the LICENSOR. The LICENSEE'S contractor shall include the LICENSOR as an additional named insured on the commercial general liability policy. The insurance coverage shall be written with insurance companies acceptable to the Village. All insurance premiums shall be paid without cost to the LICENSOR. The contractor shall furnish the LICENSOR a certificate of insurance attesting to the respective insurance coverage for the full contract term. This license agreement shall not be executed until proof of coverage and additional named insured has been received and reviewed for acceptability by the LICENSOR'S Attorney.

The LICENSOR shall receive written notice of cancellation or reduction in coverage of any insurance policy thirty (30) days prior to the effective date of cancellation or reduction. The LICENSEE'S Contractor will be responsible for obtaining new insurance coverage in this event.

In addition, the LICENSEE'S Contractor shall carry, at its own expense, at least the following insurance coverage:

- (a) Workers' compensation & Employers' Liability — Workers' compensation coverage with statutory limits for Illinois and Employers' Liability limits of \$1,000,000 per occurrence;
 - (b) Commercial General Liability Insurance:
 - (1) Bodily injury, Personal injury, and Property Damage with limits of not less than \$1,000,000 each occurrence/\$2,000,000 aggregate;
 - (2) Contractual insurance - broad form, with limits of not less than \$1,000,000 each occurrence/ \$2,000,000 aggregate.
 - (c) Business Automobile Liability - \$1,000,000 combined single limit per accident for bodily injury and property damage;
- 13) Any damage that occurs as a result of the driveway construction, which includes but is not limited to roadway settlement, grass replacement, etc., shall be repaired by the LICENSEE within thirty (30) days of any notification from the LICENSOR, weather and contractor availability permitting. Should a contractor be unavailable, the LICENSEE shall provide

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(DRIVEWAY INSTALLATION) (PAGE 4 / 4)

written notification from the contractor to the LICENSOR showing the date in which the work shall be completed. Such time period may be extended at the sole discretion of the LICENSOR. Should the LICENSEE fail to complete any restoration or repairs as required by the LICENSOR, the LICENSOR may complete such repairs and all costs for those repairs shall be paid by the LICENSEE within fifteen (15) days of the LICENSOR'S invoice for such costs.

14) All official notifications between the parties shall be in writing and delivered to the other party at the following mailing addresses via certified mail; hand delivered; or via acknowledged facsimile.

Resident
0S679 East Street
Winfield, IL 60190

Village of Winfield
ATTN: Village Manager
27W465 Jewell Road
Winfield, IL 60190

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original, on the date first above written.

VILLAGE OF WINFIELD, an Illinois
municipal corporation,

ATTEST:

John D. Kirschbaum, Village President

Jeni S. Ozark, Village Clerk

LICENSEE

ATTEST

name

name

SCHEDULE OF EXHIBITS

- Exhibit A - Depiction of Right-of-Way (copies of a plat of survey)
 - a) R192981 - Page 23C (Two 8.5x11 Pages) (Total Plat is 4 pages)
- Exhibit B - General Depiction of Existing Driveway