

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
APRIL 1, 2008 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Notification to Village Council re: Sidewalk Café Applications	Resolution Ordinance Motion ✓ Discussion Only	Cara Pavlicek Village Manager

SYNOPSIS

Notification is being provided to the Village Council in accordance with the provisions of the Municipal Code regarding an application to operate an outdoor Sidewalk Café from Emmett’s Ale House.

STRATEGIC PLAN ALIGNMENT

The Downers Grove Strategic Plan and Vision for 2022 identified *Authentic Downtown*, which means *Exciting Destination for Eating and Entertainment both Indoor and Outdoor*.

FISCAL IMPACT

N/A

RECOMMENDATION

No action required. Staff will proceed in approving the application, unless within 72 hours of the Village Council Workshop, the Village Council directs the Village Manager to deny the sidewalk cafe license to the applicant or impose any additional conditions or restrictions as it deems appropriate.

BACKGROUND

Per Village Code, a Sidewalk Café License Agreement is required to allow for the operation of outdoor cafes on public property. The Village Manager can approve the Sidewalk Café License Agreement provided that the Village Council is provided 72 hours notice of the pending approval. Café operations are limited to April 1st-October 31st of each year.

Emmett’s has submitted the attached plans, as part of a complete application, to operate an outdoor café within the Grove Street right-of-way adjacent to their building. The café is approximately 11’x 45’ (measured along the southernmost edge) and will be located upon a permanent structure that that was constructed in 2006 in Village right-of-way following the approval of a separate license agreement. They are requesting permission to serve food and alcoholic beverages in this area, which is located entirely on Village-owned property. They currently hold a valid Class “O” outdoor liquor license.

Their performance, operation and maintenance of the Café for the past seasons has been satisfactory. The license agreement, if approved, would only extend through October 31, 2008. All other terms of the agreement remain the same as last year.

Ballydoyle, who also has a Sidewalk Café license entered into a two year agreement in 2007, therefore, no action is require for them at this time.

ATTACHMENTS

Emmett’s Sidewalk Café Agreement

SIDEWALK CAFÉ LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made and entered into this 17th day of MARCH, 2005, by and between the Village of Downers Grove (the "Licensor") and Ale House I, LP d/b/a Emmett's Ale House (the "Licensee"),

WITNESSETH:

WHEREAS, Licensee has made application to the Village to conduct a Sidewalk Café as permitted under Section 19-49 of the Downers Grove Municipal Code; and,

WHEREAS, Licensee is requesting the use of certain public property (the "Improved Area") which is described as follows:

A five hundred sixty seven (567) square foot section (approximately eleven (11) feet wide by fifty-eight (58) feet long) of public property on Grove Street abutting the south side of the building located at 5200 Main Street and legally described in attached Exhibit E.

WHEREAS, Under separate agreement, Licensee has obtained an Encroachment License (Exhibit F) from the Village of Downers Grove for the use of the public right-of-way which shall include a Semi-Permanent/Permanent structure located upon the Improved Area.

WHEREAS, Licensor has reviewed said application and has agreed to authorize the Sidewalk Café subject to the provisions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements herein set forth, and other good and valuable consideration, the parties hereto agree as follows:

1. The provisions of the preamble are hereby incorporated into and made a part of this Agreement.
2. The following documents are hereby incorporated into and made a part of this Agreement:
 - a. Exhibit A - Emmett's Ale House Sidewalk Café License Application.
 - b. Exhibit B - Emmett's Ale House Sidewalk Café Site/Improvement Plan.
 - c. Exhibit C - Emmett's Ale House Sidewalk Café Operation Plan.
 - d. Exhibit D - Plat of Survey.
 - e. Exhibit E - Legal Description.
 - f. Exhibit F - Recorded Encroachment License.
3. Licensor hereby grants unto Licensee a revocable Sidewalk Café license subject to the following restrictions:
 - 3.1. The Sidewalk Café shall comply with the Site Plan and Operation Plan.
 - 3.2. The Sidewalk Café shall comply with the provisions of the Downers Grove Municipal Code, including but not limited to, Section 19-49, or such successor provision as now or hereafter amended related to Sidewalk Cafes.
 - 3.3. The Sidewalk Café shall be established and operated in a safe and reasonable manner with due regard for the health and safety of persons and property. In no event shall the Sidewalk

Café obstruct vehicular or pedestrian traffic in an unsafe or unreasonable manner. The open, unobstructed portion of the sidewalk shall not be reduced to less than five (5) feet.

- 3.4 The Licensee shall provide the Village with a letter of credit in the amount of \$5,000.00. The letter of credit shall be maintained by the licensee throughout the term of the license or after the removal of its semi-permanent/permanent facilities, whichever is later in time.
- 3.5 The Sidewalk Café shall be established and operated in a clean, well maintained and sanitary manner. In particular, but without limitation, the licensee shall promptly and properly collect and dispose of all litter, trash and other waste materials associated with the Sidewalk Café, including materials in the adjacent public right of way originating from the Sidewalk Café. The Village shall have the right to remove or cause the removal of any debris, and otherwise maintain the public property of the Sidewalk Café, in the event the licensee fails to promptly and properly clean and maintain such area. In such event, the licensee shall promptly reimburse the Village for any and all such costs associated with such clean-up. The Village reserves all rights to collect the costs associated with such clean-up, including the right to draw upon the letter of credit. If the costs exceed the letter of credit, the Village shall reserve the right to file a lien against the property.
- 3.6 To the fullest extent permitted by law, the licensee shall defend, indemnify and hold harmless the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees, for any and all claims, liabilities, losses, damages, costs, payments, and expenses of any kind and nature (including court costs and attorneys' fees), demands, actions, suits, judgments or settlements arising out of or in any way relating to this Agreement. So long as the semi-permanent/permanent improvements shall remain on Village-owned property, this indemnification shall survive termination of this Agreement.
- 3.7 Licensee shall procure and maintain proof of Dram Shop (if applicable), Workers Compensation and General Liability Insurance in a form acceptable to the Village. Such insurance shall be provided by carriers licensed in the State of Illinois and maintaining a Best rating of at least A-IV. Such Dram Shop Insurance shall include coverage to the statutory limits for the State of Illinois, but not less than Three Million Dollars (\$3,000,000). Such General Liability Insurance shall include coverage for the premises, operations, underground, collapse, explosion, products and the event, and shall name as Additional Insureds the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees. Such insurance shall be in the amount of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate covering bodily injury, including death, and property damage. If the Licensee employs independent contractors, Licensee shall insure that these contractors maintain appropriate levels of insurance and that the Village is named as an additional insured under each policy. Not less than one week prior to the opening of the Café, Licensee shall furnish to the Village Manager with Certificates of Insurance evidencing all of the aforementioned types and limits of insurance to be in effect. The insurance policies required under this Section shall be occurrence based and provide that it not be canceled nor materially changed without sixty (60) days written notice to the Village Manager.
- 3.8 Within seven days of the execution of this Agreement, Licensee shall pay to the Village a license fee in the amount of \$567.00, an application fee in the amount of \$150.00, any and all permit fees and inspection fees.
- 3.9 Within seven days of the execution of this Agreement, or prior to opening of the Sidewalk Café, Licensee shall schedule an inspection of the Sidewalk Café with Code Services and Fire Prevention and shall pay to the Village an inspection fee as established by Ordinance. In addition, at the expiration of the agreement, the Licensee shall schedule a reinspection of the Sidewalk Café with Code Services and shall pay to the Village a re-inspection fee as

established by Ordinance.

- 3.10 The licensee shall not be permitted to sell or serve alcoholic liquor at the Sidewalk Café except in conformance with an appropriate liquor license issued pursuant to Chapter 3 of the Downers Grove Municipal Code. In the event an outdoor liquor license is granted, alcohol shall be served at sidewalk cafes only in conjunction with meal service. The Café shall not function or shall not otherwise be advertised as a "beer garden". All alcoholic liquor shall be provided from the interior bar or service area. No portable bars or service counters shall be permitted in the Sidewalk Café.
- 3.11 This Agreement shall not be transferable or assignable and shall not confer any property rights in the underlying right of way.
- 3.12 This Agreement shall be subject to the absolute and primary right of the Village to protect the public health safety and welfare. The Village Manager may, in the Manager's sole discretion, terminate this Agreement, order changes to the conduct of the Sidewalk Café, including but not limited to the immediately cessation of business, and removal of any or all equipment and facilities from the public right of way. In addition, the Village Manager may suspend or revoke the license in the event he determines that it is in the public interest or if the licensee has failed or refused to truthfully complete the application, or if the licensee has failed or refused to comply with the Agreement or any other applicable law.
- 3.13 Licensee shall be subject to all rules, restrictions and directions established by the Village Manager related to the Sidewalk Café. The Village Manager may delegate any duty or power set forth in this section, including but not limited to, the conduct of the informal hearing and issuance of any final order, to such person as the Village Manager may designate.
- 3.14 Except as provided in the Site Plan and Operation Plan:
- a. The Sidewalk Café shall only be open to the public during the normal business hours of the adjacent restaurant.
 - b. Electronically amplified or reproduced music/sound is allowed, however, unreasonable noise or sound shall not disturb the peace. No live entertainment shall be permitted in the Café area, however, music from inside the establishment, whether live or recorded, shall be piped to the Café area up until one hour prior to close each night. The Café speakers shall be wired in such a way as to have a separate volume control for the Café area. The noise level of the outdoor area will comply with all Village ordinances regarding noise regulations. In the event the Village receives complaints regarding the Licensee's operation of the Cafe, the Licensee shall voluntarily assist the Village in remedying the complaint by reducing or eliminating the hours of amplified music and/or operation of the Café.
 - c. No cooking or food preparation shall be permitted in the Sidewalk Café.
- 3.15 Licensee shall comply with, and be subject to, the following special conditions:
- a. Hours of operation for the Café shall be 11:00 a.m. to 11:00 p.m. Monday through Thursday, 11:00 a.m. to 12:00 a.m. Fridays and Saturdays and 12:00 noon to 9:00 p.m. on Sundays. The Village Manager may order the Café closed during such periods as the Manager may determine that the public interest will be served, including but not limited to community festivals. The Village will endeavor to notify the applicant thirty (30) days in advance of the scheduled event that will require the closure of the Sidewalk Café and the use of the public right-of-way.

- b. No entertainment shall be permitted in the Café area.
- c. Operation of the Sidewalk Café shall be limited to April 1st through October 31st. Semi-permanent/Permanent structures may remain on the right-of-way pursuant to the Encroachment License, attached.
- d. All furniture (chairs and tables) will remain in the Improved Area each night when not in use, unless otherwise asked to be removed by the Village Manager. All furniture (chairs and tables) shall be made of wrought iron or like material heavy enough to prevent being effected by weather conditions. The iron guardrail which encloses the Sidewalk Café area will remain in place.
- e. A management staff person, other than serving staff, shall be present in the Café area at all times of operation.
- f. No portable or permanent bars or liquor service stations shall be permitted in the Sidewalk Café.
- g. The Sidewalk Café shall be hosed down and mopped at the end of business each night.
- h. Licensee shall comply with the Illinois Smoke Free Act provisions.

3.16 Licensee shall be required to pay for all inspection fees related to the operation of the Café. Receipt of any additional permits/certificates related to the further improvements to the original Site Plan shall be the sole responsibility of the Licensee.

4. Term of Agreement.

This agreement shall commence upon April 1, 200__ and shall terminate on October 31, 200__, unless terminated prior thereto pursuant to Paragraph 3-10 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein above written.

LICENSEE:

Emmett's Ale House

By: 

Title: Manager

Attest:

LICENSOR:

Village of Downers Grove

By: _____
Village Manager

Attest:

Village Clerk

Legal Description

THAT PART OF LOT 50 IN ASSESSOR'S SUBDIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS; COMMENCING IN THE CENTER OF THE ROAD AT THE NORTHEAST CORNER OF THE SAID LOT AND RUNNING THENCE SOUTH ALONG THE CENTER OF SAID ROAD 1 DEGREE 50 MINUTES EAST 1.20 CHAINS; THENCE SOUTH 89 3/4 DEGREES WEST 2.01 ½ CHAINS; THENCE NORTH 1 DEGREES 50 MINUTES WEST 1.21 CHAINS TO THE SOUTH LINE OF THE CEMETERY GROUNDS, THENCE EAST ALONG THE SOUTH LINE OF SAID CEMETERY GROUNDS 2.01 ½ CHAINS TO THE PLACE OF BEGINNING, PART OF THE SOUTHWEST QUARTER OF SECTION 8, IN DUPAGE COUNTY, ILLINOIS

Commonly known as a portion of the public right-of-way on the south side and adjacent to 5200 Main Street (PIN 09-08-305-024)



**Village of Downers Grove
Sidewalk Café License Application**

DATE: 3/23/08

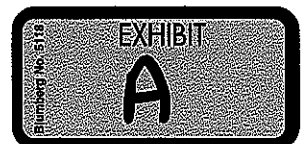
Application is hereby made to the Village of Downers Grove for issuance of a Sidewalk Café License, pursuant to the ordinances of the Village and laws of the State of Illinois. In support of said application the following is submitted:

1. Name of Applicant EMMETT'S ALE HOUSE (ALE HOUSE II)
Address 5200 MAIN ST.
City DOWNERS GROVE State IL Zip 60515 Phone No. 434 8500
2. Doing Business As (Name) EMMETT'S ALE HOUSE
3. Name of Manager ~~RON KOWALSKI~~ MICHAEL BURNS
Address 163 HILL AVE.
City ELGIN State IL Zip 60120 Phone No. 847-508-7688

4. In addition to this application form the following shall be submitted:

- Site Plan** - This shall be drawn to scale, and with sufficient detail to depict the proposed Sidewalk Café. This should include, but is not limited to, the location and area surrounding proposed Sidewalk Café as well as the location and dimension of the Sidewalk Café in relation to the adjacent street and sidewalk and showing the location of ingress, egress, tables, decorations, furnishings, equipment, removable perimeter barriers, the total square footage to be occupied by the Sidewalk Café and the maximum seating capacity.
- Operation Plan** - This shall describe the proposed Sidewalk Café detail. This should include, but is not limited to, the dates, days and hours of operation, liquor service, staff, security, maintenance personnel and proposed menu, and such other items as may be appropriate.
- Improvement Plan** - Detailed plans showing all proposed changes or improvements related to the Sidewalk Café.
- Plat of Survey**
- Application Fee (\$150.00)**

5. Applicant understands and agrees that additional information and material may be required during the processing of this application related to this application, the information provided herein, including attachments. Applicant agrees to provide such additional information and material and that failure to do so may delay the processing of this application or result in its denial. In the event Applicant is made aware that any information or document submitted as part of this application process is inaccurate or



incomplete, Applicant agrees to immediately notify the Village and provide appropriate corrections. Applicant understands and agrees to provide such additional information and material, and that failure to do so may delay the processing of this application or result in its denial.

- 6. Applicant understands and agrees that issuance of any license is within the sole discretion of the Village Council and on such terms as the Council may direct.

THE UNDERSIGNED. BEING DULY SWORN, DOES STATE AS FOLLOWS:

- A. THAT THE UNDERSIGNED IS EMPOWERED TO PREPARE AND SIGN THIS APPLICATION ON BEHALF OF THE APPLICANT.
- B. THAT THE UNDERSIGNED HAS REVIEWED THIS APPLICATION AND ALL ATTACHMENTS AND SUBMITTALS, AND THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND ACCURATE.
- C. THAT THE UNDERSIGNED HAS REVIEWED AND SHALL COMPLY WITH THE PROVISIONS OF THE DOWNERS GROVE MUNICIPAL CODE AS IT RELATES TO SIDEWALK CAFÉS.

APPLICANT: Michael Burns

BY: _____

PRINT NAME: MICHAEL BURNS

TITLE: MANAGING PARTNER

Subscribed and sworn to before me
this _____ day of _____, 20 ____.

Notary Public

* * * * *

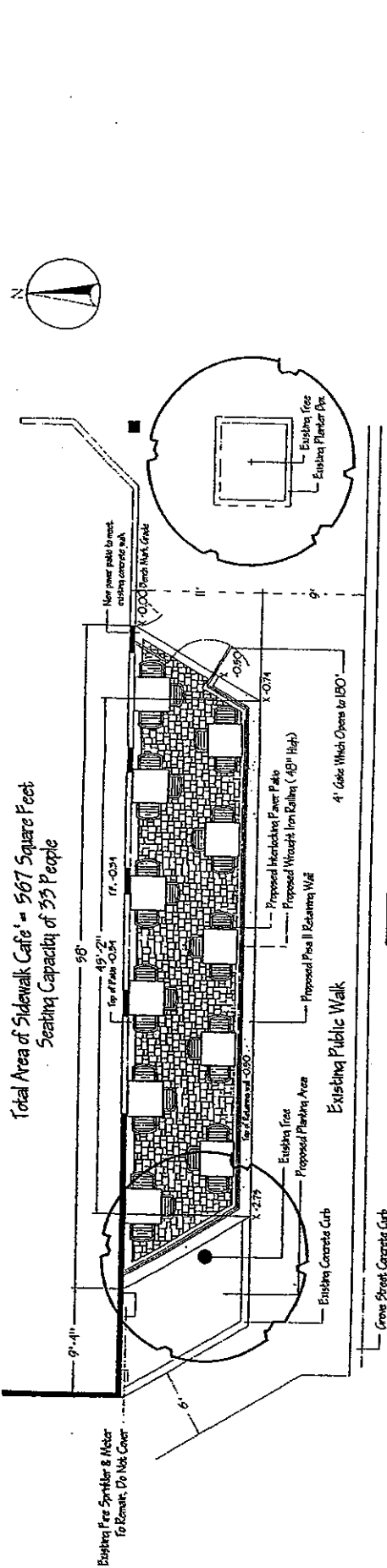
For Office Use Only

\$ _____ application fee \$ _____ inspection fee \$ _____ re-inspection fee

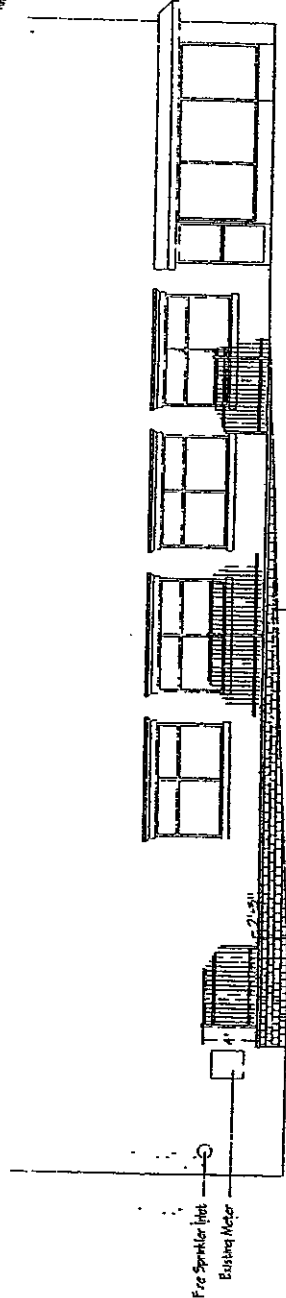
\$ _____ license fee \$ _____ Letter of Credit issued by _____

Insurance Carrier _____ /Liability limits _____ License Term _____

Total Area of Sidewalk Cafe = 567 Square Feet
Seating Capacity of 33 People



SIDEWALK CAFE' PLAN
SCALE - 1/4" = 1' - 0"



SIDEWALK CAFE' ELEVATION
SCALE - 1/4" = 1' - 0"

Blumberg No. 2029

EMMETT'S ALE HOUSE LANDSCAPE DESIGN

DRESCHER LANDSCAPING, INC. 17 W 515 NORTH FRONTAGE ROAD DARIEN, IL 60261

Project: Emmett's Ale House	Scale: 1" = 4'
Site: 1500 Main Street	Date: 09/17/06
Owner: Pasa II, LLC	Prepared: JES
Client: Pasa II, LLC	Editor: JES
Sheet: 1 of 1	Drawing No.: 4-11-06-00
Drawing Title: Emmett's Ale House	

March 22, 2008

TO: VILLAGE OF DOWNERS GROVE
FROM: EMMETTS ALE HOUSE
RE: OPERATION PLAN

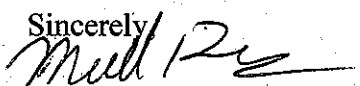
To whom it may concern:

Emmett's is planning on operating it's outdoor dining room in the exact same manner as we did in 2007. The operating hours shall be the same as our indoor hours which are:

Monday through Thursday 11:00am-~~Midnight~~ 11:00pm
Friday and Saturday 11:00am- ~~12:30am~~ Midnight
Sunday 11:00am- ~~10:00pm~~ 9:00pm
12 pm

> per agreement
& agreed to under
separate letter
from M. Burns
ck

We would like to start using the patio as soon as weather permits. Food and liquor service shall only be administered by one of our trained service staff. We have a gated security fence in place to divide the outdoor dining room from the sidewalk and there shall be a manager who is responsible for overseeing the patio operations. We have onsite maintenance personnel from 8:00am to midnight to ensure the patio stays clean.

Sincerely

Michael L. Burns
Managing Partner



Daily Setup/Breakdown/Cleanup:

All table set-ups, plates, silverware, condiments, menus etc. will be taken indoors at day end. All chairs and tables will be chained and locked every evening. The café area will be maintained daily by 1 dedicated busboy and 2 to 3 servers depending on volume of business. Serving staff will be present on patio at all times of operation. The patio and adjacent sidewalk will be hosed down and mopped during the morning hours prior to opening.

Ingress/Egress:

The entrance/exit for the patio will be located on the east side of the fencing and will be handicapped accessible.

Menu:

Emmett's will provide the same food and beverage options that are available in the restaurant proper. No food will be prepared on the patio nor will any drinks be dispensed on the patio.

Staffing:

In addition to the staffing levels mentioned above, there will also be a manager responsible for the patio as well as the bar area of the restaurant proper.

Maintenance personnel:

We employ 1 part-time maintenance engineer at our Downers Grove location and 1 full-time maintenance engineer on call at our corporate office.

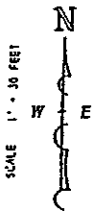
Responsible alcohol service:

Emmett's Ale House policies promote and encourage responsible drinking.

Emmett's Ale House will neither knowingly allow visibly intoxicated guests to enter the restaurant nor knowingly serve alcohol to intoxicated or underage guests.

All interior alcohol handling policies will also apply to the patio.

PLAT OF SURVEY

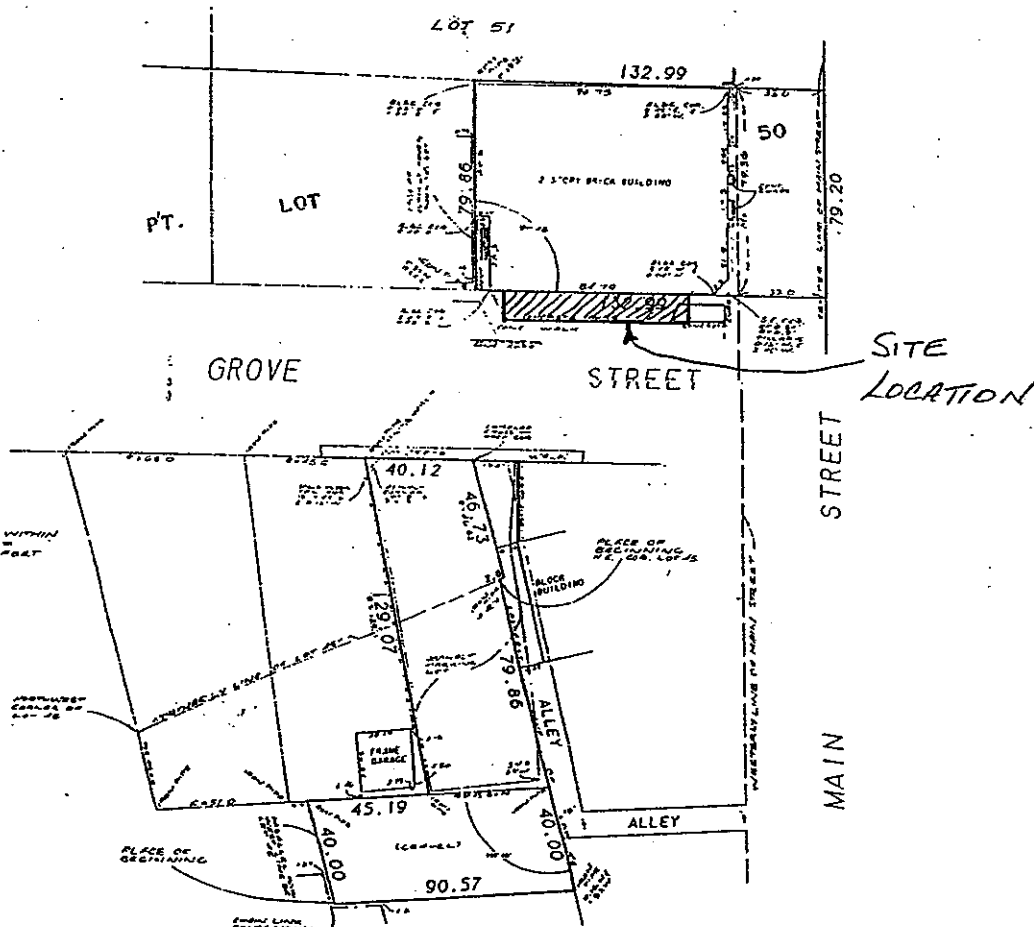


OF THAT PART OF LOT 50 IN ASSESSOR'S SUBDIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING IN THE CENTER OF THE ROAD AT THE NORTHEAST CORNER OF THE SAID LOT AND RUNNING THENCE SOUTH ALONG THE CENTER OF SAID ROAD 1 DEGREE 50 MINUTES EAST 1.20 CHAINS; THENCE SOUTH BY 3/4 DEGREES WEST 2.01 1/2 CHAINS; THENCE NORTH 1 DEGREE 50 MINUTES WEST 1.21 CHAINS TO THE SOUTH LINE OF THE CEMETERY GROUNDS, THENCE EAST ALONG THE SOUTH LINE OF SAID CEMETERY GROUNDS 2.01 1/2 CHAINS TO THE PLACE OF BEGINNING, PART OF THE SOUTHWEST QUARTER OF SECTION 8, IN DU PAGE COUNTY, ILLINOIS.

ALSO: A PART OF LOTS 45 AND 47 OF THE ASSESSOR'S SUBDIVISION OF SECTIONS 7 & 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 45 AND RUNNING THENCE NORTH 74 DEGREES 14 MINUTES EAST 2 FEET TO AN IRON PIPE; THENCE NORTH 14 DEGREES 31 MINUTES WEST 46.82 FEET TO AN IRON PIPE IN THE SOUTH LINE OF GROVE STREET; THENCE NORTH 89 DEGREES 45 MINUTES WEST 40.12 FEET ALONG THE SOUTH LINE OF GROVE STREET TO AN IRON PIPE; THENCE SOUTH 12 DEGREES 2 MINUTES EAST 129.1 FEET TO AN IRON PIPE; THENCE NORTH 85 DEGREES 35 MINUTES EAST 45.8 FEET TO AN IRON PIPE; THENCE NORTH 16 DEGREES 3 MINUTES WEST 79.86 FEET TO THE PLACE OF BEGINNING, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 2, 1871 AS DOCUMENT 14411, IN DU PAGE COUNTY, ILLINOIS.

ALSO: THAT PART OF LOT 43 OF THE ASSESSOR'S SUBDIVISION OF SECTIONS 7 & 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: TO-WIT: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 45 AND RUNNING THENCE NORTH 65 1/2 DEGREES EAST ALONG THE SOUTH LINE OF SAID LOT 45, 53 FEET; THENCE NORTH 15 3/4 DEGREES WEST, PARALLEL WITH THE WEST LINE OF SAID LOT 45 TO A POINT 40 FEET SOUTH OF THE SOUTH LINE OF LAND CONVEYED BY ELDRED THATCHER TO JURIN SCHMIDT, FOR A PLACE OF BEGINNING; THENCE NORTH, PARALLEL WITH THE WEST LINE OF SAID LOT 45, 40 FEET TO SAID SCHMIDT'S SOUTH LINE; THENCE NORTH 75 DEGREES EAST ALONG SAID SCHMIDT'S SOUTH LINE TO A POST IN THE EAST LINE OF SAID LOT 45; THENCE SOUTH 15 3/4 DEGREES EAST ALONG THE EAST LINE OF SAID LOT 45, 40 FEET; THENCE SOUTH 75 DEGREES WEST PARALLEL WITH SAID JURIN SCHMIDT'S SOUTH LINE TO THE PLACE OF BEGINNING, SITUATED IN THE VILLAGE OF DOWNERS GROVE, DU PAGE COUNTY, ILLINOIS.

Ordered by: Michael J. Fortuna, of Cushman & Wakefield of Illinois, Inc., 6250 River Road, Suite 8030, Rosemont, IL 60018.



NOTE: AREA WITHIN HEAVY LINES = 6071 SQUARE FEET

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

This is to certify that E. Harold F. Steinbrecher, Jr., a Registered Professional Engineer and Professional Land Surveyor, have surveyed the property shown and described on the annexed plat, which is to the best of my knowledge and belief, a correct representation thereof. Scale of map is 20 feet to the inch.

Wheaton, Illinois, March 14, 1973.

E. Harold F. Steinbrecher, Jr.
Harold F. Steinbrecher, Jr., P. E., P. L. S.
Registered Professional Engineer
Professional Land Surveyor
110 N. West Street
Wheaton, Illinois 60187-3082
Tel. (708) 668-4143
Fax. (708) 668-8414

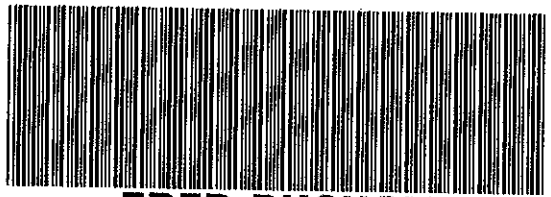


Legal Description

THAT PART OF LOT 50 IN ASSESSOR'S SUBDIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS; COMMENCING IN THE CENTER OF THE ROAD AT THE NORTHEAST CORNER OF THE SAID LOT AND RUNNING THENCE SOUTH ALONG THE CENTER OF SAID ROAD 1 DEGREE 50 MINUTES EAST 1.20 CHAINS; THENCE SOUTH 89 3/4 DEGREES WEST 2.01 1/2 CHAINS; THENCE NORTH 1 DEGREES 50 MINUTES WEST 1.21 CHAINS TO THE SOUTH LINE OF THE CEMETERY GROUNDS, THENCE EAST ALONG THE SOUTH LINE OF SAID CEMETERY GROUNDS 2.01 1/2 CHAINS TO THE PLACE OF BEGINNING, PART OF THE SOUTHWEST QUARTER OF SECTION 8, IN DUPAGE COUNTY, ILLINOIS

Commonly known as a portion of the public right-of-way on the south side and adjacent to 5200 Main Street (PIN 09-08-305-024)





FRED BUCHOLZ

DUPAGE COUNTY RECORDER

JUL 13, 2006

9:59 AM

OTHER

09-08-305-024

006 PAGES

R2006-133367

ENCROACHMENT LICENSE

5200 MAIN ST.
Downers Grove IL.

09-08-305-024
Property Identification No.
(PIN)

no rec't.

THIS AGREEMENT, made this 1st day of June 20⁰⁶, between ALE HOUSE I, LP d/b/a EMMETT'S ALE HOUSE, the Owner(s) (hereinafter called "Licensee(s), and the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation (hereinafter called "Licensor");

WITNESSETH THAT:

WHEREAS, Licensor owns or otherwise has an interest in the following real estate (hereinafter referred to as "the Property"):

Legal Description attached hereto as Exhibit A

(Commonly known as a portion of the public right-of-way on the southernmost side of PIN 09-08-305-024)

WHEREAS, Licensee(s) desires to construct and/or maintain the following improvements upon the Property:
a paver patio and retaining wall with wrought iron fencing, as depicted on Exhibit B, attached.

WHEREAS, the Licensor has determined that such improvements will not adversely impact the use of the Property or impair the public health, safety and welfare; and

WHEREAS, the Licensee(s) and the Licensor desire to consent and agree to such improvement, subject to the terms and conditions hereinafter provided.



NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. The provisions of the preamble are hereby incorporated into and made a part of this Agreement.
2. To the extent of its authority, the Licensor does hereby grant unto the Licensee(s), its successors and assigns, a nonexclusive and revocable license for the benefit of the Subject Property to encroach upon and to occupy and use, in the manner hereinafter specified, that portion of the of the property as depicted on the attached Record Drawing attached hereto and incorporated herein by reference as Exhibit B (the "Encroachment Area").
3. The license herein granted shall be limited to the use by the Licensee(s) of the Encroachment Area for the purpose of conducting thereon a Sidewalk Café (the "Licensee(s)'s Facility") as provided by a separate agreement year to year.
4. The Licensee(s) agrees that the grant of license to encroach provided for in Paragraph 2 hereof shall not otherwise modify or remove the requirements established in the public easement and covenants of record. The parties agree that this license is subject to any rights of third parties in the Property and Licensor makes no warranty regarding Licensee(s) right to use the encroachment area except as regards the interest of the Licensor.
5. The Licensee(s) accepts the Encroachment Area in its present condition.
6. The Licensee(s) assumes all liability and shall indemnify, and compensate the Licensor, its officers and employees, for any injury or damage to personal property, including the Licensor's property or employees, occasioned by or arising in connection with the use or occupancy of the above described Encroachment Area by the Licensee(s), or the existence or condition of Licensee(s)'s Facility, and the Licensee(s) further agrees to indemnify, defend and save harmless the Licensor, its officers and employees, against (i) any actions which may be brought against the Licensor, its officers and employees, arising out of this license, Licensee(s)'s Facility, the condition of the Encroachment area or any act or omission of Licensee(s), its agents or assigns, or any independent contractor on the Licensee(s)'s behalf, and (ii) any claim or expenses incurred by the Licensor in enforcing the terms and provisions of this license against the

Licensee(s).

7. The provisions and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and assigns of the respective parties hereto, and shall run with the title of the Subject Property.

8. Licensee(s) shall maintain Licensee(s)'s Facility in good repair and shall maintain the Encroachment Area in a clean and sightly manner, free of obstructions and debris. Upon demand from the Licensor, Licensee(s) shall immediately correct any defect or remove any debris from the Encroachment Area which, in the sole determination of the Licensor, presents an unsightly or unsafe condition. Provided, however, nothing contained herein shall impose upon the Licensor any duty or obligation to maintain the Encroachment Area or to effect any repairs on Licensee(s)'s Facility. The Licensor shall have the right to enter upon the Encroachment Area and to remove or otherwise render safe Licensee(s)'s Facility or the Encroachment Area when, in the sole determination of the Licensor, such action is necessary to protect the public health, welfare or safety. Licensee(s) shall remain responsible for all expenses incurred by the Licensor in effecting said repairs or removing said debris from the Encroachment Area as provided herein.

9. This license may be terminated by either party on thirty days notice. In the event of such termination, Licensee(s) shall cause the removal of Licensee(s)'s Facility and any improvements thereon, and shall return the Encroachment Area to substantially the same condition as when this License Agreement was executed. In the event Licensee(s) fails to effect such removal within thirty days of Notice of Termination, the Licensor shall have the right to enter upon the Encroachment Area and remove Licensee(s)'s Facility and improvements. All costs of said removal as provided herein shall be borne by the Licensee(s) and shall be paid to the Licensor upon demand.

10. Licensee(s) assumes all risk in the placement of Licensee(s) Facility and improvements and shall be responsible for removal or relocation of Licensee(s)'s Facility and improvements in the event that any utility, including the Licensor, requires to work within the Encroachment Area on public facilities located therein.

11. A fully executed copy of this Agreement shall be recorded in the Office of the DuPage County Recorder of by the Village Clerk upon execution and receipt of \$50.00 from Licensee to Licensor to cover administrative and recording fees.

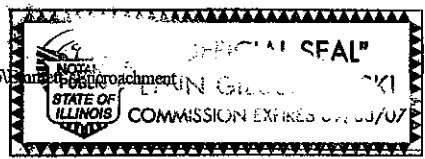
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Subscribed and sworn to before me

this 5 day of MAY, 2006

Lynn Giebudowski
Notary Public

Attest: Kenda J. Brown
Deputy Village Clerk



LICENSEE(S)

[Signature]

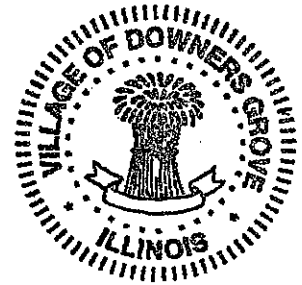
By:

[Signature]
General Manager

LICENSOR: VILLAGE OF DOWNERS GROVE

By:

[Signature]
Village Manager



prepared by & return to:

VILLAGE CLERK
VILLAGE OF DOWNERS GROVE
801 Burlington
Downers Grove, Illinois 60515

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID EA
EMMET-1

DATE (MM/DD/YYYY)
03/14/08

PRODUCER The Owens Group, Inc. 19 S. LaSalle St., Suite 500 Chicago IL 60603 Phone: 312-368-5110 Fax: 312-368-5113	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Ale House I, LP d/b/a Emmett's Ale House 5200 Main Street Downers Grove IL 60615	<table border="1"> <tr> <th>INSURERS AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Valley Forge Insurance Co.</td> <td></td> </tr> <tr> <td>INSURER B: Transcontinental Insurance Co.</td> <td></td> </tr> <tr> <td>INSURER C: National Fire Ins. of Hartford</td> <td></td> </tr> <tr> <td>INSURER D: Continental Casualty Company</td> <td></td> </tr> <tr> <td>INSURER E: Lloyds of London</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Valley Forge Insurance Co.		INSURER B: Transcontinental Insurance Co.		INSURER C: National Fire Ins. of Hartford		INSURER D: Continental Casualty Company		INSURER E: Lloyds of London	
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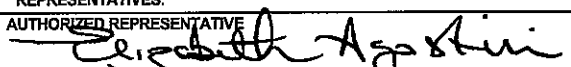
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	C2083959129	07/26/07	07/26/08	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
B	AUTOMOBILE LIABILITY	C2083959132	07/26/07	07/26/08	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
D	EXCESS/UMBRELLA LIABILITY	C2083959163	07/26/07	07/26/08	EACH OCCURRENCE	\$ 4,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 4,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input checked="" type="checkbox"/> RETENTION \$10,000					\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC2083959146	07/26/07	07/26/08	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 500,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 500,000
					E.L. DISEASE - POLICY LIMIT	\$ 500,000
E	Liquor Liability	LIQ18892	07/26/07	07/26/08	Limit:	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Village of Downers Grove, and its officers, board, commissions, elected and appointed officials, agents and employees are included as additional insureds as their interests may appear per 'Sidewalk Cafe License Agreement' between the Village of Downers Grove and Ale House I, LP d/b/a Emmett's Ale House.

CERTIFICATE HOLDER Village of Downers Grove	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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Legal Description

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THAT PART OF LOT 50 IN ASSESSOR'S SUBDIVISION OF SECTIONS 7 AND 8, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS; COMMENCING IN THE CENTER OF THE ROAD AT THE NORTHEAST CORNER OF THE SAID LOT AND RUNNING THENCE SOUTH ALONG THE CENTER OF SAID ROAD 1 DEGREE 50 MINUTES EAST 1.20 CHAINS; THENCE SOUTH 89 3/4 DEGREES WEST 2.01 1/2 CHAINS; THENCE NORTH 1 DEGREES 50 MINUTES WEST 1.21 CHAINS TO THE SOUTH LINE OF THE CEMETERY GROUNDS, THENCE EAST ALONG THE SOUTH LINE OF SAID CEMETERY GROUNDS 2.01 1/2 CHAINS TO THE PLACE OF BEGINNING, PART OF THE SOUTHWEST QUARTER OF SECTION 8, IN DUPAGE COUNTY, ILLINOIS

Commonly known as a portion of the public right-of-way on the south side and adjacent to 5200 Main Street (PIN 09-08-305-024) ✓

