

32-R-12

A RESOLUTION

Authorizing the City Manager to Execute a License Agreement with Gendell/WNB, LLC for parking at 1223-1225 Chicago Avenue

WHEREAS, the City of Evanston entered into an Assignment and Assumption Agreement pursuant to Resolution 32-R-12 to acquire real property located at 1223-1225 Chicago Avenue ("Purchase Contract"), Evanston and legally described on Exhibit "A", which is incorporated herein by reference (the "Subject Property"); and

WHEREAS, the Subject Property is part of a larger potential development of adjoining property for a retail store at 1211 Chicago Avenue, Evanston; and

WHEREAS, the City Council of the City of Evanston has determined that the best use of the Subject Property will be to provide additional parking for the proposed retail use; and

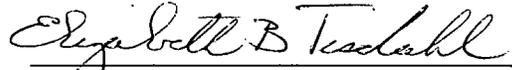
WHEREAS, in the event that the City closes on the Purchase Contract for the Subject Property, the City Manager recommends that the City Council authorize the execution of a license agreement for parking with the property manager of 1211 Chicago Avenue, Evanston (the "License Agreement") Gendell/WNB, LLC, an Illinois limited liability company; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The City Manager is hereby authorized to sign, and the City Clerk is hereby authorized to attest, the License Agreement for the Subject Property, attached hereto as Exhibit B and incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the License Agreement as he may determine to be in the best interests of the City.

SECTION 3: That this Resolution 32-R-12 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Elizabeth B. Tisdahl, Mayor

Attest:



Rodney Greene, City Clerk

Adopted: May 7, 2012

EXHIBIT A

Legal Description

LOT 19 IN THE WEST 1/2 OF BLOCK 76 IN NORTHWESTERN UNIVERSITY
SUBDIVISION IN THE NORTH 1/2 OF THE NORTH 1/2 OF SECTION 19, TOWNSHIP
41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.

Commonly Known As: 1223-1225 Chicago Avenue, Evanston, Illinois 60202

EXHIBIT B
License Agreement

LICENSE AGREEMENT

BETWEEN

CITY OF EVANSTON,

LICENSOR

AND

GENDELL/WNB, LLC,

LICENSEE

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2012, by and between CITY OF EVANSTON (“Licensor”), an Illinois home rule municipality and GENDELL/WNB, LLC (“Licensee”), an Illinois limited liability company, upon the following terms and conditions:

1. *The Licensed Area.* Subject to the terms and conditions of this Agreement, Licensor grants to Licensee and its Permittees (hereafter defined) an irrevocable exclusive license to use the area shown and described on Exhibit A attached hereto and made a part hereof (the “Licensed Area”). Licensor acknowledges and agrees that Licensee and its Permittees shall have the right to use the Licensed Area as provided herein and further right to enforce parking rights in the Licensed Area by the posting of signs and the towing of cars at the owner’s expense, if necessary. The improvements situated from time to time in the Licensed Area are hereinafter referred to as the “Licensed Improvements.”

2. *Fee Parking Spaces.*

(a) Notwithstanding the foregoing, Licensee acknowledges and agrees that during the Non-Peak Hours (hereafter defined), a portion of the Licensed Area labeled and shown on Exhibit B attached hereto and made a part hereof and containing approximately twenty (20) parking spaces may also be used by third parties (including Licensee, its Permittees and their respective customers, employees and invitees) upon payment of a fee to be determined by Licensor in its sole discretion (the “Fee Parking Spaces”). Licensor shall, at its sole cost and expense, individually mark each of the

Fee Parking Spaces as such in accordance with a design reasonably approved by Licensee and its Permittees (hereafter defined).

- (b) Licensor reserves the right to structure a permit parking arrangement with third parties for the use of twenty (20) Fee Parking Spaces as depicted on Exhibit B in accordance with the terms of this Agreement.
- (c) Non-Peak Hours – Year One of Term: For purposes of this Agreement, “Non-Peak Hours” for the first year of the Term (hereafter defined) shall mean a time period from the close of business of the Retail Building (hereafter defined) through 8 a.m. each day of the week, Monday through Sunday. Notwithstanding anything to the contrary contained in this Agreement, Licensor and Licensee acknowledge and agree that the Non-Peak Hours shall never be earlier than 8:00 p.m. on any day throughout the Term. The Fee Parking Spaces will become available to such third parties upon the date the Retail Building opens for business.
- (d) Annual Evaluation – Years One through Five of the Term: Not more than once per year at any time mutually agreed to by Licensor, Licensee and its Permittees, during the first five (5) years of the Term, the parties will commission an independent third party (the “Third Party Consultant”) to evaluate the evening usage of the entire Retail Building parking (“Retail Building Parking Lot”), including the Fee Parking Spaces. The Third Party Consultant will conduct a statistical analysis (in twenty (20) minute increments) of the parking usage of the Retail Building Parking Lot from 8

p.m. to one half hour following the hour of close for the Retail Building. If the mean rate for open parking spaces within the entire Retail Building Parking Lot is greater than 50%, the parties must use commercially reasonable efforts to evaluate and renegotiate the expansion of the Non-Peak Hours set forth in Paragraph 2(c). If the mean rate for open parking spaces within the entire Retail Building Parking Lot is less than 25%, the parties must use commercially reasonable efforts to evaluate and renegotiate the reduction of the Non-Peak Hours set forth in Paragraph 2(c).

- (e) Evaluation of Non-Peak Hours for Remainder of Term: Every other year after the initial five years of the Term, not more than once per year and at any time mutually agreed to by Licensor, Licensee and its Permittees, the parties will commission a Third Party Consultant to evaluate the evening usage of the Retail Building Parking Lot. The Third Party Consultant will conduct a statistical analysis of the parking usage of the Retail Building Parking Lot from 8 p.m. to one half hour following the hour of close for the business of the Retail Building. If the mean rate for open parking spaces within the Retail Building Parking Lot is greater than 50%, the parties must use commercially reasonable efforts to evaluate and renegotiate the expansion of the Non-Peak Hours set forth in Paragraph 2(c). If the mean rate for open parking spaces within the Retail Building Parking Lot is less than 25%, the parties must use commercially

reasonable efforts to evaluate and renegotiate the reduction of the Non-Peak Hours set in Paragraph 2(c).

3. *Permissible Use.* During the Term, the Licensed Area may, except as otherwise specifically provided herein for the Non-Peak Hours, be used exclusively by Licensee and its Permittees for access and ingress and egress, and for parking by Licensee and its Permittees. Licensee is granted this License for the specific purpose of parking and the installation of cart corrals, however Licensor retains ultimate possession and control of the Licensed Area. Licensee agrees to use the Licensed Area and operate (and cause all persons claiming through it to operate) therein in a manner that complies with all laws, orders, rules and regulations of agencies or bodies having jurisdiction and to comply with such reasonable rules and regulations (herein "Rules and Regulations") relating to the Licensed Area and their usage as Licensor may impose from time to time, provided however in no event shall any Rules and Regulations be proposed or adopted which amends any specific provision of this Agreement or imposes any fee, penalty or economic payment or obligation upon Licensee. Licensee will not use or knowingly permit the Licensed Area to be used for any illegal purpose and shall not knowingly permit the consumption of alcoholic beverages thereon, shall not cause or knowingly permit any hazardous materials to be generated, used, released, stored or disposed of in or about the Licensed Area, shall not store or knowingly permit accumulations of any trash, garbage, rubbish or other refuse inside or outside of the License Area, except in appropriate trash receptacles, and shall not in any manner create any nuisance. Licensee shall comply with all traffic control, safety, security and/or access systems installed in the Licensed Area from time to time. Licensee and its

Permittees shall not inhibit the free flow of traffic onto or from Chicago Avenue in connection with their respective uses of the Licensed Area.

4. **Term of Agreement.** This Agreement shall commence on the date the Retail Building opens for business and shall remain in full force and effect for a continuous period of seventy (70) years therefrom ("Term"). If, at any time after thirty-five (35) years (420 months) of the total Term have elapsed, the adjoining commercial property located at 1211 Chicago Avenue, Evanston, Illinois (the "Retail Building") is Vacant (hereinafter defined) for twelve (12) continuous months, Licensor shall, as its sole remedy, have the unrestricted use of the Fee Parking Spaces until such Vacancy (hereinafter defined) is remedied beginning on the first day after the end of the Cure Period (as defined herein) and continuing until said Vacancy ceases. "Vacant" or "Vacancy" shall mean and refer to the Retail Building being less than fifty percent (50%) occupied and/or used for non-retail purposes or temporary uses (such as a seasonal store). Licensor shall deliver written notice to Licensee of the Vacancy in accordance with Paragraph 17. Licensee shall have thirty (30) days to cure said Vacancy, beginning on the date of receipt of the notice prior to the aforementioned remedy being exercised ("Cure Period").

5. **Termination.** This Agreement shall terminate upon the expiration of the Term of the Agreement.

6. **License Commencement Fee.** Within thirty (30) days of the Retail Building opening for business, Licensee shall make a one-time payment of Twenty-Five Thousand and no/100 Dollars (\$25,000.00) to the Licensor.

7. **Construction of Licensed Improvements.** Licensee shall, at its sole cost and expense and with no reimbursement from Licensor, remove, relocate and/or demolish the existing

structure(s) and any other items from the Licensed Area. Licensee shall construct all Licensed Improvements in accordance with Exhibit C attached hereto and made a part hereof. All permit fees for the relocation and the construction shall be the sole cost and expense of Licensee. Licensee acknowledges the presence of a residential structure on the Licensed Area of the adjacent property at 1229 Chicago Avenue, to which there is a sister agreement, defined hereafter. Licensee shall use its commercially reasonable efforts to relocate such residence, provided the cost of relocating the residence is not cost prohibitive for the development of the Retail Building. The parties will meet and confer within 60-90 days after the execution of this Agreement to evaluate the cost of relocating the residence. If the parties agree on the cost of relocating the residence and Licensee agrees to relocate the residence, Licensee shall perform such removal at its sole cost and expense in accordance with its obligations under this Paragraph 7. In the event Licensor and Licensee can not agree on the cost of removing the residence because Licensee deems the same to be cost prohibitive, Licensee may terminate this Agreement or, in lieu thereof, Licensor may permit Licensee to demolish the residence at Licensee's own expense and, in such event, Licensee shall take all commercially reasonable steps to salvage building materials that can be reused and repurposed for another use.

8. **Maintenance and Repairs; Lighting; Snow and Ice Removal.** Licensee, at its sole cost and expense, shall perform all routine maintenance, repairs, and necessary capital expenditures to the Licensed Improvements for the Term of the Agreement. Licensee shall also keep the Licensed Improvements lighted in accordance with applicable municipal ordinances and shall remove all snow and ice and trash therefrom. Licensor shall have no obligations with respect to the maintenance, repair or capital expenditures of the Licensed Area except (i) with

respect to Licensor's negligence or willful misconduct or that of those claiming by or through Licensor and (ii) as expressly set forth herein.

9. *Licensee's Alterations.* Licensee shall make and perform, and permit the making and performance of, any alterations, installations, improvements, additions or other physical changes in or about the Licensed Area or with respect to the Licensed Improvements, inclusive, without limitation, of installation of any signage, with Licensor's prior written consent, which consent shall not be unreasonably withheld or delayed beyond thirty (30) days. Licensor has the right to inspect Licensee's alterations to ensure that the work is free from any hazardous conditions and completed in a workmanlike manner. Licensee may install, or cause to be installed, signs in, on and about the Licensed Area to the maximum extent permitted by local ordinances and in accordance with City of Evanston Code Title 4, Chapter 12 "Sign Regulations". Licensee may not erect or install any signage, of any nature or design, without Landlord's prior written consent, which consent may not be unreasonably withheld. All signage shall comply with Licensor's sign ordinance, set forth in Title 4, Chapter 12 of the Evanston City Code of 1979, as amended, and shall be reviewed in accordance with procedures outlined in the City Code

10. *Real Estate Taxes.* Licensee shall pay, or cause to be paid, all real estate taxes assessed against the Licensed Area during the Term of this Agreement. The obligation commences on the date of this Agreement. Licensee acknowledges and agrees that the Licensed Area shall not be deemed tax exempt or otherwise removed from the tax rolls.

11. *Utilities.* Licensee shall pay, or cause to be paid, any utility charges arising in connection with its use of the Licensed Area during the Term of this Agreement.

12. **Transferability of License.** Except as otherwise permitted herein, no sublicense or assignment of this License or any interest therein for any purpose shall be made or granted by Licensee without the prior written consent of the Licensor, which consent shall not be unreasonably withheld, and shall be granted or denied within thirty (30) days of Licensor's receipt of written request therefore from Licensee. Notwithstanding the foregoing, Licensor hereby acknowledges and agrees that Licensee shall have the right (without the consent of Licensor) to (i) transfer its interest in this Agreement to any owner of the land located adjacent to the Licensed Area (the "Land") and (ii) sublicense its rights hereunder to any tenant or occupant of the Land including, without limitation, the right to sublicense the Licensed Area to Trader Joe's East, Inc. ("TJ's") and its customers, employees and invitees, the rights of which are hereby acknowledged and agreed to (such sublicenses and their respective customers, employees and invitees are referred to herein as the "Permittees"); provided, however, any Licensee shall remain responsible for the performance obligations of the Agreement for a sublicense. Licensor shall have the right to transfer its interest in and to this Agreement with the written consent of Licensee, which consent shall not be unreasonably withheld.

13. **Default.** In the event of any default on the part of Licensee to faithfully keep and perform all the covenants, agreements, and undertakings herein agreed by it to be kept and performed, Licensor shall give Licensee notice in writing of such default; and if such default shall not have been rectified within thirty (30) days after receipt of such notice by Licensee (provided that such 30-day period shall be extended so long as Licensee has commenced to rectify the default within said 30-day period and diligently pursues the same to completion), all rights and privileges granted herein by Licensor to Licensee may be terminated by Licensor.

14. Contingencies. This Agreement is contingent on (i) Licensor closing on the transaction to purchase the Licensed Area from an outside party to this Agreement (the “Licensed Area Purchase”) (ii) Licensor closing the purchase of 1229 Chicago Avenue, Evanston, Illinois and Licensee terminating the lease of the occupant of such property (the “1229 Chicago Avenue Transaction”) and (iii) TJ’s waiving all conditions under its lease with Licensee (the “Lease”). In the event that the Licensed Area Purchase, the 1229 Chicago Avenue Transaction and the Lease are not consummated, then either party can opt to terminate this Agreement.

15. Insurance/Indemnification.

(a) Each party shall carry and maintain, or cause to be carried and maintained, the following insurance (“Insurance”), at its sole cost and expense, at all times during the Term of this Agreement: (1) a policy of comprehensive general public liability insurance, with broad form property damage endorsement, naming the other (or any successor), and its members, principals, beneficiaries, partners, officers, directors, employees, and agents, and other designees as the interest of such designees shall appear, as additional insureds, providing, on an occurrence basis, a minimum combined single limit of \$2,000,000; and (2) Workers’ Compensation Insurance as required by the state in which the Licensed Area is located and in amounts as may be required by applicable statute. Any company writing any Insurance shall have an A.M. Best rating of not less than A-VIII. All policies of Insurance shall contain endorsements that the insurer(s) shall give all insured parties at least 30 days’ advance written notice of any change, cancellation, termination or lapse of insurance. Each party shall provide the other with a certificate of insurance evidencing Insurance prior to the date of this Agreement and an

endorsement naming the other party as an additional insured, and upon renewals at least 15 days prior to the expiration of the insurance coverage. The comprehensive general public liability insurance may be effected by a policy or policies of blanket insurance which cover other property in addition to the Licensed Area, provided that the protection afforded thereunder shall be no less than that which would have been afforded under a separate policy or policies relating only to the licensed area and provided further that in all other respects any such policy shall comply with the other provisions of this Section.

(b) Neither the issuance of any insurance policy required under this Agreement, nor the minimum limits specified herein with respect to insurance coverage, shall be deemed to limit or restrict in any way any liability arising under or out of this Agreement.

(c) Except for the willful or negligent acts or omissions of Licensor or its agents or employees, Licensee hereby agrees to indemnify and hold harmless Licensor from and against any and all claims, losses, actions, damages, liabilities and expenses (including reasonable attorneys' fees) that (i) arise from or are in connection with any willful or negligent act or omissions of Licensee, its agents, customers, employees, or any other person entering upon the Licensed Area and/or Licensed Improvements under express or implied invitation by Licensee, (ii) result from any default, breach, violation or nonperformance of this Agreement or any provision therein by Licensee, or (iii) arise from injury or death to persons or damage to property sustained by Licensee's customers, agents, employees or any other person entering upon the Licensed Area and/or Licensed Improvements under express or implied invitation by Licensee on or about the Licensed Area. Licensee shall, at its own cost and expense, defend any and all actions, suites and proceedings which may be brought against Licensor with respect to the

foregoing or in which Licensor may be impeded. Licensee shall pay, satisfy and discharge any and all judgments, orders and decrees which may be recovered against Licensor in connection with the foregoing and all attorneys' fees incurred by Licensor.

(d) Licensee shall give prompt notice to the Licensor of any and all incidents of personal injury, property damage, and loss occurring in the Licensed Area and/or Licensed Improvements of which it becomes aware, and all claims filed as a result of such incidents.

(e) Licensor and Licensee severally waive any and every claim which arises or may arise in its favor and against the other during the Term for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Licensed Area, which loss or damage is covered by valid and collectible insurance policies to the extent that such loss or damage is recoverable thereunder. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Licensor and Licensee severally agree immediately to give each insurance company which has issued its policies of insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waivers.

16. Condemnation. If, during the Term, the entire Licensed Area or Licensed Improvements are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase or exchange in lieu, this Agreement shall automatically terminate upon such taking. In the event that a portion of the Licensed Area or Licensed Improvements are taken for any public or quasi-public use under governmental law, ordinance or regulation, Licensor will use reasonable efforts to locate

additional parking within close proximity of the Retail Building for Licensee and its users to account for the Licensed Area which was taken. Licensor agrees that it shall not initiate or participate in any condemnation or undertaking proceedings involving the Licensed Area or License Improvements.

17. **Fire and Casualty.** If the Licensed Area and/or Licensed Improvements should be destroyed or damaged by fire or other casualty, Licensor shall, at its sole cost and expense, restore the Licensed Area to its condition existing immediately prior to such fire or other casualty.

18. **Nature of License.** It is agreed between Licensor and Licensee that this Agreement conveys no interest in any of Licensor's real property to Licensee and does not constitute an easement. Licensee agrees that it does not and shall not claim at any time any interest or estate of any kind in the Licensed Area by virtue of this Agreement or use of that area hereunder.

19. **Binding Notice.** This Agreement shall be binding upon Licensor, Licensee and their successors and permitted assigns including, without limitation, the Permittees.

20. **Notices.** Notices shall be sent by certified mail return receipt requested, or by nationally recognized overnight courier, delivered against receipt or by hand and shall be deemed given when received or refused. Licensee's notice address shall be, until notice of a change is given, Gendell/WNB, LLC, 3201 Old Glenview, Suite 300, Wilmette, Illinois 60091, Attention: Scott Gendell, with a copy to Richard J. Traub, Esq., Freeborn & Peters LLP, 311 S. Wacker Drive, Suite 3000, Chicago, Illinois 60606 and with a further copy to Trader Joe's East, Inc., 711 Atlantic Avenue, Floor 3, Boston, Massachusetts 02111, Attention: Vice President Real Estate. Licensor's notice address shall be, until notice of change of address is given, City of Evanston,

Attn: City Manager, 2100 Ridge Avenue, Evanston, IL 60201; with a copy to: City of Evanston Law Department, Attn: W. Grant Farrar, Corporation Counsel, 2100 Ridge Avenue, Evanston, Illinois 60201.

21. **No Modification/Entire Agreement.** This Agreement represents the entire agreement between the parties respecting the parking rights of Licensee in the Licensed Area and shall not be modified except by a written instrument signed by both parties.

22. **Acts of God.** Neither party shall be required to perform any covenant or obligation in this Agreement, or be liable in damages to the other, so long as the performance or nonperformance of the covenant or obligation is delayed, caused by or prevented by an act of God or force majeure.

23. **Estoppel Certificates.** Licensor agrees to furnish from time to time, within five (5) business days after request of Licensee, a certified statement, as to such matters as Licensee or its mortgage holder shall reasonably request.

24. **No Broker Claims.** Each party hereby warrants and represents to the other that it has not dealt with any broker, agent or finder in connection with this Agreement, and each party covenants and agrees to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost or expense (including but not limited to reasonable attorney fees and expenses and court costs) that may be suffered or incurred because of any claim for any fee, commission or similar compensation with respect to this Agreement, made by any broker, agent or finder claiming to have dealt with such party, whether or not such claim is meritorious.

25. Recording. The parties shall join in the execution of a memorandum or so-called "short form" of this Agreement simultaneously with the execution of this Agreement or at any time during the Term when requested to do so by the other party, in a mutually acceptable form. The Licensee shall record the short form of agreement and the recording costs shall be borne by the Licensee.

26. Right to Encumber and Collaterally Assign. Licensor shall have the right to encumber its fee simple interest in the Licensed Area; provided, however, any encumbrance shall not interfere with Licensee's use of the Licensed Area pursuant to the terms of this Agreement. Licensee shall have the right to collaterally assign its interest in this Agreement without the consent of Licensor. Notwithstanding anything to the contrary contained in this Agreement, Licensor and Licensee acknowledge and agree that Licensee's interest shall, at all times, be superior (and not subordinate) to the interest of any holder of any encumbrance including, without limitation, any holder of any mortgage or deed of trust encumbering the Licensed Area.

27. Environmental Matters. Each party shall indemnify, defend and hold the other harmless from any damage or liability arising in connection with the introduction of hazardous substances to the Licensed Area. "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq. and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("ERA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act,

42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300fe seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to Know Act, and Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq.; and any environmental protection, beam superlien or environmental clean-up statutes of the State of Illinois, with implementing regulations and guidelines, as amended from time to time. Environmental Laws shall also include all state, regional, county, municipal and over local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate hazardous materials.

28. **Quiet Enjoyment.** Licensor agrees that, provided Licensee performs all covenants and agreements required of Licensee by this agreement, Licensee and its Permittees shall be entitled to the quiet enjoyment of the Licensed Area and the Licensed Improvements.

29. **Sister Agreement.** Contemporaneously with the execution of this Agreement, Licensor and Licensee shall execute a License Agreement (the "Sister Agreement") for the use of five (5) parking spaces in the area shown on Exhibit A. Licensor agrees that Licensee shall have the right to terminate this Agreement in the event the Sister Agreement is terminated for any reason.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day
and year first hereinabove provided.

LICENSOR:

CITY OF EVANSTON

By: _____ [SEAL]
Name: Wally Bobkiewicz
Title: City Manager

LICENSEE:

GENDELL/WNB, LLC

By: _____ [SEAL]
Name: _____
Title: _____

EXHIBIT A

**LEGAL DESCRIPTION AND
SITE PLAN OF
LICENSED AREA**

LOT 19 IN THE WEST 1/2 OF BLOCK 76 IN NORTHWESTERN UNIVERSITY
SUBDIVISION IN THE NORTH 1/2 OF THE NORTH 1/2 OF SECTION 19, TOWNSHIP 41
NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,
ILLINOIS.

Commonly Known As: 1223-1225 Chicago Avenue, Evanston, Illinois 60202

EXHIBIT B

**PORTION OF LICENSED AREA AVAILABLE FOR
THIRD PARTY USE**

EXHIBIT C

WORK LETTER LICENSED IMPROVEMENTS

This Exhibit is attached to and made a part of the Agreement dated as of _____, 2012, by and between CITY OF EVANSTON (“Licensor”) and GENDELL/WNB, LLC (“Licensee”) respecting a license at the parking lot located at 1223-1225 Chicago Avenue, Evanston, Illinois.

All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed thereto in the Agreement.

1. This Work Letter sets forth the obligations of Licensor and Licensee with respect to the installation, construction and payment of costs of the Licensed Improvements identified and depicted in Exhibit C-1 hereof, which Licensed Improvements consist generally of _____ “Trader Joe’s” (“Licensee Premises”). Licensee shall, at its sole cost and expense, construct the Licensed Improvements shown on Exhibit C-1 [**including meters**].
2. Licensor and Licensee acknowledge that all Licensed Improvements are and shall constitute the sole property of Licensee, with Licensor having no interest therein. The Licensed Improvements which are permanently affixed to the Licensed Area, will remain the property of the Licensor.

EXHIBIT C-1

DRAWING OF LICENSED IMPROVEMENTS

2632153v3/25344-0021

