

**NOTICE OF SPECIAL MEETING
WINNETKA VILLAGE COUNCIL
510 Green Bay Road**

Wednesday, September 29, 2010
7:30 PM

The Council of the Village of Winnetka will convene a Special Meeting on Wednesday, September 29, 2010, at 7:30 PM, on the second floor of the Winnetka Village Hall at 510 Green Bay Road, Winnetka, Illinois.

The Agenda for the Special Meeting is as follows:

Agenda

1. Call to Order
2. Pledge of Allegiance
3. Ordinance MC-6-2010 –Amending Section 2.12.010 –Village Manager Residency – Introduction (to be waived) and Adoption
[Note: The full text of Ordinance MC-6-2010 will be distributed at the meeting.]
4. Appointment of Village Manager
5. R-34-2010 – Approving an Agreement Establishing the Terms and Conditions of the Village Manager’s Employment
[Note: The full text of Resolution R-34-2010, including the referenced employment agreement, will be distributed at the meeting.]
6. Adjourn

Posted September 27, 2010, _____ p.m.

NOTICE

All agenda materials are available at www.villageofwinnetka.org (click Council and then Current Agenda), the Reference Desk at the Winnetka Library, or in the Manager’s Office at Village Hall (2nd floor). Information regarding rebroadcast of regular Council meetings may also be found on the Village’s website.

ADA NOTICE

The Village of Winnetka, in compliance with the Americans with Disabilities Act, requests that all persons with disabilities, who require certain accommodations to allow them to observe and/or participate in this meeting or have questions about the accessibility of the meeting or facilities, contact the Village ADA Coordinator – Liz Rosenthal, at 510 Green Bay Road, Winnetka, Illinois 60093, (Telephone (847) 716-3540; T.D.D. (847) 501-6041).

AGENDA REPORT

SUBJECT: Ordinance MC-6-2010 – Amending Section 2.12.010 of the Winnetka Village Code as it Pertains to the Residency of the Village Manager

PREPARED BY: Katherine S. Janega, Village Attorney

DATE: September 27, 2010

Section 2.12.010 of the Winnetka Village Code provides for the appointment of the Village Manager and, among other things, requires that the Village Manager become a resident of the Village within 120 days after the date of appointment to office.

Ordinance MC-6-2010 amends Section 2.12.010(C) of the Village Code, by changing the 120-day residency requirement to “a reasonable period of time, as determined by resolution of the Village Council.” Because the proposed contract with the new Village Manager allows more than 120 days for him to establish residency in the Village, it is necessary to amend the Village Code to authorize the longer time period.

Rather than amending Section 2.12.010(C) to allow the exact amount of time negotiated with the new Village Manager, Ordinance MC-6-2010 provides a more flexible standard that will allow future Village Councils, as well as the current Council, to determine what is a reasonable period of time in the context of the particular circumstances at the time of employment negotiations. A Council could thus simply include the time period for residency in the resolution setting the other terms and conditions of employment, without having to consider a further amendment to Section 2.12.020(C). It should be noted, however, that the basic residency requirement has not been changed.

Because of the need to proceed promptly with the appointment of the new Village Manager, MC-6-2010 contains a recital, in accordance with Section 2.04.040(D) of the Village Code, that waiving introduction and initial posting is in the Village’s best interests. As provided in Section 2.04.040(D), a motion to waive introduction must be passed by the unanimous vote of the Trustees in attendance.

Recommendation:

- 1) Consider waiving introduction and initial posting of Ordinance MC-6-2010.
- 2) Consider adopting Ordinance MC-6-2010, amending Section 2.12.010 of the Village Code as it pertains to the residency of the Village Manager.

ORDINANCE NO. MC-6-2010

**AN ORDINANCE
AMENDING SECTION CHAPTER 2.12.010 OF THE WINNETKA VILLAGE CODE
AS IT PERTAINS TO THE
RESIDENCY OF THE VILLAGE MANAGER**

WHEREAS, the Village of Winnetka is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970, pursuant to which it has the authority, except as limited by said Section 6 of Article VII, to exercise any power and perform any function pertaining to the government and affairs of the Village; and

WHEREAS, Section 2.12.010 of the Winnetka Village Code provides for the appointment of the Village Manager and, among other things, requires that the Village Manager become a resident of the Village within 120 days after the date of appointment to office; and

WHEREAS, the Council of the Village of Winnetka (“Village Council”) find and determine that it is in the best interests of the Village to provide flexibility to the Village Council regarding setting the time at which a Village Manager must become a resident of the Village; and

WHEREAS, the Village Council find and determine that authorizing the Village Council to set, by resolution, the time period in which a Village Manager must become a resident is a matter pertaining to the government and affairs of the Village of Winnetka; and

WHEREAS, the Village Council find and determine that the interests of the Village of Winnetka will best be served by waiving introduction and initial posting of this ordinance, so that the Village Council may appoint a new Village Manager without further delay.

NOW, THEREFORE, the Council of the Village of Winnetka do ordain as follows:

SECTION 1: The foregoing recitals are hereby incorporated as the findings of the Council of the Village of Winnetka, as if fully set forth herein.

SECTION 2: Section 2.12.010, “Absence of Village Manager,” of Chapter 2.12 of Title 2 of the Winnetka Village Code, “Village Manager,” is hereby amended to provide as follows:

Section 2.12.010 Office Created; Appointment; Terms and Conditions of Appointment.

A. Office Created. There is hereby created the office of Village Manager, who shall be the chief administrative officer of the Village, and shall be responsible to the Council for the management and operation of all departments of the Village, unless the

management and operation of any departments are expressly delegated elsewhere by statute or ordinance.

B. Appointment. The Village Manager shall be appointed by the President by and with the approval of the Trustees, and may be removed by the affirmative vote of a majority of the Council.

C. Terms and conditions of appointment. The Manager need not be a resident of the Village when appointed, but shall become a resident of the Village within ~~one hundred twenty days after being appointed~~ a reasonable period of time, as determined by resolution of the Village Council. The conditions of the Manager's appointment may be set forth in an agreement.

SECTION 3: This Ordinance is passed by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 4: This Ordinance shall take effect immediately upon its passage, approval and posting as provided by law.

PASSED this 29th day of September, 2010, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this 29th day of September, 2010.

Signed:

Village President

Countersigned:

Village Clerk

Introduced: Introduction waived September 29, 2010
Posted: Posting waived, September 29, 2010
Passed and Approved: September 29, 2010
Posted:

AGENDA REPORT

SUBJECT: Resolution R-34-2010 – Authorizing an Employment Agreement and Setting the terms and Conditions of Employment for Village Manager Robert M. Bahan

PREPARED BY: Katherine S. Janega, Village Attorney

DATE: September 27, 2010

Resolution R-34-2010 authorizes an employment agreement with the new Village Manager. In addition, to assure compliance with the Village Code, the resolution contains provisions setting the time period within which the Village Manager must establish residency, and sets the Village Manager's salary.

Because the most recent resolution setting the Village Manager's salary, R-21-2009, contains provisions that are inconsistent with the terms negotiated with the new Manager, Resolution R-34-2010 also contains a provision stating that the current resolution supersedes R-21-2009.

Recommendation:

- 1) Consider adopting Resolution R-34-2010, authorizing an employment agreement and setting the terms and conditions of employment for Village Manager Robert M. Bahan

RESOLUTION NO. R-34-2010

**A RESOLUTION
AUTHORIZING AN EMPLOYMENT AGREEMENT
AND SETTING THE TERMS AND CONDITIONS OF EMPLOYMENT
FOR VILLAGE MANAGER ROBERT M. BAHAN**

WHEREAS, Section 2.12.010 of the Winnetka Village Code provides for the appointment of the Village Manager and allows the terms and conditions of employment to be set forth in an agreement; and

WHEREAS, pursuant to Section 2.12.010 of the Winnetka Village Code, the Village President, with the consent and approval of the Village Trustees, desires to appoint Robert M. Bahan as Village Manager and the Village President and Trustees (collectively, the “Village Council”) have negotiated the terms and conditions of his employment, which the Village Council desire to incorporate into a written employment agreement; and

WHEREAS, the Village of Winnetka (the “Village”) is a home rule municipality in accordance with Article VII, Section 6 of the Constitution of the State of Illinois of 1970, pursuant to which it has the authority, except as limited by said Section 6 of Article VII, to exercise any power and perform any function pertaining to the government and affairs of the Village; and

WHEREAS, the Village Council find and determine that providing for the appointment of a Village Manager and establishing the terms and conditions of his employment are matters pertaining to the government and affairs of the Village.

NOW, THEREFORE, be it resolved by the Council of the Village of Winnetka as follows:

SECTION 1: The foregoing recitals are hereby incorporated as the findings of the Council of the Village of Winnetka, as if fully set forth herein.

SECTION 2: Robert M. Bahan is hereby appointed Village Manager of the Village of Winnetka, subject to the terms and conditions set forth in the agreement titled “Employment Agreement between the Village of Winnetka and Robert M. Bahan, Village Manager” (the “Employment Agreement”), which Employment Agreement is attached hereto as Exhibit A and is incorporated herein by reference and made a part hereof.

SECTION 3: Robert M. Bahan (the “Village Manager”) shall establish residency in the Village on or August 31, 2011, as provided in the attached Employment Agreement. Pursuant to Section 2.12.010(C) of the Winnetka Village Code, as amended pursuant to Ordinance MC-6-2010, the Village Council hereby determines such period of time for establishing residency to be reasonable.

SECTION 4: Pursuant to Section 2.12.040 of the Winnetka Village Code, the salary and benefits of the Village Manager shall be as set forth in the attached Employment Agreement.

SECTION 5: The Village Council hereby approve the above described Employment Agreement substantially in the form attached hereto as Exhibit A.

SECTION 6: The Village President and the Village Clerk are hereby authorized and directed to execute and seal, on behalf of the Village, said Employment Agreement, substantially in the form attached hereto as Exhibit A.

SECTION 7: This Resolution, including the provisions of the Employment Agreement attached as Exhibit A, supersedes Resolution R-21-2009.

SECTION 8: This Resolution is adopted by the Council of the Village of Winnetka in the exercise of its home rule powers pursuant to Section 6 of Article VII of the Illinois Constitution of 1970.

SECTION 9: This Resolution shall take effect immediately upon its adoption.

ADOPTED this 29th day of September, 2010, pursuant to the following roll call vote:

AYES: _____

NAYS: _____

ABSENT: _____

Signed:

Village President

Countersigned:

Village Clerk

Exhibit A

**Employment Agreement between the Village of Winnetka
and Robert M. Bahan, Village Manager**

**EMPLOYMENT AGREEMENT
VILLAGE MANAGER OF THE VILLAGE OF WINNETKA**

THIS AGREEMENT (“Agreement”) is made and entered into as of the 29th day of September, 2010, by and between the VILLAGE OF WINNETKA, an Illinois home rule municipal corporation (“Village”), and ROBERT M. BAHAN (“Employee”). (The Village and the Employee being sometimes referred to herein individually as “Party” and jointly as “Parties.”)

RECITALS

A. The Village desires to employ the services of Employee as Village Manager and Employee desires to accept employment as Village Manager pursuant to the terms, provisions, and conditions set forth in this Agreement.

B. The Parties intend by this Agreement to set forth their entire understanding regarding the employment of Employee by Village as the Village Manager of the Village of Winnetka.

C. The Village is an Illinois home rule municipal corporation, which has the authority to enter into this Agreement and to define the terms and conditions of employment of a Village Manager.

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and agreements contained herein, the Village and Employee agree as follows:

Section 1 Employment and Duties

- A. Employment.** The Village shall, and does hereby agree to, employ Employee as Village Manager and Employee shall, and does hereby agree to, accept employment with the Village as Village Manager and to assume and perform the duties and responsibilities of Village Manager, commencing November 29, 2010 (the “Start Date”).
- B. Transition.** To facilitate an orderly and effective transition of Village administrative responsibilities, Employee will endeavor, consistent with his current employment duties, to meet with Village officers and staff and to become familiar with Village policies and pending issues prior to the Start Date.
- C. Duties.** As Village Manager, Employee shall perform all duties and activities associated with the position of Village Manager as set forth in the Winnetka Village Code (“Village Code”), all other ordinances of the Village and the statutes of the State of Illinois, as such Village Code, ordinances or statutes may from time to time be amended, and Employee shall engage in any and all other activities and shall perform such other legal, permissible, and proper tasks as may be assigned to him from time to time by the Village Council. Such additional or other assigned activities and tasks shall be consistent with the range of tasks normally considered incidental to or implied by the position of Village Manager. Employee shall abide by all lawful policies and decisions of the Village whether now or hereafter existing. Employee shall report directly to the Village Council and shall keep the Village Council fully informed of his activities.

- D. Exclusive Employment.** Employee shall work exclusively for the Village and shall diligently utilize his best efforts in the performance of his duties to the Village. Employee shall devote his entire business time, attention and energies to the performance of his duties as Village Manager and shall not, without the prior written consent of the Village Council, actively (as opposed to passively) engage in any income or profit-generating activities or accept an office in any organization that would require the Employee to perform work for the organization during normal business hours of the Village.

Section 2 At-Will Employment

- A.** Employee shall be an employee at will and shall serve at the pleasure of the Village Council. This Agreement is terminable at will by either Party in accordance with Section 3 of this Agreement.
- B.** Nothing contained in this Agreement shall be deemed or construed as creating any contractual, property or other right to a continuation of Employee's employment. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Village Council to terminate the services of Employee at any time, with or without cause, subject only to the provisions set forth in this Agreement.

Section 3 Termination

A. Termination without Cause.

1. In the event the Village, without cause, terminates the employment of Employee during such time as Employee is willing and able to perform the duties of Village Manager, the Village agrees to pay Employee severance benefits as provided in Section 4, which severance benefits shall be the full extent of the liability of the Village to Employee resulting from his termination without cause.
2. For purposes of this Section 3.A, in the event the Village at any time reduces Employee's salary by a greater percentage than an applicable across-the-board reduction for Village employees, Employee may at his option declare such action by the Village to be a termination without cause, in which case Employee shall be entitled to receive the severance benefits as provided in Section 4 of this Agreement.

B Termination for Cause

1. The Village may terminate Employee's employment for cause at any time, as provided in this Section 3.B, without any liability of the Village to Employee other than payment for the cash value of 100% of Employee's accrued and unused vacation time as of the date of delivery of such notice of termination.
2. The Village shall provide Employee written notice of its intent to terminate his employment for cause. The notice shall set forth the conduct on which the termination of employment is based. Such notice shall provide Employee with not less than ten (10) days to request a meeting with the Village Council to give Employee an opportunity to respond to the conduct cited as grounds for Employee's

termination and, in the sole discretion of the Village Council, to discuss curing such conduct.

3. As used in this Agreement, “cause” means and includes any or all of the following: (i) conviction of, or a plea of guilty or a plea of *nolo contendere* to, any felony, crime of moral turpitude or violation of any statute that applies to the duties or conduct of village managers or public officials; (ii) any act of gross misconduct, including, without limitation, misfeasance, malfeasance, willful breach or habitual neglect of duty, and defalcation; (iii) any material violation of the Village Code, Village ordinances, regulations and/or personnel policies, as determined by the Village Council in the exercise of its sole discretion; and (iv) the failure of Employee to meet the residency requirements of Section 7 of this Agreement, or any other material breach of this Agreement, as determined by the Village Council, in the exercise of its sole discretion.

C. Voluntary termination. In the event Employee desires to terminate this Agreement, he shall deliver a written notice of resignation or retirement to the Village not less than sixty 60 days prior to the effective date of his resignation or retirement, and he shall not be entitled to any of the severance benefits provided in Section 4 hereof. Upon the Village’s receipt of such notice from Employee, the Village Council may, in its sole discretion, terminate Employee’s employment at any time thereafter without any liability except to continue to pay Employee his salary for the lesser of sixty 60 days or the period prior to Employee’s intended resignation date.

D. Death, Disability or Incapacity.

1. If the Employee becomes permanently disabled or is otherwise unable to perform his duties because of personal sickness, accident, injury, mental incapacity or health status for a period of three (3) successive weeks or fifteen (15) working days over a thirty (30) working day period after having used all accrued leave time, the Village shall have the option to terminate this Agreement subject to the severance benefit requirements set forth in Section 4. Notwithstanding the foregoing, no severance pay benefit shall be due Employee if the medical condition which subjects Employee to the termination of this Agreement qualifies him for long term disability benefits pursuant to any plan sponsored or paid for, in whole or in part, by the Village.
2. Notwithstanding anything in this Section to the contrary, in the event of Employee’s death, this Agreement shall terminate automatically and without any liability of the Village to Employee or his estate under this Agreement; provided, that Employee’s estate shall be entitled to the cash value of accrued benefits to the same extent as such payments are made to all Village employees, in accordance with the Village’s standard policies and practices as set forth from time to time in the Village of Winnetka Employee Handbook.

E. Standard Separation Benefits. In the event this Agreement is terminated by either Party for any reason, whether with or without cause, Employee shall be compensated for any accrued and unused sick leave, vacation leave or other benefit, to the same extent as such payments are made to all Village employees, in accordance with the Village’s standard policies and practices as set forth from time to time in the Village of Winnetka’s Employee Handbook or the Village Code. The Village reserves the sole and exclusive

right, in compliance with any applicable laws, to change, modify or eliminate in its entirety any such benefits.

Section 4 Severance Benefits

In the event of the Employee's termination, without cause, from his employment as Village Manager, Employee shall be entitled to severance benefits as provided in this Section 4. Except for the severance benefits provided in this Section 4, Employee shall not be eligible for or entitled to receive any other benefits if his employment is terminated without cause.

- A. If the termination without cause occurs at any time during the first three (3) years of Employee's employment under this Agreement, Employee shall be entitled to a lump sum cash payment in an amount equal to the value of nine (9) months of Employee's then current base salary.
- B. If the termination without cause occurs at any time after Employee's first three (3) years of employment under this Agreement, Employee shall be entitled to a lump sum cash payment in an amount equal to the value of six (6) months of Employee's then current base salary.
- C. In addition to the lump sum payment provided under Sections 4.A and 4.B of this Agreement, if Employee is terminated without cause from his employment as Village Manager at any time while this Agreement remains in effect, he shall also be entitled to receive standard separation benefits, as provided in Section 3.E of this Agreement, and to continue his participation in the Village's health care insurance plan for up to 6 months from the last date of employment, with premiums to be paid by the Village; provided, that:
 - 1. the Village's obligation to pay Employee's health insurance premiums shall cease immediately if during such time, the Employee joins another health care insurance plan or becomes entitled to participate in a health care insurance program provided by a subsequent employer; and
 - 2. in the event Employee elects to continue to participate in the Village's health care insurance in accordance with COBRA following the termination of his employment, the six (6) months during which the Village pays Employee's premiums pursuant to this Section 4.C shall constitute the first six (6) months of the COBRA period.

Section 5 Compensation and Financial Terms

- A. **Base Salary.** The base salary for Employee's first year of employment shall be \$180,000 per year, payable in installments in accordance with the Village's normal payroll practices. Thereafter, the Village will establish Employee's salary annually in conjunction with the annual budget process and at the same time as similar consideration is given to the Village's other management employees; provided, that the Council reserves the right to adjust the Employee's salary at any time to reflect the result of a performance evaluation.

- B. Salary Adjustments.** Without being obligated to make any adjustment in base salary, the Village Council will review the Employee's base salary each year based on the Employee's performance. That review may be undertaken in conjunction with a performance evaluation as provided in Section 5.C of this Agreement. The Village Council may increase the Employee's compensation if the Village Council, in its sole discretion, determines that additional compensation is appropriate.
- C. Performance Evaluation.** The Village Council will review Employee's performance at least once annually. The evaluation process will include the opportunity for both Parties to prepare a written evaluation, meet and discuss the evaluation, and present a written summary of the evaluation results.
- D. Deferred Compensation.** In addition to salary and any other benefits, the Village will deposit \$2,500 annually into a qualified Internal Revenue Code Section 457 deferred compensation plan, which Employee shall open in his name.
- E. Longevity Pay.** Employee shall be entitled to longevity pay, but only to the same extent as all other Village employees, in accordance with the Village's standard policies and practices as set forth from time to time in the Village of Winnetka's Employee Handbook or the Village Code. The Village reserves the sole and exclusive right, in compliance with any applicable laws, to change, modify or eliminate in its entirety any such benefits.
- F. Vehicle Allowance.** The Village agrees to pay Employee a cash allowance to be applied toward the use, operation, maintenance, repair and insurance for a vehicle for use in connection with Employee's performance of his duties as Village Manager. The allowance shall be equal to the standard vehicle allowance paid to department heads of the Village, and shall be payable in installments in accordance with the Village's normal payroll practices. The vehicle allowance shall not be considered additional compensation, and Employee shall have no right to payments of the allowance upon termination of employment. Employee shall be solely responsible for any tax liability incurred as a result of the vehicle allowance payments.
- G. Business Expenses.** Employee shall be entitled to reimbursement of all necessary and reasonable expenses incurred by him in the performance of his duties, tasks, and responsibilities under this Agreement, which may include Employee's membership fees in professional associations relating to his position as Village Manager; provided, that such reimbursements shall be subject to the presentation of appropriate vouchers in accordance with all applicable Village rules and policies, and to review and approval by the Village Council.

Section 6. Employment Benefits.

- A. Healthcare, Insurance and Retirement Benefits.** Employee shall be entitled to receive benefits and participate in benefit plans to the same extent as other Village employees, according to the terms of the Village of Winnetka Employee Benefits Booklet ("Benefits Booklet"), as it may be amended from time to time, which benefits currently include, but are not limited to, healthcare and medical benefits, a Section 125 flexible benefit plan, a health reimbursement arrangement account, life insurance and retirement benefit plans or programs of the Village, including the Illinois Municipal Retirement Fund, to the extent that his position, length of service, salary, age, health and other qualifications make him

eligible to participate, subject to all rules and regulations applicable thereto, including any requirements for employee contributions. Employee may also purchase additional term life insurance as provided in the Benefits Booklet. The Village reserves the sole and exclusive right, in compliance with any applicable laws, to change, modify or eliminate in its entirety any such benefits, and nothing contained in this Agreement shall be deemed or construed as creating any property rights or other right to a continuation thereof.

- B. Sick Leave.** Employee shall be entitled to receive sick leave benefits to the same extent as other Village employees, currently seven and one-half (7.5) hours per month, according to the terms of the Benefits Booklet, as it may be amended from time to time. Notwithstanding the foregoing, Employee's first year's allotment of sick leave [ninety (90) hours] will be available for Employee's use as of his first day of employment; provided, that if Employee's employment is terminated for any reason prior to the end of the first year, the balance of Employee's unused, unearned sick leave time shall be forfeited and the value of any unearned sick leave time that has been used shall be repaid to the Village by charging that amount against the employee's final pay check.
- C. Personal Leave.** Employee shall be entitled to personal leave time to the same extent as other Village employees, according to the terms of the Benefits Booklet, as it may be amended from time to time. Notwithstanding the foregoing, Employee's first year's allotment of personal leave [thirty-seven and one-half (37.5) hours] will be available for Employee's use as of his first day of employment; provided, that if Employee's employment is terminated for any reason prior to the end of the first year, the balance of Employee's unused personal leave time shall be forfeited and the value of any unearned personal leave time that has been used shall be repaid to the Village by charging that amount against the employee's final pay check.
- D. Vacation Leave.** Employee shall be entitled to vacation leave benefits to the same extent as other Village employees, according to the terms of the Benefits Booklet, as it may be amended from time to time. Notwithstanding the foregoing, (i) Employee will be considered to be in his 8th year of employment solely for the purpose of determining his entitlement to vacation leave and Employee shall accordingly be entitled to receive fifteen (15) days of paid vacation leave per year, and (ii) the equivalent of five working days [thirty-seven and one-half (37.5) hours] of Employee's first year's allotment of vacation leave will be immediately available for Employee's use as of his first day of employment; provided, that if Employee's employment is terminated for any reason prior to the end of the first year, the balance of Employee's unused, unearned vacation leave time shall be forfeited and the value of any unearned vacation leave time that has been used shall be repaid to the Village by charging that amount against the employee's final pay check.

Section 7 Residency

Employee shall establish permanent residency in the Village of Winnetka, as required by Section 2.12.010.C of the Village Code, no later than August 31, 2011.

Section 8 Relocation Assistance.

- A. Relocation Expenses.** In an effort to accommodate Employee in relocating his residence, the Village will reimburse, or pay directly for, Employee's reasonable and necessary relocation expenses of packing, moving and unpacking employee's household goods and furnishings from his current place of residence to the Village, which expenses shall be subject to the prior review and approval of the Village Council.
- B. Equity Loan.** In an effort to accommodate Employee in relocating his residence, the Village agrees to lend to Employee, upon his written request, an amount equal to one-third (1/3) of the purchase price of a residence in the Village of Winnetka ("Winnetka Residence"), provided the amount of the loan, which amount is hereinafter referred to as the "Loan Principal," shall not exceed \$250,000. This sum shall be paid to Employee on the date of the closing of Employee's purchase transaction of the Winnetka Residence. The loan will be secured by a promissory note (the "Note") and by a second mortgage on the Winnetka Residence (the "Second Mortgage"), which Note shall be in substantially the form of Exhibit A, which is attached hereto and by this reference incorporated herein. The Second Mortgage shall be in the form of a standard trust deed for second mortgage, or such other form as may be mutually agreeable to the Village and Employee's primary mortgagee. As consideration for the loan from the Village (the "Equity Loan") and in place of interest charges thereon, Employee shall pay all real estate and other taxes levied against the Winnetka Residence property and shall repay to the Village a sum equal to the greater of either the balance of the Loan Principal or the balance of the Adjusted Value of the Winnetka Residence, as defined in Section 8.C of this Agreement; such payment shall be due upon the occurrence of the earlier of one of the following: (i) one hundred eighty (180) days after the date either Party issues, for any reason, a notice of termination of Employee's employment with the Village; (ii) the date of closing on Employee's sale or other transfer of his interest in the Winnetka Residence; or (iii) the date Employee exercises his option to prepay the Village's loan pursuant to Section 8.E of this Agreement.
- C. Adjusted Value.** For purposes of this Section 8, the "Adjusted Value" of the Winnetka Residence shall be: (i) the full sale price of the Winnetka Residence resulting from an arm's length negotiation; or (ii) if no such sale shall occur prior to the date that Employee must repay the Equity Loan to him for the Winnetka Residence, or if Employee exercises his option to prepay the Village's loan, then the Appraised Valuation as determined pursuant to Subsection 8.F hereof. In no event shall the Adjusted Value be less than the original Loan Principal.
- D. Village's Equity Share.** As used in this Agreement, in the Note and in the Second Mortgage, the Village's Equity Share shall mean the percentage of the Village's interest in the Winnetka Residence, as calculated by dividing the original loan amount by the original purchase price. Notwithstanding the foregoing, in the event Employee makes any partial prepayments pursuant to Section 8.E of this Agreement, the Village's Equity Share shall be adjusted from time to time to reflect the amount of each such partial prepayments, according to the calculation described in the following paragraphs 1 and 2 of this Section 8.D and as illustrated in Exhibit B, which is attached to this Agreement. Exhibit B shall be used for illustrative purposes only, and shall not be construed as a schedule of the times and amounts that partial payments of the Loan Principal are due.

1. At the time of the first partial prepayment, the Village's Equity Share shall be recalculated by dividing the outstanding balance of the Loan Principal by the original purchase price of the Winnetka Residence. The resulting percentage shall be used to multiply the product of the initial Village's Equity Share by the number of months between the date of the inception of the Equity Loan and the first partial prepayment.
 2. For the second partial prepayment and each partial prepayment thereafter, the Village's Equity Share resulting from each such payment shall be recalculated, by dividing the balance of Loan Principal outstanding on the date of such partial prepayment by the original purchase price of the Winnetka Residence. The resulting percentage shall be used to multiply the Village's Equity Share immediately prior to such partial prepayment by the number of months between the date of the immediately preceding partial prepayment and the current partial prepayment.
- E. Prepayment Option.** Subject to the terms and conditions of this Section 8.E, Employee shall be entitled to repay the Equity Loan, in whole or in part, at any time prior to the date repayment is required pursuant to Section 8.B of this Agreement, subject to the following terms and conditions:
1. Such partial prepayments shall be made only in increments of 10% of the Original Loan Principal.
 2. The balance of either the Loan Principal or the Adjusted Value, whichever is greater, shall be paid in full at the same time Employee pays the final 10% of the original Loan Principal. For purposes of this Section 8.E, the final balance of the Loan Principal shall be calculated by adding the amounts calculated pursuant to the following subparagraphs a and b:
 - a. the original purchase price of the Winnetka Residence shall be subtracted from the gross sales price or from the Adjusted Value, as defined in Section 8.C, and the remainder shall be multiplied by the sum of all of the Equity Shares calculated pursuant to paragraphs 1 and 2 of Section 8.D of this Agreement; plus
 - b. the remaining unpaid increment(s) of the Loan Principalas such calculation is more fully illustrated in Exhibit B.
- F. Appraised Valuation.** Within thirty (30) days after any notice of termination of Employee's employment as Village Manager for any reason, or thirty (30) days prior to the date Employee exercises his option to prepay in full the remaining balance of the Equity Loan, Employee, at his expense, shall have the Winnetka Residence appraised by an MAI certified appraiser and shall submit such appraisal to the Village for its review. The Village shall have the option to accept the appraised valuation obtained by Employee or to obtain, at the Village's expense, its own appraisal by an MAI certified appraiser. If the two appraised valuations are no more than five percent (5%) apart from each, the Parties agree that the value of the Winnetka Residence, for purposes hereof, shall be equal to the average of the two valuations. If the two appraised valuations are more than five percent (5%) apart, then either (i) the Parties shall jointly select and pay for a third

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns, except as hereinbefore limited.

- H. Severability.** In the event any term of this Agreement shall be held unconstitutional, illegal, invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, neither the validity of the remaining part of such term, nor the validity of any other terms of this Agreement shall in any way be affected thereby.
- I. Amendments.** No amendments, changes, modifications, alterations or' waivers of any provision of this Agreement shall be valid unless made in writing and signed by the Parties hereto.
- J. Governing Law.** The execution, validity, construction, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the Parties hereto have duly executed this instrument as of the day and year first above written.

VILLAGE OF WINNETKA

By: _____
Village President

ATTEST:

Village Clerk

ROBERT M. BAHAN

WITNESS:

Village Clerk

EXHIBIT A
PROMISSORY NOTE

Winnetka, Illinois

_____, 2010

FOR VALUE RECEIVED, the undersigned makers of this Promissory Note, Robert M. Bahan and _____ Bahan (collectively, "Maker") , hereby jointly and severally unconditionally promise to pay to the order of the Village of Winnetka, Illinois (the "Village") at its Village Hall located at 510 Green Bay Road, Winnetka, Illinois 60093 or such other place as designated by the Village in writing to Maker, in lawful money of the United states of America and in immediately available funds, the principal amount of the greater of [*insert amount of the original Loan Principal, as defined in Section 8.B of Maker's Employment Agreement with the Village*], or a sum equal to [*that portion of Employee' purchase price of the Winnetka Residence represented by the Loan Principal*] percent (___%) of the Adjusted Value of the property known as [*insert address of property*] and described on Exhibit A attached hereto (the "Secured Property"), which Adjusted Value shall be determined in accordance with Section 8.C of the Employment Agreement entered into between Robert M. Bahan and the Village dated September 29, 2010.

The indebtedness evidenced by this Promissory Note is secured by a Second Mortgage on the Secured Property, which mortgage is dated the same date as this Promissory Note and recorded in the office of the Recorder of Deeds for Cook County, Illinois (the "Second Mortgage").

The principal amount of this Promissory Note shall not bear interest except in the event of a default under this Promissory Note or the Second Mortgage, in which event the principal amount shall bear interest at the highest rate permitted under Illinois law. Said principal amount shall be due and payable upon the earlier of one hundred eighty (180) days after the date of any notice of termination of Robert M. Bahan's employment as the Village Manager of the Village of Winnetka for any reason,, or the date of closing on the sale or other transfer by Maker of their interest in the Secured Property.

In the event of a default by Maker under the Second Mortgage, the indebtedness evidenced by this Promissory Note shall become immediately due and payable in full at the place of payment aforesaid and without prior notice.

To further secure the payment of said amount, Maker hereby authorizes, irrevocably, the Village's attorney to appear for Maker in any court of record, at any time after maturity, and confess a judgment, without process, in favor of the holder of this Promissory Note, for such amount as may be unpaid thereon, together with reasonable costs of collection, including reasonable attorney's fees, and to waive and release all errors which may intervene in any such proceedings, and consent to immediate execution upon such judgment, hereby ratifying and confirming all that said attorney may do by virtue hereof.

Maker hereby waives presentment for payment, notice of dishonor and protest.

This Promissory Note shall be governed by, and construed and interpreted in accordance with, the laws of the state of Illinois.

MAKER:

Robert M. Bahan

[Insert spouse's name]

Exhibit B
Illustration of Village Equity Share Calculation

Village of Winnetka
Partial Equity In Manager's Home Calculations
Underlying Data

9.23.2010

Assume:		Generates Values of:	
Initial home purchase price	\$ 750,000	Village % of home	33.33%
Initial Equity from Village	\$ 250,000	Home appreciation \$'s	\$ 50,000
Value of home on 6/30/12	\$ 800,000	Home appreciation %	6.67%
Purchase date	1/1/11	Av. Village Interest	23.66%
Sale date	6/30/13		

Year Month	Village Equity Outstanding	Repayments	End of Mo. V. Equity	Month #	Monthly Village Interest (1)	Average Village Interest (2)
2011-1	\$ 250,000		\$ 250,000	1	33.33%	33.33%
2	\$ 250,000		\$ 250,000	2	33.33%	33.33%
3	\$ 250,000		\$ 250,000	3	33.33%	33.33%
4	\$ 250,000		\$ 250,000	4	33.33%	33.33%
5	\$ 250,000		\$ 250,000	5	33.33%	33.33%
6	\$ 250,000	\$ (25,000)	\$ 225,000	6	30.00%	32.78%
7	\$ 225,000		\$ 225,000	7	30.00%	32.38%
8	\$ 225,000		\$ 225,000	8	30.00%	32.08%
9	\$ 225,000		\$ 225,000	9	30.00%	31.85%
10	\$ 225,000		\$ 225,000	10	30.00%	31.67%
11	\$ 225,000		\$ 225,000	11	30.00%	31.51%
2011-12	\$ 225,000		\$ 225,000	12	30.00%	31.39%
2012-1	\$ 225,000		\$ 225,000	13	30.00%	31.28%
2	\$ 225,000		\$ 225,000	14	30.00%	31.19%
3	\$ 225,000	\$ (50,000)	\$ 175,000	15	23.33%	30.67%
4	\$ 175,000		\$ 175,000	16	23.33%	30.21%
5	\$ 175,000		\$ 175,000	17	23.33%	29.80%
6	\$ 175,000		\$ 175,000	18	23.33%	29.44%
7	\$ 175,000		\$ 175,000	19	23.33%	29.12%
8	\$ 175,000		\$ 175,000	20	23.33%	28.83%
9	\$ 175,000	\$ (75,000)	\$ 100,000	21	13.33%	28.09%
10	\$ 100,000		\$ 100,000	22	13.33%	27.42%
11	\$ 100,000		\$ 100,000	23	13.33%	26.81%
2012-12	\$ 100,000		\$ 100,000	24	13.33%	26.25%
2013-1	\$ 100,000		\$ 100,000	25	13.33%	25.73%
2	\$ 100,000		\$ 100,000	26	13.33%	25.25%
3	\$ 100,000		\$ 100,000	27	13.33%	24.81%
4	\$ 100,000		\$ 100,000	28	13.33%	24.40%
5	\$ 100,000		\$ 100,000	29	13.33%	24.02%
2013-6	\$ 100,000		\$ 100,000	30	13.33%	23.66%

Notes:

- (1) Calculated as end of month Village equity divided by original purchase price.
- (2) Calculated as the sum of the monthly village interests divided by the # of months the loan is outstanding.

Exhibit B
Illustration of Village Equity Share Calculation

9.23.2010

Village of Winnetka
Calculation of Village Equity Interest in Manager's Home
At 6/30/2013 Sale or Appraisal Date

Gross Sales Price of Home (or Appraised Market Value)	\$ 800,000
Initial Home Purchase Price	<u>\$ 750,000</u>
Home Appreciation	\$ 50,000
Times: Average Village Interest	<u>23.66%</u>
Equals Village Share of Appreciation	\$ 11,830.00
Plus: Village Equity on 6/30/2013	<u>\$ 100,000.00</u>
Total Amount Due the Village to Extinguish Equity Interest on 6/30/2013 under these assumptions	\$ 111,830.00