

**51-R-10**

**A RESOLUTION**

**Authorizing the City Manager to Enter into Sublease Renewal of  
Certain Property at Green Bay Road and Central Street with  
Mary Lou Smith for Operation of  
Top of the Tracks, Inc. Coffee Shop**

**WHEREAS**, the City of Evanston leases certain real property at Central Street and Green Bay Road from Union Pacific Railroad Company ("UPRC") under a lease dated July 24, 1996 for a period of twenty years, unless sooner terminated; and

**WHEREAS**, the leased property consists of UPRC's passenger station, the lower level of the passenger station, and the exterior facade of the building, including the roof, but not including the platform areas, stairway, or ramp; and

**WHEREAS**, Mary Lou Smith has operated Top of the Tracks, Inc.'s Coffee Shop ("Top of the Tracks") in the upper level of the passenger station ("subject property") for approximately twenty-three years; and

**WHEREAS**, since the inception of the Top of the Tracks's tenancy, UPRC has become the owner of the said real property at Central Street and Green Bay Avenue and the City became the lessor of said real property; and

**WHEREAS**, Mary Lou Smith has subleased the subject property from the City since on or about August 15, 1997; and

**WHEREAS**, Mary Lou Smith is desirous of renewing the sublease with the City so that she may continue to operate Top of the Tracks; and

**WHEREAS**, the City Council has determined that it is not necessary, appropriate, or in the best interests of the City that it retain use of the subject property

and that renewal of the sublease thereof to Mary Lou Smith will serve the public interest,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** That the foregoing recitals are hereby found as fact and made a part hereof.

**SECTION 2:** The City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest on behalf of the City, the aforescribed sublease, attached hereto as Exhibit A and incorporated herein by reference, by and between the City of Evanston as sublessor and Mary Lou Smith as sublessee. Said sublease is to be for a term of five years. The monthly rent shall be \$612.00 for the first year, \$642.00 for the second, and \$674.00 for the third year, \$707.00 for the fourth year, and \$742.00 for the fifth year.

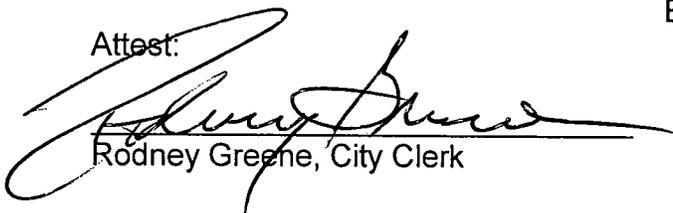
**SECTION 3:** That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions on the aforescribed sublease as may be determined to be in the best interests of the City.

**SECTION 4:** This Resolution shall be in full force and effect from and after its passage and approval, in the manner provided by law.



Elizabeth B. Tisdahl, Mayor

Attest:



Rodney Greene, City Clerk

Adopted: September 13, 2010

SUBLEASE

This Sublease is dated September 15, 2010 and is between the City of Evanston, an Illinois Municipal Corporation (Sublessor) as Sublessor, and Top of the Tracks, Inc., an Illinois Corporation, ("Sublessee") as Sublessee.

- A. The City is presently leasing certain property at Central Street and Green Bay in Evanston, Illinois from Union Pacific Railroad Company ("UPRC"), lessor, under a lease ("the Prime Lease") dated July 24, 1996, for a term of twenty (20) years unless sooner terminated. A copy of the Prime Lease is attached hereto as Exhibit A.
- B. The subject property of the aforesaid Prime Lease is located at 1826 Central Street, Evanston, Illinois, and consists of UPRC's passenger station, the lower level of the passenger station and the exterior facade of the building, including the roof, but not including the platform areas, stairway, or ramp.
- C. The property Subleased hereunder ("the Premises") is that portion of the interior of the passenger waiting area, designated on Exhibit B, attached and made a part hereof, excluding the roof and exterior facade.
- D. Sublessor and Sublessee are desirous of entering into an agreement whereby Sublessor would sublease to Sublessee the Premises for Sublessee to operate a coffee shop.

NOW, therefore, in consideration of the above recitations and the mutual promises and agreements contained in this Sublease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublessor and Sublessee agree as follows:

**This Sublease is made upon the following express covenants and agreements, each of which is made an express condition hereof:**

RENT  
AND  
TERMS

- 1. This Sublease is for a five-year term, commencing on September 15, 2010 and ending on September 14, 2015.
  - a. The monthly rent for the first year shall be six hundred twelve dollars (\$612.00).
  - b. The monthly rent for the second year shall be six hundred fort-two dollars (\$642.00).
  - c. The monthly rent for the third year shall be six hundred seventy-four dollars (\$674.00).
  - d. The monthly rent for the fourth year shall be seven hundred seven dollars (\$707.00).

RENT  
AND  
TERMS  
(CONT.)

- e. The monthly rent for the fifth year shall be seven hundred forty-two dollars (\$742.00).
- f. Rent is due in full in advance on the fifteenth (15) day of each month by check payable to the City of Evanston, and hand-delivered or mailed to: City of Evanston, Office of Facilities Management, 2100 Ridge Avenue, Evanston, Illinois 60201.
- g. A twenty-five dollar (\$25.00) late fee must accompany payments made after the twentieth (20) day of the month.
- h. If this Sublease terminates or expires with respect to all or any part of the Subleased Premises prior to the end of a Sublease year, then the Base Rent shall be prorated to reflect such termination or expiration of the partial Sublease year.
- i. As used in this Sublease, "Rent" shall mean the Base Monthly Rent and all other amounts provided for in this Sublease to be paid by Sublessee, all of which shall constitute rental in consideration for this Sublease and leasing of the Subleased Premises. The Rent shall be paid at the times and in the amounts provided for herein in legal tender of the United States of America to Sublessor. The Rent shall be paid without notice, demand, abatement, deduction, or offset, except as may be expressly set forth in this Sublease.

PURPOSE

- 2. The Premises shall be used exclusively for a coffee shop. Sublessee agrees to handle only such articles as are appropriate to this type of business, occupancy, or use.

TAXES

- 3. Sublessor is an Illinois Municipal Corporation, and, as such, is tax-exempt. The obligations imposed upon Sublessee in this paragraph with respect to taxes are in place in the event that Sublessee's for-profit enterprise gives rise to taxes associated with the granting of this Sublease. Sublessee shall pay all real estate taxes or other charges applicable to or assessed against the Sublessee, the Premises, the business conducted thereon by Sublessee, and the improvements placed thereon for each year of the term of this Sublease even though such taxes or charges may not become due and payable until after the expiration or termination of this Sublease. The general taxes for the year in which the term of this Sublease shall commence shall be prorated from January 1<sup>st</sup> to the date on which the term of this Sublease commences. If Sublessee shall terminate this Sublease during the term hereof for any reason, Sublessee shall pay the general taxes for the full year in which the Sublease is so terminated. Final tax payments will be computed on the basis of the most recent tax bill.

If any such taxes or charges have been paid by Sublessor, Sublessee agrees to reimburse Sublessor within twenty (20) days after presentation of a bill

therefor. In default of such reimbursements, all sums so paid by Sublessor shall be deemed an addition to rent and recoverable as such.

SPECIAL  
ASSESSMENTS

4. In the event the premises or any part thereof shall be subject to any special assessment or special tax for public improvement in the amount of \$300.00 or more, the rental herein reserved and stipulated to be paid by Sublessee shall be increased by ten percent (10%) per annum of the amount of such special assessment or special tax. If said special assessment or special tax for public improvement shall be less than \$300.00, Sublessee agrees to reimburse Sublessor the total cost of such assessment within twenty (20) days after presentation of a bill therefor. In default of such reimbursement, all sums so paid by Sublessor shall be deemed an addition to rent and recoverable as such.

ADVERTISING  
SIGN  
RESTRICTIONS

5. Sublessee shall not post, paint, or place, or permit others to post, paint, or place on the Premises, any advertisement or sign not related directly Sublessee's business. No signs shall be erected or placed in or about said Subleased Premises by the Sublessee without the Sublessor's consent and Sublessee's compliance with the City's Sign Ordinance.

LAWS AND  
PREMISES  
CARE

6. Sublessee shall maintain and use the Premises and buildings and structures thereon in accordance with the requirements of local ordinances, state, and federal laws. Sublessee agrees to not commit or allow waste of the Premises.

Sublessee shall bear all cost and expense arising from compliance with said ordinances, laws, rules or regulations, and shall indemnify and save harmless Sublessor from all liability, including without limitation, fines, forfeitures and penalties arising in connection with the failure by Sublessee to comply with such ordinances, laws, rules, or regulations.

RELOCATION  
OF UTILITIES  
FACILITIES

7. Sublessee accepts the Premises subject to rights of any party, including Sublessor, in and to any existing conduits, sewers, water lines, gas lines, power lines, drainage facilities, telephone, telegraph, or their wires, and poles and utilities or facilities of any kind whatsoever, whether or not of record. Should it at any time become necessary to relocate any of same because of this Sublease, Sublessee shall bear and pay that cost.

ROADWAY  
ACCESS

8. Sublessee accepts the Premises subject to rights of any party, including Sublessor, in and to any existing roadways, easements, permits or licenses. Sublessee agrees to provide to Sublessor, and other tenants, grantees, and permittees or Sublessor, access over and through Premises on these existing roadways should Sublessor deem such access necessary. Sublessee further agrees that Sublessor shall not be responsible for the care or maintenance of said roadways.

SUBLESSOR'S  
TITLE

9. Sublessor covenants and agrees that upon Sublessee paying the Rent any other charges due and payable and observing and performing all the terms, covenants, and conditions, on Sublessee's part to be observed and performed, Sublessee may peacefully and quietly enjoy the Premises hereby demised, subject, nevertheless, to the terms and conditions of this Sublease and to any mortgages and deeds of trust hereinbefore mentioned. The aforesaid obligations of Sublessor are subject to the Prime Lease.

INDEMNIFICATION 10.

Sublessee accepts this Sublease of the Premises with knowledge of the existence of railroad tracks upon or in the vicinity of the Premises and of all the risks of damage or injury which might or could occur to properties or persons upon or in the vicinity of the Premises from or in connection with the operation of railway equipment, or from or in connection with the operation, use, maintenance or improvement of said tracks. It is therefore agreed, as one of the material considerations of the Sublease and without which this Sublease would not be granted, that Sublessee assumes such risks and agrees to indemnify and hold harmless Sublessor from and against any and all liability and expenses whatsoever, (to the extent permitted by law), for bodily injury or death, including without limitation, injury or death to agents, employees, servants, invitees of the Sublessor or Sublessee, and or loss or damage of the property of the Sublessor or Sublessee, Union Pacific Railroad, their agents, employees, servants or invitees, and to the person or property of any other person or corporation, however arising, directly or indirectly out of the occupancy of, presence on, or use of said Subleased Premises or any structures thereon (including their construction, maintenance, repair, reconstruction or removal) by Sublessee, its employees, agents, or invitees.

Notice to or knowledge by the Sublessor of any act or omission by the Sublessee which is or might be a breach by the Sublessee of any of the terms or conditions of this Sublease to be performed by the Sublessee, and the acquiescence by the Sublessor in or to such act or omission, shall neither be considered to relieve the Sublessee of any obligation assumed by it under this paragraph nor be considered to be a waiver or release by the Sublessor of any rights granted to it under this paragraph.

INSURANCE

11. Sublessee agrees to add the City of Evanston and Union Pacific Railroad as additional insured on Sublessee's Commercial General Liability Policy with a minimum of one million dollars in limits. Sublessee also agrees to show satisfactory evidence of property insurance for the Subleased property. Within ten days after the execution of the Sublease, Sublessee shall provide Sublessor in writing with the name, address, and telephone number of Sublessee's contact with her insurance company. Sublessee shall promptly notify Sublessor in writing of any changes to this information.

Sublessee agrees to insure property for replacement cost with agreed amount endorsement. The City is to receive 30 days' advance notice of cancellation or modification of the policy.

NO  
SUBROGATION

12. Sublessee agrees to have all insurance policies issued to or for or upon Sublessee's account, covering any injuries to persons or any loss or damage to property, so written that the insured shall have no claim or recourse of any kind whatsoever against Sublessor or the Premises.

NO LIENS

13. Sublessee shall not suffer or permit any lien of mechanics or material men to be placed against the Subleased Premises or any part thereof, whether created by act of Sublessee, operation of law or otherwise. In the case of such attachment, Sublessee shall immediately pay same in full.

HOLD OVER

14. It is further agreed that in case Sublessee, with Sublessors consent, holds possession of the Premises beyond the term of this Sublease, such action shall have the effect of extending the term of this Sublease on a month-to-month basis, subject in all aspects to all of the terms, conditions, covenants, and agreements of this Sublease, including all rights of termination provided for herein.

BREACH

15. If Sublessee defaults in any of its undertakings or obligations hereunder, then such event or action shall be deemed to constitute a breach of this Sublease. In the event of a monetary default, Sublessee shall have ten (10) days to cure. In the case of an event or action not curable in thirty (30) days, if substantial progress toward cure is not had, this Sublease shall cease and terminate, at the Sublessor's option. Provided, however, Sublessor may grant Sublessee less than the aforesaid notice or cure periods in the event that Sublessee's action or non-action, in Sublessee's sole judgment, creates a public safety or public health hazard, or in the event Prime Lessor for any reason directs notice/cure period(s) of less than those aforesaid or granted by Sublessor.

TERMINATION

16. Either party may at any time terminate this Sublease by giving eighty (80) days written notice of its intention to do so.

a. Upon the termination of this Sublease by any manner, means, or contingency whatsoever, Sublessee shall, without further notice or demand, deliver possession of the Premises to Sublessor in good condition as when entered upon and broom-clean condition. Sublessee hereby agrees to remove all buildings, structures, foundations, footings, materials, signs, debris, or any other articles, structures or facilities owned by Sublessee as permitted to be placed on the Premises before the termination of this Sublease. Upon any such termination if rent shall have been paid in advance, Sublessor shall refund to Sublessee the unearned portion therefor of the period extending beyond such date of termination provided the Premises has been cleaned by Sublessee in a manner satisfactory to Sublessor, normal wear and tear excepted.

b. If Sublessee shall fail to so remove such property, such failure shall constitute an abandonment of such property and title thereto shall pass to Sublessor immediately, if Sublessor so elects, without any cost either by set-off, credit allowance or otherwise. Sublessor may retain, tear down, remove or sell such property or any part thereof, without any liability for damage therefor in any respect whatsoever and Sublessee shall promptly pay Sublessor for any and all expenses incurred by Sublessor in tearing down, removing, or selling such property.

RE-ENTRY

17. If Sublessee shall breach or default in any of the terms of this Sublease or if this Sublease shall expire or terminate in any manner; it shall be lawful for Sublessor then or at any time thereafter to re-enter the Premises and take possession thereof, with or without process of law, and to use any reasonable or necessary force for regaining possession. However, Sublessee shall have the right to remove certain of Sublessee's property as herein provided.

WAIVER OF REMEDIES

18. No waiver of any default of Sublessee shall be implied from omission by Sublessor to take any action on account of such default. No express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No receipt of money by Sublessor from Sublessee (1) after any default by Sublessee, (2) after the termination of this Sublease, (3) after the service of any notice or demand or after the commencement of any suit, or (4) after final judgment for possession of the premises, shall waive such default or reinstate, continue, or extend the term of this Sublease, or affect in any way such notice or suit, as the case may be.

The erection of improvements in or on the Premises shall not constitute a waiver or affect in any way the right of either party to terminate this Sublease.

NO ASSIGNMENT

19. Sublessee shall not assign or sublet this sublease without the prior written consent of sublessor's City council.

RIGHTS ARE CUMULATIVE

20. All rights and remedies of Sublessor shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

NOTICES

21. All notices, demands, elections and other instruments required or permitted to be given or made by either party upon the other by the terms of this Sublease or any statute shall be in writing. They shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid to Sublessor or Sublessee at the respective addressee shown below. Such notices, demands, elections, and other instruments shall be considered as delivered to recipient on the second business day after deposit in the U.S. Mail.

Notices to Sublessee:  
Mary Lou Smith  
2545 Prospect  
Evanston, IL 60201

Notices to Sublessor:  
Director of Parks, Recreation and  
Community Services  
City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201

With a copy to:  
John Kneafsey, Esq.  
Nisen & Elliott  
200 West Adams Street, Suite 2500  
Chicago, IL 60606

With a copy to:  
Law Department  
City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201

ENTIRE  
AGREEMENT

22. All the representations and obligations of Sublessor are contained herein. No modification, waiver, or amendment of this Sublease or any of its terms, shall be binding upon Sublessor unless it is in writing and signed by a duly authorized Officer of the Sublessor.

RENTAL  
REVIEW

23. Sublessor reserves the right to review and revise the rent applicable to this Sublease upon (1) any change in usage of the Premises (2) any extension of the Sublease term beyond the five-year term provided for above. In the event of extension beyond the five-year term provided for, Sublessor may, in addition to the renegotiation of any or all provisions hereof, renegotiate the rent. In such event, Sublessee must, upon Sublessor's written request, furnish Sublessor with accurate statements of gross receipts for each month of operation since inception of this Sublease.

RAIL  
SERVICE

24. Sublessor makes no warranties or representation, expressed or implied, as to continued rail service to the Premises.

JOINT  
OBLIGATION

25. In the event that Sublessee embraces two or more individuals and/or corporations, the covenants and agreements herein contained shall be the joint and several obligations of each of such persons or corporations.

MAINTENANCE  
AND UTILITIES

26. Sublessee has examined and knows the condition of the Premises and shall enter upon and take the same in their condition at the commencement of the term of this Sublease. Sublessee will at its own cost and expense make any necessary alterations required; however, no alteration shall be made without the consent of Prime Lessor and Sublessor. All plans and specifications for modification of the coffee shop proposed herein must be submitted for Prime Lessors and Sublessor's approval before start of any work on the Premises. Sublessor will not install, supply or maintain utilities to the said Premises.

SNOW

27. Sublessee agrees it will not dump any snow on adjoining land nor adversely alter in any way the drainage of either the Premises or adjoining land.

- LITTER 28. At the close of Sublessee's daily operation, Sublessee shall inspect Prime Lessor's adjoining waiting rooms and remove therefrom and dispose of any debris (coffee cups, napkins, orts, etc.) resulting from Sublessee's operations. Sublessee shall pay for its own scavenger service.
- LIQUOR 29. No liquor or alcoholic beverages shall be sold or served on the Subleased Premises and Sublessee shall diligently attempt to prevent and discourage the presence or consumption of any liquor or alcoholic beverages within said Subleased Premises.
- STANDARDS OF SERVICE 30. All operations and services of the Sublessee in the Subleased Premises shall be carried out and performed in a first-class manner and in keeping with the highest standards. If, in the judgment of Sublessor, the Sublessee is not so conducting its operations or services in said Subleased Premises or meeting such standards, Sublessee shall promptly change and comply with this requirement upon receipt of written notice from Sublessor.
- HOURS 31. Sublessor's hours and days of operation shall be 5:30 a.m. to 2:30 p.m., Monday through Saturday, and for a maximum of 5 nights per month, on either a Thursday, Friday or Saturday night 5:30 p.m. to 11:00 p.m.
- UTILITIES 32. The rental herein stated includes the furnishing of heat and water with the distinct understanding that the Sublessor shall not be liable for any damages on account of failure to furnish same due to any failure in its facilities for supplying same. All electricity used on the Premises shall be metered in the name of the Sublessee and paid for by Sublessee.
- PRIME LEASE 33. Sublessee acknowledges receipt of a copy of the Prime Lease, executed on July 24, 1996. Said Prime Lease is incorporated herein and made a part hereof. Sublessee acknowledges that this Sublease is subject to, and governed by, the Prime Lease, including in particular, but not limited to, paragraph 4 (Use by Lessor and Public) paragraph 9 (Pollution), 10 (Environmental Contamination), II (Relocations of Wires). In said paragraphs, "Lessee" shall be read as "Sublessee".
- FUNDS AVAILABLE 34. Sublessee acknowledges that, as an inducement to Sublessor to grant this Sublease, Sublessee has represented that it has, and will have, sufficient financial resources to meet its obligations hereunder.
- UPRC APPROVAL 35. Sublessee acknowledges that UPRC must approve this Sublease. This Sublease is null and void if UPRC fails to grant such approval. In the event such approval is denied, withheld, or not granted, Sublessee shall have no recourse whatsoever against Sublessor for any reason.
- VENUE 36. In the event of litigation between Sublessee and Sublessor, venue shall be within Cook County, Illinois, the laws of Illinois shall apply, and the parties waive trial by jury.

Top of the Tracks, Inc  
Sublessee  
By: Mary Lou Smith  
2545 Prospect Avenue  
Evanston, IL 60201  
(847) 869-7080 Wk  
847-864-2361 Hm.

City of Evanston  
Sublessor  
By: Wally Bobkiewicz  
City Manager  
City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201

Mary Lou Smith

Mary Lou Smith  
Top of the Tracks

8-24-2010  
Date

Wally Bobkiewicz

Wally Bobkiewicz  
Evanston City Manager

9-16-10  
Date

Approved as to form:

W. Grant Farrar  
W. Grant Farrar  
Corporation Counsel