

8/29/2012

66-R-12

A RESOLUTION

**Authorizing the City Manager to Execute a Loan
for the Improvement of 1818 Dempster Street
("Heartwood Center")**

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

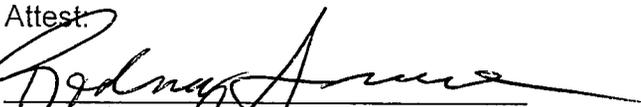
SECTION 1: Pursuant to the Agreement attached hereto as Exhibit A and incorporated herein by reference, the City Manager is hereby authorized to execute a loan not to exceed one hundred thousand dollars (\$100,000.00) between the City and Nomad Dream, LLC, which shall be secured by a mortgage and promissory note, attached hereto as Exhibits B and C, respectively, and incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the mortgage and/or promissory note as he may determine to be in the best interests of the City.

SECTION 3: 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 10, 2012

EXHIBIT A

Loan Agreement Between the City and Nomad Dream, LLC

TIF CONSTRUCTION LOAN AGREEMENT

THIS TIF CONSTRUCTION LOAN AGREEMENT [Agreement] is entered into on this ___ day of _____, 2012 ["Effective Date"], by and between the City of Evanston ["City"], and Nomad Dream, LLC ["Borrower"], regarding the rehabilitation of property located at 1818 Dempster Street, Evanston, Illinois, legally described in Exhibit 1, attached hereto and incorporated herein by reference ["Property"].

RECITALS

WHEREAS, the City desires to foster local businesses and jobs as part of its economic revitalization efforts throughout Evanston and in accord with the TIF Guidelines, as defined herein; and

WHEREAS, the City has authorized Economic Development Division Staff to manage and administer this Agreement on behalf of the City including, without limitation, authorizing the City Manager to execute this Agreement with Borrower, thereby establishing the terms, conditions, and requirements for participation in this Agreement in accordance with the TIF Guidelines; and

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the mutual obligations of the parties as herein expressed, the City and Borrower agree as follows:

AGREEMENT

I. DEFINITIONS

The following terms shall have the following meanings whenever used in this Agreement, except where the context clearly indicates otherwise. Any ambiguity as to the intended meaning or scope of the terms set forth below will be resolved solely by the City through its designated representative.

- a. "**Completion Date**" means the date that the contractor has finished the Project pursuant to the plans approved by City Council, the City Manager or his/her designee, and to the satisfaction of Borrower, as evidenced by final payment to the contractor from Borrower.
- b. "**Director**" means the City's Director of Community & Economic Development, who is responsible for managing and administering this Agreement on behalf of the City.

- c. **"Loan Amount"** means the total amount of the City's loan of TIF monies to Borrower for purposes of funding TIF eligible activities of the Project, which shall not exceed \$100,000, as defined in Article IV, Section c of this Agreement.
-
- d. **"Project"** means the improvements to the Property as proposed by Borrower and approved by the City Council, to rehabilitate the approximately 3,500 ft² vacant commercial space on the Property.
- e. **"TIF Eligible Activities"** means activities determined to be eligible for reimbursement from TIF funds by the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended.
- f. **"TIF Guidelines"** means the regulations found in the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended. All terms not defined herein shall have the meanings set forth in the TIF Guidelines.
- g. **"Total Allowable Expenses"** means the actual costs incurred, paid for, and documented by Borrower and approved by the Director or his/her designee for the proper performance of the improvement work required by the plans and specifications and/or architectural/design renderings for the Project. Such allowable expenses must be TIF Eligible Activities.
- h. **"Total Project Expenditure"** means the total actual Project costs incurred by and paid for by Borrower including costs of construction, materials, & supplies.

II. TERMS OF LOAN

- a. City shall lend Proprietor moneys not to exceed \$100,000.00 from the City's West Evanston TIF Fund for the purposes of funding the Project. City shall disburse thirty percent (30%) of Loan funds once Borrower: (i) obtains a building permit for the Project and submits a budget for the Project to the City; (ii) completes two-thirds ($\frac{2}{3}$) of the Project and said work and related documents are inspected and approved by the Director; (iii) completes construction of the Project and said work and related documents are inspected and approved by the Director. City shall disburse the remaining 10 percent (10%) of Loan funds once Borrower obtains all required licenses and/or occupancy permits for the commercial space improved per the Project. Each draw request Borrower submits shall be accompanied by Borrower's sworn statement, lien waiver(s), and any other supporting documentation reasonably required by the City. During construction, Borrower shall submit to the Director or his designee itemized invoices detailing the work completed and materials purchased. Such invoices shall include proof of payment to all contractors, suppliers, and vendors. Borrower shall be responsible for all payments to the contractors, materials suppliers, and vendors, and for providing true and correct copies of unconditional lien releases to the City.

- b. The moneys paid by the City to Borrower pursuant to this Agreement shall constitute a loan with a 6-year repayment period at 4.75% annual interest. Borrower shall make monthly payments to Lender, amortized over twenty (20) years. ~~The first such payment shall be due one (1) month after the City disburses any Loan funds to Borrower.~~ The amount due for each of the first twelve (12) such payments shall not exceed the interest accrued during the previous month. The City shall accept payments for no longer than six (6) years, or seventy-two (72) such payments, at which time Borrower shall re-pay the balance of the loan in full.

III. BORROWER'S RESPONSIBILITIES

- a. Before Borrower may receive Loan funds pursuant to this Agreement:
1. Borrower shall be responsible for contacting the Director or his/her designee to arrange for obtaining all City and other approvals and/or permits required for construction and completion of the Project.
 2. Borrower shall be responsible for hiring licensed contractors to complete the Project. The Director or his/her designee may require submission of proof of the State License issued to the selected contractors.
 3. Borrower shall be fully responsible for managing, monitoring, and scheduling the construction of the Project, for ensuring compliance with the payment of prevailing wages, if applicable, and for ensuring that all improvements are completed properly and in conformance with the approved project.
 4. Borrower shall solicit no fewer than three (3) bids for all purchases of materials and services for the Project, at least one (1) of which must be from an Evanston-based business ("EBE").
 5. After completion of each phase of the Project, Borrower shall submit to the Director or his/her designee a report that includes the following:
 - a) Cover letter indicating the Project is completed and the Total Cost Expenditures for the Project;
 - b) All contractor invoices detailing the specific tasks completed in accordance with the approved Project;
 - c) Proof of payment of all invoices for all expenditures for the Project;
 - d) Unconditional lien releases; and
 - e) Any additional material requested by the Director or his/her designee.

b. Until the expiration of this Agreement:

1. Borrower shall comply with all terms and conditions of this Agreement and all applicable requirements of Federal, Illinois and City of Evanston law.
2. Borrower shall ensure that all work done on the Project and paid for with Loan funds are TIF Eligible Activities.
3. Borrower shall obtain and keep current all certificates of insurance required herein.
4. Borrower shall maintain the Property in compliance with all applicable provisions of the Evanston City Code of 1979, as amended.
5. Borrower shall not be more than one hundred twenty (90) days in arrears with regards to any City utility and/or service bills.
6. Borrower shall complete the Project within the Time of Performance set forth in Section V of this Agreement.
7. Upon completion of each phase of the Project, Borrower shall notify the Director and request inspection of the Project by the Director or his/her designee(s).
8. Borrower shall acknowledge, in any Project-related press release(s), programs, and events, that the City's Loan was vital to the Project.

IV. THE CITY'S RESPONSIBILITIES

- a. Within a reasonable time after Borrower notifies City of the completion of each phase of the Project, the Director or his/her designee shall inspect the improvements to ensure they were completed in accordance with approved Project scope.
- b. Within a reasonable time after Borrower submits its contractors' sworn statements and accompanying documents, the Director or his/her designee shall review said documents to determine whether expenditures were made in accordance with the Project scope and the Total Allowable Expenses.
- c. On condition that Borrower has complied with its responsibilities herein and the aforementioned inspection and documents meet all terms, conditions, and obligations under this Agreement and the TIF Guidelines, the Director or his/her designee shall, in the ordinary course of business, disburse Loan funds from the City's West Evanston TIF Fund to Borrower. Said funds shall not exceed \$100,000.00.

V. TIME OF PERFORMANCE

~~The Borrower shall complete all phases of the project no later than twenty-four (24) months after receiving any building permit related to the Project. Failure to complete all phases of the Project within twenty-four (24) months will result in Borrower's breach of this Agreement. Requests for additional time and extensions in project completion time may be granted, but only if submitted in writing prior to the expiration of the agreement.~~

VI. MAXIMUM AMOUNT OF LOAN

The total amount of the City's Loan to Borrower, for the purpose of funding the Project, shall not exceed \$100,000, pursuant to the terms and conditions of this Agreement.

VII. INSURANCE

- a. During the entire period in which work on the Project is performed, the Borrower shall obtain and maintain in full force and effect during said period the following insurance policies: (i) Comprehensive General Liability Insurance in a general aggregate amount of not less than \$1,000,000, \$1,000,000 Products and Completed Operations Aggregate, and \$1,000,000 each occurrence and including; (ii) Automobile Insurance or Hired, Non-Owned Automobile Insurance, maintained in full force and effect in an amount of not less than \$1,000,000 per accident.
- b. All insurance policies shall name the City of Evanston, including its respective elected officials, officers, employees, agents, and representatives, as and additional insured and certificate holder.
- c. All deductibles on any policy shall be the responsibility of the primary holder of such policy and shall not be the responsibility of the City of Evanston.
- d. Borrower shall provide evidence of required insurance to the Director before execution of this Agreement.

VIII. OBLIGATION TO REFRAIN FROM DISCRIMINATION

- a. Borrower covenants and agrees for itself, its successors and its assigns to the Property, or any part thereof, that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

- b. That, if it hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification ~~for which employees are hired in such a way that minorities and women are not underutilized.~~
- c. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

IX. NO AGENCY CREATED

The Borrower and any contractor, supplier, vendor or any third party hired by Borrower to complete the Project are not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Borrower concerning the details of the obligations under this Agreement, or to exercise any control over such obligations, shall mean only that the Borrower shall follow the direction of the City concerning the end results of the obligations.

X. OWNERSHIP OF DOCUMENTS

All documents prepared and submitted to the City pursuant to this Agreement (including any duplicate copies) shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights thereto.

XI. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law, the Borrower agrees to and shall defend, indemnify and hold harmless the City, and its respective officers, officials, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including expert witness fees, reasonable attorneys' fees, and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or property resulting or arising from or in any way connected with the following, provided Borrower shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the City, or their respective officers, officials, active employees, contractors or agents:

- a. The development, construction, marketing, use or operation of the Property by the Borrower, its officers, contractors, subcontractors, agents, employees or other persons acting on Borrower's behalf ["Indemnifying Parties"];
- b. The displacement or relocation of any person from the Property as the result of the development of the Project on the Property by the Indemnifying Parties;

- c. Any plans or designs for the Project prepared by or on behalf of Borrower including, without limitation, any errors or omissions with respect thereto;
- ~~d. Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Borrower, or resulting from any breach or default by Borrower, under this Agreement; and~~
- e. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the improvements by the City, and their respective officers, officials, employees, contractors or agents.

The foregoing indemnity shall continue to remain in effect after the Completion Date or after the earlier termination of this Agreement, as the case may be.

XII. DUTY TO DEFEND

Borrower further agrees that the hold harmless agreement in Article XI, and the duty to defend the City, and their respective officers, officials, employees, contractors and agents, require the Borrower to pay any costs that the City may incur which are associated with enforcing the hold harmless provisions, and defending any claims arising from obligations or services under this Agreement.

XIII. COMPLIANCE WITH LAW

Borrower agrees to comply with all the requirements now or hereafter in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and construction of the Project, as well as operations conducted on the Property. The Director or his/her designee will not issue any Loan to the Borrower if there is in violation of any law, ordinance, code, regulation, or permit.

XIV. TERMINATION

If Borrower shall fail to cure any Event of Default upon notice and within the time for cure provided for herein, the City may, by written notice to the Borrower, terminate this Agreement. Such termination shall trigger the "Repayment of Loan" defined herein.

Borrower may not terminate this Agreement without the express written consent of City.

XV. NOTICES

All notices permitted or required hereunder must be in writing and shall be effected by (i) personal delivery, (ii) first class mail, registered or certified, postage fully prepaid, or (iii) reputable same-day or overnight delivery service that provides a receipt showing date and time of delivery, addressed to the following parties, or to such other address as any party may designate in writing in the manner as provided herein:

To City: City of Evanston
Director of Community & Economic Development
2100 Ridge Avenue
Evanston, IL 60201
Telephone: 847.448.8100

To Borrower: Nomad Dream, LLC
1818 Dempster Street
Evanston, Illinois 60201
Telephone: 847.491.1122

Any written notice, demand or communication shall be deemed received immediately if personally delivered or delivered by delivery service to the addresses above, and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

XVI. DEFAULT; REMEDIES; DISPUTE RESOLUTION

a. Notice of Default.

In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required herein identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

b. Cure of Default

Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within 90 days and shall continuously and diligently prosecute such cure, correction or remedy to completion.

c. City Remedies; Repayment of Loan.

In the event of a default by Borrower of the terms of this Agreement that has not been cured within the timeframe set forth in Paragraph b above, the City, at its option, may terminate this Agreement or may institute legal action in law or in equity to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement. In the event of a default by Borrower that occurs after the City has disbursed any Loan funds, the total of such disbursement(s), plus any accrued interest, shall become immediately due and payable.

All payments shall be first credited to accrued interest, next to costs, charges, and fees which may be owing from time to time, and then to principal. All payment shall be made in lawful money of the United States. Payments shall be made to City at the address set forth in Article XV or at such other address as City may direct pursuant to notice to Borrower delivered per Article XV.

d. Borrower's Exclusive Remedies.

The parties acknowledge that the City would not have entered into this Agreement if it were to be liable in damages under, or with respect to, this Agreement or any of the matters referred to herein, including the Project, except as provided in this Article. Accordingly, Borrower shall not be entitled to damages or monetary relief for any breach of this Agreement by the City or arising out of or connected with any dispute, controversy, or issue between Borrower and the City regarding this Agreement or any of the matters referred to herein, the parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be Borrower's sole and exclusive judicial remedies.

XVII. APPLICABLE LAW

The internal laws of the State of Illinois without regard to principles of conflicts of law shall govern the interpretation and enforcement of this Agreement.

XVIII. CONFLICT OF INTEREST

- a. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.
- b. The Borrower warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

XIX. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES

No member, official, agent, legal counsel or employee of the City shall be personally liable to the Borrower, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Borrower or successor or on any obligation under the terms of this Agreement.

XX. BINDING EFFECT

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

XXI. AUTHORITY TO SIGN

The Borrower hereby represents that the persons executing this Agreement on behalf of Borrower ~~have full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.~~

XXII. COUNTERPARTS

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

XXIII. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

- a. This Agreement and the Exhibits and references incorporated into this Agreement express all understandings of the parties concerning the matters covered in this Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- b. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Borrower, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Borrower.

XXIV. NON-ASSIGNMENT

The Borrower shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City's prior written approval, and Borrower and Borrower's proposed assignee's execution of an assignment and assumption agreement in a form approved by the City. Any assignment in violation of this paragraph is grounds for breach of this Agreement, at the sole discretion of the City Manager. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

XXV. NO WAIVER

No failure of either the City or the Borrower to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect.

[Signature page to follow]

IN WITNESS WHEREOF, the City, and the Borrower have signed this Agreement as of the dates set opposite their signatures.

"CITY"

Dated: 10/24/12

By: Wally Bobkiewicz

Name: WALLY BOBKIEWICZ

Title: CITY MANAGER

"BORROWER"

Dated: 10/22/12

By: Nancy Flynn

Name: Nancy Flynn

Title: President

ATTACHMENT:

- 1. Exhibit 1 – Legal Description of Property

Return this form to:
 City of Evanston
 Director of Community & Economic Development
 2100 Ridge Avenue
 Evanston, IL 60201

Approved as to form:

W. Grant Farrar

W. Grant Farrar
Corporation Counsel

Exhibit 1:

LEGAL DESCRIPTION OF PROPERTY

LOTS 3, 4 AND 5 IN BLOCK 1 IN GOLEE'S RESUBDIVISION OF BLOCKS 4, 5 AND 8 IN CHASE AND PITNER'S ADDITION TO EVANSTON, BEING A SUBDIVISION TO THE NORTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 24, AND THE SOUTH $\frac{1}{2}$ OF THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ (EXCEPT THE NORTH 71 $\frac{1}{2}$ FEET THEREOF) OF SECTION 13 ALL IN TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 10-24-200-002-0000
10-24-200-003-0000

Commonly Known As: 1818 Dempster Street, Evanston, Illinois

EXHIBIT B

Mortgage Between the City and Nomad Dream, LLC

Prepared by:
City of Evanston
Law Department
2100 Ridge Avenue
Evanston, IL 60201

Upon recording mail to:
City of Evanston
Law Department
2100 Ridge Avenue
Evanston, IL 60201

[The Above Space For Recorder's Use Only]

JUNIOR MORTGAGE

THIS MORTGAGE ("Mortgage") is executed and given as of the 22 day of October 2012, by Nomad Dream, LLC, an Illinois limited liability company, referred to as "mortgagor," which includes mortgagor's heirs, executors, administrators, successors, legal representatives and assigns, and denotes the singular and/or plural and the masculine and/or feminine and natural and/or artificial persons whenever and wherever the context requires, to the City of Evanston, having its principal offices at 2100 Ridge Avenue, Evanston, Illinois 60201, referred to as "mortgagee."

For proper consideration, and also in consideration of the sum named in the promissory note of the same date, mortgagor grants with mortgage covenants to mortgagee, its successors and assigns, all the tract of land of which mortgagor is now the legal owner, and in actual possession, located in Cook, Illinois, described as follows:

Legal Description: Attached as Exhibit "A".

Commonly known as ("Property Address"): 1818 Dempster Street, Evanston, Illinois 60201

PINs: 10-24-200-002-0000, 10-24-200-003-0000

Together with all structures and improvements now and later on the land and the fixtures attached to the land, together with all tenements, easements, and appurtenances to the property, and the rents, issues, and profits, all the estate, right, title, interest, and all claims in law and in equity, of mortgagor in and to the property.

Properties covered in this mortgage are conveyed to mortgagee, free from all rights and benefits under the Illinois Homestead Exemption Laws, which rights and benefits mortgagor now releases and waives.

This mortgage is given to secure: (a) the payment of \$100,000.00 (One Hundred Thousand and no/100 Dollars), as provided in a promissory note dated _____, 2012, which note is incorporated by reference, that note being payable as follows:

(a) The City shall acquire a lien on the Premises and said lien shall be subordinate to the first mortgage on the Premises. Mortgagor represents and warrants that it is its sole responsibility to execute such documents that may be necessary to create this lien. Mortgagor shall make monthly payments to mortgagee, amortized over twenty (20) years at a fixed interest rate of four and seventy-five hundredths' percent (4.75%). The amount due for each of the first twelve (12) such payments shall not exceed the interest accrued during the previous month. Mortgagee shall accept payments for no longer than six (6) years, or seventy-two (72) payments, at which time mortgagor shall re-pay the balance of the loan in full.

(b) the performance of the other agreements in the note;

(c) any future advances as provided in this mortgage, and to secure the performance of mortgagor's covenants and agreements.

Provided always, that if mortgagor pays to mortgagee, its successors, legal representatives, or assigns, the amount in the promissory note mentioned above, with all interest due, and performs, complies with, and abides by each and every stipulation, agreement, condition, and covenant of the note and mortgage, and pays all taxes that may accrue on the property and all costs and expenses that mortgagee, its successors or assigns may incur in collecting the note, in the foreclosure of this mortgage or otherwise, including reasonable attorney's fees, then this mortgage and the lien created will cease, and a release of the mortgage will be executed by mortgagee.

This mortgage is subject and subordinate to the first position mortgage. Borrower expressly agrees to pay that prior mortgage and to prevent any default under that mortgage. Borrower agrees that if borrower defaults on that senior mortgage, by failing to pay any installment of principal or interest on that mortgage within ten days after its due date, or to cure any other default on that mortgage within ten days after receiving notice of a default from the senior lender, the lender on this mortgage, at lender's option, may either (a) cure the default on the senior mortgage and add the cost of curing to the principal amount of the note secured by this mortgage, or (b) declare this mortgage and the note this mortgage secures due and payable in full. Borrower agrees to give any notice of default received from the senior lender to the junior lender immediately on receipt, and to attempt to have the senior lender send notices of default to the junior lender directly. Borrower may not renew, modify, or extend the senior mortgage without the lender's consent.

COVENANTS AND REPRESENTATIONS BY MORTGAGOR

Mortgagor covenants and agrees that:

1. Mortgagor will pay the principal and interest and other amounts payable by virtue of the promissory note and this mortgage, or either, promptly on the days they become due.

2. Mortgagor will pay the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature on the described property, and if they are not promptly paid, mortgagee, its successors, legal representatives, or assigns may at any time pay them without waiving or affecting the option to foreclose or any right under this mortgage, and every payment made by the mortgagee will bear interest from the date of the mortgage at the rate of 4.75% per year.

3. Mortgagor will pay all the costs, charges, and expenses, including attorney's fees, reasonably incurred or paid at any time by mortgagee, its successors, legal representatives or assigns, because of failure by mortgagor to perform, comply with, and abide by each and every stipulation, agreement, condition and covenant of the promissory note and this mortgage, or either, and every payment will bear interest from the date of the mortgage at the rate of 4.75% per year.

4. Mortgagor will keep the buildings now or later on the land insured in an amount equal to the highest insurable value, both fire and extended coverage, in a company or companies to be approved by mortgagee, with standard and customary mortgagee loss-payable clause indorsed on it, making any loss payable to mortgagee, its successors, legal representatives, or assigns; and in the event mortgagor fails to obtain insurance, then mortgagee may obtain insurance and hold it as above provided, without waiving or affecting the option to foreclose or any right under this mortgage, and the mortgagor will repay to the mortgagee on demand all premiums paid by mortgagee, with interest at the rate of 4.75% per year from the time of payment by mortgagee; all premiums paid by mortgagee will be secured by this mortgage and will be collectible in the same manner as the principal indebtedness; and should the mortgagee because of the insurance receive any amount of money for damage, that amount may be retained and applied by mortgagee toward payment of the debt secured by the mortgage, or it may be paid over either wholly or in part to the mortgagor for the repair of the buildings or for the erection of new buildings in their place, or for any other purpose or purposes satisfactory to the mortgagee; and if the mortgagee receives and retains insurance money for damage to the buildings, the lien of the mortgage will be affected only by a reduction by the amount of the insurance money retained by the mortgagee.

5. Mortgagor will not permit or cause the removal, alteration, or demolition, without the consent of the mortgagee, of any building on the premises; all buildings now or later located on the premises will be maintained by the mortgagor in good and substantial repair; mortgagor will not permit, commit, nor cause waste, impairment, or deterioration of the property, or any part of it, except reasonable wear and tear; and, in the event of the failure of mortgagor to keep the buildings on the premises and those to be erected on the premises, or improvements, in good repair, mortgagee may make repairs as in its discretion it may deem necessary for the proper preservation of the buildings and the full amount of each and every payment will be due and payable thirty (30) days after demand, and will be secured by the lien of this mortgage; and in addition, in the event of the occurrence of any of the preceding, the mortgagee will be entitled to immediately restrain the mortgagor by injunction or other appropriate remedy.

6. Mortgagor will perform, comply with, and abide by each of the stipulations, agreements, conditions, and covenants in the promissory note.

7. Mortgagee may, at any time pending an action on this mortgage, apply to the court for the appointment of a receiver, and the court will then appoint a receiver of the premises, including all income, profits, issues, and revenues from whatever source derived, each and every one of which, it is expressly understood, is mortgaged by this document, as if specifically stated and described. The receiver's appointment will be made as a matter of absolute right to mortgagee, and without reference to the adequacy or inadequacy of the value of the property mortgaged or to the solvency or insolvency of mortgagor or the defendants. Rents, profits, income, issues, and revenues will be applied by the receiver according to the lien of this mortgage and the practice of the court. In the event of any default on the part of mortgagor, mortgagor agrees to pay to mortgagee on demand as a reasonable monthly rental for the premises an amount at least equivalent to one-twelfth of the aggregate of the twelve (12) monthly installments then payable in the current year plus the actual amount of the annual taxes, assessments, water rates, and insurance premiums for that year not covered by the monthly payments.

8. If any of the sums of money are not promptly paid within thirty (30) days after becoming due, or if each of the stipulations, agreements, conditions, and covenants of the promissory note and this mortgage, or either, are not fully performed, complied with, and abided by, the aggregate sum mentioned in the promissory note will become due and payable immediately or later at the option of mortgagee, its successors, legal representatives, or assigns, as fully and completely as if the aggregate sum were originally stipulated to be paid on that day, despite anything in the promissory note or this mortgage to the contrary.

9. Mailing a written notice or demand addressed to the owner of record of the mortgaged premises or to the owner at the last address, actually furnished to mortgagee, or if none, directed to the owner at the mortgaged premises, and mailed by the United States mail, postage prepaid, will be sufficient notice and demand in any case arising under this instrument and required by the provisions of this mortgage or by law.

10. If foreclosure proceedings of any mortgage or lien of any kind superior or inferior to this mortgage are instituted, mortgagee may at its option, immediately or afterwards, declare this mortgage and the indebtedness secured due and payable.

11. The mortgagor, within ten days after request of the mortgagee, will furnish to the mortgagee or to any other person, firm, or corporation as may be designated by the mortgagee, a duly acknowledged written statement of the amount due on the mortgage and whether any offsets or defenses exist against the mortgage debt.

12. The whole of the principal amount and interest will become due at the option of the mortgagee, under any of the following conditions: after default in the payment of any principal or interest, or any installment, as provided in the note for thirty days; after default in the payment of any tax, assessment, water charges, sewer service charge, or other governmental or other charge or rate levied or charge against the mortgage premises, for thirty days after notice and demand from the mortgagee; after default subsequent to notice and demand from the mortgagee either in assigning and delivering the insurance policies insuring the building against loss, or in reimbursing the mortgagee for premiums paid on the insurance, as above provided; or after default on request of the mortgagee in furnishing a statement of the amount due on the mortgage and whether off-sets or defenses exist against the mortgage debt, as above provided.

13. The mortgagor warrants title to the premises and covenants with the mortgagee that ~~the mortgagor is the true and lawful owner of the premises and has good right and full power to grant and mortgage them,~~ and that the premises are free and clear of all encumbrances, except only restrictions and easements of record, taxes and assessments not yet due or delinquent, and any other matters as are indicated following the legal description of the premises expressly stated; and mortgagor further covenants that mortgagor will warrant and defend against all lawful claims of all persons except as above provided.

14. In case of a foreclosure sale, the premises, or so much as may be affected by this mortgage, may be sold in one parcel.

15. The mortgagor assigns to the mortgagee the rents, issues, and profits of the premises as further security for the payment of the obligations secured by this mortgage, and grants to the mortgagee the right to enter on the premises for the purpose of collecting the payments, and to rent the premises or any part of them, and to apply the moneys received from the rental, after payment of all necessary charges and expenses, to the obligation secured by this mortgage, on default under any of the covenants, conditions, or agreements contained in this mortgage. The mortgagor further promises and agrees, in the event of any default, to pay to the mortgagee, or to any receiver appointed to collect the rents, issues, and profits of the premises, a fair and reasonable occupational rent for the use and occupation of the premises or of any part that may be in the possession of the mortgagor; and on default in payment of the rental, to vacate and surrender possession of the premises, or that portion occupied by the mortgagor, to the mortgagee or the receiver.

16. In the event any action or proceeding is commenced (except an action to foreclose this mortgage or to collect the obligation secured by it) in which it becomes necessary to defend or assert the lien of this mortgage, whether or not the mortgage is made or becomes a party to such action or proceeding, all expenses of the mortgagee incurred in any action or proceeding to prosecute or defend the rights and lien created by this mortgage, including reasonable counsel fees, will be paid by the mortgagor, and if not paid promptly on request, will be added to the debt secured and become a lien on the mortgaged premises, and will be deemed to be fully secured by this mortgage and to be prior and paramount to any right, title, or interest, or claim to or on the premises accruing or attaching subsequent to the lien of this mortgage, and will bear interest at the rate provided for the obligation secured. This covenant will not govern or affect any action or proceeding to foreclose this mortgage or to recover or to collect the debt secured by it, which action or proceeding will be governed by the provisions of law and rules of court respecting the recovery of costs, disbursements, and allowances in foreclosure actions.

17. If all or any part of the premises are condemned and taken under the power of eminent domain, or if any award for any change or grade of streets affecting the premises are made, all damages and awards for the property taken or damaged will be paid to the holder of this mortgage, to the amount then unpaid on the indebtedness secured, without regard to whether or not the balance remaining unpaid on the indebtedness may then be due and payable; and the amount paid will be credited against the indebtedness and, if insufficient to pay the entire amount, may, at the option of the holder, be applied to the last maturing installments, and the

balance of damages and awards, if any, will be paid to the mortgagor. The holder of this mortgage is given full power, right, and authority to receive any and all damages and awards.

18. ~~If the mortgagor or any obligor on the secured note:~~ (1) files a voluntary petition in bankruptcy under the Bankruptcy Code of the United States, or (2) is adjudicated a bankrupt under that act, or (3) is the subject of a petition filed in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or (4) makes a general assignment for the benefit of creditors, then and on the occurrence of any of the conditions, at the option of the mortgagee, the entire balance of the principal amount secured, together with all accrued interest, will immediately become due and payable.

19. Mortgagor will comply with all statutes, ordinances, and governmental requirements affecting the mortgaged premises, and if mortgagor neglects, or refuses to comply and the failure or refusal continues for a period of thirty days, then, at the option of the mortgagee, the entire balance of the principal amount secured by this mortgage, together with all accrued interest, will immediately become due and payable.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT "A"

LEGAL DESCRIPTION

LOTS 3, 4 AND 5 IN BLOCK 1 IN GOLEE'S RESUBDIVISION OF BLOCKS 4, 5 AND 8 IN CHASE AND PITNER'S ADDITION TO EVANSTON, BEING A SUBDIVISION TO THE NORTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 24, AND THE SOUTH ½ OF THE SOUTHWEST ¼ OF THE SOUTHEAST ¼ (EXCEPT THE NORTH 71 ½ FEET THEREOF) OF SECTION 13 ALL IN TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 10-24-200-002-0000
10-24-200-003-0000

Commonly Known As: 1818 Dempster Street, Evanston, Illinois

EXHIBIT C

Promissory Note Between the City and Nomad Dream, LLC

PROMISSORY NOTE

Lender:

CITY OF EVANSTON
2100 Ridge Avenue
Evanston, IL 60201

Borrower:

Nomad Dreams, LLC
c/o Nancy Floy
1818 Dempster Street
Evanston, IL 60201

\$100,000.00 (One Hundred Thousand and no/100 Dollars)

The Borrower, Nomad Dream, LLC, for value received, promises to pay to the order of the City of Evanston (hereafter, together with any holder hereof, called "City"), having its principal office located at 2100 Ridge Avenue, Evanston, Illinois 60201, the principal sum of \$100,000.00 (One Hundred Thousand and no/100 Dollars), within six (6) years after the date of this note (the "Maturity Date").

In addition to payment of the principal sum to City as provided for above, the Borrower promises and agrees to pay Lender interest on the amount of principal outstanding from time to time (computed on the basis of a 360-day year for the actual number of days elapsed) at the fixed rate of 4.75% per annum.

Borrower shall make monthly payments to Lender, amortized over twenty (20) years. The first such payment shall be due one (1) month after the effective date of this note. The amount due for each of the first twelve (12) such payments shall not exceed the interest accrued during the previous month. Lender shall accept payments for no longer than six (6) years, or seventy-two (72) such payments, at which time Borrower shall re-pay the balance of the loan in full.

The indebtedness evidenced by this Note (including all principal and interest) is secured by a Mortgage dated _____, 2012, and/or any other related loan agreement and security instruments applicable to the following real property:

Commonly known as: 2424 Dempster Street, Evanston, Illinois 60202.

Property Identification Numbers ("PINs"): 10-24-200-002-0000, 10-24-200-003-0000

Borrower may prepay the principal amount outstanding in whole or in part without premium or penalty of any kind. Any partial prepayment shall be applied against the principal amount outstanding.

Lender has made the loan described herein to Borrower so that Borrower may use the loan funds in order to rehabilitate commercial space on the above-described property so that Borrower may expand the Heartwood Center for Mind Body Spirit, which it operates on said property.

DEFAULTS AND REMEDIES

Failure of the Borrower to pay any amount due hereunder for a period in excess of ten (10) days after it becomes due and payable under this Note, whether interest, principal, or otherwise on the Maturity Date, or the occurrence of any other Default (as defined herein or in the Mortgage), shall constitute an event of default hereunder. At any time during the existence of any Default, and at the option of the City, the entire unpaid principal balance under this Note, together with interest accrued thereon and all other sums due from the Borrower hereunder or under the Mortgage or any of the other security agreements or documents (collectively, the "Loan Documents"), shall without notice become immediately due and payable.

If any attorney is engaged by the City, including in-house staff (a) to collect the indebtedness evidenced hereby or due under the Loan Documents, whether or not legal proceedings are thereafter instituted by the City; (b) to represent City in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Note; (c) to protect the liens of any of the Loan Documents; (d) to represent City in any other proceedings whatsoever in connection with this Note or any of the Loan Documents or the real estate described therein; or (e) to represent City in monitoring the loan evidenced by this Note or any renewal, restructure, amendment, or the like applicable thereto, then the Borrower shall pay to City all reasonable attorneys' fees and expenses incurred or determined to be due in connection therewith, in addition to all other amounts due hereunder. Bank's remedies under this Note, the Mortgage, and all of the other Loan Documents shall be cumulative and concurrent and may be pursued against the Borrower, the real estate described in the Mortgage, and any other security described in the Loan Documents or any portion or combination of such real estate and other security, and City may resort to every other right or remedy available at law or in equity without first exhausting the rights and remedies contained herein, all in the City's sole discretion. Failure of the City, for a period of time or on more than one occasion to exercise its option to accelerate the maturity date shall not constitute a waiver of the right to exercise that option at any time during the continued existence of the Default or in the event of any subsequent Default. City shall not by any other omission or act be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by the City, and then only to the extent specifically set forth therein. A waiver in connection with one event shall not be construed as continuing or as a bar to or waiver of any right or remedy in connection with a subsequent event.

OTHER MATTERS

1. **WAIVER.** The Borrower agrees to be bound and (a) waive and renounce any and all redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced hereby or by any extension or renewal hereof; (b) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (c) waive all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (d) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (e) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by City with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (g) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such Obligor or security shall not affect the liability of any of Obligor for the payment hereof.

2. **GOVERNING LAW AND TIME LIMITATION.** This Note shall be construed and enforced in accordance with the laws of the State of Illinois. All disputes relating to the interpretation of the provisions of this Note shall be resolved exclusively by the federal or state court located in Cook County, Illinois, and the parties hereto hereby submit to the jurisdiction and venue of the court for such purpose. The parties hereby waive trial by jury.

3. **HEADINGS.** The headings of sections and paragraphs in this Note are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof. As used in this Note, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires. If any provision of this Note, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Note shall be construed as if such invalid part were never included herein. Time is of the essence of this Note.

4. **BINDING OBLIGATION.** This Note and all provisions hereof shall be binding on all persons claiming under or through the Borrower, which shall include the respective beneficiaries, successors, assigns, legal and personal representatives, executors, administrators, devisees, legatees, and heirs of the Borrower.

[SIGNATURES ON FOLLOWING PAGE]

The Borrower has caused this Note to be executed as of the date first written above.

Nomad Dream, LLC, an Illinois limited liability company

By: *Nancy Floy*
Name: *Nancy Floy*
Title: *President*
Date: *10/22/12*

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, *RODNEY GREENE*, a Notary Public in and for the State and County aforesaid, do hereby certify that before me this day personally appeared *Nancy Floy*, known to me to be the same person whose name is subscribed to the above and foregoing document, and acknowledged to me that he/she executed and delivered the above and foregoing as his/her free and voluntary act, for the uses and purposes set forth in said Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this *22* day of *OCTOBER*, 2012.

Rodney Greene
Notary Public

