

12/10/2012
12/3/2012

85-R-12

A RESOLUTION

**Authorizing the City Manager to Execute a Loan Agreement
for the Improvement of 2922 Central Street ("Curt's Café")**

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

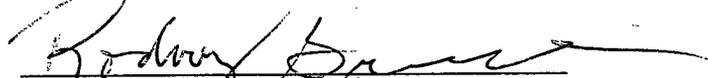
SECTION 1: The City Manager is hereby authorized to execute the Agreement attached hereto as Exhibit A and incorporated herein by reference, issuing a loan not to exceed fifteen thousand dollars (\$15,000.00) from the City to P.S. It's Social, an Illinois not-for-profit corporation, d/b/a "Curt's Café" at 2922 Central Street.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement 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: December 10, 2012

EXHIBIT A

Loan Agreement Between the City and P.S. It's Social

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Loan Agreement Between the City and P.S. It's Social

LOAN AGREEMENT

THIS LOAN AGREEMENT ["Agreement"] is entered into on this 7 day of November, 2013 ["Effective Date"], by and between the City of Evanston ["City"], and P.S. It's Social, an Illinois not-for-profit corporation, d/b/a "Curt's Café" ["Borrower"], regarding the rehabilitation and occupation of property located at 2922 Central Street, Evanston, Illinois, legally described in Exhibit "A", which is attached hereto and incorporated herein by reference ["Property"].

RECITALS

WHEREAS, the City desires to retain local businesses and jobs as part of its economic revitalization efforts throughout Evanston; and

WHEREAS, Borrower operates a restaurant in the Property that employs formerly-incarcerated Evanston residents (the "Café"); and

WHEREAS, the City Council has authorized 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; 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.
- b. "**Director**" means the City's Director of Community & Economic Development, who shall manage and administer this Agreement on behalf of the City.
- c. "**Loan**" means the total amount of the City's loan of Economic Development Fund monies to Borrower for purposes of funding the Project, which shall not exceed \$15,000, the amount approved by City Council.

- d. "Project" means the improvements on the Property as proposed by Borrower and approved by the City Council. Specifically, Borrower desires to complete build-out of the Property to make it suitable for use as a Café.

II. TERMS OF LOAN

- a. City shall lend Borrower moneys not to exceed \$15,000.00 from the City's Economic Development Fund's Business Attraction and Expansion Account in accord with the terms of this Agreement.
- b. The City shall cause disbursement of the Loan moneys to Borrower no later than thirty (30) days after the Effective Date of this Agreement and City's receipt of the Security Agreement and certificates of insurance as required by Section III of this Agreement.
- c. The Loan constitutes a three (3)-year loan to Borrower, with four percent (4%) annual interest. No interest shall accrue until the first anniversary of the Completion Date. Borrower shall repay the City in twenty-four (24) equal monthly payments, the first of which shall be due no later than thirteen (13) months after the Completion Date. The twenty-four (24) months after first anniversary of the Completion Date shall be referred to as the "Loan Repayment Period."

III. BORROWER'S RESPONSIBILITIES

- a. Borrower shall comply with all terms and conditions of this Agreement and all applicable requirements of Federal, Illinois, and City of Evanston law.
- b. Borrower shall obtain and submit all required certificates of insurance, as set forth herein, to the City Manager or his/her designee upon execution of this Agreement and prior to City's execution.
- c. 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.
- d. 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.
- e. 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.

- f. Borrower shall employ best commercial efforts to use Evanston-based businesses as frequently as is financially feasible when purchasing supplies and/or hiring subcontractors and service providers for the Project.
- g. Upon completion of the Project, Borrower shall notify the Director and request inspection of the Project by the Director or his/her designee(s).
- h. Borrower shall complete the Project no later than three hundred sixty-five (365) days after receiving any building permit related to the Project.
- i. After completion of the Project, Borrower shall submit to the Director or his/her designee a report that includes the following:
 - i. Cover letter indicating Project completion and Total Project Expenditures;
 - ii. All contractor invoices detailing the specific tasks completed in accordance with approved Project;
 - iii. Proof of payment of all invoices for all expenditures for the Project;
 - iv. Any additional material requested by the Director or his/her designee.
- j. Borrower shall execute and deliver to the City, contemporaneously with this Agreement, a security agreement creating a lien on all furnishings paid for with Loan moneys (including without limitation, furniture, furnishings, and equipment) used or to be used in the operation of the Café, together with appropriate financing statements under the Uniform Commercial Code, all in form and content satisfactory to the City (the "Security Agreement"). If Borrower ceases to operate the Café before the end of the Loan Repayment Period, the City may exercise its rights pursuant to the Security Agreement.

IV. THE CITY'S RESPONSIBILITIES

- a. City shall administer the Loan as set forth in this Agreement.
- b. Within a reasonable time after Borrower notifies City of the completion of the Project, the Director or his/her designee shall inspect the improvements to ensure they were completed in accordance with approved Project scope.
- c. Director or his/her designee shall review Borrower's request and accompanying documents for the Loan. If Borrower meets all its terms, conditions, and obligations under this Agreement, the Director or his/her designee shall issue the Loan made pursuant to this Agreement, in an amount not to exceed \$15,000.00.

V. TIME OF PERFORMANCE

The Borrower shall complete the project no later than three hundred sixty-five (365) days after receiving any permit related to the Project. Failure to complete the Project within three hundred sixty-five (365) days 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. INSURANCE

- a. During the Loan Repayment Period, 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, maintained in full force and effect in an amount of not less than \$1,000,000 per accident;
- b. The Comprehensive General Liability Insurance and Automobile Insurance policies shall name the City of Evanston, and their respective elected officials, officers, employees, agents, and representatives as additional insureds.
- 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.

VII. 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.

VIII. 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.

IX. 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.

X. 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 to said documents;
- 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.

XI. DUTY TO DEFEND

Borrower further agrees that the hold harmless agreement in Article X, 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. If the City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to obligations or services under this Agreement, the Borrower agrees to pay the City's attorney's fees, expert witness fees, and all costs.

XII. 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.

XIII. 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.

XIV. 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, from time to time, 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
Facsimile: 847.448.8020
Email: economicdevelopment@cityofevanston.org

To Borrower: Curt's Café
2922 Central Street
Evanston, IL 60201
Telephone: 847.868.8385
Facsimile: 847.859.2514
Attention: Susan Trieschmann

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.

XV. 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 ninety (90) days and shall continuously and diligently prosecute the same 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 XIV herein or at such other address as City may direct pursuant to notice delivered to Borrower in accordance with Article XIV.

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.

XVI. 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.

XVII. 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/her 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.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. 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.

XXII. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

- a. This Agreement and the Exhibits and references incorporated herein 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. Any waivers and/or amendment(s) of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and Borrower.

XXIII. 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.

XXIV. 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.

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

"CITY"

Dated: 11/7/13

By: Wally Bobkiewicz

Name: Wally Bobkiewicz

Title: City manager

"BORROWER"

Dated: 11/1/13

By: Susan Trieschman

Name: Susan Trieschman

Title: Ex. Dir

ATTACHMENT:

1. Exhibit A – 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 A:

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1: LOT 1, (EXCEPT THE WEST 20.15 FEET) IN BLOCK 1 IN ARTHUR T. MCINTOSH'S CENTRAL WOOD ADDITION TO EVANSTON BEING A SUBDIVISION OF PART OF FRACTIONAL SECTION 11, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: A 30 FOOT STRIP EAST OF AND ADJOINING LOT 1 IN BLOCK 1 IN ARTHUR T. MCINTOSH'S CENTRAL WOOD ADDITION TO EVANSTON, VACATED BY ORDINANCE PASSED BY THE CITY COUNCIL OF CITY OF EVANSTON ON JUNE 1, 1943 AND RECORDED JUNE 10, 1943 AS DOCUMENT NUMBER 13089383, IN FRACTIONAL SECTION 11, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 10-11-201-027-0000

Commonly Known As: 2922 Central Street, Evanston, Illinois.