

9/9/2014

68-R-14

A RESOLUTION

**Authorizing the City Manager to Negotiate a TIF Grant Agreement
with O'Donnell Investment Company for the Development of a Vacant
Property located at 835 Chicago Avenue**

WHEREAS, the City of Evanston, Cook County, Illinois (the "City"), is a home-rule municipality pursuant to Article VII of the Illinois Constitution of 1970; and

WHEREAS, the City previously established the Chicago and Main TIF District No. 8 Redevelopment Project Area (the "Redevelopment Project Area"), and authorized tax increment finance pursuant to the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as supplemented and amended, including the predecessor Act thereof (the "TIF Act"); and

WHEREAS, the City seeks to develop vacant parcels with structures seeking office use in order to attract new businesses and organizations into the Redevelopment Project Area with TIF Funds; and

WHEREAS, the O'Donnell Investment Company, an Illinois corporation ("O'Donnell"), is the developer of a vacant parcel of land at 835 Chicago Avenue (the "Subject Property"), legally described in Exhibit A and incorporated herein by reference; and

WHEREAS, on July 28, 2014, the City Council adopted Ordinance 32-O-14 which granted a special use permit to allow construction and operation of a planned development at the Subject Property, which will consist of a new nine-story

ninety-seven foot tall mixed use commercial, office and residential building consisting of 15,670 gross square feet of office space; and

WHEREAS, the City seeks to support the development of the office use portion of the project with TIF funds,

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

SECTION 1: The City Manager is hereby authorized and directed to execute a TIF Grant agreement ("Agreement") between the City and O'Donnell Investment Company, attached hereto as Exhibit "1" and incorporated herein by reference is the Agreement.

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 68-R-14 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 22, 2014

EXHIBIT 1
TIF GRANT AGREEMENT

TIF FORGIVABLE CONSTRUCTION LOAN AGREEMENT

This TIF Forgivable Construction Loan Agreement (the “**Agreement**”), is entered into by and between THE CITY OF EVANSTON, an Illinois municipal corporation (“**Lender**”) and O’DONNELL INVESTMENT COMPANY, an Illinois corporation (“**Borrower**”) and effective as of the last date executed on the signature page:

RECITALS

WHEREAS, it has been determined by Lender that an economic development and unique opportunity exists which warrants funding to Borrower from the Chicago-Main Tax Increment Financing District No. 8 (“**Chicago-Main TIF**”); and

WHEREAS, the Borrower requested funding to cover costs of development costs for the commercial property located at 835-849 Chicago Avenue and 516-534 Main Street, Evanston, IL 60202 (“**Subject Property**”) in order to meet the Borrower’s future operation of a planned development at the Subject Property, which will consist of a new nine-story ninety-seven foot tall mixed use commercial, office and residential building consisting of 15,670 gross square feet of office space; and

WHEREAS, the City seeks to support the development of the office use portion of the project with TIF funds, and

WHEREAS, the Lender has authorized an expenditure of up to Two Million Nine Hundred Thousand and no/100 Dollars (**\$2,900,000.00**) for a forgivable loan to the Borrower to cover a portion of the expected project budget, under such terms and conditions as may be prescribed by the Lender below, for purposes of project financial assistance to cover some of the Project costs and provide a financial incentive to remain an Evanston business; and

WHEREAS, the City Council has approved Borrower for participation in this Agreement, subject to the terms and conditions of the TIF Guidelines and this Agreement,

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

A. 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.

1. “**Borrower**” means the company, O’Donnell Investment Company applying for funding for renovations to the Subject Property and determined eligible participate in this Agreement.

2. “**Completion Date**” means the date that the contractor has finished the Project pursuant to the design and architectural plans approved by City Council, the City Manager, or his designee, and to the satisfaction of Borrower, as evidenced by final payment to the contractor from Borrower and Final Certificate of Occupancy is issued to the Borrower by the Building & Inspection Services Division.
3. “**Director**” means the City’s Assistant City Manager and Director of Administrative Services, Martin Lyons, who is responsible for managing and administering this Agreement on behalf of the City.
4. “**Loan**” means the total amount of the funds from the Chicago-Main TIF loaned to Borrower for purposes of funding TIF Eligible Expenses for the Project, which shall not exceed Two Million Nine Hundred Thousand and no/100 Dollars (\$2,900,000.00), the amount approved by City Council Resolution 68-R-14.
5. “**Loan Term**” means how long the Loan exists and expiration of the Parties requirements under this Agreement, which is ten (10) years in this Agreement.
6. “**Last Date of Reimbursement**” means the date that the Lender issues the last reimbursement payment to Borrower. If the last reimbursement is made by check, it will be the date shown on the check. If reimbursement is made by electronic funds transfer, it will be the date the Loan funds electronically transferred to the Borrower.
7. “**Project**” means the improvements to be completed on the Property as proposed by Borrower.
8. “**Subject Property**” means the real property at 835-849 Chicago Avenue and 516-534 Main Street, Evanston, IL 60202 which is owned by the Borrower, currently a vacant parcel described herein. The Property is located within the City of Evanston and is legally described on Exhibit “A”, which is attached hereto and incorporated herein by reference.
9. “**TIF Guidelines**” means the regulations found in the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.* All terms not defined herein shall have the meanings ascribed thereto in the TIF Guidelines.
10. “**TIF Eligible Expenses**” means Project expenses 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.*
11. “**Total Allowable Expenses**” means the total actual costs incurred, and documented by Borrower and subsequently approved by the Director or his designee for the costs associated with the performance of the work required by the plans and specifications and/or architectural/design renderings for the Project. Such allowable expenses must be TIF eligible activities.
12. “**Total Project Expenditure**” means the total actual Project costs incurred by and paid for by Borrower including the costs of construction, materials, and supplies. The Total

Project Expenditure includes both the Total Allowable Expenses under TIF and other remaining costs which are not reimbursable under this Agreement.

B. LOAN

1. **Principal Amount:** Subject to the term and conditions of the Agreement, the Lender hereby agrees to provide Borrower the principal sum of up to Two Million Nine Hundred Thousand and no/100 Dollars (\$2,900,000.00) (the “**Loan**”), to be amortized and forgivable over a period of ten years (one hundred twenty (120) months) calculated on 365 day calendar and commences on the Last Date of Reimbursement (the “**Loan Term**”). The Loan Term and reimbursement obligations shall not commence until the City’s issuance of debt necessary to fund this project has commenced.
2. **Interest Rate:** Interest will accrue from the Last Date of Reimbursement of the Loan funds at the rate of LIBOR per annum on the unpaid balance. If a default occurs and not cured, repayment of principal and interest shall commence immediately in accordance with the provisions set forth below. The Loan is not transferable. The interest rate will be calculated on the Last Date of Reimbursement and when the Loan Forgiveness Schedule is ratified. For illustrative purposes in the Loan Forgiveness Schedule, the LIBOR rate is set at 3.00%.
3. **Amortization Schedule for the Loan:** The outstanding principal balance of the Loan is divided by the total number of years (10) in the Loan Term, and the resulting figure will be the “installment”. The first anniversary date of the Loan shall be one year after the Last Date of Reimbursement and on said anniversary date, and every year thereafter, the Loan will be forgiven in accordance with the schedule to be attached as Exhibit B (the “**Loan Forgiveness Schedule**”). The forgiveness schedule is for illustration purposes and not the final Loan Forgiveness Schedule, which will be formed after the Last Date of the Reimbursement.
4. **Collateral:** To secure the Loan, the Borrower will ensure that a guaranty for the full Loan value for the Loan Term is issued (the “**Guaranty**”), which is attached as **Exhibit C** and incorporated herein as if fully restated.

C. CONDITIONS OF FORGIVENESS

The Loan is conditioned on the completion and satisfaction of each part of this Section C and confirmed by the Director and/or his designee. If Borrower fails to perform any condition fully set forth herein, it shall be considered an Event of Default, defined in Section N. The Conditions of Forgiveness are as follows:

1. Project Completion:
 - a. Borrower shall develop the Subject Property in conformance with the special use permit authorized by Ordinance 32-O-14 for the construction and operation of a planned development at the Subject Property, which will consist of a new nine-story ninety-seven foot tall mixed use commercial, office and residential building consisting of 15,670 gross square feet of office space. Borrower acknowledges that

the TIF Funds are conditioned on Borrower developing and retaining approximately 15,670 square feet of office space at the Subject Property.

- b. Borrower shall provide documentation that bids for the Project were sought from no less than three contractors, of which one must be an Evanston-based contractor. If an Evanston based contractor is not available to seek bids based on the scope and scale of the Project work, this requirement will be waived upon confirmation from City staff that bid solicitation to Evanston based businesses was pursued by Borrower.

2. Recording Memorandum of TIF Forgivable Loan Agreement: Developer shall receive authority from the owner, Main & Chicago Evanston JV, LLC, a Delaware limited liability company permitting the recording of a memorandum summarizing this Agreement against the Subject Property ("**Memorandum of TIF Forgivable Loan Agreement**"), which is attached as Exhibit D.

3. Sale to a Third Party: If the Building is sold for a profit greater than the acceptable return for the investment of this project, the Borrower shall be in Default and any principal and interest not previously forgiven will be repaid in accordance with Section D (6) and L.

4. Taxable Uses Only: Borrower warrants that it will not lease or otherwise allow any non-tax generating uses to occupy the commercial portions of the Subject Property until the Chicago-Main TIF expires.

D. TERMS OF REIMBURSEMENT

1. Reimbursement Payment Requirements: Reimbursement payments shall NOT be paid out until: (a) City Council has approved the Agreement; (b) the Agreement is executed; (c) Project work has commenced; and (d) the City's issuance of debt necessary to fund the project has occurred. The Loan is funded through the Chicago-Main TIF District.
2. Borrower hereby agrees to comply with all terms and conditions of this Agreement and only seek reimbursement of acceptable TIF Eligible Expenses.
5. Borrower may not seek reimbursement in a frequency greater than the following schedule:
[PROJECT MILESTONES TO BE IDENTIFIED FOLLOWING THE CREATION OF A CONSTRUCTION MANAGEMENT PLAN]
6. Reimbursement requests to the Director or his designee shall contain the following:
 - a. Cover letter indicating the total cost of TIF Eligible Expenses that it is seeking reimbursement and general overview of the Project progress to date;
 - b. All contractor invoices detailing the specific tasks completed in accordance with approved Project;
 - c. Proof of payment of all invoices for all expenditures for the Project covered by this Loan; and
 - d. Unconditional partial lien releases.
4. Such reimbursement requests shall include proof of payment to all contractors, suppliers, and vendors. Borrower is 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.

5. The Director or his designee will not issue any Reimbursement to the Borrower if there is any violation of any law, ordinance, code, regulation, or Agreement term. Lastly, Borrower must be current with all City of Evanston accounts prior to any reimbursement.
6. The total amount of the Loan will be forgiven in accordance with the schedule attached as Exhibit B (“**Loan Forgiveness Schedule**”). At the end of the Loan Term, the Loan will be deemed forgiven and the balance will be zero and the Guaranty is released.

E. BORROWER’S RESPONSIBILITIES

1. The Borrower shall obtain and submit all required certificates of insurance, as set forth herein, to the Director or his designee upon execution of this Agreement and prior to City’s execution.
2. The Borrower shall be responsible for hiring a licensed contractor to complete the Project. The Director or his designee may require submission of proof of the State License issued to the selected contractor.
3. The Borrower is responsible for contacting the appropriate City departments to arrange for obtaining all necessary approvals and/or permits required for construction and completion of the Project.
4. The Borrower is responsible for managing, monitoring, and scheduling the construction of the Project and ensuring its compliance with all applicable federal, State, and local laws and regulations.
5. Borrower shall during the Term, and for a period of 2 years following the expiration of the Term, keep and make available for the inspection, examination and audit by City or City’s authorized employees, agents or representatives, at all reasonable time, all records respecting the services and expenses incurred by Borrower, including without limitation, all book, accounts, memoranda, receipts, ledgers, canceled checks, and any other documents indicating, documenting, verifying or substantiating the cost and appropriateness of any and all expenses. If any invoice submitted by Borrower is found to have been overstated, Borrower shall provide City an immediate refund of the overpayment together with interest at the highest rate permitted by applicable law, and shall reimburse all of City’s expenses for and in connection with the audit respecting such invoice.
6. The Borrower shall be fully responsible for ensuring that all invoices from the contractors, suppliers, vendors and/or other third parties are paid and shall only seek reimbursement after payment has been disbursed by Borrower to the applicable party.

F. THE CITY’S RESPONSIBILITIES

1. Within a reasonable time after Borrower submits a request for a Reimbursement, the City will review the information provided by Borrower under Section D.
2. Director or his designee shall review Borrower's request and accompanying documents for a Reimbursement Payment. If Borrower meets all its terms, conditions, and obligations under this Agreement and the TIF Guidelines, the Director or his designee shall issue the Payment in installments up to the total amount of the Loan in accordance with the Local Government Prompt Payment Act, after City's receipt of the documentation submitted by Borrower in Section D(3).
3. The City will not object to Borrower or the property owner appealing its real estate property taxes. However, if the property taxes are appealed to a level that will result in an incremental property tax amount that would result in an inability to make debt service payments for the debt issued to fund this portion of the project, the Borrower would be required to step into the shoes of the City and make debt service payments on its behalf.

G. INSURANCE

1. During the entire period in which work on the Project is performed until termination of the Declaration, the Borrower shall obtain and maintain in full force and effect during said period the following insurance policies: 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.
2. 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.
3. Borrower shall provide evidence of required insurance to the Director before execution of this Agreement. Borrower shall name the City as an additional insured for the Loan period.

H. OBLIGATION TO REFRAIN FROM DISCRIMINATION

1. 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.
2. 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.
3. 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.

I. NO AGENCY CREATED

The Borrower and any contractor, supplier, vendor or any third party hired by Borrower to complete the Project are not agents or create any employment relationship with the City.

J. INDEMNIFICATION AND HOLD HARMLESS

Borrower shall defend, indemnify and hold harmless City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including without limitation costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of the Borrower or Borrower's subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Agreement. Nothing contained herein shall be construed as prohibiting City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. Borrower shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits. Nothing herein shall be construed as a limitation or waiver of defenses available to City and employees and agents, including without limitation the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* At the City Corporation Counsel's option, Borrower must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Borrower of any of its obligations under this Agreement. Any settlement of any claim or suit related to activities conducted under this Project by Borrower must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City. 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.

K. COMPLIANCE WITH LAW

The Borrower agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property, construction of the Project, ongoing operations conducted on the Property, and use of Loan funds. In addition, pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/7(2), records in the possession of others whom the City has contracted with to perform a governmental function are covered by the Act and subject to disclosure within limited statutory timeframes (five (5) working days with a possible five (5) working day extension). Upon notification from the City that it has received a Freedom of Information Act request that calls for records within the Borrower's control, the Borrower shall promptly provide all requested records to the City so that the City may comply with the request within the required

timeframe. The City and the Borrower shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, are applicable. Vendor shall indemnify and defend the City from and against all claims arising from the City's exceptions to disclosing certain records which Vendor may designate as proprietary or confidential. Compliance by the City with an opinion or a directive from the Illinois Public Access Counselor or the Attorney General under FOIA, or with a decision or order of Court with jurisdiction over the City, shall not be a violation of this Section.

L. DEFAULT; REMEDIES; DISPUTE RESOLUTION

1. Notice of Default: In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, including but not limited to conditions contained in Sections C and D, 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 by Section N hereof identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.
2. 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 a 15-day period, and shall continuously and diligently prosecute such cure, correction or remedy to completion.
3. City Remedies not Exclusive; Repayment of Pro Rata Share of Loan: If an Event of Default occurs, which Borrower has not cured within the timeframe set forth in subparagraph 2 above, the City, at its option, may terminate this Agreement and/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 in whole or in part the Loan funds, the "Pro Rata Repayment Amount" and interest, at the rate of LIBOR + 1% per annum shall be due and payable within 30 days of Default. The amount due and owing following an Event of Default, which is not cured by Borrower, shall be calculated according to the Date of Default and the amount outstanding from the Loan Forgiveness Schedule, outlined in Exhibit B. All payments shall be first credited to accrued interest, next to attorney's fees and costs which may be owing from time to time, and then to principal. Payments shall be made to City at the address set forth in Section M herein or at such other address as City may direct pursuant to notice delivered to Borrower in accordance with Section M.
4. 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 Section. 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 and specific performance shall be Borrower's sole and exclusive judicial remedies.

M. TERMINATION

If Borrower shall fail to cure any Event of Default upon notice and within the time for cure provided for in XVII below, the City may, by written notice to the Borrower, terminate this Agreement. Such termination shall trigger the "Repayment of Pro Rata Share of Reimbursement defined in XVII. Borrower may not terminate this Agreement without the express written consent of City.

N. 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:

If to the Lender: City of Evanston
Attn: Wally Bobkiewicz, City Manager
2100 Ridge Avenue
Evanston, IL 60201

With a copy to: City of Evanston
Attn: W. Grant Farrar, Corporation Counsel
2100 Ridge Avenue
Evanston, IL 60201

If to the Borrower: O'Donnell Investment Company
100 N. Riverside, Suite 2150
Chicago, IL 60606

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.

O. 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.

P. ATTORNEY'S FEES

In the event that the City commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by Borrower, or arising out of a breach of this Agreement by Borrower, the City shall recover from the Borrower as part of the judgment against Borrower, its attorneys' fees and costs incurred in each and every such action, suit, or other proceeding.

Q. SURVIVAL OF TERMS, BINDING UPON SUCCESSORS

The covenants, terms, conditions, representations, warranties, Agreements and undertakings set forth in this Agreement (and specifically including, without limitation, those covenants, terms, conditions, representations, warranties, Agreements and undertakings which survive the termination of this Agreement) shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

R. CONFLICT OF INTEREST

1. 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.
2. 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.

S. 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.

T. AUTHORITY TO SIGN

John O'Donnell hereby represents that he executes this Agreement on behalf of Borrower and has the full authority to do so and to bind Borrower to perform pursuant to the terms and conditions of this Agreement.

U. 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.

V. ENTIRE AGREEMENT AND SEVERABILITY

1. 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. The Agreement may be amended from time to time with the written consent of the Parties hereto.
2. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be

excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purposes of the Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

W. 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.

X. FORCE MAJEURE

Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, restrictive governmental laws and regulations, epidemics, quarantine restrictions, freight embargoes, lack of transportation or labor and material shortages. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than thirty (30) days after the commencement of the cause or not more than thirty (30) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

OWNER:

MAIN & CHICAGO EVANSTON JV, LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

CITY:

THE CITY OF EVANSTON, ILLINOIS

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOT "A" IN THE MAIN CONSOLIDATION, BEING A CONSOLIDATION OF LOTS 1, 2 AND 3 IN BLOCK 11 IN WHITE'S ADDITION TO EVANSTON IN SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 5, 1977 AS DOCUMENT NUMBER 23769201, IN COOK COUNTY, ILLINOIS.

Common Addresses: 835-849 Chicago Avenue and 516-534 Main Street, Evanston, IL 60202

EXHIBIT B

LOAN FORGIVENESS SCHEDULE

[TO BE INSERTED AT A LATER DATE]

EXHIBIT C

GUARANTY

Borrower: O'Donnell Investment Company Lender: City of Evanston

Guarantor: [INSERT] Principal Amount: \$2,900,000

Loan Term: 10 years (120 months)

Guaranty Term: 10 Years

CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction, or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is limited to Borrower's obligations under the Note.

INDEBTEDNESS. The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorneys' fees, arising from Borrower's obligations under the Note.

CONTINUING GUARANTY. THIS IS A "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREES TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until end of the tenth year (120th month) of the Loan. If Guarantor elects to revoke this, Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender; by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. This Guaranty shall bind Guarantor's estate as to the Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death, Subject to the foregoing, Guarantor's, executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any, other guarantor or termination of any other guaranty of the Indebtedness shall not affect the ability of Guarantor under this guaranty.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, either before or after any revocation hereof upon written notice to Guarantor by Lender, without lessening Guarantor's liability under this Guaranty, from time to time (A) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (B) to determine how, when and what application of payments and credits shall be made on the Indebtedness; and (C) to apply such security and direct the order or manner of sale thereof, including without limitation, any non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine;

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) Guarantor has full power, right and authority to enter into this Guaranty; (C) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor;" (D) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided Lender is and will be true and correct in all material respects and fairly present, Guarantor's financial condition as of the dates the financial information is provided; (E) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep Lender adequately informed from any relevant facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; and (C) to pursue any other remedy within Lender's power;

SUBORDINATION OF BORROWER DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates, any claim Guarantor may have against Borrower, upon an account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Indebtedness.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by both parties.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Illinois without regard to its conflicts of law provisions.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and anyone or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If anyone or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by tele-facsimile (unless, otherwise required by law) when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage

prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address, For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions, Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any Instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means O'Donnell Investment Company and includes all co-signers and co-makers signing the Note and all their successors and assigns.

GAAP. The word "GAAP" means generally accepted accounting principles.

Guarantor. The word "Guarantor" means [insert] and in each case, any signer's successors and assigns.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means City of Evanston, its successors and assigns.

Note. The word "Note" means and includes without limitation all of Borrower's promissory notes and/or credit agreements evidencing Borrower's loan obligations in favor of Lander, together with all renewals of, extensions of, modifications of, substitutions for promissory notes or credit agreements.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS, IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO UNDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY", NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE, THIS GUARANTY is DATED _____, 2014.

GUARANTOR:

EXHIBIT D

MEMORANDUM OF TIF FORGIVABLE CONSTRUCTION LOAN AGREEMENT

[TO BE INSERTED AT A LATER DATE]