

9/9/2014

70-R-14

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute a Forgivable Loan Agreement with Little Beans Café Evanston, LLC

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 and directed to negotiate and execute a forgivable loan agreement between the City and Little Beans Café Evanston, LLC, an Illinois limited liability company, attached hereto as Exhibit A and incorporated herein by reference (the "Agreement") for a forgivable loan in the amount of Twenty Thousand and no/100 Dollars (\$20,000.00).

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 70-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 A

Forgivable Loan Agreement

FORGIVABLE LOAN AGREEMENT AND PROMISSORY NOTE

This Forgivable Loan Agreement and Promissory Note (the "**Agreement**"), is entered into by and between THE CITY OF EVANSTON, an Illinois municipal corporation ("**Lender**") and LITTLE BEANS CAFÉ EVANSTON, LLC, an Illinois limited liability company ("**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 opportunity exists which warrants funding to Borrower from the City of Evanston Economic Development fund; and

WHEREAS, the Borrower requested funding to cover costs of renovation efforts to bring a commercial property located at 430 Asbury Avenue, Evanston, Illinois 60202 (PINs: 11-25-203-011-0000, 10-25-206-007-0000 and 10-25-206-008-0000) ("**Subject Property**") into compliance with City Code and address certain life safety concerns (installation of sprinklers and updating electrical panels) and to meet the Borrower's intended future use as a café and recreational play area for children (the "**Project**"); and

WHEREAS, the Lender has authorized an expenditure of up to Twenty Thousand and no/100 Dollars (\$20,000.00) 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 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, Little Beans Café Evanston, LLC, 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 of Evanston building permit division or his designee, and to the satisfaction of Borrower, as evidenced by final payment to the contractor from Borrower.
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 Economic Development fund loaned to Borrower for purposes of funding the Project, which shall not exceed Twenty Thousand and no/100 Dollars (\$20,000.00), the amount approved by Council by Resolution 70-R-14.
5. **"Loan Term"** means the forgivable period for the Loan and expiration of the Parties requirements under this Agreement, which is 10 years in this Agreement.
6. **"Last Date of Reimbursement"** means the date on which 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 430 Asbury, Evanston Illinois, which is owned by the Borrower, currently improved with a commercial building.
9. **"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 to address the life safety concerns of the building.
10. **"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 this Agreement 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 Five Hundred Thousand and no/100 Dollars (\$20,000.00) (the **"Loan"**), to be amortized and forgivable over a period of ten years (calculated on 365 day

calendar and commences on the Last Date of Reimbursement (the “**Loan Term**”).

2. **Interest Rate:** Interest will accrue from the Last Date of Reimbursement of the Loan funds at the rate of 0.0% 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 Loan (principal and interest) is forgiven annually through use of the Property for the intended Use.
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 A (the “**Loan Forgiveness Schedule**”).

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 must renovate the Subject Property, for the intended use of the Subject Property in substantial conformance with the plans submitted to the building permit division of the City of Evanston.
- c. 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.
- d. Borrower acknowledges and agrees that it cannot commence construction work for the Project unless and until the City Council approves the Loan and this Agreement is executed by both parties.

3. Evanston business:

- a. Borrower shall remain an Evanston based business for the entire Term. Meaning, Borrower cannot remove its operations from the Subject Property during the Term of this Agreement. In the event that Borrower ceases to operate as “Little Beans” in Evanston, Illinois during the Loan Term, any principal and interest not previously forgiven will be repaid in accordance with terms of this Agreement.

- b. If Little Beans is sold, (except in circumstances of an illness of principal necessitating retirement) for any reason to any entity other than one controlled by the current managers of the LLC, or files for bankruptcy protection, the Borrower shall be in Default and any principal and interest not previously forgiven will be repaid on the balance remaining from Exhibit A depending on the date that the business is sold. The remaining balance, not previously forgiven, shall be paid to the City within thirty (30) days.
- c. Borrower will coordinate with the City's Youth and Young Adult Program Manager and other workforce development professionals to employ Evanston residents with skills and abilities to work at the Subject Property either in full-time or part-time positions.
- d. Borrower will develop programs for low income patrons. Low income shall be as defined by the U.S. Housing and Urban Development guidelines.

D. TERMS OF DISBURSEMENT TO BORROWER

1. Reimbursement Payment Requirements: Disbursement payments shall NOT be paid out until: (a) City Council has approved the Agreement; (b) the Agreement is executed; and (c) Project work is complete and Temporary Certificate of Occupancy is issued to the Borrower by the Building & Inspection Services Division of the City of Evanston. The Loan is funded through the Economic Development Fund.
2. The Director or his designee will not issue the full disbursement 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.
3. The total amount of the Loan will be forgiven in accordance with the schedule attached as Exhibit A and based on the incremental new sales tax generated ("**Loan Forgiveness Schedule**"). At the end of the Loan Term, the Loan will be deemed forgiven and the balance will be zero.

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 shall be 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 shall be fully 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. 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.
6. 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.

F. 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.

G. 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.

H. 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 of Evanston.

I. 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.

J. 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 A. 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: Little Beans Café Evanston, LLC
Attn: Troy Sphar
330 N. Wabash Street, Suite 3300
Chicago, IL 60611

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

The Borrower's signatory hereby represents that he/she 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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the City, and the Borrower have signed this Agreement as of the latest date set forth below (the "Effective Date").

THE CITY OF EVANSTON,
an Illinois home rule municipal corporation

By: _____

Its: City Manager, Wally Bobkiewicz

Dated: _____

LITTLE BEANS CAFÉ EVANSTON, LLC
An Illinois limited liability company

By: _____

Its: managing member

Dated: _____

Print Name: _____

EXHIBIT A
LOAN FORGIVENESS SCHEDULE

Year completed	Amount Forgiven
February 1, 2015	20,000
February 1, 2016	18,000
February 1, 2017	16,000
February 1, 2018	14,000
February 1, 2019	12,000
February 1, 2020	10,000
February 1, 2021	8,000
February 1, 2022	6,000
February 1, 2023	4,000
February 1, 2024	2,000
January 31, 2025	0