

2/3/2015

8-R-15

A RESOLUTION

Authorizing the City Manager to Execute a TIF Forgivable Loan Agreement with Azzurri of Evanston, Inc.

WHEREAS, the City approved a redevelopment plan and project (the "Plan and Project") as required by the Tax Increment Allocation Redevelopment Act, Division 74.4 of Article 11 of the Illinois Municipal Code, as amended (the "TIF Act") by passage of Ordinance 55-O-12 and designated a redevelopment project area (the "Area") by the passage Ordinance 56-O-12; and

WHEREAS, the Plan and Project is focused in large part on the redevelopment of the shopping center at the corner of Dempster Street and Dodge Avenue and the shopping plaza was purchased by Azzurri of Evanston, Inc. ("Azzurri") in the Fall 2014;

WHEREAS, Azzurri plans to fully renovate the former Dominick's grocery store and requests funding to cover a portion of the development costs for the commercial property located at 1910 Dempster Street, Evanston, IL 60202 ("**Subject Property**") in order to modernize and bring the store into compliance with all electrical, plumbing and building Code standards for the use as a grocery store by Borrower; and

WHEREAS, the City seeks to support the renovation of the with \$2 Million in TIF funds in the form of a forgivable loan to Azzurri of Evanston,

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

SECTION 1: The City Manager is hereby authorized to execute the TIF Forgivable Loan Agreement ("TIF Agreement"), attached hereto as Exhibit 1, the terms are incorporated herein by reference, with Azzurri of Evanston, Inc. an Illinois corporation.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the TIF Agreement as he may determine to be in the best interests of the City and in a form acceptable to the Corporation Counsel.

SECTION 3: That this Resolution 8-R-15 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: February 9, 2015

EXHIBIT 1

TIF Forgivable Loan Agreement

REDEVELOPMENT AGREEMENT AND TIF FORGIVABLE CONSTRUCTION LOAN AGREEMENT

This Redevelopment Agreement and TIF Forgivable Construction Loan Agreement (the “**Agreement**”), is entered into by and between THE CITY OF EVANSTON, an Illinois municipal corporation (“**Lender**”) and Azzurri of Evanston, Inc., 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 Dempster-Dodge Tax Increment Financing District No. 7 (“**Dempster/Dodge TIF**”); and

WHEREAS, the Borrower requested funding to cover costs of development costs for the commercial property located at 1908-1910 Dempster Street and 1112-1122 Dodge Avenue, Evanston, IL 60202 (“**Subject Property**”) in order to modernize and bring the store into compliance with all electrical, plumbing and building Code standards for the use as a grocery store to be called “Valli Produce”; and

WHEREAS, the City seeks to support the renovation of the with TIF funds, and

WHEREAS, the Lender has authorized an expenditure of up to Two Million and no/100 Dollars (\$2,000,000) 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, Azzurri of Evanston, Inc., 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 building permit issued by the City, and to the satisfaction of Borrower, as evidenced by final payment to the contractor from Property Owner

and the issuance of a certificate of substantial completion issued by the architect for the Project to the Property Owner.

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 Dempster/Dodge TIF loaned to Borrower for purposes of funding TIF Eligible Expenses for the Project, which shall not exceed Two Million and no/100 Dollars (\$2,000,000), the amount approved by City Council Resolution 8-R-15.
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 which is after the Final Certificate of Occupancy is issued for the Building. 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 1908-1910 Dempster Street and 1112-1122 Dodge Avenue, Evanston, IL 60202 which is owned by the Property Owner, 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/or Property Owner 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 or the acquisition and installation of furniture, fixtures and equipment (“**FF&E**”) in 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 or Property Owner including the costs of construction, materials, FF&E 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 and no/100 Dollars (\$2,000,000.00) (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**”), but subject to earlier forgiveness under the circumstances described in Section C(3) below. The Loan Term and reimbursement obligations shall not commence until the City’s issuance of debt necessary to fund this project has commenced. The City shall undertake and diligently pursue the issuance of such debt on a timely basis so that the proceeds of such debt shall be available to the City for reimbursement when the other conditions to reimbursement set out in Section D(1) have been satisfied.
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. As used herein, “LIBOR” shall mean the 30-day LIBOR rate quoted in the most recently published edition of The Wall Street Journal. 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, other than to other entities controlled by or affiliated with Borrower. 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. Note: Exhibit B not provided.
4. **Guaranty:** To support repayment of the Loan, the Borrower will ensure that a guaranty from all of the Shareholders of Borrower for all principal and interest under the Loan which remains unforgiven over 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 cause the Property Owner to develop the Subject Property in conformance with building permit drawings that must be approved at a later date by the Building and Inspection Services Division of the City of Evanston for the construction and operation of a grocery store at the Subject Property, which will consist of a fully renovated store with improvements focusing on bringing the Subject Property into Code compliance. Borrower acknowledges that the TIF Funds are conditioned on the Property Owner developing and retaining for the term of this Agreement a grocery store at the Subject Property and any other use will be an immediate default.
 - b. Borrower shall provide documentation that bids for the Project were sought by the Project's general contractor from no less than three subcontractors for each trade, of which one must be an Evanston-based subcontractor. If an Evanston-based subcontractor is not available to seek bids from based on the scope, scale or special requirements of the Project work, this requirement will be waived upon confirmation from City staff that bid solicitation to Evanston based businesses was pursued by the general contractor.
2. Recording Memorandum of TIF Forgivable Loan Agreement: Borrower shall receive authority from the Property Owner 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. Taxable Uses Only: Borrower warrants that it will not allow the Property Owner to lease to, or otherwise allow any religious, charitable or other entity which is entitled to an exemption from real property taxes to occupy, the commercial portions of the Subject Property until the Dempster/Dodge TIF expires.

D. PAYMENT OF LOAN FUNDS

1. Distribution of Loan Funds: The Borrower agrees that the Loan funds will be disbursed on a reimbursement basis in a lump sum payment. The payment shall NOT be paid out until: (a) City Council has approved the Agreement; (b) the Agreement is executed; (c) Project work is complete and a Temporary Certificate of Occupancy is issued; and (d) the City's issuance of debt necessary to fund the project has occurred. The Loan is funded through the Dempster/Dodge 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.

3. 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.
 - b. All contractor invoices detailing the specific tasks completed in accordance with approved Project and TIF Eligible Expenses associated therewith.
 - c. Proof of payment of all invoices for all TIF Eligible Expenses for the Project covered by this Loan; and
 - d. Unconditional partial lien releases.
5. 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.
6. The Director or his designee will not issue the distribution of Loan funds 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.
7. The total amount of the Loan will be forgiven in accordance with the schedule attached as Exhibit B ("**Loan Forgiveness Schedule**") but subject to earlier forgiveness under the circumstances described in Exhibit B and Section C(2) above. 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 cause the Property Owner to 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 causing the Property Owner to hire a licensed general contractor to complete the Project. The Director or his designee may require submission of proof of the State License issued to the selected general 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 or Property Owner, 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 or Property Owner, to the applicable party.

F. PUBLIC BENEFITS TO BE PROVIDED BY BORROWER:

The Agreement is conditioned on the satisfaction of each public benefit outlined in Section F. Borrower will ensure that each public benefit and assurances made in this Agreement are fulfilled by Borrower or Valli Produce of Evanston, Inc., an Illinois Corporation, the tenant in Unit 1910 Dempster Street, Evanston, Illinois 60202 ("Valli Produce"), depending on the applicable public benefit.

1. **Non-Profit Support:** Borrower will ensure that Valli Produce offers the community support programs it has offered in its other store locations including donating goods and financial support to local schools and charities and promoting local events through weekly fliers, website, in-store signage, and social media.
2. **Dependent Care:** Borrower represents that Valli Produce is willing to assist their full time employees who utilize dependent daycare or eldercare for a dependent child or immediate family member. The amount of monetary support would be determined by the stores' performance and its ability to afford the benefit.
3. **Wellness and Health:** Borrower warrants that Valli is willing to contribute towards a fitness membership for store employees and will investigate the amount of assistance. Proof of usage by the employee would also be required.
4. **Multi-Modal Transportation:** Borrower will provide an outdoor bicycle rack use by patrons of the Subject Property.
5. **Energy Efficiency and Improvements:** Since Valli Produce is completing an entire remodel of the entire former Dominick's Finer Foods, Inc. premises located at Unit 1910 Dempster Street, Evanston, Illinois 60202, efficient systems are being put in place including LED lighting throughout the store and new high efficient mechanicals, refrigeration systems and coolers that include insulated cases, and new food prep equipment that uses less energy. The utility companies

have been notified to partake in an assessment of our new facilities and evaluate these improvements for max efficiency.

6. **Water Efficiency:** The old plumbing fixtures are being replaced with efficient fixtures to reduce water consumption. New food prep appliances will utilize water saving technologies as well. Valli Produce is proposing to add green space to the existing parking islands for greening, water absorption, and heat reduction. An irrigation system does not exist and is not being proposed, therefore, current and proposed landscaping must be urban tolerant.
7. **Recycling & Waste Reduction:** Valli Produce utilizes hydraulic balers to compact recyclable cardboard. Borrower will guarantee that Valli Produce provide recycling containers inside the store for customer use. Lastly, Borrower represents that Valli Produce will adhere to the plastic bag ordinance approved by the City Council on July 28, 2014 by Ordinance 66-O-14.

G. THE CITY'S RESPONSIBILITIES

1. Within a reasonable time after Borrower submits a request for payment under Section D, the City will review the information provided by Borrower and ensure compliance with all parameters specified in Section D.
2. Director or his designee shall review Borrower's request and accompanying documents for 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 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.

H. INSURANCE

1. During the entire period in which work on the Project is performed until termination of this Agreement, the Borrower shall cause to be obtained and maintained 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 and \$1,000,000 each occurrence.
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 cause the Property Owner to name the City as an additional insured for the Loan period.

I. 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.

J. 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.

K. 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 the Property Owner or their respective employees and agents 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. Provided, however, notwithstanding the foregoing to the contrary, Borrower shall not be liable for City's attorneys unless the attorney selected by Borrower are not diligently pursuing the defense of any indemnification claim. Borrower shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions or suits, excluding, however, City's attorneys unless Borrower is not diligently pursuing the defense of any such claim, action or suit.. 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.* Borrower must defend all suits brought upon all such Losses, with attorney of Borrower's choice 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. Except for their gross negligence acts

or omissions, no member, official, agent, legal counsel or employee of the City shall be personally liable to the Borrower or Property Owner, 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 Property Owner, or successor or on any obligation under the terms of this Agreement.

L. COMPLIANCE WITH LAW

The Borrower agrees to comply, and shall cause the Property Owner 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 or Property Owner'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. The Borrower shall indemnify and defend the City from and against all claims arising from the City's exceptions to disclosing certain records which the Borrower 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.

M. 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 30-day period, or such extended period of time that is necessary to cure any such default, so long as the defaulting party is diligently pursuing such cure 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

Attn: W. Grant Farrar, Corporation Counsel
2100 Ridge Avenue
Evanston, IL 60201

If to the Borrower: Azzurri of Evanston, Inc.
c/o Valli Produce of Hoffman Estates, Inc.
850 N. Roselle Rd.
Hoffman Estates, IL 60169
Attn: Carmine Presta

With a copy to: Martin S. Korey
Stone Pogrud & Korey LLC
1 East Wacker Drive
Chicago, IL 60601

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.

P. 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.

Q. 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, if the City is the prevailing party in any such proceeding.

R. 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.

S. 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.

T. 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.

U. 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.

V. 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.

W. 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.

X. 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.

Y. 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:

AZZURRI OF EVANSTON, INC., an Illinois corporation

By: _____
Carmine Presta
Its: President

CITY:

THE CITY OF EVANSTON, ILLINOIS

By: _____
Wally Bobkiewicz
Its: City Manager

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

LOT 1 IN BANBURY THIRD CONSOLIDATION, RECORDED MARCH 27, 1987 AS DOCUMENT 87162463 BEING A CONSOLIDATION OF PART OF LOT 1 IN BANBURY SECOND CONSOLIDATION AND PART OF LOT "A" IN CALHOUN NORTON CONSOLIDATION, BOTH IN THE NORTH WEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

EXCEPTING THEREFROM THAT PART OF BANBURY THIRD CONSOLIDATION, BEING A CONSOLIDATION PLAT RECORDED AS DOCUMENT NUMBER 87162463, LEGALLY DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 8, 9, 10, 11 AND 12 IN BLOCK 2 IN GROVER AND PITNER'S ADDITION TO EVANSTON, A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF SAID LOT 12 AT ITS INTERSECTION WITH A LINE DRAWN 45.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE CENTER LINE BETWEEN THE TWO MAIN TRACKS (THE NORTHWESTERLY OF TWO MAIN TRACKS HAVING BEEN REMOVED) OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY, AS SAID CENTER LINE WAS ORIGINALLY LOCATED AND ESTABLISHED; THENCE NORTHEASTERLY PARALLEL WITH SAID ORIGINAL CENTER LINE A DISTANCE OF 241.64 FEET; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED LINE; A DISTANCE OF 5.00 FEET; THENCE SOUTHWESTERLY ALONG A LINE DRAWN 40.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE AFORESAID ORIGINAL CENTER LINE, A DISTANCE OF 239.38 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF LOT 12 AFORESAID; THENCE WEST, ALONG SAID SOUTH LINE A DISTANCE OF 5.49 FEET TO THE HEREINBEFORE DESCRIBED POINT OF BEGINNING IN COOK COUNTY, ILLINOIS

PARCEL 2:

NON EXCLUSIVE PERPETUAL UTILITY EASEMENT FOR THE BENEFIT OF PART OF PARCEL 1 ON, OVER, UNDER, THROUGH AND ACROSS:

THE WESTERLY 15 FEET, AS MEASURED AT RIGHT ANGLES TO THE WEST LINE THEREOF, OF THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF LOT 1, IN BANBURY CONSOLIDATION IN THE NORTH EAST 1/4 OF THE NORTH WEST 1/4 OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MARCH 19, 1986 AS DOCUMENT 86107329, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHWESTERLY CORNER OF SAID LOT 1, THENCE NORTH 87 DEGREES, 29 MINUTES, 24 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 32.93 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING NORTH 87 DEGREES, 29 MINUTES, 24 SECONDS EAST ALONG SAID SOUTH LINE A DISTANCE OF 71.36 FEET TO A CORNER OF LOT 1, BEING ALSO THE SOUTH WEST CORNER OF LOT "A" IN CALHOUN NORTON CONSOLIDATION IN THE NORTH EAST 1/4 OF THE NORTH WEST 1/4 OF SAID SECTION 24, RECORDED MARCH 3, 1965 AS DOCUMENT 19396701; THENCE NORTH 21 DEGREES, 51 MINUTES, 29 SECONDS, EAST ALONG THE SOUTH LINE OF SAID LOT 1, BEING ALSO THE WEST LINE OF SAID LOT "A" IN CALHOUN NORTON CONSOLIDATION, A DISTANCE OF 326.30 FEET TO A CORNER OF LOT 1; THENCE NORTH 87 DEGREES, 29 MINUTES, 24 SECONDS, EAST ALONG THE SOUTH LINE OF SAID LOT 1, BEING ALSO THE WEST LINE OF SAID LOT "A" IN CALHOUN NORTON CONSOLIDATION, A DISTANCE OF 16.47 FEET TO A CORNER OF LOT 1, THENCE NORTH 21 DEGREES, 51 MINUTES, 29 SECONDS, EAST ALONG THE SOUTH LINE OF SAID LOT 1, BEING ALSO THE WEST LINE OF SAID LOT "A" IN CALHOUN NORTON CONSOLIDATION, A DISTANCE OF 34.53 FEET; THENCE SOUTH 87 DEGREES, 29 MINUTES, 24 SECONDS, WEST 87.83 FEET, THENCE SOUTH 21 DEGREES, 51 MINUTES, 29 SECONDS, WEST 360.84 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

AS CONTAINED IN EASEMENT AGREEMENT MADE BY NORTH WEST NATIONAL BANK OF CHICAGO, TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 14, 1979 AND KNOWN AS TRUST NUMBER 5502, NORTHERN TRUST BANK OF PALM BEACH, FLORIDA N. A., NAN P. NORTON DELATUCSH (FORMERLY KNOWN AS NAN P. NORTON) AND MICHAEL C. NORTON AS TRUSTEES UNDER THAT CERTAIN CALHOUN-NORTON MARITAL TRUST CREATED BY A TRUST AGREEMENT DATED DECEMBER 6, 1979 (COLLECTIVELY THE NORTON TRUSTEES), ARENS CONTROLS, INC., CORPORATION OF ILLINOIS, LA SALLE NATIONAL BANK, TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 9, 1986 AND KNOWN AS TRUST NUMBER 111203, (THE LA SALLE TRUST) AND BANBURY/EVANSTON LIMITED PARTNERSHIP, AN ILLINOIS LIMITED PARTNERSHIP, DATED OCTOBER 1, 1986 RECORDED NOVEMBER 16, 1986 AS DOCUMENT 86522197, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 1908-1910 DEMPSTER STREET AND 1112-1122
DODGE AVENUE, EVANSTON, ILLINOIS 60202

PERMANENT TAX INDEX NUMBER PIN: 10-24-108-038-0000

EXHIBIT B

LOAN FORGIVENESS SCHEDULE

[TO BE INSERTED AT A LATER DATE]

EXHIBIT C

GUARANTY

Borrower: Azzurri of Evanston, Inc.

Lender: City of Evanston

Guarantor: Carmine Presta, Frank Greco, Domenico Presta, Alfredo Presta, Francesco Chillelli and Luigi Tenuta

Principal Amount: \$2,000,000

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 Agreement. 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 Agreement.

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 Agreement.

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 the Agreement, 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 Azzurri of Evanston, Inc., and its successors and assigns.

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

Guarantor. The word "Guarantor" means Carmine Presta.

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, and 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 Lender, 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.

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 THE LENDER 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 _____, 2015.

GUARANTOR:

CARMINE PRESTA

Signature: _____

FRANK GRECO

Signature: _____

DOMENICO PRESTA

Signature: _____

ALFREDO PRESTA

Signature: _____

FRANCESCO CHILELLI

Signature: _____

LUIGI TENUTA

Signature: _____

EXHIBIT D

MEMORANDUM OF TIF FORGIVABLE CONSTRUCTION LOAN AGREEMENT