

7/11/2017

**64-R-17**

**A RESOLUTION**

**Authorizing the City Manager to Execute a TIF Forgivable Construction Loan and Development Agreement with Harrington Brown LLC for the Proposed Development of a Mixed Use Building at 100 and 128 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 Howard Ridge TIF District (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 encourages private development of vacant and underutilized parcels for developments in TIF areas; and

**WHEREAS**, Harrington Brown LLC, an Illinois limited liability company, seeks to develop a City-owned parcel of land at 100 Chicago Avenue and an adjoining parcel at 128-132 Chicago Avenue (the "Subject Properties") into a mixed use development with retail and residential units with nine affordable units on site; and

**WHEREAS**, the City wants to support the mixed use development of the underutilized parcels with allocation of TIF funds, as outlined in the attached TIF Forgivable Construction Loan and Development Agreement; and

**WHEREAS**, the City authorizes an expenditure of up to One Million Nine Hundred Fifty-Nine Thousand Nine Hundred Forty-Six and no/100 Dollars (**\$1,959,946.00**) in

the form of a forgivable loan to Harrington Brown LLC to cover a portion of the expected project budget,

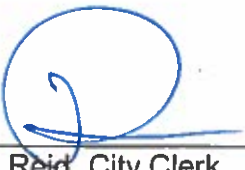
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

**SECTION 1:** The City Manager is hereby authorized and directed to execute a TIF Forgivable Construction Loan and Development Agreement ("Agreement") between the City and Harrington Brown, LLC, 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 64-R-17 shall be in full force and effect from and after its passage and approval in the manner provided by law.

Attest:



\_\_\_\_\_  
Devon Reid, City Clerk

  
\_\_\_\_\_  
Stephen H. Hagerty, Mayor

Adopted: July 24, 2017

**EXHIBIT 1**

**TIF FORIGVABLE CONSTRUCTION LOAN AND DEVELOPMENT AGREEMENT**

## TIF FORGIVABLE CONSTRUCTION LOAN AND DEVELOPMENT AGREEMENT

This TIF Forgivable Construction Loan and Development Agreement (the "Agreement"), is entered into by and between THE CITY OF EVANSTON, an Illinois municipal corporation ("City" or "Lender") and HARRINGTON BROWN, LLC, an Illinois limited liability company ("Developer" or "Borrower") and effective as of the last date executed on the signature page.

### RECITALS

WHEREAS, it has been determined by Lender that a unique economic development opportunity exists which warrants funding to Borrower from the Howard Ridge Tax Increment Financing District in the City of Evanston, IL ("Howard Ridge TIF"); and

WHEREAS, the Borrower requested funding through the Howard Ridge TIF to cover costs of a proposed development to be located at 100 and 128-132 Chicago Avenue, Evanston, IL 60202 ("Subject Property") in order to meet the construction costs and certain other costs for the planned development at the Subject Property, which will consist of a new five-story mixed-use building containing approximately 4,500 square feet of interior ground floor commercial space, 7,500 square feet of exterior ground floor commercial space and as many as 24 dwelling units on floors 2-5 ("Project"); and

WHEREAS, the City seeks to support the development of the long vacant or underutilized parcels comprising the Subject Property that serve as a gateway to the City of Evanston with TIF funds, and

WHEREAS, the Lender has authorized an expenditure of up to One Million Nine Hundred Fifty-Nine Thousand Nine Hundred Forty-Six and no/100 Dollars (\$1,959,946.00) 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

WHEREAS, the City Council has approved Borrower for participation in this Agreement and the forgivable loan and other City assistance provided for by this Agreement, pursuant to its authority as a home rule municipality and under the Act (as hereinafter defined) and 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, Harrington Brown LLC or a single-purpose entity established by Developer to develop the Project, applying for funding for redevelopment of the Subject Property and determined eligible to participate in this Agreement, or one of its affiliates or transferees as permitted in Section C(2), below.
2. **“Commencement Date”** means the date on which Lender makes the first reimbursement payment to Borrower in accordance with the schedule set forth in Section D(3).
3. **“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 the owner of the Subject Property (the **“Property Owner”**) and the issuance of a certificate of substantial completion issued by the architect for the Project to the Property Owner.
4. **“Director”** means the City’s Assistant City Manager and Chief Financial Officer, Martin Lyons, who is responsible for managing and administering this Agreement on behalf of the City.
5. **“Loan”** means the total amount of the funds from the Howard Ridge TIF loaned to Borrower for purposes of funding TIF Eligible Expenses for the Project, which shall not exceed One Million Nine Hundred Fifty-Nine Thousand Nine Hundred Forty-Six and no/100 Dollars (**\$1,959,946.00**), the amount approved by City Council Resolution 64-R-17.
6. **“Loan Term”** means how long the Loan exists under this Agreement, which is ten (10) years in this Agreement.
7. **“Project”** means the improvements to be completed on the Property as proposed by Borrower and defined in the Recitals hereto.
8. **“Subject Property”** means the real property at 100 and 128-132 Chicago Avenue, Evanston, IL 60202 which is under contract to be purchased by Borrower, currently a vacant parcel with a single-story automotive repair business formerly located on the site and a surface parking lot. 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 statute and associated 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; including but not limited to redevelopment project costs, 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.* (the “Act”), which shall include at a minimum those expenses identified on Exhibit D hereof).
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 that are reimbursed pursuant to this Agreement from funds generated by the Howard Ridge TIF 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 Guidelines and other remaining costs which are not reimbursable under this Agreement.

## **B. LOAN**

1. **Principal Amount:** Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide Borrower the principal sum of up to One Million Nine Hundred Fifty-Nine Thousand Nine Hundred Forty-Six and no/100 Dollars (**\$1,959,946.00**) (the “**Loan**”), to be amortized and forgivable over a period of ten years (one hundred twenty (120) months) calculated on a 365-day calendar and commencing on the Commencement Date (the “**Loan Term**”), but subject to earlier forgiveness under the circumstances described in Section B(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 is limited to only reimbursing funds available outside the TIF, and the availability of Loan funds is conditioned on the TIF increment being fully funded. 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 is 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 (i) other members in the Property Owner, (ii) other entities controlled by David R. Brown or (iii) other entities in which David R. Brown is a manager or member.

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 Loan will be forgiven in accordance with the schedule attached as Exhibit B (the “**Loan Forgiveness Schedule**”).
4. **Guaranty:** To support repayment of the Loan, the Borrower will ensure that a guaranty is provided from Property Owner or from such other entity or person identified by Property Owner and reasonably approved by Lender for completion of construction of the Project (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 L. The Conditions of Forgiveness are as follows:

1. **Project Completion:**
  - a. Borrower must file an application for a planned development or such other zoning relief necessary to allow for the Project to proceed (the “**Zoning Approvals**”) and follow all of the necessary steps to have the contemplated planned development approved by the City of Evanston. This TIF Funding Agreement does not represent any authorization or approval of the development by the City of Evanston and all procedures set forth within Title 6 of the City of Evanston Code of 2012, as amended, must be followed. Borrower’s obligations hereunder are contingent upon the City of Evanston’s approval of the Zoning Approvals and Borrower receiving all other approvals required for the construction and operation of the Project. The City will cooperate with Borrower’s application for zoning.
  - b. Borrower shall develop the Subject Property in conformance with the Zoning Approvals authorized by City Council for the construction and operation of the Project at the Subject Property.
  - c. 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. Borrower shall select a general contractor for the Project in its sole and absolute discretion.

2. **Sale to a Third Party:** If the Subject Property is sold at any time during the Loan Term, the remaining portion of the forgivable loan must be repaid to the City or the new owner must assume the obligations under this Agreement. The Borrower must receive the consent of the City of Evanston for such a sale during the Loan Term only, which consent shall not be unreasonably conditioned or withheld.
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 Howard Ridge 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) a building permit for the Project has been issued and (d) the City's issuance of debt necessary to fund the project has occurred; provided, the City shall be obligated to issue such debt. The Loan is funded through the Howard Ridge TIF District funds only and conditioned on the availability of said TIF funds.
2. Borrower hereby agrees to comply with all terms and conditions of this Agreement and only seek reimbursement of acceptable TIF Eligible Expenses under the Act.
3. Borrower may seek, and Lender shall make payments to Borrower of, reimbursement in milestone amounts not greater than the following scheduled payouts with the total payout issued after the Final Certificate of Occupancy is issued. The milestones are shown as the total after each event listed has occurred.

Building Permit: \$391,989.20 (20%)

Foundations: \$391,989.20 (cumulative 40%)

Topping Out: \$391,989.20 (cumulative 60%)

Final Certificate of Occupancy Permit: \$783,978.40 (100% of Loan is disbursed)

4. Reimbursement requests to the Director or his designee shall contain the following:
  - a. Cover letter indicating the total cost of TIF Eligible Expenses for which Borrower is seeking reimbursement and general overview of the Project progress to date;
  - b. All contractor invoices detailing the specific tasks completed in accordance with the approved Project;



- 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 (provided, copies of owner's sworn statement and/or other evidence of expenditures provided through a construction lending escrow shall be sufficient for purposes of (b) through (d) and Paragraph 5 hereof).
5. 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.
  6. The Director or his designee will not issue any Reimbursement to the Borrower if there is any material 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 (plus all accrued interest) will be forgiven in accordance with the schedule attached as Exhibit B ("**Loan Forgiveness Schedule**") but subject to earlier forgiveness based on Borrower's incurring TIF-Eligible Expenses and achieving Project milestones as described in Section C(1) above. At the earlier of the end of the Loan Term and the achievement of all milestones set forth in the Loan Forgiveness Schedule and Section C(1) above, 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. THE CITY'S RESPONSIBILITIES**

1. Within a commercially 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(4).
3. The City will not object to Borrower or the Property Owner appealing the real estate property taxes on the Property. 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 the City's behalf.

#### **G. 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, \$1,000,000 Products and Completed Operations Aggregate, 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 Term.

#### **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 the Property Owner or their respective employees and agents related to the Subject Property 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 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.

#### **K. 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 Subject 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.

#### **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 N herein or at such other address as City may direct pursuant to notice delivered to Borrower in accordance with Section N.
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 Section L above, the City may, by written notice to the Borrower, terminate this Agreement. Such termination shall trigger the repayment of the "Pro Rata Repayment Amount" as defined in Section L above. 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 2100 Ridge Avenue Evanston, IL 60201 Attn: Wally Bobkiewicz, City Manager
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With a copy to: City of Evanston  
2100 Ridge Avenue  
Evanston, IL 60201  
Attn: W. Grant Farrar, Corporation Counsel

If to the Borrower: Harrington Brown, LLC  
4256 N. Ravenswood Ave. #109  
Chicago, IL 60613  
Attn: David Brown

With a copy to: DLA Piper  
444 W. Lake Street, Suite 900  
Chicago, IL 60606  
Attn: Paul Shadle & Katie Jahnke Dale

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 a party commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by the other party, or arising out of a breach of this Agreement by the other party, each party to bear its own attorney's fees and costs.

**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**

David R. Brown 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:**

HARRINGTON BROWN, LLC  
an Illinois limited liability company

By: \_\_\_\_\_  
David R. Brown  
Its Manager

**CITY:**

THE CITY OF EVANSTON, ILLINOIS

By: \_\_\_\_\_  
Wally Bobkiewicz  
Its City Manager

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David R. Brown, in his capacity as manager of Harrington Brown, LLC personally known to me to be the same person whose name is subscribed to the foregoing instrument as such president, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Wally Bobkiewicz, as City Manager of the City of Evanston, Illinois, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Wally Bobkiewicz, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said municipality, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PROPERTY**

100 Chicago Avenue Parcel: PART OF THE SOUTH 6.25 CHAINS OF THE NORTH EAST ¼ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF HOWARD STREET, WITH THE EAST LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILROAD RUNNING THENCE EAST ALONG THE NORTH LINE OF HOWARD STREET TO ITS INTERSECTION WITH THE WEST LINE OF NORTH CLARK STREET (FORMERLY CHICAGO AVENUE) THENCE NORTHERLY ALONG THE WEST LINE OF SAID CLARK STREET 100 FEET, THENCE WEST PARALLEL WITH THE NORTH LINE OF HOWARD AVENUE TO THE EAST LINE OF THE RIGHT OF WAY OF CHICAGO AND NORTHWESTERN RAILROAD, THENCE SOUTHERLY ALONG SAID RIGHT OF WAY LINE 100 FEET MORE OR LESS TO THE POINT OF BEGINNING. PARCEL 2: THE NORTH 50 FEET OF THE SOUTH 150 FEET OF THAT PART OF THE SOUTH 6.25 CHAINS, LYING WEST OF THE WEST LINE OF CHICAGO AVENUE EAST OF THE EAST LINE OF CHICAGO AND NORTHWESTERN RAILROAD AND NORTH OF THE NORTHLINE OF HOWARD STREET OF THE NORTH EAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Real property address: 100 North Chicago Avenue, Evanston, IL 60202

PINs: 11-30-212-007-0000 and 11-30-212-008-0000

128-132 Chicago Avenue Parcels: [TO BE INSERTED]

**EXHIBIT B**

**LOAN FORGIVENESS SCHEDULE**

**Principal Balance: \$1,959,496**

<b>Loan Term (Forgiveness Commences on Last Date of Reimbursement)</b>	<b>Total Forgiveness Amount of Principal Loan Balance <i>Plus Interest</i></b>
<b>End of Year 2</b>	<b>20% (\$391,989)</b>
<b>End of Year 4</b>	<b>40% (\$783,978)</b>
<b>End of Year 6</b>	<b>60% (\$1,175,967)</b>
<b>End of Year 8</b>	<b>80% (\$1,567,956)</b>
<b>End of Year 10</b>	<b>100% (\$1,959,496)</b>

## EXHIBIT C

### PERFORMANCE AND COMPLETION GUARANTY

Borrower: [Developer Entity]

Lender: City of Evanston

Guarantor: Harrington Brown LLC

Principal Amount: \$1,959,946

Loan Term: 10 years (120 months)

Project: Construction of Project at 100 and 128-132  
Chicago Avenue, Evanston, Illinois, as provided in the  
Agreement

Guaranty Term: 10 Years

**PERFORMANCE AND COMPLETION GUARANTY.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees completion of the Project provided for by that certain TIF Forgivable Construction Loan and Development Agreement (the "Agreement") by and between Borrower and Lender dated \_\_\_\_\_, 2017 (the "Guaranteed Obligations"). This Guaranty is an absolute and unconditional guaranty of performance and not of collection. This Guaranty creates a direct and primary obligation to the Lender on the part of the Guarantor. Without limiting the generality of the foregoing, the Guarantors' obligations hereunder may be enforced with or without joinder of the Borrower and without proceeding against the Borrower, any other Guarantors or against any collateral held by the Lender

**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.

**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 (120<sup>th</sup> month) of the Loan, subject to the Loan Forgiveness Schedule set forth in the Agreement. 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 provided in accordance with the Agreement. 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 performance of this Guaranty, 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 completion of the Project as provided hereunder.

**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 [DEVELOPER ENTITY] and its successors and assigns.

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

**Guarantor.** The word "Guarantor" means David Brown, and its 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, 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 \_\_\_\_\_, 2017.**

GUARANTOR:

David Brown

By: \_\_\_\_\_

**EXHIBIT D**  
**TIF ELIGIBLE COSTS**

Land Acquisition	\$540,000
Pre-Development Expenses and Due Diligence	\$75,000
Environmental Remediation	\$230,000
Site Work	\$250,000
Affordable Housing (50%)	\$556,875
Professional and Legal Services	\$896,366
Other Soft Costs and Financing Costs	\$262,863
Total	\$2,811,104