71-0-19

AN ORDINANCE

Authorizing the City Manager to Execute a Lease of City-Owned Real Property Located at 1823 Church Street with Litehouse Evanston, LLC

WHEREAS, the City of Evanston owns certain real property located at 1823 Church Street, Evanston, Illinois 60201, which is improved with a single story building commonly known as the “Gibbs Morrison Cultural Center” (the “Property”); and

WHEREAS, the Property is equipped with a commercial kitchen and café space and available to be leased; and

WHEREAS, Litehouse Evanston, LLC, d/b/a “Mikkey’s Retro Grill” has five existing locations in Chicago and seeks to expand its restaurant business into Evanston; and

WHEREAS, the City Council has determined that the kitchen and storage space is not necessary to City operations at the Property and it’s in the City’s best interests to lease the spaces to Evanston Litehouse, LLC for the operation of a restaurant,

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

SECTION 1: The foregoing recitals are hereby found as fact and incorporated herein by reference.

SECTION 2: Pursuant to Subsection 1-17-4-1 of the Evanston City Code of 2012, as amended (the “City Code”), the City Manager is hereby authorized and directed to execute, on behalf of the City of Evanston, the Lease Agreement for the
commercial kitchen and storage space at the Property, by and between the City of Evanston, as landlord, and Evanston Litehouse, LLC, as tenant. The Lease Agreement shall be in substantial conformity with the Lease Agreement attached hereto as Exhibit “1” and incorporated herein by reference.

SECTION 3: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 6: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.
Ayes: 7
Nays: 0

Introduced: July 22, 2019
Adopted: July 22, 2019

Approved: July 31, 2019

Stephen H. Hagerty, Mayor

Attest:
Devon Reid, City Clerk

Approved as to form:
Michelle Masoncup, Corporation Counsel
EXHIBIT 1

LEASE AGREEMENT
LEASE AGREEMENT

This Lease Agreement (the “Agreement” or “Lease”) shall take effect as of the date of execution of the Agreement by the City (the “Effective Date”). This Lease is by and between The City of Evanston, an Illinois home rule municipality and owner of subject Property ("Landlord"), whose main business office is located at 2100 Ridge Avenue, Evanston, Cook County, Illinois, "Landlord", and Lighthouse Evanston, LLC, an Illinois limited liability company d/b/a "Mikkey’s Retro Grill" ("Tenant"). Landlord and Tenant may be referred to collectively as the “Parties”.

SECTION 1. DESCRIPTION OF PREMISES

A. TENANT PREMISES. Landlord leases to Tenant and for its exclusive use the commercial kitchen and storage space located at 1823 Church Street, Evanston, Illinois 60201 (the "Premises"), which is approximately 383 square feet (207 sq feet – kitchen; and 176 sq feet – storage space and an office) and located within the building commonly known as the Gibbs Morrison Cultural Center ("Property" or “GM Center”). The Landlord and other tenants or Premises users at the Property will not have access to utilize the kitchen and the office/storage space for the Tenant.

B. COMMON FACILITIES. The Property has various uses including a music studio, community programming for the Parks, Recreation and Community Services Department of the City of Evanston, and many other uses. The term “Common Facilities” as used in this Agreement will include those areas and facilities within the Property (outside of the Premises) for the nonexclusive use of Tenants in common with other authorized users, and includes, but is not limited to, café seating, patio seating, sidewalks, planted areas, common area restrooms and open means of ingress and egress. Tenants will have the non-exclusive right to use the Common Facilities, including the washrooms referenced above.

C. CAFÉ SEATING AREA: The seating area inside the Property and on the patio will be shared by Tenant patrons and community members utilizing the Property. The Parties will evaluate the seating to address demand needs to ensure that Tenant has adequate seating for its patrons. Tenant will be allocated seating on first come first serve basis on the patio area for its patrons. Landlord is owner of all furniture for the seating area. Tenant responsible for clearing tables after patron use.

D. IMPROVEMENTS TO PREMISES: Tenant accepts the Premises in an “As-Is” Condition. The Premises is an existing café with a commercial kitchen space and equipment necessary to perform those functions. The equipment owned by the City of Evanston and will remain the property of the City of Evanston. The equipment owned by the City is the following at the time of occupancy is:

1. 3 Compartment sink
2. 2 hand wash sinks
3. 1 Hood
4. (1) 2 tier push cart
three percent (3%).

(b) **LATE FEE.** In the event any sums required hereunder to be paid are not received by Landlord on or before the date the same are due, then, Tenant also owes Landlord a late fee of $200 per month. Such late fee is deemed Additional Rent.

Any and all Rent under this Lease shall be mailed to:

City of Evanston  
2100 Ridge Avenue, Room 1100  
Evanston, IL 60201  
Attn: Parks, Recreation, and Community Services

**SECTION 4. COMMON FACILITIES**

A. **MAINTENANCE BY LANDLORD:** Tenant acknowledges that it leases the Premises, Common Facilities and remainder of the Property in as-is condition, and acknowledge that the Landlord has made no representations to the condition or has made any repairs to same. The Landlord or Landlord’s staff or other representatives have made no representations or assurances that it will alter or remodel the Premises or Property. If the Parties discover that any part of the Premises, Common Facilities or the remainder of the Property is not or was not in substantial compliance with the Building Code at the start of lease, the Landlord will make necessary repairs in a reasonable time frame. Landlord shall, when necessary, as determined by Landlord, in its reasonable discretion or when required by applicable laws, perform, repair and maintain all of the following:

1. Exterior maintenance, including the foundation, exterior walls, slab, common area doors and roof;

2. Landlord will contract, to have trash hauled from such container with reasonable frequency;

3. Electric facilities and systems, gas facilities and systems and the HVAC unit(s) and systems (including the portions of such systems serving the Premises exclusively). However, Landlord will not upgrade electric facilities to accommodate an increased capacity due to Tenant’s use and any upgrade in electrical will be at the sole cost and expense of Tenant and any work performed shall be done in consultation and review by the Landlord prior to work;

4. Plumbing and water facilities and systems (including the portions of such systems serving the Premises exclusively). However, Landlord will not upgrade plumbing facilities to accommodate an increased capacity due to Tenant’s use and any upgrade in plumbing will be at the sole cost and expense of Tenant and any work performed shall be done in consultation and review by the Landlord prior to work;
safety hazard must be corrected within twenty-four (24) hours after discovery by Tenants, provided that the issue can be fixed within that time frame. If the issue cannot be fixed within twenty-four (24) hours after discovery by Tenants, the Tenants must provide a schedule for repair within one (1) business day after discovery by Tenants to the Director of Parks, Recreation and Community Services for approval, which cannot be unreasonably withheld.

SECTION 5. USE OF PREMISES

A. PURPOSES: Tenants will use the Premises to operate a commercial kitchen for the preparation of pastries, sandwiches, salads, and other similar items related to a restaurant, and other related business and uses incidental thereto, and no part of the Premises will be used for any other purpose without the prior written consent of Landlord (the “Permitted Use”).

B. HOURS OF OPERATION AND LANDLORD ACCESS:

1. Tenant’s use of the Premises shall only be for the permitted use. Tenants shall have the right of access to conduct their business in the Premises during the hours of 6:00 a.m. – 9:00 p.m (hours of operation 7:00 a.m. to 8:00 p.m.), and open 6 days a week (Monday – Saturday) (the "Hours of Operation"). The Property will be closed on holidays/days as observed by the City of Evanston and will not be cleaned by Landlord during this time period, however Tenant may be open for business on City holidays. If the Tenant has a special event, approved by the Landlord, the hours described above can be modified.

2. The Landlord shall have the right to retain a set of keys to the Premises, and Tenants shall not change any locks for the Premises to any other lock, other than a lock consistent with the Landlord’s master lock for the Property. The Tenants shall permit the Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises concealed to the greatest extent possible, above ceiling, under floor or in walls that don’t reduce the square footage of the Premises and don’t materially affect Tenants’ use of the Premises. The Landlord shall have the right to enter upon the Premises with 24 hours prior written notice or without notice in case of an emergency, to control heat, electricity and air conditioning, to inspect the same, and to make such repairs, alterations, improvements or additions to the Premises or the GM Center, as the Landlord may deem necessary or desirable. Tenants will not cease any Rent payments while repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of business of the Tenants, or otherwise, provided Landlord shall complete such work as quickly as reasonably possible. Notwithstanding the foregoing, if a portion of the Premises is unusable for the purpose contemplated hereunder for a period of greater than 5 days (including, without limitation, as a result of a casualty or a condemnation or the repairs required in connection therewith), the fixed minimum monthly rental will be equitably reduced in the proportion that the unusable part of the Premises bears.
F. **GARBAGE DISPOSAL:** The Tenants will not incinerate any garbage or debris in or about the Premises, and will cause all containers, rubbish, garbage and debris stored in the Premises to be placed in the refuse container supplied by Landlord for the Property before accumulation of any substantial quantity.

G. **PUBLIC REGULATIONS:** In the conduct of its business on the Premises, Tenants will observe and comply with all laws, ordinances and regulations of public authorities. Tenants acknowledge that the Property is owned by the City of Evanston and therefore no smoking will be permitted at the Property.

H. **OTHER MISUSE:** Tenant and Landlord will not permit any unlawful practice with knowledge or consent, to be committed or carried on in the Premises by Tenants or any other person. Tenant and Landlord will not use or allow the use of the Premises for any purpose whatsoever that will injure the reputation of the Premises or of the building of which they are a part.

I. **PARKING:** The Gibbs Morrison Cultural Center does not have any dedicated parking spaces for Tenants, City employees, or guests of City programs at the building. There is off street parking located on the southeast corner of Church and Dodge provided as a courtesy by Y.O.U. ("Y.O.U. Lot") The first eight parking spaces in the most northern section, affronting the sidewalk on Church, are for patron and employee use at the Gibbs Morrison Cultural Center. The Y.O.U. Lot parking is provided on a first come first serve basis. On street parking is also available on a first come first serve basis, but no permits available for this parking.

SECTION 6. **SIGNS**

Tenant is responsible for installing permanent signage for the Property along Church Street and Dodge Avenue ("Property Signs"). If tenant seeks to install signage, Tenant acknowledges that there are limitations from the City of Evanston Municipal Code of 2012, as amended, and the Code governs the application process and the details regarding size, type, and number of signs and Tenants agree to be bound by such ordinances. Landlord cannot make representations in a lease agreement that Tenants shall be entitled additional signage, a certain number of signs and/or dimensions of proposed signage, because the Tenants must make an application to the Sign Review Board, as provided by Code, but Landlord will not withhold its consent to a reasonably sized sign over the entrances to the Premises and will work with the Tenant to designate appropriate signage for the business.

SECTION 7. **DEFECTS; DEFECTIVE CONDITION; WIND; ACTS OF THIRD PERSONS**

Except as provided by Illinois law and except to the extent arising from the negligence or intentional misconduct of Landlord or its agents, employees or contractors, or from the breach of this Lease by Landlord, Landlord will not be liable to Tenants for any damage or injury done or occasioned by wind or by or from any defect of plumbing, electric wiring or of insulation thereof, gas pipes, water pipes or steam pipes, or from broken stairs, porches, railings or walks, or from the backing up of any sewer pipe or
E. FIRE AND CASUALTY. If the Premises are entirely destroyed by fire or another act of God, and Landlord elects to not rebuild the Premises, then this Agreement shall be terminated effective as of the date of the casualty.

SECTION 9. REPAIRS AND MAINTENANCE

Except to the extent any of the following is Landlord’s obligation pursuant to Section 4[A], Tenants shall keep the interior, non-structural portions of the Premises in a clean condition, and in good repair, all according to the statutes and ordinances in such cases made and provided, and the directions of public officers thereunto duly authorized, all at Tenants’ own expense, and shall yield the same back to Landlord, upon the termination of this Agreement, whether such termination shall occur by expiration of the term, or in any other manner whatsoever, in the same condition of cleanliness and repair as at the date of the execution hereof, loss by fire and reasonable wear and tear excepted. Except to the extent any of the following is Landlord’s obligation pursuant to Section 4[A], Tenant shall make all necessary repairs and renewals upon Premises and replace broken fixtures with material of the same size and quality as that broken. If, however, the Premises shall not thus be kept in good repair and in a clean condition by Tenants, as aforesaid, Landlord may enter the same, or by Landlord’s agents, servants or employees, without such entering causing or constituting a termination of this Agreement or an interference with the possession of the Premises by Tenants, and Landlord may replace the same in the same condition of repair and cleanliness as existed at the date of execution hereof, and Tenants agree to pay Landlord, in addition to the rent hereby reserved, the expenses of Landlord in thus replacing the Premises in that condition. Tenants shall not cause or permit any waste, misuse or neglect of the water, or of the water, gas or electric fixtures.

Tenants shall be in substantial compliance with all laws and regulations during the entire term of this Agreement, except for repairs required of the Landlord to be made and damage occasioned by fire, hurricane or other causes as provided for in this Agreement.

SECTION 10. UTILITIES

Landlord agrees to pay before delinquency all charges for water, heat, electricity, power and other similar charges incurred by Landlord or Tenants with respect to the Premises or the Property during the Term of this Agreement and Tenants’ occupancy of the Premises. Tenant is responsible for payment of gas charges and coordinating for service and payment of the account prior to the due date with the utility company.

SECTION 11. TAXES

If applicable, Tenants will pay before delinquency all taxes levied on Tenants’ fixtures, equipment and personal property on the demised Premises, whether or not affixed to the real property. As of the date of this Lease, the Property is tax exempt and therefore no taxes are assessed to Landlord. However, if the Cook County changes said tax assessment, the Tenant will issue payment to reimburse the City for a tax bill
appropriate taxing authorities, so that the gain will not be recognized for tax purposes. Nothing here will be construed to entitle Landlord to delay any repairs to any part of the improvements in the event of damage.

G. TENANTS’ FAILURE TO INSURE: Should Tenants fail to keep in effect and pay for insurance as required by this section, the Landlord may terminate this Lease immediately.

SECTION 13. SUBLETTING; ASSIGNMENT

Tenant cannot sublet or assign this Lease Agreement without Landlord’s consent, which consent can be withheld in Landlord’s sole discretion.

SECTION 14. SURRENDER OF PREMISES; HOLDING OVER

Tenants will, at the termination of this Lease, leave the Premises in as good condition as they are in at the time of entry by Tenants, except for reasonable use and wear, acts of God, or damage by casualty beyond the control of Tenants. On vacating, Tenants will leave the Premises clear of all rubbish and debris. If Tenants retain possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then Landlord may at its option within thirty days after termination of the term serve written notice upon Tenants that such holding over constitutes the creation of a month to month tenancy, upon the terms of this Agreement. Tenants shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenants. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as hereinafter set forth; nor shall receipt of any rent or any other act in apparent affirmation of tenancy operate as a waiver of the right to terminate this Agreement for a breach of any of the covenants herein.

SECTION 15. INDEMNIFICATION AND LIENS

A. LIENS AND ENCUMBRANCES: The Tenants will hold the Landlord harmless from all claims, liens, claims of lien, demands, charges, encumbrances or litigation arising out of any work or activity of Tenants on the Premises. Tenant will, within sixty (60) days after filing of any lien, fully pay and satisfy the lien and reimburse Landlord for all resulting loss and expense, including a reasonable attorney’s fees. Provided, however, in the event that Tenants contest any lien so filed in good faith and pursues an active defense of said lien, Tenants shall not be in default of this paragraph. However, in the event of any final judgment against Tenants regarding such lien, Tenants agree to pay such judgment and satisfy such lien within 60 days of the entry of any such judgment.

B. DISCHARGE OF LIEN: If Tenants fail to fully discharge any claim, lien, claim of lien, demand, charge, encumbrance, or litigation, or should proceedings be instituted for the foreclosure of any lien or encumbrance, and if judgment is rendered against Tenants either by a court of competent jurisdiction or by arbitration and Tenants still persists in non-payment of the same within the 60 days set forth above, Landlord will have the right at any time after expiration of the 60-day period, to pay the lien or
3. Tenants shall fail to comply with any term, provision, condition or covenant of this Lease, other than the payment of rent, and shall not cure, any such failure, within fifteen (15) days after written notice to the Tenants of such failure;

4. Tenants shall make a general assignment the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy; or

B. OCCURRENCE OF AN EVENT: Upon the occurrence of any event of default, Landlord shall have the option to pursue any one or more of the following remedies subject to the laws of the State of Illinois and the Tenants' right to cure:

1. Terminate this Lease, in which event Tenants shall immediately surrender the Premises to Landlord, but if Tenants fail to do so, Landlord may, without further notice and without prejudice to any other remedy Landlord may have for possession or arrears in rent, or damages for breach of contract, enter upon the Premises and expel or remove and with or without notice of such election or any notice or demand whatsoever, this Agreement shall thereupon terminate and upon the termination of Tenants' right of possession, as aforesaid, whether this Agreement be terminated or not, Tenants agree to surrender possession of the Premises immediately, without the receipt of any demand for rent, notice to quit or demand for possession of the Premises whatsoever and hereby grants to Landlord full and free license to enter into and upon the Premises or any part thereof, to take possession thereof with or (to the extent permitted by law) without process of law, and to expel and to remove Tenants or any other person who may be occupying the Premises or any part thereof, and Landlord may use such force in and about expelling and removing Tenants and other persons as may reasonably be necessary, and Landlord may re-possess itself of the Premises, but such entry of the Premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause a forfeiture of rents due by virtue thereof, nor a waiver of any covenant, agreement or promise in this Agreement contained to be performed by Tenants. Tenants agree to indemnify Landlord for all loss and damage which Landlord may suffer by reason of such lease termination, whether through inability to re-let the Premises, or through decrease in Rent, or otherwise.

2. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or available to Landlord at law or in equity, or constitute a forfeiture or waiver of any Rent due hereunder or of any damages suffered by Landlord.

C. REPOSESSION OR RELETTING NOT A TERMINATION; LANDLORD'S RIGHT TO TERMINATE NOT FORFEITED: No repossession, operation or re-letting of the Premises or of fixtures and equipment will be construed as an election by Landlord to terminate this Agreement unless a written notice is given by the Landlord to the Tenants. The Landlord may terminate this Agreement if the Tenants remain in default (beyond any applicable notice and cure period). The acceptance of rent, whether
The obligation of Tenants to pay the rent reserved hereby during the balance of the term hereof, or during any extension hereof, shall not be deemed to be waived, released or terminated, by the service of any five-day notice, other notice to collect, demand for possession, or notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejectment or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Tenants' right to possession of the Premises. The Landlord may collect and receive any rent due from Tenants and payment or receipt thereof shall not waive or affect any such notice, demand, suit or judgment, or in any manner whatsoever waive, affect, change, modify or alter any rights or remedies which Landlord may have by virtue hereof.

SECTION 20. EXPENSES OF ENFORCEMENT

Tenants, if Landlord is the prevailing party, shall pay upon demand all Landlord's costs, charges and expenses, including attorney's fees, agents fees and fees of others retained by Landlord, incurred in enforcing any of the obligations of Tenants under this Agreement, or in any litigation, negotiation or transaction in which Landlord shall, without Landlord's fault become involved through or on account of any action or omission of Tenants regarding this Agreement.

Landlord, if Tenants are the prevailing party, shall pay upon demand all Tenants' costs, charges and expenses, incurred in enforcing any of the obligations of Landlord under this Agreement, or in any litigation, negotiation or transaction in which Tenant shall, without Tenants' fault become involved through or on account of any action or omission of Landlord regarding this Agreement.

SECTION 21. EMINENT DOMAIN

Because the building is already owned by the City of Evanston, the only Eminent Domain proceeding for the building would be due to the State of Illinois or the Federal Government. Landlord is not aware that the State or Federal Government seeking to use the land under the building for a public use.

If the Landlord becomes aware of the State having any such interest, it will immediately so notify Tenant. If there is any such taking by the State of Illinois or the Federal Government, the Landlord and Tenant will work together to determine if such taking will change the programming at the facility, in which case the parties agree to work together to determine how and if they need to make changes to this agreement. If the parties are unable to reach an agreement, then this agreement shall terminate when such material changes become effective.

SECTION 22. GOVERNMENTAL INTERFERENCE WITH POSSESSION

Tenants will not be released from its obligation should their possession of the Premises be interfered with by adoption of any law, ordinance, resolution, regulation or act of any legal or governmental authority. Further, Tenants will not be released by any
Service will be deemed complete at the time of the leaving of notice or within 2 days after mailing. In the event that it appears that Tenants are avoiding the service of any notice and is not present at the Premises for a period of more than 14 consecutive days, notices may be served by posting such notice upon the Premises. Notice shall then be deemed effective 5 days after such posting.

SECTION 28. MISCELLANEOUS

A. Provisions typed on this Agreement and all riders attached to this Agreement and signed by Landlord and Tenant are hereby made a part of this Agreement.

B. Tenant shall keep and observe such reasonable rules and regulations now or hereafter required by Landlord, which may be necessary for the proper and orderly care of the building of which the Premises are a part.

C. All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of Landlord and Tenants and their respective heirs, legal representatives, successors and assigns.

D. The rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to excuse or waive the right to the use of another.

E. This Agreement and any written and signed Amendments and/or Riders hereto shall constitute the entire agreement between the parties, and any oral representations made by one party to the other are considered merged herein.

F. In all cases where Landlord’s consent is required, Landlord’s consent shall not be unreasonably withheld.

G. This Agreement may be executed in multiple copies, each of which shall constitute an original.

SECTION 29. VENUE AND JURISDICTION

The Parties agree the this Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes shall be in the Circuit Court of Cook County, Illinois.

SECTION 30. FORCE MAJEURE

Other than for Landlord’s and Tenantss obligations under this Lease that can be performed by the payment of money, whenever a period of time is herein prescribed for action to be taken by either party hereto, such time period will be extended by a period
IN WITNESS WHEREOF, both of said Landlord and Tenants caused this Agreement to be executed as of the date signed by the Landlord.

Landlord:

THE CITY OF EVANSTON,
an Illinois home rule municipal corporation

By: ____________________________ Date: ____________, 2019

Its: City Manager, Wally Bobkiewicz

Tenant:

LIGHTHOUSE EVANSTON, LLC
An Illinois limited liability company

By: ____________________________ Date: ____________, 2019

Its: Manager

Print Name: ____________________________