

DOWNTOWN RESTAURANT FORGIVABLE LOAN PROGRAM AGREEMENT

This Agreement, entered into this ____ day of _____, 2006, by and between the Village of Lombard, Illinois, (hereinafter referred to as the "Village"), Wailea Holdings, LLC (hereinafter referred to as "Property Owner") and Edward A. O'Neill (hereinafter referred to collectively as "Business Owner") doing business as a Restaurant at 14 W. St. Charles Road, Lombard, Illinois (said business location being legally described on Exhibit A attached hereto and made part hereof – hereinafter referred to as the "Subject Property"), with personal property being secured at 14 W. St. Charles Road, Lombard, Illinois.

WITNESSETH

WHEREAS, the Village, pursuant to Sections 35.60 through 36.55 of the Lombard Village Code, has established a Downtown Restaurant Forgivable Loan Program (hereinafter referred to as the "Program") and, as such, will provide monetary forgivable loans to qualified business owners and property owners in the Eligible TIF Districts (as said term is defined in Section 36.51 of the Lombard Village Code) for the conversion of storefront space into a restaurant; and

WHEREAS, the Program compliments and supports the Village's plans to maintain a quality Central Business District; and

WHEREAS, restaurants are desirable uses within the Central Business District and contribute to an economically strong Central Business District; a commercial area where the image, appearance, and environment encourage the attraction of shoppers; and

WHEREAS, the Business Owner wishes to participate in this program for a proposed restaurant to be located at 14 W. St. Charles Road, Lombard, Illinois; Restaurant Forgivable Loan Program Application No.: **06-02** (hereinafter referred to as the "Project"); and

WHEREAS, the Property Owner has agreed to the property lien provisions as required by the Program;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties hereto, the parties agree as follows:

SECTION 1: The Village shall provide the Business Owner with a forgivable loan under the Program in an amount not to exceed one hundred thousand and no/100 dollars (\$100,000.00). Such loan shall be available to Business Owner upon the authorization of the Village's Director of Community Development, and after the Business Owner has complied with the provisions of Section 36.54 of the Lombard Village Code. The maximum amount of the forgivable loan, as set forth above, is based upon the Business Owner expending no less than three hundred thousand and no/100 dollars (\$300,000.00) in relation to the Project. In the event that the Business Owner's expenditures for the Project are less, the forgivable loan shall be reduced such that the maximum amount of the forgivable loan shall not exceed one third ($1/3^{\text{rd}}$) of the amount expended by the Business Owner in relation to the Project.

SECTION 2: The Business Owner agrees that the Project will be constructed and undertaken in accordance with the plans and written estimates approved by the Director of Community Development of the Village of Lombard, and attached hereto as Exhibit B and made part hereof.

SECTION 3: The Business Owner shall undertake the following in connection with the Project:

- a. Comply with all applicable ordinances, rules and regulations of the Village including, but not limited to, all applicable building codes and the requirements of the Program.
- b. Take all reasonable action to assure completion of the Project within six (6) months from the date of execution of this Agreement. Failure to complete the Project within six (6) months from the date of execution of this Agreement may, at the Village's sole and absolute discretion, result in forfeiture of the forgivable loan and termination of this Agreement.
- c. Allow inspection of the Project by authorized employees and agents of the Village, to assure compliance with all applicable federal, state, and local laws, rules and regulations.
- d. Maintain, and allow authorized employees of the Village access to, the financial records that pertain to the Project. At a minimum, all contracts, change orders,

bills, invoices, receipts, canceled checks and partial and final waivers of liens shall be maintained and subject to review by the Village.

- e. Submit copies of all final waivers of lien, canceled checks, and invoices related to the Project to the Department of Community Development.

SECTION 4: Upon completion of the Project, the Business Owner agrees to maintain the business in accordance with all applicable federal, state and local laws, rules and regulations.

SECTION 5: The Property Owner hereby consents to the recording of this Agreement to serve as notice to future purchasers, assigns, estate representatives, mortgagees, and all other interested persons of the conditions outlined in this Agreement.

SECTION 6: The Property Owner hereby agrees to be bound by the lien conditions set forth in Section 36.55 of the Lombard Village Code, including, but not limited to, the condition that, upon disbursement of the forgivable loan funds by the Village, no business, other than a restaurant, may operate at 14 West St. Charles Road, Lombard, Illinois, for a period of ten (10) years from the recording of the lien referenced in said Section 36.55 of the Lombard Village Code, without the consent of the Village.

SECTION 7: The Property Owner agrees that a lien may be placed on the Subject Property, in accordance with Section 36.55 of the Lombard Village Code, to secure said forgivable loan. Pursuant to said Section 36.55 of the Lombard Village Code, one-tenth (1/10th) of the forgivable loan amount shall be forgiven for each full year after the recording of the lien that a restaurant is operated at the Subject Property. In the event that a business other than a restaurant operates at the Subject Property, the lien shall become permanent (no more amortized “forgiveness”) and the Village shall record a document to memorialize same. In addition, in the event that a business other than a restaurant operates at the Subject Property at any time during the ten (10) year period referenced in Section 6 above, the balance of the forgivable loan then due shall immediately become due and payable from the Business Owner and/or Property Owner.

SECTION 8: In the event the Village suspends or terminates this Agreement as a result of the Business Owner or Property Owner failing to comply with any of the terms of this Agreement, the Business Owner and/or Property owner shall be required to repay any amount of the forgivable loan that has been disbursed by the Village. In the event said amount is not repaid, the Village shall have the right to record a lien against the Subject Property for said amount.

SECTION 9: This Agreement shall be binding upon the successors and assigns of the parties hereto.

VILLAGE OF LOMBARD

By: Village President

Attest: Village Clerk

BUSINESS OWNER

By:

Attest:

Address

City, State

PROPERTY OWNER

By:

Attest:

Address

City, State

STATE OF ILLINOIS)
)SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that William J. Mueller, personally known to me to be the President of the
Village of Lombard, and Brigitte O'Brien, personally known to me to be the Village Clerk of
said municipal corporation, and personally known to me to be the same persons whose names are
subscribed to the foregoing instrument, appeared before me this day in person and severally
acknowledged that as such President and Deputy Village Clerk, they signed and delivered the
said instrument and caused the corporate seal of said municipal corporation to be affixed thereto,
pursuant to authority given by the Board of Trustees of said municipal corporation, as their free
and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for
the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of 2006.

Commission expires _____, 20____.

Notary Public

STATE OF ILLINOIS)
)SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that Edward A. O'Neill, personally known to me to be the Business Owner
and Applicant and personally known to me to be the same person whose name is subscribed to
the foregoing instrument, appeared before me this day in person and severally acknowledged that
as such Business Owner and Applicant, he signed and delivered the said instrument, as his free
and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of 2006.

Commission expires _____, 20____.

Notary Public

STATE OF ILLINOIS)
)SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that _____ and _____, personally known
to me to be the President and Secretary of Wailea Holdings, LLC, and personally known to me
to be the same persons whose names are subscribed to the foregoing instrument as such and
respectively, and that they appeared before me this day in Person and severally acknowledged
that as such President and Secretary they signed and delivered the said instrument, pursuant to
authority given by the Board of Directors of said Corporation as their free and voluntary act, and
as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set
forth, and the said then and there acknowledged that said Secretary as custodian of the corporate
seal of said Corporation caused said seal to be affixed to said instrument as said Secretary's 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 Notary Seal this _____ day of _____, 2006.

Commission expires _____, 20____.

Notary Public

EXHIBIT A

Legal Description

THAT PART OF LOTS 4 AND 5 IN BLOCK 11 IN THE TOWN OF LOMBARD, BEING A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF ST. CHARLES ROAD (FORMERLY LAKE STREET) AND THE WEST LINE OF THE EAST 93.12 FEET OF LOT 6 (SAID LINE BEING THE EAST LINE OF PARK AVENUE); THENCE NORTHERLY ALONG THE EAST LINE OF PARK AVENUE 206.83 FEET TO A POINT ON THE NORTHERLY LINE OF A 33.0 FOOT PUBLIC ALLEY HERETOFORE VACATED PER DOCUMENT NUMBER 26476; THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF SAID VACATED ALLEY 199.58 FEET TO A POINT ON THE EASTERLY LINE AND ITS NORTHERLY EXTENSION THEREOF, OF THE WEST 100.0 FEET OF LOT 5; THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF THE WEST 100 FEET OF LOT 5 AND ITS NORTHERLY EXTENSION A DISTANCE OF 93.55 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTHERLY ALONG THE LAST DESCRIBED LINE A DISTANCE OF 24.54 FEET; THENCE EASTERLY ALONG THE NORTH LINE OF THE SOUTH 70.0 FEET (AS MEASURED ALONG THE EAST AND WEST LINES THEREOF) A DISTANCE OF 24.94 FEET; THENCE SOUTHERLY ALONG A LINE 5 FEET EAST OF THE WEST LINE OF LOT 4, 70.0 FEET TO A POINT ON THE NORTHERLY LINE OF ST. CHARLES ROAD; THENCE WESTERLY ALONG SAID NORTHERLY LINE OF ST. CHARLES ROAD, 50.06 FEET; THENCE NORTHERLY A DISTANCE OF 97.55 FEET TO A POINT 25.04 FEET WESTERLY TO THE POINT OF BEGINNING; THENCE EASTERLY 25.04 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PIN 06-07-206-020