

7/31/2017

54-O-17

AN ORDINANCE

Authorizing the City Manager to Execute a Lease of City-Owned Real Property Located at 633 Howard Street with Sweet Vendome, Inc. doing business as "Café Coralie"

WHEREAS, the City of Evanston owns certain real property located at 633 Howard Street, Evanston, Illinois 60202, which is improved with a single story 2,643 square foot building and the total property square footage is 3,206 square feet (the "Property"); and

WHEREAS, Sweet Vendome, Inc. operates a café called "Patisserie Coralie" at 600 Davis Street, Evanston, Illinois and it seeks to expand its production of pastry goods and open an additional café in southeast Evanston;

WHEREAS, the Parties have negotiated a long-term lease of the Property as a café and bakery to be called "Café Coralie"; and

WHEREAS, the City Council has determined that the Property is not necessary to future City operations and leasing the Property to Sweet Vendome, Inc. is in the City's best interests,

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, a long term lease agreement with an initial term of ten (10) years and two (2), five (5)-year options to renew the lease agreement, between the City of Evanston and Sweet Vendome, Inc.. The Lease Agreement shall be in substantial conformity with the Lease Agreement attached hereto as Exhibit "1" and incorporated herein by reference.

SECTION 3: Pursuant to City Code Subsection 1-17-4-2-(B)-3, Notice of Intent to Lease Certain Real Estate by Negotiation was published in the *Evanston Review*, a newspaper in general circulation in the City, on July 27, 2017. Said publication was neither less than fifteen (15) nor more than thirty (30) days before the date on which the City Council considered adoption of this ordinance authorizing the City Manager to execute lease of the Subject Property.

SECTION 4: Pursuant to Subsection 1-17-4-2-(B) of the Evanston City Code, 2012, as amended (the "City Code"), an affirmative vote of two-thirds ($\frac{2}{3}$) of the elected Aldermen is required to accept the recommendation of the City Manager on the lease agreement authorized herein.

SECTION 5: 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 6: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: 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 8: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Ayes: 8


Nays: 1

Introduced: August 14, 2017

Adopted: August 14, 2017


Approved:

August 23, 2017



Stephen H. Hagerty, Mayor

Attest:



Devon Reid, City Clerk

Approved as to form:



W. Grant Farrar, Corporation Counsel

EXHIBIT 1
LEASE AGREEMENT

LEASE

between

SWEET VENDOME, INC.

an Illinois corporation, d/b/a Cafe Coralie

as Tenant

and

CITY OF EVANSTON

An Illinois municipal corporation,

as Landlord

633 Howard Street

EVANSTON, ILLINOIS 60202

LEASE

THIS LEASE AGREEMENT is made this ____ day of August, 2017, by and between **CITY OF EVANSTON** (“**Landlord**”), an Illinois municipal corporation and **SWEET VENDOME, INC.**, an Illinois corporation, d/b/a “Cafe Coralie”. (“**Tenant**”).

WITNESSETH:

1. PROPERTY

- (a) Property. Landlord is the fee simple owner of certain real property at 633 Howard Street, Evanston, Illinois 60202, legally described in **Exhibit A** attached hereto and incorporated herein (the “**Property**”). The Property has a total of approximately 3,206 square feet of land, improved with a 2,649 square foot one-story building (“**Building**”). Landlord does hereby lease the Premises to Tenant, for Tenant’s exclusive use and control, together with all appurtenances thereto, pursuant to the terms and conditions of this Lease. During this Lease Term, the Property and Building will be collectively referred to as “**Premises**”.
- (b) Parking. This Lease does not include the exclusive use of any on-street parking. There are no parking spaces in the back of the Building off of the alley for Tenant’s exclusive use for employee parking and loading space. Tenant is responsible for enforcing the exclusive use of the Parking spaces and contacting a tow company, if appropriate.

2. TERM

- (a) Primary Term. Subject to the provisions of this Lease, the “**Primary Term**” must be for 10 years (120 months) and must commence on October 1, 2017 and expire on September 30, 2027.
- (b) Extended Lease Terms. Provided Tenant is not otherwise in default beyond any applicable cure period, replaced or otherwise amended such that Tenant is still permitted to conduct the Permitted Use from the Premises, Tenant is granted two (2) options (individually, a “**Lease Extension Option**”), for successive periods of five (5) years each (each an “**Extension Term**”) upon the same terms, covenants and conditions as herein provided. Each Lease Extension Option must be exercised by Tenant delivering to Landlord written notice of such election, not less than one hundred twenty (120) days prior to the expiration of the then current term. The exercise by Tenant of any one Lease Extension Option must not be deemed to impose upon Tenant any duty or obligation to renew for any further period of time, and that the exercise of any Lease Extension Option must be effective only upon the giving of notice of extension in accordance with the foregoing provisions. The Primary Term together with any Extension Term(s) is referred to herein collectively as the “**Term**”.
- (c) Sale to Third Parties. If Landlord sells the Property to a third party which has no legal affiliation to the Tenant, as a condition of sale, the new purchaser agrees to be bound by the terms of this Agreement and must have no right to evict Tenant, to vary the terms of this Agreement or to terminate this Lease under any terms other than those contained herein. The third party must stand in the shoes of Landlord and must honor all obligations of Landlord and all rights of Tenant as

provided for herein.

3. RENT

(a) Fixed Rent. The tenant's first rent payment is due six (6) months after the Lease Commencement Date and every month thereafter due on or before the first of the month ("Rent Commencement Date"), and subject to the terms of this Lease, Tenant agrees to pay to Landlord for lease of the Premises the Rent described below: The Rent for the first year is Three Thousand Dollars (\$3,000) per month, \$36,000 per year. For every subsequent Lease Year, the annual rent shall be increased in an amount equal to the Consumer Price Index for that Lease Year and will be adjusted to cover increased property taxes assessed against the property by the Cook County Assessor.

(b) Late Fee and Interest. 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 \$25 per day. In addition, interest must accrue on all past due sums at an annual rate equal to the lesser of six percent (6.0%) per month and the maximum legal rate. Such interest must also be deemed Additional Rent.

(c) Time and Place of Payment. Tenant must pay to Landlord Fixed Minimum Rent in advance, in equal monthly installments, and without prior notice, setoff (unless otherwise expressly permitted herein) or demand, except as otherwise specifically provided herein, on or before the fifth (5th) day of each calendar month during the Term hereof to:

City of Evanston
Attn: Finance Division
2100 Ridge Avenue, Room 4500
Evanston, IL 60201

4. **TENANT IMPROVEMENT:**

(a) Tenant accepts the Premises in an "As-Is" Condition. The Tenant shall construct all renovations pursuant to build out plans agreed to by Landlord and Tenant. Once the build out plans are agreed upon, they will be attached as Exhibit A to this lease and incorporated herein. The parties agree that certain improvements to Premises are necessary to bring the Premises to a "Vanilla Box" standard, including updating the electrical system, HVAC system, and plumbing. Attached as **Exhibit B** is the **Site Plan** of the Interior Build Out for the Premises.

(b) The Parties anticipate that the total build out renovation expenses to total \$[INSERT BUDGET FIGURE] ([INSERT and no/100 Dollars). Landlord will pay for a portion of the Tenant Improvements, which account for the vanilla box improvements (the "Tenant Improvements"). Attached as **Exhibit C** is the **Project Budget**.

(c) Landlord will pay a portion of the tenant improvements to achieve the Vanilla Box, the total reimbursement to Tenant over the initial Lease Term in amount not to exceed Fifty Thousand (\$50,000.00) (the "**Tenant Improvement Allowance**"). Tenant will process the invoices from the contractor and the subcontractors and submit for payment to the Landlord. The Landlord will review the invoices and submit payment directly to the contractors after receipt of a lien waiver.

Landlord is also issuing a loan to Tenant to fund additional improvements and equipment purchases for Tenant's business in the principal amount of \$50,000 (the "**Loan**"). The terms of the Loan are set forth in a separate Loan Agreement and Promissory Note.

(d) **Improvement Allowance Payment Requirements:** Disbursement payments shall NOT be paid out until:

- City Council has approved the Agreement and the Agreement is executed; and
- Project work is complete and Temporary Certificate of Occupancy is issued to the Tenant by the Building & Inspection Services Division of the City of Evanston; and
- Invoices from the contractor are received and reviewed by City staff; and
- Contractor issues final lien waivers; and
- The Chief Financial Officer or his designee will not issue the full disbursement to the Tenant if there is any violation of any law, ordinance, code, regulation, or Agreement term; and
- Lastly, Borrower must be current with all City of Evanston accounts prior to any reimbursement.

(e) If Tenant defaults on the terms and conditions of this Agreement or terminates this Agreement for any reason other than the Landlord's willful misconduct which caused the Tenant's departure, the Tenant Improvement Allowance must be reimbursed in full. Furthermore, the Vanilla Box improvements are the property of the City of Evanston with no right of reimbursement to the Tenant for the Tenant Improvements which were paid for by the City of Evanston.

5. FIXTURES AND EQUIPMENT

All trade fixtures and equipment installed by Tenant in or on the Premises (including kitchen equipment, tables and chairs, registers, other equipment, shelving and signs) will remain the property of Tenant and Tenant may remove the same or any part thereof at any time prior to or at the expiration or earlier termination of this Lease. Tenant must repair at its own expense any damage to the Premises caused by the removal of said fixtures or equipment by Tenant. This provision must expressly survive the termination or expiration of this Lease.

6. USE OF PREMISES

(a) **Permitted Use.** Tenant must have the right, subject to applicable Federal, State and local laws, including Environmental Laws (as hereafter defined) and the terms of this Lease, to use the Premises for the following purpose(s): to operate a 60-80 seat café, central production kitchen to bake pastries for wholesale, demonstration kitchen for classes, office use and uses incidental thereto to operation of a café, and no part of the Property will be used for any other purpose without the prior written consent of the City (herein collectively "**Permitted Use**").

(b) **Tenant Exclusive Use of Premises.** Landlord covenants and agrees that it has no rights to use, modify, alter or lease any portion of the Building or Property other than as expressly provided in this Lease.

7. MAINTENANCE

- (a) Maintenance, Repair and Replacement Responsibilities of Landlord: Landlord is responsible for all structural and load bearing columns, roof, the HVAC system for the Building, interior sprinkler and fire safety system within the Building, the roof, windows and all soffits, and all structural elements of the Building.
- (b) Maintenance and Repair Responsibilities of Tenant: Tenant is responsible for all maintenance and repair responsibilities that are not outlined in Paragraph 7(a) above, including but not limited to: exterior lighting, signage, bathroom fixtures, kitchen fixtures, cafe equipment, lighting equipment and systems, security systems, telecommunications systems and other non-structural elements.
 - (c) All refuse associated with Tenant's use must be placed in appropriate containers for disposal. Tenant cannot dispose of construction building materials in the standard refuse containers and must arrange for special pick-ups and containers for said materials. A refuse container for regular refuse will be located at the Property in reasonable proximity to the Building. Tenant will contract to have trash hauled from such container with reasonable frequency.
 - (d) Tenant is responsible for snow, ice removal and leaf removal and general upkeep of the exterior of the Building along the sidewalk and other carriage walks to and from the Building. The snow must be moved to a suitable area on the Premises to allow for use of the sidewalk. .
 - (e) The Tenant will at all times maintain all of the Property in a clean, neat and orderly condition. The Tenant will not use the Property in a manner that will violate or make void or inoperative any policy of insurance held by the Landlord.
 - (f) Tenant must yield the Premises back to Landlord, upon the termination of this Lease, whether such termination must 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, less by casualty and reasonable wear and tear accepted. Tenant must make all necessary repairs and replace broken fixtures with material of the same size and quality as that broken. If, however, the Premises must not thus be kept in good repair and in a clean condition by Tenant, 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 Lease or an interference with the possession of the Premises by Tenant, and Landlord may replace the same in the same condition of repair and cleanliness as existed at the date of execution hereof, and Tenant agrees to pay Landlord, in addition to the rent hereby reserved, the expenses of Landlord in thus replacing the Premises in that condition. Tenant must not cause or permit any waste, misuse or neglect of the water, or of the water, gas or electric fixtures.
 - (g) Tenant will keep all leasehold improvements in compliance with all laws and regulations during the entire Term of this Lease, except for repairs required of the Landlord to be made and damage occasioned by fire, wind or other causes as provided for in this Lease.

8. PAYMENT OF TAXES

- (a) Definition. For purposes hereof, "Taxes" must mean real property taxes and "Assessments" must mean assessments, general and special, foreseen and unforeseen, for public improvements levied or

assessed against the Premises and the improvements thereon for that portion of the Term.

- (b) Payment. Landlord represents and warrants to Tenant that the Premises is currently exempt from Taxes and Assessments. Cook County Assessor will commence assessing property taxes against the City of Evanston for the commercial use described herein. The Landlord will pay the property taxes on behalf of the tenant because the Rent paid by the Tenant each month includes funds to pay for said tax payments. The Property will be reassessed every three years and any change in the property taxes assessed will also change the Rent outlined in Section 3.

9. DAMAGE AND DESTRUCTION

- (a) Casualty. If the Premises must be damaged by fire or other casualty by an Act of God (“Casualty”), Landlord must, within one hundred eighty (180) days after such damage occurs (subject to being able to obtain all necessary permits and approvals, including, without limitation, permits and approvals required from any agency or body administering environmental laws, rules or regulations, and taking into account the time necessary to effectuate a satisfactory settlement with any insurance company) repair such damage at Landlord’s expense and this Lease must not terminate. If the foregoing damage is due to the negligence or willful misconduct of Tenant, then Landlord must look first to the insurance carried by Tenant to pay for such damage. Notwithstanding (i) any other provisions of the Lease to the contrary, and (ii) any legal interpretation that all improvements become part of the realty upon being attached to the Premises, following a Casualty, the Landlord must be responsible only for restoring the Premises to building standard levels of improvement at the time of execution of this Lease and must not include the tenant improvements completed and installed following execution of this Lease, and the tenant must be responsible for insuring and replacing the above building standard tenant improvements or betterments that made the Premises “customized” for Tenant’s use. Customized improvements include, but not limited to: any and all theatre equipment and fixtures, alarm censored doors, wood flooring, and custom cabinetry. Except as otherwise provided herein, if the entire Premises are rendered untenable by reason of any such damage, or if Tenant cannot utilize Property and Building for its intended use by reason of any damage of any size or scope whatsoever, then all Fixed Minimum Rent and Additional Rent must abate for the period from the date of the damage to the date the damage is repaired, and if only a part of the Premises are so rendered untenable but the damage does not prevent Tenant from utilizing the Property for its Permitted Use, the Fixed Minimum Rent and Additional Rent must abate for the same period in the proportion that the area of the untenable part bears to the total area of the Premises; provided, however, that if, prior to the date when all of the damage has been repaired, any part of the Premises so damaged are rendered tenantable and must be used or occupied by or through Tenant, then the amount by which the Fixed Minimum Rent and Additional Rent abates must be apportioned for the period from the date of such use or occupancy to the date when all the damage has been repaired.
- (b) Repair to Leasehold Improvements. Landlord must have no obligation to repair damage to or to replace any leasehold improvements, Tenant’s personal property or any other property located in the Premises, and Tenant must within sixty (60) days after the Premises is sufficiently repaired so as to permit the commencement of work by Tenant, commence to repair, reconstruct and restore or

replace the Premises (including fixtures, furnishings and equipment) and prosecute the same diligently to completion. Notwithstanding the foregoing, Tenant's Fixed Minimum Rent and Additional Rent must continue to be abated as provided in Section 9(a) above, until the Property is once again suitable for its Permitted Use.

(c) Termination Right. Notwithstanding any provision contained herein to the contrary, Tenant must have the option and right to terminate this Lease if, (a) the Premises must be so damaged by Casualty that it cannot be fully repaired within one hundred eighty (180) days after the date of damage; (b) during the last eighteen (18) months of the Term of this Lease, the Premises is damaged by a Casualty in amount exceeding thirty-three and one-third percent (33.33%) of the square footage of the Premises or a lesser amount (no matter how small) that leaves Tenant unable to utilize the Premises for their Permitted Use, provided that, in such event, such termination of this Lease must be effected by written notice within ninety (90) days of the happening of the Casualty causing such damage. This provision must expressly survive the termination or expiration of this Lease.

10. INSURANCE

(a) Tenant Insurance Obligations: Tenant agrees to maintain a policy or policies of commercial general liability insurance written by an insurance carrier rated at least Class A or better in Bests Key Rating Guide of Property-Casualty Insurance Companies and licensed to do business in the state in which the Premises is located which must insure against liability for injury to and/or death of and/or damage to personal property and the Premises of any person or persons, with policy limits of not less than \$1,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others not arising out of any one occurrence. Tenant's policy must cover the Premises, it's personal property and the business operated by Tenant and must name the City of Evanston as an additional insured.

(b) Landlord Insurance Obligations: Landlord is self-insured up to \$1.25 Million and agrees to maintain an excess policy or policies of commercial general liability insurance over the self-insured limit written by an insurance carrier with a rating at least Class A or better in the Bests Key Rating Guide and licensed to do business in the state in which the Premises is located which must insure against liability for injury to and/or death of and/or damage to the Premises , with policy limits of not less than \$3,000,000.00 combined single limit.. Landlord's policy must name Tenant as an additional insured. Subject to the terms of Paragraph 9(a), Landlord must maintain fire and casualty insurance covering the entire Premises and any alterations, improvements, additions or changes made by Landlord thereto in an amount not less than their full replacement cost from time to time during the Term, providing protection against any peril included within the classification of "all risks".

(c) Within thirty (30) days after written request, each of the parties agrees to deliver to the other a certificate of insurance as evidence that the policies of insurance required by this Section 10 have been issued and are in effect.

(d) Waiver of Subrogation. Neither Landlord nor Tenant must be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income for

property or general liability losses, even though such loss or damage might have been occasioned by the acts or omissions of such party, its agents, contractors or employees. Landlord or Tenant must look exclusively to the proceeds of insurance carried by it or for its benefit in the event of any damage or destruction to its property located on the Premises. Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby release and waive any and all rights of recovery, claim, action or cause of action, against the other, or its respective directors, shareholders, officers, agents, invitees and employees, for any loss or damage that may occur to the property or the equipment, fixtures and improvements comprising any part of the Premises, by reason of fire, the elements, or any other cause which could be insured against under the terms of an "all risk" fire insurance policy, in the state where the Premises is located, regardless of cause or origin, including negligence of the parties hereto, their agents, officers, invitees and employees. Subject to the provisions of the Lease, no insurer of a party hereunder must ever hold or be entitled to any claim, demand or cause of action against Tenant by virtue of a claim of loss paid under any such insurance policies, whether such insurer's claim be in the nature of subrogation or otherwise. The waivers provided pursuant to this paragraph must not operate to the extent that they would void coverage under the provisions of any policy of insurance.

11. INDEMNIFICATION

- (a) Indemnification of Landlord. Except as otherwise provided in this Lease, and except to the extent caused by the negligence of Landlord, or its agents, employees or contractors, or by the breach of this Lease by Landlord, Tenant must protect, defend, indemnify and save Landlord and its officers, directors, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims, attorneys fees and expenses of whatever nature arising from (i) any matter, condition or thing that occurs in the Premises, which is not the result of Landlord's negligence or willful misconduct or an Act of God or an act of a third party, (ii) any negligence or willful misconduct of Tenant, or its agents, employees or contractors, or its sub-lessee; or (iii) Landlord's breach occasioned wholly or in part by any act, omission of Tenant, its agents, employees, contractors or servants. The provisions of this Section must survive the expiration or earlier termination of this Lease only with respect to any damage, injury or death occurring before such expiration or earlier termination.
- (b) Indemnification of Tenant. Except as otherwise provided in this Lease, and except to the extent caused by the negligence of Tenant, or its agents, employees or contractors, or by the breach of this Lease by Tenant, Landlord must protect, defend, indemnify and save Tenant and its officers, or employees from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from any act, omission or negligence of Landlord, its agents, employees, contractors or servants; The provisions of this Section must survive the expiration or earlier termination of this Lease only with respect to any damage, injury or death occurring before such expiration or earlier termination. The provisions of this Section do not extend to any sublessee of Tenant.

12. Intentionally Omitted.

13. UTILITIES

Tenant must pay during the Term hereof directly to the appropriate utility company or governmental agency all electric, water, gas, telephone and other public utility charges in connection with its occupancy and use of the Premises, including all costs of operating and maintaining all equipment therein, all business licenses and similar permit fees but excluding any installation costs, tap fees and/or connection fees or charges, with no right of reimbursement from the Landlord. All utilities must be paid pursuant to separate meters measuring Tenant's consumption of utilities from the Premises, which meter fee must be Landlord's obligation at its sole cost and expense. Landlord must not be liable to Tenant for damages or otherwise (i) if any utilities must become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (ii) for any interruption in any utility service (including, but without limitation, any heating, ventilation or air conditioning) caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control, and the same must not constitute a default, termination or an eviction. Tenant assures Landlord that it must arrange for an adequate supply of electricity to the Premises and it must pay for any increased voltage and any additional wiring required addressing the increased capacity. Tenant will not be responsible for the water bill until the temporary certificate of occupancy is issued.

14. COVENANTS AGAINST LIENS

Tenant covenants and agrees that it must not, during the Term hereof, suffer or permit any lien to be attached to or upon the Property or the Premises by reason of any act or omission on the part of Tenant or its agents, contractors or employees. In the event that any such lien does so attach, and (i) is not released within thirty (30) days after notice to Tenant thereof, or (ii) if Tenant has not bonded such lien within said thirty (30) day period, Landlord, in its sole discretion, may pay and discharge the same and relieve the Premises or the Property therefrom, and Tenant agrees to repay and reimburse Landlord upon demand for the amount so paid by Landlord and for other reasonable costs incurred by Landlord in discharging and relieving said lien. The Tenant 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 Tenant 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 Tenant contests any lien so filed in good faith and pursues an active defense of said lien, Tenant must not be in default of this paragraph. However, in the event of any final judgment against Tenant regarding such lien, Tenant agrees to pay such judgment and satisfy such lien within 60 days of the entry of any such judgment.

15. ASSIGNMENT AND SUBLETTING

(a) Assignment. Tenant must not have the right to assign this Lease, transfer and grant concessions or licenses ("**Transfer**") in all or any part of the Premises without the Landlord's written consent and City Council approval by Ordinance. No Transfer must relieve Tenant from any of its obligations as Tenant hereunder. Every such assignment or sublease must recite that it is and must be subject and subordinate to the provisions of this Lease, and the termination or cancellation of this Lease must constitute a termination and cancellation of every such assignment or sublease. Notwithstanding the foregoing, Landlord agrees that no merger, consolidation, corporate reorganization, or sale or transfer of Tenant's assets or stock (specifically including any inter-family or inter-company transfers), redemption or issuance of additional stock of any class, or assignment

or sublease to any person or entity which controls, is controlled by or is under common control with Tenant, must be deemed a Transfer hereunder.

16. NOTICES

Any notices required to be given hereunder, or which either party hereto may desire to give to the other, must be in writing. Such notice may be given by reputable overnight delivery service (with proof of receipt available), personal delivery or mailing the same by United States mail, registered or certified, return receipt requested, postage prepaid, at the following addresses identified for Landlord and Tenant, or to such other address as the respective parties may from time to time designate by notice given in the manner provided in this Section.

If to the Landlord:

City of Evanston
Attn: City Manager
2100 Ridge Avenue
Evanston, IL 60201

with a copy to:

City of Evanston
Attn: Corporation Counsel
2100 Ridge Avenue
Evanston, IL 60201

If to Tenant:

Pascal Berthoumieux
600 Davis Street
Evanston, IL 60201

with a copy to:

Mark A. LaRose
LaRose and Boscoe, Ltd.
200 N. LaSalle St. #2810
Chicago, IL 60601

For purposes of this Lease, a notice must be deemed given upon the date of actual receipt thereof or the date of proof of rejection thereof if delivered by hand or overnight courier service.

17. RIGHT TO GO UPON PREMISES

Landlord hereby reserves the right for itself or its duly authorized agents and representatives at all reasonable times during business hours of Tenant upon at least forty-eight (48) hours prior notice to Tenant and accompanied by a representative of Tenant (which may be the store manager or assistant manager) to enter upon the Premises for the purpose of inspecting the same and of showing the same to any prospective purchaser or encumbrance or tenant, and for the purpose of making any repairs which Landlord is required hereunder to make on the Property, but any such repairs must be made with all due dispatch during normal construction trade working hours, and in such manner as to minimize the inconvenience to Tenant in the conduct of its business, it being agreed that in the event of a necessity of emergency repairs to be made by Landlord, Landlord may enter upon the Premises forthwith to effect such repairs. Notwithstanding the foregoing, in the event that due to an entry by or on behalf of Landlord into the Premises, Tenant's use is materially interfered with and Tenant, from the standpoint of prudent business management, cannot open and operate the Premises for business for two (2) consecutive days, all Fixed Minimum Rent and other charges payable by Tenant hereunder must equitably abate commencing after such second (2nd) day, and continuing until such repairs are completed, unless such entry is required as a result of Tenant's

negligence or intentional misconduct.

18. DEFAULT

(a) Tenant Default.

(i) Events of Default. Including, but not limited to, the following events must be deemed to be an "event of default" hereunder by Tenant subject to Tenant's right to cure:

a. Tenant must fail to pay any item of Fixed Minimum Rent per Section 3 at the time and place when and where due and does not cure such failure within fifteen (15) business days after receipt of notice from Landlord of such failure;

b. Tenant must fail to comply with any other term, provision, covenant or warranty made under this Lease or if any of Tenant's representations and warranties made under this Lease are determined to be untrue, either when made or at any time during the Term, by Tenant, and Tenant must not cure such failure within thirty (30) days after Landlord's written notice thereof to Tenant. In the event Tenant cannot comply with such term, provision, or warranty, within said thirty (30) day period, Tenant must not be in default if Tenant is diligently and continuously making an effort to comply with such term, provision, covenant or warranty and Tenant completes the cure of the default; or

c. Tenant must make a general assignment the benefit of creditors, or must admit in writing its inability to pay its debts as they become due or must file a petition in bankruptcy.

(ii) Remedies. Upon the occurrence of an event of default, Landlord may, so long as such default continues, as permitted by law and subject to Landlord's obligation to use good faith efforts to mitigate damages, either:

terminate this Lease by written notice to Tenant, which written notice must specify a date for such termination at least fifteen (15) days after the date of such written termination notice and such termination must be effective as provided in such written notice unless Tenant must cure such default within such notice period, or not terminate this Lease as a result of the default of Tenant. If Tenant must fail to surrender the Premises upon such termination, Landlord may thereupon, reenter the Premises, or any part thereof, and expel or remove therefrom Tenant and any other persons occupying the same, using such means provided by law;

without terminating this Lease, Landlord may evict Tenant (by any means provided by law) and let or relet the Premises or any or all parts thereof for the whole or any part of the remainder of the Term hereof, or for a period of time in excess of the remainder of the Term hereof, and out of any rent so collected or received, Landlord must first pay to itself the expense of the cost of retaking and repossessing the Premises and the expense of removing all persons and property therefrom, and must, second, pay to itself any costs or expenses sustained in securing any new tenant or tenants (provided that such amount must not include any amounts incurred to restore the Premises to more than the condition originally delivered to Tenant), and must third, pay to itself any balance remaining, and apply the whole thereof or so much thereof as may be required toward payment of

the liability of Tenant to Landlord then or thereafter unpaid by Tenant; or pursue such other remedies as are available at law or in equity.

(b) Landlord Default. Should Landlord default in the performance of any covenant, provision, warranty, condition or agreement herein, or if any of Landlord's representations and warranties made under this Lease are determined to be untrue, either when made or at any time during the Term, and such default in the case of any failure by Landlord to pay any sum required to be paid to Tenant hereunder, continues for ten (10) business days after notice thereof from Tenant, or in case of any non-monetary default, continues for thirty (30) days after receipt by Landlord of written notice thereof from Tenant (except as otherwise provided herein), or if the default of Landlord is of a type which is not reasonably possible to cure within thirty (30) days, if Landlord has not commenced to cure said default within said thirty (30) day period and does not thereafter diligently prosecute the curing of said default to completion (except as otherwise provided herein), Tenant in addition to any and all other remedies which it may have at law and/or in equity including the right to seek injunctive relief without posting a bond or the obligation to prove irreparable harm, may pay or perform any obligations of Landlord hereunder and deduct the cost thereof from each installment of annual Fixed Minimum Rent payable pursuant to the terms of this Lease; provided, however, in no event must the amount of any such deduction exceed ten percent (10%) of the Fixed Minimum Rent payable on a monthly basis; provided, further, Tenant must not have the right to terminate this Lease except as expressly permitted herein.

19. SIGNS

Tenant may apply for signage (temporary and permanent signage) for the exterior and interior of the Premises, at its own expense, in order to conduct the business of Tenant. 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 Tenant agrees to be bound by such ordinances. Landlord cannot make representations in a lease agreement that Tenant must be entitled additional signage, a certain number of signs and/or dimensions of proposed signage, because the Tenant must make an application to the Sign Review Board, as provided by Code, but Landlord will not withhold, condition or delay its consent to a sign over the new entrance to the Premises which complies with applicable laws.

20. REPRESENTATIONS AND WARRANTIES

(a) Landlord represents, warrants and covenants to Tenant that, to Landlord's knowledge, the following is true as of the Effective Date:

- (i) all of the Premises is zoned and fit for commercial purposes, and the Permitted Use is permitted under the applicable zoning designation, and that the Premises and Property are presently properly subdivided in conformity with all applicable laws and suitable for the Permitted Use;
- (ii) Landlord is the fee simple owner of the Premises;

- (iii) the Premises is subject to no restrictions or continuing regulations of any kind or nature whatsoever incompatible with the Permitted Use and that there are no restrictions in any agreement by which Landlord is bound (including, but not limited to, Landlord's insurance policies) which would adversely affect Tenant's right to use the Premises for the Permitted Use during the Term;
 - (iv) Landlord shall deliver to Tenant on occupancy the Premises in good working order and condition, with roof, parapet walls and foundation watertight, and all utility systems, plumbing, drains and HVAC in functional condition;
 - (v) there are no exceptions to title with respect to and/or encumbrances on the Premises which would interfere with Tenants proposed use of the Premises;
 - (vi) Landlord has no notice of any proposed Assessments other than as reflected on the current tax bill;
 - (vii) Landlord has no knowledge of any condition that would preclude Tenant from obtaining all Tenant's permits and licenses necessary for Tenant to open for business and operate for the Permitted Use;
 - (ix) Landlord covenants that it is duly constituted under the laws of the state of Illinois as a municipal corporation, and the City employee who is acting as its signatory in this Lease is duly authorized and empowered to act for and on behalf of the municipal corporation; and
 - (x) there are no judicial, quasi-judicial, administrative or other orders, injunctions, moratoria or pending proceedings against Landlord or the Property which preclude or interfere with, or would preclude or interfere with, the construction contemplated herein or the occupancy and use of the Premises by Tenant for the purposes herein contemplated.
 - (xi) no third party has the right to object to Tenant's tenancy hereunder, prohibit the selling of any products sold by Tenant or the uses allowed herein or the right to consent to any feature of the Premises or Tenant's signage.
 - (xii) there are no mortgages, prime leases, deeds to secure debt, deeds of trust, or other instruments in the nature thereof, affecting Landlord or its interest in the Premises.
- (b) Tenant represents, warrants and covenants to Landlord that, to Tenant's knowledge, the following is true as of the Effective Date:
- (i) Tenant is a duly authorized and registered not-for-profit corporation with the State of Illinois and has the authority to execute this Agreement. Tenant must keep this tax exempt status during the term of the Lease.
 - (ii) Tenant will apply and obtain all necessary governmental approvals for its Permitted Use.

(iii) Execution and performance of this Lease will not (a) violate any judgment or order of Court applicable to or affecting Tenant; (b) breach the provisions of, or constitute a default under, any contract, agreement, instrument or obligation to which Tenant is a party or by which Tenant is bound, or (c) violate or conflict with any law or governmental regulation or permit applicable to Tenant.

- (c) All representations and warranties, covenants and indemnities contained in this Lease must survive the expiration or earlier termination of this Lease.

21. HOLDING OVER; END OF TERM

- (a) If Tenant must hold possession of the Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant must be deemed to be occupying the Premises as a tenant from month-to-month at one hundred fifty percent (150%) of the Fixed Minimum Rent in effect upon the expiration or termination of the immediately preceding term or (ii) Landlord may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over.
- (b) Upon the expiration or sooner termination of this Lease, Tenant must surrender the Premises to Landlord in as good order, condition and repair as when received by Tenant; ordinary wear and tear, casualty and condemnation excepted. This provision must expressly survive the termination or expiration of this Lease.
- (c) Any property, equipment, or product remaining in the Premises upon expiration of this Lease must be considered abandoned and property of the Landlord.

22. EXPENSES OF ENFORCEMENT

The Parties must bear its own costs, charges, expenses and attorney's fees, and any other fees incurred in the event of a dispute between the Parties.

23. SUCCESSORS IN INTEREST

All of the covenants, agreements, obligations, conditions and provisions of this Lease must inure to the benefit of and must bind the successors and permitted assigns of the respective parties hereto.

24. REMEDIES ARE CUMULATIVE

Remedies conferred by this Lease upon the respective parties are not intended to be exclusive, but are cumulative and in addition to remedies otherwise afforded by the law.

25. QUIET POSSESSION

Upon payment by the Tenant of the minimum, percentage and additional rent and all other sums due hereunder and upon the observance and performance of all covenants, terms and conditions on Tenant's part to be observed and performed, Tenant must peaceably and quietly hold and enjoy the

Premises for the Term of this Lease without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject nevertheless, to the terms and conditions of this Lease.

26. ALTERATION

(a) Changes Required by Law. Any structural changes, alterations or additions in or to the Premises which may be necessary or required by reason of any law, rule, regulation or order promulgated by competent governmental authority must be made at the sole cost and expense of Landlord, including but not limited to asbestos removal and disposal and interior and exterior compliance with the Americans with Disabilities Act (ADA) etc. Notwithstanding the foregoing, if any such changes, alterations or additions are required as a result of improvements made by Tenant during the Term hereof or due to Tenant's use of the Premises, such changes, alterations or additions must be made at the sole cost and expense of Tenant. Tenant may contest the validity of any such law, rule, regulation or order, but must indemnify and save Landlord harmless against the consequences of continued violation thereof by Tenant pending such contest.

(b) Alterations During Term. Tenant is permitted to perform interior, nonstructural alterations to the Premises and to revise the interior layout of the Premises. Tenant must obtain Landlord's written consent to any other alterations or construction which affects the structural nature of the Premises, which consent must not be unreasonably withheld, conditioned or delayed.

27. HAZARDOUS SUBSTANCES

(a) Tenant agrees that, except as herein set forth, it must not generate, use, store, handle or dispose of on or transport over the Premises any Hazardous Substances (defined below) in violation of any Environmental Laws (defined below), except as such incidental amounts of Hazardous Substances as may be required for Tenant to conduct the Permitted Use, but in no instance shall Tenant dispose of Hazardous Substances on the Premises in violation of Environmental Laws.

(b) If any time during the Term, Hazardous Substances are found in the Premises or on adjacent property and such Hazardous Substances are not the result of Tenant's use of or work on the Premises, then, in such event, Tenant must have the immediate right to terminate this Lease upon written notice to Landlord. Under no circumstances must Tenant be responsible for remediation or cleanup of any Hazardous Substances on the Premises or adjacent property that were not caused by Tenant, or Tenant's subcontractors, agents or employees. Furthermore, with regard to any Hazardous Substances caused by Tenant or its agents, contractors or employees, Tenant must remove same, in compliance with applicable Environmental Laws, at Tenant's sole cost and expense. Tenant must defend, indemnify, and hold Landlord harmless from and against any and all costs, damages, expenses and/or liabilities (including reasonable attorneys' fees) which Landlord may suffer as a result of any written demand (whether or not a suit), claim, suit or action regarding any such Hazardous Substances (whether alleged or real) present due to Tenant and/or regarding the removal and clean-up of same or resulting from the presence of such Hazardous Substances. The representation, warranty and indemnity of Tenant described in this subsection shall survive the termination or expiration of this Lease or purchase of the Property as provided herein. Other than Hazardous Substances caused by Tenant or its agents, contractors or employees, Tenant shall have

no duty whatsoever to remove any Hazardous Substances from the Property.

- (c) In the event that during the Term of this Lease, Tenant is prevented from performing Tenant's Work and/or Tenant must be unable to operate for a period of thirty (30) days or more for the Permitted Use at the Premises and ceases operating at the Premises as a result of remediation of Hazardous Substances not caused by Tenant or its agents, contractors or employees, and Tenant does not terminate the Lease as provided for in Section 27(b) above, then Fixed Minimum Rent, Additional Rent and all other charges due hereunder must equitably abate until such time as Tenant is able to resume the performance of Tenant's Work and/or the operation of its business in the Premises.
- (d) Tenant, for itself and its successors in interest, waives and releases Landlord from any and all past and present claims and causes of action arising from or relating to the presence or alleged presence of Hazardous Substances in, on, under, about or emanating from the Property, including without limitation any claims for cost recovery, contribution, natural resources damages, property damage, consequential damages, personal or bodily injury (including death) or otherwise, under or on account of any violation, or arising under, Environmental Law.
- (e) The term "**Hazardous Substance**" includes, without limitation, any material or substance (regardless of whether discarded, recyclable or recoverable) to which liability or standards of conduct are imposed pursuant to Environmental Laws, including, but not limited to (i) any defined, characteristic or listed "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste", "hazardous substance", "hazardous material", "regulated substance", "pollutant", "contaminant" or waste, (ii) petroleum (including crude oil or any fraction thereof, natural gas, liquefied natural gas, synthetic gas or mixtures of natural gas and synthetic gas), (iii) asbestos and any asbestos containing materials, (iv) substances known to cause cancer and/or reproductive toxicity, (v) polychlorinated biphenyls (PCBs) and (vi) radioactive material. The term "**Environmental Law**" means any federal, state or local law, statute, ordinance, rule, regulation, order, consent, decree, judgment or common-law doctrine, interpretation thereof, and provisions and conditions of permits, licenses, plans, approvals and other operating authorizations whether currently in force or hereafter enacted relating to health, industrial hygiene or the environmental conditions on, under or about the Premises or the Property, as such laws are amended and the regulations and administrative codes applicable thereto, including, by way of example and without limitation, the following: the Illinois Environmental Protection Act; Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); the Resource Conservation and Recovery Act ("RCRA"); the Clean Air Act; the Clean Water Act; the Safe Water Drinking Act ("SDWA"); the Toxic Substances Control Act; and all state and local counterparts thereto; and any common or civil law obligations including, without limitation, nuisance or trespass. It is the intent of the parties hereto to construe the terms "Hazardous Substance" and "Environmental Law" in their broadest sense.

28. GENERAL CONDITIONS

- (a) Time is of the essence of this Lease. Any deadlines in this Lease which cannot be met because of delays caused by governmental regulations, inability to procure labor or materials, strikes, acts of God, or other causes (other than financial), beyond the control of Landlord or Tenant ("**Force Majeure**") must be extended by the amount of time caused by such delays; provided, however, the

payment of rent must not be excused. Notwithstanding anything herein to the contrary, the failure by Landlord to construct the Premises according to building code and/or to receive timely inspections by the necessary authorities due solely to the negligence, misconduct or financial inability of Landlord or Landlord's contractors, employees or representatives must not constitute Force Majeure. In order for Landlord to claim the occurrence of Force Majeure, Landlord must have notified Tenant in writing of such occurrence within twenty (20) business days after the initial occurrence.

- (b) No waiver of any breach of the covenants, agreements, obligations and conditions of this Lease to be kept or performed by either party hereto must be construed to be a waiver of any succeeding breach of the same or any other covenant, agreement, obligation, condition or provision hereof.
- (c) Tenant must not be responsible for the payment of any commissions in relation to the leasing transaction represented by this Lease. Landlord and Tenant each covenant that they have not dealt with any real estate broker or finder with respect to this Lease (herein collectively "**Brokers**"). Each party must hold the other party harmless from all damages, claims, liabilities or expenses, including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from any claims that may be asserted against the other party by any real estate broker or finder with whom the indemnifying party either has or is purported to have dealt, except for the Brokers.
- (d) The use herein of any gender or number must not be deemed to make inapplicable the provision should the gender or number be inappropriate to the party referenced. All section headings, titles or captions contained in this Lease are for convenience only and must not be deemed part of this Lease and must not in any way limit or amplify the terms and provisions of this Lease.
- (e) Landlord and Tenant have negotiated this Lease, have had the opportunity to be advised respecting the provisions contained herein and have had the right to approve each and every provision hereof; therefore, this Lease must not be construed against either Landlord or Tenant as a result of the preparation of this Lease by or on behalf of either party.
- (f) If any clause, sentence or other portion of this Lease must become invalid or unenforceable, the remaining portions thereof must remain in full force and effect.
- (g) Wherever in this Lease Landlord or Tenant is required to give consent, such consent must not be unreasonably withheld, conditioned or delayed except to the extent otherwise expressly provided herein.
- (h) If the time for performance of any obligation or taking any action under this Lease expires on a Saturday, Sunday or legal holiday, the time for such performance or taking such action must be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday. If the day on which rent or any other payment due hereunder is payable falls on a Saturday, Sunday or on a legal holiday, it must be payable on the next succeeding day which is not a Saturday, Sunday or legal holiday.
- (i) Each covenant hereunder of Landlord, whether affirmative or negative in nature, is intended to and must bind the Landlord and each successive owner of the Premises and their respective heirs,

successors and assigns.

- (j) There must be no personal liability on Landlord, its elected officials, officers, employees, agents, or any successor in interest with respect to any provisions of this Lease, or amendments, modifications or renewals hereof. Tenant must look solely to the then owner's interest in the Premises (including but not limited to any insurance proceeds, rents, or judgments) for the satisfaction of any remedies of Tenant in the event of a breach by Landlord of any of its obligations hereunder.
- (l) Landlord hereunder must have the right to assign, sell or transfer Landlord's interest in this Lease or the Premises with consent of Tenant, which must not be unreasonably withheld. In the event of any such transfer, the transferor must be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer.
- (m) Tenant acknowledges that it will seek to hire qualified Evanston residents for employment in the Tenant's business located at the Premises.
- (n) The parties agree the this Lease must be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes must be in the Circuit Court of Cook County, Illinois.
- (o) There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof must be used to interpret or construe this Lease. This Lease cannot be changed or terminated except by a written instrument subsequently executed by the parties hereto. IN WITNESS WHEREOF, the respective parties hereto have executed this Lease by officers or agents thereunto duly authorized. The Effective date is the date executed by the City.

Landlord:

CITY OF EVANSTON,
an Illinois municipal corporation

By: _____
Name: Wally Bobkiewicz

Title: City Manager

Dated: _____, 2017

Tenant:

SWEET VENDOME, INC.

an Illinois corporation, d/b/a "Cafe Coralie"

By: _____

Name: _____

Its: President

EXHIBIT A

LEGAL DESCRIPTION

LOT 5 (EXCEPT THE EAST .062 FEET THEREOF) IN BLOCK 1 IN NILES HOWARD TERMINAL ADDITION, A SUBDIVISION OF THE SOUTH 6.25 CHAINS (412.50 FEET) OF THAT PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, LYING WEST OF THE RIGHT OF WAY OF THE CHICAGO AND NORTH WESTERN RAILROAD, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 11-30-209-023-0000

Commonly known: 633 Howard Street, Evanston, IL 60202.

EXHIBIT B

SITE PLAN

EXHIBIT C
PROJECT BUDGET