

CITY OF BUFFALO URBAN RENEWAL AGENCY
SMALL BUSINESS EMERGENCY ASSISTANCE PROGRAM
LOAN AGREEMENT

BETWEEN

CITY OF BUFFALO URBAN RENEWAL AGENCY

AND

225 ELLICOTT STREET MARKET LLC, DBA BRAYMILLER MARKET

This Small Business Emergency Assistance Program Forgivable Loan Agreement (“Agreement”) is entered into this ____ day of November, 2023 (“Effective Date”), by and between the City of Buffalo Urban Renewal Agency (“BURA”, “Agency”), a New York State Urban Renewal Agency of the City of Buffalo (“City”), and 225 Ellicott Street Market LLC, DBA Braymiller Market, a New York State Limited Liability Company located at 225 Ellicott Street, Buffalo NY 14203 (“Borrower”). BURA and Borrower are at times individually referred to as “Party” and collectively as “Parties” herein.

RECITALS

WHEREAS, the City of Buffalo, as a recipient under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Section 5301 et seq.) (the “Act”), receives an entitlement Community Development Block Grant annually (“CDBG funds”) from the United States Department of Housing and Urban Development (“HUD”); and

WHEREAS, On January 20, 2021, the City of Buffalo and the City of Buffalo Urban Renewal Agency have entered into a subrecipient agreement for administration and management of CDBG-CV funds allocated to the City (BURA Subrecipient Agreement).

WHEREAS, on March 27, 2020, the President of the United States signed H.R. 748, known as the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The CARES Act provides an additional \$5 billion of Community Development Block Grant – Coronavirus (“CDBG-CV”) funds to rapidly prepare, prevent, and respond to the coronavirus pandemic; and

WHEREAS, about April 2020 and again about September 2020, HUD notified the City of Buffalo and BURA that it had allocated \$11,440,746 in CDBG-CV funds to the City. According to HUD, the City may use the funds for a range of CDBG-eligible activities that prevent, prepare for, and respond to the spread of infectious disease such as the coronavirus (COVID-19); and

WHEREAS, on July 27, 2023, the City Council approved an amendment to the City’s Fiscal Year 2019-2020 Annual Action Plan and allocated CDBG-CV funds to COVID-19 response activities, including reallocation of CDBG-CV funding to aid Braymiller Market, the City of Buffalo’s only downtown grocery store. The City has specifically approved the use of these funds by BURA as described in this Agreement. This Special Economic Development Activity will provide a pathway to short-term assistance to address the COVID-19 impacts of loss of revenue resulting from reductions to downtown Buffalo’s office occupancy rates and day-to-day foot traffic; and

WHEREAS, Borrower owns and operates Braymiller Market located in the City (“the Business”); and

WHEREAS, Borrower requested a forgivable loan from the Agency through the Program by submitting a Loan Application (“Loan Application”), attached hereto as Exhibit A and incorporated herein; and

WHEREAS, Borrower acknowledges it has reviewed the Special Economic Development Activity Program Guidelines developed for this assistance (“Program Guidelines”), attached hereto as Exhibit B and incorporated herein; and

WHEREAS, Borrower represents that Borrower’s participation in the Program, funded by the Act, complies with all applicable federal laws, regulations and executive orders; and

WHEREAS, any environmental clearances required to be obtained prior to BURA’s release of CDBG funds to Borrower have been obtained; and

WHEREAS, BURA intends to provide, and Borrower intends to receive, a loan subject to all terms and conditions set forth in this Agreement; and

WHEREAS, the parties acknowledge that Ciminelli Real Estate Corporation (“Ciminelli”) will provide up to \$500,000 to the Borrower as further loan assistance to maintain the business of the Borrower pursuant to the terms and conditions of this Agreement (“Ciminelli Capital Loan”).

NOW, THEREFORE, the Parties agree as follows:

1. LOAN

- 1.1. Subject to the conditions set forth herein, City and BURA agree to extend a forgivable loan to Borrower in the amount of Five Hundred Sixty-One Thousand, Three Hundred Seventeen Dollars and Fifty-Seven Cents (\$561,317.57) (“Loan”). Funds to be distributed pursuant to the Loan shall be referred to herein as “Loan Funds.”
- 1.2. Loan Funds shall be disbursed by BURA to Borrower in accordance with the Program Guidelines.

2. TERMS OF THE LOAN

- 2.1. Interest Rate. Simple interest shall accrue on the unpaid principal balance of the Loan at the rate of nine percent (9%) per annum, compounded monthly on the basis of a three hundred sixty (360) day year, commencing on the Effective Date of this Agreement (“Interest Rate”). If a law which applies to the Loan and which sets maximum interest rates or loan charges is interpreted by a court of competent jurisdiction in a manner as would cause the interest or other loan charges collected or to be collected in connection with the Loan to exceed the limits permitted by such laws, then: (i) any such interest or loan charge shall be reduced by the amount necessary to reduce the interest or charge to the permitted limit; and (ii) any sums already collected which exceed permitted limited will be refunded by the Agency. The Agency may choose to make the refund by

reducing the outstanding principal amount of the Loan or by making a direct payment to the Borrower.

- 2.2. Repayment of Loan. No payment shall be due unless the borrower is in default, per the conditions set forth in Section 2.5. In the event of default as defined in Section 6 below, Borrower shall immediately repay all principal and accrued interest.
- 2.3. Prepayment. One year from effective date, Borrower shall have the right to prepay all or any portion of the Loan outstanding without penalty.
- 2.4. Security. Borrower shall execute a promissory note in favor of the Agency to evidence its obligations with respect to the Loan. The promissory note shall be in substantially the form as set forth in **Exhibit C** hereto. The Loan shall be secured by a personal guaranty of Stuart Green note in substantially the form as set forth in **Exhibit D** attached hereto.

The mortgage shall be secured by the property at 6936 Gowanda State Road, Hamburg, New York 14075, naming **225 Ellicott Commercial LLC**, a New York limited liability company, as the borrower, and naming **6936 Gowanda State Road, Properties LLC**, a New York limited liability company, as the mortgagor. The mortgage shall be in substantially the form as set forth in **Exhibit E** hereto.

Any security interests or assurances related to the Ciminelli Capital Loan shall be subordinate to the promissory note and personal guaranty related to the Loan Funds.

- 2.5. Loan Forgiveness. BURA and Borrower agree that the Loan balance and any accrued interest may be forgiven if the following conditions are met:
 - 2.5.1. Borrower continues to own and operate the Business for at least two (2) years from the date of the full disbursement of the Loan. Borrower's continuance of operation of the Business shall consist of the Business as a food market providing staple and fresh foods including but not limited to vegetables and fruit; meat, poultry, or fish; dairy products; and breads and grains; additionally, the Business shall keep open hours of 7 a.m. until 8 p.m. daily Sunday through Saturday; and
 - 2.5.2. Borrower employs and/or creates positions for at least seven (7) low- to moderate-income full time equivalent (FTE) employees meeting the income requirements set forth in the Program Guidelines for at least twelve (12) months from the Effective Date.
 - 2.5.3 Borrower must agree to implement key initiatives which would serve to increase Business profits during the twelve (12) months following execution of this agreement, including but not limited to:
 - (i) Marketing Plan;
 - (ii) Business Plan; and
 - (iii) Community Benefits.

The foregoing requirements will be more fully outlined in Exhibit E incorporated by reference herein.

3. HUD REQUIREMENTS

- 3.1. Borrower acknowledges and understands that City is a recipient, and BURA is a subrecipient of CDBG funds from HUD and that Borrower is subject to HUD and CDBG regulations and requirements. Borrower shall comply with all standard CDBG regulations and with all assurances and agreements made by the City to HUD in connection with CDBG-CV funds, including, but not limited to, the eligibility requirements set forth in the Program Guidelines.
- 3.2. Borrower shall retain at least seven (7) full-time equivalent employees in accordance with CDBG program requirements and shall comply with the CDBG eligibility provisions of Program Guidelines. In addition, Borrower shall provide reporting/monitoring documents/forms, which include copies of the profit and loss income statements, bank statements, and Employee Questionnaire forms, in substantially the form as set forth within Exhibit A hereto, to the City of Buffalo Mayor's Office of Strategic Planning Division of Development on a quarterly basis. In addition to the reporting/monitoring documents/forms, Borrower shall also provide the Job Creation/ Retention form, in substantially the form as set forth in Exhibit F attached hereto, on a quarterly basis, and shall provide or cause to be provided owner's filed IRS form 1040 to BURA on an annual basis, sufficient to demonstrate compliance with the Program delivery and related requirements.
- 3.3. The Borrower certifies that the activities carried out under this Agreement will meet a CDBG program National Objective by facilitating the avoidance of job losses caused by business closures related to social distancing through the provision of short-term working capital assistance to small businesses for the purpose of enabling the retention of jobs held by low- and moderate-income persons and/or meeting community development needs having a particular urgency as defined in 24 CFR 570.208
- 3.4. Borrower shall not use the Loan Funds in a manner that results in a prohibited duplication of benefits as defined by the CARES Act. Borrower shall comply with HUD's requirements for duplication of benefits, imposed on the City, which are: CDBG-CV funds may not be used to pay costs if another source of financial assistance is available to pay that cost. In the event it is determined that Borrower duplicated benefits through the use of CDBG-CV funds, Borrower shall repay the Loan, or such portion thereof determined to be duplicated benefits. If the Borrower receives any additional payment that could be considered a duplication of benefits, Borrower shall immediately notify the Agency and shall return such payments to the Agency up to the amount funded by this Agreement.

4. PERIOD OF LOAN UTILIZATION AND PERIOD OF PERFORMANCE

The period of loan utilization, meaning the period during which Borrower may utilize the Loan Funds, is June 2022 through May 2023.

The period of performance, meaning satisfaction of the conditions of loan forgiveness, is two years from full disbursement of the Loan.

5. RESTRICTIONS ON USE OF FUNDS

- 5.1. The Loan Funds are subject to the following expenditure conditions (“Approved Uses”):
 - 5.1.1. The Loan Funds shall be expended solely for the purposes provided in this Agreement, including the Program Guidelines, and must be expended during the Period of Loan Utilization;
 - 5.1.2. Loan Funds may be used for working capital to cover the Business’s day-to-day business operating expenses such as, utility bills, payroll excepting owner’s draw which is not an eligible expense, inventory for resale, technology, marketing/communication, or other similar expenses that occur in the ordinary course of operations. Loan Funds may also be used toward the cost of obtaining personal protective equipment for staff and customers as well as devices intended to enhance safety of staff and customers, such as hands-free payment devices, sanitation supplies, and plexiglass partitions (each hereinafter an “Eligible Expense[s]”);
 - 5.1.3. The Loan Funds shall not be used for any activity that *would* violate City, state or federal statutory or decisional law such as regulations affecting non-profit or tax-exempt organizations exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code; and
 - 5.1.4. The Loan Funds shall not be used for ineligible expenses, as defined by the U.S. Department of Treasury, which include, but are not limited to, damages covered by insurance, payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency, expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, reimbursement to donors for donated items or services, workforce bonuses other than hazard pay or overtime, severance pay and legal settlements.
- 5.2. Borrower further agrees that the Loan Funds will be spent solely for the Approved Uses and that the Loan Funds must be used by Borrower by the deadline set forth herein; otherwise, the Loan Funds shall be returned to BURA, as provided in Section 5.4 below.
- 5.3. If the BURA determines Loan Funds have been used for an ineligible expense, as determined in the sole discretion of the Agency, the Borrower shall pay for the ineligible expenses out of its own funds and shall then use the Loan Funds for an Eligible Expense

or return the Loan Funds used for ineligible expenses to the BURA within ten (10) days of the BURA notifying the Borrower that the expenses are ineligible.

- 5.4. The Agency and City may inspect Borrower's business and such financial records as may be necessary, in both the Agency's or the City's judgment, to ensure eligibility prior to release of any funds pursuant to this Agreement.
- 5.6. Upon 72 hours' notice, Borrower will allow the BURA to inspect Borrower's business and such financial records as may be necessary, in Agency's or the City's judgment, to verify that Loan Funds are being used in accordance with the Program requirements.

6. Events of Default

6.1 The Occurrence of any of the following shall constitute an Event of Default:

- 6.1.1 The Borrower shall cease to own or operate the Business as described in Section 2.5.1 and 2.5.2 above;
- 6.1.2 The Borrower files for bankruptcy at any point during the two (2) year period from disbursement of the Loan;
- 6.1.3 The Borrower enters into an agreement of sale of the business;
- 6.1.4 The Borrower uses the funds for an ineligible use and does not repay the amount required by within the time allocated for repayment; and
- 6.1.5 The Borrower fails to make Loan payments (if required), by the prescribed due date.

6.2 If any Event of Default described in Section 6.1 shall occur and be continuing for a period of five (5) days after notice of such Event of Default has been given to the Borrower, then the City of Buffalo and BURA may declare the outstanding unpaid principal balance and accrued interest of the Forgivable Loan to be forthwith due and payable, whereupon the Forgivable Loan shall immediately become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything in this Agreement to the contrary notwithstanding.

7. Pre-Closing Conditions

As a condition of closing the Loan Funds, the following must be provided to the satisfaction of BURA and the City of Buffalo:

BURA CLOSING CONDITIONS TO BE PROVIDED

Additional OSP Closing Conditions:

- a. Loan commitment and closing documents related to the Ciminelli Capital Loan;
- b. Articles of Organization, operating agreement and resolution of the LLC approving the Ciminelli Capital Loan and the Loan Funds Loan by Borrower;

- c. Borrower work out plan;
- d. Personal tax returns, including any LLC related schedules of Stuart Green for years 2020, 2021 and 2022(if available)

8. REPORTING AND ACCOUNTING REQUIREMENTS

- 8.1. At all times during the term of this Agreement, Borrower shall maintain true, proper, and complete books, records, and accounts (collectively, "Books and Records") in which shall be entered fully and accurately all transactions taken with respect to the expenditure of the Loan Funds. Borrower shall make available to City and/or Agency such Books and Records within ten (10) calendar days of the City's and/or Agency's request.
- 8.2. Borrower will be responsible for providing documentation, including receipts, to the Agency and City that accounts for how the entirety of the Loan Funds received were used to fund Eligible Expenses according to the timelines specified in the Program Guidelines. Borrower shall provide any additional information or documentation related to these expenditures requested by the City or Agency within ten (10) calendar days of City's or the Agency's request.
- 6.3. City and Agency reserves the right to designate its own employee representative(s) or its contracted representative(s) with a Certified Public Accounting firm who shall have the right to audit Borrower's accounting procedures and internal controls of Borrower's financial systems as they relate to the Loan Application and use of Loan Funds and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement. Any such audit(s) shall be undertaken by City or Agency and/or their representative(s) at mutually agreed upon reasonable times and in conformance with generally accepted auditing standards. Borrower agrees to fully cooperate with any such audit(s).
- 6.4. Borrower agrees to exercise prudent financial management processes including proper oversight of all assets, budget preparation, and timely reporting including budget-to-actual-comparisons.
- 6.5. In the event Borrower does not make the above-referenced records available within the City of Buffalo, New York, Borrower shall pay all necessary and reasonable expenses incurred by City in conducting any audit at the location where said records and books of account are maintained.
- 6.6 Annual financial statement review by a third-party independent firm during the term of the loan due ninety (90) days from end of the fiscal year.

7. USE OF LOAN FUNDS

The Loan Funds shall be used solely by Borrower for the Eligible Uses as described in this Agreement including but not limited to Sections 2 and 5 above

8. INDEMNIFICATION

- 8.1. To the fullest extent permitted by law, Borrower shall indemnify, defend and hold harmless the Agency, the City, its City Council, boards and commissions, officers, agents, volunteers, and

employees from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever, which may arise from or in any manner relate (directly or indirectly) to misrepresentations by Borrower, the expenditure of Loan Funds, the Loan Application, or the Agreement, including the negligent and/or willful acts, errors and/or omissions of the Borrower, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, and anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them. The provisions of this paragraph shall survive the termination of this Agreement.

8.2. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. Any policy limits do not act as a limitation upon the amount of indemnification to be provided by Borrower.

9. BORROWER INDEPENDENCE

In the performance of this Agreement, Borrower, and the agents and employees of Borrower, shall act in an independent capacity and are not officers, employees or agents of the City and/or Agency. The manner and means of performing the Approved Uses are under the control of Borrower, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Borrower or any of Borrower's employees or agents, to be the agents or employees of City and/or Agency. Anything in this Agreement that may appear to give City the right to direct Borrower as to the details of the performance or to exercise a measure of control over Borrower shall mean only that Borrower shall follow the desires of City with respect to the restrictions of the Approved Uses.

10. PROHIBITION AGAINST TRANSFERS

Borrower shall not assign, sublease, hypothecate or transfer this Agreement or any of the obligations to be performed under this Agreement, directly or indirectly, by operation of law or otherwise without prior written consent of Agency and/or City. Any attempt to do so without written consent of City and Agency shall be null and void.

11. NOTICES

11.1. All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, first class mail, addressed as hereinafter provided.

11.2. All notices, demands, requests or approvals from Borrower to Agency shall be addressed to the Agency at:

Attn: General Counsel

City of Buffalo Urban Renewal Agency

65 Niagara Square

Buffalo, NY 14202

With a copy to:

Attention: Executive Director

City of Buffalo – Mayor's Office of Strategic Planning

65 Niagara Square, 9th Floor

Buffalo, NY 14202

11.3. All notices, demands, requests or approvals from City to Borrower shall be addressed to Borrower at:

Attn: Stuart Green

225 Ellicott Street Market LLC, dba Braymiller Market

225 Ellicott Street

Buffalo NY 14203

12. TERMINATION

12.1. Termination by Agency. The Agency BUR may terminate this Agreement if it determines that the Borrower has made any misrepresentations that relate in any way to the Loan Application or expenditure of Loan Funds by providing Borrower with three (3) calendar days' notice of termination, in writing. In the event of termination, Borrower shall return any unexpended Loan Funds within ten (10) business days. Termination of this Agreement shall not relieve Borrower of any liability to expend Loan Funds on only Approved Uses, to provide receipts or documentation thereof to City, or otherwise to comply with the substantive terms of this Agreement.

12.2. Specific Performance. Borrower agrees that the City has the legal right, and all necessary conditions have been satisfied, to specifically enforce Borrower's obligations pursuant to this Agreement.

13. STANDARD PROVISIONS

13.1. Recitals. City and Borrower acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

13.2. Compliance With all Laws. Borrower shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted and comply with all state and county guidance for reopening.

13.3. Waiver. A waiver by either Party of any breach, term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

13.4. Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

13.5. Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Loan Application or any other attachments attached hereto, the terms of this Agreement shall govern.

13.6. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

13.7. Amendments. This Agreement may be modified or amended only by a written document executed by both Borrower and Agency and approved as to form by the General Counsel of the Agency.

13.8. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

13.9. Controlling Law And Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Erie, State of New York.

13.10. Equal Opportunity Employment. Borrower represents that it is an equal opportunity employer and it shall not discriminate against any contractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age or any other impermissible basis under law.

13.11. No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

13.12. Taxes. The City and Borrower expressly agree that the Borrower shall be responsible for all federal and/or state taxes that are associated in any way with the receipt and expenditure of the Loan Funds. City makes no representations whatsoever as to the tax consequences, if any, of Borrower's acceptance of Loan Funds.

13.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

14. INSURANCE

The borrow shall have in force and shall maintain, at its own expense, insurance in not less than the following amounts during the performance of service called for under the contract. The borrower must, prior to agreement execution, and for each extension of agreement, furnish to BURA certificates of insurance as evidence of such coverage stated below. In addition, the City of Buffalo and Buffalo Urban Renewal Agency must be named as additional insureds on the policy; and the certificate holder must be the City of Buffalo and the Buffalo Urban Renewal Agency, 214 City Hall, Buffalo NY.

- A. Workmen’s Compensation and Disability Insurance – covering the administrator’s employees as required by New York State Law.
- B. Comprehensive Bodily Injury and Property Damage Liability Insurance:
 - a. General Aggregate (other than products-completed operations) \$2,000,000
 - b. Products-Completed Operations Aggregate Limit \$1,000,000
 - c. Personal & Advertising Injury Limit \$1,000,000
 - d. Each Occurrence Limit \$1,000,000
 - e. Comprehensive Automobile Liability Insurance – combined single limit of \$1,000,000 covering bodily injury and property damage.
 - f. Professional Liability/ Errors and Omissions - \$1,000,000 per occurrence if required in the sole discretion of BURA.

No agreement will be executed with the borrower until the current certificates of insurance have been received and approved by the Office of Strategic Planning. If the insurance as evidence by the certificates furnished by the administrator expires or is cancelled during the term of the agreement, services and related payments will be suspended.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates written below.

APPROVED AS TO FORM:

Date: _____

By: _____

Scott Billman

General Counsel, BURA

CITY OF BUFFALO URBAN RENEWAL AGENCY,

Date: _____

By: _____

Brendan Mehaffy

Vice Chair, BURA

BORROWER:

Date: _____

By: _____

Name: _____

Officer Title: _____

- Attachment:
- Exhibit A: Borrower's Loan Application – *separately attached*
 - Exhibit B: Small Business Emergency Assistance Program Guidelines
 - Exhibit C: Promissory Note
 - Exhibit D: Personal Guaranty – *separately attached*
 - Exhibit E: Mortgage – *separately attached*
 - Exhibit F: Key Initiatives
 - Exhibit G: Loan Schedule

Exhibit A – Borrower’s Loan Application
Separately Attached

DRAFT

Exhibit B - Small Business Emergency Assistance Program Guidelines

DRAFT

ITEM	PROGRAM DESIGN, TERMS & CONDITIONS
Source of Funds	CDBG-CV funds
Eligible Uses	<p>Working Capital Assistance for:</p> <ol style="list-style-type: none"> 1. Payroll 2. Utilities 3. Inventory for resale only 4. Professional Services – including marketing <p>The funding for Working Capital Assistance for extended COVID-effects response shall only fund working capital expenses within a twelve (12) month performance period, not accrued expenses or debts outside of the established eligibility period. The twelve-month performance period shall be 12 months prior the date of completed program application.</p> <p>Mortgage payments will not be an eligible use of funds.</p>
Recommended Assistance Type	<p>Forgivable loan with recapture provisions for repayment in event(s) of default and/or if evidence of fraud, waste and/or violation of program rules.</p> <p>Loan Agreement by and between Braymiller Market LLC (borrower) and Buffalo Urban Renewal Agency</p>
Loan Term and Loan Conditions	<p>Two Year Loan Term:</p> <ul style="list-style-type: none"> - Year One: per HUD requirements borrower must create and/or retain at least seven (7) full time equivalent (FTE) low-moderate-income jobs for a period of one year: Borrower in fact employs approximately nineteen (19) FTE low-moderate income employees. - Years One and Two: borrower must continue to operate the business as a fresh and staple food market for a period of two years <p>Closing Conditions: demonstrated commitment from Evans Bank (for mortgage modification) and Ciminelli Real Estate (future working capital loan funds assistance)</p>
Maximum Assistance	Up to \$562,557 to be determined based on an Unmet Financial need following a Duplication of Benefit Analysis.
Eligibility Conditions:	<ol style="list-style-type: none"> 1. Show proof of Employer paying Payroll Taxes prior to May 2022 2. Be current on Federal, State, and Local Taxes 3. Have no pending petition for bankruptcy protection 4. Have no pending liability claims

<p>National Objective and CDBG Eligibility</p>	<p>Low- and Moderate-Income People – Jobs</p> <ol style="list-style-type: none"> 1. Per HUD requirements applicant must complete a Low- Mod- Income Job Creation/ Retention Form as part of application that identifies at least seven (7) full time equivalent (FTE) position(s) grossing less than \$41,950 per year in connection with this loan. 2. Applicant must supply the title of such positions 3. Applicant must state the wages and/or salary for the positions to be retained, re-hired, or created with this program funding 4. Applicant must include employees’ job category <p>Funding Agreement includes the following language: “The Beneficiary certifies that the activities carried out under this Agreement will meet a CDBG program National Objective by facilitating the avoidance of job losses caused by business closures related to social distancing through the provision of short-term working capital assistance to small businesses for the purpose of enabling the retention of jobs held by low- and moderate-income persons and/or meeting community development needs having a particular urgency as defined in 24 CFR 570.208”</p>
<p>CDBG Duplication of Benefits</p>	<p>Application to disclose prospective benefits such as: CRF, SBA, PPP & EIDL, Business Interruption Insurance Claim and other assistance. Disclosure shall include the timing, purpose and amount of funding received as well as any current balances available to the Business. Grant Agreement will have Claw Back language and a Subrogation Clause if DOB identified. End of Grant Report will require Business to submit accounting of how it used its Small Business Working Capital for COVID Recovery forgivable loan funds compared to any other potentially duplicating benefits</p> <p>Forgivable Loan Agreement includes following language: “By executing this Agreement, the Beneficiary certifies that it shall not use the Loan Funds to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse. If the Beneficiary receives any additional payment that could be considered a duplication of benefits, Beneficiary shall immediately notify the HUD Grantee and shall return such payments to the HUD Grantee up to the amount funded by this Agreement.”</p>
<p>Monitoring</p>	<p>Grantee may complete activities in IDIS after 365-day performance period. Grantee shall reserve the right to monitor for whatever time period it feels appropriate following the completion of the activities.</p>

Exhibit C – Promissory Note

Promissory Note

\$561,317.57

Buffalo, New York

_____, ____, 2023

FOR VALUE RECEIVED, the undersigned **225 ELLICOTT STREET MARKET LLC**, a, New York Limited Liability Company formed under the laws of the State of New York, whose address is 225 Ellicott Street, Buffalo NY 14203 (the “Borrower”) promises to pay to the order of the **CITY OF BUFFALO URBAN RENEWAL AGENCY** (“BURA”), a public body corporate established pursuant to Article 15 and 15A of the General Municipal Law of the State of New York and The City of Buffalo (City) known collectively as “Lender”, the Principal Sum of **Five Hundred Sixty One Thousand, Three Hundred and Seventeen and fifty-seven cents dollars (\$561,317.57) of Community Development Block Grant Coronavirus (“CDBG-CV”) funds (the “Assistance” or “City Funding”) available for the Project (the “Principal Amount”)** and which in sum has been made available to Borrower by Lender pursuant to the terms set forth in the Agreement Between BURA and 225 Ellicott Market of Buffalo New York, LLC, DBA Braymiller Market (“Loan Agreement”).

1. **Interest.** Interest shall accrue on the unpaid principal balance at a rate of 9% per annum, compounded monthly on the basis of a three hundred- and sixty-day (360) year, commencing on the Effective Date of this Agreement.

2. **Repayment.** If borrower is in default and the loan is not forgiven subject to the conditions specified in the Loan Agreement, the principal balance and any accrued interest of this Note will be due and payable immediately.

3. **Events of Default.** All of Borrower's obligations to Lender may be immediately terminated and the entire unpaid balance of all of Borrower's indebtedness to Lender declared to be immediately due and payable and/or the interest rate may be increased to that rate which may be charged upon the occurrence of an Event of Default and after any applicable notice and cure period at Lender's sole election.

4. **Late Charge; Involuntary Rate.** Any payment not received by Lender within ten (10) days of when due, shall cause a late payment charge of the greater of five dollars (\$5.00) or five percent (5%) of the amount due to be imposed. This provision for a late charge shall in no way impair any of BURA's rights under Loan Agreement.

5. **Acceleration; Incorporation by Reference.** IT IS EXPRESSLY AGREED that the Principal Amount, together with all interest accrued thereon and all other sums payable under this Note or any of the other loan documents executed in connection with or securing this Note (the "Loan Documents"), shall, at the option of Lender, become immediately due and payable upon the occurrence of any event of default after written notice and reasonable opportunity to cure not less than thirty (30) days for a payment default and not less than forty-five (45) days for any other default. The Loan Agreement and all exhibits are hereby incorporated by reference into this Note.

6. **Waivers.** Borrower and all endorsers, sureties and guarantors hereby jointly and severally waive presentation for payment, demand for payment, notice of nonpayment, protest, notice of protest, diligence in collecting and notice of dishonor; and without further notice, hereby consent to renewals, extensions or partial payments either before or after the Maturity Date, and to reduction in the rate of interest hereunder, whether involving the present or any future holder of this Note.

7. **Security.** This Note is secured by the Loan Agreement and the other Loan Documents which are all validly made, executed and delivered simultaneously herewith.

8. **Unexpended Loan Proceeds.** Any unexpended loan proceeds in the possession and/or control of the Borrower on the Maturity date shall be returned to the Lender by the Borrower.

9. **Notices.** Any notice, demand or request relating to any matter set forth in this Note shall be in writing and shall be given as provided in the Loan Agreement.

10. **Governing Law; Jurisdiction.** This Note and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York.

11. **Miscellaneous.** This Note may not be modified or terminated orally. No requirements hereunder may be waived at any time except by a writing signed by the holder hereof and no waiver shall be operative upon other than a single occasion. In any action or proceeding based on or arising out of the indebtedness evidenced by this Note, or against any or all of the security for this Note, no defense of adequacy of security or that resort must first be had to any particular security or remedy or to any other person shall be asserted. All rights and remedies herein specified are intended to be cumulative and not in substitution for any right or remedy otherwise available. The terms “Borrower” and “BURA” and “Lender” or “City” whenever used herein include the respective successors and assigns of the original parties. If there is more than one Borrower, all of their undertakings hereunder shall be deemed joint and several.

Notwithstanding anything to the contrary in the Loan Documents, after the satisfaction of the forgiveness conditions of the Loan, this Note is a non-recourse obligation of Borrower and Borrower, and its partners shall have no personal liability for repayment of the Loan.

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Exhibit D – Personal Guaranty
Separately Attached

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Exhibit E – Mortgage

Separately Attached

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Exhibit F – Key Initiatives

Marketing Plan

Borrower shall provide a brief quarterly update on marketing initiatives and impacts on revenue and overall business profitability.

Business Plan

Braymiller Market, at 225 Ellicott Street, Buffalo, supplies fresh, nutritionally rich, grown produce and community appropriate goods to residents of Buffalo. The opportunity for the newly constructed market located 225 Ellicott Street presented in 2017 as an expansion of the 81-year-old Hamburg location into the city of Buffalo. We recognized there were long underserved neighborhoods in Buffalo's Eastside. This location included easy access by car, on foot, and via public transportation. After convincing presentations by Ciminelli, and meeting with Mayor Brown, we made the commitment to make the 201 Ellicott conversion of a surface parking lot the future site of our new store. This was all prior to the unexpected devastation wrought by the COVID pandemic.

COVID caused people to change their routine overnight. Those who worked downtown switched gears and worked from their homes. Tens of thousands of commuters, who were potential customers, were lost to us. Due to COVID businesses closed and the chance of returning to what once was, is unlikely. Even during COVID, historically underserved residents in adjacent high and highest need neighborhoods continued to need fresh food. We provided for their needs unflinchingly.

We believe our continued growth and success will inspire others to make the commitment to support the growth of downtown and adjacent neighborhoods.

After more than a year of operation we have a much better understanding of the community and their needs, a better understanding of our needs, and overall, we have a very positive outlook for our future. Our efforts and the proposed growth of the residential population in the surrounding neighborhoods are key to our success. The original business plan and financial projections were grossly altered by the results of COVID. The pandemic disrupted working, living, and commuting patterns and changed how people shop for groceries.

We are now poised to institute key initiatives to better serve our community and develop a stronger financial climate for the company.

Initiative	Action Steps/Purpose	Projected Outcome	Initiative Start
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Delivery Options made available through Doordash	We are in discussion with several third-party vendors to engage in delivery services to residents and commuters. Research indicates sales revenue increases 15 – 30%	Estimated growth at 15% by end of 12-month period / \$368,000	Mid-Late January 2024
Delivery to residential communities after 5 pm	Braymiller wholesale vehicle will be used to service city of Buffalo condo and apartment residents.	Estimated revenue is based on an assumption of 6 buildings with 15 tenants in each building to receive deliveries 2x per week / \$468,000	December 2023
In-store dining and utilization of two-story sitting area for educational classes	The purpose is to provide a safe space for students and community for both dining and classes targeted toward educational food programming and food boxes	This initiative will not have a revenue impact	April 2024
Generic Products	“Best Yet” generic grocery items will be carried as a response to tenant’s requests at 201 Ellicott	Estimated increase in grocery sales at 1% / \$12,500	January 2024
Beer Sales	Applications and permits have been made and paid for to date. We will only provide 6 pack bottle sales (no individual sales). The beer will be in a secured cooler that will require an employee’s assistance.	Estimated revenue \$206,000	January 2024
Double Up Bucks and SNAP & WIC	Currently working alongside POS provider to integrate with paper coupons with our focus to continue to grow this program	This is community focused – we have not projected specific impact on revenue, rather, we assume it is part of our expected annual growth	Spring 2024
Marketing Strategy	As part of the downtown marketing effort with BUDC, an integrated marketing plan is being considered to develop consumer awareness, target key demographics, drive online delivery sales and to improve overall sales	A modest increase of 5% was assumed for projection purposes / \$148,000	February 2024

Community Benefits

Borrower shall continue to hire diverse staff, sell locally sourced products from diverse businesses and to further develop supplier relationships with downtown BIPOC businesses. Efforts shall be documented in brief quarterly update.

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Exhibit G – Loan Schedule

Month	Principal	Interest	Balance
1	\$ 561,317.57	\$ 4,209.88	\$ 565,527.45
2	\$ 565,527.45	\$ 4,241.46	\$ 569,768.91
3	\$ 569,768.91	\$ 4,273.27	\$ 574,042.17
4	\$ 574,042.17	\$ 4,305.32	\$ 578,347.49
5	\$ 578,347.49	\$ 4,337.61	\$ 582,685.10
6	\$ 582,685.10	\$ 4,370.14	\$ 587,055.24
7	\$ 587,055.24	\$ 4,402.91	\$ 591,458.15
8	\$ 591,458.15	\$ 4,435.94	\$ 595,894.09
9	\$ 595,894.09	\$ 4,469.21	\$ 600,363.29
10	\$ 600,363.29	\$ 4,502.72	\$ 604,866.02
11	\$ 604,866.02	\$ 4,536.50	\$ 609,402.51
12	\$ 609,402.51	\$ 4,570.52	\$ 613,973.03
13	\$ 613,973.03	\$ 4,604.80	\$ 618,577.83
14	\$ 618,577.83	\$ 4,639.33	\$ 623,217.16
15	\$ 623,217.16	\$ 4,674.13	\$ 627,891.29
16	\$ 627,891.29	\$ 4,709.18	\$ 632,600.47
17	\$ 632,600.47	\$ 4,744.50	\$ 637,344.98
18	\$ 637,344.98	\$ 4,780.09	\$ 642,125.07
19	\$ 642,125.07	\$ 4,815.94	\$ 646,941.00
20	\$ 646,941.00	\$ 4,852.06	\$ 651,793.06
21	\$ 651,793.06	\$ 4,888.45	\$ 656,681.51
22	\$ 656,681.51	\$ 4,925.11	\$ 661,606.62
23	\$ 661,606.62	\$ 4,962.05	\$ 666,568.67
24	\$ 666,568.67	\$ 4,999.27	\$ 671,567.94

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