

RESOLUTION NO. 146  
(Downtown Redevelopment Grant Award Agreement to  
Black Jack Coffee LLC, d/b/a The Human Bean)

A RESOLUTION OF THE CITY OF HENDERSON REDEVELOPMENT AGENCY, CLARK COUNTY, NEVADA, APPROVING A DOWNTOWN REDEVELOPMENT GRANT AWARD AGREEMENT BETWEEN BLACK JACK COFFEE LLC, A NEVADA LIMITED LIABILITY COMPANY D/B/A THE HUMAN BEAN, AND THE CITY OF HENDERSON REDEVELOPMENT AGENCY, IN AN AMOUNT NOT TO EXCEED \$33,848.00 FOR CONSTRUCTION COSTS ASSOCIATED WITH A 600-SQUARE-FOOT DRIVE-THROUGH COFFEE ESTABLISHMENT LOCATED ON APPROXIMATELY 0.5 ACRES OF VACANT LAND IDENTIFIED AS CLARK COUNTY ASSESSOR'S PARCEL NUMBER 179-18-613-003, AND GENERALLY LOCATED AT 71 EAST LAKE MEAD PARKWAY.

- WHEREAS, on October 4, 1995, the City Council of the City of Henderson adopted Ordinance No. 1618, adopting the Redevelopment Plan for the Downtown Redevelopment Project Area, which plan was subsequently amended on January 5, 2004, by Ordinance No. 2243 and on January 3, 2006, by Ordinance No. 2426 (as amended, the "Redevelopment Plan"), which provides for the redevelopment of the portion of the City of Henderson identified therein (the "Downtown Redevelopment Area"); and
- WHEREAS, the City of Henderson Redevelopment Agency ("Agency") is charged with the implementation of the Redevelopment Plan; and
- WHEREAS, Developer intends to construct a 600-square-foot drive-through coffee establishment located on approximately 0.5 acres of vacant land identified as Clark County Assessor's Parcel Number 179-18-613-003, and generally located at 71 East Lake Mead Parkway, Henderson, Nevada (the "Project"); and
- WHEREAS, Developer has submitted to the Agency's consultant, National Development Council ("Agency's Consultant"), for review on behalf of the Agency, a development cost budget, source of financing statement and pro forma operating statement for the Project and personal financial statements for project principals, and Agency's Consultant has advised the Agency that Developer does not have sufficient financial resources to provide the equity investment required to complete the Project, and that there is a financing gap in the amount of \$33,848.00; and
- WHEREAS, Developer has requested a grant from the Agency in the amount of \$33,848.00 to complete the construction of the Project (the "Grant") to be issued pursuant to the terms of the Downtown Redevelopment Grant Award Agreement (the "Agreement") attached as Exhibit A, consisting of eight (8) pages; and

WHEREAS, pursuant to NRS 279.486, with the consent of the Agency Board, the Agency may pay all or part of the value of the land for and the cost of the construction of a privately-owned improvement, provided that the Board first determines that (i) the improvements are of benefit to the redevelopment area or the immediate neighborhood in which the redevelopment area is located, and (ii) no other reasonable means of financing those improvements is available; and

WHEREAS, NRS 279.468 further provides that, in reaching its determination that the improvements are of benefit to the redevelopment area or the immediate neighborhood in which the redevelopment area is located, the Agency's Board must consider whether the buildings, facilities, structures or other improvements are likely to: (1) encourage the creation of new business or other appropriate development; (2) create jobs or other business opportunities for nearby residents; (3) increase local revenues from desirable sources; (4) increase levels of human activity in the redevelopment area or the immediate neighborhood in which the redevelopment area is located; (5) possess attributes that are unique, either as to type of use or level of quality and design; (6) require for their construction, installation or operation the use of qualified and trained labor; and (7) demonstrate greater social or financial benefits to the community than would a similar set of buildings, facilities, structures or other improvements not paid for by the agency; pursuant to NRS 279.468, the Agency's Board must also consider the opinions of persons who reside in the redevelopment area or the immediate neighborhood in which the redevelopment area is located and comparisons between the level of spending proposed by the Agency and projections, made on a pro forma basis by the Agency, of future revenues attributable to the buildings, facilities, structures or other improvements; and

WHEREAS, the Project is consistent with the Redevelopment Plan and the current zoning of the Property; and

WHEREAS, the Project sits at a prominent location on Lake Mead Parkway in the Downtown Redevelopment Area, and when completed, the new commercial service will create between 20 and 25 full and part time new jobs in the Downtown Redevelopment Area's core and will support existing and future commercial uses; and

WHEREAS, the Developer has represented that it will make a total investment of approximately \$644,000.00 in the Project, in addition to the Grant; and

WHEREAS, the construction of the Project in the Downtown Redevelopment Area will establish a standard for high quality development in the area and demonstrate reinvestment taking place; and

WHEREAS, the Grant is to be considered at a public meeting at which residents have the opportunity to provide their opinion of the Project; and

WHEREAS, the development of the Project on the Property will benefit the Downtown Redevelopment Area by removing physical blight from the site, providing greater access to drive-through services, construction jobs, and infuse private investment into the Downtown Redevelopment Area, which helps to support existing local businesses; and

NOW, THEREFORE, BE IT RESOLVED by the City of Henderson, Nevada, Redevelopment Agency that:

SECTION 1. The Agency hereby finds that the Project is of benefit to the Downtown Redevelopment Area and that no reasonable means of financing the Project is available without the Grant, which will be issued pursuant to the Agreement.

SECTION 2. The Agency hereby approves the Agreement and authorizes its Executive Director, or his or her designee, to take such further actions as may be necessary or appropriate to effectuate the purpose of this Resolution.

SECTION 3. The Agency is hereby authorized to disburse the Grant to Developer subject to the terms and conditions of the Agreement.

SECTION 4. This Resolution is effective upon adoption unless stated otherwise in the notice.

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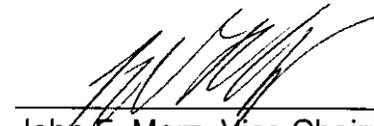
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PASSED, ADOPTED, AND APPROVED THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2020, BY  
THE FOLLOWING ROLL-CALL VOTE OF THE REDEVELOPMENT AGENCY.

Those voting aye: John F. Marz, Vice Chairman  
Members:  
Michelle Romero  
Dan K. Shaw  
Dan H. Stewart

Those voting nay: None  
Those abstaining: None  
Those absent: Debra March, Chairman

  
\_\_\_\_\_  
John F. Marz, Vice Chairman

ATTEST:   
  
\_\_\_\_\_  
Sabrina Mercadante, MMC, Secretary

***DOWNTOWN REDEVELOPMENT  
GRANT AWARD AGREEMENT***

This Downtown Redevelopment Grant Award Agreement (“Agreement”) is made as of the date of Agency board approval listed on the signature page hereto (the “Effective Date”), by and between **BLACK JACK COFFEE LLC**, (“Grantee”), and the **CITY OF HENDERSON REDEVELOPMENT AGENCY**, a public body, corporate and politic (“Agency”). Grantee and Agency are collectively referred to herein as the “Parties.”

**RECITALS**

A. Agency is a Community Redevelopment Agency formed, existing and exercising its powers pursuant to the provisions of the Community Redevelopment Law, Nevada Revised Statutes Sections 279.382 et seq.

B. On October 4, 1995, the City Council of the City of Henderson (the “City”) adopted Ordinance No. 1618 (as subsequently amended on January 5, 2004 by Ordinance No. 2243 and on January 3, 2006 by Ordinance No. 2426 and as may be amended from time-to-time), adopting the Redevelopment Plan for the Downtown Redevelopment Project Area (the “Redevelopment Plan”).

C. Agency is responsible for the implementation of the Redevelopment Plan in the Downtown Redevelopment Project Area (the “Project Area”).

D. Grantee leased approximately 0.5 acres of vacant land located generally at 71 E. Lake Mead Parkway, in the Project Area (the “Property”), for the purpose of constructing a new 600 square foot drive-through coffee business (the “Project”).

E. At the time of Grantee’s lease, the Property was vacant and was prepared for a new pad development adjacent to the new construction of the Clark County Credit Union was completed. To accommodate the Project and the new Clark County Credit Union building, all existing structures had to be demolished.

F. Developer submitted to the Agency’s consultant, National Development Council (“Agency’s Consultant”), for review on behalf of the Agency, a development cost budget, source of financing statement and pro forma operating statement for the Project (the “Confidential Financial Information”). Based on the Confidential Financial Information, Agency’s Consultant has advised the Agency that due to the increased project costs, Grantee has demonstrated a financing “gap” that may be filled by financial assistance from the Agency in the amount of the Grant Amount (defined below). Based on information and analysis provided by the Agency’s Consultant, the Agency has further determined that no other reasonable means of financing the Project are available without the Grant.

G. Grantee has now requested a grant in an amount not to exceed the Grant Amount set forth in Section 1.2 hereof to complete the construction of the Project pursuant to the terms and conditions hereof (“Grant”).

H. The Agency has determined that the construction of the Project on the Property will benefit the Project Area by creating new permanent jobs, creating temporary construction jobs and remove visual blight in the Project Area.

I. Agency has further determined that the provision of the Grant to Grantee pursuant to the terms of this Agreement is consistent with the Redevelopment Plan and is in the interest of the health, safety and welfare of the residents of the Project Area and the City.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and Grantee agree that the foregoing recitals are true and correct and incorporated herein by this reference and as follows:

### 1. Grant Terms.

1.1 Grant Application. Grantee acknowledges and agrees that this Agreement is subject to the terms and conditions in the Financial Assistance Application submitted to Agency by Grantee (the "Application").

1.2 Grant Purpose. The Grant made pursuant to this Agreement is solely for the purpose of Grantee paying the hard and soft construction costs associated with completion of the Project. The Grant shall not exceed the Grant Amount.

1.3 Grant Amount. Agency agrees to provide to Grantee, subject to the terms of this Agreement, the Grant in an amount not to exceed Thirty-Three Thousand Eight Hundred and Forty-Eight and 00/100 Dollars (\$33,848.00) (the "Grant Amount").

1.4 Grant Conditions. Notwithstanding any provision of this Agreement to the contrary, in the event that Grantee does not complete the Project, this Agreement shall automatically terminate and be of no further force or effect. The disbursement of the Grant is additionally subject to the following:

1.4.1 Grantee leases the land and owns the structure;

1.4.2 The terms and conditions contained in the Application;

1.4.3 Grantee's representations and warranties shall have been true and correct as of the date made and no default shall exist under this Agreement;

1.4.4 Grantee providing copies of the required building permit(s) and any other required approvals prior to commencement of the Project;

1.4.5 Grantee designing, bidding, constructing and completing the Project as approved by the City's Community Development and Services Department, to the Agency's satisfaction;

1.4.6 Grantee completing construction of the Project within eighteen (18) months of the effective date of the Grant Award Agreement, unless a written extension is granted by the City's Redevelopment Manager or his or her designee;

1.4.7 Grantee providing evidence satisfactory to the Agency of its represented investment in the Property;

1.4.8 Issuance of a permanent Certificate of Occupancy for the completed Project; and

1.4.9 Grantee providing any other paperwork required by the Agency.

2. Representations and Warranties. To induce Agency to enter into this Agreement, Grantee hereby makes the following representations and warranties, which shall survive the execution and performance of this Agreement, and continue until all obligations to Agency hereunder have been satisfied in full:

2.1 Legal Status; Authority. Grantee has the legal and corporate authority to enter into this Agreement and to obtain and secure the Grant. The person or persons executing and delivering this Agreement on behalf of Grantee has (have) been duly authorized to do so.

2.2 Validity and Authorization. The Application and all information provided to Agency by the Grantee in connection with the Grant is true, complete and correct and there have been no material changes from the date of the Application to the date of execution of this Agreement. Grantee has an ongoing obligation to supplement any such information if it changes during the course of performance of this Agreement.

3. Use of Funds. Grantee shall use the proceeds of the Grant solely for the purpose set forth in this Agreement.

4. Maintenance of Project. Grantee will maintain, preserve and protect the Project in good order and condition, subject to wear and tear in the ordinary course of business, and in accordance with local and state building codes for a period of five (5) years. Failure to maintain, preserve and protect the Project will result in the Grantee being rendered ineligible to participate in any other programs offered by Agency and may require reimbursement of the Grant in the Agency's discretion.

5. Maintenance Inspection. Following completion of the Project, for a period of five (5) years, Agency reserves the rights to inspect the Project upon reasonable notice and during normal business hours and to determine, in its sole discretion, if the Project has been maintained in good condition. If Agency determines that the Project has not been satisfactorily maintained, Agency

shall notify the Grantee, in writing of any deficiencies. Grantee agrees to cure any such deficiencies within thirty (30) days. If Grantee fails to cure, Agency may, but is not obligated to cure such deficiency, and Grantee shall reimburse the Agency for its actual costs in doing so within thirty (30) days of receipt of an invoice therefor.

6. Agency Liability. Notwithstanding any provision hereof to the contrary, Grantee shall be solely responsible for paying Grantee's contractors, subcontractors and suppliers and the costs of the Project. AGENCY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE GRANT AMOUNT, AND AGENCY SHALL NOT IN ANY WAY BE RESPONSIBLE FOR ANY ADDITIONAL MONETARY SUMS OR FOR ANY ACTUAL, GENERAL, SPECIAL, COMPENSATORY, CONSEQUENTIAL, PUNITIVE, PECUNIARY OR PLENARY DAMAGES, ANY INTEREST, ATTORNEY'S FEES, OR FOR ANY OTHER OR ADDITIONAL CLAIMS WHATSOEVER WHICH MAY BE MADE BY ANY PARTY TO THIS AGREEMENT. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto. This Section shall survive the expiration or earlier termination of this Agreement.

7. Indemnity. Grantee shall indemnify, defend and hold harmless Agency, its officers, officials, volunteers, representatives, employees and agents from and against any claim, liability, loss, damage, expense and cost (including without limitation attorneys' fees and costs and fees of litigation) of every nature arising out of or in connection with work performed hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of Agency. This Section shall survive the expiration or earlier termination of this Agreement.

8. Assignment. Agency and Grantee each bind itself and its partners, successors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement, except neither Agency nor the Grantee shall assign, sublet or transfer its interest in this Agreement without written consent of the other.

9. Waiver. No consent or waiver, express or implied, by either party to this Agreement to or any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection by, payment by, or tentative approval or acceptance by Agency or the failure of Agency to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release Grantee of any of its obligations hereunder.

10. No Third-Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.

11. Applicable Law. This Agreement shall be governed and construed in accordance with the laws of the State of Nevada, excluding its choice-of-law rules, and all claims relating to or arising out of this Agreement, or the breach hereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Nevada, excluding its choice-of-law rules. The Parties agree to submit to the jurisdiction of the state and federal courts located in Clark County, Nevada as the exclusive venue for the resolution of any disputes arising under or related to this Agreement.

12. Jury Trial Waiver. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE EITHER OF SUCH WAIVERS, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS, (iii) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

13. Compliance With Laws. Grantee shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement, including all state and federal laws prohibiting and/or related to the discrimination by reason of race, sex, age, religion or national origin.

14. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the Parties. Any invalid or unenforceable provision will be deemed severed from this Agreement, and the balance of this Agreement will be construed and enforced as if it did not contain the particular invalid or unenforceable provision. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

15. Prohibition Against Contingent Fees. Grantee represents warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, and brokerage or contingent fee. For breach or violation of this warranty, Agency shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage brokerage or contingent fee.

16. Notices. All notices that are required under this Agreement shall be in writing and delivered by personal delivery, by a recognized courier, or by certified U.S. mail (postage prepaid, return receipt requested), and addressed to the receiving Party at the address below:

Grantee:           Black Jack Coffee LLC  
                      12457 Loggeta Way  
                      Las Vegas, NV 89141

Agency:           City of Henderson Redevelopment Agency, MSC 512  
                      240 Water Street, P.O. Box 95050  
                      Henderson, NV 89009  
                      Attn: Redevelopment Manager

Such notice will be deemed to have been received by the Party to whom it was addressed on the date of delivery if delivered personally, on the date officially recorded as delivered (or delivery refused) according to the record of delivery if delivered by courier, or three (3) days after mailing. Either Party may change its contact information for purposes of this Agreement by giving written notice to the other Party in the manner set forth above.

17. Modification. All modifications or amendments to this Agreement are null and void unless reduced to writing and duly signed by the parties hereto.

18. Entire Contract. This Agreement and the Application constitute the entire agreement between the Parties with respect to the matters covered hereby. In the event of a conflict between this Agreement and the Application, the terms and conditions of this Agreement shall control.

19. Counterparts; Electronic Signature. The Parties may execute this Agreement in counterparts and electronically. Each of these counterparts, when signed and delivered, is deemed an original and, taken together, constitutes one and the same instrument.

*[Remainder of this page intentionally left blank.]*

*[Signatures on the following pages.]*

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

“GRANTEE”

**BLACK JACK COFFEE LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by \_\_\_\_\_ as the \_\_\_\_\_ of Black Jack Coffee LLC.

(Seal, if any)

\_\_\_\_\_  
Signature of Notarial Officer

“AGENCY”

Date of Board Approval: \_\_\_\_\_

**CITY OF HENDERSON REDEVELOPMENT AGENCY,**  
a public body, corporate and politic

By: \_\_\_\_\_  
Richard A. Derrick  
Executive Director

APPROVED AS TO FORM:

APPROVED AS TO FUNDING:

By: \_\_\_\_\_  
Nicholas G. Vaskov      CAO  
General Counsel

By: \_\_\_\_\_  
Jim McIntosh  
Treasurer

ATTEST:

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Sabrina Mercadante, MMC  
Secretary

By: \_\_\_\_\_  
Stephanie Garcia-Vause, FAICP  
Chief Strategy Officer, Assistant  
City Manager