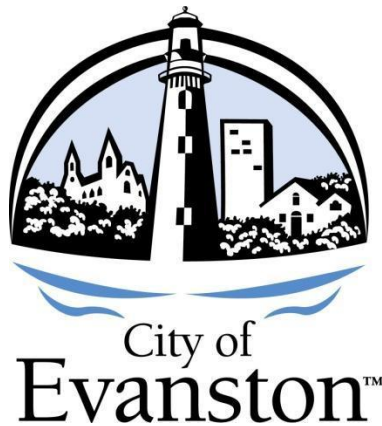


City of Evanston Storefront Modernization Program



Program Guidelines - Updated March 2021

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Program Purpose and Overview

Evanston's Storefront Modernization Program is a funding tool to assist small business owners improve the appearance and functionality of commercial buildings located in our city's business districts. The city provides a rebate of 50% of the total cost of qualifying interior or exterior improvements. The Economic Development Division manages the program. Funding is first reviewed by the Economic Development Committee and forwarded to the City Council for final approval.

Eligibility Criteria

Eligible participants include commercial property owners and tenants of ground floor commercial buildings facing business district streets. Tenants must have:

- A current lease with a minimum of five (5) years remaining from the date of Application or provide evidence that the business has operated in Evanston for over five (5) years; and
- Written approval from the property owner to participate in the Program and consent to recordation against the subject property of a Declaration of Covenants Affecting the Property (for projects receiving a forgivable loan of \$5,000 or more).
- Eligibility for the interior buildout portion of the program is limited to property owners and/or tenants of ground floor commercial buildings within one of Evanston's Tax Increment Finance (TIF) Districts.

Exterior Storefront Improvements: The exterior portion of a building that faces the public right-of-way and is fronted by a sidewalk or similar pedestrian-oriented pathway are eligible for a maximum of \$10,000 on a 50/50 cost-sharing basis (i.e. \$20,000 or higher total project cost will receive a maximum of \$10,000). Eligible improvements include ramps, door openers, signage, painting, lighting, windows, doors, fascia, tile, canopies, awnings, trim, metal work and other decorative elements, restoration of historic properties and other improvements contributing to the visual enhancement or accessibility of a property as it relates to the public right-of-way. Any projects requesting reimbursement for more than \$2,500 must have an accessible storefront.

Ineligible improvements include roofs that are not "part of the façade" or do not face the public right of way, non-permanent fixtures, security systems, personal property, interior window coverings, equipment, any improvements not visible from the public right-of-way, and any improvements deemed to be inconsistent with redevelopment purposes and objectives.

Interior Improvements: For properties located in one of Evanston's TIF districts, 50% of the cost of interior improvements are eligible for reimbursement dependent upon the availability of TIF funds and subject to negotiation and City Council approval. The final approved amount will depend on the scope of work to be completed.

Interior improvements must be TIF eligible and result in a capital improvement. Eligible improvements include plumbing, HVAC, electrical, life safety/sprinkler systems, and Americans with Disabilities Act (ADA) compliance. Furniture, fixtures, and equipment are not eligible for reimbursement nor are any expenses that do not result in fixed capital improvements. As a general rule, systems that are attached to the property and stay with subsequent tenants are eligible. Equipment and other facets of the business that are not affixed to the property such as

cooking equipment, point of sales systems, light fixtures, menus, displays, shelving, etc are not eligible.

Any significant alterations or additions to the storefront and/or interior and/or requests for approval of new or altered signage should be reviewed with the Community Development Department's Project Management Supervisor and/or Planning and Zoning staff to assure compliance with State and Local Building codes and/or zoning ordinances. Further, any alteration or construction on properties which have been designated as a local landmark or are located in historic districts must be approved by the Historic Preservation Commission prior to consideration for funding in the Program.

Ineligible Participants of the program include:

- National franchises/for profit corporations with more than ten locations outside of Evanston, unless the organization is headquartered in Evanston;
- Occupants or owners of buildings that are not current with property taxes, water bills, or properties possessing any sort of non-mortgage liens (i.e. mechanics lien, etc.);
- Persons who have one or more outstanding City of Evanston parking tickets;
- Buildings in excess of an 80,000 square foot footprint;
- Churches or other religious organizations;
- Government offices and agencies (non-governmental tenants are eligible);
- New construction, less than five (5) years old; and
- Property that has received storefront improvement funds (formerly known as the City of Evanston's Façade Improvement Program) within the past ten years (unless change of use is significant enough to warrant change in storefront).

Storefront Modernization Program Administration

The Program provides participants the opportunity to receive a rebate upon the completion of their approved Project, up to an approved amount, based on the maximum amounts set forth in the sections below.

Funding Source(s): Projects will be funded through: Tax Increment Financing (TIF) within applicable TIF Districts, Community Development Block Grants, and/or Economic Development Funds.

Project Approval: The City of Evanston must approve the project scope and reimbursement prior to commencing construction. No reimbursement will be considered for work completed prior to City Council approval of a project scope.

Estimates for the Project: Three estimates for each aspect of their project, of which one should be from an Evanston-based business.

Rebate: The rebate is in the form of loan, forgivable over a five (5) year (60 month) period as illustrated in the box to the right. Participants can receive a rebate for up to half of the total project cost, based on the "total eligible cost" for their specific Project.

Commencement Date: The 60 month forgivable period starts on the month that the project agreement is recorded at the Cook County Recorder of Deeds and ends on the 5th anniversary date. If the agreement is terminated prior to the completion of the forgivable loan period, the Participant will be responsible for repayment of the balance on a prorated basis.

Completion Date: Project completion must occur within 90 days of commencement date.

Reimbursement: Reimbursement shall only be made after the defined work has been completed and certificate of occupancy is issued. For approved projects for which a rebate of \$10,000 or more is awarded an applicant may request up to two payments for the project. In such cases, a schedule for the partial payment and a timeline with benchmarks for completion for each project phase must be submitted and approved by Economic Development Staff. Staff will consider release of funding directly to contractors on a case by case basis if the applicant demonstrates a financial need.

City Code: All funded projects must comply with all city codes including the sustainable building measures set forth in the City's Green Building Ordinance ([Title 4, Chapter 21 of the City Code](#)).

Design Guidelines

The use of the City of Evanston Design Guidelines is encouraged. Obtain a copy of the Design Guidelines from the Economic Development Division office or by visiting the web at <http://www.evanstonedge.com/files/2012/08/Facade-Sign-Design-Guidelines.pdf>

While it is not possible for many small businesses to make their storefronts fully accessible for persons with disabilities, the ADA requires that accessibility be improved whenever possible through the removal of physical barriers. For examples of barrier removal, please see "The Americans with Disabilities Act Checklist for Readily Achievable Barrier Removals" at <http://www.ada.gov/racheck.pdf> and "ADA Guide for Small Businesses" at <http://www.ada.gov/smbusgd.pdf>.

Program Steps

Step 1: Arrange to Meet with an Economic Development Specialist. Applicants should schedule a meeting with the Economic Development Division to discuss the program, ask questions, and obtain application materials.

Step 2: Application Submission.

- Applicants must submit application online at https://arts.formstack.com/forms/city_of_evanston_storefront_modernization_program
- Attach three estimates for each aspect of the proposed work (one Evanston-based)
- Photos of the property (interior if an interior improvement project)
- Letter of support from property owner

Step 3: Staff Application Review Process. After Applications are submitted, Staff will:

- Evaluate each project submitted to determine if Application is complete;
- Confirm eligibility of proposed project tasks and determine total eligible project cost;

- Identify appropriate funding sources for each proposed project;
- Prepare recommendations of approval of funds to the appropriate Committee.

Staff will evaluate Applications on the following criteria:

- Total project budget;
- Location within an established business district, along a major street or near a transit station;
- Use of energy efficiency measures (installation of energy saving windows, doors, etc.);
- Steps taken to Improve access for persons with disabilities;
- Returning unproductive uses to productive uses and/or creation of new rentable space in a building; and
- Total linear feet and/or square footage of commercial space to be improved.

If requests exceed available funding, priority will be given to qualified applicants who meet one of the following criteria:

- Have demonstrated a need for financial assistance in project completion
- Have received code violations requiring immediate remediation or mitigation
- Business is located in a CDBG target area
- Business is a woman or minority-owned business

Step 4: Public Review and Approval Process. Staff will submit recommendations to the Economic Development Committee for review and recommendation to the City Council. All projects are then forwarded to City Council for final action.

Participants whose total project costs exceed \$5,000 are required to be present at all public meetings at which proposed Project will be discussed. Participants will be notified of time, date, and place of the public meeting at which the Application will be considered. Staff will outline meeting schedules for applicants at their consultation meetings. Participants whose total project costs are less than \$5,000 are not required to attend public meetings.

Step 5: Execution of Program Agreement. Following approval by the City Council, Participants will be required to enter into and execute a written agreement with the City of Evanston which will establish the terms, conditions, and requirements for participation in the Program. Once the Program Agreement has been executed to the satisfaction of the City Manager, a **Notice to Proceed** will be issued to the Participant. A sample copy of the terms and agreements of the agreement are provided in **Attachment A** of this document.

Step 6 (if applicable): Project Phasing Plan. Applicants that have been approved for projects with a rebate of \$10,000 or more may submit to Economic Development Staff a written request to divide projects into two phases for the purposes of partial reimbursement of project costs. For example, if a project includes multiple components such as plumbing, HVAC, tuck-pointing, window and door replacement and signage, applicant may propose to staff to divide work into two phases in order to seek repayment after certain aspects of the project have been completed. Applicants shall submit to Economic Development staff a project phasing plan, which clearly defines the work to be completed in each phase along with expected completion dates. Such phasing plan must be approved by Staff in order to establish a partial payment plan.

Note: Commencement of work without an executed Program Agreement will automatically disqualify a Participant from being eligible to participate in the Program, and negates the City's obligation to rebate any portion of the work.

Terms & Conditions

In accordance with the Program Guidelines, the City of Evanston will provide financial assistance up to the approved amount of a project at no more than half of the total project cost. The rebate will come in the form of a loan forgivable over a five (5) year (or 60 month) period, upon completion of the Project.

Any rebates paid by the City of Evanston pursuant to this program shall not be made until all work has been completed; all improvement work has been inspected and approved by the City of Evanston. If a partial rebate payment schedule with project completion benchmarks has been established with and approved by Economic Development Staff (for projects eligible for \$10,000 or more), work must still be inspected and approved by the City prior to partial payment being issued. Additionally, all payments for said work must be made to contractors, material suppliers, and vendors. Participants of the Program must submit to the City of Evanston itemized invoices detailing work completed and materials purchased. Such invoices shall include proof of payment to all contractors, suppliers, and vendors. Documentation must be submitted within 45 days of project completion. The participant shall also submit unconditional lien releases and other documentation as required by this Program. **The participant is responsible for all payments to all contractors, material suppliers, and vendors.**

Any rebates paid by the City of Evanston pursuant to this Program constitute loans made to the Participants. Said loans will be forgiven, as described in the Program Agreement, however, if the property owner or successor-in-interest assumes the Participant's obligations of the Program Agreement pursuant to a City-approved assignment and assumption agreement, and continues to own and/or occupy the rehabilitated property and maintain the improvements for a period ending five (5) years from the date of receipt of the rebate without removing or significantly altering the Improvements, as determined by the City of Evanston in its sole discretion.

If the property owner sells the property or the business owner fails to occupy the property prior to the end of the fifth (5th) year, the remaining share of the loan (prorated on a monthly basis) shall become due, plus three percent (3%) interest per annum payable to the City of Evanston is due within thirty (30) calendar days, unless the succeeding property owner or business owner (i) assumes the obligations of the Program Agreement pursuant to a City of Evanston approved assignment and assumption agreement, and (ii) does not make any changes to the property resulting in the removal of significant alteration to the Improvements, and maintains the Improvements for a period of five (5) years from the date of receipt of the rebate. The prorated amount due will be obtained by multiplying the original rebate amount times the percentage obtained by dividing the number of months remaining in the five (5) year period that commences on the month that the project was recorded by the Cook County Recorder of Deeds (for projects receiving \$5,000 or more in forgivable loans) and ends on the 5th anniversary date by 60, which is the total number of months in the loan period.

Prevailing Wages: Projects utilizing CDBG must comply with Davis-Bacon Prevailing Wages. Participants will be informed if they will have to comply with Davis-Bacon Prevailing Wages.

Project Completion: Projects must be completed within ninety (90) days of approval date as specified in Section VI of the Program Agreement (extensions will be considered on a case-by-case basis);

Property Taxes and Liens: Property taxes must be current, and participants may have no debts in arrears to the City when the Commitment Letter is issued. The property must also be clear of all other non-debt related liens and.

ATTACHMENT A: Program Agreement

THIS PROGRAM AGREEMENT [Agreement] is entered into on this ____ day of _____ 20 ____ [Effective Date], by and between the City of Evanston [City], and _____ [Participant], owner (or tenant) of property located at _____ [Property], with regard to Participant's participation in the "City of Evanston – Storefront Modernization Program" [Program].

RECITALS

WHEREAS, the City desires to enhance the visual appearance, functionality, accessibility, and environmental sustainability of buildings and structures, stimulate private investment, and complement other community revitalization efforts throughout Evanston as identified in the Program Guidelines; and

WHEREAS, investment in commercial storefront, interior, and sustainability improvements will beautify the subject properties and surrounding area, create a positive visual and environmental impact, increase the volume of business by making the subject properties and businesses more attractive, stimulate private investment, and complement other community revitalization and sustainability efforts within the City; and

WHEREAS, the City has authorized Economic Development Division Staff to manage and administer the Program on behalf of the City including, without limitation, authorizing the City Manager to execute this Agreement with the Participant thereby establishing the terms, conditions, and requirements for participation in the Program in accordance with the Guidelines for the Program approved by the City Council [Program Guidelines]; and

WHEREAS, the City Council has approved the Participant and the proposed project for participation in the Program, subject to the terms and conditions of the Program Guidelines and this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, and the mutual obligations of the parties as herein expressed, the City and Participant agree as follows:

AGREEMENT

I. DEFINITIONS

The following terms shall have the following meanings whenever used in this Agreement, except where the context clearly indicates otherwise. Any ambiguity as to the intended meaning or scope of the terms set forth below will be resolved solely by the City through its designated representative.

- a. **"Economic Development Division"** means the City's designated representative responsible for managing and administering the Program on behalf of the City.

- b. **“Completion Date”** means the date that the contractor has finished the Project pursuant to the design and architectural plans approved by City Council, the City Manager, or his/her designee, and to the satisfaction of the Participant, as evidenced by final payment to the contractor from the Participant.
- c. **“Declaration”** means the Declaration of Covenants Affecting Real Property Participant is required to execute and record against the Property in order to obtain the Rebate in the form attached hereto and incorporated herein as Exhibit “B”. Projects approved for \$5,000 or less are not subject to recorded an executed Declaration of Covenants document
- d. **“Improvements”** means any agreed storefront, interior, and/or sustainability improvements made to the Property as part of the Program.
- e. **“Owner Consent”** means a Certification of Ownership and Consent to be executed by the owner of the Property, if the Participant is not the owner, in the form attached hereto and incorporated herein as Exhibit “C”.
- f. **“Participant”** means the person applying for a rebate for Improvements on the Property and determined eligible by the City Council or City Manager or his/her designee to participate in the Program. Participant may be the owner of the Property or a business owner who has obtained written consent of the Property owner to participate in the Program and to proceed with the improvements identified within this Agreement.
- g. **“Program Guidelines”** means the “City of Evanston -- Storefront Modernization Program Guidelines” approved by the City Council that govern the Program and this Agreement. The Program Guidelines are attached hereto and incorporated herein as Exhibit “D”. All terms not defined herein shall have the meanings ascribed thereto in the Program Guidelines.
- h. **“Project”** means the storefront, interior buildout, and/or sustainability improvements on the subject property as proposed by the Participant and approved by the City Council.
- i. **“Project Completion Date”** means the date agreed upon by the Participant and the City of Evanston when the approved Storefront Modernization Program project will be completed by.
- j. **“Property”** means the subject property owned or occupied by the Participant on which the improvements shall be completed. The Property is located within the City of Evanston and is legally described in Exhibit “A”, which is attached hereto and incorporated herein by this reference.
- k. **“Rebate”** means the total amount of the City’s loan provided to the Participant, which is equal to no more than half the final total project cost up to the amount approved by City Council (whichever is less).

- l. **“Total Allowable Expenses”** means the actual costs incurred, paid for, and documented by the Participant and approved by the City Manager or his/her designee for the proper performance of the improvement work required by the plans and specifications and/or architectural/design renderings for the Project.
- m. **Total Project Expenditure**” means the total actual Project costs incurred by and paid for by the Participant including, without limitation, the costs of construction, materials, and supplies.

II. CERTIFICATION OF OWNERSHIP

If Participant is not the fee owner of the Property, Participant shall, prior to the City’s execution hereof, obtain and provide to the City from the fee owner of the Property his/her/its approval in writing for Participant to participate in the Program and proceed with the Project, and for the recordation against the Property of a Declaration in the Official Records of the County Recorder of Cook County, by and through the Owner’s execution of a Certification of Ownership and Consent substantially in the form attached hereto as Exhibit “C” and incorporated herein by this reference (the “Owner Consent”).

III. TERMS OF REBATE - FORGIVABLE LOAN OVER FIVE (5) YEARS

- a. The Participant hereby agrees to comply with all terms and conditions of the Program as set forth in the Program Guidelines. (See Exhibit “D”.)
- b. The Rebate paid by the City pursuant to this Program shall not be made until all of the improvement work comprising the Project has been completed, all of the improvement work comprising the Project has been inspected and approved by the City Manager or his/her designee, and all payments for said work have been made to contractors, materials suppliers, and vendors. Thus, the Participant shall finance the Project, with tenant/owner funds (cash) and/or private funding (bank loan), during construction the Participant shall submit to the City Manager or his/her designee itemized invoices detailing the work completed and materials purchased. Such invoices shall include proof of payment to all contractors, suppliers, and vendors. The Participant is responsible for all payments to the contractors, materials suppliers, and vendors, and for providing true and correct copies of unconditional lien releases to the City.
- c. The Rebate paid by the City pursuant to the Program constitutes a loan to Participant. Said loan will be forgiven, provided that the Participant or successor-in-interest that has assumed the obligations of Participant hereunder pursuant to an City-approved assignment and assumption agreement, either continues to own or occupy, as the case may be, the rehabilitated Property for a period of five (5) years from the date of receipt of the Rebate without removing or significantly altering the Improvements, as determined by the City in its sole discretion, and agrees to maintain the improvements for said five (5) year period. The total amount of the loan will be forgiven in twenty percent (20%) increments, on an annual basis, such that at the end of five (5) years, the entire loan amount will be

deemed forgiven and the loan balance will be zero. If the Participant sells the Property or fails to occupy the Property, as the case may be, prior to the end of the fifth (5th) year, the remaining pro rata share of the loan, with interest at the rate of three percent (3%) per annum, is due and payable to the City within thirty (30) calendar days, unless the succeeding property owner or business owner, as the case may be, (i) assumes the obligations of Participant pursuant to an City-approved assignment and assumption agreement, and (ii) does not make any changes to the Property resulting in the removal or a significant alteration to the Improvements, and maintains the improvements, for a period of five (5) years from the date of receipt of the Rebate.

IV. PARTICIPANT'S RESPONSIBILITIES

- a. In preparation for submission of an Application, the Participant shall obtain a minimum of three (3) written bids from qualified, licensed contractors to perform the Project. Once the Participant awards a bid to a qualified, licensed contractor, the Participant shall provide to the City Manager or his/her designee information on the awarded bid and rejected bid. At least one (1) bid must be from an Evanston-based contractor. If an Evanston-based contractor is not sought, written evidence must be provided that documents why an Evanston-based contractor was not considered and provided in the original submission.
- b. The Participant shall obtain and submit all required certificates of insurance, as set forth in the Program Guidelines, to the City Manager or his/her designee upon execution of this Agreement and prior to City's execution.
- c. The Participant shall be responsible for hiring a licensed contractor to complete the Project. The City Manager or his/her designee may require submission of proof of the State License issued to the selected contractor.
- d. The Participant shall be responsible for contacting the City Manager or his/her designee to arrange for obtaining all City and other approvals and/or permits required for construction and completion of the Project.
- e. The Participant must issue a notice to proceed to the contractor within thirty (30) calendar days of receipt of the Notice to Proceed issued by the City to Participant.
- f. The Participant shall be fully responsible for managing, monitoring, and scheduling the construction of the Project, for ensuring compliance with the payment of prevailing wages (if applicable), and for ensuring that all improvements are completed properly and in conformance with the approved project.
- g. The Participant shall be fully responsible for making all payments to contractors, suppliers, vendors and/or other third parties and for ensuring that all contractors, subcontractors, suppliers, vendors and/or other third parties are paid in full.
- h. The Participant acknowledges and agrees that the improvements to be constructed in anticipation of a Rebate, in the form of a forgivable loan provided by the City,

constitutes the construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. The Participant shall comply with all requirements of Federal, Illinois and City of Evanston law.

- i. The Participant shall be responsible for ensuring approved project is completed by project completion date agreed upon by the Participant and the City detailed in Section VI of this agreement.
- j. Upon completion of the Project, the Participant shall notify the City Manager or his/her designee and call for an inspection of the Project. City Manager or his/her designee will arrange for the Property to be inspected.
- k. The Participant shall submit to the City Manager or his/her designee a written request for a Rebate within forty-five (45) calendar days of the Completion Date, and shall include the following:
 - i. Cover letter indicating the Project is completed and the Total Cost Expenditures for the Project and requesting the Rebate;
 - ii. All contractor invoices detailing the specific tasks completed in accordance with approved Project;
 - iii. Proof of payment of all invoices for all expenditures associated with the Project;
 - iv. Unconditional lien releases;
 - v. Any additional back up material requested by the City Manager or his/her designee;
 - vi. Before and after photographs;
 - vii. An executed (with signatures acknowledged) Declaration (for projects approved for a forgivable loan of \$5,000 or more only); and
 - viii. For the five (5) year term of the Declaration, the Participant shall maintain the façade improvements in good condition and shall not make any changes to the Property resulting in an alteration to the Improvements.

V. THE CITY'S RESPONSIBILITIES

- a. City Manager or his/her designee shall review the bids for construction submitted by Participant and prepare a submission to the appropriate City Committee that approves the Project based on the particular funding source for the project.
- b. City Manager or his/her designee shall issue the Notice to Proceed to the Participant upon his/her receipt of this Agreement and any other required or requested documentation.
- c. Within a reasonable time after Participant notifies City of the completion of the Project, the City Manager or his/her designee shall inspect the improvements to ensure they were completed in accordance with approved project scope.
- d. City Manager or his/her designee shall review Participant's request and accompanying documents for a Rebate. If all the terms, conditions, and obligations

of Participant under this Agreement and the Program Guidelines have been met, the City Manager or his/her designee shall issue the Rebate in an amount not to exceed one-half (1/2) of the Total Allowable Expenses, within the maximum allowable limits set forth in the Program Guidelines.

VI. TIME OF PERFORMANCE

The Participant shall complete the Project by the agreed upon project completion date between the Participant and the City in order to remain eligible for receipt of the Rebate. Failure to complete the Project by the agreed upon project completion date below will result in termination of this Agreement. Requests for additional time and extensions in project completion time will be granted, but only if submitted in writing prior to the expiration of the agreement.

Project Completion Date: _____

Applicant Signature: _____ **City Signature:** _____

VII. AMOUNT OF REBATE – FORGIVABLE LOAN

The total amount of the Rebate to be made by the City pursuant to the terms and conditions of this Agreement, shall not exceed the amount equal to one-half (1/2) of the Total Allowable Expenses approved by City Council for the Project up to the maximum allowable rebate amount stated above. The Total Allowable Expenses will be determined at completion of the Project at which time the total amount of the Rebate to be made by the City shall be calculated based on actual expenditures, and not to exceed program maximums, and such amount will be stated in the Declaration.

Approved Rebate Amount: _____

Applicant Signature: _____ **City Signature:** _____

VIII. INSURANCE

- a. During the entire period in which work on the Project is performed until termination of the Declaration, the Participant shall obtain and maintain in full force and effect during said period the following insurance policies: (i) Comprehensive General Liability Insurance in a general aggregate amount of not less than one million dollars (\$1,000,000), \$1,000,000 Products and Completed Operations Aggregate, and \$1,000,000 each occurrence and including; (ii) Automobile Insurance, maintained in full force and effect in an amount of not less than one million dollars (\$1,000,000) per accident;
- b. The Comprehensive General Liability Insurance and Automobile Insurance policies shall name the City of Evanston, and their respective elected officials, officers, employees, agents, and representatives as additional insured.

- c. All deductibles on any policy shall be the responsibility of the primary holder of such policy and shall not be the responsibility of the City of Evanston.
- d. Participant shall provide evidence of required insurance to the City Manager before execution of this Agreement.

IX. OBLIGATION TO REFRAIN FROM DISCRIMINATION

- a. Participant covenants and agrees for itself, its successors and its assigns to the Property, or any part thereof, that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- b. That, if it hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- c. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all Participants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

X. NO AGENCY CREATED

The Participant and any contractor, supplier, vendor or any third party hired by Participant to complete the Project are not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Participant concerning the details of the obligations under this Agreement, or to exercise any control over such obligations, shall mean only that the Participant shall follow the direction of the City concerning the end results of the obligations.

XI. OWNERSHIP OF DOCUMENTS

All documents, including, without limitation, designs, plans, bids, bills and receipts, prepared and submitted to the City pursuant to this Agreement (including any duplicate copies) shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights thereto.

XII. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law, the Participant agrees to and shall defend, indemnify and hold harmless the City, and their respective officers, officials, employees, contractors and agents from and against all claims, liability, loss, damage, costs or expenses (including expert witness fees, reasonable attorneys' fees, and court costs)

arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following, provided Participant shall not be responsible for (and such indemnity shall not apply to) any negligence or willful misconduct of the City, or their respective officers, officials, active employees, contractors or agents:

- a. The development, construction, marketing, use or operation of the Property by the Participant, its officers, contractors, subcontractors, agents, employees or other persons acting on Participant's behalf [Indemnifying Parties];
- b. The displacement or relocation of any person from the Property as the result of the development of the Project on the Property by the Indemnifying Parties;
- c. Any plans or designs for the Project prepared by or on behalf of Participant including, without limitation, any errors or omissions with respect to such plans or designs;
- d. Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Participant, or resulting from any breach or default by Participant, under this Agreement; and
- e. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits for the improvements by the City, and their respective officers, officials, employees, contractors or agents.

The foregoing indemnity shall continue to remain in effect after the Completion Date or after the earlier termination of this Agreement, as the case may be.

XIII. DUTY TO DEFEND

The Participant further agrees that the hold harmless agreement in Article XII, and the duty to defend the City, and their respective officers, officials, employees, contractors and agents, require the Participant to pay any costs that the City may incur which are associated with enforcing the hold harmless provisions, and defending any claims arising from obligations or services under this Agreement. If the City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to obligations or services under this Agreement, the Participant agrees to pay the City's attorney's fees, expert witness fees, and all costs.

XIV. COMPLIANCE WITH LAW

The Participant agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the development and use of the Property and construction of the Project, as well as operations conducted on the Property. The City Manager or his/her designee will not issue any Rebate to the Participant if there is in violation of any law, ordinance, code, regulation, permit or Program Guideline.

XV. TERMINATION

If Participant shall fail to cure any Event of Default upon notice and within the time for cure provided for in XVII below, the City may, by written notice to the Participant, terminate this Agreement. Such termination shall trigger the “Repayment of Pro Rata Share of Rebate defined in XVII.

Participant may not terminate this Agreement without the express written consent of City.

XVI. NOTICES

All notices permitted or required hereunder must be in writing and shall be effected by (i) personal delivery, (ii) first class mail, registered or certified, postage fully prepaid, or (iii) reputable same-day or overnight delivery service that provides a receipt showing date and time of delivery, addressed to the following parties, or to such other address as any party may, from time to time, designate in writing in the manner as provided herein:

To City: City of Evanston
Economic Development Division
2100 Ridge Avenue
Evanston, IL 60201
Email: economicdevelopment@cityofevanston.org

To Participant: _____

Phone No.: _____
Email: _____
Attention: _____

Any written notice, demand or communication shall be deemed received immediately if personally delivered or delivered by delivery service to the addresses above, and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

XVII. DEFAULT; REMEDIES; DISPUTE RESOLUTION

a. Notice of Default.

In the event of failure by either party hereto substantially to perform any material term or provision of this Agreement, the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required by Article XVI hereof identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

b. Cure of Default

Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within such thirty (30) day period, and shall continuously and diligently prosecute such cure, correction or remedy to completion. For purposes of this Agreement, "business days" shall refer to Monday through Friday, inclusive, other than State, Federal, or other locally declared holidays.

c. City Remedies; Repayment of Pro Rata Share of Rebate.

In the event of a default by Participant of the terms of this Agreement that has not been cured within the timeframe set forth in Paragraph B above, the City, at its option, may terminate this Agreement or may institute legal action in law or in equity to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement. In the event of a default by Participant that occurs after the City has disbursed the Rebate, the "Pro Rata Repayment Amount" and interest, at the rate of three percent (3%) per annum, commencing on the date City disbursed the Rebate to Participant, shall become immediately due and payable. The rate of interest applicable to periods of default for the defaults set forth in this paragraph shall be calculated at the lesser of three percent (%) per annum or the maximum legal rate, and shall accrue as of the date such payment was originally due.

The "Pro Rata Repayment Amount" shall be the amount obtained by multiplying the original Rebate amount times the percentage obtained by dividing the number of months remaining in the five (5) year covenant period that commences on the month the Declaration is recorded, and ends on the 5th anniversary (the "Covenant Period") by 60, which is the total number of months in the Covenant Period (12 months x 5 years). For example, if the amount of the Rebate is \$15,000, and the breach occurs after 3 years and two months (38 months), Participant shall repay \$5,500 plus any interest that has accrued during this time.

All payments shall be first credited to accrued interest, next to costs, charges, and fees which may be owing from time to time, and then to principal. All payment shall be made in lawful money of the United States. Payments shall be made to City at the address set forth in Article XVI herein or at such other address as City may direct pursuant to notice delivered to Participant in accordance with Article XVI.

d. Participant's Exclusive Remedies.

The parties acknowledge that the City would not have entered into this Agreement if it were to be liable in damages under, or with respect to, this Agreement or any of the matters referred to herein, including the Project, except as provided in this Article. Accordingly, Participant shall not be entitled to damages or monetary relief for any breach of this Agreement by the City or arising out of or connected with any dispute, controversy, or issue between Participant and the City regarding this Agreement or any of the matters referred to herein, the parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be Participant's sole and exclusive judicial remedies.

XVIII. APPLICABLE LAW

The internal laws of the State of Illinois without regard to principles of conflicts of law shall govern the interpretation and enforcement of this Agreement.

XIX. CONFLICT OF INTEREST

- a. No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.
- b. The Participant warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

XX. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES

No member, official, agent, legal counsel or employee of the City shall be personally liable to the Participant, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Participant or successor or on any obligation under the terms of this Agreement.

XXI. BINDING EFFECT

This Agreement, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

XXII. AUTHORITY TO SIGN

The Participant hereby represents that the persons executing this Agreement on behalf of Participant have full authority to do so and to bind Participant to perform pursuant to the terms and conditions of this Agreement.

XXIII. COUNTERPARTS

This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

XXIV. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

- a. This Agreement and the Exhibits and references incorporated into this Agreement express all understandings of the parties concerning the matters covered in this Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

- b. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Participant.

XXV. NON-ASSIGNMENT

The Participant shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City Manager’s prior written approval, and Participant and Participant’s proposed assignee’s execution of an assignment and assumption agreement in a form approved by the City. Any assignment in violation of this paragraph is grounds for immediate termination of this Agreement, at the sole discretion of the City Manager. In no event shall any putative assignment create a contractual relationship between the City, and any putative assignee.

XXVI. NO WAIVER

No failure of either the City or the Participant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect.

IN WITNESS WHEREOF, the City, and the Participant have signed this Agreement as of the dates set opposite their signatures.

”CITY”

Dated: _____

By: _____ (signature)

Name: _____

Title: _____

“PARTICIPANT”

Dated: _____

By: _____ (signature)

Name: _____

Title: _____

ATTACHMENTS:

1. Exhibit A – Legal Description of Property
2. Exhibit B – Declaration of Covenants Affecting Real Property (for projects approved for \$5,000 or more in forgivable loans only)
3. Exhibit C – Certification of Ownership and Consent
4. Exhibit D – Program Guidelines

Return this form to:
City of Evanston – City Manager’s Office
Economic Development Division
2100 Ridge Avenue
Evanston, IL 60201

For Official Use Only

Exhibit A: LEGAL DESCRIPTION OF PROPERTY

(Attach behind this page)

[EXHIBIT B]

This instrument was prepared by
And upon recording return to:
Economic Development Division
City of Evanston
2100 Ridge Ave.
Evanston, IL 60201

[RECORDING AREA]

DECLARATION OF COVENANTS AFFECTING REAL PROPERTY

THIS DECLARATION OF COVENANTS AFFECTING REAL PROPERTY (“Declaration”) is entered into this _____ day of _____, _____ (“Effective Date”), by and between the CITY OF EVANSTON, a public body corporate and politic (“City”), and _____ (“Participant”).

RECITALS:

- A. Participant owns fee title to, or holds a valid leasehold interest in, that certain improved real property located at _____ in the City of Evanston, County of Cook, State of Illinois (hereinafter referred to as the “Property”). The property is improved with a commercial building currently used as _____. A legal description of the Property is attached hereto and incorporated herein as Exhibit “1”.
- B. The Site is within the City of Evanston (“City”).
- C. Participant has entered into a Storefront Modernization Program Agreement (the “Program Agreement”) with the City, dated as of _____, 20____, concerning the “Project” (as defined in the Program Agreement), City’s provision to provide the Participant a rebate in the amount of half of the total project cost not to exceed _____ (\$____), in the form of a loan, to assist Participant in developing the Project (the “Rebate”), and related matters, which Program Agreement is on file with the City as a public record and is incorporated herein by reference. All defined terms used herein shall have the same meaning as in the Program Agreement unless otherwise stated.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for other valuable consideration, the sufficiency of which is hereby acknowledged, City and Participant hereby agree as follows:

1. Participant hereby covenants as follows, which covenants shall run with land and shall be binding upon itself and its assigns, and each successor-in-interest to the Property or any portion thereof:
 - a) To not transfer or encumber the Site or any portion thereof or assign any of its rights or obligations hereunder, under the Program Agreement, or under this Declaration without obtaining the prior written consent of the City.
 - b) To maintain the insurance required pursuant to the provisions of Article VIII of the Program Agreement.
 - c) To indemnify, defend, and hold the City, and their respective officers, officials, members, employees, agents, and representatives (collectively, the "City and City Personnel"), harmless from and against all liabilities, losses, damages, costs and expenses, including reasonable attorney's fees, expert witness fees, and court costs (hereinafter, collectively, "Claims"), arising from or as a result of the death or injury to any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person and which is caused by any acts or any errors or omissions of Participant or any of its employees, agents, servants, invitees, contractors, or subcontractors; provided, however, Participant shall not be required to indemnify, defend, and hold harmless the City if the Claim arises from or is caused in whole by active negligence or willful misconduct of the City, or any of their employees, agents, servants, invitees, contractors, or subcontractors
 - d) To not devote the Property to uses inconsistent with applicable laws, rules, and regulations of any governmental agencies having jurisdiction.
 - e) To maintain the Property and all improvements including the Improvements constructed as the Project, in first class condition and repair and in accordance with all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials. Participant shall not permit any accumulation of weeds, rubbish, or debris on the Property, and shall promptly remove any graffiti or other defacement of the Property. Participant shall not permit any unlawful use or public or private nuisance to be maintained on the Site.
 - f) To repay the Rebate pursuant to the terms of Article XVII Paragraph C of the Program Agreement, when such repayment is required under the terms thereof.
 - g) That there shall be no discrimination against, or segregation of, any persons, or group of persons, on any basis of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or

physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

- h) That, if the Participant hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
 - i) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all Participants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.
2. All of the covenants, easements, agreements, conditions and restrictions contained herein, whether affirmative or negative: (a) are made for the direct benefit of the Benefited Property; (b) are covenants running with the land; (c) are appurtenant to and shall not be conveyed or otherwise transferred separately from the Benefited Property, or the Site; and (d) bind and inure to the burden or benefit, as the case may be, of the respective heirs, personal representatives, successors and assigns of the parties hereto, including, without limitation, successive owners of all or any portion of, respectively, the Benefited Public Property and the Site.
3. The covenants and agreements established in this Declaration shall, without regard to technical classification and designation, be binding on Participant for the benefit of and in favor of the City, regardless of whether the City own or hold any interest in real property butting or adjacent to the Site or within the Project Area. Notwithstanding the foregoing or anything to the contrary herein, neither Participant nor any assign or successor-in-interest to the Site shall have any liability or responsibility for the breach of any covenant or agreement contained herein by any other assign or successor-in-interest to the Property that would constitute a breach or violation of the provisions hereof. At the termination of the Program Agreement, Participant may request that the City release the covenants set forth herein. The decision whether to release said covenants shall remain in the sole discretion of the City, which shall not be unreasonably withheld.

[end - signature page follows]

IN WITNESS WHEREOF, City and Participant have entered into this Declaration as of the Effective Date.

("City")

CITY OF EVANSTON, an Illinois Municipal Corporation

By: _____

Its: City Manager

Dated: _____

("Participant")

_____ (signature)

By: _____

Its: _____

Dated: _____

State of Illinois)
County of Cook)

On _____, before me, _____ (insert name and title of the officer) Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of Illinois)
County of Cook)

On _____, before me, _____ (insert name and title of the officer) Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the forgoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____ (Seal)

Owner Consent to Declaration

CONSENT TO RECORDATION

_____ (owner of the fee interest in the real property legally described in Exhibit "A" hereto, consents to the recordation of the foregoing Declaration of Covenants Affecting Real Property against said real property and agrees to be bound by the terms thereof applicable to the participant.

Dated: _____

_____ (signature)

By: _____

State of Illinois)
County of Cook)

On _____, before me, _____ (insert name and title of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument of the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT C: CERTIFICATION OF OWNERSHIP AND CONSENT

This CERTIFICATION OF OWNERSHIP AND CONSENT (this "Consent") is executed by the undersigned ("Owner") at the request of _____ ("Tenant").

1. Owner is the owner in fee of that certain real property located at _____, in the City of Evanston, County of Cook, State of Illinois (the "Property").
2. The Property is improved with a building (the "Building"). The Property is currently leased to _____, who operates a business thereon (the "Tenant").
3. The Tenant has submitted an Application to the City of Evanston (the "City") pursuant to the City's Storefront Modernization Program (the "Program") for a rebate in connection with certain improvements the Tenant contemplates making to the Building (the "Improvements").
4. The Tenant has entered into a Program Agreement with the City that sets out the terms and conditions of the Program, and includes the Program Guidelines. Pursuant to the Program Agreement if the Tenant completes construction of the Improvements within ninety (90) days after the date of the Program Agreement, and satisfies certain other requirements set forth therein, the Tenant will be eligible for a rebate (the "Rebate"). The Rebate will be in the form of a loan, the repayment of which will be forgiven if the Tenant maintains and does not alter or remove the Improvements for a period of five (5) years from the Tenant's receipt of the Rebate.
5. If the Tenant sells the business without obtaining the prior written consent of the City and/or fails to maintain or alters or removes the Improvements before the close of the five (5) year period referenced above, the Tenant will be required to repay a prorata share of the Rebate.
6. One of the City's conditions to providing the Rebate to the Tenant is that a Declaration of Covenants Affecting Real Property is recorded against the Property which imposes certain maintenance and other requirements on the Property (the "Declaration"). This condition pertains to projects receiving a forgivable loan of \$5,000 or more.

Owner now wishes to provide its written consent to all of the foregoing.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby declares as follows:

1. Owner hereby consents to all of the following:
 - a. Tenant's execution of the Program Agreement and participation in the Program.
 - b. Tenant's construction of the Improvements.
 - c. The recordation against the Property of the Declaration, which Owner hereby agrees to execute, with signature(s) acknowledged, and deliver to the City when

requested by the Tenant. This condition pertains to projects receiving a forgivable loan of \$5,000 or more.

2. The person or persons executing this Consent on behalf of Owner is fully empowered to do so and in so doing binds Owner according to the terms hereof.
3. Owner acknowledges that Tenant and City are relying upon the provisions of this Consent and that the City would not agree to provide the Rebate to Tenant without this Consent.
4. City is a third party beneficiary to this Consent.

IN WITNESS WHEREOF, Owner has executed this Consent as of _____
(date).

“OWNER”

By: _____
(signature)

Its: _____

By: _____
(signature)

Its: _____