

Attn: Recorder

Return to Denarie Kane, Director of Development, City of Hobart, 414 Main St., Hobart, IN 46342

## **CITY OF HOBART, INDIANA REDEVELOPMENT COMMISSION**

### **Commercial Façade Grant Program Agreement**

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the REDEVELOPMENT COMMISSION OF THE CITY OF HOBART, INDIANA, a political subdivision of the State of Indiana (õRDCö) and the following person or legal entity (õApplicantö):

Name of Applicant:

Name and Address of Owner:

Name of Business:

Federal Tax ID Number or Social Security Number of Applicant:

Address of Property to be Improved:

WHEREAS, the Applicant is the owner, or the owner's qualified lessee or agent, with respect to a parcel of real estate, improved with one or more commercial buildings (õBuildingö or õBuildingsö), located in the City of Hobart, Indiana, and within the Downtown Façade Grant Program Area established by the RDC (õDistrictö), such parcel being legally described as follows:

*(legal description here)*

and

WHEREAS, the Applicant has applied for a grant or grants from the RDC for financial assistance in the reconstruction or renovation of the façade of such Building or Buildings pursuant to the RDC's Hobart Downtown Façade Grant Program ("Program"); and

WHEREAS, the RDC, through the Program, has agreed to contribute, in its sole discretion, to the reimbursement of one-half (1/2) of the actual costs expended by the Applicant, as approved in advance by the RDC, for exterior improvements, reconstruction or renovation to the Building, (or for qualifying signage or for a qualifying awning, up to the sum of \$1,000.00 for each) in the amount stated below, but not to exceed \$50,000; and

WHEREAS, the Applicant and the RDC have agreed to the terms, conditions and covenants governing the grant to be made as part of the Program for the improvement of the Building's façade, and the parties wish to document their agreement in this instrument.

THEREFORE, IT IS AGREED by the Applicant and the RDC, in consideration for the mutual promises, terms and conditions contained herein, and intending themselves to be legally bound, as follows:

**Section 1. Grant.** The RDC shall reimburse the Applicant for the cost of improvements to the façade of the Applicant's Building (and/or a qualifying single awning or sign, but only up to \$1,000.00 for each sign or awning) at the rate of one-half (1/2) of the approved contract cost of such improvements, limited to the following:

a. Costs actually expended by the Applicant for labor, materials and equipment for the installation, construction or application of the improvements, and the documentation of such expenditures complying with Section 8 herein;

b. Costs to be reimbursed shall be incurred pursuant to a construction contract or contracts approved prior to the commencement of work by the RDC;

c. The maximum amount of the grant made by the RDC subject to this Agreement shall not exceed \$\_\_\_\_\_.

**Section 2. Design.** No façade improvement shall qualify for reimbursement, nor shall any such work commence until the design of the improvements, including the plans, design drawings, specifications and estimates for the work shall have been approved by the RDC. The Applicant, prior to submitting an application for grant approval and approval of the design, shall meet with the professional staff of the RDC and the Hobart Historic Preservation Commission ("HHPC") for historic preservation recommendations with respect to the reconstruction or renovation of the Building façade. The design and configuration of the reconstruction, renovation and any awning or sign in connection with the Building façade shall comply in every respect with the Lake George Commercial Historic District Design Guidelines adopted by the RDC which are incorporated herein by reference and deemed a part of this Agreement. Likewise, the Applicant agrees to conform in every respect to the Program Guidelines, also adopted by the RDC, which are attached as Exhibit "A," and also deemed part of this Agreement. The design for the improvements, together with specifications for materials and

other requirements are stated in the Applicant's application, approved by the RDC, attached hereto and made a part hereof as Exhibit B.

**Section 3. Permits and Land Use Standards.** The Applicant shall obtain all building permits, zoning approvals or variances, site plan approvals and any other land use permit or clearance required for the proposed work, if any, under the laws of the State of Indiana and the Zoning and Subdivision Ordinances of the City of Hobart.

**Section 4. Inspections and Reports.** The staff of the RDC and HHPC shall periodically review the progress of the work on the facade improvements approved under the Program and inspect the work as necessary, but such inspections shall be in addition to, and not a part of, any permit inspections required by or undertaken by the Building Department of the City. All work which is not in conformance with the approved plans, design drawings or specifications shall be replaced and made to conform thereto and to the provisions of this Agreement. The Applicant shall submit to the RDC a written report on the progress of the facade renovation at the mid-point of the project, and shall submit a letter to the RDC notifying it of the completion of the work. The RDC shall then review and inspect the finished work and, if approved, shall arrange for payment of the grant funds to the Applicant.

**Section 5. Future Maintenance.** The Applicant and his or her successors and assigns shall maintain the improvements approved and undertaken pursuant to the Program with respect to Applicant's Building upon completion of the work and for the following periods:

Signs and awnings bearing business signage	five (5) years
All other awnings	ten (10) years
All building improvements	ten (10) years

With respect to signs and awnings bearing business signage, in the event the building is transferred to a new owner and the owner terminates the tenancy of the sign or awning business grantee prior to the expiration of the five-year maintenance period for such sign or awning, then neither the business grantee nor the building owner is required to maintain the sign or awning for the balance of the maintenance period, and the building owner shall immediately remove the sign or awning bearing business signage for the business which no longer exists on the premises at his or her own expense.

Neither the Applicant nor his or her successors shall allow any alterations or changes to signs or awnings except for the removal of a sign or awning bearing business signage as specified in the preceding paragraph, no sign, awning or facade improvements constructed and approved pursuant to the Program in finished form, including no changes to the approved design, specifications, color scheme, materials employed or configuration of facade elements unless any such proposed change is first submitted to the RDC for approval. Such changes shall be approved only if the original design as approved by the RDC and contained in the approved drawings, specifications, and plans are not substantially altered by the proposed change.

During the Maintenance Period applicable to signs, awnings and facade improvements as stated above, the applicant, his or her successors and assigns, will be responsible for the

performance of periodic regular maintenance including but not limited to the annual cleaning of awnings, repair of worn, torn, frayed or broken sign or awning parts and materials, removal and touch up or repainting of faded or chipped paint and repainting with the same colors approved by the RDC as needed, repair of broken window glass, splintered or broken wood or metal trim, and all other reasonable measures to preserve the appearance of the sign, awnings or improvements.

**Section 6. Release and Indemnification.** The Applicant, its agents, representatives, invitees and employees hereby release and discharge the City of Hobart (öCityö), the RDC, the HHPC, and the officials, employees, consultants, and representatives thereof from any liability whatsoever arising from the grant or denial of approval of the Applicant's façade proposal, the performance of any work undertaken pursuant to any approved grant to the applicant, any liability for negligent design, the payment or non-payment of contractors, sub-contractors, materialmen and suppliers, any claim under any prevailing wage laws, and any other liability which may arise by reason of or related to the Program. The Applicant also agrees to indemnify and hold harmless the City, the RDC, the HHPC, and the officials, employees, consultants, and representatives thereof from any and all liability on any claim, action or cause of action whatsoever, for any property damage, personal injury, or other liability, whether sounding in contract or tort, arising from or in any way related to the grant or denial of approval of the Applicant's façade proposal, the performance of any work undertaken pursuant to any approved grant to the applicant, any liability for negligent design, the payment or non-payment of contractors, sub-contractors, materialmen and suppliers, any claim under any prevailing wage laws and any other liability which may arise by reason of or related to the Program. The Applicant's duty of indemnification shall extend to and include reimbursement of the attorney fees and expenses of litigation of the City, the RDC, the HHPC, and the officials, employees, consultants, and representatives thereof who shall have the sole right to select and direct counsel and approve any settlement of any claimed property damage, personal injury, or other liability.

**Section 7. Remedies, Failure to Comply.** In the event that the Applicant fails to strictly comply with terms of this Agreement, or the terms, conditions, specifications, plans and drawings approved by the RDC in connection with the Applicant's application, the RDC may, at its sole discretion, deny payment of some or all of the grant approved for the project, require the Applicant to correct the non-conforming work at his own expense, or, in the case of completed work after payment of the grant funds, bring an action at law or in equity, as the RDC may determine, to compel adherence to the approved specifications, plans and drawings, or to recover the grant funds, together with attorney fees and expenses of litigation.

**Section 8. Proof of Payment.** Proof of payment and expenditures by the Applicant for the purpose of obtaining reimbursement from grant funds approved for the project shall consist of a cash receipt from the Applicant's contractor or vendor containing the name of the company or individual receiving the money, the date, the amount received, in what form payment was made (e.g., cash, check, etc.), the purpose of the payment (including a general description of the work being paid for and/or the material or goods supplied), and the signature of a company representative of the payee. Credit card receipts, properly marked invoices, and cancelled checks (front and back copies) containing all of the elements stated above shall also be acceptable.

**Section 9. Verification.** The Applicant, by executing this Agreement, affirms that the statements contained in the Applicant's application materials, this Agreement, and any documents supporting them are true under the penalty of perjury. Any misrepresentation of fact or other false statement made to the City of Hobart or RDC may be grounds for disapproval of the Applicant's application, or denial of payment of grant funds.

**Section 10. Effect on Other Work.** Nothing in this Agreement shall have any effect upon the Applicant's right to perform any work on the Applicant's Building outside of or not related to the façade improvements which are provided for herein.

**Section 11. Term.** This Agreement shall be effective for a period of \_\_\_\_\_ ( ) years from the date of completion and approval of the façade improvement work provided for in this Agreement. The Applicant agrees to supply a copy of this Agreement with written notice of its effectiveness to any subsequent owner or lessee of the Building or portion thereof containing the improvements.

**Section 12. Grant of Encumbrance.** The Applicant (and, in the event that the Applicant is not the owner of the building or buildings, the undersigned owner of the parcel of real estate described above which includes the applicant's building or buildings), hereby grants to the RDC an encumbrance upon the above described real estate improved by the façade grant provided for in this Agreement to secure the performance of the Applicant's and owner's continuing duty under Section 5 of this Agreement to maintain the facade improvements for the term of this Agreement. The parties agree that the encumbrance granted herein shall be deemed a performance mortgage, subject to foreclosure or enforcement by specific performance at the sole discretion of the RDC, including the grant of orders of a court of competent jurisdiction allowing the RDC to repair or otherwise maintain the facade improvements constructed hereunder. In that event, the RDC shall be entitled to assert an equitable lien upon the real estate for the costs of such maintenance and repair, and may foreclose upon such lien at its sole discretion. In any proceeding to enforce the performance mortgage or any lien granted hereunder, the RDC shall be entitled to recover its reasonable attorney fees and expenses of litigation. This Agreement shall be filed for recordation in the Office of the Recorder of Lake County, Indiana, and the grant of the performance mortgage and any liens created under this Section shall bind the heirs, successors and assigns of the Applicant and owner, and shall run with the title to the above described real estate.

**Section 13. Other Provisions.** This Agreement may be amended only in writing in an instrument executed by the parties. This instrument contains the entire agreement of the parties. Any promise, term, condition or representation which is not contained herein shall have no force or effect. The Applicant may not assign this Agreement or any of the rights and duties thereof without the express written permission of the RDC. The laws of the State of Indiana shall govern the construction and effect of this Agreement.



STATE OF INDIANA        )  
                                          ) ss:  
LAKE COUNTY                )

BEFORE ME, a duly appointed Notary Public in and for said County and State appeared \_\_\_\_\_ and \_\_\_\_\_, President and Member of the Hobart Redevelopment Commission, respectively, persons known to me, who acknowledged the execution and attestation of the above Agreement in said official capacities, as their voluntary acts for the uses and purposes stated therein.

IN WITNESS WHEREOF, I have affixed my signature and official seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

S E A L

\_\_\_\_\_  
Notary public  
\_\_\_\_\_  
Name Printed  
My Commission expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

STATE OF INDIANA        )  
                                          ) ss:  
LAKE COUNTY                )

BEFORE ME, a duly appointed Notary Public in and for said County and State appeared \_\_\_\_\_, Applicant in the above instrument, a person known to me, who acknowledged the execution of the above Agreement, as his or her voluntary act for the uses and purposes stated therein.

IN WITNESS WHEREOF, I have affixed my signature and official seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

S E A L

\_\_\_\_\_  
Notary public  
\_\_\_\_\_  
Name Printed  
My Commission expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

STATE OF INDIANA        )  
                                          ) ss:  
LAKE COUNTY                )

BEFORE ME, a duly appointed Notary Public in and for said County and State appeared \_\_\_\_\_, Owner in the above instrument, a person known to me, who acknowledged the execution of the above Agreement, as his or her voluntary act for the uses and purposes stated therein.

IN WITNESS WHEREOF, I have affixed my signature and official seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

S E A L

\_\_\_\_\_  
Notary public

\_\_\_\_\_  
Name Printed

My Commission expires: \_\_\_\_\_

County of Residence: \_\_\_\_\_

I affirm under the penalty for perjury that I have taken reasonable care to redact each Social Security number in this document unless required by law. Anthony DeBonis, Jr.

*This Instrument prepared by Anthony DeBonis, Jr., Hobart City Attorney, ANTHONY DeBONIS, JR. & ASSOCIATES ATTORNEYS AT LAW, LLC, 214 Main Street, Hobart, Indiana 46342*