

CITY OF EVANSTON
TAX INCREMENT FINANCING DISTRICT NO. 5
HOWARD RIDGE DISTRICT
ANNUAL REPORT FOR THE FISCAL YEAR
BEGINNING JANUARY 1, 2012 AND ENDING DECEMBER 31, 2012

***CITY OF EVANSTON HOWARD AND RIDGE TIF DISTRICT ANNUAL REPORT FOR FISCAL YEAR
BEGINNING JANUARY 1, 2012 AND ENDING DECEMBER 31, 2012***

City of Evanston

**Tax Increment Financing District No. 5
Howard Ridge TIF District
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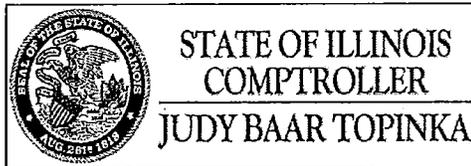
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Section 1. Name of Redevelopment Project Area and Contact Information

Refer to chart attached.

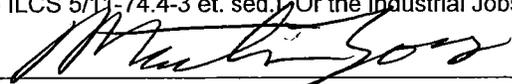
FY 2012
ANNUAL TAX INCREMENT FINANCE
REPORT



Name of Municipality: Evanston Reporting Fiscal Year: 2012
 County: Cook Fiscal Year End: 12/31 /2012
 Unit Code: 016/175/30

TIF Administrator Contact Information

First Name: Martin Last Name: Lyons
 Address: 2100 Ridge Ave Title: TIF Administrator
 Telephone: 847/328-2100 City: Evanston Zip: 60201-2798
 Mobile _____ E-mail: mlyons@cityofevanston.org
 Mobile _____ Best way to Email Phone
 Provider _____ contact Mobile Mail

I attest to the best of my knowledge, this report of the redevelopment project areas in: City/Village of
 Evanston
 is complete and accurate at the end of this reporting Fiscal year under the Tax Increment Allocation Redevelopment Act
 [65 ILCS 5/11-74.4-3 et. seq.] Or the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-10 et. seq.]

 Written signature of TIF Administrator _____ Date 10/17/13

Section 1 (65 ILCS 5/11-74.4-5 (d) (1.5) and 65 ILCS 5/11-74.6-22 (d) (1.5)*)

FILL OUT ONE FOR EACH TIF DISTRICT

Name of Redevelopment Project Area	Date Designated	Date Terminated
Downtown II TIF District (Research Park)-TIF1	1/28/1985	10/12/2009
Southwest TIF District- TIF 2	6/25/1990	
Howard Hartrey TIF District - TIF 3	4/27/1992	
Washington National TIF District - TIF 4	9/1/1994	
Howard and Ridge TIF District - TIF 5	1/26/2004	
West Evanston - TIF 6	9/1/2005	

*All statutory citations refer to one of two sections of the Illinois Municipal Code: the Tax Increment Allocation Redevelopment Act [65 ILCS 5/11-74.4-3 et. seq.] or the Industrial Jobs Recovery Law [65 ILCS 5/11-74.6-10 et. seq.]

SECTION 2 [Sections 2 through 5 must be completed for each redevelopment project area listed in Section 1.]

Name of Redevelopment Project Area:	Howard Ridge
Primary Use of Redevelopment Project Area*:	Combination/Mixed
If "Combination/Mixed" List Component Types:	Retail, Residential
Under which section of the Illinois Municipal Code was Redevelopment Project Area designated? (check one):	
Tax Increment Allocation Redevelopment Act <u> x </u>	Industrial Jobs Recovery Law _____

	No	Yes
Were there any amendments to the redevelopment plan, the redevelopment project area, or the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (1) and 5/11-74.6-22 (d) (1)] If yes, please enclose the amendment labeled Attachment A	X	
Certification of the Chief Executive Officer of the municipality that the municipality has complied with all of the requirements of the Act during the preceding fiscal year. [65 ILCS 5/11-74.4-5 (d) (3) and 5/11-74.6-22 (d) (3)] Please enclose the CEO Certification labeled Attachment B		X
Opinion of legal counsel that municipality is in compliance with the Act. [65 ILCS 5/11-74.4-5 (d) (4) and 5/11-74.6-22 (d) (4)] Please enclose the Legal Counsel Opinion labeled Attachment C		X
Were there any activities undertaken in furtherance of the objectives of the redevelopment plan, including any project implemented in the preceding fiscal year and a description of the activities undertaken? [65 ILCS 5/11-74.4-5 (d) (7) (A and B) and 5/11-74.6-22 (d) (7) (A and B)] If yes, please enclose the Activities Statement labeled Attachment D		X
Were any agreements entered into by the municipality with regard to the disposition or redevelopment of any property within the redevelopment project area or the area within the State Sales Tax Boundary? [65 ILCS 5/11-74.4-5 (d) (7) (C) and 5/11-74.6-22 (d) (7) (C)] If yes, please enclose the Agreement(s) labeled Attachment E		X
Is there additional information on the use of all funds received under this Division and steps taken by the municipality to achieve the objectives of the redevelopment plan? [65 ILCS 5/11-74.4-5 (d) (7) (D) and 5/11-74.6-22 (d) (7) (D)] If yes, please enclose the Additional Information labeled Attachment F	X	
Did the municipality's TIF advisors or consultants enter into contracts with entities or persons that have received or are receiving payments financed by tax increment revenues produced by the same TIF? [65 ILCS 5/11-74.4-5 (d) (7) (E) and 5/11-74.6-22 (d) (7) (E)] If yes, please enclose the contract(s) or description of the contract(s) labeled Attachment G	X	
Were there any reports or meeting minutes submitted to the municipality by the joint review board? [65 ILCS 5/11-74.4-5 (d) (7) (F) and 5/11-74.6-22 (d) (7) (F)] If yes, please enclose the Joint Review Board Report labeled Attachment H		X
Were any obligations issued by municipality? [65 ILCS 5/11-74.4-5 (d) (8) (A) and 5/11-74.6-22 (d) (8) (A)] If yes, please enclose the Official Statement labeled Attachment I	X	
Was analysis prepared by a financial advisor or underwriter setting forth the nature and term of obligation and projected debt service including required reserves and debt coverage? [65 ILCS 5/11-74.4-5 (d) (8) (B) and 5/11-74.6-22 (d) (8) (B)] If yes, please enclose the Analysis labeled Attachment J	X	
Cumulatively, have deposits equal or greater than \$100,000 been made into the special tax allocation fund? 65 ILCS 5/11-74.4-5 (d) (2) and 5/11-74.6-22 (d) (2) If yes, please enclose Audited financial statements of the special tax allocation fund labeled Attachment K		X
Cumulatively, have deposits of incremental revenue equal to or greater than \$100,000 been made into the special tax allocation fund? [65 ILCS 5/11-74.4-5 (d) (9) and 5/11-74.6-22 (d) (9)] If yes, please enclose a certified letter statement reviewing compliance with the Act labeled Attachment L		X
A list of all intergovernmental agreements in effect in FY 2010, to which the municipality is a part, and an accounting of any money transferred or received by the municipality during that fiscal year pursuant to those intergovernmental agreements. [65 ILCS 5/11-74.4-5 (d) (10)] If yes, please enclose list only of the intergovernmental agreements labeled Attachment M	X	

* Types include: Central Business District, Retail, Other Commercial, Industrial, Residential, and Combination/Mixed.

Attachment A Amendments to the Redevelopment Plan, the Redevelopment Project
and/or the Area Boundary

There were no amendments to the Redevelopment Plan or to the Redevelopment Project Area within the reporting Period.

Attachment B Certification of the Mayor of the municipality that the municipality has complied with all of the requirements of the Act during the reporting Period.

Re: Howard and Ridge TIF District

I, Elizabeth Tisdahl, the duly elected Mayor of the City of Evanston, County of Cook, State of Illinois, do hereby certify that to the best of my knowledge, the City of Evanston complied with the requirements pertaining to the Illinois Tax Increment Redevelopment Allocation Act during the Fiscal Year beginning January 1, 2012 and ending December 31, 2012.



MAYOR

10-17-13

DATE

Attachment C Opinion of legal counsel that the municipality has complied with the Act.

RE: Attorney Review City of Evanston Howard and Ridge TIF District

To Whom It May Concern:

This will confirm that I am the City Attorney for the City of Evanston, Illinois. I have reviewed all information provided to me by the City staff and consultants, and I find that the City of Evanston has conformed to all applicable requirements of the Illinois Tax Increment Redevelopment Allocation Act set forth thereunder for the Fiscal Year beginning January 1, 2012 and ending December 31, 2012 to the best of my knowledge and belief.

Sincerely,


Corporation Counsel

Attachment D Statement setting forth all activities undertaken in furtherance of the objectives of the Redevelopment Plan, including:

- A. Any project implemented during the reporting Period; and
- B. A description of the redevelopment activities undertaken.

The City continued to monitor the 195 unit rental housing development (located at 415 Howard St.). The City's role is to rebate all of the incremental real estate taxes through a redevelopment agreement to address certain TIF eligible extraordinary costs, but only upon achievement of a 90% occupancy level.

The City also entered into a program agreement relating to façade improvements for the property located at 607 – 609 Howard Street and a façade agreement and lease relating to property located at 629 – 631 Howard (Ward Eight LLC).

Attachment E Description of Agreements Regarding Property Disposition or Redevelopment

No agreements regarding property disposition were entered into by the City in the fiscal year. The lease and program/façade agreements described in Section 2 D. are attached in Exhibit C hereto.

Attachment F Additional Information on Uses of Funds Related to Achieving Objectives of the
Redevelopment Plan

The City continued to monitor the residential project implementation described in Attachment D. In addition to monitoring ongoing projects, the City also approved façade improvement agreements and a lease relating to the use of City owned property.

Attachment G Information Regarding Contracts with TIF Consultants.

The City utilized Kane, McKenna and Associates, Inc. in order to prepare the annual report. Fees were based upon hourly rates for services rendered and did not include contingent payments. Kane McKenna did not enter into contracts with any entities that were party to City redevelopment agreements.

Attachment H Reports Submitted by Joint Review Board.

No reports were submitted by the Joint Review Board. The Board met on February 21, 2013. Minutes of the meeting are attached as Exhibit A.

Attachment I Summary of any obligations issued by the municipality and official statements

No new obligations were issued by the City in the reporting Period.

Attachment J Financial Analysis: TIF Obligations

No financial analysis was undertaken in the reporting Period, as no new obligations or agreements were approved by the City.

Attachment K and L

For special tax allocation funds that have experienced cumulative deposits of incremental tax revenues of \$100,000 or more, a certified audit report reviewing compliance with the Act performed by an independent public accountant certified and licensed by the authority of the State of Illinois. The audit report shall contain a letter from the independent certified public accountant indicating compliance or noncompliance with the requirements of subsection (q) of Section 11-74.4-3.

Relevant portions of the City's audit and the compliance letter are attached as Exhibit B.

Attachment M Intergovernmental Agreements

Not applicable.

Section 3.1 Analysis of Special Tax Allocation Fund

Refer to table attached.

SECTION 3.1 - (65 ILCS 5/11-74.4-5 (d) (5) and 65 ILCS 5/11-74.6-22 (d) (5))

Provide an analysis of the special tax allocation fund.

Fund Balance at Beginning of Reporting Period

\$ 1,100,753

Revenue/Cash Receipts Deposited in Fund During Reporting FY:	Reporting Year	Cumulative*	% of Total
Property Tax Increment	\$ 752,477	\$ 2,600,700	97%
State Sales Tax Increment			0%
Local Sales Tax Increment			0%
State Utility Tax Increment			0%
Local Utility Tax Increment			0%
Interest	\$ 164	\$ 13,197	0%
Land/Building Sale Proceeds			0%
Bond Proceeds			0%
Transfers from Municipal Sources			0%
Private Sources			0%
Other (identify source _____; if multiple other sources, attach schedule)	\$ 63,649	\$ 64,775	2%

*must be completed where 'Reporting Year' is populated

Total Amount Deposited in Special Tax Allocation Fund During Reporting Period

\$ 816,290

Cumulative Total Revenues/Cash Receipts

\$ 2,678,672 100%

Total Expenditures/Cash Disbursements (Carried forward from Section 3.2)

\$ 861,533

Distribution of Surplus

Total Expenditures/Disbursements

\$ 861,533

NET INCOME/CASH RECEIPTS OVER/(UNDER) CASH DISBURSEMENTS

\$ (45,243)

FUND BALANCE, END OF REPORTING PERIOD*

\$ 1,055,510

* if there is a positive fund balance at the end of the reporting period, you must complete Section 3.3

Section 3.2 Itemized List of Expenditures from Special Tax Allocation Fund

Refer to tables attached.

SECTION 3.2 A- (65 ILCS 5/11-74.4-5 (d) (5) and 65 ILCS 5/11-74.6-22 (d) (5))
PAGE 1

ITEMIZED LIST OF ALL EXPENDITURES FROM THE SPECIAL TAX ALLOCATION FUND
(by category of permissible redevelopment cost, amounts expended during reporting period)

FOR AMOUNTS >\$10,000 SECTION 3.2 B MUST BE COMPLETED

Category of Permissible Redevelopment Cost [65 ILCS 5/11-74.4-3 (q) and 65 ILCS 5/11-74.6-10 (o)]	Amounts	Reporting Fiscal Year
1. Costs of studies, administration and professional services—Subsections (q)(1) and (o) (1)		
TIF eligible reimbursements	120,400	
		\$ 120,400
2. Cost of marketing sites—Subsections (q)(1.6) and (o)(1.6)		
		\$ -
3. Property assembly, demolition, site preparation and environmental site improvement costs. Subsection (q)(2), (o)(2) and (o)(3)		
TIF eligible reimbursements	48,500	
		\$ 48,500
4. Costs of rehabilitation, reconstruction, repair or remodeling and replacement of existing public buildings. Subsection (q)(3) and (o)(4)		
Kipnis Architecture	\$ 12,500.00	
607 Howard LLC	\$ 19,330.00	
Ward Eight Wine Bar	\$ 99,982.00	
	20,638	
		\$ 152,450
5. Costs of construction of public works and improvements. Subsection (q)(4) and (o)(5)		
		\$ -
6. Costs of removing contaminants required by environmental laws or rules (o)(6) - Industrial Jobs Recovery TIFs ONLY		
		\$ -

SECTION 3.2 A

PAGE 3

14. Costs of reimbursing private developers for interest expenses incurred on approved redevelopment projects. Subsection (q)(11)(A-E) and (o)(13)(A-E)		
		\$ -
15. Costs of construction of new housing units for low income and very low-income households. Subsection (q)(11)(F) - Tax Increment Allocation Redevelopment TIFs ONLY		
		\$ -
16. Cost of day care services and operational costs of day care centers. Subsection (q) (11.5) - Tax Increment Allocation Redevelopment TIFs ONLY		
		\$ -
TOTAL ITEMIZED EXPENDITURES		\$ 861,533

Section 3.3 Special Tax Allocation Fund Balance (end of reporting period).

Refer to table attached.

**SECTION 3.3 - (65 ILCS 5/11-74.4-5 (d) (5) 65 ILCS 11-74.6-22 (d) (5))
Breakdown of the Balance in the Special Tax Allocation Fund At the End of the Reporting Period**

FUND BALANCE, END OF REPORTING PERIOD \$ 1,055,510

	Amount of Original Issuance	Amount Designated
1. Description of Debt Obligations		

Total Amount Designated for Obligations \$ - \$ -

2. Description of Project Costs to be Paid

Estimated initial TIF eligible reimbursements-residential project		\$ 2,000,000
Redevelopment projects-improvements west of Chicago		\$ 1,000,000

Total Amount Designated for Project Costs \$ 3,000,000

TOTAL AMOUNT DESIGNATED \$ 3,000,000

SURPLUS*/(DEFICIT) \$ (1,944,490)

* NOTE: If a surplus is calculated, the municipality may be required to repay the amount to overlapping taxing

Section 4.0 A description of all property purchased by the municipality within the Redevelopment Project Area including:

- A. Street Address
- B. Approximate size or description of property
- C. Purchase Price
- D. Seller of property

Not applicable.

SECTION 4 [65 ILCS 5/11-74.4-5 (d) (6) and 65 ILCS 5/11-74.6-22 (d) (6)]

Provide a description of all property purchased by the municipality during the reporting fiscal year within the redevelopment project area.

 X **No property was acquired by the Municipality Within the Redevelopment Project Area**

Property Acquired by the Municipality Within the Redevelopment Project Area

Property (1):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (2):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (3):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Property (4):	
Street address:	
Approximate size or description of property:	
Purchase price:	
Seller of property:	

Section 5.0 Review of Public and Private Investment.

Refer to table attached.

SECTION 5 - 65 ILCS 5/11-74.4-5 (d) (7) (G) and 65 ILCS 5/11-74.6-22 (d) (7) (G)

PAGE 1

If **NO** projects were undertaken by the Municipality Within the Redevelopment Project Area, indicate so in the space provided:
 If Projects **WERE** undertaken by the Municipality Within the Redevelopment Project Area enter the **TOTAL** number of projects and list them in detail below. 3

SECTION 5 PROVIDES PAGES 1-3 TO ACCOMMODATE UP TO 25 PROJECTS. PAGE 1 MUST BE INCLUDED WITH TIF REPORT. PAGES 2-3 SHOULD BE INCLUDED IF PROJECTS ARE LISTED ON THESE PAGES

TOTAL:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
Private Investment Undertaken (See Instructions)	\$ -	\$ -	\$ 149,330
Public Investment Undertaken	\$ -	\$ -	\$ 149,330
Ratio of Private/Public Investment	0		1

Project 1:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
415 Howard to be provided			
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 2:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
Ward Eight Wine Bar			
Private Investment Undertaken (See Instructions)			\$ 130,000
Public Investment Undertaken			\$ 130,000
Ratio of Private/Public Investment	0		1

Project 3:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
Private Investment Undertaken (See Instructions)			\$ 19,330
Public Investment Undertaken			\$ 19,330
Ratio of Private/Public Investment	0		1

Project 4:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 5:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

Project 6:	11/1/99 to Date	Estimated Investment for Subsequent Fiscal Year	Total Estimated to Complete Project
Private Investment Undertaken (See Instructions)			
Public Investment Undertaken			
Ratio of Private/Public Investment	0		0

EXHIBIT A

DRAFT – NOT APPROVED

TIF Joint Review Board Meeting Minutes February 21, 2013

Attendees:

Board Members: Mary Brown- School District 65, Ald. Judy Fiske – City of Evanston, Darryl Holmes- Cook County, Bill Stafford- District 65

Board Members Absent: Arnold Randall- Forest Preserve of Cook County, Carolyn Dellutri- Downtown Evanston, Dr. Hardy Murphy- District 65, Bob Novak- Oakton Community College, Brian Rosinski- Ridgeville Park District, Larry Kaufman- Member at Large, Valerie Kretchmer- Member at Large, Richard Kwasneski- PACE, Patricia Vance – Evanston Township, Margaret Lee – Oakton Community College, Kathleen Therese Meany- Metropolitan Water Reclamation District, Robert Berry- North Shore Mosquito Abatement, Mayor Tisdahl – City of Evanston

City Staff: Steve Griffin, Johanna Nyden, Paul Zalmezak, Martin Lyons, Meagan Jones

Others in Attendance: Bob Rychlicki – Kane McKenna, Ald. Ann Rainey – City of Evanston, Ald. Delores Holmes – City of Evanston, Ginny Holbert- Howard to Isabella, Toni Gilpin- Howard to Isabella.

I. Call to Order by Ald. Judy Fiske, Chair

Chair Judy Fiske called the meeting to order at 3:11 p.m.

II. Approval of Joint Review Board Meeting Minutes of December 16, 2011

Darryl Holmes of Cook County Bureau of Economic Development motioned to approve the minutes from December 16, 2011; seconded by Mary Brown of District 65.

The minutes from December 16, 2011 were approved unanimously, 4-0.

III. Review of Annual Reports for Fiscal Year March 1, 2011- December 31, 2011

Mr. Bob Rychlicki of Kane McKenna Associates gave a brief overview regarding how the reporting for each TIF is conducted. He clarified that these reports cover a period of ten months reflecting the transition to calendar year accounting.

A. Southwest TIF District #2

Marty Lyons provided an executive summary to the Joint Review Board detailing the revenue and assessed value for each of the TIF Districts. He brought the Board's attention to pages 4, 19 and 26 of the report. He stated that the Southwest TIF District is scheduled to terminate in October 2014 then highlighted major projects that are still scheduled to be completed before that time.

Alderman Ann Rainey asked if the advantage of funding the Ward Manufacturing project could be clarified. Mr. Lyons gave a brief history of the project and the business. Mr. Griffin added that the company is Evanston based and has grown successfully over the last 20 years. He continued, stating that there were a large number of jobs that were kept in Evanston in addition to six new jobs created by assisting Ward in obtaining new equipment and expanding. Mr. Lyons explained that Ward Manufacturing is one of the business projects that is keeping the Southwest TIF stable and active.

Ms. Brown asked for clarification on when the increment from the TIF would be collected by the taxing bodies once the TIF expires. Mr. Lyons responded that since the TIF expires in 2014, taxing bodies would receive the levy in 2015. Mr. Rychlicki added that each taxing body would receive a certified notice in the November prior to the expiration of the TIF.

Mr. Lyons added that the TIF's Equalized Assessed Value has increased from \$1 million to \$8 million.

B. Howard Hartrey TIF District #3

Mr. Lyons presented a brief overview of the initial reasons for establishing the TIF, emphasizing that it was previously a large manufacturing business that is now a thriving commercial development. He then called attention to the surplus distributions due to the change in the fiscal year and directed the Board's attention to pages 19, 26 and 31 of the report, outlining projects within the TIF. He stated that \$1,500,000 has been set aside for projects or land acquisition in the TIF this year.

Mr. Griffin briefly described the possible uses of funds for outlot development and stated that \$1.2 million has been set aside for Capital Improvement Projects will take on several projects before the TIF expires in 2016.

Mr. Lyons explained that there are still bonds payable within the TIF District which will need to be taken into consideration before discussions of any payouts or closures of the TIF. He went on to explain that the starting Equalized Assessed Value of the TIF District was \$7 million and has grown to nearly \$25 million.

Ald. Rainey gave a background on the development that has occurred within the TIF, stating that each of the stores at that location has been successful.

C. Washington National TIF #4

Mr. Lyons introduced the TIF and explained that it was formed in 1994, amended in 1999 and is scheduled to expire in 2018. He stated that the TIF encompasses the Southwest portion of downtown Evanston. The TIF shows an \$8 million fund balance but there is \$25 million in bond payments that are still outstanding.

Mr. Griffin provided a brief overview of some of the Capital Improvement projects that are scheduled to be completed in the coming year, including waterline replacement on Davis Street and street-scape work. He stated that there has been a great amount of interest from downtown businesses in the façade program and other funding opportunities.

Mr. Lyons brought the Board's attention to pages 26 and 31 of the report and indicated that he believes that the TIF will remain stable and grow, enabling the future increment to cover the planned expenditures. Mr. Lyons explained that the initial EAV of the TIF District was \$25.7 million and has grown to the current level of \$100 million with six years left in the TIF District. Mr. Rychlicki indicated that the amendment to the TIF may have affected the EAV.

Ald. Rainey asked if Sherman Plaza was in the original TIF. Mr. Rychlicki responded that it was in the original Washington-National TIF boundaries. Mr. Lyons stated that the garage in Sherman Plaza is approximately 90% full. Mr. Holmes asked if the garage was City-owned, to which Mr. Lyons responded yes. He added that the increment accrued within the TIF District is paying for the debt service on the bond.

Mr. Stafford mentioned that if the increment had not covered this amount then the garage would have been paid for through the City's parking fund. He then described how much the Downtown area has grown since the establishment of the TIF District and emphasized that the increment has increased such that payment through the parking fund has not been necessary.

D. Howard Ridge TIF District #5

Mr. Lyons gave a brief introduction of the TIF, explaining that it is set to expire in 2028.

Ald. Rainey briefly described the most recent project underway, a lease for a restaurant on 623-627 Howard Street. She detailed how the City went about acquiring three buildings on Howard Street, with the vision of revitalizing the Street. Ms. Nyden then provided a brief overview of the 629 Howard Street project, the history of the 623-627 Howard Street project and the theater group project at 727 Howard Street.

Mr. Lyons then explained that the area met all of the requirements for establishing the TIF. He then detailed that the first project to use TIF funds was the 415 apartment building and is being used as a catalyst for the revitalization of Howard Street through various project funding strategies. Mr. Lyons then referred to pages 19, 26 and 31 of the report, describing the available funds which will be used to

assist in the development of the previously mentioned Howard Street projects.

Ald. Rainey explained how the building at 629 Howard Street was previously not generating any sales tax and now Ward Eight Cocktail Lounge & Shop is generating multiple sources of revenue and has been very successful.

E. West Evanston TIF District #6

Mr. Lyons gave a brief overview of the area encompassed by the TIF, explaining that it largely follows the old Mayfair railroad right-of-way. He stated that the TIF is set to expire in October of 2029 and that the purpose of the TIF was to update infrastructure and to attract industrial businesses

Mr. Lyons stated that the railroad is not active and that has actual caused some blight in the area. He stated that one goal for that area is to create more green space along that right-of-way. Mr. Griffin described several projects underway within the TIF including \$600,000 for the Emerson Square residential development, lighting around Evanston Township High School and some land acquisitions. Mr. Stafford expressed his support of the TIF and appreciation of the City's cooperation in terms of various public works and economic development projects.

Mr. Griffin summarized the Evanston North Shore Contractors Cooperative renovation underway at 1817 Church Alderman Rainey added that the group has built an addition to the building and that there is a good partnership between the City and the Contractor's Cooperative.

Mr. Lyons explained that this is a much more diverse TIF with a greater list of challenges and goals associated with it than with the other TIF Districts. He indicated that a goal is to attract development that creates a bond deficit that will eventually create increment. He brought the Board's attention to pages 29, 31 and 34 of the report and stated that the beginning EAV for the TIF area was \$37 million and is now \$45 million.

IV. Board Discussion

Ms. Tony Gilpin, journalist with website Howard to Isabella, asked for clarification on the six jobs that Ward Manufacturing created after receiving City funds. Mr. Lyons responded that Ward Manufacturing pursued a building addition, new equipment and increased production. He then stated that the new jobs were likely in another location and moved to Evanston.

Ms. Gilpin then asked if LSL Industries would have to return the \$50,000 it received from TIF funds since they are no longer in Evanston. Mr. Griffin responded that they are not required to repay those funds. Ms. Gilpin then inquired as to whether or not jobs are tracked by TIF. Mr. Griffin responded that the City does not track jobs by TIF but there is quarterly reporting on new jobs created by new or expanding businesses City-wide.

Mr. Holmes expressed appreciation for Ald. Rainey being present and sharing more detail stories regarding how the TIFs have benefitted the community. He

continued, stating that other communities would be envious of the growth seen in Evanston's TIF Districts.

V. Adjournment

Mr. Holmes made a motion to adjourn; seconded by Ms. Brown. Meeting adjourned at 4:25 p.m.

EXHIBIT B

Special Revenue Funds - Continued

Township Funds

Town - to account for general administrative services.

General Assistance - to account for the assistance given to persons and/or families to meet their basic living expenses.

Debt Service Funds

Debt Service funds are used to account for the servicing of general long-term debt.

Special Service District No. 5 - accumulated monies for the principal and interest payments on unlimited ad valorem tax bonds issued for this special taxing district.

Southwest Tax Increment District - accumulated monies for the principal and interest payments on debt issued for this special taxing district.

Howard Hartrey Tax Increment District - accumulated monies for the principal and interest payments on debt issued for this special taxing district.

Washington National Tax Increment District - accumulated monies for the principal and interest payments on debt issued for this special taxing district.

Howard Ridge Tax Increment District - accumulated monies for the payments on redevelopment project for this special taxing district.

West Evanston Tax Increment District - accumulated monies for the payments on redevelopment project for this special taxing district.

Capital Projects Funds

Capital projects are used to account for the acquisition and construction of major capital facilities other than those financed by proprietary funds and trust funds.

Special Assessment - to account for capital improvements financed by special assessments on property holder and public benefit contributions from the City.

Concluded

CITY OF EVANSTON, ILLINOIS

Nonmajor Governmental Funds

Combining Balance Sheet - Continued

As of December 31, 2012 and March 31, 2012 for City and Township respectively

	Special Revenue			
	Town	General Assistance	Total Township Funds	Total Special Revenue
Assets				
Cash and equivalents	\$ 352,718	\$ 1,507,749	\$ 1,860,467	\$ 7,661,448
Investments	-	-	-	3,355,646
Receivables				
Property taxes (net of allowance)				
Current year levy	130,205	486,928	617,133	5,278,347
Notes	-	-	-	7,057,452
Allowance	-	-	-	(90,000)
Special assessments	-	-	-	-
Accrued interest	-	-	-	7,452
Other	966	3,795	4,761	938,498
Prepaid items	-	2,242	2,242	2,242
Due from other governments	-	-	-	1,187,781
Due from other funds	-	10,860	10,860	264,809
Total Assets	\$ 483,889	\$ 2,011,574	\$ 2,495,463	\$ 25,663,675
Liabilities and Fund Balances				
Liabilities				
Vouchers payable	\$ 2,997	\$ 29,195	\$ 32,192	\$ 1,514,273
Other	-	-	-	665
Due to other governments	-	-	-	196,883
Due to other funds	10,860	-	10,860	356,695
Deferred revenues	110,190	463,126	573,316	5,009,354
Total Liabilities	124,047	492,321	616,368	7,077,870
Fund Balances				
Nonspendable	-	2,242	2,242	2,242
Restricted				
Highway maintenance	-	-	-	999,368
Emergency telephone system	-	-	-	1,264,807
Library projects	-	-	-	4,579,106
HUD approved projects	-	-	-	5,463,987
Neighborhood improvements	-	-	-	2,366,041
Debt service	-	-	-	-
Township	359,842	1,517,011	1,876,853	1,876,853
Committed - Economic Development	-	-	-	2,150,404
Assigned	-	-	-	-
Unassigned (deficit)	-	-	-	(117,003)
Total Fund Balances (Deficit)	359,842	1,519,253	1,879,095	18,585,805
Total Liabilities and Fund Balances	\$ 483,889	\$ 2,011,574	\$ 2,495,463	\$ 25,663,675

Debt Service						
Special Service District No.5	Southwest Tax Increment District	Howard Hartrey Tax Increment District	Washington National Tax Increment District	Howard Ridge Tax Increment District	West Evanston Tax Increment District	Total Debt Service
\$ 4,595	\$ 24,939	\$ 4,027,140	\$ 7,511,308	\$ 295,933	\$ 1,158,477	\$ 13,022,392
-	-	-	-	-	-	-
448,875	456,403	1,113,811	4,538,560	470,682	255,315	7,283,646
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
400,000	280,000	220,000	-	490,000	-	1,390,000
\$ 853,470	\$ 761,342	\$ 5,360,951	\$ 12,049,868	\$ 1,256,615	\$ 1,413,792	\$ 21,696,038
\$ -	\$ -	\$ -	\$ -	\$ 21,233	\$ -	\$ 21,233
-	-	1,501	11,155	-	-	12,656
-	-	-	-	-	-	-
-	-	-	640,000	179	290,522	930,701
420,416	456,403	1,113,811	4,107,409	179,693	250,423	6,528,155
420,416	456,403	1,115,312	4,758,564	201,105	540,945	7,492,745
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
433,054	304,939	4,245,639	7,291,304	1,055,510	872,847	14,203,293
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
433,054	304,939	4,245,639	7,291,304	1,055,510	872,847	14,203,293
\$ 853,470	\$ 761,342	\$ 5,360,951	\$ 12,049,868	\$ 1,256,615	\$ 1,413,792	\$ 21,696,038

Continued

CITY OF EVANSTON, ILLINOIS

Nonmajor Governmental Funds

Combining Statements of Revenues, Expenditures, and Changes in Fund Balances - Continued
 For the Fiscal Year ended December 31, 2012 and March 31, 2012 for City and Township respectively

	Special Revenue			
	Town	General Assistance	Total Township Funds	Total Special Revenue
Revenues				
Taxes	\$ 327,838	\$ 1,057,007	\$ 1,384,845	\$ 8,730,889
Special assessments	-	-	-	-
Intergovernmental	56,751	-	56,751	12,720,513
Charges for services	-	-	-	434,989
Investment income	138	613	751	329,559
Miscellaneous	-	5,443	5,443	217,759
Total Revenues	384,727	1,063,063	1,447,790	22,433,709
Expenditures				
Current				
General management and support	327,714	1,076,829	1,404,543	6,032,905
Public safety	-	-	-	915,384
Public works	-	-	-	1,181,452
Health and human resource development	-	-	-	-
Recreation and cultural opportunities	-	-	-	-
Housing and economic development	-	-	-	12,359,050
Debt service				
Principal	-	-	-	-
Interest	-	-	-	-
Fiscal agent fees	-	-	-	-
Capital outlay	-	-	-	-
Total Expenditures	327,714	1,076,829	1,404,543	20,488,791
Excess (Deficiency) of Revenues				
Over (Under) Expenditures	57,013	(13,766)	43,247	1,944,918
Other Financing Sources (Uses)				
Bonds issued	-	-	-	-
Transfers in (out)				
General	-	-	-	(339,953)
Emergency Telephone System	-	-	-	-
General Obligation Debt Service	-	-	-	(98,469)
Howard Ridge Tax Increment District	-	-	-	48,500
Motor Vehicle Parking System	-	-	-	-
Total Other Financing Sources (Uses)	-	-	-	(389,922)
Net Change in Fund Balances	57,013	(13,766)	43,247	1,554,996
Fund Balances (Deficit) - Beginning	302,829	1,533,019	1,835,848	17,030,809
Fund Balances (Deficit) - Ending	\$ 359,842	\$ 1,519,253	\$ 1,879,095	\$ 18,585,805

Continued

Special Service District No.5	Debt Service					Total Debt Service
	Southwest Tax Increment District	Howard Hartrey Tax Increment District	Washington National Tax Increment District	Howard Ridge Tax Increment District	West Evanston Tax Increment District	
\$ 408,107	\$ 448,605	\$ 1,113,811	\$ 4,594,537	\$ 752,477	\$ 26,572	\$ 7,344,109
-	-	-	-	-	-	-
-	-	-	-	-	-	-
9	7	13,251	17,754	164	713	31,898
-	-	-	-	14,837	-	14,837
408,116	448,612	1,127,062	4,612,291	767,478	27,285	7,390,844
-	-	-	-	-	-	-
-	-	-	82,593	-	-	82,593
-	-	-	-	-	-	-
-	670	1,023,923	725,366	692,633	1,190,031	3,632,623
325,000	-	605,000	405,000	-	-	1,335,000
98,231	-	109,603	100,650	-	-	308,484
-	-	2,170	-	-	-	2,170
-	-	-	-	-	-	-
423,231	670	1,740,696	1,313,609	692,633	1,190,031	5,360,870
(15,115)	447,942	(613,634)	3,298,682	74,845	(1,162,746)	2,029,974
-	-	-	-	48,812	600,000	648,812
-	(28,920)	(141,600)	(325,000)	(120,400)	(60,000)	(675,920)
-	-	-	-	(48,500)	-	(48,500)
-	-	-	-	-	-	-
-	-	-	(3,876,726)	-	-	(3,876,726)
-	(28,920)	(141,600)	(4,201,726)	(120,088)	540,000	(3,952,334)
(15,115)	419,022	(755,234)	(903,044)	(45,243)	(622,746)	(1,922,360)
448,169	(114,083)	5,000,873	8,194,348	1,100,753	1,495,593	16,125,653
\$ 433,054	\$ 304,939	\$ 4,245,639	\$ 7,291,304	\$ 1,055,510	\$ 872,847	\$ 14,203,293

Continued



BAKER TILLY

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INDEPENDENT ACCOUNTANTS' REPORT ON COMPLIANCE

To the Honorable Elizabeth B. Tisdahl, Mayor and
Members of the City Council
Evanston, Illinois

We have audited the basic financial statements of the City of Evanston, Illinois, as of and for the year ended December 31, 2012, and have issued our report thereon dated June 28, 2013. We conducted our audit in accordance with auditing standards generally accepted in the United States of America.

Compliance with laws, regulations, contracts and grants applicable to the City of Evanston is the responsibility of the City of Evanston's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatements, we performed tests of the City of Evanston's compliance with provisions in Subsection (q) of Section 11-74.4-3 of Public Act 85-1142, "An Act in Relation to Tax Increment Financing", noncompliance with which could have a direct and material effect on the determination of the financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance.

This report is intended solely for the information and use of the City Council, management, the State of Illinois, and others within the City and is not intended to be, and should not be, used by anyone other than the specified parties.

Baker Tilly Virchow Krause, LLP

Oak Brook, Illinois
June 28, 2013

EXHIBIT C

EXHIBIT A**LEASE AND OPTION AGREEMENT FOR THE PREMISES LOCATED AT 629-631 HOWARD STREET, EVANSTON, ILLINOIS, BY AND BETWEEN THE CITY OF EVANSTON, LANDLORD AND WARD EIGHT LLC, TENANT**

EFFECTIVE DATE OF LEASE: March 15, 2012

TERM OF LEASE: March 15, 2012 THROUGH March 14, 2017

RENTAL RATE:

FROM March 15, 2012 THROUGH March 14, 2013: FREE RENT (Year 1)

FROM March 15, 2013 THROUGH March 14, 2015: \$2,000.00/MO (Year 2 - 3)

FROM March 15, 2015 THROUGH March 14, 2016: \$2,250.00/MO (Year 4)

FROM March 15, 2016 THROUGH March 14, 2017: \$2,500.00/MO (Year 5)

This Lease and Option Agreement (the "**Agreement**") is executed by and between The City of Evanston, an Illinois home rule municipality ("**Landlord**"), whose main business office is located at 2100 Ridge Avenue, Evanston, Cook County, Illinois, and Ward Eight LLC, an Illinois limited liability company ("**Tenant**"), of Chicago, Illinois (insert Tenant's present address). Landlord and Tenant may be referred to as a "Party" and collectively as the "Parties".

SECTION 1: DESCRIPTION OF PREMISES

Landlord leases to Tenant the commercial area on the first floor of the property commonly known as 629-631 Howard Street (the "**Premises**"), situated within the Landlord's 3 story mixed use building located at the same common address and legally described on Exhibit "A" (the "**Property**"). The Property has two residential units on the second and third floors and the Premises is the commercial unit on the first floor. The term "**Common Facilities**" as used in this lease will include those facilities within the Premises for the nonexclusive use of Tenant in common with other authorized users, and includes, but is not limited to, sidewalks, planted areas, and open means of ingress and egress.

SECTION 2: TERM

The term of this lease will be for five (5 years) and will start on March 15, 2012 – March 14, 2017. Tenant must provide Landlord with 60 days notice if they choose to renew the lease of the Premises.

SECTION 3: RENT

A. **RATE:** Tenant agrees to pay Landlord a monthly rental payment for the term of this Agreement in accordance with the rental rate schedule outlined on the first page. The rent is due and payable on the first day of each month.

B. **LATE CHARGES.** ANY PAYMENTS FOR RENTAL OR ADDITIONAL RENTAL NOT PAID WITHIN FIVE (5) DAYS OF THE DUE DATE SHALL INCUR A LATE PAYMENT OF \$10.00 PER DAY UNTIL PAID IN FULL.

C. **PAYMENTS** shall be mailed to: City of Evanston
Attn: Dept of Administrative Services
2100 Ridge Avenue, Room 4100
Evanston, IL 60201

D. **RENT COMMENCEMENT:** Tenant's obligation to pay any money will not commence until the 1st day of the earlier of the completion of the tenant improvements outlined on Exhibit "B", Site Plan, and a certificate of occupancy is issued or four months after the Effective Date of this Lease (the "Rent Commencement"). However, the schedule provided on the first page commences on the first date that Tenant receives all permits, variances and governmental approvals necessary to construct and operate Tenant's wine bar in the Premises (the "Rent Commencement Date"). Tenant warrants they will use best efforts to complete construction on the Tenant Improvements, obtain a business license, obtain a liquor license from the City of Evanston and the State of Illinois, and open for business within 4 months of the Effective Date.

SECTION 4: **COMMON FACILITIES**

A. **MAINTENANCE BY LANDLORD:** Landlord will maintain in good repair the common and structural facilities of the Property which shall include but not be limited to the following:

1. Exterior maintenance, including the foundation, walls, slab, doors and roof and replacement;
2. A refuse container to be shared by all tenants in the Property;
3. Common electric facilities and the HVAC unit(s);
4. Common water facilities;
5. Fire Alarm inspections for the common facilities and Property; and
6. Hallways, stair rails, and related elements outside of the Premises within the Property.

B. **MAINTENANCE BY TENANT:**

1. Snow and ice removal, including salting, from front walkway of Premises and parking spaces behind the Property within 24 hours of any snow event with accumulation of an 1 inch or more. Tenant will furnish snow removal equipment and salt.
2. Premises maintenance and all fixtures and property within the space;
3. All refuse from Premises to be placed in appropriate containers; and

4. The Tenant will at all times maintain all of the Premises in a clean, neat and orderly condition. The Tenant will not use the Premises in a manner that will violate or make void or inoperative any policy of insurance held by the Landlord.

SECTION 5: SECURITY DEPOSIT

Concurrently with the execution of this Lease, Tenant shall deposit with Landlord the sum of Two Thousand and 00/100 Dollars (\$2,000.00). Said sum shall be held by Landlord as security for the performance of all terms, covenants and conditions of this Lease to be performed by Tenant. If Tenant defaults with respect to any provisions of this lease, Landlord may at her option apply all or any portion of such deposit to compensate Landlord for any loss or damage it may sustain. Landlord shall not be required to keep this security deposit separate from its general funds and Tenant shall not be entitled to any interest on such deposit. At the termination of this Agreement Landlord shall refund the said security deposit to Tenant. In the event Tenant has breached any of the terms, covenants and conditions of this Agreement or fails to leave the premises in substantially the same condition as when Tenant took possession, normal wear and tear excepted, Landlord shall be entitled to deduct from the security deposit the amount expended by Landlord for necessary and reasonable repairs Tenant shall not use the security deposit as the last month's rental payment. The Landlord shall itemize the deductions from the Security Deposit, if any.

SECTION 6: OPTION TO PURCHASE PROPERTY:

A. GENERAL: Tenant initially is only a Tenant of the Premises which is owned and managed by Landlord. The Landlord owns the Property, on which the Premises is located. As such, Tenant's monthly payments are lease and rental payments. However, under the Landlord's terms of this Agreement, the Tenant has an option to purchase the Property so long as the Tenant is occupying and leasing the Property and is otherwise in compliance with Landlord's program rules after the end of the third year (the "Option"). Tenant must submit written notification to Landlord that it intends to exercise the Option within 90 days of expiration of the third year, thus notice must be sent on or before the beginning of the 33rd month of the Lease. If Tenant elects to NOT exercise the Option prior to the end of the third year of this Agreement, the following are applicable: (1) the Landlord is freely able to market, enter into a contract, and sell the Property to another purchaser; (2) Tenant shall remain a Tenant of the Premises for the remainder of the term of the Agreement; and (3) Tenant shall not have another option beyond the third year to purchase the Property at the end of the Term.

B. PURCHASE PRICE: The purchase price of this Property will be \$362,650.00 (the "Purchase Price"), which is based on the fair market value and current appraisal of the Property and the actual cost of tenant improvements (see Section 8) on the date of exercising the option and corporate authority decision. The Purchase Price is based on the amount of the original purchase price that the City paid for the property (\$237,650.00), the CDBG funds anticipated to be used for the

renovation of the residential units (\$40,000.00), and part of the estimated Tenant Improvement Allowance (defined *supra*).

C. CASH USED ALONE TO PURCHASE: The Tenant may notify Landlord that they have the resources to purchase the Property and that the Tenant is exercising the Option prior to the expiration of the Agreement. A closing or transfer of ownership will occur upon the Tenant paying the purchase price and the Parties execution of a purchase and sale contract ("Property Purchase Agreement").

D. RENTAL CREDITS USED TO PURCHASE: Credit will NOT be given for residential rent payments, made to Landlord pursuant to the Lease Agreement between Landlord and Anne Carlson and Cody Modeer, for the Option. The Landlord will only give credit towards the purchase price for rent payments made under this agreement for the lease of the Premises subject to this Agreement (the "Rental Credit").

E. CASH AND RENTAL CREDIT USED TO PURCHASE: The Tenant may notify Landlord that they will be exercising the Option to Purchase and that they wish to use the Rental Credit and have the resources to supplement those credits to purchase the Property. A closing and transfer of ownership will occur upon the Tenant paying the difference between the rental credit and the purchase price.

F. DELINQUENCIES: Should the Tenant have incurred delinquencies with Landlord, the Tenant will be required to payoff those delinquencies upon any offer to exercise its Option.

G. TENANT BREACH: Should the Tenant breach this Agreement for any reason other than nonpayment, at the discretion of Landlord, the Tenant's Option may be denied.

H. LANDLORD REPORTING: So long as Tenant is leasing the Premises, Landlord shall provide at the Tenant's request, approximately every year, a written accounting of the rent paid on the Premises, any delinquencies owing, and the Property purchase price. However, except for the above, Landlord is not obligated to advise the Tenant when the Rental Credit equals or exceeds the purchase price.

I. PROPERTY SOLD: If the Property is purchased by the Tenant, the maximum interest that Landlord has in the land and structures in accordance with the Property PIN as indicated on Exhibit "A", and will be transferred pursuant to the Property Purchase Agreement.

J. NO OBLIGATION TO PURCHASE THE PROPERTY: A Tenant is under no obligation to purchase the Property and has the right to continue under the terms of this Agreement as Tenant/renter. However, if the Tenant fails to exercise his or her option at the conclusion of this Agreement, the Option to Purchase shall expire.

K. NO LANDLORD RESPONSIBILITY AFTER PURCHASE: Upon sale to Tenant pursuant to this Agreement, the Tenant shall become solely responsible for the Property.

SECTION 7: USE OF PREMISES

A. PURPOSES: Tenant will use the Premises to operate a wine bar and sell alcohol products and transaction of other related business and uses incidental thereto, and no part of the Premises will be used for any other purpose without the prior written consent of Landlord. The use of the premises will be in conformance with the restrictions set forth in the Class S Liquor License granted to the Tenant's by the City of Evanston corporate authorities. Prior to the issuance of a business license, the Tenant shall submit copies of final lien waivers to Landlord from Tenant's contractors and subcontractors for the tenant improvements.

B. BUSINESS HOURS: Tenant will operate the Premises and be open for business at the discretion of the Tenant. When Tenant is open for business, Tenant will provide adequate personnel to service its customers. However, if Tenant is unable to comply with this provision due to shortage of materials, act of God, and destruction of the premises by fire or other reason beyond Tenant's control (financial inability of Tenant accepted), Tenant will not be deemed to be in default.

C. STORAGE OF MERCHANDISE: Tenant agrees to store on the Premises only goods, wares and merchandise Tenant intends to offer for retail sale from the Premises or use in connection with the service offered by Tenant in regular course of the named Tenant's business. Tenant agrees to use for office or clerical purposes only that space as is reasonably required for Tenant's business. In the basement of the Property, storage lockers are available for the tenants to the Property. For the Premises, Tenant shall be entitled to the use of one (1) storage locker. Tenant shall be responsible for providing a lock for the storage locker. Landlord is not responsible for any lost or stolen items from the storage locker.

D. STORAGE OF INFLAMMABLE MATERIALS: Tenant agrees that it will not permit to be kept at the Premises any gasoline, distillate or other petroleum product, or other substance of an explosive or inflammable nature as may endanger any part of the premises without the written consent of the Landlord.

E. USE IMPAIRING STRUCTURAL STRENGTH: The Tenant will not permit the Premises to be used in any manner that will impair the structural strength of the store building, or permit the installment of any machinery or apparatus the weight or vibration of which may tend to impair the building's foundations or structural strength.

F. GARBAGE DISPOSAL: The Tenant will not incinerate any garbage or debris in or about the Premises, and will cause all containers, rubbish, garbage and debris stored in the Premises to be hauled away for disposal before accumulation of any substantial quantity.

G. PUBLIC REGULATIONS: In the conduct of its business on the Premises, Tenant will observe and comply with all laws, ordinances and regulations of public authorities. Tenant acknowledges that the Property is owned by the City of Evanston and therefore no smoking will be permitted at the Property.

H. OTHER MISUSE: Tenant will not permit any unlawful or immoral practice with or without his knowledge or consent, to be committed or carried on in the Premises by Tenant or any other person. Tenant will not use or allow the use of the Premises for any purpose whatsoever that will injure the reputation of the Premises or of the building of which they are a part.

I. PARKING: Tenant shall not be entitled to a parking spot in the back of the Property as part of this Lease Agreement. As stated in the Residential Lease, the Tenant is entitled to one (1) parking spot for the residential leased premises.

SECTION 8: IMPROVEMENTS.

A. FINANCING STATEMENT: The City will record a Uniform Commercial Code ("UCC") Financing Statement against the Property for the fixtures, business equipment, and other personal property to be installed at the property pursuant to the site plan (the "Site Plan"). The Financing Statement will secure the Landlord's loan, as detailed in Section 9 to Tenant for the improvements to the Premises. ~~The Tenant will~~ also be required to execute a security agreement which details the terms and conditions that the Landlord can lien the fixtures, business equipment, and personal property (the "Security Agreement"). The terms and conditions of the Security Agreement shall be incorporated into the Lease herein by reference.

B. INSTALLATION OF EXTERIOR LIGHTING AND FIXTURES: Tenant will not install any exterior lighting, exterior plumbing facilities, shades or awnings, amplifiers, or similar devices, or use any advertising medium that may be heard outside the Premises, such as loudspeakers, or radio broadcasts, without Landlord's prior written consent.

C. IMPROVEMENT INSTALLATION AND ALLOWANCE:

1. Improvement Allowance: Landlord shall provide Tenant with an improvement allowance to renovate the Property in the principal amount of no greater than \$100,000.00, the final amount to be determined based on the architecture drawings, scope of work, and cost projections (the "Tenant Improvement Allowance"). The Tenant Improvement Allowance shall be approved by the City Manager prior to any construction. This Improvement Allowance shall NOT be paid out directly to the Tenant and not be funded until: (a) City of Evanston Council has approved the Agreement; (b) the Agreement is executed; and (c) Final improvement plans attached as Exhibit "B" are accepted by both Parties. The Landlord, as administrator of the grant, shall pay the contractors for the

improvements directly in accordance with a separate TIF Grant Agreement, the terms of which are incorporated herein by reference. The Improvement Allowance is funded through the Howard-Ridge Tax Increment Financing (TIF) District.

2. Construction of Improvements: The Tenant shall contract for the construction of the improvements. The improvements shall be in substantial conformance with the attached plans on Exhibit "B" (the "Tenant Improvements"). Any variation from the plans shall be first approved by the Landlord. Landlord shall not unreasonably withhold its consent for approval of the revised plans.

D. Subject to the improvements provided on Exhibit "B", Tenant shall not attach, affix or exhibit or permit to be attached, affixed or exhibited, except by Landlord or his agent, any articles of permanent character or any sign, attached or detached with any writing or printing thereon, to any window, floor, ceiling, door or wall in any place in or about the Premises, or upon any of the appurtenances thereto, without in each case the written consent of the Landlord; and shall not commit or suffer any waste in or about said Premises; and shall make no changes or alterations in the Premises by the erection of partitions or the papering of walls or otherwise, without the consent in writing of Landlord; and in case Tenant shall affix additional locks or bolts on doors or window, or shall place in the Premises lighting fixtures or any fixtures of any kind without the consent of the Landlord first had and obtained such locks, bolts and fixtures shall remain for the benefit of Landlord, and without expense of removal or maintenance to Landlord.

SECTION 9: CDBG LOAN TO TENANT: The City shall provide a 10-year loan to the Tenant in the principal amount of up to \$130,000.00 (One Hundred Thirty Thousand and no/100 Dollars), together with interest on the unpaid principal balance from August 15, 2012, until paid in full. Borrower (Tenant) will pay this loan in 120 regular payments of \$1,316.19 each. The loan shall be repaid at the earlier of the following two dates: (1) after the date of termination of this Lease, without the Tenant exercising its option to purchase; or (2) at the conclusion of the 120th month. The loan terms are more specifically provided in the promissory note to evidence the indebtedness (the "Note"). The Note will be secured by the fixtures and personal property to which the City will be filing a UCC Financing Statement, as provided in Section 8. Additionally, the CDBG Loan shall be administered in accordance with the guidelines and requirements provided in a project agreement between the City and its Borrower (the "Project Agreement"). The Project Agreement and Note terms shall be incorporated into the Lease herein by reference.

SECTION 10: SIGNS: Tenant will have the exclusive right to maintain on the exterior and interior of the Premises, at its own expense, all signs necessary to conduct the business of Tenant. Tenant acknowledges that there are limitations from the City of Evanston's Municipal Code for the sign size, type, and number and Tenant agrees to be bound by such laws and ordinances.

SECTION 11: DEFECTS; DEFECTIVE CONDITION; WIND; ACTS OF THIRD PERSONS: Except as provided by Illinois law, Landlord will not be liable to Tenant for any damage or injury to Tenant or Tenant's property occasioned by the failure of Landlord to keep the Premises in repair, and shall not be liable for any injury done or occasioned by wind or by or from any defect of plumbing, electric wiring or of insulation thereof, gas pipes, water pipes or steam pipes, or from broken stairs, porches, railings or walks, or from the backing up of any sewer pipe or down-spout or from the bursting, leaking or running of any tank, tub, washstand, water closet or waste pipe, drain, or any other pipe or tank in, upon or about the Premises or the building of which they are a part nor from the escape of steam or hot water from any radiator, it being agreed that said radiators are under the control of Tenant, nor for any such damage or injury occasioned by water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near the Premises, or otherwise, nor for any such damage or injury done or occasioned by the falling of any fixture, plaster, or stucco, nor for any damage or injury arising from any act, omission or negligence or co-tenants or of other persons, occupants of the same building or of adjoining or contiguous buildings or of owners of adjacent or contiguous property, or of Landlord's agents or Landlord, all claims for any such damage or injury being hereby expressly waived by Tenant.

SECTION 12: CASUALTY DAMAGE; REPAIRS; ABATEMENT OF RENT

A. USE OF PARTIALLY DAMAGED PREMISES: On damage or destruction to the Premises, Tenant will continue to use them for the operation of its business to the extent practicable.

B. RIGHT TO TERMINATE ON DESTRUCTION OF TWO-THIRDS OF PREMISES: Either Party will have the right to terminate this Agreement if, during the last year of the term, the Premises is damaged to an extent exceeding two-thirds of the reconstruction cost of the Premises as a whole. On termination, this Agreement will be affected by written notice to the other Party, delivered within ten days of the damage.

C. REPAIRS BY LANDLORD: If the Premises are damaged or destroyed before or after the start of the Agreement by any cause beyond Tenant's control, then Landlord will immediately, on receipt of insurance proceeds paid in connection with casualty damage, but no later than sixty days after damage has occurred, proceed to repair the premises. Repairs will include any improvements made by Landlord or by Tenant with Landlord's consent, on the same plan and design as existed immediately before the damage occurred, subject to those delays reasonably attributable to governmental restrictions or failure to obtain materials, labor or other causes, whether similar or dissimilar, beyond the control of Landlord. Materials used in repair will be as nearly like original materials as reasonably procured in regular channels of supply. Wherever cause beyond the power of the party affected causes delay, the period of delay will be added to the period in this lease for completion of the work, reconstruction or replacement.

D. REDUCTION OF RENT DURING REPAIRS: If Tenant continues to conduct business during the making of repairs, the fixed minimum monthly rental will be equitably reduced in the proportion that the unusable part of the premises bears to the whole. The determination of the unusable space shall be determined by the Landlord based on square footage. No rent will be payable while the store building is wholly unoccupied pending the repair of casualty damage.

SECTION 13: *REPAIRS AND MAINTENANCE*

Tenant shall keep the Premises and appurtenances thereto in a clean condition, and in good repair, all according to the statutes and ordinances in such cases made and provided, and the directions of public officers thereunto duly authorized, all at Tenant's own expense, and shall yield the same back to Landlord, upon the termination of this Agreement, whether such termination shall occur by expiration of the term, or in any other manner whatsoever, in the same condition of cleanliness, repair and sightlines as at the date of the execution hereof, loss by fire and reasonable wear and tear excepted. Tenant shall make all necessary repairs and renewals upon Premises and replace broken globes, glass and fixtures with material of the same size and quality as that broken and shall insure all glass in windows and doors of the Premises at his own expense. If, however, the Premises shall not thus be kept in good repair and in a clean, and healthy condition by Tenant, as aforesaid, Landlord may enter the same, or by Landlord's agents, servants or employees, without such entering causing or constituting a termination of this Agreement or an interference with the possession of the Premises by Tenant, and Landlord may replace the same in the same condition of repair, sightlines, healthiness and cleanliness as existed at the date of execution hereof, and Tenant agrees to pay Landlord, in addition to the rent hereby reserved, the expenses of Landlord in thus replacing the Premises in that condition. Tenant shall not cause or permit any waste, misuse or neglect of the water, or of the water, gas or electric fixtures.

Tenant will, at Tenant's expense, maintain all of the demised Premises, including but not limited to, store fronts, bulk-heads, exterior entry and exit doors, ornamental facing, plate glass and glazing on the demised Premises, in good condition and repair. Tenant will also be in compliance with all laws and regulations during the entire term of this Agreement, except for repairs required of the Landlord to be made and damage occasioned by fire, hurricane or other causes as provided for in this Agreement.

SECTION 14: *UTILITIES*

Tenant agrees to pay before delinquency all charges for gas, water, heat, electricity, power and other similar charges incurred by Tenant during its occupancy of the Premises.

SECTION 15: *TAXES*

Tenant will pay before delinquency all taxes levied on Tenant's fixtures, equipment and personal property on the demised Premises, whether or not affixed to the real property. Landlord will prorate the real estate taxes for the Property based on the proportionate share of the square footage of the Premises (the "Premises Real

Estate Taxes"), which is equal to thirty three percent (33%). The Landlord will invoice the Tenant for the Premises Real Estate Taxes and payment must be received within 30 days of the date of the invoice. The amount of the Real Estate Taxes owed will fluctuate based on Cook County assessments.

SECTION 16: INSURANCE

A. INSURANCE COMPANIES: It is agreed that any policies of insurance to be maintained by the respective parties will be obtained from good and solvent insurance companies.

B. TENANT TO OBTAIN LIABILITY INSURANCE: Tenant agrees that it will, at its expense, maintain a policy of insurance, written by responsible insurance carriers, approved by Landlord that will insure Landlord against liability for injury to or death of persons or damage to property occurring about the demised Premises. The liability under insurance will be at least \$1 million for any one person injured or killed or any one occurrence, \$2 million general aggregate coverage for any one accident, and \$ 100,000.00 property damage.

C. TENANT TO OBTAIN WORKER'S COMPENSATION INSURANCE: Tenant agrees to maintain employees' Worker's Compensation insurance required under Illinois law, and any other insurance necessary to protect Landlord against liability to person or property.

D. TENANT TO OBTAIN FIRE INSURANCE ON FIXTURES AND INVENTORY: The Tenant agrees to maintain on all equipment in the Premises, a policy of fire insurance in companies approved by the Landlord of at least 80 % of the insurable replacement value. Tenant also will maintain adequate inventory insurance, the proceeds of which will, as long as this Agreement is in effect, be used for the replacement of the insured property. The policy will name Landlord as additional beneficiary to protect Landlord's interest as Landlord.

E. LANDLORD TO OBTAIN FIRE INSURANCE ON PREMISES: Landlord agrees to maintain during this Agreement, a policy fire insurance of at least 80 % of the insurable value of the Premises. If permitted without additional charge, Landlord will cause to be endorsed on its fire insurance, and any extended coverage policy or policies, the waiver of right of subrogation.

F. TENANT'S WAIVER OF CASUALTY INSURANCE PROCEEDS: If the Premises are damaged by fire or other casualty insured against, Tenant agrees to claim no interest in any insurance settlement arising out of any loss where premiums are paid by Landlord, or where Landlord is named as sole beneficiary, and that it will sign all documents required by Landlord or the insurance company necessary in connection with the settlement of any loss.

G. CONTROL OF INSURANCE PROCEEDS TO AVOID TAXABLE GAIN: If the Premises, including any improvements, were to be damaged in any manner, and the

receipt of any insurance proceeds or other reimbursement for such damage would result in the realization of taxable gain for federal or state purposes, then the party to whom the gain would be taxed will have the right to take all action respecting proceeds or reimbursements necessary to enable party to comply with any regulations of the appropriate taxing authorities, so that the gain will not be recognized for tax purposes. Nothing here will be construed to entitle Landlord to delay any repairs to any part of the improvements in the event of damage.

H. TENANT'S FAILURE TO INSURE: Should Tenant fail to keep in effect and pay for insurance as required by this section, the Landlord may do so.

SECTION 17: *SUBLETTING; ASSIGNMENT*

The Premises shall not be sublet in whole or in part to any person other than Tenant, and Tenant shall not assign this Agreement to any person or corporate entity, unless directly affiliated with a corporate entity of Tenant. If Tenant, or any one or more of the Tenants, if there be more than one, shall make an assignment for the benefit of creditors, or shall be adjudged a bankrupt, Landlord may terminate this Agreement, and in such event Tenant shall at once pay Landlord a sum of money equal to the entire amount of rent reserved by this Agreement for the then unexpired portion of the term hereby created as liquidated damages. At Landlord's option, should Landlord consent to any assignment or sublease of the demised Premises, Tenant shall nevertheless remain liable for all terms and conditions of this Agreement until the expiration of the Agreement term stated above.

SECTION 18: *SURRENDER OF PREMISES – HOLDING OVER*

Subject to the Option to Purchase language, Tenant will, at the termination of this Lease, leave the Premises in as good condition as they are in at the time of entry by Tenant, except for reasonable use and wear, acts of God, or damage by casualty beyond the control of Tenant. On vacating, Tenant will leave the Premises clear of all rubbish and debris. If Tenant retains possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then Landlord may at its option within thirty days after termination of the term serve written notice upon Tenant that such holding over constitutes the creation of a month to month tenancy, upon the terms of this Agreement. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as hereinafter set forth; nor shall receipt of any rent or any other act in apparent affirmation of tenancy operate as a waiver of the right to terminate this Agreement for a breach of any of the covenants herein.

SECTION 19: *INDEMNIFICATION AND LIENS*

A. LIENS AND ENCUMBRANCES: The Tenant will hold the Landlord harmless from all claims, liens, claims of lien, demands, charges, encumbrances or litigation arising out of any work or activity of Tenant on the Premises. Tenant will, within sixty

(60) days after filing of any lien, fully pay and satisfy the lien and reimburse Landlord for all resulting loss and expense, including a reasonable attorney's fees. Provided, however, in the event that Tenant contests any lien so filed in good faith and pursues an active defense of said lien, Tenant shall not be in default of this paragraph. However, in the event of any final judgment against Tenant regarding such lien, Tenant agrees to pay such judgment and satisfy such lien within 60 days of the entry of any such judgment.

B. DISCHARGE OF LIEN: If Tenant fails to fully discharge any claim, lien, claim of lien, demand, charge, encumbrance, or litigation, or should proceedings be instituted for the foreclosure of any lien or encumbrance, and if judgment is rendered against Tenant either by a court of competent jurisdiction or by arbitration and Tenant still persists in non-payment of the same within the 60 day set forth above, Landlord will have the right at any time after expiration of the 60-day period, to pay the lien or encumbrance. All amounts so paid will be repaid by the Tenant on demand, together with interest at the rate of 10 % per year from the date of payment and shall be considered additional rent owed to Landlord by Tenant.

C. INDEMNIFICATION OF LANDLORD: Except as otherwise provided in this Agreement, Tenant shall protect, indemnify and save Landlord and its officers, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Premises, arising out of or in connection with Tenant's use or occupancy of the Premises or Tenant's activities on the Premises, or contracts entered into for work on the Premises, or arising from any negligent or willful act of Tenant. Tenant shall pay for all of Landlord's costs of suit and attorneys fees and expenses.

D. INDEMNIFICATION OF TENANT. Except as otherwise provided in this Agreement, Landlord shall protect, indemnify and save Tenant and its officers, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from injury to persons or damage to property on the Premises, arising out of or in connection with Landlord's negligent act or omission or willful misconduct. Landlord shall pay for all of Tenant's costs of suit and attorneys fees and expenses.

SECTION 20: *LANDLORD'S RIGHT OF INSPECTION AND REPAIRS*

Tenant shall allow Landlord or any person authorized by Landlord reasonable access to the Premises during regular business hours for the purpose of examining or exhibiting the same, or to make any repairs or alterations thereof which Landlord may see fit to make. If the Tenant does not exercise the Option and/or will be vacating the Premises at or prior to the end of the Term, Tenant will also allow Landlord to have placed upon the Premises at all times notices of "For Sale" and "For Rent", and Tenant will not interfere with the same.

SECTION 21: *DEFAULT AND REMEDIES*

A. EVENT OF DEFAULT: Any one of the following events shall be deemed to be an event of default hereunder by Tenant subject to Tenant's right to cure:

- (1) Tenant shall fail to pay within five (5) days, any item of Base Rent at the time and place when and where due;
- (2) Tenant shall fail to maintain the insurance coverage as set forth herein;
- (3) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than the payment of rent, and shall not cure, or commence the good faith cure of any such failure, within fifteen (15) days after written notice to the Tenant of such failure;
- (4) Tenant shall make a general assignment the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy; or
- (5) Any default by Tenant under the terms of the Note, Project Agreement, or Security Agreement.

B. OCCURRENCE OF AN EVENT: Upon the occurrence of any event of default, Landlord shall have the option to pursue any one or more of the following remedies subject to the laws of the State of Illinois and the Tenants right to cure:

- (1) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant fails to do so, Landlord may, without further notice and without prejudice to any other remedy Landlord may have for possession or arrearages in rent or damages for breach of contract, enter upon the Premises and expel or remove and with or without notice of such election or any notice or demand whatsoever, this Agreement shall thereupon terminate and upon the termination of Tenant's right of possession, as aforesaid, whether this Agreement be terminated or not, Tenant agrees to surrender possession of the Premises immediately, without the receipt of any demand for rent, notice to quit or demand for possession of the Premises whatsoever and hereby grants to Landlord full and free license to enter into and upon the Premises or any part thereof, to take possession thereof with or (to the extent permitted by law) without process of law, and to expel and to remove Tenant or any other person who may be occupying the Premises or any part thereof, and Landlord may use such force in and about expelling and removing Tenant and other persons as may reasonably be necessary, and Landlord may re-possess herself of the Premises as of her former estate, but such entry of the Premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause a forfeiture of rents due by virtue thereof, nor a waiver of

any covenant, agreement or promise in this Agreement contained to be performed by Tenant. Tenant and its effects, without being liable to prosecution or any claim for damages therefor; and Tenant agrees to indemnify Landlord for all loss and damage which Landlord may suffer by reason of such lease termination, whether through inability to re-let the Premises, or through decrease in Rent, or otherwise.

(2) Landlord may recover from Tenant upon demand all of Landlord's costs, charges and expenses, including the fees and costs of counsel, agents and others retained by Landlord which have been incurred by Landlord in enforcing Tenant's obligations hereunder, subject to Landlord prevailing on its claims.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or available to Landlord at law or in equity, or constitute a forfeiture or waiver of any Rent due hereunder or of any damages suffered by Landlord.

C. REPOSSESSION OR RELETTING NOT A TERMINATION; LANDLORD'S RIGHT TO TERMINATE NOT FORFEITED: No repossession, operation or re-letting of the Premises or of fixtures and equipment will be construed as an election by Landlord to terminate this Agreement unless a written notice is given by the Landlord to the Tenant. The Landlord may terminate this Agreement if the Tenant remains in default. The acceptance of rent, whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereof by Tenant, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except written waiver, shall not be construed as a waiver of Landlord's rights to act without notice or demand or of any other right hereby given Landlord, or as an election not to proceed under the provisions of this Agreement.

D. TENANT'S OBLIGATION TO PAY DEFICIENCIES: If rentals received by the Landlord from re-letting the Premises under the provisions of this section are insufficient to pay all expenses and amounts due, Tenant will pay any deficiencies to the Landlord on demand and be declared in default for failure to pay.

E. LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES AT TENANT'S COST: If in Landlord's judgment any default by Tenant will jeopardize the Premises or the rights of Landlord, Landlord may, without notice, elect to cure Tenant's default and Tenant will reimburse Landlord, with interest, on 10-days' notice by Landlord to Tenant.

F. LANDLORD'S RIGHT TO TERMINATE AGREEMENT: If Tenant defaults as stated in Paragraph A of this section, Landlord may, without further notice, terminate this Agreement and all interest of Tenant and may take possession of the Premises by legal proceedings.

G. LANDLORD'S RIGHT ON TERMINATION TO RECOVER AMOUNT EQUAL TO RENT RESERVED: If this Agreement is terminated by Landlord due to any default by Tenant, Landlord will be entitled to recover from Tenant, at termination, the excess, if any, of the rent reserved in this Agreement for the balance of the term over the reasonable rental value of the Premises for the same period. The "reasonable rental value" will be the amount of rental Landlord can obtain as rent for the balance of the term.

H. LANDLORD'S REMEDIES CUMULATIVE: All of the remedies given to Landlord in this Agreement or by law are cumulative, and the exercise of one remedy by the Landlord will not impair its right to exercise any other right or remedy.

SECTION 22: INTENTIONALLY DELETED.

SECTION 23: *REMOVAL OF OTHER LIENS*

In event any lien upon Landlord's title results from any act or neglect of Tenant and Tenant fails to remove said lien within ten days after Landlord's notice to do so, Landlord may remove the lien by paying the full amount thereof or otherwise and without any investigation or contest of the validity thereof and Tenant shall pay Landlord upon request the amount paid out by Landlord in such behalf, including Landlord's costs, expenses and reasonable attorney's fees. If Tenant demonstrates to Landlord that Tenant is contesting the validity of said lien in good faith, then Landlord shall allow ~~Tenant to so contest such lien until either Tenant either abandons such contest or a~~ final verdict is reached in a court of competent jurisdiction. Any amount advanced on behalf of Tenant shall be paid to Landlord by Tenant within 30 days after such advancement is made together with interest at 9% per annum and such amount shall be considered additional rentals.

SECTION 24: *REMEDIES NOT EXCLUSIVE*

The obligation of Tenant to pay the rent reserved hereby during the balance of the term hereof, or during any extension hereof, shall not be deemed to be waived, released or terminated, by the service of any five-day notice, other notice to collect, demand for possession, or notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejectment or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Tenant's right to possession of the Premises. The Landlord may collect and receive any rent due from Tenant and payment or receipt thereof shall not waive or affect any such notice, demand, suit or judgment, or in any manner whatsoever waive, affect, change, modify or alter any rights or remedies which Landlord may have by virtue hereof.

SECTION 25: *EXPENSES OF ENFORCEMENT*

Tenant, if Landlord is the prevailing party, shall pay upon demand all Landlord's costs, charges and expenses, including reasonable attorney's fees, agents fees and fees of others retained by Landlord, incurred in enforcing any of the obligations of

Tenant under this Agreement, or in any litigation, negotiation or transaction in which Landlord shall, without Landlord's fault become involved through or on account of any action or omission of Tenant regarding this Agreement.

Landlord, if Tenant is the prevailing party, shall pay upon demand all Tenant's costs, charges and expenses, including reasonable attorney's fees, agents fees and fees of others retained by Tenant, incurred in enforcing any of the obligations of Landlord under this Agreement, or in any litigation, negotiation or transaction in which Tenant shall, without Tenant's fault become involved through or on account of any action or omission of Landlord regarding this Agreement.

SECTION 26: *EMINENT DOMAIN*

A. MORE THAN 30 PERCENT TAKEN: If 30 percent or more of the Premises are taken for a public or quasi-public use, this lease will terminate as of the date of the physical taking, and the Parties will be released from all further liability.

B. LESS THAN 30 PERCENT TAKEN: If the taking affects less than 30 percent of the Premises, the Landlord will, with reasonable diligence, proceed at Landlord's expense to repair the Premises and place them in tenantable condition within 120 days after the date of the actual physical taking. However, if 25% percent or more of the Premises as a whole is taken, the Landlord may elect to terminate this Agreement, notwithstanding that less than 30 percent of the Premises were taken. On termination, the parties will be released from all further liability under this Agreement.

C. ABATEMENT OF RENT: During any repair, Tenant will be required to pay only that part of the fixed minimum monthly rental as the area of the tenantable Premises remaining during repairs bears to the entire area leased. On completion of repairs, the fixed minimum monthly rental will be adjusted in proportion to the repaired area, and Tenant will be required to pay the adjusted fixed minimum monthly rental in accordance this Agreement. There will be no abatement of any rent once physical possession is taken of part of the Premises. The method of computing the percentage rental will not change, and there will be no reduction of percentage rental.

D. RIGHT TO CONDEMNATION AWARD: Any award made in any condemnation proceeding for the taking of any part of the Premises will be the sole property of Landlord.

SECTION 27: *GOVERNMENTAL INTERFERENCE WITH POSSESSION*

Tenant will not be released from its obligation should its possession of the Premises be interfered with by adoption of any law, ordinance, resolution, regulation or act of any legal or governmental authority. Further, Tenant will not be released by any order of abatement or judgment preventing use of the premises on the ground that the Premises or the business operated there constitutes a legally recognized nuisance.

SECTION 28: *PEACEFUL ENJOYMENT*

Landlord covenants and warrants that, subject to any trust deeds or mortgages of record, it is the owner of the Property and Premises, and that Tenant, on payment of rents and performance of the conditions, covenants, and agreements to be performed by it, may enjoy the Premises without interruption or disturbance.

SECTION 29: *EFFECT OF WAIVER OF BREACH OF COVENANTS*

No waiver of any breach of any condition of this Agreement will be construed to be a waiver of any other breach of provision, covenant or condition.

SECTION 30: *TIME OF THE ESSENCE*

Time is of the essence.

SECTION 31: *AMENDMENTS TO BE IN WRITING*

This Agreement may be modified or amended only in writing signed by Landlord and Tenant. It may not be amended or modified by oral agreements between the Parties unless they are in writing duly executed by Landlord and Tenant.

SECTION 32: *PARTIES BOUND*

Every provision of this Agreement will bind the parties and their legal representatives. The term "legal representatives" is used in its broadest meaning and includes, in addition to executors and administrators, every person, partnership, corporation or association succeeding to any interest in this Agreement. Every covenant, agreement and condition of this Agreement will be binding on Tenant's assignees, subtenants, concessionaires and/or licensees, heirs, administrators and executors.

SECTION 33: *NOTICES*

All notices or demands that Landlord may need to serve under this Agreement may be served on Tenant (as an alternative to personal service) by mailing a copy by registered or certified mail to the following addresses for the parties:

City of Evanston
Attn: W. Grant Farrar, Corporation Counsel
2100 Ridge Avenue, Rm 4400
Evanston, IL 60201

Cody Modeer and Anne Carlson
631 Howard Street, Unit 2
Evanston, IL 60202

Service will be deemed complete at the time of the leaving of notice or within 2 days after mailing. All notices or demands from Tenant to Landlord may be served on Landlord at the address where rent is being paid, or at any other address Landlord may in writing designate to Tenant. In the event that it appears that Tenant is avoiding the service of any notice and is not present at the Premises for a period of more than 14

consecutive days, notices may be served by posting such notice upon the Premises. Notice shall than be deemed effective 5 days after such posting.

SECTION 34: MISCELLANEOUS

Provisions typed on this Agreement and all riders attached to this Agreement and signed by Landlord and Tenant are hereby made a part of this Agreement. (b) Tenant shall keep and observe such reasonable rules and regulations now or hereafter required by Landlord, which may be necessary for the proper and orderly care of the building of which the Premises are a part. (c) All covenants, promises, representations and agreements herein contained shall be binding upon, apply and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and assigns. (d) the rights and remedies hereby created are cumulative and the use of one remedy shall not be taken to excuse or waive the right to the use of another. (e) The words "Landlord" and "Tenant" wherever used in this Agreement shall be construed to mean Landlords or Tenants in all cases where there is more than one Landlord or Tenant herein; and the necessary grammatical changes shall be assumed in each case as though full expressed. (f) This Agreement and any written and signed Amendments and/or Riders hereto shall constitute the entire agreement between the parties, and any oral representations made by one party to the other are considered merged herein. (g) In all cases where Landlord's consent is required, Landlord's consent shall not be unreasonably withheld. (h) This Agreement may be executed in multiple copies, each of which shall constitute an original.

SECTION 35: VENUE AND JURISDICTION

The Parties agree the this Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes shall be in the Circuit Court of Cook County, Illinois.

[Signatures on following page]

IN WITNESS WHEREOF, both of said Landlord and Tenant have caused this Agreement to be executed as of the date and year first above written by a duly authorized officer or manager of each of the respective parties.

Landlord: THE CITY OF EVANSTON,
an Illinois home rule municipal corporation

By: Wally Bobkiewicz

Its: City Manager, Wally Bobkiewicz

Tenant: WARD EIGHT LLC,
an Illinois limited liability company

By: Anne Carlson

Its: Manager, Anne Carlson

By: Cody Modeer

Its: Manager, Cody Modeer

EXHIBIT "A"

LEGAL DESCRIPTION

LOT 6 AND THE EAST 0.62 FEET OF LOT 5 IN BLOCK 1 IN NILES HOWARD
TERMINAL ADDITIONAL, BEING A SUBDIVISION OF THE SOUTH 6.25 CHAINS (412
½ FEET) OF THAT PART OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 41
NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF
THE RIGHT OF WAY OF THE CHICAGO AND NORTH WESTERN RAILROAD IN
COOK COUNTY, ILLINOIS.

Real property address: 629-631 Howard Street, Evanston, Illinois, 60202

PIN: 11-30-209-024-0000

EXHIBIT "B"

PREMISES IMPROVEMENTS – SITE PLAN

Zarko Sekerez & Associates, Inc.



116 West Clark Street
 Post Office Box 903
 Crown Point, Indiana 46307
 PHONE: (219) 789-5012
 FAX: (219) 865-7282
 www.sekerez.com

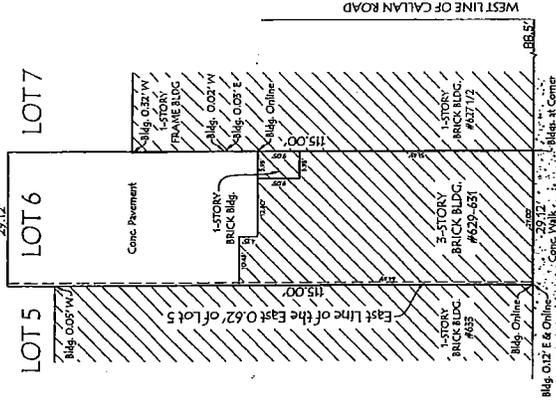
ORDER NO. 9302

629-631 W. Howard St.
 Evanston, Illinois

Surveyor Location Report

LOT 6 AND THE EAST 0.62 FEET OF LOT 5 IN BLOCK 1 IN NILES HOWARD TERMINAL ADDITION, BEING A SUBDIVISION OF THE SOUTH 6.25 CHAINS (412 1/2 FEET) OF THAT PART OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILROAD IN COOK COUNTY, ILLINOIS.

16' PUBLIC ALLEY



Conc. Pavement
 Conc. Curb

WEST HOWARD STREET
 (76' RIGHT OF WAY)

TO: Premier Title

I, the undersigned, an Illinois Registered Land Surveyor, hereby certify to the above named party that I have personally surveyed the above described property and that the same is true to the best of my knowledge and belief and that I am a duly licensed and qualified Surveyor. This report is prepared for use by above named party only, for the limited purpose of publication of said property. Subject property has not been platted and therefore no plat should be filed for confirmation or establishing liens thereon.

ILLINOIS LAND SURVEYOR NUMBER 3385

No dimensions should be assumed by scale measurement. Boundary dimensions are based on the public record and adjacent property. This plat is valid for six (6) months from the date shown and is subject to be void on the matter.

The legal description noted on this plat was provided by the client and may be incorrect. The surveyor is not responsible for the accuracy of the client's information and/or assumptions refer to your deed, contract, title policy, and/or zoning regulations. This plat is valid only if it contains the original signature and seal of the surveyor. If you have any questions regarding this plat do not hesitate to contact us.

SCALE 1" = 20' FT.
 DATE JANUARY 18, 2011
 BOOK 9302 PAGE 1
 ORDERED BY: Gordon F. Coats, P.C.

EXHIBIT "A"

TIF CONSTRUCTION GRANT AGREEMENT

THIS TIF CONSTRUCTION GRANT AGREEMENT (the "Agreement") is entered into on this 27th day of March, 2012 ("Effective Date"), by and between the City of Evanston, an Illinois home rule municipality, ("City"), and Ward Eight, LLC, an Illinois limited liability company ("Ward Eight"), regarding the renovation and occupation of City property located at 629 Howard Street, Evanston, Illinois, legally described in Exhibit "A", which is attached hereto and incorporated herein by reference ("Property").

RECITALS

WHEREAS, the City desires to foster local businesses and jobs as part of its economic revitalization efforts throughout Evanston and in accord with the TIF Guidelines, as defined herein; and

WHEREAS, the City Property is improved with a three-story building containing one (1) commercial unit on the bottom floor and two residential units on the top two floors and the City seeks to renovate the Property with TIF grant funds; and

WHEREAS, the City has authorized Economic Development Division Staff to ~~manage and administer this Agreement on behalf of the City including, without~~ limitation, authorizing the City Manager to execute this Agreement with Ward Eight, thereby establishing the terms, conditions, and requirements for participation in this Agreement in accordance with TIF Guidelines; and

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 Ward Eight 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. "**Completion Date**" means the date that the contractor has finished the Project pursuant to the plans approved by City Council, the City Manager or his/her designee, and to the satisfaction of Ward Eight, as evidenced by final payment to the contractor.

- b. **"Director"** means the City's Director of Community & Economic Development, who is responsible for managing and administering this Agreement on behalf of the City.
- c. **"Grant"** means the total amount of the City's grant of TIF monies to Ward Eight for purposes of funding TIF eligible activities of the Project, which shall not exceed \$100,000.00 and shall only be for approved improvements (One Hundred and no/100 Dollars), the amount approved by City Council.
- d. **"Project"** means the improvements on the Property as proposed by Ward Eight and approved by the City Council. Specifically, Ward Eight desires to renovate the Property to make it suitable for use as a cocktail/wine bar establishment and use TIF funds for said renovation.
- e. **"TIF Eligible Activities"** means activities determined to be eligible for payment from the City's TIF fund under the guidelines of the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended.
- f. **"TIF Guidelines"** means the regulations found in the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4 *et seq.*, as amended. All terms not defined herein shall have the meanings set forth in the TIF Guidelines.
- ~~g. **"Total Allowable Expenses"** means the actual costs incurred, paid for, and documented by Ward Eight and approved by the Director 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. Such allowable expenses must be TIF Eligible Activities.~~
- h. **"Total Project Expenditure"** means the total actual Project costs incurred by and paid for by the City, up to the amount of the Grant, and then payments made by Ward Eight after the amount of the Grant has been spent, which includes all costs of construction, materials, & supplies.

II. TERMS OF GRANT

- a. City shall disburse funds in the principal amount not to exceed \$100,000.00 (One Hundred Thousand and no/100 Dollars) (the "Grant Amount") from the City's Howard Ridge TIF Fund for improvements within the establishment that are approved for funding for the Project.
- b. The Grant by the City pursuant to this Agreement constitutes a 1-year grant to Ward Eight, until the tenant improvements for the Project are fully completed as described herein. If the Total Project Expenditures are greater than \$100,000.00, Ward Eight shall be solely responsible for any payments to the contractor or subcontractors above the Grant fund amount. If any project costs are determined to not be TIF Eligible Activities, Ward Eight must submit payment at

its own expense and Grant funds may not be used and Ward Eight shall receive no reimbursement from the City for non-TIF Eligible Activities.

- c. The City shall be invoiced directly by the contractors and subcontractors for payment. The Director or his designee shall review the invoices to ensure that the invoice charges are TIF Eligible Activities prior to payment.

III. WARD EIGHT'S RESPONSIBILITIES

- a. Ward Eight shall provide a list of all construction activities to the City prior to commencement of work to verify that the project costs are TIF Eligible Activities. Of those activities it will be determined which are eligible expenses for payment by the City and are TIF-eligible activities.
- b. Ward Eight shall comply with all terms and conditions of this Agreement and all applicable all requirements of Federal, Illinois and City of Evanston law.
- c. Ward Eight shall ensure that all work done on the Project and paid for with Grant funds are TIF Eligible Activities. The City will separately evaluate whether the project costs are TIF Eligible Activities.
- d. Ward Eight shall obtain and submit all required certificates of insurance, as set forth herein, to the City Manager or his/her designee upon execution of this Agreement and prior to City's execution.
- e. Ward Eight shall be responsible for hiring licensed contractors to complete the Project. The Director or his/her designee may require submission of proof of the State License issued to the selected contractors.
- f. Ward Eight shall be responsible for contacting the Director or his/her designee to arrange for obtaining all City and other approvals and/or permits required for construction and completion of the Project.
- g. Ward Eight 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.
- h. Ward Eight shall make a good faith effort to use Evanston-based businesses as frequently as is financially feasible when purchasing supplies and/or hiring subcontractors and administrative services providers for the Project. Ward Eight shall obtain three (3) estimates for the scope of work for the Tenant Improvements and one (1) estimate must be obtained from an Evanston-based contractor.

- i. Upon completion of the Project, Ward Eight shall notify the Director and request inspection of the Project by the Director or his/her designee(s).
- j. Ward Eight shall complete the Project no later than six (6) months after receiving any building permit related to the Project.
- k. After completion of the Project, Ward Eight shall submit to the Director or his/her designee a report that includes the following:
 - i. Cover letter indicating the Project is completed and the Total Cost Expenditures for the Project;
 - ii. All contractor invoices detailing the specific tasks completed in accordance with approved Project;
 - iii. Unconditional lien releases; and
 - iv. Any additional material requested by the Director or his/her designee.
- l. Ward Eight shall maintain the Property in compliance with all applicable provisions of the Evanston City Code of 1979, as amended.
- ~~m. Ward Eight shall not be more than one hundred twenty (120) days in arrears with regards to any City utility and/or service bills.~~

IV. THE CITY'S RESPONSIBILITIES

- a. City shall use up to \$100,000.00 (One Hundred Thousand and no/100 Dollars) (the "**Grant Amount**") from the City's Howard Ridge TIF Fund for the Project.
- b. The Director or his/her designee shall review Ward Eight's contractors' and subcontractors' sworn statements and accompanying documents, and, if said documents meet all terms, conditions, and obligations under this Agreement and the TIF Guidelines for Eligible Project Costs, the Director or his/her designee shall, in the ordinary course of business, submit payment to contractors and subcontractors.
- c. Within a reasonable time after Ward Eight notifies City of the completion of the Project, the Director or his/her designee shall inspect the improvements to ensure they were completed in accordance with approved Project and its guidelines.

V. TIME OF PERFORMANCE

The Ward Eight shall complete the Project no later than six (6) months after receiving any building permit related to the Project. Failure to complete the Project within six (6)

months will result in Ward Eight's breach 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.

VI. AMOUNT OF GRANT

The total amount of the Grant to be made by the City, pursuant to the terms and conditions of this Agreement, shall not exceed \$100,000.00 (One Hundred and no/100 Dollars) as approved by City Council as stated above.

VII. INSURANCE

- a. During the entire period in which work on the Project is performed, the Ward Eight 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 \$1,000,000, \$1,000,000 Products and Completed Operations Aggregate, and \$1,000,000 for each occurrence.
- b. All insurance policies shall name the City of Evanston, and their respective elected officials, officers, employees, agents, and representatives as additional insureds.
- ~~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.~~
- d. Ward Eight shall provide evidence of required insurance to the Director before execution of this Agreement.

VIII. OBLIGATION TO REFRAIN FROM DISCRIMINATION

- a. Ward Eight 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 applicants will be afforded equal opportunity without

discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

IX. NO AGENCY CREATED

The Ward Eight and any contractor, supplier, vendor or any third party hired by Ward Eight 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 Ward Eight concerning the details of the obligations under this Agreement, or to exercise any control over such obligations, shall mean only that the Ward Eight shall follow the direction of the City concerning the end results of the obligations.

X. OWNERSHIP OF DOCUMENTS

All documents 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.

XI. INDEMNIFICATION AND HOLD HARMLESS

To the maximum extent permitted by law, the Ward Eight agrees to and shall defend, indemnify and hold harmless the City, and its 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 property resulting or arising from or in any way connected with the following, provided Ward Eight 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 Ward Eight, its officers, contractors, subcontractors, agents, employees or other persons acting on Ward Eight'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 Ward Eight including, without limitation, any errors or omissions with respect to said documents;
- d. Any loss or damage to the City resulting from any inaccuracy in or breach of any representation or warranty of Ward Eight, or resulting from any breach or default by Ward Eight, under this Agreement; and

Telephone: 847.448.8100

With a copy to:

City of Evanston
Attn: Corporation Counsel, W. Grant Farrar
2100 Ridge Avenue, Room 4400
Evanston, IL 60201
Telephone: 847.866.2937

To Ward Eight:

Ward Eight, LLC
629 Howard Street
Evanston, IL 60202
Attn: Anne Carlson, Manager

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.

XVI. 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 herein 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 90 days and shall continuously and diligently prosecute such cure, correction or remedy to completion.

c. City Remedies; Repayment of Loan.

In the event of a default by Ward Eight 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 Ward Eight that occurs after the City has disbursed any Grant funds, the total of such disbursement(s), plus any accrued interest, shall become immediately due and payable.

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 XI herein or at such other address as City may direct pursuant to notice delivered to Ward Eight in accordance with Article XV.

d. Ward Eight'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, Ward Eight 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 Ward Eight 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 Ward Eight's sole and exclusive judicial remedies.

XVII. 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.~~

XVIII. 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 personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested.
- b. The Ward Eight 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.

XIX. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES

No member, official, agent, legal counsel or employee of the City shall be personally liable to the Ward Eight, 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 Ward Eight or successor or on any obligation under the terms of this Agreement.

XX. 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.

XXI. AUTHORITY TO SIGN

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

XXII. 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.

XXIII. 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 Ward Eight, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Ward Eight.

XXIV. NON-ASSIGNMENT

The Ward Eight shall not assign the obligations under this Agreement, nor any monies due or to become due, without the City's prior written approval, and Ward Eight and Ward Eight'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 breach 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.

XXV. NO WAIVER

No failure of either the City or the Ward Eight 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.

[SIGNATURES ON FOLLOWING PAGE]

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

THE CITY OF EVANSTON,
an Illinois home rule municipal corporation

By: Wally Bobkiewicz
Its: City Manager, Wally Bobkiewicz

WARD EIGHT LLC,
an Illinois limited liability company

By: Anne Carlson

Its: Manager, Anne Carlson

By: Cody Modeer

Its: Manager, Cody Modeer

ATTACHMENT:
Exhibit A – Legal Description of Property

Return this form to:
City of Evanston
Director Community & Economic Development
2100 Ridge Avenue
Evanston, IL 60201

Exhibit A:

LEGAL DESCRIPTION OF PROPERTY

LOT 6 AND THE EAST 0.62 FEET OF LOT 5 IN BLOCK 1 IN NILES HOWARD
TERMINAL ADDITIONAL, BEING A SUBDIVISION OF THE SOUTH 6.25 CHAINS (412
½ FEET) OF THAT PART OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 41
NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF
THE RIGHT OF WAY OF THE CHICAGO AND NORTH WESTERN RAILROAD IN
COOK COUNTY, ILLINOIS.

Real property address: 629-631 Howard Street, Evanston, Illinois, 60202

PIN: 11-30-209-024-0000

ATTACHMENT A: Program Agreement

THIS PROGRAM AGREEMENT [Agreement] is entered into on this 11th day of September, 2012 [Effective Date], by and between the City of Evanston [City], and 607 Howard, LLC [Participant], owner (or tenant) of property located at 607-609 Howard Street [Property], with regard to Participant's participation in the "City of Evanston – Façade Improvement Program" [Program].

RECITALS

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

WHEREAS, investment on commercial façade improvements visible to persons from public rights-of-way will beautify the subject properties and surrounding area, create a positive visual impact, increase the volume of business by making the subject properties and businesses more attractive, stimulate private investment, and complement other community revitalization 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 Director of Community & Economic Development 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. **"Director of Community & Economic Development"** 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 Director of Community & Economic Development, 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. **"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".
- e. **"Participant"** means the person applying for a rebate for facade improvements on the Property and determined eligible by the City Council or Director of Community & Economic Development 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.
- f. **"Program Guidelines"** means the "City of Evanston -- Façade Improvement 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.
- g. **"Project"** means the façade improvements on the subject property as proposed by the Participant and approved by the City Council.
- h. **"Project Completion Date"** means the date agreed upon by the Participant and the City of Evanston when the approved Façade Improvement Program project will be completed by.
- i. **"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.
- j. **"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).
- k. **"Total Allowable Expenses"** means the actual costs incurred, paid for, and documented by the Participant and approved by the Director of Community &

Economic Development 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.

- I. **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 Director of Community & Economic Development 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 Director of Community & Economic Development 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 façade 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 prorata 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 façade improvements, and maintains the facade 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 Director of Community & Economic Development 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 Director of Community & Economic Development 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 Director of Community & Economic Development 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 Director of Community & Economic Development 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 Director of Community & Economic Development or his/her designee and call for an inspection of the Project. Director of Community & Economic Development or his/her designee will arrange for the Property to be inspected.
- k. The Participant shall submit to the Director of Community & Economic Development 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 Director of Community & Economic Development or his/her designee;
 - vi. Two color 8" x 10" photos taken of the Project after completion;
 - 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 façade improvements.

V. THE CITY'S RESPONSIBILITIES

- a. Director of Community & Economic Development 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. Director of Community & Economic Development 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 Director of Community & Economic Development or his/her designee

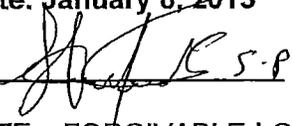
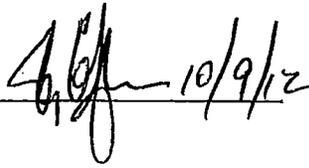
shall inspect the improvements to ensure they were completed in accordance with approved project scope.

- d. Director of Community & Economic Development 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 Director of Community & Economic Development 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.

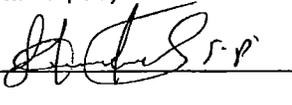
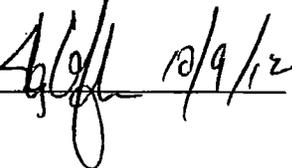
Project Completion Date: January 8, 2013

Applicant Signature:  S.P. **City Signature:**  10/9/12

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: \$19,330

Applicant Signature:  S.P. **City Signature:**  10/9/12

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 insureds.
- 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 Director of Community & Economic Development 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

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 Director of Community and Economic Development'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 Director of Community & Economic Development. 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: 10/9/12

By: [Signature] (signature)

Name: Steve Griffin

Title: Director of Community and Economic Development

"PARTICIPANT"

Dated: 10/9/12

By: [Signature] S.P. (signature)

Name: Sam Prassinis

Title: Owner, 607 Howard, LLC and 607-609 Howard Street