

TOWN OF WINTER PARK
COMMERCIAL ENHANCEMENT GRANT AGREEMENT

THIS COMMERCIAL ENHANCEMENT GRANT AGREEMENT (the "Agreement") is made and entered into this _____, by and between the Town of Winter Park, a Colorado home rule municipality with an address of 50 Vasquez Road, Winter Park, Colorado 80482, a (the "Town"), and _____ individual with an address of _____, Winter Park, Colorado 80482 (the "Property Owner") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town has made certain funds available for the purpose of beautifying the property of local organizations and businesses within the Town to encourage pedestrian and business activity in commercial areas, in accordance with the Commercial Enhancement Grant Program and Town guidelines and design standards; and

WHEREAS, the Property Owner, who is the owner of real property or a structure thereupon located at _____ and a physical address of _____ (the "Property") submitted an application under the Commercial Enhancement Grant Program.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledges, the Parties agree as follows:

I. IMPROVEMENTS

A. The Property Owner shall complete the improvements set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Project"), in compliance with all applicable local, state and federal standards and regulations.

B. A change in the Project shall not be effective unless authorized as an amendment to this Agreement. If the Property Owner proceeds without such written authorization, the Property Owner shall be deemed to have waived reimbursement under this Agreement.

C. The Property Owner, at its own cost, shall obtain all necessary approvals, including building permits, associated with the Project.

D. The Project shall be completed on or before December 31, 2016.

II. TERM AND TERMINATION

A. The term of this Agreement shall commence on the Effective Date and terminate twenty (20) years later, unless otherwise terminated as provided herein.

B. If construction of the Project has not yet commenced, either Party may terminate this Agreement upon seven (7) days advance written notice to the other Party. Once construction of the Project commences, the Town may terminate this Agreement upon thirty (30) days prior written notice, provided that the Town reimburses the Property Owner for costs reasonably incurred in compliance with this Agreement prior to the date of termination. Once construction commences, the Property Owner may terminate this Agreement upon thirty (30) days prior

written notice to the Town, but the Property Owner thereby waives any right to reimbursement under this Agreement for any portion of the Project.

III. GRANT

A. For the completion of the Project in compliance with this Agreement, the Town hereby agrees to reimburse the Property Owner up to _____ (_____) (the "Grant"). This maximum amount shall include all fees, costs, and expenses incurred by the Property Owner, and no additional amounts shall be paid by the Town for such fees, costs, and expenses. Notwithstanding the maximum amount specified in this Section, the Property Owner shall be reimbursed only for work performed. If the Property Owner completes the Project for less than the maximum amount, the Town shall reimburse the Property Owner the lesser amount, not the maximum amount.

B. Funds from the Grant shall be disbursed to the Property Owner upon completion of the Project. Within forty-five (45) days of completion of the Project, the Property Owner shall provide the Town with documentation of paid invoices. Each invoice shall contain sufficient detail regarding work performed. After verification of invoices, the Town shall inspect the Project, and if the Town determines that the Project complies with this Agreement, the Town shall disburse the Grant to the Property Owner. The Property Owner is solely responsible for the payment of any contractors or subcontractors.

IV. LIFESPAN OF IMPROVEMENTS

A. The Project is anticipated to have a minimum lifespan of _____ (_____) years. The Parties agree that the Project improvements shall remain on the Property for a minimum period of _____ (_____) years.

B. If any of the Project improvements are removed from the Property prior to the expiration of the minimum lifespan set forth herein, without prior written authorization from the Town, the Property Owner shall repay the entire Grant to the Town within thirty (30) days of receipt of a written demand.

C. The Property Owner may seek written approval from the Town prior to removing any Project improvements from the Property. Approval of the removal of any Project improvements shall be in the Town's sole discretion. If the Town approves the removal of any Project improvements, the Property Owner shall repay a portion of the Grant to the Town, as reasonably determined by the Town in the written approval. The portion of the Grant to be repaid to the Town shall be fully repaid prior to the removal of any Project improvements.

V. INDEMNIFICATION

The Property Owner agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or

damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Property Owner, any contractor or subcontractor of the Property Owner, or any officer, employee, representative, or agent of the Property Owner, or which arise out of a worker's compensation claim of any employee of the Property Owner or of any employee of any contractor or subcontractor of the Property Owner.

VI. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Grand County, Colorado.

B. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

C. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligations of this Agreement.

D. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

E. Third Parties. There are no intended third-party beneficiaries to this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties. No agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

H. Assignment. Neither this Agreement nor any of the rights or obligations or the Parties hereto, shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys and employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies or the period in which such remedies may be asserted.

EXHIBIT A

See Attached Sheets