

**FAÇADE/RESTAURANT EQUIPMENT PROGRAM  
PROMISSORY NOTE**

Effective Date: \_\_\_\_\_ (“Effective Date”)  
Principal Balance: \_\_\_\_\_ (“Principal Balance”)  
Monthly Amortization Amount: \_\_\_\_\_ (Principal Balance/36 - “Monthly Amortization Amount”)  
Borrower: \_\_\_\_\_ (“Borrower”)  
Project Address: \_\_\_\_\_ (“Project”)

On the Effective Date, Borrower does hereby agree to pay to the City of Buchanan the Principal Balance as follows (“Promissory Note”):

**RECITALS**

The City of Buchanan has created two programs to facilitate downtown area growth. The Downtown Façade Program that provides a forgivable loan to improve the facade of a building. The second program is the Restaurant Incentive program that provides a forgivable loan to help restaurant businesses acquire new equipment and make restaurant related improvements. The approval requirements and amount for each program is as provided in the program terms. Once an applicant is approved, the applicant is required by comply with certain requirements of the program including the execution of this Promissory Note. The Promissory Note is to be forgiven if the Borrower complies with the covenants as provided in this Agreement. The approved application of any Borrower is incorporated into this recitals provisions as if fully restated herein (“Approved Application”). The Borrower agrees to this Promissory Note in compliance with the program and as part of the program.

**TERMS AND CONDITIONS**

The Borrower agrees to the following terms and conditions in the payment of the Principal Balance:

1. **Approved Application.** The Approved Application is incorporated into this Promissory Note as if fully restated herein. Upon execution of this Promissory Note, Borrower represents and warrants to the City of Buchanan that Borrower has completed all improvements or purchased and installed all equipment as set forth in the Application. Borrower also represents that all improvements and/or equipment was installed in compliance with permitting requirements and the City of Buchanan Code of Ordinances. Any deviation from the Approved Application must be re-approved by the City of Buchanan.
2. **Principal Amount Confirmed.** Borrower confirms that the Principal Balance is the amount that the City of Buchanan reimbursed to the Borrower pursuant to the terms of the Program.
3. **Interest.** The Borrower shall not pay interest on the Principal Balance unless there is a breach as provided in this Promissory Note (“Interest”).
4. **Payment.** The Borrower shall pay the Principal Balance over a period of thirty-six (36) months by compliance with the terms of this Promissory Note. If Borrower fails to remain in compliance with the compliance covenants, the Borrower shall pay the Monthly Amortization Amount for each partial or full month of non-compliance. Borrower shall pay \$25.00 as an administrative late for any payment due under this Promissory Note that is not paid within five (5) days of a due date (“Late Fee”). If Borrower shall make payment that is returned to City of Buchanan as a result of non-sufficient funds, Borrower shall pay all costs charged to City of Buchanan for the non-sufficient funds return check plus a \$50.00 administrative processing fee (“NSF Fee”)(the Late Fee and NSF Fee

shall be referred to collectively as “Additional Charges”). Any payment received by Borrower shall be allocated as follows: (i) First to accrued interest, and (ii) Second to the Principal Balance, as adjusted by unpaid Additional Charges.

5. **Compliance Covenants.** Borrower agrees to comply with the following covenants: (i) **Ordinance Compliance.** Borrower shall remain in compliance with the City of Buchanan Code of Ordinances. (ii) **Truthful Application.** Borrower’s application for program participation shall not contain any false or misleading information. (iii) **Work/Equipment Compliance.** Borrower shall complete all work and purchase all equipment as approved by the City of Buchanan program approval as set forth in the Approved Application. (iv) **No Delinquency.** Borrower shall not be delinquent in property taxes or in default of any financial obligation owed to the City of Buchanan. (v) **Liens/Mortgages.** Borrower shall not be delinquent in the payment of any taxes or loan that is secured by the Borrower’s real estate or equipment. (vi) **Program Fund Use.** All program funds are used as approved by the City of Buchanan. (v) **Permits/Installation/Timelines.** All work shall be or has been performed in compliance with all permit requirements of the City of Buchanan. All installation shall be completed in a good workmanlike manner using licensed persons or entities for work required to be performed by a licensed person. All work shall be fully completed within the timelines contained in an approved application. (vi) **Insolvency.** Borrower shall not file a voluntary petition for bankruptcy, be subject to receivership, be subject to garnishment or execution or otherwise be insolvent at the time of application or during the term of this Promissory Note.

6. **Default Event/Default.** A failure to comply with the Compliance Covenants shall constitute an event of default. On the occurrence of any Event of Default, the City of Buchanan is to deliver written notice that an event of default has occurred with a fifteen (15) day right to cure, which may be extended by the City of Buchanan in its sole and unlimited discretion. If Borrower fails to cure the event of default by the expiration of the cure period, the event of default shall constitute a breach. Upon a breach, the Borrower shall begin to pay the Monthly Amortization Amount on or before the 1<sup>st</sup> day of the immediately succeeding month and each month thereafter. Borrower shall also pay interest at the maximum amount permitted by law. The City of Buchanan may accelerate all future payments to become immediately due and payable and is authorized to file a foreclosable lien to secure the performance of this Promissory Note and/or a lis pendens to give notice of the existence of this Promissory Note and its enforcement. The City of Buchanan shall have all the rights and remedies available by law to enforce the terms of this Promissory Note, including, but not limited to, the use of actions at law or in equity. All remedies of the City of Buchanan shall be cumulative and not restricted. The choice to use one remedy over another shall not be determined to be an election of remedies where the use of one prohibits the use of the other. The City of Buchanan is authorized, but not required, to take the action necessary to preserve any partially completed work, to protect the public from hazard or complete the work that was approved by the City of Buchanan. If the City of Buchanan takes such action, the cost of the action shall be added to the Principal Balance of this Promissory Note.

7. **Enforcement of Other Legal Obligations.** The terms of this Promissory Note do not supersede or replace the City of Buchanan Code of Ordinances, which shall be complied with in full. To the extent that there shall be a conflict between the City of Buchanan Code of Ordinances and this Promissory Note, the Code of Ordinances shall control. This Promissory Note does not restrict or limit the authority of the City of Buchanan to enforce the City of Buchanan Code of Ordinances. The City of Buchanan can chose to join into one action or operate separate actions concurrently to enforce The City of Buchanan Code of Ordinances and/or this Promissory Note.

8. **Setoff/Anti-Waiver.** Borrower shall have no setoff rights. The City of Buchanan’s delay in the enforcement of any violation for any period of time shall not constitute a waiver of right to enforce any term of this Promissory Note or consent to a continued violation of this Promissory Note.

9. **Miscellaneous Terms.** Time is of the essence in this Promissory Note. However, no delay by the City of

Buchanan of this note shall be a waiver of the exercise of any right or remedy. No single or partial exercise by the City of Buchanan of any right or remedy shall preclude any other or future exercise of that or any other right or remedy. No waiver by the City of Buchanan of any default or of any provision of this note shall be effective unless it is in writing and signed by the City of Buchanan. No waiver of any right or remedy on one occasion shall be a waiver of that right or remedy on any future occasion. Borrower waives demand for payment, presentment, notice of dishonor, and protest of this note, waives all defenses based on suretyship or impairment of collateral, and consents to any extension or postponement of time of its payment, to any substitution, exchange, or release of all or any part of any security given to secure this note, to the addition of any party, and to the release, discharge, waiver, modification, or suspension of any rights and remedies against any person who may be liable for the indebtedness evidenced by this note. If any part of this Promissory Note shall be deemed by a court of competent jurisdiction to be unenforceable, the remainder of the Promissory Note shall remain in full force and effect. This note shall be governed by and interpreted according to the laws of the State of Michigan without giving effect to conflict-of-laws principles. Borrower irrevocably agrees and consents that any action against Borrower to collect or enforce this note may be brought in any state or federal court that has subject matter jurisdiction and is located in, or whose district includes, Kent County, Michigan, and that any such court shall have personal jurisdiction over Borrower for purposes of such action.

BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, INCLUDING ANY CLAIM, COUNTERCLAIM, CROSS-CLAIM OR THIRD-PARTY CLAIM ("CLAIM") THAT IS BASED UPON, ARISES OUT OF, OR RELATES TO THIS NOTE OR THE INDEBTEDNESS EVIDENCED BY IT, INCLUDING, WITHOUT LIMITATION, ANY CLAIM BASED UPON, ARISING OUT OF, OR RELATING TO ANY ACTION OR INACTION OF CITY OF BUCHANAN IN CONNECTION WITH ANY ACCELERATION, ENFORCEMENT, OR COLLECTION OF THIS NOTE OR SUCH INDEBTEDNESS.

10. **Assignment.** Borrower shall not assign this Promissory Note without the advance written approval of City of Buchanan, which may be withheld in the sole discretion of the City of Buchanan. City of Buchanan may assign its rights and duties to a third party in its sole discretion without any prior approval or notice to Borrower. Upon an assignment by City of Buchanan, City of Buchanan shall be released from any further duties or obligations. If City of Buchanan shall assign this Promissory Note, the new City of Buchanan of the Promissory Note shall have all of the rights of City of Buchanan as if the new City of Buchanan was the City of Buchanan. Upon assignment, Borrower shall be given notice by City of Buchanan of the location where payments shall be made and name to whom payments shall be made. The parties recognize and agree that this Promissory Note is payable to City of Buchanan through assignment in the P Agreement referenced in the recitals.

By signature below, Borrower confirms that Borrower has received the consideration from City of Buchanan as provided by this Promissory Note. The Borrower further agrees that payment is due as provided herein and accepts the terms of payment provided in this Promissory Note.

BORROWER:

CITY OF BUCHANAN:

\_\_\_\_\_  
By: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_