

STATE OF TEXAS

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**ECONOMIC DEVELOPMENT
GRANT AGREEMENT OF THE
GRANTOR OF SAN ANTONIO**

COUNTY OF BEXAR

This Economic Development Grant Agreement (hereinafter referred to as "this Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, (hereinafter referred to as "GRANTOR"), acting by and through its City Manager or her designee, and IRON & STEEL LOFTS, L.L.C. (hereinafter referred to as "GRANTEE") and who together may be referred to as the "Parties."

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant municipal funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

WHEREAS, in accordance with City Ordinance No. 100684, GRANTOR created an economic development program for the purpose of making such grants available; and

WHEREAS, GRANTEE is engaged in an economic development project that will be located within the city limits of San Antonio that will consist of a mixed-use development structure consisting of 69 rental units and 3,251 sq. feet of retail space to be located at 1401 South Flores Street (the "Project"); and

WHEREAS, GRANTEE is seeking an economic development grant from the GRANTOR for the purpose of defraying costs associated with undertaking the Project; and

WHEREAS, the GRANTOR has identified Economic Development Incentive Funds to be made available to GRANTEE for use in completing the Project; and

WHEREAS, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2010-04-0008-____, passed and approved on April 8, 2010 to grant funds to support the Project; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

GRANTEE shall undertake the development of a mixed-use development structure consisting of 69 rental units and 3,251 sq. feet of retail space. The Project is anticipated to promote local economic development and to stimulate business and commercial activity in the City of San Antonio. The GRANTOR is supporting the Project through this Economic Development Program Grant to provide funds to be used to defer costs associated with the Project.

SECTION 2. PROJECT REQUIREMENTS

A. GRANTEE shall invest a minimum of TEN MILLION DOLLARS AND NO CENTS (\$10,000,000.00) in the Project. This amount is exclusive of any funding that the GRANTOR may provide under this Agreement.

B. GRANTEE shall commence construction on or before December 1, 2010 and complete construction no later than December 1, 2011. The commencement date shall be determined by the issuance of a building permit for the Project and the completion date shall be determined by the issuance of a Certificate of Occupancy for the Project.

C. GRANTEE make available to GRANTOR any reports generated during the construction and lease up phase of the project.

D. GRANTEE shall comply with all applicable laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement and Attachment I.

SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT.

A. **Economic Development Program Grant.** GRANTOR is providing GRANTEE with an Economic Development Program Grant in the amount of ONE HUNDRED AND NINE THOUSAND DOLLARS AND NO CENTS (\$109,000.00) ("Grant Funds"). The Grant Funds shall be used for the purpose of undertaking and completing the Project.

B. **Grant Disbursement.** Following approval of this Agreement by a duly authorized City Ordinance and the occurrence of all of the following:

1. Execution of the Agreement by both Parties; and
2. Evidence of the issuance of a building permit from the City of San Antonio for the Project's location; and
3. Initiation of construction on the Project evidenced by the submission of a letter confirming the initiation of construction by the General Contractor to Grantor.
4. Receipt by the City of evidence that the Project has received permanent financing;

the GRANTOR will make available to GRANTEE an Economic Development Program Grant in the total amount of ONE HUNDRED AND NINE THOUSAND DOLLARS AND NO CENTS (\$109,000.00) ("Grant Funds"), to be advanced to GRANTEE in one disbursement.

C. **Recapture of Program Grant Funds Years 1 through 2.** Should GRANTEE:

1. Fail to commence the Project by December 1, 2010
2. Fail to complete the Project by December 1, 2011;
3. Fail to invest approximately TEN MILLION DOLLARS AND NO CENTS (\$10,000,000.00) in the Project; or
4. Fails to keep adequate records necessary for the GRANTOR to determine if GRANTEE is in compliance with this Agreement; or
5. Breaches this Agreement in any manner set forth in this Agreement; then

GRANTOR shall have the right to terminate this Agreement and recapture the Grant Funds in accordance with this Section.

SECTION 4. AGREEMENT PERIOD

This Agreement shall commence upon the effective date listed in this Agreement and terminate upon the 2nd anniversary of its execution (the "Term").

SECTION 5. DEPARTMENT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 2 of this Agreement, GRANTOR will make an Economic Development Program Grant of ONE HUNDRED AND NINE THOUSAND DOLLARS AND NO CENTS (\$109,000.00) available to GRANTEE .

B. GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement. GRANTEE shall retain such records, and any supporting documentation, for the greater of: (1) Five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. GRANTEE shall following reasonable advance written notice from the GRANTOR, give the GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by GRANTEE pertaining to the Economic Development Loan (the "Records"). The GRANTOR's access to GRANTEE's books and records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement and to verify advances made by the GRANTOR and re-payments made by GRANTEE and to verify that the proceeds of the Economic Development Loan are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to the GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give the GRANTOR the right to suspend or terminate this Agreement as provided for in Section 15 and 16 below, or any portion thereof, for reason of default. All Records shall be retained by GRANTEE for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. GRANTEE agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public Information Act on the same terms as the Records are made available to the GRANTOR as set forth above. All of the above notwithstanding, the GRANTOR and the citizens shall have no right to access any confidential or proprietary records of GRANTEE, including but not limited to the ownership and capital structure of GRANTEE.

SECTION 9. MONITORING

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 15 and 16 herein.

B. GRANTEE shall provide to GRANTOR a statement with reasonable supporting information evidencing the creation of and filling of the number of jobs required by this Agreement.

SECTION 10. CONFLICT OF INTEREST

A. GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEE shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the GRANTOR's Code of Ethics.

SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE shall, to the best of its knowledge and belief, ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall, to the best of its knowledge and belief, include the substance of this Section 11 in all agreements associated with the funds made available through this Agreement.

SECTION 12. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. GRANTOR will have the right to suspend or terminate this Agreement in accordance with Sections 15 and 16 herein if there is a dispute as to the legal authority, of either GRANTEE or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. GRANTEE is liable to GRANTOR for any money it has received from GRANTOR for performance of the provisions of this Agreement if GRANTOR suspends or terminates this Agreement for reasons enumerated in this Section 12.

SECTION 13. LITIGATION AND CLAIMS

A. GRANTEE shall give GRANTOR immediate notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE arising out the performance of any subcontract hereunder. Except as otherwise directed by GRANTOR, GRANTEE shall furnish immediately to GRANTOR copies of all pertinent papers received by GRANTEE with respect to such action or claim. GRANTEE shall notify the GRANTOR immediately of any legal action, known to Grantee, filed against the GRANTEE or any subcontractor, or of any proceeding filed under the federal bankruptcy code. GRANTEE shall submit a copy of such notice to GRANTOR within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding GRANTEE is not required to notify GRANTOR of claim litigation which arise out of GRANTEE's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

B. GRANTOR and GRANTEE acknowledge that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 14. ATTORNEY'S FEES

A. In the event GRANTEE should default under any of the provisions of this Agreement and the GRANTOR should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of GRANTEE herein contained, GRANTEE agrees to pay to the GRANTOR reasonable fees of such attorneys and such other expenses so incurred by the GRANTOR.

SECTION 15. CHANGES AND AMENDMENTS

A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon GRANTOR approval and authorization of GRANTEE.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 16. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event GRANTEE fails to comply with the terms of any agreement with the GRANTOR, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance. GRANTOR shall grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification delivered by certified mail, to cure any issue of non-compliance under such agreement. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE and prohibit GRANTEE from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Suspension advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 15 may be lifted only at the sole discretion of the GRANTOR upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 17. TERMINATION

A. GRANTOR shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 5 of this Agreement whenever GRANTOR determines that GRANTEE has failed to comply with any term of any Agreement with the GRANTOR. GRANTOR will provide GRANTEE with written notification as to the nature of the non-compliance, and grant GRANTEE a sixty (60) day period from the date of the GRANTOR's written notification delivered by certified mail, to cure any issue of non-compliance under such Agreement. Should GRANTEE fail to cure any default within this period of time, the GRANTOR may as its sole and exclusive remedies, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement in whole or in part and either: (1) withhold further payments to GRANTEE; or (2)...deleted... Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the GRANTOR may, in its sole discretion, extend the cure period provided that GRANTEE shall: (1) immediately upon receipt of Notice of Termination advise GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 16(A), the Economic Development Program Loan may be terminated in whole or in part only as follows:

1. By the GRANTOR (with the consent of the GRANTEE) in which case the two parties shall agree upon the termination conditions, including the repayment of funds, the effective date and in the case of partial termination, the portion to be terminated; or
2. By the GRANTEE upon written notification to the GRANTOR, setting forth the reasons of such termination, a proposed pay-back plan of any funds loaned, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the GRANTOR determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the GRANTOR may terminate the award in its entirety under Section 16(A).

D. Notwithstanding any exercise by GRANTOR of its right of suspension under Section 15 of this Agreement, or of early termination pursuant to this Section 16, GRANTEE shall not be relieved of repayment of loaned funds under this Agreement or any liability to GRANTOR for actual damages due to GRANTOR by virtue of any breach by GRANTEE of any agreement with GRANTOR, including Attachment I, Attachment II and this Agreement.

SECTION 18. SPECIAL CONDITIONS AND TERMS (RESERVED)

SECTION 19. SUBAGREEMENTS

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, GRANTOR is in no way liable to GRANTEE's subcontractor(s).

C. GRANTEE assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

D. As subcontracts and supplier agreements become necessary to carry out the requirements of this Agreement, GRANTEE covenants to comply with the GRANTOR's SBEDA Program, currently identified under Ordinance No. 100873, and as amended.

SECTION. 20. DEBARMENT

By signing this Agreement, GRANTEE certifies that it will not award any funds provided under this Agreement to any party which it **knows to be** debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the GRANTOR.

SECTION 21. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements

between GRANTEE and the GRANTOR or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 22. NON-ASSIGNMENT

This Agreement is not assignable without the written consent of GRANTOR and the passage of a GRANTOR Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein. GRANTEE shall be held responsible for all funds received under this Agreement.

SECTION 23. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 24. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

GRANTOR may grant temporary relief from performance of this Agreement if the GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the GRANTEE. The burden of proof for the need for such relief shall rest upon the GRANTEE. To obtain release based upon *force majeure*, the GRANTEE must file a written request with the GRANTOR.

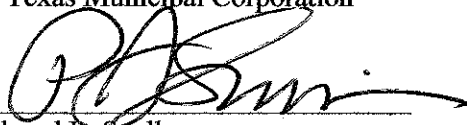
Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of June 10, 2010:

Accepted and executed in two duplicate originals on behalf of the GRANTOR of San Antonio pursuant to Ordinance Number 2010-04-0008-_____, dated April 8, 2010, and GRANTEE pursuant to the authority of its _____.

GRANTOR:

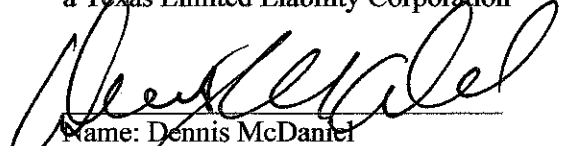
CITY OF SAN ANTONIO,
a Texas Municipal Corporation



Sheryl L. Sculley
GRANTOR MANAGER

GRANTEE:

Iron & Steel Lofts, L.L.C.
a Texas Limited Liability Corporation



Name: Dennis McDaniel
Title: Manager

ATTEST:



Leticia Vacek
GRANTOR CLERK

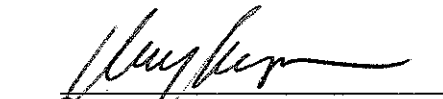


ATTEST:



Name: Jill McDaniel

APPROVED AS TO FORM:



Michael D. Bernard
GRANTOR ATTORNEY