

**GRANT AGREEMENT BETWEEN
THE CITY OF COLLEGE STATION
AND LANE COLLEGE STATION LIMITED PARTNERSHIP**

This Agreement is entered into by and between the CITY OF COLLEGE STATION, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "CITY"), and LANE COLLEGE STATION LIMITED PARTNERSHIP, a Texas Limited Partnership (hereinafter referred to as "OWNER").

WHEREAS, the CITY is authorized and empowered under applicable Texas law to aid in the development of commercial enterprises within the geographic boundaries of the CITY by offering economic and other incentives to prospective new, developing, redeveloping, and expanding businesses; and

WHEREAS, the CITY actively seeks to attract economic development prospects and retain expanding business in College Station through its participation in the College Station Business Development Corporation, and its establishment of an Economic Development Office in College Station; and

WHEREAS, OWNER is involved in the ownership and management of a full-service hotel in College Station; and

WHEREAS, OWNER has expressed its intent and desire to redevelop its business in College Station; and

WHEREAS, CITY provides cash and infrastructure incentives for use in attracting new businesses and expanding existing businesses to and within the CITY that are qualified economic development prospects; and

WHEREAS, CITY considers OWNER to be a qualified economic development prospect that will add capital investment, generate hotel/motel tax, and retain jobs in the community.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and promises hereinafter set forth, the Parties represent and agree as follows:

1. Definitions

For the purposes of this Agreement, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

1.1. **Business Facility** - The facility to be redeveloped by OWNER on the Property located at 801 University Drive East, College Station, Texas, consisting of real property improvements, machinery, and equipment, in which OWNER will conduct and operate its business as a full-service hotel.

1.2 **Building Permit** - means fees charged by the City of College Station associated with the redevelopment of the OWNER's facilities and described in CHAPTER 11, SECTION 2-F AND CHAPTER 14, SECTION 5A-F OF THE CITY OF COLLEGE STATION CODE OF ORDINANCES.

1.3. **Execution Date** - The date set forth on page 8, just above the signature lines.

1.4 **Full-service Hotel** - A first class hotel with a minimum of 300 rooms, and includes facilities and amenities such as parking, swimming pool, dining facilities, and other facilities, fixtures and furnishings customarily associated with a full-service hotel. A full service hotel must be able to service and accommodate the needs of meetings and functions that will be conducted on-premise. At a minimum, the hotel shall have adequate meeting space and facilities that can be competitively marketed to and attract group and conference business. The hotel shall also have adequate food and beverage facilities that can accommodate the catering needs of conferences conducted at the hotel.

1.5. **Property Improvements** - All improvements to redevelop the Property including, but not limited to, any real property improvements, infrastructure improvements, equipment, machinery, furnishings, and fixtures to be located at the Business Facility by OWNER. Improvements shall consist of a minimum investment of \$2,750,000.00 for all furniture, fixtures, equipment, and real property improvements. Such improvements shall be completed and the premises ready for use by hotel guests on or before July 31, 2001

1.6 **Retaining Wall** - means approximately 100 linear feet of retaining wall to be located in the Texas Department of Transportation right-of-way adjacent to 801 University Drive East.

2. **CITY's Incentive Package, Obligations and Representations**

2.1 CITY agrees to fund an economic development grant to provide incentives to OWNER as authorized by CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE (VERNON 1999 AND VERNON SUPP. 2000). The grant will consist of the incentives specified in Sections 2.1.1a., 2.1.1b., and 2.1.1c of this Agreement.

2.1.1 **Economic Incentives:** Consists of the following:

2.1.1a **Cash Incentives:**

- (a) A one-time cash payment to OWNER of \$75,000.00 for Property Improvements upon evidence of the expenditure of \$2,750,000.00 in Property Improvements as specified in Section 6.
- (b) A one-time payment to OWNER of up to a maximum of \$7,500.00 to reimburse OWNER for the actual cost of all municipal permits and fees related to the redevelopment project.
- (c) A one-time cash payment to OWNER not to exceed \$200,000.00 for actual costs of survey, design, and construction of a retaining wall located within the TXDOT right-of-way in University Drive adjacent to the Property. Such one-time payment is to be paid within 30 days of completion and proof of payment to all contractors or subcontractors for the retaining wall work and subject to the terms and conditions in Section 6 herein.

2.1.1b The incentives will be granted to OWNER on condition that and only after the requirements established in this Section 2 as well as any other requirements specified in this Agreement or in any applicable City of College Station Ordinances have been fulfilled by OWNER:

3. OWNER's Obligations and Representations

3.1. Location and Operation of the Business Facility .

3.1.1 OWNER agrees to redevelop and operate a Business Facility on the Property and Owner and any successors agree to operate its Business Facility as a full-service hotel throughout the term of this Agreement, provided however, that such operation shall be for a term of not less than five (5) years from the date of execution of this grant Agreement by both parties.

3.2. Capital Investment

3.2.1 OWNER agrees to invest a minimum of \$2,750,000.00 for Property Improvements, including but not limited to furnishings, fixtures, and equipment. The

redevelopment construction shall be completed by OWNER on or before July 31, 2001.

3.2.2 OWNER agrees to construct approximately 100 linear foot retaining wall at its Business Facility which meets the design and specifications sufficient to obtain a permit to locate the retaining wall within the Texas Department of Transportation University Drive right-of-way located adjacent to the property.

4. Permit Fee

City agrees to make a grant as authorized BY CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE to OWNER to cover the cost of the all permit fees related to the Property Improvements of up to a maximum of \$7,500.00.

5. Term

The term of this Agreement is five (5) years from the date of execution of this agreement by both parties.

6. Reporting Requirements

6.1. Reports

6.1.1 OWNER shall submit to the CITY any and all information or reports requested to verify the expenditures submitted for grant fund eligibility, including, but not limited to, bid documents, payment applications including any supporting information, cancelled checks, receipts, etc. The submission of this information shall be signed by a representative for the limited partnership.

If, upon review, the City finds that there are no discrepancies (other than simple errors of addition or subtraction that do not affect Owner's compliance with the minimum investment requirements set forth in Par. 3.2.1) in the submittal, that the costs reflect the actual and reasonable cost expended by the OWNER for said improvements, that the cost of the improvements meets or exceeds the incentive amount and that all other preconditions for payment established in this Agreement have been met, then reimbursement in the form of a cash grant will be paid to OWNER within 30 days of the date of approval.

All submittals in this Section shall be to the Director of Economic Development or her designee promptly after the completion of construction but not later than three years from the date of execution of this agreement.

7. Confidentiality

Because of the highly competitive nature of the industry in which OWNER does business, CITY agrees that the reports which OWNER may be required to submit may contain information which OWNER considers to be valuable proprietary information. As such, CITY agrees to keep any and all reports described in Section 6 provided by OWNER as confidential information to the extent the documents are not public information under SECTION 552 OF THE PUBLIC INFORMATION ACT, TEXAS GOVERNMENT CODE, as amended.

8. Notice of Intent to Cease Operation

If OWNER ceases or intends to cease operation of its full-service hotel business at the Property during the term of this Agreement, it shall give thirty (30) days prior written notice to CITY. Failure to provide such notice shall constitute an event of default pursuant to Section 10. A filing of bankruptcy pursuant to Chapters 7 or 11 of the Bankruptcy Code shall be considered as an intention to cease or cessation of operations for purposes of this Agreement.

9. Compliance with Applicable Laws

At all times during which OWNER owns and operates the Business Facility, OWNER will remain in compliance with all applicable laws, rules and regulations including without limitation, all applicable environmental laws, rules and regulations.

10. Default

10.1. If OWNER defaults in any material term or condition of this Agreement, then CITY shall not be obligated to approve or disburse the grant incentives specified under this Grant Agreement unless such default is cured by the defaulting party promptly but not more than 30 days after the occurrence of said default, unless such cure will reasonably take more than thirty (30) days, in which case the City may approve additional time to cure the default upon submission of a plan and schedule to cure the default within a reasonable time, and provided the party commences the cure within the thirty (30) day period. If the funds have been disbursed by the CITY at the time of default, then the party which has received the funds must repay the funds received, in full, promptly but not more than 30 days after the date of the failure to cure the default. The parties acknowledge and agree that a default shall not extend the time for performance or cure beyond the end of the term specified in Section 5.

10.2. A material breach by OWNER consists of, but is not limited to, any of the following individual or cumulative events: failure of Business Facility to be operated and maintained as a full-service hotel throughout the term of this Agreement; failure of OWNER to construct the retaining wall or complete the Property Improvements as required herein;

failure of OWNER to comply with all laws, codes and ordinances relating to the construction of the infrastructure and improvements that constitute the subject matter of this Agreement; submittal by OWNER of any cost information that OWNER knows or should know is incorrect at the time of its submittal; and any material misrepresentation of fact concerning the subject matter of this Agreement.

10.3. In the event that CITY materially breaches its obligation to disburse the economic incentives to OWNER under this Agreement and OWNER is not in default, OWNER, at its option, may terminate this Agreement and OWNER may pursue its remedies available at law.

11. Indemnity

OWNER agrees to and shall indemnify and hold harmless and defend CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, for damage to any property, for any breach of contract, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with this Grant Agreement.

12. Release

OWNER releases, relinquishes and discharges the CITY, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of, any person (whether they be either of the parties hereto, their employees or other third parties) and any loss of or damage to property (whether property of either of the parties hereto, their employees, or of third parties) or its failure to abide by all applicable environmental laws, rules and regulations that are caused by or alleged to be caused by, arising out of, or in connection with this grant agreement.

13. Assignment

This Agreement may not be assigned by OWNER without the prior written consent of CITY, which consent shall not be unreasonably withheld. Additionally, a change in ownership, in an asset sale or in a single transaction, of fifty plus one percent of the stock of OWNER shall be considered an assignment for purposes of this paragraph. Such assignment shall not, however, be considered a default of the Agreement, so as to require the recapture of or proration of the retaining wall and property improvements incentive, unless the Business Facility ceases to be operated and maintained as a full-service hotel within the terms of this Agreement.

14. Invalidity

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

15. Written Notice

All notices required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in address, and (iii) shall be deemed to have been delivered either when personally delivered or, if sent by mail, in which event it shall be sent by registered or certified mail, return receipt requested, three (3) business days after mailing. The addresses of the parties are as follows:

To OWNER: Lane College Station Limited Partnership
Attn: Mr. Scott Schory
1200 Shermer Rd.
Northbrook, IL 60062-4500

To CITY: City of College Station
P.O. Box 9960
College Station, Texas 77842
Attn: Mayor Lynn McIlhaney

16. Entire Agreement

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

17. Amendment

No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of OWNER and CITY.

18. Texas Law

This Agreement has been made under and shall be governed by the laws of the State of Texas.

19. Place of Performance

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

20. Authority to Enter Contract

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

21. Waiver

Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

22. Representation

OWNER represents and warrants that no member of the College Station City Council, the Brazos County Commissioners Court or County Judge has an interest in the Property, and that the same are not owned or leased by any member of the College Station City Council, the Brazos County Commissioners Court or County Judge. OWNER further represents and warrants that no member of the College Station City Council is under contract either directly or indirectly with OWNER, owners agent's, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

EXECUTED this 21st day of December, 2000.

LANE COLLEGE STATION
LIMITED PARTNERSHIP
By: LANE COLLEGE STATION, INC.,
Managing General Partner

CITY OF COLLEGE STATION, TEXAS

BY: *Scott R. Schory*
Scott R. Schory, Vice President

BY: *Lynn McIlhaney*
Lynn McIlhaney, Mayor

Date: 11-30-00

Date: 12/29/00

ATTEST:

Connie Hooks
Connie Hooks, City Secretary

12/28/00
Date

APPROVED:

Tom Brymer
Tom Brymer

12-21-00
Date

Rodannehemeck
City Attorney

12-21-00
Date

Charles Cryan
Charles Cryan, Director of Fiscal Services

12-21-00
Date

Kim Foutz
Kim Foutz, Director of Economic Development

12/21/00
Date

THE STATE OF ILLINOIS
COUNTY OF COOK

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CORPORATE ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared Scott R. Schory the Vice President of LANE COLLEGE STATION, INC., the Managing General Partner of LANE COLLEGE STATION LIMITED PARTNERSHIP, a Texas Limited Partnership, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 30th day of November, 2000.



Arlene Sugar
Notary Public in and for the
State of Illinois

THE STATE OF TEXAS
COUNTY OF BRAZOS

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ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared LYNN McILHANEY, as Mayor of the CITY OF COLLEGE STATION, a Texas home rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 29th day of December, 2000.



Priscilla Elaine Henchel
Notary Public in and for the
State of Texas