

City of Scottsbluff, Nebraska

Monday, August 29, 2016

Regular Meeting

Item Public Inp5

Council consideration of an Economic Development Assistance Agreement with Dave's Welding LLC and authorize the City Manager to execute the agreements as the Economic Development Program Administrator.

Staff Contact: Nathan Johnson, City Manager

City of Scottsbluff
Economic Development Application Review Committee
July 27, 2016

A meeting of the Economic Development Application Review Committee was held on July 27, 2016 at 9:30 a.m. at City Hall, 2525 Circle Drive, Scottsbluff, NE.

The meeting was convened at 9:34 a.m. Roll call was taken. Present were Committee Members, Jim Trumbull, Dennis Hadden, Dave Schaff, Marla Marx, Hod Kosman and Lee Glenn. In attendance on behalf of the City were Program Administrator, Nathan Johnson, Deputy City Attorney, Rick Ediger and Finance Director, Liz Hilyard. Also present were Shawn Overeynder of Twin Cities Development and David Leis on behalf of Dave's Welding, LLC.

Chairman Trumbull called the meeting to order and stated that a copy of the Nebraska Open Meetings Act is located on the West wall of the Conference Room. There were no changes in the Agenda, nor were there any citizens with business not scheduled on the agenda.

The first order of business was the approval of the Minutes of the July 15, 2015, meeting. It was moved by Schaff and seconded by Marx that those Minutes be approved. Voting yes: Trumbull, Hadden, Schaff, Marx, Kosman and Glenn. Voting no: None.

The Committee then considered the Application of Dave's Welding, LLC for assistance in connection with its commercial and industrial machinery and equipment repair and maintenance business. Deputy City Attorney Ediger indicated that Simmons Olsen Law Firm, P.C. had a conflict of interest in this matter. In addition, Kosman and Glenn indicated that they had a conflict of interest due to their positions with Platte Valley Bank. As a result, they would not be participating. The Committee received a presentation from the Applicant. The Committee asked questions of the Applicant. Following discussion, it was moved by Hadden and seconded by Marx that the Committee recommend to the City Council that a loan be made to Dave's Welding, LLC in the amount of \$88,000. The loan would draw interest at the applicable federal mid-term rate for the month of closing beginning October 1, 2016, with 108 amortized monthly payments to be made, with the first payment to be due on November 1, 2016. The Note would be secured by a Guaranty of David Leis, as well as a Security Interest in all the assets of the company and a Deed of Trust on real estate owned by David Leis. The Deed of Trust will be subordinate to the existing first mortgage. In addition, the Applicant can earn a credit against the Note for FTE's at the rate of \$1,000 per year. Voting yes: Trumbull, Hadden, Schaff, and Marx. Voting no: None. Abstain: Kosman and Glenn.

The Committee next discussed a potential Application to deal with airport storm water runoff problems, which impact certain Qualifying Businesses under the Plan. In particular, the Fusion Ranch facility and the FedEx facility are impacted, as well as land to be developed by an additional potential Applicant. The Committee indicated it would look favorably upon an Application, depending on the amount and terms and suggested that the City Engineer also look at street issues in that area. Although no official action was taken, an Application was encouraged as long as it would benefit Qualifying Businesses.

City Manager Johnson indicated that the City Council, during its budget discussions, was considering the hiring of an Economic Development Director. The Committee was invited to comment. Concerns were raised with regard to the amount to be budgeted from the Economic Development Program Fund and to make sure that an annual review takes place. As long as the primary focus of the position will deal with assistance to Qualifying Businesses, then Economic Development Program Funds would be available to fund this position. No action was taken and there was no opposition expressed, other than to provide for flexibility so the position can be reviewed for effectiveness on an annual basis.

The final order of business was to discuss the possibility of adding Housing Contractors as Qualifying Businesses under the Program. New legislation would allow for this addition to the City's Economic Development Plan. It is not this Committee's position to make a recommendation on that matter. However, if the City's Economic Development Program is amended to provide for housing, this Committee will be responsible for developing a program. The consensus of the Committee was that this could be a positive development.

It was moved by Glenn and seconded by Schaff that the meeting adjourn. Voting yes: Trumbull, Hadden, Schaff, Marx, Kosman and Glenn. Voting no: None. The meeting was then adjourned.

Nathan Johnson, Program Administrator

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on September ____, 2016, between the City of Scottsbluff, Nebraska (the "City") and Dave's Welding, LLC (the "Applicant").

Recitals:

- a. The City has adopted an Economic Development Program (the "Program") pursuant to the Nebraska Local Option Municipal Economic Development Act;
- b. The Applicant has made application for assistance from the Program (the "Application");
- c. The Administrator of the Program (the "Administrator") and the City Economic Development Application Review Committee (the "Committee") have reviewed the Application and recommended to the City Council (the "Council") that a loan (the "Loan") be made to the Applicant from the City of Scottsbluff Economic Development Fund (the "Fund") as provided for in this Agreement. The City Council has approved the Committee's recommendation.
- d. The parties now desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Loan.

Agreement:

1. Purpose of Loan:

The Applicant has opened a commercial and industrial machinery and equipment repair and maintenance business (the "Business"). The proceeds of the Loan will be used primarily for the purchase of equipment to be used in the Business.

2. Amount of Loan:

The Loan shall be in the amount of \$88,000 and shall be disbursed from the City's Economic Development Fund (the "Fund") to the Applicant as provided for below. The Loan shall be represented by a promissory note (the "Note") to be signed at the Loan Closing in the form of the attached "Exhibit A". The Note shall carry interest until October 1, 2016 (the "Note Interest Date"), at which time it shall carry interest at the rate of 1.22% per annum and shall be repaid over 108 equal monthly payments of principal and interest. The first payment shall be due one month after the Note Interest Date, with each additional payment due on the first day of each subsequent month until the Note is paid in full.

3. Loan Disbursement and Loan Closing:

As soon as the Applicant has satisfied the conditions to the Loan Closing, the amount of the Loan shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. Disbursement of the Loan proceeds shall be made within 10 business days after the Council has approved a claim for the Loan. The disbursement of the Loan proceeds shall constitute the "Loan Closing".

4. Job Credits:

As long as the Applicant is not in default of the Note, this Agreement, or any other document entered into pursuant to this Agreement, the Applicant shall be eligible for credit against the balance due under the Note for Job Credits earned during a Year. A "Year" shall mean the 12-month period ending on each September 30. "Job Credits" shall be calculated as follows:

- a. The Applicant shall receive an "Annual Job Credit" during a Year equal to the FTE's for a Year multiplied by \$1000.
- b. The amount of the Annual Job Credit may not exceed \$10,000 per Year (the "Maximum Annual Credit").
- c. If the Applicant earns credits in excess of the Maximum Annual Credit in any one Year, the excess credits may be carried back to one or more prior Years where the Maximum Annual Credit was not earned, as long as the Maximum Annual Credit is not exceeded for any one Year. Excess credits may not be carried forward

In order to receive Job Credits, the Applicant must file an Annual Report as provided for below. Job Credits shall be applied against the principal balance of the Note as prepayments, which prepayments shall not alter the amount of the monthly payment due under the Note. Once the Note is paid in full, no further Job Credits may be earned.

5. Employee Definitions:

- a. "Full Time Employee" shall mean a bona fide employee of the Applicant who (1) is classified by the Applicant as full time; and (2) subject to normal and reasonable waiting periods, is eligible for the employer's normal fringe benefit package. This normal fringe benefit package must, at the least, include a health insurance plan with coverage offered to each employee which is, if not declined, substantially paid for by the Applicant.
- b. "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) primarily works at the Facility, and (2) resides within 60 miles of the corporate limits of the City; provided, however any Full Time Employee who does not reside within 60 miles of the corporate limits of the City at the time that the Full Time Employee is hired, shall nevertheless be considered an Eligible Full Time Employee if the Full Time Employee moves to a residence

within the required geographic area within 6 months of the hiring of the Eligible Full Time Employee.

c. "Full Time Equivalent" Employees (the "FTE's") shall be the number arrived at by dividing the total hours paid by the Applicant to their Eligible Full Time Employees during a Year divided by 2080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one Eligible Full Time Employee shall not exceed 40 hours per week. Salaried employees shall be presumed to have been paid 40 hours per week.

6. Representations and Warranties of the Applicant:

The Applicant represents and warrants the following, all of which shall survive the Closing:

a. The Applicant is a limited liability company organized, existing, and in good standing under the laws of Nebraska. The Applicant has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The Applicant's execution, delivery and performance of this Agreement have been authorized by all necessary action on the part of the Applicant. This Agreement, and each agreement and instrument delivered by the Applicant pursuant to it, is the legal and binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms.

b. No representation or warranty made by the Applicant in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the Applicant that are required to make the statements not misleading.

c. The execution and performance of this Agreement will not violate any provision of law, or conflict with or result in any breach of any of the terms or conditions of, or constitute a default under any indenture, mortgage, agreement or other instrument to which the Applicant is a party or by which they are bound.

All representations and warranties made by the Applicant shall survive the Loan Closing.

7. Representations and Warranties of the City:

The City represents and warrants the following, all of which shall survive the Loan Closing:

a. The City is a municipal corporation organized and existing under the laws of Nebraska, and has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The City's execution, delivery and performance of this Agreement has been authorized by all necessary action on the part of the City. This Agreement, and each agreement and instrument delivered by the City pursuant to it, is the legal and binding obligation of the City, enforceable against the City in accordance with its terms.

b. No representation or warranty made by the City in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the City that is required to make the statements not misleading.

8. Conditions to Loan Closing:

The City's obligation to proceed with the Loan Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Loan Closing:

a. All representations and warranties of the Applicant shall be true as of the Loan Closing.

b. The Applicant shall have delivered to the City:

(1) Evidence of Good Standing of the Applicant from the Nebraska Secretary of State.

(2) A copy of the current and correct Certificate of Organization and Operating Agreement of the Applicant certified by David Leis (the "Member") to be correct;

(3) Certified resolutions of the Member authorizing this Agreement and providing for signature authority.

c. In order to secure the Loan and the Repayment, the Applicant shall have delivered to the City the following:

(1) a security agreement (the "Security Agreement") covering the Applicant's assets. The Security Agreement shall be in the form of the attached "Exhibit B".

(2) a guaranty (the "Guaranty") of the Member. The Guaranty shall be in the form of the attached "Exhibit C".

(3) a deed of trust (the "Deed of Trust") from the Member which secures the Guaranty. The Deed of Trust shall be in the form of the attached "Exhibit D" and shall be subordinate to an existing lien held by Platte Valley Bank.

d. The Applicant shall in all material respects have performed its obligations, agreements, and covenants contained in this Agreement to be performed by them, on, or before the Loan Closing.

e. There shall have been no material adverse change in the operation or financial status of the Applicant and the Loan Closing shall constitute the Applicant's representations that there has been no such material adverse change.

f. In requesting the disbursement of the Loan, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

9. Annual Reports:

If the Applicant desires to claim Job Credits, the Applicant shall annually, within 60 days of the end of each Year, provide to the Administrator a report in form and substance acceptable to the Administrator which calculates the Annual Job Credit for the Year (the "Annual Report"). The Administrator shall have the right at any time to (i) require that the Annual Reports be reviewed at the Applicant's expense by a Certified Public Accountant reasonably acceptable to the Administrator, or (ii) hire, at the Administrator's own expense, an independent Certified Public Accountant or other business or financial expert, to review the books and records of the Applicant pertaining to the Annual Report and any other terms and conditions as provided for in this Agreement. If after a review or audit of the Applicant's records it is discovered that the Annual Job Credit claimed on the Annual Job Credit Report exceeds 10% of the Annual Job Credit as determined by the Administrator, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of the audit.

10. Default:

The Applicant shall be in default in this Agreement and the Note if any of the following happen:

- a. Failure to comply with any of the terms of this Agreement or the Note, to include an assignment not permitted under this Agreement.
- b. Any warranty, representation or statement made or given to the City by the Applicant proves to have been false in any material respect when made or given.
- c. Dissolution or liquidation of any of the Applicant, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.
- d. The Applicant ceases to conduct its Business or moves its Business more than 10 miles from the zoning jurisdiction of the City.

11. Assignability:

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicant may not assign or transfer its interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership of the Applicant which results in the Member owning less than 51% of the ownership interests of the Applicant.

12. Confidentiality:

It is agreed that this Agreement and its terms are public record and are not confidential. However, the City agrees to take reasonable steps to insure that any financial and proprietary information provided in connection with this Agreement by the Applicant shall remain confidential and shall not be revealed or disclosed to outside sources unless the information is public knowledge, is independently developed, or is required to be disclosed by law or legal process.

13. Notices:

Any notices or other communications between the parties shall be personally delivered, sent by certified or registered mail, return receipt requested, by Federal Express or similar service that records delivery, to the addresses set out below, or to such other address as a party may designate, from time to time, by written notice to the other. A notice shall be deemed effective upon receipt.

- a. If to the City:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
Fax: (308) 632-2916
Attention: City Manager

- b. If to the Applicant:

Dave's Welding, LLC
60247 Sugar Factory Road
Scottsbluff, NE 69361
Attention: David Leis

14. Miscellaneous:

- a. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and may only be modified by a writing signed by both of the parties.

- b. The City's waiver of any one default shall not be a waiver of the same or any other default in the future. In addition, the City's failure to exercise any right given to it by this Agreement shall not be a waiver of any later exercise of that right.

- c. The provisions of this Agreement are severable and if any provision is held to be invalid, the remainder of the Agreement shall remain in effect.

- d. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute a single instrument.

- e. This Agreement shall be governed by the laws of Nebraska.
- f. This Agreement shall be binding on the successors and assigns of the parties.

City of Scottsbluff, Nebraska

Dave's Welding, LLC

By: _____
Economic Development
Program Administrator

By: _____
David S. Leis, Member

GUARANTY

This Guaranty is given by David S. Leis (the “Guarantor”) to guarantee certain obligations of Dave’s Welding, LLC (the “Applicant”) to the City of Scottsbluff, Nebraska (the “City”).

Recitals:

a. The Applicant has entered into an Economic Development Assistance Agreement with the City dated September ____, 2016 (the “EDA Agreement”). Capitalized terms not otherwise defined in this Guaranty shall have the same meaning as provided for in the EDA Agreement.

b. One of the conditions to the EDA Agreement is that the Guarantor enter into this Guaranty.

Guaranty:

1. Obligations Guaranteed:

The obligations of the Applicant being guaranteed (the “Obligations”) are:

- a. The “Note” as defined in the EDA Agreement;
- b. Any and all other obligations of the Applicant under the EDA Agreement and any other documents entered into pursuant to the EDA Agreement;
- c. All costs, expenses and attorney fees paid or incurred by the City in collecting the Repayment, and in enforcing this Guaranty.

2. Guarantee of Payment:

This Guaranty is a guarantee of payment and the City shall not be required to resort first for payment from the Applicant or from any other person liable in any way for the Obligations.

3. Exercise of Rights/Waiver:

The City may at any time without consent of or notice to the Guarantor, and without incurring responsibility to or impairing or releasing the Obligations, in whole or in part:

- a. Change the manner, place or terms of payment and/or change or extend the time or payment of, renew or alter, any of the Obligations, any security, or any debt, liability or obligation incurred directly or indirectly with respect to the Obligations and this Guaranty shall continue to apply to the Obligations as changed, extended, renewed or altered;

b. Exercise or refrain from exercising any rights against the Applicant or others (including the Guarantor);

c. Settle or compromise any of the Obligations or any security for the Obligations, and may subordinate the payment of all or any part of the Obligations to the payment of any debt, liability or obligation (whether due or not) of the Applicant to creditors of the Applicant other than the City and the Guarantor; and

d. Apply any sums paid or realized from any source to the Obligations and regardless of the application or use of the consideration, if any, received in connection with the Obligations.

4. Primary Obligation:

a. This Guaranty is a primary obligation of the Guarantor. The Guarantor's obligation shall not be affected by the illegality, invalidity, irregularity or unenforceability of all or any part of the Obligations or of any security for the Obligations, or by the violation of any applicable usury laws, forgery, or any other circumstances which make the Obligations unenforceable against the Applicant which actions are the responsibility of the Applicant.

b. The fact that the financial condition of the Applicant or any other obligor or guarantor may not have been correctly estimated or may change at any time shall have no effect on the rights of the City under this Guaranty. The City shall have no duty to disclose to the Guarantor any facts it may now or in the future have concerning the Applicant's financial condition.

c. The Guarantor shall remain obligated under this Guaranty even if the Applicant, or any other person who is obligated to pay the Obligations, has the Obligations discharged in bankruptcy or in any other manner. In the event of a discharge, the Guarantor's obligation shall include attorney's fees and any other amounts which the Applicant is discharged from paying.

d. If claim is ever made against the City for repayment or recovery of any amount or amounts received by the City in payment or on account of any of the Obligations and the City repays all or part of the amount claimed by reason of (1) any judgment, decree or order of any court (including a bankruptcy court) or administrative body having jurisdiction over the City or (2) any settlement or compromise of any claim effected by the City with any claimant (including the Applicant), then the Guarantor agrees that the judgment, decree, order, settlement or compromise shall be binding upon the Guarantor even though this Guaranty may have been revoked or released or the Obligations were canceled or released. In that event, the Guarantor shall remain liable to the City for the amount repaid by the City as if that amount had never been received by the City, along with any costs, interest, attorneys' fees and all other expenses incurred by the City in connection with the repayment.

5. Miscellaneous:

a. This Guaranty is secured by a Deed of Trust on certain real estate owned by the Guarantor.

b. This Guaranty shall continue until the Obligations are paid in full or unless released by the City. All Obligations shall be conclusively presumed to have been made all or in part in reliance on this Guaranty.

c. The Guarantor waives notice of acceptance of this Guaranty and notice of the Obligations, and waives presentment, demand of payment, protest, notice of dishonor or nonpayment, notice of default, or notice of right to cure any default with respect to any of the Obligations, or notice of any suit or other action by the City against any party liable for the Obligations.

d. Unless and until the Obligations are satisfied in full, the Guarantor waives all present and future claims, rights, and remedies against the Applicant or any other party obligated for the Obligations. This waiver includes, but is not limited to, the rights of contribution, reimbursement, indemnification, subrogation, exoneration, and any right to participate in any claim or remedy that the City may have.

e. No delay or failure on the part of the City to exercise its rights under this Guaranty shall be considered as a waiver of the City's rights under this Guaranty. No waiver, modification or amendment of this Guaranty by the City shall be effective unless in writing, and then shall only apply to the specific instance involved.

f. Any acknowledgment or new promise, whether or not a payment of any Obligation has occurred, by the Applicant or anyone else (including the Guarantor) shall toll any statute of limitations that may otherwise be running with respect to the Guarantor.

g. This Guaranty shall be construed according to the laws of Nebraska.

h. This Guaranty shall be binding upon the successors and assigns of the Guarantor.

Dated: September ____, 2016.

David S. Leis

PROMISSORY NOTE

\$88,000

Date: September __, 2016

Dave's Welding, LLC (the "Borrower") promises to pay to the order of the City of Scottsbluff, Nebraska (the "Lender") the sum of Eighty-Eight Thousand Dollars (\$88,000). Interest shall accrue at the rate of 1.22% per annum from October 1, 2016, and shall be payable over 108 equal monthly amortized installments of principal and interest of \$860.78. The first payment shall be due on November 1, 2016, with each additional payment then due on the first day of each subsequent month until paid in full. The Borrower shall have the right to prepay all or any part of the principal at any time.

This Note is being made pursuant to an Economic Development Assistance Agreement between the Lender and the Borrower, the terms of which are incorporated in this Note by reference. This Note is secured by a Guaranty of the Borrower, as well as a Security Agreement covering certain assets of the Borrower.

The Borrower waives presentment, demand for payment, notice of dishonor, notice of protest, and all other notices or demands in connection with the delivery, acceptance, performance, default or endorsement of this Note.

If default is made in any payment when due, then, at the option of the Lender, the entire balance due shall become due and payable. In the event that a default is declared, the entire remaining balance at that time shall bear interest at the rate of 7% per annum until paid. In the event that legal action is necessary to enforce payment of this Note, the Borrower shall be liable for reasonable attorney fees and costs of suit. This Note shall be governed by the laws of Nebraska.

Dave's Welding, LLC

By: _____
David S. Leis, President

Return to:
Rick L. Ediger
Simmons Olsen Law Firm, P.C.
1502 Second Avenue
Scottsbluff, NE 69361

DEED OF TRUST

This Deed of Trust is made on September ____, 2016, between the following parties:

Trustor: David S. Leis
60247 Sugar Factory Rd.
Scottsbluff, NE 69361

Trustee: Rick L. Ediger, Attorney at Law
1502 2nd Avenue
Scottsbluff, NE 69361

Beneficiary: City of Scottsbluff, Nebraska
2525 Circle Drive
Scottsbluff, Nebraska 69361

Trustor irrevocably conveys to Trustee, in Trust, with power of sale, all of the Trustor's interest in the following real estate (the "Real Estate"):

Lots 4 & 5, Amended 3 Pines Estates, situated in the W½NW¼ of Section 31, Township 23 North, Range 54 West of the 6th P.M., Scotts Bluff County, Nebraska.

Together with all the rents and profits from the Real Estate and subject to easements and restrictions of record, if any.

Recitals:

a. Dave's Welding, LLC ("Dave's Welding") and Beneficiary have entered into an Economic Development Assistance Agreement dated September ____, 2016 (the "EDA Agreement") which provides for a loan to Dave's Welding of \$88,000 (the "Loan"). Trustor is the sole Member of Dave's Welding and has guaranteed the Repayment. This Deed of Trust secures the Trustor's Guaranty.

b. This Deed of Trust secures to Beneficiary the Loan, any future advances with interest which may be later made by agreement of the parties, the payment of all other sums, with interest, advanced to protect the security and the performance of Trustor's covenants and agreements.

c. The total principal indebtedness outstanding and secured by this Deed of Trust, not including advances to protect the Real Estate, shall not exceed \$88,000 at any one time.

d. Trustor covenants that Trustor is lawfully seized of the Real Estate and has the legal power and lawful authority to convey the same and warrants and will defend title to the Real Estate against the lawful claims of all persons; provided, however, the Real Estate is subject to a prior Deeds of Trust given to (i) Platte Valley Bank, Scottsbluff, Nebraska, and/or (ii) Colonial Savings (the "Permitted Liens")

It is Agreed as Follows:

1. Trustor or Dave's Welding shall pay when due, the Loan and all other amounts which Dave's Welding is required to pay under the EDA Agreement.
2. Trustor shall pay all general real estate taxes and special assessments against the Real Estate before the same become delinquent.
3. Other than the Permitted Liens, Trustor shall grant no other liens against the Real Estate which have priority over this Deed of Trust If Beneficiary determines that any part of the Real Estate is subject to a lien (other than the Permitted Liens), which is or may attain priority over this security instrument, Beneficiary may give Trustor a notice identifying the lien and Trustor shall satisfy the lien within 10 days.
4. Trustor shall keep the improvements on the Real Estate insured against loss by fire and hazards included within the term "extended coverage" for their insurable value and policies for the same shall include a standard mortgage clause showing Beneficiary's interest. In event of loss, Beneficiary may make proof of loss if not promptly made by Trustor. Insurance proceeds shall be applied to restoration or repair of the Real Estate damaged, unless both parties otherwise agree, except if restoration or repair is not economically feasible or Beneficiary's security is not lessened, otherwise said proceeds shall be paid on the debt herein, whether or not then due.
5. If Trustor fails to perform the covenants and agreements of this Deed of Trust, Beneficiary may do and pay for whatever is necessary to protect the value of the Real Estate and Beneficiary's rights in the Real Estate, including the paying of any sum secured by a lien which has priority over this Deed of Trust, appearing in Court, paying reasonable attorney fees and entering the Real Estate to make repairs. Any amount disbursed by Beneficiary under this paragraph shall become an additional debt secured by this Deed of Trust, to bear interest from the date of disbursement and said amount, together with the then unpaid principal amount, shall bear interest at 7% per annum until refunded.
6. Subject to the rights of the holders of the Permitted Liens, the proceeds of any condemnation award are hereby assigned and shall be paid to Beneficiary and shall be applied to the sums secured by this security instrument, whether or not then due, with any excess paid to Trustor.
7. Any extensions or modifications of the Loan or the EDA Agreement granted by Beneficiary to any successor in interest of Dave's Welding shall not operate to release the liability of Trustor or their successors in interest. Any forbearance by Beneficiary in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
8. Any notice to Trustor provided for in this security instrument shall be given by delivering it or by mailing it by first class mail unless Nebraska law requires use of another method, at the Trustor's last known address.
9. This Deed of Trust shall be governed by the laws of Nebraska.
10. Trustor requests that a copy of any notice of default and a copy of any notice of sale shall be mailed to each person who is a party to this Deed of Trust at the addresses set out above. The notice shall specify (a) the default, (b) the action required to cure the default, (c) a date not less than 30 days from the date the notice is given to Trustor by which the default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sum secured by this Deed of Trust and sale of the real estate. The notice shall further inform Trustor of the right to reinstate, after acceleration, and the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and sale. If default is not cured, on or before

the date specified in the notice, Beneficiary, at its option, may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Nebraska law. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including but not limited to reasonable attorney fees and costs of title evidence.

11. If the power of sale is invoked, Trustee shall record a notice of default in each county in which any part of the Real Estate is located and shall mail copies of such notice in the manner prescribed by Nebraska law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Nebraska law. Trustee, without demand on Trustor, shall sell Trustor's interest in the Real Estate at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any portion of the Real Estate by public announcement at the time and place of any previously scheduled sale. Beneficiary or its designee may purchase the Real Estate at any sale.

Upon receipt of payment of the price bid, Trustee shall deliver to the purchaser a Trustee's Deed conveying the Real Estate. The recitals in the Trustee's Deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of sale in the following order: (a) to all expenses of the sale including, but not limited to, Trustee's fees as permitted by Nebraska law and reasonable attorney fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

12. Upon acceleration under Paragraph 12 or abandonment of the Real Estate, Beneficiary (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage the Real Estate and to collect the rents of the Real Estate, including those past due. Any rents collected by Beneficiary or the receiver shall be applied first to payment of the costs of management of the Real Estate and collection of rents including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney fees, and then to the sums secured by this Deed of Trust.

13. Upon payment of all sums secured by this Deed of Trust, Beneficiary shall direct Trustee to reconvey the Real Estate and shall surrender this Deed of Trust. Trustee shall reconvey the Real Estate without warranty and without charge to the persons legally entitled to it.

14. Beneficiary, at its option, may from time to time remove Trustee and appoint a successor Trustee by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Real Estate, the successor Trustee shall succeed to all the title, power and duties conferred upon Trustee under this Deed of Trust and Nebraska law.

15. The parties request that a copy of any notice of default and a copy of any notice of sale, be mailed to each party at the addresses provided for above.

16. In the event that the Real Estate is sold, leased, assigned, or otherwise conveyed (except for the Deeds of Trust which secure the Permitted Liens) in any manner without Beneficiary's consent, Beneficiary may declare the Loan immediately due and payable.

Dave's Welding, LLC

By: _____

David S. Leis, Member

State of Nebraska, County of Scotts Bluff:

This Deed of Trust was acknowledged before me on September _____, 2016, by David S. Leis, the sole Member of Dave's Welding, LLC.

Notary Public

SECURITY AGREEMENT

This Security Agreement is made on September ____, 2016, between the following parties:

The “Secured Party”:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361

The “Debtor”:

Dave’s Welding, LLC
60247 Sugar Factory Rd.
Scottsbluff, NE 69361

1. Security Interest and Collateral:

a. The Debtor grants a security interest to the Secured Party in the following assets (collectively referred to as the “Collateral”) of the Debtor=s business (the “Business”), now owned or that the Debtor may own in the future, together with all parts, accessories, repairs, improvements, and accessions to the Collateral, wherever it is located, and all proceeds and products from the Collateral:

(1) Inventory: All inventory which the Debtor holds for ultimate sale, lease, or use or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in the Business.

(2) Equipment: All equipment, furniture, fixtures, leasehold improvements, office and recordkeeping equipment.

(3) Accounts, Instruments, Documents, Chattel Paper and Other Rights to Payment: All rights the Debtor has now or may have in the future to the payment of money including, but not limited to (i) payment for goods sold or leased, for services rendered, whether or not the Debtor has earned such payment by performance; and (ii) rights to payment arising out of all present and future debt instruments, chattel paper and loans and obligations receivable. This shall include any rights and interests (including all liens and security interests) which the Debtor may have by law or agreement against any account the Debtor or obligor of the Debtor.

b. This Security Agreement is given to secure the following obligations (collectively the “Obligations”):

(1) The “Note” as provided for in an Economic Development Assistance Agreement between the Secured Party and the Debtor dated September __, 2016 (the “EDA Agreement”).

(2) Any extensions or renewals of the Note and the payment of any amounts which may be advanced later to the Debtor or any amounts paid by the Secured Party on the Debtor’s behalf pursuant to the terms of this Security Agreement. The making of advances or payments shall be at the Secured Party’s option and shall carry interest at the default rate as set out in the Note.

2. The Debtor’s Status and Use of the Collateral:

a. The Debtor is a limited liability company properly organized and currently existing under the laws of Nebraska. The signing of this Agreement and the granting of this security interest are within the Debtor’s powers, have been properly authorized, and do not violate any of its organizational documents or any other agreement binding on it. The person(s) signing this Agreement have the authority to act for the Debtor.

b. The Collateral will be used primarily for business purposes.

3. The Debtor Represents, Warrants and Agrees that:

a. The Debtor is the owner of the Collateral and that there are no other liens, security interests or encumbrances against the Collateral prior to this Security Agreement. The Debtor will defend the Collateral against all claims and demands of any other person claiming any interest in it.

b. No financing statement covering the Collateral or proceeds of the Collateral is on file in any public office which has priority over the lien created by this Security Agreement. The Secured Party is authorized to file any and all financing statements that it determines necessary in order to perfect its security interest.

c. The Debtor’s principal place of business is at the address shown on the first page of this Agreement. The Debtor shall immediately notify the Secured Party in writing if the principal place of business changes, or if the Debtor changes its name.

d. The Collateral is located in Nebraska. The Debtor will not remove the Collateral to any other state where a financing statement is required, but has not been filed, in order to perfect the Secured Party’s security interest.

e. The Debtor will not allow any other lien, security interest or encumbrance against the Collateral which is prior to the liens created by this Security Agreement. The Debtor will not let the Collateral be attached or replevied.

f. The Debtor will not allow any Collateral to become part of or attached to real estate without making sure to the Secured Party's satisfaction that the Secured Party's security interest will be prior to any interest in or lien against the real estate.

g. In the event of a default, the Secured Party shall have the right to regularly request lists of one or more of the Debtor's accounts receivable. At the time of each request, the Debtor shall deliver a current list of accounts receivable within the time period requested by the Secured Party. The accounts reported will be valid accounts representing undisputed amounts owed to one or more Debtor. The amounts reported shall reflect any possible discounts which may be claimed and the accounts shall not be subject to counterclaim or set-off. After default, the Secured Party shall have the right at any time to demand that the accounts be paid to the Secured Party. Upon receipt of that demand, the Debtor shall notify the accounts that all amounts owed shall be paid to the Secured Party. Any amounts received by the Debtor after that demand shall be turned over to the Secured Party each day in the exact form that they are received. The proceeds received by the Secured Party shall not be considered as payment of the Obligations. However, the Secured Party shall have the right to apply collected funds to the payment of the Obligations in the order determined by the Secured Party.

h. The Debtor may sell any inventory in the ordinary course of business. A sale in the ordinary course of business does not include a transfer to satisfy a debt. Until default, the Debtor may use the inventory in any lawful manner not in violation of this Agreement or any insurance policy covering the inventory.

i. The Debtor shall immediately notify the Secured Party of any loss of or material damage to any Collateral or of any adverse change in the condition of the Collateral.

j. The Debtor will keep the Collateral in good repair and condition and shall make all necessary and proper repairs, renewals, replacements, additions and improvements.

k. Except as otherwise permitted under this Agreement, the Debtor will not sell, offer to sell or in any way transfer the Collateral or any interest in the Collateral without first receiving the Secured Party's written consent.

l. The Secured Party shall have the right through any of its officers, employees, attorneys, accountants or agents to inspect the Collateral at any reasonable time, to include the right to make copies of the Debtor's books and records and to arrange for verification of accounts receivable. Upon default, the Debtor will furnish to the Secured Party when requested all notes or other documents evidencing receivables, guarantees, security interests held, securities or other related documents and information.

m. In order to evidence the Secured Party's rights under this Agreement, the Debtor agrees to assign or endorse the Collateral or proceeds to the Secured Party when requested. The Secured Party shall have the power to collect, compromise, endorse, sell, or deal with the Collateral or proceeds in any other way in either the Secured Party's or the Debtor's name. The Debtor shall pay to the Secured Party on demand any amounts spent by the Secured Party in the

collection or attempted collection of the Collateral and in protecting and enforcing the Obligations and any other of the Secured Party's rights.

n. The Debtor shall not use or transfer any part of the Collateral or proceeds for personal purposes except with the Secured Party's written consent. The Debtor shall not commingle funds or other business assets with personal assets and shall keep separate accountings for business and personal needs.

o. The Debtor shall pay all taxes and assessments that may be levied against the Collateral before they become delinquent.

p. The Debtor shall at the Debtor's expense provide fire, theft, and extended coverage insurance in an amount equal to the value of the tangible Collateral. This insurance shall remain in effect until all amounts secured are paid and shall provide for loss payable to the Secured Party as its interest may appear. The Debtor will on demand furnish proof of insurance to the Secured Party. In case of an insured loss where the Debtor is in default, the Secured Party shall be entitled to use the insurance proceeds to pay all or any portion of the amount secured whether or not the Obligations are due at that time.

q. At the Secured Party's option, and after 15 days written demand is made on the Debtor to do so which demand is not complied with by the Debtor, the Secured Party may pay taxes and assessments, discharge liens, security interests or other encumbrances placed against the Collateral which threaten the continued use of the Collateral by the Debtor, and may pay for any necessary repairs, maintenance or other expenses to maintain and preserve the Collateral. The Debtor agrees to reimburse the Secured Party on demand for any advances made for these items by the Secured Party. Until paid by the Debtor, the advances shall be added to the indebtedness secured, shall carry interest at the default rate as provided for in the EDA Agreement, and shall be secured by this Security Agreement.

r. The Debtor agrees not to use the Collateral in violation of any appropriate statutes, regulations or ordinances.

4. Default:

a. Until default, the Debtor may have possession of the Collateral and use it in any way that does not violate the terms of this Agreement.

b. The Debtor shall be in default if any of the following happen:

(1) Failure to pay the Obligations.

(2) Failure to comply with any of the terms of this Agreement or the terms of the Obligations (to include a default under the EDA Agreement).

(3) Any warranty, representation or statement made or given to the Secured Party by the Debtor or on its behalf proves to have been false in any material respect when made or given.

(4) Default by the Debtor in the payment of any other obligation, note, security agreement or other agreement between the Debtor and the Secured Party.

(5) Any event resulting in the acceleration of the maturity of any debts of the Debtor to others.

(6) Loss, theft, damage or destruction to any of the Collateral needed to operate the Business which is not repaired or replaced within a reasonable time.

(7) Encumbrance, levy, seizure, garnishment or attachment of any of the Collateral.

(8) Sale or disposition of the Collateral without the Secured Party's prior written consent unless the Collateral is (a) obsolete and of minimal value, or (b) replaced by items of comparable or greater value.

(9) The Debtor's insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy.

(10) The Debtor suspends or stops the transaction of its usual business.

(11) The Secured Party in good faith believes that repayment, or performance of any of the Obligations or realization on the Collateral is impaired.

c. Upon default or if the Secured Party deems itself insecure, the Secured Party may declare the Obligations immediately due and payable. The Secured Party shall have the remedies of a Secured Party under the Nebraska Uniform Commercial Code. In addition, the Secured Party shall have the following rights:

(1) To require the Debtor to assemble the Collateral and deliver or make it available to the Secured Party at a place to be designated by the Secured Party which is reasonably convenient to both parties.

(2) To enter the Debtor's premises without liability for damages, take possession of the Collateral without judicial process, and use and occupy the premises.

(3) Have access to the Debtor's books and records concerning the Collateral.

(4) If reasonable notice of any public sale, private sale, or other disposition of the Collateral is required by law, this requirement shall be met if the notice is mailed to the

Debtor at the addresses shown in this Agreement at least 5 calendar days before the time of the sale or disposition.

(5) The Secured Party may hold, use, operate, manage and control the Collateral (or any part of it) and may collect all earnings, proceeds or amounts owed to the Debtor. The Secured Party shall have to account only for the net earnings from the use deducting all expenses incurred during the use.

(6) The Secured Party may sell all or any part of the Collateral at public or private sale, for cash or on credit, and at a price or prices as the Secured Party may deem satisfactory. The sale may be a sale of the Collateral in its entirety or in separate parts, as determined by the Secured Party. The Secured Party may be the purchaser of any or all of the Collateral sold by public sale, and thereafter hold the Collateral free from any right or claim of any kind.

(7) The Secured Party shall have the right to apply all amounts realized on the sale or disposition of the Collateral on the Obligations in the order determined by the Secured Party and regardless of the existence of any other security held by the Secured Party.

d. All expenses of recovering possession of the Collateral and enforcement of this Security Agreement to include the Secured Party's reasonable attorney fees and legal expenses shall be additional obligations of the Debtor. These expenses shall be included in the Obligations, shall be immediately payable by the Debtor and may be recovered by the Secured Party out of the proceeds of any sale or disposition.

5. Miscellaneous:

a. The Secured Party's waiver of any one default shall not be a waiver of the same or any other default in the future. In addition, the Secured Party's failure to exercise any right given to it by this Agreement shall not be a waiver of any later exercise of that right.

b. The Secured Party's taking of this Security Agreement shall not waive or impair any other security that the Secured Party may have or later acquire for the payment of the indebtedness secured by this agreement.

c. Upon the full discharge and satisfaction of the Obligations, all rights assigned to the Secured Party shall terminate, and all right, title and interest of the Secured Party in the Collateral shall revert to the Debtor. The Secured Party shall file all requisite termination statements and do all other acts as are reasonably required of it to evidence the termination of the security interests granted by this Security Agreement.

d. All notices required under this Security Agreement shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, at the addresses shown

on the first page of this Security Agreement. Any party may change its address for receiving notice by written notice to the other party.

e. This Security Agreement shall be governed by the laws of Nebraska.

f. The provisions of this Security Agreement are severable and if any provision is held to be invalid, the remainder of the Agreement shall remain in effect.

g. This Security Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

h. This Security Agreement shall be binding on the successors and assigns of the parties.

City of Scottsbluff, Nebraska

Dave's Welding, LLC

By: _____
Economic Development
Program Administrator

By: _____
David S. Leis,
President