

Insurance Requirement

[BRE _Apple Annies]

Agreement: Business Retention and Enhancement Term Letter

Borrower: **APPLE ANNIES, INC.**

Section 1 Borrower, from the Date until issuance of the Certificate of Occupancy by the City of Austin with respect to the Property, shall carry insurance in the following types and amounts:

- 1.1 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions and endorsements in favor of the City:
 - 1.1.1 Blanket Contractual liability coverage for liability assumed under this contract;
 - 1.1.2 Products and completed operations coverage;
 - 1.1.3 Independent contractors coverage;
 - 1.1.4 Personal and Advertising injury coverage;
 - 1.1.5 Additional Insured endorsement (Form CG 2010);
 - 1.1.6 Waiver of Subrogation endorsement (Form CG 2404); and
 - 1.1.7 30-Day Notice of Cancellation endorsement (Form CG 0205).
- 1.2 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
 - 1.2.1 Additional Insured endorsement (Form TE 9901B);
 - 1.2.2 Waiver of Subrogation endorsement (Form TE 2046A); and
 - 1.2.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).

Section 2 Borrower shall cause any contractor or subcontractor of Borrower constructing improvements to the Mortgaged Property, from the Date until issuance of the certificate of occupancy by the City of Austin with respect to the Mortgaged Property, to carry insurance in the following types and amounts:

- 2.1 Employers Liability and Workers' Compensation Insurance. Minimum policy limits for Employers' Liability shall be \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. Workers' Compensation coverage shall be consistent with statutory

benefits described in the Texas Workers' Compensation Act, section 401. Coverage shall apply to the State of Texas. The policy shall contain the following endorsements in favor of the City:

- 2.1.1 Waiver of Subrogation (Form WC 420304); and
- 2.1.2 30-Day Notice of Cancellation (Form WC 420601).
- 2.2 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions and endorsements in favor of the City:
 - 2.2.1 Blanket Contractual liability coverage for liability assumed under this contract;
 - 2.2.2 Products and completed operations coverage;
 - 2.2.3 Independent contractors coverage;
 - 2.2.4 Personal and Advertising injury coverage;
 - 2.2.5 Additional Insured endorsement (Form CG 2010);
 - 2.2.6 Waiver of Subrogation endorsement (Form CG 2404); and
 - 2.2.7 30-Day Notice of Cancellation endorsement (Form CG 0205).
- 2.3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
 - 2.3.1 Additional Insured endorsement (Form TE 9901B);
 - 2.3.2 Waiver of Subrogation endorsement (Form TE 2046A); and
 - 2.3.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).
- 2.4 Builders' Risk Insurance on an all risk physical loss form in the amount of the maximum contractor amount for any improvements made to the Mortgaged Property. Coverage shall commence upon the date any work with respect to such improvements begins and shall continue until the work is complete and a certificate of occupancy is issued with respect to the improvements. The City shall be a mortgagee/loss payee on the policy. If off-site storage is permitted with respect to the work, coverage shall include transit and storage in an amount sufficient to protect any property being transported or stored.

Section 3 Borrower, from the date of issuance of the certificate of occupancy by the City of Austin with respect to the Mortgaged Property until termination of the Agreement, shall carry insurance in the following types and amounts for the duration of the Agreement:

- 3.1 Commercial General Liability Coverage with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions:
 - 3.1.1 Blanket Contractual liability coverage for liability assumed under this contract;

- 3.1.2 Products and completed operations coverage;
 - 3.1.3 Independent contractors coverage;
 - 3.1.4 Personal and Advertising injury coverage;
 - 3.1.5 Additional Insured endorsement in favor of the City (Form CG 2010);
 - 3.1.6 Waiver of Subrogation endorsement in favor of the City (Form CG 2404); and
 - 3.1.7 30-Day Notice of Cancellation endorsement in favor of the City (Form CG 0205).
- 3.2 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain the following endorsements in favor of the City:
- 3.2.1 Additional Insured endorsement (Form TE 9901B);
 - 3.2.2 Waiver of Subrogation endorsement (Form TE 2046A); and
 - 3.2.3 30-Day Notice of Cancellation endorsement (Form TE 0202A).
- 3.3 All risk property coverage including but not limited to fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned and/or acquired by Borrower with respect to the Agreement. The coverage shall be at replacement cost with an 80% coinsurance clause and, if the property is located in a flood prone area or 25 year or 100 year flood plain, include flood coverage. The City shall be a mortgage/loss payee on the policy As Their Interest May Appear.

Section 4 If the insurance policies are written for less than the amounts specified in Section 1, Section 2 and Section 3 of these Insurance Requirements, Borrower, or Borrower's contractor or subcontractor as the case may be, shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

Section 5 Borrower shall provide City at least thirty (30) calendar days written notice of erosion of the aggregate limit below the minimum required combined single limit of coverage.

Section 6 Borrower shall not acquire any property or commence work under the Agreement until it has obtained all required insurance and until the Risk Management Division of the City has reviewed such insurance coverage.

Section 7 City prefers that the required insurance be written by a company licensed to do business in the State of Texas at the time the policy is issued. In any event, the company must be rated by A.M. Best at B+ VII or better and reasonably acceptable to City. However, with respect to Employers Liability and Workers' Compensation Insurance, a policy written by the Texas Workers' Compensation Fund is acceptable.

Section 8 All endorsements, naming the City as additional insured, waivers, notices of cancellation, notices of non-renewal or any other endorsements as well as the Certificate of Insurance shall:

8.1 Name the City at the following notice address:

City of Austin, Texas

Attn: Deputy Director, Economic Growth and Redevelopment Services Office
301 W. 2d Street, Suite 2030
Austin, Texas 78701

8.2 Obligate the insurance company to notify in writing the City at its notice address of any non-renewal, cancellation or material change to the policy, at least thirty (30) calendar days before the change or cancellation.

Section 9 The "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in the Agreement, covering both City, Borrower, shall be considered primary coverage as applicable.

Section 10 Borrower shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or the twenty-four month period following completion, in the case of a claims-made policy.

Section 11 City reserves the right to review this Insurance Requirement during the effective period of the Agreement and to make reasonable adjustments to insurance coverages, and their limits, when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company, as well as that of Borrower.

Section 12 City shall be entitled, upon request, and without expense to City, to receive copies of the requisite insurance policies and all endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions. (Except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies).

Section 13 Actual losses, deductibles and self-insured retentions stated in policies, if any, which are not covered by insurance as required by this Insurance Requirement, are not allowable costs under the Agreement.