

GRANT AGREEMENT
Between
THE CITY OF AUSTIN
And
AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

This Grant Agreement ("**Agreement**") is entered into by and between the City of Austin ("**CITY**"), a Texas home-rule municipal corporation, and Austin-Bergstrom Landhost Enterprises, Inc. ("**CORPORATION**"), a Texas public facility corporation created by the CITY under Chapter 303 of the Texas Local Government Code. The CITY and the CORPORATION are hereinafter sometimes referred to individually as a "party," or collectively as the "parties."

WHEREAS:

- 1) Section 52-a of Article III of the Texas Constitution authorizes the Texas Legislature to provide for the creation of programs and the making of loans and grants of public money for the public purposes of development and diversification of the economy of the state, the elimination of unemployment and underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state; and
- 2) Chapter 380, Texas Local Government Code ("**Chapter 380**") provides that the governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality; and
- 3) The CITY has established, pursuant to Resolution Nos. 030612-15 and 050113-52, a program to provide for economic development grants to promote and foster economic development in the CITY; and
- 4) In 1998, the CITY, as lessor, and Landmark Hospitality, LP. (the "**Developer**"), as lessee, entered into a ground lease (the "**Original Facilities Lease**") on land owned by the CITY at a commercial airport known as Austin-Bergstrom International Airport ("**ABIA**"), which is owned by the CITY, on which the Developer planned to construct a hotel (the "**Airport Hotel**") to serve passengers and other users of ABIA and the community in general; and
- 5) Pursuant to the terms of an Assignment and Assumption Agreement, dated as of February 1, 1999, the Developer assigned to the CORPORATION, and the CORPORATION assumed, all of the rights, duties and obligations of the

Developer contained in the Original Facilities Lease and subsequently constructed the Airport Hotel; and

- 6) In connection with the construction and development of the Airport Hotel, the CORPORATION issued its Airport-Hotel Senior Revenue Bonds, Series 1999A, in the original aggregate principal amount of \$38,785,000 (the "**Series 1999A Bonds**") and its Airport-Hotel Subordinate Revenue Bonds, Series 1999B, in the original aggregate principal amount of \$3,730,000 (the "**Series 1999B Bonds**", and together with the Series 1999A Bonds, the "**Series 1999 Bonds**") pursuant to the terms of the Indenture of Trust dated as of February 1, 1999 (the "**1999 Indenture**") between the CORPORATION and UMB Bank, N.A. (the "**1999 Bond Trustee**"); and
- 7) The CORPORATION is not current in the payment of scheduled debt service of the Series 1999 Bonds; and
- 8) The CITY has determined the refinancing of the Series 1999 Bonds by the CORPORATION is in the best interests of the CITY, and will promote further economic development and stimulate business and commercial activity at ABIA for the benefit of the CITY; and
- 9) The CORPORATION and the CITY have entered into a Letter of Intent with Austin-Bergstrom Acquisition LLC ("**ABA**"), the holder of approximately 95.61% of the Series 1999A Bonds and all of the Series 1999B Bonds, and the 1999 Bond Trustee, dated July 28, 2016 (the "**Letter of Intent**"); and
- 10) Pursuant to the terms of the Letter of Intent, the CORPORATION agreed to issue bonds to refinance the Series 1999 Bonds to satisfy the CORPORATION'S obligations to the holders of the Series 1999 Bonds; and
- 11) Pursuant to the terms of the Letter of Intent, the CORPORATION intends to issue such bonds secured by the revenues of the Airport Hotel (the "**Series 2017 Bonds**"), pursuant to an Indenture of Trust between the CORPORATION and _____ (the "**2017 Bond Trustee**") dated _____, and any supplemental indentures entered into in connection therewith (collectively, the "**2017 Bond Indenture**") in order to refinance the Series 1999 Bonds; and
- 12) Pursuant to the terms of the Letter of Intent, ABA has agreed to receive \$30,000,000 in consideration of retiring all of the outstanding Series 1999 Bonds; and
- 13) Pursuant to the terms of the Letter of Intent and the 2017 Bond Indenture, approximately \$30,000,000 of proceeds of the Series 2017 Bonds will be appropriated to (a) pay all of the owners of the Series 1999A Bonds other than ABA (the "**Minority Bondholders**") the amount of par plus accrued interest to the date of redemption of the Series 1999A Bonds owned by the Minority Bondholders, (b) retire all of the remaining Series 1999A Bonds and all of the Series 1999B Bonds owned by ABA on their applicable dates of redemption, (c)

repay ABA for costs incurred with respect to repairs of and maintenance to the Airport Hotel, and (d) finance capital improvements to the Airport Hotel; and

- 14) In connection with the issuance of the Series 2017 Bonds, the CORPORATION seeks from the CITY, a commitment to provide financial assistance in the form of a grant or grants, to restore the amounts on deposit in the Senior Debt Service Reserve Fund (as such term is defined in the 2017 Bond Indenture) to the Senior Debt Service Reserve Fund Requirement (as such term is defined in the 2017 Bond Indenture) in the event the amounts on deposit in the Senior Debt Service Reserve Fund are less than the Senior Debt Service Reserve Fund Requirement while the Series 2017 Bonds and any Additional Bonds (as such term is defined in the 2017 Bond Indenture) remain outstanding; and
- 15) Pursuant to the terms of the Letter of Intent, this Agreement and the 2017 Bond Indenture, the CITY hereby agrees in such limited circumstances and to the extent sufficient funds are then available, to make the grant or grants hereinafter authorized to replenish the amounts on deposit in the Senior Debt Service Reserve Fund to the Senior Debt Service Reserve Fund Requirement; and
- 16) Pursuant to the terms of the Letter of Intent, this Agreement and the 2017 Bond Indenture, the grant or grants hereinafter authorized are payable solely from surplus revenues generated at ABIA ("**Surplus Airport System Revenues**"), the availability of which is subject to the terms and conditions set forth in the ordinances adopted from time to time by the CITY in connection with the issuance of General Airport Revenue Bonds ("**Airport Bond Ordinances**"); and
- 17) In furtherance of the objectives of the CITY as set forth in Resolution Nos. 030612-15 and 050113-52, the CITY established a program under the authority granted to the CITY by Chapter 380 for the redevelopment of property within the CITY, including property located at ABIA, and authorized the use of CITY funds to assist in the economic development of the CITY, including through the issuance of a grant or grants of the nature described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1.0 AUTHORITY

The parties are authorized to enter into this Agreement under the Constitution and laws of the State of Texas, including specifically Chapter 380 of the Texas Local Government Code and Section 303.041 of the Texas Local Government Code.

2.0 TERM

This Agreement shall be effective as of the date the last party to sign executes this Agreement, and shall remain in force and effect until the date the Series 2017 Bonds and

any Additional Bonds issued thereafter are no longer outstanding, but no later than December 31, 20__, subject to the respective termination rights of the parties.

3.0 CORPORATION OBLIGATIONS

- 3.1 Subject to applicable laws, including, without limitation, Section 303.075 of the Texas Local Government Code, and to the extent current financial market conditions permit, the CORPORATION shall take all reasonably necessary or appropriate action to issue the Series 2017 Bonds in an aggregate principal amount sufficient to generate at least \$30,000,000 in proceeds to satisfy its obligations to the ABA and the Minority Bondholders with respect to the Series 1999 Bonds, consistent with the terms of the Letter of Intent, to fund the Senior Debt Service Reserve Fund for the Series 2017 Bonds, and to fund the additional capital projects to the Airport Hotel. The Series 2017 Bonds may be issued in one or more series.
- 3.2 The CORPORATION shall deposit with the 1999 Bond Trustee proceeds (following payment of issuance costs) of the Series 2017 Bonds in an amount sufficient to retire the outstanding Series 1999 Bonds in accordance with the terms of the Letter of Intent and, as applicable, the 1999 Indenture. Proceeds of the Series 2017 Bonds remaining after payment of issuance costs and the retirement of the outstanding Series 1999 Bonds shall be deposited pursuant to the terms of the 2017 Bond Indenture.
- 3.3 The CORPORATION shall cause any Grant provided by the CITY under this Agreement, subject to the provisions of Section 4.3 of this Agreement, to be applied by the 2017 Bond Trustee to restore the Senior Debt Service Reserve Fund to the Senior Debt Service Reserve Fund Requirement, pursuant to section 5.08(d) of the 2017 Bond Indenture.
- 3.4 The CORPORATION shall fully, faithfully, and timely perform each of its legally binding obligations under the 2017 Bond Indenture.
- 3.5 During the term of this Agreement, the CORPORATION shall remain in good standing, preserve its legal authority and right to do business in the State of Texas, maintain its existence as a public facility corporation under Chapter 303 of the Texas Local Government Code, shall not dissolve or otherwise dispose of all or any material part of its assets, and shall not combine, consolidate with, or merge into another entity without the prior written consent of the CITY.
- 3.6 The CORPORATION shall provide the CITY with a simultaneous copy of all reports, statements, notices, audits, certificates, budgets, and other documents the CORPORATION is required to provide to an indenture trustee or purchaser of the Series 2017 Bonds under the 2017 Bond Indenture including, without limitation, construction disbursement

requests and other fund transfer requisitions made under the terms of the 2017 Bond Indenture. In addition to the foregoing, at such times and in such form as the CITY may require, and upon reasonable advance notice, the CORPORATION shall furnish the CITY with such other statements, records, reports, data and information, as the CITY may reasonably request pertinent to matters covered by this Agreement.

- 3.7 The CORPORATION shall properly, accurately and completely maintain detailed and accurate records and other supporting documentation related to its obligations under this Agreement for 3 years following the date of termination of this Agreement. Such records shall include financial statements kept in accordance with generally accepted accounting principles, and will be made available for audit, inspection and/or copying by the CITY or its designee at all reasonable times and upon reasonable notice. The CORPORATION shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with the CORPORATION's authority, and that financial records are reliable for the purposes of preparing financial statements. The CORPORATION shall deliver to the CITY a copy of all financial statements of the CORPORATION issued during, or covering periods included in, the term of this Agreement.

4.0 CITY OBLIGATIONS

- 4.1 DSRF Deficiency Notice; Grant Funding Determination; City DSRF Certificate.

4.1.1 Subject to the provisions of Section 4.3 of this Agreement, throughout the term of this Agreement, upon receiving written notice from the 2017 Bond Trustee in the form of a DSRF Deficiency Notice (as such term is defined in Section 5.08(d) of the 2017 Bond Indenture) noting (i) that a deficiency in the Senior Debt Service Reserve Fund exists due to (A) a withdrawal from the Senior Debt Service Reserve Fund, (B) a decrease in the value of such fund resulting from a decrease in valuation of the investments on deposit therein, or (C) an increase in the Senior Debt Service Reserve Fund Requirement resulting from a recalculation of the Senior Debt Service Reserve Fund Requirement on a Calculation Date (as such term is defined in the 2017 Bond Indenture), and (ii) the amount of such deficiency, the CITY shall expeditiously, and in no event later than 45 days after receipt of the DSRF Deficiency Notice, make a determination (the "**Grant Funding Determination**") as to whether Surplus Airport System Revenues are, or will become, sufficient to

fund such deficiency in the Senior Debt Service Reserve Fund within 120 days from the date of the DSRF Deficiency Notice.

- 4.1.2 Following the Grant Funding Determination, the CITY shall expeditiously, and in no event later than 90 days after receipt of the DSRF Deficiency Notice, provide a certificate in the form of a City DSRF Certificate (as such term is defined in Section 5.08(d) of the 2017 Bond Indenture) to the 2017 Bond Trustee and the CORPORATION, as to the CITY's ability to transfer Surplus Airport System Revenues in the form of a grant or grants to the CORPORATION equal to the amount necessary to restore the Senior Debt Service Reserve Fund to the Senior Debt Service Reserve Fund Requirement pursuant to Section 5.08(d) of the 2017 Bond Indenture (the "**Grant**").
- 4.1.3 If the City DSRF Certificate delivered to the 2017 Bond Trustee provides that Surplus Airport System Revenues are sufficient to fund the Grant to the CORPORATION in order to restore the Senior Debt Service Reserve Fund to the Senior Debt Service Reserve Fund Requirement, the Grant shall be transferred by the CITY to the 2017 Bond Trustee, on behalf of the CORPORATION, within 120 days of the date of the DSRF Deficiency Notice.
- 4.1.4 If the City DSRF Certificate delivered to the 2017 Bond Trustee provides that Surplus Airport System Revenues are insufficient to fund the Grant to the CORPORATION in order to restore the Senior Debt Service Reserve Fund to the Senior Debt Service Reserve Fund Requirement, no further action by the CITY will be required and the 2017 Bond Trustee shall proceed to restore such deficiency in the Senior Debt Service Reserve Fund pursuant to clause *Sixth* of Section 5.05(a) of the 2017 Bond Indenture (i.e. such deficiency in the Senior Debt Service Reserve Fund will be restored with the next available Revenues (as such term is defined in the 2017 Bond Indenture) as provided in the 2017 Bond Indenture).
- 4.2 Any Grant made by the CITY pursuant to the terms of this Agreement is payable solely from Surplus Airport System Revenues available, or to become available, within the 120 day period immediately following the date of the DSRF Deficiency Notice, and the availability of such Surplus Airport System Revenues is subject further to the terms and conditions set forth in the Airport Bond Ordinances.
- 4.3 Limitation on CITY Payments.
 - 4.3.1 This Agreement shall not be construed as a commitment or obligation to fund the payment of a Grant from moneys raised or to be raised by taxation.

4.3.2 Expenditures under this Agreement by the CITY shall be made solely from Surplus Airport System Revenues, and the obligation of the CITY under this Agreement constitutes a Subordinate Obligation, as such term is defined in the Airport Bond Ordinances.

4.3.3 In no event will a Grant provided by the CITY under this Agreement be used to fund the initial increase in the Senior Debt Service Reserve Fund Requirement resulting from the issuance of Additional Bonds, and it is the mutual understanding and agreement of the CITY and the CORPORATION that, in the event the Senior Debt Service Fund Requirement increases due to the issuance of Additional Bonds, such initial deficiency in the Senior Debt Service Reserve Fund will be funded with proceeds of such Additional Bonds or other available funds of the CORPORATION at the time of the issuance of such Additional Bonds.

4.4 Insufficient Surplus Airport System Revenues; No CITY Default.

4.4.1 If Surplus Airport System Revenues are insufficient at any time to fund a Grant pursuant to Section 4.1 of this Agreement, the CITY shall not be liable to the CORPORATION for such insufficiency and the CORPORATION shall have no claim, action or remedy against the CITY resulting from such insufficiency.

4.4.2 Any failure by the CITY to make a Grant pursuant to Section 4.1 of this Agreement as a result of having insufficient Surplus Airport System Revenues available for such purpose will not constitute a CITY Default (as such term is defined in Section 5.3 of this Agreement).

5.0 DEFAULT AND TERMINATION.

5.1 Default by the CITY. Each of the following shall be deemed to be an event of default ("**CITY Default**"):

5.1.1 The CITY fails to perform any material obligation required to be performed by it under this Agreement and such failure continues for 30 days after receipt of written notice from the CORPORATION; provided, however if the alleged default is curable, but not curable within such 30 day period, CITY Default shall not be deemed to occur, if the CITY commences to cure the failure within the 30 day period and diligently pursues the cure to a successful conclusion;

5.1.2. Any express representation or warranty made by the CITY herein or any statement or representations made in any written certificate, statement or opinion delivered to the CORPORATION or the 2017 Bond Trustee pursuant to this Agreement shall prove to have been incorrect as of the date made; or

- 5.1.3 The CITY shall file a petition in bankruptcy, be adjudicated insolvent or bankrupt, or there is commenced against the CITY any such proceeding which is not dismissed within 60 days.
- 5.2 The CORPORATION's Remedies. Upon the occurrence of a CITY Default, the CORPORATION may at any time thereafter, and upon 10 days' prior written notice to the CITY take any or all of the following action:
- 5.2.1 Terminate this Agreement in whole or in part; and
- 5.2.2 Take such other action and exercise any remedy available to the CORPORATION at law or in equity for breach of this Agreement by the CITY.

All such remedies described above are cumulative.

6.0 INDEMNITY AND CLAIMS.

- 6.1 Indemnity. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AND WITH FULL RESERVATION OF ALL DEFENSES AND IMMUNITIES AVAILABLE UNDER LAW, THE CORPORATION SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "**INDEMNIFIED PARTIES**"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("**CLAIMS**") ASSERTED AGAINST THE CITY, TO THE EXTENT ARISING OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY THE CORPORATION, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS (COLLECTIVELY, THE "**INDEMNIFYING PARTIES**"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTIES, OR (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY AN INDEMNIFYING PARTY IN CONNECTION WITH THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

The CITY shall give the CORPORATION written notice of a Claim asserted against an Indemnified Party. The CORPORATION shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right, but not the obligation, to participate in the defense of any claim or litigation with attorneys of their own selection without relieving the CORPORATION of any obligations hereunder.

- 6.2 If a claim, demand, suit, or other action ("**Action**") is made or brought by any person against the CORPORATION arising out of or concerning the Airport Hotel, the Series 2017 Bonds or any Additional Bonds or this

Agreement, the CORPORATION shall give written notice thereof to the CITY within 5 business days after being notified of such Action. Such notice shall enclose a true copy of all written Actions. If the Action is not written, or the information is not discernable from the written Action, the CORPORATION shall state the date of notification of any Action, the names and addresses of the person asserting such Action or that instituted or threatened to institute any type of action or proceeding, the basis of such Action, action, or proceeding, and the name of any person against whom such Action is being made. The CORPORATION shall give notice to the City Attorney, Austin City Hall, 301 W. 2nd Street, Austin, Texas 78701.

7.0 NOTICES

- 7.1 Any notice necessary under this Agreement shall be in writing and shall be considered delivered 3 days after mailing if sent certified mail, return receipt requested, or when received, if sent by prepaid courier, express mail or personal delivery, to the following addresses:

If to the CORPORATION:

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.
C/O Austin-Bergstrom International Airport
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719
Attn: President

If to the CITY:

City of Austin
P. O. Box 1088
Austin, Texas 78767-1088
Attn: City Manager

With a copy to:

City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-1088

- 7.2 A party may change its notice address by written notice to the other party given in accordance with this Section.

8.0 GENERAL PROVISIONS

- 8.1 Compliance with the Law. The CORPORATION shall comply with all applicable laws, ordinances, codes, and regulations of local, state, and federal governments.

- 8.2 Mutual Assistance. The CITY and the CORPORATION shall do those things commercially reasonable, necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions.
- 8.3 Adequate Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.
- 8.4 Authority. Each of the parties warrant and represent to the other that the person signing this Agreement on its behalf has been duly authorized and empowered to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of such party.
- 8.5 Economic Development Program. The CITY represents that it is entering into this Agreement as an economic development program to promote and foster economic development in the CITY pursuant to Resolution Nos. 030612-15 and 050113-52, and Resolution No. 20__ ____-__ adopted on _____, 20__ authorizing the City Manager to negotiate and execute this Agreement.
- 8.6 Jurisdiction and Venue. Any disputes arising in connection with these terms will be governed by the laws of the State of Texas. Venue for any dispute arising under this Agreement shall be in Travis County, Texas.
- 8.7 Assignment. Except as provided in this Section, the CORPORATION may not assign or transfer this Agreement in whole or in part without the prior written consent of the CITY, which the CITY may grant, deny or condition in its absolute discretion. The CORPORATION, however, may assign this Agreement as security for the Series 2017 Bonds or any Additional Bonds to a bond trustee in accordance with the terms of the 2017 Bond Indenture without the consent of the CITY.
- 8.8 Entire Agreement. This Agreement contains the entire agreement between the parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement. This Agreement may only be amended, altered or revoked by written instrument signed by the CITY and the CORPORATION.
- 8.9 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, and their respective successors and authorized assigns.

- 8.10 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement, which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 8.11 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives in Austin, Texas.

AUSTIN-BERGSTROM LANDHOST ENTERPRISES, INC.

By: _____

Name: _____

Title: _____

Date: _____

CITY OF AUSTIN

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

Assistant City Attorney