

TERM LETTER
(BRE_Las Manitas)

DATE: 31 May 2007

BORROWER: Las Manitas, Inc., a Texas corporation

ADDRESS: % Cynthia Perez and Lidia Perez
211 Congress Avenue
Austin, Travis County, Texas 78701

SUBJECT: BUSINESS RETENTION AND ENHANCEMENT PROGRAM \$750,000 LOAN
FROM THE CITY OF AUSTIN, TEXAS (THE "CITY") TO LAS MANITAS, INC., A
TEXAS CORPORATION (THE "BORROWER")

Ladies:

It is our privilege to inform you that the City of Austin, Texas (the "City") has reviewed your request for a loan under the Business Retention and Enhancement Program in a maximum amount not to exceed \$750,000 (the "Loan"). The Loan is to be used for the purpose of implementing and carrying out the work described in the Borrower Loan Application and as further set forth in the Loan Documents described below, including constructing improvements, acquiring equipment to be used in connection with the project, retaining existing full-time, permanent employment positions and achieving the applicable obligations of Borrower under the Business Retention and Enhancement Program Guidelines (the "Project").

Subject to final approval by the City Manager and the City Council of the City of Austin, Texas on or before Cancellation of the Term Letter as described below, the City Economic Growth and Redevelopment Services Office will recommend the Loan on the following terms and conditions:

1. Borrower: **Las Manitas, Inc., a Texas corporation**
211 Congress Avenue
Austin, Travis County, Texas 78701
2. Date of Borrower Loan Application: 30 March 2007.
3. Mortgaged Property: The certain real property more particularly described on **Exhibit "A"** attached to this instrument and by this reference incorporated in it, and all rights, titles and interests appurtenant thereto, which has an address of 227 Congress Avenue, Austin, Travis County, Texas 78701.

4. Loan Terms:

Loan Amount: \$750,000
Term of the Loan: 19 years, 7 months following certificate of occupancy
Interest Rate of Loan: 6.0 %

5. Terms of Payment to the City: Interest only on the outstanding principal amount is due and payable monthly beginning on the date stated in the Loan Documents as it accrues through issuance of a certificate of occupancy. After that date monthly principal and interest payments of **US Four Thousand Four Hundred Ninety-six and 63/100 Dollars (\$4,496.63)** are due and payable, as stated in the Loan Documents. Provided further, in the event no default occurs under the Loan Documents with respect to forgiveness of the Loan, the then outstanding unpaid principal balance will be forgiven by the City on the sixtieth installment payment of principal and interest following issuance of the certificate of occupancy for the Project in accordance with the terms stated in the Loan Documents. Provided finally, if any default occurs under the Loan Documents during the five year period following issuance of the certificate of occupancy for the Project, even if it is cured, no forgiveness of the unpaid outstanding principal balance will occur and Borrower will be obligated to begin making monthly principal and interest payments of **US Five Thousand Five Hundred and no/100 Dollars (\$5,500.00)** until on or about ten years following issuance of a certificate of occupancy when monthly principal and interest payments of **US SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00)** are due and payable until on or about fifteen years following issuance of a certificate of occupancy when monthly principal and interest payments of **US SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00)** are due and payable until the maturity date of the Loan, all as stated in the Loan Documents.

6. Closing Date: On or before **31 July 2007** (the "Closing Date").

7. Borrower Equity Contribution: Borrower shall contribute an amount equal to at least \$94,000.00 (the "Equity Contribution") from funds other than Loan proceeds. Such amount shall be deposited in a bank account acceptable to City at Closing. This amount on deposit shall be used during the construction of the improvements to the Mortgaged Property along with Loan proceeds to pay the cost of the Project and shall be disbursed during construction for expenses incurred in carrying out the Project in amounts equal to the approved draw amount times a percentage amount equal to the proportionate share of the Equity Contribution to the total estimated construction budget approved by the City.

8. Collateral: City shall receive a perfected deed-of-trust lien against the Mortgaged Property from the Borrower and the owners of the Mortgaged Property.

9. Necessary Information to be Submitted Prior to Closing: Prior to Closing the following information, but not limited to such information, must be submitted to City in a form acceptable to City:

- a. Hazard Insurance: Borrower shall submit, at least twenty-four (24) hours prior to Closing, a binder or policy of insurance coverage acceptable to City in an amount at least equal to the Loan or maximum insurable amount and in the form described on Exhibit "B" attached to this instrument and by this reference incorporated from an insurance company acceptable to City.
 - b. Life Insurance: Borrower shall submit, at least twenty-four (24) hours prior to Closing, binders or policies of key-person life insurance in an insured amount equal to the Loan Amount on the life of Cynthia Perez and Lidia C. Perez for the Term of the Loan and an assignment of the policy to the City.
 - c. Warranty of Presentation: Borrower shall warrant that all financial statements and tax returns for 2005 and 2006 submitted in its Loan Application are accurate, true, and correct, and the use of the Loan proceeds shall be as set forth in the Loan Application.
 - d. Title Policy Commitment: Borrower shall submit to City a title commitment policy from Heritage Title Company and covering the Mortgaged Property fifteen (15) calendar days prior to the Closing. The Loan is subject to City obtaining title insurance containing no title exceptions except standard exceptions in title policies and any others satisfactory to City, and insuring City's deed of trust against the Mortgaged Property. The Title policy is to be submitted to City within sixty (60) days following Closing.
 - e. Taxes and Utilities: Evidence submitted by Borrower that sales taxes, property taxes, payroll taxes and City utilities are paid in full up to the Closing.
 - f. Appraised Value: Borrower shall submit an appraisal letter prepared in the form and by a third party commercial appraiser acceptable to City in its sole discretion that shows the current value of the Mortgaged Property not less than 115% of the Loan Amount.
 - g. Additional Information: Borrower shall submit within fifteen (15) calendar days prior to the Closing written estimates on Borrower's intended use of Loan proceeds.
10. Program and Program Guidelines. Borrower understands that this Loan is approved under the City's Business Retention and Enhancement Program, which the City Council adopted on 15 February 2007, by Ordinance No. 20070215-003 and that the Loan must comply in all respects, unless waived by the City, with the Business Retention and Enhancement Program Guidelines, which were approved by the City Council on 15 February 2007, by Ordinance No. 20070215-003 and are attached to this Term Letter as Exhibit "C" and by this reference incorporated in it.
11. Loan Documents: The obligation of Borrower under this Term Letter shall be evidenced by one promissory note executed by Borrower in favor of City and any and all other documents, instruments, economic development loan agreements, deeds of trust, mortgages, restrictive

covenants, job retention agreements executed and delivered by Borrower in connection with the Loan, and such other reasonable documents specifying such other Borrower obligations as City may request from Borrower and its officers in order to make the Loan in a form satisfactory to City and its counsel (collectively, the "Loan Documents"). The Loan Documents also will require the Borrower to make the following covenants:

- a. obtain a City of Austin energy audit of the Mortgaged Property and the proposed equipment for use in the Mortgaged Property prepared by Austin Energy and make a good faith and commercially reasonable effort to comply with the recommendations included in the audit;
- b. submit all proposed improvements to the City Watershed Protection and Development Review Department and the Historic Preservation Office for review for a determination by the City Landmark Commission that Borrower will be in compliance with all state or local historical building or construction requirements during the construction of any improvements to the Mortgaged Property; and
- c. Borrower will retain at least fifteen (15) full-time, permanent employment positions for a minimum period of five (5) years following completion of the improvements to the Mortgaged Property that are financed with loan proceeds and the issuance of a certificate of occupancy.

12. Reporting Requirements: The Loan Documents shall include certain reports required by the City, which Borrower agrees to submit in a complete and timely manner to City during the Term of the Loan.

13. Prepayment: The Loan may be prepaid at any time without penalty.

14. Material Change: City shall not be under obligation to fund this Term Letter if there is any material, adverse change in Borrower's financial position from the data or information submitted to City or if any data or information, whether financial or otherwise, provided to City proves to be false or misleading, and no liability shall be attached to City by reason thereof.

15. Default: Borrower shall be in default under this Term Letter and under any and all Loan Documents, if it shall default in the payment of any material amounts due and owing under the Loan or to some other party holding a lien on the Mortgaged Property or should it materially fail to timely and properly perform, keep and observe any term, covenant, agreement or condition in this Term Letter or any of the Loan Documents.

16. Assignability of Rights to this Term Letter and the Loan Documents: This Term Letter is made in favor of only the persons to whom it is addressed as "Borrower". These terms are not assignable by Borrower, or otherwise transferable by operation of law, except with prior written consent of City. The Loan Documents will also be in favor of the Borrower and are not assignable by Borrower, or otherwise transferable by operation of law, except with prior written consent of City.

17. Assumption or Assignment of Collateral: Following the Closing the collateral securing the Loan is not assumable by or assignable to any other party without the prior written consent of City; provided a second lien deed of trust may be placed upon the Mortgaged Property so long as it is expressly provided that the second lien is subordinated to the first lien held by the City.

18. Terms to Survive Closing: The terms and conditions set out in this Term Letter shall be construed to supplement the various documents to be executed at Closing, and to that extent the terms and conditions of this Term Letter shall survive the Closing.

19. Acceptance: This Term Letter shall become null and void if not accepted by Borrower and one original copy of this Term Letter, properly executed by Borrower, is delivered to the City at the address set forth below **on or before 1 June 2007 at 10am in order for a City Council agenda item to be posted on the 7 June 2007 agenda, otherwise 16 July 2007 at 4 pm.**

20. Cancellation of the Term Letter: All applicable conditions contained in this Term Letter, including the approval of the City Manager and the City Council, must have been satisfactorily completed and the Loan must be closed **on or before the Closing Date**; otherwise, at its option, City may cancel this Term Letter without further notice or obligation on its part. In the event such closing and funding does not occur, this Term Letter shall become null and void.

21. Expenses: Borrower shall pay all closing costs and expenses incurred by City and Borrower in connection with City's closing of the Loan, whether or not the Loan actually closes.

22. Counterparts: This Term Letter may be executed simultaneously in two or more counterparts, each of which shall be deemed an original for evidentiary purposes, but all of which together shall constitute one and the same instrument.

23. Notice of Final Agreement: **This written Term Letter and, if and when executed, the Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten or oral agreements between the parties.**

24. The terms and conditions of the Loan outlined in this Term Letter are not limited to the above terms and conditions, and this Term Letter does not set out in full all of City's requirements and conditions to making the loan available. Those matters which are not covered by or made clear in the above outline are subject to our mutual agreement and amplification in the Loan Documents to be executed to evidence the Loan. The Loan Documents will control over this Term Letter and the Loan Application.

We look forward to working with you on completing this transaction. Should you have any questions or comments, please call Rodney Gonzales at 512 / 974-2313 or me.

Sincerely yours,

CITY OF AUSTIN, TEXAS

By: 
Name: Sue Edwards
Title: Director, Economic Growth and Redevelopment Services Office

Address: P.O. Box 1088 (78767-8828)
301 West Second Street, Suite 2030
Austin, Texas 78701

Telephone: 512 / 974-7819
Facimile: 512 / 974-7825
E-Mail: sue.edwards@ci.austin.tx.us

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BORROWER ACKNOWLEDGES, DATES AND ACCEPTS THIS TERM LETTER:

LAS MANITAS, INC., A TEXAS CORPORATION

By: 
Name: Cynthia Pérez
Title: President

Date: JUNE 11 / 2007


Vice Pres.

EXHIBIT A

Legal Description of the Mortgaged Property

[BRE_Las Manitas]

The legal description of the Mortgaged Property referred to in this instrument is described as follows:

All of that certain parcel or tract of land, being a partition of Lot 6, Block 18, Original City of Austin, Travis County, Texas.

EXHIBIT B

Insurance Requirement

[BRE - Las Manitas]

Agreement: Business Retention and Enhancement Program Term Letter

Borrower: LAS MANITAS, 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 10-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 10-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 10-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 10-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 10-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 10-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 10-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 a 100% coinsurance clause. 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 ten (10) 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 notice address set forth in the Agreement.

- 8.2 Obligate the insurance company to notify the City official named as City contact in the Agreement at its notice address of any non-renewal, cancellation or material change to the policy, at least ten (10) 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.

TL_ Insurance Requirements.doc

Exhibit C

Business Retention and Enhancement (BRE) Program

(24-Month Pilot Program)

Program Guidelines

Definitions:

"Applicant" or **"Applicants"** means any individual person; private for-profit partnerships or corporations; nonsectarian, nonprofit organizations; and combinations thereof, including limited partnerships, partnerships or joint ventures that make application under the BRE Program guidelines.

"Art Gallery" means the use of a site for the display or sale of art.

"Current Job" means one or more budgeted full- or part-time positions of employment that amount to 40 hours of work with the Applicant that are in existence prior to receipt of a BRE Program loan which would otherwise be terminated if the financial assistance from BRE Program loan funds were not provided.

"Downtown Area" means the area generally bounded by IH-35, Martin Luther King, Jr. Boulevard, Town Lake, and Lamar Boulevard in the City of Austin, Travis County, Texas.

"Eligible Area" means the area of Congress Avenue bounded by 11th Street on the north, Town Lake on the south, and the alleys directly east and west of Congress Avenue, and the area of East 6th Street bounded by Congress Avenue on the west, the southbound frontage road of IH-35 on the east, and the alleys directly north and south of East 6th Street, as indicated on the BRE Program map.

"Eligible Costs" means the cost which can be paid for with the BRE Program loan funds made available under the loan agreement.

"Food Sales" means the use of a site for the retail sale of food or household products for home consumption. This use includes grocery stores, delicatessens, meat markets, retail bakeries, and candy shops

"Full-Time Employee" means a salaried position of not less than thirty (30) hours per week, or its contractual equivalent based on no less than the federal minimum wage. Two or more part-time employees whose hours total more than thirty (30) hours per week may be substituted for one Full-Time Employee.

"General Retail Sales (Convenience)" means the use of a site for the sale or rental of commonly used goods and merchandise for personal or household use, but excludes uses classified more specifically in this section. This use includes the provision of household cleaning and maintenance products, drugs, cards, stationery, notions, books, tobacco products, cosmetics, specialty items, apparel, jewelry, fabrics, cameras, photography services, household electronic equipment, records, sporting equipment, kitchen utensils, small home appliances, art supplies and framing, arts and antiques, paint, interior decorating services, office supplies, and bicycles.

"General Retail Sales (General)" means the use of a site for the sale or rental of commonly used goods for personal or household use, but excludes uses classified more specifically in this section. This use includes department stores, furniture stores, and establishments providing home furnishings, appliances, wallpaper, floor-covering or automotive parts and accessories (excluding service and installation).

"Indoor Entertainment" means the use is predominantly spectator use conducted within an enclosed building. This use includes meeting halls and dance halls.

"Job Created" means a permanent, full-time employee position offered by the Applicant that was not in existence prior to date on the loan application and represents a new salaried position that the Applicant commits in writing to employ until maturity of the loan.

"Job Retained" means a permanent, full-time employee position that is in existence as of the date of the loan application. The Applicant commits in writing to retain this position until maturity of the loan.

"Locally-Owned Business" means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture, limited liability company, or any other business or professional entity, that is controlled by or at least 51% owned by an individual who resides in or has his or her principal place of business in the Austin MSA, or a group of individuals of which more than half reside in or have their principal places of business in the Austin MSA, or by an organization having its principal place of business in the Austin MSA.

"Minority-Owned Business Enterprise" means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture, limited liability company, or any other business or professional entity, which is at least 51 percent owned by one or more minority persons, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more minority persons.

"Project" means a proposed commercial development, for which the Applicant is requesting a loan.

"Restaurant (General)" means the use of a site for the preparation and retail sale of food and beverages and includes the sale and on-premises consumption of alcoholic beverages as an accessory use.

"Restaurant (Limited)" means the use of a site for the preparation and retail sale of food and beverages and excludes the sale of alcoholic beverages for on-premises consumption.

"Theater" means the use of a site for presentation of plays, motion pictures, or other dramatic performances within a building.

"Women-Owned Business Enterprise" means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture, limited liability company, or any other business or professional entity, which is at least 51 percent owned by one or more women, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more such women.

Background:

In 1960 Downtown Austin was a thriving retail district that served the City's residential neighborhoods and surrounding communities. Within a few blocks of Austin's "100% corner" at Congress Avenue and East 6th Street, there was a concentration of local and national department stores such as Scarborough's, Yaring's, Levine's, JC Penney, Sears Roebuck, Woolworth, Western Auto, and Kress, as well as over one hundred smaller retailers, most selling clothing or home goods.

Through the 1960's and 1970's development of suburban shopping malls and centers coincided with the decline of Congress Avenue and East 6th Street as a retail destination. JC Penney in Downtown closed in 1970; Levine's in 1973; Western Auto in 1974; and Kress in 1980. In 1981, the year that the one million square foot Barton Creek Square Mall opened three miles from Downtown, Scarborough's Department Store closed its Congress Avenue location. Woolworth closed the next year, effectively signaling the end of Downtown as a significant retail destination.

As early as the late 1980's, groups began calling for a reinvestment in Downtown retail vitality. In their 1988 *Downtown Neighborhood Plan*, the City's Downtown Commission stated a goal to "promote the development of street-level, consumer-oriented retail establishments" in Downtown.

The City of Austin's 1990 report *East 6th Street Business Changes – 1975-1990*, found that the problems associated with the conversion of the street to an area of nighttime-only uses will continue without an infusion of daytime pedestrian traffic, and that "the loss of a critical mass of complementary retail businesses has made recovery of retail business problematic."

In a 1991 study of Downtown Austin by the American Institute of Architecture's Regional/Urban Design Assistance Team (R/UDAT), the team stated that "Downtown Austin is in desperate need of a stronger retail base." R/UDAT further stated that "It may well be that a significant new retail base in the area near East 6th Street and Congress Avenue can never be developed without some form of public financial participation in the project". R/UDAT recommended that "Existing and new small business aids, such as revolving loan programs, should be packaged to accomplish this objective."

The follow-up 1992 study, *R/UDAT Austin – A Call to Action*, adopted by the City Council "as a guide to implementing Downtown Austin revitalization," recommended actions focused on economically enhancing the Downtown area by increasing shopping and eating destinations for Austin's citizens and visitors.

In a 1997 visit, R/UDAT noted that "In most, if not all, cities, substantial Downtown retail and residential developments have only happened with public participation." In a 2000 visit, R/UDAT called on the community to develop a critical mass of retail and to establish and work towards a vision for Downtown that includes retail.

In their 2003 *Austin's Sixth Street Opportunities* the consulting firm Nichols-Gilstrap found that a successful broadening of the tenant mix to include more retail would increase sales volumes, resulting in higher property values, and would enhance the performance of the Convention Center.

In a separate consultant study, *Downtown Austin Retail Market Strategy*, prepared in May 2005 for the City of Austin and the Downtown Austin Alliance (DAA), the consultant recommended that efforts be made to revitalize retail in Downtown Austin. The City and DAA contracted with the same consultant to

develop the retail strategies for Congress Avenue and East 6th Street. Both studies stressed the need to shift the balance from non-retail uses to retail uses, especially those that sell merchandise, and recommended a specific merchandising mix plan. In addition, the study recommended a 6th Street strategy – an Urban Entertainment District anchored by a mixture of entertainment including cultural attractions, live music and performance venues, movie theaters, restaurants, nightclubs/bars, and retail uses.

Purpose:

The BRE Program is a City of Austin ("City") economic development program in accordance with Chapter 380 of the Local Government Code to support re-establishing Congress Avenue and East 6th Street as retail and urban entertainment district destinations. The BRE Program is intended to provide low-interest loans for Eligible Costs to:

- Existing businesses located within the Eligible Area that are being displaced because of development, and
- Attract new businesses to the Eligible Area.

Goals:

The goals of the BRE Program are to:

- Improve the image of Congress Avenue and East 6th Street as destinations for the community, visitors and tourists.
- Enhance East 6th Street's live music and entertainment district
- Stimulate private retail investment within the Eligible Area through property improvement, business development, retention and expansion.
- Improve the quantity and quality of goods and services available within the Eligible Area.
- Create and retain jobs.

Financial Assistance:

- The City may provide a loan to any one Applicant, in an amount not to exceed \$250,000.
- Special Circumstances: For existing businesses within the Eligible Area that are required to relocate due to development, but remain within the Eligible Area, the City may increase the loan to any one Applicant up to \$750,000, of which the outstanding loan balance may be forgiven if the Project continues to successfully operate for a period of five (5) years after loan closing, the loan is not in default, and all loan payments have been made in a timely manner.

Eligible Applicant Preferences:

Preference will be given to the following categories of eligible businesses:

- Locally-Owned Businesses
- Minority-Owned Business or Women-Owned Business Enterprises

Eligible Business Uses:

The BRE Program is available only for the types of commercial uses listed below. Applicants must have a minimum of two (2) years of business operating experience in these types of commercial uses.

- Art Gallery
- Food Sales
- General Retail Sales (Convenience)

- General Retail Sales (General)
- Indoor Entertainment
- Restaurant (General)
- Restaurant (Limited)
- Theater

[Note: All commercial uses are as defined in City Code Section 25-2-4.]

Eligible Project Costs:

The loan proceeds may be used to finance Project fixed-asset costs whose useful life equals or exceeds five (5) years.

Table 1: Represents the Eligible Project Costs for fixed assets by Applicant type

Eligible Project Costs	Owner	Owner-Tenant	Tenant
1. Tenant finish-out improvements	X	X	X
2. Acquisition of machinery and equipment necessary for the operation of the business.		X	X
3. Building façade improvements that meet Storefront Design Guidelines [to be developed]. Eligible façade improvements may include:	X	X	
a. exterior treatment systems (i.e., painting, murals, siding, and bricking)			
b. repair, replacement, or installation of exterior doors, windows, and trim work, visible from the street			
c. structural improvements to building façade			
d. exterior electrical and lighting improvements			
e. masonry or tile cleaning and repair			
f. restoration of details in historically contributing or significant buildings			
g. removal of elements that cover architectural details			
h. costs associated with design work for the eligible facade improvements which do not exceed 10% of the total cost of the improvements			

Ineligible Project Costs:

The loan proceeds shall not be used for the following Project costs:

- Costs encumbered prior to closing on a BRE Program loan
- Speculative projects
- Purchase or lease of vehicles
- Incorporation and organization expenses
- Finders fee for financing
- Commitment fees on the first mortgage
- Application fees
- Working capital

- Inventory
- Intangible property (examples of intangible property include, but are not limited to, patents, franchises, goodwill, fees, trademarks or trade names.)
- Refinancing (other than construction financing approved by the City)

Loan Conditions and Considerations:

Financial:

- The Applicant must demonstrate the financial need for a BRE Program loan for the Project and demonstrate that without the BRE Program loan the Project will not be economically feasible.
- The Applicant must demonstrate that projected Project revenues are sufficient to repay the BRE Program loan
- A negotiated number of permanent, full-time position(s) must be created or an equivalent of two (2) permanent full-time jobs retained. This requirement shall be maintained during the term of the loan.
- The Applicant shall agree to make its financial records available for inspection by City representatives during the term of the loan.

Zoning:

- The Applicant must demonstrate compliance with all applicable zoning requirements for the Project and remain in compliance for the duration of the loan.
- The Applicant must adhere to all City building and technical codes and acquire all required building permits.

Other Requirements:

- The Applicant must be current on all fees and taxes owed to the City.
- Applicants must have fee simple ownership or a lease with a term of five (5) or more years.
- The Applicant must repay the balance of the loan in full upon sale or discontinuance of the Project.
- Facade improvements may require Historic Landmark Commission review and approval.

Loan Term, Interest Rate, Collateral, Early Repayment, and Default:

- The loan term will be negotiated based on the BRE Program loan amount, pledged collateral, and demonstrated financial need.
- The loan interest rate will be negotiated based on the BRE Program loan amount demonstrated financial need. In no case shall the loan interest rate be greater than six percent (6%) per annum.
- The City will take a lien position on the fixed-assets being financed. The City may also secure sufficient collateral coverage via liens or security interests against real property related and unrelated to the Project, or personal property. Other forms of collateral and security may include accounts receivable, cash and bank deposits; personal guarantees may be required. All loans must be fully secured prior to loan closing.
- The Applicant must secure and maintain appropriate property insurance during the entire term of the loan for any property pledged as security. The City must be named as an additional insured party.
- There is no penalty for early repayment of the BRE Program loan.
- Funds will be disbursed as reimbursements for an Applicant's payment of Eligible Project Costs, or paid out of an escrow account in accordance with the loan agreement, which shall establish terms and conditions deemed necessary, advisable or required by the City.

- A default shall consist of any use of BRE Program loan funds for any purpose other than as authorized in the loan agreement, or any breach of any loan agreement covenant or provision. Non-compliance with City development or zoning regulations will be an event of default.

Application Submission Information Requirements:

The Applicant must submit a loan application on a form to be provided by the City, with supporting documentation as required by the City.

Table 2: Represents the loan application information that Applicants are required to submit to the City

Loan Application Information	Owner	Owner-Tenant	Tenant
1. The Applicant must submit a Benefits Statement that addresses, but is not limited to the following issues:			
a. The extent to which the Project will contribute to any revitalization of the Eligible Area.	X	X	X
b. The number of permanent jobs to be created and/or retained directly by the Project excluding the period of construction or development, if applicable.	X	X	X
c. The increased valuation of real property in the City as a result of the completion of the Project.	X	X	X
2. The Applicant must provide a description and purpose of the improvements to be made:			
a. Façade improvements, if applicable.	X	X	
b. Tenant finish-out improvements or other physical improvements to be made to the property, if applicable.	X	X	X
c. Machinery and equipment to be acquired, if applicable.		X	X
3. The Applicant must provide the following financial information:			
a. A complete three (3) year business plan composed of four distinct sections: description of business, marketing, finances, and management.	X	X	X
b. Financial statements for the last two (2) years, including profit and loss statements and balance sheets in a manner acceptable by the City.	X	X	X
c. A cash flow pro-forma that supports the Applicant's repayment of the BRE Program loan in a manner acceptable by the City.	X	X	X
d. Business tax returns for the last two (2) years.	X	X	X
e. A current personal financial statement of each guarantor of the BRE Program loan.	X	X	X
f. Personal tax returns for the last two (2) years for each guarantor of the BRE Program loan.	X	X	X
g. Proof of business ownership, i.e. partnership agreement, articles of incorporation, or other documentation and similar documentation for non-profits.	X	X	X

Administration:

The City's Economic Growth and Redevelopment Services Office (EGRSO) is responsible for the administration of the BRE Program and guidelines. In that capacity, the City shall perform the following duties:

- Receive applications from interested Applicants;
- Analyze Applicant information submitted for compliance with the BRE Program guidelines; and
- Select Applicants for BRE Program loans to be placed on the City Council agenda for consideration.

Interpretation of terms, conditions and requirements in these guidelines is delegated to EGRSO.

The adoption of the BRE Program and these guidelines does not:

- Limit the discretion of the City Manager or the EGRSO to review loan applications, reject loan applications, or place particular loan applications on the City Council agenda for consideration; or,
- Limit the discretion of the City Council to decide whether to approve a specific loan; or,
- Create any property, contract, or other legal right in any person or entity to have the City staff or City Council consider or approve a specific loan application

BRE Program loans are limited to the amount of budget appropriations authorized by City Council for the Program.

Business Retention and Enhancement Program Map

