

**TERM LETTER**  
(BRE\_Apple Annies)

**DATE:** 12 June 2008

**BORROWER:** Apple Annies, Inc.

**ADDRESS:** 319 Congress Avenue  
Austin, Travis County, Texas 78701

**SUBJECT:** BUSINESS RETENTION AND ENHANCEMENT \$250,000 LOAN FROM THE CITY OF AUSTIN, TEXAS (THE "CITY") TO APPLE ANNIES, INC. (THE "BORROWER")

Ms. Nance:

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 \$250,000 (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 making building facade improvements and interior finish-out improvements, creating full-time, permanent employment positions and retaining existing full-time, permanent employment positions and achieving the goals of the Business Retention and Enhancement 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 Loan Committee approves the Loan on the following terms and conditions:

1. Borrower: **Apple Annies, Inc.**  
319 Congress Avenue  
Austin, Travis County, Texas 78701
2. Date of Borrower Loan Application: 27 March 2008.
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 319 Congress Avenue, Austin, Travis County, Texas 78701.

4. Loan Terms:

Loan Amount: \$250,000  
Term of the Loan: 15 years  
Interest Rate of Loan: 6 %

5. Terms of Payment to the City: Monthly principal and interest payments of US Two Thousand One Hundred Nine and 00/100 Dollars (\$2,109.00), beginning on the date stated in the Loan Documents.

6. Closing Date: The Loan must close on or before 15 July 2008 (the "Closing Date").

7. Collateral: City shall receive a perfected deed-of-trust lien against the Mortgaged Property, and a business guaranty executed by Apple Annies, Inc..

8. 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. 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 in all material respects, and the use of the Loan proceeds shall be as set forth in the Loan Application.
- c. Title Policy Commitment: Borrower shall submit to City a title commitment from Heritage Title 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.
- d. 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.
- e. 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.

9. Program and Program Guidelines. Borrower understands that this Loan is approved under the City's Business Retention and Enhancement 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 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.

10. 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 facade 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. Following completion of the improvements to the Mortgaged Property that are financed with loan proceeds and the issuance of a certificate of occupancy Borrower will: (i) create at least fifteen (15) full-time, permanent employment positions to be maintained during the term of the loan; and (ii) retain at least fifteen (15) full-time, permanent employment positions for the term of the loan.

11. 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.

12. Prepayment: The Loan may be repaid at any time without penalty or premium by payment of the then outstanding balance, accrued interest and other charges.

13. 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 materially false or misleading, and no liability shall be attached to City by reason thereof.

14. 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 amounts due and owing under the Loan or to Frost Bank or should it fail to timely and properly perform, keep and observe in strict compliance with any term, covenant, agreement or condition in this Term Letter or any of the Loan Documents.

15. Subordination to Superior Lienholder Loan: Subject to receipt of a subordination agreement acceptable to City, the Loan Documents may be subordinated to a loan payable to Frost Bank in an amount not greater than \$1,200,000.00, or such other financial institution or amount acceptable in writing to City.

16. Assignability of Rights to this Term Letter: 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.

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.

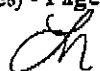
19. Acceptance: This Term Letter shall become null and void if not accepted by Borrower and one original copy of this Term Letter, properly executed by Borrower, is delivered to the City at the address set forth below on or before 15 July 2008 at 4 pm.

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 and funded 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 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 me at 512 / 974-2313.

Sincerely yours,

CITY OF AUSTIN, TEXAS

By: \_\_\_\_\_

Name: Rodney Gonzales

Title: Acting Director, Economic Growth and Redevelopment Services Office

Address: P.O. Box 1088 (78767-8828)  
301 W. 2nd Street, Suite 2030, Austin, Texas  
Austin, Texas 78701

Telephone: 512 / 974-2313

Facsimile: 512 / 974-7825

E-Mail: rodney.gonzales@ci.austin.tx.us

**BORROWER ACKNOWLEDGES, DATES AND ACCEPTS THIS TERM LETTER:**

APPLE ANNIES, INC.

By: \_\_\_\_\_

Name: Love Nance

Title: President

Date: 6 / 12 / 2008