



PURCHASE ORDER

PO CITY MULTI

PAGE NO: 1

REFERENCE NUMBER: CT 7200 11041900890

P.O DATE: 04/19/11

PRICE AGREEMENT #:

V Kelly Weiss
 E VS0000027048 AR011
 N AUSTIN COMMUNITY LAND TRUST
 D 2921 E 17th St Bldg D Ste 2
 O
 R Austin TX 78702

S
 H SEE COMMODITY LINE FOR
 I SHIP TO INFORMATION
 P
 T
 O

B
 I SEE COMMODITY LINE FOR
 L BILL TO INFORMATION
 L
 T
 O

Requestor: Sherry Cardino, 974-3153
 Buyer: See Solicitation, 512-974-2500

THE CITY'S STANDARD PURCHASE TERMS AND CONDITIONS (T & Cs) ARE HEREBY INCORPORATED INTO THIS PURCHASE ORDER (PO) BY REFERENCE, WITH THE SAME FORCE AND EFFECT AS IF THEY WERE INCORPORATED IN FULL TEXT. THE FULL TEXT VERSIONS OF THE T&Cs ARE AVAILABLE AT <http://www.ci.austin.tx.us/purchase/standard.htm> OR CALL THE PURCHASING OFFICE AT (512) 974-2500. PLEASE INCLUDE ABOVE REFERENCE NUMBER ON ALL PACKAGES, DELIVERIES AND INVOICES.

Line	Quantity	Unit	Commodity Information / Description (s)	Unit Price	Extended Amount
1			Commodity: 94660 Loan Administration	\$.00	\$ 339,595.18

Requesting approval for the agreement between Austin Community Land Trust Alias/DBA Austin PeopleTrust and Austin Housing Finance Corporation. The purpose of the contract is for Acquisition of vacant land for the development of Westgate Subdivision for the construction of 50 new condominiums to be sold to income-eligible homebuyers at or below 80% MFI. A check for \$910,404.82 was issued at closing for the purchase of 7 acres of vacant land located at 8701 Westgate Blvd. Therefore the \$33,595.18 balance remaining needs purchasing approval to be available for draw-down. The term of the agreement is from January 31, 2011 through February 28, 2011.

Line	Fund	Dept	Unit	Objt	Actv	Func	Rept	Task	Ord	Prog	Prog Period	Line Amount
1	8605	7207	0450	6830				2804				\$ 339,595.18

Ship To: Nhcd Housing & Comm Developmen, 1000 E. 11TH ST, STE 200

Austin, TX, 78702-1945

Bill To: Nhcd Housing & Comm Developmen, PO BOX 1088

Austin, TX, 78767

Order Total: \$ 339,595.18

VENDOR INSTRUCTIONS:

1. SEND ORIGINAL INVOICE WITH DUPLICATE COPY TO THE CITY DEPARTMENT TO WHICH THE GOOD(S) WERE DELIVERED.
2. SHIPPING INSTRUCTIONS: F.O.B. DESTINATION UNLESS OTHERWISE SPECIFIED.
3. NO FEDERAL OR STATE SALES TAX SHALL BE INCLUDED IN PRICES BILLED. LIMITED SALES TAX #74-6000085.

Authorized Agent for City Manager

By acceptance of this purchase order, you agree to comply with the terms and conditions incorporated herein by reference and made a part of this order.

Date

4-19-11



City of Austin

Financial and Administrative Services Department
Purchasing Office
P. O. Box 1088, Austin, TX 78767

(512) 974-2500

4/19/2011

Kelly Weiss
Austin Community Land Trust
2921 E. 17th St. Bldg D Ste 2
Austin, TX 78702

Re: Solicitation No. N/A

Dear Ms. Weiss

The Purchasing Office has approved the execution of a contract with your company for the above-referenced item as follows:

Responsible Department:	AHFC
Department Contact Person:	Sherry Cardino
Department Contact Email Address:	Sherry.cardino@ci.austin.tx.us
Department Contact Telephone:	(512) 974-3153
Project Name:	Loan Administration
Contractor Name:	Austin Community Land Trust
Contract Number:	CT-7200-11041900890
Contract Period:	Until invoice paid
Dollar Amount	NTE \$339,595.18
Extension Options:	None
Requisition Number:	RQS-7200-11041300804
Solicitation Number:	N/A
Agenda Item Number:	AHFC002
Council Approval Date:	12/9/2010

. Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-2651

Sincerely,

Jeff Dilbert, MSIM, CPSM, CPSD, C.P.M., A.P.P.
Buyer II
Purchasing Office
Finance and Administrative Services Department
Enclosure



Austin Housing Finance Corporation

MEMO

P.O. Box 1088, Austin, TX 78767-1088

Sherry Cardino, Contract Compliance Specialist Senior
(512) 974-3153, Fax: (512) 974-3161, sherry.cardino@ci.austin.tx.us

RECEIVED

APR 05 2011

FIN. LL INT AM

Date: April 4, 2011
To: Linda Lindsey, Finance
Subject: RQS Set-Up Request

This memo is a request for RQS set-up of a new agreement between **Austin PeopleTrust** and the **Austin Housing Finance Corporation**. The total contract amount is **\$1,250,000** using GO Bond (Nonfederal) Funding. A check for **\$910,404.82** was issued at closing for the purchase of 7 acres of vacant land located at **8701 Westgate Blvd.**

Therefore the **\$339,595.18** balance remaining needs Purchasing approval to be available for draw-down. The term of the agreement is from **January 31, 2011** through **February 28, 2011**. The purpose of the agreement is for Acquisition of vacant land for the development of Westgate Subdivision for the construction of 50 new condominiums to be sold to income-eligible homebuyers at or below 80% MFI.

Vendor ID: VS0000027048
Austin PeopleTrust
207 Chalmers Avenue
Austin, Texas 78702

Please find the following payment and funding information:

IDIS #:	Amount:	Approved Funding Line:	Funding Source:
A399	\$339,595.18	8605-7207-0450-6830	G.O. Bonds

The CARR form and its attachments are included.

Please contact Sherry Cardino or David Potter should you have any questions. Thank you in advance for your assistance.

Board of Directors: Lee Leffingwell, President * Mike Martinez, Vice President * Sheryl Cole, Director
* Chris Riley, Director * Randi Shade, Director * Laura Morrison, Director * Bill Spelman, Director
Marc A. Ott, General Manager * Elizabeth A. Spencer, Treasurer * Shirley Gentry, Secretary
* Karen Kennard, Acting General Counsel * Cathie Childs, Deputy Counsel

The Austin Housing Finance Corporation is committed to compliance with the American with Disabilities Act and will provide reasonable modifications and equal access to communications upon request.

**Austin Housing Finance Corporation
Contract / Amendment Review Request (CARR)**

Section 1 – Request Compliance Review

1. Review Request for: ☒ new contract, ☐ amendment, if so, number ☐ ; other, explain: _____
2. Contractor/Borrower: Austin PeopleTrust
3. Program: A&D Homeowner 4. Project Name: Westgate II Subdivision – 50 lots
5. Action Plan Year: 2010 6. Is this a multi-yr. contract: ☐ Yes ☒ No ☐ N/A If yes, max. obligation: \$ _____
7. Purpose of contract/amendment: Acquisition of vacant land for the development of Westgate II Subdivision for the construction of 50 new condominiums to be sold to income-eligible homebuyers at or below 80% MFI
8. A. What is the new or current contract term? January 31, 2011 through February 28, 2016
 B. Will the contract term be increased? ☐ Yes ☒ No If yes, by how much will it increase? _____
 C. What will be the revised contract term: _____
9. A. What is the new/current contract amount: \$ 1,250,000 Fund Source: GO BOND IDIS # A399 Project ID: 62598
 B. Will the contract amount be increased? ☐ Yes ☒ No If yes, by how much? \$ _____ Fund Source _____
 C. What will be the new contract amount? _____
10. Identify Housing Program: ☐ LHC ☒ Acquisition & Dev ☐ Rental Hsg. Development ☐ TBRA
☐ SMART ☐ Downpayment ☐ Housing Rehab ☐ Home Repair/ABR
11. Identify Continuum Level: ☐ N/A ☒ Homebuyer ☐ Owner-occupied ☐ Rental ☐ Assisted
☐ Transitional ☐ Emergency ☐ Homeless ☐ other (identify): _____
12. CARR Attachments: (Check All That Apply)
 1. Copy of Contract / Amendment ☒ (attach document)
 2. Copy of Environmental Determination / Fund Release ☒ (attach determination)
 3. Copy of Council or Board Resolution ☒ (RCA or resolution)
 4. IDIS Setup Request / Oracle Printout ☒ (attach request)
 5. Excluded Parties List Clearance ☒ (attach document)
 6. Certificate of Insurance ☒ (attach Certificate)
13. Requestor:(print): David Potter (initial): [Signature] Date: 2/1/2011
14. Program Manager:(print): Gina Copic (initial): [Signature] Date: 2/1/2011

Section 2 – Finance Compliance Review

Fund Code 1: 8605-7207-0450-6830 F U 2: _____

Recommend to: _____

Approve/Disapprove: Finance Reviewer: (print) NORA RICHARDSON (initial): NK Date: 02/01/2011

Section 3 – Regulatory Compliance Review

Remarks: NA - no federal funds

Recommend to: _____

Approve/Disapprove: Regulatory Reviewer: (print) Kim Freeman (initial): KF Date: 2-1-11

Section 4 – Community Development Administrator Review

Remarks: _____

Recommend to: _____

Approve/Disapprove: CDA Reviewer: (print) Alex Zamora (initial): [Signature] Date: 2-1-11

Section 5 – Acting Assistant Director Review

Remarks: _____

Recommend to Approve/Disapprove: _____

Reviewer: Acting Assistant Director: _____

CONTRACT WAS APPROVED &
EXECUTED 2/2/11. See
ATTACHED SIGNATURE ROUTING
APPROVAL FOR MORE PROOF.

NHCD EXECUTIVE ACTION

(FOR ITEMS REQUIRING MANAGEMENT SIGNATURE)

Date: 2/1/2011 Deadline for Signature: 2/8/2011
 Originating Staff: David Potter Staff Phone #: 43192

(please highlight if applicable)
RUSH
DATE

CARR form Attached

ITEM: Loan Agreement for PeopleTrust - Westgate II Project

SUMMARY OF ITEM: Loan of \$1,250,000 to acquire 7 acres and develop 50 condominium units to be sold to low-mod buyers.

ACTION REQUESTED: Betsy, please initial next to Marc Ott's signature line.

COMMENTS FROM ORIGINATOR: Dollar amount requires Marc Ott's signature.

ATTACHMENTS: (List all attachments.)
 CARR Form and Loan Agreement and its attachments.

APPROVED BY:	SIGNATURE	DATE IN:	DATE OUT:	COMMENTS:
ORIGINATOR David Potter	<i>David Potter</i>	2-1-11	2-1-11	
MANAGER				
DIANA DOMERACKI CDA				
ALEX ZAMORA, CFM	<i>B. f</i>	2-1-11	2-1-11	
GINA COPIC, REAL ESTATE & DEVELOPMENT	<i>G Copic</i>	2-1-11	2-1-11	
DAVID POTTER, REAL ESTATE & DEVELOPMENT	n/a			
LETITIA BROWN, COMPLIANCE				
OTHER	n/a			
OTHER	n/a			
ACTING ASST. DIRECTOR	<i>[Signature]</i>	2/2/11	2/2/11	

*Betsy,
pls
initial
next to
Marc's
signature
block.*

SIGNATORY COMMENTS / NOTES:

ACQUISITION AND DEVELOPMENT PROGRAM
LOAN AGREEMENT

Effective Date: February 8, 2011

THIS ACQUISITION AND DEVELOPMENT PROGRAM LOAN AGREEMENT (Loan Agreement), dated, February 8, 2011 is between **AUSTIN PEOPLETRUST D/B/A PEOPLETRUST**, a Texas non-profit corporation organized and operated under the Texas Non-profit Corporation Act (Borrower), and the **AUSTIN HOUSING FINANCE CORPORATION**, a Texas public, non-profit corporation organized and operated under Chapter 394, Texas Local Government Code (AHFC).

AHFC and the Borrower are mutually committed to increasing the availability of affordable housing throughout the City of Austin.

Borrower will use the proceeds of this Loan Agreement to increase housing opportunities for low income household by constructing five new homes.

The parties hereby agree as follows:

Section 1 DEFINITIONS. As used in this Loan Agreement and any attachment or exhibit incorporated in it the terms defined in the Acquisition and Development Program Definitions attached as **Exhibit "A"** to this Loan Agreement and by this reference incorporated in it have the meanings assigned to each term.

Section 2 PURPOSE AND AMOUNT OF LOAN. The Loan is for the purpose of implementing and carrying out the Project as further described in the Statement of Work, including developing and constructing Improvements to the Mortgaged Property and achieving the obligations of Borrower under the Acquisition and Development Program and the Request for Proposal.

Section 3 THE NOTE. The Loan to be made hereunder shall be evidenced by the Note.

Section 4 TERMS OF PAYMENT. The Loan to be made hereunder shall bear interest at the rate specified in the Note and shall be paid in accordance with the terms and conditions of the note of even date with this Loan Agreement.

Section 5 TERM. The term of this Loan Agreement and the Loan shall begin on the Effective Date of this Loan Agreement and end on the maturity date stated in the Note.

Section 6 RIGHTS AND OBLIGATIONS. The holders of the Note, and Borrower, hereby expressly reserve all rights to jointly amend any provisions of this Loan Agreement, to consent to or waive

Section 6 **RIGHTS AND OBLIGATIONS.** The holders of the Note, and Borrower, hereby expressly reserve all rights to jointly amend any provisions of this Loan Agreement, to consent to or waive any departure from the provisions of this Loan Agreement, to amend or consent to or waive departure from the provisions of the Note, and to release or otherwise deal with any collateral security for payment of the Note.

Section 7 **PERFORMANCE AND COMPLIANCE WITH ALL LAWS.**

- 7.1 **Agreement to Perform.** Borrower agrees to perform the Project and to produce reports as necessary until completion of the Project in accordance with the terms and conditions of this Loan Agreement.
- 7.2 **Prevailing Documents.** In the event any conflict should arise between the terms of the Program Guidelines and the Loan Documents, this Loan Agreement shall prevail, then the other Loan Documents, and then the Program Guidelines.
- 7.3 **Performance within Legal Requirements.** It is expressly understood that Borrower's performance shall be in strict compliance with all Legal Requirements, which in no way is meant to constitute a complete compilation of all duties imposed upon Borrower by law or administrative ruling or to narrow the standards which Borrower must follow. Borrower shall promptly refund any funds not expended in accordance with the Legal Requirements or the Loan Documents.
- 7.4 **Legal Requirements Governing Property and Improvements.** The Land and the Improvements and the intended use thereof by Borrower comply with all Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Mortgaged Property.
- 7.5 **Compliance with Legal Requirements.** Borrower will promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property.

Section 8 **CONDITIONS OF CLOSING.** The obligation of AHFC to make a loan as provided in this Loan Agreement is subject to the receipt by AHFC from Borrower of the Note in compliance with the terms hereof and, in AHFC's sole discretion, to the following additional conditions precedent:

- 8.1 **Truth and Accuracy.** The truth and accuracy, as of the Effective Date of this Loan Agreement, of all representations and warranties made herein by Borrower and the receipt by AHFC of such documents, certificates of officers of Borrower, and such other evidence, as AHFC reasonably shall have requested respecting the meeting of these conditions.
- 8.2 **Receipt of Documents.** The receipt by AHFC from Borrower of the additional Loan Documents executed by Borrower and copies of all other documents required in connection with this Loan Agreement and the transactions contemplated thereby,

or respecting the business and affairs of Borrower, that AHFC may reasonably have requested.

- 8.3 **Effective Date of Agreement.** The receipt by AHFC from Borrower of the Loan Documents, each dated effective the same date as this Loan Agreement, executed by Borrower, satisfactory in form and substance to AHFC and certified, when appropriate, by proper corporate officers and Governmental Authorities.
- 8.4 **Acquisition of Mortgaged Property.** If not previously owned, the acquisition of the Mortgaged Property in the name of Borrower and the filing of a warranty deed in the name of Borrower in the Travis County, Texas, real property records.
- 8.5 **Receipt of Title Policy.** The receipt by AHFC of a mortgagee's title policy covering the Mortgaged Property free and clear of all liens and other encumbrances other than the Superior Lien.
- 8.6 **Payment of Closing Costs.** The payment by the Borrower of all closing costs and expenses.

Section 9 APPLICATION OF PROCEEDS.

- 9.1 **Purpose of Loan.** Borrower agrees that it will apply the funds received by it under this Loan Agreement solely for the purpose set forth in Section 2 of this Loan Agreement.
- 9.2 **Payment of Additional Project Costs.** Borrower agrees to provide additional, unencumbered funds to pay all additional project costs incurred as a result of cost overruns or unanticipated expenses necessary to complete the Project according to the terms and conditions of this Loan Agreement.

Section 10 CONDITIONS OF LOAN AND DISBURSEMENT OF LOAN PROCEEDS. The making of the Loan and each disbursement of the Loan Proceeds hereunder shall be subject to the following conditions precedent:

- 10.1 **True and Correct Statements.** All of the representations and warranties contained in the Loan Documents shall be true and correct in all material respects on and as of the Date of this Loan Agreement and continuing to be true and correct on the date of each disbursement of a payment.
- 10.2 **Satisfactory Form of Documents.** All actions undertaken in connection with the transaction contemplated by the Loan Documents and all documents incidental thereto shall be satisfactory in form, scope and substance to AHFC, and AHFC shall have received copies of all documents which it may have requested in connection with said transaction in form, scope and substance reasonably satisfactory to it.
- 10.3 **Approvals and Consents.** All necessary approvals or consents, if any such approvals or consents are required of Governmental Authorities having jurisdiction with respect to the construction herein contemplated, shall have been obtained, and failure to have obtained prior to the issuance of the Certificate of Occupancy such consents shall constitute a default hereunder.

- 10.4 **Corporate Authority.** If Borrower, or entity constituting part of Borrower, or any guarantor of the Loan to be made hereunder, is a corporation, there shall be delivered to AHFC (with respect to each such corporation, if there be more than one) a copy of the record(s) of minutes of the Board of Directors of each such corporation specifically authorizing its officers to execute this Loan Agreement and all other Loan Documents necessary for the consummation of this transaction. The Secretary or Assistant Secretary of such corporation(s) shall certify the record(s) of the minutes of the Board of Directors to be true.
- 10.5 **Approvals of other parties.** All necessary approvals, releases, or consents required with respect to this transaction by any mortgagee or other party having any interest in the Mortgaged Property shall have been obtained, and failure to have obtained such consents shall constitute default hereunder.
- 10.6 **Good Standing.** None of the following exists:
- 10.6.1 an Event of Default; or
 - 10.6.2 the requested Advance, plus the sum of (i) the Initial Advance, (ii) the previous Advances (including retained amounts deemed to have been advanced) and (iii) other sums disbursed by the AHFC under this Loan Agreement exceeds the Available Amount; or
 - 10.6.3 an order or decree in any court of competent jurisdiction enjoins or prohibits Borrower, any person or the AHFC or any of them from performing their respective obligations under this Loan Agreement; or
 - 10.6.4 any cost or portion thereof with respect to the Project which:
 - 10.6.4.1 has been paid, reimbursed or is subject to payment or reimbursement, from any other source other than Borrower's own funds or the Superior Loan; or
 - 10.6.4.2 was incurred prior to the Effective Date or after the maturity date specified in the Note, unless specifically authorized in writing by the AHFC; or
 - 10.6.4.3 was incurred other than in material accordance with the terms of this Loan Agreement, including all exhibits attached hereto and the Legal Requirements; or
 - 10.6.4.4 has not been billed to the AHFC on or before the earlier of (i) sixty (60) calendar days following billing to Borrower, or (ii) within ninety (90) calendar days following termination of this Loan Agreement; or
 - 10.6.4.5 is not an allowable cost identified in Section 12 of this Loan Agreement; or
 - 10.6.4.6 is incurred with respect to any activity of Borrower after the AHFC has requested that Borrower furnish data concerning such action prior to proceeding further, unless and until Borrower was thereafter advised by the AHFC to proceed.

Section 11 DISBURSEMENT OF LOAN. Provided such cost are authorized by the Approved Budget and are allowable under Section 12 of this Loan Agreement, Borrower may make a request to the AHFC for an Advance not more often than once monthly unless expressly authorized by AHFC. Borrower's request shall state the cost of any land acquired, the cost of the architectural, engineering or other planning professional service necessary to design the Project, the cost of any labor and materials purchased and incorporated in the Project and any prorated cost of Contractor's overhead minus the aggregate of previous disbursement payments. Borrower shall furnish the cost incorporated into the Project with each request to the Construction Monitoring Consultant for the purpose of verifying the amount requested.

11.1 Request for Disbursement Requirements. Borrower shall cause the request for disbursement of a payment, with respect to the same period covered by the request, to include:

- 11.1.1 an original, uniquely numbered invoice, dated and submitted on Borrower's letterhead or other acceptable format;
- 11.1.2 a monthly Performance Report;
- 11.1.3 a list showing the quantity and price of materials purchased and incorporated into the Project during the previous month(s), together with any invoices of the suppliers thereof or other information requested by the AHFC;
- 11.1.4 a receipted statement or an invoice that supports all expenditures and sets forth the charges made for work performed from each consultant(s), design professional(s), contractor(s), subcontractor(s) or material supplier(s);
- 11.1.5 if disbursement of a payment is requested on the basis of materials or equipment not incorporated in the Project but delivered and suitably stored at the Project site or at another location agreed to in writing between such contractor and Borrower, the invoice shall be accompanied by such bills of sale, data and other procedures satisfactory to AHFC substantiating Borrower's title to such materials or equipment or otherwise protecting Borrower's interest. Disbursement of such payment amounts will not include any amount for such contractor's overhead or profit or relieve contractor of its obligation to protect and install such materials or equipment in accordance with the requirements of the Loan Documents and to restore damaged or defective work. If materials or equipment are stored at another location they shall be stored in a bonded and insured facility, accessible to AHFC and Borrower, and shall be clearly marked as property of Borrower;
- 11.1.6 any Compliance Affidavits or such other affidavits or reports as may be reasonably required by the AHFC to document AHFC's liabilities under this Loan Agreement;
- 11.1.7 a monthly Subcontractor Report;
- 11.1.8 evidence of Contractor's compliance with the requirements of the Addendum to General Conditions; and

- 11.1.9 an updated progress schedule.
- 11.2 **Project Manager Representations.** Borrower's agreement with its Project Manager, Momark Development, L.L.C. or its successor, with respect to all construction contracts concerning the Project, will require that Project Manager approve for disbursement of a payment each Draw Request and require that each recommendation by Project Manager of any disbursement of a payment requested in an invoice billed to AHFC will constitute a representation by Project Manager, based on observations of the executed work and on Project Manager's review of the invoice and the accompanying data and schedules, that to the best of Project Manager's knowledge, information and belief:
 - 11.2.1 the work has progressed to the point indicated; and
 - 11.2.2 the quality of the work is generally in accordance with the contract documents, as such term is defined in the Addendum to General Conditions (subject to an evaluation of the work as a functioning whole prior to or upon substantial completion, as such term is defined in the Addendum to General Conditions, to the results of any substantial tests called for in the contract documents, to a final determination of quantities and classifications for unit price work, and to any other qualifications stated in the recommendation); and
- 11.3 **Project Manager Non-representations.** Borrower's agreement with its Project Manager will provide that any recommendation by Project Manager concerning a Draw Request will not be deemed to have represented that:
 - 11.3.1 exhaustive or continuous on-site inspections have been made to check the quality or the quality of the Work;
 - 11.3.2 examination has been made to ascertain how or for what purpose Contractor has used money previously paid on account of the contract amount;
 - 11.3.3 Contractor's construction means, methods, techniques, sequences or procedures have been reviewed; or
 - 11.3.4 there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Borrower or entitle Borrower to withhold disbursement of any payment to Contractor.
- 11.4 **Disbursement of Payment Amounts not to Include.** Borrower shall cause the request for disbursement of a payment not to include the following:
 - 11.4.1 any request for disbursement of a payment on account of changes in work with respect to the Project which have not been properly included in a Change Order; or
 - 11.4.2 any request for disbursement of an amount the Borrower does not intend to pay because of a dispute or other reason.
- 11.5 **Verification of Work and Retainage Amounts.** Construction Monitoring Consultant will verify the work completed and determine the amount of funds to be released to Borrower with each request for disbursement of a payment. AHFC will

disburse the funds reasonably in proportion to the progress of the portion of the Project attributable to the Loan and only for actual costs incurred by Borrower with respect to the Project, with the right of retaining at all times an amount equal to ten percent (10%) of the work completed, excluding design professional charges, which ten percent will be retained until final disbursement of all payments, minus the aggregate of all previous disbursement payments and minus all amounts that may be additionally retained by AHFC under the terms of this Loan Agreement.

- 11.6 **Project Status Affidavits and Releases.** Borrower shall provide affidavits setting forth the status of the Project and releases of any applicable mechanics and materialman's lien(s) with respect to the Mortgaged Property.
- 11.7 **Draw Request Requirements.** AHFC will disburse a payment to the Borrower only when the Borrower furnishes an invoice as described in Section 11.1.1 of this Loan Agreement and accompanied by any additional certificates, evidence, information or clarification required by AHFC as a condition to AHFC's approval of any requested disbursement of a payment, including any requirements in this Loan Agreement and as required of the Contractor under the Addendum to General Conditions.
- 11.8 **Retainage Disbursement.** AHFC will disburse a payment to Borrower of any amounts retained under this Loan Agreement, less such amounts which are retained by AHFC pending final completion of any work required under this Loan Agreement or as required of the Contractor under the Addendum to General Conditions subsequent to issuance of a Certificate of Completion, within thirty-five (35) calendar days following the issuance of such Certificate of Occupancy. Within thirty (30) calendar days following the later of: (aa) issuance of a Certificate of Occupancy, (bb) the filing and recording of a Completion Affidavit, or (cc) final completion of any work required under this Loan Agreement or as required of the Contractor under the Addendum to General Conditions subsequent to issuance of a Certificate of Completion, AHFC will disburse a final payment of any retained amounts remaining.
- 11.9 **Conditions of Disbursement.** AHFC will make disbursement of a payment to the Borrower on the Date of this Loan Agreement only if the conditions of closing described in Section 8 and the conditions of loan and disbursement of proceeds advanced to Borrower under the Loan described in Section 10 of this Loan Agreement are satisfied, and when the Borrower furnishes an invoice as described in Section 11.1.1 of this Loan Agreement, accompanied by any additional certificates, evidences, information or clarification required by AHFC as a condition to AHFC's approval of any requested disbursement of any payment. Advances shall be disbursed, at the AHFC's option, (i) by depositing the amount into the Advances Account, (ii) by direct or joint check payment to any person entitled to payment for work performed on or materials delivered to or services performed in connection with the Mortgaged Property, or (iii) by any other method the AHFC may elect from time to time.

Section 12 ALLOWABLE COSTS.

- 12.1 **Incurred in Performance of Agreement.** Costs will be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Loan Agreement and in conformance with the standards and provisions of the Obligations and the Approved Budget. Under no circumstances shall any portion of an Advance be used for any purpose other than the payment of those costs and fees approved by the AHFC as legitimately relating to the cost of completing the work required by this Loan Agreement, or for an amount in excess of the amount authorized to be paid Borrower in the Approved Budget unless otherwise agreed to in writing by the AHFC.
- 12.2 **Requests for Approvals.** Requests for prior approvals are Borrower's responsibility and should be made to AHFC at least ten (10) working days prior to the date the approval is needed. Written approval by the AHFC must be obtained prior to the commencement of procedures to solicit or purchase services, equipment or real or personal property. Any procurement or purchase, which may be approved under the terms of this Loan Agreement, must be conducted in its entirety in accordance with the provisions of this Loan Agreement.

Section 13 SECURITY. Borrower shall execute and deliver to AHFC at closing of the Loan the Security Agreements as security for payment of the Note, including but not limited to payment of all Indebtedness, and performance of the Obligations under the Loan Documents. The Note and Security Agreements shall be in a form satisfactory to AHFC and shall provide that, in the event of default by the Borrower in the payment of the Indebtedness or the performance of any Obligation, AHFC may, at its sole option, in addition to all other remedies, take possession of the Mortgaged Property given as security, provided AHFC has given Borrower the right to cure the default as provided in subsection 22.2 of this Loan Agreement and such default is continuing.

Section 14 REPRESENTATIONS. In order to induce the AHFC to make the Loan hereunder Borrower represents and warrants as follows:

- 14.1 **No Litigation.** Except as disclosed in writing to AHFC, there are no (i) judicial, administrative, mediation or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or threatened against or affecting Borrower, any Signatory Party, or involving the Mortgaged Property, (ii) outstanding or unpaid judgments against Borrower, any Signatory Party, or the Mortgaged Property, or (iii) defaults by Borrower with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator. Borrower or any Signatory Party are not a party to any action, suit or proceeding pending or concluded, nor, to the knowledge and good faith belief of the Borrower, is Borrower or any Signatory Party threatened with any suit or proceedings which may bring into question the validity of the transaction herein contemplated or might result in any adverse change in the business or financial condition of the Borrower or any Signatory Party from that evidenced by the financing statement provided to AHFC by Borrower or any Signatory Party at or before closing.
- 14.2 **No Bankruptcy.** No bankruptcy or insolvency proceedings are pending or contemplated by Borrower or any Signatory Party or, to the best knowledge,

information, and belief of Borrower or any Signatory Party, against Borrower or any Signatory Party or by or against any endorser, cosigner or guarantor of the Note.

- 14.3 **Legal Authority.** Borrower represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Loan Documents. The person(s) executing the Loan Documents on behalf of Borrower represents and warrants that they have been fully authorized by Borrower to execute the Loan Documents on its behalf and to legally bind Borrower to all the terms, performances and provisions of the Loan Documents. If there is a dispute as to the legal authority of either Borrower or of the person signing the Loan Documents to enter into the Loan Documents, AHFC shall have the right, at its option, to either temporarily suspend or permanently terminate this Loan Agreement. If AHFC has suspended or terminated this Loan Agreement for the reasons enumerated in this subsection 14.3, Borrower is liable to AHFC for any money it has received from AHFC for performance of this Loan Agreement.
- 14.4 **No Default.** Borrower or any Signatory Party is not in default on any obligations, covenants, or conditions contained in any bond, debenture, note, or other evidence of indebtedness or any mortgages or collateral instruments securing the same. Borrower also covenants that the making of this Loan Agreement and the consummation of the transaction contemplated herein will not violate any provision of law or result in any breach or constitute a default under any agreement to which Borrower or any Signatory Party is presently a party, or result in the creation of any lien, charge or encumbrance upon any of its property or its assets other than may be specifically allowed under the Loan Documents including without limitation the AHFC's liens and security interests.
- 14.5 **No Assignment.** Borrower and each Signatory may not assign this Loan Agreement or any other Loan Document or any of Borrower's or Signatory's rights under it without AHFC's prior written consent, and any attempted assignment is void.
- 14.6 **Taxes.** Borrower and each Signatory Party have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them (including, without limitation, those required under the Tax Code) and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor any Signatory Party knows of any basis for any additional assessment in respect of any such taxes and related liabilities. Borrower and each Signatory Party believe that their respective tax returns properly reflect the income and taxes of Borrower and each Signatory Party for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit. Borrower or any Signatory Party shall promptly and completely file all tax returns which are required and has made or will make provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by Borrower or any Signatory Party. Borrower or any Signatory Party covenants that no tax

liability has been asserted against Borrower or any Signatory Party by the Internal Revenue Service or any other taxing authority for taxes in excess of those already paid and Borrower or any Signatory Party knows of no basis for any such deficiency assessment.

14.7 **Correct Information.** In the event reports required to be submitted by Borrower pursuant to this Loan Agreement, are deemed by AHFC to be incomplete or unsatisfactory, Borrower agrees to make such revisions or changes as may be required by AHFC and at no additional cost to AHFC.

14.8 **Mailing Address.** Borrower's mailing address, as set forth in subsection 22.1 of this Loan Agreement or as changed pursuant to the provisions of this Loan Agreement, is true and correct.

14.9 **No Reliance on AHFC.** Borrower is experienced in the ownership and operation of properties similar to the Mortgaged Property, and Borrower and AHFC have and are relying solely upon Borrower's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Borrower is not relying on AHFC's expertise or business acumen in connection with the Mortgaged Property.

14.10 **Environmental and Hazardous Substances.** Without regard to whether AHFC has, or hereafter obtains, any knowledge or report of the environmental condition of the Mortgaged Property:

14.10.1 The Mortgaged Property and the operations conducted thereon do not violate any applicable law, statute, ordinance, rule, regulation, order, or determination of any Governmental Authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws.

14.10.2 Without limiting subsection 14.10.1 immediately preceding, the Mortgaged Property and operations conducted thereon by the current owner or operator of such Mortgaged Property, are not in violation of or subject to any existing, pending, or threatened action, suit, investigation, inquiry, or proceeding by any Governmental Authority or non-governmental entity or person or to any remedial obligations under any Environmental Law.

14.10.3 All notices, permits, licenses, or similar authorizations, if any, required to be obtained or filed in connection with the ownership, operation, or use of the Mortgaged Property, including, without limitation, the past or present generation, treatment, storage, disposal, or release of a Hazardous Substance into the environment, have been duly obtained or filed.

14.10.4 The Mortgaged Property does not contain any Hazardous Substance.

14.10.5 Borrower has taken all steps necessary to determine and has determined that no Hazardous Substances have been generated, treated, placed, held, located, or otherwise released on, under, from, or about the Mortgaged Property.

- 14.10.6 Borrower has not undertaken, permitted, authorized, or suffered and will not undertake, permit, authorize, or suffer the presence, use, manufacture, handling, generation, transportation, storage, treatment, discharge, release, burial, or disposal on, in, under, from or about the Mortgaged Property of any Hazardous Substance or the transportation to or from the Mortgaged Property of any Hazardous Substance.
- 14.10.7 There is no pending or threatened litigation, proceedings, or investigations before or by any administrative agency in which any person or entity alleges or is investigating any alleged presence, release, threat of release, placement on, in, under, from or about the Mortgaged Property, or the manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, under, from or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.
- 14.10.8 Borrower has not received any notice, and has no actual or constructive knowledge, that any Governmental Authority or any employee or agent thereof has determined, or threatens to determine, or is investigating any allegation that there is a presence, release, threat of release, placement on, in, under, from or about the Mortgaged Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under, from or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.
- 14.10.9 There have been no communications or agreements with any Governmental Authority or any private entity, including, but not limited to, any prior owners or operators of the Mortgaged Property, relating in any way to the presence, release, threat of release, placement on, under or about the Mortgaged Property, or the use, manufacture, handling, generation, transportation, storage, treatment, discharge, burial, or disposal on, in, under or about the Mortgaged Property, or the transportation to or from the Mortgaged Property, of any Hazardous Substance.
- 14.10.10 Neither Borrower nor, to the best knowledge, information and belief of Borrower, any other person, including, but not limited to, any predecessor owner, tenant, licensee, occupant, user, or operator of all or any portion of the Mortgaged Property, has ever caused, permitted, authorized or suffered, and Borrower will not cause, permit, authorize, or suffer, any Hazardous Substance to be placed, held, located, or disposed of, on, in, under or about any other real property, all or any portion of which is legally or beneficially owned (or any interest or estate therein which is owned) by Borrower in any jurisdiction now or hereafter having in effect a so-called "superlien" law or ordinance or any part thereof, the effect of which law or ordinance would be to create a lien on the Mortgaged Property to secure any obligation in connection with the "superlien" law of such other jurisdiction.

14.10.11 Borrower has been issued all required federal, state, and local licenses, certificates, or permits relating to the Mortgaged Property, and Borrower and its facilities, business assets, property, leaseholds, and equipment are in compliance in all respects with all applicable federal, state, and local laws, rules, and regulations relating to, air emissions, water discharge, noise emissions, solid or liquid waste disposal, hazardous waste or materials, or other environmental, health, or safety matters.

14.11 **Separate Tax Parcel; Legal Lot.** The Mortgaged Property is taxed separately without regard to any other real estate and the Land constitutes a legally subdivided lot or lots under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed or otherwise dealt with as an independent parcel.

14.12 **Location of Property.** The Land is located wholly within the corporate limits of the City of Austin, Texas.

14.13 **Utilities; Access.** All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Mortgaged Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or duly recorded perpetual private easements.

Section 15 AFFIRMATIVE COVENANTS. Until payment in full of the Note and all of the other payments due AHFC hereunder, and the performance of all of the terms, conditions and provisions of the Loan Documents, and, with respect to any Restrictive Covenant required by this Loan Agreement, during the Restricted Period, Borrower and its assigns shall cause the following to be done:

15.1 **Compliance Information.** Borrower will deliver to AHFC within ten (10) calendar days after its receipt of any written reasonable request, such information as AHFC may reasonably determine in its sole discretion necessary to determine whether the Borrower is complying with its covenants and agreements contained in the Loan Documents or whether an Event of Default has occurred. So long as Borrower commences the process of obtaining such information and notifies AHFC of such action within the ten (10) calendar day period and proceeds diligently toward obtaining such information, Borrower shall have an additional twenty (20) calendar days to furnish such information to AHFC.

15.2 **Project Management Agreement.** Borrower's agreement with its Project Manager, Momark Development, L.L.C. or its successor, will require that prior to designing the Project the Project Manager will execute the applicable Non-Use of Asbestos Affidavit, that following completion of the design of the Project the Project Manager will execute the applicable Non-Use of Asbestos Affidavit, and that failure of Project Manager to comply in all respect with either Non-Use of Asbestos Affidavit will be a default under the agreement with the Project Manager.

- 15.3 **Work Required.** Borrower will perform or cause to be performed the work described in this Loan Agreement with respect to the Project, including, without limitation, the work described in the Statement of Work.
- 15.4 **Diversity.** Borrower shall employ an open, competitive, and non-discriminatory process to select its contractors and consultants, other than contractors or consultants identified in the Borrower Proposal, consistent with the Statement of Work and the MBE/WBE Project Participation Goal as provided by the Addendum to General Conditions. In the event the Contractor cannot achieve the goals, the Borrower shall require the Contractor to demonstrate to the Borrower that the Contractor made good faith efforts to achieve the MBE/WBE Project Participation Goal. The AHFC shall make information available to Borrower (Borrower shall make the information available to Contractor), including a list of MBE/WBE Contractors, so that Borrower can determine whether Contractor made good faith efforts to comply with this subsection 15.4.
- 15.5 **Subcontracting.** Borrower agrees that any work or service which is allowed to be subcontracted under this Loan Agreement shall be subcontracted by written contract or agreement and shall be subject by its terms, unless specific waiver is granted, in writing, by AHFC, to each and every provision of this Loan Agreement. Borrower agrees to assume the responsibility for performance and financing compliance by a subcontractor under this Loan Agreement.
- 15.6 **No Obligation to Others.** AHFC shall not be obligated or liable under this Loan Agreement to any party other than Borrower for payment of any monies or for provision of any goods or services.
- 15.7 **Payment of Amounts Due.** Subject to the provisions of Section 19 of this Loan Agreement, Borrower will pay punctually and fully each installment payment of principal and interest to become due on the Note in accordance with the terms of this Loan Agreement and the Note.
- 15.8 **Payment of Impositions.** Borrower will duly pay and discharge, or cause to be paid and discharged, the Impositions not later than the earlier to occur of (i) the due date thereof, (ii) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (iii) the date prior to any date any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Borrower shall deliver to AHFC a written receipt evidencing the payment of the respective Imposition, except that Borrower shall not be required to pay any such Impositions so long as the validity thereof shall be actively contested in good faith by proper proceedings, provided that any such Imposition shall be placed in escrow during such proceedings and shall be paid forthwith upon a final adjudication and order to pay from a court of competent jurisdiction.
- 15.9 **Payment for Labor and Materials.** Borrower will promptly pay all bills for labor, materials, supplies, and specifically fabricated materials incurred in connection with the Mortgaged Property and never permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part

thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions in the Deed of Trust.

- 15.10 **Payment of Other Amounts.** Borrower will pay the installments due on all indebtedness with respect to the Mortgaged Property to any other lenders, either heretofore or hereafter incurred or assumed by it when and as the same shall become due and payable, and will observe, perform and discharge all of the covenants, conditions and obligations which are imposed on it by any and all agreements securing or evidencing any encumbrance upon the Mortgaged Property securing this Loan so as to prevent an occurrence of any act or omission which, under the provisions thereof, may be declared to be a default which, could result in a lien being placed upon the Mortgaged Property. In the event any such payment is not paid, Borrower will immediately provide notice to AHFC describing such default. However, giving such notice will in no way waive any other covenant in the Loan Documents.
- 15.11 **Payment of Borrower Expenses.** Subject to the provisions of Section 19 of this Loan Agreement, Borrower will pay on demand all reasonable and bona fide out-of-pocket costs, fees, and expenses and other expenditures, including, but not limited to, reasonable attorneys' fees and expenses, paid or incurred by AHFC or Trustee to third parties incident to this Loan Agreement (including without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Documents and any amendment hereto or thereto, any release hereof, any consent, approval or waiver hereunder or under any other Loan Documents, the making of any advance under the Note, and any suit to which AHFC or Trustee is a party involving the Deed of Trust, the Loan Documents or the Mortgaged Property) or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of AHFC under any of the Loan Documents, and including without limitation:
- 15.11.1 **Expenses.** Borrower will pay all costs and taxes that might be imposed or be determined to be payable in connection with the execution, issuance or delivery of the Loan Documents, or in connection with any modification, amendment or alteration of the terms and provisions thereof, and to hold AHFC and any other holder of the Note harmless against any and all liability with respect to the Loan Documents, all of which agreements of Borrower shall survive payment of the Note.
- 15.11.2 **Loan Expenses.** If required by AHFC, Borrower will pay in addition to any other amounts a monthly servicing fee due with each installment payment in an amount stated in the Note.
- 15.11.3 **Expenses of Collection or Enforcement.** If Borrower shall at any time default in making any payment on the Note, Borrower will, to the full extent permitted by law, pay to the holder of the Note, in addition to any other amounts that may be due from Borrower to such holder, an amount equal to the reasonable costs and expenses of collection including reasonable

attorney's fees, court costs or enforcement costs incurred by holder in such collection.

15.11.4 **Expenses of Correction by AHFC of Default.** In the event of any default by Borrower in the full performance or observance of any covenant or agreement contained in any of the Loan Documents, AHFC may, upon notice to Borrower at the address and in the manner specified in subsection 22.1 of this Loan Agreement, at AHFC's sole option (but without any obligation of AHFC to do so), take such steps as reasonably may be deemed by AHFC in its sole discretion, necessary or appropriate to correct or remedy such default in whole or in part, and all costs and expenses incurred by AHFC in taking such steps (including reasonable attorney's fees and court costs) shall, subject to an opportunity to cure such default as provided by subsection 22.2 of this Loan Agreement, be due and payable by Borrower, with interest thereon from time of incurrence thereof by AHFC at the Maturity Rate stated in the Note. The taking of such action shall not be deemed to be a waiver by AHFC of the default of Borrower or a waiver of any other available right or remedy by reason of such default.

15.11.5 **Expenses of Amendments, Waiver, Consents, and Refinancing.** In the event Borrower proposes to take or omit to take any act or action prohibited or required by any provision of the Loan Documents, and Borrower requests AHFC to consent thereto or waive compliance with any such provision, then, in each such case, Borrower will reimburse or pay to AHFC any reasonable expenses incurred by AHFC in connection with such consent or waiver, or such modification or amendment.

15.12 **Excess Payments.** Borrower shall refund to the AHFC within ten working days of the AHFC's request, any sum of money which has been paid by the AHFC and which the AHFC at any time thereafter determines:

15.12.1 has resulted in overpayment to Borrower; or

15.12.2 is not supported by adequate documentation to fully justify the expenditure.

15.13 **Repair.** Borrower will keep the Mortgaged Property in reasonably good order and condition and will make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, which are necessary or reasonably appropriate to keep same in such order and condition. Borrower will prevent any act, occurrence, or neglect, which might impair the value or usefulness of the Mortgaged Property for its intended usage. In instances where repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, Borrower shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in subsection 16.2 hereof; provided, however, that in instances where such emergency measures are to be taken, Borrower will notify AHFC in

writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

- 15.14 **Protection of Lien Status.** Borrower will protect and preserve the lien and security interest status of the Security Agreements on the date of execution of this Loan Agreement and will not permit to be created or to exist in respect of the Mortgaged Property or any part thereof, unless agreed to in writing by AHFC, any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof; except for the Permitted Exceptions in the Deed of Trust.
- 15.15 **Insurance.** Prior to commencing work with respect to the Mortgaged Property, Borrower, in accordance with the Insurance Requirement and at Borrower's own expense, will obtain, maintain and keep in full force and effect insurance coverages upon and relating to the Mortgaged Property with such insurers, in such amounts, in such manner, provide such notices and covering such risks as shall be requested by and satisfactory in writing to AHFC. Borrower agrees to procure such required insurance coverages and deliver evidence of such coverages to AHFC as required by the Insurance Requirement. In the event any insurance proceeds with respect to a policy described in the Insurance Requirement are paid, such proceeds thereof shall be paid to AHFC to satisfy the balance owing on the Note at the time of the loss; the remainder of the insurance proceeds to be payable to Borrower. If the proceeds of the insurance together with such other funds as are available to Borrower are sufficient to pay for the restoration of the premises, Borrower may apply such funds to such restoration, provided the procedure to release such insurance proceeds for restoration are agreed to in writing between Borrower and AHFC. It is expressly understood and agreed that the Insurance Requirement represents AHFC's minimum requirements. Further, (i) the insolvency, bankruptcy or failure of any insurance company covering Borrower or the Mortgaged Property, (ii) the failure of any insurance company to pay claims occurring, or (iii) any exclusion from or insufficiency of coverage will not limit the amount of recovery AHFC may have in the event of casualty, damage or other occurrence giving rise to a claim under the insurance provided by Borrower under this Loan Agreement.
- 15.16 **Bonding Requirements.**
- 15.16.1 Bonds, when required in the Statement of Work, must be executed on forms furnished by or acceptable to AHFC. If required, Borrower shall furnish AHFC proof of an adequate bond prior to the earlier of (i) thirty (30) calendar days following the Effective Date of this Loan Agreement or (ii) payment of any Loan Proceeds to Borrower by AHFC under this Loan Agreement.
- 15.16.2 If the surety on any bond furnished by Borrower is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of subsection 15.16.3 of this Loan Agreement, Borrower must substitute immediately another bond and surety, both of which must be acceptable to AHFC.

- 15.16.3 When Performance Bonds and/or Payment Bonds are required in accordance with this Loan Agreement, each bond must be issued in an amount of one hundred percent (100%) of the Note, as security for the faithful performance of all of Borrower's obligations under this Loan Agreement. Performance Bonds and Payment Bonds must be issued by a solvent surety company authorized to do business in the State of Texas, U.S. Treasury listed, and with an A.M. Best rating of A- or better, or otherwise acceptable to AHFC.
- 15.17 **Condemnation.** Borrower will pay, or assign if requested by AHFC, to AHFC to satisfy the balance owing on the Note at the time of receipt of all amounts payable to or received by Borrower from condemnation of all or part of the Mortgaged Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Mortgaged Property.
- 15.18 **Environmental and Hazardous Substances.** Borrower will:
- 15.18.1 not use, generate, manufacture, produce, store, release, discharge, treat, or dispose of on, in, under, from or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Substance or allow any other person or entity to do so;
- 15.18.2 keep and maintain the Mortgaged Property in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Environmental Law;
- 15.18.3 establish and maintain, at Borrower's sole expense, a system to assure and monitor continued compliance with Environmental Laws and the exclusion of Hazardous Substances from the Mortgaged Property, by any and all owners or operators of the Mortgaged Property, which system shall include annual reviews of such compliance by employees or agents of Borrower who are familiar with the requirements of the Environmental Laws and, at the request of AHFC no more than once each year prior to issuance of a Certificate of Occupancy and once every five years thereafter, a detailed review of such compliance of the environmental condition of the Mortgaged Property (the "Environmental Report") in scope satisfactory to AHFC by an environmental consulting firm approved in advance by AHFC; provided, however, that if any Environmental Report indicates any violation of any Environmental Law or a need for Remedial Work, such system shall include at the request of AHFC a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. Borrower shall furnish an Environmental Report or such Supplemental Report to AHFC within sixty (60) calendar days after AHFC so requests, together with such additional information as AHFC may reasonably request.
- 15.19 **Notice of Hearings.** Borrower will give AHFC prior notice, in writing, of any public hearing or meeting before any Governmental Authority which may, in any manner, affect the Mortgaged Property.

- 15.20 **Inspection of Books and Records.** Borrower shall allow Monitors from time to time to inspect all books and records relating to Borrower's financial condition and to the Indebtedness, and to make and take away copies of such books and records. If Borrower is a corporation, limited liability company, partnership, joint venture, trust or other type of business association, Borrower shall provide Monitors with any and all financial statements and other documents and make any and all disclosures to Monitors with respect to any of the Constituent Parties, as Borrower is required to provide and make, and in the manner required to be provided and made, with respect to Borrower pursuant to this subsection 15.20.
- 15.21 **Monitoring, Inspection and Audit.** Borrower will permit Monitors to enter the Land and Improvements at all reasonable times, and inspect the Mortgaged Property with or without prior notice to Borrower. Monitors will have the right, at all reasonable hours and without causing any unreasonable interruption to the operations of Borrower, to carry out monitoring and evaluation activities to ensure adherence by Borrower to the provisions of this Loan Agreement and to ensure that the use of any Loan Proceeds paid to Borrower are for eligible purposes in accordance with the Legal Requirements, to inspect and audit all books, accounts, reports, files, records, contracts, and all other papers relating to the Mortgaged Property, the Project or the use of Loan Proceeds; and to be given free access to the Mortgaged Property for the purpose of such monitoring, inspection or audit and also for the purpose of determining the condition of the premises. In addition, Borrower shall provide to Monitors such audited management letters or financial statements as the Monitors may require in their sole discretion.
- 15.22 **Property Reports.** With respect to the Project, Borrower will maintain full and accurate books of account and other records reflecting the results of the operations of the Mortgaged Property and will furnish, or cause to be furnished, to AHFC: (i) on or before January 31 of each calendar year during the term of this Loan Agreement, an Annual Compliance Certificate, (ii) immediate notice of any material adverse change in the Mortgaged Property's financial condition or business prospects or any lapse of coverage with respect to the Insurance Requirement, (iii) all reports required by the Statement of Work, and (iv) upon request of Monitors, and at Borrower's expense, such other operating, financial, insurance coverage and credit information as Monitors may reasonably request with respect to the Mortgaged Property. At any time and from time to time Borrower shall deliver to Monitors such other financial data as Monitors shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property, and Monitors shall have the right, at reasonable times and upon reasonable notice, to audit, examine, and make copies or extracts of Borrower's books of account and records relating to the Mortgaged Property to enable the Monitors to comply with its record keeping and reporting obligations and to determine the level and adequacy of the Borrower's compliance with this Loan Agreement, all of which shall be maintained and made available to Monitors for such purpose at the address specified herein for Borrower or at such other location as AHFC may approve. Upon Monitors' request, Borrower shall also furnish Monitors with convenient facilities and all books and records necessary for an audit of such statements.

- 15.23 **Annual Inventory.** Borrower agrees to provide AHFC during the term of this Loan Agreement with an inventory of the real and personal property acquired in connection with this Loan Agreement no later than October 31 and within thirty (30) calendar days following the termination date of this Loan Agreement. Borrower shall maintain adequate accountability and control over such property, maintain adequate property records in a form acceptable to AHFC, and perform an annual physical inventory which shall be submitted to AHFC on or before October 31 of each year during the term of this Loan Agreement.
- 15.24 **Tax on Deed of Trust.** If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon the Deed of Trust, or upon any rights, titles, liens, or security interests created by the Loan Documents, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Borrower will immediately pay all such taxes, provided that if such law as enacted makes it unlawful for Borrower to pay such tax, Borrower shall not pay nor be obligated to pay such tax. Nevertheless, if a law is enacted making it unlawful for Borrower to pay such taxes, then Borrower must prepay the Indebtedness in full within sixty (60) calendar days after demand by AHFC.
- 15.25 **Statement of Unpaid Balance.** At any time and from time to time, Borrower will furnish promptly, upon the request of AHFC, a written statement or affidavit, in form satisfactory to AHFC, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.
- 15.26 **Borrower's Meetings.** Upon request of AHFC, Borrower shall inform AHFC of the dates and times of meetings of its governing body. Such notice shall be delivered to AHFC in a timely manner to give adequate notice and shall also include an agenda and a brief description of the matters to be discussed. Upon request of AHFC, minutes of meetings of Borrower's governing body shall be submitted to AHFC within fifteen (15) calendar days of such request. If Borrower utilizes advisory board(s), notices of meetings and formal minutes of advisory board meetings shall be kept and shall remain on file with Borrower for AHFC's inspection.
- 15.27 **Confidentiality.** Upon authorization from AHFC to render client files anonymous, Borrower agrees to mask client-identifying information in such way that said marking will not in any way obstruct AHFC's monitoring and evaluation duties. Borrower agrees, at all times, to keep confidential all client and personnel identifying information and any information received by Borrower unless required by law to release such information.
- 15.28 **Personnel Policies.** In the event the number of full-time employees of Borrower equals five (5) or more, personnel policies shall be established by Borrower in writing and shall be available for examination by AHFC. Such personnel policies, taken as a whole, shall be no more liberal than AHFC's personnel policies, procedures, and practices, including, without limitation, policies with respect to employment, salary and wage rates, working hours and holidays, fringe benefits

(health and hospitalization, retirement, etc.), vacation and sick leave privileges, and travel.

15.29 **Conflict of Interest.**

15.29.1 Borrower covenants that neither it nor any member of its governing body presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Loan Agreement. Borrower further covenants that in the performance of this Loan Agreement no person having such interest shall be employed or appointed as a member of its governing body.

15.29.2 Borrower further covenants that no member of its governing body or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others; particularly those with which they have family, business, or other ties.

15.29.3 No officer, member, or employee of AHFC and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall (i) participate in any decision relating to this Loan Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he has a direct or indirect interest, or (ii) have any interest, direct or indirect, in this Loan Agreement or the proceeds thereof.

15.30 **Nepotism.** Borrower shall not employ in any paid capacity any person who is a member of the immediate family of: (i) a person who is currently employed by Borrower, or (ii) a current AHFC employee who has discretionary authority with respect to this Loan Agreement, or (iii) a member of the AHFC or Borrower's governing body, without prior written approval by AHFC. The term "member of the immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, grandfather, grandmother, grandson, granddaughter, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, niece, first cousin, stepparent, stepchild, half-brother, and half-sister.

15.31 **Contract Close Out.** The contract close out package, together with a final Payment Request, for the time period covered by the last invoice requesting an Advance, shall be submitted by Borrower to the AHFC with respect to the Project within ninety (90) calendar days following the close of the term of this Loan Agreement, unless extended in writing by the AHFC, using the format as provided to Borrower by the AHFC.

15.32 **Audit.** Borrower agrees to submit to the AHFC a complete set of audited financial statements and the auditor's opinion and management letters covering Borrower's fiscal year until the termination of this Loan Agreement.

- 15.32.1 Borrower, at its expense, shall contract with an independent auditor utilizing a Letter of Engagement. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.
- 15.32.2 Prior to the start of the audit, a letter of engagement between Borrower and their auditor, which details the services to be provided, including the audit requirements of this subsection 15.31 must be executed. Borrower must provide the AHFC two (2) copies of a complete financial audit and the auditor's opinion and management letters within one hundred-eighty (180) calendar days following the end of each Borrower Fiscal Year, unless the AHFC approves alternative arrangements in writing.
- 15.32.3 Borrower must provide the AHFC with annual audits as required by this subsection 15.31 until termination of this Loan Agreement, unless waived by the AHFC.
- 15.32.4 The expiration or termination of this Loan Agreement shall in no way relieve Borrower of the requirement to complete the above audit requirements in the manner set forth.
- 15.33 **Tax-exempt Status of Obligations.** The AHFC and the Borrower acknowledge that the AHFC derived the proceeds of the Note from the issuance of Tax-exempt Bonds and in connection therewith the AHFC has made certain covenants, representations and provisions to assure compliance with the Tax Code relating to the Tax-exempt Bonds. The Borrower agrees to take such action to ensure, or to refrain from such action which would adversely affect the ability of the AHFC to satisfy such covenants, representations and provisions. Moreover, in the event that the Tax Code is amended, or regulations or rulings are hereafter promulgated which impose additional requirements applicable to the Tax-exempt Bonds or in the event that it is determined by a court of applicable jurisdiction that the Loan Documents fail to comply with the terms of the Tax Code, then the AHFC and the Borrower agree to renegotiate, in good faith, to amend the Loan Documents, refinance the Note or both in order to comply with the additional requirements to the extent necessary to preserve the exemption from federal income taxation of interest on the Tax-exempt Bonds. In addition (and not by way of limitation), the Borrower agrees to comply in all respects with the Tax-exempt Bond Covenants. In the event Borrower determines that a waiver from the Tax-exempt Bond Covenants is needed, Borrower agrees to notify AHFC and request a waiver in writing. AHFC, in its sole discretion, will grant or deny the waiver request within ten (10) working days of receipt of the request.
- 15.34 **Disclosures.** If at any time Borrower shall become aware of the existence or occurrence of any financial or economic conditions or natural disasters which might have a Material Adverse Effect, Borrower shall promptly notify AHFC of the existence or occurrence thereof, unless AHFC has actual notice thereof, and of Borrower's opinion as to what effect such may have on the Mortgaged Property or Borrower. Borrower shall also give prompt notice to AHFC, unless AHFC has actual notice thereof, of (i) the serious illness or death of any principal or key employee of Borrower, (ii) any litigation or dispute, threatened or pending against

or affecting Borrower, a Signatory Party, or the Mortgaged Property which could have a Material Adverse Effect, (iii) any Event of Default, (iv) any default by Borrower or any acceleration of any indebtedness owed by Borrower under any contract to which Borrower is a party, and (v) any change in the character of Borrower's business as it existed on the date hereof which could have a Material Adverse Effect.

- 15.35 **Itemized Statements.** During the construction of any Improvements to the Mortgaged Property, Borrower will furnish from time to time, whenever requested, statements showing itemization of prospective expenditures, expenditures to date, items due and unpaid, and itemized statements with receipted bills and other evidence reasonably satisfactory to AHFC. All records required to be retained shall be retained for a period of five years from the date of the record. If improvements are made to the Mortgaged Property and funded by the Loan, Borrower will furnish to AHFC a MBE/WBE Contractor Subcontract Disclosure Form listing all proposed MBE/WBE Contractors to be utilized in carrying out the work in connection with the Project prior to commencement of the subcontracted work that is so disclosed.
- 15.36 **Filing Documents.** Borrower will file for record the Security Agreements that establish valid lien(s) or restrictions on the Mortgaged Property, free and clear of all liens and encumbrances, except liens for taxes not yet due and Permitted Exceptions in the Deed of Trust.
- 15.37 **Delivery of Contracts.** Borrower will deliver to AHFC a true, correct and complete copy of each Contract within five (5) calendar days after the execution of it by all parties thereto. Within twenty (20) calendar days after a request by AHFC, Borrower shall prepare and deliver to AHFC a complete listing of all Contracts, showing date, term, parties, subject matter, whether any defaults exist, and other information specified by AHFC, of or with respect to each of such Contracts, together with a true, correct and complete copy thereof (if so requested by AHFC).
- 15.38 **Further Assurances and Corrections.** From time to time, at the request of AHFC, Borrower will (i) promptly correct any defect, error, or omission which may be discovered in the contents of this Loan Agreement or in any other Loan Document or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver, record and/or file such further instruments (including, without limitation, amendments to this Loan Agreement, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable, or proper, in AHFC's opinion, to carry out more effectively the purposes of this Loan Agreement and the Loan Documents and to subject to the absolute assignments, liens and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property; (iii) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including without limitation, any financing statement) deemed advisable by AHFC in AHFC's sole discretion to protect the liens and the security interests herein granted against the

rights or interests of third persons; and (iv) pay all costs connected with any of the foregoing.

Section 16 **NEGATIVE COVENANTS.** Borrower hereby unconditionally covenants and agrees with AHFC until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged as follows:

- 16.1 **Use Violations.** Borrower will not use, maintain, operate, or occupy, or allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner which (i) violates any Legal Requirement, (ii) may be dangerous, unless safeguarded as required by law and/or appropriate insurance, (iii) constitutes a public or private nuisance, or (iv) makes void, voidable, or cancelable, or increases the premium of, any insurance then in force with respect thereto.
- 16.2 **Waste: Alterations.** Borrower will not commit or permit any waste or impairment of the Mortgaged Property and will not (subject to the provisions of subsections 7.4 and 0 hereof) without the prior written consent of AHFC, make or permit to be made any alterations or additions to the Mortgaged Property of a material nature.
- 16.3 **Replacement of Fixtures and Personalty.** Borrower will not, without the prior written consent of AHFC, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for purposes of maintenance and repair or, if removed permanently, is replaced by an article of equal suitability and value, owned by Borrower, free and clear of any lien or security interest except as may be approved in writing by AHFC.
- 16.4 **Change in Zoning:** Borrower will not (i) seek or acquiesce in a zoning reclassification, zoning variance or special exception to zoning of all or any portion of the Mortgaged Property, (ii) grant or consent to any dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or (iii) seek or acquiesce to any imposition of any addition of a Legal Requirement or any amendment or modification thereof, covering all or any portion of the Mortgaged Property, without AHFC's prior written consent which will be granted or denied within thirty (30) working days following receipt of the proposed reclassification, variance, exception or other request.
- 16.5 **No Drilling.** Borrower will not, without the prior written consent of AHFC, permit any drilling or exploration for or extraction, removal, or production of, any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof.
- 16.6 **Additional Obligations.** Borrower shall not create or incur any additional liability other than the superior construction loan, whether contingent or non-contingent, with respect to the Mortgaged Property that is secured by a lien on the Mortgaged Property, except as specifically allowed or contemplated pursuant to the Loan Documents or, in writing, by the AHFC.

Section 17 **EVENTS OF DEFAULT.** The principal indebtedness evidenced by the Note or the unpaid balance thereof at the time outstanding, shall be due and payable at the election of the AHFC if any one or more of the following events shall occur for any reason whatsoever, and

whether such occurrences shall be voluntary, involuntary or come about or be effected by operation of law, or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or Governmental Authority and is not cured or corrected within the times and in the manner required to cure or correct such event of default by Borrower as required by subsection 22.2 of this Loan Agreement:

- 17.1 **Payment of Indebtedness.** Default shall be made in the timely and complete payment (by payment or by credit as provided in the Note) of any installment or portion of the Indebtedness as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, upon acceleration or otherwise; or
- 17.2 **False Representation.** Any representation or warranty made by the Borrower herein or any statement or representations made in any certificate, statement or opinion delivered to the AHFC pursuant to this Loan Agreement, the Note, or any other Loan Documents shall prove to have been incorrect in any material respect as of the date made; or
- 17.3 **Performance of Obligations.** Default shall be made in the performance or observance of any of the Obligations; or
- 17.4 **Default Under Other Lien Documents.** Borrower shall default or commit an event of default under and pursuant to any other mortgage or security agreement which covers or affects any part of the Mortgaged Property; or
- 17.5 **Abandonment.** Borrower abandons or removes all or substantially all of the Improvements, Personalty or Fixtures without written approval from the AHFC; or
- 17.6 **Discontinuance of Operations.** Borrower vacates, or discontinues operations of or from, any substantial portion of the Mortgaged Property without written approval from the AHFC; or
- 17.7 **Bankruptcy or Insolvency.** Borrower shall admit in writing its inability to pay its debts generally as they become due, make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, petition or apply to any tribunal for the appointment of any receiver or trustee thereof or of any substantial part of its property or commence any proceedings under any arrangement, readjustment of debt, or statute of any jurisdiction, whether now or hereafter in effect; or there is commenced against Borrower any such proceeding which remains undismissed for a period of thirty (30) calendar days; or
- 17.8 **Receivership.** Borrower by any act indicates its consent to, approval of or acquiescence in any such proceeding or in the appointment of any receiver or of any trustee for Borrower with respect to a substantial part of its property; or
- 17.9 **Inability to Pay Judgment.** If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of \$10,000.00 shall be rendered against the Borrower concerning a claim filed with respect to the Mortgaged Property and not discharged within thirty (30) calendar days from the date of final disposition thereof including the exhaustion of all appellate rights; or

- 17.10 **Non-compliance with Loan Documents.** If Borrower defaults, breaches, or commits an event of default that is uncured pursuant to any other Loan Document; or
- 17.11 **Insurance not Maintained.** If Borrower does not keep in full force and effect or any agreement with a contractor of Borrower constructing Improvements or installing Personalty does not require such contractor to keep in full force and effect any insurance coverages required by the Insurance Requirement of this Loan Agreement

Section 18 REMEDIES IN THE EVENT OF DEFAULT. Upon the occurrences of any Event of Default as stated in Section 17 of this Loan Agreement, and subject to the limitations of liability described in Section 19 of this Loan Agreement, AHFC may at any time, and without further notice take any or all of the following action:

- 18.1 If Borrower fails to cure such Event of Default within the time period provided by subsection 22.2 of this Loan Agreement:
- 18.1.1 demand repayment of the Note and Borrower shall remit such amount to AHFC within ten (10) calendar days thereof;
 - 18.1.2 demand payment of the Liquidated Damages and file suit to collect such damages if they are not promptly paid;
 - 18.1.3 cancel, suspend or terminate payment of any funds due Borrower under this Loan Agreement;
 - 18.1.4 cancel, suspend or terminate this Loan Agreement in whole or part;
 - 18.1.5 initiate legal action and foreclose under any deed of trust or security agreement; and
 - 18.1.6 pursue such other measures as may be lawful, including suing for specific performance, for the recovery of damages and for the release or return of all or part of the funds committed herein.
- 18.2 If the Event of Default is material, in addition to the remedies described in subsection 18.1 and any and all other rights, remedies and recourses available to it under any of the Loan Documents or otherwise available at law or in equity:
- 18.2.1 suspend payment of any funds due the Borrower under this Loan Agreement;
 - 18.2.2 suspend the right of the Borrower to incur any additional obligations under this Loan Agreement in whole or part; or
 - 18.2.3 suspend the right of the Borrower to continue any performance under this Loan Agreement in whole or part.
- 18.3 If the AHFC elects to foreclose its lien securing performance of this Loan Agreement, such foreclosure shall not diminish or extinguish the obligation of Borrower to pay Liquidated Damages under this Loan Agreement. The parties specifically agree that payment of Liquidated Damages and foreclosure of the AHFC's liens are two separate and distinct remedies.

Section 19 NONRECOURSE LIABILITY OF THE BORROWER.. Notwithstanding any provision or obligation to the contrary set forth in any other section of this Loan Agreement, (i) the liability for the payment of any amounts by the Borrower Parties under this Loan Agreement, or the Loan Documents, shall be limited to the Mortgaged Property subject to the Security Agreements or to such other security as may from time to time be given or have been given for payment of the Obligations, and any judgment rendered against the Borrower Parties under this Loan Agreement, or the Security Agreements shall be limited to the Mortgaged Property subject to the Security Agreements and any other security so given for satisfaction thereof; and (ii) no deficiency or other personal judgment shall be sought or rendered against the Borrower Parties, their successors, transferees or assigns, in any action or proceeding arising out of this Loan Agreement, the Security Agreements, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing in this Loan Agreement, or the Security Agreements, shall limit the AHFC or Trustee's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the AHFC or Trustee, subject to the non-recourse provisions provided hereunder, or to exercise any right against the Borrower Parties or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Borrower or other Borrower Parties or any intentional damage of the Mortgaged Property is found. Furthermore, the Borrower and other Borrower Parties shall be fully liable for the misapplication of (i) proceeds paid prior to any foreclosure under any and all insurance policies, under which the AHFC is named as insured, by reason of damage, loss or destruction to any portion of the Mortgaged Property, to the full extent of such misapplied proceeds and awards, (ii) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the Mortgaged Property, to the full extent of such misapplied proceeds and awards, (iii) rents, issues, profits and revenues received or applicable to a period prior to foreclosure, and (iv) proceeds from the sale of all or any part of the Mortgaged Property and any other proceeds that, under the terms hereof, should have been paid to the AHFC or Trustee. The limit on the Borrower's liability set forth in this Section 19 shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Obligations hereunder or a release, in whole or in part, or an impairment of the lien and security interest of the Security Agreements, or to preclude the AHFC or Trustee from foreclosing the Security Agreements in case of any default or enforcing any other right of the AHFC or Trustee or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, pledge, grant or assign its assets or collateral as security for, the Obligations under this Loan Agreement or the Loan Documents.

Section 20 HOLD HARMLESS AND INDEMNITY.

- 20.1 **Injuries or Damages.** Borrower shall perform all duties hereunder as an independent contractor and any of its employees performing work required by this Loan Agreement shall be deemed solely employees of Borrower or its subcontractor. Subject to Section 19, Borrower shall save and hold harmless AHFC, its officers, agents, and employees from any and all liability of any nature or kind on account of any claims, audit exceptions, demands, suits, or damages including reasonable attorneys' fees and court costs arising or resulting from injuries or damages sustained by any persons or property resulting in whole or in part from the performance or omissions of any employee, agent, or representative of Borrower.

- 20.2 **Any and All Liability.** Borrower undertakes to indemnify AHFC from any and all liability, loss or damages AHFC may suffer as a result of claims, demands, costs, or judgments against it arising out of the performance of the terms of this Loan Agreement.

Section 21 WAIVER OF NOTICE. The Borrower hereby expressly waive any requirement for presentation, demand, protest, notice of protest or other notice or dishonor of any kind, other than the notice specifically provided for in this Loan Agreement.

Section 22 NOTICES.

- 22.1 All notices, demands and communications provided for herein or made hereunder shall be delivered, or sent by certified mail, return receipt requested, addressed in each case as follows, until some other address shall have been designated in a written notice to the other party hereto given in like manner:

If intended for Borrower: AUSTIN PEOPLETRUST
Attn: Executive Director
2921 E. 17th Street
Austin, Travis County, Texas 78702

If intended for AHFC: AUSTIN HOUSING FINANCE CORPORATION
Attn: Acquisition and Development Program Manager
1000 East Eleventh Street - Suite 200
Austin, Travis County, Texas 78702

and shall be deemed to have been given or made when so delivered or mailed, except as herein otherwise expressly provided. Notification of a change of address shall be delivered to AHFC and Borrower within ten (10) calendar days of such change of address.

- 22.2 Notwithstanding anything herein contained in this Loan Agreement, the Note or the Loan Documents securing same to the contrary, it is agreed that AHFC shall not declare any amounts owing in the Note immediately due and payable if default is made in the payment of any installment of principal or interest thereon, as and when the same is or becomes due, unless any such default has not been fully cured within ten (10) calendar days after notice of such default shall have been given to Borrower. Further, notwithstanding anything herein to the contrary, it is agreed that the AHFC shall not declare any amounts owing on the Note immediately due and payable in the event of a default or breach by Borrower of any of the covenants or obligations herein contained or contained in any instrument securing the payment of the Note or executed in connection herewith other than the covenant to timely pay installments of principal and interest on the Note, unless any such default has not been fully cured within thirty (30) calendar days after notice of such default or breach shall have been given to Borrower; provided, however, if Borrower commences the process of curing such default and notifies AHFC of such action within such thirty day period, or within any subsequent thirty day period, and proceeds diligently and continuously toward fully curing such default, Borrower shall have an additional period, in increments of thirty (30) calendar days each, up to ninety (90) calendar days to fully cure such default. Any such notice

shall be given in writing and shall be deemed to be given three (3) calendar days after the date such notice is deposited, postage prepaid, via certified mail, return receipt requested, in the U.S. mail addressed to Borrower at the address set forth in subsection 22.1 of this Loan Agreement.

Section 23 SURVIVAL OF REPRESENTATIONS COVENANTS AND WARRANTIES. All representations, covenants and warranties contained herein shall survive the execution and delivery of the Loan Documents, any investigation at any time made by the AHFC or on its behalf, and any sale or transfer of the Loan Documents.

Section 24 ENTIRE AGREEMENT, CONSTRUCTION AND AMENDMENT. The Loan Documents constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. These Loan Documents may not be changed, amended or terminated orally but only by agreement in writing and signed by the party against whom enforcement of any change, amendment or termination is sought. Provided the amendment does not increase the Loan amount, the General Manager of AHFC or the General Manager's designee is authorized to execute any amendment to the Loan Documents without further authorization by the Board of Directors of AHFC.

Section 25 FORCE MAJEURE.

- 25.1 The failure of a party to perform its obligations hereunder shall be excused to the extent, and for the period of time, such failure is caused by the occurrence of an event of Force Majeure. Force Majeure shall mean acts and events not within the control of the party claiming suspension, and which that party has been unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include, without limitation: Acts of God; strikes, lockouts or other industrial disputes; inability to obtain material, equipment or labor; epidemics, civil disturbances, acts of domestic or foreign terrorism, wars, riots or insurrections; landslides, lightning, earthquakes, fires, storms, floods or washouts; arrests and restraint of rulers and people; interruptions by government or court orders; present or future orders of any regulatory body having proper jurisdiction and authority; explosions; and breakage or accident to machinery. Force Majeure does not include economic or market conditions which affect a party's cost, but not its ability, to perform.
- 25.2 Nothing contained herein shall be construed to require a party to settle a strike or other labor dispute against its will.
- 25.3 The party invoking Force Majeure shall give prompt, timely and adequate notice to the other party, by facsimile transmission or telephone confirmed promptly thereafter in the manner and at the address set forth in subsection 22.1 of this Loan Agreement, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible.

Section 26 PAYMENT. The Borrower will pay to AHFC at its notice address specified in subsection 22.1 of this Loan Agreement, or at such other address as it may designate in writing, all amounts payable with respect to the Loan Documents.

Section 27 LEGAL COUNSEL. The parties are each represented by legal counsel and have negotiated the Loan Documents, including but not limited to the Liquidated Damages provisions in the Loan Documents, with benefit of such counsel. All parties agree that the Liquidated Damages are fair and reasonable.

Section 28 SUCCESSOR AND ASSIGNS. All covenants, agreements, representations and warranties made in the Loan Documents or in certificates delivered in connection herewith shall, whether so expressed or not, bind and inure to the benefit of the successors and permitted assigns of the Borrower and AHFC.

Section 29 COUNTERPARTS. These Loan Documents may be executed in multiple originals.

Section 30 SEVERABILITY. In the event that any provisions of the Loan Documents or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of such provisions and agreements shall nevertheless remain in full force and effect; and to this end, the provisions of all covenants, conditions and agreements described herein are deemed severable for this purpose.

Section 31 NO WAIVER; REMEDIES CUMULATIVE. No exercise, partial exercise, failure, forbearance or delay on the part of the AHFC in exercising any power or right under the Loan Documents shall operate as a waiver of the power or right, except as specifically provided herein. No remedy conferred in the Loan Documents is intended to be exclusive of any other remedy, and each and every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise, may be sought by the enforcing party.

Section 32 EXECUTION BY ADDITIONAL PARTIES. When any Signatory Party joins in the execution of any of the Loan Documents, said party has done so for the purpose of consenting to all of the terms and conditions in such instrument and agrees by such execution to be bound hereby.

Section 33 SURVIVAL OF OBLIGATIONS. All obligations of Borrower under the Loan Documents, which have not been fully performed, paid and satisfied at the termination of this Loan Agreement, shall survive the termination.

Section 34 ALTERNATIVE DISPUTE RESOLUTION. Initiation of any alternative dispute resolution under this Section 34 shall not relieve either party of its obligations under the Loan Documents regarding matters not disputed. Any agreement reached under this Section 34 shall be enforceable as a settlement agreement in any court having jurisdiction thereof.

- 34.1 If a dispute arises out of or relates to the Loan Documents, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section 34 does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is

to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after the initial written request for a meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to Mediation as described in subsection 34.2. Negotiation as described in this subsection 34.1 may be waived by a written agreement signed by both parties, in which event the parties shall proceed directly to Mediation as described in subsection 34.2.

- 34.2 If the procedure to resolve the dispute through negotiation as described in subsection 34.1 fails or is waived in accordance with subsection 34.1, the parties agree to participate in Mediation in good faith for up to forty-five (45) calendar days immediately following the failure or waiver. The parties agree to pay the fees and expenses of the Mediation equally. In the event either party fails to reach resolution of the dispute through Mediation, then each party is released to pursue any other remedies available to each party.

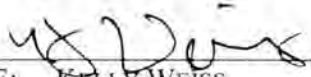
Section 35 GOVERNING LAW. The Loan Documents shall be governed by and interpreted in accordance with the laws of the State of Texas. The Loan Documents shall be fairly construed as though drafted by both parties equally, neither more strongly for nor against any party.

Section 36 PERFORMANCE; VENUE. The Loan Documents shall be performed in Travis County, Texas. Venue shall be in Travis County, Texas.

[Signature page follows.]

EXECUTED AND DELIVERED effective as of the date first above written.

Borrower: AUSTIN PEOPLETRUST

BY: 
NAME: KELLY WEISS
TITLE: Executive Director

AHFC: AUSTIN HOUSING FINANCE CORPORATION

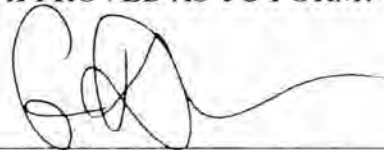
BY: 
NAME: MARC A. OTT
TITLE: General Manager

Attached Exhibits:

- EXHIBIT A - Definitions
- EXHIBIT B - Statement of Work
- EXHIBIT C - Insurance Requirements
- EXHIBIT D - Tax-exempt Bond Covenants

PREPARED IN THE LAW OFFICE OF: City of Austin
Law Department

APPROVED AS TO FORM:



Gregory D. Miller, Assistant City Attorney, City of Austin

Exhibit A

ACQUISITION AND DEVELOPMENT PROGRAM DEFINITIONS

[8701 Westgate Boulevard]

Borrower: AUSTIN COMMUNITY LAND TRUST D/B/A/ AUSTIN PEOPLETRUST

Section 1 Addendum to General Conditions: The provision required to be agreed to between the Borrower and the Project Manager and in the form set forth in an attachment to the Statement of Work and by this reference incorporated in it or as otherwise required by AHFC which sets forth the general conditions required of the Project Manager with respect to the Project.

Section 2 Advance: An advance of Loan Proceeds under the Loan Agreement to the Borrower from the AHFC for the reimbursement of expenditures in connection with the Project.

Section 3 Advances Account: If required by AHFC, the joint account into which Advances (but not Receipts) are deposited and against which checks are drawn as described in the Loan Agreement.

Section 4 Approved Budget: The budget setting forth Borrower's expenses in connection with the Project and set forth in an attachment to the Statement of Work and by this reference incorporated in it, as the same may be amended from time to time with AHFC's prior written consent.

Section 5 Architectural Barrier Laws: Any and all architectural barrier laws including, without limitation, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, P.L. 101-336, the Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq., the Architectural Barrier Act, 23 Tex. Rev. Civ. Stat. art. 9102, all as amended, or any successors thereto.

Section 6 Borrower: The entity identified at the beginning of these definitions and in the first paragraph of the Loan Agreement and any Signatory Party.

Section 7 Borrower Fiscal Year: Each one-year period ending on December 31 of each year during the term of the Loan Agreement, which period shall also be the fiscal year of the Mortgaged Property.

Section 8 CFDA #: [Not applicable to this loan since funds are non-federal.]

Section 9 C.F.R.: The Code of Federal Regulations.

Section 10 Certificate of Occupancy: The certificate issued by the appropriate Governmental Authority authorizing the occupancy of the Mortgaged Property following completion of the work described in the Statement of Work.

Section 11 City Ordinances: Any and all ordinances of the Austin City Code, provided any subsequently enacted ordinance does not unconstitutionally impair the rights of Borrower under the Loan Agreement.

Section 12 Commercial Code: The Uniform Commercial Code, Title 1, Texas Business and Commerce Code, as amended from time to time.

Section 13 Compliance Affidavit: The affidavit in a form acceptable to AHFC, executed by Borrower and evidencing payment of contractors and subcontractors with respect to a Draw Request Form.

Section 14 Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration advanced by the AHFC to the Borrower pursuant to the Loan Agreement, the receipt and sufficiency of which is acknowledged.

Section 15 Construction Monitoring Consultant: The AHFC employee or agent, compensated by AHFC, who will review the Project Manager's records to verify that the work performed by Project Manager is in accordance with the Obligations.

Section 16 Contracts: All of the right, title, and interest of Borrower, including equitable rights, in, to, and under any and all (i) contracts for the purchase of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under such contracts, including all amendments and supplements to and renewals and extensions of such contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from such contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any such contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlement for water, wastewater, and other utility services whether executed, granted, or issued by a private person or a governmental or quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlement with respect to water, wastewater, and other utility services, certificates, licenses, zoning variance, permits, and no-action letters from each governmental authority required: (a) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (b) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) any and all right, title, and interest Borrower may have in any financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchaser; and (iv) all other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases), including but not limited to maintenance and service contracts and management agreements.

Section 17 Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to

bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or similar laws affecting the rights of creditors.

Section 18 Deed of Trust: That certain deed of trust conveying the Mortgaged Property to the Trustee in such form as is acceptable to AHFC, dated even date with the Loan Agreement, incorporated herein by reference, executed by Borrower, and securing the payment of the Indebtedness and the performance and discharge of the Obligations for the benefit of AHFC.

Section 19 Demographic Report: The report required to be filed with AHFC in the form set forth in an attachment to the Statement of Work and by this reference incorporated in it or as otherwise required by AHFC which sets forth the racial, ethnic, income and gender data on Borrower's participants sufficient to report to HUD on the extent to which these categories of persons have participated in, or benefited from, the activities under the Loan Agreement, the Program Guidelines and the Statement of Work.

Section 20 Disposition: Any sale, lease (except as permitted under the Security Agreements), exchange, assignment, conveyance, transfer, trade, or other disposition of all or any portion of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest in Borrower (if Borrower is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

Section 21 Draw Request: Each dated and uniquely-numbered invoice submitted to AHFC by Borrower which requests payment of expenses incurred with respect to the Project as required in the Loan Agreement, authorized by the Approved Budget, and in the form described in an attachment to the Statement of Work and by this reference incorporated in it.

Section 22 Eligible Household: A "low- and moderate-income household" or a "low- and moderate-income person" as defined at 24 C.F.R. §570.3.

Section 23 Environmental Law: Any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Mortgaged Property, including without limitation, the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq.; Resource, Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq.; Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq.; and any corresponding state laws or ordinances including but not limited to the Texas Water Code ("TWC") § 26.001 et seq.; Texas Health & Safety Code ("THSC") § 361.001 et seq.; Texas Solid Waste Disposal Act, Tex. Rev. Civ. Stat. Ann. art. 4477-7; and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time. The terms "release," "removal," "environment," and "disposal" shall have the meanings given such terms in CERCLA, and the term "disposal" shall also have the meaning given it in RCRA; provided that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and

provided further that to the extent the laws of the State of Texas establish a meaning for "release," "removal," "environment," or "disposal," which is broader than that specified in either CERCLA and RCRA, such broader meaning shall apply.

Section 24 Event of Default: Any happening or occurrence described as an "Event of Default" in the Loan Agreement.

Section 25 Federal Requirements: Without limiting the foregoing and to the extent applicable, the term includes, without limitation, applicable provisions of the Tax Law and the Code of Federal Regulations for projects receiving funding from tax-exempt revenue bond proceeds that are authorized by the Tax Law and material compliance in the same manner Borrower would be required to comply if federal funds were funding the Project with:

- 25.1 the employment opportunities for businesses and lower income persons described in 24 C.F.R. Part 135, including requiring each of its subcontractors carrying out work in connection with the Project to comply with, in particular, the assurances set forth at 24 C.F.R. §135.38:
 - 25.1.1 The work to be performed under the Loan Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing;
 - 25.1.2 The Borrower will comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of the Loan Agreement, the parties to the Loan Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations;
 - 25.1.3 The Borrower will send to each labor organization or representative of workers with which the Borrower has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Borrower's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin;
 - 25.1.4 The Borrower will include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the

subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Borrower will not subcontract with any subcontractor where the Borrower has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135;

25.1.5 The Borrower will certify that any vacant employment positions, including training positions, that are filled (1) after the Borrower is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Borrower's obligations under 24 C.F.R. part 135;

25.1.6 Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of the Loan Agreement for default, and debarment or suspension from future HUD assisted contracts; and

25.1.7 With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under the Loan Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to the Loan Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b); and

25.2 the Tax-exempt Bond Covenants.

Section 26 Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, or installed in any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, and including but not limited to any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and lighting, traffic control, waste disposal, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Section 27 Government Authority: Any and all applicable courts, boards, agencies, corporations, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence.

Section 28 Hazardous Substance: Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" pursuant to Section 26.342(11) of TWC; or (b) the definition of "hazardous substance" pursuant to Section 361.003(11) of THSC; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" pursuant to Section 30.003(b) of TWC or "pollutant" pursuant to Section 26.001(13) of TWC; and (x) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment.

Section 29 HUD: The United States Department of Housing and Urban Development.

Section 30 Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied, or imposed upon any property, real, personal or mixed, or upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; (ii) any charges, fees, license payments, or other sums payable for or under any easement, license, or agreement maintained for the benefit of the Mortgaged Property; (iii) water, gas, sewer, electricity, and other utility charges and fees relating to the Mortgaged Property; and (iv) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

Section 31 Improvements: Any and all buildings, covered garages, air conditioning towers, open parking areas, structures and other improvements of any kind or nature, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof; including, without limitation, the construction by Borrower of the improvements described in the Statement of Work.

Section 32 Indebtedness: (i) The principal of, interest on, or other sums evidenced by the Note or other Loan Documents, adjusted by such credits or forgiveness of amounts otherwise due as allowed in the Note or the other Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from AHFC, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured by the Security Agreements (it being contemplated by Borrower and AHFC that such future indebtedness may be incurred); (iv) the Liquidated Damages; and (v) any and all other indebtedness, obligations, and liabilities of any kind or character of Borrower to AHFC, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to AHFC by Borrower as a member of any partnership,

joint venture, trust or other type of business association, or other group, and whether incurred by Borrower as principal, surety, endorser, guarantor, accommodation party or otherwise, and any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions thereof, it being contemplated by Borrower and AHFC that Borrower may hereafter become indebted to AHFC in further sum or sums. Notwithstanding the foregoing provisions of this definition, the Security Agreements shall not secure any such other loan, advance, debt, obligation or liability with respect to which AHFC is by applicable law prohibited from obtaining a lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law.

Section 33 Insurance Requirement: The insurance coverages required to be maintained on the Mortgaged Property in an amount equal to the sum of (a) the amount of the Loan, plus (b) the amount of the Superior Loan, and described in **Exhibit "C"** which is attached to the Loan Agreement and by this reference incorporated in it.

Section 34 Land: All that certain real property or interest therein situated in the County of Travis, Texas, more particularly described in the Deed of Trust, together with all right, title, interest, and privileges of Borrower in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water and water rights, timber and crops pertaining to such real estate; and (iv) all appurtenances and all reversions and remainders in or to such real property.

Section 35 Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, or now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith.

Section 36 Legal Requirements: (i) Any and all present and future judicial decisions, statutes (including Architectural Barrier Laws, Environmental Laws and HUD Law), rulings, rules, regulations, permits, certificates, or ordinances (including City of Austin Ordinances) of any Governmental Authority in any way applicable to Borrower, any Signatory Party or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, construction, alteration, repair, or reconstruction thereof, (ii) any and all covenants, conditions, and restrictions contained in any deeds, other forms of conveyance, or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use, or occupancy thereof, (iii) Borrower's presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust, or other form of business association agreement, (iv) any and all Leases, (v) any and all Contracts, (vi) the Federal Requirements, and (vii) any and all leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Mortgaged Property and to which Borrower may be bound, including, without limiting the generality of the foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in and to the Land and/or the Improvements. Further, any changes in

applicable statutes, rulings, rules, regulations, permitting certificates, or ordinances of any Governmental Authority or the Federal Requirements are automatically incorporated herein without specific reference.

Section 37 Liquidated Damages: The amount of **US ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$150,000.00)** which the parties agree will adequately compensate AHFC for damages it will suffer if an uncured Event of Default occurs.

Section 38 Loan: An amount equal to the principal sum payable in the Note or so much thereof as may be outstanding from time to time pursuant to the Loan Documents which AHFC agrees to lend to Borrower, and the Borrower hereby agrees to borrow from AHFC and repay to, or as further described in the Note receive credit from, AHFC or its assigns.

Section 39 Loan Agreement: That certain Acquisition and Development Program Loan Agreement, entered into by and between Borrower and AHFC, and dated the Effective Date.

Section 40 Loan Documents: The Loan Agreement, the Note, the Security Agreements, the Restrictive Covenant Running with the Land, and any and all other documents now or hereafter executed by Borrower, or any other person or party in connection with the loan evidenced by the Loan Agreement or in connection with the payment of the Indebtedness or the performance or discharge of the Obligations.

Section 41 Loan Proceeds: The Loan amounts paid by AHFC to Borrower in accordance with the terms and conditions of the Loan Agreement.

Section 42 Material Adverse Effect: Any material and adverse effect on (i) the business condition (financial or otherwise), operations, prospects, results of operations, capitalization, liquidity or any properties of Borrower, taken as a whole, (ii) the value of the Mortgaged Property, (iii) the ability of Borrower (or if Borrower is a partnership, joint venture, or other type of business association, of any of the parties comprising Borrower or of the ground lessor if the estate held by Borrower in the Land is a leasehold estate) to pay and perform the Indebtedness and the Obligations, respectively, or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Section 43 Mediation: A forum in which an impartial Mediator facilitates communication between the parties to promote reconciliation, settlement or understanding among them. At a minimum process shall include: 1) conducting an on-site investigation, if the Mediator deems it necessary, appropriate, by the Mediator for fact gathering purposes, 2) a meeting of all parties for the exchange of points of view, and 3) separate meetings between the Mediator and each party to the dispute for the formulation of resolution alternatives.

Section 44 Mediator: A person selected in accordance with the provisions of the Loan Agreement trained in mediation skills. The person selected may also be a person who is trained in the subject matter of the dispute and/or a contract interpretation expert. The parties agree to act in good faith in the selection of the person and to give consideration to qualified individuals nominated by either party. If the parties fail to agree on a person within thirty (30) calendar days of initiation of the Mediation, the Mediator shall be selected by the Travis County Dispute Resolution Center.

Section 45 Minerals: All substances in, on, under, or above the Land which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which may be now or

in the future enjoyed through extraction or removal from the property, including without limitation, oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron and all other metallic substances or ores.

Section 46 Monitors: HUD, Trustee and AHFC, and their respective agents, representatives, and employees.

Section 47 Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, and any interest of Borrower now owned or hereafter acquired in and to the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases and Rents, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations. As used in the Loan Documents, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any portion of the above and all or, where the context permits or requires, any interest therein.

Section 48 Non-Use of Asbestos Affidavit: The affidavits by Project Manager which agrees not to include in the design of the Project any asbestos containing materials as required in the Loan Agreement and in the forms described in an attachment to the Statement of Work and by this reference incorporated in it.

Section 49 Note: That certain promissory note in such form as is acceptable to AHFC, dated even date with the Loan Agreement, incorporated herein by reference, executed by Borrower and, if applicable, guaranteed by one or more guarantors, and payable to the order of AHFC in the principal sum of the Loan, bearing interest as therein specified, containing an attorney's fee clause, interest and principal being payable as therein specified, finally maturing as stated in the note, and secured by, among other things, the Security Agreements; and any and all renewals, modifications, amendments, rearrangements, consolidations, reinstatements, enlargements, or extensions of such promissory note or any promissory note or notes given in renewal, substitution or replacement therefor.

Section 50 Obligations: Any and all of the covenants, conditions, warranties, representations, and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, or any other person or party to the Loan Documents, to AHFC, Trustee, or others as set forth in the Loan Documents, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Section 51 Performance Report: The report required to be filed with the AHFC in the form set forth in an attachment to the Statement of Work and by this reference incorporated in it or as otherwise required by AHFC which sets forth Borrower's performance activities under the Loan Agreement, the Program Guidelines and the Statement of Work for the reporting period.

Section 52 Personalty: All of the right, title, and interest of Borrower in and to (i) furniture, furnishings, equipment, machinery, goods (including, but not limited to, crops, farm products, timber and timber to be cut, and extracted Minerals); (ii) general intangibles, money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letters of credit, inventory; (iii) all cash funds, fees (whether

refundable, returnable or reimbursable), deposits or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any Governmental Authority, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Mortgaged Property, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; and (iv) all other personal property of any kind or character as defined in and subject to the provisions of the Commercial Code (Chapter 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on, or about the Land or the Improvements, and necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

Section 53 Program Guidelines: The Acquisition and Development Program Loan Guidelines approved by the City of Austin effective October 1, 2010, as may be amended from time to time, which describes the program requirements of the Project that is proposed to be financed by proceeds from the Loan

Section 54 Project: The Acquisition of Improvements upon the Land in Austin, Travis County, Texas of a 7.003 acre parcel known as 8701 Westgate Boulevard, located in southwest Austin for the construction of no less than 50 single-family homes to serve families earning less than 80% of the Austin-Round Rock median family income and which is further described in the Statement of Work.

Section 55 Project Manager: The entity with which Borrower enters into a development agreement, or its successor, to develop and oversee the construction of the Project.

Section 56 Receipts: Any receipt of funds (but not Advances) in connection with the Project.

Section 57 Rents: All of the rents, royalties, issues, bonus monies, revenues, income, proceeds, profits, security and other types of deposits (after Borrower acquires title thereto), and other benefits paid or payable by parties to the Leases (other than Borrower) for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying all or any portion of the Mortgaged Property.

Section 58 Restricted Period: The period beginning on the Effective Date and ending on February 28, 2016.

Section 59 Restrictive Covenant Running with the Land: That certain Restrictive Covenant Running with the Land for the Restricted Period and with a Right to Substitute in such form as is acceptable to AHFC, dated even date with the Loan Agreement, incorporated herein by reference, entered into by Borrower, and impressing the Land with certain covenants and restrictions as a result of entering into the Loan Agreement.

Section 60 Security Agreements: The Deed of Trust.

Section 61 Signatory Party: Any signatory to any of the Loan Documents that signs on Borrower's behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

Section 62 Statement of Work: The work required to be completed with respect to the Mortgaged Property which will be funded by the Loan and described in **Exhibit "B"** which is attached to the Loan Agreement and by this reference incorporated in it.

Section 63 Subcontractor Report: The report Project Manager is required to submit to AHFC in connection with the submission of a Draw Request invoice and which is described in an attachment to the Statement of Work and by this reference incorporated in it.

Section 64 Tax Code: The U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

Section 65 Tax-exempt Bond Covenants: The requirements Borrower is required to remain in strict compliance with during the term of the Loan Documents which are described in **Exhibit "D"** which is attached to the Loan Agreement and by this reference incorporated in it.

Section 66 Tax-exempt Bonds: The one or more series of general obligation affordable housing bonds issued or to be issued by the City of Austin, Texas, which was authorized by voted referendum and secured or will be secured by a pledge of ad valorem taxes levied on all taxable property in the City of Austin, Texas, in an amount sufficient to pay the principal and interest on such obligations, the interest on which is excludable from gross income under the Tax Code for federal income tax purposes.

Section 67 Tax Law: The Tax Code and any and all Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal and City of Austin rules and rulings, notices, handbooks, requirements, statutes, regulations or laws governing or relating to such federal law, and any and all successor statutes thereof. It is expressly understood that any changes in these laws are automatically incorporated herein without specific reference.

Section 68 Trustee: The individual described as Trustee in the Deed of Trust.

Section 69 U.S.C.: The United States Code.

EXHIBIT B

STATEMENT OF WORK
Acquisition of Property and
Development of 50 Condominuims
\$1,250,000

A. Borrower: Austin Community Land Trust d/b/a/ Austin PeopleTrust (Borrower)
2921 E. 17th Street
Austin, Travis County, Texas 78702

B. Program: Acquisition and Development Program of the Austin Housing Finance Corporation, using Affordable Housing General Obligation Bond proceeds.

C. Project Description

The loan to Borrower is in the amount of \$1,250,000. The Borrower will acquire the property at 8701 Westgate Boulevard, Austin, Travis County, Texas (the "Property") and contract with a project manager to complete development of no fewer than 50 newly-constructed condominium residences. The Borrower will contract with the Project Manager to construct and sell the homes to low- and moderate-income homebuyers according to the requirements of Section D.

D. Performance Required

1. Product & Property Standard. After acquiring the Property, Borrower will be responsible for the completion of infrastructure improvements for the Project that meets all City of Austin requirements. After site plan approval, the site is to be developed with 50 new condominium residences to be sold to low- and moderate-income buyers.

2. Homebuyer Eligibility

- **Income Targets.** All homes constructed as a result of this Agreement shall be sold to families earning 80% of the Austin-Round Rock, TX Metropolitan Statistical Area (MSA) Median Family Income (MFI) or below at the time the buyer signs the sales contract to buy a home constructed under this agreement.
- **Income Determination Process.**
 - **Income Limits.** Borrower shall use the HUD median family income guidelines in effect at the time the purchase contract is signed. The income limits in effect at the time of this Loan Agreement are included as **Attachment 1** to the Statement of Work. Borrower shall request the updated HUD income guidelines from AHFC in March of each year.
 - **Calculation and Documentation Method.** Borrower will calculate annual gross income in accordance with 24 CFR Part 5. The Part 5 income calculation takes into account gross income and assets. The HUD website provides a helpful explanation and an on-line calculator that computes annual gross income using 24 CFR Part 5 at <http://www.hud.gov/offices/cpd/affordablehousing/training/calculator/calculator.cfm>. The printed information from HUD's web site is included as **Attachment 2**.
 - **Timing.** Borrower shall certify that the household is income-eligible at the time the sales contract is signed with the homebuyer.
 - **Affidavit.** As part of the income certification process, Borrower shall require that each prospective homebuyer complete and sign an **Income Eligibility Requirements and Applicant Affidavit** in the form of **Attachment 3**, certifying the accuracy of the annual household income, including the incomes of all individuals who will occupy the home.

In addition, it requires the buyers to acknowledge their awareness of the restrictions that apply both to the purchase of the home and to the resale of the home within the Restricted Affordability Period.

- **Principal Residence.** The homebuyer must intend to reside in the home as his or her principal dwelling within sixty days from the date the home is conveyed to the Eligible Household.
3. **Approved Budget & Eligible Use of Funds.** Funds drawn on this contract shall not exceed \$1,250,000, and shall be drawn according to the detailed budget summarized below:

<u>Source of Funds</u>	<u>Amount</u>	<u>Use of Funds</u>	<u>Amount</u>
G. O. Bond	\$1,250,000	Acquisition of Property	\$ 900,000
		Completion of Development	\$ 350,000
Total	\$1,250,000	Total	\$1,250,000

4. **S.M.A.R.T. Housing™.** The homes constructed under this Agreement must receive S.M.A.R.T. Housing certification and comply with the S.M.A.R.T. Housing standards. Borrower must supply to AHFC the letter indicating that the home has received S.M.A.R.T. Housing certification, prior to reimbursing Borrower for any costs related to the Property. AHFC may also inspect the Property or request other documentation to ensure compliance with the S.M.A.R.T. housing standards at any time during the term of the Loan Agreement.
5. **AHFC Lien During Construction.** Borrower shall file for record in the Real Property Records of Travis County, Texas, the **Deed of Trust Securing Obligation** in a form satisfactory to the Austin Housing Finance Corporation, securing AHFC's lien on the Property. Upon the sale of a home to an eligible homebuyer, AHFC shall release the portion of its lien associated with the parcel, provided Borrower has met the terms of the Loan Agreement, including having each homebuyer sign a Restrictive Covenant Running with the Land, securing the applicable resale obligation.
8. **Draw Process.** When submitting any draw requests under this Agreement, **Borrower shall submit a dated, uniquely numbered invoice**, along with a report from the Project Manager for the development showing what type of work has been completed, the percentage of work completed, and the amount being requested. A ten percent (10%) retainage amount should be figured into the pay request amount by the Project Manager. **AHFC shall hold all retainage amounts on the project until all necessary subdivision approvals have been obtained by the Borrower or its Project Manager.**
9. **Accessibility/Nondiscrimination Language** Borrower must include the required **Accessibility/Nondiscrimination Language**, provided in **Attachment 4** of this Statement of Work, and in all materials related to the development and sale of the homes developed under this Agreement. These materials include public notices, advertisements, program applications, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees.
10. **Project Timeline.** The Borrower shall be available for project meetings with AHFC staff, to be held as often as once monthly, in order to evaluate project progress relative to the Timeline (**Attachment 5**). At every scheduled project meeting, Borrower shall provide a summary of project status and a brief explanation for any delays relative to the Project Timeline.

11. **Homebuyer Closing Process:** At least 7 business days prior to closing on the sale of a home, Borrower shall submit to AHFC all items listed in the **Closing Checklist (Attachment 6)** to this Statement of Work, including a **"Section 3" Contractor Certification** form (**Attachment 7**). All items must be received and approved prior to AHFC providing the partial release of its lien.
12. **"Section 3."** Per the G. O. Bond Program Guidelines, contracts or loan agreements of \$200,000 or more and that are assisted with GO Bond proceeds must comply with HUD "Section 3" requirements throughout the development of the project. Therefore:

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing. The section 3 requirements include:

1. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
2. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
3. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
4. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
5. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
6. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to

comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

List of Attachments:

- Attachment 1 – Current HUD Income Limits**
- Attachment 2 – HUD Income Calculation Information**
- Attachment 3 – Income Eligibility Requirement Packet**
- Attachment 4 – Required Accessibility/Nondiscrimination Language**
- Attachment 5 – Project Timeline**
- Attachment 6 – Closing Checklist**
- Attachment 7 – Section 3 Contractor Certification**

The City of Austin and the Austin Housing Finance Corporation are committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance.

The City of Austin and the Austin Housing Finance Corporation do not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities. Dolores Gonzalez has been designated as the City's ADA/Section 504 Coordinator. Her office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your ADA/Section 504 rights, please call the ADA/Section 504 Coordinator at 974-3256 (voice) or 974-2445 (TTY).

This publication is available in alternative formats. Please call 974-3100 (voice) or 974-3102 (TDD) for assistance.

La City of Austin y la Austin Housing Finance Corporation está comprometida a cumplir con los requisitos de la Ley Americanos con Incapacidades (ADA) y con la Sección 504 de la Ley de Rehabilitación de 1973, y sus enmiendas. Bajo petición expresa, se harán las modificaciones que procedan y se proveerá igualdad de acceso a la información. Para asistencia, por favor llame al 974-3100 (voz) o 974-3102 (TDD).

La City of Austin y la Austin Housing Finance Corporation no permite discriminación sobre la base de incapacidad en la admisión o acceso para, o en el tratamiento o empleo, en sus programas y actividades. Dolores González ha sido designada como la Coordinadora de la ADA/ Sección 504 de la Ciudad de Austin. Su oficina está localizada en 505 Barton Springs Road, Suite 600. Preguntas o motivos de queja sobre sus derechos bajo la ADA/ Sección 504 deben ser dirigidas a la Coordinadora de la ADA/ Sección 504 al 974-3256 (voz) o 974-2445 (TTY).

Esta publicación está disponible en formatos alternativos. Para asistencia, por favor llame al 974-3100 (voz) o 974-3102 (TDD).

CITY OF AUSTIN / AUSTIN HOUSING FINANCE CORPORATION

Income Limits by Household Size* 5/10

FY 2010 Median Family Income
Austin, Travis County, Texas
\$73,800 (4-person household)

Austin-Round Rock MSA

Household Size	1	2	3	4	5	6	7	8
<i>30% Median Income (30% HUD)</i>	15,550	17,750	19,950	22,150	23,950	25,700	27,500	29,250
<i>40% Median Income</i>	20,680	23,640	28,600	29,520	31,920	34,280	36,640	39,000
<i>50% Median Income (very low HUD)</i>	25,850	29,550	33,250	36,900	39,900	42,850	45,800	48,750
<i>60% Median Income</i>	31,020	35,460	39,900	44,280	47,880	51,420	54,960	58,500
<i>80% Median Income (low HUD)</i>	41,350	47,250	53,150	59,050	63,800	68,500	73,250	77,950

Rent Limits by Unit Size* HOME Rents - 5/10 Fair Market Rents - 5/10 HTC Rents - 5/10

Unit Size	Eff.	1BD	2BD	3BD	4BD	5BD
<i>HOME:</i>						
Low HOME Rent	646	692	831	960	1,071	1,181
High HOME Rent	688	783	954	1,213	1,334	1,453
Fair Market Rent	688	783	954	1,284	1,462	1,681
<i>HTC:</i>						
30% Rent Limit	387	415	498	576	642	709
40% Rent Limit	517	554	665	768	857	945
50% Rent Limit	646	692	831	960	1,071	1,181
60% Rent Limit	775	831	997	1,152	1,285	1,418
65% Rent Limit	840	900	1,080	1,248	1,392	1,536
80% Rent Limit	1,034	1,108	1,330	1,536	1,714	1,891

*Consistent with Texas Department of Housing and Community Affairs – effective 5/2010.

ATT # 2

Complete Guide Removed From
CONTRACT FILE, BUT IS AVAILABLE
- *Seungyeon*

Technical Guide for Determining Income and Allowances for the HOME Program

Third Edition

January 2005

U.S. Department of Housing and Urban Development
Community Planning and Development
Office of Affordable Housing Programs
HOME Model Series

Prepared for the Office of Affordable Housing Programs by ICF Consulting, Inc.



ATTACHMENT 3

Income Eligibility Requirement Packet & Applicant Affidavit

Applicants must meet income eligibility requirements. An applicant's gross annual income may not exceed 80% of HUD's median family income for the City of Austin, as adjusted for the household size.

The Austin Housing Finance Corporation (AHFC) will calculate annual gross income in accordance with 24 CFR Part 5. The Part 5 income calculation takes into account gross income and assets. The HUD website provides a helpful explanation and an on-line calculator that computes annual gross income using 24 CFR Part 5:

<http://www.hud.gov/offices/cpd/affordablehousing/training/calculator/calculator.cfm>

Applicants must complete the Income Eligibility Questionnaire (page 2) and attach all supporting documentation as indicated in the Income Eligibility Documentation Requirements Checklist (page 3). Applicants must also complete the Applicant Affidavit (pages 4 and 5).

Income Eligibility Requirements as of May 14, 2010:

Family Size	Maximum Family Income
1 Person	\$41,350
2	\$47,250
3	\$53,150
4	\$59,050
5	\$63,800
6	\$68,500
7	\$73,250
8	\$77,950

* Income amounts are 80% of Median Family Income for the City of Austin.



Income Eligibility Questionnaire

If any of the answers are "YES," please attach the required documentation indicated by the corresponding number on the Income Eligibility Documentation Checklist (page 3).

1. Has any member of the Household filed tax returns? ☐ Yes ☐ No
2. Is any member of the household employed and receives wages, salaries, overtime pay, commissions, fees, tips, bonuses, or other compensation for personal services? ☐ Yes ☐ No
3. Does any member of the household have checking account(s)? ☐ Yes ☐ No
4. Does any member of the household have savings account(s)? ☐ Yes ☐ No
5. Does any member of the household have stocks, bonds, Treasury Bills, CDs, brokerage accounts, or money market accounts? ☐ Yes ☐ No
6. Does any member of the household receive periodic payments from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, or similar types of periodic payments? ☐ Yes ☐ No
7. Does any member of the household receive payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, or severance pay? ☐ Yes ☐ No
8. Does any member of the household receive Welfare Assistance? ☐ Yes ☐ No
9. Does any member of the household receive periodic and determinable allowances (such as child support, spousal support/alimony, or regular contributions or gifts from persons not residing in the household)? ☐ Yes ☐ No
10. Does any member of the household own real estate or other capital investments? ☐ Yes ☐ No
11. Does any member of the household have IRA, Keogh, retirement, or pension fund accounts? ☐ Yes ☐ No
12. Does any member of the household have life insurance policies available before death (whole or universal life insurance)? ☐ Yes ☐ No
13. Does any member of the household have a revocable trust available? ☐ Yes ☐ No
14. Does any member of the household hold personal property as an investment? ☐ Yes ☐ No
15. Has any member of the household received a lump sum payment or in receipt of inheritances, capital gains, lottery winnings, victim's restitution, or insurance settlements? ☐ Yes ☐ No
16. Does any member of the household hold mortgages or deeds of trust? ☐ Yes ☐ No
17. Does any member of the household have any interest or receive payments from Indian trust lands? ☐ Yes ☐ No



Income Eligibility Documentation Checklist

PLEASE PROVIDE THE FOLLOWING INFORMATION, FOR ALL HOUSEHOLD MEMBERS, IF APPLICABLE:

1. Copy of the **most recent year's tax return** (with W-2s) for all Household Members who filed separately.
2. Copies of **paycheck stubs for the most recent 3 months**, or other documentation of wages, salary, etc.
3. Copies of **the last 6 months of all checking account statements**.
4. A copy of **the most recent savings account statement**.
5. A copy of **the most recent brokerage or individual account statement** for stocks, bonds, Treasury Bills, certificates of deposits, and money market accounts.
6. **Proof of amount of periodic payments** received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. Do not include deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
7. **Payments in lieu of earnings**, such as unemployment and disability compensation, worker's compensation and severance pay. Do not include lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses.
8. **Proof of amount of and type of Welfare Assistance**.
9. **Proof of amount of periodic and determinable allowances**, such as child support payments, spousal support/alimony payments, and regular contributions or gifts received from persons not residing in the dwelling.
10. **Inventory of Real Estate owned** indicating address, value, equity percentage, and proof of indebtedness, if any.
11. A copy of **the most recent IRA, Keogh, retirement, and pension fund account statements**.
12. Copies of **life insurance policies whose funds are available to household member before death** (e.g., surrender value or a whole life or universal life policy). Indicate which household member is the beneficiary.
13. Proof of **cash value of revocable trusts available to applicant**.
14. **Value of personal property held as an investment** such as gems, jewelry, coin collections, antique cars, etc.
15. **Value of lump sum or one time receipts**, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
16. Copies of **mortgages or deeds of trust** held by the applicant.
17. **Proof of and amount of interest in Indian trust lands**.



Applicant Affidavit

WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

Property Address: _____

I/We hereby submit to the Austin Housing Finance Corporation the attached information and documentation required to determine my/my family's eligibility for the new home ownership program operated by Austin PeopleTrust or its affiliates. I certify that:

1. the house I am/we are purchasing will be my/our primary residence;
2. all income eligibility information and documentation is true, correct, and complete; and
3. the following persons listed will be occupying the home after closing:

NAME	AGE	RELATIONSHIP	GROSS ANNUAL INCOME
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Applicant (original signature) date

Co-Applicant (original signature) date



Applicant Demographic Information

Austin PeopleTrust, or its affiliate organizations, the City of Austin and the Austin Housing Finance Corporation do not discriminate against any applicant based on the information that you provide below or nor will it be used when considering your application. The information that is requested below is a federal requirement when any funds are provided to a project by the U.S. Department of Housing and Urban Development (HUD).

Demographic Information for Applicant

ETHNICITY

(select **one**)

- ☐ Hispanic or Latino
☐ Not Hispanic or Latino

RACE

(please select **only one**)

- ☐ American Indian or Alaskan Native
☐ Asian
☐ Black or African-American
☐ Native Hawaiian or Other Pacific Islander
☐ White
☐ American Indian or Alaskan Native AND White
☐ Asian AND White
☐ Black or African-American AND White
☐ American Indian or Alaskan Native AND Black or African-American
☐ Other multiple race combinations (please describe):

Gender: ☐ Male ☐ Female
Disabled: ☐ Yes ☐ No

Demographic Information for Co-Applicant

ETHNICITY

(select **one**)

- ☐ Hispanic or Latino
☐ Not Hispanic or Latino

RACE

(please select **only one**)

- ☐ American Indian or Alaskan Native
☐ Asian
☐ Black or African-American
☐ Native Hawaiian or Other Pacific Islander
☐ White
☐ American Indian or Alaskan Native AND White
☐ Asian AND White
☐ Black or African-American AND White
☐ American Indian or Alaskan Native AND Black or African-American
☐ Other multiple race combinations (please describe):

Gender: ☐ Male ☐ Female
Disabled: ☐ Yes ☐ No

Required Accessibility/Nondiscrimination Language
PeopleTrust
\$1,250,000 Loan

The following language must be added to all public notices, advertisements, program applications, program guidelines, program information brochures or packages, and any other material containing general information that is made available to participants, beneficiaries, applicants, or employees that relates to housing developed with the assistance of CHDO funds:

Austin PeopleTrust, as a contractor of the City of Austin / Austin Housing Finance Corporation is committed to compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as amended. Reasonable modifications and equal access to communications will be provided upon request. Please call 479-6275 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance.

Austin PeopleTrust, the City of Austin, and the Austin Housing Finance Corporation do not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs and activities. DOLORES GONZALEZ has been designated as the City's Section 504/ADA Coordinator. Her office is located at 505 Barton Springs Road, Suite 600. If you have any questions or complaints regarding your Section 504/ADA rights, please call the Section 504/ADA Coordinator at 974-3256 (voice) or 974-2445 (TTY).

This publication is available in alternative formats. Please call 479-6275 (voice) or Relay Texas at 1-800-735-2989 (TDD) for assistance

When advertising or providing a notice requirement regarding a meeting, the following language needs to be added to the end of the first paragraph:

For a sign language interpreter, please call 479-6275 (voice) or Relay Texas at 1-800-735-2989 (TDD) at least 4-5 days in advance.

Spanish:

La City of Austin y la Austin Housing Finance Corporation y Austin PeopleTrust está comprometida a cumplir con los requisitos de la Ley Americanos con Incapacidades (ADA) y con la Sección 504 de la Ley de Rehabilitación de 1973, y sus enmiendas. Bajo petición expresa, se harán las modificaciones que procedan y se proveerá igualdad de acceso a la información. Para asistencia, por favor llame al 974-3100 (voz) o 974-3102 (TDD).

La City of Austin y la Austin Housing Finance Corporation no permite discriminación sobre la base de incapacidad en la admisión o acceso para, o en el tratamiento o empleo, en sus programas y actividades. DOLORES GONZÁLEZ ha sido designada como la Coordinadora de la ADA/ Sección 504 de la Ciudad de Austin. Su oficina está localizada en 505 Barton Springs Road, Suite 600. Preguntas o motivos de queja sobre sus derechos bajo la ADA/ Sección 504 deben ser dirigidas a la Coordinadora de la ADA/ Sección 504 al 974-3256 (voz) o 974-2445 (TTY).

ESTA PUBLICACIÓN ESTÁ DISPONIBLE EN FORMATOS ALTERNATIVOS. PARA ASISTENCIA, POR FAVOR LLAME AL 974-3100 (VOZ) O 974-3102 (TDD).

Attachment 5

Project Timeline
\$1,250,000
PeopleTrust Westgate II

Tasks/Stages	Date
Acquisition of Property	February 2011
Securing and Packaging Project Financing	April 2011
Construction Specifications and Cost Estimates	April 2011
Construction Bids	April 2011
Construction Start	May 2011
Anticipated Draws	February 2011; March 2011; April 2011; May 2011; June 2011; July 2011; August 2011; September 2011; October 2011; November 2011; December 2011; January 2012
End/Completion of Construction	April 2012
Open for sales	October 2011
All homes conveyed to Low-Mod buyers	December 2012

**PeopleTrust
Closing Checklist**

Address: _____

Buyer: _____

The items listed below are needed in order to close the sale. Please submit the items identified at least 7 days prior to closing.

Legal Documents

_____ Copy of the executed sales contract

_____ Copy of the Title Commitment

_____ Request Restrictive Covenant from AHFC,
(Release of lien contingent on homebuyer signing Restrictive Covenant)

Client Information

_____ Copies of all documents required as indicated by Buyer's responses on page 2 and 3 of the
Income Eligibility Requirement Package & Applicant Affidavit

_____ Original signed Applicant Affidavit (Pages 4 and 5 of the Income Eligibility Requirement
Package & Applicant Affidavit).

_____ If Homebuyer is currently legally divorced, please provide a copy of the divorce decree.

House Documents

_____ Copy of Appraisal (first two pages)

_____ Copy of Survey

_____ Copy of Certificate of Occupancy (CO)

_____ Copy of Green Builder Certificate

Section 3 Contractor Certification

The work to be performed for PeopleTrust or its General Contractor is subject to Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, hereafter called "Section 3."

Section 3 requires that, to the greatest extent feasible, opportunities for training and employment are given to low- or moderate-income *residents* residing in the project area (Travis County) and that a percentage of contracts or subcontracts for work in connection with the project are awarded to "Section 3" *business concerns* located in the project area.

- **You or your employees are considered "Section 3" residents if:** 1) residing in Travis County and having an annual household income equal to or less than the amounts shown in the table below; **OR** 2) currently living in public housing.

Number of Persons In Household	1	2	3	4	5	6	7	8
Annual Household Income	\$41,350	\$47,250	\$53,150	\$59,050	\$63,800	\$68,500	\$73,250	\$77,950

- A "Section 3" business is a business owned 51% or more by "Section 3" residents.

Please complete the following:

This is to certify that _____
(Business Name)

(check one)

<input type="checkbox"/>	...is a "Section 3" Business (which means 51 percent or more owned by "Section 3" residents)
<input type="checkbox"/>	...employs "Section 3" residents (which means that 30% of your full-time employees are currently "Section 3" residents, or who were "Section 3" residents within three years of the date of first employment with your business)
<input type="checkbox"/>	...has a commitment to subcontract more than 25% of the dollar amount of all subcontracts to "Section 3" businesses.

Signature

Title

Date

Insurance Requirement

[8701 Westgate Blvd.]

Agreement: **Acquisition and Development Program Loan Agreement**

Borrower: **AUSTIN PEOPLETRUST D/B/A PEOPLETRUST**

Borrower, from the Date until termination of the Agreement, shall carry insurance in the following types and amounts for the duration of the Agreement:

- 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:
 - 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 in favor of the City (Form CG 2010);
 - 1.1.6 Waiver of Subrogation endorsement in favor of the City (Form CG 2404); and
 - 1.1.7 30-Day Notice of Cancellation endorsement in favor of the City (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).
- 1.3 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 2 If the insurance policies are written for less than the amounts specified in 0 of these Insurance Requirements, Borrower 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 3 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 4 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 5 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 6 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:

6.1 Name the City at the following notice address:

City of Austin
Attn: A & D Program Manager
1000 East Eleventh Street - Suite 200,
Austin, Texas 78702

6.2 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 7 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 8 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 9 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 10 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 11 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.

Exhibit D

ACQUISITION AND DEVELOPMENT PROGRAM LOAN AGREEMENT – Bond Covenants

(AUSTIN PEOPLETRUST D/B/A PEOPLETRUST)

AHFC and Borrower acknowledge that AHFC derived the proceeds used to fund this Loan from the issuance of Tax-exempt Bonds and in connection therewith AHFC has made certain covenants, representations and provisions to assure compliance with the Tax Code relating to the Tax-exempt Bonds. Borrower agrees to take such action to ensure, or to refrain from such action which would adversely affect the ability of AHFC to satisfy such covenants, representations and provisions. Moreover, in the event that the Tax Code is amended, or regulations or rulings are hereafter promulgated which impose additional requirements applicable to the Tax-exempt Bonds or in the event that it is determined by a court of applicable jurisdiction that the Loan Documents fail to comply with the terms of the Tax Code, then AHFC and Borrower agree to renegotiate, in good faith, to amend the Loan Documents, refinance the Note or both in order to comply with the additional requirements to the extent necessary to preserve the exemption from federal income taxation of interest on the Tax-exempt Bonds. In addition (and not by way of limitation), Borrower agrees to comply in all respects with the Tax-exempt Bond Covenants set forth below.

As used herein, the term "Tax Code" shall mean the U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof. As used herein, the term "Tax-exempt Bonds" shall mean one or more series of general obligation affordable housing bonds issued or to be issued by the City of Austin, Texas, which was authorized by voted referendum and secured or will be secured by a pledge of ad valorem taxes levied on all taxable property in the City of Austin, Texas, in an amount sufficient to pay the principal and interest on such obligations, the interest on which is excludable from gross income under the Tax Code for federal income tax purposes.

Borrower and its assigns shall cause the following to be done:

1. to use no portion of the proceeds to acquire, construct or rehabilitate property located outside the jurisdiction of Austin, Texas;
2. to refrain from taking any action that would result in the Note being "federally guaranteed" within the meaning of section 149(b) of the Tax Code;
3. to refrain from using any portion of the proceeds of the Note, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to invest at a yield that is materially higher than the identified yield of the Tax-exempt Bonds, other than investments acquired with:
 - 3.1 proceeds of the Note invested for a reasonable temporary period as set forth in the commitment letter of AHFC until such proceeds are needed for the purpose for which the bonds are issued,
 - 3.2 amounts invested in a debt service fund for the Note which are formally pledged to the payment of the Note within one year of the date of deposit, and
 - 3.3 amounts, if any, deposited to a reserve fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Note; and

4. to pay to AHFC, if needed and at the direction of AHFC, any amount received by Borrower from the investment of the Note proceeds which amount exceeds the identified yield on the Tax-exempt Bonds so that AHFC can comply with its obligation under the covenants made in connection with the issuance of the Tax-exempt Bonds to rebate such "Excess Earnings" to the United States of America as required by section 148(f) of the Tax Code.



City of Austin

P.O. Box 1088, Austin, TX 78767-1088
www.cityofaustin.org/housing

MEMO

Neighborhood Housing and Community Development Office
Sherry Cardino, Environmental Compliance

(512) 974-3153, Fax: (512) 974-3112, sherry.cardino@ci.austin.tx.us

Date: January 31, 2011
To: David Potter
Subject: Request for Environmental Review
Address: 8701 Westgate Boulevard, Austin, Texas 78745
Project: **Westgate II Subdivision:** Funds will be used for the acquisition of approximately 7 acres of land for development into 50 condominium units to be sold to income eligible buyers earning at or below 80% MFI
Developer: Austin PeopleTrust
Funding: General Obligation Bonds (G.O. Bonds), (Non-Federal Funds)

Based on your request for Environmental Review for the project stated above, no federal monies shall be utilized. Therefore the Responsible Entity [the City of Austin] will not be subject to Environmental Review Regulations stated within 24 CFR Part 58.1 Purpose & Applicability. Proposed activities cease to become a 'federally-funded activity' and the provisions of 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities will no longer be applicable.

The project is not subject to 24 CFR Part 58.1, a recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the use of non-federal funds to carry out proposed activities. Activities may proceed at any time.



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[Directory](#) | [Departments](#) | [FAQ](#) | [Links](#) | [Site Map](#) | [Help](#) | [Contact Us](#)[2010 Meetings](#) ▶ [Austin Housing Finance Corporation \(AHFC\) Board of Directors](#) ▶ **December 9, 2010**

Meeting of the Austin Housing Finance Corporation (AHFC) Board of Directors

December 9, 2010

Meeting Agenda



20101209, AHFC Agenda, PDF, 83kb

Approved Meeting Minutes

The minutes for the regular meeting of December 9, 2010 were approved on the 13th day of January 2011 on Board Member Morrison's motion, Board Member Riley's second on a 7-0 vote.



20101209, AHFC Minutes, PDF, 148kb

Video



Meeting Video, December 9, 2010

Closed Caption Transcript



Closed Caption Log, December 9, 2010, HTML

Agenda Items - December 09, 2010

Scroll down to view each item on the meeting agenda or click on a number to go directly to that item.

[AHFC001](#) [AHFC002](#) [AHFC003](#) [AHFC004](#) [AHFC005](#) [AHFC006](#) [AHFC007](#) [AHFC008](#) [AHFC009](#) [AHFC010](#)

Item AHFC001 - December 9, 2010

Approve the minutes of the October 14, 2010 Board meeting of the Austin Housing Finance Corporation.

The minutes for the Austin Housing Finance Corporation meeting of October 14, 2010 were approved on consent on Board Member Spelman's motion, Vice President Martinez' second on a 7-0 vote.

Work Papers and Other Backup Documentation



20101209-AHFC001, Agenda Backup, PDF, 48kb




Top

Item AHFC002 - December 9, 2010

Approve the negotiation and execution of an Acquisition and Development Program loan to AUSTIN PEOPLETRUST in an amount not to exceed \$1,250,000, to assist with the acquisition and development of approximately 7.0 undeveloped acres of land, located at the corner of Westgate Boulevard and Cameron Loop, to facilitate construction of 50 new single-family attached condominium homes to be sold to low- and moderate-income buyers.

The motion authorizing the negotiation and execution of an acquisition and development program loan to Austin Peopletrust was approved on consent on Board Member Spelman's motion, Vice President Martinez' second on a 7-0 vote.

Work Papers and Other Backup Documentation

 20101209-AHFC002, Agenda Backup, PDF, 92kb

Top


Item AHFC003 - December 9, 2010

Approve the negotiation and execution of a loan to MARSHALL AFFORDABLE PARTNERS, LTD., Montgomery, Alabama, or its affiliate, in an amount not to exceed \$2,500,000, under the Rental Housing Development Assistance Program, to acquire and rehabilitate 100 affordable units of multi-family housing located at the Marshall Apartments, 1401 East 12th Street (40 units) and 1157 Salina Street (60 units).

The motion authorizing the negotiation and execution of a loan to Marshall Affordable Partners, LTD or its affiliate was approved on Vice President Martinez' motion, Board Member Cole's second on a 7-0 vote.

Work Papers and Other Backup Documentation

 20101209-AHFC003, Agenda Backup, PDF, 116kb

 20101209-AHFC003, Agenda Late Backup, PDF, 86kb


Top

Item AHFC004 - December 9, 2010

Approve an inducement resolution for private activity bond financing to be submitted to the Texas Bond Review Board for an allocation of up to \$6 million in private activity volume cap multi-family non-recourse bonds for the acquisition and rehabilitation of the Marshall Apartments, 1401 East 12th Street and 1157 Salina Street by the bond financing applicant, MARSHALL AFFORDABLE PARTNERS, LTD., Montgomery, Alabama, or its affiliate.

Resolution No. 20101209-AHFC004 was approved on Vice President Martinez' motion, Board Member Cole's second on a 7-0 vote.

Executed Resolution

 20101209-AHFC004, Resolution, PDF, 192kb

Integrated Disbursement and Information System

Setup Request Form

IDIS
NUMBER

A399

DAVID POTTER

Requestor

1

CP Project ID

GO BOND

2010

CP Year

Matrix: 01

Reg. Cit: 570.201(a)

Grantee ID

ACQUISITION OF REAL PROPERTY

PEOPLETTRUST - WESTGATE II - 8701 WES

Activity Name

8701 WESTGATE BLVD

Location of Project

Austin

TX

78745

Project Description

Acquisition and development of 50 affordable singl

CDBG National Objectiv

LMH

NO

Will the project help prevent homelessness?

LOW/MOD HOUSING BENEFIT

NO

Will the project help the homeless?

NO

Will the project help those with HIV or AIDS

NO

Will the project primarily help people w/disabilities

NO

Will the project generate program income?

Date Funds Obligated

C

Environmental Assessment Cod

Subrecipient_ID

NO

Will another entity have access to the activity?

Funding

G

\$1,250,000.00

Total Estimated Funding

HOME ONLY

Proposed Units

Type

Number

Year

HOUSING UNITS

10

50

2009

NO

A. Is this a CHDO Loan

5

B. Type of Activity

0

C. Total Units in Project

0

D. HOME Funded Units

NO

E. Multi-Family Units?

2

F. Tenure Type

NO

G. Is this a Loan Guaranty?

1

H. Type of Ownership

I. Total Project Funding

I

J. Property Ownership

K. Owner Name and
Address



Excluded Parties List System

Search Results Excluded By

Firm, Entity, or Vessel : Austin Community Land Trust

Firm, Entity, or Vessel : Austin PeopleTrust

Firm, Entity, or Vessel : PeopleTrust

Firm, Entity, or Vessel : PeopleFund

Firm, Entity, or Vessel : Gary Lindner

Firm, Entity, or Vessel : Kelly Weiss

as of 04-Apr-2011 3:47 PM EDT

Your search returned no results.



**Neighborhood Housing
Acquisition and Development Program Loan Agreement
April 4, 2011**

PeopleFund dba People Trust

I have reviewed the work statement and certificate of insurance for this contract. My findings are as follows:

General Liability

Limits- ok
Additional Insured - ok
Waiver of Subrogation - ok
Thirty Day Notice of Cancellation - ok

Auto Liability

Limits - ok
Additional Insured - ok
Waiver of Subrogation - ok
Thirty Day Notice of Cancellation - ok

Workers Compensation

Not required

Professional Liability – Directors & Officers Insurance

Limits - ok




Property – Not yet provided

Proof of insurance shall be provided at the time of contracts for construction services.

All coverages and endorsements are indicated as required by contract. Risk Management approves the evidence of coverage as submitted.

Carol Vance
Sr. Risk Analyst
City of Austin Risk Management
512/974-3264 phone
512/974-3411 fax

View All (1 of 1) : Document submitted successfully - Pending Approval**RQS - 7200- 11041300804- 1- New- Pending**[Action Menu](#)[Load Vendor List](#) [Ship/Bill To Lines](#)**Vendor List Vendor**

	Line Number	Vendor Customer	Legal Name
  	1	VS0000027048	AUSTIN COMMUNITY LAND TRUST
Insert New Line Insert Copied Line		First Prev Go To Next Last	

**▼Vendor**

Vendor Customer :	<input type="text" value="VS0000027048"/>	Vendor Contact ID :	<input type="text" value="CT011"/>
Legal Name :	<input type="text" value="AUSTIN COMMUNITY LAND TRUST"/>		
Alias/DBA :	<input type="text" value="AUSTIN PEOPLETRUST"/>	Vendor Contact Name :	<input type="text" value="Kelly Weiss"/>
Address Code :	<input type="text" value="AR011"/>	Vendor Contact Phone :	<input type="text" value="512-472-8087"/>
	<input type="text" value="2921 E 17th St Bldg D Ste 2"/>	Vendor Contact Phone Ext. :	<input type="text"/>
	<input type="text" value="Austin"/>	Vendor Contact Email :	<input type="text" value="kelly@peoplefund.org"/>
	<input type="text" value="TX"/>		
	<input type="text" value="78702"/>		
	<input type="text" value="US"/>		
	<input type="text" value="Fax : 512-472-8191"/>		
	<input type="text" value="Fax Extension :"/>		
	<input type="text" value="Web Address http:// :"/>		

►Additional Information[Top](#)

Print	Approve	Reject	Close
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[Menu](#)

View All (1 of 1) : Document submitted successfully - Pending Approval

RQS - 7200- 11041300804- 1- New- Pending

[Action Menu](#)[Load Vendor List](#) [Ship/Bill To Lines](#)**General Information**

Document Name :	<input type="text"/>	Accounting Profile :	<input type="text"/>
Record Date :	<input type="text"/>	PCard ID :	<input type="text"/>
Budget FY :	<input type="text"/>	PCard Exp :	<input type="text"/>
Fiscal Year :	<input type="text"/>	Procurement Folder :	<input type="text"/>
Period :	<input type="text"/>	Procurement Type ID :	<input type="text" value="1"/>
Document Description :	<input type="text" value="Acquisition of vacant land"/>	Tracking Number :	<input type="text"/>
Document Short Description :	<input type="text"/>	Warehouse :	<input type="text"/>
Actual Amount :	\$339,595.18	Total of Header Attachments :	<input type="text" value="0"/>
Closed Amount :	\$0.00	Total of All Attachments :	<input type="text" value="0"/>
Closed Date :	<input type="text"/>		
Open Amount :	\$339,595.18		
Referenced Amount :	\$0.00		

Contact

Issuer ID :	<input type="text" value="lindsey"/>	Team ID :	<input type="text"/>
	Linda Lindsey	Buyer :	<input type="text"/>
	974-3179		
	linda.lindsey@ci.austin.tx.us		
Requestor ID :	<input type="text" value="cardinos"/>		
Name :	<input type="text" value="Sherry Cardino"/>		
Phone Number :	<input type="text" value="974-3153"/>		
Email :	<input type="text" value="sherry.cardino@ci.austin"/>		

Extended Description

Extended Description :	<input type="text" value="Requesting approval for the agreement between Austin Community Land Trust Alias/DBA Austin PeopleTrust and Austin Housing Finance Corporation. The purpose of the contract is for Acquisition of vacant land for the development of Westgate Subdivision for the construction of 50 new condominiums to be sold to income-eligible"/>
------------------------	---

Additional Information**Default Shipping/Billing**

Document Information**▼Reporting**Reporting 1 : >

Loans (Treasury Only)

Reporting 2 : >

No Sustainability Impact

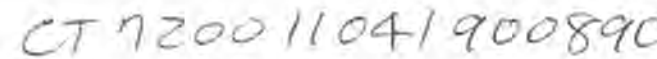
Reporting 3 : >

NOT APPLICABLE

[Top](#)

Post	Approve	Reject	Close
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[Menu](#)



PAGE NO: 1

REFERENCE NUMBER: RQS 7200 11041300804

P.O DATE: 04/19/11

SHIP TO
SEE COMMODITY LINE FOR
SHIP TO INFORMATION

B
I
L
L

T
O

SEE COMMODITY LINE FOR
SHIP TO INFORMATION

Requestor: Sherry Cardino, 974-3153
Buyer: See Solicitation, 512-974-2500

THE CITY'S STANDARD PURCHASE TERMS AND CONDITIONS (T & Cs) ARE HEREBY INCORPORATED INTO THIS PURCHASE ORDER (PO) BY REFERENCE, WITH THE SAME FORCE AND EFFECT AS IF THEY WERE INCORPORATED IN FULL TEXT. THE FULL TEXT VERSIONS OF THE T&Cs ARE AVAILABLE AT <http://www.ci.austin.tx.us/purchase/standard.htm> OR CALL THE PURCHASING OFFICE AT (512) 974-2500. PLEASE INCLUDE ABOVE REFERENCE NUMBER ON ALL PACKAGES, DELIVERIES AND INVOICES.

Commodity:	94660	Loan Administration	\$.00	\$ 339,595.18
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Ship To: Nhcd Housing & Comm Developmen
1000 E. 11TH ST, STE 200

Austin				TX 78702-1945								
Line	Fund	Dept	Unit	Objt	Actv	Func	Rept	Task	Ord	Prog	Prog Period	Line Amount
1	8605	7207	0450	6830			2804					\$ 339,595.18

Order Total: \$ 339,595.18

1. SEND ORIGINAL INVOICE WITH DUPLICATE COPY TO THE CITY DEPARTMENT TO WHICH THE GOOD(S) WERE DELIVERED.
2. SHIPPING INSTRUCTIONS: F.O.B. DESTINATION UNLESS OTHERWISE SPECIFIED.
3. NO FEDERAL OR STATE SALES TAX SHALL BE INCLUDED IN PRICES BILLED. LIMITED SALES TAX #74-6000085.

Authorized Agent for City Manager

By acceptance of this purchase order, you agree to comply with the terms and conditions incorporated herein by reference and made a part of this order.

Date _____