

## ***LOAN AGREEMENT***

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**Borrower:**            ***HERITAGE GUILD OF COLLIN COUNTY, TEXAS***  
P.O. Box 583  
McKinney, Texas 75070

**Lender:**              ***McKINNEY COMMUNITY DEVELOPMENT CORPORATION***  
5900 S. Lake Forest Boulevard, Ste. 110  
McKinney, Texas 75070

This **LOAN AGREEMENT** is between the ***HERITAGE GUILD OF COLLIN COUNTY, TEXAS***, a Texas non-profit corporation, including its successors and assigns (hereinafter referred to as the "Borrower"), and the ***McKINNEY COMMUNITY DEVELOPMENT CORPORATION***, a Texas non-profit corporation (hereinafter referred to as the "Lender"), is made and executed on the following recitals, terms and conditions.

**WHEREAS**, Borrower submitted Application No. 19-07 to the Lender requesting **Fifty-Nine Thousand Five Hundred and No/100 Dollars \$59,500.00** from the Lender, for improvements to Dixie's Store (\$12,500); PA/Speaker System (\$15,000); purchase and installation of porch awnings (\$2,000); purchase and installation of artificial turf in Wedding Garden (\$5,000); improvements to the Johnson House (\$25,000) at Chestnut Square; and

**WHEREAS**, Lender considered Borrower's Application No. 19-07 at its meeting held on **May 23, 2019** at which time the Lender agreed to approve funding in the amount of **Fifty-Nine Thousand Five Hundred and No/100 Dollars (\$59,500.00)** for improvements to Dixie's Store (\$12,500); PA/Speaker System (\$15,000); purchase and installation of porch awnings (\$2,000); purchase and installation of artificial turf in Wedding Garden (\$5,000); improvements to the Johnson House (\$25,000) at Chestnut Square; and

**WHEREAS**, All such loans and financial assistance from Lender to Borrower pursuant to this Agreement is referred to as the "Loan"; and

**WHEREAS**, Borrower understands and agrees that: (a) in granting this Loan, Lender is relying upon Borrower's representations, warranties, and agreements, as set forth and provided for in this Agreement; (b) the granting of this Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (c) this Loan shall be and shall remain subject to the terms and conditions set forth in this Agreement; and

**WHEREAS**, Section 505.152 of the Texas Local Government Code, in pertinent part, defines the term "project" to mean "land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section"; and

- (g) **Note.** The word “Note” means the non-interest bearing Promissory Note of even date herewith executed by and between the parties hereto in the principal amount of **Fifty-Nine Thousand Five Hundred and No/100 Dollars (\$59,500.00)** due upon demand and payable on or before **June 30, 2020**.
- (h) **Property.** The word “Property” refers to Chestnut Square generally located at 315 S. Chestnut Street, McKinney, Texas 75069.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean the expenditures consistent with Section 505.152 of the Act: **Fifty-Nine Thousand Five Hundred and No/100 Dollars (\$59,500.00)** for improvements to Dixie’s Store (\$12,500); PA/Speaker System (\$15,000); purchase and installation of porch awnings (\$2,000); purchase and installation of artificial turf in Wedding Garden (\$5,000); improvements to the Johnson House (\$25,000) at Chestnut Square; made by the Borrower.

#### **SECTION 4. AFFIRMATIVE COVENANTS OF BORROWER.**

Borrower covenants and agrees with Lender that, while this Agreement is in effect, Borrower shall comply with the following terms and conditions:

- (a) **Reimbursement for Qualified Expenditures Made to Property.** Upon execution and effective date of this Agreement, Borrower shall be entitled to reimbursement up to **Fifty-Nine Thousand Five Hundred and No/100 Dollars (\$59,500.00)** for Qualified Expenditures made to the Property. Borrower covenants and agrees to provide to Lender receipts, invoices, or other documentation which is in a form acceptable to the Lender for said Qualified Expenditures by **June 30, 2020**.
- (b) **Operate Facility.** Borrower covenants and agrees to use the Property continuously as a tourist and entertainment facility through the Term of this Agreement, and for a period of no less than ten (10) years following the Term of this Agreement.
- (c) **Compliance Letters.** Borrower shall provide the Lender with copies of invoices, receipts or other documentation which is in a form acceptable to the Lender for the expenditures authorized and required by Section 4(a) above. Borrower shall provide Lender with compliance letters upon making the expenditures authorized by Section 4(a), such letters to be attached to the submitted invoices, receipts, or other documentation required by this subsection. In the compliance letter, Borrower shall represent and warrant that the expenditures were made in compliance with this Agreement by and between Borrower and Lender.
- (d) **Additional Assurances.** Borrower agrees to make, execute and deliver to Lender such other promissory notes, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence the Note.
- (e) **Performance.** Borrower agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements between Borrower and Lender.

- (c) **Reimbursement for Qualified Expenditures.** The failure of the Lender to disburse Loan proceeds to Borrower for Qualified Expenditures made to the Property consistent with Section 5(a) of this Agreement is an Event of Default.
- (d) **False Statements.** Any warranty, representation, or statement made or furnished to Lender by or on behalf of Borrower under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished Agreement is an Event of Default.
- (e) **Insolvency.** Borrower's insolvency, appointment of receiver for any part of Borrower's property, any assignment for the benefit of creditors of Borrower, any type of creditor workout for Borrower, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower Agreement is an Event of Default.
- (f) **Other Defaults.** Failure of Borrower to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement is an Event of Default.

## **SECTION 9. EFFECT OF AN EVENT OF DEFAULT.**

If any Event of Default shall occur, all commitments of Lender under this Agreement immediately will terminate, (including any obligation to make Loan advances), **and the remaining outstanding balance of the Loan will become immediately due and payable**, at the option of Lender, all without notice of any kind to Borrower, except for an Event of Default described in the "Insolvency" subsection above, in which case such acceleration shall be automatic and not optional.

## **SECTION 10. INDEMNIFICATION.**

**Borrower shall indemnify, save, and hold harmless Lender, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of Lender's loan advances by Borrower or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which Lender is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of Lender or Borrower to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that Borrower shall have no obligation under this Section to Lender with respect to any of the foregoing arising out of the gross negligence or willful misconduct of Lender or the breach by Lender of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify Borrower, but the failure to so promptly notify Borrower shall not affect Borrower's obligations under this Section unless such failure materially prejudices Borrower's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Borrower in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of**

- (g) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (h) **Successors and Assigns.** This Agreement is with the Borrower, and shall not survive any sale, merger, change of control or similar transaction involving the Borrower, without the written consent of the Borrower. The Borrower shall provide the Lender written notice of any assignment, sale, merger, change of control or similar transaction pursuant to this Agreement as soon as possible, and in no event not later than thirty (30) days following such event.
- (i) **Survival.** All warranties, representations, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement shall be considered to have been relied upon by Lender and will survive the making of this Loan.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** The Borrower certifies that Borrower does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Borrower is convicted of a violation under 8 U.S.C. § 1324a(f), Borrower shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120<sup>th</sup> day after the date the Lender notifies Borrower of the violation.

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