

## ***LOAN AGREEMENT***

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**Borrower:** ***HEARD NATURAL SCIENCE MUSEUM AND WILDLIFE SANCTUARY, INC.***  
1 Nature Place  
McKinney, Texas 75069

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

This **LOAN AGREEMENT** between the ***HEARD NATURAL SCIENCE MUSEUM AND WILDLIFE SANCTUARY, INC.***, a Texas non-profit corporation (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 an application No. 16-02 to the Lender requesting **Fifty Thousand and No/100 Dollars (\$50,000.00)** from the Lender, for building modifications, electrical and equipment requirements for installation of a permanent exhibit, Magic Planet, at the Museum; and

**WHEREAS**, Lender considered Borrower's application No. 16-02 at its meeting held on March 24, 2016, at which time the Lender agreed to approve funding in the amount of **Fifty Thousand and No/100 Dollars (\$50,000.00)** for building modifications, electrical and equipment requirements for installation of a permanent exhibit, Magic Planet, at the Museum; (hereinafter referred to as "Qualified Expenditures"); and

**WHEREAS**, All such loans and financial accommodations, together with all future loans and financial accommodations from Lender to Borrower, are referred to in this Agreement individually as the "Loan" and collectively as the "Loans;" and

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

**WHEREAS**, the Board of Directors of the Lender has determined the financial assistance provided to Borrower to fund certain Qualified Expenditures at the Heard Natural Science Museum and Wildlife Sanctuary meets the definition of "project" as that term is defined by Section 505.152 of the Texas Local Government Code.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender and the Borrower agree as follows:

#### **SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

#### **SECTION 2. TERM.**

This Agreement shall be effective as of **March 24, 2016**, and shall continue thereafter until all obligations of Borrower to Lender have been performed in full, or on **April 30, 2017**, whichever is later, unless terminated sooner under the provisions hereof.

#### **SECTION 3. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- (a) **Agreement.** The word "Agreement" means this Loan Agreement, together with all exhibits and schedules attached to this Loan Agreement from time to time, if any.
- (b) **Borrower.** The word "Borrower" means the Heard Natural Science Museum and Wildlife Sanctuary, Inc., a Texas non-profit corporation, its successors and assigns, and whose address for the purposes of this Agreement is 1 Nature Place, McKinney, Texas 75069.
- (c) **Event of Default.** The words "Event of Default" mean and include any of the Events of Default set forth below in the section entitled "Events of Default."
- (d) **Lender.** The word "Lender" means the McKinney Community Development Corporation, a Type B economic development corporation, and a Texas non-profit corporation, its successors and assigns, and whose address for the purposes of this Agreement is 5900 S. Lake Forest Drive, Suite 110, McKinney, Texas 75070.

- (e) **Loan.** The word “Loan” or “Loans” means and includes any and all loans and financial accommodations from Lender to Borrower, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described in this Agreement and described on any exhibit or schedule attached to this Agreement.
- (f) **Museum.** The word “Museum” means the Heard Natural Science Museum and Wildlife Sanctuary located at 1 Nature Place, McKinney, Texas 75069.
- (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 Thousand and No/100 Dollars (\$50,000.00)** due upon demand and payable on or before **April 30, 2017**.
- (h) **Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures made at the Museum for building modifications, electrical and equipment requirements for installation of a permanent exhibit, Magic Planet, and otherwise consistent with Section 505.152 of the Texas Local Government Code, as amended, and the application considered and approved by the Lender at its meeting held on **March 24, 2016**.
- (i) **Related Documents.** The words “Related Documents” mean and include without limitation all promissory notes, loan agreements, and all other instruments and documents, whether now or hereafter existing, executed in connection with Borrower’s Indebtedness to Lender.

#### **SECTION 4. AFFIRMATIVE COVENANTS.**

The parties covenant and agree that while this Agreement is in effect, it shall comply with the following terms and conditions:

- (a) **Qualified Expenditure Reimbursement.** Upon execution and effective date of this Agreement, Borrower shall submit to the Lender invoices, receipts or other documentation reasonably acceptable to the Lender for Qualified Expenditures in a reimbursable amount not to exceed **Fifty Thousand and No/100 Dollars (\$50,000.00)** by **April 30, 2017**. The Lender shall reimburse Borrower for Qualified Expenditures in an amount not to exceed **Fifty Thousand and No/100 Dollars (\$50,000.00)** within thirty (30) days following the submission of said invoices, receipts or other documentation.
- (b) **Operate Museum.** Borrower covenants and agrees to keep the Museum open to the general public as a tourist and entertainment facility during the Term of this Agreement. Borrower also covenants and agrees to keep the Magic Planet exhibit open to the general public for a period of no less than ten (10) years subsequent to the Term of this Agreement.
- (c) **Compliance Letters.** Borrower shall provide the Lender with copies of invoices and/or receipts 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 or receipts 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 and towards the Qualified Expenditures.

- (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 loan agreement.
- (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.

## **SECTION 5. CESSATION OF ADVANCES OR DISBURSEMENTS.**

If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to advance or disburse Loan proceeds if: (i) Borrower becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

## **SECTION 6. LOAN FORGIVENESS.**

Notwithstanding the provisions hereof and the obligations contained in the Note executed incident hereto, any advance or disbursement hereunder shall be forgiven and not be payable to Lender upon verification of costs for Qualified Expenditures equaling the amount of the advance or disbursement, and completion of affirmative covenants provided in Section 4 of this Agreement. **However, any advance or disbursement, not previously forgiven under the foregoing, shall not be forgiven in an Event of Default under Section 7 and Section 8 herein, and shall become immediately due and payable in accordance with this Agreement and the Note.**

## **SECTION 7. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **Qualified Expenditure Reimbursement.** Failure of Borrower to submit to Lender invoices and or receipts for the Qualified Expenditures consistent with Section 4(a) of this Agreement is an Event of Default.
- (b) **Reimbursement for Qualified Expenditures.** Failure of the Lender to disburse financial assistance to the Borrower for Qualified Expenditures consistent with Section 4(a) of this Agreement is an Event of Default.
- (c) **Operate Museum.** Failure of Borrower to operate the Museum consistent with Section 4(b) 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 or the Related Documents that is false or misleading in any material respect, either now or at the time made or furnished 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 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 or in any of the Related Documents, or failure of Borrower to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement between Lender and Borrower is an Event of Default.

## **SECTION 8. 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 9. 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 Indemnatee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Borrower to participate in such contest. Any Indemnatee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Borrower may be liable for payment of indemnity hereunder shall give Borrower written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Borrower's concurrence thereto.

#### **SECTION 10. BORROWER'S REPRESENTATIONS.**

By execution hereof, the signators warrant and represent that they have the requisite authority to execute this Agreement and the Related Documents and that the representations made herein, and in the Related Documents, are true and accurate in all respects.

#### **SECTION 11. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement has been delivered to Lender and accepted by Lender in the State of Texas. Borrower agrees to submit to the jurisdiction of the courts of Collin County, State of Texas, and that venue is proper in said County. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and applicable Federal laws.
- (c) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (d) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown on Page 1 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.


- (e) **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.
- (f) **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 the Loan and delivery to Lender of the Related Documents, regardless of any investigation made by Lender or on Lender's behalf.
- (g) **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.

**[The Remainder of this Page Intentionally Left Blank]**

**BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS LOAN AGREEMENT, AND BORROWER AGREES TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF MARCH 24, 2016.**

**BORROWER:**

***HEARD NATURAL SCIENCE MUSEUM AND  
WILDLIFE SANCTUARY, INC.,***  
a Texas non-profit corporation,

By:   
SY SHAHID  
Executive Director

Date Signed: 4/27/16

**LENDER:**

***McKINNEY COMMUNITY  
DEVELOPMENT CORPORATION,***  
a Texas non-profit corporation,

By:   
SCOTT ELLIOTT  
Chairman

Date Signed: \_\_\_\_\_



## **PROMISSORY NOTE**

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**\$50,000.00**

**March 24, 2016**  
("Effective Date")

**HEARD NATURAL SCIENCE MUSEUM AND WILDLIFE SANCTUARY, INC.**, a Texas non-profit corporation (including its successors, hereinafter referred to as the "Maker"), For Value Received, promises and agrees to pay unto the order of **McKINNEY COMMUNITY DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter referred to as the "Payee"), at its corporate offices located at 5900 S. Lake Forest Drive, Suite 110, McKinney, Texas 75070, in lawful money of the United States of America, the principal sum of **Fifty Thousand and No/100 Dollars (\$50,000.00)**, or so much as shall be advanced, said sums to accrue no interest.

**TERMS OF PAYMENT:** The principal of this Note is due on demand, but in any event, on or before **April 30, 2017**. Notwithstanding the foregoing, advances, and repayments hereunder shall be made in accordance with the terms and provisions of that certain Loan Agreement executed as of even date herewith between Maker and Payee (hereinafter referred to as the "Loan Agreement"), and such advances shall be forgiven according to said Loan Agreement after such advance if Maker is not then in default under the Loan Agreement. As such, Payee shall make no demand on principal under this Note except for upon occurrence of an Event of Default as that term is defined in the Loan Agreement.

ALL PAST due principal shall bear interest until paid at a rate not to exceed prime plus 4%.

THIS LOAN is a line of credit but is not revolving. As already stated, advances made hereunder are also governed by the Loan Agreement of even date herewith.

IF DEFAULT is made in the payment of any interest or principal hereof, as and when the same is or becomes due, or if an Event of Default occurs under any instrument securing the payment hereof or executed in connection herewith, including the Loan Agreement, the owner and holder of this Note may declare all sums owing hereon due and payable within thirty (30) days of the date of notice. If default is made in the payment of this Note at maturity (regardless of how its maturity may be brought about), and the same is placed in the hands of an attorney for collection, or suit is filed hereon, or proceedings are had in bankruptcy, probate, receivership or other judicial proceedings for the establishment or collection of any amount called for hereunder, or any amount payable or to be payable hereunder is collected through any such proceedings, Maker agrees and is also to pay to the owner and holder of this Note a reasonable amount as attorneys' or collection fees.

Except as provided herein and in the Loan Agreement, upon an Event of Default (as that term is defined in the Loan Agreement) only, MAKER, co-makers, signers, permitted assigns,

sureties, endorsers and guarantors, and each of them, expressly waive demand and presentment for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, notice of intent to accelerate the maturity hereof, notice of the acceleration of the maturity hereof, bringing of suit and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith; and are and shall be jointly, severally, directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for hereunder or in connection with any right, lien, interest or property at any and all times had or existing as security for any amount called for hereunder.

IT IS the intention of Maker and Payee to conform strictly to applicable usury laws. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the State of Texas and the laws of the United States of America), then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this Note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Note or under any of the other aforesaid agreements or otherwise in connection with this Note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be canceled automatically and, if theretofore paid, shall be credited on the Note by the holder hereof (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker); and (ii) in the event that maturity of this Note is accelerated by reason of an election by the holder hereof resulting from any Event of Default, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this Note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on this Note (or, to the extent that this Note shall have been or would thereby be paid in full, refunded to the Maker).

THIS NOTE has been executed and delivered in and shall be construed in accordance with and governed by the laws of the State of Texas and of the United States of America, except that V.T.C.A. Finance Code, Chapter 346, as amended (which regulates certain revolving credit loan accounts and revolving tri-party accounts) shall not apply hereto. Payee's address for notice is 5900 S. Lake Forest Drive, Suite 110, McKinney, TX 75070.

**[The Remainder of this Page Intentionally Left Blank]**

In witness whereof, Maker has executed this Note to be effective as of the Effective Date.

**MAKER:**

***HEARD NATURAL SCIENCE MUSEUM AND  
WILDLIFE SANCTUARY, INC.,***  
a Texas non-profit corporation,

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

  
SY SHAHID  
Executive Director

Date Signed: \_\_\_\_\_

