

RESOLUTION NO. 17-089

**A RESOLUTION CONFIRMING THE MOTION MADE BY THE
PORT ARTHUR CITY COUNCIL, WHICH AUTHORIZED THE
CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION TO ENTER INTO A
CONDITIONAL LOAN/GRANT AGREEMENT WITH LEGACY
COMMUNITY DEVELOPMENT CORPORATION NOT TO
EXCEED \$30,000, FUNDS AVAILABLE IN PAEDC ACCOUNT
#120-1429-582.59-05**

WHEREAS, the citizens of Port Arthur voted by a ballot proposition in the May, 2016 general election to authorize the use of economic development funds to assist qualified Port Arthur residents to purchase single family residential homes in a target area in downtown Port Arthur; and

WHEREAS, it is estimated the first single family residential home would cost \$130,000 to construct, and the bank would finance the single family residential home at \$100,000 or less because there are no surrounding properties of value in the downtown Port Arthur area to compare; and

WHEREAS, the resident may not be able to afford the mortgage in the beginning and would need additional out-of-pocket money to finance the construction of the single family residential home; and

WHEREAS, the PAEDC Board of Directors has agreed to provide Legacy Community Development Corporation a loan in the amount of thirty thousand (\$30,000) dollars to assist in the construction of the first single family residential home to be sold to a qualifying low to moderate income buyer on the land; and

WHEREAS, Legacy Community Development Corporation has agreed to provide as security for the repayment of the loan a Deed of Trust and execute a Promissory Note; and

WHEREAS, Legacy Community Development Corporation covenants and agrees that it will utilize the loan only for the purposes of expenditures that are for development or construction of the improvements for construction of the first residential single family home and may not be utilized for any development fees, construction management fees, closing expenses or costs.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR, TEXAS:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That pursuant to a Motion made by the Port Arthur City Council on March 28, 2017, the PAEDC is herein authorized to enter into a Conditional Loan/Grant Agreement with Legacy Community Development Corporation in an amount not to exceed thirty thousand (\$30,000) dollars to assist in the development and expansion of affordable housing as described by 42 USC 12945 (Exhibit "A").

Section 3. That a copy of the caption of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 11th day of April A.D., 2017, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Freeman; Mayor Pro Tem Scott;


Councilmembers Hamilton, Albright, Richard Lewis, Swati and Moses

NOES:

None



Derrick Freeman, Mayor

ATTEST:



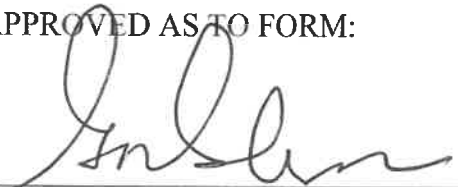
Sherri Bellard, City Secretary

APPROVED:




Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizen, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:



Rosie Vela, Interim Finance Director

EXHIBIT “A”

CONDITIONAL LOAN/GRANT AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of the ____ day of _____, 2017, by and between TENDER LOVING CARE CENTER FOR CHILDREN d/b/a/ LEGACY COMMUNITY DEVELOPMENT CORPORATION a Texas non-profit corporation, with an address of 3025 Plaza Circle, Port Arthur, Texas 77642 ("Borrower") and CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION, a Texas corporation, with an office at 501 Procter, Suite 100, Port Arthur, Texas 77640 ("Lender").

WITNESSETH

A. The citizens of the City of Port Arthur voted by a ballot proposition in the May, 2016 general election to authorize the use of economic development funds pursuant to Section 505.153 of the Local Government Code to assist in the development and expansion of affordable housing as described by 42 U.S.C. 12745.

B. Borrower is a Texas non-profit corporation whose corporate purposes include assisting low to moderate income families to overcome challenges with housing stability.

C. Borrower has been certified by the City of Port Arthur to serve as a Community Housing Development Organization and has provided the City of Port Arthur's Housing and CDBG Programs with homebuyer certification courses since 2011.

D. Borrower is the owner of a fee interest in certain property in Port Arthur, Texas, which parcel of ground is more particularly described in **Exhibit A** (the "Fee Interest") attached hereto and made a part hereof (the "Land").

E. Lender has agreed to provide to Borrower, a Loan as hereinafter described to be used to assist in the construction of appurtenant site improvements and facilities on the Land as more fully described in **Exhibit B** attached hereto and made a part hereof (the "Improvements"). The Land and Improvements are hereinafter collectively referred to herein as the "Project". The Improvements shall be constructed in accordance with all required municipal, State or Federal requirements.

F. Pursuant to this Agreement, Lender will lend to Borrower funds to facilitate the construction of the Project in consideration of the Borrower satisfying the terms and conditions of this Agreement, which if satisfied, shall convert the Loan (as hereinafter defined) to a grant in accordance with the authorities provided to the Lender pursuant to Sections 501.007, Texas Local Government Code.

G. Lender is prepared to lend Borrower the sum of THIRTY THOUSAND DOLLARS AND NO/100 (\$30,000.00) to assist in the construction of the Improvements. The proceeds of the Loan will be funded by Lender through its Development Fund and as stated in accordance with Section 501.007, Texas Local Government Code. Such sum shall be evidenced by that certain Conditional Commercial Promissory Note of even date herewith (the "Note") from Borrower to Lender.

H. Borrower has agreed to provide as security for the repayment of the loan, a Deed of Trust and execute a Promissory Note as more fully described in Section 2.3 of this Agreement.

I. Borrower is operating pursuant to its Certificate of Incorporation under File No. 800744071, Office of the Secretary of State for the State of Texas, as filed in said office on December 1, 2006 and in accordance with the Bylaws of the corporation as duly adopted, and as the Borrower is further authorized to operate in accordance with its non-profit status as provided through Department of Treasury Internal Revenue Service "Governing Documents") as hereinafter described.

J. Borrower covenants and agrees that it may utilize the Loan only for the purposes of expenditures that are for development or construction of the Improvements and may not be utilized for any development fees, construction management fees, closing expenses or costs.

K. This Agreement shall set forth the terms and conditions pursuant to which the Lender shall disburse the Loan.

NOW, THEREFORE, the parties hereto, in accordance with the Recitals set forth above and the covenants, conditions, and agreements set forth below, intending to be legally bound hereby, and said Recitals being incorporated as fully set forth below in the this Agreement, and in consideration of the covenants hereinafter contained agree as follows:

ARTICLE I. DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings indicated below. Where there are blanks to be completed in any meaning and the words "None" or "Not applicable" or "N/A" are inserted, requirements involving the application of that term are of no effect to the extent that such term would be applicable.

Advance Request - See Section 7.1(a).

Budgeted Category - See Section 5.2.

Budgeted Loan Amount - See Section 5.2.

Building Contracts - means all construction management contracts, general and/or other construction contracts, architects' contracts, if any, and interior design contracts, if any, which Borrower now has or will hereafter enter into in connection with the construction of the Project.

Commitment for Title Insurance - See Section 4.4(a).

Completion Date - May 30, 2017.

Contractor - means the Borrower which shall serve in order to achieve cost savings on the Project. Contractor shall have the right to engage a Primary Sub-Contractor (as defined herein).

Cost Breakdown - means the itemized breakdown of costs which sets forth, under the separate columns entitled and hereinafter sometimes referred to as, the "Estimated Cost Amount" and the "Budgeted Loan Amount".

Deed of Trust- means the deed of trust of even date herewith given by Borrower as grantor to Lender as beneficiary and attached hereto.

Default Rate - means that rate specified as the Default Rate in the Note.

Estimated Cost Amount - See Section 5.2.

Event of Default - See Section 8.

Fee Interest - means the tract of land located in Port Arthur, Jefferson County, Texas, and which is more particularly described in **Exhibit A** hereto.

Governing Documents - means the articles of incorporation and by-laws of Borrower.

Hazardous Substances - means those elements and compounds which are designated as such in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601 (14) and any other hazardous substances as that term may be further defined in applicable federal, state or local laws.

Hazardous Waste - means any hazardous waste, residual waste, solid waste or other waste as those terms are defined in applicable federal, state or local laws.

Improvements - means the Improvements referred to and described in **Exhibit B**.

Land - means the land referred to and described in **Exhibit A**.

Loan - means the sums to be loaned as set forth in Recital F above.

Loan Documents - See Section 2.3.

Note - means the promissory note of even date herewith given by Borrower as maker to Lender as payee referred to in Recital F above.

Plans and Specifications - means the Plans and Specifications referred to in Recital D above.

Primary Sub-Contractor – means Project - means the Land and Improvements as set forth in Recitals B and D above.

Project Costs - means any item or cost intended or required to be incurred to complete the Improvements and to carry the Project and to service the Loan for the period from the initial advance hereunder until the Completion Date.

Survey - means the survey required by Section 4.4(f) herein.

Title Insurer - See Section 4.4(a).

ARTICLE II. THE LOAN

2.1 Purpose and Amount.

(a) Lender, pursuant to Article VII of this Agreement and in accordance with the itemized Cost Breakdown attached hereto as **Exhibit C** and made a part hereof. The Loan shall be advanced by Lender and used upon the conditions and subject to the provisions hereinafter set forth. Borrower or its duly assigned agent or trustee will transfer the Loan proceeds in accordance with the Cost Breakdown.

(b) Additional funding for the construction of the Development is being provided as follows:

(i) Borrower Equity in the amount of \$100,000.

2.2 Note. Borrower has executed the Note in the amount of the Loan; however, if the covenants, conditions, and agreements contained herein are satisfied Lender shall cancel the Loan and provide the \$30,000.00 in proceeds of said Loan as a grant.

2.3 Security for Loan. As security for the Loan as evidenced by the Promissory Note, and for Borrower's obligations thereunder and hereunder, Borrower shall deliver, or cause to be delivered, to Lender at or before closing hereunder, the following documents (which documents, together with the Note, this Agreement and all other documents relating to the Loan, are collectively called the "Loan Documents"):

(a) Deed of Trust. The document attached.

(b) Commitment for Title Insurance. The document described in Section 4.4(a).

ARTICLE III. BORROWER'S REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties. Borrower specifically represents and warrants to Lender that as of the date of this Agreement and as of the date of each advance of the Loan:

(a) Borrower (i) has full power and authority to engage in all the transactions contemplated by this Agreement and (ii) has full power, authority and legal right to execute and deliver, and to comply with its obligations under the Loan Documents, which documents constitute the legally binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms.

(h) The construction of the Improvements funded through proceeds of the Loan shall be performed in conformity with all applicable statutes, laws, codes, rules, regulations, resolutions and ordinances.

(i) All construction, if any, heretofore performed on the Improvements has been performed within the perimeter of the Land in accordance with all applicable governmental authorities, and in accordance with any restrictive covenants applicable thereto. The anticipated use of the Improvements complies with applicable zoning ordinances and all regulations affecting the Project and all governmental requirements for such use as of the date of this Agreement have been satisfied.

(j) There is no default on the part of Borrower under this Agreement, the Note, Deed of Trust, or any of the other Loan Documents, and no event has occurred and is continuing which with notice or the passage of time would constitute a default thereunder.

(k) The Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

(l) Borrower has a fee interest to the land, free and clear of all mortgages, pledges, liens, security interests or other encumbrances.

3.2 Survival of Representations and Warranties. All of the representations and warranties of Borrower as set forth in this Agreement shall survive the making of this Agreement and the full repayment of the Loan and shall be continuing. Each and every Advance Request submitted by Borrower for funds under this Agreement shall constitute a new and independent representation and warranty to Lender with respect to all of the matters set forth in this Agreement, as of the date of such application.

ARTICLE IV. CONDITIONS PRECEDENT

The obligations of Lender to make the initial advance to Borrower and all additional advances under the Loan is subject to each of the following conditions precedent:

4.1 Representations and Warranties. The representations, covenants and warranties made by Borrower in this Agreement shall be true and correct in all material respects on and as of the date of each such advance.

4.2 No Event of Default. There shall be no Event of Default under any of the Loan Documents (or an event which would be an Event of Default but for the passage of time or the giving of notice or both).

4.3 Delivery of Loan Documents. All of the Loan Documents shall have been duly executed and delivered to Lender, and the Deed of Trust, and other recordable Loan Documents, shall have been recorded in the appropriate public offices or if not so recorded then the Title Insurer will insure any applicable "gap" in a manner satisfactory to Lender in its sole discretion.

(b) There is no suit, action, or proceeding pending, or to the best of Borrower's knowledge, threatened against or affecting Borrower, the Land or Improvements before or by any court, administrative agency or other governmental authority which brings into question the validity of the transactions contemplated hereby or would interfere with the ability of Borrower to comply with the terms hereof.

(c) Borrower is a corporation, duly organized, validly existing, in good standing under the laws of the state of its incorporation, is qualified to do business and is in active status in the state in which the Project is located with full power and authority to consummate the transactions contemplated hereby;

(d) Neither the execution nor delivery of this Agreement, the Note, the or any other Loan Documents or the security or collateral relating hereto or thereto will conflict with or result in a breach of any of the provisions of the Governing Documents or of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or of any agreement or other instrument to which Borrower is a party or by which Borrower is bound, or constitute a default under any of the aforementioned or result in the creation or imposition of any lien, charge or encumbrance upon any property of Borrower or the Land and/or Improvements, or any other property of Borrower other than those in favor of Lender.

(e) No consent, approval or other authorization of or by any court, administrative agency or other governmental authority or any other entity is required that remains outstanding in connection with the execution or delivery by Borrower of the Loan Documents, or compliance with the provisions hereof or of any of the Loan Documents.

(f) All approvals from governmental or quasi-governmental authorities having jurisdiction over the Land and Improvements, including, but not limited to, building permits, street openings or closings, zoning or use permits, variances or special exceptions, zoning reclassifications, setback requirements however established, and approvals of any applicable insurance underwriters necessary as of the date of this Agreement to commence construction of the Improvements have been obtained (or will be obtained) and remain in full force and effect without restriction or modification.

(g) All financial data which have been or shall hereafter be furnished to Lender to induce it to enter into this Agreement or otherwise in connection herewith or with the Loan Documents, do or will fairly represent the financial condition of Borrower as of the respective dates thereof and the results of its operations for the period for which the same are furnished to Lender and have been or will be prepared in accordance with generally accepted accounting principles consistently applied, except as disclosed to Lender, and all other information, reports and other papers and data furnished to Lender are or will be, at the time the same are so furnished, accurate and correct in all material respects and complete insofar as completeness may be necessary to give Lender a true and accurate knowledge of the subject matter. There are no material liabilities of any kind as of the date of the most recent financial statements which are not reflected therein.

4.4 Delivery of Other Documents. Borrower shall have delivered, or caused to be delivered, to Lender the following, unless otherwise waived by Lender:

(a) Title Insurance. A commitment for title insurance (the "Commitment for Title Insurance") issued by a title company or companies acceptable to Lender (the "Title Insurer"), representing Title Insurer's commitment to issue, in favor of Lender, but at the expense of Borrower, a standard mortgagee title insurance policy, insuring the lien of the Lender in the Land and the Improvements, free and clear of all prior liens and encumbrances (including possible mechanics' or construction liens), and also subject to such objections and exceptions as are reasonably acceptable to Lender and its counsel and which policy shall contain such endorsements as Lender shall require in its reasonable discretion. At Lender's option, such title policy shall include a pending disbursements clause in form reasonably acceptable to Lender. In connection with each advance, Lender shall at its option receive a notice of title continuation or an appropriate endorsement from the Title Insurer (i) indicating that, since the last preceding disbursement, there has been no change in the state of title theretofore approved by Lender (including, without limitation, no mechanics' or construction lien, notice of unpaid balance and right to file lien or other notice or claim in connection therewith), (ii) increasing the coverage of the policy by an amount equal to the disbursement then being made, so that the total amount insured equals the total amount of the Loan disbursed by Lender, and (iii) changing the effective date of the policy to the date of disbursement. In addition, at its option, Lender may require the Title Insurer to obtain co-insurance or reinsurance in such amounts as Lender shall reasonably determine.

(b) Property and Liability Insurance. A policy or policies of fire insurance with extended coverage, "builder's risk" insurance, and coverage against such other risks as Lender shall require, workers compensation, contingent and public liability insurance and such other insurance (including federal flood insurance if required by law) as Lender may require, covering any loss or damage to the Improvements or to persons or other property in, on, or about the Land and Improvements during the period of construction and thereafter, howsoever such loss or damage may arise, such insurance to be issued in such form and placed with such companies and in such amounts as Lender shall reasonably require. All premiums required to maintain all such insurance in full force and effect shall be paid by Borrower, and evidence of payment shall be furnished by Borrower to Lender. All such insurance shall be maintained in such form as to be available to and for the protection of Borrower and Borrower's agents as its interests may appear, and shall contain provisions allowing the insured to complete the construction provided for under this Agreement and the Building Contracts executed for the Development and shall cover materials on the Land during construction. All such policies shall contain a non-contributory mortgagee clause acceptable to Lender making losses payable thereunder, without contribution or assessment, and shall obligate the insurer to give not less than thirty (30) days' notice to Lender prior to expiration or cancellation of such policies or material change in the coverage thereof. All of the proceeds of such policies as to the interests of Borrower are hereby assigned by Borrower to Lender as collateral security for the repayment of the Loan. Receipt of insurance policies acceptable to Lender shall not thereafter bar Lender from requiring additional insurance, as Lender may deem necessary or desirable from time to time.

(c) **Building Contracts.** Executed copies of all Building Contracts necessary to complete the Project, together with a list thereof and a list of all engineers, architects, contractors, and subcontractors in connection with the construction of the Improvements.

(d) **Permits.** Copies of building permit or permits, site plan approval, approved plat, planning, zoning, subdivision, use, federal and state environmental, and all other permits and approvals with respect to the construction and operation of the Improvements and such other evidence as Lender may reasonably require showing the construction of the Improvements and uses thereof are permitted by and comply with all applicable statutes, codes, laws, rules, regulations, ordinances and resolutions.

(e) **Utilities.** Evidence that water, sewer, electrical and other utilities are available in adequate capacities and are either in existence or will be available to the Land so that they can be accessed for use at the Project upon completion of the Improvements.

(f) **Survey.** A survey of the Land showing any encroachments by or on the Land or any existing improvements thereon, discrepancies or conflicts in boundary lines, the location of the foundations of the Improvements and all easements and rights of way affecting the Land. Such survey shall be certified to Lender and to Title Insurer by a licensed surveyor or civil engineer and dated not more than ninety (90) days prior to Closing.

(g) **Governing Documents.** Certified copies of the Governing Documents, any amendments thereto and the certificates thereof and such other documents, active status certificates, authority to do business in a foreign jurisdiction, incumbency certificates, certified resolutions, or authorizations as may be required to establish the power and authority of Borrower and its members, general partners and/or controlling shareholders to execute and deliver the Loan Documents (as applicable).

(h) **Bonds.** Contractor shall be required to obtain a surety bond which shall include coverage for the Contractor's or Primary Sub-Contractor's faithful performance and completion of its work (including defects arising within the guarantee period) and a separate labor and material payment bond covering the payment of all obligations arising in connection therewith, each of which shall be in the amount of the contract price. The surety bonds shall be issued by companies and in amounts and in form satisfactory to Lender in its sole discretion.

4.5 **Fees, Charges and Premiums.** Borrower shall provide evidence that all recording, filing and conveyancing in connection with the closing, including, without limitation title insurance fees, costs or premiums assessed against Borrower have been paid.

4.6 **No Damage or Taking.** No portion of the Improvements shall have been damaged by fire or other casualty which is not covered by insurance and no condemnation or taking of the entire Project or any portion thereof which would result in the termination of Seahawk Landing's leasehold estate in the Land shall be pending or threatened.

4.7 **Licenses and Permits.** All licenses, permits, consents, approvals and authorizations for the construction of the Improvements necessary as of the date of this Agreement shall be in full force and effect and no notices of violation or revocation with respect thereto shall have been received.

ARTICLE V. AMOUNT; COST BREAKDOWN; BORROWER'S INVESTMENT

5.1 Funding. Lender agrees to lend and Borrower agrees to borrow (subject to the terms and conditions herein set forth), a sum aggregating not in excess of the Loan which sums shall be disbursed by Lender in connection with the terms and conditions of this Agreement. Lender shall have the right, but not the obligation, after occurrence of an Event of Default to fund amounts in excess of the Loan, to pay accrued and unpaid interest, to complete construction of the Improvements, or to correct any defaults under any of the Loan Documents (provided, however, that no such corrective action taken by Lender shall be deemed to cure Borrower's default). Any excess amount so funded shall be evidenced by the Note to the fullest extent possible and by this Agreement. Such excess amount shall bear interest at the Default Rate specified in the Note and shall be secured by the Deed of Trust and the other Loan Documents. Borrower hereby agrees to execute additional notes, mortgages and other additional documents and modifications thereto, evidencing and securing amounts funded in excess of the Loan, promptly upon request by Lender.

5.2 Cost Breakdown. The Cost Breakdown that has been prepared by Borrower and approved by Lender in the form attached hereto as **Exhibit C** is a breakdown of Project Costs and sources and uses of funds (including categories sometimes hereinafter referred to as the "Estimated Cost Amount" and the "Budgeted Loan Amount") and the constituent amounts allocated to each category of cost shown therein (a "Budgeted Category").

ARTICLE VI. CONSTRUCTION AND CONDUIT COVENANTS

While Borrower is responsible for the construction of the Improvements at the Project in conjunction with Contractor, Borrower agrees to the following conduit covenants which it shall either assume as herein stated or shall assure performance by Borrower to enable the disbursement of funds as provided in Article VII of this Agreement:

6.1 Commencement, Prosecution and Completion of Construction. Borrower shall cause the construction of the Improvements by the Commencement Date, and to proceed diligently, employing sufficient workers and supplying sufficient materials for that purpose, so that the Improvements shall be completed no later than the Completion Date.

6.2 Extras and Change Orders. Except to the extent otherwise provided in Section 9.14 of this Agreement, no extra work or change orders shall be ordered by Borrower or furnished by the Contractor, nor shall any change in the Plans and Specifications or supplements thereto be made without first obtaining written approval of Lender, which such approval not to be unreasonably withheld, delayed or conditioned. Before Lender shall be required to consider any such change, plans or bids, Borrower shall furnish to Lender any other information or documentation reasonably requested by Lender respecting the proposed extra work or change.

6.3 Conduit Covenants. Borrower covenants that it shall assure that as to the Project:

(a) All materials and labor to be used in the construction of the Improvements shall be in accordance with all applicable building codes and regulations and all other applicable

governmental and quasi-governmental requirements including the requirements of any applicable insurance underwriters. The construction shall proceed diligently and continuously and that such construction will be completed by the Completion Date. Construction of the Improvements shall be performed, free and clear of liens or claims for liens for material supplied and for labor or services performed in connection with the construction of the Improvements. All payments of worker's compensation premiums, Social Security taxes, withholding taxes, all other taxes, unemployment compensation premiums and any charges which may constitute a lien on the Project shall be paid timely.

(b) Any structural defect in the Improvements or any material departure from the Plans and Specifications other than any change approved in accordance with this Agreement shall be corrected. The advance of any proceeds of the Loan shall not constitute a waiver of Lender's right to require compliance with this covenant with respect to any such defects.

(c) All easements affecting the Project shall be submitted to Lender shall be accompanied by a drawing or survey showing the location thereof.

(d) Any and all governmental requirements shall be met and Lender, upon request, shall be furnished with copies of official inspection reports made by any governmental authority.

(e) Borrower will permit Lender, or its representatives, to enter upon the Land during business hours to, inspect the Improvements and all materials to be used in the construction thereof and to examine all detailed plans and shop drawings which are or may be kept at the construction site.

(f) All taxes and recording expenses, including documentary stamp taxes, if any; and all costs associated with loan disbursements including, without limitation, all title search costs and the fees and shall be paid as incurred.

(g) The Improvements when erected will be within all building setback lines, and the Improvements will not violate applicable use, construction or other restrictions, zoning laws or regulations. Upon their completion, Lender shall be provided with an as-built survey by a registered surveyor or engineer, (i) showing that the construction is entirely on the Land and free from any such violations, and does not encroach upon or overhang any easements, rights-of-way, or land of others, and (ii) containing and/or showing such other matters and detail as Lender may reasonably require.

(h) All requirements of any governmental or quasi-governmental agency, authority or department in connection with the construction of the Improvements shall be met, including obtaining all required permits, licenses and approvals, and such additional permits or approvals as may be required at any time after the date of this Agreement.

(i) On or before the Completion Date, Borrower shall deliver to Lender certificates of occupancy issued by the public authorities having jurisdiction over the Land and Improvements confirming that construction of the Improvements has been completed in accordance with all applicable requirements.

(j) Payments to Contractor, or any subcontractors, laborers or materialmen shall be made, when due, and to obtain and deliver to Lender and the Title Insurer, lien waivers, subordinations of lien, releases of liens, releases of notices of unpaid balance and right to file lien, affidavits of payment and any and all other documents and instruments necessary to induce the Title Insurer to at all times insure the lien of the Lender free and clear of mechanics' and materialmens' liens and the like. Borrower shall furnish to Lender and file with public authorities as appropriate such lien waivers, subordinations of lien, affidavits, and/or releases, together with paid receipts, as Lender and/or the Title Insurer and/or other applicable title insurance companies may require prior to the commencement of construction of the Improvements and from time to time thereafter to assure proper expenditure of advances made or to be made by Borrower hereunder.

(k) Borrower will deliver to Lender upon request, copies of any contracts, bills of sale, statements, receipted vouchers or agreements, under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements or subject to the lien of the Lender.

(l) Without the prior written consent of Lender which consent shall not be unreasonably withheld, Borrower will not execute any contract or become a party to any arrangement for the performance of construction work at the Project except with Contractor.

(m) Borrower agrees to make its books and accounts relating to the Project available for inspection by Lender or its representatives upon reasonable request.

(n) During the course of construction of the Improvements, Borrower shall provide Lender with such additional surveys as requested by Lender, in its reasonable discretion, or by the Title Insurer, including but not limited to a revised survey showing the location of foundation(s) when completed at Borrower's expense.

(o) Lender shall not be required to make advances in excess of the Loan, regardless of any approvals by Lender of change orders subject, however, to the right of Borrower to reallocate certain portions of budgeted Categories, which reallocation shall be submitted to Lender for reasonable review and approval.

6.4 Negative Covenants. In addition to those provisions contained elsewhere in this Agreement, Borrower agrees not to do any of the following without Lender's prior written consent which consent shall not be unreasonably withheld:

(a) Amend, or permit to be amended in any material respect, any of the Building Contracts or any other document referred to herein.

(b) Grant or acquiesce in granting any easement with respect to the Project.

(c) Assign, pledge or encumber this Agreement or any funds held pursuant hereto. No such assignment, pledge or encumbrance shall be effective.

(d) Either (i) store, use or generate any Hazardous Substance in or on the Project except in such amounts as are ordinarily used, stored or generated in similar projects;

(ii) treat or dispose of any Hazardous Waste in or on the Project; and (iii) nor will Borrower, for more than the maximum period of time allowed by the applicable federal, state or local law, without being required to obtain a permit or approval, therefore, store any Hazardous Waste or Hazardous Substance in or on the Project, but in no event will Borrower store any Hazardous Waste or Hazardous Substance in or on the Project for more than ninety (90) days. Lender reserves its right, as a condition to approving any of the foregoing, to require written confirmation in the form reasonably acceptable to Lender and its counsel that: (x) Borrower has obtained all necessary permits and approvals to perform such activities; and (y) Borrower will perform such activities in material compliance with all applicable laws in a safe and effective manner that will not endanger persons or property and will not materially diminish the value of any collateral or other security provided by Borrower to Lender to secure any and all advances hereunder.

6.5 Other Covenants. Borrower further covenants as follows:

(a) As of the date of closing hereunder, there shall be no lien or security interest held by any third party with respect to the Land or Improvements or any item or property, whether or not a fixture, installed thereon or stored on such site, , and Borrower shall keep such property free from any other lien or security interest.

(b) Borrower shall not undertake additional financing in the future secured by any lien or security interest on the Land, or any other real or personal property encumbered in favor of Lender to secure the Loan, without first obtaining Lender's written consent which consent shall not be unreasonably withheld.

ARTICLE VII. DISBURSEMENTS

7.1 Advances by Lender. Subject to the terms and conditions hereof, Lender shall undertake to disburse the proceeds of the Loan from time to time in connection with construction costs of the Improvements and other development costs, all as described in the Cost Breakdown, as each such portion of construction is completed. The obligation of Lender to make any such disbursement is conditioned upon a request of Borrower, delivery by Borrower and approval by Lender of the items required pursuant to Section 4 hereof, satisfaction of all other conditions to disbursements set forth herein, delivery of the items specified below and the satisfaction by Borrower of all of its conduit or other covenants, agreements and obligations under this Agreement and the other Loan Documents.

(a) Requisition. At least ten (10) business days prior to the date on which Borrower desires a disbursement, Borrower shall submit to Lender (i) a pay requisition, signed by the Contractor and Borrower and notarized, accompanied by original lien waivers for the prior period (as provided under Section 7.1(c)) and original change orders, and copies of invoices for indirect construction costs, and such other information and documentation required hereunder, signed by Borrower, and its Contractor ("Advance Request"); and (ii) a revised project budget showing the total project costs to date and the balance of each category of construction costs.

(b) Timing. Requests for disbursements shall not be made more often than once a month and the amount advanced shall be subject to retainage as set forth in Section 7.3 below until the retainage disbursement is made. Prior to each disbursement, Lender may inspect the Improvements to verify the accuracy of all other reports, requests or documents submitted by Borrower.

(c) Lien Release. If requested by Lender, Borrower shall furnish Lender with a schedule identifying all contractors or subcontractors who have performed work or furnished materials in connection with the Improvements, together with lien waivers from the Contractor and all subcontractors who have performed work or furnished materials in connection with the Improvements, current through the end of the previous period covered by Borrower's prior requisition.

7.2 Other Conditions for Disbursements. Advances hereunder shall be in amounts not exceeding the cost in the Lender's reasonable judgment, of labor furnished and materials physically incorporated into the Improvements, that Borrower has reasonably expended therefor, it being expressly understood that under no circumstances shall the Lender be obligated to advance from proceeds of the Loan an amount for any items of Direct Cost in excess of the Budgeted Loan Amount for the item. Lender shall not be required to make disbursements for costs incurred by Borrower with respect to material stored on or off the Land unless Lender shall, in its reasonable discretion, deem it advisable to do so. Each Advance Request shall constitute a representation that the work done and the materials supplied to date are in accordance with the Plans and Specifications; that the work and materials for which payment is requested have been physically incorporated into the Improvements and that its value is as stated; that such work and materials conform with all applicable rules and regulations of the public authorities having jurisdiction over the Land and Improvements; and that payment for the work or materials described in such Advance Request has been made or will be made with the proceeds of the advance in connection with which the Advance Request is submitted. All costs associated with loan disbursements including, without limitation, title search and inspection fees, shall be paid by Borrower.

7.3 Retainage. Lender reserves the right, at its own discretion and without liability to Borrower, to withhold from the amount of any advances made hereunder, to ten percent (10%) of each request for an advance.

7.4 Retainage Payment. In the case of advances of any of the retainage of the proceeds of the Loan, and any balance of proceeds to be advanced under the Loan, it shall be a condition precedent to each such advance that Lender shall have also received:

(a) Evidence of the approval by all applicable governmental authorities of the Improvements in their entirety for permanent occupancy to the extent any such approval is a condition of the lawful use and occupancy of the Improvements, any and all certificates of occupancy and other permits and approvals required by any governmental authority, and evidence of such approval by the local Board of Fire Underwriters or its equivalent and evidence of the approval of the contemplated use thereof by all applicable governmental authorities;

(b) A final as-built survey showing the completed Improvements and all easements;

(c) The full and complete release of all liens and the right to lien the Project in connection with any and all work performed, or labor and materials supplied, for the Land or the Improvements to the extent then permitted by law; and

(d) Such other information and documentation as may be reasonably requested by Lender.

7.5 Absence of Certain Events: Material Damage. If, at the time any advance is requested, any event shall have occurred and be continuing which, with the passage of time or the giving of notice or both, would be an Event of Default (as hereinafter defined) hereunder, then Lender shall have no further obligation to make any further advances unless such event shall be cured before it gives rise to an Event of Default. Furthermore, if the Project shall have suffered any material damage or destruction prior to any disbursement, such damaged or destroyed portion shall be restored or replaced in a manner reasonably acceptable to Lender without cost to Lender prior to any further disbursement from Lender.

7.6 Liens. If any mechanics' or construction lien or claim of mechanics' or construction lien or if applicable any other notice or claim including without limitation any notice of unpaid balance and right to file lien shall be filed against the Land or Improvements or any interest therein by reason of work, labor, services, or materials supplied or claimed to have been supplied, and if such lien, claim or notice is not fully and finally discharged, released or withdrawn as applicable against the Land and Improvements in a manner reasonably satisfactory to Lender within sixty (60) days after such lien, claim or notice shall have been filed and Borrower shall have received actual notice of the filing thereof, then Lender, at its option, may (a) pay and discharge any lien, in which case the sum which Lender shall have so advanced shall be due immediately from Borrower to Lender, shall be secured by the Deed of Trust, and shall bear interest at the Default Rate from the date of payment by Lender until the date of repayment, and/or (b) treat such occurrence as an Event of Default hereunder.

7.7 No Approval. The making of any advance by Lender shall under no circumstances be deemed an approval or acceptance by Lender of any work done prior thereto. Borrower hereby confirms that Lender is not making and will not make any representations and warranties as to any matters respecting the Loan, including, without limiting the generality of the foregoing, the sufficiency of the Loan, the adequacy of any Plans and Specifications, or the proper performance of any construction work.

ARTICLE VIII. DEFAULTS

8.1 Events of Default. The occurrence of any one or more of the following events, shall constitute an "Event of Default" hereunder:

(a) If any of the following occurs with respect to Borrower: (i) insolvency, assignment for the benefit of creditors, filing of a petition under Title 11 of the United States Bankruptcy Code or the filing of a bill in equity or the institution of other proceedings for the

appointment of a receiver of assets provided, however, if such event is involuntary in nature Borrower shall have ninety (90) days in which to seek to have it dismissed; (ii) the filing of a petition or institution of other proceedings in any court for the composition with creditors or for relief in any manner from the payment of debts when due under any state or local law; or (iii) the institution by any creditor of any proceedings under Title 11 of the United States Bankruptcy Code or for the appointment of a receiver under any state or federal law which is not dismissed within ninety (90) days;

(b) If any representation or warranty made by Borrower hereunder or in any Loan Document proves to be inaccurate or untrue in any material respect as of the date of the execution hereof or as of the date of any advance, or any statement or certificate furnished by Borrower hereunder or in any Loan Document proves to be inaccurate or untrue in any material respect as of the date as to which the facts therein set forth were stated or certified, and such misrepresentation or warranty concerns an issue which materially jeopardizes Lender's interest in the Project or demonstrates a material adverse change in the financial condition of Borrower;

(c) If Borrower shall have failed to observe and perform any of the terms, covenants, promises and agreements on its part to be observed and performed under this Agreement (other than those described in and embraced by the terms of the other subsections of this Section), or under any Loan Document, which in Lender's reasonable judgment would have a material adverse impact on the Project, Borrower or Lender, and such failure is not cured within thirty (30) days after written notice thereof provided, however, if such failure is of such a nature that it cannot be cured within a thirty (30) day period and during such period Borrower commences such cure and thereafter diligently continues to cure the failure then the thirty (30) day period shall be extended for such additional time as may be reasonably required to complete the cure which period in no event shall exceed ninety (90) days after the notice to Borrower. (Notwithstanding the foregoing, there is no intent that there be a cumulation of grace periods under this Agreement and the other Loan Documents with respect to any particular default or Event of Default);

(d) If any event of default and the expiration of any applicable period of grace (or event giving rise to the acceleration of the Loan) occurs under any of the other Loan Documents and such event of default remains uncured;

(e) If the construction of the Improvements shall, at any time, be discontinued (i) for a continuous period of thirty (30) days for reasons within the reasonable control of Borrower and/or its Contractor, or (ii) for a continuous period of sixty (60) days for reasons beyond such reasonable control (provided, however, that in no event shall the aggregate of all such periods equal more than ninety (90) days or cause the Completion Date to be extended or delayed);

(f) If Borrower shall have failed to comply with any requirements of any governmental authority concerning the Improvements which in Lender's reasonable judgment would have a material adverse impact on the Project, Borrower or Lender within thirty (30) days after notice in writing of such requirements shall have been given to Borrower provided, however, if such failure is of such a nature that it cannot be cured within a thirty (30) day period and during such period Borrower commences such cure and thereafter diligently continues to

cure the failure then the thirty (30) day period shall be extended for such additional time as may be reasonably required to complete the cure (so long as enforcement of such requirements are stayed during such cure) which period in no event shall exceed ninety (90) days after the notice to Borrower;

(g) If Borrower, without the Lender's consent, shall have created any security interest in favor of any party in any materials, fixtures, machinery or equipment then, or thereafter to be, incorporated or placed in the Improvements or shall have failed to purchase any such materials, fixtures, machinery or equipment so as to vest the ownership thereof in, unconditionally and free from any other security interest or other encumbrance, upon the delivery thereof to the Project and Borrower fails to cure such act or omission within thirty (30) days after Lender provides Borrower with written notice of such occurrence provided, however, that if the breach is of a nature that it cannot be cured within a thirty (30) day period and during such period Borrower commences such cure and thereafter diligently continues to cure the breach then the thirty (30) day period shall be extended for such additional time as may be reasonably required to complete the cure which period in no event shall exceed ninety (90) days after the notice to Borrower;

(h) If a notice of Federal or State tax lien is filed which materially adversely affects the leasehold title to the Project (and, for this purpose, an exception taken for such lien by the Title Insurer which insures title to the Project in the continuation reports or endorsements contemplated hereunder shall be treated as conclusive) and the same is not discharged, bonded off or insured over by the Title Insurer within sixty (60) days after notice in writing from Lender to Borrower; or

(i) If any execution shall have been levied against, or attachment or other judicial seizure made of, the Project which shall remain undismissed, undischarged, or not bonded off for a period of thirty (30) days after notice in writing from Lender to Borrower.

8.2 Lender's Rights and Remedies.

(a) Upon any Event of Default, Lender may exercise any or all of the following rights and remedies as it may deem reasonably necessary or appropriate:

(i) Withhold any advances hereunder which would otherwise become due to Borrower;

(ii) Declare immediately due and payable all monies advanced under the Note, and/or pursuant to this Agreement which are then unpaid, with all arrearages of interest (and, accordingly, accelerate payment thereof, notwithstanding any contrary terms of payment stated therein);

(iii) Advance any remaining balance of the proceeds of the Loan to pay for the completion of the Improvements pursuant to an irrevocable authorization from Borrower for such purpose, but Lender shall not be obligated to do so; it being further understood that;

a. No further direction or authorization from Borrower shall be necessary to warrant such direct advances and to the extent they represent advances of proceeds

of the Loan shall satisfy the obligations of Lender hereunder and shall be secured by the Deed of Trust as fully as if made to Borrower and regardless of the disposition thereof by the Contractor, any subcontractor or other person.

b. Lender may impose any reasonable condition for such direct payment including, but not limited to, estoppel certificates, waivers of lien, releases and the like.

c. In any action or proceeding for recovery of any sums expended by Lender in connection with the completion of the Improvements, a statement of such expenditures, verified by the affidavit of an officer of Lender, shall be prima facie evidence of the amounts so expended and of the propriety of and necessity for such expenditures, and the burden of proving the contrary shall be upon Borrower.

d. The remedies provided in this Agreement are cumulative and shall be in addition to and not in substitution for the rights and remedies which would otherwise be vested in Lender under the Loan Documents or otherwise at law or in equity, all of which rights and remedies are specifically reserved by Lender. Failure of Lender to exercise any remedy shall not constitute a waiver of Lender's rights for that default nor for any further or future default. The exercise of any right or remedy by Lender hereunder shall not in any way constitute a cure or waiver of default hereunder, or invalidate any act done pursuant to any notice of default, or prejudice Lender in the exercise of any of its rights hereunder, unless, in the exercise of said rights, Lender realizes all amounts owed hereunder or under the other Loan Documents.

ARTICLE IX. MISCELLANEOUS

9.1 Lender's Discretion. With respect to any provision of this Agreement which requires the submission of evidence of the existence or non-existence of a specified fact or facts Lender shall, at all times, be free independently to establish to its satisfaction and in its reasonable discretion such existence or non-existence.

9.2 No Third Party Beneficiaries Nor Rights to Rely on Supervision. No part of the Loan will at any time be subject or liable to attachment or levy at the suit of any creditor of Borrower or of any other interested party, or at the suit of any contractor, subcontractor, subsubcontractor or materialmen, or any of their creditors. This Agreement is solely for the benefit of Lender and Borrower and no third parties shall have any rights herein or hereunder. All inspections and supervision performed by Lender are solely for the benefit of Lender and Borrower is required to monitor the progress of the construction for its own benefit and on its own behalf.

9.3 Modifications. This Agreement may be changed, waived, discharged, or terminated only by an instrument in writing duly executed by the party against which enforcement of such change, waiver, discharge, or termination is sought.

9.4 Notices. All notices, requests, demands, approvals, or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when delivered by hand or sent by registered or certified mail, return receipt requested, federal express or other courier services addressed as follows:

If to Lender: Floyd Batiste, CEO
Port Arthur Section 4A Economic Development Corp.
501 Procter, Suite 100
Port Arthur, TX 77640
Telephone: (409) 963-0579
Facsimile: (409) 962-4445
E-mail: fbatiste@paedc.org

With Copies to: Guy N. Goodson, EDC Attorney
Germer PLLC
P. O. Box 4915
Beaumont, Texas 77704
Telephone: (409) 654-6730
Facsimile: (409) 835-2115
E-mail: ggoodson@germer.com

If to Borrower: Tender Loving Care Center for Children d/b/a/ Legacy Community
Development Corporation
Attn: Vivian Ballou
3025 Plaza Circile
Port Arthur, Texas 77642
409-832-2723
legacycdc@yahoo.com

With Copies to:

9.5 Headings. The headings preceding the text of the sections and subsections of this Agreement are used solely for convenience of reference and shall not affect the meaning, construction, or effect of this Agreement.

9.6 Parties to Agreement and Governing Law. Borrower shall not assign this Agreement without the prior written consent of Lender which may be granted or withheld in its sole discretion, and any assignment in violation hereof shall be of no force and effect and shall constitute an Event of Default herein. Subject to the previous sentence, this Agreement shall extend to and bind the parties hereto, their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of Texas to contracts executed therein and to be wholly performed therein.

9.7 No Waiver: Enforcement. No advance of proceeds of the Loan hereunder shall constitute a waiver of any of the conditions of Lender's obligation to make further advances

nor, in the event Borrower is unable to satisfy any such condition, shall any waiver have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default as hereinabove provided. All conditions of the obligations of Lender to make advances hereunder are imposed solely and exclusively for the benefit of Lender and its assigns and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances, be deemed to be beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it advisable to do so.

9.8 Lender Approval. All proceedings taken in connection with the transactions provided for herein, all surveys, appraisals and documents required or contemplated by this Agreement or any other Loan Documents (and the persons responsible for the execution and preparation thereof) including, without limitation, Contractor, insurers and the form of all of the Building Contracts, all leases, bonds, policies of insurance and other documents shall be reasonably satisfactory to Lender, and Lender's counsel shall have received copies (or certified copies where appropriate in such counsel's judgment) of all documents which they may reasonably request in connection therewith.

9.9 Materials. All materials delivered upon the Land for the purposes of being used in the construction of the Improvements shall be considered annexed thereto and shall become a part of the Land as if actually incorporated in the Improvements and as against Borrower and all parties acting or claiming under Borrower, shall be subject to the rights, conditions and covenants to which the Land and the Improvements are subject under this Agreement, provided that nothing herein contained shall be construed to make Lender responsible for any loss, damage or injury to such materials, nor for payment of the same. Borrower shall not make or cause to be made any contract for materials or equipment of any kind or nature to be incorporated in or to become a part of the Improvements if title to such materials or equipment is reserved under a conditional sales contract or otherwise, or is subject to a chattel mortgage or security interest in favor of a third person.

9.10 Courts of Jefferson County Jurisdiction. Borrower irrevocably consents to the exclusive jurisdiction of the state and federal courts of the State of Texas, in any and all actions and proceedings whether arising hereunder or under any other agreement. Borrower waives any objection, now or hereafter, to the laying of venue of any such action, suit or proceeding, and irrevocably submits to the jurisdiction of any of said courts in any action, suit or proceeding. Any service of process and other notice in any action, suit or proceeding shall be effective against Borrower if given by registered or certified mail, return receipt requested, or by any other means of mail which requires a signed receipt, postage prepaid, mailed to Borrower as herein provided for notice purposes. Nothing herein contained shall be deemed to affect the right of any party to serve process in any other manner permitted by law.

9.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

9.12 Force Majeure. Except to the extent otherwise specified herein a party to this Agreement shall not be in default hereunder if the delay in performance of its obligations arises from unforeseeable causes beyond its control (collectively, "Force Majeure") and without the fault or negligence of the party in question. Examples of such causes include (a) acts of God, or public enemy, (b) fires, (c) floods, (d) epidemics, (e) quarantine restrictions, (f) freight embargoes, (g) unusually severe weather, or (h) shortages in labor or material, (i) labor disputes not caused by Borrower. The party prevented from acting within a reasonable time from the beginning of such delay shall advise the other party in writing of the cause and likely duration of such delay.

9.13 Limitation of Liability. The liability of Borrower under this Agreement shall be limited in the same manner and to the same extent specified in the Note and the Deed of Trust.

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IN WITNESS WHEREOF, the parties hereto have caused this Conditional Loan/Grant Agreement to be duly executed.

**TENDER LOVING CARE CENTER FOR
CHILDREN d/b/a LEGACY COMMUNITY
DEVELOPMENT CORPORATION., a Texas
non-profit corporation**

By: _____
Name: Vivian Ballou
Title: Executive Director

EXHIBIT A

LEGAL DESCRIPTION OF THE FEE INTEREST