# LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

1. DATE OF PROPOSED ACTION: October 18, 2016

2. AGENDA ITEM:	Appointments	Bids/Purchases	Claims
Contracts/agreements	s/leases Grants	Land Use: Variances	/Board App/Plats
Proclamations Publ	ic Hearings/Rules	& Reg's Reports &	Public Petitions
Resolutions Other			

3. DEPARTMENT: Grants

**APPLICANT: LEADS and Wyoming Malting** 

**AGENT: Mark Voss** 

- **4. DESCRIPTION:** Consideration of a ratified Non-Recourse Promissory Note between Laramie County and the Wyoming Business Council for the Wyoming Malting Loan portion of the Project in the amount of \$557,935.27. This document is attachment "B" to 160607-12.
- **5. DOCUMENTATION: 1** original

RECEIVED AND APPROVED AS
TO FORM ONLY BY THE
LARAMIE COUNTY APPROVED

			- COUNTY ATTO
<u>Commissioner</u> Ash	Clerks Use Only:	<u>Signatures</u>	M
Heath Holmes Kailey		Co Attny	
ThompsonAction		Assist Co Attny Grants Manage	
Postponed/Tabled	9	Outside Agency	

#### **NON-RECOURSE PROMISSORY NOTE**

For Value Received, Laramie County, whose principal office is located at 310 West 19<sup>th</sup> Street, Suite 320, Cheyenne, WY 82001 (the "Borrower), promises to pay to the order of Wyoming Business Council (together with the holder, from time to time, of this Note, the "Council"), a body corporate organized under the laws of the State of Wyoming and operating as a state instrumentality operated solely for the public benefit, whose principal office is located at 214 West 15<sup>th</sup> Street, Cheyenne, Wyoming 82002, the unpaid principal amount of up to Five Hundred Fifty Seven Thousand Nine Hundred Thirty Five Dollars (\$557,935) (the "Principal Sum"), together with interest on the principal amount outstanding from time to time, at the annual rate of Three (3%). This Promissory Note (this "Note") is made to evidence the loan of the Principal Sum to the Borrower (the "Loan"). The Council's obligation to fund the Loan is fully subject to and conditioned upon the availability of funds appropriated therefor by the Wyoming State Legislature.

#### Section 1. Repayment of the Loan.

#### 1.1. Payments Solely from Special Fund.

Notwithstanding anything in this Note or any Loan Document to the contrary and as provided in Section 4 hereof, no payment otherwise payable under this Note or any Loan Document shall be required to be paid by the Borrower unless funds are available to the Borrower from funds received by it (i) under the revenue recaptured through lease payments received for the facility as a result of this Project more fully described in the Business Ready Community Grant and Loan Agreement dat ed

May 25, 2016, and attached to this Promissory Note.

#### 1.2. Payments.

The date of the final draw shall establish the Commencement Date.

Beginning on the first (1st) anniversary of the Commencement Date, the Borrower shall pay equal annual installments of principal and interest based on and amortization period of twenty (20) years of 365 days each. Payments received from the Borrower will be applied, first, to accrued and unpaid interest; and lastly, to principal.

There shall be no prepayment penalty if borrower pays the loan in full prior to maturity or pay portions of the annual payment prior to the annual payment due date.

#### 1.3. Payment in Full on Maturity.

The Borrower shall pay all outstanding sums due hereunder on the Maturity Date.

#### 1.4. Loan Cost.

The Loan shall always be at no cost to the Council, and all fees and expenses, including (without limitation) the Council's counsel fees and expenses, the loan servicing fees, insurance premiums, recordation costs, cost of documentary stamps, transfer taxes, photocopying expenses, appraisals, travel expenses for the Council's agents, employees, and counsel, and all other reasonable expenses relating to the Loan shall be paid by the Borrower, whether incurred before, on, or after the date hereof, such that the Loan shall be free of cost to the Council.

#### Section 2. Additional Terms and Conditions.

#### 2.1. Collateral.

This note is secured by an assignment and pledge of promissory note and mortgage (the "Collateral").

#### 2.2. Program Compliance; Disbursement of Loan Proceeds.

The Borrower covenants and agrees that it shall use the proceeds of the Loan solely for the costs of an infrastructure project where the Borrower has a business committed to start-up, expand or locate in the community.

The proceeds of the Loan shall be disbursed in accordance with the Loan Agreement to the Borrower only as needed to discharge obligations incurred in accordance with the Council-approved eligible project costs. Request for disbursement shall be made on a form supplied by the Council's staff and supported by adequate proof that such an obligation has been incurred for the project purpose and is due and owing.

The Council's staff may, at the Borrower's expense, conduct an audit of the records of the Borrower and inspect the construction and operation of the project funded by proceeds of the Loan.

The Borrower shall comply with the loan policies and procedures for the Business Ready Community – Business Committed Loans, as adopted by the Council from time to time, a copy of which the Borrower acknowledges having received on or before the date hereof.

#### 2.3. Event Default.

The occurrence of an Event of Default under any document made in connection with the Loan (each, a "Loan Document", and collectively, including this Note, the "Loan Documents") will constitute a material breach and a default under this Note. Failure to make any payment due hereunder on the date such payment came due shall also bean Event of Default under this Note.

#### 2.4. Acceleration.

Upon the occurrence of an Event of Default and after any applicable grace and/or cure periods, subject to the requirements of section 1.1 herein, the Council may declare the entire unpaid balance of this Note, together with interest accrued thereon, to be immediately due and payable and may proceed to exercise any and all rights, powers, and remedies that the Council may have under this Note or any other Loan Document or that may be available to the Council at law or in equity.

#### 2.5. Remedies Cumulative and Non-Exclusive.

The Council is not required to first proceed against any Collateral for payment of this Note. Subject to the requirements of section 1.1 herein. All remedies conferred by this Note or any of the Loan Documents shall be cumulative, and none is exclusive.

#### Section 3. Other Provisions.

#### 3.1. Waiver of Presentment.

Except as otherwise provided herein, presentment or other demand for payment, notice of dishonor, and protest are hereby expressly waived by the Borrower.

#### 3.2. Notices.

All notices, requests, and demands under this Note shall be in writing and made to the other party at its address set forth above or to such other address as such party shall have most recently designated by written notice.

#### 3.3. Indemnity.

Each party to this Note shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.

#### 3.4. Governing Law.

All terms, conditions, and other provisions of this Note are to be determined, interpreted, construed, and otherwise governed by Wyoming law.

#### 3.5. Lender's Rights to Pay Expenses.

The Council may, but shall have no obligation to, if the Council deems it necessary in order to protect or preserve the Collateral, make payments or otherwise perform on behalf of the Borrower, the Borrower's obligations affecting the Collateral, in the event the Borrower fails to make such payments or fails to perform such obligations after prior written demand by the Council.

#### 3.6. Entire Agreement, Amendment, and Severability.

The Loan Documents constitute the entire agreement between the parties with respect to the subject matter hereof. Neither the Loan Documents nor any provision thereof may be changed, waived, discharged, modified, altered, amended, or terminated orally, but only by a Document in writing signed by all parties. If any provision of the Loan Documents should be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### 3.7. Governmental Immunity.

The State of Wyoming, the Council and Borrower, do not waive and hereby reserve any claims or rights they might have to governmental immunity by entering into the Loan Documents, and specifically retain governmental immunity and all defenses available to them as governmental bodies pursuant to W.S. § 1-39-104 and all other state or federal laws. Further, the parties fully retain all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Note or any other Loan Document.

#### 3.8. Benefit of Agreement.

The terms, conditions, and other provisions of this Note shall be binding upon the Borrower, and its respective legal representatives, successors, and assigns, and shall inure to the benefit of the Council, and its legal representatives, successors, and assigns.

#### 3.9. Waivers; Consent to Jurisdiction.

The Borrower, subject to the above invocation of governmental immunity, irrevocably

- (i) agrees that any suit, action or other legal proceeding arising out of or relating to this Note or any other Loan Documents may be brought in the District Court for the First Judicial District in Laramie County, Wyoming,
- (ii) or in the courts of the United States of America located in Laramie County, Wyoming,
- (iii) consents to the jurisdiction of each such court in any suit, action, or proceeding, and

(iv) waives any objection which it may have to the laying of venue of any suit, action, or proceeding in any such courts and any claim that any such suit, action, or proceeding has been brought in an inconvenient forum.

#### 3.10. Jury Waiver.

IT IS MUTUALLY AGREED BY AND BETWEEN THE COUNCIL AND THE BORROWER THAT, TO THE EXTENT ALLOWED BY LAW, AND SUBJECT TO THE ABOVE INVOCATION OF GOVERNMENTAL IMMUNITY, THEY EACH WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS NOTE OR ANY OTHER LOAN DOCUMENTS.

#### Section 4. Non-General Obligation.

This Note evidences a loan from the Council to the Borrower. This Note will not encumber, be chargeable, create or constitute a legal or moral obligation or debt of any kind on behalf of or against the Borrower and will not encumber or be chargeable against the Borrower's assets. general reserves, general funds, or any other revenues or properties whatsoever, except for those pledged as collateral security herefor.

Without limiting the generality of the provisions of this section, neither this Note nor any of the Loan Documents (i) shall result in the imposition of any debt upon the Borrower in contravention of any constitutional or statutory limitations or requirements concerning the indebtedness of the Borrower; (ii) shall constitute a pledge of or result in the imposition of any lien, charge or encumbrance upon any tax revenues, cash reserves, or other assets or revenues of the Borrower; or (iii) shall, in the event of a default hereunder or thereunder, entitle the Council to, and the Council shall not have, the right to seek repayment of the principal or accrued interest due under the Loan, or any other sums payable under the Loan, from any source other than the collateral now or hereafter pledged.

In Witness Whereof, the Borrower has caused this Note to be executed by its County Commission Chairman and attested by its County Clerk and delivered to the Council for and on behalf of the Borrower, all as of the Honor day of October . 2016.

Laramie County:

By: K. M Buck Halmes

ATTEST:
By: Deleia K. Vel

RECEIVED AND APPROVED AS TO FORM ONLY BY THE LARAMIE COUNTY AFTORNEY

#### BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM LOAN AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND LARAMIE COUNTY

- 1. <u>Parties.</u> The parties to this Loan Agreement (Loan) are the Wyoming Business Council (Council), whose address is 214 West 15<sup>th</sup> Street, Cheyenne, Wyoming 82002 and Laramic County (Borrower), whose address is 310 West 19<sup>th</sup> Street, Suite 320, Cheyenne, WY 82001.
- 2. Purpose of Loan. The Council shall provide Business Ready Community Grant and Loan Program (BRC) Business Committed Special Assistance Fund Loan funds to Borrower in the amount set forth in Section 4, and Borrower shall undertake and complete materials, projects and or services (collectively, the Project) described in Attachment A. B. and C which are attached hereto and incorporated herein by this reference. Performance by Borrower of the requirements of this Loan and compliance with all BRC program rules and regulations is a condition to this Loan.
- 3. Term of Loan. The Borrower shall repay the Loan in accordance with the Business Ready Community Promissory Note, including but not limited to the provisions of Sections 1.1 and 4 therein. Repayment by Borrower is more fully described in the Business Ready Community Grant and Loan Agreement and the Contingency and Development Agreement entered into between Borrower and Cheyenne LEADS, which is attached hereto and incorporated herein by this reference as Attachment D. This Loan shall commence upon the date the last signature is affixed hereto. All construction services shall be completed by June 30, 2018. The term of repayment of the Loan is twenty (20) years at an interest rate of three percent (3%) per annum, and a one-time loan fee of two thousand seven hundred eighty-nine dollars and sixty-eight cents (\$2,789.68) due at closing of this Loan.
- 4. <u>Disbursement of Loan Monies</u>. Council agrees to loan monies to Borrower for performance of the Project, completed in accordance with the requirements of this Loan and the BRC program. The total payment to Borrower under this Loan shall not exceed five hundred fifty-seven thousand nine hundred thirty-five dollars (\$557.935) (Loan). Payment will be made following Borrower's delivery to Council of invoices detailing services performed in connection with the Project in a form acceptable to Council. Loan funds shall not be used for any services performed in connection with the Project prior to the date upon which the last required signature is affixed to this Loan.
- 5. Responsibilities of Borrower Regarding the Project. The Borrower agrees to its responsibilities described in Attachment A, which is attached and made a part of this Loan. The Borrower shall execute a Non-Recourse Promissory Note in to evidence its obligation to repay the Loan to the Council. A copy of the Non-Resource Promissory Note. Attachment B, is attached hereto and hereby incorporated herein by reference. In the event of a conflict between Attachment A and B, the terms of Attachment B shall control.
- 6. Loan Security. The Loan shall be secured by an Assignment and Pledge of Promissory

  Loan Between the Wyoming Business Council and Laramie County

  Wyoming Malting Business Committed Special Assistance Loan Project

  Page 1 of 9

Note and Mortgage by the Borrower to the Council of all of the Borrower's right, title, and interest in and to revenues received by the Borrower. This Assignment and Pledge of Promissory Note and Mortgage shall be in effect until the Loan has been repaid in full. A copy of the Assignment and Pledge of Promissory Note and Mortgage, Attachment C, is attached to this Loan and hereby incorporated herein by reference.

- 7. Repayment. The Borrower agrees, subject to the provisions of Section 1.1 and Section 4 of Attachment B. to arrange for the repayment of the Loan in the event that the Business Ready Community Grant and Loan Program is invalidated by any Court.
- 8. Responsibilities of Council. Council will, at its discretion, assist in providing Borrower access to information, including without limitation information concerning BRC program requirements, rules statutes, and regulations. The Council will cooperate with Borrower whenever possible. Council shall have no obligations, other than those specifically set forth herein, regarding the Project or its performance.
- 9. <u>Servicing Agent.</u> Council may contract with an independent party to act as a servicing agent for the BRC loans. Council will notify Borrower of the servicing agent's name, address, and other contact information.

#### 10. Special Provisions.

A. Audit. The Borrower agrees to an annual audit to assure all funds are used for the purposes for which the Loan has been made.

#### B. Budget.

- (i) Borrower agrees it will not exceed any of the line item totals listed in Attachment A by more than twenty percent (20%) without prior approval from Council. Such changes will not result in any change in the total Project costs, or a change in the Loan amount.
- (ii) In the Budget. "Non Construction Costs" include: appraisal. architectural. engineering, and Project inspection fees: "Construction Costs" include: site work, materials, labor, utilities, and contingencies.
- (iii) All awarded Grant funds will be fully expended prior to any Loan expenditures.
- (iv) Before funds can be drawn down. Borrower must provide the Council with copies and/or documentation of the following:
  - Receipt of documentation that all the required permits from the Wyoming Department of Agriculture. Laramie County, the Wyoming Liquor Commission and the Alcohol and Tobacco Tax and Trade Bureau are secured;
  - Receipt of documentation that the working capital and equipment

financing are secured:

- A signed contingency and development agreement:
- A signed lease agreement:
- Updated pro-forma projections to reflect all current debt and lease obligations.
- (v) This Loan is incrementally funded as costs are incurred accordingly to the Budget in Attachment A.
- (vi) Borrower shall submit one (1) reimbursement request per monthly cycle or one (1) request every thirty (30) days. If more than one request is received during that monthly cycle, the Council may return each additional request to Borrower for submittal in the next appropriate monthly cycle.
- (vi) The Council will release funds only after payment vouchers or invoices approved by the Borrower are submitted to the Council. After receipt of cash requests and billing documentation, the Council will pay the amounts of invoices at one hundred percent (100%). Verification of all in-kind contributions must be submitted to the Council.
- (vii) If actual costs of the Project are more than the Budget indicated in Attachment A, Borrower agrees to pay the difference in the amount of funds awarded through the BRC Program and the actual costs of the completed Project. If there is additional funding for the Project, the Borrower must provide the Council with all necessary information regarding the funding.
- C. Default and Remedies. Failure by Borrower to meet the conditions of this Agreement shall entitle the Council, subject to Sections 1.1 and 4 of Attachment B, to declare the whole of the unpaid balance of principal and accrued interest on the Promissory Note due and payable on demand.
  - (i) Immediately terminating this Loan without further liability or obligation of Council:
  - (ii) Issuing a letter of warning advising Borrower of the deficiency and putting the Borrower on notice that additional action will be taken if the deficiency is not corrected or is repeated;
  - (iii) Recommending, or requesting Borrower to submit proposals for corrective actions, including the correction or removal of the causes of the deficiency:
  - (iv) Advising Borrower to suspend disbursement of funds for the deficient activity;
  - (v) Advising Borrower to reimburse any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements:

- (vi) Changing the method of payment to Borrower; and/or
- (vi) Reducing, withdrawing, or adjusting the amount of the Loan.
- D. Extension of Construction. Council may, at its discretion, by amendment to this Loan, extend the construction services date if Borrower provides written justification for the extension and that the completion of construction services will not exceed six (6) months from the construction services date established herein. A construction services date extension of six (6) months or less will not change the termination date established herein.
- E. Monitor Activities. The Council shall have the right to monitor all Project related activities of the Borrower. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe personnel in every phase of performance of the Project.
- F. No Finder's Fees. No finder's fee, employment agency fee, broker fee or other such fee related to this Loan shall be paid by either party.
- G. Non-Supplanting Certification. Borrower hereby affirms that BRC loan funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose.
- H. Operations and Maintenance. Borrower will be required to provide an operations and maintenance plan for the Project commencing upon the completion of construction and for a minimum of five years thereafter.
- I. Performance Measures. Borrower will be required to provide information as requested by the State of Wyoming, by and through the Council, about the construction of the facility, jobs created, additional private investment, and secured sales contracts.
- J. Procurement Requirements. Upon completion of construction of this Project. Borrower will be required to provide the Council a letter from Borrower's attorney confirming:
  - (i) That based upon the best information available from Borrower's agent and mortgagee. Cheyenne LEADs, Borrower has followed all procurement standards have been followed as per W.S. § 15-1-113 and W.S. § 16-6-101 et. Seq.
  - (ii) That based upon the best information available from Borrower's agent and Mortgagee. Cheyenne LEADs, Borrower has followed the Wyoming Preference Act (W.S. § 16-6-201 through 16-6-206):

- K. Publicity. Any publicity given to the Project or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Borrower, shall identify the Council as a funder.
- L. Reporting. Within 15 calendar days at the conclusion of each calendar year during the Term of this Loan. Borrower shall furnish Council with a written progress report. Each progress report shall set forth, in narrative form; the Project work accomplished under the Loan during the quarter and shall include a financial status report. At the end of the term, Borrower shall furnish Council with a comprehensive report of the Project and accomplishments pursuant to the Loan. Borrower shall likewise furnish Council with a cumulative financial statement, reflecting total expenditures pursuant to this Loan.
- M. Retention of Records. Borrower agrees to retain all records related to the Project which are required to be retained pursuant to this Loan or the BRC program rules and regulations for 10 years following Council's date of notice to Borrower of closeout of the Loan.

#### 11. General Provisions

- A. Amendments. Any changes, modifications, revisions or amendments to this Loan which are mutually agreed upon in writing by the parties hereto shall be incorporated by written instrument, signed by all parties to this Loan.
- B. Applicable Law/Venue. The construction, interpretation and enforcement of this Loan shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Loan and the parties, and venue for any action shall be in the First Judicial District. Laramie County. Wyoming.
- C. Assignment. Borrower shall not assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Loan without the prior written consent of the other party. Borrower shall not use this Loan, or any portion thereof, for collateral for any financial obligation, without the prior written permission of Council.
- D. Assumption of Risk. Subject to the provisions of Attachment B. including but not limited to Sections 1.1 and 4 therein, the Borrower shall assume the risk of any loss of state funding due to the Borrower's failure to comply with state requirements. The Council shall notify the Borrower of any state determination of noncompliance.
- E. Audit/Access to Records. The Council and any of its representatives shall have access to any books, documents, papers, and records of the Borrower that are pertinent to this Loan.
- F. Availability of Funds. Each payment obligation of the Council is conditioned upon the availability of government funds that are appropriated or allocated for the

payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Borrower, the Loan may be terminated by the Council at the end of the period for which the funds are available. The Council shall notify the Borrower at the earliest possible time of the services that will or may be affected by a shortage of funds. No penalty shall accrue to the Council in the event this provision is exercised, and the Council shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Council to terminate this Loan to acquire similar services from another party.

- G. Award of Related Agreements. The Council may undertake or award supplemental or successor Agreements for work related to this Loan. The Borrower shall cooperate fully with other Borrowers and the Council in all such cases.
- H. Compliance with Laws. The Borrower shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Loan.
- I. Entirety of Loan. This Loan consisting of nine (9) pages, Attachment A, consisting of six (6) pages, Attachment B, consisting of five (5) pages, Attachment C, consisting of one (1) page, and Attachment D, consisting of twelve (12) pages, represents the entire and integrated Loan between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- J. Extensions. Nothing in this Loan shall be interpreted or deemed to create an expectation that this Loan will be extended beyond the term described herein. This Loan may be renewed by agreement of both parties in writing, provided that there is no right or expectation of renewal or extension beyond the Term, and any renewal or extension will be determined at the discretion of Council and subject to any necessary Council approval. Any agreement to extend this Loan shall include, but shall not be limited to: an unambiguous identification of the Loan being extended; the term of the extension; a statement that all terms and conditions of the original Loan shall, unless explicitly delineated in the exception, remain as they were in the original Loan; and, if the duties of either party will be different during the extension than they were under the original Loan, a detailed description of those duties.
- K. Indemnification. Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.
- L. Independent Contractor. Borrower shall function as an independent contractor for the purposes of this Loan, and shall not be considered an employee of Council for any purpose. Borrower shall assume sole responsibility for any debts or liabilities that may be incurred by the Borrower in fulfilling the terms of this Loan, and shall be solely responsible for the payment of all federal, state and local taxes, which may accrue because of this Loan, subject to the provisions of Attachment B, including but not limited to Section 1.1 and Section 4. Nothing in this Loan shall

Loan Between the Wyoming Business Council and Laramie County Wyoming Malting Business Committed Special Assistance Loan Project Page 6 of 9 be interpreted as authorizing Borrower or its agents and/or employees to act as an agent or representative for or on behalf of Council. or to incur any obligation of any kind on the behalf of Council. Borrower agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to Council employees will inure to the benefit of Borrower or Borrower's agents and/or employees as a result of this Loan.

- M. Kickbacks. The Borrower certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Loan, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Loan. If the Borrower breaches or violates this warranty, the Council may, at its discretion, terminate this Loan without liability to the Council, or deduct from the Loan or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- N. Nondiscrimination. The Borrower shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. §27-9-105 et seq.). the Americans with Disabilities Act, (ADA), 42 U.S.C. §12101, et seq., and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations related thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, origin, or disability in connection with the performance under this agreement.
- O. Notices. All notices arising out of, or from, the provisions of this Loan shall be in writing and given to the parties at the address provided under this Loan, either by regular U.S. mail or delivery in person. Delivery shall be deemed to have occurred 3 days following deposit in the U.S. mail or upon delivery in person.
- P. Ownership of Documents/Work Product/Materials. All documents, records. field notes, data samples, specimens, and materials of any kind resulting from performance of this Loan are at all times the property of the Council.
- Q. Prior Approval. This Loan shall not be binding upon either party, no services shall be performed under the terms of this Loan, and the Wyoming State Auditor shall not draw warrants for payment on this Loan, until this Loan has been reduced to writing and approved as to form by the Office of the Attorney General.
- R. Severability. Should any portion of this Loan be judicially determined to be illegal or unenforceable, the remainder of this Loan shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- Sovereign Immunity. The State of Wyoming and Council do not waive sovereign immunity by entering into this Loan and the Borrower does not waive governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereigns or governmental entities pursuant to Wyo. Stat. §1-39-101. et seq., and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of

sovereign immunity. The parties agree that any ambiguity in this Loan shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.

- Taxes. The Borrower shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to social security taxes, workers' compensation, unemployment insurance and sales taxes in connection with performance of the Project and this Loan.
- U. Termination of Loan. The Council may terminate this Loan immediately for cause if the Borrower fails to perform in accordance with the terms and conditions of this Loan. Should the Borrower fail to perform in a manner consistent with the terms and conditions set forth in this Loan, payment under this Loan may be withheld until such time as the Borrower performs its duties and responsibilities. In the event of termination under this section, any and all loan repayments obligation shall survive. The Council retains all collection rights contained in this agreement or any related documents.
- V. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Loan shall not be construed so as to create such status. The rights, duties and obligations contained in this Loan shall operate only between the parties to this Loan, and shall inure solely to the benefit of the parties to this Loan. The provisions of this Loan are intended only to assist the parties in determining and performing their obligations under this Loan.
- W. Time is of the Essence. Time is of the essence in the performance by Borrower all provisions of the Loan.
- X. Titles Not Controlling. Titles of sections are for reference only, and shall not be used to construe the language in this Loan.
- Y. Unused/Misused Funds. The Council shall be entitled to recover from Borrower any full or partial payment made under this Loan for: 1) any payments used for purposes not authorized, or performed outside this Loan, 2) any payments for services the Borrower is unable to provide, 3) any payments for services the borrower did not provide but was required to provide under the terms of this Loan.
- Z. Waiver. The waiver of any breach of any term or condition in this Loan shall not be deemed a waiver of any prior or subsequent breach.

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12. <u>Signatures.</u> By signing this Loan, the parties represent and warrant that they have read and understood it, that they agree to be bound by the terms of the Loan, that they have the authority to sign it, and that they have received a signed and dated copy of the Loan.

The effective date of this Loan is the date of the signature last affixed to this page.

WYOMING BUSINESS COUNCIL	
Shaum Roese	5-25-16
Shawn Reesc	Date
Chief Executive Officer	
Thomas Cath	5-25-16
Molly Spangler, Director Investment Ready Communities Division	Date
investment Ready Communities Division	
LARAMIE COUNTY	
K.M Buck Holme	Klauland
K.M. Buck Holmes, Chairman	5/24/2016
Laramie County Board of County Commissioners	13ate /
Laranne County Board of County Commissioners	
STATE OF WYOMING )	
) ss.	
COUNTY OF LARAMIE )	
The foregoing instrument was acknowledged before me by	
K. N. Buck Holniss or Wallitte this 34	$\int_{0}^{\infty} day \text{ of } M(U)$ . 2016
Witness my hand and official seal.  J. A. HERRINGTON - NOTARY PUBLIC NOTARY Public Notary Public	<del>/</del> ·
J. A. HERRINGTON - NOTARY PUBLIC	12/62
COUNTY OF STATE OF NOTATY PUBLIC WYOMING	-)
My commission sexpires: 1 2018	
ATTORNEY GENERAL'S OFFICE APPROVAL AS	TO FORM
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COUNTY ATTORNEY APPROVAL AS TO FORM	1 ,
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Loan Between the Wyoming Business Council and Laramic County Wyoming Malting Business Committed Special Assistance Loan Project Page 9 of 9

## ATTACHMENT

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## ATTACHMENT A TO BUSINESS READY COMMUNITY GRANT AND LOAN PROGRAM LOAN AGREEMENT BETWEEN THE WYOMING BUSINESS COUNCIL AND LARAMIE COUNTY

Parpise	and a county reduction a 32	d as a manufactu	ess Cor	mmitted grant a	e Bluffs Distillery Facility and a \$557,935 BRC loan to construct a 20,000 facility with business offices. The building will be	
Project Budget	Projected Grant Expenditure Schoolede					
	Description	BRC		Match	Total	
	Land Non-Construction Costs Construction Costs	\$ 50,205 \$ 84,633 \$2,724,946	S S	BRC Loan 9,795 16,512 531,628	S 60,000 S 101.12	
erformance	Total Project Cost	\$2.859.784	S	557.935	S 3,236,37	
Measures	Measure Businesses Assisted			Quantity	Notes 5,417,715	
Return on Investment Revenue recapture from gran		funds	\$	2 4.521,437 1,304,892	Wy. Malting Company and Pine Bluffs Distilling 2.55%	
	Revenue recapture from loan (principal and interest	· 10	s	750,040		
	County Median Wage		\$	17.38		
	Median Wage of Jobs Created Jobs to be Created (3 Year Pro	iaction)	\$	19.04		
Additional Investment	Additional Investment	jection)	S	700,000	\$550,000 in capital equipment & \$150,000 for operating expenses	
oject	Acres Developed		10 20.000 sf 2.750 lf			
Water Septic tank and leech field						
	Roads	NO RECEITED		1 1.085 If		
A Comment of the Comm	Fire Hydrant			1		

#### **Project Description**

Laramie County requests a \$2,859,784 Business Committed grant and a \$557,935 Business Ready Community loan to construct a 20,000 square-foot building to be used as a manufacturing and warehouse facility with business offices. The building will be constructed on a 10-acre parcel in the Pine Bluffs business park located north of town. The facility will be owned by Cheyenne LEADS, the local economic development organization and qualified Community Development Organization (CDO), and leased to LaGrange Grocery and Hardware, LLC doing business as Wyoming Malting Company and Pine Bluffs Distilling.

#### The Business

Wyoming Malting Company and Pine Bluffs Distilling will be jointly owned by Gene Purdy and Chad Brown. Wyoming Malting Company will be the first craft malt house in Wyoming. Pine Bluffs Distilling will distill craft whiskey and other spirits with a portion of the malt that is manufactured.

Wyoming Malting will look to meet regional market demands. Currently, there are 18 breweries in Wyoming and 200 in Colorado, but only 31 malt companies in the country; the closest being in Alamosa, Colorado. The majority of the malt for Wyoming and Colorado is transported from the Northwest, Wisconsin or imported from Canada. Jackson Hole Still Works, a small batch spirits distiller, indicates they are interested in buying malt from Wyoming Malting as soon as the product is available.

Local family farms, such as Purdy Farms owned by Gene Purdy, will grow the grains used to malt and distill. Farmers in the Pine Bluffs area have indicated interest in selling grain to the facility should there be a need for grains beyond what Purdy Farms can produce or are able to provide to the malt operation. Information available through the Brewers Association (the national organization that represents the interests of small and independent craft brewers) indicates the 18 Wyoming Breweries use approximately 936,000 pounds of malted barley a year. Colorado breweries require about 83 million pounds. Wyoming Malting will have an initial capacity of 600,000 pounds per year which is roughly 64% of the Wyoming market and 1% of the regional market. Cash flow from the malt house will sustain the distillery while the products age and can ultimately be sold. Waste products can be used as feed for farms.

#### **Project Goals and Benefits**

The project will create a facility that will add to the tax base of the community of Pine Bluffs and Laramie County. Initially, the company will create three full-time jobs and projects nine new jobs within five years. Wages will be above the county median. Benefits include health, vision and dental insurance, long-term disability, 401K retirement with employer matching opportunities and a personal time-off program.

One of the WBC's action items is to encourage business start-ups and grow business profitability. Another is to expand agricultural diversification and market development. A malting house and distillery diversify the local agriculture industry as well as add value to crop production. When in operation, the business plans to promote agri-tourism by making the facility a destination for visitors.

The company plans to market its products as Wyoming-made and will work with the Business Council's Wyoming First program to further market itself.

#### **Timeline**

Applicant estimates completing the project by the fall of 2016.

#### **Project Funding**

The total project cost is \$3,417,719, of which \$2,859,784 represents BRC grant funding and \$557,935 in BRC loan funds. The loan represents the cash match for the project. The business will finance its working capital with investor financing from Petros Wyoming Fund I, LLC. It will purchase equipment with a line of credit (\$550,000) secured by Gene and Ronda Purdy and the Garrett and Carla DeVries Family Trust.

The cost per square foot is approximately \$155. Randy Pouppirt, a registered professional architect with Pouppirt Architects, provided cost estimates.

#### Loan Terms

Total Project: \$3,417,719

Total Loan: \$557,935

BRC Grant: \$2,859,784

Collateral: Facility tobe constructed

Repayment: Lease payment from Wyoming Malting and Pine Bluffs Distilling to Cheyenne LEADS

Term: 20 years

Interest Rate: 3%

Fees: .5% loan fee (not to exceed \$5,000)

Other fees (i.e. loan documentation, appraisal, filing, etc.) are the responsibility of Laramie County,

Cheyenne LEADS and Wyoming Malting and Wyoming Distilling.

The BRC program will recapture \$750,040 in principal and interest and one-half the grant for a total of \$2,054,932

The County will have a mortgage on the facility. The WBC will take an assignment of the mortgage and lease payments.

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Sources		
BRC Grant	S	2,859,784
BRC Loan	\$	557,935
Total eligible project cost	\$.	3,417,719
BRC % of total eligible project costs		84%
Local % of total eligible project costs		16%
Usex		To the state of
Land Acquisition Costs	doug.	or the Park of the
Land	S	60,000
Non-Construction Costs		,
Architectural and Engineering fees	\$	96.095
Other fees (surveys, tests, etc.)	S	5.000
Project inspection fees	S	50
Construction Costs	•	
Building Components:		
Electrical Systems	S	380,250
Mechanical, plumbing, HVAC systems	S	533,627
Landscaping	S	25.000
Foundation and/or Structural Framing system	S	
Interior Finishes	S	154.530
Fire Protection	S	88,627
Grain Bins & Delivery Systems	S	391,745
Site Development (On-site access road	.,	371.743
improvements, septic system)	S	296,606
Public Infrastructure Improvements (Off-site	J	270.000
access road improvements, water main, hydrant)	S	250,000
Contingencies (15%)	S	445,789
Total Uses	\$3	,417,719
	4.0	, , , ,

#### Lease and Revenue Recapture

Laramie County, working with Cheyenne LEADS, will construct a 20,000 square-foot facility and lease it to Wyoming Malting Company and Pine Bluffs Distilling for 20 years on an escalating schedule. The company will have the option to purchase after year five for the amount of the BRC funding minus lease payments.

The amount of funding subject to revenue recapture is reduced by \$250,000. This reduction accounts for infrastructure that, while integral to the project, is not actually located on the project site and is not considered revenue generating. It includes a water main (\$206,500), fire hydrant (\$6,000) and access road improvements (\$37,500).

LEADS will receive \$1,304,892 over 20 years through lease payments. If the maximum grant amount is received by the County and LEADS receives all anticipated lease payments, then \$1,304,892 will be paid to the WBC as revenue recapture and \$750,040 as loan principle and interest.

In the event that the total actual revenue received from the company is less than the \$3,417,719 total project cost, LEADS will retain 33.3% and the JPB will retain 16.7% of the revenue actually received from the company and will be obligated to pay 50% of the revenue actually received from the company to the WBC as revenue recapture. All amounts retained as recapture do not include the amounts paid to the state of Wyoming as loan payments.

Cheyenne LEADS will reinvest recaptured funds into on-going economic development activities in Laramie County, including but not limited to:

- Land acquisition for business parks
- Water, sewer and transportation infrastructure
- Landscaping
- Planning
- Real estate acquisition for incubatorbuildings
- Communications or broadband infrastructure
- Power and natural gas infrastructure

The JPB will reinvest recaptured funds according to its legal purpose which includes:

- Facilitate and promote the sound economic growth of the State of Wyoming
- Development of its natural resources
- Protection of its natural environment

Promote employment opportunities for the citizens of Wyoming by creating or encouraging the expansion of manufacturing and industrial plants, processing facilities, and all kind of businesses which contribute payrolls and tax base to the State of Wyoming.

### Regional Comments by Lisa Johnson

The owners of Wyoming Malting and Pine Bluffs Distilling first contacted the Wyoming Business Council in late 2014. Since that time, they have worked with Cheyenne LEADS to refine their business plan and select a site for a manufacturing facility in Pine Bluffs.

This project is projected to create nine jobs in the Pine Bluffs community and will be the first malt house in Wyoming adding value to an agricultural commodity. This project will be the first manufacturing facility located in a newly developed area of Pine Bluffs, providing the stimulus for the community to expand its infrastructure, which will eventually attract more business

I believe the owners of these businesses have extensive business background and have invested a substantial amount of their own resources to ensure the success of this new venture.

### Comments by Agribusiness Director Cindy Garretson-Weibel

This project supports the WBC's strategic plan by expanding value-added opportunities, agricultural diversification and market development. This is an exciting project that will vertically integrate a Wyoming farming operation and add value to a commodity, such as barley.

With the craft brewing industry rapidly expanding, Wyoming Malting Company has identified a unique marketing opportunity to provide malt to breweries in the region. Purdy Farms will provide the majority of the grains used in the malting and distilling process, but other local farms may have an opportunity to provide grains to fulfill any shortfall.

The distillery provides a value-added opportunity to take a Wyoming-grown product to the consumer as finished product.

#### **WBC** Deliberation

The board discussed the projected market share and asked business owners if their projections are reasonable. Business owners replied the projections are based on research and conversations with brewers about demand.

The board inquired about whether PurdyFarms would be the sole supplier of grains. The business will contract with other producers as well. The business owners have had discussions with many local farmers who wish to produce barley. There is a significant increase to the price of barley to be used for malting as opposed to feed.

The board discussed the public benefit of off-site infrastructure that will help other industrial development.

Finally, the board discussed the number of jobs to be created. Project proponents said the number of jobs to be created is a conservative estimate. By the fifth year 10 jobs will be created that pay good wages and have benefits. The proponents said this is significant job creation for Pine Bluffs.

#### **WBC** Recommendation

After hearing from the business owners, representatives of Cheyenne LEADS and Laramie County, the board recommended the project with a vote of 11-1.

The WBC recommends funding as a business committed grant in the amount of \$2,859,784 and a BRC loan in the amount of \$557,935, as requested with the following contingencies:

- Receipt of documentation that all the required permits from the Wyoming Department of Agriculture, Laramie County, the Wyoming Liquor Commission and the Alcohol and Tobacco Tax and Trade Bureau are secured
- Receipt of documentation that the working capital and equipment financing are secured
- A signed contingency and development agreement
- A signed lease agreement
- Updated pro-forma projections to reflect all current debt and lease obligations
- Receipt of loan documentation

Performance measures for this project include the construction of the facility, jobs created, additional private investment and sales contracts secured.

State Loan and Investment Board Action: <u>APPROVED BY A VOTE OF 4 TO 1 (Secretary Murray was opposing vote) OCTOBER 1, 2015.</u>