

Sandra Newland

From: Karen Fate <karen.fate@wyo.gov>
Sent: Monday, May 07, 2018 9:09 AM
To: Sandra Newland
Cc: julie kozlowski; Josh Keefe; Brayden Connour; heather tupper
Subject: WY Malting Loan - Amendment One Attachment E - Non-Recourse Promissory Note
Attachments: AMEND ONE ATTACHMENT E WY Malting Non-Recourse P Note.pdf

Sandra;

Attached to this message is a "clean copy" of the new Non-Recourse Promissory Note (Attachment E - Amendment One). The changes are on page 1, Section 1.2 Payments - second paragraph.

I am going to be snail-mailing the original copy of this to you to have signed, notarized and returned to me so I can incorporate it into Amendment One for the final review and approval process.

I find that it is much easier to have the Non-Recourse Promissory Note signed first and then submitting to the AG's Office rather going back and forth with them on an unsigned document to finalize.

Let me know if you have any questions or concerns!

K

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E-mail to and from me, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

NON-RECOURSE PROMISSORY NOTE

For Value Received, **Laramie County**, whose principal office is located at 310 West 19th 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 15th 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 dated 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 one interest only payment of sixteen thousand, seven hundred thirty-eight dollars and five cents (\$16,738.05). On the second (2nd) anniversary of the Commencement Date, the Borrower will pay equal annual installments of principal and interest in the amount of thirty-eight thousand, nine hundred fifty-one dollars and sixty-one cents (\$38,951.61) based on an amortization period of nineteen (19) 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 be an 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 _____ day of _____, 2018.

Laramie County:

By: _____

ATTEST:

By: _____

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

