ECONOMIC DEVELOPMENT AUTHORITY
Monday, February 22, 2021, 5:15PM
*Go to Meeting (see webinar instructions below).

Meeting Agenda

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes – January 25, 2021
4. Approval of the Bills – February 22, 2021
5. New Business
   5.1. Welcome – Council Member Swanberg
   5.2. Public Hearing – Revolving Loan - Anderson Orthodontics (Res. No. 2021-02)
   5.3. Public Hearing – Revolving Loan - Haemig Dental (Res. No. 2021-03)
   5.4. Public Hearing – Revolving Loan - Mootz Eyecare (Res. No. 2021-04)
   5.5. Revolving Loan - Bennett Pharmaceuticals (Res. No. 2021-05)
   5.6. Financial Institution Access – (Res. No. 2021-06)
6. Other Business
7. Adjournment - Next Meeting: Monday, March 22, 2021 at 5:15pm

*Please register for Le Sueur Economic Development Authority (EDA) Regular Meeting on February 22, 2021 at 5:15pm CDT at:

https://register.gotowebinar.com/register/6546161691834214926

After registering, you will receive a confirmation email containing information about joining the webinar.
A regular meeting of the Economic Development Authority (EDA) was held on Monday, January 25, 2021 at 6:00 p.m. virtually via Go to Meeting with the following EDA Members present: Dan Mahoney, Melissa Meger, Marvin Sullivan, Irene Manke, and Jesse Wenisch. Members Absent: Dave Swanberg.

Motion by Member Manke, seconded by Member Meger, to approve the agenda as written. Members Voting in favor: Meger, Manke, Mahoney, Wenisch, and Sullivan. Members Voting no: None. Motion carried.

Motion by Member Sullivan, seconded by Member Meger approving the minutes of the December 17, 2020 meeting. Members Voting in favor: Meger, Manke, Mahoney, Wenisch, and Sullivan. Members Voting no: None. Motion carried.

Item 5.1. Welcome Council Member Swanberg: Member Swanberg was unable to attend the meeting so introductions will be made at the February EDA meeting.

Item 5.2. Cornerstone Bank Closeout: The EDA maintains a checking account at CornerStone State Bank which was previously utilized for the revolving loan fund repayments. The estimated balance of this account is $3,056.17. The EDA currently has no outstanding revolving loans. The EDA also has checking and savings account at First Farmers and Merchants Bank. A motion by Member Sullivan, seconded by Member Mahoney authorize Res. 2021-001, a resolution authorizing the closeout of the account at CornerStone State Bank and the transfer of these funds to First Farmers and Merchants Bank. Members Voting in favor: Meger, Manke, Mahoney, Wenisch, and Sullivan. Members Voting no: None. Motion carried.

Item 5.3. Awards and Recognition: The EDA has successfully completed the three-year Southern Minnesota Initiative Foundation Rural Entrepreneur Venture Program and the City was awarded Project of the Year for the reconstruction of Main Street by the Economic Development Association of Minnesota.

Item 5.4. Election of Officers:

Member Wenish volunteered to continue as Chair of the EDA for 2021. A motion was made by Member Meger, seconded by Member Sullivan in favor of Member Wenish serving as the 2021 EDA Chair. Members Voting in favor: Meger, Manke, Mahoney, Wenisch, and Sullivan. Members Voting no: None. Motion carried.

Member Mahoney volunteered to continue as Vice-Chair of the EDA for 2021. A motion was made by Member Wenish, seconded by Sullivan in favor of Member Mahoney serving as 2021 EDA Vice-Chair. Members Voting in favor: Meger, Manke, Mahoney, Wenisch, and Sullivan. Members Voting no: None. Motion carried.

Item 6. Other Business: The City Council will be reviewing the plans to reopen Main Street and there is still one opening on the EDA.

A motion by Member Sullivan, seconded by Member Meger to adjourn the meeting. Members Voting in favor: Meger, Manke, Mahoney, Wenisch, and Sullivan. Members Voting no: None. Motion carried.

Respectfully submitted,
Samantha DiMaggio, EDA Executive Director/Community Development Director
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TO: Economic Development Authority

FROM: Samantha DiMaggio

SUBJECT: Public Hearing – Revolving Loan - Anderson Orthodontics

DATE: Monday, February 22, 2021

PURPOSE/ACTION REQUESTED
The EDA should hold a Public Hearing and consider approving a partially forgivable Revolving Loan for Dr. Jason Anderson, Anderson Orthodontics.

SUMMARY
The Economic Development Authority (EDA) has a revolving loan fund with a balance of approximately $1,500,000. These funds have historically been used to issue loans to local businesses. On May 26, 2020, the EDA updated their Business Subsidy Policy which guides how and when the funds should be used.

Dr. Jason Anderson, owner of Anderson Orthodontics, is requesting a partially forgivable loan from the Revolving Loan Fund in the Amount of $250,000. As part of the redevelopment of Tiller and Main, Dr. Anderson is being relocated from the second floor to the main floor. These funds will be used to build out his new space inside Tiller and Main, located at 202 Valley Green Square, Suite C.

The proposed Loan will be amortized over ten (10) years and will have an interest rate of three percent (3.0%). When the Loan reaches a balance of $125,000, the remaining balance of the note ($125,000) will be forgiven, if Dr. Anderson is not in default of his loan. Dr. Anderson has 6 full time staff that will be retained because of this loan.

RECOMMENDATION/OPTIONS
Staff recommends the EDA authorize Res. 2021-002, a Resolution approving a partially forgivable Revolving Loan to Dr. Jason Anderson, Anderson Orthodontics and giving the Chair and Executive Director the authority to execute the required Loan Documents.
CITY OF LE SUEUR ECONOMIC DEVELOPMENT
REVOLVING LOAN FUND APPLICATION

SECTION 1: CONTACT INFORMATION

Legal Name of Business: Anderson Orthodontics

Project Site Address: 362 Valley Green Square

City / State / Zip: Le Sueur MN 56058

Primary Business Contact Person(s): Jason Anderson

Phone: 507-665-3394

Email: andersonorthodontics@gmail.com

Check One: __ Proprietor  x Corporation  __ Partnership

SECTION 2: PROJECT OVERVIEW

Amount Requested: $ 150,000

Total Project Cost: $ 300,000

Please provide a brief summary of your company and its products and/or services.

Specialist provider of orthodontic dental services.

Please provide a brief summary of the proposed project.

- Build out & finish new office space due to involuntary relocation due to demolition & renovation of existing building

Please describe how these funds will impact your project.

It will be necessary in order for me to continue to provide care for my patients.
SECTION 3: ESTIMATED PROJECT COSTS

Land: $

Site improvements: $

New Building: $ 475,000 - 9100,000

Equipment/Machinery: $ 430,000 - 344,000

Remodeling/Renovation: $ 436,000 - 414,000

Demolition: $

Working Capital: $

Permits/Fees: $

Other (attach description) $

Total Costs $ 450,000

SECTION 4: SOURCES OF FINANCING

Bank Loan: $

Bank Name: 

Loan Officer Name & Contact Info: 

Additional Bank Loan (if applicable): $ 

Bank Name: 

Loan Officer Name & Contact Info: 

Additional Private Funds (amount & source): $ 100,000

Owner/Business Equity: $

State Funding (amount & program): $

Federal Funding (amount & program): $

Other Sources of Funding (amount and description): $ 550,000 - Build-out allowance from developer

Total Financing: $
SECTION 5: JOB CREATION (if applicable)

Current number of Employees (working at Le Sueur location):

5

Total number of jobs to be created (in Le Sueur) over the next two years:

none

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SECTION 6: REQUIRED ATTACHMENTS CHECKLIST

Please attach the following with completed application:

- [ ] 1. Written Business Plan, including the following:
  a. Business overview and company history and ownership
  b. Date Established
  c. Products/Services
  d. Future Plans

- [x] 2. Two Years of Historical Financials and Financial Projections

- [ ] 3. Personal Financial Statements of Proprietor, Partners, Guarantors

- [x] 4. Letter of Commitment from Financing Sources

SECTION 7: AGREEMENT

I/We certify that all information provided in this application (and its attachments) is true and correct to the best of my/our knowledge. I/We authorize the City of Le Sueur to check credit references and verify financial and other information. I/We agree to provide any addition information as may be requested by the City of Le Sueur and the Le Sueur Economic Development Authority.

APPLICATION SIGNATURE: [Signature]

PRINTED NAME & TITLE: [Signature]

DATE: Tuesday Jan 19, 2021
AUTHORIZATION RESOLUTION NO. 2021-02
LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

THIS IS TO CERTIFY: That at a regular meeting of the Le Sueur Economic Development Authority, a governmental subdivision under the laws of the State of Minnesota ("EDA"), duly called and held a Public Hearing on the 22nd day of February 2021.

WHEREAS the Economic Development Authority of the City of Le Sueur (the "EDA") has established Revolving Loan Fund Program in support of private efforts to establish, expand, create, and retain jobs, business retention or relocate new and existing businesses within the community; and

WHEREAS on May 26, 2020, following the required public hearing, the EDA did adopt a policy regarding the use of business subsidies; and

WHEREAS the EDA has received a request from Dr. Jason Anderson, Anderson Orthodontics (the "Recipient") for a partially forgivable loan in the maximum amount of $250,000 from the Revolving Loan Fund (the "Loan") to assist in financing the building out of tenant space for a medical clinic ("Project") located at 202 Valley Green Square, Suite C (the "Property"); and

WHEREAS the partially forgivable Loan provide for certain financial assistance that constitutes a "business subsidy" within the meaning of Minnesota Statutes, Section 116J.993 to 116J.995 (the "Business Subsidy Act"); and

WHEREAS the Project will result in the retention of at least six (6) full-time positions, with minimum wage of $14.98 per hour; and

WHEREAS the EDA has reviewed said request from the Recipient for the Loan, the EDA finds the Loan to be in the interest of the EDA, to be in compliance with the guidelines of the Revolving Loan Fund Program, and satisfies the criteria set forth in the EDA's adopted business subsidy policy; and

WHEREAS a Loan Agreement, between the EDA, and the loan Recipient (the "Loan Agreement"), evidencing the terms and requirements of the Loan in an amount of up to $250,000, which shall be administered by the EDA; and

NOW THEREFORE be it resolved by the Le Sueur Economic Development Authority in and for the City of Le Sueur, as follows:

1. The recitals set forth in the preamble to this resolution and the exhibits attached to this resolution, if any, are incorporated into this resolution as if fully set forth herein.

2. The Loan provides for certain financial assistance that constitutes a "business subsidy" within the meaning of the "Business Subsidy Act" and a Business Subsidy Loan Agreement has been made a part of the Loan Agreement.
3. The Loan in the maximum amount of $250,000 is authorized for Recipient for the purposes as set forth in this Resolution to create and retain jobs and promote economic development in accordance with the Revolving Loan Fund guidelines and objectives of the EDA and that said Loan is subject to the terms and conditions set forth in this Resolution and the Loan Agreement.

4. The Loan Agreement and all its exhibits are hereby in all respects authorized, approved and confirmed and the President and Executive Director of the EDA are hereby authorized and directed to execute and deliver the Loan Agreement (which incorporates the Business Subsidy Agreement) and all other documents requirement for the Loan and on behalf of the EDA in substantially the forms now on file with the EDA but with such modifications as shall be deemed necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

PASSED by the Economic Development Authority of the City of Le Sueur on this the 22 day of February 2021.

VOTE:       ____ MANKE           ____ MEGER           ____ SWANBERG
           ____ MAHONEY           ____ WENISCH  ____ SULLIVAN

I CERTIFY THAT the above resolution was adopted by the Economic Development Authority of the City of Le Sueur on February 22, 2021.

ATTEST

__________________________  ______________________
President             Executive Director

__________________________  ______________________
Date             Date
LOAN AGREEMENT
(Revolving Loan Fund)

THIS AGREEMENT is made and entered into as the 22 day of February 2021, by and between the Economic Development Authority of the City of Le Sueur, a public body, corporate and politic of the State of Minnesota (the "Lender"), having its principal offices at 203 South Second Street, Le Sueur, MN and Dr. Jason Anderson, Anderson Orthodontics (the "Borrower"), having its principal offices at 202 Valley Green Square, Suite C, Le Sueur, MN;

RECITALS

A. The Economic Development Authority has an established Revolving Loan Fund which contains a pool of money with the intention of supporting private economic development projects for the City of Le Sueur’s benefit.

B. Borrower has applied to Lender for a Revolving Loan for the tenant build out of their commercial space (as hereinafter defined) in the principal amount of $250,000.00.

C. Lender is willing to make such mortgage loan to Borrower in the principal amount of $250,000.00 (the “Loan”), subject to all of the terms and conditions of this Agreement.

D. The Loan to the Borrower is considered a Business Subsidy as defined in Minnesota Statutes 116J.993 to 116J.995, as amended, as the loan is over the $150,000 threshold.

E. Contemporaneously with the execution hereof, Borrower is delivering to Lender the following security documents:

   i. A Promissory Note (“Note”) effective as of the date herewith made by Borrower and payable to the order of Lender, in the original principal amount of $250,000.00.

   ii. The Personal Guaranty of Dr. Jason Anderson, Owner (collectively, the “Personal Guaranty”).

NOW THEREFORE, in consideration of the mutual obligations of the parties, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

ARTICLE 1
Definitions

As used in this Agreement, the following terms have the following respective meanings:

“Agreement” means this Loan Agreement by and among the Lender and the Borrower.

“Authority” means the Economic Development Authority of the City of Le Sueur, Minnesota.
“Benefit Date” means when the earlier of: 1) Improvements are finished, and a certificate of occupancy is issued for the project, or 2) when a medical clinic occupies the Development Property.

"Borrower" means Dr. Jason Anderson, Anderson Orthodontics, a Minnesota Limited Liability Company.


"City" means the City of Le Sueur, Minnesota.

“Compliance Date” means the date that is two (2) years after the Benefit Date, except as extended under Section 6.1(b).

"Development Property" means the tenant space located within Tiller and Main, located at 202 Valley Green Square, Suite C, Le Sueur, Minnesota 56058.

“Final Compliance Date” means one year after the Borrower first meets the job and wage goals, as provided for in section 6.1(b).

“Final Disbursement Date” means the date on which the maximum amount of Loan Proceeds by the Lender to the Borrower have been disbursed.

“Full-Time Job” means a permanent full-time employee working 2080 annual hours.

“Improvements” means the build out including the addition of walls, doors, outlets, cabinets, and anything else that needs to be constructed in the rental space in order for the space to be occupied by a medical clinic.

“Lender” means the City of Le Sueur Economic Development Authority.

"Loan" means the funds loaned by the Lender to the Borrower pursuant to this Agreement.

"Loan Proceeds" means the funds disbursed to the Borrower pursuant to this Agreement and any proceeds thereof.

"Project" means the Borrower completing the tenant build out necessary to operate a medical clinic within the Tiller and Main property located at 202 Valley Green Square, Suite C, Le Sueur, MN.

"State" means the State of Minnesota.

“Tenant Build Out” means a build out including the addition of walls, doors, outlets, cabinets, and anything else that needs to be constructed in the rental space in order for the space to be occupied by a medical clinic.

"Termination Date" means the date of the final payment made to the Lender.
ARTICLE 2
Loan Terms and Conditions

Section 2.1. Basic Loan Terms. The principal amount of the partially forgivable loan shall not exceed $250,000. The Loan shall bear interest at a rate of three percent (3.0%) per annum. The Loan shall be used exclusively for the tenant build out unless otherwise agreed to in writing by the Authority. The term of the Loan is set forth in Section 4.2 of this Agreement.

Section 2.2. Prepayment. Prepayment of the Loan may occur at any time during the Loan without penalty.

Section 2.3. Assignment. If, prior to the Termination Date, the Borrower sells, conveys, transfers, further encumbers, or disposes of the Project, or any part thereof or interest therein, or enters into an agreement to do any of the foregoing, the Borrower shall immediately repay the entire outstanding principal amount of the Loan and interest thereon at the rate set forth in Section 3.4 from the Final Disbursement Date. This shall be in addition to any other remedies at law or equity available to the Authority.

Section 2.4. Termination. This Agreement shall automatically terminate without any notice to Borrower: (1) if no Loan proceeds have been disbursed to the Borrower prior to August 31, 2021; or (2) if: (a) the Borrower has not received any disbursement of Loan proceeds from the Authority; and (b) the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment; or 3) upon payment of the Promissory Note referred to in Section 2.5 and amounts under this Agreement.

Section 2.5. Promissory Note. The Borrower shall execute the Promissory Note in substantially the form set forth at Exhibit A.

ARTICLE 3
Default and Collateral

Section 3.1. Default. The Borrower shall be in an event of default under this Agreement upon the happening of any one or more of the following events (an "Event of Default"):

(a) the Borrower fails to pay when due any amount payable on the Loan and such nonpayment is not remedied within ten (10) business days after written notice thereof to the Borrower by the Authority;

(b) the Borrower is in breach in any material respect, of any obligation or agreement under this Agreement (other than nonpayment of any amount payable on the Loan) and remains in breach in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Borrower is proceeding to cure such breach provided such breach can be cured within a reasonable period of time;
(c) if any material covenant, warranty, or representation of the Borrower shall prove to be untrue in any material respect, provided such covenant, warranty or representation of the Borrower remains untrue in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such untruth shall reasonably be incapable of being corrected within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to correct such untruth, as the Borrower is so proceeding to correct such untruth provided such untruth can be corrected within a reasonable period of time;

(d) the Borrower on or after the Final Disbursement Date, fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment;

(e) a final judgment is entered against the Borrower that the Authority reasonably deems will have a material, adverse impact on the Borrower's ability to comply with the Borrower's obligations under this Agreement.

(f) the Borrower sells, conveys, transfers, encumbers, or otherwise disposes of all or any part of the Project without the prior written approval of the Authority.

(g) the Borrower merges or consolidates with any other entity where the Borrower is not the surviving party without the prior written approval of the Authority; or

(h) there is a loss, theft, substantial damage, or destruction of all or any part of the Project that is not remedied to the Authority's satisfaction within sixty (60) business days after written notice thereof by the Authority to the Borrower.

Section 3.2. Remedies Upon Default.

(a) In an Event of Default, the Authority shall have the right as its option and without demand or notice, to declare all or any part of the Loan immediately due and payable, and in addition to the rights and remedies granted hereby, the Authority shall have all the rights and remedies available under the Uniform Commercial Code and any other applicable law.

(b) The Borrower agrees in an Event of Default to make the collateral available to the Authority. The Borrower agrees to pay the costs and expenses incurred by the Authority in enforcing its rights under this Agreement, including but not limited to the Authority’s attorney’s fees. If any notice of sale, disposition or other intended action by the Authority is required by law to be given to the Borrower, such notice shall be deemed reasonably and properly given if mailed to the Borrower at the Development Property or at such other address of the Borrower as may be shown herein, at least fifteen (15) days before such sale, disposition, or other intended action.
Section 3.3 Collateral. The Borrower shall grant to the Authority a Personal Guarantee in a form acceptable to the Authority.

Section 3.4. Default on Job and Reporting Requirements.

(a) In the event of an Event of Default, including arising from a breach by the Borrower of any provision of Section 6.1 of this Agreement, the Borrower shall, in addition to any other payment required hereunder, pay to the Authority the interest that would have been paid and accrued on the Loan if the interest rate of the Loan at all times had been equal to 3.0%.

(b) Nothing in this Section 3.4 shall be construed to limit the Authority’s rights or remedies under any other provision of this Agreement, and the provisions of Section 3.4(a) are in addition to any other such right or remedy the Authority may have available.

ARTICLE 4
Loan Disbursement Provisions

Section 4.1. Payment Requisition Documentation and Format. Loan disbursements shall be for the tenant build out and shall not exceed $250,000. The Loan shall be disbursed to the Borrower only after the Authority has received from the Borrower contractor invoices for costs of the Project with the maximum amount of disbursement at $250,000.

Section 4.2. Loan Terms. The term of the Loan shall be ten (10) years, commencing as of the Final Disbursement Date. The Loan shall bear interest at a rate of three percent (3.0%) per annum and interest shall commence to accrue as of the Final Disbursement Date. When the Loan reaches a balance of $125,000, the remaining balance of the note ($125,000) will be forgiven, provided the Borrower is not then in default under this Agreement.

Section 4.3. Loan Repayments Schedule. Payments of principal shall commence on the first day of the month immediately following the Final Disbursement Date and shall continue monthly thereafter on the first day of the same month until paid in full.

ARTICLE 5
Provision of Evidentiary Material Requirement

Section 5.1. Job Creation Documentation. The Borrower shall submit to the Authority a written report by January 15 of each year and shall terminate on the Compliance Date if the Borrower is not then in breach of Section 6, on forms provided by the Authority. This information shall be provided by the Borrower and must include at a minimum:

(a) the number of Retained Jobs and New Jobs created and the dates on which each were created and filled; and

(b) the job title, wages, benefits, and hourly value of such benefits for each such Job.
ARTICLE 6
Job and Wage Requirements

Section 6.1. Covenants.
(a) The Borrower acknowledges and agrees that it is receiving government assistance pursuant to the Loan:
   i. The subsidy provided to the Borrower includes the $250,000 partially forgivable Loan made hereunder which will be used for the tenant build out.
   ii. The public purposes and goals of the subsidy are to retain and potentially increase net jobs in the City.
   iii. The goals for the subsidy are to create and retain jobs that pay a wage per Section 6.1 (b) of this Agreement.
   iv. If the goals are not satisfied, the Borrower shall make payment to the Authority as required in Sections 3.4 and 6.1 (b).
   v. The subsidy is needed because the low interest partially forgivable Loan helps make the Project economically feasible.
   vi. The Borrower must continue operations in the jurisdiction for at least five years following the Benefit Date.
   vii. The Borrower does not have a parent corporation.
   viii. The Borrower has not received, nor do they expect to receive additional financial assistance which would be defined as a Business Subsidy under the Business Subsidy Act.

(b) The Borrower shall retain the six (6) previously existing permanent Full-time Jobs on the Development Property (the "Retained Jobs") and shall maintain the Retained Jobs for at least one year thereafter (the "Final Compliance Date"). All of the employees of the Borrower working at the Development Property, including, the New Jobs and the Retained Jobs, must be paid a base wage of at least $14.98 per hour exclusive of benefits. If the Borrower fails to meet the Job and Wage Goals by the Compliance Date, the Authority may, after holding a public hearing, extend the period to satisfy the Job and Wage Goals by one year, in which case the Compliance Date shall be extended by one year. In the event the Job and Wage Goals for the Retained Jobs are not satisfied, the loan forgiveness will be reduced by $10,000 for each job that was not retained prior to the Compliance Date or maintained through the Final Compliance Date.

Section 6.2 Reporting. The Borrower shall provide to the Authority information regarding Job and Wage Goals and results through the Final Compliance Date or until the goals are met, whichever is later. This reporting requirement will expire if the goals are met by the Final Compliance Date. If the goals are not met, the Borrower must continue to provide information on the Loan until the Loan is repaid. If the report is not submitted by January 15th of each year, the Authority shall mail the Borrower a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Borrower fails to provide a report, the Borrower must pay to the Authority a penalty of $100 for each subsequent day until the report is filed. The maximum penalty shall not exceed $1,000.

   (a) Reporting Documentation.
      i. The type, public purpose, and amount of the subsidy.
      ii. The hourly wage of each job created with separate bands of wages.
      iii. The sum of the hourly wages and cost of benefits.
      iv. The date the job and wage goals will be reached.
      v. A statement of goals identified in the subsidy agreement and an update on achievement of those goals.
      vi. The location of the recipient prior to receiving the business subsidy.
      vii. If the recipient was previously located in another site in Minnesota, the reason that the project was completed on this site.
viii. If the Borrower has a parent corporation, the name and address.
ix. A list of all financial assistance by all grantors for the Project; and
x. Other information the Authority may request.

ARTICLE 7
Non-discrimination

Section 7.1. Non-discrimination. The provisions of Minnesota Statutes, Section 181.59, and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Agreement as though wholly set forth herein and the Borrower shall comply with each such provision throughout the term of this Agreement.

ARTICLE 8
Borrower's Acknowledgments Representation, and Warrants

Section 8.1. Representations and Warranties. The Borrower warrants and represents, in connection with the Loan and for the benefit of the City and the Authority that:

(a) Representations, statements, and other matters provided by the Borrower relating to those activities of the Project to be completed by the Borrower, were true and complete in all material respects as of the date of submission to the Authority and that such representations, statements, and other matters are true as of the date of this Agreement and that there are no adverse material changes in the financial condition of the Borrower's business.

(b) To the best of the Borrower's knowledge, no member, officer, or employee of the City or the Authority, or their officers, employees, designees, or agents, no consultant, member of the governing body of the City or the Authority, and no other public official of the City or the Authority, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit therefrom, which is part of the Project.

(c) The Borrower warrants that to the best of its knowledge, it has obtained all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for it to lawfully execute this Agreement as binding upon it.

(d) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the Project, and that any duly authorized representative of the City and the Authority shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower until such time that the City and the Authority have determined that all issues, requirements, and close-out procedures relating to or arising out of the Loan have been settled and completed.

(e) The Borrower warrants that it has fully complied with all applicable local, state, and federal laws pertaining to its business and will continue such compliance throughout the terms of this Agreement. If at any time notice of noncompliance is received by the Borrower, the Borrower agrees to take any necessary action to comply with the local, state, or federal law in question.
ARTICLE 9
Other Special Conditions

Section 9.1. Effect on Other Agreements. Nothing in this Agreement shall be construed to modify any term of any other agreement to which the Authority and the Borrower are parties.

Section 9.2. Release and Indemnification Covenants. Except for any breach of the representations and warranties of the Authority or the negligence or other wrongful act or omission of the following named parties, the Borrower agrees to protect and defend the Authority and the governing body members, officers, agents, servants, and employees thereof, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the acquisition, construction, installation, ownership, maintenance, and operation of the Project and the Equipment and the Borrower's activities on the Development Property.

Section 9.3. Modifications. This Agreement may be modified solely through written amendments hereto executed by the Borrower, and the Authority.

Section 9.4 Notices and Demands. Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered only if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

(a) as to the EDA: Economic Development Authority of the City of Le Sueur
ATTN: Executive Director
203 South Second Street
Le Sueur, MN 56058

(b) as to the Borrower: Anderson Orthodontics
ATTN: Dr. Jason Anderson
202 Valley Green Square, Suite C
Le Sueur, MN 56058

Or at such other address with respect to any party as that party may, from time to time, designate in writing and forward to the others as provided in this Section 9.4.

Section 9.5. Conflict of Interests; Representatives Not Individually Liable. No officer or employee of the City or the Authority may acquire any financial interest, direct or indirect, in this Agreement, the Project, the Equipment or in any contract related thereto. No officer, agent, or employee of the City or the Authority shall be personally liable to the Borrower or any successor in interest in the event of any default or breach by the City or the Authority or for any amount that may become due to the Borrower or on any obligation or term of this Agreement.

Section 9.6. Binding Effect. The covenants and agreements in this Agreement shall bind and benefit the heirs, executors, administrators, successors, and assigns of the parties to this Agreement.

Section 9.7. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted only for convenience of reference and shall be disregarded in construing or interpreting any of its provisions.
Section 9.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.9. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.10. Waiver. The failure or delay of any party to take any action or assert any right or remedy, or the partial exercise by any party of any right or remedy shall not be deemed to be a waiver of such action, right, or remedy if the circumstances creating such action, right, or remedy continue or repeat.

Section 9.11. Entire Agreement. This Agreement, with the exhibit hereto, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Agreement.

Section 9.12. Separability. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

Section 9.13. Immunity. Nothing in this Agreement shall be construed as a waiver by the City or the Authority of any immunities, defenses, or other limitations on liability to which the City or the Authority are entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

[Remainder of page intentionally blank]
IN WITNESS WHEREOF, the Lender has caused this Agreement to be duly executed in its name and the Borrower has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

By ______________________
Its ______________________

By ______________________
Its ______________________

DR. JASON ANDERSON, ANDERSON ORTHODONTICS

By ______________________
Its ______________________
Exhibit A
Promissory Note

$250,000                                                                                                                     February 22, 2021

Dr. Jason Anderson, Anderson Orthodontics, a Minnesota Limited Liability Corporation (the "Maker"),
for value received, hereby promises to pay to the City of Le Sueur Economic Development Authority,
Minnesota (the "City") or its assigns (the City and any assigns are hereinafter referred to as the "Holder"),
at its designated principal office or such other place as the Holder may designate in writing, the principal
sum of Two Hundred and Fifty Thousand and No/100 Dollars ($250,000.00) or so much thereof as may
be advanced under this Note, with interest as hereinafter provided, in any coin or currency which at the
time or times of payment is legal tender for the payment of private debts in the United States of America.
The principal of and interest on this Note is payable in installments due as follows:

1. The Loan shall bear interest at a rate of three percent (3%) per annum, except as otherwise
   provided for in Section 3.4 of the Loan Agreement as hereinafter defined.

2. Payments of principal and interest shall commence on the first day of the month immediately
   following the Final Disbursement Date and continue monthly thereafter on the first day of the month
   immediately following the distribution in the amount of $2,414.02. The monthly payments shall continue
   until the loan reaches 50% of the total loan amount or $125,000, at which time the remaining balance of
   $125,000 shall be forgiven, provided the Maker is not in default under this Note or under that certain
   Loan Agreement between the Maker and the Economic Development Authority of the City of Le Sueur,
   Minnesota (the "Loan Agreement").

3. The Maker shall have the right to prepay the principal of this Note, in whole or in part, without
   prepayment penalty.

4. This Note is given pursuant to the Loan Agreement and is secured by a personal guarantee.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan
Agreement, or any instrument securing this Note, are hereby made a part of this Note to the same extent
and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the
essence of this Note. If a default occurs under the Loan Agreement, or any instrument securing this Note,
then the Holder of this Note may at its right and option, without notice, declare immediately due and
payable the principal balance of this Note, together with any costs of collection including attorneys' fees
incurred by the Holder of this Note in collecting or enforcing payment hereof, whether suit be brought or
not, and all other sums due hereunder, or under any instrument securing this Note. The Maker agrees that
the Holder of this Note may, without notice to the Maker of this Note and without affecting the liability of
the Maker of this Note, accept additional or substitute security for this Note, or release any security or any
party liable for this Note or extend or renew this Note.
5. The remedies of the Holder of this Note as provided herein, and in the Loan Agreement, or any other instrument securing this Note, shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder of this Note and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

6. This Note shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

7. This Note, with the other Loan documents, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Note.

8. Wherever possible, each provision of this Note and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Note or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or any other related document.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of 22 day of February 2021.

Dr. Jason Anderson, Anderson Orthodontics

By __________________________

Its __________________________
TO: Economic Development Authority

FROM: Samantha DiMaggio

SUBJECT: Public Hearing – Revolving Loan – Haemig Family Dentistry

DATE: Monday, February 22, 2021

PURPOSE/ACTION REQUESTED
The EDA should hold a Public Hearing and consider approving a partially forgivable Revolving Loan for Dr. Karl Haemig, Haemig Family Dentistry.

SUMMARY
The Economic Development Authority (EDA) has a revolving loan fund with a balance of approximately $1,500,000. These funds have historically been used to issue loans to local businesses. On May 26, 2020, the EDA updated their Business Subsidy Policy which guides how and when the funds should be used.

Dr. Karl Haemig, owner of Haemig Family Dentistry, is requesting a partially forgivable loan from the Revolving Loan Fund in the Amount of $250,000. As part of the redevelopment of Tiller and Main, Dr. Haemig is being relocated from the second floor to the main floor. These funds will be used to build out his new space inside Tiller and Main, located at 202 Valley Green Square, Suite A.

The proposed Loan will be amortized over ten (10) years and will have an interest rate of three percent (3.0%). When the Loan reaches a balance of $125,000, the remaining balance of the note ($125,000) will be forgiven, if Dr. Haemig is not in default of his loan. Dr. Haemig has 3 full time equivalent staff that will be retained because of this loan.

RECOMMENDATION/OPTIONS
Staff recommends the EDA authorize Res. 2021-003, a Resolution approving a partially forgivable Revolving Loan to Dr. Karl Haemig, Haemig Family Dentistry and giving the Chair and Executive Director the authority to execute the required Loan Documents.
CITY OF LE SUEUR ECONOMIC DEVELOPMENT
REVOLVING LOAN FUND APPLICATION

SECTION 1: CONTACT INFORMATION

Legal Name of Business: Haemig Family Dentistry, PC
Project Site Address: 702 Valleygreen Square, Le Sueur, MN 56058
City / State / Zip:
Primary Business Contact Person(s): Dr. Karl Haemig
Phone: 651-318-7297
Email: karlhaemig@yahoo.com
Check One: ___ Proprietor ___ Corporation ___ Partnership

SECTION 2: PROJECT OVERVIEW

Amount Requested: $250,000
Total Project Cost: $450,000

Please provide a brief summary of your company and its products and/or services.

Haemig Family Dentistry is a general dental practice. We take care of emergency dental services such as tooth extractions and root canals. We save teeth using fillings and crowns and provide preventive dental services such as cleanings, x-rays, exams, sealants, and nightguards to patients of all ages.

Please provide a brief summary of the proposed project.

Moving Haemig Family Dentistry from its current location at 304 Valleygreen Square to a new location at 702 Valleygreen Square after completion of a buildout of the aforementioned space. The new space will have one more operator than our old space. The migration of your dental clinic will return a small business to an area street, as well as allow residential apartments to be built in the space that will be vacated upstairs.

Please describe how these funds will impact your project.

They can pay for moving costs for my dental equipment, purchase of one operator's new dental equipment, as well as building costs for the new space.
SECTION 3: ESTIMATED PROJECT COSTS

Land: $_______________________________

Site improvements: $__________________________

New Building: $__________________________

Equipment/Machinery: $60,000

Remodeling/Renovation: $425,000

Demolition: $__________________________

Working Capital: $__________________________

Permits/Fees: $__________________________

Other (attach description) $ moving costs for dental equipment: $11,000 - 22,000

Total Costs $510,000

SECTION 4: SOURCES OF FINANCING

Bank Loan: $200,000

Bank Name: ____________________________

Loan Officer Name & Contact Info: Taylor Stockwell (507) 665-6465

Additional Bank Loan (if applicable): $__________________________

Bank Name: ____________________________

Loan Officer Name & Contact Info: ____________________________

Additional Private Funds (amount & source): $__________________________

Owner/Business Equity: $60,000

State Funding (amount & program): $__________________________

Federal Funding (amount & program): $__________________________

Other Sources of Funding (amount and description): $__________________________

Total Financing: $260,000
SECTION 5: JOB CREATION (if applicable)

Current number of Employees (working at Le Sueur location): 6

Total number of jobs to be created (in Le Sueur) over the next two years: 2

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<th>Hourly Wage w/ Benefits</th>
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<tr>
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<td>Summer 2021</td>
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SECTION 6: REQUIRED ATTACHMENTS CHECKLIST

Please attach the following with completed application:

1. Written Business Plan, including the following:
   a. Business overview and company history and ownership
   b. Date Established
   c. Products/Services
   d. Future Plans

2. Two Years of Historical Financials and Financial Projections

3. Personal Financial Statements of Proprietor, Partners, Guarantors

4. Letter of Commitment from Financing Sources

SECTION 7: AGREEMENT

I/We certify that all information provided in this application (and its attachments) is true and correct to the best of my/our knowledge. I/We authorize the City of Le Sueur to check credit references and verify financial and other information. I/We agree to provide any addition information as may be requested by the City of Le Sueur and the Le Sueur Economic Development Authority.

APPLICATION SIGNATURE: [Signature]

PRINTED NAME & TITLE: Carl M. Haenig, DDS President

DATE: 2/15/2021

City of Le Sueur 2019
AUTHORIZATION RESOLUTION NO. 2021-03

LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

THIS IS TO CERTIFY: That at a regular meeting of the Le Sueur Economic Development Authority, a governmental subdivision under the laws of the State of Minnesota (“EDA”), duly called and held a Public Hearing on the 22nd day of February 2021.

WHEREAS the Economic Development Authority of the City of Le Sueur (the "EDA") has established Revolving Loan Fund Program in support of private efforts to establish, expand, create, and retain jobs, business retention or relocate new and existing businesses within the community; and

WHEREAS on May 26, 2020, following the required public hearing, the EDA did adopt a policy regarding the use of business subsidies; and

WHEREAS the EDA has received a request from Dr. Karl Haemig, Haemig Family Dentistry (the "Recipient"), for a partially forgivable loan in the maximum amount of $250,000 from the Revolving Loan Fund (the "Loan") to assist in financing the building out of tenant space for a medical clinic ("Project") located at 202 Valley Green Square, Suite A (the "Property"); and

WHEREAS the partially forgivable Loan provide for certain financial assistance that constitutes a "business subsidy" within the meaning of Minnesota Statutes, Section 116J.993 to 116J.995 (the "Business Subsidy Act"); and

WHEREAS the Project will result in the retention of at least three (3) full-time equivalent positions, with minimum wage of $14.98 per hour; and

WHEREAS the EDA has reviewed said request from the Recipient for the Loan, the EDA finds the Loan to be in the interest of the EDA, to be in compliance with the guidelines of the Revolving Loan Fund Program, and satisfies the criteria set forth in the EDA's adopted business subsidy policy; and

WHEREAS a Loan Agreement, between the EDA, and the loan Recipient (the "Loan Agreement"), evidencing the terms and requirements of the Loan in an amount of up to $250,000, which shall be administered by the EDA; and

NOW THEREFORE be it resolved by the Le Sueur Economic Development Authority in and for the City of Le Sueur, as follows:

1. The recitals set forth in the preamble to this resolution and the exhibits attached to this resolution, if any, are incorporated into this resolution as if fully set forth herein.

2. The Loan provides for certain financial assistance that constitutes a "business subsidy" within the meaning of the "Business Subsidy Act" and a Business Subsidy Loan Agreement has been made a part of the Loan Agreement.
3. The Loan in the maximum amount of $250,000 is authorized for Recipient for the purposes as set forth in this Resolution to create and retain jobs and promote economic development in accordance with the Revolving Loan Fund guidelines and objectives of the EDA and that said Loan is subject to the terms and conditions set forth in this Resolution and the Loan Agreement.

4. The Loan Agreement and all its exhibits are hereby in all respects authorized, approved and confirmed and the President and Executive Director of the EDA are hereby authorized and directed to execute and deliver the Loan Agreement (which incorporates the Business Subsidy Agreement) and all other documents requirement for the Loan and on behalf of the EDA in substantially the forms now on file with the EDA but with such modifications as shall be deemed necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

PASSED by the Economic Development Authority of the City of Le Sueur on this the 22 day of February 2021.

VOTE:       ____ MANKE           ____ MEGER           ____ SWANBERG

           ____ MAHONEY           ____ WENISCH           ____ SULLIVAN

I CERTIFY THAT the above resolution was adopted by the Economic Development Authority of the City of Le Sueur on February 22, 2021.

ATTEST

__________________________   ______________________
President                  Executive Director

__________________________   ______________________
Date                      Date
LOAN AGREEMENT
(Revolving Loan Fund)

THIS AGREEMENT is made and entered into as the 22 day of February 2021, by and between the Economic Development Authority of the City of Le Sueur, a public body, corporate and politic of the State of Minnesota (the "Lender"), having its principal offices at 203 South Second Street, Le Sueur, MN and Dr. Karl Haemig, Haemig Family Dentistry (the "Borrower"), having its principal offices at 202 Valley Green Square, Suite A, Le Sueur, MN;

RECITALS

A. The Economic Development Authority has an established Revolving Loan Fund which contains a pool of money with the intention of supporting private economic development projects for the City of Le Sueur’s benefit.
B. Borrower has applied to Lender for a Revolving Loan for the tenant build out of their commercial space (as hereinafter defined) in the principal amount of $250,000.00.
C. Lender is willing to make such mortgage loan to Borrower in the principal amount of $250,000.00 (the “Loan”), subject to all of the terms and conditions of this Agreement.
D. The Loan to the Borrower is considered a Business Subsidy as defined in Minnesota Statutes 116J.993 to 116J.995, as amended, as the loan is over the $150,000 threshold.
E. Contemporaneously with the execution hereof, Borrower is delivering to Lender the following security documents:
   i. A Promissory Note (“Note”) effective as of the date herewith made by Borrower and payable to the order of Lender, in the original principal amount of $250,000.00.
   ii. The Personal Guaranty of Dr. Karl Haemig, Owner (collectively, the “Personal Guaranty”).

NOW THEREFORE, in consideration of the mutual obligations of the parties, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

ARTICLE 1
Definitions

As used in this Agreement, the following terms have the following respective meanings:

“Agreement” means this Loan Agreement by and among the Lender and the Borrower.

“Authority” means the Economic Development Authority of the City of Le Sueur, Minnesota.
“Benefit Date” means when the earlier of: 1) Improvements are finished, and a certificate of occupancy is issued for the project, or 2) when a medical clinic occupies the Development Property.

"Borrower" means Dr. Karl Haemig, Haemig Family Dentistry, a Minnesota Corporation.


"City" means the City of Le Sueur, Minnesota.

“Compliance Date” means the date that is two (2) years after the Benefit Date, except as extended under Section 6.1(b).

"Development Property" means the tenant space located within Tiller and Main, located at 202 Valley Green Square, Suite A, Le Sueur, Minnesota 56058.

“Final Compliance Date” means one year after the Borrower first meets the job and wage goals, as provided for in section 6.1(b).

“Final Disbursement Date” means the date on which the maximum amount of Loan Proceeds by the Lender to the Borrower have been disbursed.

“Full-Time Equivalent” means a permanent full-time employee working 2080 annual hours or a combination of numerous part-time permanent employees whose hours are combined to count as a full-time employee (2080 annual hours).

“Improvements” means the build out including the addition of walls, doors, outlets, cabinets, and anything else that needs to be constructed in the rental space in order for the space to be occupied by a medical clinic.

“Lender” means the City of Le Sueur Economic Development Authority.

"Loan" means the funds loaned by the Lender to the Borrower pursuant to this Agreement.

"Loan Proceeds" means the funds disbursed to the Borrower pursuant to this Agreement and any proceeds thereof.

"Project" means the Borrower completing the tenant build out necessary to operate a medical clinic within the Tiller and Main property located at 202 Valley Green Square, Suite A, Le Sueur, MN.

"State" means the State of Minnesota.

“Tenant Build Out” means a build out including the addition of walls, doors, outlets, cabinets, and anything else that needs to be constructed in the rental space in order for the space to be occupied by a medical clinic.

"Termination Date" means the date of the final payment made to the Lender.
ARTICLE 2
Loan Terms and Conditions

Section 2.1. Basic Loan Terms. The principal amount of the partially forgivable loan shall not exceed $250,000. The Loan shall bear interest at a rate of three percent (3.0%) per annum. The Loan shall be used exclusively for the tenant build out unless otherwise agreed to in writing by the Authority. The term of the Loan is set forth in Section 4.2 of this Agreement.

Section 2.2. Prepayment. Prepayment of the Loan may occur at any time during the Loan without penalty.

Section 2.3. Assignment. If, prior to the Termination Date, the Borrower sells, conveys, transfers, further encumbers, or disposes of the Project, or any part thereof or interest therein, or enters into an agreement to do any of the foregoing, the Borrower shall immediately repay the entire outstanding principal amount of the Loan and interest thereon at the rate set forth in Section 3.4 from the Final Disbursement Date. This shall be in addition to any other remedies at law or equity available to the Authority.

Section 2.4. Termination. This Agreement shall automatically terminate without any notice to Borrower: (1) if no Loan proceeds have been disbursed to the Borrower prior to August 31, 2021; or (2) if: (a) the Borrower has not received any disbursement of Loan proceeds from the Authority; and (b) the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment; or 3) upon payment of the Promissory Note referred to in Section 2.5 and amounts under this Agreement.

Section 2.5. Promissory Note. The Borrower shall execute the Promissory Note in substantially the form set forth at Exhibit A.

ARTICLE 3
Default and Collateral

Section 3.1. Default. The Borrower shall be in an event of default under this Agreement upon the happening of any one or more of the following events (an "Event of Default"):

(a) the Borrower fails to pay when due any amount payable on the Loan and such nonpayment is not remedied within ten (10) business days after written notice thereof to the Borrower by the Authority.
(b) the Borrower is in breach in any material respect, of any obligation or agreement under this Agreement (other than nonpayment of any amount payable on the Loan) and remains in breach in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Borrower is proceeding to cure such breach provided such breach can be cured within a reasonable period of time;

(c) if any material covenant, warranty, or representation of the Borrower shall prove to be untrue in any material respect, provided such covenant, warranty or representation of the Borrower remains untrue in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such untruth shall reasonably be incapable of being corrected within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to correct such untruth, as the Borrower is so proceeding to correct such untruth provided such untruth can be corrected within a reasonable period of time;

(d) the Borrower on or after the Final Disbursement Date, fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment;

(e) a final judgment is entered against the Borrower that the Authority reasonably deems will have a material, adverse impact on the Borrower's ability to comply with the Borrower's obligations under this Agreement.

(f) the Borrower sells, conveys, transfers, encumbers, or otherwise disposes of all or any part of the Project without the prior written approval of the Authority;

(g) the Borrower merges or consolidates with any other entity where the Borrower is not the surviving party without the prior written approval of the Authority; or

(h) there is a loss, theft, substantial damage, or destruction of all or any part of the Project that is not remedied to the Authority's satisfaction within sixty (60) business days after written notice thereof by the Authority to the Borrower.

Section 3.2. Remedies Upon Default.

(a) In an Event of Default, the Authority shall have the right as its option and without demand or notice, to declare all or any part of the Loan immediately due and payable, and in addition to the rights and remedies granted hereby, the Authority shall have all the rights and remedies available under the Uniform Commercial Code and any other applicable law.
(b) The Borrower agrees in an Event of Default to make the collateral available to the Authority. The Borrower agrees to pay the costs and expenses incurred by the Authority in enforcing its rights under this Agreement, including but not limited to the Authority’s attorney’s fees. If any notice of sale, disposition or other intended action by the Authority is required by law to be given to the Borrower, such notice shall be deemed reasonably and properly given if mailed to the Borrower at the Development Property or at such other address of the Borrower as may be shown herein, at least fifteen (15) days before such sale, disposition, or other intended action.

Section 3.3 Collateral. The Borrower shall grant to the Authority a Personal Guarantee in a form acceptable to the Authority.

Section 3.4. Default on Job and Reporting Requirements.

(a) In the event of an Event of Default, including arising from a breach by the Borrower of any provision of Section 6.1 of this Agreement, the Borrower shall, in addition to any other payment required hereunder, pay to the Authority the interest that would have been paid and accrued on the Loan if the interest rate of the Loan at all times had been equal to 3.0%.

(b) Nothing in this Section 3.4 shall be construed to limit the Authority’s rights or remedies under any other provision of this Agreement, and the provisions of Section 3.4(a) are in addition to any other such right or remedy the Authority may have available.

ARTICLE 4
Loan Disbursement Provisions

Section 4.1. Payment Requisition Documentation and Format. Loan disbursements shall be for the tenant build out and shall not exceed $250,000. The Loan shall be disbursed to the Borrower only after the Authority has received from the Borrower contractor invoices for costs of the Project with the maximum amount of disbursement at $250,000.

Section 4.2. Loan Terms. The term of the Loan shall be ten (10) years, commencing as of the Final Disbursement Date. The Loan shall bear interest at a rate of three percent (3.0%) per annum and interest shall commence to accrue as of the Final Disbursement Date. When the Loan reaches a balance of $125,000, the remaining balance of the note ($125,000) will be forgiven, provided the Borrower is not then in default under this Agreement.

Section 4.3. Loan Repayments Schedule. Payments of principal shall commence on the first day of the month immediately following the Final Disbursement Date and shall continue monthly thereafter on the first day of the same month until paid in full.
ARTICLE 5  
Provision of Evidentiary Material Requirement

Section 5.1. Job Creation Documentation. The Borrower shall submit to the Authority a written report by January 15 of each year and shall terminate on the Compliance Date if the Borrower is not then in breach of Section 6, on forms provided by the Authority. This information shall be provided by the Borrower and must include at a minimum:

(a) the number of Retained Jobs and New Jobs created and the dates on which each were created and filled; and

(b) the job title, wages, benefits, and hourly value of such benefits for each such Job.

ARTICLE 6  
Job and Wage Requirements

Section 6.1. Covenants.

(a) The Borrower acknowledges and agrees that it is receiving government assistance pursuant to the Loan:
   i. The subsidy provided to the Borrower includes the $250,000 partially forgivable Loan made hereunder which will be used for the tenant build out.
   ii. The public purposes and goals of the subsidy are to retain and potentially increase net jobs in the City.
   iii. The goals for the subsidy are to create and retain jobs that pay a wage per Section 6.1 (b) of this Agreement.
   iv. If the goals are not satisfied, the Borrower shall make payment to the Authority as required in Sections 3.4 and 6.1 (b).
   v. The subsidy is needed because the low interest partially forgivable Loan helps make the Project economically feasible.
   vi. The Borrower must continue operations in the jurisdiction for at least five years following the Benefit Date.
   vii. The Borrower does not have a parent corporation.
   viii. The Borrower has not received, nor do they expect to receive additional financial assistance which would be defined as a Business Subsidy under the Business Subsidy Act.

(b) The Borrower shall retain the three (3) previously existing permanent Full-Time Equivalent jobs on the Development Property (the "Retained Jobs") and shall maintain the Retained Jobs for at least one year thereafter (the "Final Compliance Date"). All of the employees of the Borrower working at the Development Property, including, the New Jobs and the Retained Jobs, must be paid a base wage of at least $14.98 per hour exclusive of benefits. If the Borrower fails to meet the Job and Wage Goals by the Compliance Date, the Authority may, after holding a public hearing, extend the period to satisfy the Job and Wage Goals by one year, in which case the Compliance Date shall be extended by one year. In the event the Job and Wage Goals for the Retained Jobs are not satisfied, the loan forgiveness will be reduced by $10,000 for each job that was not retained prior to the Compliance Date or maintained through the Final Compliance Date.
Section 6.2 Reporting. The Borrower shall provide to the Authority information regarding Job and Wage Goals and results through the Final Compliance Date or until the goals are met, whichever is later. This reporting requirement will expire if the goals are met by the Final Compliance Date. If the goals are not met, the Borrower must continue to provide information on the Loan until the Loan is repaid. If the report is not submitted by January 15th of each year, the Authority shall mail the Borrower a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Borrower fails to provide a report, the Borrower must pay to the Authority a penalty of $100 for each subsequent day until the report is filed. The maximum penalty shall not exceed $1,000.

(a) Reporting Documentation.
   i. The type, public purpose, and amount of the subsidy.
   ii. The hourly wage of each job created with separate bands of wages.
   iii. The sum of the hourly wages and cost of benefits.
   iv. The date the job and wage goals will be reached.
   v. A statement of goals identified in the subsidy agreement and an update on achievement of those goals.
   vi. The location of the recipient prior to receiving the business subsidy.
   vii. If the recipient was previously located in another site in Minnesota, the reason that the project was completed on this site.
   viii. If the Borrower has a parent corporation, the name and address.
   ix. A list of all financial assistance by all grantors for the Project; and
   x. Other information the Authority may request.

ARTICLE 7
Non-discrimination

Section 7.1. Non-discrimination. The provisions of Minnesota Statutes, Section 181.59, and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Agreement as though wholly set forth herein and the Borrower shall comply with each such provision throughout the term of this Agreement.

ARTICLE 8
Borrower's Acknowledgments Representation, and Warrants

Section 8.1. Representations and Warranties. The Borrower warrants and represents, in connection with the Loan and for the benefit of the City and the Authority that:

(a) Representations, statements, and other matters provided by the Borrower relating to those activities of the Project to be completed by the Borrower, were true and complete in all material respects as of the date of submission to the Authority and that such representations, statements, and other matters are true as of the date of this Agreement and that there are no adverse material changes in the financial condition of the Borrower's business.

(b) To the best of the Borrower's knowledge, no member, officer, or employee of the City or the Authority, or their officers, employees, designees, or agents, no consultant, member of the governing body of the City or the Authority, and no other public official of the City or the Authority, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit there from, which is part of the Project.
(c) The Borrower warrants that to the best of its knowledge, it has obtained all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for it to lawfully execute this Agreement as binding upon it.

(d) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the Project, and that any duly authorized representative of the City and the Authority shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower until such time that the City and the Authority have determined that all issues, requirements, and close-out procedures relating to or arising out of the Loan have been settled and completed.

(e) The Borrower warrants that it has fully complied with all applicable local, state, and federal laws pertaining to its business and will continue such compliance throughout the terms of this Agreement. If at any time notice of noncompliance is received by the Borrower, the Borrower agrees to take any necessary action to comply with the local, state, or federal law in question.

ARTICLE 9
Other Special Conditions

Section 9.1. Effect on Other Agreements. Nothing in this Agreement shall be construed to modify any term of any other agreement to which the Authority and the Borrower are parties.

Section 9.2. Release and Indemnification Covenants. Except for any breach of the representations and warranties of the Authority or the negligence or other wrongful act or omission of the following named parties, the Borrower agrees to protect and defend the Authority and the governing body members, officers, agents, servants, and employees thereof, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the acquisition, construction, installation, ownership, maintenance, and operation of the Project and the Equipment and the Borrower's activities on the Development Property.

Section 9.3. Modifications. This Agreement may be modified solely through written amendments hereto executed by the Borrower, and the Authority.
Section 9.4 Notices and Demands. Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered only if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

(a) as to the EDA
   Economic Development Authority of the City of Le Sueur
   ATTN: Executive Director
   203 South Second Street
   Le Sueur, MN 56058

(a) as to the Borrower:
   Haemig Family Dentistry
   ATTN: Dr. Karl Haemig
   202 Valley Green Square, Suite A
   Le Sueur, MN 56058

Or at such other address with respect to any party as that party may, from time to time, designate in writing and forward to the others as provided in this Section 9.4.

Section 9.5. Conflict of Interests; Representatives Not Individually Liable. No officer or employee of the City or the Authority may acquire any financial interest, direct or indirect, in this Agreement, the Project, the Equipment or in any contract related thereto. No officer, agent, or employee of the City or the Authority shall be personally liable to the Borrower or any successor in interest in the event of any default or breach by the City or the Authority or for any amount that may become due to the Borrower or on any obligation or term of this Agreement.

Section 9.6. Binding Effect. The covenants and agreements in this Agreement shall bind and benefit the heirs, executors, administrators, successors, and assigns of the parties to this Agreement.

Section 9.7. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted only for convenience of reference and shall be disregarded in construing or interpreting any of its provisions.

Section 9.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.9. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.10. Waiver. The failure or delay of any party to take any action or assert any right or remedy, or the partial exercise by any party of any right or remedy shall not be deemed to be a waiver of such action, right, or remedy if the circumstances creating such action, right, or remedy continue or repeat.

Section 9.11. Entire Agreement. This Agreement, with the exhibit hereto, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Agreement.
Section 9.12. Separability. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

Section 9.13. Immunity. Nothing in this Agreement shall be construed as a waiver by the City or the Authority of any immunities, defenses, or other limitations on liability to which the City or the Authority are entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.
IN WITNESS WHEREOF, the Lender has caused this Agreement to be duly executed in its name and the Borrower has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

By _________________________
Its _________________________

By _________________________
Its _________________________

DR. KARL HAEMIG, HAEMIG FAMILY DENTISTRY

By _________________________
Its _________________________
Dr. Karl Haemig, Haemig Family Dentistry, a Minnesota Corporation (the "Maker"), for value received, hereby promises to pay to the City of Le Sueur Economic Development Authority, Minnesota (the "City") or its assigns (the City and any assigns are hereinafter referred to as the "Holder"), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of Two Hundred and Fifty Thousand and No/100 Dollars ($250,000.00) or so much thereof as may be advanced under this Note, with interest as hereinafter provided, in any coin or currency which at the time or times of payment is legal tender for the payment of private debts in the United States of America. The principal of and interest on this Note is payable in installments due as follows:

1. The Loan shall bear interest at a rate of three percent (3%) per annum, except as otherwise provided for in Section 3.4 of the Loan Agreement as hereinafter defined.

2. Payments of principal and interest shall commence on the first day of the month immediately following the Final Disbursement Date and continue monthly thereafter on the first day of the month immediately following the distribution in the amount of $2,414.02. The monthly payments shall continue until the loan reaches 50% of the total loan amount or $125,000, at which time the remaining balance of $125,000 shall be forgiven, provided the Maker is not in default under this Note or under that certain Loan Agreement between the Maker and the Economic Development Authority of the City of Le Sueur, Minnesota (the "Loan Agreement").

3. The Maker shall have the right to prepay the principal of this Note, in whole or in part, without prepayment penalty.

4. This Note is given pursuant to the Loan Agreement and is secured by a personal guarantee.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, or any instrument securing this Note, are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If a default occurs under the Loan Agreement, or any instrument securing this Note, then the Holder of this Note may at its right and option, without notice, declare immediately due and payable the principal balance of this Note, together with any costs of collection including attorneys' fees incurred by the Holder of this Note in collecting or enforcing payment hereof, whether suit be brought or not, and all other sums due hereunder, or under any instrument securing this Note. The Maker agrees that the Holder of this Note may, without notice to the Maker of this Note and without affecting the liability of the Maker of this Note, accept additional or substitute security for this Note, or release any security or any party liable for this Note or extend or renew this Note.
5. The remedies of the Holder of this Note as provided herein, and in the Loan Agreement, or any other instrument securing this Note, shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder of this Note and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

6. This Note shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

7. This Note, with the other Loan documents, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Note.

8. Wherever possible, each provision of this Note and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Note or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or any other related document.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of 22 day of February 2021.

Dr. Karl Haemig, Haemig Family Dentistry

By __________________________

Its __________________________
TO: Economic Development Authority  
FROM: Samantha DiMaggio  
SUBJECT: Public Hearing – Revolving Loan – Le Sueur Vision Center  
DATE: Monday, February 22, 2021  

PURPOSE/ACTION REQUESTED  
The EDA should hold a Public Hearing and consider approving a partially forgivable Revolving Loan for Dr. Blake Dirks and Dr. Zachary Dirks, Co-Owners of Le Sueur Eyecare Center (DBA Mootz Eye Clinic).

SUMMARY  
The Economic Development Authority (EDA) has a revolving loan fund with a balance of approximately $1,500,000. These funds have historically been used to issue loans to local businesses. On May 26, 2020, the EDA updated their Business Subsidy Policy which guides how and when the funds should be used.

Dr. Zachary Dirks and Dr. Blake Dirks are Co-Owners of Le Sueur Eyecare Center (DBA Mootz Eye Clinic) and are requesting a partially forgivable loan from the Revolving Loan Fund in the Amount of $250,000. As part of the redevelopment of Tiller and Main, Mootz Eye Clinic is being relocated from the second floor to the main floor. These funds will be used to build out his new space inside Tiller and Main, located at 202 Valley Green Square, Suite E.

The proposed Loan will be amortized over ten (10) years and will have an interest rate of three percent (3.0%). When the Loan reaches a balance of $125,000, the remaining balance of the note ($125,000) will be forgiven, if Le Sueur Eyecare Center is not in default of the loan. Le Sueur Eyecare Center has 5 full time equivalent staff that will be retained because of this loan.

RECOMMENDATION/OPTIONS  
Staff recommends the EDA authorize Res. 2021-004, a Resolution approving a partially forgivable Revolving Loan to Dr. Blake Dirks and Dr. Zachary Dirks, Co-Owners of Le Sueur Eyecare Center (DBA Mootz Eye Clinic) and giving the Chair and Executive Director the authority to execute the required Loan Documents.
CITY OF LE SUEUR ECONOMIC DEVELOPMENT
REVOLVING LOAN FUND APPLICATION

SECTION 1: CONTACT INFORMATION

Legal Name of Business: Le Suer Eyecare Center LLC

Project Site Address: 303 Valley Green Sq.

City / State / Zip: Le Suer, MN 56058

Primary Business Contact Person(s): Dr. Zachary & Blake Dirks

Phone: Dr. Zachary Dirks 507-469-9715 Dr. Blake Dirks 507-469-9596

Email: drzachdirks@gmail.com drblaked53@gmail.com

Check One: ___ Proprietor ___ Corporation ___ Partnership

SECTION 2: PROJECT OVERVIEW

Amount Requested: $250,000

Total Project Cost: $461,000

Please provide a brief summary of your company and its products and/or services:

Primary Eyecare provider. Evaluation of ocular health and detection and treatment of ocular disease. Fully equipped office with state of the art documentation and detection instrumentation. Large optical department which provides high quality frames and advanced optical options.

Please provide a brief summary of the proposed project:

Our facility has been outgrown and it is outdated both in equipment and presentation. Our vision is to update completely with the latest furnishing and bring in leading edge technology with a new state-of-the-art center.

We would like to add two more offices, a contact lens room, an optical area, and another special testing room and upgraded optical department check out area.

Please describe how these funds will impact your project:

To be honest, it will allow us to stay in the facility, without if we will have to look at moving to a different location. The rent structure, rent audits, buildout costs make it very difficult to viably stay in this location.
SECTION 3: ESTIMATED PROJECT COSTS

Land: $

Site improvements: $

New Building: $

Equipment/Machinery: $150,000

Remodeling/Renovation: $75,000

Demolition: $

Working Capital: $36,000

Permits/Fees: $

Other (attach description) $

Total Costs $ at least $461,000

SECTION 4: SOURCES OF FINANCING

Bank Loan: $ unknown amount @ your bank

Bank Name: First National Bank St. Peter

Loan Officer Name & Contact Info: Matt W

Additional Bank Loan (if applicable): $

Bank Name: 

Loan Officer Name & Contact Info: 

Additional Private Funds (amount & source): $

Owner/Business Equity: $

State Funding (amount & program): $

Federal Funding (amount & program): $

Other Sources of Funding (amount and description): $

Total Financing: $ at least $461,000 Regime
SECTION 5: JOB CREATION (if applicable)

Current number of Employees (working at Le Sueur location): Recently Added New doctor and two new employees in anticipation of growth.

Total number of jobs to be created (in Le Sueur) over the next two years: The practice was purchased not knowing rents would triple and it was built out. Happen after 1 year.

<table>
<thead>
<tr>
<th>Job Title</th>
<th>Number of Positions</th>
<th>Hourly Wage w/ Benefits</th>
<th>Expected Hiring Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dev. of Optometry</td>
<td>2 + 2 co-owners</td>
<td>19 - 21</td>
<td>Current - New Doctor</td>
</tr>
<tr>
<td>Office Manager / PA</td>
<td>1</td>
<td>19 - 21</td>
<td></td>
</tr>
<tr>
<td>Optician</td>
<td>2</td>
<td>17 - 19</td>
<td></td>
</tr>
<tr>
<td>Receipent</td>
<td>1</td>
<td>15 - 16</td>
<td></td>
</tr>
<tr>
<td>Technician</td>
<td>1</td>
<td>16 - 16</td>
<td>Newly Hired</td>
</tr>
<tr>
<td>Billing / Accounting</td>
<td>1</td>
<td>17 - 16</td>
<td>Newly Hired</td>
</tr>
</tbody>
</table>

SECTION 6: REQUIRED ATTACHMENTS CHECKLIST

Please attach the following with completed application:

1. Written Business Plan, including the following:
   a. Business overview and company history and ownership
   b. Date Established
   c. Products/Services
   d. Future Plans

2. Two Years of Historical Financials and Financial Projections

3. Personal Financial Statements of Proprietor, Partners, Guarantors

4. Letter of Commitment from Financing Sources

SECTION 7: AGREEMENT

I/We certify that all information provided in this application (and its attachments) is true and correct to the best of my/our knowledge. I/We authorize the City of Le Sueur to check credit references and verify financial and other information. I/We agree to provide any addition information as may be requested by the City of Le Sueur and the Le Sueur Economic Development Authority.

APPLICATION SIGNATURE: [Signature]

PRINTED NAME & TITLE: Blake T. Dirks OD, Zachary B. Dirks OD

DATE: 2/9/21
AUTHORIZATION RESOLUTION NO. 2021-04

LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

THIS IS TO CERTIFY: That at a regular meeting of the Le Sueur Economic Development Authority, a governmental subdivision under the laws of the State of Minnesota ("EDA"), duly called and held a Public Hearing on the 22nd day of February 2021.

WHEREAS the Economic Development Authority of the City of Le Sueur (the "EDA") has established Revolving Loan Fund Program in support of private efforts to establish, expand, create, and retain jobs, business retention or relocate new and existing businesses within the community; and

WHEREAS on May 26, 2020, following the required public hearing, the EDA did adopt a policy regarding the use of business subsidies; and

WHEREAS the EDA has received a request from Dr. Zachary Dirks and Dr. Blake Dirks, Le Sueur Eyecare Center, DBA Mootz Eye Clinic (the "Recipient"), for a partially forgivable loan in the maximum amount of $250,000 from the Revolving Loan Fund (the "Loan") to assist in financing the building out of tenant space for a medical clinic ("Project") located at 202 Valley Green Square, Suite E, Le Sueur, MN (the "Property"); and

WHEREAS the partially forgivable Loan provide for certain financial assistance that constitutes a "business subsidy" within the meaning of Minnesota Statutes, Section 116J.993 to 116J.995 (the "Business Subsidy Act"); and

WHEREAS the Project will result in the retention of at least five (5) full-time equivalent positions, with minimum wage of $14.98 per hour; and

WHEREAS the EDA has reviewed said request from the Recipient for the Loan, the EDA finds the Loan to be in the interest of the EDA, to be in compliance with the guidelines of the Revolving Loan Fund Program, and satisfies the criteria set forth in the EDA's adopted business subsidy policy; and

WHEREAS a Loan Agreement, between the EDA, and the loan Recipient (the "Loan Agreement"), evidencing the terms and requirements of the Loan in an amount of up to $250,000, which shall be administered by the EDA; and

NOW THEREFORE be it resolved by the Le Sueur Economic Development Authority in and for the City of Le Sueur, as follows:

1. The recitals set forth in the preamble to this resolution and the exhibits attached to this resolution, if any, are incorporated into this resolution as if fully set forth herein.

2. The Loan provides for certain financial assistance that constitutes a "business subsidy" within the meaning of the "Business Subsidy Act" and a Business Subsidy Loan Agreement has been made a part of the Loan Agreement.
3. The Loan in the maximum amount of $250,000 is authorized for Recipient for the purposes as set forth in this Resolution to create and retain jobs and promote economic development in accordance with the Revolving Loan Fund guidelines and objectives of the EDA and that said Loan is subject to the terms and conditions set forth in this Resolution and the Loan Agreement.

4. The Loan Agreement and all its exhibits are hereby in all respects authorized, approved and confirmed and the President and Executive Director of the EDA are hereby authorized and directed to execute and deliver the Loan Agreement (which incorporates the Business Subsidy Agreement) and all other documents requirement for the Loan and on behalf of the EDA in substantially the forms now on file with the EDA but with such modifications as shall be deemed necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

PASSED by the Economic Development Authority of the City of Le Sueur on this the 22 day of February 2021.

VOTE: _____ MANKE   _____ MEGER   _____ SWANBERG
       _____ MAHONEY   _____ WENISCH   _____ SULLIVAN

I CERTIFY THAT the above resolution was adopted by the Economic Development Authority of the City of Le Sueur on February 22, 2021.

ATTEST

__________________________  _______________________
President                     Executive Director

__________________________  _______________________
Date                         Date
LOAN AGREEMENT  
(Revolving Loan Fund)  

THIS AGREEMENT is made and entered into as the 22 day of February 2021, by and between the Economic Development Authority of the City of Le Sueur, a public body, corporate and politic of the State of Minnesota (the "Lender"), having its principal offices at 203 South Second Street, Le Sueur, MN and Dr. Zachary Dirks and Dr. Blake Dirks, Le Sueur Eyecare Center, DBA Mootz Eye Clinic (the "Borrower"), having its principal offices at 202 Valley Green Square, Suite E, Le Sueur, MN;

RECITALS

A. The Economic Development Authority has an established Revolving Loan Fund which contains a pool of money with the intention of supporting private economic development projects for the City of Le Sueur’s benefit.
B. Borrower has applied to Lender for a Revolving Loan for the tenant build out of their commercial space (as hereinafter defined) in the principal amount of $250,000.00.
C. Lender is willing to make such mortgage loan to Borrower in the principal amount of $250,000.00 (the “Loan”), subject to all of the terms and conditions of this Agreement.
D. The Loan to the Borrower is considered a Business Subsidy as defined in Minnesota Statutes 116J.993 to 116J.995, as amended, as the loan is over the $150,000 threshold.
E. Contemporaneously with the execution hereof, Borrower is delivering to Lender the following security documents:
   i. A Promissory Note (“Note”) effective as of the date herewith made by Borrower and payable to the order of Lender, in the original principal amount of $250,000.00.
   ii. The Personal Guaranty of Dr. Blake Dirks and Dr. Zachary Dirks, Co-Owners (collectively, the “Personal Guaranty”).

NOW THEREFORE, in consideration of the mutual obligations of the parties, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

ARTICLE 1  
Definitions

As used in this Agreement, the following terms have the following respective meanings:

“Agreement” means this Loan Agreement by and among the Lender and the Borrower.

“Authority” means the Economic Development Authority of the City of Le Sueur, Minnesota.
“Benefit Date” means when the earlier of: 1) Improvements are finished, and a certificate of occupancy is issued for the project, or 2) when a medical clinic occupies the Development Property.

"Borrower" means Dr. Blake Dirks and Dr. Zachary Dirks, Le Sueur Eyecare Center, a Minnesota Limited Liability Company.


"City" means the City of Le Sueur, Minnesota.

“Compliance Date” means the date that is two (2) years after the Benefit Date, except as extended under Section 6.1(b).

"Development Property" means the tenant space located within Tiller and Main, located at 202 Valley Green Square, Suite E, Le Sueur, Minnesota 56058.

“Final Compliance Date” means one year after the Borrower first meets the job and wage goals, as provided for in section 6.1(b).

“Final Disbursement Date” means the date on which the maximum amount of Loan Proceeds by the Lender to the Borrower have been disbursed.

“Full-Time Equivalent” means a permanent full-time employee working 2080 annual hours or a combination of numerous part-time permanent employees whose hours are combined to count as a full-time employee (2080 annual hours).

“Improvements” means the build out including the addition of walls, doors, outlets, cabinets, and anything else that needs to be constructed in the rental space in order for the space to be occupied by a medical clinic.

“Lender” means the City of Le Sueur Economic Development Authority.

"Loan" means the funds loaned by the Lender to the Borrower pursuant to this Agreement.

"Loan Proceeds" means the funds disbursed to the Borrower pursuant to this Agreement and any proceeds thereof.

"Project" means the Borrower completing the tenant build out necessary to operate a medical clinic within the Tiller and Main property located at 202 Valley Green Square, Suite E, Le Sueur, MN.

"State" means the State of Minnesota.

“Tenant Build Out” means a build out including the addition of walls, doors, outlets, cabinets, and anything else that needs to be constructed in the rental space in order for the space to be occupied by a medical clinic.

"Termination Date" means the date of the final payment made to the Lender.
ARTICLE 2
Loan Terms and Conditions

Section 2.1. Basic Loan Terms. The principal amount of the partially forgivable loan shall not exceed $250,000. The Loan shall bear interest at a rate of three percent (3.0%) per annum. The Loan shall be used exclusively for the tenant build out unless otherwise agreed to in writing by the Authority. The term of the Loan is set forth in Section 4.2 of this Agreement.

Section 2.2. Prepayment. Prepayment of the Loan may occur at any time during the Loan without penalty.

Section 2.3. Assignment. If, prior to the Termination Date, the Borrower sells, conveys, transfers, further encumbers, or disposes of the Project, or any part thereof or interest therein, or enters into an agreement to do any of the foregoing, the Borrower shall immediately repay the entire outstanding principal amount of the Loan and interest thereon at the rate set forth in Section 3.4 from the Final Disbursement Date. This shall be in addition to any other remedies at law or equity available to the Authority.

Section 2.4. Termination. This Agreement shall automatically terminate without any notice to Borrower: (1) if no Loan proceeds have been disbursed to the Borrower prior to August 31, 2021; or (2) if: (a) the Borrower has not received any disbursement of Loan proceeds from the Authority; and (b) the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case commenced against it, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment; or 3) upon payment of the Promissory Note referred to in Section 2.5 and amounts under this Agreement.

Section 2.5. Promissory Note. The Borrower shall execute the Promissory Note in substantially the form set forth at Exhibit A.

ARTICLE 3
Default and Collateral

Section 3.1. Default. The Borrower shall be in an event of default under this Agreement upon the happening of any one or more of the following events (an "Event of Default"):

(a) the Borrower fails to pay when due any amount payable on the Loan and such nonpayment is not remedied within ten (10) business days after written notice thereof to the Borrower by the Authority;
(b) the Borrower is in breach in any material respect, of any obligation or agreement under this Agreement (other than nonpayment of any amount payable on the Loan) and remains in breach in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Borrower is proceeding to cure such breach provided such breach can be cured within a reasonable period of time;

c) if any material covenant, warranty, or representation of the Borrower shall prove to be untrue in any material respect, provided such covenant, warranty or representation of the Borrower remains untrue in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such untruth shall reasonably be incapable of being corrected within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to correct such untruth, as the Borrower is so proceeding to correct such untruth provided such untruth can be corrected within a reasonable period of time;

d) the Borrower on or after the Final Disbursement Date, fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment;

e) a final judgment is entered against the Borrower that the Authority reasonably deems will have a material, adverse impact on the Borrower's ability to comply with the Borrower's obligations under this Agreement.

(f) the Borrower sells, conveys, transfers, encumbers, or otherwise disposes of all or any part of the Project without the prior written approval of the Authority;

(g) the Borrower merges or consolidates with any other entity where the Borrower is not the surviving party without the prior written approval of the Authority; or

(h) there is a loss, theft, substantial damage, or destruction of all or any part of the Project that is not remedied to the Authority's satisfaction within sixty (60) business days after written notice thereof by the Authority to the Borrower.

Section 3.2. Remedies Upon Default.

(a) In an Event of Default, the Authority shall have the right as its option and without demand or notice, to declare all or any part of the Loan immediately due and payable, and in addition to the rights and remedies granted hereby, the Authority shall have all the rights and remedies available under the Uniform Commercial Code and any other applicable law.
(b) The Borrower agrees in an Event of Default to make the collateral available to the Authority. The Borrower agrees to pay the costs and expenses incurred by the Authority in enforcing its rights under this Agreement, including but not limited to the Authority’s attorney’s fees. If any notice of sale, disposition or other intended action by the Authority is required by law to be given to the Borrower, such notice shall be deemed reasonably and properly given if mailed to the Borrower at the Development Property or at such other address of the Borrower as may be shown herein, at least fifteen (15) days before such sale, disposition, or other intended action.

Section 3.3 Collateral. The Borrower shall grant to the Authority a Personal Guarantee in a form acceptable to the Authority.

Section 3.4. Default on Job and Reporting Requirements.

(a) In the event of an Event of Default, including arising from a breach by the Borrower of any provision of Section 6.1 of this Agreement, the Borrower shall, in addition to any other payment required hereunder, pay to the Authority the interest that would have been paid and accrued on the Loan if the interest rate of the Loan at all times had been equal to 3.0%.

(b) Nothing in this Section 3.4 shall be construed to limit the Authority’s rights or remedies under any other provision of this Agreement, and the provisions of Section 3.4(a) are in addition to any other such right or remedy the Authority may have available.

ARTICLE 4
Loan Disbursement Provisions

Section 4.1. Payment Requisition Documentation and Format. Loan disbursements shall be for the tenant build out and shall not exceed $250,000. The Loan shall be disbursed to the Borrower only after the Authority has received from the Borrower contractor invoices for costs of the Project with the maximum amount of disbursement at $250,000.

Section 4.2. Loan Terms. The term of the Loan shall be ten (10) years, commencing as of the Final Disbursement Date. The Loan shall bear interest at a rate of three percent (3.0%) per annum and interest shall commence to accrue as of the Final Disbursement Date. When the Loan reaches a balance of $125,000, the remaining balance of the note ($125,000) will be forgiven, provided the Borrower is not then in default under this Agreement.

Section 4.3. Loan Repayments Schedule. Payments of principal shall commence on the first day of the month immediately following the Final Disbursement Date and shall continue monthly thereafter on the first day of the same month until paid in full.
ARTICLE 5  
Provision of Evidentiary Material Requirement

Section 5.1. Job Creation Documentation. The Borrower shall submit to the Authority a written report by January 15 of each year and shall terminate on the Compliance Date if the Borrower is not then in breach of Section 6, on forms provided by the Authority. This information shall be provided by the Borrower and must include at a minimum:

(a) the number of Retained Jobs and New Jobs created and the dates on which each were created and filled; and  
(b) the job title, wages, benefits, and hourly value of such benefits for each such Job.

ARTICLE 6  
Job and Wage Requirements

Section 6.1. Covenants.  
(a) The Borrower acknowledges and agrees that it is receiving government assistance pursuant to the Loan:  
i. The subsidy provided to the Borrower includes the $250,000 partially forgivable Loan made hereunder which will be used for the tenant build out.  
ii. The public purposes and goals of the subsidy are to retain and potentially increase net jobs in the City.  
iii. The goals for the subsidy are to create and retain jobs that pay a wage per Section 6.1 (b) of this Agreement.  
iv. If the goals are not satisfied, the Borrower shall make payment to the Authority as required in Sections 3.4 and 6.1 (b).  
v. The subsidy is needed because the low interest partially forgivable Loan helps make the Project economically feasible.  
vi. The Borrower must continue operations in the jurisdiction for at least five years following the Benefit Date.  
vii. The Borrower does not have a parent corporation.  
viii. The Borrower has not received, nor do they expect to receive additional financial assistance which would be defined as a Business Subsidy under the Business Subsidy Act.  

(b) The Borrower shall retain the five (5) previously existing permanent full-time equivalent jobs on the Development Property (the "Retained Jobs") and shall maintain the Retained Jobs for at least one year thereafter (the "Final Compliance Date"). All of the employees of the Borrower working at the Development Property, including, the New Jobs and the Retained Jobs, must be paid a base wage of at least $14.98 per hour exclusive of benefits. If the Borrower fails to meet the Job and Wage Goals by the Compliance Date, the Authority may, after holding a public hearing, extend the period to satisfy the Job and Wage Goals by one year, in which case the Compliance Date shall be extended by one year. In the event the Job and Wage Goals for the Retained Jobs are not satisfied, the loan forgiveness will be reduced by $10,000 for each job that was not retained prior to the Compliance Date or maintained through the Final Compliance Date.
Section 6.2 Reporting. The Borrower shall provide to the Authority information regarding Job and Wage Goals and results through the Final Compliance Date or until the goals are met, whichever is later. This reporting requirement will expire if the goals are met by the Final Compliance Date. If the goals are not met, the Borrower must continue to provide information on the Loan until the Loan is repaid. If the report is not submitted by January 15th of each year, the Authority shall mail the Borrower a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Borrower fails to provide a report, the Borrower must pay to the Authority a penalty of $100 for each subsequent day until the report is filed. The maximum penalty shall not exceed $1,000.

(a) Reporting Documentation.
   i. The type, public purpose, and amount of the subsidy.
   ii. The hourly wage of each job created with separate bands of wages.
   iii. The sum of the hourly wages and cost of benefits.
   iv. The date the job and wage goals will be reached.
   v. A statement of goals identified in the subsidy agreement and an update on achievement of those goals.
   vi. The location of the recipient prior to receiving the business subsidy.
   vii. If the recipient was previously located in another site in Minnesota, the reason that the project was completed on this site.
   viii. If the Borrower has a parent corporation, the name and address.
   ix. A list of all financial assistance by all grantors for the Project; and
   x. Other information the Authority may request.

ARTICLE 7
Non-discrimination

Section 7.1. Non-discrimination. The provisions of Minnesota Statutes, Section 181.59, and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Agreement as though wholly set forth herein and the Borrower shall comply with each such provision throughout the term of this Agreement.

ARTICLE 8
Borrower's Acknowledgments Representation, and Warrants

Section 8.1. Representations and Warranties. The Borrower warrants and represents, in connection with the Loan and for the benefit of the City and the Authority that:

(a) Representations, statements, and other matters provided by the Borrower relating to those activities of the Project to be completed by the Borrower, were true and complete in all material respects as of the date of submission to the Authority and that such representations, statements, and other matters are true as of the date of this Agreement and that there are no adverse material changes in the financial condition of the Borrower's business.

(b) To the best of the Borrower's knowledge, no member, officer, or employee of the City or the Authority, or their officers, employees, designees, or agents, no consultant, member of the governing body of the City or the Authority, and no other public official of the City or the Authority, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit there from, which is part of the Project.
(c) The Borrower warrants that to the best of its knowledge, it has obtained all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for it to lawfully execute this Agreement as binding upon it.

(d) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the Project, and that any duly authorized representative of the City and the Authority shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower until such time that the City and the Authority have determined that all issues, requirements, and close-out procedures relating to or arising out of the Loan have been settled and completed.

(e) The Borrower warrants that it has fully complied with all applicable local, state, and federal laws pertaining to its business and will continue such compliance throughout the terms of this Agreement. If at any time notice of noncompliance is received by the Borrower, the Borrower agrees to take any necessary action to comply with the local, state, or federal law in question.

ARTICLE 9
Other Special Conditions

Section 9.1. Effect on Other Agreements. Nothing in this Agreement shall be construed to modify any term of any other agreement to which the Authority and the Borrower are parties.

Section 9.2. Release and Indemnification Covenants. Except for any breach of the representations and warranties of the Authority or the negligence or other wrongful act or omission of the following named parties, the Borrower agrees to protect and defend the Authority and the governing body members, officers, agents, servants, and employees thereof, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the acquisition, construction, installation, ownership, maintenance, and operation of the Project and the Equipment and the Borrower's activities on the Development Property.

Section 9.3. Modifications. This Agreement may be modified solely through written amendments hereto executed by the Borrower, and the Authority.
Section 9.4 Notices and Demands. Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered only if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

(a) as to the EDA
Economic Development Authority of the City of Le Sueur
ATTN: Executive Director
203 South Second Street
Le Sueur, MN 56058

(b) as to the Borrower:
Le Sueur Eyecare Center - DBA Mootz Eye Clinic
ATTN: Dr. Zachary Dirks
202 Valley Green Square, Suite E
Le Sueur, MN 56058

Or at such other address with respect to any party as that party may, from time to time, designate in writing and forward to the others as provided in this Section 9.4.

Section 9.5. Conflict of Interests; Representatives Not Individually Liable. No officer or employee of the City or the Authority may acquire any financial interest, direct or indirect, in this Agreement, the Project, the Equipment or in any contract related thereto. No officer, agent, or employee of the City or the Authority shall be personally liable to the Borrower or any successor in interest in the event of any default or breach by the City or the Authority or for any amount that may become due to the Borrower or on any obligation or term of this Agreement.

Section 9.6. Binding Effect. The covenants and agreements in this Agreement shall bind and benefit the heirs, executors, administrators, successors, and assigns of the parties to this Agreement.

Section 9.7. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted only for convenience of reference and shall be disregarded in construing or interpreting any of its provisions.

Section 9.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.9. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.10. Waiver. The failure or delay of any party to take any action or assert any right or remedy, or the partial exercise by any party of any right or remedy shall not be deemed to be a waiver of such action, right, or remedy if the circumstances creating such action, right, or remedy continue or repeat.

Section 9.11. Entire Agreement. This Agreement, with the exhibit hereto, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Agreement.
Section 9.12. Separability. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

Section 9.13. Immunity. Nothing in this Agreement shall be construed as a waiver by the City or the Authority of any immunities, defenses, or other limitations on liability to which the City or the Authority are entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.
IN WITNESS WHEREOF, the Lender has caused this Agreement to be duly executed in its name and the Borrower has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

By _________________________
Its _________________________

By _________________________
Its _________________________

DR. ZACHARY DIRKS, LE SUEUR EYECARE CENTER, LLC

By _________________________
Its _________________________

DR. BLAKE DIRKS, LE SUEUR EYECARE CENTER, LLC

By _________________________
Its _________________________
Exhibit A
Promissory Note

$250,000 February 22, 2021

Dr. Zachary Dirks and Dr. Blake Dirks, Le Sueur Eyecare Center, DBA Mootz Eye Clinic, a Minnesota Limited Liability Corporation (the "Maker"), for value received, hereby promises to pay to the City of Le Sueur Economic Development Authority, Minnesota (the "City") or its assigns (the City and any assigns are hereinafter referred to as the "Holder"), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of Two Hundred and Fifty Thousand and No/100 Dollars ($250,000.00) or so much thereof as may be advanced under this Note, with interest as hereinafter provided, in any coin or currency which at the time or times of payment is legal tender for the payment of private debts in the United States of America. The principal of and interest on this Note is payable in installments due as follows:

1. The Loan shall bear interest at a rate of three percent (3%) per annum, except as otherwise provided for in Section 3.4 of the Loan Agreement as hereinafter defined.

2. Payments of principal and interest shall commence on the first day of the month immediately following the Final Disbursement Date and continue monthly thereafter on the first day of the month immediately following the distribution in the amount of $2,414.02. The monthly payments shall continue until the loan reaches 50% of the total loan amount or $125,000, at which time the remaining balance of $125,000 shall be forgiven, provided the Maker is not in default under this Note or under that certain Loan Agreement between the Maker and the Economic Development Authority of the City of Le Sueur, Minnesota (the "Loan Agreement").

3. The Maker shall have the right to prepay the principal of this Note, in whole or in part, without prepayment penalty.

4. This Note is given pursuant to the Loan Agreement and is secured by a personal guarantee. All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, or any instrument securing this Note, are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If a default occurs under the Loan Agreement, or any instrument securing this Note, then the Holder of this Note may at its right and option, without notice, declare immediately due and payable the principal balance of this Note, together with any costs of collection including attorneys' fees incurred by the Holder of this Note in collecting or enforcing payment hereof, whether suit be brought or not, and all other sums due hereunder, or under any instrument securing this Note. The Maker agrees that the Holder of this Note may, without notice to the Maker of this Note and without affecting the liability of the Maker of this Note, accept additional or substitute security for this Note, or release any security or any party liable for this Note or extend or renew this Note.
5. The remedies of the Holder of this Note as provided herein, and in the Loan Agreement, or any other instrument securing this Note, shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder of this Note and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

6. This Note shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

7. This Note, with the other Loan documents, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Note.

8. Wherever possible, each provision of this Note and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Note or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or any other related document.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of 22 day of February 2021.

Dr. Zachary Dirks, Le Sueur Eyecare Center
By ____________________________
Its ____________________________

Dr. Blake Dirks, Le Sueur Eyecare Center
By ____________________________
Its ____________________________
TO: Economic Development Authority
FROM: Samantha DiMaggio
SUBJECT: Revolving Loan – Bennett Pharmaceuticals
DATE: Monday, February 22, 2021

PURPOSE/ACTION REQUESTED
The EDA is asked to consider approving a Revolving Loan for Mr. James Mulvahill, Bennett Pharmaceuticals of American.

SUMMARY
The Economic Development Authority (EDA) has a revolving loan fund with a balance of approximately $1,500,000. These funds have historically been used to issue loans to local businesses. On May 26, 2020, the EDA updated their Business Subsidy Policy which guides how and when the funds should be used.

Mr. James Mulvahill, Bennett Pharmaceuticals of America, is requesting a Loan from the Revolving Loan Fund in the Amount of $50,000. Bennett Pharmaceuticals is a start-up compounding pharmacy that plans to occupy a new space inside Tiller and Main, located at 202 Valley Green Square, Suite J, Le Sueur, MN. Mr. Mulvahill is requesting the Revolving Loan Funds which will be used as working capital.

The proposed Loan will be amortized over five (5) years and will have an interest rate of three percent (3.0%). Within 18 months, Bennet Pharmaceuticals plans to have 10 full-time employees.

RECOMMENDATION/OPTIONS
Staff recommends the EDA authorize Res. 2021-005, a Resolution approving a Revolving Loan to Mr. James Mulvahill, Bennett Pharmaceuticals of America, and giving the Chair and Executive Director the authority to execute the required Loan Documents.
CITY OF LE SUEUR ECONOMIC DEVELOPMENT
REVOLVING LOAN FUND APPLICATION

SECTION 1: CONTACT INFORMATION

Legal Name of Business: Bennett Pharmaceuticals of America, LLC
Project Site Address: 202 Valley Green Square
City / State / Zip: Le Sueur, MN 56058
Primary Business Contact Person(s): Jim Mulvahill
Phone: (612) 308-6903
Email: jim@bennett-pharma.com
Check One: Proprietor Corporation Partnership LLC

SECTION 2: PROJECT OVERVIEW

Amount Requested: $ 30,000.00
Total Project Cost: $ 550,000.00

Please provide a brief summary of your company and its products and/or services.
Bennett Pharma is a compound pharmacy making branded and genetic drugs for direct sales to doctors and dentists.

Please provide a brief summary of the proposed project.

<table>
<thead>
<tr>
<th>Equipment</th>
<th>$385,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inventory</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>Intellectual Prop. Dev.</td>
<td>$25,000.00</td>
</tr>
<tr>
<td>Working Capital</td>
<td>$100,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$550,000.00</td>
</tr>
</tbody>
</table>

Please describe how these funds will impact your project.
The LSFD funds are critical to providing the necessary inventory, equipment and working capital to create 65 high paying new jobs for Le Sueur.
SECTION 3: ESTIMATED PROJECT COSTS

Land: $0

Site improvements: $paid by developer

New Building: $0

Equipment/Machinery: $385,000.00

Remodeling/Renovation: $paid by developer

Demolition: $0

Working Capital: $100,000.00

Permits/Fees: $

Other (attach description) $J P Dev. $25,000 and Inventory $410,000

Total Costs $1,500,000

SECTION 4: SOURCES OF FINANCING

Bank Loan: $300,000 (250,000 equity / 50,000 working capital)

Bank Name: TCF

Loan Officer Name & Contact Info: Monica Rozek (953) 894-9808

Additional Bank Loan (if applicable): $135,000

Bank Name: 

Loan Officer Name & Contact Info: 

Additional Private Funds (amount & source): $

Owner/Business Equity: $65,000.00

State Funding (amount & program): $

Federal Funding (amount & program): $

Other Sources of Funding (amount and description): $135,000; SMIF

Total Financing: $550,000.00 *

* assuming 50,000 from LSBED
SECTION 5: JOB CREATION (if applicable)

Current number of Employees (working at Le Sueur location): 0

Total number of jobs to be created (in Le Sueur) over the next two years:

<table>
<thead>
<tr>
<th>Job Title</th>
<th>Number of Positions</th>
<th>Hourly Wage w/ Benefits</th>
<th>Expected Hiring Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations Manager</td>
<td>1</td>
<td>$60.00</td>
<td>Jan '22</td>
</tr>
<tr>
<td>Fulfillment Manager</td>
<td>1</td>
<td>$45.00</td>
<td>Jan '22</td>
</tr>
<tr>
<td>Pharmacist</td>
<td>2</td>
<td>$55.00</td>
<td>July '21 + July '22</td>
</tr>
<tr>
<td>Pharm Techs</td>
<td>4</td>
<td>$25.00</td>
<td>July '21 + July '22</td>
</tr>
<tr>
<td>Quality Manager</td>
<td>1</td>
<td>$35.00</td>
<td>July '21</td>
</tr>
<tr>
<td>Controller</td>
<td>1</td>
<td>$50.00</td>
<td>Jan '23</td>
</tr>
</tbody>
</table>

SECTION 6: REQUIRED ATTACHMENTS CHECKLIST

Please attach the following with completed application:

1. Written Business Plan, including the following:
   a. Business overview and company history and ownership
   b. Date Established
   c. Products/Services
   d. Future Plans

2. Two Years of Historical Financials and Financial Projections

3. Personal Financial Statements of Proprietor, Partners, Guarantors

4. Letter of Commitment from Financing Sources

SECTION 7: AGREEMENT

I/We certify that all information provided in this application (and its attachments) is true and correct to the best of my/our knowledge. I/We authorize the City of Le Sueur to check credit references and verify financial and other information. I/We agree to provide any additional information as may be requested by the City of Le Sueur and the Le Sueur Economic Development Authority.

APPLICATION SIGNATURE: ____________________________

PRINTED NAME & TITLE: Jim Mulvahill, CEO

DATE: 2/2/21
WHEREAS the Economic Development Authority of the City of Le Sueur (the "EDA") has established Revolving Loan Fund Program in support of private efforts to establish, expand, create, and retain jobs, business retention or relocate new and existing businesses within the community; and

WHEREAS on May 26, 2020, following the required public hearing, the EDA did adopt a policy regarding the use of business subsidies; and

WHEREAS the EDA has received a request from James Mulvahill, Bennett Pharmaceuticals of America (the "Recipient"), for a loan in the maximum amount of $50,000 from the Revolving Loan Fund (the "Loan") to assist in financing the working capital necessary to operate a compounding pharmacy ("Project") located at 202 Valley Green Square, Suite J (the "Property"); and

WHEREAS the Loan provided does not constitute a "business subsidy" within the meaning of Minnesota Statutes, Section 1 16J.993 to 116J.995 (the "Business Subsidy Act"); and

WHEREAS the Project will result in the creation of at least ten (10) full-time positions, with minimum wage of $14.98 per hour; and

WHEREAS the EDA has reviewed said request from the Recipient for the Loan, the EDA finds the Loan to be in the interest of the EDA, to be in compliance with the guidelines of the Revolving Loan Fund Program and satisfies the criteria set forth in the EDA’s adopted business subsidy policy; and

WHEREAS, a Loan Agreement, between the EDA, and the loan Recipient (the "Loan Agreement"), evidencing the terms and requirements of the Loan in an amount of up to $50,000, which shall be administered by the EDA, and on file with the EDA; and

NOW THEREFORE be it resolved by the Le Sueur Economic Development Authority in and for the City of Le Sueur, as follows:

1. The recitals set forth in the preamble to this resolution and the exhibits attached to this resolution, if any, are incorporated into this resolution as if fully set forth herein.

3. The Loan in the maximum amount of $50,000 is authorized for Recipient for the purposes as set forth in this Resolution to create jobs and promote economic development in accordance with the Revolving Loan Fund guidelines and objectives of the EDA and that said Loan is subject to the terms and conditions set forth in this Resolution and the Loan Agreement.
4. The Loan Agreement and all its exhibits are hereby in all respects authorized, approved and confirmed and the President and Executive Director of the EDA are hereby authorized and directed to execute and deliver the Loan Agreement (which incorporates the Business Subsidy Agreement) and all other documents requirement for the Loan and on behalf of the EDA in substantially the forms now on file with the EDA but with such modifications as shall be deemed necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

PASSED by the Economic Development Authority of the City of Le Sueur on this the 22 day of February 2021.

VOTE:     ____ MANKE           ____ MEGER           ____ SWANBERG
          ____ MAHONEY          ____ WENISCH        ____ SULLIVAN

I CERTIFY THAT the above resolution was adopted by the Economic Development Authority of the City of Le Sueur on February 22, 2021.

ATTEST

_________________________________________       ______________________________
President                                      Executive Director

_________________________________________       ______________________________
Date                                             Date
LOAN AGREEMENT
(Revolving Loan Fund)

THIS AGREEMENT is made and entered into as the 22 day of February 2021, by and between the Economic Development Authority of the City of Le Sueur, a public body, corporate and politic of the State of Minnesota (the "Lender"), having its principal offices at 203 South Second Street, Le Sueur, MN and James Mulvahill, Bennett Pharmaceuticals of America, a Limited Liability Corporation (the "Borrower"), having its principal offices at 202 Valley Green Square, Suite J, Le Sueur, MN 56058.

RECITALS

A. The Economic Development Authority has an established Revolving Loan Fund which contains a pool of money with the intention of supporting private economic development projects for the City of Le Sueur’s benefit.
B. Borrower has applied to Lender for a Revolving Loan for working capital in the principal amount of $50,000.00.
C. Lender is willing to make such mortgage loan to Borrower in the principal amount of $50,000.00 (the “Loan”), subject to all of the terms and conditions of this Agreement.
D. The Loan to the Borrower is not considered a Business Subsidy as defined in Minnesota Statutes 116J.993 to 116J.995, as amended, as the loan is below the $150,000 threshold.
E. Contemporaneously with the execution hereof, Borrower is delivering to Lender the following security documents:
   i. A Promissory Note (“Note”) effective as of the date herewith made by Borrower and payable to the order of Lender, in the original principal amount of $50,000.00.
   ii. The Personal Guaranty of James Mulvahill, Owner (collectively, the “Personal Guaranty”).

NOW THEREFORE, in consideration of the mutual obligations of the parties, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

ARTICLE 1
Definitions

As used in this Agreement, the following terms have the following respective meanings:

“Agreement” means this Loan Agreement by and among the Lender and the Borrower.

“Authority” means the Economic Development Authority of the City of Le Sueur, Minnesota.
“Benefit Date” means when the earlier of: 1) Improvements are finished, and a certificate of occupancy is issued for the project, or 2) when a compounding medical pharmacy occupies the Development Property.

"Borrower" means James Mulvahill, Bennett Pharmaceuticals of America, a Minnesota Limited Liability Company.


"City" means the City of Le Sueur, Minnesota.

“Compliance Date” means the date that is two (2) years after the Benefit Date, except as extended under Section 6.1(b).

"Development Property" means the tenant space located within Tiller and Main, located at 202 Valley Green Square, Suite J, Le Sueur, Minnesota 56058.

“Full-Time Job” means a permanent full-time employee working 2080 annual hours.

“Final Compliance Date” means one year after the Borrower first meets the job and wage goals, as provided for in section 6.1(b).

“Final Disbursement Date” means the date on which the maximum amount of Loan Proceeds by the Lender to the Borrower have been disbursed.

“Lender” means the City of Le Sueur Economic Development Authority.

"Loan" means the funds loaned by the Lender to the Borrower pursuant to this Agreement.

"Loan Proceeds" means the funds disbursed to the Borrower pursuant to this Agreement and any proceeds thereof.

"Project" means the Borrower completing the build out and installation of equipment necessary to operate a compounding medical pharmacy within the Tiller and Main property located at 202 Valley Green Square, Suite J, Le Sueur, MN.

"State" means the State of Minnesota.

"Termination Date" means the date of the final payment made to the Lender.

“Working Capital” means money used to pay for regular expenses, such as utility bills, employee payroll, rent, inventory, and marketing costs.

ARTICLE 2
Loan Terms and Conditions

Section 2.1. Basic Loan Terms. The principal amount of the loan shall not exceed $50,000. The Loan shall bear interest at a rate of three percent (3.0%) per annum. The Loan shall be used for working capital unless otherwise agreed to in writing by the Authority. The term of the Loan is set forth in Section 4.2 of this Agreement.
Section 2.2. Prepayment. Prepayment of the Loan may occur at any time during the Loan without penalty.

Section 2.3. Assignment. If, prior to the Termination Date, the Borrower sells, conveys, transfers, further encumbers, or disposes of the Project, or any part thereof or interest therein, or enters into an agreement to do any of the foregoing, the Borrower shall immediately repay the entire outstanding principal amount of the Loan and interest thereon at the rate set forth in Section 3.4 from the Final Disbursement Date. This shall be in addition to any other remedies at law or equity available to the Authority.

Section 2.4. Termination. This Agreement shall automatically terminate without any notice to Borrower: (1) if no Loan proceeds have been disbursed to the Borrower prior to August 31, 2021; or (2) if: (a) the Borrower has not received any disbursement of Loan proceeds from the Authority; and (b) the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or is the subject of an order for relief in such bankruptcy case, or is adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment; or 3) upon payment of the Promissory Note referred to in Section 2.5 and amounts under this Agreement.

Section 2.5. Promissory Note. The Borrower shall execute the Promissory Note in substantially the form set forth at Exhibit A.

ARTICLE 3
Default and Collateral

Section 3.1. Default. The Borrower shall be in an event of default under this Agreement upon the happening of any one or more of the following events (an "Event of Default"): 

(a) the Borrower fails to pay when due any amount payable on the Loan and such nonpayment is not remedied within ten (10) business days after written notice thereof to the Borrower by the Authority;

(b) the Borrower is in breach in any material respect, of any obligation or agreement under this Agreement (other than nonpayment of any amount payable on the Loan) and remains in breach in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such breach shall reasonably be incapable of being cured within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to cure such breach, no default shall exist so long as the Borrower is proceeding to cure such breach provided such breach can be cured within a reasonable period of time;
(c) if any material covenant, warranty, or representation of the Borrower shall prove to be untrue in any material respect, provided such covenant, warranty or representation of the Borrower remains untrue in any material respect for thirty (30) business days after written notice thereof to the Borrower by the Authority; provided, however, that if such untruth shall reasonably be incapable of being corrected within such thirty (30) business days after notice, and if the Borrower commences and diligently prosecutes the appropriate steps to correct such untruth, as the Borrower is so proceeding to correct such untruth provided such untruth can be corrected within a reasonable period of time;

(d) the Borrower on or after the Final Disbursement Date, fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or converts the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for it, or has any court take reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment;

(e) a final judgment is entered against the Borrower that the Authority reasonably deems will have a material, adverse impact on the Borrower's ability to comply with the Borrower's obligations under this Agreement.

(f) the Borrower sells, conveys, transfers, encumbers, or otherwise disposes of all or any part of the Project without the prior written approval of the Authority;

(g) the Borrower merges or consolidates with any other entity where the Borrower is not the surviving party without the prior written approval of the Authority; or

(h) there is a loss, theft, substantial damage, or destruction of all or any part of the Project that is not remedied to the Authority's satisfaction within sixty (60) business days after written notice thereof by the Authority to the Borrower.

Section 3.2. Remedies Upon Default.

(a) In an Event of Default, the Authority shall have the right as its option and without demand or notice, to declare all or any part of the Loan immediately due and payable, and in addition to the rights and remedies granted hereby, the Authority shall have all the rights and remedies available under the Uniform Commercial Code and any other applicable law.

(b) The Borrower agrees in an Event of Default to make the collateral available to the Authority. The Borrower agrees to pay the costs and expenses incurred by the Authority in enforcing its rights under this Agreement, including but not limited to the Authority’s attorney’s fees. If any notice of sale, disposition or other intended action by the Authority is required by law to be given to the Borrower, such notice shall be deemed reasonably and properly given if mailed to the Borrower at the Development Property or at such other address of the Borrower as may be shown herein, at least fifteen (15) days before such sale, disposition, or other intended action.
Section 3.3 Collateral. The Borrower shall grant to the Authority a Personal Guarantee in a form acceptable to the Authority.

Section 3.4. Default on Job and Reporting Requirements.

(a) In the event of an Event of Default, including arising from a breach by the Borrower of any provision of Section 6.1 of this Agreement, the Borrower shall, in addition to any other payment required hereunder, pay to the Authority the interest that would have been paid and accrued on the Loan if the interest rate of the Loan at all times had been equal to 3.0%.

(b) Nothing in this Section 3.4 shall be construed to limit the Authority’s rights or remedies under any other provision of this Agreement, and the provisions of Section 3.4(a) are in addition to any other such right or remedy the Authority may have available.

ARTICLE 4
Loan Disbursement Provisions

Section 4.1. Payment Requisition Documentation and Format. Loan disbursements shall be for working capital and shall not exceed $50,000. The Loan shall be disbursed to the Borrower in two installments. The first installment of $25,000 shall be granted after the lease has been executed, the equipment has been purchased, and the verification of these transactions has been provided to the EDA. The second disbursement of $25,000 will be granted after the business has received its Certificate of Occupancy from the City of Le Sueur Building Department. Earlier distributions will be considered upon written request from the Borrower. The maximum amount of disbursement is $50,000.

Section 4.2. Loan Terms. The term of the Loan shall be five (5) years, commencing as of the Final Disbursement Date. The Loan shall bear interest at a rate of three percent (3.0%) per annum and interest shall commence to accrue as of the Final Disbursement Date.

Section 4.3. Loan Repayments Schedule. Payments of principal shall commence on the first day of the month immediately following the Final Disbursement Date and shall continue monthly thereafter on the first day of the same month until paid in full.

ARTICLE 5
Provision of Evidentiary Material Requirement

Section 5.1. Job Creation Documentation. The Borrower shall submit to the Authority a written report by January 15 of each year and shall terminate on the Compliance Date if the Borrower is not then in breach of Section 6, on forms provided by the Authority. This information shall be provided by the Borrower and must include at a minimum:

(a) the number of Retained Jobs and New Jobs created and the dates on which each were created and filled; and

(b) the job title, wages, benefits, and hourly value of such benefits for each such Job.
ARTICLE 6
Job and Wage Requirements

Section 6.1. Covenants.
(a) The Borrower acknowledges and agrees that it is receiving government assistance pursuant to the Loan:
   i. The subsidy provided to the Borrower includes the $50,000 Loan made hereunder which will be used for working capital.
   ii. The public purposes and goals of the subsidy are to increase net jobs in the City.
   iii. The goals for the subsidy are to create jobs that pay a wage per Section 6.1 (b) of this Agreement.
   iv. If the goals are not satisfied, the Borrower shall make payment to the Authority as required in Sections 3.4 and 6.1 (b).
   v. The subsidy is needed because the low interest Loan helps make the Project economically feasible.
   vi. The Borrower must continue operations in the jurisdiction for at least five years following the Benefit Date.
   vii. The Borrower does not have a parent corporation.
   viii. The Borrower has not received, nor do they expect to receive additional financial assistance which would be defined as a Business Subsidy under the Business Subsidy Act.
(b) The Borrower shall create ten (10) permanent full-time jobs on the Development Property (the "Retained Jobs") and shall maintain these Jobs for at least one year thereafter (the "Final Compliance Date"). All of the employees of the Borrower working at the Development Property, must be paid a base wage of at least $14.98 per hour exclusive of benefits. If the Borrower fails to meet the Job and Wage Goals by the Compliance Date, the Authority may, after holding a public hearing, extend the period to satisfy the Job and Wage Goals by one year, in which case the Compliance Date shall be extended by one year.

Section 6.2 Reporting. The Borrower shall provide to the Authority information regarding Job and Wage Goals and results through the Final Compliance Date or until the goals are met, whichever is later. This reporting requirement will expire if the goals are met by the Final Compliance Date. If the goals are not met, the Borrower must continue to provide information on the Loan until the Loan is repaid. If the report is not submitted by January 15th of each year, the Authority shall mail the Borrower a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the Borrower fails to provide a report, the Borrower must pay to the Authority a penalty of $100 for each subsequent day until the report is filed. The maximum penalty shall not exceed $1,000.
(a) Reporting Documentation.
   i. The type, public purpose, and amount of the subsidy.
   ii. The hourly wage of each job created with separate bands of wages.
   iii. The sum of the hourly wages and cost of benefits.
   iv. The date the job and wage goals will be reached.
   v. A statement of goals identified in the subsidy agreement and an update on achievement of those goals.
   vi. The location of the recipient prior to receiving the business subsidy.
   vii. If the recipient was previously located in another site in Minnesota, the reason that the project was completed on this site.
   viii. If the Borrower has a parent corporation, the name and address.
   ix. A list of all financial assistance by all grantors for the Project; and
   x. Other information the Authority may request.
ARTICLE 7
Non-discrimination

Section 7.1. Non-discrimination. The provisions of Minnesota Statutes, Section 181.59, and any successor statutes, which relate to civil rights and discrimination, shall be considered a part of this Agreement as though wholly set forth herein and the Borrower shall comply with each such provision throughout the term of this Agreement.

ARTICLE 8
Borrower's Acknowledgments Representation, and Warrants

Section 8.1. Representations and Warranties. The Borrower warrants and represents, in connection with the Loan and for the benefit of the City and the Authority that:

(a) Representations, statements, and other matters provided by the Borrower relating to those activities of the Project to be completed by the Borrower, were true and complete in all material respects as of the date of submission to the Authority and that such representations, statements, and other matters are true as of the date of this Agreement and that there are no adverse material changes in the financial condition of the Borrower's business.

(b) To the best of the Borrower's knowledge, no member, officer, or employee of the City or the Authority, or their officers, employees, designees, or agents, no consultant, member of the governing body of the City or the Authority, and no other public official of the City or the Authority, who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit there from, which is part of the Project.

(c) The Borrower warrants that to the best of its knowledge, it has obtained all federal, state, and local governmental approvals, reviews, and permits required by law to be obtained in connection with the Project and has undertaken and completed all actions necessary for it to lawfully execute this Agreement as binding upon it.

(d) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the Project, and that any duly authorized representative of the City and the Authority shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower until such time that the City and the Authority have determined that all issues, requirements, and close-out procedures relating to or arising out of the Loan have been settled and completed.

(e) The Borrower warrants that it has fully complied with all applicable local, state, and federal laws pertaining to its business and will continue such compliance throughout the terms of this Agreement. If at any time notice of noncompliance is received by the Borrower, the Borrower agrees to take any necessary action to comply with the local, state, or federal law in question.
ARTICLE 9
Other Special Conditions

Section 9.1. Effect on Other Agreements. Nothing in this Agreement shall be construed to modify any term of any other agreement to which the Authority and the Borrower are parties.

Section 9.2. Release and Indemnification Covenants. Except for any breach of the representations and warranties of the Authority or the negligence or other wrongful act or omission of the following named parties, the Borrower agrees to protect and defend the Authority and the governing body members, officers, agents, servants, and employees thereof, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action, or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the acquisition, construction, installation, ownership, maintenance, and operation of the Project and the Equipment and the Borrower's activities on the Development Property.

Section 9.3. Modifications. This Agreement may be modified solely through written amendments hereto executed by the Borrower, and the Authority.

Section 9.4 Notices and Demands. Any notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered only if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

(a) as to the EDA
Economic Development Authority of the City of Le Sueur
ATTN: Executive Director
203 South Second Street
Le Sueur, MN 56058

(b) as to the Borrower:
Bennett Pharmaceuticals of America
ATTN: James Mulvahill
202 Valley Green Square, Suite J
Le Sueur, MN 56058

Or at such other address with respect to any party as that party may, from time to time, designate in writing and forward to the others as provided in this Section 9.4.

Section 9.5. Conflict of Interests; Representatives Not Individually Liable. No officer or employee of the City or the Authority may acquire any financial interest, direct or indirect, in this Agreement, the Project, the Equipment or in any contract related thereto. No officer, agent, or employee of the City or the Authority shall be personally liable to the Borrower or any successor in interest in the event of any default or breach by the City or the Authority or for any amount that may become due to the Borrower or on any obligation or term of this Agreement.

Section 9.6. Binding Effect. The covenants and agreements in this Agreement shall bind and benefit the heirs, executors, administrators, successors, and assigns of the parties to this Agreement.

Section 9.7. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted only for convenience of reference and shall be disregarded in construing or interpreting any of its provisions.
Section 9.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.9. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

Section 9.10. Waiver. The failure or delay of any party to take any action or assert any right or remedy, or the partial exercise by any party of any right or remedy shall not be deemed to be a waiver of such action, right, or remedy if the circumstances creating such action, right, or remedy continue or repeat.

Section 9.11. Entire Agreement. This Agreement, with the exhibit hereto, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Agreement.

Section 9.12. Separability. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.

Section 9.13. Immunity. Nothing in this Agreement shall be construed as a waiver by the City or the Authority of any immunities, defenses, or other limitations on liability to which the City or the Authority are entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

[Remainder of page intentionally blank]
IN WITNESS WHEREOF, the Lender has caused this Agreement to be duly executed in its name and the Borrower has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

By _________________________

Its _________________________

By _________________________

Its _________________________

JAMES MULVAHILL, BENNETT PHARMACEUTICALS OF AMERICA

By _________________________

Its _________________________
James Mulvahill, Bennet Pharmaceuticals of America, a Minnesota Limited Liability Corporation (the "Maker"), for value received, hereby promises to pay to the City of Le Sueur Economic Development Authority, Minnesota (the "City") or its assigns (the City and any assigns are hereinafter referred to as the "Holder"), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of Fifty Thousand and No/100 Dollars ($50,000.00) or so much thereof as may be advanced under this Note, with interest as hereinafter provided, in any coin or currency which at the time or times of payment is legal tender for the payment of private debts in the United States of America. The principal of and interest on this Note is payable in installments due as follows:

1. The Loan shall bear interest at a rate of three percent (3%) per annum, except as otherwise provided for in Section 3.4 of the Loan Agreement as hereinafter defined.

2. Payments of principal and interest shall commence on the first day of the month immediately following the Final Disbursement Date and continue monthly thereafter on the first day of the month immediately following the final distribution in the amount of $898.43. The monthly payments shall continue until the loan is paid in full.

3. The Maker shall have the right to prepay the principal of this Note, in whole or in part, without prepayment penalty.

4. This Note is given pursuant to the Loan Agreement and is secured by a personal guarantee.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, or any instrument securing this Note, are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If a default occurs under the Loan Agreement, or any instrument securing this Note, then the Holder of this Note may at its right and option, without notice, declare immediately due and payable the principal balance of this Note, together with any costs of collection including attorneys' fees incurred by the Holder of this Note in collecting or enforcing payment hereof, whether suit be brought or not, and all other sums due hereunder, or under any instrument securing this Note. The Maker agrees that the Holder of this Note may, without notice to the Maker of this Note and without affecting the liability of the Maker of this Note, accept additional or substitute security for this Note, or release any security or any party liable for this Note or extend or renew this Note.
5. The remedies of the Holder of this Note as provided herein, and in the Loan Agreement, or any other instrument securing this Note, shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder of this Note and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

6. This Note shall be governed by and construed in accordance with the laws of the State of Minnesota without regard to its conflict of law’s provisions. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

7. This Note, with the other Loan documents, constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations, and understandings of the parties pertaining to the subject matter of this Note.

8. Wherever possible, each provision of this Note and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Note or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or any other related document.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of 22 day of February 2021.

James Mulvahill, Bennett Pharmaceuticals of America, LLC

By __________________________

Its __________________________
TO: Economic Development Authority

FROM: Samantha DiMaggio

SUBJECT: Financial Institution Access (Res. No. 2021-06)

DATE: Monday, February 22, 2021

PURPOSE
Consider approving Res. No. 2021-006, a resolution updating EDA account signers and endorsers at certain financial institutions.

SUMMARY
The City of Le Sueur and the EDA have had some staff and member changes as well as changes in designated financial institutions, therefore staff has prepared an updated Resolution to reflect these changes.

ACTION REQUESTED
Staff is recommending that EDA approve Res. No. 2021-06, A resolution updating the account signers and endorsers at certain financial institutions.
AUTHORIZATION RESOLUTION NO. 2021-06
LE SUEUR ECONOMIC DEVELOPMENT AUTHORITY

THIS IS TO CERTIFY: That at a regular meeting of the Le Sueur Economic Development Authority, a governmental subdivision under the laws of the State of Minnesota (“EDA”), was held on the 22 day of February 2021.

WHEREAS the Economic Development Authority (EDA) maintains financial accounts at First Farmers and Merchants Bank and the 4M Fund which is used as a saving account and to pay operating expenses and clear debts.

WHEREAS the EDA hereby designates and authorizes the individuals in the following positions to sign checks for debt payment on behalf of EDA.

1) Samantha DiMaggio – EDA Executive Director/Secretary & City of Le Sueur Staff
2) Jesse Wenisch – President of the EDA
3) Dan Mahoney – Vice President of the EDA

WHEREAS the EDA hereby designates and authorizes the individuals in the following positions to endorse checks and have access to the financial institutions on behalf of EDA.

1) Samantha DiMaggio – EDA Executive Director/Secretary & City of Le Sueur Staff
2) Jasper Kruggel – City Administrator
3) Joe Roby - City Finance Director

NOW THEREFORE be it resolved by the Le Sueur Economic Development Authority in and for the City of Le Sueur, as follows:

1. That the EDA hereby appoints the President and Secretary of the EDA to sign resolutions making changes in the names of individuals in the designated position of authorized signers to be filed with First Farmers and Merchants Bank and the 4M Fund; and
2. That the EDA hereby appoints the President and Secretary of the EDA to sign resolutions making changes in the names of individuals in the designated position of authorized endorsers with access to the following financial institutions: First Farmers and Merchants Bank and the 4M Fund; and
3. That the officers of the Le Sueur Economic Development Authority and the Executive Director are, hereby authorized, and directed to take such further action as may be necessary, appropriate or advisable to implement this resolution and amend and any such prior actions are here by ratified; and
PASSED by the Economic Development Authority of the City of Le Sueur on this the 22 day of February 2021.

VOTE:       ____ MANKE           ____ MEGER           ____ SWANBERG
            ____ MAHONEY           ____ WENISCH           ____ SULLIVAN

I CERTIFY THAT the above resolution was adopted by the Economic Development Authority of the City of Le Sueur on February 22, 2021.

ATTEST

_________________________________  ___________________________________
President                          Executive Director

_________________________________  ___________________________________
Date                                Date