

LOAN AGREEMENT
City of Lexington Economic Development Fund
ED Loan #2017-01

THIS AGREEMENT dated _____, 2017, by and between McFarland Family Farms, L.L.C., a Nebraska Limited Liability Company (“Borrower”), and the City of Lexington, Nebraska, (the “Lender”).

WHEREAS, the Lender is authorized to disburse certain funds received from the Economic Development Sales Tax Fund for the purposes and in accordance with requirements set forth in the Local Option Municipal Economic Development Act, See, Neb. Rev. Stat. § 18-2701 et. seq. (“Act”); and

WHEREAS, the Borrower is a Qualified Business pursuant to said Act and desires to borrow funds from Lender; and

WHEREAS, based upon information furnished by Lender and Borrower, the Lender is satisfied that this loan furthers the purposes specified in the Act for the use of Economic Development funds;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

PART I: THE LOAN

1.01 The Loan and Rate.

Subject to the terms and conditions of this Agreement and the approval of the Lexington City Council, the Lender agrees to loan the sum of \$260,000.00, to be repaid in ten annual installments of \$26,000.00, each payment to include interest at 0.0% per annum, the first such payment to be due April 3, 2018, and annually thereafter until the entire balance is paid in full. If the date of payment falls on a Federal Bank Holiday or weekend, the payment shall be made the following business day.

1.02 Purpose of Loan.

The purpose of the loan is to provide capital for Borrower’s vineyard, wine making, wine retail, and wine-related enterprises, known as Mac’s Creek Winery and Vineyard, for purposes including but not limited to an additional facility, machinery, and operating capital. The Borrower agrees it will apply the funds received by it under this Agreement in the manner described above.

PART II: REPRESENTATIONS AND WARRANTIES.

The Borrower represents and covenants the following:

2.01 Legally Binding Instruments.

When this Agreement is executed by the Borrower and the Lender, and when the Note is

executed and delivered by the Borrower, each such instrument will constitute the legal, valid, and binding obligation of the company in accordance with its terms. Any security agreements and instruments, financing statements, mortgages and other liens on chattel or real estate will constitute legal, valid and binding liens free and clear of all prior liens and encumbrances except as provided for.

2.02 No Legal Suits.

There are no legal actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower before any court or administrative agency, which, if determined adversely to the Borrower, would have a material adverse effect on the financial condition or business of the Borrower.

2.03 No Legal Authorization Needed.

No authorization, consent or approval, or any formal exemption of any Governmental body, regulatory authorities (federal, state or local) or mortgagee, creditor or third party, is or was necessary for the valid execution and delivery by the Borrower of this Agreement.

2.04 Not In Default.

The Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

2.05 Taxes Are Paid.

The Borrower has filed all tax returns which are required and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against the Borrower or its personal or real property by any taxing agency, federal, state or local. No tax liability has been asserted by the Internal Revenue Service or other taxing agency, federal, state, or local for taxes materially in excess of those already provided for and the Borrower knows of no basis for any such deficiency assessment.

2.06 No Adverse Change.

The Borrower certifies that there has been no adverse or material change since the date of loan application in the financial condition, organization, operation, business prospects, fixed properties, or personnel of the Borrower.

PART III: CONDITIONS OF LENDING.

The obligation of the Lender to make the Loan will be subject to the fulfillment at the time of closing of each of the following conditions:

3.01 Execution and Delivery of Note and Loan Agreement.

The Borrower will have executed and delivered to the Lender this Loan Agreement and the Promissory Note in a form satisfactory to the Lender and its Counsel.

3.02 Approval of Others.

The Borrower will have secured all necessary approvals or consents required with respect to this transaction by any mortgagor, creditor or other party having any financial interest in the Borrower.

3.03 Security.

The borrower will execute a Deed of Trust and Promissory Note as part of this transaction. Said Deed of Trust shall grant Lender a lien position in the real estate described in attached **Exhibit A** and said Promissory Note shall be as set out in **Exhibit B**. And in addition, thereto, the borrower will execute a Security Agreement and Financing Statement granting to Seller a lien position in all equipment, inventory, accounts, contract rights, financial accounts, plant fixtures, and all proceeds, products, rent and profits from any of the foregoing.

PART IV: AFFIRMATIVE COVENANTS OF THE BORROWER.

The Borrower agrees to comply with the following covenants from this date until the Lender has been fully repaid with interest, unless the Lender or its Assigns will otherwise consent in writing.

4.01 Payment of the Loan.

The Borrower agrees to pay punctually the principal and interest in the Note according to the terms and conditions and to pay punctually any other amounts that may become due and payable to the Lender pursuant to the terms of this Agreement.

4.02 Payment of Other Indebtedness.

The Borrower agrees to pay punctually the principal and interest due on any other indebtedness now or at any time owing by the Borrower to the Lender or any other lender.

4.03 Maintain and Insure Property.

The Borrower agrees at all times to maintain the property provided as security for this Loan in such condition and repair that the Lender's security will be adequately protected. The Borrower also agrees to maintain during the term of the Loan adequate hazard insurance policies covering fire and extended coverage and such other hazards as may be deemed appropriate in amounts and form sufficient to prevent the Borrower from becoming a co-insurer and issued by companies satisfactory to the Lender with acceptable loss payee clauses in favor of the Lender.

The Borrower further agrees, if at any time during the life of the Loan the Borrower's property is declared to be within a flood hazard area, to purchase Federal Flood Insurance, if available. Such insurance will be in an amount equal to the amount of the loan. If the property is not located in a flood hazard area at the time of the loan closing, the Borrower will provide satisfactory evidence thereof.

4.04 Pay All Taxes. The Borrower agrees to duly pay and discharge all taxes, assessments and governmental charges upon it or against its properties prior to the date on which penalties are attached except that the Borrower will not be required to pay any such tax, assessment or governmental charge which is being contested by it in good faith and by appropriate proceedings.

4.05 Provide Financial Information.

The Borrower agrees to maintain adequate records and books of account, in which complete entries will be made reflecting all of its business and financial transactions, such entries to be made in accordance with generally accepted principles of good accounting practice consistently applied in the case of financial transactions.

The Borrower further agrees to provide information, and execute and deliver any and all additional documents and instruments as may be reasonably requested by the Lender, its assigns or counsel, or the Department and its assigns.

The Borrower further agrees to provide written notice to the Lender of any public hearing or meeting before any administrative or other public agency which may, in any manner, affect the real estate securing the loan.

4.06 Right to Inspection.

The Borrower agrees to grant to the Lender and the Department, until the Note has been fully repaid with interest, the right at all reasonable hours to inspect the collateral used to secure the Loan; and the Borrower further agrees to provide the Lender free access to the Borrower's premises for the purpose of such inspection to determine the condition of the real estate.

4.07 Null and Void Covenants.

The Borrower agrees that in the event that any provision of this Loan Agreement or any other instrument executed at closing or the application to any person or circumstances will be declared null and void, invalid, or held for any reason to be unenforceable by a Court of competent jurisdiction, the remainder of such agreement will nevertheless remain in full force and effect, and to this end, the provisions of all covenants, conditions, and agreements described herein are deemed separate.

4.8 Expenses and Closing Costs.

The Borrower agrees to pay all fees, expenses and charges with respect to the Loan, or its

making or transfer to the Lender in any way connected including, but no limited to, the fees and out-of-pocket expenses of local counsel employed by the Lender, title insurance and survey costs, recording and filing fees, mortgage taxes, documentary stamp, and any other taxes, fees and expenses payable in connection with this transaction and with the enforcement of this Loan Agreement and Note.

4.9 Notice of Default.

The Borrower agrees to give written notice to the Lender of any event, within fifteen (15) days of the event, which constitutes an Event of Default under this Loan Agreement as described in Article VI or that would, with notice or lapse of time or both, constitute an Event of Default under this Loan Agreement.

4.10 Indemnification.

The Borrower agrees to indemnify and save the Lender or its Assigns harmless against any and all liability with respect to, or resulting from, any delay in discharging any obligation of the Borrower.

4.11 Expenses of Collection or Enforcement.

The Borrower agrees, if at any time the Borrower defaults on any provision of this Loan Agreement, to pay Lender in addition to any other amounts that may be due from the Borrower, an amount equal to the costs and expenses of collection, enforcement or correction or waiver of the default incurred by the Lender or its Assigns in such collection, enforcement, correction or waiver of default.

4.12 Compliance With Law.

Evidence satisfactory to the Lender will be furnished certifying that all improvements and their use comply fully with all applicable zoning and building laws, ordinances and regulations, and all other applicable federal, state and municipal law requirements. The loan will be in all respects legal and will not violate any applicable law or other requirements of any governmental authority.

4.13 Environmental Protection Laws.

Receipt of evidence satisfactory to the Lender of compliance with all applicable environmental protection and land use and development laws, ordinances and regulations of all federal, state and local governmental authorities and agencies having jurisdiction.

PART V: NEGATIVE COVENANTS OF THE BORROWER.

The Borrower covenants and agrees that, from this date until payment in full of the Note, unless the Lender or its Assigns otherwise consent in writing, it will not enter into any agreement or other commitment the performance of which would constitute a breach of any of the covenants

contained in this Loan Agreement including, but not limited to the following covenants:

5.01 Sell the Acquisition Assets.

The Borrower will not sell, convey, or suffer to be conveyed, lease, assign, transfer or otherwise dispose of the secured property unless approved in writing by the Lender.

5.02 Change Ownership.

The principals of the Borrower will not permit without the written permission of the Lender any material change in the ownership, structure, control, or operation of the Borrower including but not limited to i) merger into or consolidation with any other person, firm or corporation; ii) significant issuance of any shares of its capital stock having ordinary voting power for the election of members of the Board of Directors or other governing body of the Borrower; iii) changing the nature of its business as carried out at the date hereof; (iv) substantial distribution, liquidation or other disposal of the Borrower's assets to the stock holders. Should the Borrower propose any material change in the ownership, structure, control, or operation of the Borrower, the Lender and the Department reserve the right to re-negotiate this Agreement or make the entire unpaid principal of the Note and the accrued interest will immediately be due and payable upon written demand of the Lender assigns.

PART VI: EVENTS OF DEFAULT.

The entire unpaid principal of the Note and the accrued interest will become and be immediately due and payable upon the written demand of Lender, except where noted, without any other notice or demand of any kind or any presentment or protest, if any one of the following events (an "Event of Default") occurs and be continuing at the time of such demand, whether voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rules or regulation of any administrative or governmental body, provided, however, that such sum will not be then payable if Borrower's payments have been waived, or the time for making the Borrower's payments have been extended by the Lender.

6.01 Non-Payment of Loan.

If the Borrower fails to make payment when due of any installment of principal on the Note or accrued interest and if the default remains unremedied for fifteen (15) days.

6.02 Non-Payment or Other Indebtedness.

If default is made in the payment when due of any installment of principal or of interest on any of Borrower's other indebtedness and if such default will remain unremedied for fifteen (15) days.

6.03 Incorrect Representation or Warranty.

Any representation or warranty contained in, or made in connection with the execution and

delivery of, this Loan Agreement or Grant Application or in any provided information proves to be incorrect.

6.04 Default in Covenants.

The Borrower will default in the performance of any other term, covenant or agreement contained in this Loan Agreement, and such default continues unremedied for thirty (30) days after either: 1) it becomes known to an executive officer of the Borrower or 2) written notice has been given to the Borrower by the Lender and the Department.

6.05 Voluntary Insolvency.

If the Borrower becomes insolvent or ceases to pay its debts as they mature or voluntarily files a petition seeking reorganization of its business, or the appointment of a receiver, trustee, or liquidation of a substantial portion of its assets, effects a composition or other arrangement with creditors, or be adjudicated bankrupt, or make voluntary assignment for the benefit of creditors.

6.06 Involuntary Insolvency.

If an involuntary petition is filed against the Borrower under any bankruptcy, insolvency or similar law or seeking the reorganization of or the appointment of any receiver, trustee or liquidator for the Borrower, or of a substantial part of the property of the Borrower, or a writ or warrant of attachment or similar process will be issued against a substantial part of the property of the Borrower, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded, within thirty (30) days after filing or levy.

PART VII: MISCELLANEOUS.

7.01 Waiver of Notice

No failure or delay on the part of the Lender in exercising any right, power, or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No modification or waiver of any provision of this Loan Agreement or of the Note, nor any consent to same will be effective unless it is in writing and then such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case will entitle the Borrower to any other or further notice or demand in similar or other circumstances.

7.02 Amendments.

The Borrower and the Lender or its Assigns, reserves all rights to amend any provisions of this Agreement, to consent to or waive any departure from the provisions of this Loan Agreement, to amend or consent to or waive departure from the provisions of the Note, and to release or otherwise deal with any collateral security for payment of the note provided, unless all such amendments be in writing and executed by the Lender or its Assigns, and the Borrower.

7.03 Notices.

All notices, consents, requests, demands and other communication will be in writing and will be deemed to have been duly given to a party if mailed to the Lender at its address set forth in the grant application, and to the Borrower at the address set forth in the grant application.

7.04 Survival of Representations and Warranties.

All agreements, representations, and warranties made by the Borrowers or any other document or certificate delivered to the Lender in connection with the transactions contemplated by this Loan Agreement will survive the delivery of this Agreement, the Note and the Security Agreements, and will continue in full force and effect so long as the Note is outstanding.

7.05 Successors and Assigns.

This Loan Agreement will be binding upon the Borrower, its Successors, and Assigns. The Borrower may not assign or transfer its rights without prior written consent of the Lender.

7.06 Counterparts.

This Loan Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

7.07 Governing Law.

This Loan Agreement and the Note and Security Agreements and Financing Statements will be deemed contracts made under the laws of the State of Nebraska and for all purposes will be construed in accordance with the laws of this State.

7.08 Article and Section Headings.

Article and Section Headings used in this Agreement for convenience only and will not affect the construction of this Agreement.

IN WITNESS WHEREOF, the parties have each caused this Loan Agreement to be executed on _____, 2017.

The City of Lexington, NE, Lender

McFarland Family Farms, L.L.C., a Nebraska
Limited Liability Company, Borrower

By: _____

By: _____

City Manager

Managing Member

Exhibit A

A tract of land in the Southwest Quarter of Section 29, Township 10 North, Range 21 West of the 6th P.M., Dawson County, Nebraska, and more particularly described as follows:

Beginning at a point on the South Section Line 296.00 feet east of the southwest corner of Section 29, Township 10 North, Range 21 West of the 6th P.M., Dawson County, Nebraska;

Thence North and parallel to the west line of the Southwest Quarter of said Section 29, a distance of 330.00 feet;

Thence N 89°52'00" E, a distance of 90.00 feet;

Thence North and parallel to the west line of the Southwest Quarter of said Section 29, a distance of 322.48 feet;

Thence S 82°58'27" E a distance of 205.01 feet;

Thence North and parallel to the west line of the Southwest Quarter of said Section 29, a distance of 27.21 feet;

Thence S 81°11'00" E, a distance of 273.40 feet;

Thence S 62°00'00" E, a distance of 274.50 feet;

Thence S 43°42'00" E, a distance of 127.60 feet;

Thence S 17°49'00" E, a distance of 409.30 feet;

Thence S 89°52'00" W, and along the south section line of said Section 29, a distance of 1019.40 feet to the place of beginning.

Exhibit B

PROMISSORY NOTE (ED LOAN #2017-01)

Payee (lender):	The City of Lexington, Nebraska P.O. Box 70 Lexington, NE 68850
Maker (borrower):	McFarland Family Farms, LLC, 2702 N Adams Lexington, NE 68850
Place to Make Payments:	P.O. Box 70, Lexington, Nebraska 68850
Principal Sum (face amount):	\$260,000.00
Due Date 1st Payment:	April 3, 2018
Amount of Each Equal Payment:	\$26,000.00
Due Date Last Payment:	April 3, 2027
Frequency of Payments:	Annually
Interest Rate:	0%
Number of Payments:	10
Default Interest Rate:	0%
Pre-Payment Restrictions:	None
Collateral:	Deed of Trust dated April 3, 2017; other Collateral

FOR VALUE RECEIVED, the Maker, promises to pay to the order of Payee as the holder hereof may direct, the Principal Sum with interest on the principal balance from time to time remaining unpaid at the Interest Rate per annum from the date of this Promissory Note payable in equal amortization installments as set forth above and in the Amortization Schedule attached hereto for ten (10) years. The date of maturity shall be on April 3, 2027.

The principal and interest are to be paid in equal installments as provided herein, with each installment to be applied first to reimburse holder for any advancements made by holder for the protection of security as provided in the Deed of Trust securing this obligation, second to pay accrued interest, and the balance to reduce principal.

Should any installment not be paid when due, holder may, without notice, declare the entire unpaid principal balance and accrued interest immediately due and payable, whereupon all amounts due hereunder shall bear interest at the Default interest rate per annum from the due date of the installment on which makers have defaulted. On such acceleration, holder shall be entitled to exercise all rights available to holder.

Failure of holder to exercise any option contained herein on any one default shall not waive the right of holder to exercise any such option on any subsequent default.

Maker shall have the right to pre-pay any amounts of principal and interest at any time prior to the date of maturity.

Maker waives presentment, protest, notice of protest, diligence in bringing suit hereon, and notice of extension of time for payment.

DATED: _____, 2017.

McFarland Family Farms, L.L.C., a Nebraska Limited Liability Company

By _____
Managing Member



ECONOMIC DEVELOPMENT PROGRAM FUND APPLICATION

(Please complete all information)

Name of Business requesting assistance: Max's Creek Vineyards & Winery
McFarland Family Farm, LLC Federal ID# 47-0842310

Address: 43315 Rd. 757 ; Lexington , NE , 68850
(City) (State) (Zip)

Contact Person: Barry McFarland Telephone No. 308-324-0440 Cell No. 308-325-3667

Fax No. 308-324-7968 Email Address: barry@maxscreekvineyards.com

Business Classification: Manufacturing Service Retail
 Administrative Management Headquarters Warehousing and Distribution
 Research and Development Other

Business Organization: Proprietorship Corporation Partnership
 Other (Explain) Limited Liability Company

Does the Company have a Parent or Subsidiaries? Yes No
 If Yes, please identify by Name: _____
 Address: _____
 City, State, Zip: _____

Business Status: Start-up (0-5 yrs old) Acquisition
 Existing (Years in business) _____

Ownership: List all officers, directors, partners, owner(s), co-owners and/or stockholders. Under Minority Code, Enter "1" if person identified is female, "2" if minority, or "3" if person is disabled.

Name	Title	Ownership Percent	Minority Code
Max McFarland	Partner	40%	
Theresa McFarland	"	40%	1
Seth McFarland	"	10%	
Barry McFarland	"	10%	

If there are more than space allows, please list on back of application.)

Personnel: (Full-time equivalent, based on 2,080 hrs per year)

Existing Number of Full-Time Positions: 4
 Full-Time Positions to be created within 18 months of Application Approval: 0
 If applicable, number of seasonal full-time jobs created:
 (i.e. Jobs which will be available for at least 3 continuous months and recur annually) 2



Project Information:

<u>Uses of Funds</u>	<u>Total Project Funds</u>	<u>Lexington Funds Requested</u>
Land Acquisition	0	0
Building Acquisition	0	0
New Facility Construction	260,000	200,000
Acquisition of Machinery/Equip.	230,000	10,000
Acquisition of Furniture/Fixtures	0	0
Working Capital (includes inventory)	50,000	50,000
Other (Specify)	0	
TOTAL:	\$ 640,000	\$ 260,000

Sources of Funds:

Note: Public sources of financing require the participation of a bank and/or injection of equity (non-debt) funds.

Participating Lender Information:

Name of Lending Institution: FARM CREDIT SERVICES OF AMERICA

Address: 535 S. 10th Ave., Broken Bow, NE

Contact Person: SANDY PRIEST Phone Number: (302) 872-2461

Loan Amount: \$ 260,000 Loan Term (Yrs) _____
 Interest Rate: _____ (percent) _____ Variable _____ Fixed

Collateral Required: _____ Equity Required: _____

Equity Information:

Amount available by business or owners for Investment: \$ _____

Project Location:

Within Lexington City Limits _____ Outside of City Limits, but within Zoning Jurisdiction

Personal Financial Statement: Complete and attach Personal Financial Statement for each person.

The Applicant hereby certifies the following to the Agency pursuant to Nebraska State Statute 18-2119(3)(a):

- a) Have you filed or intend to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for this project?
NO
- b) If so, does the application include (or will include) as one of the tax incentives, a refund of the city's local option sales tax revenue?

- c) Has such application, if any, been approved under the Nebraska Advantage Act?



The above information is accurate to the best of my knowledge and belief. The above information is provided to help you evaluate the feasibility of obtaining public financial assistance. I further authorize release of personal and business credit information to the City of Lexington

Signature: [Handwritten Signature] Date: 3/14/17
Signature: [Handwritten Signature] Date: _____
Signature: [Handwritten Signature] Date: _____

ATTACH THE FOLLOWING:

- Brief description of business/history and the proposed project.

- 3-yr historical balance sheets and operating statements. Statements should be less than 90 days old. For start-up, provide projected year-end statements for first two years of operation.

- Personal Financial Statement (noted above) for each person.

- List of current obligations for existing business.

- For new business and existing business expanding into new product line, include business plan.