



TOWN COUNCIL

TOWN COUNCIL AGENDA DOCUMENTATION

PREPARATION DATE: November 10, 2016
MEETING DATE: November 14, 2016

SUBMITTING DEPARTMENT: Town Administration
DEPARTMENT DIRECTOR: Bob McLaurin
PRESENTER: Bob McLaurin, & Larry Pardee

SUBJECT: 2nd Amendment of Commercial Lease Agreement with Center Management, Inc. (CMI) and Bid Award for Snow King Center Phase II Improvement Project

PURPOSE OF ITEM

The purpose of this item is to consider the 2nd Amendment of the Commercial Lease Agreement with Center Management, Inc. (CMI) for the Ski Shelter portion of the Snow King Center and to consider a bid award for the Snow King Center Phase II Improvement Project which includes the addition of reduced meeting space & kitchen facilities on the upper mezzanine level.

BACKGROUND

At the August 1st 2016 regular Town Council meeting, the Council approved a motion to accept a \$650K 15-year loan from the Wyoming Business Council (WBC) that has an annual debt service of \$46,880, directed staff to prepare a lease amendment with CMI to set a 15 year term to allow CMI to make the debt service payments to the Town for this loan repayment, directed staff to negotiate an additional payment to the Town over and above the debt service payment, and rejected all bids and directed staff to rebid the reduced project scope of improvements. At that meeting the Council also asked that staff bring back the Snow King Mountain Recreation (SKMR) lease for the ski shelter for discussion related to the lease payment and staff addressed that issue in the Town Manager's report from the October 17 meeting.

Staff spoke with Karen Fate, Senior Grant & Loan Specialist, from the WBC in late July and she confirmed the WBC is in support of the reduced scope of construction improvements for \$650,000 for a 15-year loan term.

2nd Amendment of CMI Lease Agreement

In 2012, a First Amendment to the CMI Lease Agreement was entered into to refine the definition of Leased Premises, to extend the term, and to modify "Rent and Payment" such that for the third year of the Lease and all years of the term thereafter, Tenant agreed to pay the Town 8% of Net Revenues collected beginning on April 1, 2014. So, under the current lease agreement, CMI pays the Town 8% of net revenues. In FY2015, the lease payment from CMI was approximately \$22,600 and in FY2016, the lease payment from CMI was approximately \$19,900. The Town uses these funds to cover ongoing maintenance and insurance coverage as owner of the facility. In FY2015 the maintenance costs were \$29,499 and insurance was \$10,981. In FY2016 the maintenance costs were \$25,331 and insurance was \$15,304. Please note we expect these maintenance costs to be reduced some in the years ahead because of the new refrigeration system improvements. However the insurance costs are expected to increase to approximately \$21,685.

Staff estimates the annual debt service payment with 1% interest on a \$650,000 loan for a term of 15-years would result in an annual debt service payment of \$46,880. Town staff met with representatives from CMI to negotiate an additional payment to the Town over and above the debt service payment. The Town presented an option to CMI that would reinstate payments in addition to the debt service as follows:

Year 1-2 0% of net revenue over and above the debt service

Year 3-4	2% of net revenue over and above the debt service
Year 5-6	4% of net revenue over and above the debt service
Year 7-8	6% of net revenue over and above the debt service
Year 9-15	8% of net revenue over and above the debt service

The attached 2nd Amendment to Lease reflects the above percentage payments over and above the debt service. In addition, the amendment also adds some additional language to provide further transparency to the Town and the public regarding verification of net revenue. These additional provisions will provide a fuller picture to the Town regarding the true costs of operating the facility.

CMI requested that they either continue to pay the 8% of net revenue that they are currently required to provide OR they make the debt service payments, whichever is higher, but not both. Should the Council approve the lease with the attached changes, CMI may reject the Town's proposal at the Council meeting on November 14. In that event, the Town of Jackson would notify the State of Wyoming that we have decided to not proceed with the project as approved and decline the \$650,000 1% interest loan to construct the project. Should the Town accept the loan, the WBC would require that the Town of Jackson place a mortgage on the Snow King Center facility to secure the loan. Declining the project would also affect the ability of CMI to proceed with their resort liquor license application. Should the Town proceed with the project, the improvements would need to be constructed by March 31, 2018 for compliance with resort liquor license requirements, but the Town can also provide an additional year extension.

As a comparison to other projects regarding debt service payments over and above the debt service, the Town recently agreed to a 20 year loan term with the WBC for the snow making project, and in turn leased these improvements to Snow King Mountain Recreation. The lease payment is equivalent to the debt service payment, \$52,552 annually. However, there are essentially no major maintenance issues the Town must fund for the snow making project but we have retained \$47,546 in the Snow Making Fund for maintenance issues that may arise.

Staff recommends the Town Council approve the 2nd Amendment to the Lease as presented. Once the 2nd Amendment to the CMI Lease is approved, Council can then act on the bid award.

Bid Award for the Snow King Center Phase II Improvement Project

The Snow King Conference room & kitchen remodel project was reduced in scope and re-advertised in the Casper Star Tribune and the JH News & Guide. One bid was received on Friday, Sept. 23rd, for \$767,980 from Big-D Signature Construction. CMI Group, Hoyt/CTA Architects, the Town and Big-D worked to value engineer the project down to the Council approved \$650,000 number. The Town has completed the value engineering process on the original bid and now has it adjusted down to:

<u>Contractor:</u>	<u>Bid Amount:</u>
Big-D Construction	\$625,158

The Town would include the remaining \$24,842 in the not to exceed number as that is the project contingency. As an update, Phase I of this project is progressing well and is almost completed. The cost of replacing the compressors, refrigeration system, ice floor, and dasher boards was estimated to be \$1,935,463. The revenue to fund these improvements was comprised of: WBC Grant = \$500,000, ECW Grant = \$300,000, Teton County Energy Mitigation Grant = \$200,000, FY 2016 5th Cent Revenue = \$283,478 and FY 2017 5th Cent Revenue = \$651,985.

The Town Council has many options available to them including:

1. Approve the 2nd Amendment to the lease as presented that includes a 2% reinstatement of net revenue payments after the first 2 years in addition to the debt service payments, a 15 year term, as well as additional provisions to provide accounting and reporting transparency, including finalization and any minor changes by the Town Attorney, authorize Mayor Flitner to execute the 2nd Lease Amendment on behalf of the Town of Jackson, and further award the bid to Big-D Construction in an amount not to exceed \$650,000.

2. Decline the loan from the WBC, reject all bids for the project, and make no changes to the current lease with CMI that expires in 2022.
3. Direct staff to further revise the 2nd Amendment to the lease to reflect only debt service payments, a 15 year term, as well as additional provisions to provide accounting and reporting transparency, including finalization and any minor changes by the Town Attorney, authorize Mayor Flitner to execute the lease amendment on behalf of the Town of Jackson, and further award the bid to Big-D Construction in an amount not to exceed \$650,000.
4. Direct staff to further revise the 2nd Amendment to the lease to reflect only debt service payments, a 5 year term, as well as additional provisions to provide accounting and reporting transparency, including finalization and any minor changes by the Town Attorney, authorize Mayor Flitner to execute the lease amendment on behalf of the Town of Jackson, and further award the bid to Big-D Construction in an amount not to exceed \$650,000.
5. Other.

FISCAL IMPACT

The fiscal impact is dependent on Council action on this item. The Town of Jackson is ultimately responsible for the loan payments to the WBC should the Town accept the loan. The collateral for this loan will be the Snow King Sports and Events Center. There is no pre-payment penalty for the loan should the Town decide to pay the loan off early. As noted in the recommendation above, staff has prepared a Second Amendment to the lease with CMI that would ensure that the lease payment fully offsets the loan payment to the WBC, and provides additional income to the Town beyond the lease payment in order for the Town to have offsetting revenue for the portion of ongoing maintenance and upkeep for the facility that is the responsibility of the Town. Should the Council proceed with a Second Amendment to the Lease that provides no additional payments above and beyond the debt service, the Town would need to directly fund any ongoing maintenance and upkeep issues without offsetting revenue.

STAFF IMPACT

This project will impact the Facilities Manager in the Public Works Department, as he will be responsible for overseeing the construction of the project. The Facilities Manager and Public Works Director are also involved in ongoing maintenance and upkeep issues related to this Town owned facility. The Finance Department will be impacted by the need to process payments and reimbursements from the Business Council and track and report on loan documentation.

STAKEHOLDER ANALYSIS

The stakeholders involved in this project include the Town of Jackson, CMI, the WBC, users of the Snow King Sports and Events Center, and the community at large.

The Town of Jackson organization will benefit from these improvements in that the life of the Town owned facility will be extended into the future and allow for expanded uses. These improvements will increase the value of this Town owned asset. CMI Inc. will greatly benefit from these improvements in that it allows them to continue operations and also to expand potential revenue from conferences, meetings, tournaments and competitions. Increased revenue will allow CMI to continue to participate in their portion of the expenditures related to use of the facility that are outside the lessor's (Town's) responsibility. The kitchen improvements also allow CMI to comply with the resort liquor licensing requirements. The WBC will receive 1% interest on their \$650,000 loan to the Town of Jackson and the State of Wyoming will benefit generally through increased sales tax generation. The users of the facility will see an improved venue for events and ongoing sports uses at the facility. The community will benefit through continued sales tax and lodging tax revenue from promotion of this facility as a venue for meetings, conferences, competitions and tournaments.

LEGAL ISSUES

Complete. The Town Attorney has prepared the 2nd Amendment to the Commercial Lease Agreement with CMI, Inc. and recommended security instruments to attach thereto.

ATTACHMENTS

- 1) CMI Lease Agreement Fully Executed 4.1.12
- 2) CMI 1st Amendment of Commercial Lease Agreement
- 3) Proposed CMI 2nd Amendment of Commercial Lease Agreement

RECOMMENDATION

Staff recommends the Town Council approve the 2nd Amendment to the Lease as presented with attachments thereto that includes a 2% reinstatement of net revenue payments after the first 2 years in addition to the debt service payment, a 15 year term, as well as additional provisions to provide accounting and reporting transparency, including finalization and any minor changes by the Town Attorney, authorize Mayor Flitner to execute the lease amendment on behalf of the Town of Jackson, and further award the bid to Big-D Construction in an amount not to exceed \$650,000.

SUGGESTED MOTION

Should the Town Council be ready to take action one possible motion would be:

I move to approve the 2nd amendment to the lease as presented that includes a 2% reinstatement of net revenue payments after the first 2 years in addition to the debt service payment, a 15 year term, as well as additional provisions to provide accounting and reporting transparency, including finalization and any minor changes by the Town Attorney, authorize Mayor Flitner to execute the lease amendment on behalf of the Town of Jackson, and further award the bid to Big-D Construction in an amount not to exceed \$650,000.

Powerpoint:

The purpose of this item is to consider the 2nd Amendment of the Commercial Lease Agreement with Center Management, Inc. (CMI) for the Ski Shelter portion of the Snow King Center and to consider a bid award for the Snow King Center Phase II Improvement Project which includes the addition of reduced meeting space & kitchen facilities on the upper mezzanine level.

SECOND AMENDMENT TO COMMERCIAL LEASE AGREEMENT

This Second First Amendment of Commercial Lease Agreement (“Second Amendment”) is made and entered into effective November ____, 2016, by and between the Town of Jackson, a municipal corporation of the State of Wyoming, 150 E. Pearl Avenue/P.O. Box 1687, Jackson, Wyoming 83001 (“Town” or “Landlord”); and Center Management, Inc., a Wyoming non-profit public benefit corporation dba Jackson Hole Sports and Events Center, of 90 E. Snow King Drive, Jackson, Wyoming 83001 (“Tenant”) (collectively the “Parties”).

Recitals

WHEREAS, the Town is the current landlord under that certain Commercial Lease Agreement dated effective April 1, 2012, between the Town of Jackson, a municipal corporation of the State of Wyoming, as landlord, and Center Management, Inc., a Wyoming non-profit public benefit corporation dba Jackson Hole Sports and Events Center, as Tenant, for certain real property located at the Snow King Center and more particularly described therein (the “Ice Rink Prime Lease”) (all capitalized terms not defined herein are as defined in the Ice Rink Prime Lease);

WHEREAS, a First Amendment to the Ice Rink Prime Lease effective December 21, 2012 was entered into to: a) add additional convention and multi-purpose rooms to the Tenant’s Leased Premises under the Ice Rink Prime Lease; b) to extend the term of the Ice Rink Prime Lease for two (2) additional years until March 31, 2017; and c) to grant options to extend the term of the Ice Rink Prime Lease by an additional five (5) years such that upon exercise of the option, the Ice Rink Prime Lease would terminate on March 31, 2022; and

WHEREAS, on August 29, 2016, Tenant exercised its option in writing to extend the lease to March 31, 2022;

WHEREAS, Landlord and Tenant have been working together on a Business Ready Community grant to the Wyoming Business Council (WBC) to expand and construct the kitchen facility and additional convention and multi-purpose rooms on the upper mezzanine level of the Snow King Conference and Events Center Phase II project improvements (“Project”);

WHEREAS, the purpose of the Business Ready Community (“BRC”) Program is to promote economic development at the city, town and county level in order to create additional economic health and a stronger state economy;

WHEREAS, the Town is an eligible applicant to the BRC Program;

WHEREAS, CMI is in the business of providing ice skating rink services, conventions and events for the public benefit and desires to expand its services if Project is constructed);

WHEREAS, the WBC approved a grant/loan combination for the Project such that a fifteen (15) year loan could be provided by the WBC to Landlord for which the Landlord would be responsible; and,

WHEREAS, the parties desire to extend the Ice Rink Prime Lease to extend the lease further to March 31, 2032 such that debt service payments for the loan can be paid off by Tenant to Landlord over a fifteen (15) year period of time.

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties agree as follows:

Agreement

1. **Term of Lease.** Paragraph 2 of the Ice Rink Prime Lease titled "Term of Lease" is deleted in its entirety and replaced with the following:

"Term of Lease. The term of the Lease shall be for a period of fifteen (15) years, commencing on April 1, 2017 and terminating on March 31, 2032, unless sooner terminated or extended under the provisions of this Lease, and, if not extended pursuant to the following paragraph, shall continue on a month-to-month basis thereafter.

Tenant shall have the right and option to extend the term of this Lease for an additional five (5) years, such that upon exercise of this option to extend, the Lease will terminate on March 31, 2037, unless sooner terminated under the provisions of this Lease. The option to renew may be exercised by delivery to Landlord of written notice of such option to renew no later than October 1, 2036. Rent payable to the Landlord for the extended lease term shall be as set forth below in Paragraph 3. All other terms and provisions of the Lease shall be applicable during any extended term with the same force and effect as the base term."

2. **Rent and Payment.** Paragraph 3 of the Ice Rink Prime Lease titled "Rent and Payment" is deleted in its entirety and replaced with the following:

A. Rent payments

Tenant covenants and agrees to pay Landlord during the first year of the Lease, rent of One Dollar (\$1.00) per month, beginning on April 1, 2017, in exchange

for assuming full responsibility for all day-to-day operating costs, including routine maintenance for the Leased Premises as described at paragraph 9 below and Common Areas as described at paragraph 8 below. For Years 1 and 2 of this Lease, there shall be no net revenue payment required to Landlord. For Years 3 and 4, Tenant shall pay Landlord two percent (2%) of Net Revenues collected beginning on April 1, 2019. For Years 5 and 6 Tenant shall pay Landlord four percent (4%) of Net Revenues collected beginning on April 1, 2021. For Years 7 and 8 Tenant shall pay Landlord six percent (6%) of Net Revenues collected beginning on April 1, 2023. For Years 9 through 15, Tenant shall pay Landlord eight percent (8%) of Net Revenues collected beginning on April 1, 2025. Net Revenues shall be equal to gross revenues collected by Tenant less utility expenses and routine maintenance expense paid by tenant applicable to the operation of the Snow King Center. Net Revenues due hereunder shall be calculated each calendar quarter, and shall be due to the Town forty-five (45) days following the quarter end.

Commented [AC1]: This is reflective of Staff recommendation of Option 2 in the Staff report to Council.

Tenant's additional obligation to pay for pro-rata utilities and snow removal costs are described in more detail at paragraph 8 below.

Thereafter, if this Lease is renewed and/or extended, rent payments shall be due and owing on the first day of each month thereafter.

Rent Payments shall be made payable to the Town of Jackson, Wyoming, P.O. Box 1687, Jackson, Wyoming 83001 until directed otherwise.

Notwithstanding anything contained herein to the contrary, including paragraph 3.B herein, Tenant shall in no event be obligated to pay an amount in excess of the rent above under both this Lease and the Sublease.

B. Debt Payments for Wyoming Business Council Loan

1). Payment of Debt Service. Subject to the performance of each and every covenant and satisfaction of each and every condition of Tenant contained herein, Landlord agrees to be responsible for a Six Hundred Fifty Thousand Dollar (\$650,000.00) loan from the Wyoming Business Council (WBC Loan) for the Project. As a condition of Landlord taking responsibility for the WBC Loan, Tenant agrees to execute this Second Amendment to Lease evidencing the payments on the WBC Loan in equal annual payments of Forty Six Thousand Eight Hundred and Eighty Dollars (\$46,880.00) per year and by signing this Second Amendment to Lease, Tenant covenants and agrees to pay Landlord debt service payments of \$46,880.00 per year, beginning on April 1, 2017 over a fifteen (15) year period of time, or until April 1, 2031.

2). Loan Security. As security for repayment of the WBC Loan, Tenant agrees to assign and pledge its revenues to the Landlord of all Tenant's right, title and interest in and to revenues received by Tenant. This assignment and pledge of revenues shall be in effect until the Loan has been repaid in full, or until the Ice Rink Prime Lease and amendments thereto are assigned, which shall only be permitted if Tenant obtains Landlord's written consent as set forth in paragraph 12 of the Ice Rink Prime Lease. A copy of the Loan Agreement, Promissory Note and Assignment and Pledge of revenues Attachments A, B and C are attached to this Lease Amendment and hereby incorporated herein by reference. (collectively "Security Documents")

Commented [AC2]: The WBC requires for its loans a Loan Agreement, a Promissory Note and an Assignment and Pledge of Revenues. In my opinion, the Town needs to require the same documentation for the loan portion.

3) Conditions to Advance. The obligation of Landlord (also referenced as Lender for the purposes of this section 3 and section 4 below)) to make the advance of the WBC Loan to Tenant (also referenced as Borrower for the purposes of this section 3 and section 4 below) is subject to the receipt by Landlord of the following:

(a) Execution and delivery of the assignment and pledge of revenues, Attachment A.

(b) An itemized statement of the total estimated cost to complete the Project (the "Budget"). The total cost to complete the Project (the "Project Costs") shall in no event exceed the amount of the WBC Loan plus all other amounts available to Borrower for the Project. A copy of the Budget is attached as Exhibit B hereto.

(c) Evidence that all building permits and other authorizations necessary to construct the Project have been obtained and evidence that the Project will comply with all federal, state and local laws, regulations, zoning, building codes and other ordinances and restrictions affecting construction and use of the Project.

(d) Workmen's compensation insurance policies insuring Borrower, if required by law and in the amount required by such law, public liability insurance and a policy of builders' all-risk completed value, non-reporting form of fire, extended coverage, vandalism and malicious mischief hazard insurance covering the Project with insurance companies satisfactory to Lender and in amounts satisfactory to Lender.

(e) Certified copies of the Borrower's Articles of Incorporation and a [redacted] executed by all of its members in form satisfactory to Landlord.

(f) Borrower shall have provided Lender with a request for advance in form satisfactory to Lender certifying that:

(i) The representations and warranties of the Borrower contained in the assignment and pledge of revenues shall be true and correct on and as of the date the advance is made (both before and after such advance is made) as if such representations and warranties were made on and as of such date.

(ii) No Default or Event of Default shall exist or shall have occurred and be continuing on the date such advance is made (whether before or after such advance is made).

(iii) The funds to construct the Project have been expended in a manner materially consistent with the Budget.

(iv) The advance from Lender shall be sufficient to complete the Project.

(g) **Unused/Misused Funds.** The Lender shall be entitled to recover from Borrower any full or partial payment made under this Lease for: 1) any payments used for purposes not authorized or performed outside of this Lease; 2) any payments for services the Borrower is unable to provide; and, 3) any payments for services the Borrower did not provide but was required to provide under the terms of this Lease and the Security Documents.

(a) **Good Standing.** Borrower is a non-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Wyoming and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted. Borrower is duly qualified to transact business in each jurisdiction in which it conducts its business, except where failure to be so qualified would not have a material adverse effect on the Borrower's financial condition, business, operations or property.

(b) **Authority.** Borrower has the full right, capacity, power, and authority to execute and deliver this Agreement and the ancillary documents described herein, to perform its obligations hereunder and thereby, and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Borrower, and assuming due authorization, execution, and delivery by Lender, constitutes the valid and legally binding obligation of Borrower enforceable in accordance with its terms and conditions, except as may be limited (i) by applicable bankruptcy, insolvency, reorganization, or other laws of general application affecting creditors' rights generally or (ii) by general principles of equity.

(c) **No Conflict.** The execution, delivery and performance by Borrower of this Agreement and the ancillary documents described herein, and the consummation of the transactions contemplated hereby and thereby, will not (i) violate any statute, ordinance, regulation, order, judgment or decree of any court or governmental agency or board; or (ii) violate, conflict with, result in any breach

of, or constitute a default (or an event that, with notice or lapse of time or both, would constitute a default) under any contract to which Borrower is a party or by which Borrower is bound, or under Borrower's Articles of Incorporation.

(d) Litigation. There is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, currently threatened against Borrower or its managers, members, employees, or consultants (i) that questions the validity of this Agreement or the ancillary documents described herein, or the right of Borrowers to enter into this Agreement or the ancillary documents described herein, or consummate the transactions contemplated hereby or thereby, or (ii) that might result, either individually or in the aggregate, in any material adverse changes in the assets, condition, affairs or prospects of either the Tenant business or Borrower, financially or otherwise.

(e) Taxes. Borrower has paid when due all federal, state, and local taxes (including without limitation income, sales and use, and employee taxes) arising from or relating to the operation of the Tenant business prior to the date hereof.

(f) Full Disclosure. No representation, warranty or other statement of Borrower contained herein, when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein not misleading.

(g) Use of Proceeds. Borrower will use the loan proceeds solely for the purpose of completing the Project.

(h) Approvals. Borrower has obtained all approvals, permits, licenses, authorizations and consents from each governmental authority or any other person necessary for the development, construction, leasing, sale, operation, or use of the Project, and the same remain in full force and effect.

(i) Survival. All representations and warranties of Borrower contained herein shall survive the execution of this Agreement and all advances made under this Agreement.

C. Tenant/ Borrowers' Affirmative Covenants. Tenant/Borrower hereby covenants and agrees that it will do the following, in addition to all of the other affirmative covenants contained herein or in the ancillary documents described herein:

- (a) Financial Statements. Borrowers shall deliver to Lender annual financial statements of the Borrower, to be in reasonable detail, prepared by or with the assistance of an experienced accountant in accordance with generally accepted accounting principles ("GAAP"), and certified by the principal financial officer of the Borrower that they are true and accurate in all material respects as of their dates.

The annual financial statements shall be provided to Lender no later than ninety (90) days following the end of each year and shall include an unaudited balance sheet, income statement, statement of cash flows, , set forth in comparative form to the corresponding figures for the period in the prior fiscal year.

(b) Tax Matters. Borrower shall pay when due all federal, state, and local taxes (including without limitation income, sales and use, and employee taxes) arising from or relating to the operation of the Business. Borrower shall file when due all federal, state, and local income tax returns, and shall deliver a copy thereof to Lender within thirty (30) days of filing.

(c) Compliance with Ancillary Documents. Borrower shall comply with the terms and conditions contained in each of the ancillary documents described herein.

(d) Notices to be Given. Borrower shall promptly notify Lender of any lawsuit filed against Business or Borrower (whether or not affecting the Business), or any lawsuit or legal action threatened against Business or Borrower, including without limitation zoning and permit complaints, environmental complaints, licensing actions, and the like. Such notification shall indicate the complaining party and the general nature of the dispute, proceeding and amount of potential liability to Business or Borrower, and the nature of any defensive action planned, proposed or taken, and the identity of any attorneys representing any party.

(e) Licenses. Borrower shall furnish Lender with evidence reasonably satisfactory to Lender that Borrower and/or Business have, currently in effect, all necessary licenses and permits required for operation of the Business in full conformity with applicable laws, ordinances and regulation. To the extent any license or permit may expire or require periodic renewal, Borrower shall, without demand therefor, promptly furnish Lender evidence of the timely renewal of such permit or license.

(f) Changes. Borrower will not cause, suffer or permit any material modification or amendment of, or deviation from, the Plans and Specifications or any of the contracts for construction of the Project (the "Contracts") without Lender's prior written consent. Any modification(s) or amendment(s) to any of the Contracts changing the aggregate compensation payable by more than 5% of the original contract amount shall be deemed to be material.

(g) Cost Over-Runs. Lender may, at any time, request from the General Contractor or Borrower, an estimate of the total cost to complete the Project. If, in Lender's sole opinion, the undisbursed portion of the Loan is insufficient to pay in full the remaining total cost to complete the Project, Borrower agrees to contribute to the Project an amount of funds equal to the total cost to complete the Project.

(h) Completion. Borrower shall cause all construction to be performed in a good and workmanlike manner using only new materials, shall require prompt correction of all defective or non-conforming work, and shall cause all damage to or casualty suffered by the Project to be promptly repaired and restored. Borrower in cooperation with the Town of Jackson, shall use its best efforts to cause construction of the Project to be completed in accordance with the Plans and Specifications on or before _____ (the "Completion Date").

(i) Other Borrowings. Borrower will not borrow money with respect to the Project from any person other than Lender or obtain any materials, fixtures or equipment on credit (other than customary trade terms).

(j) Inspection and Information. Borrower will permit representatives of Lender to have free access to the Project and to inspect all work, materials, equipment, and personal property purchased or pledged in connection with the Project and to inspect and copy all books, records, and financial information of Borrower as well as contracts relating to the Project. Borrower will provide Lender copies of all leases and other contracts relating to the Project. Borrower will promptly notify Lender of any adverse event or condition affecting the Project, the progress of construction, or the performance of Borrower's obligations under this Agreement, the assignment and pledge of revenues.

(k) Audit/Access to Records. Borrower shall permit Lender and any of its representatives to any books, documents, papers, and records of the Lender that are pertinent to this Loan and the Security Documents.

(l) Insurance. Maintain the insurance required under Section 3(d) hereof.

D. Borrower's Negative Covenants. Borrower hereby covenants and agrees that Borrower will not do any of the following, in addition to any other negative covenant contained herein or in the ancillary documents described herein:

(a) Excessive Compensation. Cause or permit Borrower to pay members, managers, and employees, whether by salary, bonus or otherwise, unreasonable compensation.

(b) Liens and Encumbrances. Cause or permit Borrower to create, incur, assume or suffer to exist any lien or encumbrance of any kind upon any of its property or assets whether now owned or hereafter acquired, or directly or indirectly enter into any agreement with any person that prohibits or restricts or limits the ability of the Borrower to create, incur, pledge or suffer to exist any lien upon any assets of Borrower in favor of Lender other than a Permitted Lien. "Permitted Lien" means (i) purchase money security interests and capital leases in Borrower's equipment, (ii) liens for taxes not yet payable, and (iii) liens of material-men, mechanics, warehousemen, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent, herein.

(c) Extension of Credit. Cause or permit Borrower to make loans, advances or extensions of credit to any person, except in the ordinary course of business.

(d) Guarantee Obligations. Cause or permit Borrower to guarantee or otherwise, directly or indirectly, in any way be or become responsible for obligations of any other person, whether by agreement to purchase the indebtedness of any other person, agreement for the furnishing of funds to any other person through the furnishing of goods, supplies or services, by way of stock purchase, capital contribution, advance or loan, for the purpose of paying or discharging (or causing the payment or discharge of) the indebtedness of any other person, or otherwise, except for the endorsement of negotiable instruments by Borrower in the ordinary course of business for deposit or collection.

(e) Property Transfers. Cause or permit the Borrower to (i) sell, lease, transfer or otherwise dispose of properties and assets, except for the sale of inventory in the ordinary course of business, the disposition of obsolete or worn-out property in the ordinary course of business; or (ii) enter into any sale-leaseback transaction.

(f) Combinations; Reorganizations. Cause or permit Borrower to change its name, form any subsidiary, consolidate with or merge into any other entity or corporation, permit another entity or corporation to merge into it, acquire all or substantially all the properties or assets of any other person, or enter into any reorganization or recapitalization, or reclassify its equity.

(g) Change in Business. Cause or permit Borrower to change the nature of the Business.

(h) Misrepresentation. Cause or permit Borrower to furnish Lender with any certificate or other document that contains any untrue statement of a material fact or omits to state a material fact necessary to make such certificate or document not misleading in light of the circumstances under which it was furnished.

3. Except as set forth herein, the Ice Rink Prime Lease and the First Amendment thereto are hereby ratified and affirmed and remains in full force and effect, and the terms hereof shall be made a part thereof.

IN WITNESS WHEREOF, the parties hereto have caused this SECOND AMENDMENT OF COMMERCIAL LEASE AGREEMENT to be executed and delivered as of the date first set forth above.

TOWN OF JACKSON, Municipal Corporation,

By: _____
Its: Mayor

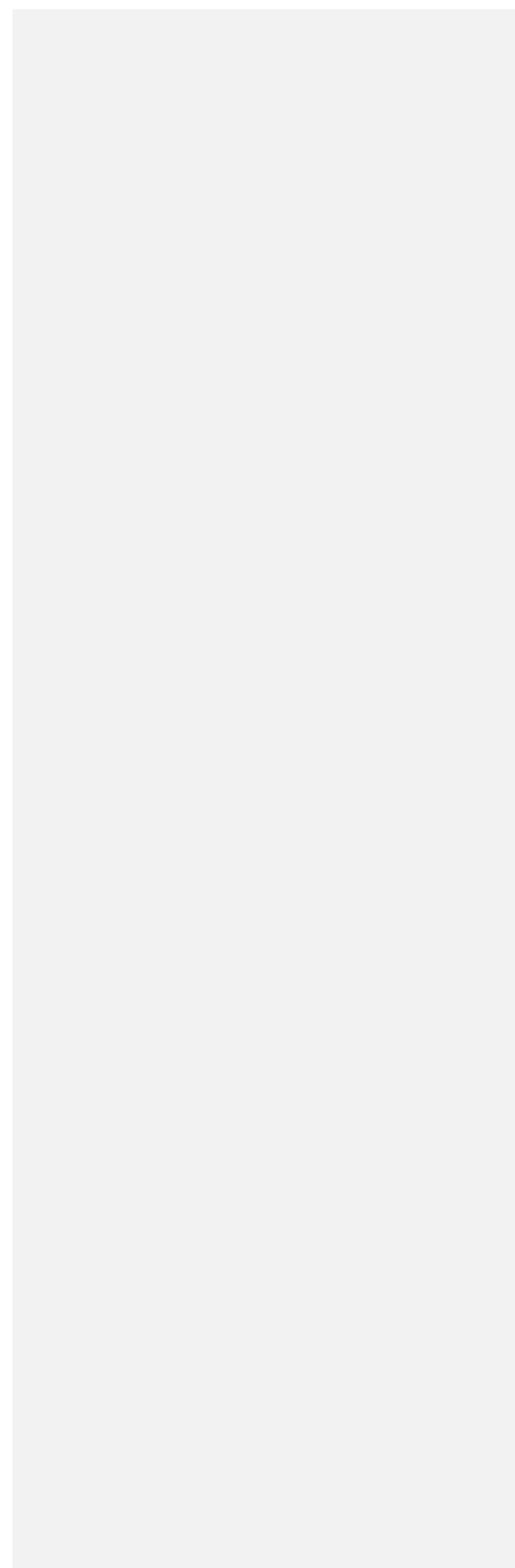
ATTEST:

Its: Town Clerk

CENTER MANAGEMENT, INC., a Wyoming nonprofit public benefit corporation, dba
JACKSON HOLE SPORTS AND EVENTS CENTER

By: _____
Name: _____
Its: Chief Executive Officer

DRAFT



**ATTACHMENT C TO SECOND AMENDMENT TO COMMERCIAL LEASE
AGREEMENT BETWEEN THE TOWN OF JACKSON AND CENTER
MANAGEMENT, INC.**

ASSIGNMENT AND PLEDGE OF REVENUES

For value received, Center Management, Inc. d/b/a Jackson Hole Sports and Events Center (hereinafter "Borrower"), does hereby assign and pledge to the Town of Jackson, a political subdivision of the State of Wyoming (hereinafter "Lender") whose address is 150 East Pearl Avenue, P.O. Box 1687, Jackson, Wyoming 83001 all of its right, title and interest in and to the following revenues:

- Center Management Inc. d/b/a Jackson Hole Sports and Events Center Gross revenues

Commented [AC1]: Not sure how to word "revenues" Net revenues or since the town needs the money as security, perhaps this should be Gross Revenues.

BORROWER:

CENTER MANAGEMENT, INC., a Wyoming nonprofit public benefit corporation, dba JACKSON HOLE SPORTS AND EVENTS CENTER

By: _____
Name: _____
Its: Chief Executive Officer

**ATTACHMENT B TO SECOND AMENDMENT TO COMMERCIAL LEASE
AGREEMENT BETWEEN THE TOWN OF JACKSON AND CENTER
MANAGEMENT, INC.**

PROMISSORY NOTE

For the value received, Center Management, Inc. d/b/a Jackson Hole Sports and Events Center (hereinafter "Borrower"), promises to pay to the order of the Town of Jackson, a political subdivision to the State of Wyoming (hereinafter "Town") whose address is 150 East Pearl Avenue, P.O. Box 1687, Jackson, WY 83001, the amount of funds to be disbursed not to exceed (\$650,000) together with interest at the rate of one half percent (.5%) per annum. This loan is made pursuant to the Loan Agreement and Second Amendment to Commercial Lease Agreement between the Borrower and the Town (hereinafter "Second Amendment").

Commented [AC1]: IF WE DO A LOAN AGREEMENT;
OTHERWISE IT IS PURSUANT TO THE SECOND AMENDMENT
TO COMMERCIAL LEASE

Borrower agrees that the Town will release monies to Borrower for performance of the project, incrementally as invoices are submitted for work done in connection with the project, completed in accordance with the requirements of the Loan Agreement and the Second Amendment.

1. **Definitions.** Terms used in this Promissory Note shall have the same meaning as in the Loan Agreement and Second Amendment.
2. **Interest Rate.** This Promissory Note shall bear interest on the unpaid balance at the annual rate of one percent (1%), from April 1, 2017 to April 1, 2031, when this Promissory Note shall be paid in full. Interest shall be compounded annually based upon a 365-day year.
3. **Term.** The Promissory Note shall commence on the date in which the Loan Agreement has commenced. All principal and accrued interest and other amounts owed hereunder being due and payable not later than twenty (20) years after the date of final disbursement.
4. **Payment.** The principal and interest of this note shall be paid in amortized installments payable annually in the manner and form as follows: There will be fifteen (15) annual payments of Forty Six Thousand Eight Hundred Eighty Dollars (\$46,880.46) due on April 1 of each year from 2017 through 2031.
5. **No Prepayment Penalty.** Borrower may prepay the principal of this loan without penalty. Any prepayment will not reduce the annual installments but will operate only to mature this note at an earlier date.

Commented [AC2]: IF WE DO A LOAN AGREEMENT;

6. Terms of Payment.

- a. Time is of the essence and if the annual payment is not received by the annual anniversary date of the final loan disbursement the Borrower will be in default, and the Town may proceed against the fund described below, pursuant to the security given to secure this Note.
- b. Failure by Borrower to pay any installment or installments hereon when due shall entitle the Town to declare the whole of the unpaid balance on this note due and payable on demand.
- c. The Borrower hereby accepts the conditions herein and expressly waives presentment of payment, protest and notice of protest for nonpayment hereof and all defenses on the grounds of any extension of time of payment that may be given by the Town to them.
- d. In the event of suit to enforce payment of this note for any installment, interest, or part thereof, the Borrower agrees to pay, in addition to the costs and disbursements provided and allowed by law, a reasonable attorney's fee.

BORROWER:

CENTER MANAGEMENT, INC., a Wyoming nonprofit public benefit corporation, dba JACKSON HOLE SPORTS AND EVENTS CENTER

By: _____
Name: _____
Its: Chief Executive Officer

STATE OF WYOMING)ss.

COUNTY OF TETON

The foregoing instrument was acknowledged before me by _____
of _____, as its _____, this ____ day of _____, 2016.

Witness my hand and official seal.

Notary Public

My commission Expires: