

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): April 20, 2020

Windtree Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-26422
(Commission
File Number)

94-3171943
(I.R.S. Employer
Identification No.)

2600 Kelly road, Suite 100, Warrington, Pennsylvania
(Address of principal executive offices)

18976
(Zip Code)

Registrant's telephone number, including area code: (215) 488-9300

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
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Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value \$0.001 per share

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 **Entry into a Material Definitive Agreement.**

On April 9, 2020, Windtree Therapeutics, Inc. (the “Company”), applied to Newtek Small Business Finance, LLC (the “Lender”) under the Small Business Administration (the “SBA”) Paycheck Protection Program of the Coronavirus Aid, Relief and Economic Security Act of 2020 (the “CARES Act”) for a loan of \$546,600 (the “Loan”). On April 20, 2020, the Company entered into a promissory note in favor of the Lender (the “Note”). The Company plans to use the loan proceeds for covered payroll costs, rent and utilities in accordance with the relevant terms and conditions of the CARES Act.

The Note has a two-year term, matures on April 22, 2022, and bears interest at a stated rate of 1.0% per annum. Monthly principal and interest payments, less the amount of any potential forgiveness (discussed below), will commence in October 2020. The Company did not provide any collateral or guarantees for the Loan, nor did the Company pay any facility charge to obtain the Loan. The Note provides for customary events of default, including, among others, those relating to failure to make payment, bankruptcy, breaches of representations and material adverse effects. The Company may prepay the principal of the Loan at any time without incurring any prepayment charges.

The Loan may be partially or fully forgiven if the Company complies with the provisions of the CARES Act including the use of Loan proceeds for payroll costs, rent, utilities and other expenses, and at least 75% of the loan proceeds must be used for payroll costs as defined by the CARES Act. Any forgiveness of the Loan will be subject to approval by the SBA and the Lender and will require the Company to apply for such treatment in the future.

Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements concerning the Company’s expectations, anticipations, intentions, or beliefs regarding the Loan. These express or implied statements are not promises or guarantees and involve substantial risks and uncertainties. Among the factors that could cause actual results to differ materially from those described or projected herein are the following: financial market conditions; actions by the Loan parties; changes by, or new guidelines or interpretations by, the SBA or other governmental authorities regarding the CARES Act, the Payroll Protection Program or related administrative matters; and the Company’s ability to comply with the terms of the Loan and the CARES Act, including to use the proceeds of the Loan as described herein. A further list and description of these risks, uncertainties and other risks associated with an investment in the Company can be found in Company’s filings with the U.S. Securities and Exchange Commission, including its most recent Annual Report on Form 10-K. The Company undertakes no obligation to update the information contained in this Current Report on Form 8-K to reflect subsequently occurring events or circumstances.

Item 2.03 **Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The disclosure in Item 1.01 and Exhibit 10.1 of this report are incorporated herein by reference.

Item 9.01 **Financial Statements and Exhibits.**

(d) Exhibits

The following exhibits are being filed herewith:

Exhibit No.	Document
10.1	<u>Note dated April 20, 2020, between Windtree Therapeutics, Inc. and Newtek Small Business Finance, LLC</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Windtree Therapeutics, Inc.

By: /s/ Craig Fraser
Name: Craig Fraser
Title: President and Chief Executive Officer

Date: April 24, 2020

**NOTE – PAYCHECK PROTECTION
PROGRAM**

SBA Loan #	96328971-00
SBA Loan Name	Windtree Therapeutics, Inc.
Date	04-20-2020
Loan Amount	\$546,600.00
Interest Rate	One (1%) Percent
Borrower	Windtree Therapeutics, Inc.
Lender	Newtek Small Business Finance, LLC

1. PROMISE TO PAY:

In return for the Loan, Borrower promises to pay to the order of Lender the amount of **Five Hundred Forty-Six Thousand Six Hundred and 00/100 Dollars (\$546,600.00)**, interest on the unpaid principal balance, and all other amounts required by this Note.

2. DEFINITIONS:

"Loan" means the loan evidenced by this Note.

"Loan Documents" means the documents related to this loan signed by Borrower.

"SBA" means the Small Business Administration, an Agency of the United States of America.

3. PAYMENT TERMS:

Initial Deferment Period: No payments are due on this loan for 6 months from the date of first disbursement of this loan. Interest will continue to accrue during the deferment period.

Loan Forgiveness: Borrower may apply to Lender for forgiveness of the amount due on this loan in an amount equal to the sum of the following costs incurred by Borrower during the 8-week period beginning on the date of first disbursement of this loan:

- a. Payroll costs
- b. Any payment of interest on a covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation)
- c. Any payment on a covered rent obligation
- d. Any covered utility payment

The amount of loan forgiveness shall be calculated (and may be reduced) in accordance with the requirements of the Paycheck Protection Program, including the provisions of Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136). Not more than 25% of the amount forgiven can be attributable to non-payroll costs.

Maturity: This Note will mature two years from date of first disbursement of this loan.

Repayment Terms: The interest rate on this Note is one percent per year. The interest rate is fixed and will not be changed during the life of the loan.

Borrower must pay principal and interest payments in the amount of \$23,013.00 each and every month beginning SIX MONTHS from the month this Note is dated; payments must be made on the first calendar day in the months they are due. Lender will apply each installment payment first to pay interest accrued to the day Lender received the payment, then to bring principal current, and will apply any remaining balance to reduce principal.

Loan Prepayment: Notwithstanding any provision in this Note to the contrary:

Borrower may prepay this Note at any time without penalty. Borrower may prepay 20 percent or less of the unpaid principal balance at any time without notice. If Borrower prepays more than 20 percent and the Loan has been sold on the secondary market, Borrower must: a. Give Lender written notice; b. Pay all accrued interest; and c. If the prepayment is received less than 21 days from the date Lender received the notice, pay an amount equal to 21 days interest from the date lender received the notice, less any interest accrued during the 21 days and paid under b. of this paragraph. If Borrower does not prepay within 30 days from the date Lender received the notice, Borrower must give Lender a new notice.

Non-Recourse. Lender and SBA shall have no recourse against any individual shareholder, member or partner of Borrower for non- payment of the loan, except to the extent that such shareholder, member or partner uses the loan proceeds for an unauthorized purpose.

The undersigned agrees, upon request of the Lender, to promptly (not later than 7 days after Lender's request) and fully cooperate in the correction, if necessary in the reasonable discretion of the Lender, of any and all loan closing documents so that all documents accurately describe the loan between the Borrower(s) and the Lender. The correction may be deemed necessary to enable Lender to sell, convey, seek a guaranty or obtain insurance for, or market said loan to any purchaser, including but not limited to any investor or institution.

4. DEFAULT: Borrower is in default under this Note if Borrower does not make a payment when due under this Note, or if Borrower: Fails to do anything required by this Note and other Loan Documents;

Does not disclose, or anyone acting on their behalf does not disclose, any material fact to Lender or SBA;

Makes, or anyone acting on their behalf makes, a materially false or misleading representation to Lender or SBA.

5. LENDER'S RIGHTS IF THERE IS A DEFAULT: Without notice or demand and without giving up any of its rights, Lender may:

Require immediate payment of all amounts owing under this Note; Collect all amounts owing from any Borrower;

File suit and obtain judgment.

6. LENDER'S GENERAL POWERS: Without notice and without Borrower's consent, Lender may:

Incur expenses, including reasonable attorney's fees, to collect amounts due under this Note and otherwise enforce the terms of this Note or any other Loan Document. If Lender incurs such expenses, it may demand immediate repayment from Borrower or add the expenses to the principal balance;

Release anyone obligated to pay this Note.

WHEN FEDERAL LAW APPLIES: *When SBA is the holder, this Note will be interpreted and enforced under federal law, including SBA regulations. Lender or SBA may use state or local procedures for filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using such procedures, SBA does not waive any federal immunity from state or local control, penalty, tax, or liability. As to this Note, Borrower may not claim or assert against SBA any local or state law to deny any obligation, defeat any claim of SBA, or preempt federal law.*

7. SUCCESSORS AND ASSIGNS: Under this Note, Borrower and Operating Company include the successors of each, and Lender includes its successors and assigns.

8. GENERAL PROVISIONS:

Borrower must sign all documents necessary at any time to comply with the Loan Documents.

Lender may exercise any of its rights separately or together, as many times and in any order it chooses. Lender may delay or forgo enforcing any of its rights without giving up any of them.

Borrower may not use an oral statement of Lender or SBA to contradict or alter the written terms of this Note. If any part of this Note is unenforceable, all other parts remain in effect.

To the extent allowed by law, Borrower waives all demands and notices in connection with this Note, including presentment, demand, protest, and notice of dishonor. Borrower also waives any defenses based upon any claim that Lender did not obtain any guarantee.

BORROWER'S NAME(S) AND SIGNATURE(S): By signing below, each individual or entity becomes obligated under this Note as Borrower and certifies that during the period beginning on February 15, 2020 and ending on December 31, 2020, the Borrower has not, and will not, receive another loan under the Paycheck Protection Program.

BORROWER: Windtree Therapeutics, Inc.

By: /s/ John A. Tattory

John A. Tattory, Senior VP/CFO