

Wylie Economic Development Corporation Board Special Called Meeting - Amended

April 11, 2023 – 12:00 PM

WEDC Office Conference Room - 250 South Highway 78, Wylie, Texas
75098



CALL TO ORDER

INVOCATION & PLEDGE OF ALLEGIANCE

COMMENTS ON NON-AGENDA ITEMS

Any member of the public may address Board regarding an item that is not listed on the Agenda. Members of the public must fill out a form prior to the meeting in order to speak. Board requests that comments be limited to three minutes for an individual, six minutes for a group. In addition, Board is not allowed to converse, deliberate or take action on any matter presented during citizen participation.

REGULAR AGENDA

1. Consider approval of the First Extension and Modification of Real Estate Lien Note, Security Interest and Lien with Glen Echo Brewing LLC to extend the maturity date of the loan.

FUTURE AGENDA ITEMS

ADJOURNMENT

CERTIFICATION

I certify that this Amended Notice of Meeting was posted on April 6, 2023 at 8:00 p.m. on the outside bulletin board at Wylie City Hall, 300 Country Club Road, Building 100, Wylie, Texas, a place convenient and readily accessible to the public at all times.

Stephanie Storm, City Secretary

Date Notice Removed

The Wylie Municipal Complex is wheelchair accessible. Sign interpretation or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Secretary's Office at 972.516.6020. Hearing impaired devices are available from the City Secretary prior to each meeting.

If during the course of the meeting covered by this notice, the Board should determine that a closed or executive meeting or session of the Board or a consultation with the attorney for the City should be held or is required, then such closed or executive meeting or session or consultation with attorney as authorized by the Texas Open Meetings Act, Texas Government Code § 551.001 et. seq., will be held by the Board at the date, hour and place given in this notice as the Board may conveniently meet in such closed or executive meeting or session or consult with the

attorney for the City concerning any and all subjects and for any and all purposes permitted by the Act, including, but not limited to, the following sanctions and purposes:

Texas Government Code Section:

§ 551.071 – Private consultation with an attorney for the City.

§ 551.072 – Discussing purchase, exchange, lease or value of real property.

§ 551.073 – Discussing prospective gift or donation to the City.

§ 551.074 – Discussing personnel or to hear complaints against personnel.

§ 551.076 – Discussing deployment of security personnel or devices or security audit.

§ 551.087 – Discussing certain economic development matters.

AGENDA REPORT

Meeting Date:	<u>April 11, 2023</u>	Item Number:	<u>1</u>
Prepared By:	<u>Jason Greiner</u>	Account Code:	<u></u>
Date Prepared:	<u>4/6/23</u>	Exhibits:	<u>1</u>

Subject

Consider approval of the First Extension and Modification of Real Estate Lien Note, Security Interest and Lien with Glen Echo Brewing LLC to extend the maturity date of the loan.

Recommendation

Motion to approve the First Extension and Modification of Real Estate Lien Note, Security Interest and Lien and to authorize the Board President or his designee to negotiate, finalize, and execute said document.

Discussion

As the Board will recall, the Real Estate Contract between the WEDC and Glen Echo Brewing LLC was approved on January 18, 2023, for sale of the .2100-acre property at 106 N. Birmingham. As such, Glen Echo Brewing LLC closed on the purchase of the property on February 21, 2023.

Texas Bank approved the loan subject to SBA approval and now the SBA has identified a potential issue:

It appears that the seller's carryback note has a term of three years. If that is the case, the seller cannot secure its loan with the subject property (if secured with junior position on the subject property, the term of the loan cannot be shorter than the term of the SBA loan). Wylie EDC can adjust the Seller Note to reflect a 25-year term to match the SBA 504 loan OR they can add an addendum stating the Wylie EDC will not have a lien on the subject property.

For your review is a First Extension and Modification of Real Estate Lien Note as prepared by legal. Note: Approval of the proposed extension of the real estate lien note extends the maturity date for the Note and Deed of Trust from 3 years to 25 years, until 2048.

After recording, return to:

Wylie Economic Development Corporation
250 State Highway 78
Wylie, Texas 75098

**FIRST EXTENSION AND MODIFICATION OF REAL ESTATE LIEN NOTE,
SECURITY INTEREST AND LIEN**

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF COLLIN §

WHEREAS, GLEN ECHO BREWING LLC, a Texas limited liability company (hereinafter referred to as the “Maker”), being legally obligated to pay the hereinafter described Real Estate Lien Note (the “Note”), and who, if not presently primarily liable for the payment of the Note, hereby expressly assumes the payment thereof, the Note being in the original principal sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) dated February 21, 2023, executed by Maker, payable to the order of WYLIE ECONOMIC DEVELOPMENT CORPORATION, a Texas corporation (hereinafter referred to as the “Payee”), more fully described in a Deed of Trust (the “Deed of Trust”) dated February 21, 2023, duly recorded in Document Number 2023000017181 of the Official Public Records of Collin County, Texas, the Note being secured by the liens and security interests therein created or mentioned against certain real property (the “Property”), including the land more particularly described as follows:

Lot R-1, Block 2, of a REPLAT OF PART OF LOT 9 and PART OF LOT 10, BLOCK 2 of W.J. KELLER'S FIRST ADDITION, an Addition to the City of Wylie, Collin County, Texas, according to the map or plat thereof recorded in Cabinet F, Slide 574, Plat Records, Collin County, Texas; and

WHEREAS, Maker now desires to extend or rearrange the time or manner of payment of the Note and to extend or carry forward said liens and security interests on the Property, and to modify the Note; and

WHEREAS, the Payee, the legal owner and holder of said Note and of the liens and security interests securing the same, in consideration of the premises, and at the request of the Maker has agreed to extend or rearrange the time or manner of payment of the Note, and to modify the Note, as hereinafter provided.

NOW, THEREFORE, in consideration of the rearrangement of time or manner of payment of the Note as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Payee and Maker hereby agree as follows:

1. Acknowledgement of Outstanding Balance. The parties hereto acknowledge that the outstanding principal balance of the Note as of the effective date hereof is One Hundred Thousand and No/100 Dollars (\$100,000.00).

2. Renewal and Extension of Maturity. The Note is hereby renewed and the maturity of the Note is hereby extended to February 21, 2048 (“Maturity”).

3. Required Payments. From and after the effective date of this Agreement, the Terms of Payment paragraph of the Note is hereby replaced in its entirety with the following:

“Terms of Payment: The accrued unpaid interest and principal of this Note is due in three (3) annual installments, with the first installment being due and payable upon the earlier of (i) the issuance of a Certificate of Completion from the City of Wylie for a remodel of a 4,125 square foot building on the Property (defined below), or (ii) six (6) months after the date hereof, with the second installment being due and payable twelve (12) months following the first installment, and the third installment being due and payable on or before Maturity; subject, however, to the terms of the Performance Agreement dated February 21, 2023, by and between Maker and Payee (the "Performance Agreement"), which will provide for economic incentives that will include credits to the payment obligations herein. Upon payment in full of this Note pursuant to the terms of this Note or Maker's performance as set forth in the Performance Agreement, Payee shall release all liens (including without limitation the Deed of Trust dated February 21, 2023, by Maker ("Deed of Trust") and this Note shall be fully released with the original being returned to Maker marked "PAID IN FULL".”

4. Renewal and Extension of Liens and Security Interests. Maker hereby extends the liens and security interests on the Property set forth herein until the indebtedness and the Note as modified, renewed and extended hereby has been fully paid, and agrees that the extension, rearrangement and modification set forth herein shall in no manner affect or impair the Note or the liens or security interests securing the same and that said liens and security interests shall not in any manner be waived, the purpose of this First Extension and Modification of Real Estate Lien Note, Security Interest and Lien (“Agreement”) simply being to extend, rearrange and modify the time or manner of payment of the indebtedness evidenced by the Note and to carry forward all liens and security interests securing the same, which are acknowledged by Maker to be valid and subsisting.

5. Additional Acts. In addition to the acts recited herein and contemplated to be performed, executed and/or delivered by Maker, Maker hereby agrees, at any time, and from time to time upon the request of Payee, to perform, execute, acknowledge, deliver, record and/or file such further instruments, do such further acts and give such further assurances as may be necessary or proper to (a) promptly implement the intent of Maker and Payee under the Deed of Trust; (b) promptly correct any defect, error or omission which may be discovered in the Deed of Trust or any related document and execute any and all additional documents, as may be requested by Payee to correct such defect, error or omission or to identify any additional properties which are or become subject to the Deed of Trust; (c) assure Payee a valid and direct first lien and prior first perfected security interest under the Deed of Trust or any of them on the Property; (d) create, perfect, preserve, maintain and protect the liens and security interests created or intended to be created by the Deed of Trust; and (e) provide the rights and remedies to Payee granted or provided for by the Deed of Trust. Maker, upon request of the Payee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the

Deed of Trust, to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property, and to complete, execute, record and file any document or instrument necessary to place third parties on notice of the liens and security interests granted under Deed of Trust. Maker hereby irrevocably appoints Payee as Maker's agent and attorney-in-fact to execute, acknowledge and deliver all such instruments and additionally to record and file any of the same as may be necessary.

6. Release and Waiver of Claims. In consideration of (a) the modification of certain provisions of the Note and Deed of Trust, all as herein provided and (b) the other benefits received by Maker, Maker further hereby RELEASES, RELINQUISHES and forever DISCHARGES Payee, as well as Payee's predecessors, successors, assigns, agents, attorneys, officers, directors, employees and representatives of and from any and all claims, demands, actions and causes of action of any and every kind or character, whether known or unknown, present or future, which Maker may have against Payee, and Payee's predecessors, successors, assigns, agents, attorneys, officers, directors, employees and representatives arising out of or with respect to any and all transactions relating to the Note and the Deed of Trust occurring prior to the date hereof, including any other loss, expense and/or detriment, of any kind of character, growing out of or in any way connected with or in any way resulting from the acts, actions or omissions of Payee, and Payee's predecessors, successors, assigns, agents, attorneys, officers, directors, employees and representatives, and including any loss, cost or damage in connection with any breach of fiduciary duty, breach of any duty or fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, libel, slander, conspiracy or claim for wrongfully accelerating the Note, foreclosing or attempting to foreclose on any collateral relating to the Note.

7. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable requirements of law. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision of other persons or circumstances or other instruments referred to hereinabove shall be affected thereby, but rather, the same shall be enforced to the greatest extent permitted by law.

8. Tolling of Limitations. In the event Maker and any guarantor of the Note or any other person or entity claims in a pleading that this Agreement ("Obligors") is ineffective to extend the maturity date of the Note, OBLIGORS HEREBY, *AB INITIO*, TOLL LIMITATIONS ON ANY CLAIM MADE BY PAYEE TO ENFORCE THE NOTE OR DEED OF TRUST TO A DATE WHICH IS FOUR (4) YEARS FOLLOWING THE DATE OF THE FILING OF SUCH PLEADING. Obligors stipulate that this is a reasonable time period for tolling limitations in light of (a) the legitimacy of the Note which Maker owes the Payee and hereby acknowledges in writing; (b) the Payee's agreement to extend the dates for the performance of the obligations under the Note, which but for this extension agreement would mature at a much earlier date; and (c) the additional time for bringing suit equating to additional time for Obligors

to perform the obligations to which Obligors intend to bind themselves under this Agreement. While this is not a complete waiver of Obligors' rights to assert the defense of limitations, it is Obligors' intent to waive their right to assert the defense of limitations if a suit is brought within the four (4) year period set forth above.

9. Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

10. No Waiver. No waiver of any default on the part of Maker shall be implied from any omission by Payee to take action with respect to such default.

11. Miscellaneous.

a. As modified hereby, the provisions of the Note and Deed of Trust shall continue in full force and effect, and Maker acknowledges and reaffirms Maker's liability to Payee thereunder. In the event of a conflict between this Agreement and the terms of the Note and Deed of Trust, this Agreement shall govern.

b. Maker hereby agrees to pay all costs and expenses incurred by Payee in connection with the execution and administration of this Agreement, the modification of the Note and Deed of Trust and any other documents executed in connection herewith.

c. Any default by Maker in the performance of Maker's obligations herein contained shall constitute a default under the Note and Deed of Trust, and shall allow Payee to exercise all of its remedies at law and as set forth in said Deed of Trust.

d. Payee does not by its execution of this Agreement waive any rights Payee may have against any person not a party hereto.

e. The failure of Maker to comply with each of the conditions set forth in this Agreement and deliver or cause to be delivered each and all of the documents, instruments, consents and assurances required to be executed and delivered hereunder shall be a default and Payee shall be entitled to exercise any and all such remedies as may be available to Payee under the Note and Deed of Trust.

f. In the event Maker should, on the date of this Agreement, be in default in the performance or observance of any of the covenants to be performed or observed by Maker pursuant to the Deed of Trust or the Note, the failure of Maker to perform or observe any such covenant shall nevertheless be enforceable by Payee as an event of default on the part of Maker on any subsequent date, notwithstanding any knowledge Payee may have as of the date of this Agreement of the prior existence of such event of default. All failures by Maker to perform or observe any covenants under this Agreement shall be strictly enforced from and after the date hereof, without regard to the degree to which Maker may be in default of such covenants on the date hereof or the degree of Payee's knowledge concerning any such defaults by Maker.

g. Maker, at Maker’s sole cost and expense, shall, promptly after the recordation of this instrument, furnish to the Payee an endorsement to the Loan Policy of Title Insurance currently insuring the Payee’s lien position under the Deed of Trust, which endorsement shall reaffirm the Payee’s lien position in connection with the aforesaid and shall recognize the validity and extension of said lien position as herein provided; and further, shall execute and deliver such other instruments and documents as may be reasonably required by the Payee to evidence the modification and renewal herein embodied, and to carry forward the liens and security interests securing the Note. The failure of Maker to promptly comply with the requirements of this subparagraph may be an event of default under the Note, if Maker’s failure to perform hereunder remains continuing at the expiration of the applicable notice and opportunity to cure provisions, if any.

h. All capitalized terms in this Agreement shall have the same meaning as defined in the Note and Deed of Trust.

i. Maker acknowledges that this Agreement is given in modification (but not in novation or accord and satisfaction) of the Note and Deed of Trust.

THIS WRITTEN LOAN AGREEMENT, TOGETHER WITH THE LOAN DOCUMENTS AS AMENDED HEREBY, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

EXECUTED on the dates of the acknowledgments set forth below, to be effective, however, for all purposes, on the _____ day of April, 2023.

Maker:

GLEN ECHO BREWING LLC, a Texas limited liability company

By: _____
Debbie Schoenekase, Managing Member

By: _____
Steve Schoenekase, Managing Member

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2023, by _____, _____ of WYLIE ECONOMIC DEVELOPMENT CORPORATION, a Texas corporation, on its behalf.

Notary Public, State of Texas