

**AGENDA
HANOVER CITY COUNCIL
JULY 22, 2019**

**MAYOR
CHRIS KAUFFMAN**

**COUNCIL
DOUG HAMMERSENG
KEN WARPULA
JIM ZAJICEK
MARYANN HALLSTEIN**

- 1. Call to Order: 6:30 p.m.**
- 2. Approval of Agenda**
- 3. Res No 07-22-19-66 – Approving EDA Low Interest Loan Request & Standby Agreement**
- 4. Adjournment**

**CITY OF HANOVER
COUNTIES OF WRIGHT AND HENNEPIN
STATE OF MINNESOTA**

A special meeting of the City Council of the City of Hanover, Minnesota, was called to order by Mayor Kauffman at 6:30 p.m. in the Council Chambers of the City Hall, in the City of Hanover, Minnesota, on the 22nd day of July, 2019.

The following Council Members were present:

The following Council Members were absent:

A motion to adopt the following resolution was made by ___ and seconded by ___.

.....

RESOLUTION NO 07-22-19-66

**A RESOLUTION APPROVING EDA LOW INTEREST LOAN REQUEST AND
STANDBY AGREEMENT BETWEEN BYLINE BANK AND HANOVER EDA**

WHEREAS, the Hanover Economic Development Authority received and supports a Low Interest Loan Program application from BBBBQ LLC/Big Bore Barbeque Co. for the purpose of purchasing an existing property and to remodel the building into a barbeque style family restaurant; and

WHEREAS, the requested amount is \$92,500; and

WHEREAS, a low interest loan approval was made by Res No 06-04-19-49 and amended by Res No 07-02-19-55; and

WHEREAS, conditions of those resolutions have been reviewed by the Hanover EDA with recommended changes; and

WHEREAS, Res No 06-04-19-49 and Res No 07-02-19-55 are no longer applicable.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hanover, Minnesota, hereby approves a \$92,500 Low Interest Loan through the Hanover Economic Development Authority business incentive fund to BBBBQ LLC/Big Bore Barbeque Co. subject to the following conditions:

- Hanover EDA placed 2nd on commercial real estate mortgage
- Hanover EDA placed 2nd on UCC filing against the business assets
- Hanover EDA placed 3rd on home real estate mortgage
- Appraisal of commercial property be provided showing a value in an amount to provide financial security for the low interest loan (*identified value of \$57,100*)
- Asset inventory list to show value of equipment in an amount to provide financial security for the low interest loan
- Appraisal and loan documents of home mortgage showing a value in an amount to provide financial security for the low interest loan (*identified value in excess of \$35,400*)
- Personal guarantee of \$92,500 from majority business owners (Mr. & Mrs. Brink)
- Personal guarantee of \$35,400 from minority business owner

- All business corporation and LLC documents be supplied to the City (*completed*)
- Title opinion showing ownership of property (*provided prior to closing*)
- Loan repayment monthly over a 10-year period with no early payoff penalty
- Interest rate equal to Prime (as published by the Wall Street Journal) minus two, with a minimum interest rate of 2% and a maximum interest rate of 6%
- Approval of Standby Agreement between Byline Bank and Hanover EDA as attached

BE IT FURTHER RESOLVED, that the City Council directs its City Administrator and Hanover EDA Vice Chair to execute the Low Interest Loan through BankWest with BBBBQ LLC/Big Bore Barbeque Co.

BE IT FURTHER RESOLVED, that the City Council directs its City Administrator to execute the Standby Agreement between Byline Bank and Hanover EDA as attached.

Council members voting in favor:

Opposed or abstained:

Adopted by the city Council this 22nd day of July, 2019.

APPROVED BY:

Chris Kauffman, Mayor

ATTEST:

Brian Hagen, City Administrator

**DEBT, LIEN AND SECURITY INTEREST SUBORDINATION AND STANDBY
AGREEMENT**

THIS DEBT, LIEN AND SECURITY INTEREST SUBORDINATION AND STANDBY AGREEMENT (this “Agreement”), dated as of _____, 2019, is made by Hanover Economic Development Authority (“Junior Lender”), to and for the benefit of Byline Bank, an Illinois banking corporation (with its participants, successors and assigns, “Senior Lender”).

RECITALS

A. Senior Lender has agreed to make a certain non-revolving U.S. Small Business Administration loan in the amount of Nine Hundred Fifteen Thousand and 00/100 Dollars (\$915,000.00) (the “Senior Loan”) to BBBBQ, LLC, a Minnesota limited liability company, and Big Bore Barbecue Company, a Minnesota corporation (collectively, “Borrower”), pursuant to a Loan Agreement of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the “Senior Loan Agreement”).

B. As a condition to making the loan or any extension of credit pursuant to the Senior Loan Agreement, Senior Lender has required that Junior Lender subordinate the payment of Junior Lender’s loan and other financial accommodations made to Borrower to the payment of any and all indebtedness of Borrower to Senior Lender.

AGREEMENT

ACCORDINGLY, in consideration of the loan and other financial accommodations that have been or will be made by Senior Lender for the benefit of Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Junior Lender hereby agrees as follows:

1. Definitions. As used herein, the following terms have the meanings set forth below:

“Borrower Default” shall mean a Default or Event of Default as defined in any agreement or instrument evidencing, governing, or issued in connection with Senior Debt, including, but not limited to, the Senior Loan Agreement.

“Collateral” means all collateral now or hereafter securing payment of the Senior Debt, including all proceeds thereof.

“Junior Debt” means all obligations arising under the Junior Note and each and every other debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Junior Lender.

“Junior Debt Documents” means the Junior Note and any other agreement, instrument, guarantee or other document executed or made by Borrower or any Guarantor

(as defined in the Senior Loan Agreement) in connection with the Junior Debt. Todd Bartels (“Minority Interest Holder”) is expressly excluded as a Guarantor.

“Junior Note” means the Promissory Note dated _____, 2019 made by Borrower and payable to the order of Junior Lender in the principal amount of Ninety-Two Thousand Five Hundred and 00/100 Dollars (\$92,500.00), a fully executed copy of which is attached hereto as Exhibit A.

“Lien” means any security interest, mortgage, deed of trust, pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device, including the interest of each lessor under any capitalized lease and the interest of any bondsman under any payment or performance bond, in, of or on any assets or properties of any person or entity, whether now owned or hereafter acquired and whether arising by agreement or operation of law.

“Payment in Full” or “Paid in Full” means the indefeasible payment in full in cash of the Senior Debt and the termination of commitments under the Senior Loan Agreement.

“Senior Debt” is used herein in its most comprehensive sense and means the Senior Loan and any and all other advances, debts, obligations and liabilities of Borrower and any Guarantor to Senior Lender, pursuant to the Senior Debt Documents.

“Senior Debt Documents” means all of the Loan Documents, as such term defined in the Senior Loan Agreement.

2. Subordination. The payment of all of the Junior Debt is hereby expressly subordinated to the extent and in the manner hereinafter set forth to the Payment in Full of Senior Debt; and regardless of any priority otherwise available to Junior Lender by law or by agreement, Senior Lender shall hold a senior priority Lien on all Collateral, and any Lien claimed therein by Junior Lender shall be and remain fully subordinate for all purposes to the Lien of Senior Lender therein for all purposes whatsoever.

3. Standby; Permitted Payments. Following the date of this Agreement, Borrower may make, and Junior Lender may accept, monthly payments of principal and interest under the Junior Note in an amount sufficient to fully amortize the Junior Note over a maximum term of ten (10) years at a rate of interest not to exceed six percent (6%) per annum, so long as at the time of and after giving effect to the making of such payments no Borrower Default has occurred or would occur. Following written notice from Senior Lender to Junior Lender of a Borrower Default, Borrower shall not make, and Junior Lender shall not accept, any payments on the Junior Note (whether from Borrower or from any Guarantor), until Senior Lender notifies Junior Lender that such Borrower Default has been cured and Borrower is permitted to recommence making payments on the Junior Note. Payments made by the Minority Interest Holder are excluded from this restriction. The Junior Note will mature no sooner than ten (10) years from the date of this Agreement.

4. Receipt of Prohibited Payments. With the exception of any payments made by the Minority Interest Holder, Junior Lender agrees to turn over to Senior Lender, upon

demand, any payments that are prohibited hereunder or that are received by Junior Lender on the Junior Note after Senior Lender has given Junior Lender notice of any Borrower Default, unless otherwise agree to in writing by Senior Lender. Nothing in this Section 4 shall prohibit Borrower from making and Junior Lender from accepting any payments on the Junior Note that are permitted under Section 3 above at any time during which a Borrower Default is not continuing.

5. Action Against Borrower. Junior Lender shall not take any action to collect, enforce payment of, or accelerate any of the Junior Debt or any guarantee thereof by exercising any of the remedies with respect to the Junior Debt set forth in any of the Junior Debt Documents, or that otherwise may be available to Junior Lender, either at law or in equity, by judicial proceedings or otherwise, without the prior written consent of Senior Lender until the Senior Debt is Paid in Full.

6. Action Concerning Collateral. Junior Lender shall not take any action to foreclose upon, take possession of or sell any Collateral by exercising any of the remedies with respect to the Collateral set forth in any of the Junior Debt Documents, or that otherwise may be available to Junior Lender, either at law or in equity, by judicial proceedings or otherwise, without the prior written consent of Senior Lender until the Senior Debt is Paid in Full.

7. Continuing Effect. Senior Lender may, at any time and from time to time, without the consent of or notice to Junior Lender and without affecting this Agreement:

- (a) modify the terms of the Senior Debt other than to increase the principal amount of the Senior Debt;
- (b) grant an extension or renewal of the Senior Debt;
- (c) defer payments or enter into a workout agreement on the Senior Debt;
- (d) release or substitute Collateral securing the Senior Debt;
- (e) forbear from collecting on existing Collateral or requiring additional Collateral;
- (f) declare a Borrower Default on the Senior Debt and notify Junior Lender to stop accepting payments; and/or
- (g) agree to release, compromise or settlement of Senior Debt.

8. Notices. All notices and other communications hereunder shall be in writing and shall be (i) personally delivered or (ii) upon deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier, airbill prepaid,, in each case addressed to the party to whom notice is being given at its address as follows: if to Senior Lender: Byline Bank, 13925 W. North Ave., Brookfield, WI 53005; if to Junior Lender: 11250 5th Street NE, Hanover, MN 55341, or at such other address(es) as may hereafter be designated in writing by that party. All such notices or other communications shall be deemed to

have been given on (i) the date received if delivered personally or (ii) the date of posting if delivered by mail.

9. Amendment of Junior Note. Junior Lender agrees that the Junior Note may not be amended or otherwise modified without the prior written consent of Senior Lender in Senior Lender's sole and absolute discretion.

10. Successors and Assigns. This Agreement applies to any successor to Junior Lender or assignee of this Agreement or the Junior Debt, including any bankruptcy, trustee, receiver, guarantors or sureties of the Junior Debt.

11. Miscellaneous. This Agreement shall be governed by and construed in accordance with the substantive laws (other than conflict of laws principles) of the State of Illinois. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Illinois in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by any of them in connection with this Agreement may be venued in either the state or federal courts located in Illinois. **THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

[Signature Page Follows]

IN WITNESS WHEREOF, Junior Lender and Senior Lender have executed this Agreement as of the date and year first above-written.

JUNIOR LENDER:

Hanover Economic Development Authority
(a _____)

By: _____

Name: _____

Its: _____

This is a signature page to that certain Debt, Lien and Security Interest Subordination and Standby Agreement dated _____, 2019.

SENIOR LENDER:

Byline Bank
(an Illinois banking corporation)

By: _____

Name: _____

Its: _____

This is a signature page to that certain Debt, Lien and Security Interest Subordination and Standby Agreement dated _____, 2019.

ACKNOWLEDGMENT AND AGREEMENT BY BORROWER

The undersigned hereby (i) acknowledges receipt of a copy of the foregoing Debt, Lien and Security Interest Subordination and Standby Agreement, (ii) agrees to all of the terms and provisions thereof, (iii) agrees to and with Senior Lender that it shall make no payment on the Junior Debt that Junior Lender would not be entitled to receive under the provisions of this Agreement, (iv) agrees that any such payment will constitute a default under Senior Debt, and (v) agrees to mark its books conspicuously to evidence the subordination of the Junior Debt effected hereby.

BBBBQ, LLC
(a Minnesota limited liability company)

By: _____
Chad Allen Brink
Its: Chief Executive Officer/President

Big Bore Barbecue Company
(a Minnesota corporation)

By: _____
Chad Allen Brink
Its: President/Chief Executive Officer

This is the Acknowledgement and Agreement signature page to that certain Debt, Lien and Security Interest Subordination and Standby Agreement dated _____, 2019.

EXHIBIT A

Attach copy of Junior Note