

1 BILL NO. R-17-05-26

2 RESOLUTION - _____

3
4 A RESOLUTION APPROVING THE MUNICIPAL
5 RIVERFRONT DEVELOPMENT DOWNTOWN
6 DINING DISTRICT LIQUOR LICENSE

7 WHEREAS, the City of Fort Wayne has created the Municipal
8 Riverfront Development Project, known as the Downtown Dining District, to
9 continue the current progress in the redevelopment of downtown; and

10 WHEREAS, Indiana Code 7.1-3-20, authorizes the issuance of
11 certain, non-transferable permits to sell alcoholic beverages for on-premise
12 consumption in a restaurant located on land or in a historic river vessel within
13 a municipal riverfront development project; and

14 WHEREAS, to be considered for a recommendation for approval of a
15 221-3 Riverfront License from the Indiana ATC, an applicant submit a
16 Downtown Dining District Liquor License Application and shall enter into a
17 formal written agreement with the municipality; and

18 WHEREAS, NAWA, LLC has submitted an application for a Downtown
19 Dining District Liquor License, a copy of which is attached hereto as
20 Appendix A and is prepared to enter into a formal written agreement with the
21 City of Fort Wayne, a copy of which is attached hereto as Appendix B; and

22 WHEREAS, the application and agreement meet the criteria
23 established by Resolution R-105-15 as adopted by Common Council;

24 NOW, THEREFORE, BE IT RESOLVED, The Common Council of
25 The City of Fort Wayne, Indiana:

26 Section1. That the City of Fort Wayne Common Council hereby
27 approves the "Downtown Dining District" application and agreement between
28 The City of Fort Wayne and NAWA, LLC, and hereby provides the required

local recommendation to the Indiana Alcohol and Tobacco Commission for a 221-3 Riverfront license to be issued to NAWA, LLC; and

Section 2. That this resolution shall be in full force and effect from and after its passage and approval by the Mayor, unless rescinded by resolution by this legislative body.

CouncilMember

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

ATTACHED HERETO AND MADE A PART HEREOF:

**Appendix 1: Application of NAWA, LLC for Downtown Dining District
Liquor License**

Appendix 2: City of Fort Wayne Agreement with NAWA, LLC



City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne, IN 46802
260.427.1127

Community Development

Thomas C. Henry, Mayor

Appendix 1

Downtown Dining District Liquor License Application

Business Entity Making this Application: NAWA, LLC

Applicant's Name: Dijisila Chaisuthi, Manager

Applicant's Address: 126 West Columbia Street City: Fort Wayne State: IN Zip: 46802

Applicant's Phone (daytime): (260) 416-4678 E-mail: prill_c@hotmail.com

1. Please outline any plans you have to improve the facility in which you will operate

See attached Exhibit "A".

2. The excepted timetable for work and business commencement

See attached Exhibit "A".

3. Explain the overall concept and unique features of the proposed establishment.

See attached Exhibit "A".

4. Describe the level of control and participation the owners will have in the day, to, day operation of the business.

See attached Exhibit "A".

5. Explain how your operation plans to focus on a dining, entertainment or cultural experience rather than an alcohol consumption experience.

See attached Exhibit "A".

6. Describe how your venue/operation will draw people to Downtown Fort Wayne.

See attached Exhibit "A".

7. Provide information regarding the proposed permit holder's related experience

See attached Exhibit "A".

Permits are not transferable and any renewal is subject to compliance with the terms of the agreement with the City of Fort Wayne. The permits shall not be pledged as collateral or subject to any lien judgment, property settlement agreement, or third party claim.

Downtown Dining District - Liquor License Application

Eligibility Requirements and Evaluation Criteria

The Downtown Dining District is a project district where 3-way liquor licenses are made available to eligible dining, entertainment, and cultural establishments as a way to encourage dining in Downtown Fort Wayne. This District was made possible via state legislation and an Ordinance passed by the City of Fort Wayne Council that designated the District and adopted eligibility requirements.

Eligibility Requirements:

In addition to complying with all building, health, zoning laws, ordinances and all rules and regulations of the Indiana State Alcohol and Tobacco Commission (ATC), and local, state, and federal government's applicants must also meet the following local requirements annually in order to be eligible to apply or renew:

1. Applicant's establishment must be located within the Downtown Dining District boundaries.
2. The focus of operation must be on a dining, entertainment or cultural experience rather than solely an alcohol consumption experience.
3. The establishment cannot be a private club, nightclub, or adult entertainment venue.
4. Fees: Applicant must submit a \$1,000 non-refundable application fee with application.

District Requirements:

Applicants will enter into a formal written agreement with the City of Fort Wayne committing to ongoing compliance with the following district requirements, including annual reporting, and verification of compliance.

1. Establishments receiving Riverfront liquor licenses within the Downtown Dining District are required to maintain an annual ratio of non-liquor sales to total sales of at least 50%.
2. The licensed establishment will be actively open for business and fully operational during a minimum of three hundred (300) days per year, and a minimum of five evenings (5) per week.
3. The Applicant shall comply with all local and ATC application and renewal procedures.
4. Annual dues in the amount of \$2500 must be paid for membership in the *Downtown Dining Association*, payable through the Downtown Improvement District.

Evaluation Criteria:

The recommendation to support the state permit application will be based on how strongly the applicant meets the following criteria:

1. Granting of the license will benefit the purposes of the district, i.e. to become a cultural and dining destination in Downtown Fort Wayne.
2. Granting of the license and the business activity will not be detrimental to the property values and business interest of others in the district.

The above criteria will be evaluated on the following:

1. The Physical Location
2. The Business Plan
3. Reputation/Experience of Ownership

Please attach:

1. Your completed Indiana State form entitled "Application for New or Transfer Permit" along with any attachments.
2. A signed copy of this Application, including the Applicant's Certification below
3. A copy of your business plan
4. A check made payable to the City of Fort Wayne in the amount of \$1,000.

Please submit this form and all attachments to: City of Fort Wayne – Community Development, Attention: Development Finance - Downtown Dining District, 200 E. Berry Street - Suite 320, Fort Wayne, IN 46802.

APPLICANT'S CERTIFICATION

I hereby certify that all information in this application and all information furnished in support of this application are true and complete to the best of the Applicant's knowledge and belief.

I understand that the project described in this Application may not receive a Downtown Liquor License.

I certify that I have read and understand and agree to the above eligibility requirements & evaluation criteria. I further understand and agree to enter into a formal written agreement regarding the aforementioned district requirements, to be approved by the City of Fort Wayne Common Council and the Mayor.

I hereby release and discharge the City of Fort Wayne, together with their respective subsidiaries, affiliates, employees, agents, directors and other related parties, from any and all rights and obligations, duties, claims, debts, actions, causes of action or liabilities arising out of, or relating to, the seeking or receipt of a Downtown Dining District Liquor License pursuant to this Project Application and related documents.

Applicant's Signature: _____

Printed Name: _____

DUSSILA CHAISUTHI

Date: _____

4/20/17

Title: _____

Manager

EXHIBIT A

1. Please outline any plans you have to improve the facility in which you will operate.

For nearly a century, The Landing was the primary business street in Fort Wayne. Literally a "landing," the street welcomed passengers (and freight) arriving by stagecoach and canal – and eventually by railroad. It was home to many diverse Fort Wayne firsts – including retail shops, hotels, taverns, barbershops, printing offices, bakeries, pool halls and more. The Landing features an architectural sampling of Italianate, Renaissance and Romanesque-style buildings.

The goal of NAWA LLC ("NAWA") is to preserve the beauty and integrity of the building's historic brick façade, tin ceilings and other unique, architectural features while investing over \$350,000 in desirable and necessary practical upgrades. See attached Exhibit "B" for pictures and renderings. Exterior work, which shall be under the direction and control of the building owner (also a partner of NAWA), includes cleaning/repair of masonry, tuck pointing and brick replacement (as necessary).

Interior design is intended to create a chic and cosmopolitan Asian dining experience. Higher-end finishes, modern furniture and large artwork pieces will serve as focal points balanced by the striking historical aesthetics of the interior.

Upgrade of the building's mechanical systems has also not been overlooked by NAWA. Installation of a modern fire suppression system, new HVAC system, and other long-term, functional improvements to modernize the building's systems will be installed by the building owner (also a partner of NAWA).

Significant investment by NAWA and building ownership in exterior and interior upgrades will set the stage for additional investment and rehabilitation in The Landing. Neither the granting of the liquor license nor the business activity itself will be detrimental to property values and the business interests of others. In fact, NAWA anticipates this will be a leading project in redevelopment plans concerning The Landing - creating synergies for the rest of this historic area and the art, dining and cultural community generally.

2. The expected timetable for work and business commencement.

At this time, ownership expects demolition and buildout to begin in May, 2017, with a planned soft opening of the restaurant in August, 2017.

3. Explain the overall concept and unique features of the proposed establishment.

NAWA partners are all local full-time residents of Allen / DeKalb counties. NAWA will feature distinctive small and large plate dining, with culinary influences from Thailand, Japan, China, Korea and elsewhere in Asia in a refined setting with a goal to enhance and to amplify culinary choice for visitors to the growing and vibrant downtown Fort Wayne community. As local residents, NAWA ownership believes in the importance of sourcing our ingredients and services from reputable, local providers whenever practical. At this time, we plan to operate for both lunch and dinner with options for takeout and downtown delivery.

4. Describe the level of control and participation the owners will have in the day to day operation of the business.

Attention to detail is part and parcel of creating a refined dining experience for patrons. In consequence, NAWA ownership must be "hands on." NAWA's ownership consists of four (4) partners, all of whom are long term Fort Wayne/Northeast Indiana residents, and two (2) of whom immigrated to the United States from Thailand (bringing with them their rich cultural and culinary experience) before earning their U.S. citizenship. Two (2) partners will be the Operating Partners, with one of these Operating Partners on-site (and/or on-call) at all times. One partner in the restaurant is also the building owner. The fourth partner will be available at most times. The owners will be actively involved in all aspects of the business on a daily basis. NAWA will actively operate its restaurant no less than five (5) evenings per week for no less than three hundred (300) days per year.

5. Explain how your operation plans to focus on a dining, entertainment or cultural experience rather than an alcohol consumption experience.

NAWA believes its dining concept will bring a richly diverse experience to Downtown Fort Wayne uniquely complementing the future Landing development and new Riverfront. Rather than detracting from the success of other restaurants, NAWA intends to play a role in increasing downtown traffic by offering vibrant, culinary choices to meet growing demand and stand in its own "palate niche" beside other notable, fine dining restaurants in the immediate neighborhood such as Tolon, Bourbon St. Hideaway and The Golden. Part of NAWA's own uniquely Asian experience will include some custom-crafted alcoholic beverages that will include herbal and fruit flavors of the Far East. Cuisine will be distinctive and artistic – emphasizing quality and taste not simply quantity. Alcoholic beverages are offered only as an accoutrement to fine dining; therefore, maintaining an annual ratio of 50% non-liquor sales to total sales is expected. NAWA is not a private club, nightclub nor adult entertainment venue.

6. Describe how your venue/operation will draw people to Downtown Fort Wayne.

Part of the strategy for business/talent attraction for Fort Wayne is to encourage thriving quality of life options. NAWA adds to that initiative by being a dining venue contemplated to be both sophisticated and distinct both in terms of its culinary offerings and its metropolitan style within the historic framework of The Landing. The dining menu will be inspired by combining different Asian countries' specialties into a singular culinary experience. Attention-to-detail service will be offered in a relaxed, friendly and professional environment. With NAWA's emphasis on cuisine and overall experience quality, NAWA will be looking to retain hospitality professionals as well as offer new, quality employment opportunities to individuals interested in pursuing careers in fine-dining in front or back of house operations. Through strong training, mentoring and incentivized compensation, NAWA plans to retain a friendly and efficient team. Simply put, happy employees make happy, repeat guests.

7. Provide information regarding the proposed permit holder's related experience.

NAWA's partnership team has a combined 40+ years of experience in restaurant ownership/management, catering, event organization, finance, marketing, business law and IT. As such, NAWA will be able to comply with required annual reporting and verification of compliance.

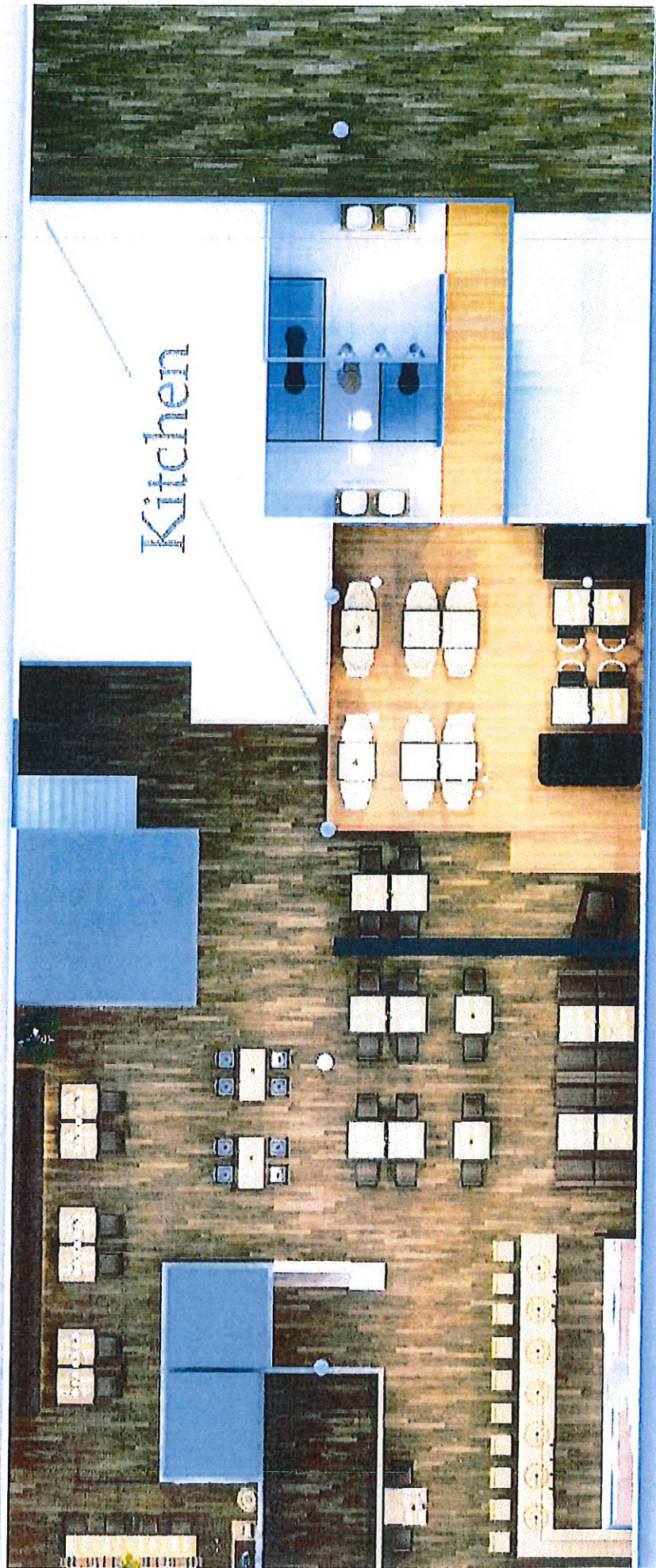
EXHIBIT B

PICTURES AND RENDERINGS





Kitchen





**CITY OF FORT WAYNE
AGREEMENT
WITH NAWA, LLC
REGARDING AN APPLICATION FOR A RIVERFRONT LIQUOR LICENSE**

This Agreement (the "Agreement") is entered as of the Effective Date (as hereinafter defined) by the City of Fort Wayne, Indiana (the "City") and NAWA, LLC ("Applicant") (the City and Applicant being collectively referred to herein as the "Parties"), regarding the establishment proposed at 126 West Columbia Street, Fort Wayne, IN 46802. The Parties, in consideration of the mutual covenants, obligations and agreements set forth herein, agree as follows:

WHEREAS, Fort Wayne Common Council Ordinance R-105-15 (the "Ordinance") provides that all applicants seeking a Riverfront liquor license as described in Ind. Code 7.1-3-20-16 shall enter into a formal agreement with the City; and

WHEREAS, the Parties desire to enter into this Agreement to encourage: (a) downtown revitalization; (b) expansion and strengthening of the downtown dining landscape; and (c) riverfront development; and

WHEREAS, the Applicant will be investing in the development and construction of a dining establishment within the boundaries of the municipal riverfront development area;

NOW, THEREFORE, for and in consideration of the mutual considerations hereinafter set forth, the parties hereto agree as follows:

1. **Purpose of the Agreement.** The purpose of this Agreement is to establish the mutually contemplated and agreed upon requirements for initial and annual renewal recommendations for the Applicant's Riverfront liquor license.
2. **Definitions.**
 - a. The "Application" means the Downtown Dining District Liquor License Application, dated April 21, 2017, a copy of which is attached hereto as Exhibit A and incorporated hereby by reference.
 - b. "Permit" means the Applicant/Permit Holder's type 221-3 Riverfront Liquor License as issued by the Indiana Alcohol and Tobacco Commission.
 - c. "Effective Date" means the date on which the second of the Parties executes the Agreement.
3. **Term of the Agreement.** This Agreement shall commence on the Effective Date and shall continue until such time as the permit is lost, revoked, or not renewed.
4. **Responsibilities of Applicant.** Applicant has made certain representations and covenants to the City in the Application regarding the planned Permit premises, including the amount of private sector investment, and the type of establishment planned. Applicant represents and covenants that it will use its best efforts to continuously maintain in all material respects the following Eligibility Requirements and District Requirements:

Eligibility criteria:

- a. The focus of operation will be on a dining, entertainment or cultural experience rather than solely an alcohol consumption experience.
- b. The establishment is not and will not convert to be a private club, nightclub, or adult entertainment venue.

District Requirements:

- a. Establishments receiving permits within the Downtown Dining District are required to achieve within thirty-six (36) calendar months following the date on which applicant's business is open to the public, and thereafter maintain, an annual ratio of non-liquor sales to total sales of at least 50%.
- b. The licensed establishment will be actively open for business and fully operational a minimum of 300 (three hundred) days per year, and a minimum of 5 (five) nights per week.
- c. The Applicant shall comply with all local and ATC application and renewal procedures.
- d. The Applicant shall contribute to the Economic Improvement District for the Downtown Area of the City of Fort Wayne ("Downtown Improvement District"), annual dues in the amount of Two Thousand Five Hundred Dollars (\$2500.00).

5. Reporting Obligations of Applicant.

- a. The Applicant shall submit to the City documentation of compliance including the following reports:
 - i. A revenue report indicating the total annual non-liquor and liquor sales.
 - ii. A report indicating the total number of days open during the last year, along with a schedule of current operating hours.
 - iii. Proof of payment to the Downtown Improvement District for the annual Downtown Dining Association dues.
- b. Annual compliance reports will be submitted to the City during the term of the agreement, no later than 90 days prior to the annual renewal date of the establishment's permit.
- c. Applicant agrees to provide supplemental and/or clarifying information and data which the City may request in writing after reviewing the information submitted by Applicant pursuant to sub paragraph a. of this Section 5, within fifteen (15) days following City's request.

Applicant shall certify under oath the accuracy of all information submitted to the City under this Section 5.

6. Non-Compliance: If the City determines in its sole discretion that the Applicant is not in compliance with the requirements of this Agreement in any material respect, the City may, following thirty (30) days written notice to Applicant which shall provide the Applicant an opportunity to explain the reasons for the noncompliance and the opportunity to cure, take any action the City deems appropriate, including the following steps:

- a. Termination of this Agreement

- b. Notice to the Indiana Alcohol and Tobacco Commission of non-compliance with the agreement, including a request for non-renewal of the Applicant's permit.
- c. A copy of the notice in Section 6 item b., above provided to the local ATC board and Excise office, requesting a recommendation to the state ATC office for non-renewal of the Applicant's permit.

Applicant hereby forever releases the City and the Downtown Improvement District, their directors, officers, employees, agents, representatives, departments and divisions, from any and all claims, demands, liabilities or causes of action of every kind and nature, whether now existing or hereafter arising, both known and unknown, which Applicant has or may have against the City or the Downtown Improvement District which is in any manner related to the termination of this Agreement by the City or the Applicant for any reason.

7. **Notice to Parties.** Any notice, statement or other communications sent to the City or the Applicant shall be sent to the following addresses, unless otherwise specifically advised.

To the City of Fort Wayne:

Carol Helton – City of Fort Wayne
200 East Berry St., Suite 430
Fort Wayne, IN 46802
PH: (260) 427-1124
e-mail: Carol.Helton@cityoffortwayne.org

To NAWA, LLC:

Dujsila Chaisuthi, Manager
126 W. Columbia Street, Suite 320
Fort Wayne, IN 46802
PH: (260) 416-4678
e-mail: prill_c@hotmail.com

8. **Authority to Bind.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Applicant represents that he/she has been duly authorized by the Applicant to execute this Agreement and to bind the Applicant to each of the representations, covenants, and obligations of Applicant contained herein.

9. **Amendment of this Agreement.** This Agreement or any portion hereof may only be amended by a writing executed by the Parties.

10. **Assignability.** The Applicant shall not assign this Agreement or any portion thereof without the prior written consent of the City, which consent may be withheld at the City's discretion.

11. **Remedies not impaired.** No delay or omission of any party in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

12. **Compliance with Laws.** The Applicant agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances and all provisions required thereby, whether now existing or hereafter enacted, which are included and incorporated by reference herein, in Applicant's performance under this Agreement.

Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, Applicant shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of such person's race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

The Applicant affirms under the penalties of perjury that the Applicant does not knowingly employ an unauthorized alien. The Applicant affirms under the penalties of perjury that the Applicant has enrolled and is participating in the E-Verify program as defined in IC 22-5-1.7-3. The Applicant agrees to provide documentation to the State of Indiana that the Applicant has enrolled and is participating in the E-Verify program. Additionally, the Applicant is not required to participate if the Applicant is self-employed and does not employ any employees. The City may terminate for default if the Applicant fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

13. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules. Suit, if any, shall be brought in a court of applicable jurisdiction situated in Allen County, Indiana.

14. **Entire Agreement.** This Agreement, entered into of even date herewith, and any attachments hereto, contain the entire understanding of the Parties and this Agreement supersedes all prior agreements and understandings, oral or written, with respect to the subject matter enclosed herein and contemplated hereby.

15. **Indemnification and Release.** The Applicant shall indemnify, defend and hold harmless the City and the Downtown Improvement District and their divisions, department, directors, officers, employees, representatives and agents (collectively, the "Indemnitees") from and against all claims, demands, charges, lawsuits, costs and expenses (including legal costs and attorney's fees) caused by or associated with any act or omission of the Applicant and/or any of its contractors, subcontractors, vendors, suppliers, employees, representatives, licensees, invitees and/or authorized agents in connection with (a) the design, development, construction, operation, management and control of the Facility and (b) any and all activities of every kind and nature which occur in, on or about the Facility. Neither the City nor the Downtown Improvement District shall provide any indemnification hereunder to the Applicant. The Applicant hereby forever releases Indemnitees and each of them from any and all claims, demands

and charges, of every kind and nature, both known and unknown, whether now existing or hereafter arising, that Applicant has or may at any time in the future have against Indemnitees, or any of them, under this Agreement. In no event shall the City or the Downtown Improvement District be liable for any direct, indirect, special, incidental, consequential or punitive damages, costs or expenses arising from any act or omission to act by any party relating in any manner to this Agreement, the Application "as amended" or the activities described herein or therein or contemplated hereby or thereby. The covenants contained in this Section 18 shall survive the expiration or termination of the Agreement for any reason.

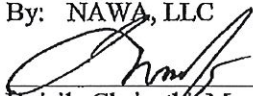
16. **Severability**. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the dates entered below.

The City of Fort Wayne

By: _____ Date: _____, 20____
Mayor

NAWA, LLC

By: NAWA, LLC


Dujsila Chaisutlu, Manager

Date: 5/4, 2017



COMMUNITY DEVELOPMENT

Thomas C. Henry, Mayor

Engage • Innovate • Perform

City of Fort Wayne
Community Development
200 East Berry Street, Suite 320
Fort Wayne IN 46802
260.427.1127

www.cityoffortwayne.org

MEMO

To: Common Council Members

From: Sharon Feasel – Manager-Downtown, Community Development Division

Date: May 9, 2017

Re: Downtown Dining District Liquor License- NAWA, LLC

The purpose of this Resolution is to request approval of the application and agreement from NAWA, LLC requesting a special Riverfront liquor license (Type 221-3) and provide the local recommendation for approval as required by the Indiana Alcohol and Tobacco Commission.

The application and agreement meet the criteria approved in Resolution R-105-15

Thank you for your consideration and if you have any questions please contact me at 427-2107.

An Equal Opportunity Employer

A faint, stylized illustration of a city skyline with various buildings and trees is located at the bottom of the page.