

BILL NO. R-18-02-26

RESOLUTION - R_____

A RESOLUTION APPROVING THE MUNICIPAL
RIVERFRONT DEVELOPMENT DOWNTOWN DINING
DISTRICT LIQUOR LICENSE

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

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

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

WHEREAS, Proximo, LLC has submitted an application for a Downtown Dining District Liquor License, a copy of which is attached hereto as Appendix 1 and is prepared to enter into a formal written agreement with the City of Fort Wayne, a copy of which is attached hereto as Appendix 2; and

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

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

Section1. That the City of Fort Wayne Common Council hereby approves the "Downtown Dining District" application and agreement between

1 The City of Fort Wayne and Proximo, LLC, and hereby provides the required
2 local recommendation to the Indiana Alcohol and Tobacco Commission for a
3 221-3 Riverfront license to be issued to Proximo, LLC; and

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5 after its passage and approval by the Mayor, unless rescinded by resolution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

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8 _____
Council Member

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10 Approved as to Form and Legality:

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12 _____
Carol Helton, City Attorney
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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.fwcommunitydevelopment.org

Downtown Dining District Liquor License Application

Business Entity Making this Application: Proximo LLC

Applicant's Name: James Khan

Applicant's Address: 898 Harrison St. City: Fort Wayne State: IN Zip: 46802

Applicant's Phone (daytime): (260) 422-0080 Email: james@bakerstreetfortwayne.com

1. Please outline any plans you have to improve the facility in which you will operate
2. The expected timetable for work and business commencement
3. Explain the overall concept and unique features of the proposed establishment.
4. Describe the level of control and participation the owners will have in the day, to, day operation of the business.
5. Explain how your operation plans to focus on a dining, entertainment or cultural experience rather than an alcohol consumption experience.
6. Describe how your venue/operation will draw people to Downtown Fort Wayne.
7. Provide information regarding the proposed permit holder's related experience

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

An Equal Opportunity Employer



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: _____

Date: _____

Title: _____

1/3/18
President

To whom it may concern:

This letter is in reference to the Downtown Dining District Liquor License Application for Proximo, LLC. Proximo will be a fine-dining restaurant featuring a Latin-themed cuisine which is planned to be open 7 days per week for breakfast, lunch, and dinner.

Construction Plans

Current plans for construction are to remodel two existing separate spaces by combining them to create a larger more guest friendly restaurant to service the community needs of downtown Fort Wayne. We have budgeted just under \$1,000,000 to cover the costs of construction, equipment and training. Our current expectations are for construction to begin towards the middle of February and be completed by early April.

Proximo Concept

Proximo will be Fort Wayne's first fine-dining Latin restaurant. Located in the center of downtown Fort Wayne along the Harrison Corridor, Proximo will be the premier destination for local fine-dining cuisine providing food and beverage service 18 hours a day. One of the most unique business aspects of Proximo is the simple fact that it will not only be open for lunch and dinner, but breakfast as well. A sit-down breakfast concept has been missing from the downtown dining scene since the closure of Bill's Palace in 2006 to make way for the development of Harrison Square. It doesn't take a large survey of the downtown business community to discover the demand for a breakfast meeting location downtown. While two other restaurants offer breakfast, neither one could be properly classified as having an upscale atmosphere.

Additional business aspects that will distinguish Proximo are centered on cuisine and service. Firstly, Proximo will feature a service staff committed to each and every desire of the guests who are frequenting the restaurant. This isn't unique to Fort Wayne or downtown, only because the ownership group of Proximo have other restaurants in town (and downtown) in which they have instilled the same set of values. A review of any commonly used rating standards (OpenTable, Yelp, TripAdvisor, Google reviews) for BakerStreet Steakhouse or The Hoppy Gnome will quickly reveal a consistent theme of great service provided by concepts owned by Proximo's common ownership partners. Not only do the restaurants which are owned *and operated* by Proximo's owners rank amongst the best in the city, BakerStreet is rated the best overall restaurant in the state of Indiana according to 2185 reviews on OpenTable, higher even then the nationally renown St. Elmo's Steakhouse in Indianapolis (BakerStreet is rated 4.8/5 while St. Elmo's is 4.7/5). Additionally, Proximo will offer a culinary selection unique to all of Fort Wayne, much less to downtown Fort Wayne. While there are a plethora of latin themed restaurants in and around Fort Wayne, none of them have elevated their offerings beyond a "Tex-Mex" offering of burritos, enchiladas, and tacos. This in itself is going to help contribute to driving dining traffic to downtown Fort Wayne. The exact purpose of the Dining District Liquor License is to cultivate private investment into unique culinary concepts within a concentrated area. We believe Proximo hit every individual eligibility requirement. Up to and including a proven track record of compliance and accountability to local and state laws governing liquor sales.

Owner Experience and Participation

In addition to meeting the eligibility requirement, Proximo will be backed by a decade worth of local ownership experience and "know-how". A partner within the ownership team will be onsite participating in the operations of the restaurant every single day. The partners that are onsite will be supported through investment in a full management staff around them to ensure standards and procedures are consistently met. In addition to the support within Proximo, the management staff of Proximo will be bolstered through support from throughout our company of restaurants. While each entity operates autonomously from the others, they also provide support for each other. Some examples may include managerial coaching and support from a team of four (two of which are also owners) individuals who are specifically tasked with providing help to all of our entities or counter-parts coming together across restaurants to brainstorm the solution to a problem within one of the restaurants.

Ultimately, our experience will help cultivate a culture within Proximo that mirrors the culture of The Hoppy Gnome and BakerStreet Steakhouse. We have a locally proven track record of success. Which we believe is mainly a result, well mainly a result of God, but through our continual desire to not rest on our past accomplishments but instead work each day to again prove our commitment to our guests.

Cultural experience vs alcohol consumption experience

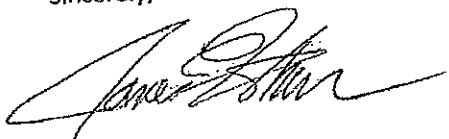
A common thought process in the hospitality industry is to try to sell more alcohol. It is no secret that there is a higher profit margin generated from alcohol and that it costs much less labor to produce an end product for the guest. However, the adage that "too much of a good thing is bad for you" is truly applicable to that thought process. Without a proper balance in alcohol sales to food sales, not only will a restaurant risk the livelihood of their business through a lack of revenue, it will also risk its livelihood through a more dangerous and contentious litigation scene. Simply put, the more inebriated you allow your patrons to get, the more likely they will cause harm to themselves or within the community. Our restaurants strive to maintain a balance of food to alcohol sold of 75% to 25%. Ethically, this allows us to know we are being good stewards to the responsibility tasked to us of allowing guests to enjoy themselves without putting the community as a whole at risk. And financially, this enables us to stay in business. The Golden is a good example of a restaurant that was dangerously close to operating more as a bar. As a result of a lack of food sales (Golden's mixture was approximately 60% food 40% liquor) The Golden faced lower revenues and thus lower cash flow. For example, while alcohol may have a higher profit margin, it almost always has a lower price point. Which would be more successful, a business with 40% COGS or one with 20% COGS. The answer is in the revenue. I, as I am certain would everyone, would rather have 40% of \$750,000 vs 20% of \$250,000. A lower cost doesn't always mean more profit.

Our dedication to ensuring our guests are not overserved can be found in a review of our liquor license track record. In our ten years of operations across what is now three different concepts all with unique liquor permits, we have never once had a citation. Our perfect record is something we value highly and strive to maintain through systematic procedures that are implemented throughout our operations. This devotion to standards can be found within every single aspect of our business, it is the backbone that drives our success.

Conclusion

It is my hope that this brief synopsis provides at least a glimpse into the type of investment the city would be making by assisting Proximo in obtaining a Liquor License to operate within the space formerly occupied by The Golden. I am available for further questions or comments or concerns at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Khan', with a stylized, flowing script.

James Khan

President

BakerStreet Steakhouse / The Hoppy Gnome / Gnometown Brewing Co. / Proximo



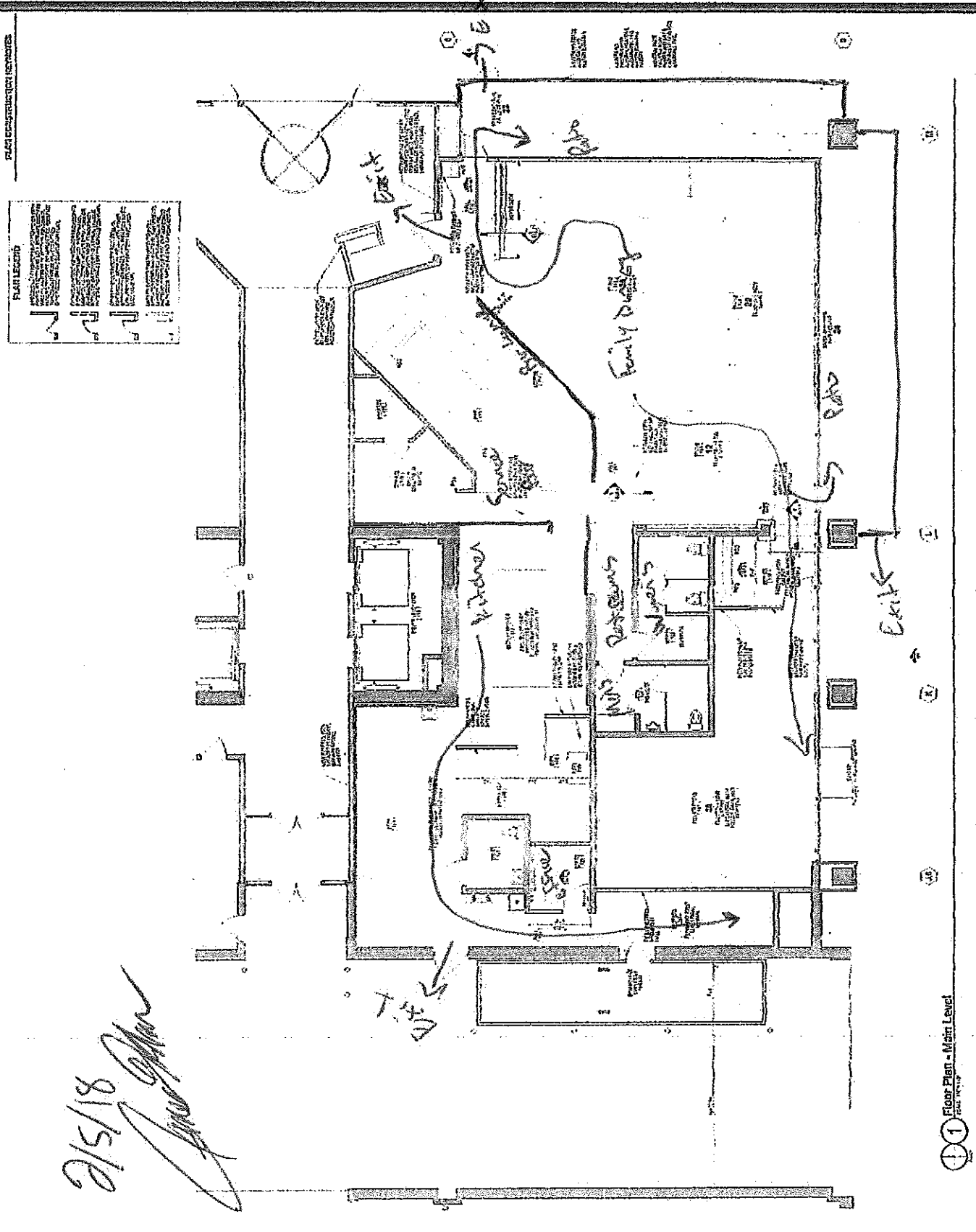
2017-2018
11/20/17
11/20/17

PROXIMO
898 Harrison Street
Fort Wayne, Indiana

DATE: 11/20/17
PROJECT: 2017-0175

Floor Plan - Main Level

A1.1



8/15/18
[Signature]

1 Floor Plan - Main Level

**CITY OF FORT WAYNE
AGREEMENT
WITH Proximo, 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 Proximo, LLC ("Applicant") (the City and Applicant being collectively referred to herein as the "Parties"), regarding the establishment proposed at 898 Harrison St., 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 _____-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 January 13, 2018, a copy of which is attached hereto as Exhibit 1 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:

City Attorney – City of Fort Wayne
200 East Berry St., Suite 430
Fort Wayne, IN 46802
PH:
e-mail:

To James Khan:

203 E. Berry St., Suite 702a

Fort Wayne, IN 46802

PH: (260) 422-0080

e-mail: james@bakerstreetfortwayne.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

A handwritten signature in dark ink, appearing to read "James Khan", is written over a horizontal line.

By: James Khan Date: January 3, 2018
President



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

www.cityoffortwayne.org

COMMUNITY DEVELOPMENT

Thomas C. Henry, Mayor

MEMO

To: Common Council Members

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

Date: February 27, 2018

Re: Downtown Dining District Liquor License Applications for

Proximo LLC, Caliente Cuban Café and ZZX, LLC d/b/a Ruth's Chris Steak House

The purpose of these Resolutions is to request approval of the applications and agreements from Proximo LLC, Caliente Cuban Café and ZZX, LLC d/b/a Ruth's Chris Steak House who are 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.