

**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, Perry St Markets To Go, LLC has applied for a Downtown Dining District Liquor License, a copy of which is attached hereto as Exhibit 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 Exhibit 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 The City of Fort Wayne and Perry St Markets To Go, and hereby provides the required local recommendation to the Indiana Alcohol and Tobacco Commission for a 221-3 Riverfront license to be issued to Perry St Markets To Go, 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 That this resolution shall be in full force and effect from and after its passage and approval by the Mayor, unless rescinded by resolution by this legislative body.

Council Member

APPROVED as to form and legality

Malak Heiny, City Attorney



COMMUNITY DEVELOPMENT

Thomas C. Henry, Mayor

Exhibit 1

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: Ecds. Snack + Bar

Applicant's Name: BRIAN HENCH

Applicant's Address: 12628 COLDWATER RD City: FT WAYNE State: IN Zip: 46845

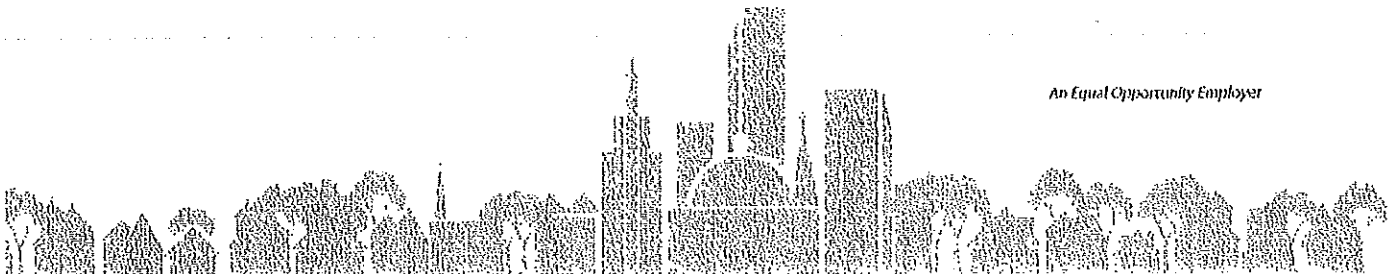
Applicant's Phone (daytime): 260 267 2106 Email: brian@ecds-market.com

Please include a thorough narrative for each of the items below:

1. Provide description (including renderings) of 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.

An Equal Opportunity Employer



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:

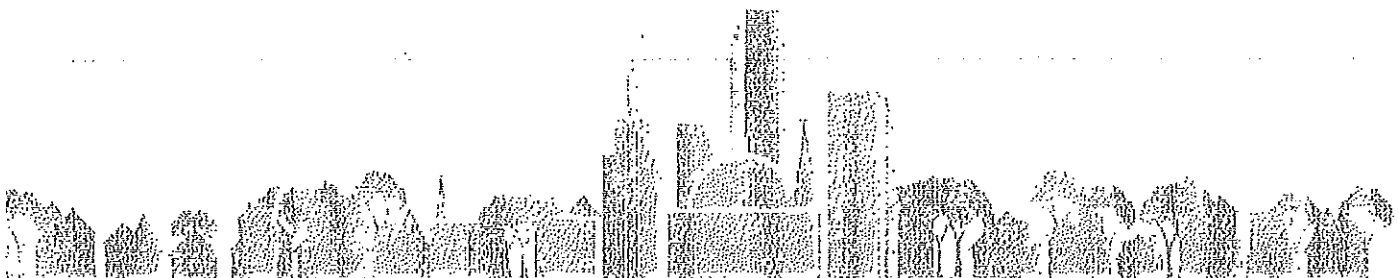
In addition to complying with all building, health, zoning laws, ordinances and all rules and regulations of the Indiana State Alcohol and Tobacco Commission (ATC), and local, state, and federal government's applicants must also meet the following local requirements annually in order to be eligible to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

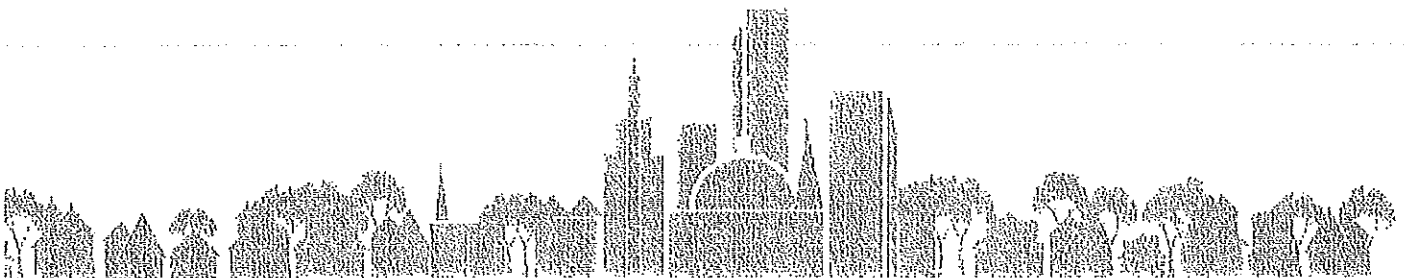
The above criteria will be evaluated on the following:

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

Attachments to include:

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

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 and 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.

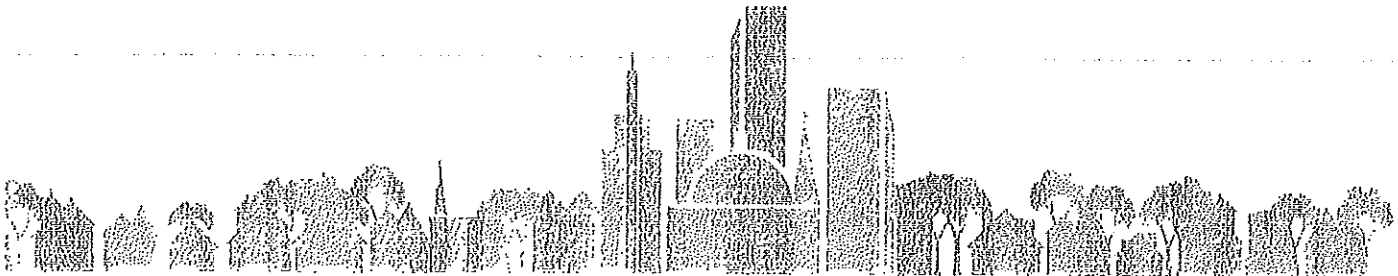
I hereby release and discharge the City of Fort Wayne, together with their respective subsidiaries, affiliates, employees, agents, directors and other related parties, from any and all rights and obligations, duties, claims, debts, actions, causes of action or liabilities arising out of, or relating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

Applicant's Signature: _____

Date: 10/25/2022

Printed Name: Brian Howell

Title: AUTHORIZED MEMBER



**CITY OF FORT WAYNE
AGREEMENT
WITH PERRY ST MARKETS TO GO, 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 PERRY ST MARKETS TO GO, LLC ("Applicant") (the City and Applicant being collectively referred to herein as the "Parties"), regarding the establishment proposed at 202 W SUPERIOR #102, 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-106-15 (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 6/26/2022, 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 BRIAN HENCH :

c/o TEDS BEERHALL
12628 COLDWATER RD
Fort Wayne, IN 46802 46845
PH: (260) 267 2106
e-mail: BRIAN @ TEDS-MARKET.COM

W/ COPY TO: MARK BAINS
c/o BARRETT McNAGHY
215 E BERRY ST
FT WAYNE IN 46802

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

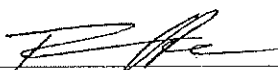
and charges, of every kind and nature, both known and unknown, whether now existing or hereafter arising, that Applicant has or may at any time in the future have against Indemnitees, or any of them, under this Agreement. In no event shall the City or the Downtown Improvement District be liable for any 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

By:  Date: JAN 31, 2023
AUTHORIZED MEMBER



COMMUNITY DEVELOPMENT

Thomas C. Henry, Mayor

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

MEMO

To: Common Council Members

From: Sharon Feasel – Development Finance Administrator,
Community Development Division

www.cityoffortwayne.org

Date: February 14, 2023

Re: Riverfront Liquor License for Teds Snack + Bar

Mr. Hench has been selected by the Parks and Recreation Department to lease space at Promenade Park. He has applied for a recommendation from the City to the Indiana Alcohol and Tobacco Commission (ATC) for a Riverfront type liquor license as provided in state legislation and locally through the designated Municipal Riverfront District. The Resolution submitted today is seeking approval to send a positive recommendation to the ATC for issuance of a Riverfront type license for the new establishment to be located at Promenade Park.

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

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February 7, 2023

Sharon Feasel
Executive Director
Fort Wayne New Markets Revitalization Fund, LLC
200 E. Berry Street
Fort Wayne, IN 46802

Dear Ms. Feasel,

The Fort Wayne Parks and Recreation Department would like to provide our support for a Riverfront Excise application to Ted's Snack + Bar located within Promenade Park. This expanded excise space for a 3-way permit will allow for a better food and beverage service within the Park Foundation Pavilion. Currently alcohol served in the café space cannot be carried into the pavilion. This expanded footprint will allow for this, and provide more cost-effective service to visitors within the park.

Fort Wayne Parks and Recreation Department received two bids for RFP #8169544 for the café space and Teds Snack +Bar was selected for a variety of reasons. One of the main reasons was they were able to demonstrate the ability to produce a variety of programs and event at their Coldwater location, and in their proposal, they wanted to provide similar events at Promenade Park. These events would provide new and unique experiences to visitors to Promenade Park. It also demonstrated their ability to provide a strong business model for Promenade Park for many years.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve McDaniel", with a stylized flourish at the end.

Steve McDaniel
Director
Fort Wayne Parks and Recreation Department

Cc: Brian Hensch
Chuck Reddinger
File

12628 Coldwater Rd
Fort Wayne, IN 46845



888.260.0351
teds-market.com

October 26, 2022

To Whom It May Concern;

As part of our plan to expand our business footprint within the Fort Wayne Community, we are excited to be the next tenant of the cafe space at Promenade Park! We believe that our history of adapting to customer needs and finding ways to activate our outdoor spaces will be key to the success of our business in the space at Promenade Park.

We are seeking a Downtown Dining District Liquor License as a way to both serve the needs of our day to day customers within the cafe and adjacent beer garden, but also to allow us to more seamlessly integrate the Promenade Pavillion space for large events, live entertainment, or as otherwise needed by the city parks department, or those who rent the space for private events through the parks department.

The concept for the space is more relaxed than our main business, in line with the needs of the park. We are renaming the space **teds Snack + Bar**, which we believe will align with what customers want in that space. We intend to serve a variety of quick meal options, as well as "bar" snacks that should cater those needing a quick bite, both those visiting the park as well as the growing area business and residential scene. We will also feature a variety of cold treats for the families, such as smoothies, shave ice treats, and ice cream. On the opposite side of the space will be our small bar area, featuring a limited selection of beer, wine, and mixed drinks.

The current arrangement of having one space with a beer and wine license and the other space using a catering license to offer beer, wine, and liquor has created barriers, confusion with guests, and ultimately added unnecessary additional costs to the city and Parks Department. By permitting us with a Downtown Dining District Liquor License, we will be able to blend the spaces more seamlessly, saving cost, headache, and confusion, and ultimately bringing a better experience for guests of both spaces.

Based on taking possession on Jan 1, 2023, our plan is to be operational by mid-April, in advance of the summer season. To prepare the space, we will need to make some cosmetic changes to the space, making the food prep and bar areas more efficient, and creating a space for a streamlined menu, while still adhering to the limited partition requirements for the bar area. (Please see floor plan and sketch, attached).

12628 Coldwater Rd
Fort Wayne, IN 46845



888.260.0351
teds-market.com

As owner, I will be intimately involved in seeing the concept get started. Ongoing, day-to-day operations will involve a site manager and counter server/bartender. My current GM has experience with the space, and is aware of some of the customer requests and limitations with the space. Weather and business permitting, we hope to add outdoor servers for the patio spaces and beer garden during busy times. Based on customer needs, we intend to be open 6 days a week in summer and 5 days in the winter, for lunch and dinner.

We will also be the primary beverage caterer for events at the Promenade Park Pavillion. As such, we will cater a wide range of events, from private parties to city or parks sponsored gatherings. In addition, during major Promenade Park events, such as live music or riverfront races, we plan to set up remote locations to serve limited food and beverage options. These will depend on the activity and weather, but we are looking into such options as a remote shave ice tent for hot weather activities.

At our current location, we have 7+ years of experience in hosting large scale events, live music, and creating engaging outdoor spaces. Combining this experience with the opportunity to more seamlessly integrate our service with events hosted at Promenade Park, will create a positive experience for guests, and will ultimately draw even more people to the park / riverfront to spend time.

We thank you for your consideration.

Best Regards,

Brian Hench

Owner
teds market
brian@teds-market.com

[enclosures]