

CITY COUNCIL MEETING MINUTES
CITY OF FOND DU LAC, WISCONSIN
Legislative Chambers
160 S Macy Street

August 9, 2017
6:00 PM

CALL TO ORDER

Roll Call

Present

Catherine Block
Lee Ann Lorrigan
Greg Giles
Karyn Merkel
Brian Kolstad
Kay Miller
Derek TerBeest

Absent

None

Administrative Staff

Joe Moore, City Manager
Dyann Benson, Dir of Comm Dev
Tracy Salter, Dir of Admin
Deb Hoffmann, City Attorney
Jordan Skiff, Dir of Public Works
Paul De Vries, City Engineer
Autumn Fisher, WCTS Operations Mgr
Pete Hartz, Water Operations Mgr
John Redmond, Park Superintendent
Richard Flynn, Operations Director
Ray Dilts, Fleet Manager
Jon Mark Bolthouse, Library Director
Bill Lamb, Chief of Police
Peter O'Leary, Fire Chief
Cathy Loomans, Senior Center Director

Declaration a Quorum Is Present

President Merkel declared a quorum present.

Pledge of Allegiance

The Pledge of Allegiance was recited.

Silent Reflection

A moment of silent reflection was observed.

A Proclamation Recognizing September As Senior Center Month

President Merkel issued a proclamation designating September as Senior Center Month and encouraged all citizens to recognize the special contributions of the Fond du Lac Senior Center, the Friends of the Fond du Lac Senior Center, and the staff and volunteers who work to enhance the well-being of the seniors in our community.

CONSENT AGENDA

July 26, 2017 Regular Council Minutes

List Of Claims Dated August 2, 2017

A Motion was made by Greg Giles to approve the Consent Agenda and seconded by Catherine Block, and the motion was **Passed**.
Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

INPUT

Audience Comments

Spoke in support of Downtown Fond du Lac Partnership Update

Craig Molitor, 295 Woodward Ave, Fond du Lac, WI

Spoke to thank volunteers of the Greenway Arboretum

Laura DeGolier, 289 14th St, Fond du Lac, WI

Downtown Fond du Lac Partnership Update

Amy Hansen, Executive Director of Downtown Fond du Lac Partnership and DFP Board Member Nicole Wiese, presented an update. Topics included a recap of improvements made over the last few years and upcoming renovations. Ms. Hansen also explained the implementation strategy of the recommendations set forth by the Downtown Exploratory Committee, i.e. targeted redevelopment, new residential planning, improvement of the Arts & Entertainment District, and downtown landscaping and streetscaping. Other programs such as the Storefront Beautification Program, Residential Feasibility Program, and Retail & Restaurant Expansion Program were highlighted.

Public Works 2018 Budget Presentation

Director of Public Works, Jordan Skiff, presented the proposed 2018 Public Works Budget. Mr. Skiff provided a high level review of the proposed 2018 projects as well as staffing plans and recent accomplishments which included the Fond du Lac Loop additions, the Lead Service Replacement plan, Neighborhood Drainage Program, and the Emerald Ash Borer Crisis Management Plan. Upcoming 2018 budget items were also highlighted, i.e. the Annual Clearwater Program, upcoming street construction, Lakeside Park improvements, and

Wastewater Treatment & Resource Recovery Facility initiatives. Mr. Skiff also touched on 2019 and 2020 proposed budget items.

ACTIONS

Permit To Sell Fermented Malt Beverages On Park Property

A Motion was made by Derek TerBeest to approve a permit to sell fermented malt beverages on park property for The Labor Day Celebration on September 4th, 2017 at Lakeside Park Oven Island and seconded by Brian Kolstad, and the motion was **Passed**.
Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Class "B" Fermented Malt & "Class B" Intoxicating Liquor License

A Motion was made by Kay Miller to approve a Class "B" Fermented Malt & "Class B" Intoxicating Liquor License for Pump N Pantry at 329 W Pioneer Road and seconded by Greg Giles, and the motion was **Passed**.
Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Ordinance No. 3637

2017-080

A Motion was made by Brian Kolstad to approve Ordinance 3637 amending Chapter 630, Vehicles and Traffic of the Code of the City of Fond du Lac to add Camelot Drive as a through street and add controlled intersections to the areas of Police Memorial Drive, Knights Drive, and Mihill Avenue and seconded by Kay Miller, and the motion was **Passed**.
Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Resolution No. 8693

2017-081

A Motion was made by Brian Kolstad to approve Resolution 8693 authorizing a Tax Incremental District Development Agreement with Hotel Retlaw, LLC and Midwest Hotel Finance Corporation (MHFC) for the redevelopment of The Retlaw Hotel and seconded by Catherine Block, and the motion was **Passed**.
Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

ADJOURN

A Motion was made by Kay Miller to adjourn at 7:18 PM and seconded

by Derek TerBeest, and the motion was **Passed.**

Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Margaret Hefter

City Clerk

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: A Proclamation Recognizing September As Senior Center Month

Subject: A Proclamation Recognizing September As Senior Center Month

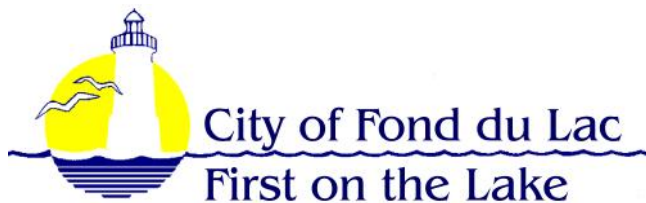
Initiator:

Recommendation:

ATTACHMENTS:

File Name

[Senior Center Month.pdf](#)



Proclamation

Whereas, older Americans are significant members of our society, investing their wisdom and experience to help enrich and better the lives of younger generations; and

Whereas, as encouraged and supported by the Older Americans Act, the Fond du Lac Senior Center has acted as a catalyst for mobilizing the creativity, energy, vitality, and commitment of the older residents of Fond du Lac; and

Whereas, the Fond du Lac Senior Center provides opportunities for older adults to stay active and healthy, continue learning, share experiences and stay connected with friends and community members by providing health and wellness programs, nutrition services, educational and recreational activities, arts and humanities programs, travel, and fitness programs;

Now, Therefore, I, Karyn Merkel, President of the Fond du Lac City Council, by my signature affixed, on behalf of our City and its residents, do hereby proclaim September as Senior Center Month and encourage all citizens to recognize the special contributions of the Fond du Lac Senior Center participants and the special efforts of the Friends of the Fond du Lac Senior Center and the staff and many volunteers who work every day to enhance the well-being of people aged 50 and over in our community.

*Karyn Merkel, President
Fond du Lac City Council*

Dated: August 2017

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: July 26, 2017 Regular Council Minutes

Subject: July 26, 2017 Regular Council Minutes

Initiator:

Recommendation:

ATTACHMENTS:

File Name

[Minutes 2017 7 26 Meeting\(357\).pdf](#)

CITY COUNCIL MEETING MINUTES
CITY OF FOND DU LAC, WISCONSIN
Legislative Chambers
160 S Macy Street

July 26, 2017
6:00 PM

CALL TO ORDER

Roll Call

Present

Catherine Block
Lee Ann Lorrigan (via phone)
Greg Giles
Karyn Merkel
Brian Kolstad
Kay Miller
Derek TerBeest

Absent

None

Administrative Staff

Joe Moore, City Manager
Dyann Benson, Dir of Community Development
Tracy Salter, Dir of Administration
Deb Hoffman, City Attorney
Alexandra Klimko, Asst City Attorney
Jon Mark Bolthouse, Library Director
Bill Lamb, Chief of Police
Steve Klein, Asst Police Chief, Operations
Steven Thiry, Asst Police Chief, Administration
James Knowles, Asst Fire Chief, Training

Declaration a Quorum Is Present

President Merkel declared a quorum present.

Pledge of Allegiance

The Pledge of Allegiance was recited.

Silent Reflection

A moment of silent reflection was observed.

CONSENT AGENDA

July 12, 2017 Regular Council Minutes

July 12, 2017 Closed Session Minutes

List Of Claims Dated July 19, 2017

A Motion was made by Greg Giles to approve the Consent Agenda and seconded by Brian Kolstad, and the motion was **Passed**.

Ayes: Block, Giles, Kolstad, Merkel, Miller, TerBeest

Absent: Lorrigan

INPUT

Audience Comments

No audience comments were made at this meeting.

Police Department 2018 Budget and Building Security Update

Chief of Police, Bill Lamb, provided an overview of the Police Department's 2018 Budget which included an activity summary and crime stats, department accomplishments, in-house and community training programs, new technology, personnel and policy updates, district policy initiatives, department accreditation, as well as building and equipment upgrade needs.

ACTIONS

Change Of Agent "Class B" Intoxicating Liquor And Class "B" Fermented Malt Beverage

A Motion was made by Kay Miller to approve an Agent Change for the "Class B" Intoxicating Liquor and Class "B" Fermented Malt Beverage License for 2.0 Ale House at 65 N Main Street and seconded by Derek TerBeest, and the motion was **Passed**.

Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Resolution No. 8687

2017-003

A Motion was made by Catherine Block to approve Resolution No. 8687 making appointments to the Redevelopment Authority, Fond du Lac Public Library Board, and Art Board and seconded by Greg Giles, and the motion was **Passed**.

Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Resolution No. 8688

2017-075

A Motion was made by Greg Giles to approve Resolution No. 8688 granting a Special Use Permit to Marian University at 45 S National Avenue for renovation and expansion of The Science Building and seconded by Kay Miller, and the motion was **Passed**.

Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Resolution No. 8689

2017-076

A Motion was made by Brian Kolstad to approve Resolution No. 8689 approving The Fond du Lac Bike Loop Landscape Master Plan and seconded by Greg Giles, and the motion was **Passed.**

Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Resolution No. 8690

2017-077

A Motion was made by Kay Miller to approve Resolution No. 8690 authorizing the use of public streets and waiving the prohibition against possession of alcoholic beverages on public ways for The Outdoor Concert Series at The Thelma on July 27, August 3, August 10, August 17, and August 24, 2017 and seconded by Brian Kolstad, and the motion was **Passed.**

Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

ADJOURN

A Motion was made by Brian Kolstad to to adjourn at 6:38 PM and seconded by Catherine Block, and the motion was **Passed.**

Ayes: Block, Giles, Kolstad, Lorrigan, Merkel, Miller, TerBeest

Margaret Hefter
City Clerk

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: List Of Claims Dated August 2, 2017

Subject: List Of Claims Dated August 2, 2017

Initiator:

Recommendation:

ATTACHMENTS:

File Name

[List of Claims 8-2-17 \(2\).pdf](#)

CITY OF FOND DU LAC - Memorandum

Department of Administration

Date: August 2, 2017

To: City Council

From: Tracy Salter, Director of Administration

Re: List of Claims

The list of claims for goods and services for the payment periods July 15, 2017 through July 28, 2017 for all funds total \$1,299,337.22. Wisconsin statute 66.0609 (2) requires the comptroller to file, at least monthly with the City Council, a list of approved claims paid.

Suggested Motion: Receive and File

CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN

Title: Audience Comments

Subject:

Initiator:

Recommendation:

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Downtown Fond du Lac Partnership Update

Subject: Presented By: Amy Hansen, Executive Director

Initiator:

Recommendation:

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Public Works 2018 Budget Presentation

Subject: Presented By: Director of Public Works

Initiator:

Recommendation:

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Permit To Sell Fermented Malt Beverages On Park Property

Subject: Entity: Fond du Lac County Labor Council
Event: Labor Day Celebration
Location: Lakeside Park Oven Island
Date: September 4, 2017
Introduction: City Clerk

Initiator:

Recommendation:

ATTACHMENTS:

File Name

[CC M Bev-Park.pdf](#)

[09-04-17 Labor Day Celebration.pdf](#)

CITY OF FOND DU LAC - Memorandum

City Clerk's Office

Date: August 3, 2017

To: City Council

From: Maggie Hefter, City Clerk

Re: Permit to Sell Fermented Malt Beverages on City
Property

City Ordinance § 488-6 (E) requires a special permit be authorized by City Council to allow the sale of Fermented Malt Beverages on Park Property.

The following application is being submitted for your approval:

Entity:	FDL County Labor Council
Event:	Labor Day Celebration
Location:	Lakeside Park Oven Island
Date:	September 4, 2017

Please contact me should you have further questions regarding this special use request.

Thank you.

Application for Temporary Class "B" / "Class B" Retailer's License

See Additional Information on reverse side. Contact the municipal clerk if you have questions.

FEE \$ 10.00 If not filed 15 days prior to event, a \$25
rush fee will be charged, for a total of \$35 due. Application Date: 7-24-2017

☐ Town ☐ Village ☒ City of FOND DU LAC County of FOND DU LAC

The named organization applies for: (check appropriate box(es).)

☒ A Temporary Class "B" license to sell fermented malt beverages at picnics or similar gatherings under s. 125.26(6), Wis. Stats.

☒ A Temporary "Class B" license to sell wine at picnics or similar gatherings under s. 125.51(10), Wis. Stats.

at the premises described below during a special event beginning 4th of September 2017 and ending 4th of September 2017 and agrees to comply with all laws, resolutions, ordinances and regulations (state, federal or local) affecting the sale of fermented malt beverages and/or wine if the license is granted.

1. Organization (check appropriate box) → ☐ Bona fide Club ☐ Church ☐ Lodge/Society
☒ Chamber of Commerce or similar Civic or Trade Organization (organized under Ch. 181)
☐ Veteran's Organization ☐ Fair Association

(a) Name Fond du Lac County Labor Council

(b) Address 50 East Bank Street, Fond du Lac, WI 54935
(Street) ☐ Town ☐ Village ☒ City

(c) Date organized 1957

(d) If corporation, give date of incorporation _____

(e) If the named organization is not required to hold a Wisconsin seller's permit pursuant to s. 77.54 (7m), Wis. Stats., check this box: ☐

(f) Names and addresses of all officers:

President Dave Page, P.O. Box 137 Neeshkore, WI 54960

Vice President Steve Kirchhoff, 226 E Follett Street Fond du Lac, WI 54935

Secretary Jeff Grebe, W2949 Cody Road Mount Calvary, WI 53057

Treasurer Keith Joseph, N6880 Ridge Road Glenbeulah, WI 53023

(g) Name and address of manager or person in charge of affair: Steve Kirchhoff
226 East Follett Street Fond du Lac, WI 54935

2. Location of Premises Where Beer and/or Wine Will Be Sold, Served, Consumed, or Stored, and Areas Where Alcohol Beverage Records Will be Stored:

(a) Street number Lake side Park, Owen Island, Fond du Lac, WI

(b) Lot _____ Block _____

(c) Do premises occupy all or part of building? _____

(d) If part of building, describe fully all premises covered under this application, which floor or floors, or room or rooms, license is to cover: _____

3. Name of Event

(a) List name of the event Labor Day Celebration

(b) Dates of event 4th of September 2017

DECLARATION

The Officer(s) of the organization, individually and together, declare under penalties of law that the information provided in this application is true and correct to the best of their knowledge and belief.

Fond du Lac County Labor Council
(Name of Organization)

X Officer Dave Page (Signature/date) X Officer Jeff Grebe (Signature/date) 07/26/17

Officer Steve Kirchhoff (Signature/date) 7-23-2017 X Officer _____ (Signature/date)

Date Filed with Clerk _____ Date Reported to Council or Board _____

Date Granted by Council _____ License No. 17-5135

OL-1077 R#38019 7/28/17

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Class "B" Fermented Malt & "Class B" Intoxicating Liquor License

Subject: Corporation: Pump N Pantry, Inc.
Agent Name: Robert LeMense
Agent Address: N8055 Rolling Hills Dr, Fond du Lac
d/b/a: Pump N Pantry
Location of Premises: 329 W Pioneer Rd, Fond du Lac
Introduction: City Clerk

Initiator:

Recommendation:

ATTACHMENTS:

File Name

[ALC Memo 0647.pdf](#)

[Pump N Pantry Application - Redacted.pdf](#)

[Agent Form 0648 Redacted.pdf](#)

[Excerpt - ALC 07-31-17.pdf](#)

**Fond du Lac City
Police Department**



Memo

To: City Manager Moore

From: Chief Lamb

Date: 07-27-17

Re: Change of License from Class A Combination to Class B Combination License for Pump and Pantry, 329 W Pioneer Rd.

The applicant, Robert LeMense has requested a change of license from a Class A Combination to a Class B Combination. Mr. LeMense currently operates Pump and Pantry as a convenience store with a restaurant inside the business. The restaurant has in store seating and dining, along with catering.

The proposed license change would allow those dining customers who chose to, to consume alcoholic drinks with their meal in the restaurant area. The applicant stated he does not anticipate any changes to the hours of operation for the business.

The applicant was advised that the City is exploring changing our City Ordinance to prohibit the carry out sale of fermented malt beverages or intoxicating liquors between the hours of 9 p.m. and 8 a.m. for Class B combination license holders. This would be in line with the current ordinance closing hours for Class A license holders.

Mr. LeMense has held a liquor license in the City of Fond du Lac for many years with no significant concerns noted by law enforcement.

Background checks performed on the applicant, both in-house and NCIC/CIB, indicate no criminal history that would preclude him from obtaining the requested license. The Police Department has no objections to the approval of the proposed license request.

ORIGINAL ALCOHOL BEVERAGE RETAIL LICENSE APPLICATION

Submit to municipal clerk.

For the license period beginning 5-11 20 2017
ending 06-30 20 2017

TO THE GOVERNING BODY of the: ☐ Town of }
☐ Village of }
☒ City of }

County of FOND DU LAC Aldermanic Dist. No. _____ (if required by ordinance)

1. The named ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ LIMITED LIABILITY COMPANY
☒ CORPORATION/NONPROFIT ORGANIZATION

hereby makes application for the alcohol beverage license(s) checked above.

2. Name (individual/partners give last name, first, middle; corporations/limited liability companies give registered name): Pump N Pantry, Inc.

An "Auxiliary Questionnaire," Form AT-103, must be completed and attached to this application by each individual applicant, by each member of a partnership, and by each officer, director and agent of a corporation or nonprofit organization, and by each member/manager and agent of a limited liability company. List the name, title, and place of residence of each person.

	Title	Name	Home Address	Post Office & Zip Code
President/Member	<u>Pres.</u>	<u>Robert Lee McMenise</u>	<u>N 8055 Rolling Hills Dr.</u>	<u>FOL 54937</u>
Vice President/Member	<u>VP</u>	<u>Lois Jean McMenise</u>	<u>"</u>	<u>"</u>
Secretary/Member	<u>Sec.</u>	<u>Lois Jean McMenise</u>	<u>"</u>	<u>"</u>
Treasurer/Member	<u>Treas.</u>	<u>Robert Lee McMenise</u>	<u>"</u>	<u>"</u>
Agent		<u>Robert Lee McMenise</u>		

Directors/Managers

3. Trade Name Pump n Pantry Business Phone Number 920 926-0021
4. Address of Premises 329 W. Pioneer Rd Post Office & Zip Code FOL 54935

5. Is individual, partners or agent of corporation/limited liability company subject to completion of the responsible beverage server training course for this license period? ☐ Yes ☒ No
6. Is the applicant an employee or agent of, or acting on behalf of anyone except the named applicant? ☐ Yes ☒ No
7. Does any other alcohol beverage retail licensee or wholesale permittee have any interest in or control of this business? ☐ Yes ☒ No
8. (a) Corporate/limited liability company applicants only: Insert state WI and date 12-25-1991 of registration.
(b) Is applicant corporation/limited liability company a subsidiary of any other corporation or limited liability company? ☐ Yes ☒ No
(c) Does the corporation, or any officer, director, stockholder or agent or limited liability company, or any member/manager or agent hold any interest in any other alcohol beverage license or permit in Wisconsin? Class A License ☒ Yes ☐ No
(NOTE: All applicants explain fully on reverse side of this form every YES answer in sections 5, 6, 7 and 8 above.)

9. Premises description: Describe building or buildings where alcohol beverages are to be sold and stored. The applicant must include all rooms including living quarters, if used, for the sales, service, consumption, and/or storage of alcohol beverages and records. (Alcohol beverages may be sold and stored only on the premises described.) restaurant deli counter cold case large cooler

10. Legal description (omit if street address is given above): _____

11. (a) Was this premises licensed for the sale of liquor or beer during the past license year? ☒ Yes ☐ No
(b) If yes, under what name was license issued? Pump n Pantry, Inc

12. Does the applicant understand they must file a Special Occupational Tax return (TTB form 5630.5) before beginning business? [phone 1-800-937-8864] ☐ Yes ☐ No

13. Does the applicant understand a Wisconsin Seller's Permit must be applied for and issued in the same name as that shown in Section 2, above? [phone (608) 266-2776] ☒ Yes ☐ No

14. Does the applicant understand that they must purchase alcohol beverages only from Wisconsin wholesalers, breweries and brewpubs? ☒ Yes ☐ No

READ CAREFULLY BEFORE SIGNING: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers. Signers agree to operate this business according to law and that the rights and responsibilities conferred by the license(s), if granted, will not be assigned to another. (Individual applicants and each member of a partnership applicant must sign; corporate officer(s), members/managers of Limited Liability Companies must sign.) Any lack of access to any portion of a licensed premises during inspection will be deemed a refusal to permit inspection. Such refusal is a misdemeanor and grounds for revocation of this license.

SUBSCRIBED AND SWORN TO BEFORE ME

this 27th day of MARCH, 20 17

[Signature]
(Clerk/Notary Public)

My commission expires 4-27-2019

Robert L. McMenise
(Officer of Corporation/Member/Manager of Limited Liability Company/Partner/Individual)

(Officer of Corporation/Member/Manager of Limited Liability Company/Partner)

(Additional Partner(s)/Member/Manager of Limited Liability Company (if Any))

TO BE COMPLETED BY CLERK

Date received and filed with municipal clerk <u>3-27-17</u>	Date reported to council/board <u>05-10-17</u>	Date provisional license issued	Signature of Clerk / Deputy Clerk
Date license granted	Date license issued	License number issued	

Control# : 399 OL

**SCHEDULE FOR APPOINTMENT OF AGENT BY CORPORATION/NONPROFIT
ORGANIZATION OR LIMITED LIABILITY COMPANY**

Submit to municipal clerk.

All corporations/organizations or limited liability companies applying for a license to sell fermented malt beverages and/or intoxicating liquor must appoint an agent. The following questions must be answered by the agent. The appointment must be signed by the officer(s) of the corporation/organization or members/managers of a limited liability company and the recommendation made by the proper local official.

To the governing body of: ☐ Town ☐ Village ☒ City of FOND DU LAC County of FOND DU LAC

The undersigned duly authorized officer(s)/members/managers of Pump n Pantry, Inc
(registered name of corporation/organization or limited liability company)

a corporation/organization or limited liability company making application for an alcohol beverage license for a premises known as Pump n Pantry
(trade name)

located at 329 W. Pioneer Rd FOND DU LAC, WI 54935

appoints Robert Lee LeMense
(name of appointed agent)
18055 Rolling Hills Dr. FOND DU LAC
(home address of appointed agent)

to act for the corporation/organization/limited liability company with full authority and control of the premises and of all business relative to alcohol beverages conducted therein. Is applicant agent presently acting in that capacity or requesting approval for any corporation/organization/limited liability company having or applying for a beer and/or liquor license for any other location in Wisconsin?

☐ Yes ☒ No If so, indicate the corporate name(s)/limited liability company(ies) and municipality(ies).

Is applicant agent subject to completion of the responsible beverage server training course? ☐ Yes ☒ No

How long immediately prior to making this application has the applicant agent resided continuously in Wisconsin? 64 yrs

Place of residence last year 18055 Rolling Hills Dr FDL WI 54935

For: Pump n Pantry, Inc
(name of corporation/organization/limited liability company)

By: Robert L. LeMense Officer
(signature of Officer/Member/Manager)

And: Lois J. LeMense V.P. Officer
(signature of Officer/Member/Manager)

ACCEPTANCE BY AGENT

I, _____, hereby accept this appointment as agent for the
(print/type agent's name)

corporation/organization/limited liability company and assume full responsibility for the conduct of all business relative to alcohol beverages conducted on the premises for the corporation/organization/limited liability company.

Robert L. LeMense 3/27/2017 Agent's age [REDACTED]
(signature of agent) (date)
18055 Rolling Hills Dr. FOND DU LAC, WI 54937 Date of birth [REDACTED]
(home address of agent)

**APPROVAL OF AGENT BY MUNICIPAL AUTHORITY
(Clerk cannot sign on behalf of Municipal Official)**

I hereby certify that I have checked municipal and state criminal records. To the best of my knowledge, with the available information, the character, record and reputation are satisfactory and I have no objection to the agent appointed.

Approved on _____ by _____ Title _____
(date) (signature of proper local official) (town chair, village president, police chief)

AUXILIARY QUESTIONNAIRE ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk.

Individual's Full Name (please print) (last name)		(first name)		(middle name)	
LEPENSE		LOIS		JEAN	
Home Address (street/route)		Post Office	City	State	Zip Code
N 8055 Rolling Hills Dr		FDL	FDL	WI	54437
Home Phone Number		Age	Date of Birth	Place of Birth	

The above named individual provides the following information as a person who is (check one):

☐ Applying for an alcohol beverage license as an **individual**.

☒ A member of a **partnership** which is making application for an alcohol beverage license.

☒ **Officer** of **Pump n Pantry, Inc**
(Officer/Director/Member/Manager/Agent) (Name of Corporation, Limited Liability Company or Nonprofit Organization)

which is making application for an alcohol beverage license.

The above named individual provides the following information to the licensing authority:

1. How long have you continuously resided in Wisconsin prior to this date? **58 YRS**

2. Have you ever been convicted of any offenses (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of any other states or ordinances of any county or municipality? ☐ Yes ☒ No
If yes, give law or ordinance violated, trial court, trial date and penalty imposed, and/or date, description and status of charges pending. (If more room is needed, continue on reverse side of this form.)

3. Are charges for any offenses presently pending against you (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of other states or ordinances of any county or municipality? ☐ Yes ☒ No
If yes, describe status of charges pending.

4. Do you hold, are you making application for or are you an officer, director or agent of a corporation/nonprofit organization or member/manager/agent of a limited liability company holding or applying for any other alcohol beverage license or permit? ☒ Yes ☐ No
If yes, identify. **Pump n Pantry 329 W. Pioneer Rd FDL WI CLASS A**
(Name, Location and Type of License/Permit)

5. Do you hold and/or are you an officer, director, stockholder, agent or employee of any person or corporation or member/manager/agent of a limited liability company holding or applying for a wholesale beer permit, brewery/winery permit or wholesale liquor, manufacturer or rectifier permit in the State of Wisconsin? ☐ Yes ☒ No
If yes, identify.

(Name of Wholesale Licensee or Permittee)

(Address By City and County)

6. Named individual must list in chronological order last two employers.

Employer's Name	Employer's Address	Employed From	To
Pump n Pantry Inc	329 W Pioneer Rd FDL	1988	PRESENT
Carrow Oil	509 W. Edgewood Apple		1987

The undersigned, being first duly sworn on oath, deposes and says that he/she is the person named in the foregoing application; that the applicant has read and made a complete answer to each question, and that the answers in each instance are true and correct. The undersigned further understands that any license issued contrary to Chapter 125 of the Wisconsin Statutes shall be void, and under penalty of state law, the applicant may be prosecuted for submitting false statements and affidavits in connection with this application.

Subscribed and sworn to before me

this **27th** day of **MARCH**, 20 **17**

[Signature]
(Clerk/Notary Public)

My commission expires **9-29-17**

[Signature]
(Signature of Named Individual)



Printed on
Recycled Paper

AUXILIARY QUESTIONNAIRE ALCOHOL BEVERAGE LICENSE APPLICATION

Submit to municipal clerk.

Individual's Full Name (please print) (last name)		(first name)		(middle name)	
LE MENSE		Robert		Lee	
Home Address (street/route)		Post Office	City	State	Zip Code
N8055 Rolling Hills Dr		FDL	Fond du Lac	WI	54937
Home Phone Number		Age	Date of Birth	Place of Birth	

The above named individual provides the following information as a person who is (check one):

☐ Applying for an alcohol beverage license as an individual.

☐ A member of a partnership which is making application for an alcohol beverage license.

☒ Officer of Pump n Pantry, Inc.
(Officer/Director/Member/Manager/Agent) (Name of Corporation, Limited Liability Company or Nonprofit Organization)

which is making application for an alcohol beverage license.

The above named individual provides the following information to the licensing authority:

- How long have you continuously resided in Wisconsin prior to this date? 64 years
- Have you ever been convicted of any offenses (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of any other states or ordinances of any county or municipality? ☒ Yes ☐ No
If yes, give law or ordinance violated, trial court, trial date and penalty imposed, and/or date, description and status of charges pending. (If more room is needed, continue on reverse side of this form.) X ATTENDS DUI 04-2006 license suspension 6 months - class 1 + moraine park, fine
- Are charges for any offenses presently pending against you (other than traffic unrelated to alcohol beverages) for violation of any federal laws, any Wisconsin laws, any laws of other states or ordinances of any county or municipality? ☐ Yes ☒ No
If yes, describe status of charges pending.
- Do you hold, are you making application for or are you an officer, director or agent of a corporation/nonprofit organization or member/manager/agent of a limited liability company holding or applying for any other alcohol beverage license or permit? ☒ Yes ☐ No
If yes, identify. Pump n Pantry, Inc 329 W. Pierce Rd FDL WI 54935 CLASS (A) Beer + liquor
(Name, Location and Type of License/Permit)
- Do you hold and/or are you an officer, director, stockholder, agent or employee of any person or corporation or member/manager/agent of a limited liability company holding or applying for a wholesale beer permit, brewery/winery permit or wholesale liquor, manufacturer or rectifier permit in the State of Wisconsin? ☐ Yes ☒ No
If yes, identify.

(Name of Wholesale Licensee or Permittee)

(Address By City and County)

6. Named individual must list in chronological order last two employers.

Employer's Name POQ	Employer's Address 3310 University Ave Madison WI	Employed From 1977	To 1985
Employer's Name GARROW Oil	Employer's Address 504 W. Edgewood Dr, Appleton WI	Employed From 1985	To 1987

The undersigned, being first duly sworn on oath, deposes and says that he/she is the person named in the foregoing application; that the applicant has read and made a complete answer to each question, and that the answers in each instance are true and correct. The undersigned further understands that any license issued contrary to Chapter 125 of the Wisconsin Statutes shall be void, and under penalty of state law, the applicant may be prosecuted for submitting false statements and affidavits in connection with this application.

Subscribed and sworn to before me

this 27th day of MARCH, 2017

[Signature]
(Clerk/Notary Public)

Robert L. Le Mense
(Signature of Named Individual)

My commission expires 9-27-2019



Printed on
Recycled Paper

Business Plan Proposal Pump N Pantry

We are applying for a Class B license to serve on premise. We have had a class A license for 20 years since May 1997 at our location 329 W. Pioneer Rd. in Fond du lac.

Our restaurant has been the strongest part of our business. We have a seating area for 65 people. Home cooking for breakfast, lunch and dinner. Our fish fry and chicken have been our strongest items.

With all the road constructions, economy and new competition that we have endured we find our gas sales have declined and customer counts are declining. Our restaurant sales seem constant, this seems to be the only area where we might grow our business.

By offering Drinks on premise mainly beer and wine and possibly a Bloody Mary Bar on sun mornings. We feel this would give us the opportunity to grow our restaurant sales.

We have had a Class B at the Forest Mall from 2006-2009 when we had our mall restaurant. We served glasses of beer from bottles and cans and individual small wines from bottles.

At our Pioneer Store, we would do the same for the Bloody Mary Bar we would use the small individual serving bottle of alcohol.

As of now our operators license holders are at the front registers, convenience side of store.

In the restaurant, currently no tobacco, lottery or alcohol sales are rung up on the restaurant registers.

We currently have high school students cashiering in the restaurant, and also have responsible adults working for us with up to 11 years' experience. I have shared the idea of on-site consumption and was met with enthusiasm. Often customers have stated it would be nice to have a beer with their fish- fry, pizza or sandwich. We have had 2 employees with combined 17 yrs. working at Pump N Pantry that have gone on to become police officers Kevin Post Sheboygan Police Dept. and Keywon Brown FDL Police Dept.

We plan on improving our menu for dine in experience, and catering opportunities as customers have really appreciated what we are doing.

We realize with a convenience store the concerns, customers would not be allowed to bring alcohol from the convenience side to the sit-down restaurant side.

We currently close at 9:30 pm but in the past, we were open till 10: pm. We have No interest in staying open until midnight.

If our business increases due to restaurant sales expansion, and as our gas equipment needs replacing due to age, our plan would be to move more to a restaurant with bar.

Thank You for your consideration,

Sincerely,

Bob & Lois LeMense

Pump N Pantry, Inc 329 W. Pioneer Rd. Fond du lac 920 926-0021 pumpnpantry@aol.com



WISCONSIN DEPARTMENT OF REVENUE
PO BOX 8902
MADISON, WI 53708-8902

Contact Information:

2135 RIMROCK RD PO BOX 8902
MADISON, WI 53708-8902
ph: 608-266-2776 fax: 608-264-6884
email: DORBusinessTax@revenue.wi.gov
website: revenue.wi.gov

PUMP N PANTRY, INC.
329 W PIONEER RD
FOND DU LAC WI 54935-5614

Letter ID L2036339296



Wisconsin Business Tax Registration Certificate

Expiration date: August 31, 2017
Legal/real name: PUMP N PANTRY, INC.

- This certificate confirms that you are registered with the Wisconsin Department of Revenue for the tax types shown below.
- This registration certificate is not a seller's permit, and should not be used as proof that you hold a seller's permit.
- You may not transfer this certificate to any other individual or business.

Tax Type	Account Type	Number
Sales & Use Tax	Sales & Use Tax	456-0000470636-03
Withholding Tax	Withholding Tax	036-0000470636-04

**SCHEDULE FOR APPOINTMENT OF AGENT BY CORPORATION/NONPROFIT
ORGANIZATION OR LIMITED LIABILITY COMPANY**

Submit to municipal clerk.

All corporations/organizations or limited liability companies applying for a license to sell fermented malt beverages and/or intoxicating liquor must appoint an agent. The following questions must be answered by the agent. The appointment must be signed by the officer(s) of the corporation/organization or members/managers of a limited liability company and the recommendation made by the proper local official.

To the governing body of: ☐ Town ☐ Village ☒ City of FOND DU LAC County of FOND DU LAC

The undersigned duly authorized officer(s)/members/managers of Pump n Pantry, Inc
(registered name of corporation/organization or limited liability company)

a corporation/organization or limited liability company making application for an alcohol beverage license for a premises known as

Pump n Pantry
(trade name)

located at 329 W. Pioneer Rd FOND DU LAC, WI 54935

appoints Robert L. Lemense
(name of appointed agent)

18055 Rolling Hills Dr. FOND DU LAC
(home address of appointed agent)

to act for the corporation/organization/limited liability company with full authority and control of the premises and of all business relative to alcohol beverages conducted therein. Is applicant agent presently acting in that capacity or requesting approval for any corporation/organization/limited liability company having or applying for a beer and/or liquor license for any other location in Wisconsin?

☐ Yes ☒ No If so, indicate the corporate name(s)/limited liability company(ies) and municipality(ies).

Is applicant agent subject to completion of the responsible beverage server training course? ☐ Yes ☒ No

How long immediately prior to making this application has the applicant agent resided continuously in Wisconsin? 64 yrs

Place of residence last year 18055 Rolling Hills Dr FDL WI 54935

For: Pump n Pantry, Inc
(name of corporation/organization/limited liability company)

By: Robert L. Lemense OFFICER
(signature of Officer/Member/Manager)

And: Louis J. L. M... V.P. OFFICER
(signature of Officer/Member/Manager)

ACCEPTANCE BY AGENT

I, ROBERT L. LEMENSE, hereby accept this appointment as agent for the
(print/type agent's name)

corporation/organization/limited liability company and assume full responsibility for the conduct of all business relative to alcohol beverages conducted on the premises for the corporation/organization/limited liability company.

Robert L. Lemense 3/27/2017 Agent's age [REDACTED]
(signature of agent) (date)
18055 Rolling Hills Dr. FOND DU LAC, WI 54937 Date of birth [REDACTED]
(home address of agent)

APPROVAL OF AGENT BY MUNICIPAL AUTHORITY
(Clerk cannot sign on behalf of Municipal Official)

I hereby certify that I have checked municipal and state criminal records. To the best of my knowledge, with the available information, the character, record and reputation are satisfactory and I have no objection to the agent appointed.

Approved on 07/27/17 by [Signature] Title ASSISTANT POLICE CHIEF
(date) (signature of proper local official) (town chair, village president, police chief)

ALCOHOL LICENSE COMMITTEE
MEETING MINUTES
CITY OF FOND DU LAC, WISCONSIN
Meeting Room A & B
160 S Macy Street
July 31, 2017
4:00 PM

ROLL CALL

Attendance

Present

Shawn Anhalt
Peter Doll
Karen Merkel
Mark Otterstatter

Absent

Jacob Lehman
Kerry Ann Strupp
Travis VanDynHoven

Administrative Staff

Steve Klein, Asst Police Chief

Declaration Quorum Present

Chairperson Anhalt declared a quorum present.

*****OTHER BUSINESS*****

ACTIONS

Class "B" Fermented Malt & "Class B" Intoxicating Liquor License

Limited Liability Co: Pump N Pantry, Inc.

Agent Name: Robert LeMense

Agent Address: N8055 Rolling Hills Dr, Fond du Lac

d/b/a: Pump N Pantry

Location of Premises: 329 W Pioneer Rd, Fond du Lac

A Motion was made by Karyn Merkel to approve a "Class B" Intoxicating Liquor and Class "B" Fermented Malt Beverage license for Pump N Pantry at 329 W Pioneer Road and seconded by Peter Doll, and the motion was Passed.

Ayes: Anhalt, Doll, Merkel, Otterstatter

Absent: Lehman, Strupp, VanDynHoven

*****OTHER BUSINESS*****

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Ordinance No. 3637

Subject: An Ordinance Amending Chapter 630, Vehicles And Traffic Of The Code Of The City Of Fond du Lac To Add Camelot Drive As A Through Street And Add Controlled Intersections To The Areas Of Police Memorial Drive, Knights Drive And Mihill Avenue
Introduction: City Engineer

Initiator:

Recommendation:

ATTACHMENTS:

File Name

[3637 Ord Camelot Drive through street.pdf](#)

[Memo Camelot.pdf](#)

[APTB Camelot Drive Through Street - July 2017.pdf](#)

[Excerpt - APT 07-20-17.pdf](#)

ORDINANCE NO. 3637

AN ORDINANCE AMENDING CHAPTER 630, VEHICLES AND TRAFFIC
OF THE CODE OF THE CITY OF FOND DU LAC
TO ADD CAMELOT DRIVE AS A THROUGH STREET AND ADD CONTROLLED
INTERSECTIONS TO THE AREAS OF POLICE MEMORIAL DRIVE, KNIGHTS
DRIVE AND MIHILL AVENUE

The City Council of the City of Fond du Lac do ordain as follows:

Section 1. That Section 630-35, Schedule A, Arterial Streets and Stop Intersections, paragraph B., Stop Intersections are hereby amended as follows:

Add Thereto:

Through Street

Traffic on the following streets shall stop at the corresponding through streets

Camelot Drive
Camelot Drive
Camelot Drive

Police Memorial Drive
Knights Way
Mihill Avenue

Section 2. Any person violating the provisions of this Ordinance shall be subject to the penalty provided in Section 1-4 of the Code.

Section 3. The appropriate City officials are hereby authorized and directed to take such action as is necessary to effectuate the terms of this Ordinance.

Section 4. All other ordinances and resolutions inconsistent with the provisions of this Ordinance are hereby repealed.

Section 5. This Ordinance shall take effect and be in force upon its passage and publication as provided by law.

ADOPTED:

Karyn Merkel, President
Fond du Lac City Council

Attest:

City Attorney:

Margaret Hefter, City Clerk

Reviewed 

CITY OF FOND DU LAC - Memorandum

Engineering and Traffic Division

Date: July 20, 2017

To: Advisory Parking and Traffic Board

From: Paul De Vries, P.E., City Engineer

Re: **Request to add Camelot Drive as a “Through Street”, adding stop signs at Police Memorial Drive, Knights Way, and Mihill Avenue**

This memo and Exhibit “C” covers agenda item listed as “C” for the Advisory Parking & Traffic Board’s July 20, 2017 meeting:

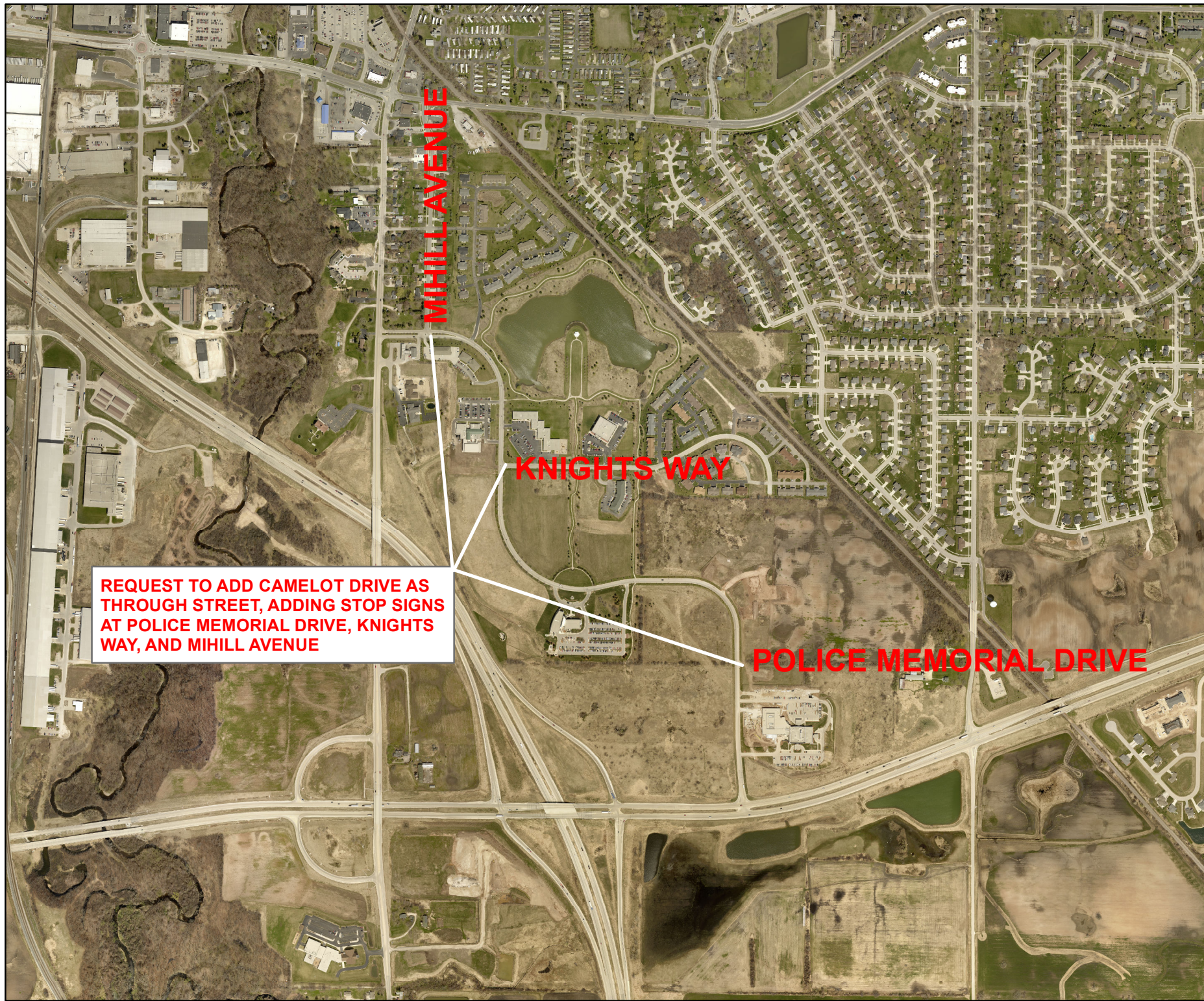
Request to add Camelot Drive as “Through Street” in accordance with Code of Ordinances Section 630-3, Through Highways and Controlled Intersections, A. Through Highways and in accordance with Section 630-35, Schedule A, Arterial Streets and Stop Intersections, B. Stop Intersections.

Through Street: Camelot Drive

Stop Streets: Police Memorial Drive, Knights Way, Mihill Avenue

The City Engineer initiated this request after the completion of Police Memorial Drive construction and multiple inquiries regarding the intersection of Knights Way and Camelot Drive. Currently, there is no stop or yield control on Knights Way but it has always functioned more or less, as a stop sign due to heavier traffic on Camelot Drive and it being a “T” intersection. At Police Memorial Drive’s intersections with Camelot Drive and Martin Avenue, we recommend stop sign control for vehicles on Police Memorial Drive. Martin Avenue is already listed as a “through street” so the stop sign installed there is covered by current City Ordinance. On Mihill Avenue, there is a stop sign at Camelot Drive, but no current City Ordinance since Camelot Drive is not listed as a “through street.”

The Engineering and Traffic Division recommends adding Camelot Drive as a “through street”.

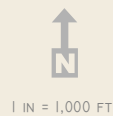


ADVISORY PARKING & TRAFFIC BOARD

CAMELOT DRIVE - THROUGH STREET - JULY 2017

AGENDA / ITEM C

DRAWN BY: PDE/RIES DATE: 6/30/2017



ADVISORY PARKING AND TRAFFIC MINUTES

July 20, 2017

1:30 PM

160 S Macy Street
City-County Government Center

Meeting Room A & B
Fond du Lac, Wisconsin

ROLL CALL

Attendance

Present

Ned Derksen
Lawrence Foster
Andrew Klemp
Brian Kolstad
Renee Wagner
Troy Goebel

Absent

Brent Schumacher

Administrative Staff

Paul DeVries, City Engineer
Aaron Goldstein, Police Captain

Declaration Quorum Present

Deputy Clerk, Arlene Mand, called the meeting to order and declared a quorum present.

*****OTHER BUSINESS*****

ACTIONS

This proposed Ordinance would add stop signs for Police Memorial Drive, Knights Way, and Mihill Avenue at their intersections with Camelot Drive.

Request to add Camelot Drive as "Through Street" in accordance with Code of Ordinances Section 630-3, Through Highways and Controlled Intersections, A. Through Highways and in accordance with Section 630-35, Schedule A, Arterial Streets and Stop Intersections, B. Stop Intersections.

Through Street: Camelot Drive
Stop Streets: Police Memorial Drive, Knights Way, Mihill Avenue
Initiator: City Engineer

A Motion was made by Ned Derksen to recommend approval of proposed Ordinance to add stop signs for Police Memorial Drive, Knights Way, and Mihill Avenue at their intersections with Camelot Drive to the City Council and seconded by Brian Kolstad, and the motion was Passed.

Ayes: Derksen, Foster, Goebel, Klemp, Kolstad, Wagner

Absent: Schumacher

*****OTHER BUSINESS*****

**CITY COUNCIL MEETING AGENDA
CITY OF FOND DU LAC, WISCONSIN**

Title: Resolution No. 8693

Subject: A Resolution Authorizing Tax Incremental District Development Agreement With
Hotel Retlaw, LLC And Midwest Hotel Finance Corporation (MHFC) For The
Redevelopment Of The Hotel Retlaw
Introduction: Community Development Director

Initiator:

Recommendation:

ATTACHMENTS:

File Name

[8693 Res Agmt w Hotel Retlaw.pdf](#)

[CC Memo - DA.pdf](#)

[City of FDL - Retlaw - Development Agreement \(QB 8.7.17\).pdf](#)

RESOLUTION NO. 8693

**A RESOLUTION AUTHORIZING
TAX INCREMENTAL DISTRICT DEVELOPMENT AGREEMENT
WITH HOTEL RETLAW, LLC AND MIDWEST HOTEL FINANCE
CORPORATION (MHFC) FOR THE REDEVELOPMENT OF THE
HOTEL RETLAW**

WHEREAS, Hotel Retlaw, LLC and Midwest Hotel Finance Corporation own the hotel property located at 1 N Main Street in Fond du Lac, WI; and

WHEREAS, the redevelopment of the Hotel Retlaw will enhance hospitality options, will induce development within and around the TID and contribute to the tax base of the community; and

WHEREAS, the City of Fond du Lac wishes to help in making the project feasible through financial assistance to redevelop the property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fond du Lac that the proper City officials are hereby authorized to negotiate and execute any necessary documents to effectuate an agreement with Hotel Retlaw, LLC and MHFC, as outlined to City Council, and to take all other necessary steps to accomplish this.

ADOPTED:

Karyn Merkel, President
Fond du Lac City Council

Attest:

City Attorney:

Margaret Hefter, City Clerk

Reviewed DSM

CITY OF FOND DU LAC - Memorandum

Department of Community Development

Date: August 7, 2017

To: Joe Moore, City Manager

From: Dyann Benson, Community Development Director

Re: Hotel Retlaw – Development Agreement

The Retlaw Hotel is being redeveloped into a full-service independent hotel that provides affordable luxury with modern amenities, restaurant, and event meeting space. Representatives of Hotel Retlaw, LLC and Legendary Hospitality, LLC, Steve Frantz and Dennis Doucette, have previously presented their plans and vision for the redeveloped hotel with Council.

In order to help facilitate the project, the City will be creating a Tax Increment Finance (TIF) District that would provide \$2.3 million dollars in financial assistance to the developers for the project. A development agreement is part of the TIF creation process.

Some of the key provisions of the development agreement include:

- The \$2.3 million in financial assistance would be paid upon Certificate of Occupancy. The developer is required to complete the renovation of the hotel prior to the investment of public dollars.
- The City's investment will be secured by a mortgage against the property.
- The City's investment will be structured as a forgivable loan. As increment is generated from the increase in value of the hotel project, the increment becomes the value of the forgivable amount.

Staff is requesting review and approval of the development agreement.

**DEVELOPMENT AGREEMENT
(HOTEL RETLAW)**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of the [_____] day of August, 2017 (the "Effective Date"), by and among the CITY OF FOND DU LAC, a Wisconsin municipal corporation (the "City"), HOTEL RETLAW, LLC, a Wisconsin limited liability company ("Retlaw"), and MIDWEST HOTEL FINANCE CORPORATION, a Wisconsin corporation ("MHFC", Retlaw and MHFC referred to herein, collectively, as "Developer").

RECITALS

WHEREAS, Retlaw is the owner of certain real property in the City of Fond du Lac, County of Fond du Lac, State of Wisconsin, described on Exhibit A attached hereto (the "Property"), on which is built a hotel commonly known as "Hotel Retlaw" (the "Hotel"); and

WHEREAS, Developer and Borrower have proposed to renovate the Hotel and otherwise develop the Property as described on Exhibit B attached hereto (the "Proposal") and as otherwise set forth herein; and

WHEREAS, the City has, pursuant to the authority granted in Wisconsin Statutes, Section 66.1105, intends to create a Tax Incremental District (the "TID") and plans to adopt a Project Plan (the "TID Plan") to finance certain costs to induce development within or around the TID; and

WHEREAS, in order to achieve the objectives of the TID Plan and to make the land within the TID available for development by private enterprises for and in accordance with the uses specified in the TID Plan, the City has determined to provide financial and other assistance from the TID and other actions, as hereinafter set forth, to permit development to proceed; and

WHEREAS, the Property is within the TID; and

WHEREAS, the City has determined that the proposed development of the Property by Developer, as set forth herein, will (i) promote and carry out the development objectives of the City, (ii) further the purposes of the TID Plan, and (iii) would not occur at the Property without the assistance of the City.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

- a. "Agreement" means this Development Agreement.
- b. "Allocated Increment" means a cumulative total of \$70,000.00 of the Tax Increment.
- c. "City" is defined in the introductory paragraph of this Agreement.

d. "Construction Period Liens" means any mortgage or other liens securing (1) Retlaw's deferred payment obligations to C.D. Smith Construction; or (2) the historic tax credit bridge loan made to Retlaw by Lincoln Savings Bank.

e. "Construction Period Liens Payoff Deadline" means March 31, 2019.

f. "Courtyard" means the outdoor area to the north and west of the Hotel on City-owned property depicted on the Site Plan attached as Exhibit C.

g. "Courtyard Agreement" means, if any, a license or other agreement among the City, Developer and potentially other parties allowing for use of the Courtyard by the Hotel. Developer understands and agrees that the City is under no obligation to enter into a Courtyard Agreement and that such agreement is subject to further negotiations and agreement by all parties.

h. "Default" is defined in Section 6 below.

i. "Developer" is defined in the introductory paragraph of this Agreement.

j. "Effective Date" is defined in the introductory paragraph of this Agreement.

k. "Grant" means a grant of \$250,000 through the Grant Administrator's Community Development Investment grant program pursuant to the terms and conditions of the Grant Agreement. Subject to the terms and conditions herein, the City will provide MHFC with all Grant funds to the extent received by the City.

l. "Grant Administrator" means Wisconsin Economic Development Corporation.

m. "Grant Agreement" means that certain Community Development Investment Grant Contract by and between the City and Grant Administrator dated [_____, 2017 (contract No. _____)], as may be amended from time to time.

n. "Hotel" is defined in the Recitals above.

o. "Loan" means the interest-free loan of up to \$2,300,000.00 from the City to MHFC for reimbursement of City-approved hard construction Project costs. The maturity date of the Loan shall be [_____, 20___], unless accelerated. As set forth below, portions of the Loan are subject to forgiveness by the City upon Developer's satisfaction of certain performance benchmarks.

p. "Loan Request Deadline" means March 31, 2019.

q. "Memorandum" means a short form memorandum of this Agreement recorded in the real estate records against Developer's interest in the Property. The parties agree that the form of memorandum attached hereto as Exhibit F is acceptable to both parties.

- r. "MHFC" is defined in the introductory paragraph of this Agreement.
- s. "MHFC Collateral Assignment" means a collateral assignment, from MHFC for the benefit of the City, of the MHFC Note, the MHFC Mortgage and all other documents evidencing, governing or securing the MHFC Loan. The MHFC Collateral Assignment is being given to secure repayment of the Loan and any claw-back of the Grant and shall be in the form attached hereto as Exhibit E.
- t. "MHFC Loan" means a loan from MHFC to Retlaw of the Loan proceeds and Grant proceeds for City-approved Project costs consistent with the Project Cost Breakdown. The MHFC Loan shall be evidenced by a promissory note (the "MHFC Note") and secured by a mortgage of the Property (the "MHFC Mortgage"). The MHFC Mortgage shall be subordinate only to mortgages securing the Senior Debt. The MHFC Loan documents shall provide that the MHFC Loan shall be accelerated to the extent any repayment of the Loan or the claw back of the Grant is required of MHFC hereunder.
- u. "Note" means the instrument signed by Developer evidencing Developer's obligation to repay the Loan in the form attached hereto as Exhibit D.
- v. "Parking Ramp" means the City-owned parking ramp to the north of the Hotel known as Lot 9 (Portland Ramp) and depicted on the Site Plan attached as Exhibit C.
- w. "PILOT Requirement" is defined in Section 2 below.
- x. "PILOT Requirement Expiration" means the later of January 31, 2045 and the date Developer pays in full all payments due under the PILOT Requirement.
- y. "Plans" means final detailed plans and specifications of the Project in form and substance acceptable to the City, which shall include, without limitation, the following: all improvements now located or to be located on the Property, the footprint of all improvements and the square footage of all improvements, all easements, pathways, exterior boundary lines, walkways, parking and circulation areas, adjoining public streets and alleys, utilities, exits and entrances, all signage, sidewalks, landscaping, all materials to be used in construction, all interior and exterior finishes, building sections, description of room and space sizes, plan arrangement of rooms and functional spaces, exterior elevations, the stacking of floors and all construction elements, a narrative description of all structural systems, mechanical systems, electrical systems and any specialty systems, and a landscaping plan and landscape maintenance plan. For the purposes of the Plans, the Project shall include the Courtyard.
- z. "Project" means the redevelopment of the Property and the Hotel as a luxury hotel, as described with more particularity in the Proposal, including, but not limited to, the construction of all improvements as may be required in order to comply with applicable laws, rules, regulations, codes and ordinances in the use of the Property.
- aa. "Project Commencement" means the date of actual Project construction commencement, as determined by the City in its reasonable discretion.

- bb. "Project Commencement Deadline" means November 30, 2017.
- cc. "Project Completion" means the substantial completion of the Project, as determined by the City in its reasonable discretion, including the occurrence of all of the following: (i) a certificate of occupancy is issued by the appropriate governmental authorities for Project, as applicable; (ii) the Project architect has issued a certificate stating that the Project has been substantially completed in accordance with the Plans; and (iii) the Hotel is operational and open to the public.
- dd. "Project Completion Deadline" means November 30, 2018.
- ee. "Project Cost Breakdown" means a current cost breakdown of construction and non-construction cost items (i.e., a line-item budget), clearly identifying development, engineering, construction, furnishing, equipping, financing, contingency and all other direct and indirect costs of development, construction and installation of the Project in accordance with the Plans. The Project Cost Breakdown shall also include Developer's proposed source(s) of funds.
- ff. "Property" is defined in the Recitals above. As used herein, the term "Property" shall also include all improvements and fixtures located on the real estate.
- gg. "Proposal" is defined in the Recitals above, as may be amended and supplemented from time to time with the express approval of the City.
- hh. "Retlaw" is defined in the introductory paragraph of this Agreement.
- ii. "Senior Debt" means permanent financing for the Project as follows: (1) a permanent loan from Two Rivers Bank & Trust (which may be funded by one or more participant lenders) in a principal amount not to exceed \$12,750,000; (2) a permanent loan from County of Fond du Lac in an amount not to exceed \$1,150,000; and (3) to the extent the loan in clause (1) above is less than \$12,750,000, a permanent loan from Barker Financial which shall be secured and payable on a *pari passu* basis with the MHFC Loan; provided that the principal balance of the MHFC Loan shall, for purposes of this clause (3), be reduced by (i) the amount of the Grant which is not subject to clawback; and (ii) any forgiveness of the Loan under Section 3a.ii. of this Agreement. In this definition of Senior Debt, a loan is "permanent" if the maturity date of the loan is at least 5 years following Project Completion.
- jj. "Senior Debt Closing Deadline" means March 31, 2019.
- kk. "Tax Increment" for any given calendar year is the amount derived by: (i) taking the total real property tax revenues paid by Developer and actually received and retained by the City from real property tax payments on the Property and then (ii) subtracting the Tax Increment Base Year Amount. In the event of a negative number, the Tax Increment for such year shall be \$0.00.
- ll. "Tax Increment Base Year Amount" means the real property taxes payable for calendar year 2017 based on the assessed value of the Property as of January 1, 2017, which is [\$_____].

mm. "Tax Increment Forgiveness Amount" for any given calendar year means an amount equal to the Tax Increment collected for the preceding calendar year minus (i) the legal, financial/debt service and administrative expenses incurred by the City to date in connection with the creation, administration and closure of the TID (including, but not limited to, legal expenses in connection with the preparation, negotiation and administration of this Agreement) which have not yet been reimbursed by Tax Increment in previous years and minus (ii) the portion of the Allocated Increment which has not yet been funded by Tax Increment in previous years. In the event of a negative number, the Tax Increment Forgiveness Amount shall be \$0.00 and any balance(s) under item (i) above and/or item (ii) above shall be carried forward to the next year.

nn. "TID" is defined in the Recitals above.

oo. "TID Plan" is defined in the Recitals above.

2. Commitments of Developer. The City agrees and acknowledges that Retlaw will construct, own and operate the Project, and that MHFC, although it is an affiliate of Retlaw, is not a member of Retlaw and has no control over Retlaw's activities. As consideration for the receipt of the Loan and Grant, MHFC is willing to be jointly and severally responsible for the commitments of Retlaw under this Section 2. Developer agrees and covenants with the City as follows:

a. *Construction and Operation of the Project.*

i. Subject to the terms and conditions of this Agreement, Retlaw, at its cost and expense, agrees to construct, install, furnish, equip, maintain and continuously operate the Project a luxury hotel during the term of this Agreement. Retlaw will cause the Project to be constructed in a good and workmanlike manner and substantially in accordance with the Plans.

ii. Construction of the Project shall commence no later than the Project Commencement Deadline, and, upon commencement of the Project, Retlaw will continue construction of the Project diligently and shall achieve Project Completion substantially in accordance with the construction schedule approved by the City, and in no event later than the Project Completion Deadline.

iii. Retlaw will conform and comply with, and will cause the Project to be in conformance and compliance with, all applicable federal, state, local and other laws, rules, regulations and ordinances, including without limitation, all zoning and land division laws, rules, regulations and ordinances, all building codes and ordinances of the City, and all environmental laws, rules, regulations and ordinances. Retlaw covenants that it will perform and observe the covenants contained in, and the Project will conform and comply with, the covenants, restrictions, documents or instruments governing the Property. Retlaw acknowledges that it has had sufficient opportunity to determine such covenants or restrictions through a title search and other due diligence.

iv. Retlaw shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority or non-governmental

entity in connection with the development, construction, management and operation of the Project.

v. Retlaw will not, without the City's prior written consent, materially change the scope of the Project, the Plans, or the uses of the Project. The development and operation of the Project shall be in substantial conformity with the Proposal.

vi. After Project Completion, Retlaw shall provide the City with periodic updates (at least quarterly) regarding the performance of the Hotel. Such updates shall be in form and content reasonably acceptable to the City. Retlaw consents to the City communicating with the Senior Debt lender(s) regarding the performance of the Hotel and the compliance by Developer with the terms and conditions of this Agreement, and Retlaw consents to the Senior Debt lender(s) communicating with the City regarding the performance of the Hotel and the compliance by Developer with the terms and conditions of the Senior Debt loan documentation.

b. *Parking Ramp.*

i. Developer acknowledges that, during the term of this Agreement, the City will allot to the Project 120 parking spaces in the Parking Ramp and that, except as otherwise expressly set forth herein, the City will not waive the parking permit fees associated therewith. Retlaw shall pay the then-current standard parking fees for Retlaw's parking spaces beginning in January 2019; provided, however, that so long as there is no Default, Retlaw will only be charged the rate of 100 spaces for the allotted 120 spaces. The current standard monthly parking permit rate is eighteen dollars (\$18.00) per month per permit stall. Retlaw acknowledges that these parking fees may be increased over time (but only if such increases apply to all spaces in the Parking Ramp) and that any parking permits needed for the Project beyond the 120 parking permit stalls will need to be purchased at the then-current regular parking permit rate for the Parking Ramp.

ii. Upon a Default (including the failure by Retlaw to continuously operate the Project as a luxury hotel as contemplated herein), the City's obligation hereunder to provide parking spaces in the Parking Ramp will cease.

iii. Developer acknowledges the Parking Ramp is a public parking lot and the City shall not be liable for any damage to any property of Retlaw or of guests of the Hotel at any time stored or kept in the Parking Ramp. Retlaw shall cooperate in good faith to resolve the issue if a guest of the Hotel causes damage or vandalism to the Parking Ramp.

iv. Developer acknowledges and agrees that the right to use the parking spaces committed by the City herein may not be sublet, assigned or otherwise transferred to any other party and that such parking spaces are only intended for use by guests, employees and invitees of the Hotel.

c. *Grant Administration; Grant Claw-Back.*

i. Developer agrees to be responsible for tracking all invoicing, draws, cancelled checks and other related documents required under the Grant Agreement or otherwise requested by the Grant Administrator for submittal and Grant reimbursement. Developer agrees to timely provide the necessary documentation to the City in order to submit the reimbursement request(s) for the Grant. Developer understands that failure to timely provide the required documentation may result in non-funding of the Grant.

ii. The provision of the Grant funds is subject to the terms and conditions of the Grant Agreement, including, without limitation, any claw-back (repayment) requirements in the event that the Project is not completed. In the event of any claw-back of the Grant, MHFC shall immediately repay the City all Grant funds (or the required portion thereof), irrespective of the priority of the MHFC Loan with respect to other funding sources for the Project.

d. *PILOT Requirement.*

i. In the event the Property, or any part of it, becomes exempt or partially exempt from general property taxes prior to the PILOT Requirement Expiration, Developer agrees to make to the City a payment-in-lieu-of taxes equal to the difference between (A) the amount of taxes which would have been levied on the Property for said year by the City and other taxing jurisdictions if the Property was not exempt or partially exempt from general property taxes and (B) the actual amount of taxes levied on the Property for said year by the City and all other taxing jurisdictions. Said payment-in-lieu-of taxes shall be due and payable in full to the City on January 31 immediately following such tax year. The payment-in-lieu-of taxes set forth above shall be a lien on the Property. The obligations of Developer in this subsection are referred to herein as the "PILOT Requirement".

ii. Developer understands and agrees that the PILOT Requirement shall not in any way bind the City assessor in his/her assessment and appraisal of the Property and that the City assessor will arrive at an equalized value of the Property based solely on his/her application of all applicable property tax laws, rules, rates, regulations and ordinances in effect from time to time. Nothing in this Agreement shall impair any statutory rights of the City and other taxing authorities with respect to the assessment, levy, priority, collection and/or enforcement of real estate and personal property taxes.

e. *MHFC Loan to Retlaw; Other Financing.* MHFC shall loan all of the proceeds of the Loan and the Grant to Retlaw as the MHFC Loan. Developer agrees that the MHFC Collateral Assignment shall secure the repayment of the Loan and any Grant claw-back requirements and that a Default hereunder shall be a default under the MHFC Loan. Accordingly, Developer agrees that, upon the occurrence of a Default, the City may, at its option, enforce the Note against MHFC and/or directly enforce the MHFC Note and the MHFC Mortgage against Retlaw pursuant to the terms of the MHFC

Collateral Assignment. MHFC may enter into an intercreditor agreement with the holders of the Senior Debt reflecting the relative loan priorities herein set forth; provided, however, that such intercreditor agreement shall be subject to the prior review and approval by the City. Retlaw shall cause the Construction Period Liens to be released from the Property no later than the Construction Period Lien Payoff Deadline and shall close the Senior Debt no later than the Senior Debt Closing Deadline.

3. Commitments of the City.

a. *Forgivable Loan.*

i. Subject to the terms and conditions herein, to induce Developer to construct the Project, the City hereby agrees to provide MHFC with the Loan for City-approved costs of the construction necessary to complete the Project, whether such costs are incurred by MHFC or Retlaw. Provided that Developer submits the draw request for disbursement (along with sufficient proof of such expenditures and evidence that all other conditions precedent set forth herein have been satisfied) no later than the Loan Request Deadline, the requested portion of the Loan shall be made available by the City to MHFC within thirty (30) days of such written request. The Loan shall not accrue interest (except in the event of default interest) and MHFC shall have no obligation to repay the Loan until the maturity date set forth above (except in the event of acceleration due to default). A Default under this Agreement (whether or not caused by MHFC) shall be a default under the Loan. MHFC may prepay the Loan in whole or in part from time to time without penalty or premium for prepayment.

ii. Subject to the terms and conditions herein, commencing the calendar year following the year of Project Completion, the City agrees to forgive outstanding Loan principal annually effective on December 31 in the amount of the Tax Increment Forgiveness Amount for such year until Loan maturity or repayment/forgiveness in full. No later than January 31 following the scheduled effective date of any loan forgiveness, Developer shall provide the City with all documentation and other evidence required herein for the applicable loan forgiveness installment. If Developer fails to provide such evidence or fails to satisfy all conditions precedent for such loan forgiveness, then, subject to written notice from the City and thirty (30) days for MHFC to cure, the applicable installment of loan forgiveness shall be forfeited by MHFC. Based on the current Project information, the City's anticipated annual amount of Tax Increment after Project Completion is \$210,000.00 (subject to the adjustments set forth above in the definition of "Tax Increment Forgiveness Amount"); provided, however, that the City makes no representation or covenant, express or implied, that any non-zero Tax Increment Forgiveness Amount will be generated or appropriated in any given year or that, in the aggregate, all such loan forgiveness installments will be sufficient to forgive the entire amount of the Loan.

iii. Any Tax Increment which is not appropriated and allocated toward the Tax Increment Forgiveness Amount (including, but not limited to, the

Allocated Increment) may be used by the City for any legally permitted purpose, in its sole discretion.

b. *Grant.* The City applied for and received an award of the Grant to assist with the Project. Subject to the responsibilities of Developer hereunder for Grant administration, the City will administer the grant pursuant to the Grant Agreement. Upon completion of the Project and compliance with the requirements of the Grant Administrator and the Grant Agreement, the City shall request reimbursement from the Grant Administrator for the approved reimbursement amount for Project costs, not to exceed \$250,000. Upon receipt of the Grant Funds, subject to the terms and conditions herein, the City will reimburse MHFC for the approved amount of the Grant funds actually received by the City.

c. *Parking Ramp.* During the term of this Agreement and subject to the terms and conditions herein, the City agrees to provide 120 parking permit spaces in the Parking Ramp for Hotel guests. The City agrees that all overnight Hotel guests shall be provided covered stalls the Parking Ramp, subject to a maximum of 125 guaranteed covered stalls for overnight Hotel guests (provided the extra spaces are purchased as indicated in Section 2.b above), but the City makes no commitment of covered stalls for Hotel employee parking and parking for others who are not overnight Hotel guests. The City acknowledges that it will continue to maintain the Parking Ramp under its standard maintenance guidelines for snow removal, lighting, landscape maintenance and ramp repairs. The City will notify Developer of planned maintenance that may impact access to permit parking stalls and offer alternative parking until said maintenance is completed.

d. *Governmental Approvals.* Developer acknowledges and agrees that the City cannot contract away its governmental powers and that certain approvals may require issuance by or cooperation from government bodies external to the City. The City shall, in good faith, and as expeditiously as possible, process all necessary municipal approvals to permit the development and operation of the Project.

e. *Drop-Off Lane.* The parties agree to continue to negotiate in good faith regarding Developer's request to have a drop-off lane at one of the entrances at the Hotel as part of the positioning of the Hotel as a full-service hotel. The City agrees, in concept, to this request, but Developer acknowledges that the Property is within a historic downtown area and the City must continue to serve existing traffic needs and work within existing infrastructure limitations. In no event shall the City be required to complete infrastructure changes in excess of a cost of \$5,000.00 to accommodate Developer's request.

4. Conditions Precedent to the City's Obligations.

a. In addition to all other conditions and requirements set forth in this Agreement, all of the obligations of the City under this Agreement are conditioned upon the satisfaction of each and every of the following conditions:

i. No Default, or event which with the giving of notice or lapse of time or both would be a Default, shall exist under this Agreement.

ii. Developer shall promptly provide the City with (A) evidence that Developer is authorized to enter into this Agreement and that the persons signing this Agreement on behalf of Retlaw and MHFC are authorized to so sign this Agreement and to bind each respective entity to the terms and conditions of this Agreement, (B) certified copies of the organizational documents of Retlaw and MHFC, (C) certificates of status issued by the Wisconsin Department of Financial Institutions or the applicable jurisdiction for each of Retlaw and MHFC, and (D) resolutions or consents of the board of directors, partners or members, as the case may be, of each of Retlaw and MHFC approving this Agreement and the transactions which are the subject of this Agreement. Developer shall provide this documentation on or before the Effective Date.

iii. The City, through its City Council, shall have approved or authorized this Agreement, shall have created the TID, shall have adopted the TID Plan, and shall have approved or authorized the other transactions contemplated herein, and all other agreements and/or transactions which require approval.

iv. The City's Joint Review Board for tax incremental districts shall have approved the creation of the TID and the adoption of the TID Plan.

v. Developer shall provide financial information of Developer to the City, which information shall be in form and content acceptable to the City, including evidence that Developer has available funds sufficient to complete the Project.

vi. Developer shall provide the City with a detailed completion schedule for the Project which must be acceptable to the City. Such schedule shall specify the timing of all material aspects of the Project. Any revisions to such completion schedule shall be subject to the City's review and approval.

vii. Developer, at its cost, shall provide the Project Cost Breakdown to the City. The Project Cost Breakdown shall be certified by Developer, its Project architect and general contractor as accurate and complete and shall be acceptable to the City. The Project Cost Breakdown must show a state of facts acceptable to the City. Any revisions to the Project Cost Breakdown shall be subject to the City's review and approval.

viii. Developer shall have completed the Plans which must be acceptable in all respects to the City. Any revisions to the Plans shall be subject to the City's review and approval.

ix. Developer shall provide the City with such other written certifications or documentation as may be reasonably requested by the City, including, without limitation, certifications with respect to the direct and indirect ownership of Developer.

b. In addition to subsection (a) above and all other conditions and requirements set forth in this Agreement, the obligation of the City under this Agreement to make disbursements on the Loan is conditioned upon the satisfaction of each and every of the following conditions:

i. No Default, or event which with the giving of notice or lapse of time or both would be a Default, shall exist under this Agreement.

ii. Developer shall have achieved Project Completion no later than the Project Completion Deadline.

iii. The Hotel shall be open for business as a luxury hotel and the Project shall otherwise be operating in substantial conformity with the Plans and the Proposal.

iv. MHFC shall have executed and delivered the Note, the MHFC Collateral Assignment (with the consent page to the MHFC Collateral Assignment executed by Retlaw) and any other document reasonably requested by the City to evidence the Loan.

v. Retlaw and MHFC shall have entered into all applicable documents for the MHFC Loan, including the MHFC Note and the MHFC Mortgage, and provided the City with copies thereof. Developer shall provide assurances that the Loan shall be immediately disbursed by MHFC to Retlaw as MHFC Loan proceeds.

vi. The Memorandum shall have been recorded prior to any mortgage of Developer's interest in the Property, including, without limitation, the Construction Period Liens.

vii. Developer shall provide the City with written evidence of Developer's expenditures with respect to the Project and such other documentary evidence as required herein.

viii. Developer shall provide the City with such other written certifications or documentation as may be reasonably requested by the City, including, without limitation, certifications with respect to the then-current direct and indirect ownership of Developer.

ix. For disbursements occurring before the Construction Period Liens have been released, Developer shall provide evidence reasonably satisfactory to the City that the Construction Period Liens will be released from the Property prior to the Construction Period Lien Payoff Deadline.

x. For disbursements occurring before the Senior Debt has closed, Developer shall provide evidence reasonably satisfactory to the City that the Senior Debt will close prior to the Senior Debt Closing Deadline.

c. In addition to subsection (a) above and all other conditions and requirements set forth in this Agreement, the obligation of the City under this Agreement to make disbursements of the Grant is conditioned upon the satisfaction of each and every of the following conditions:

i. No Default, or event which with the giving of notice or lapse of time or both would be a Default, shall exist under this Agreement.

ii. Developer shall have complied with all material requirements under the Grant Agreement.

iii. The Hotel shall be open for business as a luxury hotel and the Project shall otherwise be operating in substantial conformity with the Plans and the Proposal.

iv. MHFC shall have executed and delivered the MHFC Collateral Assignment (with the consent page to the MHFC Collateral Assignment executed by Retlaw).

v. Retlaw and MHFC shall have entered into all applicable documents for the MHFC Loan, including the MHFC Note and the MHFC Mortgage, and provided the City with copies thereof. Developer shall provide assurances that the Grant shall be immediately disbursed by MHFC to Retlaw as MHFC Loan proceeds.

vi. The Memorandum shall have been recorded prior to any mortgage of Developer's interest in the Property.

vii. The City shall have received the Grant funds (or portion thereof) to be disbursed.

viii. Developer shall provide the City with such other written certifications or documentation as may be reasonably requested by the City, including, without limitation, certifications with respect to the then-current direct and indirect ownership of Developer.

d. In addition to subsections (a) and (b) above and all other conditions and requirements set forth in this Agreement, the obligation of the City under this Agreement to forgive a portion of the Loan annually effective on any December 31 as set forth herein is conditioned upon the satisfaction of each and every of the following conditions:

i. No Default, or event which with the giving of notice or lapse of time or both would be a Default, shall exist under this Agreement.

ii. The Hotel shall be open for business as a luxury hotel and the Project shall otherwise be operating in substantial conformity with the Plans and the Proposal.

iii. Prior to the loan forgiveness, the principal amount of the Loan shall be equal to or less than the outstanding principal amount of the MHFC Loan.

iv. Developer shall be in compliance with the PILOT Requirement and shall have paid any applicable payment in lieu of taxes for the calendar year of the applicable Loan forgiveness installment.

v. The Construction Period Liens shall have been released from the Property and Developer shall provide evidence reasonably satisfactory to the City of the same.

vi. The Senior Debt financing(s) shall have closed and Developer shall provide evidence reasonably satisfactory to the City of the same.

vii. Developer shall provide the City with such other written certifications or documentation as may be reasonably requested by the City, including, without limitation, certifications with respect to the then-current direct and indirect ownership of Developer.

All submissions given to the City to satisfy the conditions contained in this Section 4 must be satisfactory in form and content to the City, in its reasonable discretion.

5. Additional Representations, Warranties and Covenants of Developer. Developer represents and warrants to the City and agrees and covenants with the City as of the Effective Date, and again any time Developer requests Loan disbursements and again on each scheduled date of Loan forgiveness, as follows:

a. All copies of documents, contracts and agreements which Developer has furnished to the City are true and correct in all material respects.

b. Developer has paid, and will pay when due, all federal, state and local taxes, and will promptly prepare and file returns for accrued taxes prior to any taxes becoming delinquent.

c. Developer will pay for all work performed and materials furnished for the Project.

d. No statement of fact by Developer contained in this Agreement and no statement of fact furnished or to be furnished by Developer to the City pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements herein or therein contained not misleading at the time when made.

e. Retlaw is a limited liability company duly formed and validly existing and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. MHFC is a corporation duly formed and validly

existing. Developer is duly licensed or qualified to do business and in good standing in the State of Wisconsin and all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

f. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of Developer and constitute the valid and binding obligations of Developer enforceable in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, general principles of equity, and other similar laws of general application affecting the enforceability of creditors' rights generally.

g. The execution, delivery, and performance of Developer's obligations pursuant to this Agreement will not violate or conflict with Developer's organizational documents or any indenture, instrument or agreement by which Developer is bound, nor will the execution, delivery, or performance of Developer's obligations pursuant to this Agreement violate or conflict with any law applicable to Developer or the Project.

h. There is no litigation or proceeding pending or threatened against or affecting Developer or the Project that would adversely affect the Project or Developer or the enforceability of this Agreement, the ability of Developer to complete the Project or the ability of Developer to perform its obligations under this Agreement.

i. The Project Cost Breakdown approved by the City accurately reflects all Project costs that will be incurred in the development, completion, construction, furnishing and equipping of the Project, and the City is entitled to rely on the Project Cost Breakdown. Developer knows of no circumstances presently existing or likely to occur which would or could be expected to result in a variation or deviation from the Project Cost Breakdown.

j. All construction of the Project to date has been made substantially in conformity with the Plans and in compliance with the terms and conditions of this Agreement.

k. As of the date hereof, Michael Frantz has no ownership interest (directly or indirectly) in Developer and will not have an ownership interest for the term of this Agreement.

l. No Default, or event which with the giving of notice or lapse of time or both would be a Default, exists under this Agreement, and Developer is not in default (beyond any applicable period of grace) of any of its obligations under any other agreement or instrument entered into in connection with the Project.

m. Developer agrees to pay timely all generally applicable property taxes assessed and levied in connection with the Property under applicable property tax laws, rules, rates, regulations and ordinances in effect from time to time and, as applicable, all payments due under the PILOT Requirement.

The representations and warranties contained herein shall be true and correct at all times as required by this Agreement. Developer shall comply with all covenants contained herein at all times during the term of this Agreement.

6. Default.

a. *Default by Developer.* The occurrence of any one or more of the following events shall constitute a default by Developer or Borrower ("Default") hereunder:

i. Developer shall fail to pay any amounts due from it under this Agreement or the Note or the Mortgage on or before ten (10) days following the date when due; or

ii. Any representation or warranty made by Developer in this Agreement or the Note or the Mortgage, or any document or financial statement delivered by Developer pursuant to this Agreement, shall prove to have been false in any material respect as of the time when made or given; or

iii. Developer shall breach or fail to perform timely or observe timely any of its covenants or obligations (other than payment obligations, which is addressed in subparagraph (i) above) under this Agreement or the Note or the Mortgage, and such failure shall continue for thirty (30) days following notice thereof from the City to Developer (or such longer period of time as is necessary to cure the default as long as Developer has commenced the cure of the default within the 30-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than 90 days following the notice thereof from the City); or

iv. Construction of the Project shall be abandoned for more than sixty (60) consecutive days (subject to the force majeure provisions below) or if any portion of the Project shall be damaged by fire or other casualty and not repaired, rebuilt or replaced within a reasonable time thereafter; or

v. Other than reasonable temporary closures for maintenance and repair, the Hotel shall fail to be continuously operated as a luxury hotel consistent with the Proposal.

vi. Developer shall: (A) become insolvent or generally not pay, or be unable to pay, or admit in writing its/his inability to pay, its/his debts as they mature; or (B) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or (C) become the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or file a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or (D) have a petition or application filed against it/him in bankruptcy or any similar proceeding, or have such a proceeding commenced against it/him, and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or Developer or Guarantor shall file an answer to such a petition or application,

admitting the material allegations thereof; or (E) apply to a court for the appointment of a receiver or custodian for any of its/his assets or properties, or have a receiver or custodian appointed for any of its/his assets or properties, with or without consent, and such receiver shall not be discharged within ninety (90) days after its/his appointment; or (F) adopt a plan of complete liquidation of its/his assets; or

vii. If Developer shall dissolve or shall cease to exist; or

viii. A default shall occur under the Grant Agreement caused by an action or inaction of Developer; or

ix. A default shall occur under the Courtyard Agreement, if any, caused by an action or inaction of Developer; or

x. A default shall occur on any other indebtedness of or loan to Developer, or a default shall occur under any mortgage or other lien or encumbrance affecting the Property.

Upon the occurrence of any Default, the City, at its option, may pursue any or all of the rights and remedies available to it at law and/or in equity and/or under this Agreement and/or under any of the other agreements contemplated herein; provided that (a) the City shall not be permitted to recover any portion of the Loan which has been forgiven previously under the terms of this Agreement, and (b) the remedy for a default under the Grant Agreement shall be limited to the portion of the Grant which is clawed back. Upon the occurrence of any Default, any amounts due to the City shall accrue interest at the rate of one percent (1%) per month.

b. *Default by the City.* In the event the City shall breach or fail to perform timely or observe timely any of its covenants or obligations (other than payment obligations, which is addressed in subparagraph (a) above) under this Agreement and such failure shall continue for thirty (30) days following notice thereof from Developer to the City (or such longer period of time as is necessary to cure the default as long as the City has commenced the cure of the default within the 30-day period, is diligently pursuing the cure of the default and as long as the default is cured not later than 60 days following the notice thereof from Developer), then Developer may, at its option, pursue any or all of the rights and remedies available to it at law and/or in equity and/or under this Agreement.

7. Transfers; Assignment.

a. *Transfer of the Property.* Except as provided herein, Developer shall not, directly or indirectly, sell, assign, transfer, convey, mortgage or encumber its interest in the Property during the term of this Agreement unless it first obtains the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

b. *Assignment of Development Agreement.* Developer shall not have the right to assign this Agreement to any other party without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed;

provided, however, that if no Default exists, Developer may assign this Agreement to an entity controlled by or under common control with Developer without such consent simultaneously with the transfer of the Property to such entity. No assignment of this Agreement shall serve to release Developer from any liability or obligations under this Agreement. The provisions of this Agreement shall run with the land.

8. Term. The term of this Agreement shall commence on the Effective Date and shall continue, unless terminated earlier as provided herein, until the latest to occur of the following: (i) repayment or forgiveness in full of the Loan; (ii) the PILOT Requirement Expiration; (iii) termination of the Grant Agreement and repayment of any required claw back of the Grant; and (iv) termination of the TID.

9. Notices. All notices hereunder must be in writing and must be sent by United States registered or certified mail (postage prepaid) or by an independent overnight courier service, addressed to the addresses specified below:

Notices to Developer:

Hotel Retlaw, LLC
1496 Woodmont Way
Ashwaubenon, WI 54313
Attn: Dennis Doucette

with a copy to:

Wayman C. Lawrence
Foley & Lardner LLP
150 East Gilman Street, Suite 5000
Madison, WI 53703

Notices to the City:

City of Fond du Lac
160 South Macy Street
Fond du Lac, WI 54935
Attn: City Clerk

with a copy to:

City of Fond du Lac
160 South Macy Street
Fond du Lac, WI 54935
Attn: Community Development Dept.

Notices given by mail are deemed delivered within (3) three business days after the party sending the notice deposits the notice in the United States Post Office. Notices delivered by courier are deemed delivered on the next business day after the party delivering the notice timely deposits the notice with the courier for overnight (next day) delivery.

10. Recording. Recording of this Agreement is prohibited except as allowed in this section. At the request of either party, the parties shall promptly execute and record, at the cost of the Developer, the Memorandum.

11. Indemnity. Developer shall indemnify, defend and hold harmless the City, its officers, employees and authorized representatives (each an "Indemnified Party") from and against any and all liabilities in connection with the Project (and its use of the Courtyard and Parking Ramp), including, without limitation, environmental remediation required by any federal or state agency having jurisdiction, losses, damages, costs and expenses, including reasonable attorney fees and costs, arising out of any third-party claims, causes of action, or demands made against or suffered by any Indemnified Party on account of this Agreement, unless such claim, causes of action, or demands: (a) relate to the Indemnified Party's failing to perform its obligations to Developer; or (b) arise out of any willful misconduct of the Indemnified Party. At

the Indemnified Party's request, Developer shall appear for and defend the Indemnified Party, at Developer's expense, in any action to which the Indemnified Party may be made a party by reason of the foregoing.

12. Force Majeure. For the purposes of any provisions of the Agreement, a party shall not be considered in breach or default of its obligations in the event of delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including but not restricted to acts of God, acts of public enemy, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, and unusually severe weather; it being the parties' purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times of performance of any of the obligations of such party shall be equitably extended for the period of the delay.

13. Joint and Several Obligations. Each entity comprising Developer shall be jointly and severally liable for the performance of all obligations of Developer under this Agreement, and the City may bring suit against each such entity, jointly or severally, or against any one or more of them.

14. Miscellaneous.

a. *No Personal Liability*. Under no circumstances shall any alderperson, council member, officer, official, director, attorney, employee or agent of the City or the Developer have any personal liability arising out of this Agreement, and no party shall seek or claim any such personal liability.

b. *Immunity*. The City of Fond du Lac is a governmental entity entitled to governmental immunity under law, including Section 893.80, Wis. Stats. Nothing contained herein shall waive the rights and immunities to which the City may be entitled under law, including all of the immunities, limitations and defenses under Section 893.80, Wis. Stats., or any subsequent amendments thereof, any federal law, common law or other applicable laws.

c. *Waiver; Amendment*. No waiver, amendment, or variation in the terms of this Agreement shall be valid unless in writing and signed by the City and Developer, and then only to the extent specifically set forth in writing. Nothing contained in this Agreement is intended to or has the effect of releasing Developer from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

d. *Entire Agreement*. This Agreement and the documents executed pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth in this Agreement and the documents executed in connection with this Agreement. This Agreement and the documents executed in connection herewith supersede all prior negotiations, agreements and undertakings between the parties with respect to the subject matter hereof.

e. *No Third-Party Beneficiaries*. This Agreement is intended solely for the benefit of Developer and the City, and no third party (other than successors and permitted

assigns) shall have any rights or interest in any provision of this Agreement, or as a result of any action or inaction of the City in connection therewith. Without limiting the foregoing, no approvals given pursuant to this Agreement by Developer or the City, or any person acting on behalf of any of them, shall be available for use by any contractor or other person in any dispute relating to the Project.

f. *Severability.* If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent by law.

g. *Governing Law.* This Agreement is governed by, and must be interpreted under, the internal laws of the State of Wisconsin. Any suit arising or relating to this Agreement must be brought in Fond du Lac County, Wisconsin.

h. *Time is of the Essence; Deadlines.* Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. In the event a deadline herein falls on a non-business day, the deadline shall be deemed to fall on the next following business day.

i. *Relationship of Parties.* This Agreement does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between the City and Developer.

j. *Captions and Interpretation.* The captions of the articles and sections of this Agreement are to assist the parties in reading this Agreement and are not a part of the terms of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural and the plural includes the singular.

k. *Counterparts/Electronic Signature.* This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the agreement among the parties. Facsimile signatures and PDF email signatures shall constitute originals for all purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first printed above.

RETLAW:

HOTEL RETLAW, LLC

By: _____

Name: _____

Title: _____

MHFC:

MIDWEST HOTEL FINANCE
CORPORATION

By: _____

Name: _____

Title: _____

CITY :

CITY OF FOND DU LAC

By: _____

Joseph P. Moore, City Manager

Attest: _____

Margaret Hefter, City Clerk

Countersigned pursuant to Section 62.09(10) Wis. Stats.

By: _____

Tracy Salter, Director of Administration

APPROVED AS TO FORM:

By: _____

Deborah S. R. Hoffmann, City Attorney

Signature Page to Development Agreement

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That part of Lots 10, 11, 12, 13 and the South 20.00 feet of Lot 14 in Block 3 in Van Renselaer's Addition to the City of Fond du Lac, being a part of the East ½ of the Southeast ¼ of Section 10, Township 15 North, Range 17 East, in the City of Fond du Lac, Fond du Lac County, Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of said Block 3; Thence North 01 degree 39' 40" West along the East line of Block 3 aforesaid 158.98 feet to a point; Thence North 89 degrees 37' 43" West along the North line of Lot 10 aforesaid 53.90 feet to the Northeast corner of lands described in Volume 890, Page 65 and 66 as Document No. 406192 recorded on December 13, 1984 in the Register of Deeds Office, Fond du Lac County; Thence South 00 degrees 01' 30" West along the East line of said lands 0.36 feet to a point; Thence North 89 degrees 58' 30" West along the South line of said lands 61.54 feet to a point; Thence South 00 degrees 01' 30" West along the East line of said lands 33.50 feet to a point; Thence North 89 degrees 58' 30" West along the South line of said lands 3.57 feet to a point on the West line of said Lot 10; Thence South 01 degrees 39' 30" East along said West line 54.10 feet to the Northeast corner of lands described in Volume 889 on page 736 as Document No. 405591 recorded on December 6, 1984 in the Register of Deeds Office, Fond du Lac County; Thence North 89 degrees 38' 30" West along the North line of said lands 15.39 feet to a point; Thence South 01 degree 46' 00" East along the West line of said lands 11.63 feet to a point; Thence North 89 degrees 37' 43" West along the North line of the South 20.00 feet of Lot 14 aforesaid 104.65 feet to a point on the West line of said Block 3; Thence South 01 degree 39' 30" East along the said West line 60.10 feet to a point; Thence South 89 degrees 53' 45" East along the South line of Block 3 aforesaid 240.00 feet to the point of beginning.

Tax Key No.: FDL 15-17-10-44-816-00

EXHIBIT B
PROJECT PROPOSAL

[ATTACH TO THIS COVER PAGE]

EXHIBIT C
PROJECT SITE DIAGRAM

[ATTACH TO THIS COVER PAGE]

EXHIBIT D
FORM OF NOTE

[ATTACH TO THIS COVER PAGE]

EXHIBIT E
FORM OF COLLATERAL ASSIGNMENT

[ATTACH TO THIS COVER PAGE]

EXHIBIT F
FORM OF MEMORANDUM

[ATTACH TO THIS COVER PAGE]