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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

TO: Frank Schulte, City Administrator

FROM: Debra Walling, City Attorney

RE: Crispelli's, LLC – Request for New Quota Class C Liquor License, 19852 Mack Ave., Grosse Pointe Woods

DATE: May 31, 2023

In accordance with Chapter 4, Article II, Section 4-24(4) of the City Code, I have reviewed the application submitted by Crispelli's, LLC for a new quota Class C Liquor License.

Sec. 4-24 of the City Code guides the application and review procedures. An extensive and thorough process has been ongoing for the past several weeks. At your request, City departments have carefully considered all the review factors set forth in Sec. 4-24(6). There have been no concerns identified with the applicant or the application, except that the proposed location is within 500' of a church. Liquor licenses are prohibited by state law within 500' of a school or church, but the Michigan Liquor Control Commission (MLCC) may waive this prohibition for all classes of liquor licenses if an objection is not filed by the church or school. If an objection is filed, the MLCC must hold a hearing before making its decision on issuing the license. If there is no objection from the church which is located within 500' of Crispelli's proposed location, then a recommendation for approval of the Class C Liquor License is appropriate.

As we have discussed, Class C and Tavern liquor licenses are important for the City's economic development. State law has changed in recent years such that the MLCC can approve transfers of quota liquor licenses in and out of communities. In order to restrict those transfers, some communities have required applicants to sign an agreement that requires prior approval of the legislative body before the transfer of a quota liquor license can occur. I drafted such an agreement for consideration pertaining to this transfer, because it involves one of the City's two remaining quota liquor licenses. If the City Council is inclined to recommend the approval of the liquor license to Crispelli's, LLC to the MLCC, I recommend that the City Council condition its approval of that recommendation upon the requirement that the applicant executes the attached agreement. I further recommend that the City Council's approval be conditioned upon the applicant's compliance with all federal, state, and local laws, including, but not limited to, obtaining a certificate of occupancy prior to opening for business.

Respectfully submitted,

Debra A. Walling
Debra A. Walling
City Attorney

**AGREEMENT RESTRICTING CERTAIN TRANSFER
OF CLASS C LIQUOR LICENSE**

City of Grosse Pointe Woods, Michigan

This Agreement is made and entered into this _____ day of _____, 2023, by and between CRISPELLI'S, LLC, a Michigan limited liability company (the "Applicant"), and THE CITY OF GROSSE POINTE WOODS, a Michigan municipal corporation (the "City").

RECITALS

A. The Applicant has requested that the City recommend to the Liquor Control Commission (the "MLCC") approval of the issuance of a new Class C liquor license ("New Quota License") from the City's quota of such licenses for use at 19852 Mack Avenue, Grosse Pointe Woods, Michigan 48236; and

B. As of the date of this Agreement, the City has only two (2) New Quota Licenses available for possible issuance; and

C. The City's ability to encourage economic development and business growth within the City is enhanced by the City's ability to award New Quota Licenses; and

D. The City's ability to encourage economic development and business growth within the City may be undermined if current liquor licensees are able to transfer the location of the quota license to a location outside the boundaries of the City; and

E. The City has determined that it is critical to accomplish its goals for the remaining two New Quota Licenses to remain in the City; and

F. Under Section 501 of the Michigan Liquor Control Code of 1998 (MCL 436.1531), it is within the City's discretion to approve the issuance of the New Quota License and the City is not required to issue a minimum number of New Quota Licenses; and

G. Based on the above, the City has decided that it will not issue the New Quota License to the Applicant unless the Applicant is willing to abide by the terms of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THEIR MUTUAL PROMISES, THE PARTIES AGREE AS FOLLOWS:

1. The Recitals above are incorporated herein by reference and expressly agreed to and made a part of this Agreement for all purposes.

2. The City will, in reliance upon the Applicant's agreement herein, recommend to the MLCC approval of the New Quota License to be utilized at 19852 Mack Avenue, Grosse Pointe Woods, Michigan 48236.

3. The Applicant agrees that if for any reason, except for fire or acts of God, it should discontinue the use and operation of the New Quota License for a period in excess of ninety (90) consecutive days without the prior written consent of the City, then, and in that event, the Applicant shall return the New Quota License to the MLCC and shall request that its rights to the license be terminated and that the license not be placed or continued in escrow, but instead be returned to the City to be added to its available licenses under the quota provisions of Section 531 of the Michigan Liquor Control Code of 1998 (MCL 436.1531).

4. Nothing in this Agreement shall prohibit the Applicant from selling, assigning, or transferring its interest in the license and/or business, nor from transferring the location of said license within the boundaries of the Township, subject to the prior approval of the City.

5. Prior to the Applicant transferring, selling or assigning its interest in the New Quota License and/or business to another person or entity, the Applicant shall present to the City for approval a new agreement incorporating the same terms and conditions of this Agreement, fully executed by the transferee, purchaser or assignee, verifying that the transferee, purchaser or assignee agrees to abide by the terms of this Agreement.

6. The City and the Applicant acknowledge that this Agreement and the covenants and obligations herein are unique, and in the event of default by the Applicant, the City will not be able to be adequately compensated in damages. It is, therefore, agreed that in the event of

a default by the Applicant hereunder, the City shall have the right to enforce the terms and provisions hereof by an action for specific performance, and if the City prevails in such action, it shall be entitled to recover its costs and attorney fees.

7. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Michigan, without regard to its conflicts of law principles, or any principles that may require the application of the laws of any other jurisdiction.

8. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality or unenforceability shall not affect the enforceability of any other provision of this Agreement. This Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained in it. The remainder of the Agreement shall remain in full force and effect.

9. No waiver, alteration, amendment or modification of any provision of this Agreement shall be binding unless in writing and signed by the parties hereto. The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

10. It is the intention of the parties that this Agreement is not made for the benefit of any private third party.

11. This Agreement shall be binding upon the parties hereto and their respective heirs, successors, legal representatives and permitted assigns.

12. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, superseding any prior oral or written agreements or understandings.

13. The parties acknowledge that they have not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained herein or expressly incorporated by reference herein.

14. The parties represent that they have the authority to execute this Agreement on behalf of their respective entities and to bind their respective entities to all the terms contained herein.

15. A delay in enforcement of any provisions of this Agreement shall not be construed as a waiver or estoppel of the City's right to eventually enforce, or take action to enforce, the terms of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first written above.

CRISPELLI'S, LLC

By:
Its:

By:
Its:

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The foregoing Agreement was acknowledged before me by _____ and _____ on behalf of Crispelli's, LLC, on the _____ day of _____, 2023.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

CITY OF GROSSE POINTE WOODS

By: Arthur W. Bryant
Its: Mayor

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

The foregoing Agreement was acknowledged before me by Arthur W. Bryant, Mayor, on behalf of the City of Grosse Pointe Woods, on the _____ day of _____, 2023.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____