

AGREEMENT REGARDING RENEWAL OF LIQUOR LICENSE

THIS AGREEMENT is made as of the 27th day of June 2024 by and between the City of Whitewater (the “City”) and D.L.K. Enterprises, Inc. (“DLK”).

WHEREAS, DLK currently holds a Class B Retail License for the sale of fermented malt beverages and intoxicating liquors issued by the City for Hawk Bowling Lanes, 1390 W. Main Street, Whitewater, WI 53190, License No. 2023-BBL-013 (the “License”);

WHEREAS, DLK has applied for renewal of the License for the period from July 1, 2024 through June 30, 2025;

WHEREAS, concerns have been raised as to whether the License should be canceled and not renewed based upon nonuse of the License as provided in Whitewater Municipal Code Section 5.20.032.B;

WHEREAS, DLK contends that cancellation and non-renewal of the License is not appropriate due to the existence of one (1) or more of the Exceptions set forth in Whitewater Municipal Code Section 5.20.032.D and the City’s stated policy that the impact on economic development is a primary factor when making decisions regarding liquor license applications as stated in Whitewater Municipal Code Section 5.20.027.C; and

WHEREAS, the parties desire to resolve and settle all issues and concerns associated with renewal of said License in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. The parties acknowledge and agree that (a) DLK has held the License for many years, (b) during the time DLK has held the License, DLK has not been cited for sale of alcohol to underage patrons on the premises or for allowing disorderly, indecent, riotous, indecent or illegal activity on the premises, (c) DLK is not currently in violation of any City licensing requirements (except alleged nonuse of the License as noted above); (d) DLK seeks to redevelop the property at 1390 W. Main Street, Whitewater but has been waiting for the development of the ALDI Grocery Store to be completed; and (e) construction of the ALDI Grocery Store recently was commenced which may facilitate redevelopment of 1390 W. Main Street, Whitewater for future use as a restaurant or other commercial uses.

2. DLK’s longstanding use of the License over a period of many years and DLK’s efforts to arrange for use and redevelopment of the subject property for the benefit of City residents are a sufficient basis for, and strongly support, a finding by the City’s Alcohol Licensing Committee (the “ALC”) that due to the unusual circumstances existing in this case, it is appropriate that DLK be granted the License for the period of July 1, 2024 through June 30, 2025. Renewal of the License as provided herein also is expected to foster future economic development in the City by enhancing redevelopment opportunities on a prime commercial site in the City.

3. DLK shall pay all required license fees and other charges associated with the holding of the License. Michael S. Kachel shall be the designated agent for both the License.

4. The License shall be renewed for the period from July 1, 2024 through June 30, 2025. The license use requirements set forth in Whitewater Municipal Code Section 5.20.032.B shall be waived by the City during the license period beginning July 1, 2024 and ending June 30, 2025.

5. DLK shall take necessary and appropriate steps towards the establishment of a business to be operated on the premises at 1390 W. Main Street, Whitewater, subject to compliance with all City development requirements and City codes. If operation of a business at said location is not accomplished prior to June 30, 2025, the License shall expire and, unless a further agreement to renew the License beyond June 30, 2025 is entered into between DLK and the City, DLK agrees to surrender the License to the City without the need for further legal or regulatory action. Upon surrender of the License as provided herein, it is acknowledged that this Agreement shall terminate including Section 4 above providing for waiver of the requirement of municipal code section 5.20.032B on an ongoing basis for this License.

6. The parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

7. Each of the parties and counsel for each of the parties have reviewed this Agreement and have participated in its drafting and, accordingly, no party shall attempt to invoke any rule of construction to the effect that ambiguities, if any, are to be resolved against the drafting party.

8. This Agreement shall not be altered, amended or modified by oral representation made before or after its execution. All alterations, amendments, modifications or changes of any kind must be in writing, executed by both parties.

9. This Agreement contains the entire understanding and agreement between the parties with respect to the matters referenced herein. No other representations, covenants, undertakings or prior or contemporaneous agreements (whether oral or written) respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the parties hereto.

10. Waiver of any term or condition of this Agreement by either party shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of a party to object to one or more breaches or violations of this Agreement shall not constitute a waiver or limitation upon the right of such party to object to any other breach or violation of this Agreement.

11. The parties understand, acknowledge and agree that the terms and conditions of this Agreement have been accepted and agreed upon in settlement of disputed issues and concerns. This settlement and the consideration exchanged by each party shall not be construed as an admission of liability or an acknowledgement of improper conduct by either party and all such liability is expressly denied.

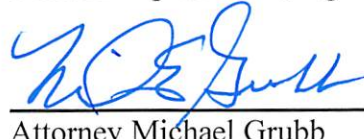
12. Each party represents that, by its duly authorized representative, said party has read this Agreement and knows the contents hereof and that said representative signs this Agreement freely, voluntarily and without coercion of any kind.

13. The ALC shall recommend renewal of the License to the City's Common Council, subject to the terms and conditions of this Agreement. This Agreement is subject to approval by the City's Common Council.

IN WITNESS WHEREOF, each party, by its duly authorized representative, has executed this Agreement to become effective as of the date set forth above.

 6.27.24

Michael S. Kachel Date
DLK Enterprises Inc., Agent

 6/27/24

Attorney Michael Grubb Date
Attorney for DLK Enterprises Inc
State Bar No. 1005641

Attorney Jonathan K. McDonell Date
City Attorney for the City of Whitewater
State Bar No. 1103196

THE ABOVE AGREEMENT HAS BEEN REVIEWED BY THE ALCOHOL LICNESING COMMITTEE AND THE ALCOHOL LICENSING COMMITTEE RECOMMENDS COMMON COUNCIL APPROVAL OF THE ABOVE AGREEMENT.

CITY OF WHITEWATER ALCOHOL LICENSING COMMITTEE

By: _____
Chairman Date

