

# PONTIAC CITY COUNCIL

**Kermit Williams, District 7**  
President  
**Randy Carter, District 4**  
President Pro Tem



**Patrice Waterman, District 1**  
**Don Woodward, District 2**  
**Mary Pietila, District 3**  
**Gloria Miller, District 5**  
**Dr. Doris Taylor Burks, District 6**

*It is this Council's mission "To serve the citizens of Pontiac by committing to help provide an enhanced quality of life for its residents, fostering the vision of a family-friendly community that is a great place to live, work and play."*

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Garland S. Doyle, M.P.A.  
Interim City Clerk

## FORMAL MEETING

August 6, 2019

6:00 P.M.

109<sup>th</sup> Session of the 10<sup>th</sup> Council

**Call to order**

**Invocation**

**Pledge of Allegiance**

**Roll Call**

**Authorization to Excuse Councilmembers**

**Amendment to and Approval of the Agenda**

**Approval of the Minutes**

1. July 29, 2019 Special Meeting
2. July 30, 2019 Study Session

**Subcommittee Reports**

3. Community Development – July 16, 2019

**Recognition of Elected Officials**

**Agenda Address**

**Special Presentations (Presentations are limited to 10 minutes.)**

4. Pontiac Youth Recreation and Enrichment Center (PYREC) Data Report  
Presentation Presenter: Ben Plassman, Senior Financial Analyst
5. Finance Report regarding feasibility to purchase Wessen Lawn Tennis Club (formerly Hayes Jones) Property located at 235 Wessen  
Presentation Presenters: Hughey Newsome, Interim Finance Director, Anthony Chubb, Esq., City Attorney and Ben Plassman, Senior Financial Analyst
6. Informational Report regarding the Youth Summit Conference  
Presentation Presenter: Angelica Tibbets, Pontiac Student Representative, Charter Member, Youth Advisory Council (YAC)

**Ordinance**

7. Adoption of an Ordinance to allow Redevelopment Liquor Licenses and Conditions for Issuance and Operations

**Resolutions**

8. Resolution to authorize Mayor to conduct preliminary due diligence regarding the potential purchase of 235 Wesson Street and to negotiate terms and conditions of sale.

**Monthly Mayoral Reports**

9. Monthly Check Register  
(The weekly check registers for June 28, 2019; July 5, 12, 19 and 26, 2019 have not been posted on the website.)
10. Monthly Staff Changes Report.  
(The June and July reports were not submitted.)
11. City Credit Card Statement  
(The June and July reports were not submitted.)

**Public Comment**

**Mayor, Clerk and Council Closing Comments**

**Adjournment**

**#1**

**MINUTES**

**7-29-19**

July 29, 2019 Special

**Official Proceedings  
Pontiac City Council  
107<sup>th</sup> Session of the Tenth Council**

A Special Meeting of the City Council of Pontiac, Michigan was called to order in City Hall, Monday, July 29, 2019 at 10:00 a.m. by Council President Kermit Williams.

Call to Order

Roll Call

Members Present: Carter, Miller, Pietila, Taylor-Burks, Williams and Woodward

Members Absent: Waterman.

Mayor Waterman was present.

Clerk announced a quorum.

19-380        **Excuse Councilperson Patrice Waterman for personal reasons. Moved by Councilperson Pietila and second by Councilperson Woodward.**

Ayes: Miller, Pietila, Taylor-Burks, Williams, Woodward and Carter

No: None

**Motion Carried.**

19-381        **Approval of the agenda. Moved by Councilperson Taylor-Burks and second by Councilperson Woodward.**

Ayes: Pietila, Taylor-Burks, Williams, Woodward, Carter, and Miller

No: None

**Motion Carried.**

**Received Veto Statements from the Mayor**

1. Veto of Resolution to approve Appeal 19-03 Special Exception Permit application to sell packaged liquor at 1124 Joslyn Avenue from A&S Kajy Enterprise, Inc., parcel #64-14-16-402-030. (Resolution #19-364)

**The Mayor read her veto written statement. There was discussion after the statement was read to modify Ordinance to allow 500 ft. if no objections raised.**

2. Veto of Resolution to instruct the City Attorney to amend City of Pontiac Ordinance #2287 and place the Cable Division and Appointment of the Cable Director under the legislative branch of City government. (Resolution #19-369)

**The Mayor read her veto written statement.**

**19-382 Resolution to Override Mayor's Veto of Resolution 19-364, the resolution to approve Appeal 19-03 Special Exception Permit application to sell packaged liquor at 1124 Joslyn Avenue from Kajj Enterprise, Inc., parcel #64-14-16-402-030. Moved by Councilperson Carter and second by Councilperson Taylor-Burks.**

WHEREAS, on July 16, 2019, the City Council adopted a Resolution to approve Appeal 19-03 Special Exception Permit application to sell packaged liquor at 1124 Joslyn Avenue from A&S Kajj Enterprise, Inc., parcel #64-14-16-402-030 (Resolution 19-364); and, WHEREAS, section 3.112(f) of the Home Rule Charter of the City of Pontiac, Michigan (Charter) requires the City Clerk to present the resolution to the Mayor; and, WHEREAS, on July 22, 2019, the Clerk presented Resolution 19-364 to the Mayor; and, WHEREAS, section 3.112 (f) of the Charter allows the Mayor to veto the resolution; and, WHEREAS, the Mayor issued a veto of Resolution 19-364; and, WHEREAS, pursuant to Charter section 3.112(f), the City Council wishes to reconsider Resolution 19-364 the resolution to approve Appeal 19-03 Special Exception Permit application to sell packaged liquor at 1124 Joslyn Avenue from A&S Kajj Enterprise, Inc., parcel #64-14-16-402-030 over the Mayor's veto. Five affirmative votes are required by Charter section 3112(f). NOW THEREFORE, BE IT RESOLVED, by the Pontiac City Council that the Council hereby adopts Resolution 19-364 the resolution to approve Appeal 19-03 Special Exception Permit application to sell packaged liquor at 1124 Joslyn Avenue from A&S Kajj Enterprise, Inc., parcel #64-14-16-402-030 over the Mayor's veto.

Ayes: Taylor-Burks, Williams, Woodward, Carter, Miller and Pietila

No: None

**Resolution Passed.**

**19-383 Resolution to Override Mayor's Veto of Resolution 19-369 to instruct the City Attorney to amend City of Pontiac Ordinance 2287 and place the Cable Division and Appointment of the Cable Director under the legislative branch of City government. Moved by Councilperson Taylor-Burks and second by Councilperson Miller.**

WHEREAS, on July 16, 2019, the City Council adopted a Resolution to instruct the City Attorney to amend City of Pontiac Ordinance 2287 and place the Cable Division and Appointment of the Cable Director under the legislative branch of City government (Resolution 19-369); and, WHEREAS, section 3.112(f) of the Home Rule Charter of the City of Pontiac, Michigan (Charter) requires the City Clerk to present the resolution to the Mayor; and, WHEREAS, on July 22, 2019, the Clerk presented Resolution 19-369 to the Mayor; and, WHEREAS, section 3.112 (f) of the Charter allows the Mayor to veto the resolution; and, WHEREAS, the Mayor issued a veto of Resolution 19-369; and, WHEREAS, pursuant to Charter section 3.112(f), the City Council wishes to reconsider Resolution 19-369 the resolution to instruct the City Attorney to amend City of Pontiac Ordinance 2287 and place the Cable Division and Appointment of the Cable Director under the legislative branch of City government over the Mayor's veto. Five affirmative votes are required by Charter section 3112(f).

July 29, 2019 Special

NOW THEREFORE, BE IT RESOLVED, by the Pontiac City Council that the Council hereby adopts Resolution 19-369 the resolution to instruct the City Attorney to amend City of Pontiac Ordinance 2287 and place the Cable Division and Appointment of the Cable Director under the legislative branch of City government over the Mayor's veto.

Ayes: Williams, Woodward, Carter, Miller and Taylor-Burks

No: Pietila

**Motion Passed.**

19-384        **Resolution to authorize the legal engagement of the law firm of Clark Hill PLC, to provide advice and or a legal opinion regarding the Cable division.** Moved by Councilperson Taylor-Burks and second by Councilperson Miller. Discussion of the floor to add entire language from the charter under the third "Whereas" of the resolution. After discussion, Councilperson Taylor-Burks withdrew her motion and Councilperson Miller withdrew her second.

19-384(b)     **Resolution amended to authorize the legal engagement of the law firm of Clark Hill PLC, to provide advice and or a legal opinion regarding the Cable division.** Moved by Councilperson Taylor-Burks and second by Councilperson Miller.

WHEREAS, on July 16, 2019, the Pontiac City Council passed resolution 19-369, to instruct the City Attorney to amend City of Pontiac Ordinance 2287 and place the Cable Division and Appointment of the Cable Director under the legislative branch of the City government; and,

WHEREAS, on July 24, 2019, Mayor Deirdre Waterman vetoed the resolution and provided a statement which states in part that the resolution is "null and void, non-implementable and unenforceable;" and,

WHEREAS, section 4.204 of the Pontiac City Charter expressly states, "notwithstanding the above, the Council may engage independent legal counsel on a temporary basis where the Council is seeking enforcement of a Council subpoena or order, suing or being sued by any City agency or officer, or defending against any action or proceedings involving the Council's official duties. Further, the Council may obtain the opinion or advice of independent legal counsel in any matter pending before it."

NOW, THEREFORE BE IT RESOLVED that the Pontiac City Council hereby authorizes the legal engagement of the law firm of Clark Hill PLC, to provide advice and or a legal opinion regarding the Cable Division.

Ayes: Woodward, Carter, Miller, Taylor-Burks and Williams

No: Pietila

**Amended Resolution Passed.**

No Public Comment

Council President Kermit Williams Adjourned meeting at 10:42 a.m.

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GARLAND S. DOYLE  
INTERIM CITY CLERK

DRAFT

**#2**

**MINUTES**

**7-30-19**



July 30, 2019 Study

**Official Proceedings  
Pontiac City Council  
108<sup>th</sup> Session of the Tenth Council**

A Study Session of the City Council of Pontiac, Michigan was called to order in City Hall, Tuesday, July 30, 2019 at 6:00 p.m. by Council President Pro-Tem Randy Carter.

Call to Order

Roll Call

Members Present: Carter, Miller, Pietila, Taylor-Burks and Waterman

Members Absent: Williams and Woodward.

Mayor Waterman was absent.

Deputy Mayor Bais-DiSessa was present.

Clerk announced a quorum.

19-385        **Excuse Councilperson Kermit Williams and Don Woodward for personal reasons.**  
Moved by Councilperson Taylor-Burks and second by Councilperson Miller.

Ayes: Miller, Pietila, Taylor-Burks, Waterman and Carter

No: None

**Motion Carried.**

19-386        **Motion to amend agenda to add Resolution to have the City Attorney amend the current Zoning Ordinance to adopt the provisions in MCL 436.1503 as item 8.** Moved by Councilperson Taylor-Burks and second by Councilperson Miller.

Ayes: Pietila, Taylor-Burks, Waterman, Carter, and Miller

No: None

**Motion Carried.**

19-387        **Approval of agenda as amended.** Moved by Councilperson Miller and second by Councilperson Taylor-Burks.

Ayes: Taylor-Burks, Waterman, Carter, Miller and Pietila

No: None

**Motion Carried.**

19-388        **Approve meeting minutes for July 23, 2019.** Moved by Councilperson Miller and second by Councilperson Taylor-Burks.

Ayes: Waterman, Carter, Miller, Pietila and Tylor-Burks

No: None

July 30, 2019 Study

**Motion Carried.**

Eleven (11) individuals addressed the body during public comment.

19-389        **Suspend the rules to vote.** Moved by Councilperson Pietila and second by Councilperson Waterman.

Ayes: Carter, Miller, Pietila, Taylor-Burks and Waterman

No: None

**Motion Carried.**

19-390        **Adoption of an Ordinance to allow Redevelopment Liquor Licenses and Conditions for Issuance and Operations.** Moved by Councilperson Pietila and second by Councilperson Waterman.

**THE CITY OF PONTIAC ORDAINS:**

**I.        BISTRO RESTAURANTS**

- (1)        An applicant for a liquor license may propose to utilize the license for purposes of the operation of a bistro. Dining, entertainment, or recreation may be the primary purpose of the bistro. Unique and diverse venues with specialized menus that attract new patronage are encouraged.
- (2)        For purposes of this chapter, a "bistro" is defined as being a fixed food service establishment with interior seating that meets all of the following criteria:
  - (a)        The liquor license must be a redevelopment district or development district license, as defined in the Michigan Liquor Control Code, MCLA § 436.1101 et seq., as amended.
  - (b)        Interior seating (including bar seating) can be no less than 50 people and no greater than 150 people.
  - (c)        Sidewalk Cafes and Outdoor Dining Patios as defined in Section 2.539 of the Pontiac Zoning Ordinance are permitted in establishments with Bistro Liquor Licenses, provided that the City determines that there is sufficient space on an adjacent public sidewalk. Rooftop seating does not qualify as seasonal sidewalk cafe seating. Alcohol may only be served to seated patrons in sidewalk seating areas.
  - (d)        Bar seating shall be limited to 25% or less of the interior seating.
  - (e)        The establishment shall close no later than 12:00AM. With the prior approval of City Council, an establishment may remain open to offer food service.
  - (f)        Sales of food shall total not less than 50% of the total revenue of the establishment.

- (g) The licensee must otherwise comply with all requirements of the City Code.
- (3) Bistro Restaurants may only be located in the C-2 Downtown Zoning District.
- (4) Bistro Restaurant liquor licenses may not be transferred to other businesses, nor other addresses. A Bistro Restaurant liquor license may be transferred to a subsequent owner of the business originally granted the Bistro Restaurant liquor license if approved by the City Council, which shall use the criteria set forth in Section 8(a)-(h) to make such determination.
- (5) Prior to requesting approval by the City Council, a Bistro Restaurant shall obtain a Special Exception Permit from the City Planning Commission.
- (6) Prior to operating a bistro, a licensee shall enter into a Development Agreement with the City setting forth all rehabilitation/restoration plans and operating requirements for the Bistro Restaurant. Failure to comply with the terms and conditions of the Agreement shall be grounds for the City Council to recommend revocation of the license by the Michigan Liquor Control Commission.
- (7) Grounds for Immediate Review. A bistro license holder may be subject to immediate review by the City Council if he or she is cited for three violations within one calendar year. When under review, the City Council may determine that the bistro license holder is no longer operating within the best interests of the city, and the City Council may recommend revocation of the bistro license to the Michigan Liquor Control Commission.
  - (a) A violation includes any of the following:
    - (i) Violations issued from the Michigan Liquor Control Commission.
      - a. Citations from the City.
    - (ii) Citations issued from any other governmental body.
- (8) Approval. If the City Council is satisfied that the establishment or operation will provide a benefit to the City of Pontiac and constitute an asset to the community, it will adopt a resolution granting approval, subject to the satisfaction of any conditions stated in the resolution. The City Council shall consider the following nonexclusive list of criteria to assist in the determination if the establishment will provide a benefit and be an asset to the community.
  - (a) The applicant's demonstrated ability to finance the rehabilitation/restoration as set forth in the Development Agreement.
  - (b) The applicant's demonstrated ability to finance the operations of the proposed project.
  - (c) The applicant's track record with the city, including responding to city and/or citizen concerns.

- (d) Whether the applicant has an adequate site plan to handle the bistro liquor license activities at the proposed establishment.
- (e) Whether the applicant has adequate health and sanitary facilities at the proposed establishment.
- (f) Potential community benefits proposed by the applicant.
- (g) The applicant's ability to employ city residents.
- (h) Whether the applicant has outstanding obligations to the city (i.e., property taxes, utilities, etc.). Applicant shall be automatically denied if applicant has any outstanding/past-due obligations to the city or other municipality or governmental agency.

(9) Approval Procedures and Requirements;

- A. **Submission & Initiation of Licensee Process.** A property owner with business interest in an existing establishment, a possessory interest entitled to exclusive possession, or a contractual interest may submit to the City of Pontiac Planning Division an application requesting a Bistro Redevelopment Liquor License.
- B. **Submission of application.** All requirements of the Bistro Redevelopment License Application and Special Exemption Application must be submitted to the Planning Division with all required information included to be considered complete, incomplete applications will not be reviewed. Applications must be submitted 45 days prior to the scheduled Planning Commission Meeting.
- C. **Technical Review.** Upon receipt of the Bistro License Application, and prior to the scheduled Planning Commission Special Exemption Review, the Planning Division must conduct a technical review of the application findings based on the criteria outline above Section 8(a)-(h), as well as those criteria outline in the Zoning Ordinance for Special Exemption Review.
- D. **Special Exemption and Application Review.** Upon the Planning Commission's review of the proposed Bistro Redevelopment Liquor License, the Planning Commission will offer a recommendation to City Council for Denied or Approval of the license request.
- E. **City Council License Review.** Upon receipt of the Planning Commission recommendation of the proposed Bistro Redevelopment Liquor License. City Council will affirm that the proposed site complies with the City of Pontiac Zoning Ordinance and section 8(a)-(h) of this ordinance, and vote to adopt a resolution to approve or deny the applicant's request for a Bistro Redevelopment Liquor License.

Ayes: Pietila, Waterman and Carter

No: Miller and Taylor-Burks

**Ordinance Failed.**

19-391      **Suspend the rules to vote.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

July 30, 2019 Study

Ayes: Pietila, Taylor-Burks, Waterman, Carter and Miller  
No: None

**Motion Carried.**

19-392        **Resolution to authorize Mayor to enter into a contract with Pamar Enterprises Inc., for \$1,617,806.50 for the City's 2019 Local Street improvement Project.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

Whereas, the City of Pontiac has advertised and received responses to a Request for Proposal for the 2019 Local Street Improvement Program on May 28, 2019, and publically opened bids; and

Whereas, a bid tabulation was prepared and reviewed, and;

Whereas, the City identified the low bidder as Pamar Enterprises, and references of the low bidder checked and found acceptable.

Now, Therefore, Be It Resolved, that the Pontiac City Council authorizes the Mayor to enter into a contract with Pamar Enterprises, Inc. for \$1,617,806.50 for the 2019 Local Street Improvement Project.

Ayes: Taylor-Burks, Waterman, Carter, Miller and Pietila  
No: None

**Resolution Passed.**

#### **Communication from the City Clerk**

Report received informing the City Council that the Office of the City Clerk will continue distributing Medical Marihuana applications for growers, processors, secure transporters and safety compliance again to the public as of July 26, 2019.

#### **Monthly Mayoral Reports**

Monthly Staff Changes Report. (The June report was not submitted. This item was brought back from the July 2, 9, 16, 23, 2019 Council Meetings.)

City Credit Card Statement (Finance Department stated that they would provide the June report at the July 9, 2019 meeting. The report has not been submitted. This item was brought back from the July 16 and 23, 2019 Council Meetings.)

19-393        **Suspend the rules to vote.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

Ayes: Waterman, Carter, Miller, Pietila and Taylor-Burks  
No: None

**Motion Carried.**

July 30, 2019 Study

19-394            **Resolution to have the City Attorney amend the current Pontiac Zoning Ordinance to adopt the provisions in MCL 436.1503. (Agenda add-on)** Moved by Councilperson Pietila and second by Councilperson Miller.

Whereas, on April 3, 2019, the Planning Commission reviewed a Special Exception Permit Request for retail sale of packaged liquor at 1124 Joslyn Avenue and was denied; and,

Whereas, the Applicant, A&S KAJAY ENTERPRISE, INC., submitted an appeal to the Planning Manager within ten days of the Planning Commission's decision and requested an appeal from the Pontiac City Council; and,

Whereas, the Pontiac Planning Commission reviewed and applied section 2.515 of Pontiac's Zoning Ordinance which states: (a) the sale of packaged alcoholic beverages is prohibited to be located less than 500 feet from the property of a place of worship, park, playground, daycare facility, pre-school or K thru 12 school and (b) not more than two properties upon which the retail sale of packaged alcoholic beverages is permitted shall be located within one mile; and,

Whereas, MCL 436.1503 of the Michigan Liquor Control Code of 1988 provides for the licensing, proximity of contemplated location to church or school building; measurement of distance; exceptions; presumption of validity; waiver; objection; hearing; transfer to location farther from church or school; and,

Whereas, MCL 436.1503 (4) further states that the commission may waive the section for all classes of licenses. If an objection is not filed by the Church or school, the commission may issue the license under the act. If an objection is filed, the commission shall hold a hearing under rules established by the commission before making a decision on issuing the license; and,

Whereas, the Pontiac Zoning Ordinance fails to provide a method for measuring the distance between properties, but MCL 436.1503 does however, establish a method of measurement.

Now, Therefore Be It Resolved, that the Pontiac City Council hereby authorizes the City Attorney within thirty days, to amend the current Pontiac Zoning Ordinance and to adopt the provisions in MCL 436.1503 which allows for a waiver if no objections are filed by a church or school, implement a method of measurement of properties upon which the retail sale of alcoholic beverages are permitted and forward the changes to the Planning Commission.

Ayes: Carter, Miller, Pietila, Taylor-Burks and Waterman

No: None

**Resolution Passed.**

Council President Pro-Tem Randy Carter Adjourned meeting at 6:53 p.m.

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GARLAND S. DOYLE  
INTERIM CITY CLERK

**#3**

**SUB**

**COMMITTEE**

**REPORT**

## COMMUNITY DEVELOPMENT SUB-COMMITTEE NOTES

July 16, 2019

In attendance:

Council members: Chairperson Don Woodward, Kermit Williams and Gloria Miller

Deputy Mayor: Jane Bais-Disessa

Planning Manager: Vernon Gustafsson

Community Relations Specialist: James Johnson

Building Official: Mike Wilson

Start: 12:01 p.m.

### I. Phoenix Center Update

Renderings were provided by, AUCH Construction to provide possible ideas and potential concepts. Examples include, connecting the Phoenix Center to downtown, using storage units, enhancing the lighting and making structural and esthetic uses.

The repairs need to be made first and then an attempt to cultivate a relationship with a developer. Some developers have shown an interest, but there is nothing concrete.

Improvements downtown require a joint development agreement.

It was argued that the cost and expertise should be borne by someone else who can handle it.

The Council and the Executive should be on the same page.

The Executive states that both sides need to come up with a plan, this is the only piece of property owned by the City in downtown and most cities have successful parking structures downtown.

The counter-argument is that the citizens paid to get the structure built and took out bonds when the water- treatment facility was purchased. For years, the structure has been of no benefit to the citizens and the request is for them to take out bonds again.

Lot 9 is essential and there should be a discussion with the owner.

Main Street is a non-profit organization that runs downtown. It was argued, that Main Street makes all the decisions regarding downtown and the counter-argument, the City has input, as the Mayor has appointed members to the board and the entity is through Oakland County.

### II. MDOT/Woodward Loop Meeting July 9, 2019

There is a new Director of MDOT, so the Mayor wanted to meet with key Executive staff and key Legislators to discuss the Woodward Loop.

The Loop is not helping downtown to grow.

MDOT would like to assist and the cost will be \$16 million to get the project done.

The roads are fine. Changes need to be made to the lighting and easements.

MDOT would like a resolution from the Council showing their support.

The attempt is to find a better way to bring people into the downtown.

The total cost is \$16 million and the City would be responsible for 12% percent.

### III. Hidden River Park

An individual is willing to give in upwards of \$60K to develop the two (2) cement lots and place park benches and a movie screen in the area. The Executive states that the space is too small.

It was argued, that the grant money should be used to develop a park and not this location.



It was further argued, that the location has never been deemed a "park," there are no City documents reflecting the location as a park and the location is not included in the Master Plan nor on the City of Pontiac's website.

It was expressed, that the Mayor never discussed putting equipment at Hidden River Park at a subcommittee meeting. There was at no point, a prior discussion with the Council.

It was questioned as to how this location could get re-zoned without going to the Council or to the Planning Commission. The Executive replied, the grant is for "instrumental equipment" and not "play-ground equipment" and the zoning has not been changed.

The Executive also expressed that the Mayor has the authority.

Historically, the location was called Hidden River Park due to Arts Beats and Eats.

It was also questioned as to the impact on the bistro licenses. Retail sales is a problem, so the ordinance must be changed.

It was noted, that the marihuana discussions regarding zoning were going on prior to this designation.

#### **IV. George Derderian-Ultimate Soccer Arena PA 210 Request**

The applicant has not provided all of the information that was requested.

Questioned whether the district was created.

**Adjourned 12:54 pm.**

**#7**

**ORDINANCE**



**CITY OF PONTIAC**  
**Department of Building Safety**  
**PLANNING DIVISION**

47450 Woodward Ave | PONTIAC, MICHIGAN 48342-5009  
TELEPHONE: (248) 758-2800 | FAX: (248) 758-2827

*Mayor Deirdre Waterman*

**TO: MAYOR DEIRDRE WATERMAN, CITY COUNCIL & COUNCIL PRESIDENT**

**FROM: OFFICE OF DEPUTY MAYOR JANE BIAS-DISESSA  
VERN GUSTAFSSON – PLANNING MANAGER**

**SUBJECT: BISTRO REDEVELOPMENT LIQUOR LICENSE ORDINANCE**

**DATE: JULY 11, 2019**

I have attached for your consideration and first reading pursuant to Charter Section 3.112, a proposed Bistro Redevelopment Liquor License Ordinance. The implementation of the Bistro Redevelopment Liquor License program supports business located in designated TIFA Districts to be granted “Bistro” Liquor Licenses. These licenses are created from Public Act 501 of 2006, establishing Redevelopment Liquor Licenses and encouraging businesses who desire to locate in cities with limited or no liquor licenses available to redevelopment areas within the city. The Bistro Liquor License will benefit those businesses downtown who engage in dining, entertainment, or recreation as a primary use, while the sale of alcohol for on-site consumption will be a secondary use. The issuance of Bistro Licenses will serve as an Economic Development tool, increasing vehicular and pedestrian foot traffic in the Downtown area, while also increasing services to local business and their patrons.

The provided Bistro Redevelopment Liquor License Ordinance outlines the requirements and restrictions for licensure, process and procedure for application, and permit revocation and review. The granting of Bistro Licenses will require the submission of a Bistro License Application provided by the city, Planning Commission Special Exemption Permit review, and City Council approval is required for the initial issuance, reissuance, and transfer of Bistro Licenses. Upon an adopted resolution approving a requested Bistro License the Liquor Control Commission (LLC) will provide to the applicant a Bistro License for \$20,000.

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO ALLOW REDEVELOPMENT LIQUOR LICENSES AND  
CONDITIONS FOR ISSUANCE AND OPERATIONS**

**THE CITY OF PONTIAC ORDAINS:**

**I. BISTRO RESTAURANTS**

- (1) An applicant for a liquor license may propose to utilize the license for purposes of the operation of a bistro. Dining, entertainment, or recreation may be the primary purpose of the bistro. Unique and diverse venues with specialized menus that attract new patronage are encouraged.
- (2) For purposes of this chapter, a "bistro" is defined as being a fixed food service establishment with interior seating that meets all of the following criteria:
  - (a) The liquor license must be a redevelopment district or development district license, as defined in the Michigan Liquor Control Code, MCLA § 436.1101 et seq., as amended.
  - (b) Interior seating (including bar seating) can be no less than 50 people and no greater than 150 people.
  - (c) Sidewalk Cafes and Outdoor Dining Patios as defined in Section 2.539 of the Pontiac Zoning Ordinance are permitted in establishments with Bistro Liquor Licenses, provided that the City determines that there is sufficient space on an adjacent public sidewalk. Rooftop seating does not qualify as seasonal sidewalk cafe seating. Alcohol may only be served to seated patrons in sidewalk seating areas.
  - (d) Bar seating shall be limited to 25% or less of the interior seating.
  - (e) The establishment shall close no later than 12:00AM. With the prior approval of City Council, an establishment may remain open to offer food service.
  - (f) Sales of food shall total not less than 50% of the total revenue of the establishment.
  - (g) The licensee must otherwise comply with all requirements of the City Code.
- (3) Bistro Restaurants may only be located in the C-2 Downtown Zoning District.
- (4) Bistro Restaurant liquor licenses may not be transferred to other businesses, nor other addresses. A Bistro Restaurant liquor license may be transferred to a subsequent owner of the business originally granted the Bistro Restaurant liquor license if approved by the City Council, which shall use the criteria set forth in Section 8(a)-(h) to make such determination.
- (5) Prior to requesting approval by the City Council, a Bistro Restaurant shall obtain a Special

Exception Permit from the City Planning Commission.

(6) Prior to operating a bistro, a licensee shall enter into a Development Agreement with the City setting forth all rehabilitation/restoration plans and operating requirements for the Bistro Restaurant. Failure to comply with the terms and conditions of the Agreement shall be grounds for the City Council to recommend revocation of the license by the Michigan Liquor Control Commission.

(7) Grounds for Immediate Review. A bistro license holder may be subject to immediate review by the City Council if he or she is cited for three violations within one calendar year. When under review, the City Council may determine that the bistro license holder is no longer operating within the best interests of the city, and the City Council may recommend revocation of the bistro license to the Michigan Liquor Control Commission.

(a) A violation includes any of the following:

(i) Violations issued from the Michigan Liquor Control Commission.

a. Citations from the City.

(ii) Citations issued from any other governmental body.

(8) Approval. If the City Council is satisfied that the establishment or operation will provide a benefit to the City of Pontiac and constitute an asset to the community, it will adopt a resolution granting approval, subject to the satisfaction of any conditions stated in the resolution. The City Council shall consider the following nonexclusive list of criteria to assist in the determination if the establishment will provide a benefit and be an asset to the community.

(a) The applicant's demonstrated ability to finance the rehabilitation/restoration as set forth in the Development Agreement.

(b) The applicant's demonstrated ability to finance the operations of the proposed project.

(c) The applicant's track record with the city, including responding to city and/or citizen concerns.

(d) Whether the applicant has an adequate site plan to handle the bistro liquor license activities at the proposed establishment.

(e) Whether the applicant has adequate health and sanitary facilities at the proposed establishment.

(f) Potential community benefits proposed by the applicant.

(g) The applicant's ability to employ city residents.

(h) Whether the applicant has outstanding obligations to the city (i.e., property taxes, utilities, etc.). Applicant shall be automatically denied if applicant has any outstanding/past-due obligations to the city or other municipality or governmental agency.

(9) Approval Procedures and Requirements;

- A. **Submission & Initiation of Licensee Process.** A property owner with business interest in an existing establishment, a possessory interest entitled to exclusive possession, or a contractual interest may submit to the City of Pontiac Planning Division an application requesting a Bistro Redevelopment Liquor License.
- B. **Submission of application.** All requirements of the Bistro Redevelopment License Application and Special Exemption Application must be submitted to the Planning Division with all required information included to be considered complete, incomplete applications will not be reviewed. Applications must be submitted 45 days prior to the scheduled Planning Commission Meeting.
- C. **Technical Review.** Upon receipt of the Bistro License Application, and prior to the scheduled Planning Commission Special Exemption Review, the Planning Division must conduct a technical review of the application findings based on the criteria outline above Section 8(a)-(h), as well as those criteria outline in the Zoning Ordinance for Special Exemption Review.
- D. **Special Exemption and Application Review.** Upon the Planning Commission's review of the proposed Bistro Redevelopment Liquor License, the Planning Commission will offer a recommendation to City Council for Denied or Approval of the license request.
- E. **City Council License Review.** Upon receipt of the Planning Commission recommendation of the proposed Bistro Redevelopment Liquor License. City Council will affirm that the proposed site complies with the City of Pontiac Zoning Ordinance and section 8(a)-(h) of this ordinance, and vote to adopt a resolution to approve or deny the applicant's request for a Bistro Redevelopment Liquor License.

I hereby certify this ordinance was adopted at a second reading of the ordinance by the City Council of the City of Pontiac on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Garland Doyle, Interim City Clerk

I further hereby certify that the foregoing is a true copy of the Ordinance as passed by the City Council and was published verbatim in a publication of general circulation on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Garland Doyle, Interim City Clerk

**#8**

# **RESOLUTION**



# CITY OF PONTIAC

## OFFICIAL MEMORANDUM

*Executive Branch*

---

**TO:** Honorable City Council President and City Council Members

**FROM:** Honorable Mayor Waterman

**Thru:** Office of Deputy Mayor, Jane Bais-DiSessa

**DATE:** August 1, 2019

**RE:** Resolution Regarding 235 Wesson Street.

For your consideration, the following resolution is proposed:

*Whereas*, the City of Pontiac has been presented with a Real Estate Purchase and Sale Agreement for the property located at 235 Wesson Street (Copy Attached); and

*Whereas*, the City Council Real Estate Subcommittee referred the matter to the Executive Office for further review.

***NOW THEREFORE***, it is resolved that the Mayor is hereby authorized to conduct preliminary due diligence regarding the potential purchase of 235 Wesson Street, and negotiate terms and conditions of sale.

Thank you.

DW:jbd

Attachment



## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into on the 22<sup>nd</sup> day of July, 2019, but is not effective until August 7, 2019, ("Effective Date") by and between PLTC I Realty Investment, LLC, a Michigan limited liability company, whose address is 4967 Crooks Road, Ste. 150, Troy, Michigan 48098 ("Seller") and, the City of Pontiac, a Michigan municipal corporation, with its principal offices located at 47450 Woodward Ave., Pontiac, Michigan 48342 ("Purchaser"), and states as follows:

### BACKGROUND

- A. Seller is the owner of certain real property, consisting of four (4) parcels of land, the first being approximately 8 acres located at 235 Wessen St., City of Pontiac, County of Oakland, Michigan ("Parcel A"), the second being two (2) vacant lots located at the corner of Wessen and Branch Streets, City of Pontiac, County of Oakland, Michigan ("Parcel B"), the third and fourth being two (2) vacant lots located at the corner Houston and Branch Streets, City of Pontiac, County of Oakland, Michigan ("Parcel C" & "Parcel D", respectfully), as more fully described in **EXHIBIT A** attached hereto and made a part hereof (but subject to conformance with the Commitment (as defined hereafter) (Parcels A,B,C,&D being collectively described herein as the "Land"), together with such building structures existing thereon (collectively "Buildings"), and certain other improvements on, above or below the Land, and all fixtures and appurtenances, including but not limited to, all cabinets, shelving, lighting fixtures, ceiling fans, window treatments, window hardware, curtain rods, ventilating fixtures, screens, doors, windows, alarm systems, landscaping, carpeting, flooring, heating, ventilation and air conditioning systems, utilities and signs, attached to, a part of or used in connection with the improvements, structures and buildings, and the parking facilities, walks, ways, ramps and other appurtenances relating to the Land (collectively "Improvements"), and excluding such other personal property not deemed to be a fixture or appurtenance essential to the operation of the Buildings, and by way of clarification, excluding also all personal property owned by Wessen Lawn Tennis Club, Inc, Seller's tenant ("Excluded Personal Property").
- B. The Land and the Improvements not listed as Permitted Exceptions (as defined hereafter), together with all right, title and interest of Seller in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Land to the center line thereof, and all easements appurtenant to the Land, including, but not limited to, privileges or rights of way over adjoining premises inuring to the benefit of the Land, or the fee owner thereof, and together with all rights of use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging to the foregoing, are hereinafter sometimes collectively referred to as the "Real Estate".
- C. Seller desires to sell the Real Estate to Purchaser, and Purchaser desires to purchase the Real Estate from Seller, all upon the terms and subject to the conditions hereinafter set forth.

### AGREEMENTS

**NOW, THEREFORE**, for and in consideration of the mutual promises hereinafter set forth, and the purchase monies to be paid by Purchaser to Seller, it is hereby agreed:

1. **AGREEMENT TO SELL AND PURCHASE.**

1.1 Seller hereby agrees to sell the Real Estate to Purchaser, and Purchaser hereby offers and agrees to purchase the Real Estate from Seller, in accordance with the terms and subject to the conditions hereinafter set forth.

1.2 Due to the time sensitive nature of this transaction, this Agreement will automatically terminate in its entirety and be of no further force or effect, unless the Pontiac City Council has authorized the execution of this Agreement via a resolution, substantially in the form of **EXHIBIT B**, and the Agreement has been executed by representatives of the Seller and Purchaser, on or before August 7, 2019. ("**Automatic Termination Date**")

1.3 Notwithstanding the foregoing, personal property not included in Seller's Bill of Sale shall also be deemed Excluded Personal Property and as such shall not be included as part of the purchase of the Real Estate.

2. **PURCHASE PRICE AND PAYMENT THEREOF.**

2.1 The purchase price for the Real Estate shall be Two Million Five Hundred and Fifty Thousand and 00/100 Dollars (\$2,550,000.00) to be due at Closing (as defined hereafter) in cash or via a cashier's check, wire transfer, or other secured funds payable to Seller, subject to the adjustments required in this Agreement in accordance with the terms hereof ("**Purchase Price**").

3. **PERMITTED EXCEPTIONS.**

3.1 The Real Estate shall be sold and conveyed to Purchaser as described herein with the exception of certain items, if any, acceptable to the Purchaser as disclosed in the Title Commitment ("**Permitted Exceptions**").

4. **EVIDENCE OF TITLE.**

4.1 As evidence of title, within five (5) days of the Effective Date, Seller shall furnish Purchaser with a commitment ("**Commitment**") for an A.L.T.A. Owner's Policy of Title Insurance issued by the Title Company, along with copies of all instruments described in Schedule B of the Commitment, in the amount of the Purchase Price as well as copy of the most recent survey ("**Survey**"), substantially in the form as attached in **EXHIBIT C**. At Closing, Seller shall provide to Purchaser, at Purchaser's expense, a policy of title insurance issued pursuant to the Commitment, insuring the interest in the Real Estate being acquired by Purchaser, without "standard exceptions," and subject to only the Permitted Exceptions acceptable to Purchaser.

4.2 Within five (5) days of the Effective Date, Purchaser shall have the option to obtain, at its expense, an updated survey ("**Updated Survey**") of the Real Estate prepared by a licensed surveyor or engineer reasonably acceptable to Purchaser, and, at least five (5) days prior to Closing, the survey shall be certified to the Purchaser, the Title Company and any lenders designated by the Purchaser. The Survey shall show the legal description of the Land, the total acreage of each parcel comprising the Land, and such other matters as shall be necessary for removal of the standard survey exception from the policy of title insurance to be issued pursuant to the Commitment.

4.3 If the Commitment or the Survey shows any exceptions or matters which are not acceptable to Purchaser, in its sole discretion, other than a lien or encumbrance of a definite or ascertainable amount which may be removed by the payment of money at the Closing and which the

Seller has the right to remove hereinafter referred to as "Removable Liens" (a "Title Defect"), Purchaser shall advise Seller of same in writing within five (5) days after receipt of the Commitment and Survey, Seller shall have twenty (20) days after receipt of notice from Purchaser of such Title Defects to have such Title Defects deleted from such Commitment. In such event, the Closing shall be held within fifteen (15) days after delivery of the revised Commitment deleting such Title Defects or on the Closing Date, whichever is later; provided that if the Title Defects are not cured before the Closing Date, Purchaser may terminate this Agreement upon written notice to the Seller. If Seller fails to have the Title Defects removed from such Commitment or to remove the Removable Liens as required herein, Purchaser may: (a) terminate this Agreement upon notice to Seller, , and neither Seller nor Purchaser shall have any further duties or obligations under this Agreement; or (b) elect to take title as it then is.

Notwithstanding anything to the contrary in this Section, the time periods provided in this Section shall not operate to extend Purchaser's Due Diligence Period.

## 5. INFORMATION AND ACCESS TO PROJECT.

5.1 Within five (5) days from the Effective Date, Seller shall deliver and make available to Purchaser such of the following which are in Seller's possession:

- (a) Any surveys of the Land, and any Phase I, Phase II or such other Environmental Site Assessments;

5.2 From and after the Effective Date through the Closing Date, Seller shall afford Purchaser and its representatives, agents, contractors, legal counsel and accountants, access to the Real Estate, as coordinated and approved by Seller in advance thereof, to permit Purchaser to perform such Inspections, as each is defined in Section 9 hereof; Further, if Purchaser or its representatives or contractor or agent enter upon the Real Estate pursuant to the terms hereof, Purchaser agrees to indemnify and hold Seller harmless from damage caused to persons or the Real Estate as a result of such entry and the acts or omissions of Purchaser or its agents or representatives or contractor; provided, however, that nothing herein shall be construed as to make Purchaser responsible or liable for general security of the Real Estate. Purchaser, or its contractor, shall provide Seller evidence of insurance and list Seller as an "additional insured." All tests and inspection activities shall be at Purchaser's expense, and without reimbursement from Seller.

## 6. ADJUSTMENTS AND PRORATIONS.

6.1 The following adjustments and prorations shall be made at the Closing between Seller and Purchaser computed to, but not including, the Closing Date.

- (a) The amount of all unpaid water and other utility bills, if any, and all other expenses incurred with respect to the Real Estate, and relating to the period prior to the Closing Date, shall be paid by Seller. Purchaser shall pay all such water and utility expenses related to the period from and after the Closing.

- (b) The amount of all unpaid real estate taxes that are due and payable as of the Closing Date, shall be paid by Seller. Current real estate taxes shall be prorated and adjusted as of the date of Closing on a due date basis in accordance with the municipality or taxing unit in which the Real Estate is located.

- (c) There is no current rent.

- (d) There are no security deposits, advance rentals or future lease credits.

6.2 If after the closing but within one (1) year, either Seller or Purchaser discovers any inaccuracies or errors in the prorations or adjustments done at Closing, Seller and Purchaser shall take all action and pay all sums necessary so that the said prorations and adjustments shall be in accordance with the terms of this Agreement, and the obligations of either party to pay any such amount shall survive the Closing Date for such one (1) year period.

7. **WARRANTY DISCLAIMER**

7.1 It is understood and agreed that Seller is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to the real or personal property, or the associated buildings or improvement. Purchaser agrees that with respect to the real and personal property and any buildings or improvements associated therewith, Purchaser has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of Seller. Purchaser acknowledges and agrees that upon Closing, Seller shall sell and convey to Purchaser and Purchaser shall accept the real and personal property and any buildings or improvements associated therewith "as is," "where is," and "with all faults," and there are no oral agreements, warranties or representations, collateral to or affecting the real and personal property or the buildings or improvements associated therewith by Seller, any agent of Seller or any third party. Seller is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the real and personal property or any buildings or improvements associated therewith furnished by any real estate broker, agent, employee, servant or other person.

8. **CONDITIONS.**

8.1 Purchaser's obligation to consummate the purchase of the Real Estate is expressly conditioned upon the following, each of which constitutes a condition precedent to Purchaser's obligations hereunder which, if not performed or determined to be acceptable to Purchaser on or before the Closing Date (unless a different time for performance is expressly provided herein), shall permit Purchaser, at its sole option, to declare this Agreement null and void and of no further force and effect by written notice to Seller deposited in the United States mail, postage prepaid, or by facsimile transmission, or personally delivered to Seller, at any time on or before the Closing Date, whereupon the Deposit shall be returned immediately to Purchaser, and neither the Seller nor the Purchaser shall have any further obligations hereunder to the other (provided that Purchaser shall have the right to waive any one or all of said conditions).

- (a) Purchaser shall have been satisfied with all Inspections pursuant to Section 9.1 hereof.
- (b) Seller and Purchaser shall have complied with and performed all covenants, agreements and conditions on its part to be performed under this Agreement within the time herein provided for such performance.

9. **DUE DILIGENCE PERIOD & INSPECTIONS**

9.1 Purchaser, at Purchaser's expense, shall have a period of thirty (30) days commencing on the Effective Date ("Due Diligence Period") to: (i) inspect the Real Estate, to conduct any and all tests, studies and investigations, including but not limited to inspection, evaluation, and testing of the heating, ventilation, air conditioning systems and all components thereof, all structural and mechanical systems

within the Buildings, including but not limited to, sprinkler systems, power lines and panels, air lines and compressors, automatic doors, tanks, pumps, plumbing and all equipment, with respect to the Real Estate as Purchaser shall deem necessary or appropriate, (ii) review current tax assessments for the Real Estate, (iii) review all financial and operational information relating to the physical operation of the Real Estate, (iv) conduct any and all environmental tests, studies, and investigations, and (v) review all other aspects of the Real Estate and all documents, instruments and agreements relating to any of the foregoing (collectively the foregoing are referred to herein as the "Inspections"). At any time during the Due Diligence Period, and for any reason whatsoever, Purchaser may, at its option and in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to Seller, and Purchaser shall be entitled to and shall receive from the Seller a full refund of the Deposit.

In the event Purchaser does not deliver a notice of termination with respect to this Agreement pursuant to this Section 9.1 to Seller and Escrow Agent on or before the expiration of the Due Diligence Period, Purchaser shall then be precluded from terminating this Agreement pursuant to this Section 9.1.

In the event Purchaser delivers a notice of termination with respect to this Agreement on or before the expiration of the Due Diligence Period, as the same may be extended, this Agreement shall have no further force or effect, and the parties shall have no further rights or obligations hereunder (except for Purchaser's indemnification and restoration obligations described in Section 9.1, which shall survive).

#### 10. DESTRUCTION OF REAL ESTATE.

10.1 In the event any part of the Real Estate shall be damaged or destroyed prior to the Closing Date, Seller shall notify Purchaser thereof, which notice shall include a description of the damage and all pertinent insurance information. If the use or occupancy of the Real Estate is affected by such damage or destruction or the cost to repair such damage or destruction exceeds One Hundred Thousand (\$100,000.00) Dollars, Purchaser may terminate this Agreement by notifying Seller within thirty (30) days following the date Purchaser receives notice of such occurrence, whereupon the Deposit shall be returned immediately to Purchaser, and Seller and Purchaser shall not have any further obligation hereunder to the other. If Purchaser does not elect to terminate this Agreement, or shall fail to notify Seller within the said thirty (30) day period, on the Closing Date, Seller shall assign to Purchaser all of Seller's right, title and interest in and to the proceeds of the fire and extended coverage insurance presently carried by or payable to Seller.

#### 11. CONDEMNATION.

11.1 If, prior to the Closing Date, either Seller or Purchaser receives or obtains notice that any governmental authority having jurisdiction intends to commence or has commenced proceedings for the taking of any portion of the Real Estate by the exercise of any power of condemnation or eminent domain, or notice of any such taking is recorded among the public records of the State of Michigan or Oakland County, Purchaser shall have the option to terminate this Agreement by notifying Seller within thirty (30) days following Purchaser's receipt of such notice, in which event the Deposit shall be returned immediately to Purchaser, and Seller and Purchaser shall not have any other or further liability or responsibility hereunder to the other. If Purchaser does not elect to terminate this Agreement or shall fail to notify Seller within thirty (30) day period, Purchaser shall close the transaction as if no such notice had been received, obtained or recorded or proceedings commenced, and in such event, any proceeds or awards made in connection with such taking shall be the sole property of the Purchaser.

#### 12. PURCHASER'S LIABILITY.

12.1 Recourse against Purchaser shall be limited to entity liability. No officer, director, member, manager, shareholder or partner, general or limited, of Purchaser, its designee, transferee or assignee, shall be personally or individually liable with respect to any obligation under this Agreement, all such personal and individual liability, if any, being hereby waived by the Seller on its behalf and on behalf of all persons claiming by, through or under the Seller.

13. **DEFAULT BY SELLER OR PURCHASER.**

13.1 In the event Seller shall fail to perform any of its obligations hereunder, Purchaser may, at Purchaser's option select as its remedy from the following options: (i) terminate this Agreement by written notice delivered to Seller at or prior to the Closing Date and receive a full refund of the Deposit in full termination of this Agreement, (ii) obtain specific performance of the closing this transaction and such damages arising from the breach hereof, including actual attorneys' fees incurred by Purchaser in the enforcement of this Agreement, or (iii) waive Seller's default and proceed to consummate the transactions with Seller.

13.2 In the event Purchaser fails to perform its obligations pursuant to the terms of this Agreement, Seller may, at Seller's option, select as its sole remedy any of the following options: (i) Purchaser shall pay \$100,000 in liquidated damages to the Seller, (ii) obtain specific performance of the closing this transaction, or (iii) waive Purchaser's default and proceed to consummate the transaction with Purchaser.

14. **LIABILITY AND INDEMNIFICATION.**

14.1 Purchaser does not and shall not assume any liability for any claims arising out of any occurrence prior to the Closing Date with respect to the Real Estate. Purchaser shall assume liability for any claims arising out of occurrences subsequent to the Closing Date with respect to the Real Estate.

14.2 From and after the Closing Date, Seller hereby agrees to indemnify and hold Purchaser, and Purchaser's successors and assigns, harmless from and against any and all claims, penalties, damages, liabilities, actions, causes of action, costs and expenses (including attorneys' fees), arising out of, as a result of or as a consequence of: (i) any property damage or injuries to persons, including death, caused by any occurrence at the Real Estate or in connection with the Seller's use, possession, operation, repair and maintenance of the Real Estate prior to the Closing Date; and (ii) any breach by Seller of any of its representations, warranties, or obligations set forth herein.

14.3 From and after the Closing Date, Purchaser hereby agrees to indemnify and hold Seller and Seller's successors and assigns, harmless from and against any and all claims, penalties, damages, liabilities, actions, causes of action, costs and expenses (including attorneys' fees), arising out of, as a result of or as a consequence of: (i) any property damage or injuries to persons, including death, caused by any occurrence at the Real Estate or in connection with the Purchaser's use, possession, operation, repair and maintenance of the Real Estate after the Closing Date; and (ii) any breach by Purchaser of any of its representations, warranties, or obligations set forth herein.

15. **CLOSING.**

15.1 Subject to the provisions of Section 4.3 and satisfaction or waiver by Purchaser of the conditions set forth in Section 8 hereof, the closing ("Closing") of the transaction contemplated herein shall take place on a date and time mutually agreed upon by Seller and Purchaser, but shall occur no later than September 16, 2019 ("Closing Date"). The Closing shall be held at the Title Company's offices, or at such other place as Purchaser and Seller shall agree upon.

15.2 At any Closing, with respect to this Agreement:

- (a) Seller shall execute and deliver a Covenant Deed in recordable form effectively conveying marketable and insurable title to the Land and Improvements to Purchaser, subject to the Permitted Exceptions;
- (b) Seller shall execute and deliver a Bill of Sale to Purchaser effectively conveying to Purchaser legal title to the Fixtures and Improvements;
- (c) Seller shall deliver a standard form Owner's Affidavit and any lien waivers required by the Title Company for the purpose of removing the construction lien exception, gap exception, parties-in-possession exception, unrecorded easements exceptions, and any other standard exceptions from the Title Policy;
- (d) Seller shall deliver a Title Policy, in the condition required hereunder, at Seller's expense;
- (e) Seller shall deliver an IRC Section 1445 Non-Foreign Affidavit; and
- (f) Seller and Purchaser shall each deliver to the other such other documents or instruments as shall reasonably be required by such party, its counsel or the Title Company to consummate the transaction contemplated herein and/or to cause the issuance of the policy of title insurance which, in all events, shall not increase such party's liability hereunder or decrease such party's rights hereunder.

16. CLOSING COSTS, PRORATIONS, AND ADJUSTMENTS.

16.1 Seller shall cause the release of the Real Estate from all loans, liens and other encumbrances secured by the Real Estate, and Seller shall pay all prepayment penalties or fees assessed by the holders of such loans, if any. Seller shall pay for Purchaser's Title Policy, state and county transfer taxes, one half of the Title Company's escrow fees for closing the transaction and Seller's legal fees. The Purchaser shall be responsible for the cost of recording the Covenant Deed, one half of the Title Company's escrow fees for closing the transaction and Purchaser's legal fees. Seller shall pay all outstanding utilities and water bills as of and through the date of Closing and any personal property taxes. All real estate taxes that are due and payable as of the date of Closing shall be paid by Seller. Current real estate taxes shall be prorated and adjusted as of the date of Closing on a due date basis in accordance with the municipality or taxing unit in which the Real Estate is located. Other customary items shall be prorated as of the day of Closing as if paid on a current basis. The adjustments and prorations required under this Agreement shall be computed as of the date of Closing and the cash portion of the Purchase Price paid to Seller hereunder shall be adjusted to reflect such prorations. In the event accurate prorations or other adjustments cannot be made at Closing because of the lack of necessary information, the parties shall prorate on the best available information, subject to prompt adjustment upon the receipt of the necessary information.

16.2 Following the Closing, Seller shall continue to exclusively occupy without disturbance, and conduct its business without disturbance at, the Real Estate until October 31, 2019 ("Post-Closing Occupancy"). During the Post-Closing Occupancy period, neither Seller, nor its tenants, will pay rent to the Purchaser but will continue to maintain general liability and casualty insurance, and pay its utility costs until it vacates the Real Estate.

17. ASSIGNMENT.

17.1 This Agreement is not assignable by either party absent the express written consent of the non-assigning party. Such consent may be reasonably conditioned or withheld.

18. CONTROLLING LAW.

18.1 This Agreement shall be controlled, construed and enforced in accordance with the laws of the State of Michigan.

19. ENTIRE AGREEMENT.

19.1 This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties hereto with respect to the transactions herein contemplated, and supersedes all prior agreements, written or oral, between the parties relating to the subject matter hereof. Any modification or amendment to this Agreement shall be effective only if in writing and executed by each of the parties hereto.

20. NOTICES.

20.1 Any notice from Seller to Purchaser or from Purchaser to Seller shall be deemed duly served if personally served or if mailed by certified mail, return receipt requested, or if sent via "Overnight" courier service, addressed to such party as follows:

If to Seller:	City of Pontiac 47450 Woodward Avenue Pontiac, Michigan 48342
If to Purchaser:	William E. Massie, Manager PLTC I Realty Investment, LLC 4967 Crooks Road, Ste. 150 Troy, Michigan 48098
With a copy to:	James M. Radabaugh, Esq. Bowen, Radabaugh & Milton, P.C. 4967 Crooks Road, Ste. 150 Troy, Michigan 48098

Either party hereto may change the name and/or address of the designee to which notice shall be sent by giving written notice of such change to the other party hereto as hereinbefore provided.

21. BINDING.

21.1 The terms hereof shall be binding upon and shall inure to the benefit of the parties hereto, their successors, transferees and assigns.

21.2 Time shall be of essence for all purposes herein.

22. PARAGRAPH HEADINGS; BACKGROUND DEFINITIONS.



22.1 The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

22.2 The definitions contained in the Background are incorporated into this Agreement by reference.

23. **SURVIVAL AND BENEFIT.**

23.1 Any such agreement made in this Agreement by or on behalf of either party, shall survive the Closing Date and the consummation of the transactions provided for herein for a period commensurate with its respective statute of limitations.

23.2 The covenants, agreements and undertakings of each of the parties hereto are made solely for the benefit of, and may be relied on only by, the other party hereto, their transferees and assigns, and are not made for the benefit of, nor may they be relied upon, by any other person whatsoever.

23.3 Purchaser and seller shall exercise reasonable efforts to keep all information confidential and shall return all documents (including survey and the like) and all photocopies to the party either providing or generating the document, if this transaction does not close for any reason.

24. **FACILITY**

24.1 To the extent that the transactions contemplated herein are deemed a sale of real estate, please take notice that the Real Estate is a "facility" (as that term is defined at MCL 324.20101(1)(s) due the presence of hazardous substances in excess of concentrations that satisfy the cleanup criteria for unrestricted residential use. The general nature and extent of the releases of hazardous residential use, the general nature and extent of the releases of hazardous substances is described in Baseline Environmental Assessments previously provided to Buyer. Buyer accepts the Real Estate in their "as is" condition.

25. **SECTION 1031 EXCHANGE**

25.1 At the request of either party, Purchaser and Seller agree to reasonably cooperate with the other and Escrow Agent in structuring and documenting the sale of the Real Estate to effect a tax deferred exchange in accordance with the provisions of Section 1031 of the Internal Revenue Code and its corresponding regulations. Such cooperation shall be at no cost to the other party. In no event shall such cooperation require a delay of the Closing.

*[The remainder of this page is intentionally left blank. Signatures follow on the next page]*

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

IN THE PRESENCE OF:

**SELLER:**

City of Pontiac

\_\_\_\_\_  
By:  
Its:

**PURCHASER:**

PLTC I Realty Investment, LLC

\_\_\_\_\_  
By: William E. Massie  
Its: Manager

**EXHIBIT A**

**Legal Descriptions**

**PARCEL A**

T3N, R10E, SEC 31 ASSESSOR'S PLAT NO. 68 LOT 1, ALSO OF 'ASSESSOR'S PLAT NO. 128' LOT 111 & ½ OF VAC WALNUT ST ADJ TO SAME, ALSO LOTS 134 & 135, ALSO ½ OF VAC WALNUT ST ADJ TO SD LOT 135 & LYING SLY OF N LI OF SD LOT 111 AS EXT ELY EXC THAT PT OF SD LOT 135 LYING NWLY & NLY OF SLY LINE OF RE-LOCATED WESSEN ST

COMMONLY KNOWN AS: 235 WESSEN

TAX ITEM NO. 14-32-178-003

**PARCEL B**

Lot 113, except the South 50 feet and also all of Lot 114, Assessor's Plat No 128, Section 32, T3N, R10E, as recorded in Liber 53 of Plats, Page(s) 53, Oakland County Records.

COMMONLY KNOWN AS: VL, Pontiac, MI

TAX ITEM NO. 14-32-177-005

**PARCEL C**

T3N, R10E, SEC 32 ASSESSOR'S PLAT NO. 128 LOT 113 S 50 FT

COMMONLY KNOWN AS: 106 BRANCH ST.

TAX ITEM NO. 14-32-177-014

**PARCEL D**

T3N, R10E, SEC 32 ASSESSOR'S PLAT NO. 128 LOT 112

COMMONLY KNOWN AS: VL, Pontiac, MI

TAX ITEM NO. 14-32-177-015

**EXHIBIT B**  
**RESOLUTION**

**WHEREAS**, the City of Pontiac City Council is authorized to approve the purchase of real estate by the City of Pontiac;

**WHEREAS**, the City Council has thoroughly reviewed a proposed Real Estate Purchase and Sale Agreement presented by PLTC I, Realty Investment, LLC ("Purchase Agreement"), wherein the City would purchase approximately nine (9) acres composed of four (4) parcels at Wessen and Branch in the City of Pontiac, approximately 8 acres of which is the former Hayes Jones Community Center ("Real Estate");

**WHEREAS**, the City Council has allocated certain funds for the purchase of real estate within the City of Pontiac in an effort to expand the City's public recreation footprint, which this Purchase Agreement would accomplish

**NOW, THEREFORE, BE IT REOLVED** by the City Council of the City of Pontiac that the Purchase Agreement is approved, and that the Mayor of the City of Pontiac is authorized to execute the Purchase Agreement and to take such actions, to expend such monies as required by the Purchase Agreement and to execute such documents necessary, appropriate and convenient to fully implement and carry out the foregoing resolutions of the City Council of the City of Pontiac, the taking of such actions, the expenditure of such monies and execution of such documents being evidence of the Mayor of the City of Pontiac authority to do so.

Tax Parcel Numbers: 14-32-178-003, 14-32-177-005, 14-32-177-014, and 14-32-177-015