

EXHIBIT B

**HOST COMMUNITY AGREEMENT
BY AND BETWEEN
CITY OF CHICAGO, ILLINOIS
AND
BALLY'S CHICAGO OPERATING COMPANY, LLC**

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HOST COMMUNITY AGREEMENT

This Host Community Agreement is dated as of June 9, 2022, by and between the City of Chicago, Illinois, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, ("**City**"), having its principal place of business at 121 N. LaSalle Street, Chicago, Illinois 60602 and Bally's Chicago Operating Company, LLC, a Delaware limited liability company with a place of business at c/o Bally's Corporation, 100 Westminster Street, Providence, RI 02903 ("**Developer**"). Capitalized terms used and not defined elsewhere in this Agreement are defined in Section 1.

R E C I T A L S

A. On June 28, 2019, the Governor of the State of Illinois (the "**State**") signed into law Public Act 101-0031, which public act significantly expanded gaming throughout the State by, among other things, amending the Illinois Gambling Act, 230 ILCS 10/1 et seq., as amended from time to time (such Illinois Gambling Act and all rules and regulations promulgated thereunder, the "**Act**") and authorizing the Illinois Sports Wagering Act, 230 ILCS 45/25 et seq., as amended from time to time (such Illinois Sports Wagering Act and all rules and regulations promulgated thereunder, the "**Sports Wagering Act**").

B. The Act authorizes the issuance of one (1) owners license within the City, and provides the City authority to regulate the location of the Project and regulate zoning, licensing, public health and other issues that are within the jurisdiction of the City concerning the Project;

C. Under Section 7(e-5) of the Act, for an application for a City-based owners license to be considered by the Illinois Gaming Board (the "**Board**"), the City must certify the following requirements (collectively, the "**(e-5) Requirements**") to the Board:

- (i) that the applicant has negotiated with the City in good faith;
- (ii) that the applicant and the City have mutually agreed on the permanent location of the casino;
- (iii) that the applicant and the City have mutually agreed on the temporary location of the casino;
- (iv) that the applicant and the City have mutually agreed on the percentage of revenues that will be shared with the City;
- (v) that the applicant and the City have mutually agreed on any zoning, licensing, public health or other issues that are within the jurisdiction of the municipality or county;
- (vi) that the City Council has passed a resolution or ordinance in support of the casino in the City;
- (vii) that the applicant has made a public presentation concerning its casino proposal; and

(viii) that the applicant has prepared a summary of its casino proposal and such summary has been posted on a public website of the City.

D. The Project will result in Developer paying millions of dollars of property taxes, gaming taxes and fees to the City, investing millions of dollars in capital improvements in the City and creating thousands of construction jobs and direct jobs, as well as related indirect jobs and revenue, for both the City and the surrounding area.

NOW, THEREFORE, in consideration of their mutual execution and delivery of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions; References.

The terms defined in this Section 1 shall have the meanings indicated for purposes of this Agreement. Definitions which are expressed by reference to the singular or plural number of a term shall also apply to the other number of that term. References to Recitals, Sections and Exhibits herein refer to the Recitals and Sections in this Agreement and Exhibits attached to this Agreement.

“Act” is defined in Recital A.

“Additional Commitments” means collectively, those obligations of Developer set forth in Section 4.3.

“Affiliate” means a Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, another Person.

“Agreement” means this Host Community Agreement including all exhibits and schedules attached hereto, as the same may be amended, supplemented or otherwise modified from time to time.

“Application” means Developer’s application for a License in the form and containing such information, documents, certifications and signatures as required by the Act.

“Approvals” means all or any licenses, permits, approvals, consents and authorizations that Developer is required to obtain from any Governmental Authority to perform and carry out its obligations under this Agreement, including, but not limited to, the Developer’s License, the Planned Development, and such other permits and licenses necessary to complete the Work, and to open, operate and occupy the Project Site and the Project.

“Board” is defined in Recital C.

“Bringdown Schedule” is defined in Section 2.3(c).

“Business Day” means all weekdays except Saturday and Sunday and those that are official legal holidays of the City, State or the United States government. Unless specifically stated as “Business Days,” a reference to “days” means calendar days.

“Casino” means the premises, buildings and improvements in the City in which Gaming is conducted by Developer pursuant to the Act, the Sports Wagering Act and this Agreement, but shall not include any public streets or other public ways.

“Casino Gaming Operations” means any Gaming operations permitted under the Act or the Sports Wagering Act and offered or conducted at the Project.

“Casino Management Agreement” means any agreement or arrangement that may be entered into by and between Developer and a Casino Manager or pursuant to which Developer pays any fees to a Casino Manager.

“Casino Manager” means any Person (a) who or which has been engaged, hired or retained by or on behalf of Developer to manage or operate the Casino and the Casino Gaming Operations or (b) to whom or which Developer has any liability to pay management fees, license fees, royalties or like payments for the management or operation of the Casino and the Casino Gaming Operations, in each case, excluding Developer’s employees and the employees of Parent Company and its subsidiaries.

“Certification” shall mean the certification made by the City that Developer has satisfied the (e-5) Requirements.

“City” means the City of Chicago, Illinois, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois.

“City Consultants” is defined in the definition of “Development Process Cost Fees”.

“City Council” shall mean the duly elected municipal council of the City of Chicago, Illinois.

“Closing Certificate” means the certificate to be delivered by Developer in substantially the form of Exhibit G.

“Closing Conditions” is defined in Section 2.3.

“Closing Date” is defined in Section 4.10.

“Closing Deliveries” is defined in Section 2.3(a).

“Complete” means the substantial completion of the Work, as evidenced by the issuance of a temporary certificate of occupancy by the appropriate Governmental Authority for all Components to which a certificate of occupancy would apply, and in any case that:

(a) in the case of either Project, not less than seventy-five percent (75%) of the Gaming Area is open to the general public for its intended use;

(b) in the case of the Temporary Project, Gaming Machines and Table Games constituting not less than 600 Gaming Positions have been installed and are operable for Casino Gaming Operations; and

(c) in the case of the Permanent Project, not less than:

(i) seventy-five percent (75%) of the Parking Spaces are open for their intended use by patrons and employees of the Project;

(ii) seventy-five percent (75%) of the Initial Hotel Rooms are rented or available for rental by overnight guests;

(iii) seventy-five percent (75%), taken as a whole, of the Retail Floor Space, the Restaurant Floor Space, the Event Space, the Exhibition Space, the Visitor Center Space and the other Components, but excluding the Greenspace, is open to the general public for its intended use, including at least five (5) distinct food and beverage outlets (counting a 'food hall', 'marketplace', 'food truck stand', cafeteria or other venue featuring multiple outlets but common patron seating as a single outlet); and

(iv) the Riverwalk Running Length is open for traverse by the general public alongside the Chicago River for all or such portion of the length of the Project Site (Permanent) as determined by the Planned Development and, taken as a whole, seventy-five percent (75%) complete.

"Component" means any of the following:

(i) the Parking Spaces;

(ii) the Gaming Area;

(iii) the Gaming Machines, the Table Games and the Poker Tables;

(iv) an in-person sports book located at the Project in accordance with any requirements therefor necessary to comply with the Sports Wagering Act;

(v) the Retail Floor Space;

(vi) the Restaurant Floor Space, including (A) at least five (5) table-service restaurants, (B) at least one (1) fast-casual restaurant or 'food hall', (C) at least one carry-out or 'café' food service establishment, (D) the Rooftop Bar, and (E) at least four (4) other bars and lounges;

(vii) the Hotel Tower;

(viii) the Hotel Rooms;

(ix) the Event Space;

(x) the Exhibition Space;

(xi) the Visitor Center Space;

- (xii) the Riverwalk Running Length;
- (xiii) the Required Seawall Running Length (if any);
- (xiv) the Greenspace;
- (xv) private bus, limousine and taxi parking and staging areas;
- (xvi) the other facilities described on Exhibits B-1 and B-2; and
- (xvii) such other major facilities that may be added as components by amendment to this Agreement.

“Concept Design Documents” means documents for the design of the Project as described on Exhibit D, which such documents may be subject to change, alteration or modification as provided in Section 3.1(c) and (e).

“Condemnation” means a taking of all or any part of the Project by eminent domain, condemnation, compulsory acquisition or similar proceeding by a competent authority for a public or quasi-public use or purpose.

“Construction Completion Date (Permanent Project)” means the date occurring no later than thirty-six (36) months and one day following Operations Commencement for the Temporary Project, *provided, however*, that upon written request of the Developer to the City and upon Developer’s showing that it timely commenced and has been diligently pursuing construction of the Permanent Project, the City may consent to up to two three (3)-month extensions of the Construction Completion Date (Permanent Project) followed by one two (2)-month extension of the Construction Completion Date (Permanent Project) (each, a **“Permanent Project Extension”**), the first of which shall be consented to automatically by the City and any subsequent consent not to be unreasonably withheld, conditioned, or delayed. In the event that the Construction Completion Date (Permanent Project) is extended beyond the period terminating thirty-six (36) months and one day following Operations Commencement for the Temporary Project and the Temporary Project does not remain operational and open to the public, the City may exercise its rights under Section 7.4 hereunder. The City shall not grant more than three (3) Permanent Project Extensions without an amendment of this Agreement.

“Construction Completion Date (Temporary Project)” means the date occurring no later than twelve (12) months following the date on which the Board reaches a Finding of Preliminary Suitability for the Developer, *provided, however*, that upon written request of the Developer to the City and upon Developer’s showing that it timely commenced and has been diligently pursuing construction of the Temporary Project, the City may consent to up to two extensions of the Construction Completion Date (Temporary Project), an initial three (3)-month extension and, if requested by Developer, a two (2)-month extension (each, a **“Temporary Project Extension”**), in each case the City’s consent not to be unreasonably withheld, conditioned, or delayed, *provided further, however*, that the City shall not grant more than two (2) Temporary Project Extensions without an amendment of this Agreement.

“Control(s)” or **“Controlled”** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, as such terms are used by and interpreted under federal securities laws, rules and regulations.

“Court” is defined in Section 13.4.

“Default” means any event or condition that, but for the giving of a Default Notice or the lapse of time, or both, would constitute an Event of Default.

“Default Notice” means a written notice addressed to Developer by the City that a Default has occurred.

“Default Period” is defined in Section 7.4.

“Default Rate” means a rate of interest at all times equal to the greater of (i) the rate of interest announced from time to time by Bank of America, N.A. (**“B of A”**), or its successors, as its prime, reference or corporate base rate of interest, or if B of A is no longer in business or no longer publishes a prime, reference or corporate base rate of interest, then the prime, reference or corporate base rate of interest announced from time to time by the bank with offices in Chicago, Illinois having from time to time the largest capital surplus, plus four percent (4%) per annum, or (ii) six percent (6%) per annum, provided, however, the Default Rate shall not exceed the maximum rate allowed by applicable law.

“Developer” means Bally’s Chicago Operating Company, LLC, its successors or assigns as permitted hereunder.

“Developer’s Confidential Items” is defined in Section 6.4.

“Developer’s License” means the License issued to the Developer.

“Developer’s Payments” is defined in Section 4.7(a).

“Developer’s Response” means the proposal and all information contained therein, dated October 29, 2021, as supplemented through the date of this Agreement, submitted by Developer to the City in response to the Request for Proposal.

“Development Process Cost Fees” means the aggregate amount of any and all costs and expenses in good faith incurred by the City to third parties (including attorneys, paralegal professionals, accountants, consultants and others at such professionals’, consultants’ and others’ customary rates charged to their respective non-municipal clients), whether before, on or after the date hereof and whether retained by the City directly or through one or more of such third parties, in connection with the City’s preparation of the Request for Proposal and review of responses relating thereto; the City’s due diligence, mitigation review, study and investigations of and concerning the Project and Developer; the selection of Developer as the Person with whom the City has negotiated this Agreement; the negotiation, interpretation, preparation, compliance with and enforcement of this Agreement; the planning, zoning, development, construction, ownership,

management, use or operation of the Project; the issuance, maintenance or revocation of the Developer's License; Developer's compliance with the Act; review of Developer's Application and any limitations on its License; and any litigation filed by or against the City or in which the City intervenes in connection with any of the foregoing. Such third parties shall be referred to herein as the **"City's Consultants"**.

"Direct Or Indirect Interest" means an interest in an entity held directly or an interest held indirectly through interests in one or more intermediary entities connected through a chain of ownership to the entity in question, taking into account the dilutive effect of the interests of others in such intermediary entities.

"(e-5) Requirements" is defined in Recital C.

"EAV" means Equalized Assessed Valuation.

"EBITDAM" means, for any period, earnings before interest, income taxes, depreciation, amortization and Management Fees of the Developer for such period, determined in accordance with GAAP applied consistently with Developer's audited financial statements; provided, that, while EBITDAM may make provision for allocation of Project-related corporate-level expenditures of Parent Company (e.g., for compensation and benefits payable in respect of employees of the Project), EBITDAM shall add back all "home office" or other overhead unrelated to the Project.

"Effective Date" is defined in Section 2.2.

"Escrow Agent" is defined in Section 10.4.

"Event" or **"Events"** are defined in the definition of "Material Adverse Effect".

"Event of Default" is defined in Section 7.1.

"Event Space" means approximately 65,000 square feet of interior space in the Permanent Project which is designed, constructed, finished and fitted out for use as one or more theater, live music, convention or special events venues in accordance with First-Class Project Standards and Governmental Requirements but, in any case, at least one such venue capable of seating approximately 3,000 attendees; *provided*, that "Event Space" does not include any of the Gaming Area, the Restaurant Floor Space, the Retail Floor Space, the Hotel Rooms, the Hotel Tower, the Exhibition Space or the Visitor Center.

"Exhibition Space" means approximately 23,000 square feet of interior space in the Permanent Project which is designed, constructed, finished and fitted out for use museum/exhibition space in accordance with First-Class Project Standards and Governmental Requirements; *provided*, that "Exhibition Space" does not include any of the Gaming Area, the Restaurant Floor Space, the Retail Floor Space, the Hotel Rooms, the Hotel Tower, the Event Space or the Visitor Center.

“Financing” means the act, process or an instance of obtaining funds specifically designated by Developer, Parent Company or any Affiliate of Developer or Parent Company for use in the Project (including any securities having a prospectus or other offering document which expressly lists the Project or the design, development, construction, fitting out, bankroll or operation thereof as a use of net proceeds from the sale of such securities), whether secured or unsecured, or whether initially funded or as part of a refinancing, including (i) issuing securities; (ii) drawing upon any existing or new credit facility; or (iii) contributions to capital by any Person.

“Final Completion (Permanent Project)” means the completion of the Work, as evidenced by the issuance of a temporary certificate of occupancy by the City’s Department of Buildings for all Components comprising the Permanent Project to which a certificate of occupancy would apply, and, in any case, that not less than:

(i) ninety percent (90%) of the Parking Spaces are open for their intended use by patrons and employees of the Project;

(ii) ninety percent (90%) of the Gaming Area is open to the general public for its intended use;

(iii) ninety percent (90%), taken as a whole, of the Hotel Tower shall be completed and the Hotel Extension Infrastructure installed;

(iv) ninety percent (90%) of the Initial Hotel Rooms are rented or available for rental by overnight guests;

(v) ninety percent (90%), taken as a whole, of the Retail Floor Space, the Restaurant Floor Space, the Event Space, the Exhibition Space, the Visitor Center Space, the Greenspace, the Riverwalk Running Length and all of the remaining Components is open to the general public for its intended use, including at least the Rooftop Bar and five (5) other distinct food and beverage outlets (counting a ‘food hall’, ‘marketplace’, ‘food truck stand’, cafeteria or other venue featuring multiple outlets but common patron seating as a single outlet); and

(vi) the Riverwalk Running Length is open for traverse by the general public for at least the length of adjacency with the Hotel Tower and Casino.

“Final Completion (Temporary Project)” means the completion of the Work, as evidenced by the issuance of a temporary certificate of occupancy by the City’s Department of Buildings for all Components comprising the Temporary Project to which a certificate of occupancy would apply, and, in any case, that not less than:

(i) ninety percent (90%) of the Gaming Area is open to the general public for its intended use; and

(ii) in the case of the Temporary Project, Gaming Machines and Table Games constituting not less than 800 Gaming Positions have been installed and are operable for Casino Gaming Operations.

“Final Completion Date” means (i) for the Temporary Project, the date occurring no later than three (3) months following the Construction Completion Date (Temporary Project), unless otherwise agreed to by the Parties in writing and (ii) for the Permanent Project, the date occurring no later than six (6) months following Construction Completion Date (Permanent Project).

“Finding of Preliminary Suitability” is defined in Section 3.1(a).

“Finish Work” refers to the finishes which create the internal and external appearance of the Project.

“First-Class Project Standards” means: (a) facilities and amenities for the Components consistent with the level and quality of other high-end integrated casino resort developments opened in urban settings in the United States in the six (6) years prior to the Closing Date; (b) the Finish Work and furnishings is to the level and quality of high-end integrated casino resort developments opened in urban settings in the United States in the six (6) years prior to the Closing Date; and (c) five-star quality for 100 guest suites and 400 hotel guest rooms comparable to other high-end luxury hotels.

“Force Majeure” is defined in Section 12.1.

“Force Majeure Period” means, with respect to any event of Force Majeure:

(a) the period commencing on the date when the event of Force Majeure occurs and continuing thereafter until the earlier of (x) the cessation of the event of Force Majeure or (x) the first date when Developer, its agents and contractors could, through the prompt and diligent exertion by Developer, its agents and its contractors of all commercially reasonable efforts cure, the delay resulting from the event of Force Majeure notwithstanding that the event of Force Majeure is then ongoing; plus

(b) the additional period, if any, continuing immediately after the cessation of such event of Force Majeure (x) during which ongoing delay, beyond the reasonable control of Developer (and its agents and contractors) and of which such event of Force Majeure is the predominant and proximate cause, continues to impair in a material respect the performance of Developer’s obligations under this Agreement notwithstanding the prompt and diligent exertion by Developer, its agents and its contractors of all commercially reasonable efforts so to perform and (y) which could not have been avoided or shortened by commercially reasonable efforts to foresee, mitigate or cure such continuing delay (to the extent that such delay was foreseeable or susceptible to mitigation or cure), by Developer and its agents and contractors;

(c) provided, that each day when performance is so delayed shall be counted only once notwithstanding that multiple events of Force Majeure may have occurred and, as yet, not have ceased or the delay therefrom not have been cured on such day.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or

in such other statements by such other entity as may be approved by a significant segment of the accounting profession for use in the United States, which are applicable to the circumstances as of the date of determination.

“Gambling Game” shall have the same definition as in the Act.

“Gaming” means the conduct of a Gambling Game or Sports Wagering.

“Gaming Area” means any space in the Project, as authorized by Governmental Requirements, in which Casino Gaming Operations occurs, together with the immediately adjoining patron circulation space, consisting of (i) approximately 168,000 contiguous square feet on a single level in the case of the Permanent Project and (ii) approximately 37,000 square feet in the case of the Temporary Project, in each case, which has been designed, constructed, finished and fitted out in accordance with First-Class Project Standards and Governmental Requirements; *provided*, that “Gaming Area” does not include any of the Retail Floor Space, the Restaurant Floor Space, the Hotel Rooms, the Hotel Tower, the Event Space, the Exhibition Space or the Visitor Center Space.

“Gaming Authority” or **“Gaming Authorities”** means any agencies, authorities and instrumentalities of the City, State, or the United States, or any subdivision thereof, having jurisdiction over the Gaming or related activities at the Casino, including the Board, or their respective successors.

“Gaming Positions” means ‘gaming positions’ as defined in the rules of the Board promulgated under the Act.

“Gaming Machines” means (i) approximately 3,400 Slot Machines (as such term is defined in the Act) in the case of the Permanent Project and (ii) approximately 500 Slot Machines (as such term is defined in the Act) in the case of the Temporary Project.

“Governmental Authority” or **“Governmental Authorities”** means any federal, state, county or municipal governmental authority (including the City), including all executive, legislative, judicial and administrative departments and bodies thereof (including any Gaming Authority) having jurisdiction over Developer or the Project.

“Governmental Requirements” means the Act, Sports Wagering Act, Municipal Code and all laws, ordinances, statutes, executive orders, rules, zoning requirements, policies (including but not limited to the City’s Sustainable Development Policy) and agreements of any Governmental Authority that are applicable to the acquisition, remediation, renovation, demolition, development, construction and operation of the Project including all required permits, approvals and any rules, guidelines or restrictions enacted or imposed by Governmental Authorities.

“Greenspace” means two and 40/100 (2.40) contiguous acres of the Project Site (Permanent) which (i) is free of structures and other erections (excepting fencing and directional signage) and free of parking areas, loading docks, roadways, driveways, (ii) is not bisected by any roadways or driveways, (iii) has been graded and landscaped in accordance with First-Class

Project Standards and Governmental Requirements, (iv) is accessible from public ways by members of the general public on foot and by bicycle without having to traverse any interior portions of the Permanent Project or the Parking Spaces, (iv) is not designed or intended to be used for storage of equipment, material, refuse or debris or for accumulation, storage, treatment or infiltration of runoff or storm water, and (v) is designed and intended to be useable by the general public for non-commercial recreational purposes without cost or advance registration, except when closed by Developer as reasonably necessary to prepare for, conduct and clean up from any special event conducted thereon; *provided*, that the Greenspace does not include any portion of the Riverwalk Running Length, any greenspace resulting from required setbacks from public ways or property boundaries, any greenspace resulting from easements or access rights of record affecting the Project Site (Permanent), or any greenspace the principal or predominant design purpose of which is ingress to, egress from or circulation upon the Project Site, the Parking Spaces, or the Casino by vehicles or pedestrians.

“Guaranty Agreement” means the Guaranty Agreement dated as of the Closing Date between the City and the Parent Company in the form and on the terms of Exhibit P attached hereto.

“Initial Hotel Rooms” means not less than 100 hotel guest rooms and suites located in the Hotel Tower and which have been designed, constructed, finished and fitted out in accordance with First-Class Project Standards and Governmental Requirements.

“Hotel Extension Infrastructure” means interior space of the Permanent Project of sufficient square footage to contain the Hotel Extension Rooms, and related patron and employee circulation spaces, which is designed and constructed as unfinished ‘raw space’ but is equipped with sufficient life safety systems and equipment to allow all of the other Components to fully open on an indefinite basis, together with elevators, stairwells and other means of ingress and egress and with electricity, fresh water, wastewater, domestic hot water, standpipe, telephone, cable television, internet and other utilities sufficient to serve the Hotel Extension Rooms.

“Hotel Extension Rooms” means not less than 400 hotel guest rooms and suites located in the Hotel Tower and which have been designed, constructed, finished and fitted out in accordance with First-Class Project Standards and Governmental Requirements; *provided*, for the avoidance of doubt that the Hotel Extension Rooms are incremental to, and not duplicative of, the Initial Hotel Rooms.

“Hotel Rooms” means the Initial Hotel Rooms and the Hotel Extension Rooms; *provided*, for the avoidance of doubt, that the Hotel Tower would contain a total of not less than 500 Hotel Rooms if the Hotel Extension Rooms are constructed; *provided, further*, that “Hotel Rooms” does not include the Gaming Area, the Retail Floor Space, the Restaurant Floor Space, the Hotel Tower, the Event Space, the Exhibition Space or the Visitor Center Space.

“Hotel Tower” means the Components related to the Hotel Rooms, including lobby areas, administrative offices, housekeeping and other back-of-house areas, fitness center, spa, pool, hot tub, all of which have been designed, constructed, finished and fitted out in accordance with First-

Class Project Standards and Governmental Requirements; provided that “Hotel Tower” does not include the Hotel Rooms.

“including” and any variant or other form of such term means including but not limited to.

“Indemnatee” is defined in Section 11.1(a).

“Initial Temporary Project Operation Period” is defined in Section 3.4(c).

“Labor Peace Agreement” is defined in Section 4.4(e).

“License” shall mean an owners license issued by the Board pursuant to the Act authorizing the conduct of casino or riverboat gambling operations in the City.

“Local Tax Revenue” means the total tax revenue received by the City, Chicago Public Schools, the Metropolitan Pier and Exhibition Authority, the Illinois Sports Facilities Authority and other units of local government from the following taxes: (a) the portion to be paid to the City pursuant to subsection (b-8) of Section 13 of the Act from the gaming privilege tax imposed upon the owners licensee of the Casino and payable to the City under paragraph (2) of subsection (a-5) of Section 13 of the Act based the ‘adjusted gross receipts’ (as defined in the Act) of the Casino in the Reference Year (Temporary) or the Reference Year (Permanent), as applicable; (b) the portion to be remitted to the City pursuant to subsection (b-10) of Section 12 of the Act from the admission tax imposed upon the owners licensee of the Casino under subsection (a) of Section 12 of the Act and of the fee imposed upon the owners licensee of the Casino under subsection (a-5) of Section 12 of the Act, in each case, based upon the ‘admissions’ (as defined in the Act) to the Casino during the Reference Year (Temporary) or Reference Year (Permanent); (c) the total levy of *ad valorem* property taxes for the Reference Year (Temporary) or Reference Year (Permanent), as applicable, payable in respect of the EAV of the Temporary Project or Permanent Project, as applicable, pursuant to the Illinois Property Tax Code, based upon the EAV of the Temporary Project or Permanent Project, as applicable, which was assumed by the Projected Revenue Analysis regardless of the ‘taxing district’, as defined in the Illinois Property Tax Code, levying such property taxes or any portion thereof; (d) the tax imposed pursuant to Section 4-236-020 of the Chicago Municipal Code upon the use and privilege of parking a motor vehicle at the Project, based upon the assumptions about visitation, personal automobile mode share and parking fees at the Project which were assumed by the Projected Revenue Analysis; (e) the tax imposed pursuant to Section 3-24-030 of the Chicago Municipal Code upon the rental or leasing of hotel accommodations at the Project, based upon the hotel revenues for the Project projected in the Projected Revenue Analysis; (f) the tax imposed pursuant to Section 3-30-030 of the Chicago Municipal Code upon the selling price of all food and beverages sold at retail at the Project, based upon the food and beverage revenues for the Project projected in the Projected Revenue Analysis; (g) the tax imposed pursuant to 70 ILCS 210/13(c) upon Developer’s gross rental receipts from the renting, leasing, or letting of hotel rooms within the City of Chicago, based upon the hotel revenues for the Project projected in the Projected Revenue Analysis; (h) the tax imposed pursuant to 70 ILCS 210/13(b) upon Developer’s sales of food, alcoholic beverages, and soft drinks, based upon the food and beverage revenues for the Project projected in the Projected Revenue Analysis; and (i) the tax imposed pursuant to 70 ILCS 210/13(c) upon Developer’s gross rental receipts from

the renting, leasing, or letting of hotel rooms within the City of Chicago, based upon the hotel revenues for the Project projected in the Projected Revenue Analysis.

“Major Condemnation” means a Condemnation either (i) of the entire Project, or (ii) of a portion of the Project if, as a result of the Condemnation, it would be imprudent or unreasonable to continue to operate the Project even after making all reasonable repairs and restorations.

“Management Fee” means the fees paid to a Casino Manager or its Affiliates pursuant to a Casino Management Agreement, including overhead attributable to the Project.

“Material Adverse Effect” or **“Material Adverse Change”** means any change, effect, occurrence or circumstances (each, an **“Event”** and collectively, **“Events”**) that, individually or in the aggregate with other Events, is or would reasonably be expected to be materially adverse to the condition (financial or otherwise), business, operations, prospects, properties, assets, cash flows or results of operations of the Developer, taken as a whole or the ability of Developer to perform its obligations hereunder in a timely manner; provided, however, that none of the following shall be taken into account in determining whether a Material Adverse Effect or Material Adverse Change has occurred or would reasonably be expected to occur: (i) any Event in the United States or global economy generally, including Events relating to world financial or lending markets; (ii) any changes or proposed changes in GAAP; and (iii) any hostilities, act of war, sabotage, terrorism or military actions or any escalation or worsening of any such hostilities, act of war, sabotage, terrorism or military actions, except, in the case of clauses (i), (ii) or (iii) to the extent such Event(s) affect the Developer, taken as a whole, in a materially disproportionate manner as compared to similarly situated companies.

“Material Change” means a change that: (i) requires a PD amendment, (ii) substantially affects or could reasonably be expected to substantially affect the Project whether in scope, size, design or otherwise, or other obligations of the Developer as provided in the Agreement; or (iii) results in or could reasonably be expected to result in reduction in Project cost, other than by virtue of value engineering or market changes of general applicability to the costs of material or labor. Without limiting the foregoing, the addition or deletion of a Component from the Project shall be deemed a Material Change.

“Minimum Capital Investment” means the sum of the following costs incurred by Developer in connection with the Temporary Project and the Permanent Project: (i) costs related to the actual construction of the Temporary Project and the Permanent Project, including overhead and indirect costs attributable to the construction activities; (ii) costs related to preparation of the Project Site (Temporary) and/or the Project Site (Permanent) including, clearing, demolition, remediation and abatement; (iii) any industrial corridor conversion payment made to the City in connection with either or both the Temporary Project and the Permanent Project; (iv) the costs associated with designing, improving or constructing the infrastructure inside the property boundaries of the Project Site (Temporary) and the Project Site (Permanent); (v) costs of pre-opening furniture, fixtures, equipment, gaming equipment, information technology and personal property; and (vi) professional fees including for engineers, architects, legal advisors, consultants or contractors to the extent that they represent costs related to the development of the Temporary Project and/or the Permanent Project and do not represent “home office” overhead. For purposes of clarification, Minimum Capital Investment does not include the cost of purchasing, optioning

or leasing the Project Site (Temporary) or the Project Site (Permanent), carried interest costs and other associated financing costs, or infrastructure costs outside the boundaries of the Project Site (Temporary) or the Project Site (Permanent).

“Minor Condemnation” means a Condemnation that is not a Major Condemnation.

“Mortgage” means a mortgage on and associated security agreements relating to all or any part of Developer’s interest in the Project.

“Mortgagee” means the holder from time to time of a Mortgage.

“Municipal Code” means the municipal code of the City.

“Notice of Agreement” means a notice of this Agreement in substantially the same form as Exhibit L.

“Operations Commencement (Permanent Project)” means that the Permanent Project is Complete and open for business to the general public and all Project Infrastructure has been completed, in each case, in accordance with all Governmental Requirements.

“Operations Commencement (Temporary Project)” means that the Temporary Project is Complete and open for business to the general public and all Project Infrastructure has been completed, in each case, in accordance with all Governmental Requirements.

“Operations Commencement Date” means (i) for the Temporary Project, the date occurring no later than two (2) months following the Construction Completion Date (Temporary Project) and (ii) for the Permanent Project, the date occurring no later than three (3) months following the Construction Completion Date (Permanent Casino).

“Parent Company” means Bally’s Corporation, a Delaware corporation, and its successors and assigns.

“Parking Spaces” means, in the case of the Permanent Project, parking spaces and related vehicular circulation, ingress and egress infrastructure for 3,300 personal automobiles in a dedicated, off-street parking structure located at the Project Site (Permanent), in each case, which has been designed, erected and fitted out in conformity with Governmental Requirements; *provided*, for the avoidance of doubt, that, although the Concept Design Documents and Project Description contemplate the allocation of such 3,300 parking spaces among users (approximately 2,200 patron spaces, approximately 600 employee spaces and approximately 500 valet spaces), all references to “Parking Spaces” in this Agreement refer only to the total number of parking spaces which are so provided and not to the specific allocation of such parking spaces among any users.

“Parties” means the City and Developer.

“Passive Investor” means:

- (a) any Person who owns less than a ten percent (10%) Direct Or Indirect Interest in Developer or Casino Manager and acquired and holds such interest for

investment purposes only, such interest was acquired and is held not for the purpose or effect of (i) causing the election or appointment of any management member of Developer or Casino Manager, (ii) causing, directly or indirectly, any change in the charter documents (including articles of incorporation, bylaws or other documents), or other limited liability company or operating agreements, management, policies or operations of Developer or Casino Manager, or (iii) controlling, influencing, affecting or being involved in the business activities of Developer or Casino Manager; and

(b) at any time when Parent Company's shares of common stock are listed on a national securities exchange registered under Section 6 of the Exchange Act, "Passive Investor" also means any Person who or which owns a Direct or Indirect Interest in Parent Company, individually or as part of a group (as defined under Rule 13d-5 under the Exchange Act), including any beneficial interest (as defined under Rule 13d-3 under the Exchange Act), less than twenty-five percent (25%) (calculated in accordance with paragraph (j) of Rule 13d-1 under the Exchange Act) of Parent Company's common stock which is so publicly traded, *provided* that (x) such Person is current in the Person's reporting obligations under Section 13 of the Exchange Act, (y) if such Person beneficially owns more than five percent (5%) of the outstanding shares of Parent Company's common stock, such Person is eligible or would (excepting only that the Person directly or beneficially owns 20% or more but less than 25% of the outstanding shares of Parent Company's common stock) be eligible to report the Person's ownership of and transactions in Parent Company's common stock pursuant to Section 13 of the Exchange Act by filing a short-form statement with the SEC on Schedule 13G in accordance with paragraphs (b) or (c) of Rule 13d-1, and (z) such Person is not required in accordance with paragraphs (e) or (g) of Rule 13d-1 to file a statement on Schedule 13D due to any recent transaction in the shares of Parent Company's common stock or change in facts or circumstances.

"Permanent Project" means the premises at which Casino Gaming Operations will be conducted at the Project Site (Permanent), and all buildings, structures, facilities, Components and Project Infrastructure, all of which are more specifically described on Exhibit B-1 and depicted in the Concept Design Documents.

"Permitted Exception" is defined in Section 5.1(g).

"Permitted Transfer" means those Transfers of any Direct Or Indirect Interest in a Restricted Party permitted pursuant to the terms of those certain Transfer Restriction Agreements entered into by a Restricted Party from time to time as provided in Section 8.1.

"Person" means an individual, a corporation, partnership, limited liability company, association or other entity, a trust, an unincorporated organization, or a governmental unit, subdivision, agency or instrumentality.

"PD" or "Planned Development" means the 'planned development', as such term is defined in Section 17-17-02120 of the Municipal Code of Chicago, for the Permanent Project, being Planned Development #1426, as the same is in effect on the date of this Agreement and may hereafter be amended in accordance with the City's planned development procedures, Section 17-

13-0600 *et seq.* of the Municipal Code of Chicago, and any minor changes therein which are approved in accordance with Section 17-13-0611 of the Municipal Code of Chicago.

“PD Improvements” means any traffic-related or other public infrastructure improvements that the Developer is required to provide under the PD, whether located on the Project Site (Permanent) or off-site.

“Poker Tables” means (i) approximately 20 ‘table games’ (as such term is defined in the Act) intended for use of Gambling Games which are not ‘house banked’ in the case of the Permanent Project and (ii) approximately 35 ‘table games’ (as such term is defined in the Act) intended for use of Gambling Games which are not ‘house banked’ in the case of the Temporary Project.

“Proceeds” means the compensation paid by the condemning authority to the City or Developer in connection with a Condemnation, whether recovered through litigation or otherwise, but excluding any compensation paid in connection with a temporary taking.

“Project” means, as the case may be, each of, or collectively, the Permanent Project or the Temporary Project.

“Project Description” means the respective detailed descriptions of the Permanent Project on Exhibit B-1 and the Temporary Project on Exhibit B-2 but, in any case, includes not less than:

- (i) the Parking Spaces;
- (ii) the Gaming Area;
- (iii) the Gaming Machines, the Table Games and the Poker Tables;
- (iv) an in-person sports book located at the Project in accordance with any requirements therefor necessary to comply with the Sports Wagering Act;
- (v) the Retail Floor Space;
- (vi) the Restaurant Floor Space, including (A) at least five (5) table-service restaurants, (B) at least one (1) fast-casual restaurant or ‘food hall’, (C) at least one carry-out or ‘café’ food service establishment, (D) the Rooftop Bar, and (E) at least four (4) other bars and lounges;
- (vii) the Hotel Tower;
- (viii) the Hotel Rooms;
- (ix) the Event Space;
- (x) the Exhibition Space;
- (xi) the Visitor Center Space;

- (xii) the Riverwalk Running Length;
- (xiii) the Required Seawall Running Length (if any); and
- (xiv) the Greenspace.

“Project Incentives” means the One-Time Payment, the Direct Impact Fee and the Indirect Impact Fee described on Exhibit A-1.

“Project Infrastructure” means, with respect to the Project, all infrastructure improvements to the Project Site (Temporary) or Project Site (Permanent), as the case may be, whether PD Improvements, required by any Government Authorities or otherwise set forth in the Project Description or depicted on the Concept Design Documents.

“Project Site” means, as the case may be, the Project Site (Permanent) or Project Site (Temporary).

“Project Site (Permanent)” means the land assemblage upon which the Permanent Project is to be developed and constructed, as depicted on Exhibit C-1.

“Project Site (Temporary)” means the land assemblage upon which the Temporary Project is to be developed and constructed, as depicted on Exhibit C-2.

“Projected Annual Local Revenue (Permanent)” means, for any day, the projected Local Tax Revenue in the Reference Year (Permanent) in which such day occurs, assuming that the Permanent Project is open to the public for the entirety of the Reference Year (Permanent), based upon the final projection of Local Tax Revenue pursuant to which the City entered into this Agreement with Developer, as communicated to the City in the Projected Revenue Analysis.

“Projected Annual Local Revenue (Temporary)” means, for any day, the projected Local Tax Revenue in the Reference Year (Temporary) in which such day occurs, assuming that the Temporary Project is open to the public for the entirety of the Reference Year (Temporary), based upon the final projection of Local Tax Revenue pursuant to which the City entered into this Agreement with Developer, as communicated to the City in the Projected Revenue Analysis.

“Projected Per-Diem Amount (Permanent)” means, for any day, an amount equal to the quotient of (a) the Projected Annual Local Revenue (Permanent) for the year in which such day occurs divided by (b) three hundred sixty five (365).

“Projected Per-Diem Amount (Temporary)” means, for any day, an amount equal to the quotient of (a) the Projected Annual Local Revenue (Temporary) for the year in which such day occurs divided by (b) three hundred sixty five (365).

“Projected Revenue Analysis” the final report, dated May 16, 2022, from Sovereign Finance LLC to the City reporting Sovereign Finances, LLC’s estimates of the Projected Local

Tax Revenue, of which each Party acknowledges, as of the date of this Agreement, having received a copy.

“Publicly Traded Corporation” means a Person, other than an individual, to which either of the following provisions applies: the Person has one (1) or more classes of voting securities registered under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. §781, as amended; or the Person issues securities and is subject to Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §780(d), as amended.

“Radius Restriction” is defined in Section 4.6(a).

“Radius Restriction Agreement(s)” means the agreement(s) dated as of the Closing Date between the City and each of the Restricted Party(ies) as requested by the City in substantially the same form as Exhibit K.

“Reference First Year (Permanent)” means the first full year of operations of the Permanent Project for which a projection of the Local Tax Revenue to be received for such year is provided in the Projected Revenue Analysis.

“Reference Second Year (Permanent)” means the second full year of operations of the Permanent Project for which a projection of the Local Tax Revenue to be received for such year is provided in the Projected Revenue Analysis.

“Reference Third Year (Permanent)” means the third full year of operations of the Permanent Project for which a projection of the Local Tax Revenue to be received for such year is provided in the Projected Revenue Analysis.

“Reference Year (Permanent)” means:

(a) with respect any day for which amounts are payable to the City pursuant to subsections (b) or (c) of Section 7.4, (i) the Reference First Year (Permanent); and

(b) with respect any day for which amounts are payable to the City pursuant to subsections (d) of Section 7.4, (i) the Reference First Year (Permanent) if such day is a day in the twelve (12) month period commencing on Operations Commencement (Permanent), (ii) the Reference Second Year (Permanent) if such day is a day in the twelve (12) month period commencing on the first calendar anniversary of Operations Commencement (Permanent), or (iii) the Reference Third Year (Permanent) if such day is the second calendar anniversary of Operations Commencement (Permanent) or any day thereafter.

“Reference Year (Temporary)” the first full year of operations of the Temporary Project for which a projection of the Local Tax Revenue to be received for such year is provided in the Projected Revenue Analysis.

“Releases” means the executed releases to be delivered as part of the Closing Deliveries by Developer, its Affiliates and its other direct and indirect equity owners in substantially the same form as Exhibit H.

“Request For Proposal” means the City’s request for a proposal dated April 21, 2021 and any amendments thereto, for the opportunity to apply for the sole casino license authorized by the Act for a casino to be located in the City.

“Required Seawall Running Length” means, to the extent that any portions of Chicago River embankment comprising the Eastern edge of the Project Site (Permanent) are to be characterized or delineated by a vertical bulkhead or seawall or other engineered structure as contemplated by the design of the Riverwalk Running Length, that such vertical bulkhead or seawall or other engineered structure has actually been installed and implemented along such portions of the Chicago River embankment in accordance with the City’s *Chicago River Design Guidelines* (2019) and other Governmental Requirements.

“Restaurant Floor Space” means space in the Project which, collectively, is designed, constructed, finished and fitted out for use as one or more restaurant, bar or lounge spaces accommodating, in the aggregate, not less than (i) approximately 945 simultaneous table-service, fast casual and ‘food hall’ dining patrons and approximately 400 simultaneous seated bar and lounge patrons in the case of the Permanent Project, or (ii) approximately 70 simultaneous dining patrons and approximately 50 simultaneous seated bar and lounge patrons in the case of the Temporary Project, in each case, in accordance with First-Class Project Standards and Governmental Requirements; *provided*, that “Restaurant Floor Space” does not include any of the Gaming Area, the Retail Floor Space, the Hotel Rooms, the Hotel Tower, the Event Space, the Exhibition Space or the Visitor Center Space.

“Restore” is defined in Section 10.1.

“Restoration” is defined in Section 10.1.

“Restricted Activity” is defined in Section 4.6(a).

“Restricted Area” means the geographic area constituting a circle with a radius of fifty (50) miles having the Permanent Project as its center.

“Restricted Party” means each of (i) Developer; (ii) any Casino Manager; (iii) any Person who owns a Direct Or Indirect Interest in any of the foregoing, excluding, however, any Person who qualifies as a Passive Investor; and (iv) a subsidiary of or any Person Controlled by any of the foregoing (other than any such subsidiary or other Person that does not own a Direct Or Indirect Interest in Developer or Casino Manager).

“Restrictions” is defined in Section 4.8.

“Retail Floor Space” means approximately 3,000 square feet of interior space in the Permanent Project which is designed, constructed, finished and fitted out for use as one or more retail outlets in accordance with First-Class Project Standards and Governmental Requirements; *provided*, that “Retail Floor Space” does not include any of the Gaming Area, the Restaurant Floor Space, the Hotel Rooms, the Hotel Tower, the Event Space, the Exhibition Space or the Visitor Center.

“Riverwalk Running Length” means a corridor containing continuous paved pathways and associated landscaping, hardscaping and lighting running immediately adjacent to the Chicago River along the entire length of the Eastern edge of the Project Site (Permanent) which has been cleared, graded, improved and landscaped in accordance with, and meets or exceeds the minimum width and accessibility requirements set forth in, the City’s *Chicago River Design Guidelines* (2019).

“Rooftop Bar” means a portion of the Restaurant Floor Space located on the highest floor of the Hotel Tower having space which is lawfully occupiable for use by the general public together with additional contiguous exterior square footage located on the roof area of the Hotel Tower (which roof area, for the avoidance of doubt, is not includable in the Restaurant Floor Space because it is not interior space) which, collectively, is designed, constructed, finished and fitted out for use as one or more bar or lounge spaces accommodating not less than 100 simultaneous patrons in accordance with First-Class Project Standards and Governmental Requirements.

“Sports Wagering” has the meaning given to such term in the Sports Wagering Act.

“Sports Wagering Act” is defined in Recital A.

“State” is defined in Recital A hereof.

“Subordination Agreement” means a Subordination Agreement in substantially the form and on the terms as Exhibit N between the City and any Casino Manager pursuant to which the Casino Manager agrees to subordinate its Management Fee upon an Event of Default.

“Table Games” means (i) approximately 150 ‘table games’ (as such term is defined in the Act) intended for use in Gambling Games which are ‘house banked’ in the case of the Permanent Project and (ii) approximately 25 ‘table games’ (as such term is defined in the Act) intended for use in Gambling Games which are ‘house banked’ in the case of the Temporary Project.

“Temporary Project” means the premises in which Casino Gaming Operations will be conducted by Developer at the Project Site (Temporary) for such period of time as permitted by Section 3.4(c) hereof and all buildings, structures, facilities, Components and Project Infrastructure, all of which are more specifically described on Exhibit B-2 and depicted in the Concept Design Documents.

“Temporary Project Operation Period” is defined in Section 3.4(c).

“Term” is defined in Section 2.4.

“Transfer” means (i) any sale (including agreements to sell on an installment basis), lease, assignment, transfer, pledge, alienation, hypothecation, merger, consolidation, reorganization, liquidation, or any other disposition by operation of law or otherwise, and (ii) the creation or issuance of new or additional ownership interests in any entity.

“Transfer Restriction Agreements” means the agreement(s) dated as of the Closing Date between the City and each Restricted Party as requested by the City in substantially the same form as Exhibits E and F.

“Trigger Event” and **“Triggering Events”** are defined in Section 4.3(b).

“Visitor Center Space” means (interior space in the Temporary Project and Permanent Project, in each case, which is designed, constructed, finished and fitted out for use as a visitor information center/concierge to be operated in coordination with the City’s official destination marketing organization, Choose Chicago®, or a comparable offering reasonably acceptable to the City, in each case, in accordance with First-Class Project Standards and Governmental Requirements; *provided*, that “Visitor Center Space” does not include any of the Gaming Area, the Retail Floor Space, the Restaurant Floor Space, the Hotel Rooms, the Hotel Tower, the Event Space or the Exhibition Space.

“Work” means demolition and site preparation work at the Project Site, and construction of the improvements constituting the Project in accordance with the construction documents for the Project and includes labor, materials and equipment to be furnished by a contractor or subcontractor.

2. General Provisions.

2.1 Findings.

The City hereby finds that the development, construction and operation of the Project will (i) be in the best interest of the City and the State; (ii) contribute to the objectives of providing and preserving gainful employment opportunities for residents of the City; (iii) support and contribute to the economic growth of the City and the State including supporting and utilizing local and small businesses, minority, women and veteran business enterprises; (iv) attract commercial and industrial enterprises, promote the expansion of existing enterprises, combat community blight and deterioration, and improve the quality of life for residents of the City; (v) support and promote tourism in the City and the State; and (vi) provide the City and the State with additional tax revenue.

2.2 Effectiveness and Certification.

Upon the execution of this Agreement by the necessary City officials and Developer and Developer’s meeting the (e-5) Requirements, this Agreement shall become effective (the **“Effective Date”**). Provided that the Effective Date and the Closing Date have occurred, the City shall submit the Certification to the Board.

2.3 Closing Conditions.

The City’s obligation to submit the Certification as set forth in Section 2.2 shall be subject to the satisfaction of the following conditions precedent, each in form and substance reasonably satisfactory to the City (collectively, the **“Closing Conditions”**):

- (a) the City's receipt of the following items (the "**Closing Deliveries**"):
- (i) the Transfer Restriction Agreements executed by Parent Company and each other Restricted Party (if any) as requested by the City;
 - (ii) an opinion of counsel from Developer to the City covering customary organizational, due authority, conflict with other obligations, enforceability and other matters reasonably requested by the City;
 - (iii) the Closing Certificate;
 - (iv) the Notice of Agreement;
 - (v) evidence of payment of Developer's due and unpaid Development Process Cost Fees incurred to date, if any;
 - (vi) the Releases;
 - (vii) resolutions of Developer, properly certified, approving this Agreement and authority to execute;
 - (viii) the Radius Restriction Agreement(s), executed by the Restricted Parties as requested by the City;
 - (ix) the Guaranty Agreement executed by the Parent Company;
 - (x) the Bringdown Schedule;
 - (xi) the Economic Disclosure Statement(s);
 - (xii) written confirmation that the Labor Peace Agreement relating to personnel that will work on the operation of the Project remains in full force and effect; and
 - (xiii) evidence reasonably satisfactory to the City of the Developer's ability to finance the Project.

(b) No Default or Event of Default shall have occurred and be continuing hereunder.

(c) The representations and warranties of Developer contained in Section 5.1 are true and correct in all material respects at and as of the Closing Date as though then made, except as set forth on a schedule delivered by Developer to the City on the Closing Date and approved by the City (the "**Bringdown Schedule**").

(d) No Material Adverse Change shall have occurred in the condition (financial or otherwise) or business prospects of Developer or Parent Company.

2.4 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Developer's License unless: (i) sooner terminated as provided herein and except as to those provisions that by their terms survive or (ii) extended as provided in the next sentence. The term of this Agreement shall automatically be extended upon any and each renewal of the Developer's License; provided, that at the time of each extension there is no uncured Event of Default with respect to which a Default Notice was received by Developer. The term of this Agreement, including any extensions thereof, shall be referred to as the "**Term.**"

3. Project.

3.1 Approvals; Permits and Other Items.

(a) Approvals. Developer shall use its best efforts to promptly apply for, pursue and obtain all Approvals necessary to design, develop, construct and operate the Project. Developer shall promptly furnish the City with all studies, reports or other documents required by the City in connection with any Approvals required by the City. Until all such Approvals are obtained, Developer shall provide the City, from time to time upon its request, but not more often than once each calendar month following the date of this Agreement, with a written update of the status of such Approvals. If any Approvals are denied or unreasonably delayed, Developer shall provide prompt written notice thereof to the City, together with Developer's written explanation as to the circumstances causing such delay or resulting in such denial and Developer's plan to cause such Approvals to be issued promptly. Except for the review and approval of final Concept Design Documents and construction documents pursuant to Sections 3.1(b), (c) and (d), approval of Material Changes pursuant to Section 3.1(e) and the matters governed by Section 3.1(h): (i) this Agreement does not create any new Approvals; (ii) this Agreement does not modify the application, review or approval process for any Approvals or modify or waive any of the terms or conditions of any Approvals, including the Planned Development; and (iii) the City will not create any requirements for any Approvals of special applicability to the Project. For the avoidance of doubt, nothing in this Agreement shall affect or qualify any requirements or process which may apply to any amendments or minor changes necessary in the Planned Development in connection with the development of the Project.

(b) Compliance with RFP Design Program. Developer shall develop and construct the Project in compliance with the Concept Design Documents and the Project Description except to the extent the City approves changes to the same in writing. To determine compliance with the Concept Design Documents and the Project Description Developer shall submit the following to the City:

- (i) Temporary Project: (x) no later than thirty (30) days following the date Developer is found to be preliminarily suitable for licensing by the Board pursuant to Title 86, Chapter IV, Part 3000, Section 3000.230 of the Illinois Administrative Code (a "**Finding of Preliminary Suitability**"), final Concept Design Documents for the Temporary Project; (y) no later than forty-five (45) days from delivery of the Concept Design Documents provided in clause (x) above, fifty percent (50%) construction documents

for the Temporary Project; and (z) no later than forty-five (45) days from delivery of the construction documents provided in clause (y) above, ninety-five percent (95%) construction documents for the Temporary Project.

- (ii) Permanent Project: (x) no later than one hundred twenty (120) days following the “Finding of Preliminary Suitability”, final Concept Design Documents for the Permanent Project; (y) no later than one hundred eighty (180) days from delivery of the Concept Design Documents provided in clause (x) above, fifty percent (50%) construction documents for the Permanent Project; and (z) no later than ninety (90) days from delivery of the construction documents provided in clause (y) above, ninety-five percent (95%) construction documents for the Permanent Project.

(c) The City will commence its review promptly upon receipt of the documents under clauses (b) (i) and (ii) above will diligently pursue such review until the City has either approved such documents or notified the Developer in writing of its disapproval and stated with specificity the grounds for such disapproval and any necessary revisions, in each case, necessary for the final Concept Design Documents or construction documents, as applicable, to comply with the requirements of this Agreement. If the City disapproves any such documents in any respect, Developer shall either modify the documents and submit the revised documents to the City for review to determine compliance with this Agreement or request a meeting with the City to discuss the City’s objection to such documents and propose an alternative modification (or no modification) necessary for the Projects, as proposed to be constructed pursuant to the final Concept Design Documents or construction documents, as applicable, to comply with the requirements of this Agreement. This procedure shall be followed until all objections have been resolved and the documents have been approved. For the avoidance of doubt, the review and approval of final Concept Design Documents and construction documents pursuant to Sections 3.1(b) and (c) hereof is to determine compliance of the Projects, as proposed to be constructed pursuant to the final Concept Design Documents or construction documents, as applicable, to comply with the requirements of this Agreement, does not grant any Approvals and does not substitute for or qualify or condition the process to obtain any Approvals.

(d) Hotel Extension Documentation. Developer shall deliver the City: (i) fifty percent (50%) construction documents for the build-out of the Hotel Extension Rooms no later than (A) one hundred twenty (120) days after the last day of the calendar month when, on a trailing 12 month basis, Developer achieves \$170 million of EBITDAM and (B) the date which is four years and six months after the Operations Commencement (Permanent Project); and (ii) ninety-five percent (95%) construction documents for the Hotel Extension Rooms no later than sixty (60) days from delivery of the construction documents provided in clause (i) above.

(e) Material Changes. Following approval of the amended Planned Development which authorizes the Permanent Project, any Material Change shall require the approval of the City.

(f) Sports Wagering. It is acknowledged that the City has authorized Sports Wagering to be conducted at the Casino and that Developer shall apply to the Board for issuance of a master sports wagering license under the Sports Wagering Act to authorize the conduct of Sports

Wagering at the Casino and over the internet or through a mobile application as permitted by the Sports Wagering Act. If Developer obtains such license, Developer shall operate all Sports Wagering in accordance with the Sports Wagering Act.

(g) Gaming Positions. In accordance with 230 ILCS 10/7, Developer shall reserve and pay for the maximum number of Gaming Positions which are available for the owners licensee of a casino located in the City licensed under 230 ILCS 10/7(e-5)(1).

(h) Signage. With regard to the Temporary Project authorized by this Agreement and located in Planned Development 768, on-premise signs and associated sign structures shall be exclusively subject to the following requirements and restrictions, which are in lieu of any provision, process, or requirement of the Municipal Code of Chicago. Any such on-premise sign(s):

- (i) Shall be limited to: (A) signs that are attached to attachment points approved for use by the previous tenant; (B) one sign associated with each exterior entrance; (C) one sign associated with the roll-up door on Ontario Street; and (D) signs placed behind non-decorative glazing.
- (ii) Shall be subject to review and approval by the Building Commissioner or the Commissioner's designee as to conformity with the structural and electrical provisions of the Chicago Construction Codes through the permit process and collection of otherwise-applicable permit fees.
- (iii) Shall be subject to review and approval by the Commissioner of Planning and Development or the Commissioner's designee for: (A) conformity with the character of the underlying structure; (B) sensitivity to the surrounding area; (C) size, shape, type, illumination, placement, orientation, and method of attachment; and (D) in lieu of a public way use permit, appropriateness and degree of the presence, if any, in or over the public way.
- (iv) Shall be subject to review and approval by the Zoning Administrator or the Zoning Administrator's designee for all aspects bearing on conformity with the Planned Development.
- (v) Shall be subject to review and approval by the Commission on Chicago Landmarks to ensure that the attachment of any sign to the Landmark does not cause irreversible damage to any significant feature of the Landmark.
- (vi) Shall not include video display signs or dynamic image display signs, as defined in Section 17-17-0248.5 of the Zoning Ordinance, but may otherwise be illuminated.

Off-premise signs (as defined in Section 17-17-02108 of the Zoning Ordinance) are prohibited at the Temporary Project.

(i) Removal of Signs. The Developer shall remove all signs and sign structures erected or installed pursuant to Section 3.1(h) within thirty (30) days of Operations Commencement (Permanent Project). Removal shall include restoration to the pre-installation condition to the satisfaction of the Department of Planning and Development.

3.2 Performance of Work.

Developer shall ensure that all Work is performed in a good and workmanlike manner and in accordance with all Governmental Requirements and First-Class Project Standards. Without limiting the generality of the foregoing sentence, Developer shall ensure that all materials used in the construction of the Project shall be of first-class quality, and the quality of the Finish Work shall meet or exceed First-Class Project Standards.

3.3 Duty to Complete; Commencement of Operations.

(a) Developer shall Complete the Temporary Project not later than the Construction Completion Date (Temporary Project), achieve Operations Commencement (Temporary Project) not later than the Operations Commencement Date and achieve Final Completion (Temporary Project) not later than the Final Completion Date. Upon the occurrence of an event of Force Majeure, the Construction Completion Date (Temporary Project), Final Completion Date, and the Operations Commencement Date, shall each be extended by a number of days equal to the number of days in the Force Majeure Period resulting from such event of Force Majeure; provided, that each day when performance is delayed shall be counted only once notwithstanding that multiple events of Force Majeure may occur and, as yet, remain uncured on such day.

(b) Developer shall Complete the Permanent Project not later than the Construction Completion Date (Permanent Project), achieve Operations Commencement (Permanent Project) not later than the Operations Commencement Date and achieve Final Completion (Permanent Project) not later than the Final Completion Date; *provided*, that Developer shall not be required to cause the Operations Commencement (Permanent Project) to occur before the date which is one (1) day after the third anniversary of Operations Commencement (Temporary Project). Upon the occurrence of an event of Force Majeure, the Construction Completion Date (Permanent Project), Final Completion Date, and the Operations Commencement Date, shall each be extended by a number of days equal to the number of days in the Force Majeure Period resulting from such event of Force Majeure; provided, that in no event shall the Operations Commencement Date for the Permanent Project extend beyond the Temporary Project Operation Period unless approved by the Board and the City.

(c) To assure completion of the Project, prior to Developer's commencement of construction of the Project, Developer shall provide the City with an executed (i) copy of a completion or performance bond or other form of financial guaranty from the general contractor engaged by Developer to construct the Project in such amount and form customary for projects similar to the Project and (ii) construction management plan, each of which is reasonably acceptable to the City. Developer's construction management plan shall address site issues, including, but not limited to, sequencing of construction events, construction milestones, light, noise, dust and traffic mitigation measures, rodent and waste controls, contact information for the Project's general contractor's site manager, and shall include all other items required by

Governmental Authorities relating to all applicable Governmental Requirements and specify all Approvals necessary in connection with the construction of the Project.

(d) Developer shall commence the build-out of the Hotel Extension Rooms within the Hotel Extension Infrastructure not later than the first to occur of (i) the date which is twelve (12) months after the last day of the calendar month when, on a trailing 12-month basis, Developer achieves \$170 million of EBITDAM and (ii) the fifth (5th) anniversary of Operations Commencement (Permanent Project). Developer shall thereafter diligently prosecute the build-out, finishing and furnishing of the Hotel Extension Rooms until the Hotel Extension Rooms are complete, the City has issued a temporary occupancy permit for the Hotel Extension Rooms, and the Hotel Extension Rooms are available to rent to the general public, which shall be not later than the first to occur of (i) the date which is eighteen (18) months after the last day of the calendar month when, on a trailing 12 months, Developer achieves \$170 million of EBITDAM and (ii) the date which is five years and six months after Operations Commencement (Permanent Project).

(e) To the extent that Developer has received all Approvals necessary to commence the Work, Developer, its agents and its contractors will promptly and diligently (i) perform the Work and (ii) complete all the Components, in each case, until the respective Project has been fully completed in accordance with the design which is finally determined in accordance with Sections 3.1(b), (c) and (d) (but subject to any modifications of such final design with the City's consent in accordance with Section 3.1(e)).

3.4 Project Operations (Temporary Project).

(a) Developer agrees to diligently operate and maintain the Temporary Project and all other support facilities for such Project owned or controlled by Developer in accordance with all Governmental Requirements and First-Class Project Standards and in compliance with this Agreement.

(b) Developer covenants that, at all times following Operations Commencement (Temporary Project), it will, directly or indirectly: (i) continuously operate and keep open for business to the general public the Casino for Casino Gaming Operations for the maximum hours permitted under Governmental Requirements, other than closures of up to four (4) hours per day, during extremely low volume periods of time, for operational efficiency; (ii) continuously operate and keep open for business to the general public for the maximum hours permitted under Governmental Requirements, the Components related to the hotel and parking; and (iii) operate and keep open for business to the general public all Components (other than the hotel Component and parking Component and Components where Casino Gaming Operations are conducted) in accordance with commercially reasonable hours of operation. Notwithstanding the foregoing, Developer shall have the right from time to time in the ordinary course of business and without advance notice to City, to close portions of any Component (x) for such reasonable periods of time as may be required for repairs, alterations, maintenance, remodeling, or for any reconstruction required because of casualty, Condemnation, or Force Majeure, (y) to respond to then existing market conditions but only for so long as reasonable commercial practices would so require, or (z) for such periods of time as may be directed by a Governmental Authority; provided, however, no such direction shall relieve Developer of any liability as a result of such closure to the extent caused by an act or omission of Developer as provided for otherwise in this Agreement.

(c) So long as Developer is diligently pursuing Approvals for, and construction of, the Permanent Project, Developer may conduct Casino Gaming Operations at the Temporary Project for a period of up to twenty-four (24) months after Operations Commencement (Temporary Project) (such 24-month period, the **“Initial Temporary Project Operation Period”**). In the event that Developer petitions the Board to extend the Initial Temporary Project Operation Period for a period of up to twelve (12) additional months pursuant to Section 7(l) of the Act, the City shall support Developer’s petition to the extent reasonably requested by Developer. If the Board grants Developer’s petition pursuant to Section 7(l) of the Act, then Developer shall be permitted to conduct Casino Gaming Operations at the Temporary Project for such extended period (the Initial Temporary Project Operation Period, as may be extended as provided herein, the **“Temporary Project Operation Period”**). Acknowledging that Section 7(l) of the Act controls, Developer agrees that Developer shall not be permitted to conduct Casino Gaming Operations at the Temporary Project for a period of greater than thirty-six (36) months after the Operations Commencement (Temporary Project) unless otherwise approved by the City and the Board.

3.5 Project Operations (Permanent Project).

(a) Beginning on the Operations Commencement (Permanent Project) and continuing during the Term, Developer agrees to diligently operate and maintain the Permanent Project and all other support facilities for such Project owned or controlled by Developer in accordance with all Governmental Requirements and First-Class Project Standards and in compliance with this Agreement.

(b) Developer covenants that, at all times following Operations Commencement (Permanent Project), it will, directly or indirectly: (i) continuously operate and keep open the Casino for Casino Gaming Operations for the maximum hours permitted under Governmental Requirements, other than closures of up to four (4) hours per day, during extremely low volume periods of time, for operational efficiency; (ii) continuously operate and keep open for business to the general public for the maximum hours permitted under Governmental Requirements, the hotel Component and the parking Component; and (iii) operate and keep open for business to the general public all Components (other than the hotel Component, parking Component and Components where Casino Gaming Operations are conducted) in accordance with commercially reasonable hours of operation. Notwithstanding the foregoing, Developer shall have the right from time to time in the ordinary course of business and without advance notice to City, to close portions of any Component (x) for such reasonable periods of time as may be required for repairs, alterations, maintenance, remodeling, or for any reconstruction required because of casualty, condemnation, or Force Majeure, (y) to respond to then existing market conditions but only for so long as reasonable commercial practices would so require, or (z) for such periods of time as may be directed by a Governmental Authority; provided, however, no such direction shall relieve Developer of any liability as a result of such closure to the extent caused by an act or omission of Developer as provided for otherwise in this Agreement.

(c) Developer covenants that the Project will be designed, finished and operated under the ‘BALLY’S’ brand and trademark(s) with a design and marketing theme of ‘The Best of Chicago’.

4. Other Obligations.

4.1 Project Incentives.

(a) Developer recognizes and acknowledges that the construction and operation of the Project will have direct and indirect negative impacts on the City which will require the City and other local governmental units to provide continuing mitigation, and as an added inducement to the City to provide the Certification, and to demonstrate Developer's commitment to give back to the community, foster community development and investment and garner public support, Developer agrees to provide the Project Incentives.

(b) If any of the following shall occur and have an adverse impact on the Casino, the obligation of Developer to pay the Direct Impact Fee and Indirect Impact Fee (each, as defined in Exhibit A-1) shall be subject to good-faith renegotiation, in light of the economic impacts on the City and the Casino and all the other facts and circumstances then prevailing:

- (i) a new casino becomes open to the public within the City;
- (ii) there is an increase in the gaming privilege tax imposed upon the 'adjusted gross receipts' (as such term is defined in the Act) of the Casino; or
- (iii) (A) there is authorized by the State or the City a mode of lawful gaming to occur in the City other than Gambling Games under the Act, Sports Wagering under the Sports Wagering Act and pari-mutuel wagering under the Illinois Horse Racing Act of 1975; (B) one or more Persons, excluding Developer, any Casino Manager and their Affiliates, receives a license from the State regulator having jurisdiction over such mode of gaming which permits such Person or Persons to lawfully conduct such gaming within the territorial limits of the City; and (C) such licensed Persons commence to operate such new mode of gaming within the territorial limits of the City on more than a *de minimis* or 'beta test' basis.

4.2 Minimum Capital Investment.

Developer shall make a Minimum Capital Investment of \$1,340,000,000 in furtherance of its obligations pursuant to Section 3.3 hereof.

4.3 Payment of Taxes and Fees.

Developer agrees that the minimum EAV for the Project Site (Permanent) and all improvements thereon shall be \$125,000,000. Developer shall pay all real estate taxes on the Project Site (Permanent), all improvements thereon and all personal property taxes on all Project personal property in accordance with Governmental Requirements. Developer shall not contest or file a property tax protest of the EAV of the Project Site (Permanent) and all improvements thereon unless the EAV exceeds \$125,000,000 and, in such case, shall not contest or file a property tax protest of the EAV claiming an EAV or seeking an adjustment in EAV of the Project Site (Permanent) to an EAV less than \$125,000,000.

As approved in the original Planned Development #1426, Developer shall pay an Industrial Corridor Conversion Fee, at the time of submission of the first building permit within the boundary of Planned Development #1426, Neighborhood Opportunity Fund (NOF) Bonus Fee, at such time as Developer submits a building permit which exceeds the allowable floor area ratio in the underlying zoning district, General Permit Reviews (both permit and part II fees), as required upon the submission of applications for individual building permits, ARO Obligation (units and/or potential to generate fees), as required upon the submission of applications for building permits containing residential units, all as customary for other large scale developments of this type. Developer will pay other ancillary miscellaneous inspection and permit fees which may also be required.

4.4 Additional Commitments.

(a) As described on Exhibit A-2, Developer agrees to: (i) meet or exceed its goals for contracting with City-based businesses for the design and construction of the Project and the provision of goods and services to the Project both during construction and operation of the Project; (ii) meet or exceed the hiring of the minimum number of employees, both full-time and part-time, during construction of the Project and when the Project is fully operational; (iii) meet or exceed the goals for work hours for construction work by City residents and residents of the area surrounding the Project; (iv) meet or exceed its goals for hiring specific percentages of City residents, women, minorities, veterans and persons with a disability during operation of the Project; (v) satisfy the requirements for business utilization and building wealth and increasing employment in disadvantaged communities, prioritize hiring of City residents, and achieve a diverse workforce; and (vi) satisfy the requirements for sourcing goods and services.

(b) As described on Exhibit A-3, Developer agrees to: (i) establish, fund and maintain human resource hiring and training practices; and (ii) comply with Developer's workforce development plan.

(c) As described on Exhibit A-4, Developer agrees to implement the marketing and operating plan, including Developer's plan for: (i) treatment of compulsive behavior disorders; (ii) ensuring that minors will be prohibited from gambling at the Casino; (iii) providing security inside and surrounding the Project; (iv) attracting new businesses, tourists and visitors to the area around the Project Site; (v) use of its customer databases to support the Project; and (vi) implementing the theme and targeting market segments for the Permanent Project.

(d) Developer agrees that the Permanent Project will comply with the City's Sustainable Development Policy with a point score under that policy of at least 125 points, including with the enhanced bird protection provisions of Sec. 9.2 thereof, as well as the City's North Branch Framework Plan and the Chicago River Design Guidelines. In addition the Permanent Project will be designed to meet LEED Gold standards.

(e) Parent Company, on behalf of Developer, has entered into an agreement with organized labor, including hospitality services (the "Labor Peace Agreement"), and shall use commercially reasonable efforts to assure labor harmony during construction and operation of the Project.

(f) As described on Exhibit A-6, Developer agrees to comply with its plan for relocating or compensating any existing businesses, tenants or services displaced on account of the Project.

(g) As described on Exhibit A-7, Developer agrees to comply with its plan for (i) transportation demand and supply management for the Project; (ii) traffic control measures for the Project; (iii) pedestrian and bicycle ingress/egress within and surrounding the Project; (iv) leveraging/upgrading use of existing, in-place City infrastructure to serve and harmonize with the Project; (v) accommodating special events and grand opening traffic and parking for the Project; (vi) emergency access for police, fire and ambulatory ingress and egress and its emergency operations plan for the Project; (vii) addressing any additional burdens placed on existing City infrastructure; and (viii) multi-modal traffic circulation infrastructure showing ingress and egress to the Project.

(h) Developer will adhere to the highest level of ethical and responsible gaming practices, consistent with requirements of the Act, the Sports Wagering Act, rules and regulations of the Board, including but not limited to, the following:

- (i) use certified trainers to train all of its employees on responsible gaming including tiered training in accordance with the employee's exposure to gaming in their job duties;
- (ii) post signage in English and Spanish with the toll-free Problem Gamblers Help Line number and a local help line number in employer and customer-facing areas in the Project;
- (iii) adhere to the Board's voluntary self-limit or exclusion laws, regulations and policies;
- (iv) provide an on-site location for guests to privately receive information on problem gambling, together with information of available resources for treatment, counseling and prevention for compulsive gaming behaviors;
- (v) have its employees participate annually in "Responsible Gaming Education Week" sponsored annually by the American Gaming Association or any successor or equivalent program; and
- (vi) collaborate with local agencies that provide gambling addiction services with respect to strategies for addressing problem gambling.

(i) Developer will train its employees at least annually to request and verify the identification of any patron that appears to be underage in accordance with industry standards or otherwise provided in the Act and Sports Wagering Act and the rules and regulations of the Board promulgated thereunder.

(j) Developer agrees to pay when due in the ordinary course of Approvals the City's customary permit and license fees applicable to the Project.

(k) In the design, construction and operation of the Project, Developer shall comply with all Governmental Requirements including the Americans with Disabilities Act. Developer shall provide within the Project gaming tables and electronic gaming machines accessible to persons with disabilities.

(l) Developer agrees to comply with the City's "Other Agreements" set forth in Exhibit A-8.

(m) As described on Exhibit A-9, Developer agrees to implement the minority and women ownership provisions which Developer shall incorporate into the operating agreement of Developer.

4.5 Payment of Development Process Cost Fees.

(a) Developer shall pay the due and unpaid Development Process Cost Fees on or before the fifth (5th) Business Day following the execution of this Agreement by Developer and the City, and thereafter, in accordance with the procedures set forth in Section 4.5(b). Any such Development Process Cost Fees due the City's consultants shall be paid by Developer directly to such consultants; provided, that, prior to the payment of any Development Process Cost Fees by Developer, the City shall apply the sum of all application fees paid to the City by other applicants for the License to the Development Process Cost Fees (the "Other Party Application Fees"). Developer shall reimburse the City for all Development Process Cost Fees paid by the City prior to the execution of this Agreement.

(b) The City and the City's Consultants, as the case may be, shall invoice Developer from time to time, but no more frequently than monthly for the Development Process Cost Fees incurred by the City and due such party since the prior monthly invoice. Developer shall pay such invoiced Development Process Cost Fees within thirty (30) days from the date of the invoice, directly to the party submitting the invoice in accordance with the instructions provided in the invoice. The City's Consultants shall be intended third-party beneficiaries of Developer's obligation to pay Development Process Cost Fees. The invoices provided by the City and the City's Consultants, as the case may be, shall include a summary of the charges and such detail as party submitting the invoice reasonably believes is necessary to inform Developer of the nature of the costs and expenses, subject to privilege and confidentiality restrictions. At Developer's request, the City shall, or shall cause the City's Consultant submitting the invoice to consult with Developer on the necessity for such charges during the ten (10) Business Day period immediately subsequent to Developer's receipt of such summary. Developer's obligation to pay Development Process Cost Fees incurred by the City prior to any termination of the Agreement shall survive termination of the Agreement.

(c) Notwithstanding anything to the contrary in this Section 4.5, (i) in no event shall the Developer's aggregate liability for Development Process Cost Fees incurred by the City through the date of execution of this Agreement by Developer and the City exceed five million seven hundred thousand dollars (\$5,700,000); and (ii) the Development Process Cost Fees shall not exceed \$100,000 per year after the issuance of the License.

4.6 Radius Restriction.

(a) No Restricted Party shall directly or indirectly (including through a subsidiary or Person Controlled by it): (i) manage, operate or become financially interested in any casino, whether land based or riverboat, or in any other establishment at which Gambling Games or historical horse racing are authorized (a “**Restricted Activity**”) within the Restricted Area other than the Project; (ii) make application for any franchise, permit or license to manage or operate any Restricted Activity within the Restricted Area other than the Project; or (iii) respond positively to any request for proposal to develop, manage, operate or become financially interested in any Restricted Activity within the Restricted Area other than the Project (all of the previous clauses (i), (ii) and (iii) comprising the “**Radius Restriction**”). Developer shall cause each Restricted Party as requested by the City, to execute and deliver to the City as part of the Closing Deliveries, an agreement to abide by the Radius Restriction.

(b) If any Restricted Party acquires or is acquired by a Person such that, but for the provisions of this Section 4.6, such Restricted Party or the acquiring Person would be in violation of the Radius Restriction as of the date of acquisition, then such party shall have two (2) years in which to comply with the Radius Restriction, unless such time period is extended or waived by the City.

(c) It is the desire of the Parties that the provisions of this Section 4.6 be enforced to the fullest extent permissible under the laws and public policies in each jurisdiction in which enforcement might be sought. Accordingly, if any particular portion of this Section 4.6 shall ever be adjudicated as invalid or unenforceable, or if the application thereof to any party or circumstance shall be adjudicated to be prohibited by or invalidated by such laws or public policies, such section or sections shall be modified as determined appropriate by such a court to the minimum extent necessary so as to render such portion to be valid and enforceable with such modifications to apply only with respect to the operation of such section or sections in the particular jurisdictions so adjudicating on the parties and under the circumstances as to which so adjudicated

(d) The provisions of this Section 4.6 and the related Radius Restriction Agreements shall lapse and be of no further force or effect ten (10) years after the Operations Commencement Date for the Permanent Project.

4.7 Statutory Basis for Fees; Default Rate.

(a) Developer recognizes and acknowledges that the payments to be made by Developer to the City under this Agreement, the Project Incentives, and the Development Process Cost Fees (collectively, the “**Developer’s Payments**”) are being paid by Developer, in part: (i) in exchange for particular governmental authorizations and services which benefit Developer in a manner not shared by other members of society; (ii) by choice in that Developer has voluntarily requested that the City serve as its host community and would not be obligated to pay such amounts but for such request; and (iii) to compensate the City and other governmental units for providing Developer with the services required to allow Developer to construct and operate the Project and to mitigate the impact of Developer’s activities on the City and its residents.

(b) All amounts payable by Developer hereunder, including Developer's Payments, shall bear interest at the Default Rate from the due date or, if no due date is specified, then from the date which is fifteen (15) Business Days from the date of notice to Developer until paid; *provided*, that no interest shall accrue or be payable on Developer's Payment if such amounts are paid late by not more than (15) Business Days on not more than two (2) occasions in any twelve (12) month period.

4.8 Notice of Agreement.

(a) The Parties agree that the Notice of Agreement shall not in any circumstance be deemed to modify or to change any of the provisions of this Agreement.

(b) The restrictions imposed by and under Sections 4.9(b) (Financing), 6.3(b) (Transfers) and 8.1 (Transfer of Ownership Interests) (collectively, the "**Restrictions**") will be construed and interpreted by the Parties as covenants running with the land. Developer agrees for itself, its successors and assigns to be bound by each of the Restrictions. The City shall have the right to enforce such Restrictions against Developer, its successors and assigns to or of the Project or any part thereof or any interest therein.

4.9 Financing.

(a) Developer agrees to notify the City in writing of any Financing reasonably contemporaneously with any notice thereof to the Board.

(b) If any interest of Developer is Transferred by reason of any foreclosure, trustee's deed or any other proceeding for enforcement of the Mortgage, then the Mortgagee (or any Nominee of the Mortgagee) shall immediately upon such Transfer assume the obligations of the Developer hereunder except as otherwise provided in Section 4.9(f). As used in this Agreement, the term "**Nominee**" shall mean a Person who is designated by Mortgagee to act in place of the Mortgagee solely for the purpose of holding title to the Project and performing the obligations of Developer hereunder.

(c) In no event may Developer or any Finance Affiliate represent that the City is or in any way may be liable for the obligations of Developer or any Finance Affiliate in connection with: (i) any financing agreement or (ii) any public or private offering of securities. If Developer or any Finance Affiliate shall at any time sell or offer to sell any securities issued by Developer or any Finance Affiliate through the medium of any prospectus, offering memorandum or otherwise that relates to the Project or its operation, Developer shall: (i) first submit such offering materials to the City for review with respect to Developer's compliance with this Section 4.9; and (ii) do so only in compliance with all applicable federal and state securities laws, and shall clearly disclose to all purchasers and offerees that (y) the City shall not in any way be deemed to be an issuer or underwriter of such securities, and (z) the City and its officers, agents, and employees have not assumed and shall not have any liability arising out of or related to the sale or offer of such securities, including any liability or responsibility for any financial statements, projections, forward-looking statements or other information contained in any prospectus or similar written or oral communication. Developer agrees to indemnify, defend and hold the City and its respective

officers, agents and employees free and harmless from, any and all liabilities, costs, damages, claims or expenses arising out of or related to the breach of its obligations under this Section 4.9(c).

(d) Neither entering into this Agreement nor any breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project or the Project Site made in good faith and for value.

(e) Provided Developer has given the City written notice of the existence of any Mortgage, together with Mortgagee's address and a contact party, simultaneously with the giving to Developer of any Default Notice, the City shall give a duplicate copy thereof to any Mortgagee by registered mail, return receipt requested, and no such notice to Developer shall be effective unless a copy of the same has been so sent to Mortgagee. Any Mortgagee shall have the right to cure any Default within the same period by which Developer is required to effectuate any such cure plus (a) an additional thirty (30) days for any monetary Default and (b) an additional ninety (90) days for any non-monetary Default; provided that any such ninety (90) day period shall be extended to the extent that the Default is of the nature that it cannot reasonably be expected to be cured within such ninety (90) day period and Mortgagee is diligently prosecuting such cure to completion or otherwise has commenced action to enforce its rights and remedies under any Mortgage to recover possession of the Project. In all cases, the City agrees to accept any performance by Mortgagee of any obligations hereunder as if the same had been performed by Developer, and shall not terminate the Agreement until the requisite time periods for cure by Mortgagee have been exhausted pursuant to the terms hereof. It is understood that no cure or attempt to cure by Developer, Mortgagee or any other Person of any Default shall limit the right of the City to recover damages from Developer or otherwise exercise remedies with respect to any Default during any period in which such Default remained uncured.

(f) In the event of a non-monetary Default which cannot be cured without obtaining possession of the Project or that is otherwise personal to Developer and not susceptible of being cured by Mortgagee, the City will not terminate this Agreement without first giving Mortgagee reasonable time within which to obtain possession of the Project, including possession by a receiver, or to institute and complete foreclosure proceedings. Upon acquisition of Developer's interest in the Project and performance by Mortgagee of all covenants and agreements of Developer, except those which by their nature cannot be performed or cured by any person other than the Developer, the City's right to terminate this Agreement shall be waived with respect to the matters which have been cured by Mortgagee or which are not susceptible of being cured.

4.10 Closing Deliveries.

Developer will deliver or cause to be delivered all of the Closing Deliveries no later than ten (10) Business Days following Effective Date. Unless the time for delivery of any Closing Deliveries is extended, or the satisfaction of any Closing Delivery or any other Closing Condition is waived by the City, the date that all Closing Deliveries have been made and all other Closing Conditions shall have been met is the "Closing Date".

4.11 Infrastructure Improvements.

The City shall not be responsible for payment of any land entitlement, design, development and construction costs of any Project Infrastructure.

5. Representations and Warranties.

5.1 Representations and Warranties of Developer.

As a material inducement to the City to enter into this Agreement, Developer represents and warrants to the City that each of the following statements is true, accurate and complete as of the date of this Agreement and the Closing Date, except as set forth in the Bringdown Schedule:

(a) Developer is duly organized, validly existing and in good standing under the Governmental Requirements of Delaware and is registered to do business in the State. Developer has all requisite organizational power and authority to own and operate its properties, carry on its business and enter into and perform its obligations under this Agreement and all other agreements and undertakings to be entered into by Developer in connection herewith.

(b) Each financial statement, document, report, certificate, written statement and description delivered by or on behalf of Developer whether pursuant to the Request for Proposal or hereunder has, and will be, when delivered, complete and correct in all material respects.

(c) Developer is not a party to any agreement, document or instrument that has or will have a Material Adverse Effect on the ability of Developer to carry out its obligations under this Agreement.

(d) Developer currently is in compliance with all Governmental Requirements, its organizational documents and all agreements to which it is a party which relate to the Project or otherwise, to the extent that any noncompliance would have a Material Adverse Effect. Neither execution of this Agreement nor discharge by Developer of any of its obligations hereunder shall cause Developer to be in violation of any Governmental Requirement, its organizational documents or any agreement to which it is a party.

(e) This Agreement, Developer's Transfer Restriction Agreement, Radius Restriction Agreement, and Release when duly executed and delivered by Developer will constitute legal, valid and binding obligations of Developer, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and subject to general equitable principles which may limit the right to obtain equitable remedies.

(f) Developer has taken all requisite action and obtained all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced in this Agreement or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required under this Agreement, and no consent of any other party is required for the performance by Developer of its obligations under this Agreement.

(g) Developer has control over, and enforceable rights to obtain good, marketable and insurable title to, all parcels constituting the Project Site, subject to no liens, easements, restrictions or other encumbrances other than the matters identified on Exhibit M (the “**Permitted Exceptions**”). Developer has no knowledge of any facts or any past, present or threatened occurrence that could preclude or impair in any material respect its ability to obtain good, marketable and insurable title to any parcel constituting part of the Project Site which it does not own as of the date of this Agreement.

(h) Developer has received no notice of and has no knowledge of any action, litigation, investigation or proceeding of any kind pending or threatened against Developer or any party controlling or controlled by Developer or any portion of the Project Site that could prevent Developer in any material respect from performing its obligations in accordance with the terms of this Agreement, and Developer knows of no facts which could give rise to any such action, litigation, investigation or proceeding.

(i) Attached hereto as Exhibit O is a true, accurate and complete organizational chart of Developer showing each equity owner of Developer, as applicable, and the respective percentage ownership in Developer, as applicable, that exceeds five percent (5%).

(j) All information set forth in Developer’s Response or the Bringdown Schedule was true, accurate and complete in all material respects.

(k) Developer has not engaged any Casino Manager or entered into any Casino Management Agreement to pay any Management Fee.

5.2 Representations and Warranties of the City.

The City represents and warrants to Developer that each of the following statements is true, accurate and complete as of the Closing Date:

(a) All of the (e-5) Requirements have been met.

(b) Upon the receipt of Approvals as provided in this Agreement, including any necessary amendment or minor change in the Planned Development, relating to the Project, the conduct of Gaming at the Project Site will be permitted under the City’s ordinances.

(c) The City is a validly existing municipal corporation and has all requisite power and authority to enter into and perform its obligations under this Agreement.

(d) This Agreement is binding on the City and is enforceable against the City in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors’ rights and subject to general equitable principles which may limit the right to obtain equitable remedies.

(e) The City has taken all requisite action and obtained all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced in this Agreement or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required under this Agreement, and

no consent of any other party is required for the performance by the City of its obligations under this Agreement.

6. Covenants.

6.1 Affirmative Covenants of Developer.

Developer covenants that throughout the Term, Developer shall:

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence.

(b) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect the rights, licenses, registrations, permits, certifications, Approvals, consents, franchises, patents, copyrights, trade secrets, trademarks and trade names that are used in the conduct of its businesses and other activities, and comply with all Governmental Requirements applicable to the operation of its business and other activities, in all material respects, whether now in effect or hereafter enacted.

(c) Furnish to the City:

- (i) no later than ninety (90) days after the end of each calendar year commencing with the calendar year in which the Operations Commencement (Temporary Project) occurs, balance sheets, and statements of operations, owners' equity and cash flows of Developer showing the financial condition and operations of the Developer as of the close of such year and the results of operations during such year, all of the foregoing consolidated financial statements to be audited by a firm of independent certified public accountants of recognized national standing acceptable to the City and accompanied by an opinion of such accountants without material exceptions or qualifications;
- (ii) no later than forty-five (45) days after the end of each fiscal quarter of Developer commencing with the fiscal quarter in which the Operations Commencement (Temporary Project) occurs, financial statements (including balance sheets and statements of cash flow and operations) showing the financial condition and results of operations of Developer as of the end of each such fiscal quarter and for the then elapsed portion of the current fiscal year, accompanied by a certificate of an officer of Developer that such financial statements have been prepared in accordance with GAAP, consistently applied, to the extent applicable;
- (iii) promptly upon the receipt thereof, but subject to the distribution limitations and restrictions contained therein, copies of all reports, if any, submitted to Developer by independent certified public accountants in connection with each annual, interim or special audit or review of the financial statements of Developer made by such accountants, including any comment letter

(again, subject to the distribution limitations and restrictions contained therein) submitted by such accountants to management in connection with any annual review;

- (iv) within five (5) Business Days after submission to the Board, accurate and complete copies of all reports submitted to the Board; and
- (v) from time to time, such other information regarding the compliance by Developer with the terms of this Agreement or the Project as the City may reasonably request in writing.

(d) No later than ninety (90) days after the end of each fiscal year of Developer commencing with the fiscal year in which the Closing Date occurs, Developer shall deliver to the City:

- (i) a detailed report on Developer's obligations to comply with its Additional Commitments in such form as may reasonably be requested by the City from time to time;
- (ii) a written description of any administrative determination, binding arbitration decision, or judgment rendered by a court of competent jurisdiction finding a willful and material violation by Developer of any federal, state or local laws governing employment and labor, including those related to wages, hours, collective bargaining, labor relations, immigration, classification of workers and employees, workers safety and equal employment opportunity during such fiscal year; and
- (iii) a statement as to whether Developer is aware of any non-compliance with the radius restrictions set forth in Section 4.4 or the restrictions on Transfer set forth in Section 8.1.

(e) Deliver to the City prompt written notice of the following (but in no event later than twenty (20) calendar days following the actual knowledge thereof by Developer):

- (i) the issuance by any Governmental Authority of any injunction, order, decision, notice of any violation or deficiency, asserting a violation of Governmental Requirements applicable to Developer or the Project or seeking to affect Developer's ability to operate the Project or comply with the terms of this Agreement, in each case together with copies of all relevant documentation with respect thereto;
- (ii) the notice, filing or commencement of or any threatened notice, filing or commencement of, any action, suit or proceeding by or against Developer whether at law or in equity or by or before any court or any Governmental Authority and that (A) if adversely determined against Developer could result in injunctive relief or could result in uninsured net liability in excess of Five Million Dollars (\$5,000,000) in the aggregate (in either case,

together with copies of the pleadings pertaining thereto) or (B) seeks to (x) enjoin or otherwise prevent the consummation of the transactions contemplated by this Agreement or the City's ability to recover any damages or obtain relief under this Agreement or the issuance of any license (including the License) to Developer by the Board or (y) affect Developer's ability to operate the Project or comply with the terms of this Agreement;

- (iii) to the knowledge of Developer, any Default, specifying the nature and extent thereof and the action (if any) that is proposed to be taken with respect thereto;
- (iv) any Transfer not permitted under Section 8.1 specifying the nature thereof and the action (if any) that is proposed to be taken with respect thereto;
- (v) to the knowledge of Developer, any development in the business or affairs of Developer or the Casino Manager that could reasonably be expected to have or result in a Material Adverse Effect; and
- (vi) receipt by Developer of any written notice of default from any lender or other financing source to Developer.

(f) Maintain financial records in accordance with GAAP and permit an authorized representative designated by the City, upon reasonable advance written notice and at a reasonable time during normal business hours but not more frequently than once in any 12-month period, except after the occurrence and during the continuation of any Event of Default (when such limitation shall not apply), to visit and inspect Developer's properties and financial records and to make extracts from such financial records, all at Developer's reasonable expense, and permit any authorized representative designated by the City to discuss the affairs, finances and conditions of Developer with any executive officer or other manager or officer of Developer or Casino Manager as such representative shall reasonably deem appropriate, and Developer's independent public accountants.

(g) If a Casino Manager is engaged, enter into and maintain a marketing or similar agreement with the Casino Manager and approved by the City for purposes of branding, sharing of customer information, joint marketing and customer loyalty programs and other matters customary in agreements of this type.

(h) Not amend or modify any organizational document that directly or indirectly would have the effect of adversely affecting the rights, ownership or distributions of any minority or women owners.

(i) In the event Developer has not engaged, hired or retained a Casino Manager by the Closing Date, prior to the effective date of any Casino Management Agreement,

- (i) Deliver a copy of the execution version of the Casino Management Agreement to the City, which the City shall have the right to approve prior to the Casino Management Agreement becoming effective; and

- (ii) Deliver a fully-executed Subordination Agreement to the City.

6.2 License Application.

Developer shall:

(a) Promptly and accurately complete and submit to the Board its Application no later than forty-five (45) Business Days from the City's delivery of the Certification to the Board, together with other such information as the Board or its staff may from time to time require from Developer in connection with such Application, make all payments required under the Act to be made by an applicant for a License and use its best efforts to satisfy all criteria necessary to be issued a License by the Board.

(b) Deliver to the City a copy of the Application together with proof of the filing of the Application in accordance with the Act contemporaneous with or immediately following its filing, excluding, however, personal disclosure forms (including attachments or exhibits related thereto) that are included as a part of the Application.

(c) Prior to the Board issuing a License to Developer, keep the City informed as to all material contacts and communications between the Board and its staff and Developer so as to enable the City to evaluate the likelihood and timing of the Board issuing a License to Developer.

6.3 Negative Covenants of Developer.

Developer covenants that throughout the Term, Developer shall not:

(a) Upon the occurrence of an Event of Default, and until such time that such Default or Event of Default is cured, declare or pay any dividends or make any other payments or distributions to any Restricted Party.

(b) Directly or indirectly through one or more intermediary companies engage in or permit any Transfer of this Agreement, the Project, the Project Site or any ownership interest therein other than a Permitted Transfer without the prior consent of the City.

(c) Take any action to voluntarily terminate any Casino Management Agreement or amend or waive any compliance with such Casino Management Agreement in a manner that has or could reasonably be expected to have a Material Adverse Effect on the Project or the City or Developer's ability to perform its obligations under this Agreement without submitting notice to the City of any such termination, amendment, or waiver within ten (10) days of effecting same.

6.4 Confidentiality of Deliveries.

To the extent that the Act, Sports Wagering Act, other laws of the State or the City or any other Governmental Requirements, in the reasonable opinion of Developer's legal counsel, allow confidential treatment of the items Developer is obligated to furnish to the City under Sections 6.1(c), (d), or (e)(i), (ii), (iv) and (v) or Section 6.2(b) (the "**Developer's Confidential Items**"), Developer shall have the right to deliver Developer's Confidential Items to the City's Mayor, Corporation Counsel, and consultants, upon each such Person's execution and delivery of a

customary non-disclosure agreement which shall include customary exceptions for disclosure required pursuant to subpoenas, Freedom of Information requests, or other applicable legal requirements. Further, to the extent that Developer requests confidential treatment of any other documentation or information required to be provided to the City under this Agreement, and such documentation and information may be protected from disclosure by the City under applicable law as reasonably determined by the City's Corporation Counsel, the City shall maintain the confidentiality of such documentation and information to the extent permitted by applicable law. Upon receipt of a freedom of information act or other public record request for information relating to Developer's Confidential Items, the City shall provide reasonable written notice of such request to Developer and shall consult with Developer prior to disclosure of such Developer's Confidential Items. Upon Developer's request, City shall allow Developer to commence or participate in any action it reasonably determines it shall have a basis for to protect such information from disclosure, at Developer's cost and expense.

7. Default.

7.1 Events of Default.

The occurrence of any of the following shall constitute an "**Event of Default**" under this Agreement:

(a) If Developer materially defaults in the performance of any: (i) Governmental Requirement; or (ii) commitment, agreement, covenant, representation, term or condition (other than those specifically described in any other subparagraph of this **Section 7.1**) of this Agreement, and in such event if Developer fails to remedy any such Default within thirty (30) days after Developer's receipt of a Default Notice with respect thereto; **provided, however,** that if any such Default is reasonably susceptible of being cured within ninety (90) days, but cannot with due diligence be cured by Developer within thirty (30) days, and if Developer commences to cure such Default within thirty (30) days and diligently prosecutes the cure to completion, then Developer shall not during such period of diligently curing be in Default hereunder as long as such Default is completely cured within ninety (90) days of Developer's receipt of a Default Notice with respect thereto.

(b) If Developer makes a general assignment for the benefit of creditors or admits in writing its inability to pay its debts as they become due;

(c) If Developer files a voluntary petition under any title of the United States Bankruptcy Code, as amended from time to time, or if such petition is filed against Developer and an order for relief is entered, or if Developer shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or any future federal bankruptcy law or any other present or future applicable federal, state or similar statute or law, or seeks or consents to or acquiesces to or suffers the appointment of any trustee, receiver, custodian, assignee, liquidator or similar official of Developer, or of all or any substantial part of its properties or of the Project or any interest therein of Developer;

(d) If within ninety (90) days after the commencement of any proceeding against Developer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or similar statute or law, such proceeding shall not have been dismissed; or if within ninety (90) days after the appointment, without the consent or acquiescence of Developer of any trustee, receiver, custodian, assignee, liquidator or other similar official of Developer or of all or any substantial part of its properties or of the Project or any interest therein of Developer, such appointment shall have not been vacated or stayed on appeal or otherwise, or if within ninety (90) days after the expiration of any such stay, such appointment shall not have been vacated;

(e) If any representation or warranty made by Developer hereunder proves to have been false or misleading in any material respect as of the time made or furnished, unless Developer cures such representation or warranty within thirty (30) days;

(f) If a Default occurs, which has not been cured within any applicable cure period, under, or if there is any attempted withdrawal, disaffirmance, cancellation, repudiation, disclaimer of liability or contest of obligations (other than a contest as to performance of such obligations) of, any Transfer Restriction Agreement, any Radius Restriction Agreement, any Subordination Agreement, or the Guaranty Agreement;

(g) If Developer fails to maintain in full force and effect policies of insurance meeting the requirements of Article 9 and in such event Developer fails to remedy such Default within ten (10) Business Days after Developer's receipt of a Default Notice with respect thereto;

(h) If the construction of the Project at any time is discontinued or suspended for a period of one hundred twenty (120) consecutive calendar days, and is not restarted prior to Developer's receipt of a Default Notice with respect thereto; provided, however, that if the discontinuation or suspension of construction is due to an event of Force Majeure event then such discontinuation or suspension shall not be an Event of Default during the resulting Force Majeure Period;

(i) If Operations Commencement (Temporary Project) does not occur by the Operations Commencement Date; or if Operations Commencement (Permanent Project) does not occur by the Operations Commencement Date, subject to Force Majeure as provided in this Agreement; or

(j) If Developer fails to make any Developer's Payments or any other payments required to be made by Developer hereunder as and when due, and fails to make any such payment within ten (10) calendar days after receiving a Default Notice with respect thereto.

7.2 Remedies.

(a) Upon an Event of Default, the City shall have the right if it so elects to: (i) exercise any and all remedies available at law or in equity; (ii) terminate this Agreement; (iii) receive liquidated damages under the circumstances set forth in Section 7.4; (iv) exercise its rights under any Subordination Agreement; or (v) institute and prosecute proceedings to enforce in whole or in

part the specific performance of this Agreement by Developer, or to enjoin or restrain Developer from commencing or continuing said breach, or to cause by injunction Developer to correct and cure said breach or threatened breach, and otherwise without the need to post any bond therefor. None of the remedies enumerated herein are exclusive, except the City's rights to receive liquidated damages in Section 7.4, which shall be the exclusive remedy for the City's to recover its direct damages from delay under such circumstances as the payments under Section 7.4 become payable, and nothing herein shall be construed as prohibiting the City from pursuing any other remedies at law (except as otherwise provided in herein), in equity or otherwise available to it under the Agreement.

(b) Except as expressly stated otherwise, the rights and remedies of the City whether provided by law or by this Agreement, shall be cumulative, except as set forth in Section 7.4, and the exercise by the City of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same Default or breach, to the extent permitted by law. No waiver made by the City or Developer shall apply to obligations beyond those expressly waived in writing.

(c) Notwithstanding the payments provided in Section 7.4 to compensate the City for the City's direct damages for delay, the Parties agree: (i) that irreparable damage, by way of detriment to the public benefit and welfare of the City through lost employment opportunities, lost tourism, degradation of the economic health of the City, loss of indirect revenue and otherwise, would occur to the City if the Temporary Project and the Permanent Project are not designed in accordance with Section 3.1, constructed in accordance with Section 3.2, and fully completed in accordance with Section 3.3(e) or if Developer's obligations in Exhibits A-2, A-3, A-4, A-7, A-8 and A-9 are not fully performed; and (ii) that monetary damages, even if available, would not be an adequate remedy to compensate the City for such damages if such provisions of this Agreement are not performed in accordance with the specific terms thereof. The Parties acknowledge and agree that Developer and Parent Company have been selected to enter into this Agreement as the result of a competitive Request for Proposal process, are performing aspects of the Work which are personal to Developer and Parent Company which could not be contracted-for or otherwise obtained from a third party, are providing knowhow, intellectual property and goodwill (including the 'BALLY'S' tradename and mark, and associated goodwill) for use in the operation of the Project which are unique, and that the Permanent Project has been uniquely designed and is located on a unique Project Site (Permanent). The Parties agree that (A) the City shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement or to enforce specifically the performance by Developer of the terms and provisions of this Agreement, including Section 3.3(e), in the courts described in Section 13.14 without proof of actual damages, in addition to any other remedy to which it is entitled at law or in equity, (B) Developer will not oppose the granting of an injunction, specific performance, or other equitable relief on the basis that the City has an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity; and (C) the City shall not be required to obtain, furnish, or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 7.2(c), and each Party irrevocably waives any right it may have to require the obtaining, furnishing, or posting of any such bond or similar instrument. The right of specific enforcement is an integral part of Developer's agreements in this Agreement, including the City's agreement to deliver the Certification on the terms herein provided. Developer

acknowledges, moreover, that in making the Certification, the City is relying on the City's right to specifically enforce this Agreement, including Developer's covenants in Section 3.3(e), in order to obtain for the benefit of the City the aforesaid irreplaceable and non-quantifiable damages, and that, without that right, the City would not have entered into this Agreement.

(d) Upon a breach of this Agreement by the City, Developer shall have all remedies at law, in equity or otherwise available to it under this Agreement, including an action for specific performance.

(e) In no event shall the City be liable under this Agreement for consequential damages, including lost profits.

(f) In the event that the City shall have been paid liquidated damages pursuant to Section 7.4 or Section 6 of Exhibit A-2 under the circumstances when such liquidated damages are payable and is awarded specific performance of this Agreement in connection with the failures to perform this Agreement giving rise to such liquidated damages, it shall not also have a separate claim for indirect or consequential damages arising from such failures to perform.

7.3 Termination.

Except for the provisions that by their terms survive, this Agreement shall terminate immediately upon the occurrence of any of the following, or as otherwise provided in this Agreement:

(a) The Closing Date does not occur;

(b) The Board rejects or denies Developer's Application; *provided*, that, if such denial or rejection is subject to appeal and Developer timely asserts and diligently continues to prosecute such appeal, no termination shall occur until the earlier of (i) the date which is twelve (12) months after the date of the Board's rejection or denial, subject to extension with the consent of the City (not unreasonably withheld) for up to an additional six (6) months, or (ii) the rejection or denial is finally upheld or affirmed without any further right of appeal during such twelve (12) month period, as it may be so extended;

(c) There is no Finding of Preliminary Suitability of Developer within twelve (12) months (as such date may be extended by the City in its sole discretion) after Developer's submission of its Application as provided in the Act; or

(d) Developer's License (i) is revoked by a final, non-appealable order; (ii) expires and is not renewed by the Board and Developer has exhausted any rights it may have to appeal such expiration or non-renewal; or (iii) imposes conditions which are not satisfied within the time periods specified therein, subject to any cure periods or extension rights.

These termination events are in addition to any other rights the City or Developer may have to terminate this Agreement whether specified herein or otherwise available to the City under law.

7.4 Liquidated Damages.

(a) In the event that Operations Commencement (Temporary Project) does not occur on or before the Operations Commencement Date (subject to the extension thereof by any Force Majeure Periods pursuant to Section 3.3(e)), Developer will pay the City an amount, calculated on a daily basis, equal to the product of (i) eighty-five percent (85%) of the Projected Per-Diem Amount (Temporary) multiplied by (ii) the number of days in the period commencing on the Operations Commencement Date through and until Operations Commencement (Temporary Project).

(b) In the event that at least seventy-five percent (75%) of the Gaming Area of the Permanent Project is not open to the general public for Casino Gaming Operations in accordance with Governmental Requirements on or before the Operations Commencement Date (subject to the extension thereof by any Force Majeure Periods pursuant to Section 3.3(e)), Developer will pay the City an amount, calculated on a daily basis, equal to the excess of (i) the product of (A) eighty-five percent (85%) of the Projected Per-Diem Amount (Permanent) multiplied by (B) the number of days in the period commencing on the Operations Commencement Date through and until (x) Operations Commencement (Permanent Project) or, (y) if earlier, the date when seventy-five percent (75%) of the Gaming Area of the Permanent Project is open to the general public for Gaming in accordance with Governmental Requirements and fees begin to accrue under Section 7.4(c) minus (ii) the actual Local Tax Revenues received for such period; *provided*, that no such payment shall be payable for any day earlier than the day which is one (1) day after the third anniversary of Operations Commencement (Temporary Project).

(c) If, on and after the Operations Commencement Date (subject to the extension thereof by any Force Majeure Periods pursuant to Section 3.3(e)), seventy-five percent (75%) of the Gaming Area of the Permanent Project shall be open to the general public for Casino Gaming Operations in accordance with Governmental Requirements but the Permanent Project nevertheless has not achieved Operations Commencement (Permanent Project), Developer will pay the City an amount, calculated on a daily basis, equal to the product of (i) ten percent (10%) of the Projected Per-Diem Amount (Permanent) multiplied by (ii) the number of days in the period commencing on the Operations Commencement Date through and until Operations Commencement (Permanent Project); *provided*, that no such payment shall be payable for any day earlier than the day which is one (1) day after the third anniversary of Operations Commencement (Temporary Project).

(d) In the event that the Permanent Project does not achieve Final Completion (Permanent Project) on or before the Final Completion Date (subject to the extension thereof by any Force Majeure Periods pursuant to Section 3.3(e)), Developer will pay an amount, calculated on a daily basis, equal to the product of (i) ten percent (10%) of the Projected Per-Diem Amount (Permanent) multiplied by (ii) the number of days in the period commencing on the Final Completion Date through and until Final Completion (Permanent Project).

(e) The City and Developer covenant and agree that, because of the difficulty or impossibility of determining the City's damages from delayed performance of Developer's covenants under Section 3.3, the percentages of the Projected Per-Diem Amount (Temporary) and the Projected Per-Diem Amount (Permanent) which would be payable under this Section 7.4 are a

reasonable forecast the City's direct damages of such delay under the circumstances in which they would become payable in accordance with this Agreement and not penalties. The City's election to receive liquidated damages pursuant to this Section 7.4 for such direct damages of the City caused by the delayed performance of Developer's covenants under Section 3.3 is not intended to and shall not derogate from the City's right to seek the specific performance or other equitable relief with respect to Developer's covenants in Sections 3.1, 3.2 and 3.3(e).

(f) The payment obligations of Developer under subsections (a), (b), (c) and (d) of this Section 7.4 shall accrue as provided herein, but the obligations accrued thereunder shall become payable only when the City delivers written notice to Developer of the City's election to receive liquidated damages pursuant to this Section 7.4. After the City gives notice, Developer's payment obligations under this Section 7.4 for accrued amounts (if any) shall be immediately due and payable, and Developer's payment obligations accruing from and after the date of such notice shall be due periodically on such schedule as the City and Developer agree, but not less often than weekly, until the violations or failures to perform giving rise to such obligations have been fully cured. All amounts payable under this Section 7.4 shall bear interest at the Default Rate from the due date until paid.

8. Transfer of Ownership Interests.

8.1 Transfer of Ownership Interests.

(a) Developer acknowledges and agrees that the obligations that Developer is to perform under this Agreement for the City's benefit are personal in nature. The City is relying upon each Restricted Party in the exercise of their respective skill, judgment, reputation and discretion with respect to the Project. Any Transfer by a Restricted Party of any Direct Or Indirect Interest in any Restricted Party shall be subject to the rules and restrictions set forth in the respective Transfer Restriction Agreement, which Developer shall cause each Restricted Party, as requested by the City, to execute and deliver to the City, as part of the Closing Deliveries.

(b) Any transferee of a Restricted Party shall hold its interests subject to the restrictions of such Transfer Restriction Agreement.

(c) Developer shall notify the City as promptly as practicable upon Developer becoming aware of any Transfer in violation of this Section 8.1.

9. Insurance.

9.1 Maintain Insurance.

Developer shall maintain in full force and effect the types and amounts of insurance as set forth on Exhibit I.

9.2 Form of Insurance and Insurers.

Whenever, under the terms of this Agreement, Developer is required to maintain insurance, the City shall be named as an additional insured in all such insurance policies to the extent of its insurable interest. All policies of insurance provided for in this Agreement shall be effected under

valid and enforceable policies, in commercially reasonable form issued by responsible insurers which are authorized to transact business in the State, having a financial strength rating by A.M. Best Company, Inc. of not less than "A-" or its equivalent from another recognized rating agency. Thereafter, as promptly as practicable prior to the expiration of each such policy, Developer shall deliver to the City an Accord certificate, together with proof reasonably satisfactory to the City that the full premiums have been paid or provided for at least the renewal term of such policies and as promptly as practicable, a copy of each renewal policy.

9.3 Insurance Notice.

Each such policy of insurance to be provided hereunder shall contain, to the extent obtainable on a commercially reasonable basis, an agreement by the insurer that such policy shall not be canceled or modified without at least thirty (30) days prior written notice by registered mail, return receipt requested, to the City.

9.4 Keep in Good Standing.

Developer shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Project and Developer shall so perform and satisfy the requirements of the companies writing such policies.

9.5 Blanket Policies.

Any insurance provided for in this Article 9 may be provided by blanket or umbrella policies issued to Developer covering the Project and other properties owned or leased by Developer; provided, however, that the amount of the total insurance allocated to the Project shall be such as to furnish in protection the equivalent of separate policies in the amounts herein required without possibility of reduction or coinsurance by reason of, or damage to, any other premises covered therein, and provided further that in all other respects, any such policy or policies shall comply with the other specific insurance provisions set forth herein and Developer shall make such policy or policies or a copy thereof available for review by the City.

10. Damage and Destruction.

10.1 Damage or Destruction.

In the event of damage to or destruction of improvements at the Project or any part thereof by fire, casualty or otherwise, Developer, at its sole expense, shall promptly repair, restore, replace and rebuild, or demolish and rebuild (collectively, "Restore") the improvements, as nearly as possible to the same condition that existed prior to such damage or destruction using materials of an equal or superior quality to those existing in the improvements prior to such casualty. All work required to be performed in connection with such restoration and repair is hereinafter called the "Restoration." Developer shall obtain any required temporary certificate of occupancy as soon as practicable after the completion of such Restoration. If neither Developer nor any Mortgagee shall commence the Restoration of the improvements or the portion thereof damaged or destroyed promptly following such damage or destruction and adjustment of its insurance proceeds, or, having so commenced such Restoration, shall fail to proceed to complete the same with reasonable

diligence in accordance with the terms of this Agreement, the City may, but shall have no obligation to, complete such Restoration at Developer's expense, upon thirty (30) calendar days' notice to Developer without Developer having commenced Restoration. Upon the City's election to so complete the Restoration and the expiration of the required notice to Developer, Developer immediately shall permit the City to utilize all insurance proceeds which shall have been received by Developer, minus those amounts, if any, which Developer shall have applied to the Restoration, and if such sums are insufficient to complete the Restoration, Developer, on demand, shall pay the deficiency to the City. Each Restoration shall be done subject to the provisions of this Agreement.

10.2 Use of Insurance Proceeds.

(a) Subject to the conditions set forth below, all proceeds of casualty insurance on the improvements shall be made available to pay for the cost of Restoration if any part of the improvements are damaged or destroyed in whole or in part by fire or other casualty.

(b) Promptly following any damage or destruction to the improvements by fire, casualty or otherwise, Developer shall:

- (i) give written notice of such damage or destruction to the City and each Mortgagee; and
- (ii) deliver a written notice of Developer's intent to complete the Restoration in a reasonable amount of time plus periods of time as performance by Developer is prevented by Force Majeure events (other than financial inability) after occurrence of the fire or casualty.

(c) Developer agrees to provide monthly written updates to the City summarizing the progress of any Restoration, including but not limited to, anticipated dates for the opening of the damaged areas to the public, to the extent applicable.

(d) Developer shall have no notification requirements to the City for any Restoration having a value less than Ten Million Dollars (\$10,000,000) in the aggregate.

10.3 No Termination.

No destruction of or damage to the Project, or any portion thereof or property therein by fire, flood or other casualty, whether such damage or destruction be partial or total, shall permit Developer to terminate this Agreement or relieve Developer from its obligations hereunder.

10.4 Condemnation.

If a Major Condemnation occurs, this Agreement shall terminate, and no Party shall have any claims, rights, obligations, or liabilities towards any other Party arising after termination, other than as provided for herein. If a Minor Condemnation occurs or the use or occupancy of the Project or any part thereof is temporarily requisitioned by a civil or military governmental authority for not more than thirty (30) days, then (a) this Agreement shall continue in full force and effect; (b) Developer shall promptly perform all Restoration required in order to repair any physical damage to the Project caused by the Condemnation, and to restore the Project, to the extent reasonably

practicable, to its condition immediately before the Condemnation. If a Minor Condemnation occurs, any Proceeds in excess of Ten Million Dollars (\$10,000,000) will be and are hereby, to the extent permitted by applicable law and agreed to by the condemnor, assigned to and shall be withdrawn and paid into an escrow account to be created by an escrow agent (the "**Escrow Agent**") selected by (i) the Mortgagee if the Project is encumbered by a Mortgage (or if the Project is encumbered by multiple mortgages, the Mortgagee with the highest priority lien on the Project); or (ii) Developer and the City in the event there is no first Mortgagee, within ten (10) days of when the Proceeds are to be made available. If Developer or the City for whatever reason cannot or will not participate in the selection of the Escrow Agent, then the other party shall select the Escrow Agent, which shall be a bank with an office in the City of Chicago that takes deposits having a capital surplus in excess of One Hundred Million Dollars (\$100,000,000). Nothing herein shall prohibit the Mortgagee (or if the Project is encumbered by multiple mortgages, the Mortgagee with the highest priority lien on the Project) from acting as the Escrow Agent. This transfer of the Proceeds, to the extent permitted by applicable law and agreed to by the condemnor, shall be self-operative and shall occur automatically upon the availability of the Proceeds from the Condemnation and such Proceeds shall be payable into the escrow account on the naming of the Escrow Agent to be applied as provided in this **Section 10.4**. If the City or Developer are unable to agree on the selection of an Escrow Agent, either the City or Developer may apply to the Circuit Court of Cook County for the appointment of a bank with an office in the City of Chicago that takes deposits having a capital surplus in excess of One Hundred Million Dollars (\$100,000,000) as the Escrow Agent. The Escrow Agent shall deposit the Proceeds in an interest-bearing escrow account and any after tax interest earned thereon shall be added to the Proceeds. The Escrow Agent shall disburse funds from the Escrow Account to pay the cost of the Restoration in accordance with the procedure described in **Section 10.2(b), (c) and (d)**. If the cost of the Restoration exceeds the total amount of the Proceeds, Developer shall be responsible for paying the excess cost. If the Proceeds exceed the cost of the Restoration, the Escrow Agent shall distribute the excess Proceeds, subject to the rights of the Mortgagees, first to the City to pay any amounts then due the City under this Agreement and then to Developer. Nothing contained in this **Section 10.4** shall impair or abrogate any rights of Developer against the condemning authority in connection with any Condemnation. All fees and expenses of the Escrow Agent shall be paid by Developer.

11. Indemnification.

11.1 Indemnification by Developer.

(a) Developer shall defend, indemnify and hold harmless the City and each of its officers, agents, employees, contractors, subcontractors, attorneys, consultants, and members of the City's casino evaluation and selection teams (collectively the "**Indemnitees**" and individually an "**Indemnitee**") from and against any and all liabilities, losses, damages, costs, expenses, claims, obligations, penalties and causes of action (including reasonable fees and expenses for attorneys, paralegals, expert witnesses, environmental consultants and other consultants at the prevailing market rate for such services) whether based upon negligence, strict liability, statutory liability, absolute liability, product liability, common law, misrepresentation, contract, implied or express warranty or any other principle of law, and whether or not arising from third party claims, that are imposed upon, incurred by or asserted against Indemnitees or which Indemnitees may suffer or be

required to pay and which arise out of or relate in any manner including but not limited to any of the following: (1) Developer's (the terms "Developer" or "Developer's" including for purposes of clauses (1) through (15) of this Section 11.1(a), the Casino Manager or Casino Manager's) development, construction, ownership, possession, use, condition, occupancy or abandonment of the Project or any part thereof; (2) Developer's operation or management of the Project or any part thereof; (3) the performance of any labor or services or the furnishing of any material for or at the Project or any part thereof by or on behalf of Developer or enforcement of any liens with respect thereto; (4) any personal injury, death or property damage suffered or alleged to have been suffered by Developer (including Developer's employees, agents or servants), or any third person as a result of any action or inaction of Developer; (5) any work or things whatsoever done in, or at the Project or any portion thereof, or off-site pursuant to the terms of this Agreement by or on behalf of Developer; (6) the condition of any building, facilities or improvements at the Project or any non-public street, curb or sidewalk at the Project, or any vaults, tunnels, malls, passageways or space therein; (7) any breach or default on the part of Developer for the payment, performance or observance of any of its obligations under all agreements entered into by Developer or any of its Affiliates relating to the performance of services or supplying of materials to the Project or any part thereof; (8) any act, omission or negligence of any tenant, or any of their respective agents, contractors, servants, employees, licensees or other tenants at the Project; (9) any failure of Developer to comply with all Governmental Requirements; (10) any breach of any warranty or the inaccuracy of any representation made by Developer contained or referred to in this Agreement or in any certificate or other writing delivered by or on behalf of Developer pursuant to the terms of this Agreement; (11) the environmental condition of the Project Site (including the presence of any hazardous or regulated substance in, on, under or adjacent to such property); (12) the release of any hazardous or regulated substance to the environment arising or resulting from any work or things whatsoever done in or at the Project or any portion thereof, or in or at off-site improvements or facilities used or constructed in connection with the Project pursuant to the terms of this Agreement by or on behalf of Developer; (13) the operation or use of the Project, whether or not intended, in violation of any law addressing the protection of the environment or the protection of public health; (14) any breach or failure by Developer to perform any of its covenants or obligations under this Agreement; and (15) any legal challenge brought by any community group, citizens group, or any Person relating in any way to the effectiveness of this Agreement, the process by which this Agreement was entered into or approved and the selection of Developer to negotiate this Agreement, the Request for Proposal, the Certification process, the zoning ordinance amendments necessary to develop and operate the Project, the authority of the City to enter into this Agreement, the compliance of this Agreement with the provisions of the Act, the Sports Wagering Act, or any other Government Requirement, or the implementation or enforcement of any provision of this Agreement.

(b) In case any action or proceeding shall be brought against any Indemnatee based upon any claim in respect of which Developer has agreed to indemnify any Indemnatee, Developer will upon notice from Indemnatee defend such action or proceeding on behalf of any Indemnatee at Developer's sole cost and expense and will keep Indemnatee fully informed of all developments and proceedings in connection therewith and will furnish Indemnatee with copies of all papers served or filed therein, irrespective of by whom served or filed. In such a case, Developer shall defend such action with legal counsel it selects provided that such legal counsel is reasonably satisfactory to Indemnatee. Such legal counsel shall not be deemed reasonably satisfactory to

Indemnatee if legal counsel has: (i) a legally cognizable conflict of interest with respect to the City; (ii) within the five (5) years immediately preceding such selection performed legal work for the City which in its respective reasonable judgment was inadequate; or (iii) frequently represented parties opposing the City in prior litigation. Each Indemnatee shall have the right, but not the obligation, at its own cost, to be represented in any such action by legal counsel of its own choosing.

(c) Notwithstanding anything to the contrary contained in Section 11.1(a), Developer shall not indemnify and shall have no responsibility to any Indemnatee for any matter to the extent directly caused by the gross negligence or willful misconduct of such Indemnatee.

12. Force Majeure.

12.1 Definition of Force Majeure.

An event of “**Force Majeure**” shall mean the following events or circumstances if, but only if, such event or circumstances delays performance beyond the reasonable control of Developer, or its agents and contractors, of their duties and obligations under this Agreement and such delay could not have been avoided or shortened by commercially reasonable efforts to foresee, mitigate or cure such disruption by Developer and its agents and contractors:

(a) Acts of God, tornadoes, hurricanes, floods or other abnormal and highly inclement weather, sinkholes, fires and other casualties, landslides or earthquakes;

(b) Acts of a public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrections, riots, civil disturbances, or national or international calamities;

(c) Rioting, looting, arson and like violent or destructive acts of civil commotion of a scale which is materially adversely impactful on the City and its businesses, taken as a whole;

(d) Actual or threatened health emergencies (including, without limitation, epidemic, pandemic, Covid-19, famine, diseases, plague, quarantine, and other health risks);

(e) Concealed and unknown conditions of an unusual nature that are encountered below ground or in an existing structure, but only to the extent that such conditions could not have been discovered by Developer’s exercise of reasonable diligence;

(f) Any temporary restraining order, preliminary injunction or permanent injunction, or mandamus or similar order, or any litigation or administrative delay which prevents or materially impedes the ability of Developer to complete the Project or perform any obligations of Developer under this Agreement, unless based in whole or in part on the actions or failure to act of Developer;

(g) The failure by, or unreasonable delay of, the City or State or other Governmental Authority to issue any permits or Approvals necessary for Developer to develop, construct, open or operate the Project unless such failure or delay is based materially in whole or in part on the actions or failure to act of Developer or its Affiliates, agents, representatives or contractors;

(h) The enactment after the date hereof of any City, State, or Federal ordinance that has the effect of unreasonably delaying Developer's obligations under this Agreement; or

(i) A breach by the City of its covenants in Section 3.1(c) of this Agreement related to the review and approval of Concept Design Documents and construction documents, to the extent that such breach that results in an actual delay of Developer's performance of its obligations under Section 3.3(a) and Section 3.3(b) relative to the timeline for such performance (including the timeline for amending the PD) had the City not so breached its covenants in Section 3.1(c).

12.2 Notice.

Developer shall, within thirty (30) days, notify the City in writing of the occurrence of an event of Force Majeure of which it has knowledge, describe in reasonable detail the nature of the event and provide a good faith estimate of the duration of any delay expected in Developer's performance obligations. During the Force Majeure Period, Developer shall keep the City reasonably apprised orally or, at the City's request, in writing of the status of the Force Majeure and of Developer's efforts to prevent and remedy delays in Developer's performance resulting from the Force Majeure. Developer will furnish the City with such additional information orally or, at the City's request, in writing regarding the event of Force Majeure and the anticipated and actual delay resulting therefrom as City may reasonably request.

12.3 Delay of Performance.

Notwithstanding any other provision of this Agreement to the contrary, Developer shall be entitled to an adjustment in the time of any duty or obligation of Developer under this Agreement for Force Majeure events but only for the Force Majeure Period and only to the extent that Developer has taken commercially reasonable steps to mitigate the effects of the Force Majeure event and only if such occurrences actually delay the performance of such duty or obligation.

13. Miscellaneous.

13.1 Notices.

Notices shall be given as follows:

Any notice, demand, update or other communication which any Party may desire or may be required to give to any other Party shall be in writing delivered by (i) hand-delivery, (ii) a nationally recognized overnight courier, or (iii) U.S. mail (but excluding electronic mail, i.e., "e-mail") addressed to a Party at its address set forth below, or to such other address as the Party to receive such notice may have designated to all other Parties by notice in accordance herewith:

If to the City:	Mayor
	City of Chicago
	121 N. LaSalle Street, 5 th Floor
	Chicago, Illinois 60602

with copies to: Office of the Chief Financial Officer
City of Chicago
121 N. LaSalle Street, Room 700
Chicago, Illinois 60602

and

Corporation Counsel
City of Chicago
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602

and

Cezar M. Froelich, Esq.
Kimberly M. Copp, Esq.
Taft Stettinius & Hollister LLP
111 E. Wacker Drive, Suite 2800
Chicago, Illinois 60601

If to Developer: Bally's Chicago Operating Company, LLC
c/o Bally's Corporation
Attn: Craig Eaton, Executive Vice President
100 Westminster Street
Providence, RI 02903

with copies to: Jonathan Mechanic, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004

Any such notice, demand or communication shall be deemed delivered and effective upon actual delivery. Additionally, if notice is required to be delivered to a Mortgagee pursuant to Section 4.9(e), then it shall be delivered to Mortgagee at the address provided in the mortgage.

13.2 Non-Action or Failure to Observe Provisions of this Agreement; Waiver

The failure of the City or Developer to promptly insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any exhibit hereto, or any other agreement contemplated hereby, shall not be deemed a waiver of any right or remedy that the City or Developer may have, and shall not be deemed a waiver of a subsequent Default or nonperformance of such term, covenant, condition or provision, it being understood that a waiver by a Party shall be made only by a writing signed by such Party.

13.3 Applicable Law and Construction.

The laws of the State shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the City and Developer, and the Agreement,

including the exhibits and schedules attached hereto, shall not be deemed to have been negotiated and prepared by the City or Developer, but by each of them.

13.4 Submission to Jurisdiction; Service of Process.

(a) It is the express intention of the Parties that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this Agreement shall be the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois (the "**Court**").

(b) If at any time during the Term, Developer is not a resident of the State or has no officer, director, employee, or agent thereof available for service of process as a resident of the State, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, director, employee, or agent available for service of process in the State, Developer or its assignee hereby designates the Secretary of the State, as its agent for the service of process in any court action between it and the City or arising out of or relating to this Agreement and such service shall be made as provided by the laws of the State for service upon a non-resident.

13.5 Complete Agreement.

This Agreement, and all the documents and agreements described or referred to herein, including the exhibits and schedules attached hereto, constitute the full and complete agreement between the Parties with respect to the subject matter hereof, and supersedes and controls in its entirety over any and all prior agreements, understandings, representations and statements whether written or oral by each of the Parties.

13.6 Holidays.

It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a day other than a Business Day, it shall be postponed to the next following Business Day.

13.7 Exhibits.

Each exhibit referred to and attached to this Agreement is an essential part of this Agreement.

13.8 No Joint Venture.

The City on the one hand and Developer on the other, agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City and Developer as joint venturers or partners.

13.9 Unlawful Provisions Deemed Stricken.

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement

without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

13.10 No Liability for Approvals and Inspections.

No approval to be made by the City under this Agreement or any inspection of the Work by the City shall render the City liable for failure to discover any defects or non-conformance with this Agreement, or a violation of or noncompliance with any federal, State or local statute, regulation, ordinance or code.

13.11 Time of the Essence.

All times, wherever specified herein for the performance by Developer and City of their obligations hereunder, are of the essence of this Agreement.

13.12 Captions.

The captions of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

13.13 Amendments.

(a) This Agreement may only be modified or amended by a written instrument signed by the Parties.

(b) The Parties acknowledge that the Board may, subsequent to the date of this Agreement, promulgate regulations under or issue interpretations of or policies or evaluation criteria concerning the Act which regulations, interpretations, policies or criteria may conflict with, or may not have been contemplated by, the express terms of this Agreement. In addition, the Parties acknowledge that environmental permits and approvals may necessitate changes to this Agreement. In such event, the Parties agree to negotiate in good faith any amendment to this Agreement necessary to comply with the foregoing two sentences, whether such changes increase or decrease either of the Parties' respective rights or obligations hereunder.

13.14 Compliance.

Any provision that permits or requires a Party to take action shall be deemed to permit or require, as the case may be, the Party to cause the action to be taken.

13.15 Table of Contents.

The table of contents is for the purpose of convenience only and is not to be deemed or construed in any way as part of this Agreement or as supplemental thereto or amendatory thereof.

13.16 Number and Gender; Inclusive Or.

All terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any gender as the context may require. The term “or” should be read as inclusive.

13.17 Third-Party Beneficiary.

Except as expressly provided in the Releases, Sections 4.5 (payment of Development Process Cost Fees), and 11 (Indemnification), there shall be no third-party beneficiaries with respect to this Agreement.

13.18 Cost of Investigation.

If as a result of the Agreement, the City, the City Council, or any employee, agent, or representative of the City is required to be licensed or approved by the Board, the reasonable costs of such licensing, approval or investigation shall be paid by Developer within five (5) Business Days following receipt of a written request from the City.

13.19 Further Assurances.

The City and Developer will cooperate and work together in good faith to the extent reasonably necessary and commercially reasonable to accomplish the mutual intent of the Parties that the Project be successfully completed as expeditiously as is reasonably possible.

13.20 Estoppel Certificates.

The City shall, at any time and from time to time, upon not less than twenty (20) Business Days prior written notice from any lender of Developer, execute and deliver to any lender of Developer an estoppel certificate in the form attached hereto as Exhibit J.

13.21 Counterparts.

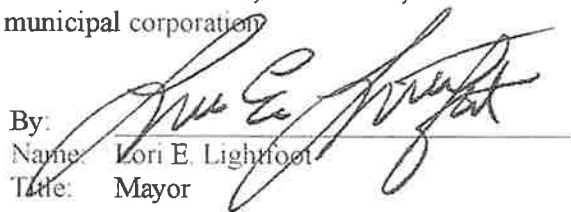
This Agreement may be executed in counterparts, each of which shall be deemed to be an original document and together shall constitute one instrument.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers on the date first set forth above at Chicago, Illinois.

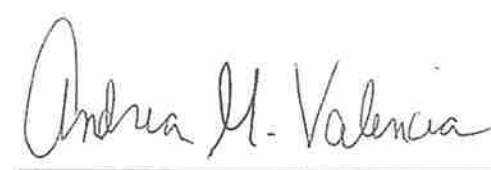
CITY:

CITY OF CHICAGO, ILLINOIS,
a municipal corporation

By: 

Name: Lori E. Lightfoot

Title: Mayor

Attest: 

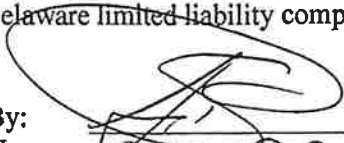
Name: Andrea M. Valencia

Title: City Clerk

[SIGNATURES CONTINUED ON NEXT PAGE]

DEVELOPER:

BALLY'S CHICAGO OPERATING COMPANY, LLC,
a Delaware limited liability company

By: 

Name: _____

Title: _____

GEORGE PAPADAKIS
PRESIDENT