**Nos. 130036 & 130058**

# In the Supreme Court of Illinois

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|---|---|---|
| WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company,<br><br>*Plaintiff-Appellee*,<br><br>v.<br><br>THE ILLINOIS GAMING BOARD, an Illinois administrative agency, and, in their official capacities, CHARLES SCHMADEKE, Board Chairman, DIONNE R. HAYDEN, Board Member, ANTHONY GARCIA, Board Member, MARC E. BELL, Board Member, and MARCUS FRUCHTER, Board Administrator, and the CITY OF WAUKEGAN, an Illinois municipal corporation,<br><br>*Defendants-Appellants*. | ) | On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-22-0883<br><br>There on appeal from the Circuit Court of Cook County, Illinois, Chancery Division, No. 21 CH 05784<br><br>Presiding Judge: Hon. Cecilia A. Horan |

**BRIEF AND SUPPLEMENTARY APPENDIX OF PLAINTIFF-APPELLEE WAUKEGAN POTAWATOMI CASINO, LLC**

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## INTRODUCTION

With steadfast consistency, this Court has reaffirmed the principles that dictate the outcome of this appeal: "An administrative agency's powers are limited to those granted by the legislature, and any action taken by an agency must be authorized by its enabling act."[1] Accordingly, when an agency acts without statutory authority, its decision is void.[2] Moreover, the scope of an agency's power is a question for the judiciary, not the agency itself.[3] In holding that the circuit court erred by dismissing this case at the pleading stage, the appellate court correctly applied these principles.

Under the Illinois Gambling Act, the Gaming Board does not have authority to issue casino licenses in whatever number and on whatever conditions it pleases. Rather, the General Assembly has authorized the Board to issue a maximum of sixteen such licenses—ten under the original Gambling Act, and up to six under the 2019 gaming expansion law, as codified in section 7(e-5) of

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[1] *Goral v. Dart*, 2020 IL 125085, ¶ 33; *see also Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 16 (same); *Cnty. of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 554 (1999) (same); *Prazen v. Shoop*, 2013 IL 115035, ¶ 36 (same); *Bio-Medical Labs., Inc. v. Trainor*, 68 Ill. 2d 540, 551 (1977) (same).

[2] *Bus. & Prof'l People for the Pub. Int. v. Ill. Com. Comm'n*, 136 Ill. 2d 199, 244 (1989); *see also Goral*, 2020 IL 125085, ¶ 51 (citing same); *Genius v. Cnty. of Cook*, 2011 IL 110239, ¶ 25 (articulating same rule).

[3] *Goral*, 2020 IL 125085, ¶ 47; *Prazen*, 2013 IL 115035, ¶ 36; *Masterson*, 188 Ill. 2d at 554 (same). The Gaming Board is no exception. *See J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 41; *Emerald Casino, Inc. v. Ill. Gaming Bd.*, 346 Ill. App. 3d 18, 25 (1st Dist. 2003).

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the Act. In a departure from the regime governing the first ten licenses, section 7(e-5) specifies that the Board "shall consider issuing" each of the six new licenses "*only after*" the host community certifies to the Board that certain conditions have been satisfied—namely, that the applicant has negotiated with the host community in good faith, and that the applicant and the host community have "mutually agreed" on certain key aspects of the proposed casino. Further, section 7(e-5) mandates that the host community memorialize the details concerning the proposed casino in a resolution adopted by its governing body "*before* any certification is sent to the Board."

As one of the municipalities earmarked for a casino under the gaming expansion law, the City of Waukegan issued a request for qualifications and proposals ("RFQ") to develop a casino there. Having submitted a qualifying proposal and paid the required $25,000 fee, plaintiff-appellant Waukegan Potawatomi Casino, LLC ("WPC") was entitled to participate in a certification process that complied with the law. Under a lawful process, the City would not submit an applicant for the Board's consideration until the City could certify to the Board that the section 7(e-5) conditions had been satisfied—*i.e.*, that the City had negotiated and reached mutual agreement on the required items with at least one applicant.

According to the well-pleaded allegations in WPC's verified complaint, however, the City did not comply with the statute. The City did not negotiate to any extent with the casino applicants before submitting certifications to the



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Board. Rather, the City decided to submit multiple applicants to the Board and then negotiate "after the fact"—the exact opposite of what section 7(e-5) requires. It necessarily follows that the City did not "mutually agree" with any applicant on the required items before submitting purported "certifications" to the Board. This flouting of statutory requirements was part and parcel of a sham certification process designed to achieve a predetermined outcome. According to the testimony of a City Council member, quoted in the complaint, the City's mayor told the alderperson "what the vote [on casino proposals] was going to be" and instructed him to vote accordingly.

The "certifying" resolutions that the City Council approved for submission to the Board were noncompliant on their face. Rather than certify that the City and the applicant had mutually agreed on the required items—which would have been false—the resolutions fudged the statutory language: they recited merely that the City and the applicant had mutually agreed "in general terms" on those required items. The City did not "memorialize the details" concerning the proposed casino in a resolution, as section 7(e-5) required it to do "*before* any certification is sent to the Board." Rather, for the "details of the mutual agreements," the City's "certifying" resolutions pointed to the applicant's *response to the City's RFQ*. This language should have been a flashing red light for the Board, as it underscored that there had been no negotiation at all, much less mutual agreement on casino details.



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WPC commenced this action the day after the Board first posted an agenda indicating that it intended shortly to make a "Determination of Preliminary Suitability" as to a Waukegan casino license. Given the facial deficiencies in the City's "certifications," the Gaming Board did not need further proof of the City's failure to satisfy the section 7(e-5) conditions. But WPC's verified complaint provided such additional proof. For example, it attached and incorporated testimony by the City's attorney admitting that the City did not negotiate with applicants and intended to do so only after the Board picked a presumptive licensee. Notably, the Board did not argue (and has not argued on appeal) that the City complied with section 7(e-5). Nevertheless, after the circuit court denied WPC's request for a temporary restraining order on standing grounds, the Board forged ahead with the licensing process.

Given these circumstances, as the appellate court correctly held, the circuit court erred by dismissing on standing grounds. WPC had a legally cognizable interest in a fair and lawful casino certification process. By disregarding the requirements of section 7(e-5), the City moved the goalposts, and thus deprived WPC of the opportunity to compete for a casino license on fair and lawful terms. And by issuing a license notwithstanding the City's facially deficient "certifications," the Board ratified the City's statutory violation. On the law and the well-pleaded facts, WPC is entitled to an order declaring that the license was issued without authority and is therefore void, and requiring the



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process contemplated by section 7(e-5) to begin anew. Accordingly, WPC's injury is traceable to defendants' conduct and redressable through this action.

The appellate court was also correct to reject defendants' mootness arguments. Unlike in defendants' cited cases, this action challenges the very license that is needed for a Waukegan casino to exist. The Board suggests that its decision to issue a license gives rise to a vested right that precludes any relief. This argument wrongly presumes that the Board had authority to issue a license in the first place. But the Board has no pre-existing or inherent authority to issue the six new licenses. Rather, any such authority is itself contingent on satisfaction of the statutory prerequisites. The Board's "vested right" argument also glosses over the fact that there is no property interest in a casino license, and that there is nothing to prevent interested third parties from seeking to intervene on remand. In short, because effectual relief can be provided through this action, it is not moot.

The City advances additional arguments the Board does not make, but those arguments provide no basis to reverse. The City's attempt at crabbed formalism is contrary to well-established principles of Illinois pleading. WPC's complaint properly seeks to force public officials to comply with unambiguous legislative mandates. Further, where, as here, an agency's power to act is challenged, there is no place for the City's "exclusive jurisdiction" argument. And the City's claim that it "substantially complied" with section 7(e-5) ignores both



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the statute's unambiguous requirements and the well-pleaded facts in WPC's complaint.

The City claims the appellate court offhandedly opened the door to litigation, but that criticism is misplaced. The well-pleaded facts in WPC's complaint, supported by exhibits, detail egregious disregard for the legislative will. By requiring mutual agreement before certification, section 7(e-5) was designed to foster transparency at the municipal level—to commit an applicant to a well-defined casino proposal *before* the City submitted that proposal for the Board's consideration. Because the City disregarded the statute's requirements and because the Gaming Board chose to look the other way, the legislature's objective was fatally undermined in Waukegan. Given this egregious set of well-pleaded facts, the City's attempt to characterize the appellate court's decision as a "blueprint for disappointed applicants" misses the mark.

Finally, the City and its *amici* argue, in effect, that economic imperatives must trump qualms about the proper scope of agency authority. That critique is misguided. When administrative agencies overreach their statutory authority, they impede economic development at least as often as they foster it. Ensuring that state agencies adhere to the limits the General Assembly places on their authority vindicates the rule of law, which is a linchpin of economic prosperity. Most important, requiring agencies to act within the scope of their legislative authority is consistent with the Illinois Constitution and this Court's precedent. The Court should affirm the appellate court's judgment.



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## STATEMENT OF FACTS

Because the circuit court dismissed WPC's complaint at the pleading stage, the well-pleaded facts must be accepted as true and read in WPC's favor. *O'Connell v. Cnty. of Cook*, 2022 IL 127527, ¶ 18; *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55.

### The Gaming Expansion Law

In 2019, the General Assembly amended the Illinois Gambling Act to authorize licenses for six new casinos. *See* 230 ILCS 10/7(e-5). The new licensing regime represented a sharp break from the past regime, which assigned no meaningful role to host communities. *See* 230 ILCS 10/7(e). For the six new licenses, the General Assembly limited the Board's authority in favor of requiring greater up-front transparency. The focus of the Act as amended is on public vetting and approval of a specific and well-defined casino proposal at the municipal level *before* the Board may even consider issuing a license.[4]

More specifically, under the gaming expansion law, the Board "shall consider issuing" one of the new licenses "*only after*" the municipality certifies to the Board that, following "good faith" negotiation by the applicant, the municipality and the applicant "have mutually agreed" on certain key features of the proposed casino. 230 ILCS 10/7(e-5). Those key features include the temporary

[4] By 2019, Illinois had more than twenty-five years' experience with legalized casino gambling. That experience included the extended saga involving the Board's revocation of the Emerald Casino license, which resulted in part from Emerald's failure to disclose its dealings with the Village of Rosemont. *See In re Emerald Casino*, 867 F.3d 743, 750–53 (7th Cir. 2017).



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and permanent locations of the casino, the percentage of revenues to be shared with the municipality, and "any zoning, licensing, public health, or other issues that are within jurisdiction of" the municipality. 230 ILCS 10/7(e-5)(ii)-(v). Further, "before any certification is sent to the Board," the municipality must "memorialize the details concerning the proposed . . . casino" in a resolution adopted by its governing body. 230 ILCS 10/7(e-5).

The General Assembly set a timeframe for the issuance of the new licenses, but it also provided for the possibility that not all the licenses would be issued within that period. Section 7(e-10) provides that, if by June 1, 2020 all the licenses authorized under section 7(e-5) have not been issued and no license applications are pending, "then the Board shall reopen the license application process" for the unissued licenses, "with all time frames tied to the last date of a final order issued by the Board under subsection (e-5) rather than the effective date" of the gaming expansion law. 230 ILCS 10/7(e-10).

**The City's Non-Compliant Certification Process**

The gaming expansion law earmarked the City of Waukegan for a casino license. *See* 230 ILCS 10/7(e-5)(3). In July 2019, to avail itself of this opportunity, the City issued an RFQ inviting proposals to develop and operate a casino. (SA19, Compl. ¶ 17.[5]) The Forest County Potawatomi Community formed WPC, an Illinois limited liability company, for the purpose of applying for the

[5] The attached supplementary appendix shall be cited as "SA__," the common law record as "C__," state defendants' opening brief as "Bd. Br. at __," the City's opening brief as "City Br. at __," and *Amici Curiae*'s brief as "*Amici* Br. __."



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Waukegan casino license, paid the City its $25,000 fee, and submitted a proposal meeting all the City's requirements. (SA16–17, 19, Compl. ¶¶ 4, 18.)

Contrary to what section 7(e-5) requires, the City did not negotiate with any applicant before submitting certifications to the Gaming Board. (SA21-22, Compl. ¶¶ 32(a), 33.) Nor did the City "mutually agree" with any applicant on the required statutory items. (SA21–22, Compl. ¶ 32(b).) The City also failed to "memorialize the details" concerning any proposed application before submitting certifications. (SA22, Compl. ¶ 32(c).) Instead, as the City's own attorney testified, the City decided "to certify multiple candidates and then complete the negotiations after the fact [*i.e.*, after the Board selected the presumptive licensee]." (SA79, Compl. Ex. 9 at 106:9–12.) The City thus did the opposite of what the statute mandates.

Indeed, evidence adduced in a related federal suit, incorporated in WPC's complaint in this action, supports the conclusion that the City manipulated its process to exclude WPC in favor of other applicants—including an ally of the then-mayor who had largely bankrolled the campaigns of several City Council members. (SA21, Compl. ¶ 29; SA53–69, Compl. Ex. 8 at 2–18.) A City Council member testified in the federal litigation that, just as the meeting to consider casino proposals was commencing, the mayor told him "what the vote was going to be." (SA23, Compl. ¶ 37.)

Despite the City's failure to meet the Gambling Act's requirements, in October 2019, the Waukegan City Council voted on "certifying" resolutions as



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to four proposals, including WPC's. (SA19, Compl. ¶ 19.) Had the City complied with the Gambling Act, it would have been simple to craft resolutions mirroring the statutory requirements. But because the City had not negotiated at all with applicants, much less mutually agreed with any of them on the required items, it could not certify to the Board that it had done so.

Therefore, instead of certifying to the Board that the City and the applicant had "mutually agreed" on the necessary items, as section 7(e-5) requires, the City's resolutions recited merely that the City had "mutually agreed *in general terms*" with the applicants. (SA21–22, Compl. ¶ 32(b); SA34, Compl. Ex. 2 at 2; SA37, Compl. Ex. 3 at 2; SA39, Compl. Ex. 4 at 2; SA41, Compl. Ex. 5 at 2.) And instead of memorializing the details concerning the proposed casinos, as the statute requires, the City's resolutions stated that "the details of the mutual agreements" could be found in the applicants' proposals submitted in response to the RFQ (which, by definition, were not the product of negotiation). (SA22, Compl. ¶ 32(c); SA34, Compl. Ex. 2 at 2; SA37, Compl. Ex. 3 at 2; SA39, Compl. Ex. 4 at 2; SA41, Compl. Ex. 5 at 2.) The City's "certifying" resolutions were thus deficient on their face; they did not even purport to certify what the Gambling Act required the City to certify to the Board.

The City Council passed resolutions in favor of three proposals but did not pass the resolution supporting WPC's proposal. (SA20, Compl. ¶¶ 24–25.)

**WPC's Federal Suit Against the City**

In October 2019, WPC sued the City in the Circuit Court of Lake County. WPC asserted a class-of-one equal protection claim, as well as state claims



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under the Gambling Act and the Open Meetings Act. (*Id.*) (SA20–21, Compl. ¶¶ 26–28.) The City subsequently removed the case to federal court. (SA20, Compl. ¶ 26.)

The federal district court ultimately entered summary judgment dismissing WPC's federal claim and declining to exercise supplemental jurisdiction over the state claims. *See Waukegan Potawatomi Casino, LLC v. City of Waukegan*, No. 20-cv-00750, 2024 WL 1363733 (N.D. Ill. Mar. 29, 2024). It held that, as an "arm" of a sovereign tribe, WPC was not a "person" for purposes of the federal civil rights statute. *Id.* at *6–7. Alternatively, the district court opined that, because there were "reasonably conceivable" rationales for the City's conduct, the claim must be dismissed "even if they were not 'the actual justification' for the City's refusal to certify [WPC]." *Id.* at *9–10. Even if City Council members "testified falsely . . . about why they voted against [WPC's] proposal," the court reasoned, "the finding of a rational basis is the end of the matter—animus or no." *Id.* (cleaned up). *Id.* at 10. Because the district court declined to retain jurisdiction, it did not address WPC's state-law claims. WPC has appealed the district court's ruling.

**The Board's Unlawful Exercise of Authority**

On November 15, 2021, despite the facially deficient nature of the City's "certifying" resolutions, the Gaming Board posted a meeting agenda indicating that it would make a finding of preliminary suitability for a Waukegan casino license at a Board meeting to be held three days later. (SA25, Compl. ¶¶ 44–45; C1294, C1296.)



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The next day, November 16, 2021, WPC filed its verified complaint in the Circuit Court of Cook County, along with a motion for a temporary restraining order and preliminary injunction seeking to prevent the Board from acting on a Waukegan casino license. (C11–1297; C1298–1304.)

In its complaint, WPC detailed the City's failure to comply with the Gambling Act. (SA21–24, Compl. ¶¶ 32–39.) WPC alleged that, as a result, "the Gaming Board lacks authority to consider issuing an owner's license for a Waukegan casino." (SA24, Compl. ¶ 40.) WPC attached to its pleading the City's deficient certifying resolutions. (SA33–42; *see also* C29–C1054 (resolutions with exhibits).) For contrast, WPC also attached public documents from the City of Rockford. Those documents showed that, unlike Waukegan, Rockford mutually agreed with an applicant on the required statutory items and memorialized the details in a host community agreement before submitting its section 7(e-5) certification to the Board. (SA89–202, Compl. Exs. 11–12).

On December 7, 2021, the circuit court denied WPC's request for a temporary restraining order. (C1481–84; C1398–99.) WPC petitioned for review of that order, which the appellate court denied. (C1522.) The day after the circuit court denied WPC's TRO request, the Board issued a preliminary suitability finding in favor of an applicant known as "Full House." (C1398–99, C1408, C1481–84.)

Defendants then moved to dismiss WPC's complaint under 735 ILCS 5/2-615, 2-619(a)(9), and 2-619.1. (C1403, C1511.) On May 13, 2022, the trial



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court dismissed WPC's complaint with prejudice. (R45–47; C1563.) In its oral ruling, the court found "a problem with standing" and suggested that mootness might be an issue. (R46.) The court opined that WPC's suit could not yield "really the relief they want, which is to . . . be able to participate, again, I suppose in the process." (*Id.*) The court's written order granted dismissal for "the reasons stated in open court." (C1563.)

**Appellate Court Proceedings**

WPC timely appealed. (C1564–90.) On June 15, 2023, shortly after learning that oral argument would be in July 2023, the Board issued a Waukegan casino license to Full House. (SA12, ¶ 21; SA203.) The Board and the City then moved to dismiss WPC's appeal as moot. (SA12, ¶ 21.)

On July 28, 2023, the appellate court reversed the circuit court's dismissal of WPC's complaint and remanded for further proceedings. (SA1–14.) The appellate court concluded that WPC sufficiently alleged the City's failure to comply with section 7(e-5), and that WPC's legally cognizable interest in a fair and lawful certification process conferred standing to sue. (SA5–9, ¶¶ 11–15.) The court reasoned that "the Board's acquiescence in accepting the deficient resolutions and commencing the licensing process" was "necessarily intertwined with the City's conduct, together denying [WPC] an opportunity to participate in a lawful and fair process." (SA8, ¶ 15.) The deprivation of this right was therefore redressable through this action. (SA9–10, ¶¶ 16–17.)



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The appellate court rejected defendants' remaining contentions, including that WPC's appeal was moot. (SA12–13, ¶¶ 21–24.) As the court explained, WPC sought "more than just an injunction to prohibit the Board from issuing a license"—it "also sought a declaration that the Board lacked authority to issue a license because of the City's failure to comply with the statutory prerequisites in certifying applicants to the Board." (SA12, ¶ 22.) If WPC were to prevail on its claim that the Board lacked authority to issue a Waukegan casino license, the circuit court could "compel 'a restoration of the status quo ante.'" (SA13, ¶ 24 (quoting *Blue Cross Ass'n v. 666 N. Lake Shore Drive Assocs.*, 100 Ill App. 3d 647, 651 (1st Dist. 1981)).)

## ARGUMENT

As shown in Part I below, the appellate court correctly held that, because WPC alleges a legally cognizable injury—loss of the opportunity to compete in a lawful certification process—and because that injury is traceable to defendants and redressable through this action, the circuit court erred by dismissing on standing grounds. As Part II shows, because effectual relief in this action remains possible, the appellate court also correctly rejected defendants' mootness arguments. Finally, as Part III demonstrates, the City's additional arguments are without merit.

### I. The Appellate Court Correctly Held That WPC Has Standing.

Standing requires only that there be "some injury in fact to a legally cognizable interest." *Ill. Rd. and Transp. Builders Ass'n v. Cnty. of Cook* ("*Ill. Rd.*"), 2022 IL 127126, ¶ 13. To satisfy this requirement, the plaintiff's alleged



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injury, "whether actual or threatened, must be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of requested relief." *Id.* (cleaned up).

The City claims that, on top of these basic requirements, WPC must be "'one of the class designed to be protected by the statute, or for whose benefit the statute was enacted, and to whom a duty of compliance is owed.'" (City Br. at 25–26 (quoting *Jenner v. Wissore*, 164 Ill. App. 3d 259, 268 (5th Dist. 1988) [(quoting *Vill. of Lake in the Hills v. Laidlaw Waste Sys.*, 143 Ill. App. 3d 285, 293 (2d Dist. 1989) (quoting *Lynch v. Devine*, 45 Ill. App. 3d 743, 747–48 (3d Dist. 1977)))]).) But this Court has rejected that so-called "*Lynch* test" for standing. *See Glisson v. City of Marion*, 188 Ill. 2d 211, 222 (1999) (refusing "to expand the requirements for standing to include the additional requirements set forth in *Lynch*"). In seeking to impose non-existent standing requirements, the City relies on bad law.

For the reasons discussed below, the well-pleaded facts alleged in WPC's complaint satisfy the applicable standing requirements.

### A. Defendants Have the Burden to Establish Lack of Standing.

"Illinois law 'tends to vary in the direction of greater liberality' than federal law on matters of standing." *Ill. Rd.*, 2022 IL 127126, ¶ 24 (quoting *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 491 (1988)). Under Illinois law, "it is defendants' burden to plead and prove lack of standing" as an affirmative defense. *Ill. Rd.*, 2022 IL 127126, ¶ 12. Moreover, even in federal court, standing disputes "are best resolved by motions for summary judgment rather than



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motions for judgment on the pleadings." *Greer*, 122 Ill. 2d at 494. Here, the circuit court dismissed on standing grounds before defendants answered WPC's complaint. As the appellate court correctly held, that was error.

### B. Defendants Cannot Satisfy Their Burden to Establish Lack of Standing.

#### 1. WPC suffered a distinct and palpable injury.

"A distinct and palpable injury refers to an injury that cannot be characterized as a generalized grievance common to all members of the public." *Ill. Rd.*, 2022 IL 127126, ¶ 17. WPC alleges such an injury.

The City solicited casino proposals precisely to fulfill its responsibilities under section 7(e-5). Having responded to that invitation, paid the required $25,000 fee, and submitted a qualifying proposal, WPC had a legally cognizable right to participate in a fair and lawful RFQ process—*i.e.*, a process that, at a minimum, complied with the statute. It is well settled that the loss of that *opportunity* satisfies the distinct-and-palpable injury requirement. *See Ill. Rd.*, 2022 IL 127126, ¶ 27 (standing where plaintiff's injury was "the loss of opportunity to obtain a benefit due to the government's failure to perform a required act") (internal quotations and citation omitted); *see also Keefe-Shea Jt. Venture v. City of Evanston*, 332 Ill. App. 3d 163, 170–72 (1st Dist. 2002) (unsuccessful bidder for municipal contract "has the right to participate in a fair bidding process"); *Aramark Corr. Servs., LLC v. Cnty. of Cook*, No. 12 C 6148, 2012 WL 3961341, at *5 (N.D. Ill. Sept. 10, 2012) (violation of plaintiff's "right to



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participate in a fair bidding process" is sufficient to confer standing) (citing Illinois cases).[6]

Accordingly, Illinois courts have long recognized standing based on an alleged lost opportunity to participate in a lawful public procurement process. *See Court St. Steak House, Inc. v. Cnty. of Tazewell*, 163 Ill. 2d 159, 165 (1994) (under public contracting statute, "*mandamus* will issue if a plaintiff alleges and proves fraud, lack of authority, unfair dealing, favoritism, or similar arbitrary conduct by a county"); *L.E. Zannini & Co., Inc. v. Bd. of Ed., Hawthorn Sch. Dist. 73*, 138 Ill. App. 3d 467, 469, 473–80 (2d Dist. 1985) (reversing dismissal of complaint challenging contract award under Illinois School Code); *State Mech. Contractors, Inc. v. Vill. of Pleasant Hill*, 132 Ill. App. 3d 1027, 1030 (4th Dist. 1985) (holding that disappointed bidder had standing to seek relief under Municipal Code); *Cardinal Glass Co. v. Bd. of Ed. of Mendota Cmty. Consol. Sch. Dist. No. 289*, 113 Ill. App. 3d 442, 446–48 (3d Dist. 1983) (reversing dismissal of complaint alleging violation of contracting provision in Illinois School Code); *Stanley Magic-Door, Inc. v. City of Chicago*, 74 Ill. App. 3d 595 (1st Dist. 1979) (reversing dismissal of complaint alleging City awarded

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[6] Notably, Illinois cases in this realm draw on federal authority. *See Ill. Rd.*, 2022 IL 127126, ¶¶ 22–23 (discussing *U.S. Women's Chamber of Commerce v. (RBW) U.S. Small Business Admin.* ("SBA"), 2005 WL 3244182, at *9–12 (D.D.C. Nov. 30, 2005)); *id.* ¶ 27 (rejecting defendant's effort to distinguish federal cases, including *W. Va. Ass'n of Cmty. Health Ctrs., Inc. v. Heckler*, 734 F.2d 1570 (D.C. Cir. 1984)); *Keefe-Shea*, 332 Ill. App. 3d at 173 (discussing *Nat'l Mar. Union of Am. v. Commander, Military Sealift Command*, 824 F.2d 1228 (D.D. Cir. 1987)). For that reason, and because federal courts are subject to stricter standing requirements, the federal cases cited below are instructive.



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contract to ineligible bidder); *see also Aramark*, 2012 WL 3961341, at *6 ("Illinois courts have consistently allowed disappointed bidders to bring suit against the local government entity that allegedly deprived them of a fair bidding process.").

As the appellate court recognized, moreover, although these cases often involve competitive bidding, the right to participate in a lawful process is not limited to that context. (SA6, ¶ 11.) *See Ill. Rd.*, 2022 IL 127126, ¶ 18 (lost business opportunities due to unconstitutional diversion of transportation tax revenues). *Aramark* involved a request for proposals that, like the City's RFQ here, allowed for "consideration of qualitative factors in addition to the bid price." 2012 WL 3961341, at *1, *5–6; *see also SBA*, 2005 WL 3244182, at *9–12 (associational standing based on injury to members' procedural rights arising from SBA's statutory non-compliance); *CC Distribs., Inc. v. United States*, 883 F.2d 146, 150–51 (D.C. Cir. 1989) (lost opportunity resulting from allegedly unlawful discontinuation of procurement program); *W. Va. Ass'n of Cmty. Health Ctrs.*, 734 F.2d at 1572–76 (lost opportunity due to unlawfully calculated federal block grant funding).

The Board does not contest these fundamental legal principles. Instead, it suggests—unconvincingly—that they do not apply. The Board claims that the statute does not "mandate that the City follow a prescribed selection process." (Bd. Br. at 23.) But as the appellate court correctly concluded,



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section 7(e-5) "prescribes a process with which the City is unambiguously required to comply before the Board can consider issuing a license." (SA5–6, ¶ 11.)

The Board reasons that "the host municipality could have negotiated with and certified a single applicant." (Bd. Br. at 23.) But that is irrelevant. In that hypothetical scenario, section 7(e-5) still would have required satisfaction of the statutory preconditions to the Board's exercise of licensing authority—*i.e.*, prior certification that, after good-faith negotiation, the municipality had mutually agreed with the applicant on the required items. On the well-pleaded facts, that did not happen before the Board took up consideration of a Waukegan license. Again, *the Board does not argue and has never argued in this case that the City actually complied with section 7(e-5).*

The Board's single-applicant hypothetical also overlooks the fact that the City purported to fulfill its obligations under section 7(e-5) through an open RFQ inviting casino proposals and imposing a $25,000 nonrefundable fee for the privilege of submitting one. *See Keefe-Shea*, 332 Ill. App. 3d at 173 ("Such a right [to a legally valid procurement process] was implicitly bestowed on all bidders by the mandatory language of the federal procurement statutes '*and by the contractual invitation to bid embodied in the solicitation.*'") (quoting *Nat'l Mar. Union of Am.*, 824 F.2d at 1237)).

The City (but not the Gaming Board) argues that there is "no such fair 'process" right," and that "'categories of substance and procedure are distinct.'"



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(City Br. at 27 (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985)). But *Loudermill* concerned a different question—whether plaintiffs had a property right in their continued employment sufficient to implicate the Fourteenth Amendment's Due Process Clause. *See* 470 U.S. at 538–41; *see also Aramark*, 2012 WL 3961341, at *6 (rejecting argument that disappointed bidder "did not have property interest" as raising "different issue" from standing). *Loudermill* has no bearing on whether WPC suffered a cognizable injury under Illinois law.[7]

In sum, WPC had a right to participate in a fair and lawful casino certification process, and its loss of that opportunity is a legally cognizable injury.

#### 2. WPC's injury is traceable to both the City and the Gaming Board.

Particularly where "the injury to a plaintiff is the loss of opportunity to obtain a benefit due to the government's failure to perform a required act," traceability does not require certainty that the plaintiff would have benefited in a lawful process. *Ill. Rd.*, 2021 IL App (1st) 190396, ¶ 40; *see also Ill. Rd.*, 2022 IL 127126, ¶ 23 (agreeing "that such certainty is not required"). Rather, a plaintiff need show only a substantial probability that the unlawful conduct deprived it of the opportunity sought. *Ill. Rd.*, 2022 IL 127126, ¶ 23; *Ill. Rd.*,

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[7] The City also argues (at 27) that WPC "cannot claim a 'legally protectible interest to enforce' a statute that does not confer a private right of action." As discussed below (*see infra* Part III-A), this argument rests on a misapprehension of both WPC's claim and controlling Illinois law.



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2021 IL App (1st) 190396, ¶¶ 46–49. WPC's well-pleaded allegations satisfy this standard.

(a) *WPC's injury is traceable to the City's Gambling Act violation.*

Contrary to the City's arguments, its statutory violation was not limited to technical "shortcomings" in "the form and content of its resolutions" (City Br. at 27), or a mere failure "to properly memorialize its agreements with the successful applicants" (*id.* at 29). As alleged in WPC's complaint, including the incorporated exhibits, there were no "agreements" to "memorialize," because there had not been any negotiation with applicants and thus no mutual agreement on the required items. (SA21–22, Compl. ¶¶ 32–34.) As described, the City's "certifying" resolutions baldly pointed to the applicants' RFQ responses for the details concerning the casino proposals. Unlike the City of Rockford, for example, the City of Waukegan chose not to negotiate with applicants, opting instead to submit facially deficient resolutions in the hope that the Gaming Board would be willing to overlook the clear statutory requirements. By doing so, the City conducted a certification process other than what the General Assembly mandated—a process with a premature endpoint. The City cannot simply "fix" or "redo" its resolutions now (City Br. at 28; Bd. Br. at 25), because any recital that the City complied with section 7(e-5)'s requirements *before* purporting to "certify" casino proposals to the Board would be *false*.

The City's claim that its Gambling Act violation did not impact WPC is likewise contrary to the well-pleaded facts. The City characterizes the



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complaint as alleging that Waukegan violated the Gambling Act only "*after advancing the other applicants* to the Gaming Board." (City Br. at 27.[8]) That is not what WPC alleges (or what happened). The City did not weed out WPC at some earlier stage before voting on the "certifying" resolutions. The City Council simultaneously voted on resolutions to support WPC's casino proposal and the three other proposals. (SA19–20, Compl. ¶¶ 19–23; SA30–42, Compl. Ex. 1 at 2–4, Exs. 2–5.) To be clear, those deficient resolutions were the means by which the City supposedly "certified" proposals to the Gaming Board. (SA19, Compl. ¶ 19.) The City's selection of applicants and its Gambling Act violations were thus intertwined, not separate and sequential.

The City complains that WPC's argument would require host communities "to negotiate with *every potential applicant*, no matter how many applicants and no matter how lackluster the proposal." (City Br. at 25.) Not so. As the appellate court observed: "The statute does not require the municipality to negotiate with every applicant, but it does require a good-faith negotiation on enumerated items with applicants the municipality certifies to the Board." (SA7, ¶ 13.) WPC's injury—the lost opportunity to compete in a lawful casino certification process—is directly traceable to the City's failure to heed that requirement.

[8] *See also* City Br. at 29 ("[WPC] was no longer being considered as a potential applicant when the City [] allegedly failed to issue the proper certifications.").



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(b) *WPC's injury is traceable to the Board's unlawful exercise of authority.*

As the appellate court correctly reasoned, WPC's injury is "traceable to the Board's conduct of acting on the applications that have been certified in a non-compliant process." (SA8, ¶ 15.)

The Gaming Board argues that the appellate court "conflated the City Council's role in approving casino proposals with the Act's separate licensing process." (Bd. Br. at 22.) That is not a fair reading of the appellate court's opinion. Rather, as the above-quoted language shows, the appellate distinguished between the City's non-compliant certification process and the Board's decision to "act[] on" the City's facially deficient certifications—*i.e.*, to move forward with the licensing process notwithstanding the City's failure to satisfy the statutory prerequisites. The appellate court was correct.

On the facts alleged in WPC's complaint, the Board cannot sanitize its unlawful exercise of authority by drawing an artificial line at the City's violation of section 7(e-5). Had the Board honored the statutory limits on its authority, it would have declined to take up consideration of a Waukegan license until the City satisfied the section 7(e-5) requirements. Instead, by accepting and acting on the City's facially deficient certifications notwithstanding the City's failure to comply with section 7(e-5), the Board ratified and enabled the City's statutory violation. *See Noyola v. Bd. of Educ. of the City of Chicago*, 179 Ill. 2d 121, 134 (1997) (allowing action against local and state school boards, where state board allegedly failed to enforce statute and to "promulgat[e] rules and



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regulations that would prevent the local school board from violating the statute"); *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 501 (7th Cir. 2005) (where Secretary of Interior's silence was "functional equivalent of an affirmative approval" of tribal-state compact and "allowed the parties to the compact to behave as if it were lawful in all respects," injury was traceable to Secretary notwithstanding that "regulable third parties—the HoChunk and Wisconsin—have already made the choices that give rise to the potential harm by negotiating the compact").

In short, the Board's effort to draw a line between the City's noncompliant certification process and the Board's unlawful exercise of authority is unavailing. "According to the allegations of the complaint, the Board's acquiescence in accepting the deficient resolutions and commencing the licensing process is necessarily intertwined with the City's conduct, together denying [WPC] an opportunity to participate in a lawful process." (SA8, ¶ 15.)

**3. WPC's Injury Is Redressable Through This Action.**

Declaratory and mandatory relief requiring the Board to issue a casino license only after the City satisfies the statutory preconditions will redress WPC's injury. "Because the injury is the lost opportunity" due to an unlawful process, WPC "need not be certain whether it would ultimately secure the City's certification to the Board in a fair process, so long as the opportunity itself is given." (SA10, ¶ 17 (citing *Ill. Rd.*, 2022 IL 127126, ¶ 27).)

The Board claims that it is not "reasonably likely" the City would have advanced WPC's proposal to the Board even if the City had complied with



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section 7(e-5). (Bd. Br. at 25–26.) As just discussed, however, the City incorrectly minimizes its violation as limited to "the form and content of its resolutions." (City Br. at 27.) On that premise, the City insists that "fix[ing] its resolutions" would not impact WPC. (*Id.* at 28.) Both arguments improperly ignore the well-pleaded facts. They also badly misread the law of standing.

Just before the City Council's vote on the "certifying" resolutions, the City's outside consultant advised that the City could not go wrong with any of the casino proposals (including WPC's). (SA67–68, Compl. Ex. 8 at 16–17.) Of the three proposals that the City "certified," at least two (including Full House's) had serious flaws. Yet because of the City's failure to negotiate with applicants as the law required, the City Council was unaware of those flaws when it voted on resolutions to "certify" proposals.[9] The third applicant selected by the City later withdrew from consideration. (SA25, Compl. ¶ 43.) Therefore, on the well-pleaded facts, more than a substantial probability exists that, had the City complied with section 7(e-5), WPC would have been afforded a fair and lawful casino review process, and would have been among the candidates ultimately submitted to the Board. *See Ill. Rd.*, 2022 IL 127126, ¶ 23

[9] For example, the City Council did not know when voting in favor of North Point that its proposal was contingent on being the sole selection for certification. (SA23, Compl. ¶ 36; SA62–63, Compl. Ex. 8 at 11–12.) Meanwhile, Full House proposed to lease the casino site from the City. In February 2022, well after the votes on the "certifying" resolutions, when corporation counsel advised the City Council of the need to retain outside counsel to negotiate the lease, City Council members raised concerns about leasing as opposed to selling the land. (C1528.) In response, corporation counsel modified the resolution to retain outside counsel so that it referred to a generic "land transaction." (*Id.*)



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(citing *SBA*, 2005 WL 3244182, at *8, for proposition that plaintiffs need not establish certainty, only substantial probability that defendants' noncompliance caused injury).

The Board cites the federal court's observation that there were "'many rational bases for the City's decision not to certify [WPC].'" (Bd. Br. at 26 (quoting *Waukegan Potawatomi Casino*, 2024 WL 1363733, at *9).) As noted, however, under the standard governing class-of-one equal protection claims, it did not matter whether these "conceivable" justifications were "the actual justification[s] for the City's refusal to certify [WPC]." *Id.* at *10. Conceivable justifications, alone, are sufficient to satisfy rational basis and defeat a class-of-one equal protection claim. But, contrary to the Board's suggestion, *conceivable* justifications do not permit a finding, at the pleading stage, that WPC's proposal inevitably would have been unsuccessful in a fair and lawful process.

The City accuses the appellate court of offering "speculation about what the City Council might have done with a statutorily compliant process." (City Br. at 29.) But it is *defendants* who improperly ask this Court to speculate in their favor about the outcome of a statutorily compliant process—the very thing they denied WPC. *See Ill. Rd.*, 2022 IL 127126, ¶ 19 (Defendant interweaves "the traceability and judicial redress prongs in a manner that we could summarize in one word—speculation.") (cleaned up).

In rejecting a similar standing argument, this Court has made clear that "certainty as to judicial redress is not required for standing." *Id.* ¶ 27. Because



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"it is rarely possible to know with any confidence what *might* have happened had the government performed the act at issue or the improper conduct had been corrected," a demand for such certainty is unwarranted. *Id.* (cleaned up). That is particularly so where, as here, "the injury to a plaintiff is the loss of opportunity to obtain a benefit due to the government's failure to perform a required act." *Id.* (cleaned up).[10]

Finally, the City asserts in a footnote that there is "no statutory process for the Gaming Board to retract an *issued* owners license absent some sort of malfeasance on the part of the license holder." (City Br. at 28 n.8.) In effect, the City argues that an agency can foreclose judicial redress by doing the very thing it has no authority to do. As already discussed, however, a decision by an agency that lacks statutory power is void. (*Supra* at 1 & n.2.) Accordingly, it "may be attacked at any time or in any court, either directly or collaterally." *Bus. & Prof'l People for the Pub. Int.*, 136 Ill. 2d at 243–44; *Goral*, 2020 IL 125085, ¶ 51 (citing same). Moreover, as noted, the Gambling Act provides that the licensing process may begin anew if any of the six new licenses are not issued within the contemplated timeframe. *See* 230 ILCS 10/7(e-10) (requiring

[10] As *SBA* noted, the United States Supreme Court held in *Bakke* that an applicant had standing to challenge a school admission program without being "required to show that, but for the preferential program, he would have been admitted into the school." 2005 WL 3244182, at *11 (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 280 n.14 (1978)). Rather, standing arose from the plaintiff's "lack of opportunity to compete for all of the positions in the entering class, coupled with the desire to do so." *Id.* (citing *Bakke*, 438 U.S. at 280 n.14).



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Board to "reopen the license application process" if no applications are pending and "not all licenses authorized under subsection (e-5) have been issued").

In sum, because WPC meets all three standing requirements, defendants cannot sustain their burden to demonstrate lack of standing.

## II. The Appellate Court Correctly Held That This Case Is Not Moot.

An appeal is moot only when it is impossible to render effectual relief. *Provena Health v. Ill. Health Facilities Planning Bd.*, 382 Ill. App. 3d 34, 50 (1st Dist. 2008); *see also Jackson-Hicks v. E. St. Louis Bd. of Election Comm'rs*, 2015 IL 118929, ¶ 12 (same). Nothing has rendered it impossible to grant effectual relief in this case. Accordingly, as the appellate court correctly held, WPC's claim is not moot.

The relevant chronology is as follows: On November 15, 2021, the Gaming Board first notified the public that it intended to take up the issue of a Waukegan casino license at a special meeting to be held three days later. (SA25, Compl. ¶¶ 44–45.) The next day, November 16, WPC commenced this action, seeking, among other relief, a declaration "that the Gaming Board lacks statutory authority to consider issuing a license to operate a Waukegan casino," and an injunction barring the Board "from taking formal steps to issue a Waukegan casino license." (SA27.) In December 2021, after the circuit court denied WPC's request for a TRO, the Board voted to proceed with selection of a winning applicant and found Full House preliminarily suitable for a license. (SA4, ¶ 6; Bd. A90–91.)



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In May 2022, the circuit court granted defendants' motions to dismiss. (C1563.) In February 2023, while WPC's appeal from that order was pending, Full House opened a temporary casino. (SA12, ¶ 21.) On May 31, 2023, the appellate court notified the parties that oral argument would take place in July 2023. (SA203.) Shortly after that notice, on June 15, the Gaming Board purported to issue a casino owners license to Full House. (SA12, ¶ 21.) Defendants then moved to dismiss the appeal as moot. (*Id.*) On July 28, 2023, the appellate court reversed the judgment of the circuit court and denied defendants' motion to dismiss the appeal. (SA13, ¶¶ 26–27.) Full House has stated "it cannot obtain financing for the construction of the permanent Waukegan casino 'as long as the uncertainty posed by [this] litigation remains.'" (City Br. at 42 (citation omitted).) Accordingly, "'[e]verything is on pause until the litigation is resolved . . . .'" (*Id.*; *Amici* Br. at 18.)

Defendants now offer three overlapping mootness arguments: (a) the Board's issuance of a license supposedly mooted WPC's claim (Bd. Br. at 26–32); (b) because the Board supposedly had jurisdiction, the license cannot be "retracted" (*id.* at 33–39); and (c) Full House supposedly has a "superseding interest" in the license (*id.* at 31, 39–43). (*See also* City Br. at 38–41.) Each of these arguments fails.

### A. The Issuance of a License Did Not Moot WPC's Claim.

In arguing that it mooted this case by issuing a license, the Board relies heavily on this Court's decision in *Marion Hospital.* (Bd. Br. at 26–30.) But, as



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the appellate court explained (SA12, ¶ 22), *Marion Hospital* involved circumstances "decidedly different" from those here.

The plaintiff there challenged the Health Facilities Planning Board's issuance of a planning permit for construction of a new medical facility. *See Marion Hosp. Corp. v. Ill. Health Facilities Planning Bd.*, 201 Ill. 2d 465, 467–69 (2002). The Planning Board "[did] not have any oversight of the operations of a medical facility once it [was] built." *Id.* at 472. After the circuit court rejected the challenge to the planning permit, the defendant constructed the facility and received an operating license from a different agency, the Department of Public Health. *Id.* at 470. In ruling that the appeal was moot, this Court explained that there was no basis "to suspend or revoke the [facility's] operating license or otherwise limit its medical functions based on an improperly granted planning permit." *Id* at 475. Accordingly, the appeal "could have had no effect on the result of the case as to the parties and the appellate court could not have rendered . . . effectual relief." *Id.*

Here, in contrast, WPC challenges the very license needed for a Waukegan casino to exist. A ruling that the casino license is void therefore would affect "the result of the case as to the parties." That circumstance alone distinguishes this case from *Marion*. Moreover, the City's "certifying" resolutions are not analogous to the planning permit at issue in *Marion*. Unlike the permit there, a "certification" is not issued to or held by an applicant under section 7(e-5). Put another way, the Board does not have any inherent



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authority to issue a Waukegan casino license provided the City submits applicants for the Board's consideration. Rather, as a precondition to the Board's exercise of authority, the City must certify *to the Board* that certain things have occurred. Because the Gaming Board has authority to consider issuing a license "only after" the City satisfies those section 7(e-5) requirements, a finding that the City failed to do so necessarily means that the Board acted without authority and that the casino license is void. That is precisely what WPC alleges here.

Further, as a rule, a party cannot moot an appeal by taking the very action that a complaint challenges. *See Schnepper v. American Info. Techs., Inc.*, 136 Ill. App. 3d 678, 680 (1st Dist. 1985) ("[I]f the defendant does any act which the complaint seeks to enjoin, he acts at his peril and is subject to the power of the court to compel a restoration of the *status quo ante* . . . .") (citing *Gribben v. Interstate Motor Freight Sys. Co.*, 18 Ill. App. 2d 96, 102–03 (1st Dist. 1958)); *Blue Cross Ass'n*, 100 Ill. App. 3d at 651 (same). And regardless, because the Board acted without authority, its decision to issue the license is void and may be challenged "at any time or in any court, either directly or collaterally." *Bus. & Prof'l People for the Pub. Int.*, 136 Ill. 2d at 244 (cleaned up).

Accordingly, the fact that the Gaming Board has purported to issue a license, or that a temporary facility has been constructed, does not moot WPC's claim. *See Provena Health*, 382 Ill. App. 3d at 50 (appeal challenging hospital



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construction permit was not moot despite intervening construction expenditures of $29 million); *Pierce Downer's Heritage All. v. Vill. of Downers Grove*, 302 Ill. App. 3d 286, 288–94 (2d Dist. 1998) (rejecting mootness challenge where plaintiffs alleged that village and planning board were required but failed to consult with state agency before approving health facility, even though state agency had closed consultation, board had issued permit, and village council had approved project).

**B. Because the Board Lacked Jurisdiction, the License Is Void and May Be Attacked at Any Time.**

The Board argues that, "as a matter of law," WPC's allegations "cannot support a claim that the Board lacked jurisdiction to issue the Waukegan owners license," and that the Board's decision to issue the license "therefore cannot be undone." (Bd. Br. at 33.) The Board's premise is wrong: as amply demonstrated above, it had no authority even to consider issuing a Waukegan license. Therefore, the Board's conclusion is equally wrong: the license is void and can be collaterally attacked at any time. *Bus. & Prof'l People for the Pub. Int.*, 136 Ill. 2d at 244; *Goral*, 2020 IL 125085, ¶ 51.

The Board agrees with WPC on key legal principles: Even a purportedly "final" administrative decision may be set aside where the agency "acted without jurisdiction." (Bd. Br. at 33.) Jurisdiction in this sense encompasses "the agency's scope of authority under the statute."[11] (*Id.*) An agency exceeds its

[11] Although "not strictly applicable to an administrative body," the term "jurisdiction" "may be employed to designate the authority of an administrative body to act . . . ." *Newkirk v. Bigard*, 109 Ill. 2d 28, 36 (1985).



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statutory authority when it acts "beyond the scope of its enabling statute." (*Id.* at 34.) Yet the Board misapplies these well-settled legal principles.

*First*, section 7(e-5) unambiguously restricts the Board's authority. Theoretically, the statute could have been drafted to authorize the issuance of a license "after" the host community satisfied the required conditions. But the General Assembly chose to speak even more emphatically and unambiguously: the Board shall "*consider* issuing" a license "*only* after" the preconditions are satisfied. 230 ILCS 10/7(e-5).

*Second*, as demonstrated above, and as the Board itself acknowledged in the appellate court, WPC alleges "that the City's noncompliance was 'more than merely technical.'" (Brief of State Defendants-Appellees, No. 1-22-0883 (1st Dist.) at 8.) Section 7(e-5) does not permit the City merely to identify preferred applicants for the Board's consideration and leave negotiation of the casino's essential features for another day. On the well-pleaded facts in WPC's complaint, that is precisely what the City did.

*Third*, on the well-pleaded facts, the City's noncompliance with section 7(e-5) was obvious. Rather than certify to the Board that the City and the applicants had mutually agreed on the statutorily-required items, the City certified that they had mutually agreed in "general terms." (SA21–22, Compl. ¶ 32(b); SA34, Compl. Ex. 2 at 2; SA37, Compl. Ex. 3 at 2; SA39, Compl. Ex. 4 at 2; SA41, Compl. Ex. 5 at 2.) Further, section 7(e-5) required the City to "memorialize the details concerning the proposed . . . casino in a resolution"



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adopted by the City Council "*before any certification is sent to the Board*." 230 ILCS 10/7(e-5) (emphasis added). Yet the City submitted its "certifications" to the Board while advertising that it had *not* complied with this requirement. (SA22, Compl. ¶ 32(c).) Instead, for the "details of the mutual agreements," the City pointed to "the Applicant's Response to the City's Request for Proposals." (SA34, Compl. Ex. 2 at 2; SA37, Compl. Ex. 3 at 2; SA39, Compl. Ex. 4 at 2; SA41, Compl. Ex. 5 at 2.)

This glaring deviation from the statute highlighted the City's failure to negotiate and reach mutual agreement on casino details before submitting its purported certifications to the Gaming Board. On the facts alleged, the City's failure to follow the law would have been obvious to the Board, which had seen other host communities' submissions, including the City of Rockford's. As shown in the exhibits incorporated in WPC's complaint, Rockford's certification to the Board tracked section 7(e-5) and was accompanied by a resolution approving a host community agreement that the City and the applicant negotiated beforehand. (SA24, Compl. ¶ 39; SA91–202, Compl. Ex. 12.)

Moreover, contrary to the Board's claims of delay, WPC filed its complaint before the Board took up the question of "preliminary suitability" for a license. The complaint and the attached exhibits—including the City attorney's testimony that it was "fundamentally impossible" to comply with section 7(e-5), and that the City did not negotiate in "any respect" with applicants but planned instead to negotiate "after the fact" (SA22, Compl. ¶¶ 33–34; SA78–



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79, Compl. Ex. 9 at 102:4–102:17, 106:2–108:7)—showed beyond any doubt that the City had not satisfied the statutory preconditions to the Board's exercise of licensing authority.

Accordingly, the Board did not merely "err in the exercise" of "powers expressly granted to it by statute." (Bd. Br. at 35.) *See Bus. & Prof'l People for the Pub. Int.*, 136 Ill. 2d at 245 ("[A] reviewing court can make the appropriate distinction between an erroneous decision and one which lacks statutory authority."). Rather, the Board disregarded an express, threshold restriction on its power to act. In arguing that it "merely exercised a statutorily delegated duty when it accepted those certifications" (Bd. Br. at 38), the Board attempts to refashion the statutory framework. Again, section 7(e-5) does not call on municipalities to issue "certifications" akin to a permit or a professional credential. Rather, under the statute, the Board has the power to act "only after" the host community "has *certified to the Board*" *that* the section 7(e-5) requirements are satisfied. In this context, the Board's claim that it had a duty to "accept" "certifications" is nonsensical. Rather, the Board's obligation was to ask whether the City had certified to the Board *that* the statutorily required conditions had been met.

In short, the Board's claim that the Waukegan casino license "cannot be undone" is 180 degrees wrong. Because the Board acted without authority, the license is void and may be challenged in court.



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### C. Any Interest of Full House Can Be Addressed on Remand.

The Board and its *amici* argue that it cannot be ordered to "retract" the Waukegan casino license because Full House is a "stranger" to this action and has a "superseding" interest in the license. (Bd. Br. at 39–43; *Amici* Br. at 15.) The Board did not advance this argument below until its petition for rehearing. The argument is therefore forfeited. *Lemke v. Kenilworth Ins. Co.*, 109 Ill. 2d 350, 355 (1985). Regardless, it has no merit.

The circuit court dismissed this case at the pleading stage. Accordingly, the appellate court did not purport to adjudicate any interest in a casino license; it merely reversed the circuit court's judgment of dismissal and remanded for further proceedings. (SA13, ¶ 27.) To the extent Full House needs or seeks to participate in this action, that issue can be addressed on remand. (As evidenced by the amicus brief submitted on its behalf, Full House is fully aware of this proceeding.) Therefore, the Board's "indispensable party" argument is a red herring. (*See* Bd. Br. at 39–40.)

Moreover, as already discussed, the claim that an agency exceeded its authority may be made in any court at any time. *Bus. & Prof'l People for the Pub. Int.*, 136 Ill. 2d at 244. As shown above, because WPC alleges that the Board acted without authority, the Board's purported issuance of a license to Full House does not preclude effectual relief on remand. Accordingly, cases involving deadlines for challenging "final administrative decisions" are inapposite. (*See* Bd. Br. at 41–42 (citing *Kosakowski v. Bd. of Trs.*, 389 Ill. App. 3d



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381 (1st Dist. 2009), *Sola v. Roselle Police Pension Bd.*, 342 Ill. App. 3d 227 (2d Dist. 2003), and *Outcom, Inc. v. Ill. Dep't of Transp.*, 233 Ill. 2d 324 (2009)).)

The Board argues that WPC should have sought a stay, but a stay is not a requirement for a successful appeal. *Greer*, 122 Ill. 2d at 516–17 (rejecting argument that failure to seek stay under Rule 305 "precludes the appellees from prevailing on appeal"); *Blue Cross Ass'n*, 100 Ill. App. at 651 (completion of "penetrations into plaintiffs' leasehold" did not moot appeal; defendant proceeds "at his peril" in doing what plaintiff seeks to enjoin). In this case, a motion to stay would have been unwarranted. Rule 305 allows parties to move to "stay the enforcement" of judgments. *See* Ill. S. Ct. R. 305(b). Here, the circuit court never reached the merits, and thus did not rule on the scope of the Board's power or the validity of the casino license. Accordingly, there was no "enforcement" of any judgment to "stay."

The Board cites principles "reflected" in Supreme Court Rule 305(k) and cases involving real property interests, but those authorities are inapposite. (Bd. Br. at 40–41.) Under the Board's own rules, a Board license "*does not create a property right*, but is a revocable privilege granted by the State contingent upon continuing suitability for licensure." 86 Ill. Admin. Code § 3000.1105 (emphasis added). Defendants themselves insist that "there is no right to possess a gambling license (even once granted)." (City Br. at 26; *see also* Bd. Br. at 22 (Gambling Act does not "confer any right to obtain a gambling license").) Adoption cases, which turn on "[p]ublic policy considerations" requiring "stability



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and finality" in adoptions, are equally inapposite. *See In re Tekela*, 202 Ill. 2d 282, 293 (2002); *In re J.B.*, 204 Ill. 2d 382, 386–91 (2003) (adhering to *Tekela*). (*See* Bd. Br. at 39, 41 (citing same).)

In sum, given WPC's well-pleaded challenge to the Board's jurisdiction, and the procedural posture of this case, Full House's nonparty status has no bearing on mootness.

## III. The City's Remaining Arguments Are Meritless.

The City advances arguments that the Board does not see fit to make. Those additional arguments have no merit.

### A. WPC May Pursue This Action to Force Official Compliance With the Gambling Act.

The appellate court correctly held that, because WPC "is seeking to force statutory compliance" rather than pursuing tort remedies, it does not need an implied right of action under the Gambling Act. (SA11, ¶ 19 (citing *Noyola*, 179 Ill. 2d at 132, and *Landmarks Ill. v. Rock Island Cnty. Bd.*, 2020 IL App (3d) 190159, ¶ 62).)

The City argues that, because WPC's complaint "asks the Court to undo the actions of public officials" and "does not ask for a writ of mandamus," *Noyola* and the concept of mandamus have "no application to the case." (City Br. at 13–14.) The City is wrong on both fronts.

#### 1. Mandamus *can* be used "to compel the undoing of an act."

For its claim that mandamus cannot be used "to undo the actions of public officials," the City cites 90-year-old precedent from a federal court outside



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Illinois. (City Br. at 14 (citing *United States v. Nordbye*, 75 F.2d 744 (8th Cir. 1935)).) There is contrary and controlling authority closer at hand: "The writ [of mandamus] provides affirmative rather than prohibitory relief *and can be used to compel the undoing of an act.*" *Noyola*, 179 Ill. 2d at 133 (internal citations omitted) (emphasis added); *see also Burnette v. Terrell*, 232 Ill 2d. 522, 543 (2009) (mandamus "'can be used to compel the undoing of an act'") (quoting *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 449 (2007)); *People ex rel. Bier v. Sholz*, 77 Ill. 2d 12, 16 (1979) ("We must reject the first contention of the respondent that Mandamus will not lie 'to compel the undoing of an act.'").

Indeed, the public procurement cases discussed above (at 17–18) constitute their own category of decisions holding that a suit in mandamus will lie to undo officials' improper contract awards. *See Court Street Steak House*, 163 Ill. 2d at 165 ("*[M]andamus* will issue if a plaintiff alleges and proves fraud, lack of authority, unfair dealing, favoritism, or similar arbitrary conduct by a county."); *Keefe-Shea Jt. Venture*, 332 Ill. App. 3d at 175 ("'Injunction and mandamus are the proper remedies to compel compliance with public contract award procedures.'") (citation omitted); *Cardinal Glass*, 113 Ill. App. 3d at 447–48 (allegations of favoritism in contract award stated cause of action sufficient for mandamus relief). For the reasons already discussed, WPC is entitled to pursue such affirmative relief here.

**2. The form of relief requested is not a basis to dismiss.**

The City suggests that, because WPC's complaint "does not ask for a writ of mandamus," *Noyola*'s holding does not apply. The City is wrong again.



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In *Noyola*, "the plaintiffs' complaint [did] not seek a writ of *mandamus*." *Noyola*, 179 Ill. 2d at 136 (Bilandic, J., dissenting); *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999) (noting same). Rather, much like here, the *Noyola* plaintiffs "request[ed] a determination that defendants have violated the law and on order requiring defendants to use Chapter 1 funds as . . . the School Code requires." *Noyola*, 179 Ill. 2d at 124–25. "[T]his court nonetheless construed the [*Noyola*] complaint as sufficiently pleading a *mandamus* action." *Spagnolo*, 186 Ill. 2d at 229; *Clarke v. Cmty. Unit Sch. Dist. 303*, 2012 IL App (2d) 110705, ¶ 23 (following *Noyola* where "plaintiffs' complaint does not explicitly seek a writ of *mandamus*").

That approach is consistent with Illinois pleading practice generally. *See* 735 ILCS 5/2-603(c) ("Pleadings shall be liberally construed with a view to doing substantial justice between the parties."). Under the Code of Civil Procedure, requesting the "wrong remedy" is not grounds for dismissal. *See* 735 ILCS 5/2-617 (where facts pleaded entitle plaintiff to relief but plaintiff "has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms" and shall "grant the relief to which the plaintiff is entitled on the amended pleadings or upon the evidence"); *see also Wilson v. Quinn*, 2013 IL App (5th) 120337, ¶ 18 ("[T]he plaintiffs should be afforded the opportunity to amend their complaint to fully plead their alleged causes of action, including *mandamus*.").



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Indeed, section 2-617 has been construed as not requiring an amendment as to a theory of relief. *Ill. Graphics Co. v. Nickum*, 159 Ill. 2d 469, 489–90 (1994) (citing, *inter alia*, *Mamolella v. First Bank of Oak Park*, 97 Ill. App. 3d 579, 584 (1st Dist. 1981), for proposition that cause of action "to enjoin a purpresture" could be "treated as action in mandamus"). Accordingly, as in *Noyola* and *Clarke*, the question is simply whether the well-pleaded facts entitle WPC to relief, whatever the specific remedy requested.

Here, for reasons already demonstrated, the well-pleaded facts satisfy the criteria for mandamus—"a clear right to the relief requested, a clear duty of the respondent to act, and clear authority in the respondent to comply with the writ." *Noyola*, 179 Ill. 2d at 133; *see also Emerald Casino*, 346 Ill. App. 3d at 26 (citing same). WPC has a cognizable interest in a lawful certification process under section 7(e-5); the statute unambiguously restricts the Board's power; and the Board has no choice but to comply with that restriction on its authority. Moreover, the Board's alleged violation of section 7(e-5) does not involve an exercise of agency discretion. *See Noyola*, 179 Ill. 2d at 133. "[O]nly after" the statutory conditions are met may the Board even "consider issuing a license." 230 ILCS 10/7(e-5). By clearly and unambiguously prohibiting *consideration* of a license until the City satisfies section 7(e-5), the General Assembly left nothing to the Board's "discretion."

Finally, absent mandatory relief in this action, WPC has no adequate remedy for defendants' Gambling Act violation. As the Board itself observes,



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WPC has no administrative remedy. (Bd. Br. at 24.) Further, although WPC has a cognizable interest in the opportunity to compete for a casino license on lawful terms, the loss of that opportunity cannot be recouped through a claim for money damages under the Gambling Act. *Keefe-Shea Jt. Venture*, 332 Ill. App. 3d at 176–77 ("Lost profits are not recoverable by an unsuccessful bidder for a public contract.") (citing *Court St. Steak House*, 163 Ill. 2d at 169–70).

As the federal district court's recent decision shows, moreover, WPC's federal cause of action against the City (a class-of-one equal protection claim) is not adequate to remedy defendants' ongoing Gambling Act violation. As discussed, under the standard applicable to class-of-one claims, the district court opined that it did not matter whether the City complied with the Act or what the City's "actual" reason was for declining to support WPC's proposal. 2024 WL 1363733, at *10. Moreover, given the district court's holding that WPC could not sue under the federal civil rights statute, *id.* at *6–7, WPC's ability to pursue its equal protection claim is uncertain at best, even assuming it could satisfy the applicable pleading standard. Accordingly, that federal claim is not adequate to remedy defendants' violations of Illinois law. *See Bio-Medical Labs*, 68 Ill. 2d at 549 (holding that legal remedy was inadequate where plaintiff's entitlement to damages was "uncertain," and damages action "would not be as practical and efficient to the ends of justice as an action for injunctive relief") (cleaned up); *Prairie Eye Ctr., Ltd. v. Butler*, 329 Ill. App. 3d 293, 304 (4th Dist. 2002) (To be adequate, legal remedy "must be clear and complete and



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must be just as effective as the sought-for injunction in achieving justice."); *Keefe-Shea*, 332 Ill. App. 3d at 96–97 (plaintiff alleged inadequate legal remedy for denial of right to participate in fair bidding process).

In sum, the well-pleaded facts entitle WPC to mandamus relief.

### 3. The City wrongly assumes that WPC must establish a private right of action.

Again, because WPC has sued "to force public officials responsible for implementing [a statute] to do what the law requires," the four-part test for a private right of action is "not necessary." *Noyola*, 179 Ill. 2d at 132; *see also Landmarks Ill.*, 2020 IL App (3d) 190159, ¶ 62 (same); *Clarke*, 2012 IL App (2d) 110705, ¶ 25 (same). The City nevertheless insists that WPC must have an "underlying private right of action." (City Br. at 14.) That argument is based on the erroneous assumption that *Noyola* and mandamus have "no application to this case." (*Id.*)

Just as the City's premise is wrong, the cases it cites are inapposite. *Carmichael* was not an action to force officials to comply with a statute. (*See* City Br. at 14–15 (citing *Carmichael v. Prof'l Transp., Inc.*, 2021 IL App (1st) 201386, ¶ 35).) Rather, the plaintiff there sought a declaration that a motor vehicle's *private owner* was liable for failing to maintain required insurance coverage. *Carmichael*, 2021 IL App (1st) 201386, ¶¶ 1–2. Similarly, the defendants in *Davis* and *Smith* were not public officials. *See Davis v. Kewanee Hosp.*, 2014 IL App (2d) 130304, ¶ 1; *Smith v. Sears, Roebuck & Co.*, 95 Ill. App. 3d 174 (4th Dist. 1981). (*See* City Br. at 16 (citing *Davis* and *Smith*).) The plaintiffs



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in *Gilmore*, seeking money damages as well as declaratory and injunctive relief, argued merely that they had "standing to bring a private right of action under the Insurance Code." *Gilmore v. City of Mattoon*, 2019 IL App (4th) 180777, ¶¶ 4, 9, 14.

As in its standing argument (*see supra* at 15), the City relies on bad law. *Jackson v. Randle*, 2011 IL App (4th) 100790, "was based on a misreading of *Glisson*," which "specifically rejected the zone-of-interests test for standing that the appellate court had adopted in *Lynch*." *Cerbertowicz v. Baldwin*, 2017 IL App (4th) 160535, ¶ 17 (citing *Glisson*, 188 Ill. 2d at 222). Accordingly, the Fourth District later "decline[d] to follow *Jackson* insofar as it holds that for a plaintiff to bring a private cause of action based on a statute, the statute must expressly confer standing on an individual or class to do so." *Id.* ¶ 20 (cleaned up). That is precisely the principle for which the City now cites *Jackson*. (City Br. at 15.) Contrary to the City's position, "the long-standing rule is that the plaintiff in a *mandamus* action need have only an interest in the subject matter of the petition." *Cerbertowicz*, 2017 IL App (4th) 160535, ¶ 20.

*AFCSME v. Ryan* affirmatively undermines the City's position. (*See* City Br. at 15–16.) That case turned on specific language in the Health Facilities Planning Act, but the appellate court there recognized that, "ordinarily, injunctive relief *is* proper to prevent public officials from taking actions that are outside the scope of their authority or unlawful." 332 Ill. App. 3d 866, 873 (4th Dist. 2002) (emphasis added) (citing *Vill. of Westmont v. Lenihan*, 301 Ill. App.



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3d 1050, 160 (1998)). Both *Ryan* and *Landmarks Illinois*, which the City tries to discredit (*see* City Br. at 16 n.5), cite the same case—*Village of Westmont*—for this general rule. *See Landmarks Ill.*, 2020 IL App (3d) 190159, ¶¶ 61–62 (citing *Vill. of Westmont*, 301 Ill. App. 3d at 1060, for principle that "an injunction is proper to prevent public officials . . . from taking actions that are outside the scope of their authority," and that plaintiffs need not establish implied right of action "to proceed with their claims for injunctive relief").

Citing federal and non-Illinois cases, the City also questions WPC's right to pursue declaratory relief. (City Br. at 17–18.) Here as well, the City wrongly assumes that WPC needs "a predicate right of action." (*Id.* at 17.) The City offers a lone Illinois citation, for the proposition that declaratory judgment actions are "designed to settle and fix rights *before* there has been an irrevocable change" in the parties' position. (City Br. at 18 (citing *Carle Found. v. Cunningham Twp.*, 2017 IL 120427, ¶ 26).) In context, however, the quoted passage merely underscores that the declaratory judgment statute allows a court "to take hold of a controversy one step sooner than normally," 2017 IL 120427, ¶ 26 (cleaned up).[12] It does not announce some special rule of mootness for declaratory judgment claims.

Contrary to the City's position, a claim that an agency acted without statutory authority "is a proper issue to be determined by a declaratory

---

[12] The passage derives from *First of America Bank, Rockford, N.A. v. Netsch*, which rejected an argument that there could be no declaratory judgment as to a "*potential* purchaser." 166 Ill. 2d 165, 173–74 (1995) (emphasis added).



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judgment action." *Newkirk*, 109 Ill. 2d at 35–36; *Emerald Casino*, 346 Ill. App. 3d at 26 ("Declaratory judgment is an appropriate method for determining controversies relating to construction or interpretation of a statute."); *Family Amusement of N. Ill., Inc. v. Accel Entm't Gaming, LLC*, 2018 IL App (2d) 170185, ¶ 41 (circuit court "had jurisdiction to entertain FA's request for a declaratory judgment regarding the Board's authority to issue a disassociation order"). Moreover, such a claim need not be resolved "before" the agency acts, but instead may seek a declaration that the agency *acted* without authority. *See, e.g.*, *Goral*, 2020 IL 125085, ¶¶ 18, 62, 84 (where Merit Board issued administrative decision while appeal was pending, reversing dismissal of declaratory and injunctive claims challenging Board's authority); *Stanley Magic-Door*, 74 Ill. App. 3d at 595–96 (reversing dismissal of action "seeking a declaration that the city of Chicago awarded a contract to an ineligible bidder").

In sum, the City's authorities do not suggest that WPC needs to establish a private right of action to pursue the claim it has asserted in this case.

#### 4. Even if WPC needed to satisfy the criteria for an implied private remedy, it does so.

The General Assembly recognized that Illinois will realize the Gambling Act's objectives "only if public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process is maintained." 230 ILCS 10/2(a), (b). Yet on the facts alleged, the City conducted a sham casino review process that ignored section 7(e-5)'s requirements, and the Board enabled that violation by exercising authority it does not rightly possess. Absent



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WPC's suit, there is no remedy for this official lawlessness. As the Board's own conduct illustrates, "one cannot assume that State officers or agencies charged with the duty to do so will oversee and challenge every improper act of a political or administrative agency." *Stanley Magic-Door*, 74 Ill. App. 3d at 597; *Keefe-Shea*, 332 Ill. App. 3d at 171–72 (quoting same).

Of course, the Gambling Act is intended to benefit the broader public. And the public interest is best served by reading section 7(e-5) to protect applicants who participate in the very process it mandates. *See Cardinal Glass*, 113 Ill. App. 3d at 446 ("These measures, while inuring indirectly to the benefit of the taxpayers by providing for competitive bidding, also directly benefit and protect the bidders themselves."); *see also L.E. Zannini*, 138 Ill. App. 3d at 476 (quoting same); *Keefe-Shea*, 332 Ill. App. 3d at 171 ("[S]ecuring compliance with the statute, and thereby the benefits to taxpayers, will be more effectively handled by unsuccessful bidders, who for the most part have a greater stake in such matters . . . .") (cleaned up).[13]

Accordingly, although WPC is not pursuing a private remedy, this action would satisfy the criteria for one.

[13] *L.E. Zannini* and *Cardinal Glass*, on which *Keefe-Shea* relied, focused on standing but applied the now-abrogated zone-of-interest test. *See L.E. Zannini*, 138 Ill. App. 3d at 474; *Cardinal Glass*, 113 Ill. App. 3d at 445–47. Therefore, those cases are instructive as to the elements for an implied remedy.



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### B. The City's "Exclusive Jurisdiction" Argument Is Meritless.

The City, but not the Board, argues that the Board had "exclusive jurisdiction" over "this controversy." (City Br. at 30–33.) The City is wrong. As already demonstrated, the Board had *no* jurisdiction to consider issuing a Waukegan casino license, much less "exclusive" jurisdiction to determine the scope of its own power. (*See supra* at 32–36.)

The City suggests that *J&J Ventures* somehow "controls" the outcome here (City Br. at 30–31), but that case provides no support for the City's position. *J&J Ventures* involved the specific question whether the Gaming Board had "exclusive authority over contracts for the placement of video gaming terminals" under the Video Gaming Act. *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 1. *J&J Ventures* did not involve anything comparable to the licensing scheme in section 7(e-5). It therefore cannot "control" this case, which turns on section 7(e-5)'s unambiguous language.

If any aspect of *J&J Ventures* "controls," it is the admonition that determining the Board's jurisdiction "is a judicial function and not a question for the agency itself," *id.* ¶ 41, and that the "most reliable indicator of legislative intent is the language of the statute itself, which should be given its plain and ordinary meaning," *id.* ¶ 25. Under its "plain and ordinary meaning," section 7(e-5) conditions the Board's power to consider issuing a license on the satisfaction of the statutory prerequisites. Reading the whole statute only buttresses this conclusion. As noted, section 7(e-5) departs starkly from the regime that governed the ten original licenses. *Compare* 230 ILCS 10/7(e-5), *with* 230



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ILCS 10/7(e). The General Assembly deliberately crafted the gaming expansion law to foster transparency and accountability at the municipal level.

Regardless, as the City acknowledges, an agency's "exclusive jurisdiction" over an issue does not foreclose judicial intervention; instead, it generally requires exhaustion of administrative remedies. (City Br. at 31.) *See generally People v. NL Indus.*, 152 Ill. 2d 82, 95–96 (1992). Here, because the Board exceeded its statutory authority, there is no exhaustion requirement. *Masterson*, 188 Ill. 2d at 552. But even were that not so, exhaustion would be excused here on grounds of futility. *See Canel v. Topinka*, 212 Ill. 2d 311, 321 (2004). The Board itself concedes that WPC had no administrative remedy to "exhaust." (Bd. Br. at 24 ("But WPC was not a party before the Board, and thus could not challenge the Board's decision to grant the license.").) Accordingly, even ignoring the Board's lack of jurisdiction, the "exhaustion" doctrine provides no basis to dismiss.

Finally, the City argues that the appellate court "ignored the Gaming Board's rulemaking authority." (City Br. at 33.) But the Board cannot by rule arrogate to itself power the General Assembly has expressly withheld. "It is well settled that an administrative agency is a creature of statute and therefore any power or authority claimed by it must find its source in the provisions of the statute that created it." *Prazen*, 2013 IL 115035, ¶ 36; *see also Emerald Casino*, 346 Ill. App. 3d at 25–26 ("[I]f the Board has no authority to do



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anything other than fulfill a legislative directive, its refusal to do so does not constitute a decision subject to administrative review.").

### C. The City's "Substantial Compliance" Argument Is Meritless.

The City argues that the appellate court should be reversed on the ground that, as a matter of law, the City "substantially complied" with section 7(e-5). The City errs both substantively and procedurally.

#### 1. Section 7(e-5) does not allow mere "substantial compliance" with its unambiguous requirements.

There is no free-roaming doctrine of "substantial compliance" permitting an agency to disregard unambiguous statutory restrictions on its authority, as the Board did here. "An administrative agency has no general or common law powers," and any act it takes "must be authorized specifically by statute." *Ferris*, 2015 IL 117443, ¶ 17. Again, "[t]he best indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *Id.* ¶ 17. "When statutory language is plain and unambiguous, the statute must be applied as written without resort to aids of statutory construction, and the court will not read into it exceptions, conditions, or limitations that the legislature did not express." *Jackson-Hicks*, 2015 IL 118929, ¶ 29 (cleaned up); *Corbin v. Schroeder*, 2021 IL 127052, ¶ 44 (quoting same).

At the risk of repetition, section 7(e-5)'s "plain and ordinary meaning"—authorizing the Board to consider issuing a license "*only* after" the City satisfies the statutory conditions, and requiring the City to memorialize casino details "in a resolution that *must* be adopted" by the City's governing body "*before*



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any certification is sent to the Board," 230 ILCS 10/7(e-5)—leaves no room for the City's "substantial compliance" argument. The City's approach is "fatally flawed because [it] replace[s] the mandatory, objective direction of the legislature with something more discretionary and subjective." *Corbin*, 2021 IL 127052, ¶ 45.

Moreover, section 7(e-5) does not just impose obligations on the City; it "dictates a particular consequence" for the City's failure to comply: the Board may not even "consider issuing" a license. 230 ILCS 10/7(e-5). "[A] statute is considered mandatory, as opposed to directory, if it indicates a legislative intent to dictate a particular consequence for failure to comply with the provision." *Shultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 16; *see also Norman v. U.S. Bank Nat'l Assoc.*, 2020 IL App (1st) 190765, ¶ 33 (distinguishing *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (2009), as involving statute that "did not include a penalty for noncompliance"). That consequence need not be a fine or criminal penalty. As in section 7(e-5), the consequence may be the invalidity of the non-compliant act. *See Shultz*, 2013 IL 115738, ¶ 17 (consequence for statutory noncompliance was that income withholding notice "be rendered invalid").

Because the question whether a provision is mandatory or directory turns on the statutory language, the cases cited by the City, most of which arise in the election context, are inapposite. (*See* City Br. at 33–37.) As described, the requirement that there be negotiation and mutual agreement on casino



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details before the Gaming Board may act is integral to section 7(e-5)'s licensing scheme. Those requirements cannot be brushed aside as mere technicalities. *See Jackson-Hicks*, 2015 IL 118929, ¶ 37 (distinguishing election cases where candidate met basic requirements of Election Code but did so in a technically deficient manner).

In sum, "substantial compliance is not a valid justification for deviating from the clear and unambiguous" requirements of section 7(e-5). *Id.* ¶ 39.

**2. The City ignores the well-pleaded facts.**

Even if section 7(e-5) allowed for a "substantial compliance" defense (and it does not), that factual defense would not be available at the pleading stage. The City's claim that it "substantially complied" with the statute is contrary to the well-pleaded facts in WPC's complaint, the truth of which must be assumed. The complaint alleges that the City did the exact opposite of what section 7(e-5) requires. (*See supra* at 8–10.) Therefore, as the appellate court correctly held (SA7, ¶ 13 n.2), the circuit court's dismissal of WPC's complaint cannot be affirmed on grounds of "substantial compliance."

The City moved to dismiss under 735 ILCS 5/2-615 for failure to state a claim. (C1403.) It now cites *Behl* for the proposition that "whether a party has complied (or substantially complied) with a statutory requirement is a question of law—*not a question of fact*." (City Br. at 33.) To the extent the City means to suggest that the *facts* relevant to compliance may be decided on a motion to dismiss, that is not *Behl*'s holding and, regardless, it is not the law, as myriad decisions of this Court attest. *See, e.g.*, *M.U. By and Through Kelly U. v. Team*



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*Ill. Hockey Club, Inc.*, 2024 WL 994911, ¶ 3 (citing *DeHart v. DeHart*, 2013 IL 114137, ¶ 18); *O'Connell*, 2022 IL 127527, ¶ 18. *Behl* was an appeal from a judgment rendered *after trial*, and the relevant facts were undisputed. 396 Ill. App. 3d at 1084–86. That case does not support the City's attempt to upend well-settled pleading rules.

Finally, even if factual arguments were appropriate, the City's would be unavailing. The City and its *amici* point to a "Development and Host Community Agreement" with Full House that the City Council approved on January 3, 2023. (City Br. at 36–37; *Amici* Br. at14.) As an initial matter, the City did not raise this issue below until its petition for rehearing and thus forfeited any argument based on this *post hoc* agreement. *See Lemke*, 109 Ill. 2d at 355.

In any event, the City approved the *post hoc* agreement more than three years *after* the City submitted its noncompliant certifications to the Board and more than a year *after* the Board selected Full House as the presumptive licensee. That sequence makes a mockery of the mandate that the Board consider issuing a license "only after" the City satisfies section 7(e-5), as well as the directive to memorialize casino details "before" submitting any certification to the Board. 230 ILCS 10/7(e-5). The City states that the *post hoc* agreement "was the product of extensive negotiations between the City and Full House." (City Br. at 36.) The City seems not to realize that this claim fatally undermines another, already implausible argument—that, by incorporating the applicants' pre-negotiation *proposals*, the City's "certifying" resolutions



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substantially complied with section 7(e-5). (*Id.*) Rather than demonstrating "substantial compliance," the City highlights defendants' egregious noncompliance.

**D. The City's Public Policy Argument Is Meritless.**

The City argues that the appellate court's ruling "provides a blueprint for disappointed applicants to halt future developments." (City Br. at 40–41.) This critique is misguided.

First, the City's repeated references to "offhand remarks" by the appellate court (City Br. at 41) are unwarranted. As Justice Lyle (a former Chicago alderperson) stated during oral argument: "Let me just state that, several of us—I think my colleague indicated already that he served as a corporate counsel—that we understand the exigencies of government and we understand that every penny that we're all spending is taxpayers' dollars . . . . I don't want people to think that we are sitting here in some room where we don't realize that this is real dollars and cents. That's just not the case." (Appellate court oral argument at 48:20.[14]) The appellate court faithfully applied the Gambling Act and this Court's precedent to the well-pleaded facts.

The result is not a general "blueprint" for disgruntled litigants. That claim is belied by WPC's verified complaint. The complaint alleges that the City, deeming it "fundamentally impossible" to comply with section 7(e-5),

[14] Available at www.illinoiscourts.gov/courts/appellate-court/oral-argument-audio/.



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decided to forego any negotiation with applicants, submit proposals to the Board, and then negotiate "after the fact." (A22, ¶¶ 33–34; SA79, Compl. Ex. 9 at 106:2–108:7.) Exhibits consisting of public records and deposition testimony back those averments. Where the complaint alleges facts "on information and belief," it articulates the basis for that belief. (SA21, 23–24, Compl. ¶¶ 32, 36–38.) Assuming the truth of the well-pleaded facts, the City flouted statutory requirements, and the Board defied express legislative restrictions on its authority. In such circumstances, to enforce the Gambling Act as written hardly opens the proverbial litigation floodgates.[15]

The concern of the City about "future developments" is misplaced, as are similar concerns of the City's *amici*. One could equally argue that allowing agencies to exceed their authorized powers would open the door to unchecked regulation and thus impede economic development. Regardless, as this Court has admonished, a statute's perceived wisdom is no reason to ignore its unambiguous commands: "We must construe and apply statutory provisions as they

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[15] The City claims the appellate court ignored what the City calls the "*Sypolt* warning." (*See* City Br. at 1, 11, 24, 25 (citing *Sypolt v. Ill. Gaming Bd.*, 2021 WL 1209132 (N.D. Ill. Mar. 31, 2021).) But *Sypolt* involved a question not presented here—whether Board members should have quasi-judicial immunity "from damages." 2021 WL 1209132, at *4. Also, the court in *Sypolt* later *denied* a motion to dismiss amended claims against the Board's former administrator and two of its investigators. *See Sypolt v. Ill. Gaming Bd.*, 2022 WL 170063, at *8–10 (N.D. Ill. Jan. 19, 2022). *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, on which the City and its *amici* rely (City Br. at 42; *Amici* Br. at 12), did not involve a challenge to agency authority and is therefore inapposite.



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are written and cannot rewrite them to make them consistent with the judiciary's view of orderliness and public policy." *Prazen*, 2013 IL 115035, ¶ 35.

Here, the appellate court correctly applied section 7(e-5) as written to the well-pleaded facts.

## CONCLUSION

For the above reasons, plaintiff Waukegan Potawatomi Casino, LLC respectfully requests that the Court affirm the appellate court's judgment.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,667 words.

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ *Dylan Smith*
Dylan Smith

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# SUPPLEMENTARY APPENDIX

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2023 IL App (1st) 220883

No. 1-22-0883

Opinion filed July 28, 2023

FIFTH DIVISION

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| | | |
|---|---|---|
| WAUKEGAN POTAWATOMI CASINO, LLC,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>THE ILLINOIS GAMING BOARD; CHARLES SCHMADEKE, Board Chairman; DIONNE R. HAYDEN, Board Member; ANTHONY GARCIA, Board Member; MARC E. BELL, Board Member; MARCUS FRUCHTER, Board Administrator; and THE CITY OF WAUKEGAN,<br><br>Defendants-Appellees. | ) | Appeal from the Circuit Court of Cook County.<br><br>No. 2021 CH 5784<br><br>Honorable Cecilia A. Horan, Judge presiding. |

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JUSTICE MITCHELL delivered the judgment of the court, with opinion.
Presiding Justice Delort and Justice Lyle concurred in the judgment and opinion.

**OPINION**

¶ 1 Plaintiff, Waukegan Potawatomi Casino, LLC, appeals an order dismissing its complaint for declaratory judgment and injunctive relief. The principal issue presented in this appeal is as follows: did the circuit court err in dismissing Potawatomi Casino's complaint for lack of standing because the alleged violations of the Illinois Gambling Act denied Potawatomi Casino its right to compete in a lawful certification process? Because the trial court did err, we reverse and remand.



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¶ 2 I. FACTS

¶ 3 The General Assembly amended the Illinois Gambling Act in 2019 to authorize the Illinois Gaming Board to issue 6 new casino licenses, including one in the City of Waukegan, in addition to the 10 existing licenses. Pub. Act 101-31 (eff. June 28, 2019) (amending 230 ILCS 10/7(e-5)). The Act provides for a licensing process specific for these new licenses, requiring the host municipality to initiate the process. *Id.* Notably, the Board can consider issuing a license to an applicant *only after* the host municipality has certified to the Board that it has negotiated with the applicant on certain specified details of the proposed casino:

> "The Board shall consider issuing a license pursuant to paragraphs (1) through (6) of this subsection only after the corporate authority of the municipality or the county board of the county in which the riverboat or casino shall be located has certified to the Board the following:
>
> (i) that the applicant has negotiated with the corporate authority or county board in good faith;
>
> (ii) that the applicant and the corporate authority or county board have mutually agreed on the permanent location of the riverboat or casino;
>
> (iii) that the applicant and the corporate authority or county board have mutually agreed on the temporary location of the riverboat or casino;
>
> (iv) that the applicant and the corporate authority or the county board have mutually agreed on the percentage of revenues that will be shared with the municipality or county, if any;





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(v) that the applicant and the corporate authority or county board 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 corporate authority or county board has passed a resolution or ordinance in support of the riverboat or casino in the municipality or county;

(vii) the applicant for a license under paragraph (1) has made a public presentation concerning its casino proposal; and

(viii) the applicant for a license under paragraph (1) has prepared a summary of its casino proposal and such summary has been posted on a public website of the municipality or the county." 230 ILCS 10/7(e-5) (West 2020).

¶ 4 The City of Waukegan issued a request for qualifications and proposals, soliciting proposals to develop and operate a casino in the City. Waukegan Potawatomi Casino, LLC submitted a proposal in response, and the City held a public meeting during which four casino applicants presented their proposals. Subsequently, the Waukegan City Council voted on resolutions certifying those four applicants to the Board. The council passed resolutions certifying three of the applicants but declined to pass the resolution certifying Potawatomi Casino. A few days later, the council voted to reconsider the resolution regarding Potawatomi Casino but, on reconsideration, did not pass the resolution.

¶ 5 Following the council's adoption of the resolutions, Potawatomi Casino filed an action in the circuit court of Lake County against the City, asserting claims under the fourteenth amendment of the United States Constitution (U.S. Const., amend. XIV), the Illinois Gambling Act, and the Open Meetings Act (5 ILCS 120/1 *et seq*. (West 2020)). The City removed the case to the federal





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district court, where the case remains pending. *Waukegan Potawatomi Casino, LLC v. City of Waukegan*, No. 1:20-CV-750 (N.D. Ill.)

¶ 6 Subsequently, Potawatomi Casino filed a separate action in the circuit court of Cook County against the City and the Board. In its complaint, Potawatomi Casino sought a declaratory judgment that the City had failed to comply with the statutory requirements in the Illinois Gambling Act to certify applicants to the Board. It also sought to enjoin the Board from issuing a casino license until the City had satisfied those requirements. The circuit court denied Potawatomi Casino's emergency motion for a temporary restraining order, and this court affirmed. *Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board*, No. 1-21-1561 (filed Dec. 16, 2021) (order denying plaintiff's interlocutory appeal). The Board, soon after, issued a finding of preliminary suitability in favor of one of the certified applicants, Full House Resorts. The City and the Board moved to dismiss Potawatomi Casino's complaint (735 ILCS 5/2-615, 2-619.1 (West 2020)), and the circuit court dismissed the complaint with prejudice for lack of standing. Potawatomi Casino timely appealed. Ill. S. Ct. R. 303(a) (eff. July 1, 2017).

¶ 7 II. ANALYSIS

¶ 8 A. Standing

¶ 9 Potawatomi Casino argues that the circuit court erred in dismissing its complaint for lack of standing because it did suffer an injury to its right to compete in a lawful certification process. Under Illinois law, standing "tends to vary" from federal law "in the direction of greater liberality." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 491 (1988). Illinois courts are generally more willing than federal courts to recognize standing on the part of any person "who shows that he is in fact aggrieved." *Id.* Lack of standing under Illinois law is an affirmative defense;



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it is not jurisdictional. *Glisson v. City of Marion*, 188 Ill. 2d 211, 224 (1999); see also *Soto v. Great America LLC*, 2020 IL App (2d) 180911, ¶ 20. As a consequence, a defendant bears the burden to raise and establish lack of standing, and if not timely raised, it is forfeited. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). A defendant may properly raise lack of standing in a motion to dismiss brought under section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(9) (West 2020); *Glisson*, 188 Ill. 2d at 220. When considering such a motion, a court must accept as true all well-pleaded facts in the complaint as well as any inferences that may reasonably be drawn in the plaintiff's favor. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. We review a dismissal under section 2-619 *de novo*.[1] *Glisson*, 188 Ill. 2d at 220-21.

¶ 10 The doctrine of standing is designed to preclude parties who have no interest in a controversy from bringing suit and assures that suit is brought "only by those parties with a real interest in the outcome of the controversy." *Id.* at 221. In general, standing requires "some injury in fact to a legally cognizable interest." *Id.* (citing *Greer*, 122 Ill. 2d at 492). The claimed injury must be (1) distinct and palpable, (2) fairly traceable to the defendant's actions, and (3) substantially likely to be redressed by the grant of the requested relief. *Greer*, 122 Ill. 2d at 492-93.

¶ 11 Potawatomi Casino claims a legally cognizable interest in its right to compete in a casino certification process that is fairly and lawfully conducted. The Illinois Gambling Act prescribes a process with which the City is unambiguously required to comply before the Board can consider

[1]The City argues that we should review the appeal for "clear error" because it somehow implicates the Board's decision. This contention is wholly without merit. When a circuit court dismisses a complaint under section 2-619, our review is *de novo*. See *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 681 (2010) (reviewing a section 2-619 dismissal of administrative review complaint *de novo*).



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issuing a license. 230 ILCS 10/7(e-5) (West 2020). An applicant participating in such statutorily mandated selection process would thus have a right to have a fair and compliant process. See *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 171-72 (2002) (a duty is owed to a bidder to award the contract to the lowest, responsive, responsible bidder as statutorily required, and, "as a necessary corollary, a bidder has the right to participate in a fair bidding process"). Although this interest is often implicated in cases involving a competitive bidding process, it is not strictly limited to such context. See, *e.g.*, *Illinois Road & Transportation Builders Ass'n v. County of Cook*, 2022 IL 127126, ¶ 18 (the plaintiffs had standing where the county's unconstitutional diversion of transportation funds decreased the number of projects they could bid on); *Aramark Correctional Services, LLC v. County of Cook*, No. 12 C 6148, 2012 WL 3961341, at *1, 5 (N.D. Ill. Sept. 10, 2012) (request for proposals).

¶ 12 First, Potawatomi Casino's alleged injury to this legally cognizable interest is distinct and palpable. "A distinct and palpable injury refers to an injury that cannot be characterized as a generalized grievance common to all members of the public." (Internal quotation marks omitted.) *Illinois Road & Transportation Builders Ass'n*, 2022 IL 127126, ¶ 17. Potawatomi Casino submitted an application to participate in the City's casino certification process and paid a nonrefundable application fee of $25,000. Potawatomi Casino pursued a significant business opportunity to fairly compete for a casino license, and where that opportunity was denied due to the City's alleged failure to perform the process lawfully, there is a distinct and palpable injury. See *Messenger v. Edgar*, 157 Ill. 2d 162, 171 (1993) (" '[I]nterested' does not mean merely having a curiosity about or a concern for the outcome of the controversy ***.").





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¶ 13 Next, this injury is fairly traceable to the actions of the City and the Board. The Act plainly requires that the host municipality "memorialize the details concerning the proposed riverboat or casino in a resolution that must be adopted *** before any certification is sent to the Board." 230 ILCS 10/7(e-5). The Board can act upon the license applications *only after* the municipality sends certifications to the Board. *Id.* The statute does not require the municipality to negotiate with every applicant, but it does require a good-faith negotiation on enumerated items with applicants the municipality certifies to the Board. *Id.* Here, the resolutions that the city council voted on only stated, without more, that the City and each applicant agreed "in general terms" on the enumerated items. The resolutions pointed to each applicant's initial proposal for "the details of the mutual agreements" and contemplated that final negotiations would take place after the Board completes its licensing process.[2]

¶ 14 Potawatomi Casino alleged that the City did not engage in any negotiations with the applicants during the certification process and that the City passed the certifying resolutions that fall short of the statutory requirements. The complaint expressly alleges the following violations:

> "a. Contrary to the representation in the City's 'certifying resolutions,' and the Gambling Act's requirements, the City did not negotiate in any respect with casino applicants during the RFQ process.
>
> b. The City and the applicants the City purported to 'certify' did not 'mutually agree' on the items required by the Gambling Act. In fact, the City's 'certifying resolutions'

[2] The City maintains that these resolutions are in substantial compliance with section 7(e-5). However, where Potawatomi Casino sufficiently alleged facts, including that the City did not engage in any negotiations with the applicants and that the City contemplated negotiating "after the fact," we accept those factual allegations as true for the purpose of a section 2-619 motion to dismiss. *Sandholm*, 2012 IL 111443, ¶ 55.





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recited only that the City and the applicant had 'mutually agreed *in general terms*' on the required items. [Citations.]

c. *** [T]he City did not 'memorialize the details concerning the proposed riverboat or casino in a resolution' adopted by the City's corporate authority, as the Gambling Act requires, and the City's 'certifying resolutions' do not purport to include any such memorialization." C 17-18.

¶ 15 Further, the City's corporation counsel admitted that the City did not engage in negotiations with any applicant during the certification process and that it was "fundamentally impossible" to mutually agree with the applicants on the items as to which the Act requires mutual agreement before the Board may consider issuing a casino owner's license. It is this very failure that Potawatomi Casino complains of. The injury is also traceable to the Board's conduct of acting on the applications that have been certified in a non-compliant process. According to the allegations of the complaint, the Board's acquiescence in accepting the deficient resolutions and commencing the licensing process is necessarily intertwined with the City's conduct, together denying Potawatomi Casino an opportunity to participate in a lawful and fair process:[3]

"35. *** Upon information and belief, the City's decision not to negotiate with applicants reflected and facilitated the City's plan to manipulate the casino certification process to achieve a predetermined outcome. For example, in purporting to rank casino proposals, upon information and belief, the City's outside consultant solicited and considered supplemental information from other applicants, including Full House, but

[3]That the injury is traceable to the Board's conduct is further evidenced by the redressability, as explained below, since the relief that redresses the injury would, in part, require the Board to retract the license already issued to another applicant.





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refused to consider supplemental information from plaintiff. [Citation.] Upon information and belief, this discriminatory treatment occurred with the knowledge of and at the direction of the City. [Citation.]

36. Upon information and belief, by failing to reach agreement on details of casino proposals, the City was able to obscure contingencies and weaknesses in other parties' casino proposals. For example, upon information and belief, before the City's purported certification votes, North Point conditioned its casino proposal on being the City's sole selection, and advised the City that its proposal would be less favorable to the City if the City certified multiple proposals to the Gaming Board. [Citation.] Yet the City's resolution for North Point does not reflect this critical qualification. [Citation.]

37. Upon information and belief, the City did not negotiate with applicants because its casino certification process was a sham. Indeed, just before the formal start of the October 17, 2019 special City Council meeting, according to the sworn testimony of a City Council member in the related federal action, Waukegan Mayor Samuel Cunningham approached the City Council member and told him which proposals to vote for:

> . . . as the mayor entered, he came by, he had to pass by my chair, and he said to me, these are the three that we want to send to Springfield [*i.e.*, to the Gaming Board]. Right. And that was what the vote was going to be. Right. Put those three down there. [Citation.]" C 18-19.

¶ 16 The City and the Board both argue that Potawatomi Casino's alleged injury is not traceable to their actions because the City Council had voted to not certify Potawatomi Casino. However, Potawatomi Casino's complaint alleged that the City engaged in a predetermined sham to certify





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applicants despite their applications' contingencies and shortfalls while deliberately shutting Potawatomi Casino out of the process. Based on the allegations of the complaint, the City Council's vote to not certify Potawatomi Casino itself constitutes a part of the City's unfair and unlawful certification process at the cost of Potawatomi Casino's opportunity.

¶ 17 As a result, the requested relief is substantially likely to redress Potawatomi Casino's injury, the lost opportunity. Potawatomi Casino sought declarations that the City failed to satisfy statutory requirements for certification and that the Board consequently lacks authority to issue a casino license as well as an injunctive relief enjoining the Board from issuing a casino license until the City complies with the statute. In essence, Potawatomi Casino seeks to repeat the application process on fair and lawful terms. This remedy would correct the alleged injury since it would require the City to conduct the certification process again without the alleged illegality or unfairness. Because the injury is the lost opportunity, Potawatomi Casino need not be certain whether it would ultimately secure the City's certification to the Board in a fair process, so long as the opportunity itself is given. See *Illinois Road &Transportation Builders Ass'n*, 2022 IL 127126, ¶ 27 ("[P]articularly when the injury to a plaintiff is the loss of opportunity to obtain a benefit due to the government's failure to perform a required act *** it is rarely possible to know with any confidence what *might* have happened had the government performed the act at issue or the improper conduct had been corrected." (Emphasis in original and internal quotation marks omitted.)). Accordingly, the circuit court erred in dismissing Potawatomi Casino's complaint for lack of standing.





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¶ 18 B. Private Right of Action

¶ 19 Defendants argue that the absence of a private right of action under the Act provides an alternative basis on which to affirm. See *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶ 50 (where there was no right of private action under the statute, the plaintiffs did not have standing to sue for statutory violations). The argument, however, is misguided. Plaintiff here is not seeking to bring an independent cause of action akin to a tort, but rather it is seeking to force statutory compliance. *Noyola v. Board of Education of Chicago*, 179 Ill. 2d 121, 132 (1997) (the four-factor test for private right of action not necessary where the plaintiffs were "not attempting to use a statutory enactment as the predicate for a tort action" but sought to force public officials "to do what the law requires"); *Landmarks Illinois v. Rock Island County Board*, 2020 IL App (3d) 190159, ¶ 62 (the plaintiffs sought only injunctive relief, not tort damages, to "enforce their protectable right to ensure that the public entity defendants do not act in a manner that would frustrate the proper operation of the law"). Accordingly, Potawatomi Casino need not demonstrate that the Act creates an implied right of action with respect to its claim to compel the City and the Board to comply with the Act.[4]

[4]Similarly, the argument that the Board has exclusive jurisdiction over Potawatomi Casino's claim is unpersuasive. While the Board has the authority under the Act to "fully and effectively execute [the] Act" (230 ILCS 10/5 (West 2020)), an administrative agency's authority is limited to that which is specified by statute. *Modrytzkji v. City of Chicago*, 2015 IL App (1st) 141874, ¶ 10. The plain language of section 7(e-5) conditions the Board's exercise of authority on the host municipality's certification. 230 ILCS 10/7(e-5) (West 2020). There is nothing in the language that allows the Board to bypass the City's noncompliant certification process, and Potawatomi Casino's claim here is not a claim on which the Board may exercise its exclusive jurisdiction. See *LifeEnergy, LLC v. Illinois Commerce Comm'n*, 2021 IL App (2d) 200411, ¶ 94 (when the plaintiff "challeng[ed] the scope of the agency's power to act, not just identifying irregularities or defects in the process of exercising its power," the claim is proper before the court).





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¶ 20 C. Mootness

¶ 21 While this appeal was pending, in February 2023, the Board issued a temporary operating permit to Full House, and Full House began operating a temporary casino. On June 15, 2023, the Board issued an owner's license to Full House and approved a one-year extension to operate the temporary casino while the permanent casino facility is under construction. After the issuance of the owner's license, both the City and the Board moved to dismiss the appeal as moot.

¶ 22 Defendants argue that the Board's grant of the license moots the appeal because the court can no longer grant effective relief. An appeal becomes moot "when the resolution of a question of law cannot affect the result of a case as to the parties, or when events have occurred which make it impossible for the reviewing court to render effectual relief." *Marion Hospital Corp. v. Illinois Health Facilities Planning Board*, 201 Ill. 2d 465, 471 (2002). Here, Potawatomi Casino sought more than just an injunction to prohibit the Board from issuing a license. It also sought a declaration that the Board lacked authority to issue a license because of the City's failure to comply with the statutory prerequisites in certifying applicants to the Board. If the court were to provide this requested relief, defendants would be required to retract the issued license and repeat the process. See *Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill. App. 3d 34, 50 (2008) (case not moot even when the Board had already granted the construction permit because the court could still order effectual relief by enjoining the hospital from proceeding with the construction or from obtaining an operating license without a valid permit). Further, the permanent casino is still under construction, and Full House would be operating at its temporary location for another 12 months. This case is decidedly different from *Marion*, which involved the interplay between a planning permit for a surgery center obtained from the Illinois Health Facilities Board





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and an operating license issued by the Illinois Department of Public Health. *Marion*, 201 Ill. 2d at 468-70. By the time of the *Marion* appeal, which challenged only the planning permit, a capital expenditure had been approved and made and an operating license had been issued (to which there was no challenge): "No statute or regulation had been cited which would have authorized the Department to suspend or revoke [the] operating license or otherwise limit its medical functions based on an improperly granted planning permit." *Id.* at 475. In short, even assuming the planning permit was improperly issued, there was no longer an effective remedy because there was no legal basis to rescind the operating license.

¶ 23 Further, the fact that Full House has already commenced gambling operations at its temporary facility is of no moment. The Administrative Code allows the Board to find an applicant not suitable for licensing at the final stage of review, even after it has issued the applicant a temporary operating permit. 86 Ill. Adm. Code 3000.230(f)-(g) (2000).

¶ 24 Thus, the current circumstances of the case are such that the court may compel "a restoration of the status quo ante," and where the court is able to render such effectual relief, the case is not moot. *Blue Cross Ass'n v. 666 North Lake Shore Drive Associates*, 100 Ill. App. 3d 647, 651 (1981) ("[I]f the defendant does any act which the complaint seeks to enjoin, he acts at his peril and subject to the power of the court to compel a restoration of the status quo ante ***.").

¶ 25 III. CONCLUSION

¶ 26 The motions to dismiss the appeal as moot are denied.

¶ 27 The judgment of the circuit court of Cook County is reversed, and the case is remanded for further proceedings.

¶ 28 Reversed and remanded.





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***Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board*, 2023 IL App (1st) 220883**

| | |
|---|---|
| **Decision Under Review:** | Appeal from the Circuit Court of Cook County, No. 2021-CH-5784; the Hon. Cecilia A. Horan, Judge, presiding. |
| **Attorneys for Appellant:** | Michael J. Kelly, Jill C. Anderson, Dylan Smith, and Martin Syvertsen, of Freeborn & Peters LLP, of Chicago, for appellant. |
| **Attorneys for Appellee:** | Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Christina T. Hansen, Assistant Attorney General, of counsel), for appellees Illinois Gaming Board, Charles Schmadeke, Dionne R. Hayden, Anthony Garcia, Marc E. Bell, and Marcus Fruchter.<br><br>Glenn E. Davis and Charles N. Insler, of HeplerBroom LLC, of St. Louis, Missouri, for other appellee. |





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Hearing Date: 3/16/2022 9:30 AM - 9:30 AM
Courtroom Number: 2008
Location: District 1 Court
Cook County, IL



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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH05784

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FILED DATE: 11/16/2021 10:30 AM 2021CH05784

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

| | | |
|---|---|---|
| WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company,<br><br>Plaintiff,<br><br>v.<br><br>THE ILLINOIS GAMING BOARD, an Illinois administrative agency, and, in their official capacities, CHARLES SCHMADEKE, Board Chairman, DIONNE R. HAYDEN, Board Member, ANTHONY GARCIA, Board Member, MARC E. BELL, Board Member, and MARCUS FRUCHTER, Board Administrator, and the CITY OF WAUKEGAN, an Illinois municipal corporation,<br><br>Defendants. | ) | Case No. ***2021CH05784*** |

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Waukegan Potawatomi Casino, LLC complains against defendants the Illinois Gaming Board, and, in their official capacities, Charles Schmadeke, Dionne R. Hayden, Anthony Garcia, Marc E. Bell, and Marcus Fruchter, and the City of Waukegan, as follows:

## NATURE OF THE ACTION

1. Plaintiff brings this suit to avoid irreparable harm that will result from threatened action by the Illinois Gaming Board—action for which the Board lacks statutory authority. Under the Illinois Gambling Act, the Gaming Board may consider issuing a license to operate a casino in the City of Waukegan only after the City has satisfied certain statutory prerequisites. Although the City has not satisfied those preconditions, the Board yesterday signaled its intent to act imminently on a Waukegan casino license.



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2. As discussed further below, plaintiff has been pursuing relief in federal court against the City for what plaintiff alleges was a rigged casino review process that discriminated against plaintiff and violated the Gambling Act. Evidence obtained in discovery in that federal action supports a finding that the City's casino certification process was a sham, and that the City's disregard of the Gambling Act's requirements was part and parcel of the City's plan to reach a predetermined outcome. In the federal action, a magistrate judge has scheduled a mediation between plaintiff and the City for later this month.

3. The Gaming Board's threatened action would irrevocably prejudice plaintiff's ability to remedy the City's unlawful and unfair certification process. Yet because the Board and its members enjoy Eleventh Amendment immunity from federal suit grounded in state law, plaintiff cannot seek relief against the Board in the federal action. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-106 (1984). The relief sought here against the Board is distinct from the relief sought against the City in the federal action. The federal action challenges the validity of the City's purported certification of casino proposals to the Gaming Board. The relief sought here concerns the Board's power to issue the one potential casino license for Waukegan. If the Board moves forward on a Waukegan casino license notwithstanding its lack of authority to do so, the Board will fatally undermine any effort in the federal action to rectify the City's flawed certification process. Therefore, to preserve the safeguards the legislature built into the Gambling Act and prevent irreparable harm to plaintiff and the public interest, intervention by this Court is necessary.

## PARTIES

4. Plaintiff is an Illinois limited liability company owned by the Forest County Potawatomi Community of Wisconsin, which formed plaintiff for the purpose of applying for a



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license to operate a casino in Waukegan, Illinois, and developing and operating a Waukegan casino.

5. The Illinois Gaming Board (the "Gaming Board" or the "Board") is a five-member board appointed by the Governor and confirmed by the Senate that administers a regulatory and tax collection system for riverboat casino gambling and video gaming in Illinois. The Board has a headquarters and typically holds its meetings at 160 North Lasalle Street in Chicago.

6. Charles Schmadeke is Chairman of the Gaming Board. He is named here in his official capacity.

7. Dionne R. Hayden is a member of the Gaming Board. She is named here in her official capacity.

8. Anthony Garcia is a member of the Gaming Board. He is named here in his official capacity.

9. Marc E. Bell is a member of the Gaming Board. He is named here in his official capacity.

10. The City of Waukegan (the "City") is an Illinois municipal corporation in Lake County, Illinois.

## VENUE AND JURISDICTION

11. This Court has jurisdiction over defendants pursuant to 735 ILCS 5/2-209(a)(1), (a)(14), (b)(1), and (b)(3).

12. Venue is proper in the Circuit Court of Cook County, Illinois, because, among other reasons, the Illinois Gaming Board is resident in Cook County, and because this cause of action arises from anticipated conduct of the Illinois Gaming Board in Cook County against which plaintiff seeks injunctive relief.



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## GENERAL ALLEGATIONS

### Applicable Gambling Act Provisions

13. On June 28, 2019, Governor Pritzker signed into law Public Act 101-31, expanding gaming in Illinois. Among other things, the law, as codified in the Illinois Gambling Act, authorizes the Gaming Board to issue one license to operate a casino in the City of Waukegan, as well as licenses for a number of other municipalities where casino gambling has not previously been authorized. *See* 230 ILCS 10/7(e-5).

14. Under the Gambling Act, the Gaming Board shall consider issuing a license for a Waukegan casino "only after" the City's corporate authority has certified to the Board that certain conditions have been satisfied. 230 ILCS 10/7(e-5).

15. Specifically, the Gaming Board may consider issuing a license "only after" the City's corporate authority certifies "that the applicant [for a casino license] has negotiated with the corporate authority in good faith," and that the applicant and the corporate authority "have mutually agreed" on certain specific items—the casino's permanent location, the casino's temporary location, the percentage of revenues that will be shared with the municipality, and any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality. 230 ILCS 10/7(e-5).

16. Further, under the Gambling Act, the City's corporate authority must "memorialize the details concerning the proposed riverboat or casino in a resolution that must be adopted by a majority of the corporate authority . . . *before* any certification is sent to the Board." 230 ILCS 10/7(e-5) (emphasis added).



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**The City's Purported Certification of Casino Proposals**

17. On July 3, 2019, the City of Waukegan issued a request for qualifications and proposals ("RFQ") soliciting proposals to develop and operate a casino in Waukegan. The RFQ's submittal requirements included a "non-refundable application fee" of $25,000.

18. On behalf of plaintiff, the Forest County Potawatomi Community paid the required $25,000 fee, submitted a casino proposal that met all the RFQ's submittal requirements, and, on October 11, 2019, formed plaintiff for the purpose of applying for a casino license and developing and operating a Waukegan casino.

19. On October 17, 2019, the Waukegan City Council held a special meeting to consider resolutions purporting to certify the items required by the Gambling Act as to four casino proposals. In addition to plaintiff's proposal (the "Potawatomi" proposal), the City Council voted on resolutions regarding proposals from three other would-be casino developers: Lakeside Casino LLC ("North Point"); Full House Resorts, Inc. ("Full House"); and CDI-RSG Waukegan, LLC ("Rivers"). (*See* City of Waukegan Thursday, October 17, 2019 Special City Council Meeting Agenda attached as Exhibit 1.)

20. The resolution that the City Council voted on with respect to the North Point casino proposal, including the accompanying exhibits referenced in the resolution, is publicly available at https://go.boarddocs.com/il/cowil/Board.nsf/Public, and is attached as Exhibit 2.

21. The resolution that the City Council voted on with respect to the Full House casino proposal, including the accompanying exhibits referenced in the resolution, is publicly available at https://go.boarddocs.com/il/cowil/Board.nsf/Public, and is attached as Exhibit 3.



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22. The resolution that the City Council voted on with respect to the Rivers proposal, including the accompanying exhibits referenced in the resolution, is publicly available at https://go.boarddocs.com/il/cowil/Board.nsf/Public, and is attached as Exhibit 4.

23. The resolution that the City Council voted on with respect to the Potawatomi proposal, including the accompanying exhibits referenced in the resolution, is publicly available at https://go.boarddocs.com/il/cowil/Board.nsf/Public, and is attached as Exhibit 5.

24. At the October 17, 2019 special meeting, the City Council passed the resolutions regarding the North Point, Full House, and Rivers proposals, but did not pass the resolution regarding the Potawatomi proposal. (*See* Exhibit 6 (10/17/2019 meeting minutes).)

25. At a meeting on October 21, 2019, the City Council voted to reconsider the resolution regarding the Potawatomi proposal, but, upon reconsideration, did not pass the resolution.

**Plaintiff's Pending Claims Against the City**

26. On October 21, 2019, plaintiff sued the City in the Circuit Court of Lake County, Illinois. As amended, plaintiff's complaint asserts claims under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Illinois Gambling Act, and the Illinois Open Meetings Act. Among other relief, plaintiff seeks a declaration that the City Council's votes on the purported certification resolutions are void, an injunction requiring the City to certify Potawatomi's proposal, and damages for the lost opportunity to develop a casino.

27. In January 2020, the City removed plaintiff's suit to the United States District Court for the Northern District of Illinois, where it is captioned *Waukegan Potawatomi Casino, LLC v. City of Waukegan*, 1:20-cv-750 (the "federal action").



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28. In the federal action, the parties have completed discovery and are in the process of briefing the City's motion for summary judgment. A copy of the public version of the City's summary judgment brief in the federal action is attached as Exhibit 7. A copy of the public version of plaintiff's response brief is attached as Exhibit 8.

29. As described more fully in Exhibit 8, plaintiff alleges in the federal action that the City manipulated its entire casino certification process to favor a developer who was a political benefactor of the City's then-mayor and several City Council members. (See Exhibit 8 at 2-18.)

30. In the federal action, the City has argued that, among other defenses, that it enjoys "absolute immunity" from suit. (See Exhibit 7 at 9-12.)

31. In the federal action, mediation between the parties is currently scheduled for November 30 before a federal magistrate judge.

**The City's Non-Compliant Certification Process**

32. Despite purporting to do so, the City did not satisfy the Gambling Act's prerequisites to Board consideration of a Waukegan casino license. In particular, upon information and belief based on (i) plaintiff's participation in the City's certification process, (ii) the attached resolutions voted on by the City Council, and (iii) the below-described testimony by the City's former corporation counsel:

a. Contrary to the representation in the City's "certifying resolutions," and the Gambling Act's requirements, the City did not negotiate in any respect with casino applicants during the RFQ process.

b. The City and the applicants the City purported to "certify" did not "mutually agree" on the items required by the Gambling Act. In fact, the City's "certifying resolutions" recited only that the City and the applicant had "mutually agreed *in general*



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*terms*” on the required items. (*See* Exhibit 2 at 2; Exhibit 3 at 2; Exhibit 4 at 2; Exhibit 5 at 2.)

c. As the attached resolutions show, the City did not “memorialize the details concerning the proposed riverboat or casino in a resolution” adopted by the City’s corporate authority, as the Gambling act requires, and the City’s “certifying resolutions” do not purport to include any such memorialization. As noted, under the statute, such memorialization must occur “before any certification is sent to the Board.” 230 ILCS 10/7(e-5).

33. The attorney who served as the City’s corporation counsel during the period relevant to this matter has admitted at deposition in the federal action that the City did not engage in negotiations to any extent with the casino applicants during the certification process. (See Exhibit 9 (Long 4/27/2021 Tr.) at 107:19-108:7.)

34. The same former corporation counsel testified that in his view it was “fundamentally impossible” to mutually agree with the applicants on the items as to which the Gambling Act requires mutual agreement before the Gaming Board may consider issuing a casino owner’s license for Waukegan. (See Exhibit 9 (Long 4/27/2021 Tr.) at 96:5-98:6, 99:22-103:2.)

35. The City’s non-compliance with the Gambling Act was more than merely technical. Upon information and belief, the City’s decision not to negotiate with applicants reflected and facilitated the City’s plan to manipulate the casino certification process to achieve a predetermined outcome. For example, in purporting to rank casino proposals, upon information and belief, the City’s outside consultant solicited and considered supplemental information from other applicants, including Full House, but refused to consider supplemental information from plaintiff. *See* Ex. 8



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at 10-11. Upon information and belief, this discriminatory treatment occurred with the knowledge of and at the direction of the City. *See id.*

36. Upon information and belief, by failing to reach agreement on details of casino proposals, the City was able to obscure contingencies and weaknesses in other parties' casino proposals. For example, upon information and belief, before the City's purported certification votes, North Point conditioned its casino proposal on being the City's sole selection, and advised the City that its proposal would be less favorable to the City if the City certified multiple proposals to the Gaming Board. (*See* Exhibit 8 at 11-12.) Yet the City's resolution for North Point does not reflect this critical qualification. (*See id.* at 15-16.)

37. Upon information and belief, the City did not negotiate with applicants because its casino certification process was a sham. Indeed, just before the formal start of the October 17, 2019 special City Council meeting, according to the sworn testimony of a City Council member in the related federal action, Waukegan Mayor Samuel Cunningham approached the City Council member and told him which proposals to vote for:

> . . . as the mayor entered, he came by, he had to pass by my chair, and he said to me, these are the three that we want to send to Springfield [*i.e.*, to the Gaming Board]. Right. And that was what the vote was going to be. Right. Put those three down there.

(*See* Exhibit 10 (Turner Tr.) at 46:2-47:7.)

38. Upon information and belief, which information and belief is based on (i) the City of Waukegan's "certifying" resolutions, (ii) the above-cited testimony by the City's former corporation counsel, and (iii) plaintiff's participation in the City's certification process, the City has not even mutually agreed with any casino developer on a price or other purchase terms for the City-owned parcel that is the presumed casino site. Under the Illinois Municipal Code, sale of that



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City-owned land requires approval by a three-fourths vote of the City Council (which no casino proposal received). See 65 ILCS 5/11-76-1. (*See* Exhibit 6 (10/17/2019 meeting minutes).)

39. In contrast to Waukegan, before certifying a casino proposal in October 2019, the City of Rockford mutually agreed with a casino developer on the required statutory items and memorialized the details concerning the proposed casino in a host community agreement with the developer. (*See* Exhibit 11 (Rockford City Council 10/7/2019 meeting minutes); Exhibit 12 (excerpt from 10/7/2019 City Council agenda packet including draft resolution certifying applicant, Host Community Agreement, and draft resolution approving Host Community Agreement).)

40. In Waukegan's case, because the City has not satisfied the Gambling Act's prerequisites, the Gaming Board lacks authority to consider issuing an owner's license for a Waukegan casino.

**Recent Developments Necessitating**
**Equitable Relief Against The Gaming Board**

41. The Gambling Act provides that "[t]he licenses authorized under subsection (e-5) of this Section [including a Waukegan casino license] shall be issued within 12 months after the date the license application is submitted," but that, "[i]f the Board does not issue the licenses within that time period, then the Board shall give a written explanation to the applicant as to why it has not reached a determination and when it reasonably expects to make a determination." 230 ILCS 10/7(e-10).

42. As of September 2021, according to press reports, the Illinois Gaming Board had advised that it contemplated potentially giving "initial approvals" to applicants for the Waukegan and other casino licenses in January 2022. (*See* Chicago Sun Times, "Slow play? Gaming board seeks final bids for Waukegan, south suburban casinos next month—so it can decide early next



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year," Sept. 9, 2021 (available at https://chicago.suntimes.com/2021/9/9/22665368/new-casino-south-suburbs-waukegan-illinois-gambling-gaming-board-license) (last visited Nov. 9, 2021).

43. According to press reports, Rivers has withdrawn its Waukegan casino proposal from consideration, leaving only the North Point and Full House proposals for consideration for a Waukegan casino license by the Gaming Board.

44. Late on the afternoon of November 15, 2021, the Gaming Board posted the agenda for a special meeting scheduled for this coming Thursday, November 18, 2021, at 9:00 a.m. (See Exhibit 13.)

45. Notwithstanding the City's failure to satisfy the statutory prerequisites to the issuance of a Waukegan casino license, the agenda for the November 18 meeting indicates that the Board will make a "Determination of Preliminary Suitability," and will take up the issue of "Individuals, Business Entities, and Trusts as Key Persons of Waukegan Owners License Applicant found Preliminarily Suitable." (Exhibit 13 at 3.)

46. Under the Gaming Board's rules, after a finding of preliminary suitability, the next step in the licensure process is that "the applicant's Riverboat Gaming Operation shall be assessed to determine its effectiveness, integrity, and compliance with law and Board standards." Ill. Admin. Code Tit. 86, Ch. IV, Sec. 300.230(a), (e). Matters to be assessed at this stage include such things as the gaming operations manager, proposed gaming operations and use of gaming equipment, the casino facility itself, handicapped access, support facilities, internal controls and operating procedures, security operations, and staffing. Ill. Admin. Code, Tit. 86, Ch. IV, Sec. 300.230(e)(1)(A).

47. Upon information and belief, based in part on the above provisions, the Gaming Board's finding of preliminary suitability is effectively a selection of the presumptive licensee,



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which can be expected to begin development of the casino in anticipation of the Board's assessment of gaming operations.

**CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF
(ILLINOIS GAMBLING ACT)**

48. Plaintiff incorporates the preceding paragraphs of this complaint as if fully stated here.

49. The City has failed to satisfy the statutory prerequisites for the Gaming Board to consider issuing an owner's license for a casino in Waukegan.

50. Accordingly, the Gaming Board lacks statutory authority to take any formal steps toward issuing an owner's license for a casino in Waukegan, including by issuing a determination of preliminary suitability.

51. Among other purposes, the Gambling Act is intended to maintain "public trust in the credibility and integrity of the gambling operations and the regulatory process." 230 ILCS 10/2(b). Absent the relief requested here, that purpose will be undermined.

52. Plaintiff is among the beneficiaries of the Gambling Act, and, absent the relief requested here, will suffer irreparable injury of a kind the Act was designed to prevent.

53. Absent the relief requested here, plaintiff will suffer irreparable injury for which it has no adequate remedy at law.

54. The balance of harms favors an award of equitable relief against the Gaming Board and in favor of plaintiff.

WHEREFORE, plaintiff respectfully requests that the Court:

a. Declare that the City has failed to satisfy the requirements for the Gaming Board to consider issuing a license to operate a casino in Waukegan, Illinois;



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b. Declare that the Gaming Board lacks authority to consider issuing a license to operate a Waukegan casino;

c. Award temporary, preliminary, and permanent injunctive relief enjoining the Gaming Board from taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability, until the City has satisfied the Gambling Act's requirements; and

d. Grant any other relief in plaintiff's favor, and against defendants, that the Court deems just and proper.

Dated: November 16, 2021

Respectfully submitted,

/s/ Dylan Smith
Michael J. Kelly
Dylan Smith
Martin Syvertsen
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 360-6000
mkelly@freeborn.com
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Firm No. 71182

*Attorneys for Plaintiff*
*Waukegan Potawatomi Casino, LLC*



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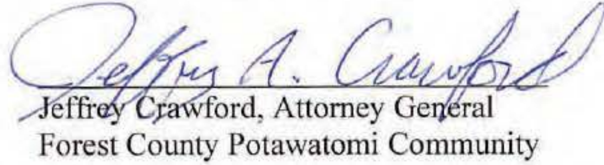
**Verification**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Jeffrey Crawford, Attorney General
Forest County Potawatomi Community



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**Thursday, October 17, 2019**
**Special City Council Meeting**

**Time of Special Meeting: 6:00 pm**
**Waukegan City Hall ~ Council Chambers**
**100 N MLK Jr. Ave - Waukegan IL 60085**
**Telephone: (847)599-2513**

## 1. Open Items

| **Subject** | **A. Roll Call** |
|---|---|
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 1. Open Items |
| Type | Procedural |

| **Subject** | **B. Pledge of Allegiance** |
|---|---|
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 1. Open Items |
| Type | |

| **Subject** | **C. Mayor's Comments** |
|---|---|
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 1. Open Items |
| Type | |

| **Subject** | **D. Recap of public comments received during comment period** |
|---|---|
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 1. Open Items |
| Type | Information |

Robert Long, Corporation Counsel
Noelle Kischer-Lepper, Director of Planning & Economic Development

The formal public comment period was open from September 18, 2019 through 5:00 p.m. on Friday, October 4, 2019. Comments were to be submitted via email to casino@waukeganil.gov, or delivered to the City Clerk's office in person or by mail.

**SA29**

File Attachments

**Complaint Exhibit 1, Page 1 of 4**



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Comment delivered to City Clerk's office.pdf (4,274 KB)
Comments from public hearing Sept 18 2019.pdf (4,597 KB)
Comments in opposition to a casino.pdf (3,957 KB)
Public comments.pdf (2,273 KB)
Potawatomi part 1.pdf (8,316 KB)
Potawatomi part 2.pdf (5,945 KB)
Potawatomi part 3.pdf (10,887 KB)
North Point part 1.pdf (3,166 KB)
North Point part 2.pdf (2,837 KB)
North Point part 3.pdf (4,147 KB)

## 2. New Business

| | |
|---|---|
| **Subject** | **A. Presentation by Johnson Consulting, consultant to the City of Waukegan** |
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 2. New Business |
| Type | |

File Attachments
CHJC Waukegan Casino Developer_Memo Report 101019.pdf (1,216 KB)

| | |
|---|---|
| **Subject** | **B. Resolution for CDI-RSG (Rivers)** |
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 2. New Business |
| Type | Action |

File Attachments
Resolution Certifying CDI RSG.docx (14 KB)
Rivers Waukegan - Updated Proposal Letter 10.04.2019.pdf (615 KB)
CDI RSG Waukegan LLC - CDI RSG RFP (Redacted)_201909031757146329.pdf (27,339 KB)
CHJC Waukegan Casino Developer_Memo Report 101019.pdf (1,216 KB)

**Motion & Voting**

(not specified)

Motion by Ald Moisio, second by Ald Kirkwood.
Final Resolution: MOTION APPROVED
AYE: Ald Bolton, Ald Seger, Ald Kirkwood, Ald Newsome, Ald Turner
NAY: Ald Moisio, Ald Rivera, Ald Florian, Ald Taylor

| | |
|---|---|
| **Subject** | **C. Resolution for Full House** |
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 2. New Business |
| Type | Action |

**SA30**

File Attachments
Resolution Certifying Full House Resorts.docx (14 KB)

**Complaint Exhibit 1, Page 2 of 4**



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Full House Resorts - FullHouseResorts-RFQ Response Book_Redacted_201909041506232942.pdf (14,822 KB)
CHJC Waukegan Casino Developer_Memo Report 101019.pdf (1,216 KB)

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**Motion & Voting**

(not specified)

Motion by Ald Bolton, second by Ald Seger.
Final Resolution: MOTION APPROVED
AYE: Ald Bolton, Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner
NAY: Ald Rivera, Ald Florian, Ald Taylor

| | |
|---|---|
| **Subject** | **D. Resolution for Lakeside Casino LLC** |
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 2. New Business |
| Type | Action |

File Attachments
NPC Letter to City 09262019.pdf (244 KB)
Lakeside Casino LLC - North Point Casino Proposal (digital) (FOIA redactions 08-30-2019)_Redacted_201909031456322081.pdf (46,394 KB)
CHJC Waukegan Casino Developer_Memo Report 101019.pdf (1,216 KB)
Resolution Certifying LakesideCasinoLLC.docx (14 KB)

**Motion & Voting**

(not specified)

Motion by Ald Newsome, second by Ald Turner.
Final Resolution: MOTION APPROVED
AYE: Ald Bolton, Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner
NAY: Ald Rivera, Ald Florian, Ald Taylor

| | |
|---|---|
| **Subject** | **E. Resolution for Potawatomi** |
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 2. New Business |
| Type | Action |

File Attachments
Resolution Certifying Potawatomi.docx (14 KB)
Supplemental Letter to Waukegan Casino Review Team 10-4-19.pdf (248 KB)
10.08.19 Letter to Corporation Counsel re_Correct Purchase Price.pdf (183 KB)
Potawatomi Hotel and Casino - Final Application_Redacted and Ex 1 - 9.pdf (24,513 KB)
Exhibit 1 Hospitality and Gaming Solutions Comments.pdf (183 KB)
Exhibit 2 Letter to P. Olson from R. Ferguson 9-30-19.pdf (461 KB)
Exhibit 3 Redevelopment in Milwaukee's Menomonee Valley. What Worked and Why (00477001xB15CF).pdf (4,511 KB)
CHJC Waukegan Casino Developer_Memo Report 101019.pdf (1,216 KB)

**SA31**

**Motion & Voting**


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(not specified)

Motion by Ald Kirkwood, second by Ald Moisio.
Final Resolution: MOTION FAILED
AYE: Ald Moisio, Ald Newsome
NAY: Ald Bolton, Ald Seger, Ald Kirkwood, Ald Turner, Ald Rivera, Ald Florian, Ald Taylor

| | |
|---|---|
| **Subject** | **F. Resolution requesting consideration of local interests** |
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 2. New Business |
| Type | Action |

File Attachments
Accompanying resolution, final.docx (16 KB)

**Motion & Voting**

(not specified)

Motion by Ald Florian, second by Ald Rivera.
Final Resolution: MOTION APPROVED
AYE: Ald Bolton, Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Florian, Ald Taylor
NAY: Ald Turner, Ald Rivera

## 3. Closing Items

| | |
|---|---|
| **Subject** | **A. Motion to Adjourn** |
| Meeting | Oct 17, 2019 - Special City Council Meeting |
| Category | 3. Closing Items |
| Type | Procedural |

City of Progress

SA32

Complaint Exhibit 1, Page 4 of 4



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**RESOLUTION No. 2019-R-___**

**A RESOLUTION CERTIFYING LAKESIDE CASINO LLC's PROPOSAL FOR A RIVERBOAT GAMING OPERATION TO THE ILLINOIS GAMING BOARD**

**WHEREAS**, Pursuant to Public Act 101-0031(the "Act"), the State of Illinois earmarked an owner's license for the conduct of riverboat gambling in the City of Waukegan (the "City"); and

**WHEREAS**, the City issued a Request for Qualifications and Proposals ("RFQ") to identify prospective developers of a Riverboat gambling operation (hereinafter referred to as either "casino" or "riverboat"); and

**WHEREAS**, the City received a response from Lakeside Casino, LLC (the "Applicant") to build and operate a casino in Waukegan, Illinois hereto attached as Exhibit A; and

**WHEREAS**, the City held a Public Hearing on September 18, 2019 at 4:00pm at the Genesee Theatre, where the Applicant presented their proposal to the public, and the public was given time to address both the Applicant and the City's Corporate Authorities; and

**WHEREAS**, the City allowed three weeks of written comment following the Public Hearing, receiving more than 1,200 comments from residents and the public; and

**WHEREAS**, the City Council further heard oral comments from more than two dozen members of the public on the casino proposals at its regularly scheduled Council meeting held October 7, 2019; and

**WHEREAS**, the City Staff and consultants thoroughly vetted the Applicant's proposal, with their findings being incorporated into the report prepared by Charles Johnson, hereto attached as Exhibit B; and

**WHEREAS**, the Act requires that the corporate authority of the City submit a certification to the Illinois Gaming Board (the "Board") concerning certain items found in Section 230 ILCS 10/7(e-5); and

**WHEREAS**, the City Council desires to certify the Applicant to the Board for its competitive bidding process, pursuant to the Act, as the Board has specialized knowledge and technical expertise to more thoroughly investigate, and select of the applicants certified by the City, to select that applicant who will be most beneficial to the City and State; and

**WHEREAS**, the City contemplates that final negotiations on all of the terms with the Applicant cannot take place until after the Board completes its process and issues a license; and



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**WHEREAS,** the City Council finds that the Applicant has negotiated with the Corporate Authority in good faith; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms upon a permanent location for the riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on location for a temporary riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on the percentage of revenues to be shared with the City; and

**WHEREAS,** the City and the Applicant have mutually agreed in general terms on the zoning, licensing, public health, and other issues under the jurisdiction of the City;

**NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, LAKE COUNTY, ILLINOIS as follows:**

**SECTION ONE**. The foregoing recitals are hereby incorporated as findings of fact as if fully set forth here.

**SECTION TWO**. The Applicant, Lakeside Casino, LLC, is hereby certified to the Illinois Gaming Board, with the details of the mutual agreements included in the Applicant's Response to the City's Request for Proposals, hereto attached as Exhibit A, which should be read in conjunction with any additional materials submitted by the Applicant, hereto attached as Exhibit C. All Exhibits are hereby incorporated in their entirety as if fully set forth here.

**SECTION THREE**. This Resolution shall take effect immediately upon passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, ILLINOIS, ON THIS ___ DAY OF OCTOBER, 2019.

______________________________________

SAMUEL D. CUNNINGHAM, JR.
MAYOR OF THE CITY OF WAUKEGAN

ATTEST:



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________________________________________

JANET E. KILKELLY, CITY CLERK



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**RESOLUTION No. 2019-R-___**

**A RESOLUTION CERTIFYING FULL HOUSE RESORTS' PROPOSAL FOR A RIVERBOAT GAMING OPERATION TO THE ILLINOIS GAMING BOARD**

**WHEREAS**, Pursuant to Public Act 101-0031(the "Act"), the State of Illinois earmarked an owner's license for the conduct of riverboat gambling in the City of Waukegan (the "City"); and

**WHEREAS**, the City issued a Request for Qualifications and Proposals ("RFQ") to identify prospective developers of a Riverboat gambling operation (hereinafter referred to as either "casino" or "riverboat"); and

**WHEREAS**, the City received a response from Full House Resorts (the "Applicant") to build and operate a casino in Waukegan, Illinois hereto attached as Exhibit A; and

**WHEREAS**, the City held a Public Hearing on September 18, 2019 at 4:00pm at the Genesee Theatre, where the Applicant presented their proposal to the public, and the public was given time to address both the Applicant and the City's Corporate Authorities; and

**WHEREAS**, the City allowed three weeks of written comment following the Public Hearing, receiving more than 1,200 comments from residents and the public; and

**WHEREAS**, the City Council further heard oral comments from more than two dozen members of the public on the casino proposals at its regularly scheduled Council meeting held October 7, 2019; and

**WHEREAS**, the City Staff and consultants thoroughly vetted the Applicant's proposal, with their findings being incorporated into the report prepared by Charles Johnson, hereto attached as Exhibit B; and

**WHEREAS**, the Act requires that the corporate authority of the City submit a certification to the Illinois Gaming Board (the "Board") concerning certain items found in Section 230 ILCS 10/7(e-5); and

**WHEREAS**, the City Council desires to certify the Applicant to the Board for its competitive bidding process, pursuant to the Act, as the Board has specialized knowledge and technical expertise to more thoroughly investigate, and select of the applicants certified by the City, to select that applicant who will be most beneficial to the City and State; and

**WHEREAS**, the City contemplates that final negotiations on all of the terms with the Applicant cannot take place until after the Board completes its process and issues a license; and



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**WHEREAS,** the City Council finds that the Applicant has negotiated with the Corporate Authority in good faith; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms upon a permanent location for the riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on location for a temporary riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on the percentage of revenues to be shared with the City; and

**WHEREAS,** the City and the Applicant have mutually agreed in general terms on the zoning, licensing, public health, and other issues under the jurisdiction of the City;

**NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, LAKE COUNTY, ILLINOIS as follows:**

**SECTION ONE**. The foregoing recitals are hereby incorporated as findings of fact as if fully set forth here.

**SECTION TWO**. The Applicant, Full House Resorts, is hereby certified to the Illinois Gaming Board, with the details of the mutual agreements included in the Applicant's Response to the City's Request for Proposals, hereto attached as Exhibit A. All Exhibits are hereby incorporated in their entirety as if fully set forth here.

**SECTION THREE**. This Resolution shall take effect immediately upon passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, ILLINOIS, ON THIS ___ DAY OF OCTOBER, 2019.

______________________________________

SAMUEL D. CUNNINGHAM, JR.
MAYOR OF THE CITY OF WAUKEGAN

ATTEST:

______________________________________

JANET E. KILKELLY, CITY CLERK



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COOK COUNTY, IL
2021CH05784

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**RESOLUTION No. 2019-R-___**

**A RESOLUTION CERTIFYING CDI-RSG's PROPOSAL FOR A RIVERBOAT GAMING OPERATION TO THE ILLINOIS GAMING BOARD**

**WHEREAS**, Pursuant to Public Act 101-0031(the "Act"), the State of Illinois earmarked an owner's license for the conduct of riverboat gambling in the City of Waukegan (the "City"); and

**WHEREAS**, the City issued a Request for Qualifications and Proposals ("RFQ") to identify prospective developers of a Riverboat gambling operation (hereinafter referred to as either "casino" or "riverboat"); and

**WHEREAS**, the City received a response from CDI-RSG, doing business as "Rivers" (the "Applicant") to build and operate a casino in Waukegan, Illinois hereto attached as Exhibit A; and

**WHEREAS**, the City held a Public Hearing on September 18, 2019 at 4:00pm at the Genesee Theatre, where the Applicant presented their proposal to the public, and the public was given time to address both the Applicant and the City's Corporate Authorities; and

**WHEREAS**, the City allowed three weeks of written comment following the Public Hearing, receiving more than 1,200 comments from residents and the public; and

**WHEREAS**, the City Council further heard oral comments from more than two dozen members of the public on the casino proposals at its regularly scheduled Council meeting held October 7, 2019; and

**WHEREAS**, the City Staff and consultants thoroughly vetted the Applicant's proposal, with their findings being incorporated into the report prepared by Charles Johnson, hereto attached as Exhibit B; and

**WHEREAS**, the Act requires that the corporate authority of the City submit a certification to the Illinois Gaming Board (the "Board") concerning certain items found in Section 230 ILCS 10/7(e-5); and

**WHEREAS**, the City Council desires to certify the Applicant to the Board for its competitive bidding process, pursuant to the Act, as the Board has specialized knowledge and technical expertise to more thoroughly investigate, and select of the applicants certified by the City, to select that applicant who will be most beneficial to the City and State; and

**WHEREAS**, the City contemplates that final negotiations on all of the terms with the Applicant cannot take place until after the Board completes its process and issues a license; and



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**WHEREAS,** the City Council finds that the Applicant has negotiated with the Corporate Authority in good faith; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms upon a permanent location for the riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on location for a temporary riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on the percentage of revenues to be shared with the City; and

**WHEREAS,** the City and the Applicant have mutually agreed in general terms on the zoning, licensing, public health, and other issues under the jurisdiction of the City;

**NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, LAKE COUNTY, ILLINOIS as follows:**

**SECTION ONE**. The foregoing recitals are hereby incorporated as findings of fact as if fully set forth here.

**SECTION TWO**. The Applicant, CDI-RSG, is hereby certified to the Illinois Gaming Board, with the details of the mutual agreements included in the Applicant's Response to the City's Request for Proposals, hereto attached as Exhibit A, which should be read in conjunction with any additional materials submitted by the Applicant, hereto attached as Exhibit C. All Exhibits are hereby incorporated in their entirety as if fully set forth here.

**SECTION THREE**. This Resolution shall take effect immediately upon passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, ILLINOIS, ON THIS ___ DAY OF OCTOBER, 2019.

________________________________________

SAMUEL D. CUNNINGHAM, JR.
MAYOR OF THE CITY OF WAUKEGAN

ATTEST:

________________________________________

JANET E. KILKELLY, CITY CLERK



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**RESOLUTION No. 2019-R-___**

**A RESOLUTION CERTIFYING POTAWATOMI's PROPOSAL FOR A RIVERBOAT GAMING OPERATION TO THE ILLINOIS GAMING BOARD**

**WHEREAS**, Pursuant to Public Act 101-0031(the "Act"), the State of Illinois earmarked an owner's license for the conduct of riverboat gambling in the City of Waukegan (the "City"); and

**WHEREAS**, the City issued a Request for Qualifications and Proposals ("RFQ") to identify prospective developers of a Riverboat gambling operation (hereinafter referred to as either "casino" or "riverboat"); and

**WHEREAS**, the City received a response from Potawatomi (the "Applicant") to build and operate a casino in Waukegan, Illinois hereto attached as Exhibit A; and

**WHEREAS**, the City held a Public Hearing on September 18, 2019 at 4:00pm at the Genesee Theatre, where the Applicant presented their proposal to the public, and the public was given time to address both the Applicant and the City's Corporate Authorities; and

**WHEREAS**, the City allowed three weeks of written comment following the Public Hearing, receiving more than 1,200 comments from residents and the public; and

**WHEREAS**, the City Council further heard oral comments from more than two dozen members of the public on the casino proposals at its regularly scheduled Council meeting held October 7, 2019; and

**WHEREAS**, the City Staff and consultants thoroughly vetted the Applicant's proposal, with their findings being incorporated into the report prepared by Charles Johnson, hereto attached as Exhibit B; and

**WHEREAS**, the Act requires that the corporate authority of the City submit a certification to the Illinois Gaming Board (the "Board") concerning certain items found in Section 230 ILCS 10/7(e-5); and

**WHEREAS**, the City Council desires to certify the Applicant to the Board for its competitive bidding process, pursuant to the Act, as the Board has specialized knowledge and technical expertise to more thoroughly investigate, and select of the applicants certified by the City, to select that applicant who will be most beneficial to the City and State; and

**WHEREAS**, the City contemplates that final negotiations on all of the terms with the Applicant cannot take place until after the Board completes its process and issues a license; and



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**WHEREAS,** the City Council finds that the Applicant has negotiated with the Corporate Authority in good faith; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms upon a permanent location for the riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on location for a temporary riverboat; and

**WHEREAS**, the City and the Applicant have mutually agreed in general terms on the percentage of revenues to be shared with the City; and

**WHEREAS,** the City and the Applicant have mutually agreed in general terms on the zoning, licensing, public health, and other issues under the jurisdiction of the City;

**NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, LAKE COUNTY, ILLINOIS as follows:**

**SECTION ONE**. The foregoing recitals are hereby incorporated as findings of fact as if fully set forth here.

**SECTION TWO**. The Applicant, Potawatomi, is hereby certified to the Illinois Gaming Board, with the details of the mutual agreements included in the Applicant's Response to the City's Request for Proposals, hereto attached as Exhibit A, which should be read in conjunction with any additional materials submitted by the Applicant, hereto attached as Exhibit C. All Exhibits are hereby incorporated in their entirety as if fully set forth here.

**SECTION THREE**. This Resolution shall take effect immediately upon passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, ILLINOIS, ON THIS ___ DAY OF OCTOBER, 2019.

______________________________________

SAMUEL D. CUNNINGHAM, JR.
MAYOR OF THE CITY OF WAUKEGAN

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## SPECIAL CITY COUNCIL MEETING - Waukegan Casino
### *OFFICE OF THE WAUKEGAN CITY CLERK*
### *JANET E. KILKELLY*

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**The Council of the City of Waukegan met in Special Session on Thursday, October 17, 2019 at 6:00 PM**
**City Council Chambers, City Hall. 100 N. Martin Luther King Jr. Ave, Waukegan.**
**Mayor; Samuel D. Cunningham Jr, City Clerk Executive Secretary; Nathalie Alvarez, and Corporation Counsel; Robert J. Long, were present.**
**Absent: City Clerk; Janet E. Kilkelly, Treasurer; Dr. John R. Schwab and Deputy City Clerk; David A. Patterson.**

---

**1. OPENING ITEMS**
**Action A:** Call Meeting to Order / Roll Call
Present: Ald Bolton, Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner, Ald Rivera, Ald Florian, Ald Taylor
Absent: None.

**Action B:** Pledge of Allegiance

**Action C**: Mayor's Comments

Mayor Cunningham welcomed everyone and thanked everyone for engaging in the casino process. He gave a special thanks to governor Pritzker, state elected officials, State Senator Terry Link, Representative Rita, all present and past Waukegan Aldermen, our neighbors North Chicago and Park City and all residents.

**Action D**: Recap of public comments received during comment period

Corporation Counsel, Robert J Long stated that this meeting is a continuation of public hearing that started September 17th. Attorney Long then introduced Noelle, Director of planning and Economic Development to further discuss public comments. Noelle discussed proposals, Johnson Consulting, public hearing and the 17th day comment period. Noelle also gave a brief summary and overview of the casino submittals and answered questions from Ald Turner, Ald Rivera, ald Florian and Ald Taylor.

---

**2.NEW BUSINESS**
**Action A**: Presentation by Johnson Consulting, consultant to the City of Waukegan

Charles Johnson, President of Johnson Consulting gave a presentation in regard to the Casino Developer Report and answered questions from the aldermen.

**Action B:** Resolution for CDI-RSG (Rivers)

**AYE:** Ald Bolton, Ald Seger, Ald Kirkwood, Ald Newsome, Ald Turner
**NAY:** Ald Moisio, Ald Rivera, Ald Florian, Ald Taylor
**ABSENT:** None.
**ABSTAIN:** None.
**MOTION APPROVED**

**Action C:** Resolution for Full House

**AYE:** Ald Bolton, Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner
**NAY:** Ald Rivera, Ald Florian, Ald Taylor
**ABSENT:** None.
**ABSTAIN:** None.

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**MOTION APPROVED**

**Action D:** Resolution for Lakeside Casino LLC

**AYE:** Ald Bolton, Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner
**NAY:** Ald Rivera, Ald Florian, Ald Taylor
**ABSENT:** None.
**ABSTAIN:** None.
**MOTION APPROVED**

**Action E:** Resolution for Potawatomi

**AYE:** Ald Moisio, Ald Newsome,
**NAY:** Ald Bolton, Ald Seger, Ald Kirkwood, Ald Turner, Ald Rivera, Ald Florian, Ald Taylor
**ABSENT:** None.
**ABSTAIN:** None.
**MOTION FAILED**

**Action F:** Resolution requesting consideration of local interests

**AYE:** Ald Bolton, Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Florian, Ald Taylor
**NAY:** Ald Turner, Ald Rivera
**ABSENT:** None.
**ABSTAIN:** None.
**MOTION APPROVED**

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**3.CLOSING ITEMS**
Action A: Motion to Adjourn
Motion by Ald Seger, second by ald Taylor to adjourn at **6:41PM**

---

**These minutes were transcribed by the Office of the Waukegan City Clerk:**

________________________________

**JANET E. KILKELLY, CITY CLERK**
**Office of the City Clerk**
**City of Waukegan**
**Waukegan, Illinois**

*ATTEST:*

________________________________

**DAVID A. PATTERSON, DEPUTY CITY CLERK**
**Office of the City Clerk**
**City of Waukegan**
**Waukegan, Illinois**

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**Complaint Exhibit 6, Page 2 of 2**





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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | | |
|---|---|---|
| WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company, | ) | |
| | ) | Case No. 1:20-cv-750 |
| Plaintiff, | ) | |
| | ) | Judge John F. Kness |
| v. | ) | |
| | ) | Magistrate Judge M. David Weisman |
| CITY OF WAUKEGAN, an Illinois municipal corporation, | ) | |
| | ) | |
| Defendant. | ) | |

**PLAINTIFF WAUKEGAN POTAWATOMI CASINO'S MEMORANDUM IN OPPOSITION TO DEFENDANT CITY OF WAUKEGAN'S MOTION FOR SUMMARY JUDGMENT**

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*Counsel for Plaintiff Waukegan Potawatomi Casino, LLC*

Dated: October 29, 2021



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## INTRODUCTION

On the evening of October 17, 2019, the Waukegan City Council assembled for a special meeting. Up for consideration were four proposals to develop a Waukegan casino—a prospect the new state gaming expansion law made possible. Under the law, only proposals receiving City Council support would be considered by the Illinois Gaming Board for a casino license.

For the public gathered that evening in the council chamber, the meeting was supposed to be the culmination of a fair and open casino review process. But all was not what it seemed.

The City Council members took their seats on the dais at the front of the chamber, waiting for the meeting to begin. At that point, according to Alderperson Keith Turner's sworn testimony, Mayor Samuel Cunningham entered:

> . . . as the mayor entered, he came by, he had to pass by my chair, and he said to me, these are the three that we want to send to Springfield. Right. And that was what the vote was going to be. Right. Put those three down there.

(*See* Pl. LR 56.1 Stmt. of Additional Material Facts ("SAF") ¶ 69.) Four City Council members voted precisely as Cunningham had directed. Those four votes were decisive in the evening's results: The City Council advanced three casino proposals "to Springfield," but not Potawatomi's.

Cunningham's secret directive was the culmination of a rigged process—a process Cunningham manipulated to achieve the outcome he preferred. Although Cunningham took steps to project an appearance of municipal impartiality, the City's casino review process discriminated against plaintiff Potawatomi without any rational basis, disregarded the requirements of the gaming expansion law, and violated both the letter and the spirit of the Illinois Open Meetings Act.

These are not mere allegations. Discovery has yielded abundant and compelling evidence to support Potawatomi's claims. Rather than deal with that evidence, the City has attempted to barricade itself behind supposed legal defenses. But those defenses are either non-existent or


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dependent on the outcome of factual disputes that cannot be resolved short of trial. Therefore, the City is not entitled to summary judgment.

## FACTS PRECLUDING SUMMARY JUDGMENT

Based on the evidence adduced in discovery, a jury could find the following facts, which must be viewed, and from which all reasonable inferences must be drawn, in Potawatomi's favor. *Mlsna v. Union Pac. R.R. Co.*, 975 F.3d 629, 633 (7th Cir. 2020) (reversing summary judgment).

### The Bond-Cunningham Connection

As 2018 turned to 2019, Waukegan Mayor Samuel Cunningham and Michael Bond shared two related concerns—their mutual effort to elect a slate of Bond-backed candidates for City Council, and Bond's plans to develop a casino in Waukegan. *See infra*, pp. 2-7.

A former Illinois state senator, Bond was now CEO and part owner of Tap Room Gaming, a video gaming company. (SAF ¶ 3.) During Cunningham's successful 2017 run for mayor, Bond had advised Cunningham on campaign strategy. (*Id.* ¶ 2.) Through companies Bond controlled, political action committees, and business associates, Bond directed more than $50,000 in support to Cunningham's campaign during the critical final weeks before the 2017 election, making Bond by far the campaign's largest benefactor. (*Id.* ¶ 5.)

When Cunningham won, he took charge of one of the few Illinois municipalities with a strong-mayor form of government—meaning that, with few exceptions, Cunningham controlled all City departments and could appoint and remove municipal officers. (SAF ¶ 1.) As corporation counsel, Cunningham installed attorney Robert Long, who previously had represented Cunningham and his family, including on campaign-related issues. (*Id.* ¶ 6.)

### Bond Sponsors Candidates Receptive to His Casino Vision

Starting in late 2018, Bond met with a number of City officials and candidates, mostly at Tap Room's headquarters, to pitch his vision for a Waukegan casino, which included an

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entertainment component. (SAF ¶¶ 8, 10.) Cunningham was one of those officials. (*Id.* ¶ 8.) Another was Thomas Maillard. (*Id.*) Formerly a Bond campaign staffer and Tap Room employee, Maillard worked on Cunningham's 2017 campaign at Bond's suggestion and then became a special projects analyst for the mayor. (*Id.* ¶ 9.) Bond also delivered versions of his casino pitch to, at a minimum, incumbent City Council members Sylvia Sims Bolton (First Ward), Greg Moisio (Third Ward), David Villalobos (Fourth Ward), Edith Newsome (Fifth Ward), Lynn Florian (Eighth Ward), and Ann Taylor (Ninth Ward), as well as Sixth Ward candidate Keith Turner. (*Id.* ¶ 8.)

Bond treated Second Ward alderman Patrick Seger and Fourth Ward candidate Roudell Kirkwood to tours of Tap Room, but Seger and Kirkwood claim that the tour did not include a casino pitch. (SAF ¶ 11.) At around the time Kirkwood received his tour, he was about to or had recently become president and owner of a bar and lounge, managed by his son, that featured five Tap Room Gaming video gaming terminals. *(Id.* ¶ 25.*)* From January through October 2019, those Tap Room Gaming devices generated more than $2.5 million in total wagering activity, yielding $216,020 in net wagering activity for Kirkwood's business before taxes. (*Id.*)

Once Bond had gauged City Council candidates' receptivity to his casino pitch, he threw his support behind six of them. (SAF ¶ 14, 18, 19-24.) Again using a network of companies he controlled, associates, and political action committees, including the Video Gaming United Association and the Waukegan Voter Alliance, Bond directed more than $250,000 in financial support to his six candidates in the April 2019 City Council election, providing all or almost all of the funding for the four candidates who won seats on the City Council. (*Id.* ¶ ¶18, 20-23.)[1]

[1] The only portions of those funds not originating with one of Bond's companies were $30,000 that Bond solicited from another gaming company (which later purchased Tap Room) and $2,500 that Bond solicited from Cunningham's campaign. (*Id.* ¶ 18.)



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Bond delivered more than just financial support to his favored City Council candidates. He built them a turnkey campaign operation. Bond installed 28-year-old Jon Kozlowski as titular head of the Video Gaming United Association, an "industry association" Bond founded in 2016 that counted Tap Room as its only dues-paying member. (SAF ¶ 7.) Notably, Kozlowski had been instrumental in reaching out to City Council members and candidates to schedule their casino-related meetings with Bond. (*Id.* ¶ 8.) In the 2019 City Council elections, Kozlowski set up a joint campaign office for the Bond-backed candidates and provided campaign support that included coordinating mail programs and phone banks, overseeing campaign staff and field work, helping set up video shoots for campaign ads, and arranging for a consultant to handle the candidates' campaign filings. (*Id.* ¶ 14.) At times, Kozlowski himself picked up checks at Tap Room for the Waukegan Voter Alliance, the chief PAC through which Bond funded his candidates. (*Id.* ¶ 19.) Kozlowski also communicated with Bond about funding for the six campaigns. (*Id.*)

That was not all. Funded by Tap Room Gaming's "dues" to the Video Gaming United Association, Kozlowski retained a Springfield law firm recommended by Will Cousineau, a lobbyist who worked for Bond on gaming issues, to mount successful challenges to the candidacies of primary opponents to incumbent City Council members Bolton and Seger. (SAF ¶ 15.) Kozlowski later arranged for the same Springfield law firm to represent the Bolton and Kirkwood campaigns in response to complaints filed with the Illinois State Board of Elections. (*Id.* ¶ 16.) The firm's fees were paid by the Waukegan Voter Alliance. (*Id.*)

Cunningham and Maillard were allies in this effort to stack the City Council with Bond supporters. In March 2019, about two weeks before the election, Bond and Cunningham exchanged the following texts in a conversation that also included Maillard and Kozlowski:









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Four of the Bond-backed candidates—Bolton, Seger, Kirkwood, and Turner—prevailed, with campaigns entirely or almost entirely financed by Bond's campaign-finance network. (SAF ¶¶ 20-23.) In late May 2019, weeks *after* the election, at a time when Turner's campaign had only $1,884 on hand, the Waukegan Voter Alliance contributed $6,273 to his campaign. (*Id.* ¶ 24.) That money enabled the campaign to repay Turner $2,700 he had loaned it earlier that year and to pay $4,783 the campaign owed to a printing company. (*Id.*.)

**The Bond-Cunningham Collaboration**

Following his relative success packing the City Council, Bond turned his focus not only to Cunningham's political fortunes but also to Cunningham's control of City government. On April 8, 2019, Bond texted Cunningham advice about City Council committee assignments:

> Bond: Let's think through your [City Council] committee assignments when we get together on Tuesday. Hold off on commitments if you can. You need to make sure you have the right people in the right spots. You should not empower your enemies with powerful committee chairmanships or assignments. Just my thoughts.
>
> Cunningham: Will do and I think we have done that. I'll show you the list today. (SAF ¶ 28.)









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In mid-April 2019, Bond invited Cunningham, Maillard, Kozlowski, lobbyist Cousineau, and attorney Michael Del Galdo to Bond's lake house for an early Cunningham re-election strategy session. (*Id.* ¶ 27.)

Bond and Cunningham also continued to communicate about Bond's plans for a casino in Waukegan. In May 2019, for example, a casino update from Bond provoked an enthusiastic response from the mayor:

> Bond: I'm in Las Vegas traveling to Hard Rock Casino in Tulsa later today. I'm not sure we need the Hard Rock brand but I want to make sure we have the option. They basically take a licensing fee and this just makes the economics more challenging. I'll let you know how it goes.
>
> Cunningham: Awesome (SAF ¶ 29.)

In mid-June 2019, Bond texted Cunningham about the Waukegan casino license fee , urging, "Host communities will need to take this into consideration when working with developers." (*Id.* ¶ 30.) Cunningham acknowledged the message and advised, "We [a]r[e] getting [ou]r RFQ [Request for Qualifications and Proposals] as we speak," prompting Bond to reply, "Awesome!!!" (*Id.*)

On June 28, 2019, Governor Pritzker signed SB 690 into law. (Doc. 116 ("Def. LR 56.1 Stmt.") ¶ 1.) That morning, Bond texted Cunningham to call "before 10am"—presumably to speak before the bill signing, at which point (as Bond reminded Cunningham) any communication between them would need to be reported to the Illinois Gaming Board. (SAF ¶ 31.)

When the City issued its casino RFQ on July 3, 2019, there was an added obstacle to further Bond-Cunningham communication, as the RFQ generally barred contact between would-be casino developers and City officials or employees. (SAF ¶ 32.) Yet on July 12, 2019, Cunningham texted Bond about the Milan Banquet Hall, a facility across the street from the presumed casino site (Fountain Square) and thus potentially useful to Bond in his quest to develop a casino:

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| | |
|---|---|
| Cunningham: | R u interested in the Milan Banquet Hall? |
| Bond: | Yes. |
| Cunningham: | Ok they might be open to sales |
| Bond: | Can you send me contact info? |
| Cunningham: | Yes, (*Id.* ¶ 33.) |

At the end of July, as required by statute, the City submitted a report to the Illinois Gaming Board, with a copy to Cunningham, disclosing its contacts with casino developers over the past month. (*Id.* ¶ 34.) The report did not include Cunningham's July 12 text exchange with Bond. (*Id.*)

**The City's Casino RFQ Process—Phase 1**

The Cunningham administration put in place a casino RFQ process that could not pass any objective test for fairness or transparency. Instead, a jury could draw the inference that the City deliberately stacked the process in Bond's favor. Released July 3, 2019, on the eve of what was essentially a four-day holiday weekend, the RFQ initially set a response deadline of July 22, 2019. (Def. LR 56.1 Stmt. ¶ 5.) Even granting that SB 690 imposed onerous time constraints on the City, this absurdly tight deadline seemed designed to deter rather than invite submissions, and to favor Bond, a founding partner in the casino applicant known as "North Point," (SAF ¶ 3), who, as noted, had been pitching his casino vision to Waukegan officials months earlier. As described above, after the RFQ issued, Cunningham communicated with Bond on a casino-related matter, in violation of the RFQ, and failed to report it, in violation of statute.

The City did not initially retain a consultant with casino expertise, either before or in the weeks after the RFQ's release. (SAF ¶ 42.) Rather, the City initially relied on a team Cunningham assembled to review casino proposals: Cunningham, Maillard (the former Bond staffer and Tap Room employee), corporation counsel Long, Long's deputy, the City's planning and zoning



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director, and attorney James Vasselli of the Del Galdo law firm—the firm whose name partner attended Cunningham's re-election strategy session at Bond's lake house in April 2019. (*Id.*)[2]

### Increased Scrutiny of the Bond-Cunningham Connection

As the RFQ process moved forward, allegations about Bond's undue influence garnered some publicity. On the day SB 690 became law, the City sued aspiring casino developer Waukegan Gaming. (SAF ¶ 35.) The City sought a declaration that casino development rights Waukegan Gaming claimed under an agreement from the early 2000s were no longer operative. (*Id.*)

In mid-July, Waukegan Gaming alleged in counterclaims against the City that Bond's "substantial political contributions" to City officials, including Cunningham and City Council members, were intended to further his efforts to develop a Waukegan casino, and that Bond "appear[ed] to have the inside track with Mayor Cunningham . . . ." (SAF ¶ 37.) Commenting for a news story about the allegations, Cunningham stated that the City's "plan" was to recommend multiple developers for consideration by the Illinois Gaming Board, which "quashes the argument [Waukegan Gaming] is trying to make." (*Id.* ¶ 38) In retrospect, this statement was noteworthy, because the City Council—not Cunningham—would decide which proposals to forward to the Gaming Board. Yet Cunningham apparently believed he had sufficient control over the process to ensure that more than one applicant would move on to the next stage.

On August 6, 2019, the day after the City received casino proposals, new public scrutiny loomed for Cunningham. On that date, a reporter emailed him a series of pointed questions for "a story I plan to publish this week about the casino, political donations from Tap Room Gaming and its affiliates as well as Tap Room-funded PACs and a dark money group that pushed for a casino

[2] As that group prepared internal "score sheets" for reviewing casino proposals, drafts evolved from largely tracking the City's RFQ to reflecting the desire of Cunningham (who, as noted, was long privy to Bond's casino vision) to make Waukegan a "destination spot." (SAF ¶ 41.)







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at Fountain Square, where one of Tap Room's owners purchased land a few months after funding your campaign for mayor." (SAF ¶ 43) Among the questions: "Why did you donate money to the [Waukegan Voter Alliance], which supported a slate of candidates favorable to Tap Room's interests in Waukegan?" and "How did you choose the selection committee for the casino? Why did you choose an attorney from the Del Galdo Group to sit on the commission?"[3] (*Id.*)

The very next day, the City began a search for an outside casino consultant. (SAF ¶ 44.) Around the same time, Vasselli (the Del Galdo firm attorney) and Maillard (because of his past association with Bond) stepped back from involvement in evaluating casino proposals. (*Id.* ¶ 46.)

## The City's Casino RFQ Process—Phase II

On August 19, 2019, the City retained Johnson Consulting. (Def. LR 56.1 Stmt. ¶ 16.) Although the outside consultant presumably lent a veneer of "independence," the City's review process did not treat casino applicants equally. To the contrary, based on the facts now described below, a reasonable jury could conclude that the City implemented a sham process along the lines Cunningham previewed when he announced the City's "plan" to "quash" suspicions about Bond's influence by selecting multiple proposals. In addition to Bond's North Point proposal, the City stacked the deck in favor of Full House, the most non-threatening competitor to North Point. A third applicant, Rivers, won favorable treatment by leveraging discovery it obtained in litigation against the City—discovery Cunningham had reason to want shielded from public view. A jury could find that pliant City Council members voted in favor of these three proposals, and against Potawatomi's, at Cunningham's behest.

[3] The story ran two days later, jointly published by ProPublica, WBEZ Chicago, and the Chicago Sun Times under the headline, "From Truck Stops to Elections, a River of Gambling Money Is Flooding Waukegan; Owners of one of Illinois' largest video gambling companies are behind efforts to influence city politics, expand gambling and build a casino near land they control." (*Id.* ¶ 45, Pl. SJ Ex. 71.)



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In September 2019, based on its initial review, Johnson Consulting prepared a detailed summary of the casino proposals, which Cunningham and corporation counsel Long both received. (SAF ¶ 48.) [REDACTED] Potawatomi's bank reference letter stated that Potawatomi could fully fund its casino project, [REDACTED] (*Id.*)

The RFQ highlighted "a significant number of high quality jobs" as a development objective. (SAF ¶ 32, Pl. SJ Ex. 44 at 2.) To that end, one basic RFQ "submittal requirement" was for each applicant to "quantify . . . estimated economic impacts." (SAF ¶ 32, Pl. SJ Ex. 44 at 3, item 2G.) Yet the City did not [REDACTED] Instead, well after the RFQ submission deadline, with the knowledge and approval of Cunningham's casino team, Johnson Consulting solicited additional information from applicants other than Potawatomi, including pro forma financials, tax projections, supplemental detail regarding projected revenues and expenses, and, in Full House's case, job projections that Johnson Consulting subsequently included in its report to the City. (SAF ¶ 49.)

Potawatomi did not receive the same treatment. It proposed to purchase the City-owned Fountain Square site for its "appraised value +/ 15%." (Pl. LR 56.1 Resp. ¶ 26.) This offer assumed that negotiations would ensue, and that any appraisal used for the sale of the property would value it as a casino site. (*Id.*) But Johnson Consulting latched onto an existing City appraisal, not publicly available, that valued the site at $5.625 million, pre-gaming expansion, on the assumption that its highest and best use was "subdivision into smaller lots for new commercial development." (SAF



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¶ 50.) Johnson Consulting equated Potawatomi's offer with this figure at a September 18, 2019 public hearing, (*id.*), leaving the impression that the City did not intend to negotiate with applicants before the certification process concluded. Therefore, in early October, Potawatomi advised that City that it would pay $12 million for Fountain Square. (Pl. LR 56.1 Resp. ¶ 43).

As noted, although Johnson Consulting incorporated supplemental information from other applicants into its analysis, including required job projections from Full House, it refused to do so for Potawatomi. (SAF ¶ 61, 71.) The City sanctioned this disparate treatment. In October 2019, after discussing the issue with Cunningham and City staff, Long advised Johnson Consulting that he could not consider supplemental information from applicants, including Potawatomi's, unless the information was specifically requested by the City. (*Id.* ¶ 61.)

The City's selective funneling of information also served to insulate Johnson Consulting from developments that would have undermined Bond's North Point proposal. In early October 2019, noting correctly that the Gambling Act required the City "to reach certain agreements with a [casino applicant] prior to advancing the [applicant] to the Illinois Gaming Board," North Point proposed to enter into either of two alternative memoranda of understanding with the City. (SAF ¶ 51.) If the City advanced North Point alone, then the terms would be consistent with the original casino proposal it had submitted. (*Id.*). But if the City certified multiple casino applicants, North Point proposed to match the terms of the [applicant] offering a lower financial contribution to the City" —*i.e.*, adjust the original North Point proposal to:

> *(i) reduce the City Revenue Share and Additional Donations from the levels in the Original North Point Development Proposal down to the lowest, aggregate minimum payments . . . proposed to he paid to the City under the Competing Proposal[s], (ii) incorporate the lease and purchase terms offered under the Competing Proposal[s] that are most favorable to the competing proponent[s]; and (iii) match any donation to the City or community project to the extent documented in publicly available REP responses to the City.* (*Id.* (emphasis in original).)

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North Point's conditioning of its original proposal on being the City's sole selection should have been a show-stopper. According to Cunningham, the City already had a "plan" to certify multiple applicants. (SAF ¶ 38.) If so, then North Point's proposal was far less favorable than it seemed. In fact, each payment to the City, including for Fountain Square, would be only as good as the least favorable corresponding offer among the competing proposals. Moreover, upon reviewing the modified proposal, Long concluded that North Point was trying to gain an unfair advantage. (*Id.* ¶ 52.) Yet, according to Long's deposition testimony, he decided he did not want to "prejudice" the process, and therefore did not disclose North Point's modified proposal to Johnson Consulting, the City Counsel, or Cunningham. Long also did not disclose North Point's communication to the Illinois Gaming Board, as required by the Illinois Gambling Act. (*Id.*)

**Johnson Consulting's Inscrutable Rankings**

Cunningham and Long reached out to Johnson Consulting on multiple occasions to arrange calls or meetings not involving other City personnel. (SAF ¶ 47.) On October 10, 2019, Johnson Consulting submitted to Long its report concerning the four remaining casino proposals. (*Id.* ¶ 53.)

The Johnson Consulting report included notable omissions and obfuscations that would have been apparent to anyone who, like Cunningham and Long, had access to its earlier, more detailed summary of proposals. The report stated that Full House reported $182.3 million of assets in 2017, [redacted]

[redacted] (SAF ¶ 54.) Although the earlier summary had detailed material variations among the applicants' bank reference letters, including [redacted] the Johnson Consulting report described the letters in identical terms, merely listing the financial institutions that issued them. (*Id.* ¶ 48, 55.) The Johnson Consulting report also included employment projections that, as described above, Full House submitted well after the casino proposal submission deadline. (*Id.* ¶ 49; Pl. SJ Ex. 81 at 8.) In addition, Johnson Consulting report



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did not reflect that North Point's proposal would be substantially reduced if the City certified multiple applicants, as Long had not shared that information Johnson Consulting. (SAF ¶ 56.)

The Johnson Consulting report assessed "that all [applicant] teams include seasoned professionals with skills and resources necessary to deliver a high-quality project to the Waukegan market." (SAF ¶ 53, Pl. SJ Ex. 81 at 10.) In keeping with the City's stated development objectives, Potawatomi's proposal was projected to generate the most annual employment, the most gaming revenue, and (after Rivers), the second-most gaming and admissions taxes for the City. (SAF ¶ 57.)

Nevertheless, the Johnson Consulting report awarded Full House the best "overall ranking," followed by North Point, then Rivers, and ranked Potawatomi last of the four proposals. (SAF ¶ 58.) At deposition, the two responsible Johnson Consulting representatives could not articulate any reproducible method by which they arrived at these rankings. (*Id.* ¶ 60.) What's more, they gave diametrically conflicting testimony about various criteria factored into their analysis. (*Id.* ¶ 59.) In particular, Johnson Consulting's principal claimed that the Potawatomi proposal's relatively high number of gaming positions was a strike against it, and—contrary to the City's RFQ—that Full House's and North Point's *lower* employment numbers were a plus for applicants, because more appropriate for the Waukegan market. (*Id.* ¶ 59.) In contrast, his associate testified that Potawatomi's high employment and relative size were positive factors. (*Id.*)

### Rivers Leverages the Waukegan Gaming Litigation

In the meantime, the lawsuit between the City and Waukegan Gaming had taken on increased significance for the City's RFQ process. Waukegan Gaming had become a partner in the Rivers casino proposal, and was represented in the lawsuit by counsel to Rush Street Gaming, one of the original partners in the Rivers proposal. (SAF ¶ 62.)

In late September 2019, Cunningham was deposed in the Waukegan Gaming litigation. (SAF ¶ 63.) Among the exhibits were text messages between Cunningham and Bond, including







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some of the texts quoted above. (*Id.*) The exhibits also included interrogatory answers by the City that identified Maillard as one of the people "involved in the . . . drafting, and distribution of" the City's casino RFQ. (*Id.*; Pl. SJ Ex. 99 at 3.) Cunningham testified that Maillard should not have been listed, which led to the following question and the following false answer by Cunningham:

> Q. Did Mr. Maillard have any responsibility for the [RFQ] in any way?
>
> A. No. (SAF ¶ 64.)[4]

The litigants took pains to keep discovery materials out of the public record. On October 15, 2019, they exchanged summary judgment briefs and submitted courtesy copies to the presiding judge, but managed to keep even the fact of their submissions off the public docket. (SAF ¶ 65.) On the afternoon of October 17, 2019, however, Waukegan Gaming's counsel put the City's counsel on notice that matters would escalate, and likely spill into public view, if the City Council did not pass the Rivers certification resolution at the special meeting set for that evening:

> As we have previously discussed, please be advised that if our client is not Certified by the City tonight, we will be filing a TRO and presenting the TRO for hearing tomorrow morning at our scheduled court date and time at 9:00 am.
>
> The TRO will seek an order enjoining the City of Waukegan from submitting any certifications to the gaming board until after the ruling(s) on the motions for summary judgment that are set for hearing on Monday, October 24. . . . (*Id.* ¶ 66.)

### The October 17, 2019 Special City Council Meeting

Under the gaming expansion law, the Illinois Gaming Board may consider issuing a Waukegan casino license only after the City's "corporate authority" certifies to the Board that certain conditions have been satisfied with regard to a particular applicant, including that the applicant has negotiated with the corporate authority in good faith, and that the applicant and the

[4] A jury could find that this was not an innocent memory lapse. (*See* SAF¶ 39 (Cunningham email directing that Maillard be added as one of two "project managers to the Casino RFP/Q" email address); *id.* ¶ 40 (Maillard was point of contact between Cunningham and others responding to RFQ-related questions).

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corporate authority have "mutually agreed" on certain things—the permanent and temporary location of the casino, the sharing of casino revenues, and "any zoning licensing, public health or other issues within the jurisdiction of" the City. *See* 230 ILCS 10/7(e-5). Further, the City "must subsequently *memorialize the details* concerning the proposed riverboat or casino in a resolution that must be adopted by a majority of the corporate authority . . . *before any certification is sent to the Board*." *Id.* (emphasis added).

Notwithstanding these mandatory preconditions, the City did not engage in negotiations to any extent with the casino applicants. (SAF ¶ 67.) Nor did the City "mutually agree" with any casino applicant on the items required by the statue. (*Id.* ¶ 68.) Indeed, corporation counsel Long testified at deposition that it was "fundamentally impossible" to agree on the required statutory items with multiple applicants. (*Id.*.) Needless to say, therefore, the City could not possibly "memorialize the details" concerning a proposed casino in any resolution.

Instead, for its special meeting on October 17, 2019, Long placed before the City Council resolutions for each casino proposal that purported to follow the statute but actually fudged the requirements. First, although there had been no negotiations whatsoever between the City and any applicant, the resolutions recited, falsely, that the applicant "has negotiated with the Corporate Authority in good faith." (SAF ¶ 74, Pl. SJ Ex. 101 at 3, 7, 11; Pl. SJ Ex. 103 at 2.) Then the resolutions recited that the City and the applicant had mutually agreed "*in general terms*" on the required items. (*Id.*) Finally, although there had been no mutual agreement, much less agreement on "details," the resolutions purported to certify the "Applicant," "with the details of the mutual agreements included in the Applicant's Response to the City's Request for Proposals, . . . which [in certain cases] should be read in conjunction with any additional materials submitted by the Applicant." (*Id.*). To be clear, North Point's alternative, reduced proposal, which underscored the





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lack of any "mutual agreement," went unmentioned to the City Council and unreferenced in the applicable resolution. (*Id.* ¶ 52.)

On the evening of October 17, 2019, Cunningham presided over the City Council's special meeting to consider the casino resolutions. (SAF ¶ 71.) Alderman Turner's sworn testimony in this case is that he received the following directive from the mayor just before the start of the meeting:

> A. So as I sat on the dais waiting for the meeting to start, preparing, as the mayor entered, he came by, he had to pass by my chair, and he said to me, these are the three that ***we*** want to send to Springfield. Right. ***And that was what the vote was going to be.*** Right. Put those three down there.
>
> Q. . . . And how did he identify the three that they wanted to send down, did he name them or did he point to something?
>
> A. No. He named them. (SAF ¶ 69.)

Once the special meeting began, no public comment was allowed. (SAF ¶ 70.) During the meeting, Johnson Consulting's principal, Charles Johnson, addressed the City Council about his report. (*See id.* ¶¶ 71-73.) Johnson advised that "the process does not allow for supplemental information [provided after the RFQ's submittal deadline] to be considered," and that such information therefore was not reflected in Johnson Consulting's report to the City, "nor from a purchasing standpoint can it be from a technical standpoint included in our analysis." (*Id.* ¶ 71.) This statement was false, as both Cunningham and Long had reason to know: Johnson Consulting's own report included employment projections—prominently displayed in graph form—that Full House had provided weeks after the submittal deadline. (*Id.* ¶¶ 48-49.)

Johnson told the City Council that all four applicants were "qualified" and "able to deliver the project." (SAF ¶ 73.) Referring to his firm's report, he remarked, "I think we provided a ranking based upon the information that was available to us based upon the proposals, which we've supplied in our report; but you can't go wrong with either—all four of these bidders, in our

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judgment." (*Id.*) Asked whether any applicant raised "ethical considerations," Johnson responded, "We certainly did our due diligence in looking at the nature of the quality of the companies and all of them have high integrity and we did not see any ethical components at the principal level of the proposals." (*Id.* ¶ 72.) Yet just a few months earlier, in a letter the City attached to its complaint against Waukegan Gaming (now a partner in the Rivers proposal), Long had questioned whether Waukegan Gaming "would even qualify" for a casino license: given Waukegan Gaming's "past affiliation with [William Cellini]"—"a state power broker who fell from grace and influence to spend time in federal prison"—that was "somewhat questionable," Long had written. (*Id.* ¶ 36.)

When the vote was taken, four City Council members, and only four members, voted precisely as the mayor had instructed Turner—against the Potawatomi resolution and for the other three. (SAF ¶ 74.) The four—Bolton, Seger, Kirkwood, and Turner—were the same members whose candidacies had been underwritten by Bond's companies. The other two "pro-casino" members (Moisio and Newsome) voted *for* the Potawatomi resolution (*id.*):

| Council Member | Potawatomi | North Point (Lakeside) | Full House | Rivers |
|---|---|---|---|---|
| Bolton | No | Yes | Yes | Yes |
| Seger | No | Yes | Yes | Yes |
| Moisio | Yes | Yes | Yes | No |
| Kirkwood | No | Yes | Yes | Yes |
| Newsome | Yes | Yes | Yes | Yes |
| Turner | No | Yes | Yes | Yes |
| Rivera | No | No | No | No |
| Florian | No | No | No | No |
| Taylor | No | No | No | No |







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When the City Council reconsidered the Potawatomi proposal four days later, on October 21, 2019, the result was the same, except that Florian voted in favor. Def. LR 56.1 Stmt. ¶ 60. Cunningham yelled at Florian just for signing a request to add the reconsideration motion to the October 21 meeting agenda (which the City refused to do). (SAF ¶ 79.)

## Argument

### I. The City Does Not "Enjoy Absolute Immunity" Against Potawatomi's Claims.

The City argues that it has "absolute immunity" against Potawatomi's federal and state claims. (City Mem. at 9-11.) The City is wrong on both fronts.

#### A. A State Statute Cannot Immunize the City Against Potawatomi's Federal Claim.

The City assumes that the Illinois General Assembly can grant immunity from federal claims. (City Br. at 10 (citing 745 ILCS 10/1-204).) But under our constitutional system, a state legislature has no such power.

In this case, "the Illinois Tort Immunity Act does not shield" the City from Potawatomi's § 1983 claim, "because under the Supremacy Clause of the United States Constitution, federal laws are supreme to state laws." *Thomas ex rel. Smith v. Cook County Sheriff*, 401 F. Supp. 2d 867, 875 (N.D. Ill. Sept. 25, 2005); *see Thomas v. Sheahan*, 499 F. Sup. 2d 1062, 1099 n.20 (N.D. Ill. 2007) (quoting same); *Pilditch v. Bd. of Ed. of the City of Chicago*, No. 90 C 5526, 1991 WL 195775, at *3 (N.D. Ill. Sept. 25 1991) (Hart, J.) ("Under the supremacy clause, . . . the Illinois Tort Immunity Act can not immunize defendants where the cause of action is based on a federal statute."); *see also Bryant v. Oak Forest High School Dist.*, No. 06 C 5697, 2007 WL 2738544, at *6 (N.D. Ill. Sept. 12, 2007) (Kocoras, J.) ("[The defendant] cannot be shielded from personal liability for violations of federal law by operation of a state law, because under the Supremacy Clause of the United States Constitution, federal law preempt conflicting state laws."); *Salazar v.*


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1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
2 EASTERN DIVISION
3
4 WAUKEGAN POTAWATOMI CASINO, )
LLC, an Illinois limited )
5 liability company, )
)
6 Plaintiff, ) No. 1:20-cv-750
)
7 -vs- )
)
8 CITY OF WAUKEGAN, an Illinois )
municipal corporation, )
9 )
Defendant. )
10
11
12
13
14 The videotaped videoconference deposition
15 of ROBERT LONG, reported remotely by JUNE M.
16 FUNKHOUSER, CSR, RMR, and Notary Public, pursuant
17 to the Federal Rules of Civil Procedure for the
18 United States District Courts pertaining to the
19 taking of depositions, commencing at 10:03 a.m. on
20 April 27, 2021.
21
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1 There were present at the taking of this
2 deposition via videoconference the following
3 counsel:
4
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17 on behalf of the Defendant.
18 ALSO PRESENT:
19 MR. MICHAEL PRAGER, Videographer.
20
21
22
23
24



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EXHIBIT 213 39
10 Article from rrstar.com, 7/19/19
11 EXHIBIT 214 40
E-mail, 8/7/19, R. Long to T. Maillard,
12 M. Pitchford, Mayor Cunningham,
T. Smigielski, Subject: Casino consultant
13 Bates WKGN 25036
14 EXHIBIT 215 49
E-mail, 8/8/19, R. Long to J. Banovitz,
15 Cc: Mayor Cunningham, Subject: Waukegan
Casino
16 Bates WKGN 25035
17 EXHIBIT 216 42
E-mail, 8/6/19, J. Grotto to Mayor
18 Cunningham, Subject: Jason Grotto/
ProPublica story about Waukegan casino
19 Bates CW00505 - 00506
20 EXHIBIT 217 51
E-mails, 8/8/19 to 8/14/19, Subject:
21 Waukegan Casino
Bates WKGN 28275 - 28278
22
EXHIBIT 218 57
23 Video Clip, City of Waukegan Finance
& Purchasing Meeting, 8/19/19
24



1 EXHIBITS (Cont'd)
Page
2 EXHIBIT 219 71
E-mails, 8/30/19, Subject: Casino
3 schedule
Bates WKGN 28373 - 28375
4
EXHIBIT 220 143
5 Calendar invite, 10/15/19, R. Long to
Mayor Cunningham, Subject: Bond Meeting
6 Bates WKGN 24491
7 EXHIBIT 221 145
E-mails, 8/15/19
8 Bates WKGN 22530 to 22533
9 EXHIBIT 222 146
Redacted e-mail chain, 9/3/19
10 Bates WKGN 24905
11
PREVIOUSLY MARKED EXHIBITS
12 Page
EXHIBIT 4 60
13 E-mails, 8/8/19 to 8/20/19 with
Score Sheets
14 Bates CHJC_0001192 - 0001220
15 EXHIBIT 9 73
E-mails, 9/4/19
16 Bates WKGN 001857 - 001858
17 EXHIBIT 10a 75
Spreadsheet, Waukegan Casino RFQ/P
18 List of Proposals Received
19 EXHIBIT 26 125
E-mail with attachments, 10/4/19,
20 D. Dorando to C. Johnson, S. Emmerton,
casino@waukeganIL.gov, and R. Long,
21 Subject: Potawatomi Supplemental
Letter to Waukegan Casino Review Team 10-4-19
22 Bates CHJC_0000992 - 0001079
23 EXHIBIT 27 129
E-mails, 10/15/19
24 Bates CHJC_0002433 - 0002434



1 PREVIOUSLY MARKED EXHIBITS (Cont'd)
Page
2 EXHIBIT 28 134
E-mails, 10/16/19
3 Bates CHJC_0002424 - 0002425
4 EXHIBIT 30 84
E-mail with attachment, 9/16/19,
5 S. Emmerton to R. Long, Cc:
C. Johnson, Subject: CONFIDENTIAL
6 CHJC Waukegan Casino_Public Meeting
091819_DRAFT
7 Bates CHJC_0000929 - 0000942
8 EXHIBIT 38 115
E-mail with attachment, 10/8/19,
9 S. Emmerton to R. Long, Cc: C. Johnson,
Subject: CONFIDENTIAL CHJC Waukegan
10 Report WORKING DRAFT
Bates CHJC_0000943 - 0000958
11
EXHIBIT 41 117
12 E-mails, 10/8/19
Bates CHJC_0002251 - 0002252
13
EXHIBIT 43 120
14 E-mail, 10/10/19, S. Emmerton to
R. Long, Cc: C. Johnson, Subject:
15 CHJC Waukegan Casino Developer_Memo
Report 101019
16 Bates CHJC_0000900 to 0000918
17 EXHIBIT 170 74
E-mails, 9/6/19 to 9/7/19
18 Subject: CHJC Waukegan Casino
Proposal Summary
19 Bates WKGN 24105 - 24106
20 EXHIBIT 206 18
Letter, 10/18/19, S. Cunningham to
21 Illinois Gaming Board, Re: Waukegan
Certification of Developers Pursuant
22 to Public Act 101-0031
Bates WKGN 27139
23
24


SA71

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1 McHenry County Department of Health in a rather
2 interesting lawsuit last year involving the
3 coronavirus, PPE, and the disclosure of HIPAA
4 information that was requested by a sheriff that
5 went to the Illinois Appellate Court.
6 Q All right. Well, thank you. That was a
7 helpful overview.
8 Mr. Long, I could make out everything
9 you were saying but you were starting to get a
10 little faint, so if you're able to -- I don't know
11 if there's a way to get a little closer to your
12 microphone it may help.
13 A Not much. It's sitting at the top of my
14 computer screen. I suppose I can try to pull it a
15 little closer if that will help.
16 Q It helps a little.
17 A My voice is also deep and it doesn't pick
18 up well on microphones.
19 Q Whatever you did it's a little better, I
20 think.
21 So can you tell me a little bit more,
22 just to focus in on 2017, how you came to be
23 corporation counsel for the City of Waukegan?
24 A Well, I was -- I've known Sam Cunningham

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1 since I think about 2000, 2001. I met him through
2 a -- an acquaintance named Bobby Evans. Bobby
3 Evans was the former first ward alderman of the
4 City of Waukegan and he was a client of this firm
5 and his sister, Bette Thomas, was elected the mayor
6 of the City of North Chicago and that's where I
7 served, as I mentioned earlier, and in that context
8 I got to know some of the other people around the
9 first ward and in the -- that adjoins North Chicago
10 on 10th Street, so I also got to know a broad range
11 of people in that area.
12 And the -- I got to know Sam. Sam
13 brought a -- his -- I think his mother in-law at
14 the time, Rayeanne's mother, who had had a horrific
15 accident at one of the local hospitals where she
16 had a knee replacement surgery on an elective
17 basis, they severed the popliteal artery, and she
18 lost her -- lost her leg, and that led to a
19 malpractice case that I worked on quite extensively
20 with a firm of -- Bob Baizer is the attorney that
21 actually try -- got the case ready for trial, and I
22 do a lot of work on that case.
23 I got to know Sam pretty well during
24 that period of time. I did some other work for

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1 him, I think a couple of real estate deals maybe
2 and he had an insurance claim for a building that
3 had a roof collapse, if I remember correctly, or
4 something went wrong with the roof, I don't
5 remember the details, it was a long time ago, and
6 then he was running for mayor and he did that I
7 think three or four times. I guess four in total.
8 He probably did it -- the third time I think he won
9 the 2017 election, but I had assisted him on --
10 with some legal issues. I'd looked at his
11 paperwork, the filing petitions, make sure that
12 they looked right before he filed stuff. I knew
13 his mother from -- and I represented her at
14 different points in time and some other family
15 members. I was pretty close to the family.
16 They're really good people.
17 And I think it was in 2013 when he was
18 running against Terry Link and Wayne Motley that he
19 asked me for the first time if I would consider
20 serving as corporation counsel, and, of course, by
21 then I had a substantial amount of municipal
22 background, I was happy to take him up on the
23 offer, but it didn't lead to anything because he
24 didn't get elected.

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1 So fast-forward to 2017. He wins the
2 primary, and then shortly -- I think it was right
3 about the time of the election there was -- there
4 were two things that went on over at city hall
5 involving Mayor Motley, one of which was a union
6 dispute involving the arbitration of benefits and
7 such under one of the police contracts and the
8 other one was a -- well, to put it bluntly, she was
9 a bit wacky, a real estate broker that claimed --
10 that came in and claimed to be representing a
11 Chinese company that wanted to invest a billion
12 dollars on the lakefront in Waukegan.
13 And at that point Motley had lost the
14 primary so he knew he wasn't going to be reelected,
15 Sam was running against Alderman Lisa May and it
16 was a tight race, but immediately after he edged
17 out Lisa by a small margin of votes I was brought
18 into the City Council to try to start a transition
19 period from the then corporation counsel, Steve
20 Martin, and I was working particularly on those two
21 issues, the -- we eventually resolved the police
22 union contract and we eventually found out that the
23 Chinese really weren't hiring the rather wacky real
24 estate broker and nothing ever came of that. She


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1 really wanted the city to just pay her -- buy her
2 -- to go into contract with her and then she was
3 going to try to put a deal together, but that
4 wasn't going to work.
5 Q So that was basically the sequence that
6 ended up with you as corporation counsel?
7 A Yes.
8 (Witness referred to previously
9 marked Exhibit 206.)
10 BY MR. SMITH:
11 Q Okay. Mr. Long, let's give -- since we
12 made such an effort to get you linked up to it,
13 let's give Exhibit Share a try.
14 If I could ask you to pull up what's
15 been premarked as Exhibit 206. It should be
16 available in your folder of marked exhibits.
17 A Okay. Yeah. It's pretty small, but
18 okay. Oh, here.
19 Q Hopefully you can enlarge it to
20 full-screen size.
21 A Yeah, I got it now.
22 Q Okay. So just to set the stage for my
23 questions about Exhibit 206, would you agree with
24 me that at a special City Council meeting on



1 October 17th, 2019, the Waukegan City Council voted
2 to approve certain resolutions certifying three
3 casino proposals to send on to the Illinois Gaming
4 Board?
5 A That is correct.
6 Q Is Exhibit 206 the letter from the City
7 of Waukegan transmitting those certifying
8 resolutions to the Illinois Gaming Board?
9 A It looks like it. It looks like the
10 letter I wrote, yes.
11 Q Obviously without any enclosures,
12 correct?
13 A Yeah, I didn't -- I didn't assemble the
14 document. I might have had help writing the letter
15 from Douglas, but I think I wrote this one.
16 Q Okay.
17 A Not quite sure.
18 (Witness referred to previously
19 marked Exhibit 207.)
20 BY MR. SMITH:
21 Q Okay. Let me -- let me ask you to take a
22 look at what's been premarked as Exhibit 207, and
23 I'll just give you a moment. Let me know when
24 you've had a chance to look that over.



1 And while you're pulling that up I'll
2 just note that Exhibit 207 is a document that on
3 the first page is entitled City of Waukegan
4 Resolution Number 19-R-96, and it runs from WKGN
5 10838 through 10853.
6 A Yeah, okay. Yeah, I know what this is.
7 Q Mr. Long, do you recognize the documents
8 that are included in Exhibit 207?
9 A Yep. I do.
10 Q What are they?
11 A Those are the resolutions that -- that
12 certified, as required by the stat -- by the public
13 act that we were operating under, the amendments of
14 the video game -- or the riverboat video game -- or
15 Riverboat Gambling Act is the correct name of that,
16 and it -- these certify the Rivers Casino, which is
17 a combination of Rivers and Churchill Downs, Full
18 House, and North Point, which is a combination of
19 some -- it was something put together by Michael
20 Bond, I think, and Warner Gaming. It certified
21 those three casino proposals to the Illinois Gaming
22 Board for further vetting and the bidding process
23 and all the stuff that goes along with it.
24 Q And North Point, if I'm not mistaken, was



1 also known as Lakeside Casino, correct?
2 A Yeah, I think that's what they called it.
3 The names don't mean an awful lot to me. I know
4 which groups they are.
5 Q Fair enough.
6 Just to try to nail this down for the
7 record, hopefully it won't be too tedious, in each
8 of these certifying resolutions included as Exhibit
9 207 there's a reference to an Exhibit A, which is
10 identified as the response the particular applicant
11 submitted to the City's request for proposals. Do
12 you see what I'm referring to throughout that
13 exhibit?
14 A Yeah. That's exactly what we did. We --
15 Q Am I correct in --
16 THE REPORTER: I'm sorry. Would you
17 repeat the end of that answer, please?
18 MR. SMITH: Sorry.
19 THE WITNESS: We incorporated the exhibit
20 by reference.
21 BY MR. SMITH:
22 Q And in terms of what was actually sent to
23 the Illinois Gaming Board, am I correct in assuming
24 that the proposals that were sent along with each





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1 because our original RFQ date we put -- you know,
2 here's the basic problem. The legislation gave us
3 a very short window of time in which to operate,
4 and we extrapolated backwards from that final date,
5 which we calculated to be I think the 19th or the
6 21st of October, whatever the date was, and tried
7 to back it up from there to try to create what were
8 reasonable milestones for the submission, a review
9 process, the aldermen to look at it, a meeting with
10 the developers, a public hearing, and finally,
11 finally Council action. These are the principal
12 steps that we had to follow there.
13 So what we were looking for was, okay,
14 well, when -- how much time do we need to get
15 developers. Now this was hot news. We knew it had
16 been in some of the -- there's some kind of trade
17 journal, Gaming News or something like that, I
18 forget the name of the thing, and it was in the --
19 in the Milwaukee papers, in the Chicago papers, it
20 was even in some of the national press that this
21 went out, new stuff was coming on the market, new
22 opportunities, so we figured that if we were going
23 to get developers they would be pretty well-heeled,
24 be ready to proceed, and very ready to go in a

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1 pretty quick period of time.
2 So we looked at that and originally
3 gave I think -- I think 30 days, something like
4 that, I'm not quite sure of the time frame because
5 I haven't reviewed the document, and then after we
6 submitted our original RFP/RFQ we saw that both
7 Danville and Rockford had longer periods of time
8 and we said, wait a minute, if they're going this
9 long, they're our competitors in this for the
10 bidders in this process because we figured we
11 probably would get some overlap or maybe bidders
12 would be more likely to bid for ours versus
13 Rockford's, ours versus Danville's, whereever, you
14 know, it's a competitive thing, but when we saw
15 they were doing a couple extra weeks we figured,
16 well, let's all do it about the same time and we
17 extended our period of time.
18 So that's really what my take on the
19 Rockford situation was was it was more timing than
20 anything else.
21 (Document was marked Exhibit 213
22 for identification.)
23 BY MR. SMITH:
24 Q That's helpful. Let me ask you to take a

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1 look at what's been marked as Exhibit 213.
2 And, again, just while you're pulling
3 that up, Mr. Long, Exhibit 213 is a two-page
4 document. It's a printout of an article from the
5 rrstar.com website dated July 19th, 2019.
6 A Yeah.
7 Q All right. Now, Mr. Long, in fairness,
8 this isn't anything you drafted. I just wanted to
9 see if looking at this article from July 19th of
10 2019 whether you recall being aware around this
11 point in time that Rockford had hired a couple of
12 outside consultants by July 19th, 2019.
13 A No. I didn't know that. I don't
14 remember ever seeing this article.
15 (Document was marked Exhibit 214
16 for identification.)
17 BY MR. SMITH:
18 Q Let me ask you, then, to take a look at
19 what's been marked as Exhibit 214, and this is an
20 e-mail dated August 7th, 2019, from Mr. Long to
21 Mr. Maillard, Mr. Pitchford, Mayor Cunningham, and
22 Tina Smigielski Bates stamped WKGN 25036.
23 A Uh-huh.
24 Q Mr. Long, am I correct this concerns your

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1 efforts as part of the City's casino review process
2 to think about possible outside consultants who
3 could be contacted?
4 A Yeah. That's exactly what this was.
5 Q Okay. Now I will represent to you, it's
6 possible I missed something, but this is the
7 earliest e-mail I've seen from the City's
8 production of any effort to seek out an outside
9 consultant. Do you have a memory seeing this of
10 earlier efforts to identify potential outside
11 consultant candidates?
12 A There weren't any to the best of my
13 knowledge. I happened to find -- and this -- this
14 came because I was looking at some of the documents
15 that related to the Waukegan Gaming litigation and
16 I saw that there was -- that there was a
17 consultant's report in there.
18 Q And I just want to make sure, I may not
19 have heard the beginning of your answer, did you
20 say there weren't any earlier efforts or not?
21 A That is correct, there were not to the
22 best of my knowledge.
23 Q Okay.
24 A If anybody thought about it, they didn't





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1 tell me.
2 (Document was marked Exhibit 216
3 for identification.)
4 BY MR. SMITH:
5 Q Okay. Mr. Long, let me ask you to take a
6 look at what's been marked as Exhibit 216.
7 And while you're pulling it up,
8 Exhibit 216 is an e-mail dated August 6th, 2019,
9 from Jason Grotto to Mayor Cunningham. It's Bates
10 stamped WKGN 7464 to 7465.
11 Mr. Long, this e-mail, obviously
12 you're not copied as a recipient, my question for
13 you is apart from having seen this e-mail in any
14 litigation context did you -- did you see this
15 e-mail at or around the time it was sent to Mayor
16 Cunningham?
17 A Well, yes, in my -- in my capacity as the
18 advisor and counsel for the City, yes, but, then
19 again, now you're into the -- that gets us into the
20 attorney-client privilege issues.
21 Q All right. And let me just issue a
22 little preface that I think could just as well come
23 from Mr. Davis. Obviously, Mr. Long, I appreciate
24 that given your role as corporation counsel and

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1 your involvement in the underlying activities that
2 are going on here there may be questions or areas
3 of inquiry where you feel we're getting into areas
4 of attorney-client privilege. Obviously I expect
5 you to speak up about that, and if at any point in
6 time you need to have an offline conversation with
7 Mr. Davis to just confirm the parameters of that I
8 have no -- no problem with that at all.
9 Do I -- am I correct in understanding
10 from your answer that if I were to ask you about
11 any conversation you had with Mayor Cunningham
12 about this e-mail or its content that you would
13 view that as falling within the confines of the
14 attorney-client privilege?
15 A Yes.
16 Q And just to make sure the record's clear,
17 I assume on that basis you would decline to answer
18 questions I put to you about this -- your
19 conversations with Mayor Cunningham about this
20 e-mail?
21 A I don't believe I have any choice but to
22 do so, sir.
23 Q Understood. Understood. Okay.
24 Let me ask you this. I don't know

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1 whether you will feel you can answer it. Was there
2 any connection between this e-mail and the decision
3 to retain an outside consultant?
4 A None.
5 Q And why do you say that?
6 A Because we were -- our sources of looking
7 for an outside consultant were -- were just going
8 on. I realize that there's what appears to be a
9 synchronicity at the time. The ProPublica dude,
10 you know, that wasn't the defining question. For
11 us the defining question was how are we going to --
12 you know, there are political issues and there are
13 practical issues. The political issues involve how
14 is this going to go through City Council when some
15 of the aldermen don't like the idea of a casino
16 very much at this point as well and how is this
17 going to be presented, and that's the mayor's
18 political issue and a number of the Council
19 members.
20 I'm not -- keep in mind, I'm not an
21 advocate for that. I don't push -- I don't push
22 the agenda. I push the process to try to make sure
23 that whatever the decision is it's up -- it's
24 square and it's up front, okay?

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1 So the question politically is how is
2 this going to be packaged in a way that makes the
3 most sense to people so that they can look at the
4 proposals dispassionately. There's already been
5 some degree of public dis -- public dismay over
6 there's going to be a casino. We've been down this
7 road before. Other people are saying this is the
8 best -- absolutely the best thing since sliced
9 bread and the invention of the light bulb and it's
10 just a matter of trying to figure out how we're
11 going to package it up and what's the most
12 effective way to do it.
13 That's where I ran into that -- that
14 document from Ludwig's -- the litigation with
15 Ludwig, and I said, you know, that's not a bad
16 idea, that might take -- help package this up in a
17 fashion that made sense to the aldermen and they
18 could more closely focus in on what the real issues
19 are of a casino, which is what real benefits is it
20 going to bring to the City. We're holding onto
21 this piece of property now for, I don't know, 15
22 years or 20 years at that point almost, I think,
23 and where is this -- where is this proposal going,
24 how are they going to complete a vetting process,







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1 a good time to take a lunch break?
2 A It would.
3 Q Why don't we do that. If you're able
4 without impeding on your lunch and other
5 obligations you want to attend to to see whether
6 you can refresh your memory about that issue of the
7 exhibits to the resolutions that would be helpful.
8 A I'll see. There are some problems I need
9 to deal with over the lunch hour that have come up.
10 Q Understood.
11 A I'm getting texts and phone calls which I
12 need to respond to.
13 Q I understand. The world does not stop.
14 Do you want to -- how long do you want to take --
15 THE VIDEOGRAPHER: Let's go off the
16 record first.
17 We are going off the record. The time
18 is 12:22 p.m.
19 (Whereupon, a lunch recess was
20 taken at 12:22 p.m. and resumed
21 at 1:15 p.m. as follows:)
22 THE VIDEOGRAPHER: We are back on the
23 record. The time is 1:15 p.m. Please proceed.
24



1 BY MR. SMITH:
2 Q All right, Mr. Long. I hope you were
3 able to attend to some of the outside world over
4 lunch.
5 Did you have an opportunity to refresh
6 your memory about what the exhibits were to the
7 certifying resolutions we had looked at in Exhibit
8 207?
9 A Hello?
10 THE REPORTER: I didn't hear you. I'm
11 sorry.
12 THE WITNESS: Yeah, I didn't hear --
13 Dylan was asking a question. It didn't come
14 through. The speaker shut down.
15 BY MR. SMITH:
16 Q Sure. Can you hear me now?
17 A I can.
18 Q All right. I think you answered it, but
19 I was just asking whether you'd had an opportunity
20 over lunch to refresh your memory as to what the
21 exhibits were to the resolutions that the City
22 Council voted on on October 17th, 2019.
23 A Yeah. I looked at that. We included all
24 the things that were submitted to us no matter when



1 they were submitted.
2 Q Okay. So let's go back to Exhibit 207,
3 if we could.
4 A Okay.
5 Q So I think we've established that the
6 resolutions in Exhibit 207 are the signed copies of
7 the resolutions that passed the City Council on
8 October 17th, 2019, correct?
9 A Yes. Yes.
10 Q So, Mr. Long, I take it you'd agree with
11 me that if we looked at the Rivers certification,
12 turning to the second page of that, which is on the
13 page with Bates stamped 10840, there's in Section
14 Two a reference to Exhibit C.
15 Do you see where I am?
16 A Yes.
17 Q And I think you've now confirmed that
18 Exhibit C to this resolution is the supplemental
19 letter that Rivers submitted sometime -- to the
20 City sometime after its original casino proposal,
21 correct?
22 A That is correct.
23 Q All right. And that was the letter we
24 had looked at in Exhibit 208 at the time when we



1 sort of abandoned this effort earlier, correct?
2 A Yep.
3 Q All right. So could you explain to me
4 what the resolution means when it says that "the
5 details in the mutual agreements included in the
6 applicant's response to the City's request for
7 proposals, hereto attached as Exhibit A, should be
8 read in conjunction with any additional materials
9 submitted by the applicant, hereto attached as
10 Exhibit C"?
11 A So the City is -- what we're trying to
12 say is the Gaming Board, along with the fourth
13 resolution that doesn't certify anything but asks
14 the Gaming Board to look at the entire package,
15 says take a look at the entire package. It's up to
16 you. You have the statutory authority from this
17 point forward to decide what to do with all of
18 these. We have certified these candidates, we have
19 given you all of their materials as they've
20 supplemented them and as they originally submitted
21 them, and it's now up to you to decide what you're
22 going to do with it.
23 Q Right. Although this language that I
24 just referenced refers to mutual agreements between













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1 the City and the -- and the applicant, doesn't it?
2 A Well, it says mutual agreements. I'm not
3 quite sure I remember at this point in time what I
4 was thinking when I put that language in. I think
5 it may -- it would be better read and it might have
6 been better phrased as mutual representations.
7 Q Let me direct your attention a little
8 higher up on this same page. It's the whereas
9 clause -- it's the second whereas clause from the
10 top. It says, "Whereas, the City and the applicant
11 have mutually agreed in general terms upon a
12 permanent location for" --
13 A Oh, I've lost you.
14 Q You lost my train or you lost the volume?
15 Volume.
16 MR. SMITH: Can everyone else on the call
17 hear me?
18 MR. DAVIS: I can hear you.
19 MR. SMITH: Hmm. Does someone else want
20 to say something to Mr. Long just to see whether
21 it's just an issue with my connection?
22 MR. DAVIS: Robert, can you hear me?
23 THE WITNESS: Yeah, now I can hear you.
24 MR. DAVIS: Okay.

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1 MR. SMITH: And can you --
2 THE WITNESS: I didn't hear any of that
3 question.
4 MR. SMITH: Can you hear me, Mr. Long?
5 THE WITNESS: Yeah, now I can.
6 MR. SMITH: Okay.
7 THE WITNESS: I don't know what's going
8 on but...
9 BY MR. SMITH:
10 Q Strange.
11 Okay. So, Mr. Long, it states, if I
12 can refer you to the second whereas clause on this
13 page, second from the top, "the City and the
14 applicant have mutually agreed in general terms
15 upon a permanent location for the riverboat."
16 Where is that mutual agreement set
17 forth?
18 A Only because they have -- the only
19 property that they've identified, as all of the --
20 all five of the proposals did, landed on Fountain
21 Square.
22 Q Well, going back to Section Two, it
23 states "the details of the mutual agreements
24 included in the applicant's response to the City's

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1 request for proposals, hereto attached as Exhibit A."
2 Tell me if I'm reading this correctly.
3 I understand this language to be indicating that
4 the mutual agreements referenced above are included
5 in the applicant, in this case Rivers', response to
6 the City's request for proposals. Isn't that what
7 this language states here?
8 A It's the same language in all of the
9 resolutions.
10 Q Right.
11 A It was the same language that I drafted
12 for the Potawatomi, too, I might add.
13 Q Correct.
14 A But, yes, I think that's one of the --
15 one of the things that would be mutually agreed
16 upon.
17 Q All right. So Exhibit C, the
18 supplemental proposal that Rivers submitted,
19 included an increased offer for the purchase of
20 Fountain Square. Do you recall that?
21 A Yeah, I think they did try to sweeten
22 their pot, too.
23 Q Okay. So when it says that the mutual
24 agreements are included in Exhibit A, which should

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1 be read in conjunction with any additional material
2 submitted by the applicant, hereto attached as
3 Exhibit C, what impact does Exhibit C have on the
4 purchase price that is mutually agreed between the
5 City and Rivers?
6 MR. DAVIS: Object to the form of the
7 question --
8 THE WITNESS: Nothing.
9 MR. DAVIS: -- it misstates the evidence.
10 Hold on. It misstates the evidence, and it's taken
11 totally out of context. Misleading in form, vague
12 and ambiguous.
13 BY MR. SMITH:
14 Q Okay. You can answer, Mr. Long.
15 A My answer is nothing.
16 Q Why is it nothing?
17 A Well, because you get to the last whereas
18 at the bottom of the preceding page, "the City
19 contemplates final negotiations on all terms with
20 the applicant cannot take place until after the
21 Board completes its process and issues a license."
22 All we can do, Board, is give you the stuff. We
23 say this is an okay applicant, here's the stuff.
24 You decide whether or not you're going to give



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1 them, this particular applicant, the license and
2 then send them back to us and we'll complete our
3 negotiations.
4 Q Well, the reason these recitals about
5 agreements are in here is because the relevant
6 legislation required a certification that certain
7 agreements had been reached, correct?
8 A Yes.
9 Q Okay.
10 A That the parties negotiated in good
11 faith.
12 Q Right. And reached agreement on certain
13 points, correct?
14 A Yeah, they tried to make that, but they
15 also made it fundamentally impossible for us to do
16 exactly that with more than one -- with more than
17 one applicant.
18 Q Explain what you mean by that.
19 A How can you have a contract with somebody
20 that doesn't -- that is one of three and we have
21 three different con -- we would have three
22 different contracts. I realize they could be
23 conditional, but it was unworkable in that setting.
24 Q Okay. And is that the reason for the



1 mutual agreement on general terms language?
2 A Yes.
3 Q Now you're aware, I take it, that
4 Rockford negotiated a host community agreement with
5 the applicant that it certified to the Illinois
6 Gaming Board?
7 A It got exactly one applicant, which it
8 negotiated a deal with, certified it, sent it to
9 the Gaming Board, and got it sent back to them.
10 Q And you kind of anticipated my next
11 question there, Mr. Long, but I take it that the
12 distinction you would draw between Waukegan's
13 situation and Rockford's situation is that Rockford
14 ended up certifying only one applicant whereas
15 Waukegan made the decision to certify multiple
16 applicants, correct?
17 A That is true. But then again, Rockford
18 only had one applicant.
19 Q What's the basis for your understanding
20 that Rockland [sic] only had one applicant?
21 A That was what I was told. Were there
22 more than one? I don't know.
23 Q Okay.
24 A I'd be surprised to hear that.



1 Q Why would you be surprised to hear that?
2 A Because that's not the information I've
3 been operating on for the last, I don't know, year
4 and a half.
5 Q Where did you get your information?
6 A I think I got that from probably an
7 online newspaper would be my guess. It was my
8 understanding that Rockford and Danville both got
9 one applicant, which I thought was an inherent --
10 and we talked about it at the time, it was an
11 inherent weakness in their process because it means
12 that they aren't that valuable a commodity compared
13 to Waukegan that drew as many applicants as we got.
14 Q Can you explain for me in your view,
15 Mr. Long, about why the City could not have at
16 least commenced negotiations with each of the
17 applicants as a way of gauging the seriousness of
18 their proposals and helping to draw distinctions
19 among the applicants?
20 A We read that --
21 Q Prior to certification. I apologize.
22 Yeah.
23 A I understood that.
24 So we read that -- that legislation at



1 least 15 to 20 times and tried to interpret it as
2 best we could. That legislation doesn't seem to be
3 well set for a situation where you have multiple
4 applicants competing in an open environment for a
5 license.
6 And we also know that the Gaming
7 Board, historically at least, has auctioned off the
8 licenses once they get down to -- down to their
9 office. So as a result, you know, you're sitting
10 there and you're trying to figure out, you know,
11 what if we certified a candidate that wasn't going
12 to pay as much to the gaming -- pay as -- (audio
13 lost).
14 THE REPORTER: I lost his audio.
15 MR. SMITH: We lost your connection.
16 THE VIDEOGRAPHER: Shall we go off the
17 record?
18 THE WITNESS: Well, there's not much -- I
19 can go back on --
20 MR. DAVIS: Now we hear you.
21 THE VIDEOGRAPHER: You're good now.
22 MR. DAVIS: Can we go back and start your
23 answer over again?
24 THE WITNESS: Yeah. What was my question













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1 again? Why couldn't we negotiate? Okay.
2 We were looking at the legislation in
3 multiple ways to try to figure out what it actually
4 required of the City in the setting like this where
5 we had multiple applicants and we determined, and
6 especially since we had the lousy history of having
7 selected a candidate that we -- that the City spent
8 a lot of money and a lot of energy on only to have
9 it fall through, we thought that the safest
10 approach for the City was for us to certify
11 multiple candidates and then complete the
12 negotiations after the fact because that would
13 avoid the problem if the candidate we sent down was
14 unacceptable to the Gaming Board.
15 The way that legislation is written,
16 if you read it carefully, what it says is if a --
17 that it carves out a location in -- for Waukegan.
18 However, if they don't certify a candidate for
19 Waukegan then it opens up to all of Lake County.
20 So -- and, you know, Park -- you asked earlier
21 about Park City and North Chicago. Those cities
22 would be more than happy to have a casino in their
23 territory, and we were concerned that if we sent
24 one down that wasn't certified the Gaming Board

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1 would send it back and then we would end up
2 locked -- either having the Gaming Board allow a
3 proposal for Park City or North Chicago or we'd end
4 up in litigation over the siting and whether we
5 had -- or whether the -- an alternative site in
6 Park City or North Chicago would be allowed.
7 So we were put in a box by the
8 legislation.
9 BY MR. SMITH:
10 Q Right. I understand what you're saying.
11 Should I take from your answer that
12 you viewed negotiating with the applicants as
13 inconsistent with the idea of sending down multiple
14 proposals to the Gaming Board?
15 A Yeah, to a degree. To a degree. You
16 could only negotiate so far. If you came to a
17 final agreement on it and you picked the wrong one
18 I think you were screwed, to put it bluntly.
19 Q Am I right, in this case I don't think
20 there's any real dispute about this, I just want to
21 confirm, the City didn't engage in negotiations to
22 any extent with the applicants; is that fair?
23 A That is correct. We did not negotiate
24 beyond, you know, their original proposal and then,

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1 you know, they added their stuff after the fact,
2 but if you look at Johnson's report he didn't look
3 at the ups and extras, he just looked at the base
4 proposal itself on all instances, and that's what
5 we went on, although we did inform City Council of
6 what everybody's clarifications, supplementations,
7 and so on and so forth were.
8 Q Yeah. Is there a reason you wanted the
9 Gaming Board to take into account the supplemental
10 information but didn't want Johnson to include it
11 in his analysis?
12 MR. DAVIS: Object to the form of the
13 question. It presumes facts not in evidence, that
14 they had an intention that Johnson would or would
15 not consider something.
16 MR. SMITH: Well, I think that's in
17 evidence, but we can get to that.
18 MR. DAVIS: No, it isn't.
19 BY MR. SMITH:
20 Q Okay. Mr. -- Mr. Long, I thought you
21 just said that Johnson did not consider the
22 supplemental information in its -- in his analysis.
23 A I believe that's true.
24 Q Okay. And do you recall that you in

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1 particular confirmed with Mr. Johnson that he was
2 not supposed to consider that supplemental
3 information in his analysis?
4 MR. DAVIS: Same objection.
5 You can answer if you have an answer.
6 THE WITNESS: You know, I think Charlie
7 and I did, in fact, talk about it after -- after I
8 got back from Canada.
9 BY MR. SMITH:
10 Q Okay. And you --
11 A Briefly.
12 Q And didn't you express the view on the
13 part of the City that the City did not want
14 Mr. Johnson to incorporate the supplemental
15 information from applicants in his analysis?
16 A That's not quite exactly right. You're
17 close but not quite there.
18 Q All right. Explain to me how you would
19 qualify that.
20 A Well, Charlie said I don't think I should
21 be looking at this stuff, I think it would impair
22 my ability to be -- because that opens the door for
23 everybody to submit additional stuff and I've got
24 to go back and finish and reconfigure all of these


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1 things if we do that and come up with alternative A
2 and B depending on which -- what you believe from
3 each individual applicant, what was their original
4 offer, what's their enhanced offer, and then part
5 of the concern there was, well, what happens if you
6 don't get it done by October 25th.
7 Q And so you expressed agreement to
8 Mr. Johnson with the idea that he should not
9 incorporate supplemental materials into his
10 analysis, didn't you?
11 A Yeah.
12 Q Okay.
13 A Seemed like it made sense to me.
14 Q Okay. And nevertheless, I think we've
15 established the City's resolutions asked the Gaming
16 Board to take into account the supplemental
17 information, correct?
18 A Well, the resolution reads for itself,
19 but, yes, I think the Gaming Board has the inherent
20 ability to read the entire proposal anyway.
21 Q Was there a concern on your part that
22 there would be a disconnect between what
23 Mr. Johnson was analyzing and what the Illinois
24 Gaming Board was being asked to take into account?

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1 A No, I don't think so. I mean, no, I
2 don't -- I don't really think so.
3 Q Okay.
4 A I'm not sure that those factors really
5 meant very -- would mean very much to the Gaming
6 Board, and I never have thought that they would add
7 much.
8 Q Mr. Long, the resolution states, and, as
9 you've indicated, the language of the resolution
10 was the same for each of the applicants so I'll
11 just stay focused on Rivers since we have that in
12 front of us, there's a -- the next whereas clause
13 on the second page here says that "the City and the
14 applicant have mutually agreed in general terms on
15 location for a temporary riverboat."
16 Did any of the applicants in the
17 course of the RFQ process reach agreement with the
18 City, in general or specific terms, on a location
19 for a temporary casino?
20 A In the context that the ones that said
21 they would put up a temporary casino said they
22 would site it near where the permanent casino would
23 be, and that's what I mean by "general terms."
24 That's a broad general term.

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1 Q So let me -- going back to the Section
2 Two of this certification which states, and I'll --
3 I know it's cumbersome. I'll read it in its
4 entirety, because I don't want to draw an objection
5 that I've mischaracterized it, just to remind us.
6 Section Two states, "The applicant,
7 CDI-RSG, is hereby certified to the Illinois Gaming
8 Board, with the details of the mutual agreements
9 included in the applicant's response to the City's
10 request for proposals, hereto attached as Exhibit
11 A, which should be read in conjunction with any
12 additional materials submitted by the applicant,
13 hereto attached as Exhibit C. All exhibits are
14 hereby incorporated in their entirety as if fully
15 set forth here?"
16 In light of that language, Mr. Long,
17 if CDI-RSG, which I believe is also known as
18 Rivers, is the applicant licensed by the Illinois
19 Gaming Board is the agreement on price for Fountain
20 Square to be taken from the original application
21 from Rivers or would the City take the position
22 that the price is the sweetened offer included in
23 Exhibit C?
24 A Neither.

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1 Q Can you elaborate on that?
2 A Go back to the whereas I read you
3 earlier. You can't complete the negotiations until
4 there's a license in place. Then we negotiate.
5 Q All right. Well, what would be the
6 City's opening position on what Rivers had
7 committed to?
8 MR. DAVIS: Object to the form of the
9 question.
10 THE WITNESS: It's speculative, but I
11 think if I was negotiating that I would start that
12 that's you've set the floor, here's our asking
13 price.
14 BY MR. SMITH:
15 Q Right. Which set the floor, Exhibit C or
16 Exhibit A?
17 A Probably whatever is higher.
18 But I'd also look at the other
19 proposals and say these other people were offering
20 X, whatever that is. I'd probably take the highest
21 one of the bunch as setting the floor and then I'd
22 look for more than that. That would be my job, to
23 try to maximize the revenue to the City.
24 Might even have an appraisal done.


SA80

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1 That would be a point at which it would make sense
2 to have an appraisal done.
3 Q Why do you say that?
4 A Because now you have an actual use of the
5 land that's available. Otherwise you're
6 speculating, you're speculating that you'll get a
7 license.
8 Q And I think I understand what you're
9 saying there but just so the record is clear, when
10 you say "now you have a use of the land," how does
11 that relate to getting a new appraisal?
12 A "Use" is a technical legal term. Now you
13 have a legitimate zoned use, and once you have a
14 use it is an entitlement that you can appraise.
15 Otherwise you're just engaging in this hypothetical
16 thought process that if a casino is licensed and if
17 it can be sited on this property then it might be
18 worth X, and that removes one of the principal
19 hypotheticals from that analysis.
20 Q Gotcha. Okay.
21 Mr. Long, in thinking about the way
22 this was set up by the legislation in the form of
23 these certifying resolutions did you have any
24 concern that once a single applicant was licensed

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1 by the IGB that the City's negotiating leverage
2 would be limited by the fact that there was now one
3 license holder?
4 A Yeah.
5 I didn't write the law. If I had
6 written the law it would have been a lot better.
7 (Witness referred to previously
8 marked Exhibit 38.)
9 BY MR. SMITH:
10 Q Understood. Understood.
11 Let me -- let me ask you to take a
12 look at what's been marked as Exhibit 38.
13 A 32?
14 Q 38. I'm sorry.
15 MR. DAVIS: 8.
16 THE WITNESS: Okay.
17 BY MR. SMITH:
18 Q And, Mr. Long, I just want to confirm, is
19 Exhibit 38 an e-mail you received from Ms. Emmerton
20 on October 8th, 2019, attaching the -- a draft of
21 Johnson Consulting's report to the City of
22 Waukegan?
23 A Well, I think that's when she sent it,
24 but I probably didn't see it for a bit after that

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1 because I was in Canada at the time.
2 Q Ah. Okay. When did -- if you remember,
3 when did you get back from Canada?
4 A I believe I was gone from short -- one or
5 two days after the -- I think it was the Friday
6 after the thing at the Genesee, and I got back in
7 town, really had a horrible trip back but it's a
8 long story, I got back to this area the Friday
9 before the 17th, whatever that was, and I didn't
10 look at -- I didn't look at any of this stuff until
11 Monday -- (audio lost).
12 MR. SMITH: You cut out.
13 MR. DAVIS: You're dropping off again,
14 your voice is.
15 THE WITNESS: Well, I'm doing the best I
16 can, Glenn.
17 MR. DAVIS: Now you're back.
18 MR. SMITH: Whatever you just did worked.
19 THE WITNESS: Okay.
20 MR. SMITH: I don't know.
21 THE WITNESS: Well, I don't know. The
22 phone doesn't like me. What else is new.
23 MR. SMITH: I don't know. Maybe Glenn is
24 hitting a mute button over there. That's --

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1 MR. DAVIS: No, I'm not.
2 If you could put -- maybe put that
3 phone directly in front of you. Is it off to the
4 side?
5 THE WITNESS: Well, here. I'll try and
6 see if this does anything.
7 MR. DAVIS: It just seems to be catching
8 some dead space once in a while.
9 THE WITNESS: All right.
10 So basically I left town two days --
11 about two days after the extravaganza at the
12 Genesee. I got back and I was at work the Monday
13 before the special meeting on October 17th or 19th,
14 whatever that was.
15 BY MR. SMITH:
16 Q Okay. So you recall at some point
17 reviewing this draft, just perhaps not right when
18 it was sent to you?
19 A Yeah, I remember looking at it, although
20 it might have been -- it might have been outmoded
21 by the time I saw it.
22 (Witness referred to previously
23 marked Exhibit 41.)
24


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1 A The expression --
2 Q Go ahead.
3 A What people expressed seemed to be, yeah,
4 this is -- we probably shouldn't in large -- well,
5 for the two different reasons that I already
6 mentioned.
7 Q And you sort of cleaned up my question
8 with your clarification, so thank you. In terms of
9 what was expressed to you, you were not aware of
10 anyone expressing at the senior staff or mayoral
11 level a dissenting view in terms of how to handle
12 supplemental information?
13 A No.
14 Q Mr. Long, I want to ask you a little bit
15 about the Waukegan Gaming litigation, and I'm
16 sensitive to the fact that I need to be careful
17 here not to, you know, try to -- try to press on
18 anything that would either get into work product or
19 attorney-client privilege so I'm going to -- I'm
20 going to try to do that and I feel confident that
21 between you and Mr. Davis you'll push back if you
22 think I'm overstepping that boundary.
23 Can you just describe for me -- I know
24 that the City was represented by outside counsel in

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1 that litigation between the City and Waukegan
2 Gaming in 2019. Can you just explain to me how you
3 viewed your role as corporation counsel in a
4 litigation like that where you have outside
5 counsel? Are you, you know, overseeing the
6 litigation in some way or do you just kind of hand
7 that off to outside counsel?
8 A Same way I view this litigation and Glenn
9 Davis's role here. I am their client. I am the
10 face of the client and to a very large extent.
11 There are other people that are also the face of
12 the client because the client has many faces.
13 Q That's helpful.
14 Who do you -- what do you do to keep
15 the City as the client abreast of developments in
16 the litigation?
17 A Well, you're familiar with the
18 Consolidation Coal case and the concept of a
19 control group, right? Okay. They're the ones I
20 talk to, and I will determine which ones need to
21 hear at what points in time based on my best
22 judgment and my years of experience.
23 Q And are you comfortable telling me who
24 you considered to be the control group for purposes

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1 of the Waukegan Gaming litigation?
2 A Well, the corporate authority. The
3 aldermen -- the elected officials essentially, and
4 that would include actually the clerk and the
5 treasurer as well as the mayor and the aldermen and
6 then typically senior staff, particularly those --
7 you know, Noelle and Tina since they were in the
8 review team and have express opinions from time to
9 time on important aspects of the litigation and are
10 affected by it.
11 Q Is it fair to assume that as a point of
12 contact that the mayor was a more frequent point of
13 contact for you in terms of updates on the
14 litigation than, say, for example, the City
15 Council?
16 A You have to realize that -- yes, but
17 there's a reason for that.
18 Q Sure.
19 A And the reason is that Waukegan is one of
20 the few strong-mayor form of governments in the
21 State of Illinois. There aren't very many of them.
22 But when you have a strong-mayor form of government
23 all of the executive power as well as the chairman
24 of the board sort of aspect of a mayor is vested in

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1 him, so as a result he is the primary face of the
2 City for any -- a great multiple of reasons.
3 Q Mr. Long, my understanding is that the
4 summary judgment briefs that were exchanged in that
5 case were not filed on the public docket but they
6 were exchanged and courtesy copies were provided to
7 the judge. Are you able to explain to me why that
8 process was followed?
9 A No.
10 Q And just so the record is clear, I just
11 want to understand, are you not able to tell me
12 because you feel you would be disclosing privileged
13 information or is it because it's information
14 you're not privy to?
15 A Even the answer to that question will
16 disclose information that you're not entitled to
17 and will violate my privilege -- the privilege.
18 Q Okay. Okay. That's fair.
19 Did the -- my understanding is that
20 litigation was resolved through a dismissal without
21 prejudice. Is that your recollection of it as
22 well?
23 A I believe that's what the order on record
24 is.


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1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
2 EASTERN DIVISION
3
4 WAUKEGAN POTAWATOMI CASINO, )
LLC, an Illinois Limited ) JUDGE JOHN F. KNESS
5 Liability Company, )
) MAGISTRATE JUDGE
6 Plaintiff, ) M. DAVID WEISMAN
)
7 -vs- ) No. 1:20-cv-750
)
8 CITY OF WAUKEGAN, an Illinois )
Municipal Corporation, )
9 )
Defendant. )
10
11
12
13
14 Zoom videotaped deposition of KEITH TURNER,
15 taken before KAREN KOSTAS, CSR, RMR, CRR, RDR and
16 Notary Public, pursuant to the Federal Rules of
17 Civil Procedure for the United States District
18 Courts pertaining to the taking of depositions,
19 at 311 South Wacker Drive, Suite 3000, in the
20 City of Chicago, Cook County, Illinois, at
21 12:30 p.m. on the 19th day of March, 2021.
22
23
24


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Legal Videographer
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24 - - - - - - - - - -

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22
23
24 - - - - - - - - - -

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1 THE VIDEOGRAPHER: Good afternoon.
2 The time is 12:39 Central Time on Friday,
3 March 19th, 2021.
4 This begins Media Unit Number 1 of
5 the video-recorded Zoom deposition of
6 Keith Turner taken in the matter of Waukegan
7 Potawatomi Casino, LLC --
8 Is that pretty close?
9 MR. SMITH: Close enough.
10 THE VIDEOGRAPHER: -- versus the
11 City of Waukegan and to be heard in the
12 United States District Court for the
13 Northern District of Illinois,
14 Eastern Division, Case Number 1:20-cv-750.
15 My name is Cody Henderson, I'm the
16 videographer. Karen Kostas is the
17 court reporter.
18 Will counsel please state their
19 appearance for the record.
20 MR. SMITH: Sure. Dylan Smith of
21 Freeborn & Peters for plaintiff, Waukegan
22 Potawatomi Casino, LLC.
23 MS. RIGNEY: Meghan Rigney from
24 Hepler Broom here on behalf of the City of


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1 Q Got you. So taking your -- taking
2 your explanation that the focus for you really
3 was the price for the land, how did that --
4 how did that play out in terms of your voting
5 on the proposals?
6 A So, as I recall, and I don't
7 remember all these specifics, but there was
8 one -- there were four -- four proposals.
9 One I think was for 33 million.
10 One was like 17 million or something
11 like that. I forgot. 20 maybe. And then --
12 Maybe it was 22. I don't know. Something
13 less.
14 There was one for like 5 million.
15 And there was one there that wanted
16 to lease it, lease the land for 99 years with
17 an option to buy anywhere in there and I think
18 they were going to pay something over market
19 price or something. I forget the details.
20 Q Okay.
21 A Yeah.
22 Q And am I right that the one proposal
23 you voted against was the one that you recall
24 being somewhere in the $5 million

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1 neighborhood?
2 A Yes. But that's not why I voted
3 against it.
4 Q Ahh. Okay. Tell me why you voted.
5 And just to make sure we're talking about the
6 same thing, is that what you understood to be
7 the Potawatomi proposal?
8 A Yes.
9 Q Tell me why you voted against the
10 Potawatomi proposal.
11 A Well, when the gentleman who
12 represented Potawatomi came before the council
13 and made his presentation or his pitch, he
14 stated words, more or less he said, this is an
15 Indian tribe and we should get it because
16 we're an Indian tribe, we're entitled. He was
17 saying he was entitled to -- or they were
18 entitled to be awarded that bid because they
19 were Indians.
20 I do not believe in that in any
21 shape, form or fashion. I think everyone
22 should be treated equally. There should not
23 be given any considerations for color, creed,
24 ethnicity, none of that. We're all Americans.

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1 And they should have came to the
2 table with a straight proposal for
3 consideration. But they asked me and they
4 asked us to consider -- not to consider, but
5 to give it to them because you're an Indian
6 tribe.
7 It didn't fit with my makeup. And I
8 didn't like it. And so as soon as he said
9 that, I was like, I don't want to hear
10 anymore. It just so happened that they had
11 the $5 million bid.
12 And even if -- So that being said,
13 right, that was my driving decision, that the
14 decision point for me was that statement he
15 made along those lines.
16 Taking that aside, had I only
17 considered monetary offers for that land, they
18 still would have made my cut because they were
19 so low.
20 Q Okay. So let me -- let me just
21 unpack that a little bit.
22 The statement that you're talking
23 about that was a turnoff to you, was that
24 something that was said at the -- at the

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1 public meeting at the Genesee Theatre?
2 A No. That was said in the -- in the
3 council chambers, as I recall.
4 Q Okay. My understanding is no one --
5 none of the applicants addressed the
6 City Council at the -- at the initial vote on
7 the proposal, so I'm just trying to identify
8 what you're referring to.
9 A I don't know when -- when he was
10 there. I think it was an attorney. But he
11 was -- He did come into the council chambers.
12 And I -- I don't think that was -- I think
13 that statement was made in the council
14 chambers. I don't think it was made at the
15 Genesee Theatre. It may have been. Maybe I'm
16 wrong. It was a long time ago. But I do
17 recall him making that statement. And I think
18 it was in the council chambers.
19 Q And was it -- was it -- So just to
20 kind of put a time frame on this, putting
21 aside the exact date, you remember there was a
22 special City Council meeting where the City
23 Council voted on the various casino proposals
24 in October of 2019?





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1 A Yes. Yes.
2 Q Okay. Was this statement that you
3 recall being made in council chambers at that
4 meeting or at some earlier City Council
5 meeting?
6 A I think that was at an earlier
7 council meeting. Yeah. I don't think it was
8 at that special meeting. Because that special
9 meeting was a continuation of an earlier
10 meeting. Yeah. The one at the Genesee was a
11 continuation, I think, because they had so
12 many people that wanted to speak.
13 Q But your best memory, as you sit
14 here today, is that that statement, that sort
15 of turned you off because it seemed like, and
16 this is my effort to catch what you said, but
17 sort of special pleading for an Indian tribe,
18 that was something you remember being stated
19 in council chambers sometime before the
20 special City Council meeting?
21 A Yeah. That's -- That's my
22 remembrance.
23 Q Okay.
24 A Excuse me. I'm just going to turn

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1 the heater on.
2 Q Sure. Sure.
3 A All right. Go ahead.
4 Q So let me ask you this, and I
5 appreciate you just laying out your thinking
6 for me, just to explore that for a moment.
7 Excepting that you found that --
8 that statement that you recall to be a
9 turnoff, why, in your mind, was the
10 appropriate response to vote against
11 Potawatomi as opposed to saying, okay, I'm not
12 going to give you special treatment, I'm going
13 to certify you with the other casino
14 proposals?
15 MS. RIGNEY: Objection, form,
16 foundation.
17 Go ahead.
18 A Can I answer?
19 BY MR. SMITH:
20 Q Yeah.
21 A Rephrase.
22 Q Yeah. And just to be clear, I'm
23 really trying to explore the way you thought
24 about this. So this may sound argumentative,

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1 but I don't mean it that way.
2 A I understand.
3 Q I think you've been very clear that
4 you found the statement, hey, you should --
5 you should choose us because we're an Indian
6 tribe, that was a turnoff to you, correct?
7 A Yes.
8 Q Okay. And what I'm wondering is in
9 your mind, why was the appropriate response to
10 that, hey, I'm going to vote against
11 Potawatomi as opposed to I'm not going to give
12 you special consideration because you're an
13 Indian tribe, but I'm going to certify you
14 along with the others, why did you go to a no
15 vote?
16 MS. RIGNEY: Objection, form,
17 foundation.
18 Go ahead.
19 A That was my reason. That was it.
20 Because they're asking for special
21 consideration.
22 I go through my life, I never ask
23 for special consideration for any reasons.
24 And I don't -- I don't -- I deeply believe,

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1 it's at the core of my belief system, that we
2 are all equal and we all deserve to be treated
3 equally under the law. And as a member of a
4 legislative body, I -- I think it is my
5 responsibility to do that.
6 And so when they said treat me
7 differently, I want to be treated equal, but
8 treat me more equal because, then I reject
9 that and that's why I rejected them.
10 BY MR. SMITH:
11 Q Thank you for explaining that.
12 If you were to try to refresh your
13 memory about where this statement was made,
14 what do you think would be the best way to do
15 that? Would it be watching videos of the --
16 A I have to -- I have to go back and
17 -- and watch the videos.
18 Q Yeah. Okay. Okay. Let me -- Let
19 me ask you, on the -- on the other three, your
20 yes votes on the other three proposals, can
21 you explain to me your reasoning behind those.
22 And, you know, feel free to make it as short
23 or as elaborate as you think you need to to
24 kind of explain how you thought about those





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1 proposals.
2 A Yeah. So my thought was to only
3 send one. Somebody offered 33 million. And I
4 don't recall, I think, I think that was
5 North Point, but I'm not certain. But one of
6 them offered like 33 million, right. And that
7 was my choice. Only.
8 And shortly before we took the vote
9 -- Again, I'm a new guy and, you know, I'm not
10 a go-along get-along guy, by any means, but
11 not to rock the boat. As we were prepping for
12 the meeting, I was seated on the dais. As
13 others came in, the mayor came in to me and he
14 said, we want to send these three down to
15 Springfield for them to decide, these are the
16 choices.
17 Q Sure. And I'm going to ask you -- I
18 apologize, Alderman Turner. It was getting a
19 little faint there, so I'm going to ask if you
20 could repeat that part of your answer again.
21 A So as I sat on the dais waiting for
22 the meeting to start, preparing, as the mayor
23 entered, he came by, he had to pass by my
24 chair, and he said to me, these are the three

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1 that we want to send to Springfield. Right.
2 And that was what the vote was going to be.
3 Right. Put those three down there.
4 Q Got you. And how did he identify
5 the three that they wanted to send down, did
6 he name them or did he point to something?
7 A No. He named them.
8 Q And Alderman Turner, let me kind of
9 bring your attention to something else I think
10 you said at the City Council meeting. And I'm
11 talking about the special City Council meeting
12 in October, 2019 before you voted.
13 I think as to Rivers you made a
14 statement bringing up the fact that it had
15 partnered in some way with another entity that
16 had had some difficulty getting licensed in
17 the past with regard to what is known as the
18 tenth casino license.
19 Do you remember making that
20 statement?
21 A Yeah. Vaguely. I do.
22 Q And it sounded like you were
23 expressing some concern about that but saying,
24 nevertheless, I'm going to go ahead and vote

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1 for them.
2 Was part of the reason you sort of
3 went ahead and voted for them despite those
4 misgivings based on kind of what -- what
5 Mayor Cunningham had -- had told you
6 beforehand a little bit?
7 MS. RIGNEY: Objection, form,
8 foundation, speculation.
9 Go ahead.
10 A Yeah. Not really. I mean I figured
11 that whatever vetting had been done back then
12 and was going to be done, or had been done --
13 The vetting that had been done during that
14 2005 bidding process that canceled out the
15 casino for Waukegan and whatever vetting had
16 been done to the point where we were taking
17 this vote and whatever was to come later under
18 the Illinois Gaming Board, they would flush
19 all that out. So it wasn't a super
20 consideration on my end. It just -- It was --
21 It was a point that I had to make note of.
22 BY MR. SMITH:
23 Q Okay. So if I'm following you, from
24 what I understand, although you brought up

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1 that issue, it wasn't in your mind a
2 tremendously important consideration at that
3 stage of the process?
4 A It was not.
5 Q Okay. How did you, if you recall,
6 how did you become aware about that particular
7 issue, do you remember?
8 A I do not.
9 Now, you know, you're talking about
10 a long period of time. And that initial -- I
11 was around when that came up back in 2005.
12 Right. And so I had awareness of it back
13 then. But then I totally forgot about that.
14 And when we were going through this
15 process, someone raised the issue again. I
16 don't recall where and how that came, you
17 know, was put back into my mind. Oh, yeah,
18 remember that happened. I don't know. I
19 don't know why -- why it came back to me.
20 Q Okay.
21 A But I did have an awareness of it
22 when it occurred back in 2005, because there
23 were newspaper articles about it and so forth
24 and so on. And, again, I was a political


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1 I'm sorry.
2 THE REPORTER: Let's start with
3 Mr. Bond called me and invited me to come out.
4 A To see or hear his presentation or
5 -- or, you know, his vision, what he wanted to
6 do in terms of bringing a casino, developing a
7 casino in Waukegan.
8 BY MR. SMITH:
9 Q And do you know, had -- had you --
10 Do you know how Bond had your phone number?
11 A I do not. He could have had it
12 since 2003 when I worked on his campaign. I
13 mean I've got literally thousands, tens of
14 thousands of phone numbers in my phone.
15 Q Yeah. Okay. And I take it you
16 agreed to go out to Tap Room and hear him out?
17 A Yes.
18 Q And I'm not sure it matters, but
19 just to give me a sense. About how much time
20 passed between the phone call and when you
21 went out to Tap Room Gaming?
22 A A couple, three days maybe. Yeah.
23 Q And describe for me, I'm going to
24 ask you about what was said at the meeting,

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1 but before we get to that, just set the table
2 for me, describe what happened when you got to
3 Tap Room Gaming.
4 A I got a tour of the facility and
5 Tap Room Gaming. I mean you remember,
6 Mr. Bond and I go back to 2003. So he's kind
7 of proud of his business and showing me what
8 he has done, right. So he gave me a tour of
9 the building.
10 And we went into a conference room.
11 It was very nice and a high tech kind of
12 thing. Big screens up on the wall. And he
13 showed me basically a PowerPoint presentation
14 about what -- what his project might look
15 like.
16 Q So who else was at this meeting
17 where he showed you the PowerPoint?
18 A Yeah. So I'm not -- I'm not
19 certain. Jon Kozlowski might have been there,
20 but I don't -- I can't say for certain if
21 that's -- if that's when I met Jon.
22 And Michael's -- I think Michael's
23 business partner was there, but I don't
24 remember him being in the -- in the room when

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1 the presentation was made. Maybe he was. I
2 don't remember the specifics there. I don't.
3 Q Sure. When you say his business
4 partner may have been there for part of it, is
5 that Mr. Hochberg?
6 A Yeah, I don't know. I don't
7 remember his name. What's the first name?
8 Q Andrew. Andy.
9 A Maybe.
10 Q Okay. Let me see if this refreshes
11 your memory at all.
12 Do you recall that one of the casino
13 applicants that ended up dropping out was
14 something called Waukegan Development
15 Association or WDA?
16 A No. No.
17 Q All right. How many -- How many
18 people do you remember meeting when you went
19 to Tap Room about?
20 A I don't know. There were some
21 people there, you know, some -- some employees
22 there. And he's like this is the guy that
23 does that or something. I don't know. It
24 wasn't -- I don't know. I don't remember.

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1 Q All right. About how long did the
2 meeting last, Alderman Turner?
3 A I'd say about an hour all total.
4 You know, come in, hey, how are you doing, you
5 want something to drink. He showed me around
6 the building and described the operation for
7 Tap Room. And then we went into the
8 conference room. I'd say roughly an hour. I
9 was there roughly an hour.
10 Q Okay. And you mentioned there was a
11 PowerPoint presentation. Can you describe to
12 me what that consisted of.
13 A Several slides that showed a
14 building on the -- the building, the entry to
15 and the parking lots for the building. And I
16 think there was some interiors where he
17 described like the layout of the gaming
18 facility and like a restaurant. There was
19 going to be a couple -- There was going to be
20 a couple, three restaurants or something
21 there. And then I think there was going to be
22 room for some kind entertainment with concerts
23 or some such. I don't recall.
24 Q So these were renderings of a -- of



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# City Council
~ Minutes ~

City Hall, Second Floor
Rockford, IL 61104
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**Regular Meeting**

**Monday, October 7, 2019**

## I. CALL TO ORDER

Mayor McNamara called the meeting to order at 5:31 p.m.

### A. Invocation and Pledge of Allegiance

The invocation was given by Alderman Ervins and the Pledge of Allegiance was led by Mayor McNamara.

### B. Roll Call

| Attendee Name | Organization | Title | Status | Arrived |
|---|---|---|---|---|
| Tim Durkee | City of Rockford | Alderman | Present | |
| Tony Gasparini | City of Rockford | Alderman | Present | |
| Chad Tuneberg | City of Rockford | Alderman | Present | |
| Kevin Frost | City of Rockford | Alderman | Present | |
| Venita Hervey | City of Rockford | Alderman | Late | 5:33 PM |
| Natavias Ervins | City of Rockford | Alderman | Present | |
| Ann Thompson-Kelly | City of Rockford | Alderman | Absent | |
| Karen Hoffman | City of Rockford | Alderman | Present | |
| Bill Rose | City of Rockford | Alderman | Present | |
| Franklin C. Beach | City of Rockford | Alderman | Present | |
| Tuffy Quinonez | City of Rockford | Alderman | Present | |
| John C. Beck | City of Rockford | Alderman | Present | |
| Linda McNeely | City of Rockford | Alderman | Present | |
| Joseph Chiarelli | City of Rockford | Alderman | Present | |

### C. Acceptance of the Journal

**1. Journal of Proceedings for the City Council meeting held on September 16, 2019.**

Alderman Durkee moved to accept the Journal of Proceedings for the City Council meeting held on September 16, 2019, seconded by Alderman McNeely. MOTION PREVAILED with a voice vote (Alderman Thompson-Kelly was absent).

## II. PROCLAMATIONS

1. Mayor McNamara presented a proclamation proclaiming the week October 6-12, 2019 to be "FIRE PREVENTION WEEK" in Rockford, Illinois.

2. Mayor McNamara presented a proclamation proclaiming October 20, 2019 to be "CROP HUNGER WALK DAY" in Rockford, Illinois.

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## B. Code and Regulation Committee

1. **2019-216-R** - Resolution certifying Casino Applicant(s) to the Illinois Gaming Board.

   Alderman Chiarelli, on behalf of the Code and Regulation Committee, read in the resolution and placed it up for passage.

| | |
|---|---|
| **RESULT:** | **ADOPTED [11 TO 1]** |
| **AYES:** | Durkee, Gasparini, Tuneberg, Frost, Hervey, Ervins, Hoffman, Rose, Beach, Quinonez, Chiarelli |
| **NAYS:** | Linda McNeely |
| **ABSTAIN:** | John C. Beck |
| **ABSENT:** | Ann Thompson-Kelly |

2. **2019-217-R** - Resolution approving Host Community Agreement with Casino Developer(s).

   Alderman Chiarelli, on behalf of the Code and Regulation Committee, read in the resolution and placed it up for passage.

| | |
|---|---|
| **RESULT:** | **ADOPTED [11 TO 1]** |
| **AYES:** | Durkee, Gasparini, Tuneberg, Frost, Hervey, Ervins, Hoffman, Rose, Beach, Quinonez, Chiarelli |
| **NAYS:** | Linda McNeely |
| **ABSTAIN:** | John C. Beck |
| **ABSENT:** | Ann Thompson-Kelly |

## C. Finance and Personnel Committee

# XIII. ADJOURNMENT

The meeting was adjourned at 6:49 p.m.



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*City Council Rooms, City of Rockford, Illinois*

Date: October ___, 2019

**RESOLUTION ___________________**

WHEREAS, Section 7(e-5)(i) of the Illinois Gambling Act, 230 *ILCS* 10/1, *et seq*., requires that the City of Rockford certify that the applicant, HR Rockford, has negotiated with the City of Rockford in good faith; and

WHEREAS, Section 7(e-5)(ii) of the Illinois Gambling Act, 230 *ILCS* 10/1, *et seq*., requires that the City of Rockford certify that the applicant, HR Rockford, and the City of Rockford have mutually agreed on the permanent location of the casino; and

WHEREAS, Section 7(e-5)(iii) of the Illinois Gambling Act, 230 *ILCS* 10/1, *et seq*., requires that the City of Rockford certify that the applicant, HR Rockford, and the City of Rockford have mutually agreed on the temporary location of the casino; and

WHEREAS, Section 7(e-5)(iv) of the Illinois Gambling Act, 230 *ILCS* 10/1, *et seq*., requires that the City of Rockford certify that the applicant, HR Rockford, and the City of Rockford have mutually agreed on the percentage of revenues that will be shared with the municipality, if any; and

WHEREAS, Section 7(e-5)(v) of the Illinois Gambling Act, 230 *ILCS* 10/1, *et seq*., requires that the City of Rockford certify that the applicant, HR ROckford, and the City of Rockford have mutually agreed on any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality; and

WHEREAS, Section 7(e-5)(vi) of the Illinois Gambling Act, 230 *ILCS* 10/1, *et seq*., requires that the City of Rockford adopt a resolution in support of the riverboat or casino in the City of Rockford; and

WHEREAS, Section 7(e-5) of the Illinois Gambling Act, 230 ILCS 10/1, et seq requires the City of Rockford to hold a public to discuss items (i) through (vi) above and any other details concerning the proposed casino above at least seven days before certification,

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Attachment: Resolution to certify casino requirements 9.30.19 revised (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming



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NOW, THEREFORE, BE IT RESOLVED that the City Council of Rockford, Illinois certifies as follows:

1. That the applicant, HR Rockford, has negotiated with the City of Rockford in good faith; and

2. That the applicant, HR Rockford, and the City of Rockford have mutually agreed on the permanent location of the casino, 7801 E. State St. Rockford, IL 61108; and

3. That the applicant, HR Rockford, and the City of Rockford have mutually agreed on the temporary location of the casino, 610 Bell School Rd. Rockford, IL 61107; and

4. That the applicant, HR Rockford, and the City of Rockford have mutually agreed on the percentage of revenues that will be shared with the municipality, if any; and

5. That the applicant, HR Rockford, and the City of Rockford have mutually agreed on any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality; and

6. The City of Rockford previously passed a resolution in support of the casino in the City of Rockford in compliance with 230 *ILCS* 10/7(e-5)(vi); and

7. The City of Rockford conducted a public hearing on September 23, 2019 to discuss items (i) through (vi) and all other details concerning the proposed casino.

8. The Mayor and Legal Director are authorized to execute all necessary documents consistent with this certification or otherwise required by the Illinois Gaming Board in conjunction with this certification.

ADOPTED by the City Council of the City of Rockford, Illinois this _____ day of _____________, 2019.

APPROVED by the Mayor of the City of Rockford, Illinois this _______ day of _______________, 2019.

______________________________
Thomas P. McNamara, Mayor
City of Rockford, Illinois

ATTEST:

______________________________
Nicholas O. Meyer, Legal Director and
*Ex Officio* Keeper of the Records and
Seal of the City of Rockford, Illinois

Attachment: Resolution to certify casino requirements 9.30.19 revised (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming









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# HOST COMMUNITY AGREEMENT

# BY AND BETWEEN

# CITY OF ROCKFORD, ILLINOIS

# AND

# 815 ENTERTAINMENT, LLC





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10/5/2019 Draft

# HOST COMMUNITY AGREEMENT

This Host Community Agreement is dated as of October ___, 2019, by and between the City of Rockford, Illinois, a municipal corporation ("**City**"), having its principal place of business at 425 E. State Street, Rockford, Illinois 61104 and 815 Entertainment, LLC, an Illinois limited liability company having its principal place of business at 2800 S. River Road, Suite 110, DesPlaines, Illinois 60018 ("**Developer**"). Capitalized terms used and defined elsewhere in this Agreement are defined in Section 1.

## RECITALS

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 reflects the public policies of the State with regard to the operation and regulation of gaming as well as the public benefits to the State and its citizens that can result from a gaming project conducted in accordance with such policies by assisting economic development, promoting Illinois tourism, and increasing the amount of revenues available to the State to assist and support education and to defray State expenses.

C. The Act authorizes the issuance of one (1) owners license within the City.

D. Under Section 7(e-5) of the Act, 230 ILCS 10/7(e-5), for an application for a Rockford-based owners license to be considered by the Illinois Gaming Board (the "**Board**"), the City must certify to the Board (collectively, the "**(e-5) Requirements**"):

(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; and

(vi) that the City Council has passed a resolution or ordinance in support of the casino in the City.

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E. Following a public hearing to discuss the (e-5) Requirements, as well as after details concerning the Project (defined below), the City Council certified that the Developer met the (e-5) Requirements, subject to the requirements of Section 2.3.

F. 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.**

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. Capitalized terms which are used primarily in a single Section of this Agreement are defined in that Section.

(a) "**AAA**" is defined in Section 13.13 hereof.

(b) "**Act**" is defined in Recital A hereof.

(c) "**Additional Commitments**" means collectively, those obligations of Developer set forth in Section 4.4.

(d) "**Adjusted Gross Receipts**" shall have the same meaning as given to such term in the Act.

(e) "**Adjusted Gross Sports Wagering Receipts**" shall have the same meaning as given to such term in the Sports Wagering Act.

(f) "**Adjusted Receipts**" means, collectively, (i) Adjusted Gross Receipts and (ii) Adjusted Gross Sports Wagering Receipts.

(g) "**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.

(h) "**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.

(i) "**Application**" means an application for a License as required by the Act.

(j) "**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, a License issued to Developer, and such other permits and licenses necessary to complete the Work, and to open, operate and occupy the Project Site and the Project.

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(k) "**Board**" is defined in Recital D hereof.

(l) "**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.

(m) "**Casino**" means any premises in the City wherein Gaming is conducted by Developer pursuant to the Act, the Sports Wagering Act and this Agreement, and includes all buildings, improvements, equipment, and facilities developed, constructed, used or maintained in connection with such gaming, but shall not include any public streets or other public ways.

(n) "**Casino Gaming Operations**" means any Gaming operations permitted under the Act or the Sports Wagering Act and offered or conducted at the Project.

(o) "**Casino Management Agreement**" is defined in Section 2.3(a) hereof.

(p) "**Casino Manager**" means HR Rockford LLC, a Florida limited liability company or its successors or assigns as permitted hereunder engaged, hired or retained by Developer to develop, manage and/or operate the Casino and the Casino Gaming Operations.

(q) "**Certification**" shall mean the certification to be made by the City that Developer has satisfied the (e-5) Requirements.

(r) "**City**" means the City of Rockford, Illinois, a municipal corporation.

(s) "**City Council**" shall mean the duly elected municipal council of the City of Rockford, Illinois.

(t) "**City's Share of Taxes**" means the aggregate of (i) the amount paid to the City by the Board on behalf of the State for admission tax imposed under 230 ILCS 10/12; plus (ii) the amount paid to the City from the tax revenue from riverboat or casino gambling deposited in the State Gaming Fund under subsection (b) of 230 ILCS 10/13.

(u) "**Closing Certificate**" means the certificate to be delivered by Developer in the form as attached hereto as Exhibit G.

(v) "**Closing Conditions**" is defined in Section 2.3.

(w) "**Closing Date**" means the date on which the Closing Conditions have been satisfied.

(x) "**Closing Deliveries**" is defined in Section 2.3.

(y) "**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 that not less than seventy-five percent (75%) of the Gaming Area, and fifty percent (50%) of the aggregate retail floor space and fifty percent (50%) of the aggregate restaurant floor space are open to the public for their intended use (and/or in the case of the retail and restaurant floor spaces, are completed as shells and available for leasing).

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(z) "**Component**" means any of the following included as part of the Project: the Casino; hotel; restaurants; bars and lounges; meeting and assembly space; retail space; back of house and central plant space; office space; entertainment, recreational facilities and spa; parking; private bus, limousine and taxi parking and staging areas; the other facilities described on Exhibit B; and such other major facilities that may be added as components by amendment to this Agreement.

(aa) "**Concept Design Documents**" means documents for the design of the Project attached to this Agreement as Exhibit D, which such documents may be subject to change, alteration and/or modification as provided in Section 3.1(b).

(bb) "**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.

(cc) "**Construction Completion Date (Permanent Project)**" means the date occurring no later than twenty-four (24) months following the date on which the Board issues to the Developer a License.

(dd) "**Construction Completion Date (Temporary Project)**" means the date occurring no later than three (3) months following the date on which the Board issues to the Developer a License, *provided*, *however,* that upon written request of the Developer to the City and upon Developer showing that it is diligently pursuing construction of the Temporary Project, the City shall extend the period by up to three (3) months.

(ee) "**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.

(ff) "**Court**" is defined in Section 13.4.

(gg) "**Damage Period**" is defined in Section 7.4.

(hh) "**Default**" means any event or condition that, but for the giving of notice or the lapse of time, or both, would constitute an Event of Default.

(ii) "**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 such local bank 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.

(jj) "**Determination Period**" means a period of twelve (12) months during which GAAP Net Income in connection with the Temporary Casino Payments and Adjusted Receipts in connection with the Permanent Casino Payments are determined or, in the case of the Temporary

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Casino Payments, such shorter period if the Temporary Project Operation Period ends before any twelve (12) month period has elapsed.

(kk) "**Developer**" means 815 Entertainment, LLC, an Illinois limited liability company, its successors or assigns as permitted hereunder.

(ll) "**Developer Payments**" is defined in Section 4.7(a).

(mm) "**Development Process Cost Fees**" means, to the extent not otherwise (i) previously paid by Developer to the City, whether directly or indirectly or (ii) payable by Developer hereunder, a fee to reimburse the City for the aggregate amount of any and all costs and expenses in good faith paid or incurred by the City to third parties through the date that is the one hundred eighty (180) days of Operations Commencement (Permanent Project) (including attorneys, accountants, consultants and others) in connection with the City's preparation of its Request for Proposal for Casino Development and review of responses relating thereto; the City's due diligence, mitigation review, study and investigations of and concerning the Project and Developer; the negotiation, preparation and enforcement of this Agreement; the planning, development, ownership, management and operation of the Project; the issuance of the License to the Developer; and any litigation filed by or against the City or in which the City intervenes in connection with any of the foregoing.

(nn) "**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.

(oo) "**(e-5) Requirements**" is defined in Recital D hereof.

(pp) "**Escrow Agent**" is defined in Section 10.4.

(qq) "**Event of Default**" is defined in Section 7.1.

(rr) "**Financing**" means the act, process or an instance of obtaining specifically designated funds for the Project, whether secured or unsecured, including (i) issuing securities; (ii) drawing upon any existing or new credit facility; or (iii) contributions to capital by any Person.

(ss) "**Finance Affiliate**" means any Affiliate created to effectuate all or any portion of a Financing.

(tt) "**Final Completion (Permanent Project)**" means the completion of the Work, as evidenced by the issuance of a temporary certificate of occupancy by the appropriate Governmental Authority for all Components comprising the Permanent Project to which a certificate of occupancy would apply, and that at least ninety-five percent (95%) of the Gaming Area, retail floor space and restaurant floor space are open to the public for their intended use (and/or in the case of the retail and restaurant floor spaces, are completed as shells and available for leasing).

(uu) "**Final Completion (Temporary Project)**" means the completion of the Work, as evidenced by the issuance of a temporary certificate of occupancy by the appropriate Governmental Authority for all Components comprising the Temporary Project to which

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certificate of occupancy would apply, and that at least ninety-five percent (95%) of the Gaming Area, retail floor space and restaurant floor space are open to the public for their intended use (and/or in the case of the retail and restaurant floor spaces, are completed as shells and available for leasing).

(vv) "**Final Completion Date**" means (i) for the Temporary Project, the date occurring no later than two (2) 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).

(ww) "**Finish Work**" refers to the finishes which create the internal and external appearance of the Project.

(xx) "**First Class Project Standards**" means the general standards of quality for construction, maintenance, operations and customer service established and maintained on the date hereof at the Hard Rock Hotel and Casino Atlantic City taken as a whole.

(yy) "**Force Majeure**" is defined in Section 12.1.

(zz) "**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.

(aaa) "**GAAP Net Income**" means, as of any Determination Date, the Developer's net income as determined in conformity with GAAP.

(bbb) **"Gambling Game"** shall have the same definition as in the Act.

(ccc) "**Gaming**" means the conduct of a Gambling Game and Sports Wagering.

(ddd) "**Gaming Area**" means the space on which Casino Gaming Operations occur.

(eee) "**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.

(fff) "**Gaming Tax Guaranty**" is defined in Section 4.2.

(ggg) "**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 and/or the Project.

(hhh) "**Governmental Requirements**" means the Act, Sports Wagering Act and all laws, ordinances, statutes, executive orders, rules, zoning requirements and agreements of any

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9.C.1.b

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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, but only to the extent that such laws, ordinances, statutes, executive orders, zoning requirements, agreements, permits, approvals, rules, guidelines and restrictions are valid and binding on Developer.

(iii) "**Guaranteed Amount**" is defined in Section 4.2(a).

(jjj) "**including**" and any variant or other form of such term means including but not limited to.

(kkk) "**Indemnitee**" is defined in Section 11.1(a).

(lll) "**Initial Temporary Project Operation Period**" is defined in Section 3.4(c).

(mmm) "**Institutional Investor**" means any of the following Persons: (i) a corporation, bank, insurance company, pension fund, or pension fund trust, retirement fund, including funds administered by a public agency, employees' profit-sharing fund, or employees' profit-sharing trust, or an association, any of which is engaged, as a substantial part of its business or operation, in purchasing or holding securities; (ii) any trust in respect of which a bank is a trustee or co-trustee; (iii) an investment company registered under the Investment Company Act of 1940; (iv) collective investment trust organized by banks under part 9 of the Rules of the Comptroller of Currency; (v) closed-end investment trust; (vi) chartered or licensed life insurance company or property and casualty insurance company; (vii) an investment adviser under the Investment Advisers Act of 1940; and (viii) a real estate investment trust that is a Publicly Traded Corporation with one or more classes of securities listed on a recognized stock exchange or NASDAQ.

(nnn) "**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.

(ooo) "**Limited Arbitrable Dispute**" is defined in Section 13.13(a).

(ppp) "**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.

(qqq) "**Management Agreement**" means that certain agreement to be entered into by and between the Developer and the Casino Manager pursuant to which the Casino Manager will develop, operate and manage the Project.

(rrr) "**Management Fee**" means the fees paid to the Casino Manager pursuant to the Management Agreement.

(sss) "**Material Adverse Effect**" 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.

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in a timely manner; provided, however, that none of the following shall be taken into account in determining whether a Material Adverse Effect 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 disproportionate manner as compared to similarly situated companies.

(ttt) "**Material Change**" means a change in the Project, the Project Description or the Concept Design Documents that substantially affects the program or any of the fees or obligations of the Developer as provided in the Agreement.

(uuu) "**Minor Condemnation**" means a Condemnation that is not a Major Condemnation.

(vvv) "**Mortgage**" means a mortgage on all or any part of Developer's interest in the Project, and does not include a mortgage on the leasehold interest of any third party in the Project.

(www) "**Mortgagee**" means the holder from time to time of a Mortgage.

(xxx) "**Notice of Agreement**" means a notice of this Agreement in substantially the same form as Exhibit L.

(yyy) "**Operations Commencement (Permanent Project)**" means that the Casino and parking Component at the Project Site (Permanent) are Complete and open for business to the general public.

(zzz) "**Operations Commencement (Temporary Project)**" means that the Casino and parking Component at the Project Site (Temporary) are Complete and open for business to the general public.

(aaaa) "**Operations Commencement Date**" means (i) for the Temporary Project, the date occurring no later than one (1) month 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).

(bbbb) "**Parent Company**" means Seminole Hard Rock International, LLC and its successors and assigns.

(cccc) "**Parties**" means the City and Developer.

(dddd) "**Passive Investor**" means any Person who is an Institutional Investor owning 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 in the ordinary course of such Person's business and not for the purpose 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,

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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.

(eeee) "**Permanent Casino Payments**" means (i) one percent (1%) of Adjusted Receipts generated at the Permanent Project during each of the first two (2) Determination Periods commencing with the Operations Commencement (Permanent Project) and (ii) one half of one percent (0.5%) of Adjusted Receipts generated at the Permanent Project during each Determination Period subsequent to the first two (2) Determination Periods.

(ffff) "**Permanent Project**" means the Casino at which Casino Gaming Operations are conducted at the Project Site (Permanent) and all buildings and Components located within the City that are connected with, or operated in such an integral manner as to form a part of the same operation, all of which are more specifically described on Exhibit B.

(gggg) "**Permitted Transfer**" means those Transfers of any direct or indirect interest in a Restricted Owner permitted pursuant to the terms of those certain Transfer Restriction Agreements entered into by Restricted Owners from time to time as provided in Section 8.1 hereof.

(hhhh) "**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.

(iiii) "**Proceeds**" means the compensation paid by the condemning authority to the City and/or Developer in connection with a Condemnation, whether recovered through litigation or otherwise, but excluding any compensation paid in connection with a temporary taking.

(jjjj) "**Project**" means, as the case may be, each of, or collectively, the Permanent Project or the Temporary Project.

(kkkk) "**Project Description**" means the detailed description of Project as set forth on Exhibit B.

(llll) "**Project Site**" means, as the case may be, the Project Site (Permanent) or Project Site (Temporary).

(mmmm) "**Project Site (Permanent)**" means the approximately 25 acre land assemblage upon which the Permanent Project is to be developed and constructed, as depicted on Exhibit C.

(nnnn) "**Project Site (Temporary)**" means the approximately 4.5 acre land assemblage upon which the Temporary Project is to be developed and constructed, as depicted on Exhibit C.

(oooo) "**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; 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).

(pppp) "**Radius Restriction**" is defined in Section 4.6(a).

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(qqqq) "**Radius Restriction Agreement(s)**" means the Radius Restriction 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 attached hereto.

(rrrr) "**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 attached hereto.

(ssss) "**Report**" is defined in Section 3.3(c)(iii).

(tttt) "**Restore"** is defined in Section 10.1.

(uuuu) "**Restoration**" is defined in Section 10.1.

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

(wwww) "**Restricted Owner**" means each of (i) Developer; (ii) Casino Manager; and (iii) any Person who owns a direct or indirect interest in Developer or Casino Manager through one (1) or more intermediary entities, excluding, however, any Person who (x) would be a Restricted Owner due solely to such Person's ownership of a direct or indirect interest in a Publicly Traded Corporation, or (y) would be a Restricted Owner but such Person owns less than a ten percent (10%) direct or indirect interest in Developer or Casino Manager.

(xxxx) "**Restricted Party**" means each of (i) Developer; (ii) Casino Manager; (iii) Affiliates of each of the foregoing; and (iv) any Person who owns a direct or indirect interest in Developer or Casino Manager through one (1) or more intermediary entities, excluding, however, any Person who (x) would be a Restricted Party due solely to such Person's ownership of a direct or indirect interest in a Publicly Traded Corporation, or (y) would be a Restricted Party but such Person owns less than a ten percent (10%) direct or indirect interest in Developer or Casino Manager, or (z) would be a Restricted Party but such Person qualifies as a Passive Investor.

(yyyy) "**Restrictions**" is defined in Section 4.8(b).

(zzzz) "**RMTD**" is defined in Section 4.4(c).

(aaaaa) "**Sports Wagering**" has the meaning given to such term in the Sports Wagering Act.

(bbbbb) "**Sports Wagering Act**" is defined in Recital A hereof.

(ccccc) "**State**" is defined in Recital A hereof.

(ddddd) "**Subordination Agreement**" means the executed Subordination Agreement dated as of the Closing Date between the City and the Casino Manager pursuant to which the Casino Manager agrees to subordinate its Management Fee upon an Event of Default in substantially the same form as Exhibit N attached hereto.

(eeeee) "**Temporary Casino Payments**" means (i) an amount equal to fifteen percent (15%) of GAAP Net Income generated at the Temporary Project during the initial Determination Period commencing with the Operations Commencement (Temporary Project), provided that such

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amount shall not be less than One Million Eight Hundred Twenty Thousand Dollars ($1,820,000); and (ii) an amount equal to five percent (5%) of GAAP Net Income generated at the Temporary Project during all Determination Periods following such initial Determination Period, provided that such amount shall not be less than One Million Seventy Thousand Dollars ($1,070,000) during each such Determination Period, prorated for any partial Determination Period.

(fffff) "**Temporary Project**" means the Casino in which Casino Gaming Operations shall 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 and Components located within the City that are connected with, or operated in such an integral manner as to form a part of the same operation, all of which are more specifically described on Exhibit B.

(ggggg) "**Temporary Project Operation Period**" is defined in Section 3.4(c).

(hhhhh) "**Term**" is defined in Section 2.4.

(iiiii) "**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 interests in the ownership of any entity.

(jjjjj) "**Transfer Restriction Agreements**" means the Transfer Restriction Agreements dated as of the Closing Date between the City and each of the Restricted Owners as requested by the City in substantially the same form as Exhibits E and F attached hereto.

(kkkkk) "**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 Certification.

Upon the execution hereof by the necessary City officials and the Developer, and subject to Developer's satisfaction of the Closing Conditions, the City shall submit the Certification to the Board.

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**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 Casino Management Agreement by and between the Developer and the Casino Manager executed by the parties thereto (the "**Casino Management Agreement**");

(ii) The Transfer Restriction Agreements executed by the Restricted Owners as requested by the City;

(iii) 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;

(iv) The Closing Certificate;

(v) The Notice of Agreement;

(vi) Evidence of payment of Developer's due and unpaid Development Process Cost Fees incurred to date, if any;

(vii) The Releases;

(viii) Resolutions of Developer, properly certified, approving this Agreement and authority to execute;

(ix) The Radius Restriction Agreement(s), executed by the Restricted Parties as requested by the City; and

(x) The Subordination Agreement, executed by the Casino Manager.

(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.

(d) No material adverse change shall have occurred in the condition (financial or otherwise) or business prospects of Developer.

**2.4 Term.**

The term of this Agreement shall commence upon the execution by the necessary City officials and the Developer and shall continue until the expiration of the License issued to the Developer 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,

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that at the time of each extension Developer has received no written notice of an Event of Default for a default which remains uncured. 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) The Developer shall use its best efforts to promptly apply for, pursue and obtain all Approvals necessary to design, develop, construct and operate the Project. The Developer shall promptly furnish the City with all studies required by the City's ordinances in connection with any Approvals required by the City. Until all such Approvals are obtained, the 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, the 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. Upon obtaining such Approvals, the Developer shall develop and construct the Project in material compliance with the Concept Design Documents and the Project Description. To determine compliance with the Concept Design Documents and the Project Description:

(i) for the Temporary Project, Developer shall submit the following to the City: (a) no later than August 1, 2020, final Temporary Project concept design documents; (b) no later than September 1, 2020, fifty percent (50%) construction documents for the Temporary Project, and (c) no later than November 1, 2020, ninety-five percent (95%) construction documents for the Temporary Project; and

(ii) for the Permanent Project, Developer shall submit the following to the City: (a) no later than one hundred twenty (120) days following the date Developer receives the License, final Permanent Project concept design documents; (b) no later than one hundred eighty (180) days from delivery of the concept design documents provided in clause (a) above, fifty percent (50%) construction documents for the Permanent Project, and (c) no later than ninety (90) days from delivery of the construction documents provided in clause (b) above, ninety-five percent (95%) construction documents for the Permanent Project.

(b) The City acknowledges and agrees that, notwithstanding the specific Concept Design Documents and the Project Description, the Developer may alter the Concept Design Documents, the Project Description and the Project and its Components provided that any Material Change, whether in scope or size, to any of the foregoing (including the addition or deletion of a Component) shall require the approval of the City Council, which approval shall not be unreasonably withheld.

(c) So long as Gaming is permitted by law to be conducted at the Project, the primary business to be operated at the Project shall be Gaming.

(d) Developer may 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

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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.

(e) The City will recommend and support for approval by the City Council Developer's liquor license application to serve alcohol at the Project during the hours permitted by the Board.

**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 on a day-for-day basis but only for so long as the event of Force Majeure is in effect.

(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. 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 on a day-for-day basis but only for so long as the event of Force Majeure is in effect; *provided, however,* 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. Operations Commencement (Permanent Project) shall not occur until all traffic, water, stormwater and sewer improvements required by Governmental Authorities have been completed in accordance with all Governmental Requirements.

(c) To assure completion of the Permanent Project, prior to Developer's commencement of construction of the Permanent 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 Permanent Project in such amount and form customary for projects similar to the Permanent 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 Permanent Project.

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**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 the Casino for Casino Gaming Operations for the maximum hours permitted under Governmental Requirements and in accordance with City ordinances so long as not in conflict with the Developer's obligations under this Agreement; (ii) continuously operate and keep open for business to the general public for the maximum hours permitted under Governmental Requirements and in accordance with City ordinances, the parking Component; and (iii) operate and keep open for business to the general public all Components (other than 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 for (x) such reasonable periods of time as may be required for repairs, alterations, maintenance, remodeling, or for any reconstruction required because of casualty, condemnation, governmental order or Force Majeure (y) to respond to then existing market conditions, or (z) 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. Notwithstanding Developer's covenants as set forth in this Section 3.4, Developer has the right to alter the operations of the Temporary Project in accordance with any changes to the Act or the Sports Wagering Act.

(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**"). If, pursuant to Section 7(l) of the Act, Developer shall petition the Board to extend the Initial Temporary Project Operation Period for a period of up to twelve (12) additional months and the Board grants Developer's petition, 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**"). In no event, however, shall Developer 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 Facility).**

(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.

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(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 and in accordance with City ordinances so long as not in conflict with the Developer's obligations under this Agreement; (ii) if constructed as part of a subsequent phase or phases, continuously operate and keep open for business to the general public for the maximum hours permitted under Governmental Requirements and in accordance with City ordinances, the hotel Component and the parking Component; and (iii) operate and keep open for business to the general public all Components (other than 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 for (x) such reasonable periods of time as may be required for repairs, alterations, maintenance, remodeling, or for any reconstruction required because of casualty, condemnation, governmental order or Force Majeure (y) to respond to then existing market conditions, or (z) 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. Notwithstanding Developer's covenants as set forth in this Section 3.5, Developer has the right to alter the operations of the Project in accordance with any changes to the Act or the Sports Wagering Act.

## 4. Other Obligations.

### 4.1 Community Impact Payments.

(a) The Developer recognizes and acknowledges that the construction and operation of the Project will cause direct impacts on the City which will require that the City and other governmental units of the City provide continuing mitigation of certain community impacts. Accordingly, Developer shall make the Temporary Casino Payments and the Permanent Casino Payments within sixty (60) days of the end of each respective Determination Period or the end of the Term, whichever first occurs.

(b) The City will mitigate certain community impacts from the construction and operation of the Project by using the Temporary Casino Payments and the Permanent Casino Payments for the following purposes: (i) payment of costs incurred for City police, fire and EMT; (ii) contributions to the City's Domestic Violence and Human Trafficking Office; (iii) expenditures for marketing and coordination with the Rockford Area Venues and Entertainment Authority (RAVE) in consultation with the Developer; (iv) expenditures in an amount no less than $150,000 annually to support development in high risk and low economic growth neighborhoods as approved by City Council; (v) addressing such other community impacts as determined by the City (other than transportation) in its sole discretion; and (vi) funding a local community foundation to be known as the "815 Hard Rock Foundation," or similar name, which will make grants to various local not-for-profit entities that are aligned with City Council's goals (such as the Family Peace Center, Rockford Promise and Remedies). The foundation set forth herein will have a nine (9) member board of trustees, two (2) of which will be appointed by Developer, four (4) of which will City Aldermen (two (2) from each political party) and three (3) of which to be Rockford residents to be mutually selected by the City and Developer. All foundation grants will require City Council approval except for grants of de minimus amounts not exceeding Five Thousand Dollars ($5,000).

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**4.2 Guaranty of Gaming Taxes and Admission Fees.**

(a) The Developer guarantees that the City's Share of Taxes shall be no less than Seven Million Dollars ($7,000,000) during each calendar year, prorated for any partial calendar year (the "**Guaranteed Amount**"), beginning on Operations Commencement (Permanent Project) (such guarantee obligation, the "**Gaming Tax Guaranty**"). If, at the end of any such calendar year, the aggregate amount received by the City from the City's Share of Taxes during such calendar year is less than the Guaranteed Amount, then within sixty (60) days of the end of such calendar year, the Developer shall pay to the City an amount equal to the difference between the Guaranteed Amount and the amount received by the City from the City's Share of Taxes.

(b) The obligation of the Developer under the Gaming Tax Guaranty shall be subject to good faith renegotiation if any of the following occur (each a "**Trigger Event**" and collectively, the "**Triggering Events**") and have an adverse impact on the casino:

(i) a new casino becomes open to the public within an area constituting a circle with a radius of fifty (50) miles having the Permanent Project as its center, *provided, however,* that the parties hereto agree that any casino operating as of the date of this Agreement within such 50-mile radius that, after the date of this Agreement, shall relocate its casino from a riverboat to a land-based facility located within the same host community shall not be deemed a "new casino" for purposes of this Triggering Event;

(ii) there is an increase in gaming taxes imposed on Adjusted Gross Receipts;

(iii) the State authorizes licenses to conduct online gaming without also requiring such online gaming provider to operate a "brick and mortar" casino within the State; *provided, however,* that the parties agree that the Board's issuance of the master sports wagering licenses to online sports wagering operators pursuant to Section 25-45 of the Sports Wagering Act and the Illinois Lottery's online sale of lottery tickets within the State shall not be deemed to constitute an activity under this Triggering Event; or

(iv) the number of video gaming terminals operating in the City shall increase by thirty percent (30%) or more over the number of video gaming terminals located in the City as of the date of this Agreement. For purposes of this Triggering Event, as of the date of this Agreement, the number of video gaming terminals in the City is four hundred ninety (490).

Additionally, the City agrees to negotiate in good faith a subordination of Developer's obligations under the Gaming Tax Guaranty (but only to the extent of Developer's obligation to pay amounts in excess of the City's Share of Taxes) to Developer's senior secured lender if so required by such lender and provided that similar subordination is required to be made by the Casino Manager of its management and other fees and any such subordination shall be on substantially the same terms and conditions as that required of the Casino Manager. If, upon the occurrence of a Triggering Event, the City and the Developer cannot agree upon a renegotiated Gaming Tax Guaranty obligation, then the parties agree to settle any such dispute by arbitration as provided in Section 13.13 of this Agreement.

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(c) In the event that the Developer is not, for any reason, required to pay the admissions tax imposed under 230 ILCS 10/12 or the gaming tax imposed under subsection (b) of 230 ILCS 10/13, the Developer shall pay to the City an amount equal to the City's Share of Taxes had the Developer been required to pay such admissions and gaming tax to the Board or the State.

**4.3 Payment of Taxes.**

Developer shall pay all real estate taxes on the Project Site and personal property taxes on all Project personal property consistent with Governmental Requirements. The Developer shall not file a property tax protest of the reasonable assessed value of the Project Site (Temporary) or Project Site (Permanent).

**4.4 Additional Commitments.**

(a) Developer acknowledges that the proposed Project Site (Permanent) is currently located within Rockford Enterprise Zone I-90, effective January 1, 2017. Developer shall promptly apply to the Zone Administrator for a building material sales tax exemption certificate under 35 ICCS 120/5k. If Developer qualifies for such exemption, Developer shall pay to the City an amount by the end of each month equal to two percent (2%) of the actual cost of building materials purchased in such month (i.e., the sales tax the City would have otherwise have received) minus the administrative fee assessed under the City of Rockford Fee Schedule. Developer acknowledges that local property tax abatements will not be accessible for commercial development in Enterprise Zone I-90. The City acknowledges that other Enterprise Zone I-90 benefits from the State such as Investment Tax Credit, the Construction Jobs Credit (starting 2021) and potentially High Impact Business certification may be available and not restricted by this provision.

(b) Developer agrees to: (i) comply with all City Resident, Woman, Minority, Veteran and Person with Disability (as each such term is defined in Exhibit A) employment goals set forth on Exhibit A; and (ii) satisfy the requirements set forth on Exhibit A for utilization of businesses owned by City Residents, Women, Minorities, Veterans and Persons with Disability.

(c) Developer acknowledges and agrees that employee transportation is critical to recruiting and hiring employees residing in the City and will work directly with the Rockford Mass Transit District (the "**RMTD**") in a joint effort to satisfy this need. Such efforts shall include ample, prompt and dependable employee shuttle service to and from the Permanent Project and the Temporary Project from and to locations convenient to employees residing in the City, provided either directly by the Developer or in conjunction with the RMTD at no cost to the employees. Such shuttle service will include paratransit service for persons with disabilities. Such shuttle service will operate on schedules that will coordinate with shift changes at the Permanent Project and the Temporary Project and will be available seven (7) days a week.

(d) 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;

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(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 problems gambling.

(e) 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.

(f) Developer agrees to pay when due the City's permit and license fees applicable to the Project.

(g) In the design, construction and operation of the Project, Developer shall comply with all Governmental Requirements including, without limitation, the Americans with Disabilities Act. Additionally, during the Term, Developer shall provide within the Project gaming tables and electronic gaming machines accessible to persons with disabilities.

(h) At Operations Commencement (Permanent Project), Developer will use its best efforts to employ no fewer than One Thousand (1,000) persons, of which no fewer than Eight Hundred (800) persons shall be employed on a full time basis with benefits.

(i) Contemporaneously with Developer obtaining title to or entering into a ground lease for the Project Site (Permanent), Developer shall record, or cause to be recorded, against the Project Site (Permanent) a covenant not to develop, construct, locate or operate, or permit any Person to develop, construct, locate or operate any buildings or facilities on the Project Site (Permanent)other than (i) the Permanent Project, (ii) any roadway required to access real property located adjacent to the (Permanent) Project Site, and (iii) during any period prior to Operations Commencement (Permanent Project), the continued operation of any business that is operating on the Project Site (Permanent) as of the date of this Agreement, without in each instance the approval of the City Council in its sole discretion.

(j) Developer agrees to coordinate entertainment booking relationships and calendars with RAVE in order to ensure entertainment is complimenting the market and not negatively competing within the market or creating negative competition amongst venues.

(k) Developer agrees to allow the City, without cost, to showcase community activities, entertainment and promotions on Developer's: (i) proposed digital billboards located along I-39

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at such times and from time to time as the City reasonably shall request, provided that such use shall not exceed an aggregate of Eight Hundred Seventy-Nine (879) hours per calendar year, prorated for any partial calendar year; and (ii) kiosks and other advertising displays located within the Casino as Developer and City shall reasonably agree.

**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 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.

(b) The City shall invoice Developer from time to time, but no more frequently than monthly for the Development Process Cost Fees incurred 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 third parties with respect to whom the City incurred the Development Process Cost Fees in accordance with the instructions provided in the invoice. Such third parties shall be intended third-party beneficiaries of Developer's obligation to pay Development Process Cost Fees. The City invoice provided by the City shall include a summary of the charges and such detail as City 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 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) With respect to Development Process Cost Fees incurred by the City during the period commencing on Operations Commencement (Temporary Project) and continuing through the date that is one hundred eighty (180) days from Operations Commencement (Permanent Project), the parties agree that the maximum amount of such Development Process Cost Fees to be paid by the Developer shall not exceed One Hundred Fifty Thousand Dollars ($150,000) per 12-month period, prorated for any portion thereof.

**4.6 Radius Restriction.**

(a) No Restricted Party shall directly or indirectly: (i) manage, operate or become financially interested in any casino within the Restricted Area other than the Project; (ii) make application for any franchise, permit or license to manage or operate any casino 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 casino 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 otherwise waived by the City.

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(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 (i) deemed amended to delete therefrom such portions so adjudicated or (ii) modified as determined appropriate by such a court, such deletions or 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.

(a) 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 including the Temporary Casino Payments, the Permanent Casino Payments, the Gaming Tax Guaranty, and the Development Process Cost Fees (collectively, the "**Developer Payments**") are: (i) being charged to Developer in exchange for particular governmental services which benefit Developer in a manner not shared by other members of society; (ii) paid by Developer 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) paid not to provide additional revenue to the City but 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 Payments, shall bear interest at the Default Rate from the due date (but if no due date is specified, then fifteen (15) Business Days from demand for payment) until paid.

**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 (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 deliver to the City for its review, but not approval, relevant documents relating to each Financing.

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(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 agree to assume the obligations of the Developer hereunder except as otherwise provided in this Section 4.9. 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. Notwithstanding the foregoing, the City shall not have the right to terminate this Agreement as a result of Mortgagee failing to assume the obligations of Developer hereunder unless Mortgagee or its Nominee fails to do so within six (6) months following Mortgagee's acquisition of the Project; it being acknowledged that Mortgagee may intend to Transfer its interest in the Project to a Nominee and such Nominee shall assume 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, directors, 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 or hold the City and its respective officers, directors, 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.

(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 provided the City with 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 notice of default under this Agreement, 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 by Developer under this Agreement 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 hereunder and (b) an additional ninety (90) days for any non-monetary default hereunder; 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

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the Agreement until the requisite time periods for cure by Mortgagee have been exhausted pursuant to the terms hereof.

(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, 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.

**4.10 Closing Deliveries.**

Developer will deliver or cause to be delivered all of the Closing Deliveries no later than October 23, 2019.

**4.11 Land Use and Infrastructure Improvements and Approvals.**

The City shall not be responsible for payment of any land entitlement, design, development and construction costs of all infrastructure (including roads, signals, parking, drive aisles, curb cuts, sewer, electricity and other utilities, storm water management facilities and other improvements) necessary for the Project.

**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 and accurate as of the date of this Agreement and the Closing Date, except as otherwise indicated herein or in the exhibits referenced herein:

(a) Developer is duly organized, validly existing and in good standing under the Governmental Requirements of the State of Illinois. 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 Developer hereunder 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 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. Neither execution of this Agreement nor discharge by Developer of any of its obligations hereunder shall cause Developer

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to be in violation of any Governmental Requirement, its organizational documents or any agreement to which it is a party.

(e) This Agreement and Developer's 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) The Developer has control over, and enforceable rights to obtain good title to, all parcels constituting the Project Site. Developer has no knowledge of any facts or any past, present or threatened occurrence that could preclude or impair its ability to obtain good title to any parcel constituting part of the Project Site which it does not own as of the date of this Agreement.

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

(b) All information set forth in Developer's August 30, 2019 response to the City's Request for Proposals for a Proposed Casino Development for the City of Rockford, IL was true, accurate and correct in all material respects as of August 30, 2019.

**5.2 Representations and Warranties of the City.**

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

(a) 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, and all other agreements and undertakings to be entered into by the City in connection herewith.

(b) This Agreement is binding on the City and is enforceable against the City in accordance with its terms, subject to applicable principles of equity and insolvency laws.

**6. Covenants.**

**6.1 Affirmative Covenants of Developer.**

The Developer covenants that throughout the Term, the 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.

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(c) Furnish to the City:

(i) No later than ninety (90) days after the end of each calendar year of Developer 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 the 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 the 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 the 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.

(v) On the same date that Developer provides documentation in compliance with Section 6.1(c)(i) following the first full calendar year following Operations Commencement (Temporary Project), a detailed statistical report covering those Developer's obligations set forth on Exhibit A which are not covered by reports delivered under Section 6.1(c)(iv) for the prior calendar year.

(vi) From time to time, such other information regarding the compliance by Developer with the terms of this Agreement 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:

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(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 4.6 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 five (5) Business 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 material violation of Governmental Requirements applicable to Developer or the Project, 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 One Million Five Hundred Thousand Dollars ($1,500,000) in the aggregate (in either case, together with copies of the pleadings pertaining thereto) or (B) seeks to 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.

(iii) To the knowledge of the Developer, any Default or Event of Default, specifying the nature and extent thereof and the action (if any) that is proposed to be taken with respect thereto.

(iv) Any Transfer 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 the Developer, any development in the business or affairs of Developer or the Casino Manager that could reasonably be expected to have a Material Adverse Effect.

(vi) Receipt by Developer of any written notice of default from any lender to Developer.

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(f) Maintain financial records in accordance with GAAP, or the equivalent thereof, and permit an authorized representative designated by the City, upon reasonable advance written notice and at a reasonable time during normal business hours, to visit and inspect the properties and financial records and to make extracts from such financial records, all at the Developer's reasonable expense, and permit any authorized representative designated by the City to discuss the affairs, finances and conditions of the Developer with any executive officer or other manager or officer of the Developer as such representative shall reasonably deem appropriate, and the Developer's independent public accountants.

(g) Enter into and maintain a marketing or similar agreement with the Casino Manager for purposes of branding, sharing of customer information, joint marketing and customer loyalty programs and other matters.

**6.2 License Application.**

The Developer shall:

(a) Promptly and accurately complete and timely submit to the Board its substantially complete Application no later than October 25, 2019, together with other information as the Board may from time to time require from Developer in connection with such Application, and 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 proof to the City of the filing of the Application simultaneous with or immediately following its submission together with a copy of the Application, 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.**

The Developer covenants that throughout the Term, the Developer shall not:

(a) Upon the occurrence of a Default or 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 Council, which consent shall not be unreasonably withheld; provided, however, upon prior notice to the City and without the consent of the City Council, Developer may Transfer its interest in this Agreement, the Project, or the Project Site, in whole or in part, to any Affiliate, in accordance with the Act or Sports Wagering Act, and so long as any direct or indirect owner (through one or more intermediary entities) of any interest in such Affiliate that, as a result of such Transfer, becomes a Restricted Owner delivers a Transfer Restriction Agreement to the City.



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(c) Develop, construct, locate or operate, or permit any Person to develop, construct, locate or operate any buildings or facilities on the Project Site without in each instance the approval of the City Council, to be issued in its sole discretion, other than (i) the Project, (ii) any roadway required to access real property located adjacent to the Project Site, and (iii) during any period prior to Operations Commencement Date of the Project, the continued operation of any business that is operating on the Project Site as of the date of this Agreement, without in each instance the approval of the Board in its sole discretion. The above notwithstanding, prior to the City's issuance of a certificate of occupancy, Developer shall be permitted to use areas of the Project Site for staging and access purposes during Project construction.

(d) Without the City's prior written consent (which shall not be unreasonably withheld), take any action to voluntarily terminate the Casino Management Agreement or amend such Casino Management Agreement in a manner that has a material adverse effect on the City or the Developer's ability to perform its obligations under this Agreement.

**6.4 Confidentiality of Deliveries.**

To the extent that the Act, Sports Wagering Act, other laws of the State or any other Governmental Requirements, in the reasonable opinion of the 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**"), the Developer shall have the right to deliver Developer's Confidential Items to the City's Mayor, Legal Director, accountant, assessor, City Council and the City's consultants, upon each such Person's execution and delivery of a customary non-disclosure agreement. 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 Legal Director, the City shall maintain such documentation and information confidential to the extent permitted by Applicable Law. Upon receipt of a public record request for information relating to Developer's Confidential Items, the City shall give prompt written notice of such request to Developer and provide Developer at least forty-eight (48) hours to review any information proposed to be disclosed by the City in response to such request and provide any objections to same or take any other necessary and appropriate action.

**7. Default.**

**7.1 Events of Default.**

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

(a) Subject to Force Majeure, if Developer shall materially default in the performance of any (i) Governmental Requirement; or (ii) commitment, agreement, covenant, 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 shall fail to remedy any such default within thirty (30) days after receipt of written notice of default 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 the Developer within thirty (30) days, and if the Developer commences to cure the default within thirty (30) days and diligently prosecutes the cure to completion, then the

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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 the first notice of such default to Developer;

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

(c) If Developer shall file 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 code or any other present or future applicable federal, state or similar statute or law, or shall seek or consent to or acquiesce to or suffer 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 material representation or warranty made by Developer hereunder shall prove to have been false or misleading in any material respect as of the time made or furnished;

(f) If a default shall occur, 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, the Subordination Agreement, or the Gaming Tax Guaranty;

(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 written notice of default with respect thereto from the City;

(h) If the construction of the Project (inclusive of offsite activities) at any time is discontinued or suspended for a period of ninety (90) consecutive calendar days, subject to Force Majeure, and is not restarted prior to Developer's receipt of written notice of default hereunder;

(i) Subject to an event of Force Majeure, 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; or

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(j) If Developer fails to make any Developer 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) days after receiving written notice of default from the City.

**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 the Subordination Agreement; and/or (v) institute and prosecute proceedings to enforce in whole or in part the specific performance of this Agreement by Developer, and/or to enjoin or restrain Developer from commencing or continuing said breach, and/or to cause by injunction Developer to correct and cure said breach or threatened breach, and otherwise. None of the remedies enumerated herein are exclusive, except the City's rights to receive liquidated damages under such circumstances in Section 7.4, which shall be the exclusive remedy under such circumstances, and nothing herein shall be construed as prohibiting the City from pursuing any other remedies at law, 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) 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.

**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) Developer fails to satisfy the conditions precedent as set forth in Section 2.3 on or before October 23, 2019, as the same may be waived or the time for delivery extended by the City;

(b) The Board rejects or denies Developer's Application or the License is not issued to Developer within twelve (12) months after Developer's submission of its Application; or

(c) 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.

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**7.4 Liquidated Damages.**

The City and Developer covenant and agree that because of the difficulty and/or impossibility of determining the City's damages upon the: (i) occurrence of an Event of Default pursuant to Section 7.1(i); or (ii) suspension of Developer's License, 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 and loss of revenue, both directly and indirectly, Developer shall pay to the City, during the Damage Period, as hereinafter defined, and the City shall accept as an exclusive remedy, as liquidated damages and as a reasonable forecast of such potential damages, and not as penalties, as follows: upon the occurrence of an Event of Default pursuant to Section 7.1(i), or in the case of suspension of Developer's License, the sum of Two Thousand Five Hundred Dollars ($2,500) per calendar day shall be paid to the City. Developer agrees to waive any and all affirmative defenses that the amount of liquidated damages provided herein constitutes a penalty. For purposes of this Section 7.4, the "**Damage Period**" shall commence on the date the City delivers written notice to Developer of its election to receive liquidated damages pursuant to Section 7.4 and shall continue until the date that such default is cured or the date such suspension expires.

**8. Transfer of Ownership Interests.**

**8.1 Transfer of Ownership Interests.**

(a) The covenants that Developer is to perform under this Agreement for the City's benefit are personal in nature. The City is relying upon all Restricted Owners in the exercise of their respective skill, judgment, reputation and discretion with respect to the Project. Any Transfer by a Restricted Owner of (x) any direct ownership interest in Developer or Casino Manager; or (y) any ownership interest in any Restricted Owner 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 Owner 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.

**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



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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 and/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 a 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 the City's election to so complete the Restoration, 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

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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, 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 Thirty Million Dollars ($30,000,000) in the aggregate.

**10.3 No Termination.**

Except as and to the extent provided in the last sentence of Section 10.1 and the last sentence of Section 10.4, 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 Twelve Million Five Hundred Thousand Dollars ($12,500,000) 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 first Mortgagee if the Project is encumbered b



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first Mortgage; 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. Nothing herein shall prohibit the first Mortgagee 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 Winnebago Circuit Court for the appointment of a local bank having a capital surplus in excess of Sixty Million Dollars ($60,000,000) as the Escrow Agent or if there is no local bank meeting such criterion, then any other bank located in the State that does meet such criterion. 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. 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 review team (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 to any of the following: (1) Developer'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

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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 any property (including the presence of any hazardous or regulated substance in, on, under or adjacent to such property) on which the Project is located; (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 projection 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, 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, the request for proposals for the proposed casino development in the City, 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 or the Sports Wagering Act, or the implementation of any provision of this Agreement.

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

## 12. Force Majeure.

### 12.1 Definition of Force Majeure.

An event of "**Force Majeure**" shall mean the following events or circumstances, to the extent that they delay or otherwise adversely affect the performance beyond the reasonable control of Developer, or its agents and contractors, of their duties and obligations under this Agreement:

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(a) Strikes, lockouts, labor disputes, disputes arising from a failure to enter into a union or collective bargaining agreement, inability to procure materials attributable to market-wide shortages, failure of utilities, labor shortages or explosions;

(b) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires and other casualties, landslides, earthquakes, epidemics, quarantine, pestilence, and/or abnormal inclement weather;

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

(c) Concealed and unknown conditions of an unusual nature that are encountered below ground or in an existing structure;

(d) Any temporary restraining order, preliminary injunction or permanent injunction, or mandamus or similar order, or any litigation or administrative delay which 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;

(e) 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;

(f) Any impacts to major modes of transportation to the Project Site, whether private or public, which adversely and materially impact access to the Project Site, including but not limited to, sustained and material closure of airports or sustained and material closure of highways servicing the Project Site; or

(g) The enactment after the date hereof of any City ordinance that has the effect of unreasonably delaying Developer's obligations under this Agreement.

**12.2 Notice.**

Developer shall promptly 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.

**12.3 Excuse of Performance.**

Notwithstanding any other provision of this Agreement to the contrary, Developer shall be entitled to an adjustment in the time for or excuse of the performance of any duty or obligation of Developer under this Agreement for Force Majeure events, but only for the number of days due to and/or resulting as a consequence of such causes and only to the extent that such occurrences actually prevent or delay the performance of such duty or obligation or cause such performance to be commercially unreasonable.

**13. Miscellaneous.**

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**13.1 Notices.**

Notices shall be given as follows:

Any notice, demand 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 Rockford
425 E. State Street
Rockford, Illinois 61104

with copies to:
Legal Director
City of Rockford
425 E. State Street
Rockford, Illinois 61104

and

Roberta L. Holzwarth, Esq.
Holmstrom Kennedy P.C.
800 N. Church Street
Rockford, Illinois 61103

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:
Daniel L. Fischer
815 Entertainment, LLC
2800 S. River Road, Suite 110
DesPlaines, Illinois 60018

with copies to:
Jan H. Ohlander, Esq.
Ian K. Linnabary, Esq.
Reno & Zahm LLP
2902 McFarland Road, Suite 400
Rockford, Illinois 61107

and

Terence M. Dunleavy, Esq.
OROURKE LLP

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55 West Wacker Drive, Suite 1400
Chicago, Illinois 60601

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.**

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.

**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.**

Except as and to the extent provided in Section 13.13:

(a) The Parties expressly agree that the sole and exclusive place, status and forum of this Agreement shall be the City. All actions and legal proceedings which in any way relate to this Agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City. 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 Winnebago County, Illinois or the United States District Court for the Northern District of Illinois, Western Division (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.



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**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 Arbitration.**

(a) The Parties agree that any dispute, claim, or controversy arising under Sections 4.2 (Guaranty of Gaming Taxes and Admission Fees), Exhibit A (Employment, Workforce Development and Opportunities for Business Owners) and/or such other matters hereunder as the Parties may mutually determine (individually or collectively, a "**Limited Arbitrable Dispute**") shall be resolved through arbitration as provided in this Section 13.13.

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(b) Either Party shall give the other Party written notice of any Limited Arbitrable Dispute (**"Dispute Notice"**) which Dispute Notice shall set forth the nature of the dispute and the amount of loss, damage, and cost of expense claimed, if any, or the position of the Party with respect to the Limited Arbitrable Dispute.

(c) Within ten (10) Business Days of the Dispute Notice, the Parties shall meet to negotiate in good faith to resolve the Limited Arbitrable Dispute. No time bar defenses shall be available based upon the passage of time during any negotiation called for by this Section.

(d) In the event the Limited Arbitrable Dispute is unresolved within thirty (30) days of the Dispute Notice by good faith negotiations, the Dispute shall be arbitrated upon the filing by either Party of a written demand, with notice to the other Party, to the American Arbitration Association ("**AAA**") (to the extent such rules are not inconsistent as provided for herein). Within ten (10) days after the filing of such arbitration demand, the Parties shall each select one person to act as arbitrator, and the two so selected shall select a third arbitrator within twenty (20) days of the commencement of the arbitration. If a Party fails to select an arbitrator or the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within the allocated time, the arbitrator(s) not selected shall be appointed by AAA in accordance with its rules. The arbitrators shall be selected from a list supplied by AAA and shall be neutral and independent and must be either an attorney with at least ten (10) years of active practice or be a retired judge. Arbitration of the Limited Arbitrable Dispute shall be governed by the then current Commercial Arbitration Rules of AAA. Within ten (10) days after the selection of the three (3) arbitrators has been completed, each Party shall submit to the arbitrators a best and final settlement offer with respect to each issue submitted to the arbitrators and an accompanying statement of position containing supporting facts, documentation and data. Upon such Limited Arbitrable Dispute being submitted to the arbitrators for resolution, the arbitrators shall assume exclusive jurisdiction over the Limited Arbitrable Dispute, and shall utilize such consultants or experts as they shall deem appropriate under the circumstances to assist in the resolution of the Limited Arbitrable Dispute, and will be required to make a final binding determination of a majority of the arbitrators with a reasoned opinion, not subject to appeal, within forty-five (45) days of the date of submission. Nothing herein shall prevent either Party to seek injunctive or equitable relief in Court to maintain the status quo in furtherance of arbitration.

(e) For each issue decided by the arbitrators, the arbitrators shall award the reasonable expenses of the proceeding, including reasonable attorneys' fees, to the prevailing Party with respect to such issue. The arbitrators in arriving at their decision shall consider the pertinent facts and circumstances as presented in evidence and be guided by the terms and provisions of this Agreement and applicable law, and shall apply the terms of this Agreement without adding to, modifying or changing the terms in any respect, and shall apply the laws of the State to the extent such application is not inconsistent with this Agreement.

(f) Any arbitration award may be entered as a judgment in the Court. A printed transcript of any such arbitration proceeding shall be kept and each of the Parties shall have the right to request a copy of such transcript, at its sole cost.

(g) The Parties agree that, in addition to monetary relief, the arbitrators may make an award of equitable relief including a temporary, preliminary or permanent injunction and the Parties further agree that the arbitrators are empowered to enforce any of the provisions of this Agreement.

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**13.14 Amendments.**

(a) This Agreement may not be modified or amended except 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.

**13.15 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.

**13.16 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.

**13.17 Number and Gender.**

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.

**13.18 Third-Party Beneficiary.**

Except as expressly provided in Sections 2.3(a)(vii) (the Release), 4.5 (payment of Development Process Cost Fees), and 11 (Indemnification), there shall be no third-party beneficiaries with respect to this Agreement.

**13.19 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.

**13.20 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.

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### 13.21 Estoppel Certificates.

The City shall, at any time and from time to time, upon not less than ten (10) 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.

### 13.22 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.

### 13.23 Deliveries to the City.

Any reports or other items to be delivered or furnished to the City hereunder (other than notices, demands or communications under Section 13.1 (Notices)) shall be delivered or furnished to the attention of the Legal Director of the City.

**[SIGNATURE PAGE TO FOLLOW]**

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IN WITNESS WHEREOF, the Parties have set their hands and had their seals affixed on the dates set forth after their respective signatures.

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**CITY:**

**CITY OF ROCKFORD, ILLINOIS**, a municipal corporation

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**[SIGNATURES CONTINUED ON NEXT PAGE]**

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**DEVELOPER:**

**815 ENTERTAINMENT, LLC,** an Illinois liability company

____________________________________
____________________________________
____________________________________

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Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)

# EXHIBIT A

## EMPLOYMENT, WORKFORCE DEVELOPMENT AND OPPORTUNITIES FOR BUSINESS OWNERS

**Intent and Objective.** The Parties acknowledge that an economic development goal of the Project is to capitalize on the creation of opportunities for Minorities, Women, Persons with Disability, Veterans, City Residents, Local Businesses, MBEs, WBEs, DBEs and VBEs regarding both the construction and operations of the Project and employment related to the Project.

With respect to all employment decisions of the Developer whether for construction jobs or operations jobs, Developer shall, and shall cause its contractors and subcontractors, to:

(a) comply with all applicable equal employment opportunity, non-discrimination and affirmative action laws and all other applicable anti-discrimination and equal opportunity laws;

(b) not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry, status as a survivor of domestic violence, or disability or any other status protected by applicable law;

(c) undertake, in good faith, measures to promote diversity in employment and to eliminate discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability or any other status protected by applicable law. Such measures shall entail positive and aggressive measures to ensure non-discrimination and to promote the equal opportunities in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, apprenticeship and on the job training programs; and

(d) comply with all goals for employment and the award of contracts established by the Board.

**Definitions**.*

For purposes of this Exhibit A, the following terms shall have the following meanings:

(a) "**Armed Forces of the United States**" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or service in active duty as defined under 38 U.S.C. Section 101. Service in the Merchant Marine that constitutes active duty under Section 401 of federal Public Act 95-202 shall also be considered service in the armed forces.

* Definitions of the terms "minority person", "woman", and "person with a disability" and businesses owned by such persons was derived from Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, 30 ILCS 575/1. Definitions of "Armed Forces", "Veteran", and "Veteran-owned business" were adapted from the Illinois Procurement Code (30 ILCS 500/45-57).



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(b) "**Best Efforts**" means the efforts that a reasonable commercial enterprise in the business of developing first-class, regional casino projects in urban and suburban locations that it intends to own and operate on a long-term basis would use, consistent with good faith business judgment, in order to achieve completion of the applicable project in a timely manner and in accordance with approved budgets.

(c) "**Business owned by a Person with Disability**" or "**DBE**" means a business that is at least 51% owned by one or more persons with a disability and the management and daily business operations of which are controlled by one or more of the persons with disabilities who own it. A not-for-profit agency for persons with disabilities that is exempt from taxation under Section 501 of the Internal Revenue Code of 1986 is also considered a "business owned by a person with a disability."

(d) "**City Resident**" means any person for whom the principal place of residence is within the City as of the date of such person's hire, unless such person's residency occurred within three (3) months of the date of such hire as a result Developer's prior express agreement to hire. Proof of residence may include, but is not limited to, the following: a valid Illinois driver's license indicating a City permanent residence, utility bills indicating a City address, proof of voter registration within the City or such other proof indicating a permanent residence within the City.

(e) "**Local Business**" means a business having its headquarters or a substantial location within (i) the City of Rockford, Illinois, (ii) the County of Winnebago, Illinois, or (iii) any part of the State of Illinois located within 50 miles of the Project.

(f) "**Minority**" means a person who meets one or more of the following definitions:

(i) American Indian or Alaska Native (a person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment);

(ii) Asian (a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam);

(iii) Black or African American (a person having origins in any of the black racial groups of Africa);

(iv) Hispanic or Latino (a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race); or

(v) Native Hawaiian or Other Pacific Islander (a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands).

(g) "**Minority-owned business**" or "**MBE**" means a business which is at least 51% owned by one or more Minority persons, or in the case of a corporation, at least 51% of the stock in which is owned by one or more Minority persons; and the



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management and daily business operations of which are controlled by one or more of the Minority individuals who own it.

(h) "**Person with Disability**" means a person with a severe physical or mental disability that results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, Crohn's disease, cystic fibrosis, deafness, head injury, heart disease hemiplegia, hemophilia, respiratory or pulmonary dysfunction, an intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, including stroke and epilepsy, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, ulcerative colitis, specific learning disabilities, or end stage renal failure disease; and substantially limits one or more of the person's major life activities.

(i) "**Total Biddable Goods and Services**" means the purchase of supplies and materials or work for the Project, except that the following shall be expressly permitted to be excluded: (i) expenditures for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part; (ii) expenditures for the maintenance or servicing of, or provision of repair parts for, equipment that are paid to the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent; (iii) expenditures for the use, purchase or delivery of data processing systems and equipment, networking systems and equipment, telecommunications systems and equipment, and any security related systems and equipment, and any related services; (iv) contracts for the purchase of utilities; (v) any funds expended in an emergency; (vi) expenditures for such goods or services relating to (a) gaming equipment, gaming software, gaming IT infrastructure and such other related items and (b) structural steel, exterior pre-manufactured walls, casework, light fixtures, mechanical equipment, doors, hardware, escalators, elevators and such other related items; (vii) any funds expended by Developer pursuant to pre-existing national contracts; and (viii) expenditures for goods and services that in cases in which, in Developer's reasonable commercial judgment, the number of Local Businesses, MBEs, WBEs, DBEs, and VBEs (as applicable) are too few to enable Developer to purchase, or that in Developer's reasonable commercial judgment, the Local Businesses, MBEs, WBEs, DBEs and VBEs (as applicable) are not capable of offering or supplying, such goods and services at competitive prices in the quantity and quality, at the date and time, required by Developer.

(j) "**Veteran**" means a person who (i) has been a member of the Armed Forces of the United States or, while a citizen of the United States, was a member of the armed forces of allies of the United States in time of hostilities with a foreign country and (ii) has served under one or more of the following conditions: (a) the veteran served a total of at least 6 months; (b) the veteran served for the duration of hostilities regardless of the length of the engagement; (c) the veteran was discharged on the basis of hardship; or (d) the veteran was released from active duty because of a service connected disability and was discharged under honorable conditions.

(k) "**Veteran-owned Business**" or "**VBE**" means a business that is at least 51% owned by one or more Veterans or, in the case of a corporation, at least 51% of the stock of which is owned by one or more Veterans.









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(l) "**Woman**" means a person who is of the female gender.

(m) "**Women-owned business**" or "**WBE**" means a business which is at least 51% owned by one or more women, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more women; and the management and daily business operations of which are controlled by one or more of the women who own it.

**Agreement**. During operation of the Project, Developer agrees to use its Best Efforts to achieve the following goals:

| Category | Employment | Business Utilization* |
|---|---|---|
| City Resident | 50% | N/A |
| Local Business | N/A | 50% |
| Women or Women-owned Business ("**WBE**") | 45% | 5% |
| Minority or Minority-owned Business ("**MBE**") | 25% | 25% |
| Veteran or Veteran-owned Business ("**VBE**") | 5% | 3% |
| Person with Disability or a Business owned by a Person with a Disability ("**DBE**") | 5% | 2% |
| *Expressed as a percentage of Developer's Total Biddable Goods and Services. | | |

With respect to Developer's efforts to achieve business utilization of Local Businesses, Developer agrees to use its Best Efforts to achieve such goals by soliciting Local Businesses in accordance with the following priority: (1) first, within the City of Rockford, Illinois; (2) then, within the County of Winnebago, Illinois; and (3) thereafter, in any part of the State of Illinois located within 50 miles of the Project.

With respect to Developer's efforts to achieve the above-specified goals for Women, Minorities, Veterans or Persons with Disability and WBEs, MBEs, VBEs, and DBEs, Developer agrees to use its Best Efforts to achieve such goals in accordance with the following priority: (1) first, to those persons residing in, or businesses located in, the City of Rockford; (2) then, to those persons residing in, or businesses located in, the County of Winnebago, Illinois; (3) next, to those persons residing in, or businesses located in, the State of Illinois; and (4) thereafter, those persons residing in, or businesses located in, any other location.

Additionally, during construction of the Project, Developer agrees to use its Best Efforts to: (1) maximize utilization of Local Businesses, MBEs, WBEs, DBEs and VBEs; and (2) maximize employment of City Residents, Women, Minorities, Veterans and Persons with Disability who are members of the local construction trade unions which are signatories to the Project Labor Agreement.

**Preference.** In connection with Developer's awarding of contracts during both the construction and operation phases of the Project, Developer shall give a preference to the awarding of such contracts to a Local Business submitting a qualified bid provided that the qualified bid submitted by such Local Business is within 3% of the otherwise lowest qualified bid received by Developer for such contract and, further provided, that, in any 12-month period, the difference between (1) the dollar amount of the contract(s) awarded to the Local Business(es) pursuant to this preference and (2) the dollar amount of the otherwise lowest qualified bid(s) for such contract(s) shall not exceed One Hundred Thousand Dollars ($100,000). If there are qualified bids submitted by more than one Local Business all within 3% of the otherwise lowest qualified bid and such qualified bids submitted by Local Businesses include one or more Local Business/MBEs, the contract will be awarded to the Local Business/MBE submitting the lowest qualified bid.

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**Employment Outreach and Recruitment Efforts by Developer.** Developer shall:

(a) Establish procedures to assure that Developer and its contractors for Project construction exercise Best Efforts to achieve the objectives and goals set forth herein;

(b) Disseminate information on construction and operations employment needs via the Developer's website and advertising through other media, and use of community organizations targeted to recruit City Residents, Minorities, Women, Persons with Disability, and Veterans;

(c) Implement an assertive recruiting plan to create awareness and foster interest in the jobs it provides;

(d) Rockford-based job fairs and casino career information sessions in economically disadvantaged areas of the City;

(e) Provide for online job application processes for easy accessibility including for persons who are disabled; and

(f) Maintain regular communications with established and reputable recruiting sources for the purpose of:

1. continued establishment of contacts in the City's community;

2. active recruitment through City's community organizations; and

3. skill development assistance for people with employment barriers.

**Training and Career Development.** Developer shall:

(a) Provide career development programs including on-the-job training and apprenticeships/internships aimed at recruitment, retention, and promotion of Minority, Woman, Person with Disability, and Veteran employees; and

(b) Conduct training for all businesses that are selected to do work on the Project, which will provide direction and instruction on the specific operations of the Project, such as what contract documents are required, what presentation of licenses are required, what insurance is required, and how to submit payrolls and where.

**Construction and Operations Contracting**. Developer shall:

(a) Disseminate information on contracting opportunities to local, MBE, WBE, DBE and VBE professionals, contractors, subcontractors, suppliers and vendors through Developer's websites, general media (including general circulation newspapers such as The Rockford Register Star, etc.), minority-focused media, emails and other standard communication methods;

(b) Invite local, MBE, WBE, DBE and VBE professionals, contractors, subcontractors, suppliers and vendors to attend in-person Developer outreach sessions

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advertised through general and special purpose media defined above; said sessions shall be hosted in economically disadvantaged areas of the City;

(c) Contact and encourage bona fide and qualified local, MBE, WBE, DBE, and VBE professionals, contractors, subcontractors, suppliers and vendors to compete for Project opportunities;

(d) Independently engage community partners, associations, institutions, units of local government in Rockford and Winnebago County, associations of MBEs, WBEs, DBEs and VBEs, and other stakeholders to gather their input through a community outreach and information program, and facilitated public meetings in economically disadvantaged areas of the City, all in an effort to determine appropriate candidates for contract awards by Developer;

(e) Designate a local officer or employee of Developer whose principal job responsibility to administer Developer's obligations and goals herein;

(f) Maintain records showing (i) procedures adopted, including the establishment of a source list of Local Businesses, MBEs, WBEs, DBEs and VBEs, (ii) awards to Local Businesses, MBEs, WBEs, DBEs and VBEs, and (iii) specific efforts to identify and award contracts to Local Businesses, MBEs, WBEs, DBEs and VBEs;

(g) Seek and utilize information regarding past performance with respect to achieving diversity goals when considering the selection of a General Contractor, its Subcontractors or other direct engaged contractors; and

(h) Reasonably cooperate with the City in conducting studies relating to general hiring practices and procedures for Local Businesses, MBEs, WBEs, DBEs and VBEs.

**Establishment and Operation of the Oversight Entity; Reporting.**

(a) To determine reporting requirements, monitor, and determine compliance set forth in this Exhibit, the City shall designate an entity as the City "Oversight Entity" for the Developer to report compliance with the obligations and goals set forth in this exhibit within one hundred twenty (120) calendar days after mutual execution of this Agreement. The Oversight Entity shall determine the procedure and process for reporting.

(b) Prior to the Operation Commencement Date for the Temporary Project, the Developer and Oversight Entity or designee shall meet regularly at least once every six (6) months to discuss the matters of compliance with the obligations and goals set forth in this exhibit and shall continue such meetings every six (6) months thereafter during the Term.

**Duties and Responsibilities of the Oversight Entity.** The Oversight Entity or designee shall:

(a) Have the authority to grant waivers, exemptions or time extensions for the obligations and goals set forth in this Exhibit after showing the Developer has complied with its Best Efforts obligations;

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(b) Develop monitoring reports with Developer for both business participation and hiring;

(c) Establish and maintain files in support of this Exhibit to include but not be limited to copies of all compliance plans of the Developer; and

(d) Review and report non-compliance of the obligations and goals set forth in this exhibit to the City and recommend methods to correct compliance methods.

## MONITORING AND COMPLIANCE

**Compliance Plan.** Within ninety (90) days after receiving the License, Developer shall submit to the Oversight Entity a written plan that reasonably demonstrates how Developer intends to comply with its obligations and goals set forth herein for the Project.

**Monitoring and Documentation.** Developer shall document all of its compliance efforts set forth herein in a format that is reasonably acceptable to the City. Developer shall keep full and complete records of its efforts to comply with its compliance efforts. All such records shall be reasonably maintained, in accordance with its common business practice record retention policies and shall be made available for reasonable inspection by the Oversight Entity.

**Default.** In the event that the Oversight Entity determines that Developer has failed to use Best Efforts to comply with its obligations and goals herein, the Oversight Entity shall provide detailed written notice of such failure to Developer, and Developer shall have thirty (30) days from its receipt of such notice to cure or commence to cure and diligently pursue such failure ("**Cure Period**"). Following the conclusion of such Cure Period, the Oversight Entity shall determine whether Developer has cured such failure. In the event that the Oversight Entity determines that Developer has not cured such failure during the Cure Period, the Oversight Entity shall: (i) reduce, modify or waive the applicable obligations and goals; (ii) allow Developer additional time to cure such failure; or (iii) declare Developer to be in default (a "**Default**") and after express approval of the City, require that the Developer contribute an amount to the City as liquidated damages. The liquidated damages shall be determined based upon the nature and severity of the default; *provided* that in no event shall damages be less than Fifteen Thousand Dollars ($15,000). Liquidated damages shall not exceed during any twelve (12) month period Two Hundred Thousand Dollars ($200,000). It is the Parties' intent that any such payment be used by the City to support organizations focused on building capacity in Local Businesses, MBEs, WBEs, DBEs, and VBEs. The Parties agree that, in the event of a Default, it would be impractical and extremely difficult to estimate the damages suffered by the City as a result thereof, and the payment by Developer of any recommended such payment, as liquidated damages, represents a reasonable estimate of the damages that the City will incur as a result thereof. The payment by Developer to any recommended Local Business, MBE, WBE, DBE or VBE organizations, as liquidated damages, is not intended as a penalty, but is intended to constitute liquidated damages to the City.

The foregoing notwithstanding, if the Developer disagrees with the City's declaration of Default, the parties shall submit to resolve the dispute by arbitration as provided in Section 13.13 of the Host Community Agreement.

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# EXHIBIT B

## PROJECT AND PROJECT DESCRIPTION

**Temporary Project**

The Temporary Project is a casino resort real estate development of approximately 37,790 square feet of total enclosed area occupying the Project Site (Temporary). Components include the following approximate minimum elements and sizes and comprised of the following:

1. Approximately 736 total gaming positions (all slots).
2. Two restaurants, including a 120 seat convertible bar and restaurant and a 160-seat steak, seafood, pasta and burgers restaurant.
3. A main casino bar.
4. Approximately 1,000 square feet of retail space.
5. Approximately 8,275 square feet of casino support space.
6. Approximately 1,850 square feet of casino amenities.
7. Approximately 3,600 square feet of general support space.

**Permanent Project**

The Permanent Project is a casino resort real estate development of approximately 187,040 square feet of total enclosed area occupying the Project Site (Permanent). Components include the following approximate minimum elements and sizes and comprised of the following:

1. Approximately 2,000 total gaming positions (offering a mixture of slot machines and table games) and sports book area.
2. Six restaurants, including a Hard Rock Café; buffet, steak and seafood restaurant; Asian-themed noodle bar; VIP lounge; and coffee shop. Total anticipated seating will be 660 with approximately 18,970 square feet of dining area and 8,397 square feet of dedicated kitchen space.
3. Approximately 23,415 square feet of casino support.
4. Approximately 8,750 square feet of casino amenities.
5. A "Hard Rock Live" event center with approximately 1,600 seats, configured to serve as a 23,500 square foot conference center when seats retracted.
6. Approximately 2,000 square feet of retail space.
7. Approximately 22,000 square feet of back of the house space.
8. A center bar connected to the Hard Rock Café in the heart of the gaming floor.

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# EXHIBIT C

## PROJECT SITE

### PROJECT SITE (TEMPORARY)

The location commonly known as Giovanni's Restaurant & Convention Center located at 610 N. Bell School Road, Rockford, IL

### PROJECT SITE (PERMANENT)

The location commonly known as the site of the former Clock Tower Resort & Conference Center located along I-90 at 7801 E. State Street, Rockford, IL

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**EXHIBIT D**

**CONCEPT DESIGN DOCUMENTS**

SEE ATTACHED

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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# EXHIBIT E

## FORM OF CASINO MANAGER TRANSFER RESTRICTION AGREEMENT

This Transfer Restriction Agreement ("**TRA**") is made as of this ___ day of __________, 20__, by HR Rockford LLC, a Florida limited liability company ("**Casino Manager**"), having its office at ______________________________________ to and for the benefit of the City of Rockford, Illinois, a municipal corporation acting by and through its City Council (the "**City**"). The Casino Manager and the City shall be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

## RECITALS

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 (the "**Act**") and authorizing the Illinois Sports Wagering Act, 230 ILCS 45/25 et seq., as amended from time to time (the "**Sports Wagering Act**").

B. 815 Entertainment, LLC, an Illinois limited liability company (the "**Developer**") and the City have executed that certain Host Community Agreement dated October ___, 2019, as the same may from time to time be amended ("**Agreement**," with capitalized terms herein having the same meaning as therein defined, unless expressly otherwise defined herein), which Agreement sets forth the terms and conditions upon which Developer has agreed to develop, construct, operate and maintain a casino, including all buildings, hotel structures, recreational or entertainment facilities, restaurants or other dining facilities, bars and lounges, retail stores or other amenities, back office facilities and improvements developed, constructed, used or maintained by Developer in connection with the casino (the "**Project**").

C. Casino Manager will be engaged by Developer to provide casino resort development and management services to Developer pursuant to the terms of a Management Agreement to be entered into between the Developer and Casino Manager, as the same may from time to time be amended ("**Management Agreement**").

D. Casino Manager, by virtue of entering into the Management Agreement with Developer, will benefit from the financial success of Developer.

E. The City is relying upon Developer and the Casino Manager in the exercise of their respective skill, judgment, reputation and discretion with respect to the Project.

F. The execution and delivery of this TRA is required under the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and in order to induce the City to execute and deliver the Agreement, Casino Manager, acknowledging that, but for the execution and delivery of this TRA, the City would not have entered into the Agreement with Developer, hereby covenants and agrees as follows:

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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1. Without first obtaining the prior written consent of the City, the Casino Manager shall not permit or engage in the following transfers (each a "**Restricted Transfer**"):

(a) consummate a sale of all or substantially all of its assets;

(b) consummate a merger or consolidation with any other corporation or entity, other than a merger or consolidation which would result in the voting securities of the Casino Manager outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into the voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the Casino Manager or such surviving entity outstanding immediately after such merger or consolidation;

(c) liquidate all or substantially all of its assets;

(d) change its ownership through a transaction or a series of related transactions, such that any person or entity is or becomes the beneficial owner, directly or indirectly, of securities in the Casino Manager representing more than fifty percent (50%) of the combined voting power of the voting securities of the Casino Manager; or

(e) transfer, whether by assignment or otherwise, the Management Agreement.

2. Nothing contained in this TRA shall prevent (i) the delegation of certain duties and responsibilities regarding the Project to third parties so long as (x) such delegation is ordinary and customary in the casino industry, and (y) the Casino Manager remains the primary provider of overall services and continues to exercise ultimate operational control over the Project, (ii) a pledge or a grant of a security interest by the Casino Manager of its assets, ownership interests or its direct or indirect interest in Developer or the Management Agreement to one or more an institutional lender(s), provided that the prior written consent of the City shall be required if any such institutional lenders in the exercise of their remedies desires to affect a Restricted Transfer, and (iii) the Board from authorizing the appointment of an interim casino manager under the Act.

3. The procedure for obtaining approval of a Restricted Transfer by the City under this TRA shall be as follows:

(a) Casino Manager shall notify the City as promptly as practicable upon Casino Manager becoming aware of any Restricted Transfer. The City shall have a period of thirty (30) calendar days to consider a Restricted Transfer after a written request for approval of such Restricted Transfer has been provided to the City by the Casino Manager. The Casino Manager shall provide the City with such information as the City may reasonably request regarding such Restricted Transfer to the extent that such information is either in possession of the Casino Manager or reasonably accessible by it. The information regarding the Restricted Transfer provided to the Illinois Gaming Board by the Casino Manager and/or the proposed transferee of the Casino Manager shall be deemed to be sufficient for this purpose. Pursuant to the request of either Party, the Casino Manager and the City agree to meet and confer during the review process to discuss any proposed Restricted Transfer.

(b) A Restricted Transfer shall be approved as follows: (i) by an affirmative vote of a majority of the members of the City Council (ii) in the event of an equal number of votes by the City Council for and against a Restricted Transfer, the Restricted Transfer shall be deemed to



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have been approved (iii) in the event that the City Council abstains or otherwise fails to vote on the Restricted Transfer during the thirty (30) day period referred to subparagraph 3(i) above, the Restricted Transfer shall be deemed to have been approved or (iv) if otherwise approved pursuant to the dispute resolution provisions set forth in this TRA.

(c) In the event that the City shall withhold approval of any Restricted Transfer, such withholding of approval shall be in writing and shall set forth with reasonable specificity each of the reasons why such approval has been withheld. In the event that the Casino Manager disputes the withholding of such approval, then the Casino Manager shall have the right to invoke the dispute resolution provisions set forth in this TRA.

4. Each Party hereby represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the applicable laws of the jurisdiction of its formation, with full power and authority to execute and deliver this TRA and consummate the transactions contemplated hereby; and

(b) the execution and delivery of this TRA and the consummation and performance by it of the transactions contemplated hereby: (1) have been duly authorized by all actions required under the terms and provisions of the instruments governing its existence ("**Governing Instruments**") and the laws of the jurisdiction of its formation; (2) create legal, valid and binding obligations of it enforceable in accordance with the terms hereof, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity); (3) does not require the approval or consent of any federal, state, county or municipal governmental authority, agency or instrumentality, including the City, State or the United States and all executive, legislative, judicial and administrative departments and bodies thereof (each a "**Governmental Authority**") having jurisdiction over it, except those already obtained; and (4) do not and will not constitute a violation of, or default under, its Governing Instruments, the Act, the Sports Wagering Act, and all laws, ordinances, statutes, executive orders, rules, zoning requirements 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 rules, guidelines or restrictions enacted or imposed by Governmental Authorities, but only to the extent that such laws, ordinances, statutes, executive orders, zoning requirements, agreements, permits, approvals, rules, guidelines and restrictions are valid and binding on Casino Manager (the "**Government Requirements**"), agreement, commitment or instrument to which it is a party or by which any of its assets are bound, except for such violations or defaults under any Government Requirements, agreements, commitments or instruments that would not result in a material adverse change in the condition, financial or otherwise, or in the results of operations or business affairs of the Casino Manager and its subsidiaries, considered as one enterprise; and

(c) a true, complete and accurate copy of the Casino Manager's operating agreement dated ________________ is attached hereto as Exhibit E-1.

5. Each Party covenants with the other Party as follows:

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(a) none of the representations and warranties of such Party in this TRA contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein, in the light of the circumstances under which they were made, not misleading.

(b) Casino Manager shall give notice to the City promptly upon the occurrence of any Event of Default (hereinafter defined). Each notice pursuant to this subparagraph shall be accompanied by a statement setting forth details of the Event of Default referred to therein and stating what action Casino Manager proposes to take with respect thereto.

(c) the Casino Manager agrees, upon the reasonable request of the City, to do any act or execute any additional documents as may be reasonably required by the City to accomplish or further confirm the provisions of this TRA.

6. The City may declare Casino Manager to be in default under this TRA upon the occurrence of any of the following events ("**Events of Default**"):

(a) If Casino Manager fails to comply with any material covenants and agreements made by it in this TRA (other than those specifically described in any other subparagraph of this paragraph 6) and such noncompliance continues for fifteen (15) days after written notice from the City, provided, however, that if any such noncompliance is reasonably susceptible of being cured within thirty (30) days, but cannot with due diligence be cured within fifteen (15) days, and if Casino Manager commences to cure any noncompliance within said fifteen (15) days and diligently prosecutes the cure to completion, then Casino Manager shall not during such period of diligently curing be in default hereunder as long as such default is completely cured within thirty (30) days of the first notice of such default to Casino Manager;

(b) If any representation or warranty made by Casino Manager hereunder was false or misleading in any material respect as of the time made;

(c) If any of the following events occur with respect to Casino Manager: (i) by order of a court of competent jurisdiction, a receiver, liquidator or trustee of Casino Manager or of any of the property of Casino Manager (other than non-material property and with respect to which the appointment hereinafter referred to would not materially adversely affect the financial condition of Casino Manager) shall be appointed and shall not have been discharged within ninety (90) days; (ii) a petition in bankruptcy, insolvency proceeding or petition for reorganization shall have been filed against Casino Manager and same is not withdrawn, dismissed, canceled or terminated within ninety (90) days; (iii) Casino Manager is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein); (iv) if there is an attachment or sequestration of any of the property of Casino Manager and same is not discharged or bonded over within ninety (90) days; (v) if Casino Manager files or consents to the filing of any petition in bankruptcy or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Code or any other law, now or hereafter in effect, relating to the reorganization of Casino Manager or the arrangement or readjustment of the debts of Casino Manager; or (vi) if Casino Manager shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver, trustee or liquidator of Casino Manager or of all or any material part of its property; or









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(d) If Casino Manager ceases to do business or terminates its business for any reason whatsoever or shall cause or institute any proceeding for the dissolution of Casino Manager, unless the City has first approved a successor Casino Manager pursuant to the terms of this TRA

7. Remedies:

(a) Upon an Event of Default, the City shall have the right if it so elects to: (i) any and all remedies available at law or in equity; and/or (ii) institute and prosecute proceedings to enforce in whole or in part the specific performance of this TRA by Casino Manager, and/or to enjoin or restrain Casino Manager from commencing or continuing said breach, and/or to cause by injunction Casino Manager to correct and cure said breach or threatened breach, each in accordance with the dispute resolution provisions set forth in paragraph 16 of this TRA. Except as otherwise provided in such paragraph 16, none of the remedies enumerated herein is exclusive and nothing herein shall be construed as prohibiting the City from pursuing any other remedies at law, in equity or otherwise available to it under this TRA.

(b) In the event that the City shall fail to honor any of its obligations under this TRA, the Casino Manager shall have the same remedies that the City has under paragraph 7(a) of this TRA.

(c) The rights and remedies of each Party whether provided by law or by this TRA, shall be cumulative, and the exercise by a Party 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, subject to the dispute resolution provisions set forth in paragraph 16 of this TRA. No waiver made by a Party shall apply to obligations beyond those expressly waived in writing.

8. If any of the provisions of this TRA, or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this TRA, or the application of such provision or provisions to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this TRA shall be valid and enforceable to the fullest extent permitted by law.

9. This writing is intended by the Parties as a final expression of this TRA, and is intended to constitute a complete and exclusive statement of the terms of the agreement among the Parties. There are no promises or conditions, expressed or implied, unless contained in this writing. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, shall be used to supplement or modify the terms of this TRA. No amendment, modification, termination or waiver of any provision of this TRA, shall in any event be effective unless the same shall be in writing and signed by the City and Casino Manager, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver shall be implied from the City's delay in exercising or failing to exercise any right or remedy against Developer in connection with any transfer restriction imposed on Developer under the Agreement or any other Transfer Restriction Agreement.

10. Notices shall be given as follows:

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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(a) Any notice, demand or other communication which any Party may desire or may be required to give to any other Party hereto shall be in writing delivered by (i) hand-delivery, (ii) a nationally recognized overnight courier, or (iii) 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 City: | Mayor<br>City of Rockford<br>425 E. State Street<br>Rockford, Illinois 61104 |
| with copies to: | Legal Director<br>City of Rockford<br>425 E. State Street<br>Rockford, Illinois 61104 |
| If to Casino Manager: | HR Rockford LLC<br>__________________<br>__________________ |
| with copies to: | __________________<br>__________________<br>__________________ |

(b) Any such notice, demand or communication shall be deemed delivered and effective upon the actual delivery.

11. Time is of the essence in performance of this TRA by the City and the Casino Manager.

12. The terms of this TRA shall bind and benefit the legal representatives, successors and assigns of the City and Casino Manager; provided, however, that Casino Manager may not assign this TRA, or assign or delegate any of its rights or obligations under this TRA, without the prior written consent of the City in each instance.

13. This TRA shall be governed by, and construed in accordance with, the local laws of the State without application of its law of conflicts principles.

14. Submission to Jurisdiction.

(a) The Parties expressly agree that the sole and exclusive place, status and forum of this TRA shall be the City. All actions and legal proceedings which in any way relate to this TRA shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City. It is the express intention of the Parties that the exclusive venue of all legal actions and procedures of any nature whatsoever which related in any way to this TRA shall be the Circuit Court of Winnebago County, Illinois, or the United States District Court for the Northern District of Illinois, Western Division (the "**Court**").

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(b) If at any time during the Term, the Casino Manager 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, the Casino Manager or its assignee hereby designates the Secretary of State of the State of Illinois, 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 TRA and such service shall be made as provided by the laws of the State for service upon a non-resident.

15. Casino Manager acknowledges that it expects to derive a benefit as a result of the Agreement because of its relationship to Developer, and that it is executing this TRA in consideration of that anticipated benefit.

[signature page follows]

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**CITY OF ROCKFORD, ILLINOIS**, a municipal corporation

By:___________________________________
Its:______________________________

**HR ROCKFORD LLC**, a Florida limited liability company

By:___________________________________
Its:______________________________

*[Signature Page – Casino Manager Transfer Restriction Agreement]*

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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9.C.1.c

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## EXHIBIT F

## FORM OF RESTRICTED OWNER TRANSFER RESTRICTION AGREEMENT*

This Transfer Restriction Agreement ("**TRA**") is made as of this ___ day of __________, 20__, by ____________________________, a ______________ ("**Restricted Owner**"), having its office [his or her residence] at ________________________________________________ to and for the benefit of the City of Rockford, Illinois, a municipal corporation acting by and through its City Council (the "**City**"). The Restricted Owner and the City shall be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

## 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 (the "**Act**") and authorizing the Illinois Sports Wagering Act, 230 ILCS 45/25 et seq., as amended from time to time (the "**Sports Wagering Act**").

B. 815 Entertainment, LLC, an Illinois limited liability company (the "**Developer**"), and the City have executed that certain Host Community Agreement dated October ___, 2019, as the same may from time to time be amended ("**Agreement**," with capitalized terms herein having the same meaning as therein defined, unless expressly otherwise defined herein), which Agreement sets forth the terms and conditions upon which Developer has agreed to develop, construct, operate and maintain a casino, including all buildings, hotel structures, recreational or entertainment facilities, restaurants or other dining facilities, bars and lounges, retail stores or other amenities, back office facilities and improvements developed, constructed, used or maintained by Developer in connection with the casino (the "**Project**").

C. Casino Manager will be engaged by Developer to provide casino resort development and management services to Developer pursuant to the terms of a Management Agreement to be entered into between the Developer and Casino Manager, as the same may from time to time be amended ("**Management Agreement**").

D. The Restricted Owner, as a direct or indirect owner of Developer or the Casino Manager will benefit from the financial success of Developer or Casino Manager.

E. The City is relying upon Developer or the Casino Manager and the Restricted Owner and their respective Affiliates in the exercise of their respective skill, judgment, reputation and discretion with respect to the Project.

F. The execution and delivery of this TRA is required under the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and in order to induce the City to execute and deliver the Agreement, the Restricted Owner, acknowledging that, but for

* Certain provisions of this Agreement will need to be modified for the Restricted Owners who are individuals.



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the execution and delivery of this TRA, the City would not have entered into the Agreement with Developer, hereby covenants and agrees as follows:

1. Without first obtaining the prior written consent of the City, the Restricted Owner shall not, whether by operation of law or otherwise, permit or engage in the following transfers (each a "**Restricted Transfer**"):

(a) consummate a sale, transfer or assignment of all or substantially all of its assets or its ownership interest in the Developer or Casino Manager;

(b) consummate a merger or consolidation with any other corporation or entity, other than a merger or consolidation which would result in the voting securities of the Restricted Owner outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into the voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the Restricted Owner or such surviving entity outstanding immediately after such merger or consolidation;

(c) liquidate all or substantially all of its assets or its ownership interest in the Developer or Casino Manager; or

(d) change its ownership through a transaction or a series of related transactions, such that any person or entity is or becomes the beneficial owner, directly or indirectly, of securities in the Restricted Owner representing more than fifty percent (50%) of the combined voting power of the voting securities of the Restricted Owner.

Notwithstanding any provision to the contrary set forth in this TRA, this TRA shall terminate in the event that (i) Developer or Casino Manager or its successor(s) successfully completes an initial public offering of its securities so that it becomes a Publicly Traded Corporation and its securities are traded on at least one (1) recognized stock exchange or NASDAQ, or (ii) Restricted Owner ceases to be a Restricted Owner (as defined in the Agreement.

A Restricted Owner other than an Institutional Investor, institutional lender of Developer or Casino Manager, or a Publicly Traded Corporation shall (i) place a legend on its ownership certificate, if any, or include in its organizational documents, a transfer restriction requiring the owners of such Restricted Owner to comply with the terms of this TRA, and (ii) either enforce such provision or acknowledge that the City is a third party beneficiary of such provision and may enforce such provision in its own name.

2. Nothing contained in this TRA shall prevent a (i) Restricted Transfer to a Permitted Transferee (hereinafter defined); or (ii) pledge or grant of a security interest by the Restricted Owner of its direct or indirect interest in Developer or Casino Manager to one or more institutional lenders, *provided* that the prior written consent of the City shall be required if any such institutional lenders in the exercise of their remedies desires to affect a Restricted Transfer; or (iii) complying with an order of the Board requiring a Restricted Transfer to be consummated. For purposes of this Agreement, a "**Permitted Transferee**" shall mean any of the following:

(a) a Restricted Owner's spouse, child, brother, sister or parent ("**Family Members**");









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(b) an entity whose beneficial owners consist solely of the Restricted Owner and/or Family Members of the Restricted Owner;

(c) a beneficial owner of the Restricted Owner if the Restricted Owner is an entity;

(d) a person or entity who already has an ownership interest in Developer or Casino Manager; provided, however, that if such person or entity will as a result of such acquisition own directly or indirectly ten percent (10%) or more of the ownership interests in Developer or Casino Manager, such person or entity shall be required to execute a TRA in favor of the City;

(e) a Publicly Traded Corporation engaged in the business of owning, operating or managing casino properties and such Publicly Traded Corporation does not, at the time of the transfer, own, manage, operate or have financial interest in any casino property that is located within the Restricted Area; or

(f) an Institutional Investor provided such Institutional Investor does not, at the time of the transfer, manage, operate or have more than a ten percent (10%) ownership interest in any casino property that is located within the Restricted Area.

3. The procedure for obtaining approval of a Restricted Transfer by the under this TRA shall be as follows:

(a) The Restricted Owner shall notify the City as promptly as practicable upon the Restricted Owner becoming aware of any Restricted Transfer. The City shall have a period of thirty (30) calendar days to consider a Restricted Transfer after a written request for approval of such Restricted Transfer has been provided to the City by the Restricted Owner. The Restricted Owner shall provide the City with such information as the City may reasonably request regarding such Restricted Transfer to the extent that such information is either in possession of the Restricted Owner or reasonably accessible by it. The information regarding the Restricted Transfer provided to the Board by the Restricted Owner and/or the proposed transferee of the Casino Manager shall be deemed to be sufficient for this purpose. Pursuant to the request of either Party, the Restricted Owner and the City agree to meet and confer during the review process to discuss any proposed Restricted Transfer.

(b) A Restricted Transfer shall be approved as follows: (i) by an affirmative vote of a majority of the members of the City Council, (ii) in the event of an equal number of votes by the City Council for and against a Restricted Transfer, the Restricted Transfer shall be deemed to have been approved, (iii) in the event that the City Council abstains or otherwise fails to vote on the Restricted Transfer during the thirty (30) day period referred to subparagraph 3(b)(i) above, the Restricted Transfer shall be deemed to have been approved, or (iv) if otherwise approved pursuant to the dispute resolution provisions set forth in this TRA.

(c) In the event that the City shall withhold approval of any Restricted Transfer, such withholding of approval shall be in writing and shall set forth with reasonable specificity each of the reasons why such approval has been withheld. In the event that the Restricted Owner disputes the withholding of such approval, then the Restricted Owner shall have the right to invoke the dispute resolution provisions set forth in this TRA.

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4. Each Party hereby represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the applicable laws of the jurisdiction of its formation, with full power and authority to execute and deliver this TRA and consummate the transactions contemplated hereby;

(b) the execution and delivery of this TRA and the consummation and performance by it of the transactions contemplated hereby: (1) have been duly authorized by all actions required under the terms and provisions of the instruments governing its existence ("**Governing Instruments**") and the laws of the jurisdiction of its formation; (2) create legal, valid and binding obligations of it enforceable in accordance with the terms hereof, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity); (3) do not require the approval or consent of any federal, state, county or municipal governmental authority, agency or instrumentality, including the City, State or the United States and all executive, legislative, judicial and administrative departments and bodies thereof (each a "**Governmental Authority**") having jurisdiction over it, except those already obtained; and (4) do not and will not constitute a violation of, or default under, its Governing Instruments, the Act, the Sports Wagering Act, and all laws, ordinances, statutes, executive orders, rules, zoning requirements 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 rules, guidelines or restrictions enacted or imposed by Governmental Authorities, but only to the extent that such laws, ordinances, statutes, executive orders, zoning requirements, agreements, permits, approvals, rules, guidelines and restrictions are valid and binding on Casino Manager (the "**Government Requirements**"), agreement, commitment or instrument to which it is a party or by which any of its assets are bound, except for such violations or defaults under any Government Requirements, agreements, commitments or instruments that would not result in a material adverse change in the condition financial or otherwise, or in the results of operations or business; and

(c) a true, complete and accurate copy of the Restricted Owner's operating agreement dated _______________ is attached hereto as Exhibit F-1.

5. Each Party covenants with the other Party as follows:

(a) none of the representations and warranties of such Party in this TRA contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading.

(b) the Restricted Owner shall give notice to the City promptly upon the occurrence of any Event of Default (hereinafter defined). Each notice pursuant to this subparagraph shall be accompanied by a statement setting forth details of the Event of Default referred to therein and stating what action the Restricted Owner proposes to take with respect thereto.

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(c) the Restricted Owner agrees, upon the reasonable request of the City, to do any act or execute any additional documents as may be reasonably required by the City to accomplish or further confirm the provisions of this TRA.

6. The City may declare the Restricted Owner to be in default under this TRA upon the occurrence of any of the following events ("**Events of Default**").

(a) If the Restricted Owner fails to comply with any covenants and agreements made by it in this TRA (other than those specifically described in any other subparagraph of this paragraph 6) and such noncompliance continues for fifteen (15) days after written notice from the City, provided, however, that if any such noncompliance is reasonably susceptible of being cured within thirty (30) days, but cannot with due diligence be cured within fifteen (15) days, and if the Restricted Owner commences to cure any noncompliance within said fifteen (15) days and diligently prosecutes the cure to completion, then the Restricted Owner shall not during such period of diligently curing be in default hereunder as long as such default is completely cured within thirty (30) days of the first notice of such default to the Restricted Owner;

(b) If any representation or warranty made by the Restricted Owner hereunder was false or misleading in any material respect as of the time made;

(c) If any of the following events occur with respect to the Restricted Owner: (i) by order of a court of competent jurisdiction, a receiver, liquidator or trustee of the Restricted Owner or of any of the property of the Restricted Owner (other than non-material property and with respect to which the appointment hereinafter referred to would not materially adversely affect the financial condition of the Restricted Owner) shall be appointed and shall not have been discharged within ninety (90) days; (ii) a petition in bankruptcy, insolvency proceeding or petition for reorganization shall have been filed against the Restricted Owner and same is not withdrawn, dismissed, canceled or terminated within ninety (90) days; (iii) the Restricted Owner is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein); (iv) if there is an attachment or sequestration of any of the property of the Restricted Owner and same is not discharged or bonded over within ninety (90) days; (v) if the Restricted Owner files or consents to the filing of any petition in bankruptcy or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Code or any other law, now or hereafter in effect, relating to the reorganization of the Restricted Owner or the arrangement or readjustment of the debts of the Restricted Owner; or (vi) if the Restricted Owner shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver, trustee or liquidator of the Restricted Owner or of all or any material part of its property; or

(d) If the Restricted Owner ceases to do business or terminates its business for any reason whatsoever or shall cause or institute any proceeding for the dissolution of the Restricted Owner, unless the City has first approved the Restricted Owner's successor pursuant to the terms of this TRA.

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7. Remedies:

(a) Upon an Event of Default, the City shall have the right if it so elects to: (i) any and all remedies available at law or in equity; and/or (ii) institute and prosecute proceedings to enforce in whole or in part the specific performance of this TRA by the Restricted Owner, and/or to enjoin or restrain the Restricted Owner from commencing or continuing said breach, and/or to cause by injunction the Restricted Owner to correct and cure said breach or threatened breach, each in accordance with the dispute resolution provisions set forth in paragraph 16 of this TRA. Except as otherwise provided in such paragraph 16, none of the remedies enumerated herein is exclusive and nothing herein shall be construed as prohibiting the City from pursuing any other remedies at law, in equity or otherwise available to it under this TRA.

(b) In the event that the City shall fail to honor any of its obligations under this TRA, the Casino Manager shall have the same remedies that the City has under paragraph 7(a) of this TRA.

(c) The rights and remedies of each Party whether provided by law or by this TRA, shall be cumulative, and the exercise by a Party 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, subject to the dispute resolution provisions contained in paragraph 16 of this TRA. No waiver made by a Party shall apply to obligations beyond those expressly waived in writing.

8. If any of the provisions of this TRA, or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this TRA, or the application of such provision or provisions to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this TRA shall be valid and enforceable to the fullest extent permitted by law.

9. This writing is intended by the Parties as a final expression of this TRA, and is intended to constitute a complete and exclusive statement of the term of the agreement among the Parties. There are no promises or conditions, expressed or implied, unless contained in this writing. No course of dealing, course of performance or trade usage, and no parole evidence of any nature, shall be used to supplement or modify the terms of this TRA. No amendment, modification, termination or waiver of any provision of this TRA, shall in any event be effective unless the same shall be in writing and signed by the City and the Restricted Owner, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver shall be implied from the City's delay in exercising or failing to exercise any right or remedy against Developer and/or any Restricted Owner in connection with any transfer restriction imposed on Developer and/or any Restricted Owner under the Agreement or under any other Transfer Restriction Agreement.

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10. Notices shall be given as follows:

(a) Any notice, demand 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) 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 City: | Mayor<br>City of Rockford<br>425 E. State Street<br>Rockford, Illinois 61104 |
| with copies to: | Legal Director<br>City of Rockford<br>425 E. State Street<br>Rockford, Illinois 61104 |
| If to the Restricted Owner: | ____________________<br>____________________<br>____________________<br>____________________ |
| with copies to: | ____________________<br>____________________<br>____________________ |

(b) Any such notice, demand or communication shall be deemed delivered and effective upon actual delivery.

11. Time is of the essence in performance of this TRA by the City and the Restricted Owner.

12. The terms of this TRA shall bind and benefit the legal representatives, successors and assigns of the City and the Restricted Owner; provided, however, that the Restricted Owner may not assign this TRA, or assign or delegate any of its rights or obligations under this TRA, without the prior written consent of the City in each instance.

13. This TRA shall be governed by, and construed in accordance with, the local laws of the State without application of its law of conflicts principles.

14. Submission to Jurisdiction

(a) The Parties expressly agree that the sole and exclusive place, status and forum of this TRA shall be the City. All actions and legal proceedings which in any way relate to this TRA shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City. It is the express intention of the Parties that the exclusive venue of all legal actions and procedures of any nature whatsoever which related in any way to this TRA shall be

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the Circuit Court of Winnebago County, Illinois, or the United States District Court for the Northern District of Illinois, Western Division (the "**Court**").

(b) If at any time during the Term, the Restricted Owner 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, Restricted Owner or its assignee hereby designates the Secretary of State of the State of Illinois, 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 TRA and such service shall be made as provided by the laws of the State for service upon a non-resident.

15. The Restricted Owner acknowledges that it expects to derive a benefit as a result of the Agreement because of its relationship to Developer and/or Casino Manager, and that it is executing this TRA in consideration of that anticipated benefit.

**CITY OF ROCKFORD, ILLINOIS**, a municipal corporation

By:____________________________________
Its:________________________________

____________________, a ________________

By:____________________________________
Its:________________________________

*[Signature Page – Restricted Owner Transfer Restriction Agreement]*

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**EXHIBIT G**

**FORM OF CLOSING CERTIFICATE**

Pursuant to Section 2.3 of that certain Host Community Agreement dated as of October ___, 2019 (the "**Agreement**"), by and among the City of Rockford, Illinois (the "**City**") and 815 Entertainment, LLC, an Illinois limited liability company (the "**Developer**"), the Developer hereby certifies to the City that:

(a) Certificate of Legal Existence. Attached hereto as "**Exhibit A**" is a true, correct and complete copy of the Articles of Organization of the Developer, together with any and all amendments thereto, as on file with the any and all amendments thereto, as on file with the Illinois Secretary of State, and no action has been taken to amend, modify or repeal such Articles of Organization, the same being in full force and effect in the attached form as of the date hereof.

(b) Limited Liability Agreement. Attached hereto as "**Exhibit B**" is a true, correct and complete copy of the Developer's limited liability agreement, together with any and all amendments thereto.

(c) Resolutions. Attached hereto as "**Exhibit C**" is a true and correct copy of the resolutions approving the execution, delivery and performance of the obligations of the Developer under the Agreement that have been duly adopted at a meeting of, or by the written consent of, the [managers/members of] Developer, and none of such resolutions have been amended, modified, revoked or rescinded in any respect since their respective dates of execution, and all of such resolutions are in full force and effect on the date hereof in the form adopted.

(d) Incumbency. Attached hereto as "**Exhibit D**" is an incumbency certificate of the managers of the Developer, which individuals are duly elected, qualified and acting managers of the Developer, each such individual holding the office(s) set forth opposite his or her respective name as of the date hereof, and the signature set forth beside the respective name as of the date hereof, and the signature set forth beside the respective name and title of said managers and authorized signatories are true, authentic signatures.

(e) Certificate of Good Standing. Attached hereto as "**Exhibit E**" are original certificates dated as of a recent date from the Illinois Secretary of State and/or other appropriate authority of each jurisdiction in which the Developer was, respectively, incorporated or qualified to do business, such certificate evidencing the good standing of the Developer in such jurisdictions.

Dated as of: _____________, 2019

[Insert Signature Block]









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Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)

# EXHIBIT H

## FORM OF RELEASE*

This Release ("**Release**") is made as of this ___ day of __________, 20__, by __________________________, a ______________ (the "**Releasor**"), having its office at ____________________________________________________ to and for the benefit of the City of Rockford, Illinois, a municipal corporation (the "**City**").

## RECITALS

A. Releasor and the City have executed that certain Host Community Agreement dated October __, 2019, as the same may from time to time be amended ("**Agreement**," with capitalized terms herein having the same meaning as therein defined, unless expressly otherwise defined herein), which Agreement sets forth the terms and conditions upon which Releasor has agreed to develop, construct, operate and maintain the Project.

B. The execution and delivery of this Release is required under the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and in order to induce the City to execute and deliver the Agreement, Releasor acknowledging that, but for the execution and delivery of this Release, the City would not have entered into the Agreement with Releasor, hereby covenants and agrees as follows:

1. The Releasor and its successors and assigns, and on behalf of its Affiliates and their successors and assigns, hereby release: (i) the City including its City Counsel, Legal Director, all departments, agencies and commissions thereof; (ii) Taft Stettinius & Hollister LLP; (iii) Holmstrom Kennedy P.C.; and (iv) their respective elected and appointed officials, principals, agents, subcontractors, consultants, attorneys, advisors, employees, officers, directors and members of the City's casino review team(the "**Releasees**"), and hold each of them harmless from any damages, claims, rights, liabilities, or causes of action, which the Releasor ever had, now has, may have or claim to have, in law or in equity, against any or all of the Releasees, arising out of or directly or indirectly related to the (i) selection and evaluation of its development proposal and related submissions; (ii) negotiation of the Agreement between the City and the Releasor; or (iii) any matters pending or coming before the Board (the "**Released Matters**"). This Release specifically excludes any liability arising from any fraud or intentional misrepresentation of the Releasees.

2. The Releasor and its successors and assigns, and on behalf of its affiliates and assigns will not ever institute any action or suit at law or in equity against any Releasee, nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action, or cause of action for damages, costs, loss of services, expenses, or compensation for or on account of any of the Released Matters.

* Separate forms modified as appropriate to be signed by Developer, and all direct or indirect owners of Developer.



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3. Releasor hereby represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the applicable laws of the jurisdiction of its formation, with full power and authority to execute and deliver this Release;

(b) the execution and delivery of this Release: (1) have been duly authorized by all actions required under the terms and provisions of the instruments governing its existence ("**Governing Instruments**"), and the laws of the jurisdiction of its formation; (2) create legal, valid and binding obligations of it enforceable in accordance with the terms hereof, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity); (3) do not require the approval or consent of any Governmental Authority having jurisdiction over it, except those already obtained; and (4) do not and will not constitute a violation of, or default under, its Governing Instruments, any Government Requirements, agreement, commitment or instrument to which it is a party or by which any of its assets are bound, except for such violations or defaults under any Government Requirements, agreements, commitments or instruments that would not result in a material adverse change in the condition, financial or otherwise, or in the results of operations or business affairs of the Releasor and its subsidiaries, considered as one enterprise.

4. If any of the provisions of this Release, or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Release, or the application of such provision or provisions to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Release shall be valid and enforceable to the fullest extent permitted by law.

5. No amendment, modification, termination or waiver of any provision of this Release, shall in any event be effective unless the same shall be in writing and signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6. This Release shall be governed by, and construed in accordance with, the local laws of the State without application of its law of conflicts principles.

7. Submission to Jurisdiction

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

(b) If Releasor 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, Releasor hereby designates the Secretary of State of the State of Illinois, as its agent for the service of process in any court action between it and the City or arising out of or

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Complaint Exhibit 12, Page 79 of 112

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relating to this Release and such service shall be made as provided by the laws of the State for service upon a non-resident.

[Insert signature block]

*[Signature Page – Release]*



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**EXHIBIT I**

**TYPES AND AMOUNTS OF INSURANCE**

| Type of Coverage | Requirements |
|---|---|
| Commercial General Liability Insurance (occurrence form) | Coverage shall include products liability, completed operations, liquor liability, garagekeepers legal liability, damage to rented premises, personal & advertising injury and blanket contractual liability. The policy shall have limits of at least US $1,000,000 per occurrence and US $2,000,000 per location aggregate for property damage and bodily injury. |
| Automobile Liability Insurance | US $1,000,000 combined single limit coverage each accident. This policy shall include coverage for loss due to bodily injury or death of any person, or property damage arising out of the ownership, maintenance, operation or use of any motor vehicle whether owned, non-owned, hired or leased. |
| Workers' Compensation Insurance | Limits as required by statute in the State of Illinois covering all of Developer's personnel performing work or services in connection with this Agreement and the Project. |
| Employers' Liability Insurance | US $1,000,000 each accident and each employee for disease. |
| Umbrella and/or Excess Liability Insurance | US $300,000,000 each occurrence/aggregate. |
| Pollution Legal Liability Insurance | US $5,000,000 each occurrence/aggregate. The policy shall provide coverage for third-party bodily injury, property damage, cleanup costs and defense costs that arise in connection with this Agreement and the Project. |



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# EXHIBIT J

## FORM OF ESTOPPEL CERTIFICATE

[DATE]

**[Name of Financial Institution] ("Addressee")**
**[Address of Financial Institution]**
Attn:____________________

Re: Host Community Agreement between the City of Rockford, Illinois and 815 Entertainment, LLC, an Illinois limited liability company (the "**Developer**"), dated October __, 2019 (the "**Agreement**")

Ladies and Gentlemen:

The undersigned, the City of Rockford, Illinois, a municipal corporation ("**City**"), provides this Estoppel Certificate ("**Certificate**") to you with respect to those matters and only those matters set forth herein concerning the above-referenced Agreement:

As of the date of this Certificate, the undersigned hereby certifies that to the undersigned's actual knowledge:

1. Attached hereto as Exhibit A is a true, accurate, and complete copy of the Agreement. The Agreement has not been amended except as set forth in Exhibit A.

2. The Agreement has not been terminated or canceled. The City has/has not sent to Developer notice in accordance with the terms of the Agreement alleging that the Developer is in default under the Agreement. **[If a notice has been sent, a copy is attached].**

3. The City has/has not received notice from Developer in accordance with the terms of the Agreement alleging that the City is in default under the Agreement. **[If a notice has been sent, a copy is attached].**

4. The Closing Date, as such term is defined in the Agreement, **[occurred, _________/has not occurred].**

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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Notwithstanding the representations herein, in no event shall this Certificate subject the City to any liability whatsoever, despite the negligent or otherwise inadvertent failure of the City to disclose correct or relevant information, or constitute a waiver with respect to any act of Developer for which approval by the City was required but not sought or obtained, provided that, as between the City and Addressee, the City shall be estopped from denying the accuracy of this Certificate. No party other than Addressee shall have the right to rely on this Certificate. In no event shall this Certificate amend or modify the Agreement, and the City shall not be estopped from denying the accuracy of this Certificate as between the City and any party other than the Addressee.

**CITY OF ROCKFORD, ILLINOIS**,
a municipal corporation

By:________________________________
Its:______________________________

*[Signature Page – Estoppel Certificate]*

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)

# EXHIBIT K

## FORM OF RADIUS RESTRICTION AGREEMENT*

This Radius Restriction Agreement ("**RRA**") is made as of this ___ day of _________, 20__, by _________________________________ (the "**Restricted Party**"), having its office at _________________________________________ to and for the benefit of the City of Rockford, Illinois, a municipal corporation (the "**City**"). Restricted Party and the City shall be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

## RECITALS

A. 815 Entertainment, LLC, an Illinois limited liability company (the "**Developer**"), and the City have executed that certain Host Community Agreement dated October ___, 2019, as the same may from time to time be amended ("**Agreement**," with capitalized terms herein having the same meaning as therein defined, unless expressly otherwise defined herein), which Agreement sets forth the terms and conditions upon which Developer has agreed to develop, construct, operate and maintain the Project.

B. The Restricted Party, as an indirect owner of Developer [or an Affiliate of a Restricted Party], will benefit from the financial success of Developer.

C. The execution and delivery of this RRA is required under the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and in order to induce the City to execute and deliver the Agreement, the Restricted Party, acknowledging that, but for the execution and delivery of this RRA, the City would not have entered into the Agreement with Developer, hereby covenants and agrees as follows:

1. The Restricted Party shall not itself, directly or indirectly, nor permit any of its Affiliates directly or indirectly to: (i) manage, operate or become financially interested in any casino within the Restricted Area other than the Project; (ii) make application for any franchise, permit or license to manage or operate any casino 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 casino within the Restricted Area (the "**Radius Restriction**") other than the Project.

2. It is the desire of the Parties that the provisions of this RRA 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 RRA 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 (i) deemed amended to delete therefrom such portions so adjudicated or (ii) modified as determined appropriate by such a court, such deletions or 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.



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3. The Restricted Party hereby represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the applicable laws of the jurisdiction of its formation, with full power and authority to execute and deliver this RRA and consummate the transactions contemplated hereby; and

(b) the execution and delivery of this RRA and the consummation and performance by it of the transactions contemplated hereby: (1) have been duly authorized by all actions required under the terms and provisions of the instruments governing its existence ("**Governing Instruments**") and the laws of the jurisdiction of its formation; (2) create legal, valid and binding obligations of it enforceable in accordance with the terms hereof, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity); (3) do not require the approval or consent of any Governmental Authority having jurisdiction over it, except those already obtained; and (4) do not and will not constitute a violation of, or default under, its Governing Instruments, any Government Requirements, agreement, commitment or instrument to which it is a party or by which any of its assets are bound, except for such violations or defaults under any Government Requirements, agreements, commitments or instruments that would not result in a material adverse change in the condition financial or otherwise, or in the results of operations or business affairs of the Restricted Party and its Affiliates, considered as one enterprise.

4. The Restricted Party covenants with the City as follows:

(a) none of the representations and warranties in this RRA contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein not misleading;

(b) the Restricted Party shall give notice to the City promptly upon the occurrence of any Event of Default. Each notice pursuant to this subparagraph shall be accompanied by a statement setting forth details of the Event of Default referred to therein and stating what action Related Party proposes to take with respect thereto; and

(c) the Restricted Party agrees, upon the reasonable request of the City, to do any act or execute any additional documents as may be reasonably required by the City to accomplish or further confirm the provisions of this RRA.

5. The City may declare the Restricted Party to be in default under this RRA upon the occurrence of any of the following events ("**Events of Default**").

(a) If the Restricted Party fails to comply with any covenants and agreements made by it in this RRA and such noncompliance continues for fifteen (15) days after written notice from the City, provided, however, that if any such noncompliance is reasonably susceptible of being cured within thirty (30) days, but cannot with due diligence be cured within fifteen (15) days, and if the Restricted Party commences to cure

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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any noncompliance within said fifteen (15) days and diligently prosecutes the cure to completion, then the Restricted Party shall not during such period of diligently curing be in default hereunder as long as such default is completely cured within thirty (30) days of the first notice of such default to the Restricted Party; and

(b) If any representation or warranty made by the Restricted Party hereunder was false or misleading in any material respect as of the time made.

6. Remedies:

(a) Upon an Event of Default, the City shall have the right if it so elects to: (i) any and all remedies available at law or in equity; and/or (ii) institute and prosecute proceedings to enforce in whole or in part the specific performance of this RRA by the Restricted Party, and/or to enjoin or restrain the Restricted Party from commencing or continuing said breach, and/or to cause by injunction the Restricted Party to correct and cure said breach or threatened breach. None of the remedies enumerated herein is exclusive and nothing herein shall be construed as prohibiting the City from pursuing any other remedies at law, in equity or otherwise available to it under this RRA.

(b) The rights and remedies of the City whether provided by law or by this RRA, shall be cumulative, 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 shall apply to obligations beyond those expressly waived in writing.

7. If any of the provisions of this RRA, or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this RRA, or the application of such provision or provisions to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this RRA shall be valid and enforceable to the fullest extent permitted by law.

8. This writing is intended by the Parties as a final expression of this RRA, and is intended to constitute a complete and exclusive statement of the term of the agreement among the Parties. There are no promises or conditions, expressed or implied, unless contained in this writing. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, shall be used to supplement or modify the terms of this RRA. No amendment, modification, termination or waiver of any provision of this RRA, shall in any event be effective unless the same shall be in writing and signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver shall be implied from the City's delay in exercising or failing to exercise any right or remedy against Developer and/or any Restricted Party in connection with any transfer restriction imposed on Developer and/or any Restricted Party under the Agreement or under any other Radius Restriction Agreement.



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9. Notices shall be given as follows:

(a) Any notice, demand or other communication which any Party may desire or may be required to give to any other Party hereto shall be in writing delivered by (i) hand-delivery, (ii) a nationally recognized overnight courier, or (iii) 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 City: Mayor
City of Rockford
425 E. State Street
Rockford, Illinois 61104

with copies to: Legal Director
City of Rockford
425 E. State Street
Rockford, Illinois 61104

If to the Restricted Party: ____________________
____________________
____________________

with copies to: ____________________
____________________
____________________

(b) Any such notice, demand or communication shall be deemed delivered and effective upon actual delivery.

10. Time is of the essence in performance of this RRA by the Restricted Party.

11. The terms of this RRA shall bind and benefit the legal representatives, successors and assigns of the City and the Restricted Party.

12. This RRA shall be governed by, and construed in accordance with, the local laws of the State without application of its law of conflicts principles.

13. Submission to Jurisdiction

(a) The Parties expressly agree that the sole and exclusive place, status and forum of this RRA shall be the City. All actions and legal proceedings which in any way relate to this RRA shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City. It is the express intention of the Parties that the exclusive venue of all legal actions and procedures of any nature whatsoever which

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related in any way to this RRA shall be the Circuit Court of Winnebago County, Illinois, or the United States District Court for the Northern District of Illinois, Western Division (the "**Court**").

(b) If at any time during the Term, the Restricted Party 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, the Restricted Party or its assignee hereby designates the Secretary of State of the State of Illinois, 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 RRA and such service shall be made as provided by the laws of the State for service upon a non-resident.

14. The Restricted Party acknowledges that it expects to derive a benefit as a result of the Agreement to Developer because of its relationship to Developer, and that it is executing this RRA in consideration of that anticipated benefit.

**CITY OF ROCKFORD, ILLINOIS**, a municipal corporation

By:___________________________________
Its:______________________________

**[insert other signature blocks]**

*[Signature Page – Radius Restriction Agreement]*

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## EXHIBIT L

## FORM OF NOTICE OF AGREEMENT

THIS INSTRUMENT WAS
PREPARED BY AND AFTER
RECORDING MAIL TO:

Legal Director
City of Rockford
425 E. State Street
Rockford, IL 61104

## NOTICE OF AGREEMENT

THIS NOTICE OF AGREEMENT (this "**Notice**"), dated as of the ___ day of ___________, 2019, is made by and among the City of Rockford, Illinois, a municipal corporation (the "**City**"), and 815 Entertainment, LLC, an Illinois limited liability company (the "**Developer**").

## R E C I T A L S

A. The City and the Developer entered into that certain Host Community Agreement dated October ___, 2019, (the "**Agreement**") which sets forth their mutual rights and obligations with respect to the development, construction and operation of a destination resort casino complex (the "**Project**"); and

B. The City and Developer desire to set forth certain terms and provisions contained in the Agreement in this Notice for recording purposes.

NOW, THEREFORE, for and in consideration of the premises and the covenants and conditions set forth in the Agreement, the City and Developer do hereby covenant, promise and agree as follows:

1. Developer has enforceable rights to acquire the Project Site (as hereinafter described) on which the Project is to be developed, constructed and operated.

2. A description of the Project Site is attached hereto as Exhibit 1 and by this reference made a part hereof.

3. The Project and its operations are subject to the terms and conditions set forth in the Agreement, including but not limited to the following restrictions:

(a) Developer shall not directly or indirectly, through one or more intermediary companies, engage in or permit any Transfer (as hereinafter defined) of the Project, the Pro

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Site or any ownership interest therein other than a Permitted Transfer (as defined in the Agreement); and

(b) Developer shall not develop, construct, locate or operate, or permit any third party to develop, construct, locate or operate any buildings or facilities on the Project Site other than (i) the Project, (ii) any roadway required to access real property located adjacent to the Project Site, and (iii) during any period prior to Operations Commencement (Permanent Casino) (as defined in the Agreement), the continued operation of any business that is operating on the Project Site as of the date of the Agreement, without in each instance the approval of the City in its sole discretion.

As used herein the term "**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 interest in the ownership of any entity.

**CITY OF ROCKFORD, ILLINOIS, a municipal corporation**

By:____________________________________
Its:________________________________

**815 ENTERTAINMENT, LLC, an Illinois limited liability company**

By:____________________________________
Its:________________________________

*[Signature Page – Notice of Agreement]*

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STATE OF ______________ )
) SS
COUNTY OF ____________ )

I, ________________________, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that _____________________, personally known to me to be the _______________________ of _______________________, a ___________________, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such ________________________ s/he signed and delivered the said Instrument of writing as his/her free and voluntary act and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this ____ day of _________________, 2019.

____________________________________
Notary Public

My Commission Expires:

________________________

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STATE OF ILLINOIS )
) SS
COUNTY OF WINNEBAGO )

I, ________________________, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that ________________________, personally known to me to be the ________________________ of The City of Rockford, Illinois, a municipal corporation, whose name is subscribed to the within Instrument, appeared before me this day in person and acknowledged that as such ________________________ s/he signed and delivered the said Instrument of writing as his/her free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this _____ day of __________________, 2019.

______________________________
Notary Public

My Commission Expires:

________________________

**[INSERT LEGAL DESCRIPTION AS EXHIBIT 1 BEFORE RECORDING]**

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# EXHIBIT M

## LEGAL DESCRIPTION OF PROJECT SITE

**Project Site (Temporary)**

See property description in Exhibit C (Project Site).

**Project Site (Permanent)**

***Parcels 1 & 2***

**PART OF THE SOUTHEAST-QUARTER OF SECTION 23, T. 44 N., R. 2 E. OF THE THIRD P.M.,**

**CITY OF ROCKFORD, WINNEBAGO COUNTY, ILLINOIS**

Commencing at the Southeast corner of Section 23, aforesaid;

Thence South 88°46’20” West 50.01 feet to the westerly Right-of-Way of Lyford Road;

Thence North 0°01’24” West 70.02 feet to the Point of Beginning of the lands herein described;

Thence South 88°46’20” West 897.11 feet;

Thence North 1°13’40” West 73.53 feet;

Thence South 88°46’20” West 73.51 feet to the easterly Right-of-Way of Interstate 90;

Thence North 0°04’09” West 831.11 feet to the southerly Right-of-Way of East State Street;

Thence North 79°50’25” East along said southerly Right-of-Way 546.73 feet;

Thence South 35°16’29” East along said southerly Right-of-Way 35.34 feet;

Thence North 79°50’25” East along said southerly Right-of-Way 80.00 feet;

Thence North 14°57’18” East along said southerly Right-of-Way 35.34 feet;

Thence North 79°50’25” East along said southerly Right-of-Way 219.89 feet;

Thence North 89°58’36” East along said southerly Right-of-Way 89.68 feet to the westerly Right-of-Way of Lyford Road;

Thence South 0°01’24” East along said westerly Right-of-Way 609.57 feet;

Thence North 89°58’36” East along said westerly Right-of-Way 20.00 feet;



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Thence South 0°01'24" East along said westerly Right-of-Way 428.93 feet to the Point of Beginning.

Containing 21.4 acres, more or less.

***Parcel 3***

**PART OF THE SOUTHEAST-QUARTER OF SECTION 23, T. 44 N., R. 2 E. OF THE THIRD P.M., CITY OF ROCKFORD, WINNEBAGO COUNTY, ILLINOIS**

Commencing at the Southeast corner of Section 23, aforesaid;
Thence South 88°46'20" West 50.01 feet to the westerly Right-of-Way of Lyford Road and Point of Beginning for the lands herein described;
Thence South 88°46'20" West 972.05 feet to the westerly Right-of-Way of Interstate 90;
Thence North 0°04'09" East along said Right-of-Way 143.56;
Thence North 88°46'20" East 73.51 feet;
Thence South 1°13'40" East 73.53 feet;
Thence North 88°46'20" East 897.11 feet to the easterly Right-of-Way of Lyford Road;
Thence South 0°01'24" East along said westerly Right-of-Way 70.02 feet to the Point of Beginning.

Containing 1.7 acres, more or less.

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# EXHIBIT N

## FORM OF CASINO MANAGER SUBORDINATION AGREEMENT

This Subordination Agreement ("**Subordination Agreement**") is made as of this ___ day of __________, 2019, by HR Rockford LLC, a Florida limited liability company ("**Casino Manager**"), having its office at ____________________________________ to and for the benefit of the City of Rockford, Illinois, a municipal corporation (the "**City**"). The Casino Manager, the City and, by its execution of the "Acknowledgment" included herein, the Developer (defined below) shall be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

## RECITALS

A. 815 Entertainment, LLC, an Illinois limited liability company (the "**Developer**"), and the City have executed that certain Host Community Agreement dated October ___, 2019, as the same may from time to time be amended ("**Agreement**," with capitalized terms herein having the same meaning as therein defined, unless expressly otherwise defined herein), which Agreement sets forth the terms and conditions upon which Developer has agreed to develop, construct, operate and maintain the Project.

B. Casino Manager has been [will be] engaged by Developer to provide casino resort development and management services to Developer pursuant to the Management Agreement.

C. Casino Manager, by virtue of entering into the Management Agreement with Developer, will receive payments from the Developer and, therefore, will benefit from the financial success of Developer.

D. The execution and delivery of this Subordination Agreement is required under the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and in order to induce the City to execute and deliver the Agreement, Casino Manager, acknowledging that, but for the execution and delivery of this Subordination Agreement, the City would not have entered into the Agreement with Developer, hereby covenants and agrees as follows:

1. Casino Manager agrees that any present and future right that it has to receive payments under the Management Agreement (the "**Management Payments**") shall be and remain junior and subordinate to the Developer's payment to the City of the following, whether due and payable or that become due and payable, and however arising: (i) the Developer Payments; (ii) real estate taxes on the Project Site; (iii) personal property taxes on all Project personal property; and (iv) any other amounts payable by Developer to the City under and pursuant to the Agreement (collectively, the "**Developer Payment Obligations**").

2. Except as provided below, Developer may make, and Casino Manager may accept, the Management Payments in accordance with the terms of the Management Agreement, so long as at the time of, and after giving effect to, the making of such payments, no Casino Manager Default has occurred or would occur. If at any time a Casino Manager Default has occurred and is continuing, then Developer shall not make, and the Casino Manager shall not accept, any Management Payments and



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shall not take any steps, whether by suit or otherwise, to compel or force the payment of the Management Payments nor use the Management Payments by way of counterclaim, set-off, recoupment or otherwise so as to diminish, discharge or otherwise satisfy in whole or in part any liability of the Developer or Casino Manager to the City, whether now existing or hereafter arising, until such time as the City has advised Casino Manager in writing that such Casino Manager Default has been cured or is no longer continuing. "**Casino Manager Default**" shall mean a "Default" as defined in the Agreement or "Event of Default" as defined in this Subordination Agreement.

3. In the event of any distribution, dividend, or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the assets of the Developer or of the proceeds thereof to the creditors of the Developer or upon any indebtedness of the Developer, occurring by reason of the liquidation, dissolution, or other winding up of the Developer, or by reason of any execution sale, or bankruptcy, receivership, reorganization, arrangement, insolvency, liquidation or foreclosure proceeding of or for the Developer or involving its property, no dividend, distribution or application shall be made, and the Casino Manager shall not be entitled to receive or retain any dividend, distribution, or application on or in respect of any Management Payments, unless and until all Developer Payment Obligations then outstanding (including, without limitation, all principal, interest, fees, and expenses, including post-petition interest in a bankruptcy or similar proceeding whether or not allowed) shall have been paid and satisfied in full in cash (or cash equivalents acceptable as such to the holder thereof), and in any such event any dividend, distribution or application otherwise payable in respect of Management Payments shall be paid and applied to the Developer Payment Obligations until such Developer Payment Obligations have been fully paid and satisfied.

4. If notwithstanding the provisions of this Subordination Agreement, Casino Manager shall receive payment of any Management Payments which the Developer is not entitled to make pursuant to the terms hereof, whether or not the Casino Manager has knowledge that the Developer is not entitled to make such payment, the Casino Manager shall properly account for such payment and agrees to turn over to the City such payments within fifteen (15) days after the City has given Casino Manager written demand.

5. The City may, at any time and from time to time, without the consent of or notice to Casino Manager, all such notice being hereby waived, and without incurring responsibility to the Casino Manager or impairing, releasing or otherwise affecting this Subordination Agreement:

(a) amend, restate or otherwise modify the terms of the Agreement, including, without limitation, any amendment or modification which increases or decreases the amount of any Developer Payment Obligation or otherwise modifies the terms of any Developer Payment Obligation or creates any new Developer Payment Obligation;

(b) grant an extension of the Term;

(c) defer Developer Payment Obligations or enter into a workout agreement on the Developer Payment Obligations;

(d) declare a Casino Manager Default and notify Casino Manager to stop accepting Management Payments; and/or

(e) agree to release, compromise or settlement of Developer Payment Obligations.



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Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)

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6. Casino Manager will not sell, assign or otherwise transfer the Management Agreement or its right to receive any Management Payments thereunder, or any part thereof, except upon written agreement of the transferee or assignee to abide by and be bound by the terms hereof.

7. Casino Manager hereby represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the applicable laws of the jurisdiction of its formation, with full power and authority to execute and deliver and become bound by this Subordination Agreement and to consummate the transactions contemplated hereby; and

(b) the execution and delivery of this Subordination Agreement and the consummation and performance by it of the transactions contemplated hereby: (1) have been duly authorized by all actions required under the terms and provisions of the instruments governing its existence ("**Governing Instruments**") and the laws of the jurisdiction of its formation; (2) create legal, valid and binding obligations of it enforceable in accordance with the terms hereof, subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally and to the effect of general principles of equity which may limit the availability of equitable remedies (whether in a proceeding at law or in equity); (3) does not require the approval or consent of any Governmental Authority having jurisdiction over it, except those already obtained; and (4) do not and will not constitute a violation of, or default under, its Governing Instruments, any Government Requirements, agreement, commitment or instrument to which it is a party or by which any of its assets are bound, except for such violations or defaults under any Government Requirements, agreements, commitments or instruments that would not result in a material adverse change in the condition, financial or otherwise, or in the results of operations or business affairs of the Casino Manager and its subsidiaries, considered as one enterprise.

8. Casino Manager covenants with the City as follows:

(a) none of the representations and warranties in this Subordination Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein or herein, in the light of the circumstances under which they were made, not misleading.

(b) Casino Manager shall give notice to the City promptly upon the occurrence of any Event of Default. Each notice pursuant to this subparagraph shall be accompanied by a statement setting forth details of the Event of Default referred to therein and stating what action Casino Manager proposes to take with respect thereto.

(c) Casino Manager agrees, upon the reasonable request of the City, to do any act or execute any additional documents as may be reasonably required by the City to accomplish or further confirm the provisions of this Subordination Agreement.

9. The City may declare Casino Manager to be in default under this Subordination Agreement upon the occurrence of any of the following events (each an "**Event of Default**").

(a) If Casino Manager fails to comply with any covenant or agreement made by it in this Subordination Agreement (other than those specifically described in any other



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subparagraph of this paragraph 9) and such noncompliance continues for fifteen (15) days after written notice from the City;

(b) If any representation or warranty made by Casino Manager hereunder was false or misleading in any material respect as of the time made;

(c) If any of the following events occur with respect to Casino Manager: (i) by order of a court of competent jurisdiction, a receiver, liquidator or trustee of Casino Manager or of any of the property of Casino Manager (other than non-material property and with respect to which the appointment hereinafter referred to would not materially adversely affect the financial condition of Casino Manager) shall be appointed and shall not have been discharged within ninety (90) days; (ii) a petition in bankruptcy, insolvency proceeding or petition for reorganization shall have been filed against Casino Manager and same is not withdrawn, dismissed, canceled or terminated within ninety (90) days; (iii) Casino Manager is adjudicated bankrupt or insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein); (iv) if there is an attachment or sequestration of any of the property of Casino Manager and same is not discharged or bonded over within ninety (90) days; (v) if Casino Manager files or consents to the filing of any petition in bankruptcy or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Code or any other law, now or hereafter in effect, relating to the reorganization of Casino Manager or the arrangement or readjustment of the debts of Casino Manager; or (vi) if Casino Manager shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver, trustee or liquidator of Casino Manager or of all or any material part of its property;

(d) If Casino Manager ceases to do business or terminates its business for any reason whatsoever or shall cause or institute any proceeding for the dissolution of Casino Manager; or

(e) If Casino Manager takes any action for the purpose of terminating, repudiating or rescinding this Subordination Agreement.

10. Remedies:

(a) Upon an Event of Default, the City shall have the right if it so elects to: (i) any and all remedies available at law or in equity; and/or (ii) institute and prosecute proceedings to enforce in whole or in part the specific performance of this Subordination Agreement by Casino Manager, and/or to enjoin or restrain Casino Manager from commencing or continuing said breach, and/or to cause by injunction Casino Manager to correct and cure said breach or threatened breach. None of the remedies enumerated herein is exclusive and nothing herein shall be construed as prohibiting the City from pursuing any other remedies at law, in equity or otherwise available to it under this Subordination Agreement.

(b) The rights and remedies of the City whether provided by law or by this Subordination Agreement, shall be cumulative, 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 shall apply to obligations beyond those expressly waived in writing.

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Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)









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11. If any of the provisions of this Subordination Agreement, or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Subordination Agreement, or the application of such provision or provisions to Persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Subordination Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. This writing is intended by the Parties as a final expression of this Subordination Agreement, and is intended to constitute a complete and exclusive statement of the terms of the agreement among the Parties. There are no promises or conditions, expressed or implied, unless contained in this writing. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, shall be used to supplement or modify the terms of this Subordination Agreement. No amendment, modification, termination or waiver of any provision of this Subordination Agreement, shall in any event be effective unless the same shall be in writing and signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No waiver shall be implied from the City's delay in exercising or failing to exercise any right or remedy against Developer in connection with any transfer restriction imposed on Developer under the Agreement.

13. Notices shall be given as follows:

(a) Any notice, demand or other communication which any Party may desire or may be required to give to any other Party hereto shall be in writing delivered by (i) hand-delivery, (ii) a nationally recognized overnight courier, or (iii) 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 City: | Mayor<br>City of Rockford<br>425 E. State Street<br>Rockford, Illinois 61104 |
| with copies to: | Legal Director<br>City of Rockford<br>425 E. State Street<br>Rockford, Illinois 61104 |
| If to Casino Manager: | HR Rockford LLC<br>__________<br>__________ |
| with copies to: | __________<br>__________<br>__________ |

(b) Any such notice, demand or communication shall be deemed delivered and effective upon the actual delivery.

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)









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14. Time is of the essence in performance of this Subordination Agreement by Casino Manager.

15. The terms of this Subordination Agreement shall bind and benefit the legal representatives, successors and assigns of the City and Casino Manager; provided, however, that Casino Manager may not assign this Subordination Agreement, or assign or delegate any of its rights or obligations under this Subordination Agreement, without the prior written consent of the City in each instance.

16. This Subordination Agreement shall be governed by, and construed in accordance with, the local laws of the State without application of its law of conflicts principles.

17. Submission to Jurisdiction

(a) The Parties expressly agree that the sole and exclusive place, status and forum of this Subordination Agreement shall be the City. All actions and legal proceedings which in any way relate to this Subordination Agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City. It is the express intention of the Parties that the exclusive venue of all legal actions and procedures of any nature whatsoever which related in any way to this Subordination Agreement shall be the Circuit Court of Winnebago County, Illinois, or the United States District Court for the Northern District of Illinois, Western Division (the "**Court**").

(b) If at any time during the Term, the Casino Manager 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, the Casino Manager or its assignee hereby designates the Secretary of State of the State of Illinois, 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 Subordination Agreement and such service shall be made as provided by the laws of the State for service upon a non-resident.

18. Casino Manager acknowledges that it expects to derive a benefit as a result of the Agreement because of its relationship to Developer, and that it is executing this Subordination Agreement in consideration of that anticipated benefit.

[signature page follows]



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**CITY OF ROCKFORD, ILLINOIS**, a municipal corporation

By:______________________________
Its:________________________

**815 ENTERTAINMENT, LLC**, an Illinois limited liability company

By:_____________________________
Its:________________________

*[Signature Page – Casino Manager Subordination Agreement]*

Attachment: Exhibits to Host Community Agreement (Rockford) (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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## EXHIBIT O

## OWNERSHIP OF DEVELOPER AND CASINO MANAGER

**Ownership of Developer:**

| Owner | Percentage Interest |
|---|---|
| Rockford Casino Development, LLC | 89.7% |
| Seminole Hard Rock International, LLC | 10.3% |

**Ownership of Casino Manager**: 100% by Seminole Hard Rock International, LLC

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# SUMMARY OF THE HOST COMMUNITY AGREEMENT

Below is a summary of the principal terms of the Host Community Agreement (draft dated October 5, 2019 (the "**Agreement**") by and between the City of Rockford, Illinois (the "**City**") and 815 Entertainment, LLC (the "**Developer**") to develop, construct and operate the proposed temporary and permanent casino facilities in the City (the "**Project**").

## I. Effective Date; Term of Agreement

The Agreement will become "effective" upon it being approved by City Council and executed by the Mayor and the Developer.

The Agreement will continue from its effective date until the first to occur of the following:

- the Developer's casino license (the "**License**") is not issued within 12 months after Developer submits its application to the Illinois Gaming Board (the "**Board**") or the license is revoked by the Board or expires and is not renewed by the Board; or
- the City terminates the Agreement at its option after Developer defaults on one of its obligations under the Agreement.

## II. Closing

The Agreement contemplates that no later than October 23, 2019 there will be a "closing." At the closing, the City, the Developer, the parent company of the Developer (Seminole Hard Rock International, LLC) (the "**Parent Company**"), and significant investors in the Developer will execute and deliver certain agreements such as the transfer restriction agreement (described below), noncompetition agreement (described below) and other agreements.

## III. Application for Casino Gaming License and Sports Wagering License

No later than October 25, 2019, the Developer must file with the IGB Developer's complete application for a license (the "**Application**"). Based on prior applications filed with the IGB, it is estimated that the process for approving an Application can take about 9 to12 months from filing of the Application. The Developer may, but is not obligated to, apply for issuance of a sports wagering license.

## IV. Findings

Under the Agreement, the City formally finds that the Project is in the best interest of the City and the State and specifically finds that the Project will:

- provide and preserve employment opportunities;
- contribute to economic growth, including supporting local businesses and minority, women, persons with disability, and veteran business enterprises;
- attract commercial and industrial enterprises;

Attachment: Summary of Host Community Agreement (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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- promote existing enterprises;
- combat community blight and improve the quality of life;
- support and promote tourism in the City and the State; and
- provide additional tax revenue.

## V. Development and Construction of Casino

*Permits.* Under the Agreement, the Developer commits to pursue all approvals necessary to develop the Project (i.e., zoning, building permits, utilities, etc.).

*Construction.* Upon obtaining the License and other approvals, the Developer commits to finance and build a temporary and permanent casino facility in accordance with the project descriptions set forth in the Agreement, the plans submitted by Developer to the City and within the time periods required under the Agreement. Any "material change" in the Project (whether in scope or size including adding or deleting any Project component such as a hotel) will require approval of the City.

*Schedule.* The Agreement establishes date-certain deadlines for Developer to meet major development and construction milestones, including the following:

- "substantial completion" of the Temporary Project (i.e. the issuance of occupancy permits and having at least 75% of the gaming area and 50% of the retail and restaurant space open to the general public) no later than 3 months following the date the License is issued, extendable by up to additional 3 months if Developer is diligently pursuing construction;
- commencement of gaming and other operations at the Temporary Project no later than 1 month following substantial completion;
- "substantial completion" of the Permanent Project (i.e. the issuance of occupancy permits and having at least 75% of the gaming area and 50% of the retail and restaurant space open to the general public) no later than 24 months following the date the License is issued; and
- commencement of gaming and other operations at the Permanent Project no later than 3 months following substantial completion.

The Developer will agree to pay the City liquidated damages of $2,500 per day if Developer fails to commence gaming at either the Temporary Project or the Permanent Project by the deadlines indicated above until gaming commences or during any period that the License is suspended.

*Construction Standards.* The Developer must complete all construction, work and finishes in the Project to "First Class Project Standards," which means standards established and maintained at the Hard Rock Hotel and Casino and Atlantic.

## VI. Commitment to Operate Casino

*Hours of Operation.* Developer commits to operate the Project as a casino for so long as Illinois law permits gaming. Additionally, the Developer agrees that it will keep open to the public:

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- the casino for the maximum hours permitted by law;
- if a hotel is constructed as part of a subsequent phase, for the maximum hours permitted by law; and
- the retail and restaurant components for commercially reasonable hours.

*Insurance.* Developer must also maintain specified levels of insurance coverage. If the Project is damaged or destroyed such as in a fire, the Developer must restore the Project promptly following destruction or damage even if insurance coverage is insufficient to pay for full restoration. If the Developer fails to restore the Project, the City may do so at the Developer's expense and using the proceeds of Developer's insurance. Damage to or destruction of the Project does not terminate the Developer's obligations under the Agreement.

## VII. Payments to the City

The Developer will make certain community impact payments to the City:

- Temporary Casino Payments - an amount equal to 15% of net income but no less than $1,820,000 during the first 12 months of operations and 5% of net income but no less than $1,070,000 during each subsequent 12 months; and

- Permanent Casino Payments- an amount equal to 1% of "Adjusted Receipts" (casino and sports wagering gaming revenues) during the first 24 months of operations and 0.5% of Adjusted Receipts during each subsequent 12 months.

The Temporary Casino Payments and the Permanent Casino Payments will be used by the City to mitigate certain community impacts from the construction and operation of the Project including payment of costs for City police, fire and EMT; contributions to the City's Domestic Violence and Human Trafficking Office; RAVE (in consultation with the Developer); no less than $150,000 per year to support development in high risk and low economic growth neighborhoods as approved by the City Council; other community impacts as determined by the City; and funding a local community foundation.

The City will also receive payments from the State of the City's share of casino admission fees and gaming taxes paid to the State. The Developer has agreed to guarantee that such payments will not be less than $7,000,000 each calendar year (prorated for any partial year), subject to renegotiation if a new casino opens up within 50 miles of the Permanent Project; there's an increase in gaming taxes; the State authorizes online only gaming (except for online gaming conducted by "brick and mortar casinos," online only sports wagering currently authorized by the Gambling Act and online sales of lottery tickets by the State); or the number of video gaming terminals located in the City increases by 30% or more.

Additionally, through Developer's opening of the temporary casino, the Developer is obligated to reimburse the City for all costs and expenses incurred by the City payable to 3rd parties (including all attorneys and consultants) in connection with preparing the RFP, selecting a development proposal, issuance of a License, construction and operation of the Project, and other matters. After opening of the temporary casino and continuing until the date that is 180-days from

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the opening of the permanent casino, the Developer will continue to reimburse the City for these costs in an amount not to exceed $150,000 per year.

## VIII. Additional Commitments to the City

In addition to the payments described above, the Developer has made the following additional commitments to the City:

- If the Developer obtains a building material sales exemption for locating in an Enterprise Zone, Developer will pay the City an amount equal to 2% of the cost of building materials;
- Developer will comply with all local, women, minority, veteran and persons with disability employment goals described below and satisfy the requirements for utilization of local businesses and businesses owned by minorities, women, veterans and persons with disability described below;
- Provide ample, prompt and dependable employee shuttle service from and to convenient City locations from and to the Project;
- Adhere to the highest level of ethical and responsible gaming practices;
- Train its employees to identify underage patrons for exclusion from the casino gaming areas;
- Comply with the Americans with Disabilities Act;
- Use its best efforts to employ as of the opening of the Permanent Project no fewer than 1,000 persons of which no fewer than 800 will be employed on a full time basis with benefits;
- Coordinate entertainment booking relationships and calendars with RAVE to compliment the market; and
- Allow the City, without cost, to use the Project's digital billboards along Interstate 90 and kiosks and other advertising displays within the casino to showcase community activities, entertainment and promotions.

## IX. Employment and Business Opportunities

*Employment and Business Opportunities.* During operation of the Project, Developer agrees to use its best efforts to achieve the following goals:

| Category | Employment | Business Utilization* |
|---|---|---|
| City Resident | 50% | N/A |
| Local Business | N/A | 50% |
| Women or Women-owned Business ("**WBE**") | 45% | 5% |
| Minority or Minority-owned Business ("**MBE**") | 25% | 25% |
| Veteran or Veteran-owned Business ("**VBE**") | 5% | 3% |
| Person with Disability or a Business owned by a Person with a Disability ("**DBE**") | 5% | 2% |
| *Expressed as a percentage of Developer's Total Biddable Goods and Services. | | |

With respect to Developer's efforts to achieve business utilization of local businesses, Developer agrees to use its best efforts to achieve such goals by soliciting local businesses in accordance with the following priority: (1) first, within the City of Rockford, Illinois; (2) then,



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within the County of Winnebago, Illinois; and (3) thereafter, in any part of the State of Illinois located within 50 miles of the Project.

With respect to Developer's efforts to achieve the above-specified goals for women, minorities, veterans or persons with disability and WBEs, MBEs, VBEs, and DBEs, Developer agrees to use its best efforts to achieve such goals in accordance with the following priority: (1) first, to those persons residing in, or businesses located in, the City of Rockford; (2) then, to those persons residing in, or businesses located in, the County of Winnebago, Illinois; (3) next, to those persons residing in, or businesses located in, the State of Illinois; and (4) thereafter, those persons residing in, or businesses located in, any other location.

Additionally, during construction of the Project, Developer agrees to use its best efforts to: (1) maximize utilization of local businesses, MBEs, WBEs, DBEs and VBEs; and (2) maximize employment of locals, women, minorities, veterans and persons with disability who are members of the local construction trade unions which are signatories to the Project Labor Agreement.

*Preference.* In connection with Developer's awarding of contracts during both the construction and operation phases of the Project, Developer will give a preference to the awarding of such contracts to a local business submitting a qualified bid provided that the qualified bid submitted by such local business is within 3% of the otherwise lowest qualified bid received by Developer for such contract and, further provided, that, in any 12-month period, the difference between (1) the dollar amount of the contract(s) awarded to the local business(es) pursuant to this preference and (2) the dollar amount of the otherwise lowest qualified bid(s) for such contract(s) shall not exceed One Hundred Thousand Dollars ($100,000). If there are qualified bids submitted by more than one local business all within 3% of the otherwise lowest qualified bid and such qualified bids submitted by local businesses include one or more local business/MBEs, the contract will be awarded to the local business/MBE submitting the lowest qualified bid.

*Employment Outreach and Recruitment.* Developer has agreed to establish a variety of outreach and recruitment efforts including establishing procedures to assure that Developer and its contractors use best efforts to achieve construction hiring goals, disseminating information through various channels on construction and employment needs; implementing an aggressive recruiting plan; hosting City-based job fairs and information sessions in economically disadvantaged areas of the City; providing on-line job applications; and maintaining regular communications with established and reputable recruiting sources.

*Training and Career Development.* Developer has agreed to provide career development programs including on-the-job training and apprenticeships/internships aimed at recruiting, retaining and promoting minority, women, disabled and veteran employees and conducting training for all businesses that are selected to do work on the Project.

*Construction and Operations Contracting.* Developer has agreed to disseminate information on contracting opportunities to, hold outreach sessions with and contact and encourage to compete for Project opportunities by local businesses, MBEs, WBEs, DBEs and VBEs; engage community partners and other stakeholders to gather their input through outreach and information meetings and facilitate public meetings in economically disadvantaged areas of the City; designate an individual with Developer whose principal job responsibility is to administer Developer's

Attachment: Summary of Host Community Agreement (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)



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obligations and goals herein; maintain records to demonstrate procedures, awards and specific efforts to identify and award contracts to local businesses, MBEs, WBEs, DBEs and VBEs; seek and utilize information on achieving diversity goals when considering the selection of a general contractor for the Project; and cooperate with the City in conducting studies relating to general hiring practices and procedures for companies with special status as described above.

*Oversight, Monitoring and Compliance.* The City will establish an "Oversight Entity" to determine reporting requirements, and monitor and determine compliance with the Employment and Business Opportunities described above in this section. The Oversight Entity and the Developer will meet at least once each 6 months to discuss compliance and the other obligation and goals described herein. The Developer will submit a compliance plan to the Oversight Entity and will document its efforts herein, including full and complete documents demonstrating such efforts in a format reasonably acceptable to the City. If the Developer fails to use its best efforts to comply with its goals and objectives herein, the Oversight Entity will provide notice to the Developer and Developer will have 30 days to cure any deficiencies. Following the conclusion of the cure period, the Oversight Entity can reduce, modify or waive the applicable obligations or goals; allow the Developer additional time to cure; or declare the Developer in default. If the City confirms that the Developer is in default, the Developer may be required to pay liquidated damages determined based on the nature and severity of the default but in no event less than $15,000 or more than $200,000 during any 12 month period. If the Developer disagrees with the City's declaration of a default, the matter will be submitted to binding arbitration as discussed below.

## X. Communications and Reports

While Developer is applying for the casino license and obtaining its various other approvals, the Developer is required to report monthly to the City as to the status of those approvals.

The Developer also will provide the City:

- its unaudited quarterly and audited annual financial statements as well as copies of any accountants' reports and comment letters;
- copies of any reports that Developer submits to the Board;
- an annual report discussing Developer's compliance with its commitments under the Agreement; and
- an annual statement regarding compliance with the transfer and competition restrictions described below.

## XI. Limitations on Transfer of Ownership

The Agreement includes restrictions on certain activities by the Developer and the casino manager, HR Rockford LLC (the "**Casino Manager**"), as well as any 10% or greater owner of the Project (the "**Restricted Owners**").

The Restricted Owners may not sell or otherwise transfer their ownership interest in the Developer or the Project without the City's approval except within the same corporate structure or to a spouse, child or parent. Those transferees are similarly restricted. In addition, if the Developer

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mortgages the Project, the mortgagee must accept and agree to become bound by the Agreement and agree to follow its terms. To enforce the transfer restrictions, the Developer will file a "Notice of Agreement" with the property records for the Project site that encumbers subsequent owners of the Project to operate the Project as a casino and abide by the transfer restrictions.

## XII. Non-Competition Agreement

The Agreement prohibits the Developer, the Casino Manager, as well as any 10% or greater owner of the Project (the "**Restricted Parties**") from competing with the Project by managing, owning or investing in another casino within a 50-mile radius of the Project.

Similarly, the Developer and Restricted Parties may not apply for a franchise or license or respond positively to any request for proposal to manage, operate or invest in a casino located within such area. If the Developer or any of the Restricted Parties buys, is bought by, or merges with another company that manages or owns a casino in the restricted area, the new parent company has two years to sell or transfer casinos so as not to be in violation of the competition restriction.

## XIII. Indemnification

The Developer agrees to indemnify and hold harmless the City and each of its officers, agents, employees, contractors, subcontractors, attorneys, consultants and casino review team from and against any and all losses and expenses arising out of or relating to the development, construction and operation of the Project and the RFP and proposal selection process conducted by the City. However, the Developer is not required to indemnify and hold harmless any indemnitee for that indemnitee's own gross negligence or willful misconduct.

## XIV. Dispute Resolution

*Court.* The Agreement provides that disputes, claims or controversies relating to this Agreement, other than those matters specifically reserved for arbitration as described below, will be litigated in court. The exclusive venue for all such litigation shall be either the Circuit Court of Winnebago County or the U.S. District Court for the Northern District of Illinois, Western Division.

*Arbitration.* Disputes, claims or controversies between the City and the Developer relating to the following matters will be resolved through mandatory arbitration (rather than litigation):

- Any renegotiation of Developer's guarantee of the City's share of State gaming taxes and admission fees as described in Section VII above;
- Any disagreement between the City and the Developer as to whether a default has occurred in the Developer's performance of its Employment and Business Opportunities obligation described in Section IX above; or
- Such other matters as the City and Developer may mutually agree.

Following a 30-day negotiation period after delivery of a formal dispute notice, either the City or the Developer may present those disputes for mandatory arbitration under the commercial

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arbitration rules of the American Arbitration Association. The arbitrator will render a reasoned, unappealable opinion finally resolving the dispute within 45 days.

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Attachment: Summary of Host Community Agreement (7701 : Resolution Certifying Casino Applicant(s) to the Illinois Gaming Board.)











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*City Council Rooms, City of Rockford, Illinois*

**Date: October ___, 2019**

**RESOLUTION ___________________**

WHEREAS, the State of Illinois recently adopted amendments to the Illinois Gambling Act, 230 ILCS 10/1, et seq. which expands gambling within Illinois; and

WHEREAS, the legislation allows the Illinois Gaming Board to issue one owners license authorizing the conduct of riverboat gambling in the City of Rockford (230 ILCS 10/7(e-5)); and

WHEREAS, the City of Rockford held a public hearing pursuant to Section 7(e-5) of the Illinois Gambling Act, 230 ILCS 10/7(e-5) on September 23, 2019, at the Coronado Performing Arts Center, 314 North Main Street, Rockford, Illinois; and

WHEREAS, at the public hearing, the following items were discussed: (1) whether the applicant has negotiated with the City of Rockford in good faith; (2) whether the applicant and City of Rockford have mutually agreed on the permanent location of the casino; (3) whether the applicant and the City of Rockford have mutually agreed on the temporary location of the casino; (4) whether the applicant and City of Rockford have mutually agreed on the percentage of revenues that will be shared with the municipality, if any; (5) that the applicant and City of Rockford have mutually agreed on any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality; and (6) that the City of Rockford will pass a resolution or ordinance in support of the casino in the municipality; and

WHEREAS, the public was afforded an opportunity to present written and/or oral comments and questions relevant to the above-listed items and any other details concerning the proposed casinos in the City of Rockford.





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WHEREAS, on October 7, 2019 the City Council of the City of Rockford certified items (i) through (vi) as required under 230 ILCS 10/7(e-5) no less than seven days following the public hearing;

WHEREAS Sec. 7(e-5) requires the City of Rockford to memorialize the details concerning the proposed casino in a resolution adopted by a majority of the City Council,

NOW, THEREFORE, pursuant to 230 ILCS 10/7(e-5) the City Council of Rockford, Illinois RESOLVES AS FOLLOWS:

1. The City of Rockford and the applicant HR Rockford have reached an agreement as to all details concerning the proposed casino located in the City of Rockford.
2. All terms and details are memorialized in the Host Community Agreement attached hereto and incorporated by reference as if fully rewritten herein.
3. The Mayor and Legal Director are authorized to execute the Host Community Agreement and all other required documents.

ADOPTED by the City Council of the City of Rockford, Illinois this _____ day of _____________, 2019.

APPROVED by the Mayor of the City of Rockford, Illinois this _______ day of _______________, 2019.

_________________________________
Thomas P. McNamara, Mayor
City of Rockford, Illinois

ATTEST:

_________________________________
Nicholas O. Meyer, Legal Director and
*Ex Officio* Keeper of the Records and
Seal of the City of Rockford, Illinois

Attachment: Resolution Approving HCA 2 (7702 : Resolution Approving Host Community Agreement with Casino Developer(s).)



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ILLINOIS APPELLATE COURT FIRST DISTRICT
160 N. La Salle Street
Chicago, Illinois 60601

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May 31, 2023

NOTICE TO THE CLERK OF THE APPELLATE COURT

The **FIFTH DIVISION** shall hear oral arguments in the following appeal on

**Tuesday, July 18, 2023,**

beginning at 1:00 p.m. in the 14th floor courtroom of the Michael A. Bilandic Building, 160 North LaSalle Street, Chicago

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1 p.m.

1-22-0883 *Waukegan Potawatomi Casino v. The Illinois Gaming Board*

Honorable
***Mathias W. Delort***
Presiding Justice, Fifth Division



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## CERTIFICATE OF FILING AND SERVICE

I certify that on May 7, 2024, I electronically filed the foregoing **Brief and Supplementary Appendix of Plaintiff-Appellee Waukegan Potawatomi Casino, LLC** with the Clerk of the Illinois Supreme Court using the Odyssey eFileIL system.

I further certify that the other participants in this case, named below, are registered service contacts on the Odyssey eFileIL system and thus will be served via the Odyssey eFileIL system.

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*Attorney for Amicus City of North Chicago*

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ *Dylan Smith*
Dylan Smith

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