Nos. 130036, 130058

IN THE SUPREME COURT OF ILLINOIS

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellee, vs. 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, Defendants-Appellants.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-22-0883 There heard on Appeal from the Circuit Court of Cook County, Illinois Chancery Division, No. 21 CH 05784 Presiding Judge: Cecilia A. Horan

Appellant's **OPENING BRIEF OF THE CITY OF WAUKEGAN**

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E-FILED
4/2/2024 2:54 PM
CYNTHIA A. GRANT
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POINTS AND AUTHORITIES

PAGE(S)

NATURE OF THE ACTION 1

230 ILCS §10/7(e-5) 1

Sypolt v. Illinois Gaming Bd.,
2021 WL 1209132 (N.D. Ill. Mar. 31, 2021) 1

ISSUES PRESENTED FOR REVIEW 2

STATEMENT OF JURISDICTION 3

STATUTE INVOLVED 3

230 ILCS 10/1 3

STATEMENT OF FACTS 4

Waukegan Potawatomi Casino, LLC v. City of Waukegan,
No. 1:20-cv-750 (N.D. Ill.) 6

Steve Sadin, Holding a Good Hand,
2023 WLNR 26093979, *Chicago Tribune* (July 29, 2023) 9

Steve Sadin, All-In On American Place,
2023 WLNR 27772925, *Lake County News-Sun* (Aug. 12, 2023) 9

Ill. Admin. Code §3000.230 10

STANDARD OF REVIEW 10

Solaia Tech., LLC v. Specialty Pub. Co.,
221 Ill. 2d 558 (2006) 10

People v. Tompkins,
2023 IL 127805 10

Beacham v. Walker,
231 Ill. 2d 51 (2008) 10

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

LEGAL ARGUMENT 11

Margaret Naczek, How Competition is Influencing Potawatomi and When Sports Betting Might Arrive, 2022 WLNR 14622749, *Milwaukee Business Journal* (May 9, 2022) 11

Steve Sadin, Thousands Visit Waukegan's New Casino on First Weekend, 2023 WLNR 6353798, *Chicago Tribune* (Feb. 20, 2023) 12

A. The Circuit Court Was Correct to Dismiss the Action Because the Illinois Gambling Act Does Not Provide a Private Right of Action 13

1. *Noyola* Does Not Control This Case 13

Noyola v. Board of Education of Chicago, 179 Ill. 2d 121 (1997) 13

Chicago Bar Ass'n v. Illinois State Bd. of Elections, 161 Ill. 2d 502 (1994) 13

People v. Castleberry, 2015 IL 116916 13

Bos. Med. Ctr. Corp. v. Sec'y of Exec. Off. of Health & Hum. Servs., 974 N.E.2d 1114 (Mass. 2012) 14

United States v. Nordbye, 75 F.2d 744 (8th Cir. 1935) 14

Kitt v. City of Chicago, 415 Ill. 246 (1953) 14

2. Injunction and Declaratory Judgment Actions Require an Underlying Private Right of Action 14

Carmichael v. Pro. Transportation, Inc., 2021 IL App (1st) 201386 .... 14, 15

Davis v. Kewanee Hosp., 2014 IL App (2d) 130304 .... 14, 16

Jackson v. Randle, 2011 IL App (4th) 100790 .... 15, 16

Am. Fed'n of State, Cnty. & Mun. Emps., Council 31 v. Ryan, 332 Ill. App. 3d 866 (4th Dist. 2002) 15, 16

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Beahringer v. Page,
204 Ill. 2d 363 (2003) 15

Gilmore v. City of Mattoon,
2019 IL App (4th) 180777 16

Smith v. Sears, Roebuck & Co.,
95 Ill. App. 3d 174 (4th Dist. 1981) 16

Landmarks Illinois v. Rock Island Cnty. Bd.,
2020 IL App (3d) 190159 16

3. The First District's Decision Misapprehends the Nature of Declaratory Judgment Actions 17

Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.,
929 F.3d 865 (7th Cir. 2019) 17

Chester v. State Farm Mut. Auto. Ins. Co.,
227 Ill. App. 3d 320 (2d Dist. 1992) 17

Villasenor v. Am. Signature, Inc.,
2007 WL 2025739 (N.D. Ill. July 9, 2007) 17

McGlamery v. Pub. Employees' Ret. Sys. of Nevada,
481 P.3d 1261 (Nev. Ct. App. 2021) 17

Gwinnett Cnty. v. Netflix, Inc.,
885 S.E.2d 177 (Ga. Ct. App. 2023) 17

Neighbors Against Large Swine Operations v. Cont'l Grain Co.,
901 S.W.2d 127 (Mo. Ct. App. 1995) 18

Cherrie v. Virginia Health Servs., Inc.,
787 S.E.2d 855 (Va. 2016) 18

Carle Found. v. Cunningham Twp.,
2017 IL 120427 18

4. There is No Private Right of Action Under the Gambling Act 19

230 ILCS 10/7(e-5) 19

Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.,
194 F. Supp. 3d 706 (N.D. Ill. 2016) 19

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Metzger v. DaRosa,
209 Ill. 2d 30 (Ill. 2004)....................19

Helping Others Maintain Env't Standards v. Bos,
406 Ill. App. 3d 669 (2d Dist. 2010)....................19, 21, 22

Holloway v. Household Auto. Fin. Corp.,
227 B.R. 501 (N.D. Ill. 1998)....................20

230 ILCS 10/2....................20

230 ILCS 10/5....................20

230 ILCS 10/7....................20

In re: Emerald Casino, Inc.,
867 F.3d 743 (7th Cir. 2017)....................22

Dolly's Cafe LLC v. Illinois Gaming Bd.,
2019 WL 6683046 (N.D. Ill. Dec. 6, 2019)....................22

J&J Ventures Gaming, LLC v. Wild, Inc.,
2016 IL 119870....................22

Windy City Promotions, LLC v. Illinois Gaming Bd.,
2017 IL App (3d) 150434....................22

Bernacchi v. First Chicago Ins. Co.,
52 F.4th 324 (7th Cir. 2022)....................22

5. Other States Provide Additional Authority That The Gambling Act Does Not Provide a Private Right of Action....................22

Midwest Gaming & Ent., LLC v. Cnty. of Cook,
2015 IL App (1st) 142786....................22

230 ILCS 10/5....................22

Stulajter v. Harrah's Indiana Corp.,
808 N.E.2d 746 (Ind. Ct. App. 2004)....................23

Merrill v. Trump Indiana, Inc.,
320 F.3d 729 (7th Cir. 2003)....................23

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Sherman v. Harrah's New Orleans Casino,
2008 WL 11509255 (E.D. La. Feb. 12, 2008) 23

Logan v. Ameristar Casino Council Bluffs, Inc.,
185 F. Supp. 2d 1021 (S.D. Iowa 2002) 24

Sports Form, Inc. v. Leroy's Horse & Sports Place,
823 P.2d 901 (Nev. 1992) 24

Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.,
929 F.3d 865 (7th Cir. 2019) 24

Sadler v. Retail Properties of Am., Inc.,
2014 WL 2598804 (N.D. Ill. June 10, 2014) 24

B. Potawatomi Casino Lacked Standing to Invoke the Gambling Act for Its Alleged Injury 24

Sypolt v. Illinois Gaming Bd.,
2021 WL 1209132 (N.D. Ill. Mar. 31, 2021) 24

Waukegan Gaming, LLC v. City of Waukegan,
2023 IL App (2d) 220426 24

1. Potawatomi Casino Cannot Satisfy the Requirements for Standing 25

Glisson v. City of Marion,
188 Ill. 2d 211 (Ill. 1999) 25, 26

Jenner v. Wissore,
164 Ill. App. 3d 259 (5th Dist. 1988) 25

In re Est. of Wellman,
174 Ill. 2d 335 (1996) 25

2. Potawatomi Casino Does Not Have a Recognized Injury 26

Dep't of Transp. v. Anderson,
384 Ill. App. 3d 309 (3d Dist. 2008) 26

Vill. of Rosemont v. Jaffe,
482 F.3d 926 (7th Cir. 2007) 26

J&J Ventures Gaming, LLC v. Wild, Inc.,
2016 IL 119870 26

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Doxsie v. Illinois Gaming Bd.,
2021 IL App (1st) 191875 26

Cleveland Bd. Of Educ. V. Loudermill,
470 U.S. 532 (1985) 27

Neighbors Against Large Swine Operations v. Cont'l Grain Co.,
901 S.W.2d 127 (Mo. Ct. App. 1995) 27

Glisson v. City of Marion,
188 Ill. 2d 211 (Ill. 1999) 27

3. Potawatomi Casino's Alleged Injury Is Not Traceable to the Defendants' Conduct and Not Redressable Through this Action 27

Illinois Rd. & Transportation Builders Ass'n v. Cnty. of Cook,
2022 IL 127126 27

Marion Hosp. Corp. v. Illinois Health Facilities Plan. Bd.,
201 Ill. 2d 465, 475 (2002) 28

Lake Cnty. Riverboat L.P. v. Illinois Gaming Bd.,
332 Ill. App. 3d 127 (1st Dist. 2002) 28

C. The Gaming Board Has Exclusive Jurisdiction Over this Controversy 30

1. *J&J Ventures Gaming* Controls This Case 30

J&J Ventures Gaming, LLC v. Wild, Inc.,
2015 IL App (5th) 140092 30

J&J Ventures Gaming, LLC v. Wild, Inc.
2016 IL 119870 ....30, 31

Illinois Ins. Guar. Fund v. PriFority Transportation, Inc.,
2019 IL App (1st) 181454 30

230 ILCS §10/5 31

2. Potawatomi Casino Had to Proceed Before the Gaming Board 32

Beahringer v. Page,
204 Ill. 2d 363 (2003) 31, 32

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Nestle USA, Inc. v. Dunlap,
365 Ill. App. 3d 727 (4th Dist. 2006)....................31

3. The First District Ignored the Gaming Board's Rulemaking Authority....................33

230 ILCS 40/78....................33

230 ILCS 10/5....................33

Windy City Promotions, LLC v. Illinois Gaming Board,
2017 IL App (3d) 150434....................33

D. The Appellate Court Failed to Analyze the Issue of Substantial Compliance....................33

Behl v. Gingerich,
396 Ill. App. 3d 1078 (4th Dist. 2009)....................33

1. The City Substantially Complied with Section 7(e-5)....................34

Akin v. Smith,
2013 IL App (1st) 130441....................35

Ferguson v. Ryan,
251 Ill. App. 3d 1042 (3d Dist. 1993)....................35

Bd. of Educ. of Du Page High Sch. Dist. 88 v. Pollastrini,
2013 IL App (2d) 120460....................35

Behl v. Gingerich,
396 Ill. App. 3d 1078 (4th Dist. 2009)....................35

230 ILCS 10/7(e-5)....................36, 37

Resolution No. 23-R-03....................37

Am. Nat. Bank & Tr. Co. of Chicago v. City of Chicago,
4 Ill. App. 3d 127 (1st Dist. 1971)....................37

Let Forest Park Vote on Video Gaming v. Vill. of Forest Park Mun. Officers Electoral Bd.,
2018 IL App (1st) 180391....................38

Fehrenbacher v. Mercer Cnty.,
2012 IL App (3d) 110479....................38

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

E. This Case Should Be Dismissed as Moot 38

Davis v. City of Country Club Hills,
2013 IL App (1st) 123634 .... 38, 41

Steve Sadin, Holding a Good Hand,
2023 WLNR 26093979, *Chicago Tribune* (July 29, 2023) 40

Rasky v. Anderson,
62 Ill. App. 3d 633 (1st Dist. 1978) 40, 41

Marion Hosp. Corp. v. Illinois Health Facilities Plan. Bd.,
201 Ill. 2d 465 (2002) 40

LaSalle Nat. Bank, N.A. v. City of Lake Forest,
297 Ill. App. 3d 36 (2d Dist. 1998) 41

F. The First District's Opinion Poses a Concrete Threat to Future Municipal Developments 41

Steve Sadin, Casino Asks For Extra Time,
2023 WLNR 39748875, *Lake County News-Sun* (Nov. 21, 2023) 42

Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.,
2012 IL 111286 42

CONCLUSION 43

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

NATURE OF THE ACTION

On June 28, 2019, Governor Pritzker signed into law Public Act 101-031, which amended the Illinois Gambling Act ("Gambling Act") (230 ILCS 10/1 et seq.) to authorize the Illinois Gaming Board ("Gaming Board") to issue six, new casino licenses, including one for the City of Waukegan. A026; A002 at ¶3; 230 ILCS §10/7(e-5). These decisions over casino licenses "often involve millions of dollars," which is why there is a "danger that a person who receives an adverse decision will retaliate and seek vengeance in the courts." *Sypolt v. Illinois Gaming Bd.*, 2021 WL 1209132, at *4 (N.D. Ill. Mar. 31, 2021).

That is exactly what happened here. On October 17, 2019, the City Council for the City of Waukegan ("City" or "Waukegan") certified three casino license applicants to the Gaming Board, following an extensive public process. A027-032; C15 at ¶19; C16 at ¶24; C29; C1055-1057; C1064. The City declined, however, to certify Waukegan Potawatomi Casino, LLC ("Potawatomi Casino"). A032-034; C16 at ¶¶24-25. Potawatomi Casino sought to have the City Council reconsider its decision, but on October 21, 2019, Potawatomi Casino filed suit against Waukegan in the circuit court of Lake County (later removed to federal court), a few hours before the City Council was scheduled to vote on the motion for reconsideration. A034; C16 at ¶¶25-26. In this October 2019 lawsuit, Potawatomi Casino filed an Emergency Motion for Temporary Restraining Order, seeking to block the City "from submitting its certifications to the [Illinois Gaming Board] pursuant to resolutions that were adopted in its October 17, 2019 special meeting. . ." *See* A487-495.

Two years later, on November 16, 2021, Potawatomi Casino filed a Verified Complaint for Declaratory and Injunctive Relief against the Gaming Board, the Gaming

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Board Administrator, the members of the Gaming Board, and the City. C11-1297. Potawatomi Casino's complaint contained a single claim for Declaratory and Injunctive Relief under the Illinois Gambling Act and sought to enjoin the Gaming Board from "taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability" until the City of Waukegan had satisfied certain statutory requirements. A506, C23.

The circuit court dismissed the complaint with prejudice at the pleading stage, finding Potawatomi Casino lacked standing to proceed with its lawsuit. A465; A004 at ¶6. On July 28, 2023, the First District reversed the circuit court's decision, permitting Potawatomi Casino to continue its attack on the City's certification process, thereby jeopardizing the construction of the casino in Waukegan. A001-014.

ISSUES PRESENTED FOR REVIEW

This appeal asks whether the circuit court was correct to dismiss Potawatomi Casino's lawsuit. The issues for appeal are:

1. Does a declaratory judgment action somehow provide an exception to the ordinary requirement that a statute provide a private right of action in order for the statute to be privately enforced?

2. Does the Illinois Gambling Act provide a private right of action, when nothing in the statute suggests the Legislature intended to confer such a right?

3. Does Potawatomi Casino have standing to assert violations of the Illinois Gambling Act when the alleged harm, even if remedied, would not give Potawatomi Casino the ultimate relief that it is seeking?

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

4. Does the Gaming Board have exclusive jurisdiction over this lawsuit that concerns the process for awarding a casino license, as established by this Court's exclusive jurisdiction decision in *J&J Ventures Gaming*.

5. Did the City of Waukegan substantially comply with the Gambling Act when it solicited detailed proposals from the casino license applicants and later entered into extensive negotiations with Full House Resorts, Inc.

6. Is this appeal moot because Potawatomi Casino seeks injunctive and declaratory relief, but the Illinois Gaming Board has already issued an owner's license to Full House Resorts, Inc. and Full House has already constructed a temporary casino?

STATEMENT OF JURISDICTION

This Court has jurisdiction under Illinois Supreme Court Rule 315. On July 28, 2023, the First District issued its opinion, reversing the circuit court's decision to dismiss Potawatomi Casino's complaint for lack of standing. A001-014. On August 18, 2023, the City of Waukegan and the Illinois Gaming Board filed their respective petitions for rehearing. A055-351. On August 22, 2023, the First District denied both petitions for rehearing. A054. On September 26, 2023, the City of Waukegan filed its petition for leave to appeal. The Illinois Gaming Board filed its petition for leave to appeal the following month. On January 24, 2024, this Court granted the City of Waukegan's and the Gaming Board's petitions for leave to appeal. A052-053.

STATUTE INVOLVED

This appeal concerns provisions of the Illinois Gambling Act, 230 ILCS 10/1, *et seq.* Sections 2 and 7 of the statute are reprinted in the accompanying appendix. A015-023.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

STATEMENT OF FACTS

Passage of the Amendments to the Illinois Gambling Act

On June 28, 2019, Public Act 101-31 became law, authorizing the Gaming Board to issue a casino license for the City of Waukegan. C14 at ¶13. On July 3, 2019, Waukegan issued a Request for Qualifications and Proposals ("RFQ/P") for casino proposals seeking certification by Waukegan to the Gaming Board. C15 at ¶17. On August 5, 2019, Waukegan received casino proposals from five applicants in response to its RFQ/P. C1067. After one of the applicants withdrew its proposal, four applicants remained: (1) Lakeside Casino LLC ("North Point"); (2) Full House Resorts, Inc. ("Full House"); (3) CDI-RSG Waukegan, LLC ("Rivers"); and (4) Plaintiff Potawatomi Casino. *See* C15 at ¶19; A003 at ¶4.

Waukegan Certifies Three Applicants, but Not Potawatomi Casino

On September 18, 2019, the RFQ/P applicants gave presentations to the public at the Genesee Theatre in Waukegan. A029; C29; C1067. After the public hearing, Waukegan held the public comment period open for another three weeks, during which it received more than 1,200 comments from residents and the public. A029; C29; C1067. Waukegan received a final set of comments from more than two dozen people during the regularly scheduled City Council Meeting on October 7, 2019. A029; C29; C1067. City officials also met with each applicant to review and discuss the specifics of their proposals. *See* C29; C298; C721 (noting the vetting process).

On October 17, 2019, the City Council met in a Special Session to vote on the various casino proposals. A032; A500 at ¶19; C15 at ¶19. The City Council voted to certify the casino proposals of North Point, Full House, and Rivers, but voted against certifying

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the casino proposal by Potawatomi Casino for multiple reasons. A003 at ¶4; A032-033; A501 at ¶24, C16 at ¶24; C1055-C1056. Potawatomi Casino lobbied for rehearing, and on the evening of October 21, 2019, the City Council voted on Potawatomi Casino's motion for reconsideration. A033-034; A501 at ¶25, C16 at ¶25. A majority of the City Council voted to approve the motion for reconsideration but, on reconsideration, the City Council again voted against certifying Potawatomi Casino's proposal to the Gaming Board. A033-034; A501 at ¶25, C16 at ¶25; C1071.

The Federal Lawsuit

This is not the first lawsuit between Potawatomi Casino and the City of Waukegan. On October 21, 2019, before any vote on the motion for reconsideration had been cast, Potawatomi Casino filed suit against the City of Waukegan in the Circuit Court for Lake County. A034; A501 at ¶26, C16 at ¶26; C1070. This lawsuit, like the current one, represents Potawatomi Casino's continuing efforts to interfere with Illinois' casino process in order to protect its flagship casino in Milwaukee. *See* A029; C1353; C1086; *see also* Naczek, How Competition is Influencing Potawatomi, 2022 WLNR 14622749 (quoting the Potawatomi CEO referring to the "regional competition coming [from] Waukegan.").

On January 3, 2020, Potawatomi Casino filed its First Amended Complaint, which asserted claims arising under the Equal Protection Clause of the Fourteenth Amendment (Count I), the Illinois Gambling Act (Count II), and the Open Meetings Act (Count III). A003 at ¶5; A501 at ¶26, C16 at ¶26; C1065-C1066. Among the relief sought, Potawatomi Casino sought a declaration that the City Council's votes on the purported certification resolutions were void, an injunction requiring Waukegan to certify Potawatomi Casino's proposal, and damages for the lost opportunity to develop the Waukegan casino. A501 at

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¶26, C16 at ¶26. On January 31, 2020, Waukegan removed the case to federal court. *Waukegan Potawatomi Casino, LLC v. City of Waukegan,* No. 1:20-cv-750 (N.D. Ill.). A501 at ¶27, C16 at ¶27. On September 21, 2021, the City of Waukegan moved for summary judgment on all counts, after extensive discovery and more than three dozen depositions. C1057-C1099.

On March 29, 2024, the federal court granted Waukegan's motion for summary judgment on Potawatomi Casino's Equal Protection claim. A024-050. The federal court rejected Potawatomi Casino's "theory of a 'rigged process'" and held the company had not rebutted the "conceivable state of facts that could have reasonably explained the City's refusal to certify Plaintiff." A048. The federal court declined to exercise supplemental jurisdiction over the Illinois Gambling Act or Open Meetings Act claims, and dismissed those claims without prejudice. A049-050.

This Lawsuit and the Quest for Injunctive Relief

On November 15, 2021, the Illinois Gaming Board posted its agenda for a special meeting to be held on November 18, 2021. A506 at ¶44, C21 at ¶44. The agenda included "Consideration of Matters Related to the Pending Applications for the Owners License to Be Located in Waukegan," and "Determination of Preliminary Suitability." C1296. The very next day, Potawatomi Casino filed this lawsuit against the Gaming Board, the Gaming Board Administrator, the members of the Gaming Board, and the City of Waukegan ("Defendants"). A496-509 (without the exhibits); C11-C1297 (with the exhibits).

Potawatomi Casino's complaint contained a single claim for Declaratory and Injunctive Relief under the Illinois Gambling Act. A506-507 at ¶¶48-54, C22-C23 at ¶¶48-54. Potawatomi Casino's lawsuit sought to enjoin the Gaming Board from "taking formal

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steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability" until the City of Waukegan had satisfied the requirements of the Illinois Gambling Act. A507, C23. Potawatomi Casino sought this injunctive relief because it believed the City of Waukegan had "failed to satisfy" certain statutory certification prerequisites for the Gaming Board to consider issuing an owner's license for a casino in Waukegan, A502 at ¶32, A507 at ¶49, C17 at ¶32, C22 at ¶49, even though Potawatomi Casino was never certified by the City and the certifications issued by the City were in substantial compliance with the statute.

Potawatomi Casino alleged the City's certification process was deficient because:

> 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 terms" on the required items. . .
>
> 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).

A502-503 at ¶32, C17-18 at ¶32. These alleged failures, according to Potawatomi Casino, meant the Gaming Board lacked the statutory authority to take any formal steps toward issuing an owner's license for a casino in Waukegan. A507 at ¶50, C22 at ¶50.

Alongside its Complaint, Potawatomi Casino filed an emergency motion for injunctive relief. C1298-C1321. On December 7, 2021, the circuit court denied the request for a temporary restraining order. A466-467; A004 at ¶6. Potawatomi Casino petitioned

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the First District to review the denial of injunctive relief, C1400-C1402, but the First District declined to review the circuit court's decision. A004 at ¶6.

The Circuit Court Grants the Motion to Dismiss

Back before the circuit court, the City of Waukegan (and the Gaming Board) moved to dismiss the complaint. C1403-C1507; C1510-C1518. On May 13, 2022, the circuit court held a hearing and granted the Defendants' respective motions to dismiss, finding Potawatomi Casino lacked standing to proceed with its lawsuit. A453-455, R45-R47. In particular, the circuit court found that even if Potawatomi Casino was granted the relief it was requesting, Potawatomi Casino could not actually receive the relief it wanted (A453, R46) because the alleged "defect" in the certification process, even if cured, would only affect the three entities that were certified, and not Potawatomi Casino. On May 31, 2022, the circuit court entered its order, dismissing the complaint with prejudice. A465; A004 at ¶6. Potawatomi Casino then filed its Notice of Appeal. A439-464; A004 at ¶6.

The Gaming Board Issues a Formal License to Full House

On December 8, 2021, the Gaming Board took formal steps toward issuing a casino license for Waukegan and made a finding of preliminary suitability in favor of Full House Resorts, Inc.[1] A004 at ¶6; A082, A113. On January 3, 2023, the Waukegan City Council passed Resolution No. 23-R-03, entitled "A Resolution Approving a Ground Lease and a Development and Host Community Agreement for the Construction, Development, and Operation of 'The Temporary [Casino] By American Place' and the American Place Casino." *See* A109 at ¶5; A112-115. On February 16, 2023, the Gaming Board formally

[1] Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the subsidiary company operating the Waukegan casino under the name American Place. This brief refers to the two entities, collectively, as "Full House."

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issued a temporary operating permit to Full House, allowing Full House to open its temporary casino in Waukegan. A109 at ¶8. On June 15, 2023, the Gaming Board issued a Casino Owners License to Full House to operate its City of Waukegan casino. A012 at ¶21; *see also* Illinois Gaming Board, Board Meeting of June 15, 2023 at 1:05:00 to 1:06:30, available at https://tinyurl.com/IGB06152023. The Gaming Board's issuance of the Owners License is the final step in the state's casino licensing process.[2]

Full House Opens the Temporary Casino

On February 17, 2023, Full House opened the Temporary at American Place. Steve Sadin, Holding a Good Hand, 2023 WLNR 26093979, *Chicago Tribune* (July 29, 2023). Six months in, the Temporary was already the third-most visited casino in Illinois, drawing an average of 70,000 monthly visitors, and all while operating within a temporary casino. *Id.* In that same time frame, the Temporary at American Place generated more than $3.5 million in direct gaming taxes for the state and nearly $1.8 million for Waukegan, North Chicago, Park City, and Lake County. *Id.* On July 27, 2023, Waukegan's Planning and Zoning Commission recommended that the City Council approve the site plan and variance request for the permanent casino. Steve Sadin, All-In On American Place, 2023 WLNR 27772925, *Lake County News-Sun* (Aug. 12, 2023). The City Council issued its formal approval on September 5, 2023.

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[2] Under the Gambling Act, an owner's licensee may conduct gaming at a temporary facility pending the construction of a permanent facility, subject to certain statutory time limits. The final step for licensure by the Gaming Board is the issuance of an owner's license. There is only one owner's license issued to a casino operator; there is not a "temporary" owner's license and a "permanent" owner's license. When a casino operator is ready to move its casino operations from a temporary casino facility to a permanent casino facility, it petitions the Gaming Board for approval to move its operations. The Gaming Board does not issue a "new" owner's license at the time of the move to the permanent casino facility. *See* Ill. Admin. Code §3000.230.

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As of February 2024, the Temporary at American Place had generated more than $92.3 million in adjusted gross receipts, resulting in more than $14.1 million in direct gaming taxes for the state and more than $5.3 million for Waukegan, North Chicago, Park City, and Lake County. Illinois Gaming Board, Casino Monthly Report (Feb. 2023-Feb. 2024), available at https://www.igb.illinois.gov/CasinoReports.aspx.

The Appellate Court Reverses the Circuit Court

On July 28, 2023, the First District held the circuit court erred when it dismissed Potawatomi Casino's complaint for lack of standing. A001 at ¶1. The First District found Potawatomi Casino had adequately alleged the Defendants violated provisions of the Illinois Gambling Act and that these violations denied Potawatomi Casino a right to a fair certification process. *See id.*

STANDARD OF REVIEW

This Court reviews de novo an order granting a motion to dismiss (under either §2-615 or §2-619). *Solaia Tech., LLC v. Specialty Pub. Co.*, 221 Ill. 2d 558, 579 (2006). This de novo standard permits this Court to affirm the circuit court's dismissal on any basis contained in the record, including grounds not relied on by the lower court. *People v. Tompkins*, 2023 IL 127805, ¶54; *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

LEGAL ARGUMENT

The reasons for Potawatomi Casino's serial lawsuits and "emergency" motions for injunctive relief are transparent. Discovery in the federal litigation has shown that the Forest County Potawatomi Community (the "Potawatomi Tribe")[3] is interested in blocking any casino other than its own. And for obvious reasons: by Potawatomi Casino's own estimates, a casino in the City of Waukegan is expected to pull tens of millions of dollars a year from the Potawatomi Tribe's flagship casino in Milwaukee.[4] Indeed, using litigation as a bulwark against gaming expansion and gaming competition has long been the hallmark of the Potawatomi Tribe. This position dates as far back as 2001, when the Potawatomi Tribe filed suit to block the Menominee Indian Tribe's plans to build a casino in Kenosha, Wisconsin. C1065. In one recent interview, the CEO of the Potawatomi Tribe's Milwaukee casino noted the need to prepare for the "regional competition coming on the Illinois border, most notably [from] Waukegan" and to be ready "to keep the money here in Wisconsin." Margaret Naczek, How Competition is Influencing Potawatomi and When Sports Betting Might Arrive, 2022 WLNR 14622749, *Milwaukee Business Journal* (May 9, 2022). This lawsuit represents the Potawatomi Tribe's most recent attempt to block a competing casino and to preserve the current revenue stream for its Milwaukee casino.

The First District's decision failed to appreciate the danger warned of in *Sypolt.* Worse yet, the First District's decision now provides the blueprint for additional litigation by empowering *any* future, disappointed applicant of a license or permit to seek recourse

[3] The Potawatomi Tribe is the organization behind the Potawatomi Casino. A497 at ¶4.
[4] A protective order in the federal lawsuit prevents the City from disclosing the exact amount of Potawatomi Casino's forecasted revenue losses.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

in the courts. The First District's ruling runs contrary to Illinois precedent and the overarching purpose of the Gambling Act in several ways, all warranting reversal.

The First District's decision must be reversed for at least five, independent reasons. First, the Appellate Court was incorrect when it held Potawatomi Casino could bring a lawsuit to compel compliance with the Illinois Gambling Act, without demonstrating the Gambling Act supported a private right of action. Second, the Appellate Court's decision was incorrect when it held Potawatomi Casino had standing to complain of the alleged wrongs. Third, the Appellate Court's decision was incorrect because it failed to consider this Court's exclusive jurisdiction decision in *J&J Ventures Gaming.* Fourth, the Appellate Court's decision was incorrect because it failed to adequately consider Waukegan's substantial compliance with the statute. Fifth, the Appellate Court's decision was incorrect because it failed to adequately consider the issue of mootness. Each of these five reasons independently compels reversal.

Reversal is all-the-more imperative given the financial stakes associated with the casino-licensing process and the ability of strategically-timed litigation to forestall (and even kill) the economic development intended by the Gambling Act. *See* 230 ILCS §10/2(a). The First District's decision showed no hesitation about the prospect of requiring the City of Waukegan to "conduct the certification process again," A010 at ¶17, to undo the $125 million already expended by Full House Resorts, and to otherwise halt construction on the planned $500 million development. *See* Steve Sadin, Thousands Visit Waukegan's New Casino on First Weekend, 2023 WLNR 6353798, *Chicago Tribune* (Feb. 20, 2023); *see* Full House Resorts, Inc., Form 10-Q at 9, 37 (Aug. 9, 2023), available at

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

https://tinyurl.com/FHRForm10-Q. This Court should reverse the First District and hold the Cook County Circuit Court correctly dismissed Potawatomi Casino's complaint.

A. The Circuit Court Was Correct to Dismiss the Action Because the Illinois Gambling Act Does Not Provide a Private Right of Action

The circuit court found Potawatomi Casino lacked standing to proceed with its lawsuit. A453-454. Earlier, at the injunction stage, the circuit court expressed its doubts that the Gambling Act provided a private right of action. C1481-C1482. Those doubts were well-founded. Potawatomi Casino cannot proceed with its lawsuit because the Illinois Gambling Act does not provide a private right of action. The First District erred when it found Potawatomi Casino could side-step this requirement by seeking a declaratory judgment.

1. *Noyola* Does Not Control This Case

The First District found Potawatomi Casino did not need to show the Gambling Act provides a private right of action because the plaintiff was "seeking to force statutory compliance" rather than seeking to bring an independent cause of action. A011 at ¶19 (citing *Noyola v. Board of Education of Chicago*, 179 Ill. 2d 121, 132 (1997)). This finding is in error and misunderstands *Noyola.*

Noyola was not a declaratory judgment or injunction case. 179 Ill. 2d at 132. The Supreme Court's opinion does not contain a single reference to declaratory or injunctive relief. *See id.* Instead, *Noyola* was about when the courts could compel public officials to act "by means of a writ of mandamus." *Id.* A writ mandamus bears little resemblance to a declaratory judgment or injunction proceeding. A writ of mandamus is an extraordinary remedy, *id.* at 133, and is appropriate only to command a public officer to perform an official, nondiscretionary duty that the plaintiff is entitled to have performed, *Chicago Bar*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Ass'n v. Illinois State Bd. of Elections, 161 Ill. 2d 502, 507 (1994). Mandamus cannot be used to substitute the court's discretion or judgment for that of the official. *People v. Castleberry*, 2015 IL 116916, ¶26; *see also Bos. Med. Ctr. Corp. v. Sec'y of Exec. Off. of Health & Hum. Servs.*, 974 N.E.2d 1114, 1133 (Mass. 2012) ("Mandamus is not an appropriate remedy to obtain a review of the decision of public officers who have acted and to command them to act in a new and different manner."). Mandamus is used to compel inaction; it is not used to correct wrongs already taken. *United States v. Nordbye*, 75 F.2d 744, 745 (8th Cir. 1935).

Potawatomi Casino's complaint contains a single claim for "Declaratory and Injunctive Relief" under the Illinois Gambling Act. A506-507. Its complaint seeks a declaration that the City failed to satisfy certain requirements of the Gambling Act for the Gaming Board to consider issuing a license to operate a casino in Waukegan and, as such, a declaration that the Gaming Board lacks the authority to consider issuing a license to operate a Waukegan casino. *Id.* The complaint, therefore, asks the court to decide the state of the law under the Illinois Gambling Act. *See Kitt v. City of Chicago*, 415 Ill. 246, 252 (1953) (noting a declaratory judgment may be used to determine the rights of parties or to construe a statute). The complaint also asks the Court to undo the actions of public officials. The complaint does not ask for a writ of mandamus and does not seek to compel a public officer to perform his or her official duties. *Noyola,* and a writ of mandamus, has no application to this case.

2. Injunction and Declaratory Judgment Actions Require an Underlying Private Right of Action

Illinois courts have found that a private right of action is necessary to pursue a declaratory judgment or injunction action. *See, e.g., Carmichael v. Pro. Transportation,*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Inc., 2021 IL App (1st) 201386, ¶35; *Davis v. Kewanee Hosp.*, 2014 IL App (2d) 130304, ¶1, ¶54; *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶14; *Am. Fed'n of State, Cnty. & Mun. Emps., Council 31 v. Ryan*, 332 Ill. App. 3d 866, 871 (4th Dist. 2002).

In *Carmichael,* the First District held the trial court properly granted the defendant's motion for summary judgment because there was no private right of action for violations of the Illinois Vehicle Code. 2021 IL App (1st) 201386, ¶35. In *Carmichael,* as in this case, the plaintiff's complaint sought a declaratory judgment the defendant had violated a statutory provision. *Id.* at ¶7, ¶15. But the exact nature of the cause of action was irrelevant because a given statute either "provides for a private right of action or it does not — it is not a fact-specific inquiry dependent on the particular circumstances of any given case." *Id.* at ¶34.

Carmichael is no outlier. In *Jackson,* the Fourth District noted how the "doctrine of standing precludes a plaintiff from bringing a private cause of action based on a statute *unless the statute expressly confers standing on an individual or class to do so.*" *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶14 (emphasis added). *Jackson,* like *Carmichael,* involved an action for declaratory judgment, with the plaintiff seeking a finding the defendants had violated a statutory provision. *Id.* at ¶¶1, 5. A private right of action is a prerequisite to pursuing a declaratory judgment. *See Carmichael*, 2021 IL App (1st) 201386, ¶35; *Jackson*, 2011 IL App (4th) 100790, ¶14. After all, the declaratory judgment action "does not create substantive rights or duties . . ." *Beahringer v. Page,* 204 Ill. 2d 363, 373 (2003).

The same holds true for injunction actions. Injunctive relief is not available to private parties when the statute that has allegedly been violated does not provide a private

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

right of action. *Ryan*, 332 Ill. App. 3d at 871 (reversing the decision to grant a temporary restraining order); *see also Gilmore v. City of Mattoon*, 2019 IL App (4th) 180777, ¶15 ("Although the Director had authority to take action, such relief is unavailable to private persons because the legislature, had it intended to grant a private right of action for injunctive relief, would have explicitly done so.").

This has been the law both before and after the *Noyola* decision. In *Davis,* for example, the Second District rejected the plaintiff's lawsuit for declaratory and injunctive relief based on violations of the Medical Studies Act and the Health Care Professional Credentials Data Collection Act precisely because those statutes did not provide a private right of action. *Davis*, 2014 IL App (2d) 130304, ¶1, ¶54. In *Smith,* the Fourth District explicitly held that "[n]o distinction has been made between an action for damages and other civil actions for injunction or declaratory judgment" when the statute does "not intend a private cause of action. . ." *Smith v. Sears, Roebuck & Co.*, 95 Ill. App. 3d 174, 179 (4th Dist. 1981).[5]

The Illinois appellate courts have consistently required that a statute provide a private right of action before a plaintiff can pursue declaratory and injunctive relief under that statute. *Carmichael*, 2021 IL App (1st) 201386, ¶35; *Davis*, 2014 IL App (2d) 130304, ¶1, ¶54; *Jackson*, 2011 IL App (4th) 100790, ¶14; *Ryan*, 332 Ill. App. 3d at 871; *Smith,* 95 Ill. App. 3d at 179. The First District erred when it failed to consider all of this authority.

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[5] The First District relied on the *Landmarks Illinois* case to hold that declaratory and injunctive relief is available even without a private right of action. *See* A011 at ¶19 (citing *Landmarks Illinois v. Rock Island Cnty. Bd.*, 2020 IL App (3d) 190159, ¶62). *Landmarks Illinois* relied on *Noyola* for its support, but – as noted above – *Noyola* does not stand for this proposition.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

3. The First District's Decision Misapprehends the Nature of Declaratory Judgment Actions

The First District permitted Potawatomi Casino to pursue declaratory relief without asking whether the Gambling Act provides a private right of action. A011 at ¶¶18-19. This decision reveals a misunderstanding of the nature of a declaratory judgment.

"Declaratory relief *presupposes* the existence of a judicially remediable right" and thus cannot be pursued without a predicate right of action. *Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 929 F.3d 865, 871 n.2 (7th Cir. 2019) (emphasis added). This means that it "does not matter" that the plaintiff "seeks declaratory, rather than monetary, relief." *Id.*[6] The First District's contrary position—in which a plaintiff can still pursue declaratory relief—is "tantamount to allowing a private cause of action" where none exists. *Villasenor v. Am. Signature, Inc.*, 2007 WL 2025739, at *6 (N.D. Ill. July 9, 2007) (rejecting plaintiff's attempt to bring a declaratory judgment action under the Illinois Retail Installment Sales Act). The First District's decision misapprehends the nature of a declaratory judgment by permitting private parties to invoke statutes that do not provide them private rights of action.

Other state decisions provide additional, persuasive authority for this position. "[D]eclaratory relief is not available to remedy an alleged statutory violation when no private right of action under the statute exists." *McGlamery v. Pub. Employees' Ret. Sys. of Nevada*, 481 P.3d 1261, at *3 (Nev. Ct. App. 2021); *see also Gwinnett Cnty. v. Netflix, Inc.*, 885 S.E.2d 177, 185 (Ga. Ct. App. 2023) ("[B]ecause we have determined that the

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[6] A trial court may enter a money judgment when rendering declaratory relief. *Chester v. State Farm Mut. Auto. Ins. Co.*, 227 Ill. App. 3d 320, 324 (2d Dist. 1992).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Appellants lack a private right of action, their declaratory judgment claim is insufficient as a matter of law.").

The First District's contrary position—that a party can enforce a statute without a private right of action—would amount to "an end run around the lack of any private right of action to enforce [the Act]." *Neighbors Against Large Swine Operations v. Cont'l Grain Co.*, 901 S.W.2d 127, 132 (Mo. Ct. App. 1995). The First District's contrary position would effectively transform the declaratory judgment procedure into a "roving statutory private right of action" by which the "very concept of statutory standing . . . would no longer exist." *Cherrie v. Virginia Health Servs., Inc.*, 787 S.E.2d 855, 859 (Va. 2016). This position makes no sense and would bestow a private right of action on "any aggrieved claimant, [simply] by virtue of claiming that his grievance involves a statutory violation. . ." *Id.*

The First District's decision also failed to consider that the "declaratory judgment procedure was designed to settle and fix rights *before* there has been an irrevocable change in the position of the parties that will jeopardize their respective claims of right" and that the procedure is intended to *avoid* "potential litigation." *Carle Found. v. Cunningham Twp.*, 2017 IL 120427, ¶26 (emphasis added). That is certainly not the reality here. When the Potawatomi Casino filed its lawsuit seeking a declaratory judgment, it had already been litigating for two years with the City of Waukegan. A501 at ¶26. And as Potawatomi Casino continues its quest for declaratory relief, it does so against a backdrop in which Full House has already spent more than $125 million. This Court should correct the First District's untenable understanding of declaratory judgment actions and hold that a private right of action under the Gambling Act is necessary to pursue any relief under the Act.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

4. There is No Private Right of Action Under the Gambling Act

Potawatomi Casino's complaint arises under the Illinois Gambling Act. A507. Section 7(e-5) of the Gambling Act authorizes the Gaming Board to issue a casino license for the operation of a casino in the City of Waukegan. 230 ILCS 10/7(e-5). Section 7(e-5) is, therefore, enabling legislation. *See id.* And courts examining regulatory or enabling legislation "have found that such legislation does not imply a private right of action." *Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 194 F. Supp. 3d 706, 714 (N.D. Ill. 2016), *aff'd*, 929 F.3d 865 (7th Cir. 2019) (collecting cases from Illinois state and federal courts). *Alarm Detection Systems* and its supporting case law demonstrate that §7 of the Gambling Act is not the "type of legislation that usually provides for a private right of action under Illinois law." *Id.*

This conclusion is buttressed by the four-factor test used to determine whether a statute provides for an implied right of action. Under this test, courts will imply a cause of action when: "(1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violation of the statute." *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (Ill. 2004). Courts must use "caution in implying a private right of action," because the act of doing so is an exercise of policy-making authority that is more appropriately exercised by the legislature. *Helping Others Maintain Env't Standards v. Bos*, 406 Ill. App. 3d 669, 684 (2d Dist. 2010). The reason for this "due caution" is simple: when a legislature wants "to provide a private damage remedy,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

it knows how to do so." *Holloway v. Household Auto. Fin. Corp.*, 227 B.R. 501, 506 (N.D. Ill. 1998) (emphasis added).

Potawatomi Casino cannot satisfy this four-factor test. The Gambling Act was enacted "to benefit the people of the State of Illinois" by assisting economic development, promoting Illinois tourism, and increasing the amount of revenue available to the state. 230 ILCS 10/2. The Gaming Board is empowered to select among competing license applicants according to which applicant will "best serve the interests of the citizens of Illinois." 230 ILCS 10/5(c)(1). Potawatomi Casino is a corporate organization that is owned by the Potawatomi Tribe. *See* A497 at ¶4; C12 at ¶4; *see Alarm Detection Sys.,* 194 F. Supp. 3d at 714 ("There is no indication in the statute's language that it is designed to provide a remedy for injury to commercial interests like those Alarm Detection raises here."). To be sure, the statute speaks of situations where a party is aggrieved by "action of the [Gaming Board]." 230 ILCS §10/5(b). But Potawatomi Casino did not suffer any adverse action before the Gaming Board—its complaint is directed toward the City's own certification process. *See* A502-505 at ¶¶32-40 (referring to the "City's Non-Compliant Certification Process"). Potawatomi Casino is not a member of the class for whose benefit the statute was enacted. Potawatomi Casino cannot satisfy the first factor. *See* C1483 ("I don't believe . . . the plaintiff is an entity that the statute was designed to protect. . .").

Plaintiff's purported injuries—that it was not selected for certification and the City of Waukegan did not mutually agree to certain items *with the certified applicants*—are not the type of injuries the statute was designed to prevent. Instead, the statute is intended to award the City a casino license and to ensure the City's *selected applicants* have negotiated *with the City* in good faith (and not the other way around). 230 ILCS 10/7(e-5). The statute

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

also has no bearing on *unselected applicants* like Potawatomi Casino. *See id.* The Gambling Act seeks to protect certain injuries before the Gaming Board, but Potawatomi Casino has not suffered any direct injury from any action by the Gaming Board. Implying a private right of action for a private corporation that was not selected by or certified by Waukegan at the initial selection stage would be inconsistent with the underlying purpose of the statute: namely, promoting economic development and Illinois tourism through the award of additional casino licenses. *See* 230 ILCS 10/2; 230 ILCS 10/7(e-5).[7]

The Gaming Board's extensive (and exclusive) authority also counsels against implying a private right of action. The Illinois Gambling Act grants the Gaming Board all powers "necessary and proper to fully and effectively execute this Act. . . ." 230 ILCS §10/5(a)(1). The Gaming Board possesses the authority to conduct "*all hearings* pertaining to *civil violations of this Act* or rules and regulations promulgated hereunder." 230 ILCS §10/5(b)(2) (emphasis added). When such "broad discretion is given to an agency, it negates the implication that there was legislative intent to create a private right of action." *Helping Others Maintain Env't Standards*, 406 Ill. App. 3d at 686. Potawatomi Casino cannot satisfy the second or third factors.

Implying a private right of action for a private corporation is unnecessary to provide an adequate remedy for a violation of the statute. The statute already provides the Gaming Board with the ultimate authority for issuing casino licenses and the authority to ensure that local governments have followed the proper guidelines. 230 ILCS 10/7(a),(b),(e-5).

[7] Potawatomi Casino has argued the City will be free to decide which applicants are considered by the Gaming Board without any scrutiny as to whether it exercised that power in a lawful manner. That is not the case. Potawatomi Casino's federal lawsuit against the City of Waukegan seeks to exert that precise scrutiny over the City's selection process.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

The Gambling Act is effective without the need for an implied private right of action. "A private right of action will be implied only where there is a clear need to uphold and implement the public policy of the statute by providing an adequate remedy for a violation of the statute." *Helping Others Maintain Env't Standards*, 406 Ill. App. 3d at 686.

The Gaming Board has never been shy about exercising its statutory and regulatory authority. *See, e.g., In re: Emerald Casino, Inc.*, 867 F.3d 743, 749 (7th Cir. 2017) (the Gaming Board revoked Emerald Casino's gaming license); *Dolly's Cafe LLC v. Illinois Gaming Bd.*, 2019 WL 6683046, at *1 (N.D. Ill. Dec. 6, 2019) (the Gaming Board shut down plaintiff's gaming terminals); *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶9 (the Gaming Board denied a license application based on a company's association with an individual convicted of illegal gambling); *Windy City Promotions, LLC v. Illinois Gaming Bd.*, 2017 IL App (3d) 150434, ¶1 (the Gaming Board seized two of plaintiff's kiosks). Potawatomi Casino cannot satisfy the fourth factor. *See Bernacchi v. First Chicago Ins. Co.*, 52 F.4th 324, 331 (7th Cir. 2022).

5. Other States Provide Additional Authority That The Gambling Act Does Not Provide a Private Right of Action

The Illinois Gambling Act grants the Gaming Board all powers "'necessary and proper to fully and effectively execute this Act. . . .'" *Midwest Gaming & Ent., LLC v. Cnty. of Cook*, 2015 IL App (1st) 142786, ¶52 (quoting 230 ILCS §10/5(a)(1)). The Gambling Act also provides the Gaming Board jurisdiction and supervision over "'all gambling operations governed by this Act.'" *Id.* (quoting 230 ILCS 10/5(c)). This jurisdiction extends to "'every person, association, corporation, partnership and trust involved in riverboat gambling operations in the State of Illinois.'" *Id.* (quoting 230 ILCS 10/5(a)(1)). Finally, the Gambling Act bestows upon the Gaming Board the power and

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

authority to "'promulgate rules and regulations for the purpose of administering the provisions'" of the statute, including the ability to review permits and licenses, and to impose penalties for violations of the statute. *Id.* (quoting 230 ILCS 10/5(c)(3)).

Other states have given their respective Gaming Boards and Gaming Commissions similar authority. In Indiana, for instance, the legislature empowered its Gaming Commission to adopt rules for the regulation of the gaming industry, including the ability to impose penalties for noncriminal violations of the state's gaming provisions. *Stulajter v. Harrah's Indiana Corp.*, 808 N.E.2d 746, 748-49 (Ind. Ct. App. 2004). Given the Gaming Commission's power to enforce the gaming regulations and penalize noncompliance, the Indiana Court of Appeals concluded that "Indiana's gaming statutes and regulations do not create a private cause of action. . ." *Id.* at 749. If an entity is in violation of any of the statutory provisions, that entity "must answer to the Commission, *not a private citizen claiming harm from the alleged violation.*" *Id.* at 748 (emphasis added); *see also Merrill v. Trump Indiana, Inc.*, 320 F.3d 729, 732 (7th Cir. 2003) ("Given the extent of gambling regulation in Indiana, we conclude that the Indiana Supreme Court would not conclude that the legislature intended to create a private cause of action.").

Indiana is hardly alone. Courts in Iowa, Louisiana, and Nevada have found enforcement of gaming statutes is best left to gaming regulators, and not to private individuals or companies. "The Court finds persuasive [the] argument that neither the Louisiana Administrative Code nor the Louisiana Gaming Control Law authorizes a private right of action in the event of noncompliance. . . Accordingly, Plaintiff's claims based on violations of the Gaming Control Law are within the exclusive jurisdiction of the [Louisiana] Gaming Board." *Sherman v. Harrah's New Orleans Casino*, 2008 WL

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

11509255, at *9 (E.D. La. Feb. 12, 2008); *see also Logan v. Ameristar Casino Council Bluffs, Inc.*, 185 F. Supp. 2d 1021, 1024-25 (S.D. Iowa 2002) ("[T]he legislature drafted quite detailed code provisions and allowed thorough administrative regulations governing gaming, with no suggestion of a private remedy. . ."). The same is true of Nevada, a state long-synonymous with legalized gambling. "Clearly, the legislature intended that only the Nevada Gaming Control Board or the Nevada Gaming Commission may bring enforcement actions for violations of [the statute]. . ." *Sports Form, Inc. v. Leroy's Horse & Sports Place*, 823 P.2d 901, 903 (Nev. 1992). These persuasive precedents provide additional proof that the Gambling Act does not provide a private right of action.

The circuit court was correct to dismiss this case because Potawatomi Casino cannot show the Gambling Act provides for a private right of action. *See Alarm Detection Sys*, 929 F.3d at 871; *see also Sadler v. Retail Properties of Am., Inc.*, 2014 WL 2598804, at *24 (N.D. Ill. June 10, 2014) (noting it is the plaintiff's burden to establish there is an implied private right of action).

B. Potawatomi Casino Lacked Standing to Invoke the Gambling Act for Its Alleged Injury

Because they are so lucrative, decisions over casino licenses create a substantial risk of retaliatory lawsuits, which seek to thwart the regulatory process and delay or block public benefits. *See Sypolt*, 2021 WL 1209132, at *4. The City knows this risk first-hand. This lawsuit is now the third lawsuit stemming from its casino certification process, with two lawsuits brought by Potawatomi Casino and a third brought by Waukegan Gaming, LLC. A501 at ¶26, C16 at ¶26; C11-C24; *Waukegan Gaming, LLC v. City of Waukegan*, 2023 IL App (2d) 220426 (affirming the dismissal of Waukegan Gaming's lawsuit).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

The First District's standing decision does not just ignore the *Sypolt* warning; its decision actively encourages litigation by any future applicants on the losing side of the casino selection process. At one point, the First District proclaims that 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." A009 at ¶16. It is hard to imagine a broader and more expansive view of standing, in which the very act of voting an applicant down, together with a few "upon information and belief" allegations, *see* A008 at ¶15, supplies the requisite legal injury. This Court must stanch the threat of future litigation by giving the Gambling Act a common-sense interpretation and by reversing the First District's unnecessarily expansive standing decision.

1. Potawatomi Casino Cannot Satisfy the Requirements for Standing

A plaintiff must have standing before it can file suit. *Glisson v. City of Marion,* 188 Ill. 2d 211, 221 (Ill. 1999); *Jenner v. Wissore*, 164 Ill. App. 3d 259, 268 (5th Dist. 1988). The standing doctrine is designed to assure that courts are deciding actual, specific controversies and not abstract questions or moot issues. *In re Est. of Wellman*, 174 Ill. 2d 335, 344 (1996). To demonstrate standing, a plaintiff must possess (1) a distinct and palpable injury, (2) which is fairly traceable to the defendant's conduct, and (3) substantially likely to be redressed by the grant of such relief. *Glisson,* 188 Ill. 2d at 221. In short, "standing requires some injury in fact to a legally cognizable interest." *Id.*

When a lawsuit "seeks to enjoin the violation of a statute, the doctrine of standing specifically requires: that the plaintiff 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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

owed." *Jenner*, 164 Ill. App. 3d at 268. "The object of the statute, the nature of the duty imposed by it, and the benefits resulting from its performance dictate what persons are entitled to sue thereunder." *Id.* When a lawsuit seeks a declaratory judgment, the plaintiff must possess some personal claim, status or right that is capable of being affected by the grant of such relief. *Glisson,* 188 Ill.2d at 221. Potawatomi Casino cannot satisfy these standing requirements.

2. Potawatomi Casino Does Not Have a Recognized Injury

Standing requires an injury to a legally cognizable interest. *In re Est. of Wellman*, 174 Ill. 2d at 345. This means a party must be able to show "a direct injury to his property or rights," and not simply an abstract injury. *Dep't of Transp. v. Anderson*, 384 Ill. App. 3d 309, 313-14 (3d Dist. 2008). Potawatomi Casino's lawsuit does not present any direct injury to a recognized property or right.

Potawatomi Casino has previously conceded it has no right to be certified to the Gaming Board and no right to be awarded the casino license. A419. This is true. There is no common law right to engage in gambling or profit from gambling, and there is no right to possess a gambling license (even once granted). *Vill. of Rosemont v. Jaffe*, 482 F.3d 926, 938 (7th Cir. 2007); *J&J Ventures Gaming, LLC*, 2016 IL 119870, ¶26; *Doxsie v. Illinois Gaming Bd.*, 2021 IL App (1st) 191875, ¶15. To avoid these legal hurdles, Potawatomi Casino has framed its legal right as the right to compete for the opportunity in a fair and lawful casino certification process. *See* A419. The First District accepted this argument and found an "applicant participating in such [a] statutorily mandated selection process would thus have a right to have a fair and compliant process." A005-006 at ¶11.

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There is no such fair "process" right and the First District's finding stands in direct contradiction to both the language of the Gambling Act and the long-settled rule that "categories of substance and procedure are distinct." *Cleveland Bd. Of Educ. V. Loudermill*, 470 U.S. 532, 541 (1985). There is no entitlement to a casino license. And nothing in the Illinois Gambling Act, or any other source of state law, confers a right to a "fair and lawful casino certification process." This is particularly true since the Gambling Act does not provide a private right of action (see above) and Potawatomi Casino cannot claim a "legally protectible interest to enforce" a statute that does not confer a private right of action. *See Neighbors Against Large Swine Operations*, 901 S.W.2d at 132-33; *see also Glisson,* 188 Ill. 2d at 223 ("The Act, however, does not expressly confer standing on plaintiff to bring this private cause of action."). Potawatomi Casino did not suffer any legally recognized injury.

3. Potawatomi Casino's Alleged Injury Is Not Traceable to the Defendants' Conduct and Not Redressable Through this Action

Standing requires the claimed injury be fairly traceable to the defendant's actions and substantially likely to be prevented or redressed by the grant of the requested relief. *Illinois Rd. & Transportation Builders Ass'n v. Cnty. of Cook*, 2022 IL 127126, ¶13. Potawatomi Casino cannot satisfy either of these standing requirements.

Potawatomi Casino seeks to enjoin the Gaming Board from taking any further action based on the allegation that Waukegan failed to fulfill certain obligations under the Gambling Act *after advancing the other applicants* to the Gaming Board. C22-C23. Even assuming Waukegan failed to follow statutory provisions on the form and content of its resolutions, any shortcomings in the resolutions or agreements with other applicants *following* the certification vote had no impact on any legal interest of Potawatomi Casino

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because the City of Waukegan had already decided not to certify Potawatomi Casino's proposal to the Gaming Board. C1482.

An order directing the City of Waukegan to fix its resolutions with the successful applicants that were certified would have no impact on any legal interest running to Potawatomi Casino. The same is true of any order requiring the "City to conduct the certification process again." A010 at ¶17; *see also* A012-013 at ¶22 (noting the possibility of having the Defendants retract the issued owners license and repeat the process).[8] With or without a sufficiently detailed resolution, the City Council repeatedly voted against advancing Potawatomi Casino's proposal to the Gaming Board. And no amount of haggling over the exact contours of the City's resolutions will change the fact that the City Council *twice voted* against certifying Potawatomi Casino.

Potawatomi Casino cannot show the City of Waukegan owed it any duty to comply with the statute's certification provisions as a non-certified applicant. *See Jenner,* 164 Ill. App. 3d at 268. Even the First District acknowledged the "statute does not require the municipality to negotiate with every applicant. . ." A007 at ¶13. The circuit court correctly found Potawatomi Casino lacked standing to complain about the purported lack of compliance with the Illinois Gambling Act. *See* A453, R46. The First District's decision to the contrary empowers any unhappy applicant to litigate government licensing decisions at all stages of any certification or RFP process. This is not the law. *See, e.g., Lake Cnty.*

[8] The reference to retracting the issued license is also incorrect. 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. *See Marion Hosp. Corp. v. Illinois Health Facilities Plan. Bd.*, 201 Ill. 2d 465, 475 (2002) ("No statute or regulation had been cited which would have authorized the Department to suspend or revoke SIOC's operating license or otherwise limit its medical functions based on an improperly granted planning permit.").

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Riverboat L.P. v. Illinois Gaming Bd., 332 Ill. App. 3d 127, 140 (1st Dist. 2002) ("Lake County has no standing to challenge the constitutionality of section 10/11.2 because it has not sustained and is not in immediate danger of sustaining a direct injury as a result of the enforcement of the statute.").

The First District offered speculation about what the City Council might have done with a statutorily compliant process. A010 at ¶17. But this argument provides no basis to support standing and does not track the language of the Gambling Act. Potawatomi Casino was no longer being considered as a potential applicant when the City of Waukegan allegedly failed to issue the proper certifications. *See* 230 ILCS §10/7(e-5).

The Gaming Board is to consider issuing the license only after the City Council has made the necessary certifications. *Id.* To the extent the City of Waukegan failed to properly memorialize its agreements with the successful applicants, that failure only impacted Full House, North Point, and CDI-RSG—the three applicants Waukegan advanced to the Gaming Board. Waukegan twice refused to advance Potawatomi Casino to the Gaming Board for consideration. This refusal necessarily had no impact on the certifications described in section 7(e-5). Accepting the First District's argument to the contrary would require municipalities and corporate authorities to negotiate countless details with *every potential applicant,* no matter how many applicants and no matter how lackluster the proposal. This strained interpretation of the Gambling Act is both impractical and illogical. This Court should reverse the First District and hold Potawatomi Casino lacked the necessary standing to invoke the Gambling Act, unable to show a recognized injury that can be traced to the Defendants' conduct and cured by this Court.

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C. The Gaming Board Has Exclusive Jurisdiction Over this Controversy

The First District found the Gaming Board did not possess the exclusive jurisdiction to resolve the issues raised by Potawatomi Casino through a single footnote. A011 at n.4. This limited analysis overlooks binding precedent from this Court and misunderstands the exclusive jurisdiction doctrine.

1. *J&J Ventures Gaming* Controls This Case

In *J&J Ventures Gaming,* the Fifth District found the Gaming Board had exclusive jurisdiction over the parties' controversy surrounding the placement of video game terminals within licensed establishments. *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2015 IL App (5th) 140092, ¶1, ¶32. In doing so, the Fifth District found that whether certain conduct violated the Video Gaming Act was "an exclusive question for the Gaming Board." *Id.* at ¶48. This Court affirmed the Fifth District's analysis, holding the "comprehensive statutory scheme" surrounding gaming operations "precluded [the courts] from addressing the merits of the parties' claims." *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶42. The First District's truncated analysis failed to grapple with—or even consider—the *J&J Ventures Gaming* case.

The First District's decision overlooks *J&J Ventures Gaming;* it also misunderstands the doctrine of exclusive jurisdiction. Generally, Illinois courts have original jurisdiction over all justiciable matters. *Illinois Ins. Guar. Fund v. Priority Transportation, Inc.*, 2019 IL App (1st) 181454, ¶45. However, the "legislature may vest exclusive original jurisdiction in an administrative agency when it has explicitly enacted a comprehensive statutory administrative scheme." *Id.* Gaming represents one such statutory administrative scheme. This Court expressly noted the "comprehensive statutory scheme"

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surrounding gaming when it found the parties' controversy in *J&J Ventures Gaming* was within the "exclusive, original jurisdiction" of the Illinois Gaming Board. 2016 IL 119870, ¶42; *see also id.* at ¶32 ("[T]his statutory scheme demonstrates the legislature's explicit intent that the Gaming Board have exclusive jurisdiction over the video gaming industry and the use agreements that are a necessary prerequisite of engaging in that industry.").

The Gaming Board's exclusive jurisdiction naturally extends to the question of whether Waukegan's certifying resolutions satisfied the statutory requirements of the Gambling Act. The Gaming Board's June 15, 2023 decision to issue the owners license to Full House *necessarily* meant the Gaming Board found the City's certifying resolutions complied with the Gambling Act—which is, of course, the very act the Gaming Board is charged with overseeing. *See* 230 ILCS §10/5. In enacting the Gambling Act, the Legislature gave the Gaming Board not only "the powers and duties specified in this Act," but "all other powers necessary and proper to fully and effectively execute this Act for the purpose of administering, regulating, and enforcing the system of riverboat and casino gambling established by this Act." *Id.* Any questions concerning the process for awarding the license to Full House belonged before the Gaming Board.

2. Potawatomi Casino Had to Proceed Before the Gaming Board

The exhaustion doctrine applies when an administrative agency has exclusive jurisdiction to hear an action. *Beahringer v. Page*, 204 Ill. 2d 363, 374 (2003); *Nestle USA, Inc. v. Dunlap*, 365 Ill. App. 3d 727, 735 (4th Dist. 2006). Under the exhaustion doctrine, judicial interference must be withheld until the administrative process has run its course. *Beahringer,* 204 Ill. 2d at 375. This applies to declaratory relief. *Id.* "If the agency is vested

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

by the legislature with the authority to administer the statute, declaratory relief is not available." *Id.*

Several underlying policy reasons support the exhaustion doctrine. *Id.* at 375. Exhaustion allows the agency to fully develop the facts at issue and to apply its expertise. *Id.* Exhaustion protects the agency process from avoidable interruptions and gives the aggrieved party the opportunity to succeed before the agency. *Id.* Finally, exhaustion allows the agency to correct its alleged errors, such as issuing a license, "thus conserving valuable judicial resources." *Id.*

These policy considerations apply here. Gaming—from the selection, to the licensing, to the policing of the various games and establishments—is a complex endeavor. Questions of licensure are not "readily susceptible of resolution by judicial decree." *Id.* Selecting, licensing, and overseeing gaming facilities is a difficult and specialized undertaking, one that "requires expertise, planning, and the commitment of resources." *Id.* That is, of course, the reason behind the creation of the Illinois Gaming Board, and the reason for endowing the Board with all "powers necessary and proper to fully and effectively execute" the Gambling Act. 230 ILCS 10/5(a)(1). These powers include the ability to exercise "jurisdiction over and the [ability to] supervise all gambling operations governed by this Act." 230 ILCS 10/5(c). Finally, there is the obligation to respect the separation of powers of a co-equal branch and the need to exercise proper "judicial restraint" before encroaching on the authority of an executive agency. *Beahringer*, 204 Ill.2d at 375-76; 230 ILCS 10/5(a)(2). This case belonged before the Gaming Board.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

3. The First District Ignored the Gaming Board's Rulemaking Authority

The Gaming Board has the power to adopt any administrative rules that may be necessary to administer, protect or enhance the gaming regulatory process. 230 ILCS 40/78(a)(3); 230 ILCS 10/5(b)(3); *Windy City Promotions, LLC v. Illinois Gaming Bd.*, 2017 IL App (3d) 150434, ¶23. An administrative rule is any agency statement of general applicability that implements, applies, *interprets,* or prescribes law or policy. *Windy City Promotions*, 2017 IL App (3d) 150434, ¶24 (citing ILCS 100/1-70). An interpretative rule is a rule issued by the agency to advise the public of the agency's construction or reading of the statutes and rules that it administers. *Id.* at ¶¶24-25. The First District failed to recognize the importance of administrative rulemaking and failed to recognize the benefit that would have come from allowing the Gaming Board to adopt a rule interpreting the amendments to the Gambling Act.

D. The Appellate Court Failed to Analyze the Issue of Substantial Compliance

The First District accepted Potawatomi Casino's allegations that the City's resolutions were deficient under the Gambling Act, even for the purpose of analyzing the *legal* question of substantial compliance. A007 at n.2; A008-009 at ¶15 ("According to the allegations of the complaint. . ."). This was the wrong analysis and not the law.

The question of whether a party has complied (or substantially complied) with a statutory requirement is a question of law—*not a question of fact. Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (4th Dist. 2009). Potawatomi Casino could not, therefore, overcome a motion to dismiss by simply *alleging* the City's resolutions were deficient. *See id.* The First District's decision failed to adequately appreciate the law on substantial

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

compliance and failed to analyze whether the City's resolutions satisfied substantial compliance under the Gambling Act's new provisions. The First District also failed to consider the critical conclusion that the Gaming Board implicitly believed the resolutions were adequate when it issued the owner's license to Full House.

1. The City Substantially Complied with Section 7(e-5)

Section 7(e-5) of Gambling Act states that the Gaming Board "shall consider issuing a license" only after the corporate authority of the municipality has certified to the Gaming Board:

> (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;
>
> (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.

230 ILCS 10/7(e-5).[9] Potawatomi Casino alleges the City passed certifying resolutions for North Point, Full House, and CDI-RSG, but that these certifying resolutions merely recited

[9] Paragraphs (vii) and (viii) were omitted because those paragraphs only apply to the casino for the City of Chicago. 230 ILCS 10/7(e-5).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

that the City had "agreed *in general terms*" with the applicants, instead of providing the specific areas of agreement allegedly required by section 7(e-5). A502-503 at ¶32; C17-C18 at ¶32.

Waukegan substantially complied with the requirements of the Gambling Act, even assuming the City Council's certifying resolutions did not provide all of the precise details set out in section 7(e-5). This Court has recognized that substantial compliance can "satisfy mandatory statutory requirements," such as those beginning with "shall." *See Akin v. Smith*, 2013 IL App (1st) 130441, ¶9. "[A] mandatory provision does not always require strict compliance." *Behl,* 396 Ill. App. 3d at 1086. The word "shall" does not have an intransigent or inflexible meaning; it may be given a permissive meaning depending on the legislative intent. *Ferguson v. Ryan*, 251 Ill. App. 3d 1042, 1047 (3d Dist. 1993).

Whether to give "shall" a mandatory or directory meaning often turns on whether the term is accompanied by a penalty or consequence. *Bd. of Educ. of Du Page High Sch. Dist. 88 v. Pollastrini*, 2013 IL App (2d) 120460, ¶11. "Where the term is not accompanied by some sort of penalty or consequence, substantial compliance is sufficient." *Id.* Courts also consider a two-part analysis when determining whether substantial, rather than strict, compliance is permissible in the face of a mandatory statutory requirement. *Behl,* 396 Ill.App.3d at 1086. First, courts consider the purpose of the statute to determine whether its purpose may be achieved without strict compliance. *Id.* Second, courts consider whether the plaintiff has suffered any prejudice from the defendant's failure to strictly comply with the statute. *Id.*

Waukegan substantially complied with the Gambling Act. The City Council's resolutions noted how the City and the respective applicant had mutually agreed in general

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

terms upon a temporary and permanent location for the casino, had mutually agreed in general terms on the percentage of revenues to be shared with the City, and had mutually agreed in general terms on the zoning, licensing, public health, and other issues under the jurisdiction of the City. C29-30 (Resolution Certifying North Point); C298-299 (Resolution Certifying Full House); C721-722 (Resolution Certifying CDI-RSG). The City Council's resolutions specifically incorporated the respective proposals from North Point, Full House, and CDI-RSG. *See id.*

These proposals, in turn, provide the specifics requested by section 7(e-5). For instance, each of the applicants proposed building the casino on the Fountain Square site. *See* C285; 230 ILCS 10/7(e-5)(ii). Each of the applicants' proposals described projected revenues for the City. *See* C291-295; *see also* C44 (North Point's projection of taxable gaming revenues); C303 (Full House's proposal to lease the Fountain Square site from the City for 2.5% of gaming revenues); C767-770 (CDI-RSG's preliminary pro forma showing anticipated revenues generated) [redacted]; 230 ILCS 10/7(e-5)(iv). Some of the proposals also described zoning, licensing, and public health issues. *See, e.g.,* C94-96 (North Point's feature on Sustainable Design – Health and Wellness); 230 ILCS 10/7(e-5)(v). Finally, the City Council passed resolutions in support of the certified applicants. C27-28; C28-29; C298-299; C721-722; 230 ILCS 10/7(e-5)(vi).

On January 3, 2023, the Waukegan City Council passed a series of resolutions that were the product of extensive negotiations between the City and Full House. These resolutions included Resolution No. 23-R-03, which specifically approved a Ground Lease and a Development and Host Community Agreement ("DHCA") for the construction, development, and operation of Full House's temporary and permanent casinos. A109;

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

A112-351. In the DHCA, the City of Waukegan warranted that all of the Gambling Act's section 7(e-5) requirements had been satisfied. A268 at ¶9.2(e). This was not a bare conclusion. The DHCA pinpoints the exact location of both the temporary casino, and the permanent casino and describes any relevant zoning, licensing, or public health considerations. A248-249; A299-304 (Temporary Facility); A295-298 (Project Description and Project Plan). The Ground Lease describes the revenue sharing arrangement between the City of Waukegan and Full House. *See* A130 at §4.2 (noting annual rent payments would be the greater of $3 million or 2.5% of adjusted gross receipts).[10]

The DHCA and Ground Lease demonstrate there was negotiation and mutual agreement on the required Gambling Act items. The two documents contain more than *two hundred pages* of documentation and negotiation. A117-218 (Ground Lease); A220-351 (DHCA). More to the point, Resolution No. 23-R-03, the Ground Lease, and the DHCA were all signed in January 2023, *before* the Gaming Board issued the owner's license to Full House. *See* A109-110 at ¶5, ¶10. Accordingly, the Gaming Board issued the Waukegan license "only after the corporate authority of the municipality" had made the necessary certifications. 230 ILCS §10/7(e-5).

The City's process satisfies both the requirements of section 7(e-5) and the two-part test identified in *Behl.* The City's RFQ/P process produced detailed proposals from all the casino license applicants, who stood ready to invest in Waukegan by developing and operating a casino. The City itself held public presentations, during which the public could

[10] These documents are properly before the Court because they are public documents subject to judicial notice. *Am. Nat. Bank & Tr. Co. of Chicago v. City of Chicago*, 4 Ill. App. 3d 127, 130 (1st Dist. 1971).

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comment and ask questions. A029; C29; C1067 (noting the receipt of more than 1,200 comments from the public). The final resolutions with Full House contain hundreds of pages of detailed negotiation. The casino selection process was an open and public process. *See id.* Potawatomi Casino's insistence on a hyper-technical adherence to every letter of the statute and its desire to have the City and Gaming Board restart a certification process that began in October 2019, A422-423; C22-23, runs contrary to the Gambling Act's stated purpose of kickstarting economic development in Waukegan, 230 ILCS 10/2; 230 ILCS 10/7(e-5). *See Let Forest Park Vote on Video Gaming v. Vill. of Forest Park Mun. Officers Electoral Bd.*, 2018 IL App (1st) 180391, ¶20 ("[S]ubstantial compliance is sufficient when there is only a technical violation.").

Potawatomi Casino has not suffered any prejudice from the City of Waukegan's failure to strictly comply with the statute. As noted above, strict compliance or not, the City Council twice declined to advance Potawatomi Casino's proposal to the Gaming Board. The City of Waukegan substantially complied with the requirements of the Gambling Act. *See Fehrenbacher v. Mercer Cnty.*, 2012 IL App (3d) 110479, ¶¶18-19 (finding substantial compliance was appropriate even though Mercer County had not strictly complied with the Illinois Code).

E. This Case Should Be Dismissed as Moot

A case with an actual controversy is an essential requisite to appellate jurisdiction. *Davis v. City of Country Club Hills*, 2013 IL App (1st) 123634, ¶10. The appellate courts do not generally decide abstract, hypothetical, or moot questions. *Id.* "A case on appeal becomes moot where the issues presented in the trial court no longer exist" because subsequent events have made it impossible for the court to grant the complaining party

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effective relief. *Id.* This is true even if the mooting events happened while the appeal was pending. *Id.*

This appeal should be dismissed as moot. Potawatomi Casino's lawsuit seeks to enjoin the Gaming Board from "taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability. . ." A508, C23. This is the only *effectual* relief that Potawatomi Casino seeks from its lawsuit. The other "relief" Potawatomi Casino seeks is to have the Court declare the law on two discreet issues: (1) whether the City failed to satisfy the requirements for the Gaming Board to consider issuing a license to operate a casino in the City of Waukegan and (2) whether the Gaming Board lacks authority to consider issuing a license to operate a casino in the City of Waukegan. A507-508, C22-23.

The conduct that Potawatomi Casino seeks the opportunity to enjoin has already happened and there is no effectual relief available. On December 8, 2021, the Gaming Board made a finding of preliminary suitability in favor of Full House. A004 at ¶6; A082, A113. This finding of preliminary suitability allowed Full House to begin construction and to take other steps toward commencement of gaming operations and ultimate licensure. *See* A506-507, C21-22 at ¶¶47-48.

Construction on the temporary casino began in June 2022 and finished in February 2023. Since opening on February 17, 2023, the Temporary at American Place has generated more than $92.3 million in adjusted gross receipts, resulting in more than $14.1 million in direct gaming taxes for the state and more than $5.3 million for Waukegan, North Chicago, Park City, and Lake County. Illinois Gaming Board, Casino Monthly Report (Feb. 2023-Feb. 2024), available at https://www.igb.illinois.gov/CasinoReports.aspx. The Temporary

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now boasts a number of restaurants, including a high-end steak and seafood establishment, and employs nearly 540 employees (more than 85% of whom are Illinois residents and more than 66% are minorities). Sadin, Holding a Good Hand, 2023 WLNR 26093979; Illinois Gaming Board, Board Meeting of February 8, 2024 at 36:10-37:20, available at https://tinyurl.com/IGB02082024. Full House has invested more than $125 million to construct the Temporary and its accompanying restaurants, and stands to spend hundreds of millions of additional dollars to construct its permanent casino. *See* Thousands Visit Waukegan's New Casino on First Weekend, 2023 WLNR 6353798; *see* Full House Resorts, Inc., Form 10-Q at 9, 37, available at https://tinyurl.com/FHRForm10-Q.

The actual relief sought by Potawatomi Casino—according to its own complaint—was an injunction preventing the Gaming Board from taking steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability. A507-508, C22-23. The Gaming Board has done that, and it did so more than two years ago, meaning "it is no longer within the power of this court to render any effective relief to plaintiff." *Rasky v. Anderson*, 62 Ill. App. 3d 633, 635-36 (1st Dist. 1978). Potawatomi Casino acknowledged the unavailability of this relief by pivoting to argue to the First District that the case was not moot because the Gaming Board had not yet "issued a Waukegan casino license." A431. But on June 15, 2023, the Gaming Board approved the issuance of the final owner's license to Full House to operate its Waukegan casino. A012 at ¶21. None of the stated relief Potawatomi Casino has requested can be ordered by this Court. *See Marion Hosp. Corp. v. Illinois Health Facilities Plan. Bd.*, 201 Ill. 2d 465, 472 (2002) ("[O]nce a capital expenditure is approved by the Board and made by the permit holder, any question concerning the propriety of that expenditure—which is the issue addressed by the permit

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application process—is moot."). Indeed, once the Gaming Board has issued an owner's license, the Gaming Board cannot revoke that license except on those grounds specified by Gambling Act—none of which apply to this case. *See, e.g.*, 230 ILCS 10/7(e-20); 230 ILCS 10/5(c)(11). The First District was incorrect, therefore, when it found the fact that "Full House has already commenced gambling operations at its temporary facility [to be] of no moment." A013 at ¶23.

Potawatomi Casino also seeks declarations on two discreet legal issues, but "courts are not required to review questions of a refusal to grant declaratory or injunctive relief where the relief sought involves a matter that has become moot." *Rasky,* 62 Ill. App. 3d at 636. This appeal should be dismissed as moot because the effectual relief sought is no longer possible. *Davis*, 2013 IL App (1st) 123634, ¶10; *LaSalle Nat. Bank, N.A. v. City of Lake Forest*, 297 Ill. App. 3d 36, 42-43 (2d Dist. 1998).[11]

F. The First District's Opinion Poses a Concrete Threat to Future Municipal Developments

The First District noted that Potawatomi Casino's purported injury could be cured by having the City "repeat the application process" and "conduct the certification process again without the alleged illegality or unfairness." A010 at ¶17. These offhand remarks fail to appreciate the expertise of the Gaming Board, the diligence of municipal officials, and the *$125 million dollars* that Full House has already spent in reliance on the license that it received from the Gaming Board. These offhand remarks also dramatically overestimate the likelihood that bidders would be willing to reappear before a city to "repeat the application process," particularly after having been burned once before.

[11] A mootness finding would not prevent Potawatomi Casino from continuing to pursue its case for damages against the City of Waukegan in the federal court action. The time for appealing the federal court's summary judgment ruling has not yet run.

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The First District's ruling threatens the efforts of Waukegan, the Gaming Board, and Full House. But the First District's reasoning—in which a disappointed applicant can threaten a duly issued license or permit by an executive agency—can be applied to threaten *any* future municipal or agency decision. The First District's reasoning provides a blueprint for disappointed applicants to halt future developments, even after a municipality or agency has approved of the project and work on that project has begun.

This threat of protracted litigation, and the resulting uncertainty that accompanies it, poses a real threat to large municipal projects and developments; in short, anything that relies on the permitting or licensing process. This is not hyperbole or conjecture. Full House has stated that it cannot obtain financing for the construction of the permanent Waukegan casino "as long as the uncertainty posed by [this] litigation remains." Steve Sadin, Casino Asks For Extra Time, 2023 WLNR 39748875, *Lake County News-Sun* (Nov. 21, 2023). "Everything is on pause until the litigation is resolved against the city and the state." *Id.* Full House made similar remarks to the Gaming Board, noting how the First District's decision presented "severe implications for [the] development" of its casino. *See* Illinois Gaming Board, Board Meeting of February 8, 2024, at 35:00, available at https://tinyurl.com/IGB02082024.

This Court foresaw this very issue, warning of the "significant uncertainty" that would arise if plaintiffs were given an avenue for challenging and reopening agency permitting decisions. *See Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶31. This Court also noted that such challenges risked undermining the role of the agency itself. *Id.* The First District's decision poses a distinct threat to agency expertise and future municipal developments and projects.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

CONCLUSION

This Court should reverse the opinion of the Appellate Court of Illinois, and remand the case back to the Circuit Court of Cook County with directions for Potawatomi Casino's complaint to be dismissed with prejudice.

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CERTIFICATE OF COMPLIANCE

I certify that this Opening Brief conforms to the requirements of Supreme Court Rule 315(h), Rule 341(a) and (b). The length of this Opening Brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief, is 43 pages.

By: */s/ Glenn E. Davis*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Nos. 130036, 130058

IN THE SUPREME COURT OF ILLINOIS

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellee, vs. 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, Defendants-Appellants.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-22-0883 There heard on Appeal from the Circuit Court of Cook County, Illinois Chancery Division, No. 21 CH 05784 Presiding Judge: Cecilia A. Horan

CITY OF WAUKEGAN'S NOTICE OF FILING

Defendant-Appellant City of Waukegan hereby gives notice that the following filing was electronically submitted to the Supreme Court Clerk's office on this 2nd day of April 2024:

1. Opening Brief
2. Appendix to the Opening Brief of the City of Waukegan

The foregoing document was electronically served via email on the following counsel of record on this 2nd day of April 2024:

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PROOF OF SERVICE

The undersigned certifies that a complete copy of this instrument was electronically served via email to:

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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.

By: */s/ Glenn E. Davis*

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CERTIFICATE OF SERVICE

Glenn Davis, the attorney representing Defendant-Appellant City of Waukegan hereby gives notice that on this 2nd day of April 2024, he caused to be electronically filed the following documents with the Clerk of the Illinois Supreme Court, 202 E. Capital Ave., Springfield, IL 62701.

- Opening Brief
- Appendix to the Opening Brief of the City of Waukegan
- Notice of Filing

And that he electronically served via email on this 2nd day of April 2024, the Opening Brief and all other documents listed above to:

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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

Dated this 2nd day of April 2024.

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WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellee, vs. 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, Defendants-Appellants.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-22-0883 There heard on Appeal from the circuit court of Cook County, Illinois Chancery Division, No. 21 CH 05784 Presiding Judge: Cecilia A. Horan

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APPENDIX TO THE OPENING BRIEF OF THE CITY OF WAUKEGAN

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS TO APPENDIX

First District's Opinion and Order A001-A014
(July 28, 2023)

Full Text of 230 ILCS 10/2 .... A015

Full Text of 230 ILCS 10/7 .... A016-023

Memorandum Opinion and Order from the United States District Court for the Northern District of Illinois A024-050
(March 29, 2024)

Judgment from the United States District Court for the Northern District of Illinois A051
(March 29, 2024)

Illinois Supreme Court Order Granting Leave to Appeal A052-053
(January 24, 2024)

First District Order Denying Petitions for Rehearing A054
(August 22, 2023)

Illinois Gaming Board Petition for Rehearing A055-075
(August 18, 2023)

City of Waukegan's Petition for Rehearing A076-351
(August 18, 2023)

City of Waukegan's Motion to Dismiss the Appeal as Moot A352-387
(June 27, 2023)

Waukegan Potawatomi Casino's Brief on Appeal A388-438
(September 30, 2022)

Notice of Appeal A439-464
(June 10, 2022)

Cook County Circuit Court Order Granting Motions to Dismiss A465
(May 31, 2022)

Cook County Circuit Court Order Denying Plaintiff's Emergency Motion for Temporary Restraining Order A466-467
(December 7, 2021)

City of Waukegan's Memorandum in Opposition to Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction A468-495
(December 6, 2021)

Waukegan Potawatomi Casino's Verified Complaint for Declaratory and Injunctive Relief (without exhibits) A496-509
(November 16, 2021)

Table of Contents to the Record on Appeal A510-512

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Nos. 130036, 130058

IN THE SUPREME COURT OF ILLINOIS

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellee, vs. 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, Defendants-Appellants.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-22-0883 There heard on Appeal from the circuit court of Cook County, Illinois Chancery Division, No. 21 CH 05784 Presiding Judge: Cecilia A. Horan

APPENDIX TO THE OPENING BRIEF OF THE CITY OF WAUKEGAN VOLUME I (A001-A218)

ORAL ARGUMENT REQUESTED

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2023 IL App (1st) 220883

No. 1-22-0883

Opinion filed July 28, 2023

FIFTH DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO, LLC,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	
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,	)	No. 2021 CH 5784
	)	Honorable Cecilia A. Horan, Judge presiding.
Defendants-Appellees.	)	

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*).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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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No. 1-22-0883

***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. Glenn E. Davis and Charles N. Insler, of HeplerBroom LLC, of St. Louis, Missouri, for other appellee.

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 230. Gaming
Act 10. Illinois Gambling Act (Refs & Annos)

230 ILCS 10/2
Formerly cited as IL ST CH 120 ¶ 2402

10/2. Legislative Intent

Effective: June 28, 2019
Currentness

§ 2. Legislative Intent.

(a) This Act is intended to benefit the people of the State of Illinois 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.

(b) While authorization of riverboat and casino gambling will enhance investment, beautification, development and tourism in Illinois, it is recognized that it will do so successfully only if public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process is maintained. Therefore, regulatory provisions of this Act are designed to strictly regulate the facilities, persons, associations and practices related to gambling operations pursuant to the police powers of the State, including comprehensive law enforcement supervision.

(c) The Illinois Gaming Board established under this Act should, as soon as possible, inform each applicant for an owners license of the Board's intent to grant or deny a license.

Credits

P.A. 86-1029, § 2, eff. Feb. 7, 1990. Amended by P.A. 93-28, § 10, eff. June 20, 2003; P.A. 101-31, § 35-55, eff. June 28, 2019.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 2402.

Notes of Decisions (2)

230 I.L.C.S. 10/2, IL ST CH 230 § 10/2
Current through P.A. 103-585 of the 2024 Reg. Sess. Some statute sections may be more current, see credits for details.

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Chapter 230. Gaming
Act 10. Illinois Gambling Act (Refs & Annos)

230 ILCS 10/7
Formerly cited as IL ST CH 120 ¶ 2407

10/7. Owners licenses

Effective: December 8, 2023
Currentness

§ 7. Owners licenses. (a) The Board shall issue owners licenses to persons or entities that apply for such licenses upon payment to the Board of the non-refundable license fee as provided in subsection (e) or (e-5) and upon a determination by the Board that the applicant is eligible for an owners license pursuant to this Act and the rules of the Board. From December 15, 2008 (the effective date of Public Act 95-1008) until (i) 3 years after December 15, 2008 (the effective date of Public Act 95-1008), (ii) the date any organization licensee begins to operate a slot machine or video game of chance under the Illinois Horse Racing Act of 1975 or this Act, (iii) the date that payments begin under subsection (c-5) of Section 13 of this Act, (iv) the wagering tax imposed under Section 13 of this Act is increased by law to reflect a tax rate that is at least as stringent or more stringent than the tax rate contained in subsection (a-3) of Section 13, or (v) when an owners licensee holding a license issued pursuant to Section 7.1 of this Act begins conducting gaming, whichever occurs first, as a condition of licensure and as an alternative source of payment for those funds payable under subsection (c-5) of Section 13 of this Act, any owners licensee that holds or receives its owners license on or after May 26, 2006 (the effective date of Public Act 94-804), other than an owners licensee operating a riverboat with adjusted gross receipts in calendar year 2004 of less than $200,000,000, must pay into the Horse Racing Equity Trust Fund, in addition to any other payments required under this Act, an amount equal to 3% of the adjusted gross receipts received by the owners licensee. The payments required under this Section shall be made by the owners licensee to the State Treasurer no later than 3:00 o'clock p.m. of the day after the day when the adjusted gross receipts were received by the owners licensee. A person or entity is ineligible to receive an owners license if:

(1) the person has been convicted of a felony under the laws of this State, any other state, or the United States;

(2) the person has been convicted of any violation of Article 28 of the Criminal Code of 1961 or the Criminal Code of 2012, or substantially similar laws of any other jurisdiction;

(3) the person has submitted an application for a license under this Act which contains false information;

(4) the person is a member of the Board;

(5) a person defined in (1), (2), (3), or (4) is an officer, director, or managerial employee of the entity;

(6) the entity employs a person defined in (1), (2), (3), or (4) who participates in the management or operation of gambling operations authorized under this Act;

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(7) (blank); or

(8) a license of the person or entity issued under this Act, or a license to own or operate gambling facilities in any other jurisdiction, has been revoked.

The Board is expressly prohibited from making changes to the requirement that licensees make payment into the Horse Racing Equity Trust Fund without the express authority of the Illinois General Assembly and making any other rule to implement or interpret Public Act 95-1008. For the purposes of this paragraph, "rules" is given the meaning given to that term in Section 1-70 of the Illinois Administrative Procedure Act.

(b) In determining whether to grant an owners license to an applicant, the Board shall consider:

(1) the character, reputation, experience, and financial integrity of the applicants and of any other or separate person that either:

(A) controls, directly or indirectly, such applicant; or

(B) is controlled, directly or indirectly, by such applicant or by a person which controls, directly or indirectly, such applicant;

(2) the facilities or proposed facilities for the conduct of gambling;

(3) the highest prospective total revenue to be derived by the State from the conduct of gambling;

(4) the extent to which the ownership of the applicant reflects the diversity of the State by including minority persons, women, and persons with a disability and the good faith affirmative action plan of each applicant to recruit, train and upgrade minority persons, women, and persons with a disability in all employment classifications; the Board shall further consider granting an owners license and giving preference to an applicant under this Section to applicants in which minority persons and women hold ownership interest of at least 16% and 4%, respectively;

(4.5) the extent to which the ownership of the applicant includes veterans of service in the armed forces of the United States, and the good faith affirmative action plan of each applicant to recruit, train, and upgrade veterans of service in the armed forces of the United States in all employment classifications;

(5) the financial ability of the applicant to purchase and maintain adequate liability and casualty insurance;

(6) whether the applicant has adequate capitalization to provide and maintain, for the duration of a license, a riverboat or casino;

(7) the extent to which the applicant exceeds or meets other standards for the issuance of an owners license which the Board may adopt by rule;

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(8) the amount of the applicant's license bid;

(9) the extent to which the applicant or the proposed host municipality plans to enter into revenue sharing agreements with communities other than the host municipality;

(10) the extent to which the ownership of an applicant includes the most qualified number of minority persons, women, and persons with a disability; and

(11) whether the applicant has entered into a fully executed construction project labor agreement with the applicable local building trades council.

(c) Each owners license shall specify the place where the casino shall operate or the riverboat shall operate and dock.

(d) Each applicant shall submit with his or her application, on forms provided by the Board, 2 sets of his or her fingerprints.

(e) In addition to any licenses authorized under subsection (e-5) of this Section, the Board may issue up to 10 licenses authorizing the holders of such licenses to own riverboats. In the application for an owners license, the applicant shall state the dock at which the riverboat is based and the water on which the riverboat will be located. The Board shall issue 5 licenses to become effective not earlier than January 1, 1991. Three of such licenses shall authorize riverboat gambling on the Mississippi River, or, with approval by the municipality in which the riverboat was docked on August 7, 2003 and with Board approval, be authorized to relocate to a new location, in a municipality that (1) borders on the Mississippi River or is within 5 miles of the city limits of a municipality that borders on the Mississippi River and (2) on August 7, 2003, had a riverboat conducting riverboat gambling operations pursuant to a license issued under this Act; one of which shall authorize riverboat gambling from a home dock in the city of East St. Louis; and one of which shall authorize riverboat gambling from a home dock in the City of Alton. One other license shall authorize riverboat gambling on the Illinois River in the City of East Peoria or, with Board approval, shall authorize land-based gambling operations anywhere within the corporate limits of the City of Peoria. The Board shall issue one additional license to become effective not earlier than March 1, 1992, which shall authorize riverboat gambling on the Des Plaines River in Will County. The Board may issue 4 additional licenses to become effective not earlier than March 1, 1992. In determining the water upon which riverboats will operate, the Board shall consider the economic benefit which riverboat gambling confers on the State, and shall seek to assure that all regions of the State share in the economic benefits of riverboat gambling.

In granting all licenses, the Board may give favorable consideration to economically depressed areas of the State, to applicants presenting plans which provide for significant economic development over a large geographic area, and to applicants who currently operate non-gambling riverboats in Illinois. The Board shall review all applications for owners licenses, and shall inform each applicant of the Board's decision. The Board may grant an owners license to an applicant that has not submitted the highest license bid, but if it does not select the highest bidder, the Board shall issue a written decision explaining why another applicant was selected and identifying the factors set forth in this Section that favored the winning bidder. The fee for issuance or renewal of a license pursuant to this subsection (e) shall be $250,000.

(e-5) In addition to licenses authorized under subsection (e) of this Section:

(1) the Board may issue one owners license authorizing the conduct of casino gambling in the City of Chicago;

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(2) the Board may issue one owners license authorizing the conduct of riverboat gambling in the City of Danville;

(3) the Board may issue one owners license authorizing the conduct of riverboat gambling in the City of Waukegan;

(4) the Board may issue one owners license authorizing the conduct of riverboat gambling in the City of Rockford;

(5) the Board may issue one owners license authorizing the conduct of riverboat gambling in a municipality that is wholly or partially located in one of the following townships of Cook County: Bloom, Bremen, Calumet, Rich, Thornton, or Worth Township; and

(6) the Board may issue one owners license authorizing the conduct of riverboat gambling in the unincorporated area of Williamson County adjacent to the Big Muddy River.

Except for the license authorized under paragraph (1), each application for a license pursuant to this subsection (e-5) shall be submitted to the Board no later than 120 days after June 28, 2019 (the effective date of Public Act 101-31). All applications for a license under this subsection (e-5) shall include the nonrefundable application fee and the nonrefundable background investigation fee as provided in subsection (d) of Section 6 of this Act. In the event that an applicant submits an application for a license pursuant to this subsection (e-5) prior to June 28, 2019 (the effective date of Public Act 101-31), such applicant shall submit the nonrefundable application fee and background investigation fee as provided in subsection (d) of Section 6 of this Act no later than 6 months after June 28, 2019 (the effective date of Public Act 101-31).

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;

(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;

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(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.

At least 7 days before the corporate authority of a municipality or county board of the county submits a certification to the Board concerning items (i) through (viii) of this subsection, it shall hold a public hearing to discuss items (i) through (viii), as well as any other details concerning the proposed riverboat or casino in the municipality or county. The corporate authority or county board 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 or county board before any certification is sent to the Board. The Board shall not alter, amend, change, or otherwise interfere with any agreement between the applicant and the corporate authority of the municipality or county board of the county regarding the location of any temporary or permanent facility.

In addition, within 10 days after June 28, 2019 (the effective date of Public Act 101-31), the Board, with consent and at the expense of the City of Chicago, shall select and retain the services of a nationally recognized casino gaming feasibility consultant. Within 45 days after June 28, 2019 (the effective date of Public Act 101-31), the consultant shall prepare and deliver to the Board a study concerning the feasibility of, and the ability to finance, a casino in the City of Chicago. The feasibility study shall be delivered to the Mayor of the City of Chicago, the Governor, the President of the Senate, and the Speaker of the House of Representatives. Ninety days after receipt of the feasibility study, the Board shall make a determination, based on the results of the feasibility study, whether to recommend to the General Assembly that the terms of the license under paragraph (1) of this subsection (e-5) should be modified. The Board may begin accepting applications for the owners license under paragraph (1) of this subsection (e-5) upon the determination to issue such an owners license.

In addition, prior to the Board issuing the owners license authorized under paragraph (4) of subsection (e-5), an impact study shall be completed to determine what location in the city will provide the greater impact to the region, including the creation of jobs and the generation of tax revenue.

(e-10) The licenses authorized under subsection (e-5) of this Section shall be issued within 12 months after the date the license application is submitted. If 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. The fee for the issuance or renewal of a license issued pursuant to this subsection (e-10) shall be $250,000. Additionally, a licensee located outside of Cook County shall pay a minimum initial fee of $17,500 per gaming position, and a licensee located in Cook County shall pay a minimum initial fee of $30,000 per gaming position. The initial fees payable under this subsection (e-10) shall be deposited into the Rebuild Illinois Projects Fund. If at any point after June 1, 2020 there are no pending applications for a license under subsection (e-5) and not all licenses authorized under subsection (e-5) have been issued, then the Board shall reopen the license application process for those licenses authorized under subsection (e-5) that have not been issued. The Board shall follow the licensing process provided in subsection (e-5) 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 amendatory Act.

(e-15) Each licensee of a license authorized under subsection (e-5) of this Section shall make a reconciliation payment 3 years after the date the licensee begins operating in an amount equal to 75% of the adjusted gross receipts for the most lucrative 12-month period of operations, minus an amount equal to the initial payment per gaming position paid by the specific licensee. Each licensee shall pay a $15,000,000 reconciliation fee upon issuance of an owners license. If this calculation results in a negative amount, then the licensee is not entitled to any reimbursement of fees previously paid. This reconciliation payment may be made in installments over a period of no more than 6 years.

All payments by licensees under this subsection (e-15) shall be deposited into the Rebuild Illinois Projects Fund.

(e-20) In addition to any other revocation powers granted to the Board under this Act, the Board may revoke the owners license of a licensee which fails to begin conducting gambling within 15 months of receipt of the Board's approval of the application if the Board determines that license revocation is in the best interests of the State.

(f) The first 10 owners licenses issued under this Act shall permit the holder to own up to 2 riverboats and equipment thereon for a period of 3 years after the effective date of the license. Holders of the first 10 owners licenses must pay the annual license fee for each of the 3 years during which they are authorized to own riverboats.

(g) Upon the termination, expiration, or revocation of each of the first 10 licenses, which shall be issued for a 3-year period, all licenses are renewable annually upon payment of the fee and a determination by the Board that the licensee continues to meet all of the requirements of this Act and the Board's rules. However, for licenses renewed on or after the effective date of this amendatory Act of the 102nd General Assembly, renewal shall be for a period of 4 years.

(h) An owners license, except for an owners license issued under subsection (e-5) of this Section, shall entitle the licensee to own up to 2 riverboats.

An owners licensee of a casino or riverboat that is located in the City of Chicago pursuant to paragraph (1) of subsection (e-5) of this Section shall limit the number of gaming positions to 4,000 for such owner. An owners licensee authorized under subsection (e) or paragraph (2), (3), (4), or (5) of subsection (e-5) of this Section shall limit the number of gaming positions to 2,000 for any such owners license. An owners licensee authorized under paragraph (6) of subsection (e-5) of this Section shall limit the number of gaming positions to 1,200 for such owner. The initial fee for each gaming position obtained on or after June 28, 2019 (the effective date of Public Act 101-31) shall be a minimum of $17,500 for licensees not located in Cook County and a minimum of $30,000 for licensees located in Cook County, in addition to the reconciliation payment, as set forth in subsection (e-15) of this Section. The fees under this subsection (h) shall be deposited into the Rebuild Illinois Projects Fund. The fees under this subsection (h) that are paid by an owners licensee authorized under subsection (e) shall be paid by July 1, 2021.

Each owners licensee under subsection (e) of this Section shall reserve its gaming positions within 30 days after June 28, 2019 (the effective date of Public Act 101-31). The Board may grant an extension to this 30-day period, provided that the owners licensee submits a written request and explanation as to why it is unable to reserve its positions within the 30-day period.

Each owners licensee under subsection (e-5) of this Section shall reserve its gaming positions within 30 days after issuance of its owners license. The Board may grant an extension to this 30-day period, provided that the owners licensee submits a written request and explanation as to why it is unable to reserve its positions within the 30-day period.

A licensee may operate both of its riverboats concurrently, provided that the total number of gaming positions on both riverboats does not exceed the limit established pursuant to this subsection. Riverboats licensed to operate on the Mississippi River and the Illinois River south of Marshall County shall have an authorized capacity of at least 500 persons. Any other riverboat licensed under this Act shall have an authorized capacity of at least 400 persons.

(h-5) An owners licensee who conducted gambling operations prior to January 1, 2012 and obtains positions pursuant to Public Act 101-31 shall make a reconciliation payment 3 years after any additional gaming positions begin operating in an amount equal to 75% of the owners licensee's average gross receipts for the most lucrative 12-month period of operations minus an amount equal to the initial fee that the owners licensee paid per additional gaming position. For purposes of this subsection (h-5),

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"average gross receipts" means (i) the increase in adjusted gross receipts for the most lucrative 12-month period of operations over the adjusted gross receipts for 2019, multiplied by (ii) the percentage derived by dividing the number of additional gaming positions that an owners licensee had obtained by the total number of gaming positions operated by the owners licensee. If this calculation results in a negative amount, then the owners licensee is not entitled to any reimbursement of fees previously paid. This reconciliation payment may be made in installments over a period of no more than 6 years. These reconciliation payments shall be deposited into the Rebuild Illinois Projects Fund.

(i) A licensed owner is authorized to apply to the Board for and, if approved therefor, to receive all licenses from the Board necessary for the operation of a riverboat or casino, including a liquor license, a license to prepare and serve food for human consumption, and other necessary licenses. All use, occupation, and excise taxes which apply to the sale of food and beverages in this State and all taxes imposed on the sale or use of tangible personal property apply to such sales aboard the riverboat or in the casino.

(j) The Board may issue or re-issue a license authorizing a riverboat to dock in a municipality or approve a relocation under Section 11.2 only if, prior to the issuance or re-issuance of the license or approval, the governing body of the municipality in which the riverboat will dock has by a majority vote approved the docking of riverboats in the municipality. The Board may issue or re-issue a license authorizing a riverboat to dock in areas of a county outside any municipality or approve a relocation under Section 11.2 only if, prior to the issuance or re-issuance of the license or approval, the governing body of the county has by a majority vote approved of the docking of riverboats within such areas.

(k) An owners licensee may conduct land-based gambling operations upon approval by the Board and payment of a fee of $250,000, which shall be deposited into the State Gaming Fund.

(*l*) An owners licensee may conduct gaming at a temporary facility pending the construction of a permanent facility or the remodeling or relocation of an existing facility to accommodate gaming participants for up to 24 months after the temporary facility begins to conduct gaming. Upon request by an owners licensee and upon a showing of good cause by the owners licensee: (i) for a licensee authorized under paragraph (3) of subsection (e-5), the Board shall extend the period during which the licensee may conduct gaming at a temporary facility by up to 30 months; and (ii) for all other licensees, the Board shall extend the period during which the licensee may conduct gaming at a temporary facility by up to 12 months. The Board shall make rules concerning the conduct of gaming from temporary facilities.

Credits

P.A. 86-1029, § 7, eff. Feb. 7, 1990. Amended by P.A. 86-1389, § 2, eff. Sept. 10, 1990; P.A. 86-1475, Art. 2, § 2-37, eff. Jan. 10, 1991; P.A. 87-826, § 3, eff. Dec. 16, 1991; P.A. 91-40, § 15, eff. June 25, 1999; P.A. 92-600, Art. 5, § 5-35, eff. June 28, 2002; P.A. 93-28, § 10, eff. June 20, 2003; P.A. 93-453, § 5, eff. Aug. 7, 2003; P.A. 94-667, § 5, eff. Aug. 23, 2005; P.A. 94-804, § 15, eff. May 26, 2006; P.A. 95-1008, § 10, eff. Dec. 15, 2008; P.A. 96-1392, § 5, eff. Jan. 1, 2011; P.A. 97-1150, § 470, eff. Jan. 25, 2013; P.A. 100-391, § 150, eff. Aug. 25, 2017; P.A. 100-1152, § 10, eff. Dec. 14, 2018; P.A. 101-31, § 35-55, eff. June 28, 2019; P.A. 101-648, § 5, eff. June 30, 2020; P.A. 102-13, § 5, eff. June 10, 2021; P.A. 102-558, § 585, eff. Aug. 20, 2021; P.A. 103-574, § 10, eff. Dec. 8, 2023.

Formerly Ill.Rev.Stat.1991, ch. 120, ¶ 2407.

Notes of Decisions (15)

230 I.L.C.S. 10/7, IL ST CH 230 § 10/7
Current through P.A. 103-585 of the 2024 Reg. Sess. Some statute sections may be more current, see credits for details.

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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,	
Plaintiff,	No. 20-cv-00750
v.	
CITY OF WAUKEGAN, an Illinois municipal corporation,	Judge John F. Kness
Defendant.	

MEMORANDUM OPINION AND ORDER

This case arises from the City of Waukegan's refusal to certify Plaintiff, an arm of the Potawatomi Indian Tribe, to the Illinois Gaming Board for the issuance of a casino license. After the Illinois legislature amended the Illinois Gambling Act to authorize its Gaming Board to issue one casino license in the City of Waukegan, the City invited prospective casino applicants to submit their proposals for a casino at available sites. Four experienced casino operators submitted their materials. Under the Illinois statute, to be eligible for consideration by the Gaming Board, casino applicants had to first obtain the City's certification. And to obtain a City certification, the statute provided certain prerequisites. On October 17, 2019, the City Council voted against certifying Plaintiff to the Gaming Board. On October 21, 2019,

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the City granted Plaintiff's motion to reconsider and again voted against certifying Plaintiff.

Plaintiff originally filed this lawsuit in state court on October 21, 2019, a few hours before the City voted on Plaintiff's motion for reconsideration. The City removed the case to federal court based on federal question and supplemental jurisdiction. Plaintiff's operative complaint includes one claim under 42 U.S.C. § 1983 on the ground that the Gaming Board intentionally discriminated against Plaintiff by refusing to certify it to the Gaming Board in violation its Fourteenth Amendment Equal Protection rights, and two state-law claims under the Illinois Gambling Act and the Illinois Open Meetings Act. The City has since filed a motion for summary judgment.

As explained more fully below, Plaintiff, as a sovereign entity with openly sovereign interests, is not "person" entitled to bring a claim under § 1983. Even if Plaintiff's interests could be characterized as non-sovereign in nature, Plaintiff nevertheless does not fall within the "zone of interests" protected by § 1983. In any event, Plaintiff has failed to establish a § 1983 Equal Protection violation claim as a matter of law. No reasonable jury could find that Plaintiff was similarly situated to the other casino license applicants, and sufficient rational bases exist for the City's decision not to certify Plaintiff. Accordingly, Defendant's motion for summary judgment is granted, and the Court declines to retain jurisdiction over Plaintiff's remaining state-law claims.

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I. BACKGROUND

Plaintiff Waukegan Potawatomi Casino LLC ("WPC") is an Illinois limited liability company fully owned by the Forest County Potawatomi Community of Wisconsin, descendants of the Potawatomi Indian Tribe (the "Potawatomi Tribe"). (Response to Defendant's Statement of Material Facts, ("Resp. Def. SOF"), Dkt. 127 (filed under seal) ¶¶ 12, 66–67.) The Potawatomi Tribe, doing business as the Potawatomi Hotel & Casino, formed Plaintiff WPC on October 11, 2019. (*Id.* ¶¶ 14, 70.) The Potawatomi Tribe is the sole member of Plaintiff WPC. (*Id.* ¶ 12.) The Potawatomi Tribe is a government and has a government-to-government relationship with the federal government. (*Id.* ¶ 62.) Plaintiff's board of directors was appointed by the Potawatomi Tribe, which also pays Plaintiff's bills. (*Id.* ¶¶ 81, 83.) Plaintiff does not have any employees and did not have a bank account in 2019. (*Id.* ¶¶ 74, 82).

On June 28, 2019, Illinois Senate Bill 690 went into effect, amending the Illinois Gambling Act to authorize the Illinois Gambling Board ("IGB") to issue a casino license in the City of Waukegan, Illinois. (Resp. Def. SOF ¶¶ 1, 2); *see also* 230 ILCS § 10/7(e-5). Under the statute, the IGB was required to consider issuing a license "only after the [City of Waukegan] has certified to the Board" certain information. *Id.* To be eligible for consideration by the IGB, the City of Waukegan had to certify:

> (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;

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(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 county board have mutually agreed on the percentage of revenues that will be shared with the municipality or county, if any;

(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.

Id.

The statute further provides:

> At least 7 days before the corporate authority of a municipality or county board of the county submits a certification to the Board concerning items (i) through (viii) of this subsection, it shall hold a public hearing to discuss items (i) through (viii), as well as any other details concerning the proposed riverboat or casino in the municipality or county. The corporate authority or county board 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 or county board before any certification is sent to the Board. The Board shall not alter, amend, change, or otherwise interfere with any agreement between the applicant and the corporate authority of the municipality or county board of the county regarding the location of any temporary or permanent facility.

Id.

On July 3, 2019, the City of Waukegan issued a Request for Qualifications and Proposals ("RFQ/P") for those applicants seeking certification by the City to the IGB. (Resp. Def. SOF ¶ 4.) The RFQ/P required applicants to submit materials by August

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

130036

5, 2019, including property specifications and locations, a description of the proposed development, project team experience, and financial data. (*Id.* ¶¶ 6–7.) Five applicants responded to the RFQ/P with proposals for a casino, but one withdrew. (*Id.* ¶ 8.) The remaining four applicants were: (1) Lakeside Casino LLC ("North Point"); (2) CDI-RSG Waukegan, LLC ("Rivers"); (3) Full House Reports, Inc. ("Full House"); and (4) the Potawatomi Tribe, doing business as the Potawatomi Hotel & Casino (which later formed Plaintiff WPC). (*Id.* ¶¶ 8, 63, 70.)

Each applicant had experience in the casino business. North Point's casino operator, Warner Gaming, operates six casino properties in four states. (*Id.* ¶ 9.) Full House is a publicly traded company that runs five casinos in four states. (*Id.* ¶ 10.) Rivers is owned by Rush Street Gaming and Churchill Downs Incorporated; Rush Street operates four casinos in three states and Churchill Downs is a publicly traded company. (*Id.* ¶ 11.) The Potawatomi Tribe, doing business as the Potawatomi Hotel & Casino, operates two tribal casinos in Wisconsin: one in Milwaukee and the other in Carter. (*Id.* ¶¶ 13–14, 64–65.)

Under the gaming compact between Wisconsin and the Potawatomi Tribe for its casinos, the Potawatomi Tribe is required to pay the State annually 6.5% of net win for the previous fiscal year. (*Id.* ¶ 69.) The annual combined gaming tax and admission fee rates for a Waukegan casino, however, would be over 27%. (*Id.*) The median household income levels for the City of Waukegan are below state and national averages. (*Id.* ¶ 34.) According to a feasibility study and economic analysis prepared for the Potawatomi Tribe, an overwhelming majority of potential gaming

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

revenue for the proposed casino would emanate from within a 35-mile radius of the casino. (*Id.* ¶ 35.)

For the Potawatomi Tribe, the casino in Waukegan would be an investment made on behalf of a sovereign entity, rather than a private commercial investor. (*Id.* ¶ 84.) The Potawatomi Tribe views the City of Waukegan as within its formally occupied homelands and views its sovereignty as inextricably linked with these former tribal lands. (*Id.* ¶ 76.) The casino in Waukegan would be exempt from federal income tax because it is owned by a tribal entity and would operate for the benefit of its tribal members. (*Id.* ¶¶ 84–85.) As talking points for tribal members on operating a casino in Waukegan, the Potawatomi Tribe noted that it would be the best way to mitigate some of the financial losses at its Milwaukee casino, that it was "consistent with [the] Tribal goal of reclaiming land and commerce in treaty territory," and that it would be a natural progression for the Potawatomi Tribe. (*Id.* ¶ 75.)

On September 18, 2019, the casino applicants gave public presentations on their proposals. (*Id.* ¶ 17.) During the hearing, with approximately 500 people in attendance, the City heard from 44 people and reviewed 17 written comments. (*Id.* ¶ 20.) The City thereafter held the public comment period open for another 17 days, during which it received another 1,249 written or emailed comments. (*Id.* ¶ 21.) The City also received comments from 26 people during its October 7, 2019, City Council Meeting. (*Id.* ¶ 22.)

Each applicant proposed different terms for the development of a casino at the Fountain Square property in Waukegan. Rivers proposed to purchase the site for $11

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

million or to offer a long-term lease. (*Id.* ¶ 25.) Full House proposed to enter into a 99-year lease with the City for 2.5% of gaming revenues, subject to a minimum annual guarantee of $3 million, with an option to buy the site for $30 million at any time during the lease term. (*Id.*) North Point proposed $22 million for the site, with an initial payment of $10 million and another $1 million paid annually over twelve years. (*Id.*) Plaintiff WPC proposed to purchase the site for an amount equal to "+/- 15%" of the appraised value of the property. (*Id.* ¶ 26.) On June 13, 2019, the Fountain Square property was valued at $5,625,000. (*Id.* ¶ 27.)[1]

Each applicant proposed a casino of different square footage and with a different number of gaming positions. (*See id.* ¶¶ 36–40.) Full House proposed a casino of 75,000 square feet with 1,670 gaming positions. (*Id.* ¶ 36.) North Point proposed a casino of 53,500 square feet with 1,332 gaming positions. (*Id.* ¶ 37.) Rivers proposed a casino with 1,625 gaming positions and did not disclose its proposed square footage. (*Id.* ¶ 38.) Plaintiff WPC proposed a casino of 130,000 square feet with 1,890 gaming positions. (*Id.* ¶ 39.)

Plaintiff's proposal was projected to create the most annual employment, generate the second-most gaming/admission taxes (after Rivers), and generate the most gaming revenue. (Response to Plaintiff's Statement of Additional Material Facts, ("Resp. Pl. SOF") Dkt. 149 (filed under seal) ¶ 57.) Unlike Plaintiff's proposal,

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[1] Plaintiff admits that it proposed "+/- 15%" of the appraised value of the property. (Resp. Def. SOF ¶ 26.) Plaintiff contends, however, that its proposal "assumed an appraisal valuing Fountain Square as a casino site" and not its "existing, non-public City appraisal that assumed Fountain Square's highest and best use was other than as a casino site." (*Id.*) Plaintiff disputes that the June 13 appraisal, which predated SB 690's coming into law, valued Fountain Square as a casino site or was an appropriate measure of its offer. (*Id.* ¶ 27.)

130036

however, the proposals by Full House and North Point featured an entertainment complex and additional phases that could include the addition of a hotel. (Resp. Def. SOF ¶¶ 29–30.) Also, the proposals by Rivers, Full House, and North Point included an option for creating a temporary casino. (*Id.* ¶ 31.) Plaintiff's proposal did not include an entertainment complex or a temporary casino. (*Id.* ¶ 32.)

Johnson Consulting, the consulting group retained by the City to evaluate the proposals, ranked Plaintiff last among the applicants. (Resp. Pl. SOF ¶ 58.) The Johnson Consulting report included a "score matrix" that assigned Full House the best "overall ranking," followed by North Point, Rivers, and, in last place, Plaintiff. (*Id.*)

On October 4, 2019, Plaintiff delivered a letter to the City providing a revised offer of $12 million for the Fountain Square Parcel. (Resp. Def. SOF ¶ 43.) On October 10, 2019, Johnson Consulting delivered a summary report of the proposals (the "Johnson Report"). (Resp. Pl. SOF ¶ 53.) The Johnson Report did not include supplemental information provided after the RFP/Q's submittal date. (*Id.* ¶ 71.) The City was also advised by its counsel that it could not consider supplemental information from applicants, including Plaintiff WPC's October 4 letter, unless the City requested the information itself. (*Id.* ¶ 61.) The City did not engage in negotiations with any of the casino applicants during the RFP/Q process. (*Id.* ¶ 67.)

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

On October 17, 2019, the City Council met in a special session. (Resp. Def. SOF ¶ 45.) During the meeting, a representative from Johnson Consulting stated that all four bidders were "qualified" and "able to deliver the project," and the City "can't go wrong" with any of the four proposals. (Resp. Pl. SOF ¶ 73.) At the meeting, the City voted to certify North Point, Full House, and Rivers to the IGB. (Resp. Def. SOF ¶ 47.) The City voted against certifying Plaintiff by a vote of 7-2. (*Id.* ¶ 48.) A table summarizing the votes is reproduced below:

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

(Resp. Pl. SOF ¶ 74.)

The City Council members provided different reasons for not certifying Plaintiff's proposal to the IGB. Alderman Bolton "was looking [for] a proposal that would offer more than just a casino[,] but also [a] theater [and] entertainment,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

130036

restaurants, [and] things [that] would give us as the city an opportunity to develop economically." (Resp. Def. SOF ¶ 49.) Alderman Seger found Plaintiff's presentation to be short and fast, and its approach seemed to be "hurry up and get it done." (*Id.* ¶ 50.) Alderman Kirkwood found Plaintiff's proposal lacked detail and transparency with respect to the offer price. (*Id.* ¶ 51.) Alderman Turner believed Plaintiff was asking for special consideration as an Indian Tribe and found that to be "a turnoff." (*Id.* ¶ 52.)[2] Aldermen Rivera, Florian, and Taylor voted against all the casino applicants. (*Id.* ¶ 53.)

The day after the City Council's vote, the Potawatomi Tribe delivered a letter[3] to the City requesting that it reconsider its certification vote. (Resp. Def. SOF ¶ 54.) On October 21, 2019, Aldermen Florian and Riviera met with Jeffrey Crawford, the Attorney General of the Forest County Potawatomi Community, and Malcolm Chester, an Illinois gaming legislation monitor for the Potawatomi Tribe. (*Id.* ¶¶ 42, 56.) At the meeting, Crawford communicated that, because the motion for reconsideration had not been placed on the City Council's agenda, the Potawatomi

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[2] Alderman Turner also testified that, before the October 17 meeting began, Mayor Samuel Cunningham told him, "[T]hese 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." (Resp. Pl. SOF ¶ 69.) Under Plaintiff's theory of the case, a former Illinois State Senator, Michael Bond, dictated the results of the casino selection process by leading Mayor Samuel Cunningham—for whom Bond was a campaign benefactor—to direct Aldermen Bolton, Seger, Kirkwood, and Turner to vote against Plaintiff and in favor of North Point, of which Bond was a founding partner. (*See* Dkt. 128 at 2–7.) Alderman Turner's admission, to the extent Plaintiff proffers it as evidence of intent or animus towards Plaintiff, is negated by the existence of rational bases, as explained more fully below.

[3] The letter was signed by Jeffrey Crawford in his capacity as the Attorney General of the Forest County Potawatomi Community and bore the letterhead of the Forest County Potawatomi Community Legal Department. (Def. SOF Resp. ¶¶ 55–56.)

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Tribe was preparing litigation. (*Id.* ¶ 56.) At some time before 3:30 p.m. on that same day, Plaintiff filed this lawsuit. (*Id.* ¶ 58.) At some time after 7:00 p.m. on that same day, a majority of the City Council voted to approve the motion for reconsideration. (*Id.* ¶¶ 59–60.) On reconsideration, the City Council again voted against certifying Plaintiff WPC by a vote of 6-3, with Alderman Florian now voting in favor of certifying Plaintiff's proposal. (*Id.* ¶ 60.)

Plaintiff filed this action in state court on October 21, 2019. (Dkt. 1.) The City removed the case on January 31, 2020, based on federal question and supplemental jurisdiction. (*Id.*) The First Amended Complaint raises claims for violation of Plaintiff's Fourteenth Amendment Equal Protection rights (Count I), the Illinois Gambling Act (Count II), and the Illinois Open Meetings Act (Count III). (*Id.*)

On February 14, 2020, the City filed a motion to dismiss Counts I and II of the First Amended Complaint. (Dkt. 12.) On May 14, 2021, three days before fact discovery was set to close (*see* Dkt. 77), Plaintiff filed an opposed motion for leave to file a second amended complaint. (Dkt. 85.) The proposed Second Amended Complaint raises the same three causes of action. (Dkt. 86 (filed under seal).) On September 21, 2021, the City filed a motion for summary judgment that is intended to "apply with equal force to either version of the complaint." (Dkt. 114 at 3 n.2.) For the reasons that follow, the City's motion for summary judgment is granted, and the remaining motions are dismissed as moot.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

II. LEGAL STANDARD

Summary judgment is warranted only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Jewett v. Anders*, 521 F.3d 818, 821 (7th Cir. 2008) (quoting *Magin v. Monsanto Co.*, 420 F.3d 679, 686 (7th Cir. 2005)); *see also* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.*, 477 U.S. at 322. As the " 'put up or shut up' moment in a lawsuit, summary judgment requires a non-moving party to respond to the moving party's properly-supported motion by identifying specific, admissible evidence showing that there is a genuine dispute of material fact for trial." *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 568 (7th Cir. 2017) (quotations omitted). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). All facts, and any inferences to be drawn from them, are viewed in the light most favorable to Plaintiff as the nonmoving party. *See Scott v. Harris*, 550 U.S. 372, 378 (2007).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

III. DISCUSSION

Plaintiff contends that, by not voting to certify its proposal to the IGB, the City discriminated against Plaintiff without any rational basis in violation of its Fourteenth Amendment rights under the Equal Protection clause, disregarded the requirements of the Illinois Gambling Act, and violated the Illinois Open Meetings Act. Defendant argues that summary judgment is appropriate as to all claims because: (1) Plaintiff cannot bring suit under 42 U.S.C. § 1983 as an arm of the Potawatomi Tribe and, even if it could, Plaintiff cannot prove that it was similarly situated or that the City acted irrationally in refusing to certify its proposal; (2) Plaintiff's state-law claims are barred by the Tort Immunity Act;[4] and (3) in the alternative, Plaintiff cannot establish either its ability to invoke the Illinois Gambling Act or that the City failed to comply with the Open Meetings Act. For the following reasons, the Court holds that Plaintiff cannot bring a constitutional claim under § 1983 and, even if it could, Plaintiff has failed to establish the necessary elements of the claim as a matter of law.

A. Plaintiff Is Not a "Person" Under 42 U.S.C. § 1983

As a preliminary matter, to bring a § 1983 claim against the City, Plaintiff must "fall within the zone of interests" protected by that statute. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). The controlling question in a "zone of interests" inquiry is "whether a legislatively conferred cause of action

[4] In its motion for summary judgment, Defendant argues that the Illinois Tort Immunity Act affords it "absolute immunity" against all claims. (*See* Dkt. 114 at 9–11.) Defendant later concedes in its Reply that the Act does not apply to Plaintiff's constitutional claim under § 1983. (Dkt. 148 at 7 n.5.)

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

encompasses a particular plaintiff's claim." *Id.* at 127. In making this determination, *Lexmark* prescribes applying "traditional principles of statutory interpretation." *Id.* at 128. What earlier cases described as "prudential standing" or "statutory standing," permitting courts to dismiss actions *sua sponte*, *Lexmark* reframed as a determination "on the merits whether the party had a cause of action under the statute." *Knopick v. Jayco, Inc.*, 895 F.3d 525, 529 (7th Cir. 2018); *Lexmark*, 572 U.S. at 128 n.4 (although "statutory standing" is "an improvement" over "prudential standing . . . [,] it, too, is misleading, since the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional *power* to adjudicate the case." (cleaned up)).

As the Seventh Circuit has since explained, *Lexmark* requires both an Article III standing inquiry "and, separately, [an inquiry into] whether [Plaintiff] falls within the zone of interests Congress meant to protect in creating a civil cause of action in [§ 1983]." *Crabtree v. Experian Info. Sols., Inc.*, 948 F.3d 872, 883 (7th Cir. 2020); *see also T.S. ex rel. T.M.S. v. Heart of CarDon, LLC*, 43 F.4th 737, 741 (7th Cir. 2022) (interpreting the zone-of-interests doctrine to first require ascertainment of the interests to be protected by a statute, and then whether the interests claimed by the plaintiff are within those protections). With respect to Article III standing, the answer is straightforward: Plaintiff, by not having its proposal certified by the City Council as a result of alleged discrimination, suffered a redressable injury-in-fact that is traceable to the City. Under *Lexmark*, however, "identifying an injury is not the same as locating a viable statutory cause of action." *Crabtree*, 948 F.3d at 883; *see also T.S.*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

ex rel. T.M.S., 43 F.4th at 741 ("There may be some overlap between zone-of-interests and merits analyses, but a court must take care not to conflate the two."). Accordingly, the Court must determine whether Plaintiff fits within the zone of interests protected by § 1983 and, therefore, has a cause of action under the statute. *See id.*; *see also McGarry & McGarry, LLC v. Bankr. Mgmt. Sols., Inc.*, 937 F.3d 1056, 1063 (7th Cir. 2019) ("whether a plaintiff may sue is an issue that requires us to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim" (internal quotations omitted)).

In *Inyo County, California v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony*, the Supreme Court held that a Native American Tribe "does not qualify as a 'person' who may sue under § 1983." 538 U.S. 701, 704 (2003). In so holding, *Inyo* relied specifically on the nature of the "sovereign right" that the plaintiff, a Native American tribe, was attempting to vindicate, rather than "upon a bare analysis of the word 'person.'" *See id.* at 711–12. The plaintiff in *Inyo* sought relief under § 1983 on the grounds that a District Attorney's search warrant violated its Fourth and Fourteenth Amendment rights and its right to self-government. *Id.* at 706. *Inyo* reasoned that, because § 1983 was designed "to secure private rights against government encroachment, not advance a sovereign's prerogative[,]" the plaintiff's § 1983 claim, asserted "by virtue of [the plaintiff's] 'sovereign' status," did not fall within "legislative environment" of the statute. *Id.*

Plaintiff does not dispute that it is "an arm of" the Potawatomi Tribe, a sovereign Native American Tribe, and therefore enjoys sovereign privileges (*see* Dkt.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

128 at 23); instead, Plaintiff argues that, unlike the plaintiff in *Inyo*, its equal protection claim is not based on a sovereign interest but is "one any casino applicant could bring, regardless of tribal status." (Dkt. 128 at 25.) Indeed, *Inyo* did not definitively resolve whether a sovereign could sue under § 1983 to vindicate non-sovereign rights. *See id.* at 711 (suggesting a distinction between an "allegation that the [defendant] lacked probable cause or that the warrant was otherwise defective" and the Tribe relying "only" on its " 'sovereign' status [to] claim[] immunity from the [defendant's] processes"). But *Inyo* does not foreclose such a result either.[5] Nor is it clear that Plaintiff's interest in this suit is non-sovereign.

As the record reflects, Plaintiff WPC is 100% owned by the Potawatomi Tribe and was formed in October 2019 by the Potawatomi Tribe, doing business as the Potawatomi Hotel & Casino. (Resp. Def. SOF ¶¶ 12, 64–67.) It is undisputed that Plaintiff is an arm of a sovereign government, seeks to enjoy the privileges associated with its sovereign status in operating a Waukegan casino tax-free, views its sovereignty as "inextricably linked" with the City of Waukegan, and believes that operating a casino would be "consistent with the Tribal goal of reclaiming land and commerce in treaty territory." Based on the foregoing, it is a Gordian knot to untangle Plaintiff's sovereign status and conspicuously sovereign interests in getting certified

[5] Since *Inyo*, several circuits have provided different answers to that question in differing contexts. *Compare Va. Off. for Prot. & Advoc. v. Reinhard*, 405 F.3d 185, 190 (4th Cir. 2005) (holding a state agency as "an arm of the state" cannot constitute a "person" under § 1983 because it is a sovereign entity), *with Muscogee (Creek) Nation v. Okla. Tax Comm'n*, 611 F.3d 1222, 1234 (10th Cir. 2010) *and Keweenaw Bay Indian Cmty. v. Rising*, 569 F.3d 589, 596 n.5 (6th Cir. 2009) (rejecting the argument that an Indian tribe can never constitute a "person" under § 1983). The Seventh Circuit has not weighed in on the issue.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

for a casino license from its putative "non-sovereign" interests. Even if, as Plaintiff argues, a sovereign could assert a § 1983 claim if the claim was not dependent on its status as a sovereign, Plaintiff fails to identify what its supposed "non-sovereign" interests would be under the circumstances. (*See* Dkt. 128 at 23–25.) Given the clear evidence of Plaintiff's sovereign interests, and absent evidence of Plaintiff's "non-sovereign" interests, Plaintiff does not qualify as a § 1983 plaintiff. *Inyo*, 538 U.S. at 704.

To the extent Plaintiff's interest in this suit can be hypothetically distinguished as "non-sovereign"—which, even drawing all reasonable inferences in Plaintiff's favor, Plaintiff has not established—*Inyo* does not preclude a finding that Plaintiff does not fall "within the zone of interests" protected by § 1983. Like a State, which the Supreme Court has previously held not to be a "person" amenable to suit under § 1983, *Will v. Mich. Dep't of State Po.*, 491 U.S. 58 (1989), a Tribe cannot be sued under § 1983, *Inyo*, 538 U.S. at 709 (citing *Kiowa Tribe of Okla. v. Mnfg. Tech., Inc.*, 523 U.S. 751, 754 (1998) ("an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity")). This is because, in enacting § 1983, "Congress did not intend to override well-established immunities or defenses under the common law," such as "[t]he doctrine of sovereign immunity." *Id.* at 709 (quoting *Will*, 491 U.S. at 67). This is consistent with the Court's "longstanding interpretive presumption that 'person' does not include the sovereign" absent "some affirmative showing of statutory intent to the contrary." *Id.* (citing *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 780–81 (2000)).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Section 1983 permits "citizen[s]" and "other *person*[*s*] within the jurisdiction" of the United States to seek legal and equitable relief from "person[s]" who, under color of state law, deprive them of federally protected rights. 42 U.S.C. § 1983 (emphasis added). Applying "traditional principles of statutory interpretation," *Lexmark*, 572 U.S. at 128, courts "generally presume that identical words used in different parts of the same [statute] are intended to have the same meaning." *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 213 (2001). Congress's decision to use the word "person" to describe both the intended plaintiff and intended defendant under the statute, therefore, creates a presumption that those who are not "person[s]" amenable to suit under § 1983 cannot then also qualify as a "person within the jurisdiction" of the United States to bring a claim under § 1983.

Notwithstanding the traditional principles of statutory interpretation, the " 'legislative environment' in which the word ['person'] appears" does not permit a sovereign like Plaintiff to secure private rights against another sovereign's encroachment. *Inyo*, 538 U.S. at 711. Plaintiff is not "like other private persons" that "would have no right to immunity." *Id.* at 712. It follows that a sovereign, like Plaintiff, cannot both benefit from the immunities of § 1983 as a potential defendant as well as its protections as a potential claimant. *See Muscogee*, 611 F.3d at 1236 ("Of course, a 'person' within the meaning of § 1983 possesses neither 'sovereign rights' nor 'sovereign immunity.' ").

Plaintiff does not dispute its sovereign status and, therefore, its accompanying sovereign privileges. The Potawatomi Tribe is the sole member of WPC and enjoys a

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

130036

government-to-government relationship with the federal government. (Resp. Def. SOF ¶¶ 12, 62.) Plaintiff's board of directors were all appointed by the Potawatomi Tribe. (*Id.* ¶ 81.) Until October 19, 2019, when Plaintiff was formed by the Potawatomi Tribe, all communications to the City on behalf of, what is now, Plaintiff, were made by representatives of the Potawatomi Tribe. (*See, e.g.*, *id.* ¶¶ 55–56.) In essence, Plaintiff WPC, which does not have any employees (*id.* ¶ 74) and whose expenses are paid for by the Potawatomi Tribe, is undisputedly an arm of the Potawatomi Tribe, if not the Tribe itself. *Cf. Holtz v. Oneida Airport Hotel Corp.*, 826 F. App'x 573, 574 (7th Cir. 2020) ("[W]e have not yet had occasion to consider the application of the 'arm of the tribe' test."). As a sovereign Native American Tribe, or at least an arm of one, Plaintiff is immune from suit under § 1983. *See Muscogee*, 611 F.3d at 1236. Plaintiff does not "fall within the zone of interests" protected by § 1983, *see Lexmark*, 572 U.S. at 127, and thus ought to be precluded from converting the defensive shield of § 1983 into an offensive sword. Accordingly, Plaintiff cannot maintain a § 1983 action against Defendant.

B. Plaintiff's § 1983 Claim Fails as a Matter of Law

Even if Plaintiff were a "person" within the meaning of the statute, Plaintiff fails to establish an Equal Protection violation as a matter of law. Plaintiff argues that Defendant singled it out for disparate treatment without a rational basis in violation of its Fourteenth Amendment rights. Specifically, Plaintiff claims that the

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

City, by refusing to certify Plaintiff to the IGB, intentionally treated Plaintiff less favorably than other similarly situated applicants.

The Equal Protection Clause of the Fourteenth Amendment protects individuals from governmental discrimination. U.S. Const. amend. XIV, § 1. A plaintiff who is not a member of a "protected class" may bring an Equal Protection claim under a "class-of-one theory." *Fares Pawn, LLC v. Ind. Dep't of Fin. Insts.*, 755 F.3d 839, 841 (7th Cir. 2014) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). To succeed under this theory, Plaintiff must establish that: (1) defendant intentionally treated it differently from others who were similarly situated, and (2) there is no rational basis for the difference in treatment. *Id.* at 845. So long as a "reasonably conceivable state of facts" exist to explain the disparate treatment—even if it is not "the actual justification"—sufficient rational basis exists as a matter of law. *145 Fisk, LLC v. Nicklas*, 986 F.3d 759, 771 (7th Cir. 2021) (internal citations omitted); *see also Miller v. City of Monona*, 784 F.3d 1113, 1121 (7th Cir. 2015) ("Even at the pleading stage, all it takes to defeat a class-of-one claim is a conceivable rational basis for the difference in treatment." (cleaned up)).

1. *Plaintiff fails to establish that it was similarly situated to the other casino license applicants.*

The Court turns first to the similarly situated requirement. Whether individuals are similarly situated is usually a question of fact reserved for the jury. *Fares Pawn*, 755 F.3d at 846 (quoting *McDonald v. Village of Winnetka*, 371 F.3d 992, 1002 (7th Cir. 2004)). But summary judgment is appropriate where it is clear that "no reasonable jury could find that the similarly situated requirement ha[s] been

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

met." *Id.* And the Seventh Circuit further requires class-of-one plaintiffs to "strictly comply with presenting evidence of a similarly situated entity at the summary judgment stage." *FKFJ, Inc. v. Village of Worth*, 11 F.4th 574, 589 (7th Cir. 2021). To meet this burden, Plaintiff must establish that the alternatives were "*prima facie* identical in all relevant respects." *Paramount Media Grp., Inc. v. Village of Bellwood*, 929 F.3d 914, 920 (7th Cir. 2019) (quoting *D.S. v. E. Porter Cnty. Sch. Corp.*, 799 F.3d 793, 799 (7th Cir. 2015)).

Plaintiff admits that each applicant proposed different terms for the casino property. (Dkt. 128 at 27 ("Of course, as the City observes, there were differences among the applicants and their proposals.").) Rivers proposed to buy the casino site for $11 million or to enter into a long-term lease. (Def. SOF Resp. ¶ 25.) Full House proposed to enter into a 99-year lease with an option to purchase the casino site for $30 million. (*Id.*) North Point proposed to buy the property for $22 million, to be paid over thirteen years. (*Id.*) Plaintiff proposed to buy the site for "+/- 15%" of the appraised value of the property. (*Id.* ¶ 26.) The proposals also varied in available amenities, casino square footage, and number of gaming positions. (*Id.* ¶¶ 36–40.)

Plaintiff argues that, despite the differences in the other applicants' proposals, all four applicants were "qualified" according to the Johnson Consulting Report and, thus, a reasonable jury could find that Plaintiff was similarly situated to the other bidders, "or at the very least the evidence would support such a finding at trial." (Dkt. 128 at 27–28.) Being equally qualified, however, is only necessary—but not sufficient—to meet the requirement of being similarly situated. *See Paramount*, 929

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

130036

F.3d at 920. And, at this "put up or shut up" moment in the case, Plaintiff cannot rely on evidence that may come up at trial and "would" support such a finding. *See Grant*, 870 F.3d at 568. Given the multifarious terms of the casino applicants' proposals, no reasonable jury could find that the other casino applicants were "identical in all relevant aspects." *Paramount*, 929 F.3d at 920 (finding no reasonable jury would conclude that two competitors offering different payment terms are similarly situated). Accordingly, Plaintiff has failed to establish as a matter of law that the other casino applicants were similarly situated. *See Fares Pawn*, 755 F.3d at 846.

Where, as here, a plaintiff cannot identify a similarly situated comparator for a class-of-one claim, it is "normally unnecessary to take the analysis any further; the claim simply fails." *Monarch Beverage Co. v. Cook*, 861 F.3d 678, 682 (7th Cir. 2017); *see Paramount*, 929 F.3d at 920 (disposing of a class-of-one claim on the sole basis that the entities were not similarly situated). In a small number of cases, however, the Seventh Circuit has excused failure to comply strictly with the similarly situated requirement where animus is readily apparent. *See, e.g.*, *Swanson v. City of Chetek*, 719 F.3d 780 (7th Cir. 2013); *Geinosky v. City of Chicago*, 675 F.3d 743 (7th Cir. 2012). Allegations of animus come into play, however, "only when courts can hypothesize no rational basis" for the disparate treatment. *145 Fisk*, 986 F.3d at 771 (quoting *Flying J Inc. v. City of New Haven*, 549 F.3d 538, 547 (7th Cir. 2008)). As a result, the Court thus turns to the rational basis requirement of a class-of-one claim.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

2. Plaintiff fails to establish that the City acted irrationally.

So long as a "reasonably conceivable state of facts exists" to explain the difference in treatment, Plaintiff cannot prevail on its claim. *See 145 Fisk*, 986 F.3d at 771. The rational basis requirement presents a "low legal bar," requiring only "a rational relationship between the disparity of treatment and some legitimate governmental purpose." *FKFJ*, 11 F.4th at 587 (cleaned up). To survive summary judgment, therefore, Plaintiff must "negative any reasonably conceivable state of facts that could provide a rational basis" for the City's conduct. *145 Fisk*, 986 F.3d at 772.

The record establishes many rational bases for the City's decision not to certify Plaintiff:

- *First*, the City could have reasonably found that Plaintiff's proposal did not match the realities of the economic market in Waukegan. For a City with lower-than-average median household income levels, and one in which a casino would, according to Plaintiff's own study, yield most of its clientele from within a 35-mile radius, Plaintiff's proposed casino could have been too large. Plaintiff's proposal included 1,890 gaming positions—the highest number of positions among the applicants. (*See* Resp. Def. SOF ¶ 37 (North Point proposed 1,332); *id.* ¶ 38 (Rivers proposed 1,625); *id.* ¶ 36 (Full House proposed 1,670).) Plaintiff's proposal also provided for a 130,000 square foot casino—the largest casino size proposed among the applicants. (*See id.* ¶ 37 (North Point

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

proposed 53,500 square feet); *id.* ¶ 36 (Full House proposed 75,000 square feet); *id.* ¶ 38 (Rivers did not disclose proposed square footage).)

- *Second*, the City could have reasonably preferred, as Alderman Bolton explained, "a proposal that would offer more than just a casino[,] but also [a] theater [and] entertainment, restaurants," and other things that would provide the City with "an opportunity to develop economically." (*Id.* ¶ 49.) Plaintiff's proposal did not include a temporary casino or entertainment complex. (*Id.* ¶¶ 31–32.)
- *Third*, the City could have reasonably prioritized maximizing the amount of money received for the Fountain Square property or, as Alderman Kirkwood explained, have been displeased by the lack of detail and transparency with respect to the offer price. (*Id.* ¶ 51.) Plaintiff was the only applicant that did not provide a specific price for the purchase or lease of the casino site by the August 5, 2019, deadline. Instead, Plaintiff offered "+/- 15%" of the appraised value of the property, without quantifying what it meant by "appraised value." (*Id.* ¶ 26.)
- *Fourth*, the City could have reasonably believed that Plaintiff was not as experienced in running a casino as the other applicants. Plaintiff operated only two casinos in one state while the other applicants operated at least four in multiple states. (*See id.* ¶ 9 (North Point operated six casinos in four states); *id.* ¶ 10 (Full House operated five in four states); *id.* ¶ 11 (Rivers' parent company operated four casinos in three states).) In the alternative, the City

could have conceivably believed that, despite being less experienced, Plaintiff was, as Alderman Turner explained, asking for special consideration as an Indian Tribe. (*Id.* ¶ 52.)

- *Fifth*, the City could have had reasonable competition concerns with Plaintiff's proposal because Plaintiff already operates two other casinos in Wisconsin. (*Id.* ¶¶ 13, 15.) Given the proximity of Plaintiff's Milwaukee casino to Waukegan, and the significantly more favorable revenue sharing rate with Wisconsin for its Milwaukee casino than Plaintiff would have with a Waukegan casino, the City could have reasonably determined that Plaintiff was not fully committed to operating a casino in Waukegan. (*See id.* ¶ 69.)
- *Sixth*, the City could have conceivably found Plaintiff's spiel at the September 18, 2019, hearing to be, as Alderman Seger explained, "hurry up and get it done." (*Id.* ¶ 50.)

Plaintiff argues, under its theory of a "rigged process" by which Michael Bond dictated the results the City's certification, that the City's failure to conduct a fair and transparent hearing "is the height of irrationality." (Dkt. 128 at 29–32.) Plaintiff does not, however, rebut the conceivable state of facts that could have reasonably explained the City's refusal to certify Plaintiff. Even if, as Plaintiff argues, the "Bond-backed City Council members testified falsely in this case about why they voted against Potawatomi's proposal," (*id.* at 32), "the finding of a rational basis is 'the end of the matter—animus or no' "*145 Fisk*, 986 F.3d at 773 (quoting *Fares Pawn*, 755 F.3d at 845). Because Plaintiff does not "negate any of the reasonably conceivable

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

state of facts that could provide a rational basis" for the City's conduct—even if they were not "the actual justification" for the City's refusal to certify Plaintiff—sufficient rational basis exists as a matter of law. *Id.* at 771–72.

* * *

Plaintiff fails to meet the "very significant burden" of a class-of-one claim. *Bell v. Duperrault*, 367 F.3d 703, 708 (7th Cir. 2004). No reasonable jury could find that Plaintiff was similarly situated to the other applicants. Nor does Plaintiff rebut any of the proffered rational bases. Accordingly, summary judgment as to Count I is granted in favor of Defendant. *See Swanson*, 719 F.3d at 784 (summary judgment appropriate where no reasonable jury could find "[plaintiff] and the comparator were similarly situated, or there was a rational basis for any differential treatment").

When Plaintiff filed its claim, the Court had supplemental jurisdiction over Plaintiff's state-law claims (Counts II and III). *See* 28 U.S.C. § 1367(a) ("[D]istrict courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy"). In view of this outcome on Plaintiff's § 1983 claim (Count I, its only federal-law claim), the Court declines to retain jurisdiction over Plaintiff's remaining state-law claims. *See* 28 U.S.C. § 1367(c)(3) ("[t]he district courts may decline to exercise supplemental jurisdiction [if] . . . the district court has dismissed all claims over which it has original jurisdiction."); *see also Williams v. Rodriguez*, 509 F.3d 392, 404 (7th Cir. 2007) ("As a general matter, when all federal claims have been dismissed prior to trial, the federal court should relinquish jurisdiction over the

remaining pendant state claims."). Counts II and III are therefore dismissed without prejudice.

IV. CONCLUSION

For the foregoing reasons, the City's motion for summary judgment (Dkt. 113) is granted. All remaining motions (Dkt. 12; Dkt. 85; Dkt. 96; Dkt. 158) are dismissed as moot.

SO ORDERED in No. 20-cv-00750.

Date: March 29, 2024

JOHN F. KNESS
United States District Judge

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

WAUKEGAN POTAWATOMI CASINO, LLC, Plaintiff, v. CITY OF WAUKEGAN, Defendant.	No. 20-cv-00750 Judge John F. Kness

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of Plaintiff(s)
and against Defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of Defendant CITY OF WAUKEGAN
and against Plaintiff WAUKEGAN POTAWATOMI CASINO, LLC.

Defendants shall recover costs from Plaintiff.

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge John F. Kness presiding, and the jury has rendered a verdict.
☐ tried by Judge John F. Kness without a jury and the above decision was reached.
☒ decided by Judge John F. Kness on Defendant's motion for summary judgment (Dkt. 113).

Date: March 29, 2024

JOHN F. KNESS
United States District Judge

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SUPREME COURT OF ILLINOIS

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January 24, 2024

In re: Waukegan Potawatomi Casino, LLC, Appellee, v. The Illinois Gaming Board et al., etc., Appellants. Appeal, Appellate Court, First District.
130036

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

The Court also ordered that this cause be consolidated with:

130058 Waukegan Potawatomi Casino, LLC v. The City of Waukegan

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

A list of all counsel on these appeals is enclosed.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

130036
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CLERK'S OFFICE
APPELLATE COURT FIRST DISTRICT
STATE OF ILLINOIS
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August 22, 2023

RE: WAUKEGAN POTAWATOMI CASINO v. THE ILLINOIS GAMING BOARD
General No.: 1-22-0883
County: Cook County
Trial Court No: 21CH5784

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Thomas D. Palella
Clerk of the Appellate Court

c:

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E-FILED
Transaction ID: 1-22-0883
File Date: 8/18/2023 11:02 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-22-0883

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division
Plaintiff-Appellant,	)	
v.	)	
THE ILLINOIS GAMING BOARD, an Illinois administrative agency; 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,	)	No. 2021 CH 5784
	)	The Honorable CECILIA A. HORAN,
Defendants-Appellees.	)	Judge Presiding.

PETITION FOR REHEARING OF STATE DEFENDANTS-APPELLEES

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

TABLE OF CONTENTS

Page(s)

POINTS OVERLOOKED OR MISAPPREHENDED 1

FACTUAL BACKGROUND 3

ARGUMENT 6

POINTS AND AUTHORITIES

This appeal is now moot because Full House, which is not a party to this action, has acquired an interest in the owners license that cannot be rescinded under the Act. 6

Waukegan Potawatomi Casino, LLC v. Ill. Gaming Bd., 2023 IL App (1st) 2208836 6

A. Pursuant to the Board's June 15, 2023 decision, Full House is a licensed owner under the Act. 6

230 ILCS 10/7(b) (2020) 6

86 Ill. Admin. Code § 3000.230(f) 6

230 ILCS 10/7(l) (2020) 7

86 Ill. Admin. Code § 3000.540 7

B. The Act authorizes rescission of the owners license only under limited circumstances not applicable here. 7

Waukegan Potawatomi Casino, LLC V. Ill. Gaming Bd., 2023 IL App (1st) 220883 7

In re J.B., 204 Ill. 2d 382 (2003) 8

In re Tekela, 202 Ill. 2d 282 (2002) 8, 10

Steinbrecher v. Steinbrecher, 197 Ill. 2d 514 (2001) 8, 9, 11

Zenith Radio Corp. v. Hazeline Rsch., Inc., 395 U.S. 100 (1969) 8

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

People ex rel. Sheppard v. Money,
124 Ill. 2d 265 (1988) 8

Ill. Sup. Ct. R. 305(k) 8, 9

Town of Libertyville v. Moran,
179 Ill. App. 3d 880 (2d Dist. 1989) 9

NBC-USA Hous., Inc., Twenty-Six v. Donovan,
674 F.3d 869, 870, 872-73 (D.C. Cir. 2012) 9

Kosakowski v. Bd. of Trs.,
389 Ill. App. 3d 381 (1st Dist. 2009) 10

Sola v. Roselle Police Pension Bd.,
342 Ill. App. 3d 227, 231 (2d Dist. 2003) 10

Provena Health v. Ill. Health Facilities Plan Bd.,
382 Ill. App. 3d 34 (1st Dist. 2008) 10, 11

Vill. of Bartonville v. Lopez,
2017 IL 120643 11

Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.,
2011 IL 111611 11

Marion Hosp. Corp. v. Ill. Health Facilities Plan. Bd.,
201 Ill. 2d 465 (2002) 11, 12

230 ILCS 10/5(c) (2020) 11

86 Ill. Admin. Code § 3000.110 11

Bus. & Pro. People for Pub. Int. v. Ill. Com. Comm'n,
136 Ill. 2d 192 (1989) 12, 13

Newkirk v. Bigard,
109 Ill. 2d 28 (1985) 12, 13, 14

230 ILCS 10/5(b)(1) (2020) 13

230 ILCS 10/7(e-5) (2020) 13, 14

Cnty. of Knox ex re. Masterson v. Highlands, L.L.C.,
188 Ill. 2d 546 (1999) 14

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Fam. Amusement of N. Ill., Inc. v. Accel Ent. Gaming, LLC, 2018 IL App (2d) 170185 14

CONCLUSION 15

CERTIFICATE OF COMPLIANCE

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

POINTS OVERLOOKED OR MISAPPREHENDED

On July 28, 2023, this court issued an opinion that (1) reversed the circuit court's judgment dismissing Waukegan Potawatomi Casino's ("WPC") action for lack of standing and (2) denied the motions of State Defendants-Appellees Illinois Gaming Board; its Chairman, Charles Schmadeke; Members, Dionne R. Hayden, Anthony Garcia, and Jim Kolar; and Board Administrator, Marcus Fruchter (collectively, "Board") and Defendant-Appellee City of Waukegan to dismiss the appeal as moot.[1] On the first issue, this court ruled that WPC could pursue this action, which sought a declaration that the City failed to comply with the certification requirements of the Illinois Gambling Act, 230 ILCS 10/7(e-5) (2020), and that the Board thus could not proceed to consider candidates for issuance of the Waukegan casino license authorized by the Act. On the second issue, this court ruled that WPC's appeal was not moot, even though the Board had recently awarded the sole Waukegan owners license to Full House Resorts, Inc., d/b/a American Place ("Full House"). This court reasoned that it could still grant a declaration that the Board lacked statutory authority under the Act to grant the Waukegan license, which, in effect, would require the Board to retract Full House's license.

The Board seeks reconsideration of this court's mootness ruling because it overlooked that the Board's June 15, 2023 grant of a full owners license to

[1] By operation of law, current Board member Jim Kolar should replace former Board member Marc E. Bell as a Defendant-Appellee in this appeal. *See* 735 ILCS 5/2-1008(d) (2020).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Full House is now conclusive, and because Full House is not a party to this case, so that if WPC ultimately prevailed in its claim, the court in this action could not enter any relief that would divest Full House of that license. This preclusive effect of the Board's final administrative decision to grant Full House the Waukegan license would prevent the Board from rescinding that license on any ground that would have permitted it to deny the license, and now the Board could only seek to revoke that license for other reasons, such as a violation by Full House of the Act after June 15, 2023. As described below, Illinois precedent establishes that in these circumstances, WPC's claim is moot and its appeal should be dismissed. By contrast, the appellate court's decision in *Provena Health v. Ill. Health Facilities Planning Bd.*, 382 Ill. App. 3d 34 (1st Dist. 2008), is inapposite because there the entity to which the public agency issued the disputed permit was a party to the judicial proceeding, and thus was subject to the possibility that the court's order reversing the grant of the permit would require it to undo any interim actions that it had taken.

Here, WPC could have avoided the risk of mootness in two ways: by naming Full House as a party to this action so that it would be bound by a judgment in its favor; or by obtaining a court order preventing the Board from proceeding with the process for awarding the Waukegan license. But WPC did neither. Instead, this court affirmed the circuit court's denial of WPC's motion for a temporary restraining order ("TRO"), and WPC never sought a stay pending appeal of the circuit court's judgment dismissing this action.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FACTUAL BACKGROUND

On June 28, 2019, the General Assembly authorized the Board to issue six new owners licenses to operate casinos in the State, including one in Waukegan. 230 ILCS 10/7(e-5) (2020). The amended Act precluded the Board from considering any application for a new owners license until the corporate authority of the municipality in which the casino would operate had certified certain items about an applicant. *Id.* The City certified three entities seeking to apply for a license before the Board, but it did not certify WPC. *See* C15-16, C25-27, C1055-56. WPC sued the City in the circuit court, alleging that it "manipulated its entire certification process." C 16-17. The Board is not a party to that lawsuit.

Over the next two years, the Board undertook its statutorily mandated duties to investigate the City's applicants, conduct a competitive bidding process, select a winning bid proposal for the Waukegan casino, evaluate the winning bid within a reasonable time for preliminary suitability, and, ultimately, consider the winning bidder for licensure. *See* 230 ILCS 10/7, 7.5(1)-(8), 7.12 (2020); 86 Ill. Admin. Code § 3000.230. In November 2021, when the Board gave public notice that it would hold a special meeting to vote on the Waukegan license, WPC brought this action in the circuit court against the Board and the City, seeking a declaration that the City failed to comply with the certification requirements of the Act and thus that the Board lacked statutory authority to take any formal steps toward issuing a license, and an

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

injunction to prevent the Board from taking steps toward issuing a Waukegan license. C22. At the same time, WPC unsuccessfully moved for a TRO to prevent the Board from voting on that license at its special meeting, C 1298-1305; 1398-99, and this court affirmed the TRO's denial.

On December 8, 2021, following the circuit court's denial of WPC's TRO request, the Board proceeded with its vote, selected Full House as the winning proposal and final applicant for the Waukegan casino license, and found Full House preliminarily suitable for licensing under 86 Ill. Admin. Code § 3000.230(c). *See* 12/8/21 Bd. Mins., at https://bit.ly/3YIP3Wo, at 2-3; 12/8/21 Bd. Mtg., at https://bit.ly/3dK48k8 (23:00-31:45). WPC did not seek a preliminary injunction to enjoin the Board from taking any further steps toward issuing Full House a license. Nor did WPC seek to expedite this appeal from the circuit court's judgment dismissing its claim.

In the interim, Full House continued to demonstrate its suitability for licensure. *See* 86 Ill. Admin. Code § 3000.230(e), (f). Full House constructed a temporary casino, completed pre-opening operations audits overseen by both Board staff and independent auditors, and successfully completed multiple practice gaming sessions. *See* 6/15/23 Bd. Mtg., at https://bit.ly/3XFp1CU (40:19-42:30). On February 16, 2023, the Board's Administrator determined that Full House qualified for a temporary operating permit and authorized it to commence gambling operations. *See id*. The next day, Full House opened

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

the Temporary by American Place, commencing gambling operations in Waukegan. *See id.*

On June 15, 2023, the Board unanimously voted to award Full House the Waukegan owners license under section 7(b) and 7(e-5) of the Act, 230 ILCS 10/7 (2020), and 86 Ill. Admin. Code § 3000.230(g)(1). 6/15/23 Bd. Mtg. Mins., at https://bit.ly/3P3AGsS, at 3. The Board also unanimously voted to award Full House a Master Sports Wagering license to accept sports wagers under section 25-35 of the Illinois Sports Wagering Act, 230 ILCS 45/25-35 (2020). 6/15/23 Bd. Mtg. Mins. at 6; 6/15/23 Bd. Mtg., at https://bit.ly/3XFp1CU (2.28:02-2:28:48).

Thereafter, the Board moved this court to dismiss this appeal as moot, arguing that this court could no longer grant WPC effective relief. On July 28, 2023, this court issued its opinion reversing the circuit court's judgment dismissing WPC's action for lack of standing and denying the motion to dismiss the appeal as moot. *Waukegan Potawatomi Casino, LLC v. Ill. Gaming Bd.*, 2023 IL App (1st) 220883, ¶ 1. Regarding mootness, this court ruled that it could provide effective relief in the form of a declaration "that the Board lacked authority to issue a license," thus requiring the Board "to retract the issued license and repeat the process." *Id.* at ¶ 22. The court reasoned that the license could still be rescinded under the Act because Full House was continuing to operate at the temporary location, as opposed to a permanent one. *Id.*

ARGUMENT

This appeal is now moot because Full House, which is not a party to this action, has acquired an interest in the owners license that cannot be rescinded under the Act.

This court concluded that WPC's action was not moot because it could still declare that the Board lacked statutory authority to issue a license, thus requiring the Board to "retract the issued license and repeat the process." *Waukegan Potawatomi Casino, LLC*, 2023 IL App (1st) 220883, ¶ 22. But that relief is inconsistent with the plain language of the Act and overlooks the fact that Full House, who was not made a party to this action, has now acquired the sole Waukegan owners license available under the Act.

A. Pursuant to the Board's June 15, 2023 decision, Full House is a licensed owner under the Act.

This court erroneously concluded that WPC's action was not moot because Full House has not completed construction on its permanent casino. *Id.* Completion of a permanent casino is not a statutory prerequisite to licensure under the Act's plain terms. Instead, the Act and corresponding regulations permit the Board to grant full licensure to a casino applicant, while at the same time authorizing the licensee to operate a temporary facility. *See* 230 ILCS 10/7(b) (2020) (applicants' "facility *or proposed casino* facility" is one factor in licensure decision) (emphasis added); 86 Ill. Admin. Code § 3000.230(f) (practice gaming session evaluated for "effectiveness, safety, and security" of gaming operation, not completion of permanent facility).

Pursuant to its final decision to issue the owners license to Full House, the

Board concluded that it met all of the statutory and regulatory requirements for licensure. *See* 6/15/23 Bd. Mtg., at https://bit.ly/3XFp1CU (1.04:00-1.06:25). And there has not been any challenge to that Board determination.

Although the Board also granted Full House authorization to operate a temporary casino based on section 7(l) of the Act, 230 ILCS 10/7(l) (2020), neither that action, nor Full House's ongoing construction of a permanent facility affects its status as a licensed owner. Rather, section 7(l) allows an "owners licensee" to conduct gaming at a temporary facility while it constructs or remodels its permanent casino or relocates to a new facility. 230 ILCS 10/7(l) (2020); 86 Ill. Admin. Code § 3000.540. The provision does not condition the owners license on completion of the permanent facility. In other words, Full House holds an unencumbered owners license. And because its owners license is not conditioned on completion of its permanent casino facility, the ongoing construction of its permanent facility should not have been relevant to this court's mootness analysis.

B. The Act authorizes rescission of the owners license only under limited circumstances not applicable here.

This court also erroneously concluded that WPC's action was not moot because it could still issue a declaration that the City failed to comply with the certification requirements of the Act, and therefore the Board lacked statutory authority to accept the certifications, which would require the Board to retract Full House's license and redo the process. *See Waukegan Potawatomi Casino, LLC*, 2023 IL App (1st) 220883, ¶ 22. But that relief has now been rendered

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unavailable because Full House, a stranger to this action, obtained an intervening interest in the owners license that is conclusive between it and the Board and cannot be undone by any court order entered in this action. *See In re J.B.*, 204 Ill. 2d 382, 386-87 (2003) (parent's appeal challenging termination of her parental rights became moot due to intervening adoption that became final during pendency of appeal); *In re Tekela*, 202 Ill. 2d 282, 289-90 (2002) (same); *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 516 (2001) (appeal challenging court ordered partition and sale of joint owners' property became moot when court confirmed judicial sale of property).

Full House now holds the license, and because it was not made a party to this action, this court cannot enter an order affecting its interest in the license. *See Zenith Radio Corp. v. Hazeline Rsch., Inc.*, 395 U.S. 100, 110 (1969) ("It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process."); *People ex rel. Sheppard v. Money*, 124 Ill. 2d 265, 281 (1988) ("Due process requires the joinder of all indispensable parties to an action, and an order entered without jurisdiction over a necessary party is void.").

This principle is reflected in Ill. Sup. Ct. R. 305(k), which requires an appealing party to obtain a stay pending appeal to protect its interest in real or personal property from third parties who might obtain an interest in it. As the rule recognizes, a stay is necessary because the reversal or modification of a

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judgment cannot "affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed." Ill. Sup. Ct. R. 305(k). The rule promotes "finality and permanence" by ensuring that a non-party to an action who acted in good faith is not adversely affected by judicial proceedings in which they were not involved. *Steinbrecher*, 197 Ill. 2d at 528. It would be unfair otherwise, as they were not put on notice that their interests could be affected.

In *Steinbrecher*, for example, the Illinois Supreme Court recognized that the court could not undo a court-ordered partition and sale of real property after the property had been sold to a third party. 197 Ill.2d at 527-28. As the Court explained, the sale of the property mooted the appeal because under the circuit court's judgment, a nonparty had acquired all rights to the property, such that "any order invalidating that judgment and sale is without effect." *Id.* at 523. *See also Town of Libertyville v. Moran*, 179 Ill. App. 3d 880, 886 (2d Dist. 1989) (absent stay, appeal becomes moot if "specific property, possession, or ownership of which is the relief being sought on appeal, has been conveyed to third parties," as long as record discloses that third-party purchaser was not "party or nominee of a party to the litigation"); *see also NBC-USA Hous., Inc., Twenty-Six v. Donovan*, 674 F.3d 869, 870, 872-73 (D.C. Cir. 2012) (agency's sale of foreclosed property during pendency of appeal mooted appeal from foreclosure order because court could not "unravel" sale involving nonparty).

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Consistent with this principle, the Court in *Tekela*, 202 Ill. 2d at 287-93, ruled that once the adoption of a child became final, it mooted the mother's appeal of the order terminating her parental rights on which the adoption was predicated. As the Court explained, because the mother had not secured a stay of the circuit court order, the adoption process proceeded to conclusion before the appellate court reversed the order terminating the mother's parental rights. *Id.* at 289-90. As a result, the adoption became final and unchangeable, and the appeal from the termination of parental rights, in turn, became moot. *Id.* at 292.

The same principle applies in this case. Because WPC did not obtain a preliminary injunction from the circuit court preventing the Board from proceeding with the licensing process, the Board proceeded with it during the pendency of this appeal. The Board's June 15, 2023 decision awarding the sole Waukegan owners license to Full House was a final agency decision as to Full House's interest in the license. *See Kosakowski v. Bd. of Trs.*, 389 Ill. App. 3d 381, 383-384 (1st Dist. 2009) (under Administrative Review Law, agency lacks power to undo final administrative decision 35 days after its issuance); *Sola v. Roselle Police Pension Bd.*, 342 Ill. App. 3d 227, 231 (2d Dist. 2003) (same).

Moreover, this analysis is consistent with *Provena Health*, 382 Ill. App. 3d at 50-51. There, the plaintiff sought judicial review of the Illinois Health Facilities Planning Board's decision to issue a permit for the construction of a new facility to another hospital and named that hospital as a defendant in its

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action. *See id.* at 34, 50-51. Accordingly, even though the court did not enjoin construction under the challenged permit, the hospital, as a party, acted subject to the risk of a reversal. *Id.* at 51. Indeed, the court had warned the hospital that although its permit remained valid during the pendency of the litigation, its partial construction of the facility did not prevent the court from setting aside the permit. *Id.*

Here, in contrast, Full House was not a party to this action, and so its license cannot be rescinded in this action. *See Steinbrecher*, 197 Ill. 2d at 516 (court cannot undo sale of property to nonparty); *NBC USA Hous., Inc., Twenty-Six*, 674 F.3d at 872-73 (same). Indeed, the judgment in this case can affect only the rights of the parties to this case.

And the Board's grant of the license to Full House would be *res judicata* between the Board and Full House. *See Vill. of Bartonville v. Lopez*, 2017 IL 120643, ¶¶ 71-72; *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 56. Thus, if the Board were to commence a proceeding to rescind Full House's license for any reason that pre-dated June 15, 2023, Full House could defeat it by invoking the Board's final administrative decision, which became conclusive under the Administrative Review Law after 35 days passed, as preclusive.

Accordingly, Full House cannot now be divested of its license in a way that is consistent with the Act. *See Marion Hosp. Corp. v. Ill. Health Facilities Plan. Bd.*, 201 Ill. 2d 465, 473 (2002). In *Marion Hosp. Corp.*, like in *Provena*

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Health, a plaintiff sought judicial review of the Planning Board's decision granting a permit that allowed a competing hospital to construct a new facility. *Id.* at 468-69. But unlike in *Provena Health*, the hospital completed the project and obtained an operating license for its facility while the plaintiff's appeal was pending. *Id.* at 469-70. The Illinois Supreme Court concluded that the issuance of the operating license mooted the plaintiff's appeal because, once the operating license issued, it could not be revoked under the applicable law "based on an improperly granted planning permit." *Id.* at 475.

Here, like in *Marion Hosp. Corp*, Full House has obtained its owners license. Accordingly, its license can be disturbed only in accordance with the Act. And the Act provides that a license may be revoked or suspended only in compliance with applicable administrative procedures based on a finding that the licensee has violated the Act or a Board Rule or engaged in fraudulent practice. *See* 230 ILCS 10/5(c)(11), (15) (2020); 86 Ill. Admin. Code § 3000.110.

Nor could WPC avoid mootness by arguing that the Board's final administrative decision awarding an owners license to Full House may be set aside as void for lack of jurisdiction. An administrative agency's jurisdiction has three aspects: (1) authority over the parties; (2) the power to "hear and determine causes of the general class of cases to which the particular case belongs"; and (3) the agency's scope of authority under the statute. *Bus. & Pro. People for Pub. Int. v. Ill. Com. Comm'n*, 136 Ill. 2d 192, 244 (1989); *Newkirk v. Bigard*, 109 Ill. 2d 28, 36 (1985). There is no dispute here that the

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Board had jurisdiction over Full House, an entity that applied for the Waukegan owners license, or that the Board had the power to award an owners license. *See* 230 ILCS 10/5(b)(1) (2020) (Board has duty "[t]o decide promptly and in reasonable order all license applications"); 230 ILCS 10/7(e-5)(3) (2020) (Board authorized to issue Waukegan license).

And the Board acted within the scope of its authority under section 7(e-5) of the Act when it considered for licensure the applicants for which the City had submitted certifications. The Illinois Supreme Court has recognized that an agency does not act without statutory authority, even if it makes an error in the application of its statutory duty. *Newkirk*, 109 Ill. 2d at 39. Otherwise, a party "could merely point to any provision of a statute which was not complied with and claim that the agency did not have authority to act unless the provision was complied with." *Id.* Instead, the court must ask if the agency took actions that the statute does not permit. *Cnty. of Knox ex re. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 553-55 (1999); *see Bus. & Prof. People for Pub. Int.*, 136 Ill. 2d at 245 (recognizing that agency acts with statutory authority even if it makes "erroneous decision").

For example, in *Newkirk*, the Court affirmed the dismissal of a declaratory judgment action seeking to void an agency order that did not include certain statutorily mandated provisions. 109 Ill. 2d at 35-36. The court concluded that the omitted provisions "did not render the order void; it merely made the order voidable." *Id.* at 40. As the Court explained, "a party

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cannot collaterally attack an agency order in a [declaratory judgment proceeding] unless the order is void on its face as being unauthorized by statute." *Id.* at 39; *see also Fam. Amusement of N. Ill., Inc. v. Accel Ent. Gaming, LLC*, 2018 IL App (2d) 170185, ¶¶ 32-37 (Board order requiring sales agent to dissociate from business partner was not void where lack of statutory authority to enter order was not facially apparent).

Here, the Board's decision awarding a license to Full House was not facially void. The Board acted within the scope of its statutory authority when it considered the candidates that the City certified and ultimately awarded the owners license to Full House at the conclusion of its statutorily mandated licensing process. *See* 230 ILCS 10/7(e-5) (2020). This court's decision, therefore, overlooked that because Full House was fully licensed under the Act before this court issued its decision, its intervening interest in the owners license mooted WPC's appeal.

CONCLUSION

For these reasons, State Defendants-Appellees Illinois Gaming Board; its Chairman, Charles Schmadeke; Members, Dionne R. Hayden, Anthony Garcia, and Jim Kolar; and Board Administrator, Marcus Fruchter, ask this court to reconsider its order denying the Board's motion to dismiss this appeal as moot.

Respectfully submitted,

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August 18, 2023

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Ill. S. Ct. R. 367(a) and, to the extent applicable, Ill. S. Ct. R. 341(a) and (b). The length of this brief, excluding the pages or words contained in the Ill. S. Ct. R. 341(d) cover, the Ill. S. Ct. R. 341(h)(1) table of contents and statement of points and authorities, the Ill. S. Ct. R. 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Ill. S. Ct. R. 342(a), is 15 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on August 18, 2023, I electronically filed the foregoing **Petition for Rehearing of State Defendants-Appellees** with the Clerk of the Illinois Appellate Court, First Judicial District, 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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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.

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E-FILED
Transaction ID: 1-22-0883
File Date: 8/18/2023 2:08 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-22-0883

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company,

Plaintiff-Appellant,

vs.

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,

Defendants-Appellees.

Appeal from the Circuit Court of Cook County, Illinois
Chancery Division

Circuit Court No. 21 CH 05784
Presiding Judge: Cecilia A. Horan

Circuit Court Judgment: May 13, 2022
Date of Appeal: June 10, 2022
Date of Appellate Opinion: July 28, 2023

CITY OF WAUKEGAN'S PETITION FOR REHEARING

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

POINTS AND AUTHORITIES

Page(s)

INTRODUCTION 1

REHEARING STANDARD 1

REHEARING ISSUES PRESENTED FOR REVIEW 1

BRIEF FACTUAL AND PROCEDURAL BACKGROUND 2

REHEARING ARGUMENT 5

A. This Court Overlooked Prior Precedents on Private Rights of Action 5

Waukegan Potawatomi Casino, LLC v. Illinois Gaming Bd., 2023 IL App (1st) 220883 5

Noyola v. Board of Education of Chicago, 179 Ill. 2d 121 (1997) 5

Landmarks Illinois v. Rock Island County Board, 2020 IL App (3d) 190159 5

Carmichael v. Pro. Transportation, Inc., 2021 IL App (1st) 201386 5

Jackson v. Randle, 2011 IL App (4th) 100790 5

Schmidt v. Ameritech Illinois, 329 Ill. App. 3d 1020 (1st Dist. 2002) 5

Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist., 929 F.3d 865 (7th Cir. 2019.) 6

Villasenor v. Am. Signature, Inc., 2007 WL 2025739 (N.D. Ill. July 9, 2007) 6

SUBMITTED 27086202 Carol Kolberer - 4/2/2024 2:54 PM

B. This Court Overlooked a Recent Resolution by the City of Waukegan 7

Waukegan Potawatomi Casino, LLC v. Illinois Gaming Bd.,
2023 IL App (1st) 220883 7

230 ILCS §10/7(e-5) 7

Am. Nat. Bank & Tr. Co. of Chicago v. City of Chicago,
4 Ill. App. 3d 127 (1st Dist. 1971) 8

Unity Ventures v. Pollution Control Bd.,
132 Ill. App. 3d 421 (2d Dist. 1985) 9

C. This Court Overlooked Binding Precedent from the Illinois Supreme Court on Exclusive Jurisdiction 9

Waukegan Potawatomi Casino, LLC v. Illinois Gaming Bd.,
2023 IL App (1st) 220883 9

J & J Ventures Gaming, LLC v. Wild, Inc.,
2015 IL App (5th) 140092 9

J & J Ventures Gaming, LLC v. Wild, Inc.,
2016 IL 119870 9

Illinois Ins. Guar. Fund v. Priority Transportation, Inc.,
2019 IL App (1st) 181454 10

230 ILCS §10/5 11

Behl v. Gingerich,
396 Ill. App. 3d 1078 (4th Dist. 2009) 11

CONCLUSION 11

CERTIFICATE OF COMPLIANCE 13

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

INTRODUCTION

Defendant City of Waukegan respectfully petitions this Court for rehearing of the decision filed on July 28, 2023 (the "Decision," attached as Exhibit A), pursuant to Illinois Supreme Court Rule 367. The Decision reversed the Circuit Court's Order that had dismissed Plaintiff Waukegan Potawatomi Casino, LLC's complaint for lack of standing. Rehearing is warranted because the Circuit Court's Order, however brief, was correct and this Court's Decision overlooked or misapprehended binding authority and recent resolutions by the City of Waukegan.

This Court overlooked the past precedents of *Carmichael* and *Jackson,* which found that without a private right of action, a plaintiff could not enforce a statute, even in the context of a declaratory judgment action. This Court also overlooked the City of Waukegan's January 2023 Resolution, which included extensive documentation of the items and points negotiated between the City and Full House Resorts. Finally, this Court overlooked the Illinois Supreme Court's precedent on exclusive jurisdiction, when it failed to consider the *J & J Ventures Gaming* case. Rehearing is warranted to correct these issues.

REHEARING STANDARD

A party seeking a rehearing must do so within twenty-one days of the filing of the judgment. Ill. S. Ct. R. 367(a). A party's petition for rehearing shall state the points "claimed to have been overlooked or misapprehended by the court." Ill. S. Ct. R. 367(b). The petition for rehearing is not the place for rearguing the appellate case. *Id.*

REHEARING ISSUES PRESENTED FOR REVIEW

1. Did the Court overlook existing precedent on private rights of action when it failed to consider the *Carmichael* and *Jackson* cases?

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2. Did the Court overlook Resolution No. 23-R-03, which sets out the extensive negotiations between the City of Waukegan and Full House Resorts, Inc.?

3. Did the Court overlook existing precedent on exclusive jurisdiction when it failed to consider the *J & J Ventures Gaming* case?

BRIEF FACTUAL AND PROCEDURAL BACKGROUND[1]

This Lawsuit and the Quest for Injunctive Relief

On November 15, 2021, the Illinois Gaming Board posted its agenda for a special meeting on November 18, 2021. C21 at ¶44. The Gaming Board's agenda included "Consideration of Matters Related to the Pending Applications for the Owners License to Be Located in Waukegan," and "Determination of Preliminary Suitability." C1296. The very next day, Plaintiff Waukegan Potawatomi Casino, LLC ("Potawatomi Casino") filed this lawsuit against the Gaming Board, the members of the Gaming Board, and the City of Waukegan. A202-A1488; C11-C1297.

Potawatomi Casino's Complaint contained a single claim for Declaratory and Injunctive Relief under the Illinois Gambling Act. A213-A214 at ¶¶48-54; C22-C23 at ¶¶48-54. In particular, Potawatomi Casino's lawsuit sought to enjoin the Gaming Board from "taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability" until the City of Waukegan had satisfied the requirements of the Illinois Gambling Act. A214; C23. Potawatomi Casino sought this injunctive relief because it believed that the City of Waukegan had "failed to satisfy the statutory prerequisites for the Gaming Board to consider issuing an owner's license for a

[1] The City of Waukegan is only providing those facts necessary for ruling on the current petition for rehearing.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

casino in Waukegan." A213 at ¶49; C22 at ¶49. This alleged failure, according to Potawatomi Casino, meant the Gaming Board lacked the 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. A213 at ¶50; C22 at ¶50.

Alongside its Complaint, Potawatomi Casino filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction. C1298-C1321. Potawatomi Casino's motion sought to enjoin the Gaming Board from "taking formal steps toward issuance of [a] license to operate a casino in Waukegan, Illinois, including by issuing a finding of preliminary suitability." C1304. Notably, the only process failure Potawatomi Casino alleged occurred during Waukegan's review of proposals. The City considered and reconsidered the Potawatomi application, but denied it both times.

On December 7, 2021, following extensive argument, the Circuit Court for Cook County denied Potawatomi Casino's request for a temporary restraining order. A200-A201. Potawatomi Casino petitioned this Court to review the denial of injunctive relief, C1400-C1402, but this Court declined to review the Circuit Court's decision. *See Waukegan Potawatomi Casino, LLC v. The Illinois Gaming Board et al.*, No. 1-21-1561 (1st Dist. Dec. 16, 2021) (Smith, J., Lavin, J., Cobbs, J.).

The Circuit Court Grants the Motion to Dismiss

Back before the Circuit Court, the City of Waukegan (and the Gaming Board) moved to dismiss the Complaint. C1403-C1507; C1510-C1518. On May 13, 2022, the Circuit Court held a hearing and granted the Defendants' respective motions to dismiss, finding Potawatomi Casino lacked standing to proceed with its lawsuit. A33-A35. In particular, the Circuit Court found that even if Potawatomi Casino was granted the relief it

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

was requesting, Potawatomi Casino would not actually receive the relief it wanted. A34. On May 31, 2022, the Circuit Court entered its Order, dismissing the Complaint with prejudice. A4. This appeal followed. A45-A46.

The Gaming Board Issues a Formal License to Full House

On December 8, 2021, the Gaming Board took formal steps toward issuing a casino license for the City of Waukegan and made a finding of preliminary suitability in favor of Full House Resorts, Inc.[2] *See* Brief of the City of Waukegan at 9-10. On January 3, 2023, the City Council of the City of Waukegan passed Resolution No. 23-R-03, entitled "A Resolution Approving a Ground Lease and a Development and Host Community Agreement for the Construction, Development, and Operation of 'The Temporary By American Place' and the American Place Casino." *See* Certification of Charles N. Insler at ¶5. On February 16, 2023, the Gaming Board issued a temporary operating permit to Full House, allowing Full House to operate the temporary casino in Waukegan. *See* Certification of Charles N. Insler at ¶8. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners License to Full House to operate its City of Waukegan casino. *See* Certification of Charles N. Insler at ¶10; *see also* Illinois Gaming Board, Board Meeting of June 15, 2023 at 1:05:00 to 1:06:30, available here.

This Court Reverses the Circuit Court

On July 28, 2023, this Court issued its Decision, finding the Circuit Court erred when it dismissed Potawatomi Casino's complaint for lack of standing. *Waukegan*

[2] Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the subsidiary company operating the Waukegan casino under the name American Place. *See* Certification of Charles N. Insler at ¶9. The Petition for Rehearing refers to the two entities, collectively, as "Full House."

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Potawatomi Casino, 2023 IL App (1st) 220883, ¶1. In doing so, this Court found that Potawatomi Casino had adequately alleged the defendants violated provisions of the Illinois Gambling Act and that these violations denied Potawatomi Casino its right to a fair certification process. *See id.* The City of Waukegan now seeks a rehearing of this Decision, which has drastic implications.

REHEARING ARGUMENT

A. This Court Overlooked Prior Precedents on Private Rights of Action

The Defendants argued this Court could have affirmed the Circuit Court's dismissal because the Illinois Gambling Act does not provide a private right of action. *Waukegan Potawatomi Casino, LLC v. Illinois Gaming Bd.*, 2023 IL App (1st) 220883, ¶19. This Court's Decision rejected that argument, finding the Potawatomi Casino was not seeking to bring an independent cause of action "akin to a tort, but rather [was] seeking to force statutory compliance." *Id.* (citing *Noyola v. Board of Education of Chicago*, 179 Ill. 2d 121, 132 (1997) and *Landmarks Illinois v. Rock Island County Board*, 2020 IL App (3d) 190159, ¶62). This Court's analysis of the private right of action arguments did not extend beyond this single, solitary sentence. *See id.* Respectfully, this limited analysis overlooks and misapprehends prior precedents. *See, e.g., Carmichael v. Pro. Transportation, Inc.*, 2021 IL App (1st) 201386, ¶35; *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶14.

In *Carmichael* – a case decided by the First District a year after the Third District decided *Landmarks Illinois*[3] – this Court held that the trial court properly granted the defendant's motion for summary judgment because there was no private right of action for

[3] The most recent appellate court decision on point should be the controlling one. *See Schmidt v. Ameritech Illinois*, 329 Ill. App. 3d 1020, 1029-30 (1st Dist. 2002).

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

violations of the Illinois Vehicle Code. 2021 IL App (1st) 201386, ¶35. In *Carmichael,* as in this case, the plaintiff's complaint sought a declaratory judgment the defendant had violated a statutory provision. *Id.* at ¶7, ¶15. But the exact nature of the cause of action was irrelevant. A given statute either "provides for a private right of action or it does not — it is not a fact-specific inquiry dependent on the particular circumstances of any given case." *Id.* at ¶34. *Carmichael* is no outlier. In *Jackson,* the Fourth District noted how the "doctrine of standing precludes a plaintiff from bringing a private cause of action based on a statute *unless the statute expressly confers standing on an individual or class to do so.*" *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶14. *Jackson,* like *Carmichael,* involved an action for declaratory judgment, with the plaintiff seeking a finding the defendants had violated a statutory provision. *Id.* at ¶¶1, 5.

This Court's Decision overlooks the *Carmichael* and *Jackson* decisions. This Court's Decision also misapprehends the nature of a declaratory judgment. "Declaratory relief *presupposes* the existence of a judicially remediable right" and thus cannot be pursued without a predicate right of action. *Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 929 F.3d 865, 871 n.2 (7th Cir. 2019) (emphasis added). This means that it "does not matter" that the plaintiff "seeks declaratory, rather than monetary, relief" under an Illinois statute. *Id.* A contrary holding – in which a plaintiff can still pursue declaratory relief – is "tantamount to allowing a private cause of action," where none exists. *Villasenor v. Am. Signature, Inc.*, 2007 WL 2025739, at *6 (N.D. Ill. July 9, 2007) (rejecting plaintiff's attempt to bring a declaratory judgment action under the Illinois Retail Installment Sales Act). This Court's Decision misapprehends the nature of a declaratory judgment by adopting this contrary holding.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

B. This Court Overlooked a Recent Resolution by the City of Waukegan

The Circuit Court dismissed Potawatomi Casino's complaint for lack of standing. *Waukegan Potawatomi Casino,* 2023 IL App (1st) 220883, ¶9. This Court's Decision reversed that ruling, accepting the Potawatomi Casino's arguments that it had standing based on the City of Waukegan's purported failure to adequately follow the certification process requirements found in section 7(e-5) of the Gambling Act. *Id.* at ¶¶13-17. This Court noted how Potawatomi Casino sought declarations that the City failed to satisfy statutory requirements for certification and that the Illinois Gaming Board lacked the authority to issue a casino license "until the City complies with the [Gambling Act]." *Id.* at ¶17. Respectfully, this analysis overlooks the City of Waukegan's January 3, 2023 resolution, which approved a ground lease and development and host community agreement with FHR-Illinois LLC.

On January 3, 2023, the City Council of the City of Waukegan passed Resolution No. 23-R-03, entitled "A Resolution Approving a Ground Lease and a Development and Host Community Agreement for the Construction, Development, and Operation of 'The Temporary By American Place' and the American Place Casino." *See* Certification of Charles N. Insler at ¶¶5-7; Exhibit 1 to Certification of Charles N. Insler. As part of this Resolution, the City Council approved the Ground Lease with FHR-Illinois, LLC and the Development and Host Community Agreement ("DHCA") with FHR-Illinois, LLC. *See id.* at ¶¶6-7.

In the DHCA, the City of Waukegan warranted that all of the Gambling Act's section 7(e-5) requirements had been satisfied. DHCA at ¶9.2(e). This is not a bare conclusion. The DHCA describes the location of both the temporary casino and the

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permanent casino. *See* DHCA at Exhibits E-F (Temporary Facility); Exhibits A-D (Project Description and Project Plan). The Ground Lease describes the revenue sharing arrangement between the City of Waukegan and FHR-Illinois, LLC. *See* Ground Lease, §4.2 (noting annual rent payments would be the greater of $3 million or 2.5% of adjusted gross receipts). The DHCA also describes any relevant zoning, licensing, or public health considerations. *See* DHCA at §5.1.

The signed DHCA and Ground Lease demonstrate there was mutual agreement on the required Gambling Act items. The two documents contain more than *two hundred pages* of documentation and negotiation. More to the point, Resolution No. 23-R-03, the Ground Lease, and the DHCA were all signed in January 2023, *before* the Gaming Board issued the license to FHR-Illinois, LLC. *See* Certification of Charles N. Insler at ¶5, ¶10. Accordingly, the Gaming Board issued the Waukegan license "only after the corporate authority of the municipality" had made the necessary certifications. *See* 230 ILCS §10/7(e-5). This Court's Decision was incorrect when it found the Potawatomi Casino might be successful in proving the City failed to satisfy the statutory requirements for certification and that the Gaming Board lacked authority to issue a license because the City had not fully complied with the Gambling Act's requirements. *See Waukegan Potawatomi Casino,* 2023 IL App (1st) 220883, ¶17.

Admittedly, Resolution No. 23-R-03 and the DHCA are not in the appellate record. The explanation for that is a matter of timing – the Circuit Court's Judgment was appealed in June 2022, more than six months before the City of Waukegan passed the Resolution with the accompanying Ground Lease and DHCA. These documents could not have been presented below. *See Am. Nat. Bank & Tr. Co. of Chicago v. City of Chicago*, 4 Ill. App.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

3d 127, 130 (1st Dist. 1971) ("The obvious reason that these events concerning the additional application were not of record was that they had not yet occurred at the time of trial."). These documents are properly before this Court, particularly where the City of Waukegan has argued mootness. *See Unity Ventures v. Pollution Control Bd.*, 132 Ill. App. 3d 421, 430 (2d Dist. 1985). These documents are also properly before the Court because they are public documents subject to judicial notice.[4] *Am. Nat. Bank & Tr.,* 4 Ill. App. 3d at 130 ("[O]rdinances, decisions and rulings of the City Council are matters of public record, and as such this Court may take judicial notice thereof."). This Court's Decision failed to consider Resolution No. 23-R-03.

C. This Court Overlooked Binding Precedent from the Illinois Supreme Court on Exclusive Jurisdiction

As an alternative ground for affirming, the City of Waukegan argued the Gaming Board possessed the exclusive jurisdiction to resolve the issues raised by Potawatomi Casino. This Court's Decision found that argument unpersuasive, though the analysis for doing so was limited to a single footnote. *Waukegan Potawatomi Casino*, 2023 IL App (1st) 220883, ¶19 n.4. Respectfully, this limited analysis overlooks binding precedent from the Illinois Supreme Court and misapprehends the exclusive jurisdiction doctrine.

In *J & J Ventures Gaming,* the Fifth District determined the Gaming Board had exclusive jurisdiction over the parties' controversy surrounding the placement of video game terminals within licensed establishments. *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2015 IL App (5th) 140092, ¶1, ¶32. In doing so, the Fifth District found that whether certain

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[4] The Resolution is available here. The Ground Lease is available here. The DHCA is available here and its accompanying exhibits are available here.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

conduct violated the Video Gaming Act was "an exclusive question for the Gaming Board." *Id.* at ¶48. The Illinois Supreme Court affirmed the Fifth District's analysis, holding the "comprehensive statutory scheme" surrounding gaming operations "precluded [the courts] from addressing the merits of the parties' claims." *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶42. This Court's Decision fails to grapple with – or even consider – the *J & J Ventures Gaming* case.

This Court's Decision overlooks *J & J Ventures Gaming;* it also misapprehends the doctrine of exclusive jurisdiction. As a general rule, Illinois courts have original jurisdiction over all justiciable matters. *Illinois Ins. Guar. Fund v. Priority Transportation, Inc.*, 2019 IL App (1st) 181454, ¶45. However, the "legislature may vest exclusive original jurisdiction in an administrative agency when it has explicitly enacted a comprehensive statutory administrative scheme." *Id.* Gaming represents one such statutory administrative scheme. Indeed, the Illinois Supreme Court expressly noted the "comprehensive statutory scheme" surrounding gaming when it found the parties' controversy in *J & J Ventures Gaming* was within the "exclusive, original jurisdiction" of the Illinois Gaming Board. 2016 IL 119870, ¶42; *see also id.* at ¶32 ("[T]his statutory scheme demonstrates the legislature's explicit intent that the Gaming Board have exclusive jurisdiction over the video gaming industry and the use agreements that are a necessary prerequisite of engaging in that industry.").

The Gaming Board's exclusive jurisdiction naturally extends to the question of whether Waukegan's certifying resolutions satisfied the statutory requirements of the Gambling Act. The Gaming Board's June 15 decision to issue the license to Full House *necessarily* meant the Gaming Board found the City's certifying resolutions complied with

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

the Gambling Act – which is, of course, the very act the Gaming Board is charged with overseeing. *See* 230 ILCS 10/5. In enacting the Gaming Act, the Legislature gave the Gaming Board not only "the powers and duties specified in this Act," but "all other powers necessary and proper to fully and effectively execute this Act for the purpose of administering, regulating, and enforcing the system of riverboat and casino gambling established by this Act." *Id.* This Court lacked the legal authority to question whether the certifying resolutions were deficient.

Finally, this Court misapprehended the law when it accepted the Potawatomi Casino's *allegations* that the City's resolutions were deficient under the Gambling Act. *See Waukegan Potawatomi Casino,* 2023 IL App (1st) 220883, ¶14 ("According to the *allegations of the complaint. . .*") (emphasis added). The question of whether a party has complied (or substantially complied) with a statutory requirement is a question of law – *not a question of fact*. *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (4th Dist. 2009). The Potawatomi Casino could not, therefore, overcome a motion to dismiss by simply *alleging* the City's resolutions were deficient. *See id.* This Court's Decision failed to include any analysis or discussion of the comprehensive statutory scheme that governs gaming in the state of Illinois and failed to distinguish between questions of law and questions of fact.

CONCLUSION

This Court should rehear the case and affirm the decision of the trial court.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 11 pages or 3,078 words.

By: */s/ Glenn E. Davis*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

CERTIFICATE OF SERVICE

I certify that a copy of the City of Waukegan's Petition for Rehearing will be served by email to the following attorneys of record on August 18, 2023:

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT A

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

2023 IL App (1st) 220883

No. 1-22-0883

Opinion filed July 28, 2023

FIFTH DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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

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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

¶ 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;

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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;

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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*).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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 ***.").

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

¶ 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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

¶ 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).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

¶ 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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

No. 1-22-0883

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. Glenn E. Davis and Charles N. Insler, of HeplerBroom LLC, of St. Louis, Missouri, for other appellee.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

No. 1-22-0883

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellant, vs. 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, Defendants-Appellees.	Appeal from the Circuit Court of Cook County, Illinois Chancery Division Circuit Court No. 21 CH 05784 Presiding Judge: Cecilia A. Horan Circuit Court Judgment: May 13, 2022 Date of Appeal: June 10, 2022 Date of Appellate Opinion: July 28, 2023

CERTIFICATION OF CHARLES N. INSLER

Charles N. Insler certifies as follows:

1. My name is Charles N. Insler. I am over the age of twenty-one (21) and under no legal disability.

2. I have personal knowledge of the facts in this §1-109 certification.

3. This certification is given in support of Defendant-Appellee City of Waukegan's Petition for Rehearing.

4. I am an attorney with the law firm of HeplerBroom LLC, licensed to practice in Illinois. I am one of the attorneys for the City of Waukegan.

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5. On January 3, 2023, the City Council of the City of Waukegan passed Resolution No. 23-R-03, entitled "A Resolution Approving a Ground Lease and a Development and Host Community Agreement for the Construction, Development, and Operation of 'The Temporary By American Place' and the American Place Casino."

6. As part of this Resolution, the City Council approved the Ground Lease with FHR-Illinois, LLC and the Development and Host Community Agreement with FHR-Illinois, LLC.

7. A true correct copy of Resolution No. 23-R-03 (including the Ground Lease and Development and Host Community Agreement) is attached as Exhibit 1.

8. On February 16, 2023, the Gaming Board issued a temporary operating permit to FHR-Illinois LLC, d/b/a American Place, allowing American Place to operate the temporary casino. *See* Statement of Administrator Marcus Fruchter, Illinois Gaming Board, Board Meeting of June 15, 2023, at 41:20 to 41:55, available here.[1]

9. Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the company operating the Waukegan casino under the name American Place. *See* Statement of Paul Jensen, Illinois Gaming Board, Board Meeting of June 15, 2023, at 43:30 to 43:40, available here. On January 27, 2022, the Gaming Board approved Full House Resorts' request to amend its application, so that its application was on behalf of FHR-Illinois, LLC, and no longer Full House Resorts, Inc. *See* Illinois Gaming Board, Open Session Minutes of January 27, 2022, attached as Exhibit E at 3. All of the Gaming Board's prior actions, approvals, and findings (including the finding of preliminary suitability) transferred to FHR-Illinois LLC. *Id.*

10. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners

[1] The full cite is:
https://www.igb.illinois.gov/ViewMeetingVideo.aspx?BoardDate=6/15/2023%2012:00:00%20AM

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License to FHR-Illinois LLC to operate its City of Waukegan casino. *See* Illinois Gaming Board, Board Meeting of June 15, 2023, at 1:05:00 to 1:06:30, available here.

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.

Charles N. Insler

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EXHIBIT 1

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CITY OF WAUKEGAN

RESOLUTION NO. 23—R—03

A RESOLUTION APPROVING A GROUND LEASE AND A DEVELOPMENT AND HOST COMMUNITY AGREEMENT FOR THE CONSTRUCTION, DEVELOPMENT, AND OPERATION OF "THE TEMPORARY BY AMERICAN PLACE" AND THE AMERICAN PLACE CASINO

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN

ON THE 03rd DAY OF JANUARY, 2023

Published in pamphlet form by authority of the City Council, of the City of Waukegan, Lake County, Illinois, on the 04th day of JANUARY, 2023

[signature]

CITY CLERK JANET E. KILKELLY

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RESOLUTION NO. 23—R—03

A RESOLUTION APPROVING A GROUND LEASE AND A DEVELOPMENT AND HOST COMMUNITY AGREEMENT FOR THE CONSTRUCTION, DEVELOPMENT, AND OPERATION OF "THE TEMPORARY BY AMERICAN PLACE" AND THE AMERICAN PLACE CASINO

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, in 2019, the Illinois General Assembly adopted Public Act 101-0031 which authorized the issuance of an owner's license to conduct casino gambling in the City of Waukegan; and

WHEREAS, in the fall of 2019, after an open request for qualifications/proposal process and public hearing, the City of Waukegan adopted resolutions certifying three separate applicants to the Illinois Gaming Board ("***IGB***") as potential operators for the Waukegan casino license, including Full House Resorts, Inc.; and

WHEREAS, in December of 2021, the IGB determined that Full House Resorts, Inc. was preliminarily suitable for the owner's license designated for the City of Waukegan; and

WHEREAS, Full House Resorts, Inc. has created a wholly-owned subsidiary, FHR-Illinois LLC ("***Developer***"), to develop and operate both a temporary and permanent casino gaming facility along with appurtenant and accessory buildings and improvements in the City of Waukegan (collectively, the "***Project***"); and

WHEREAS, Developer seeks to develop and operate the Project on three adjacent parcels of property located within the City of Waukegan including (i) one parcel owned by the City ("***City-Owned Parcel***"); and (ii) two parcels owned by Developer (collectively "***10-Acre Parcel***" and together with the City-Owned Parcel, referred to herein as the "***Development Property***"); and

WHEREAS, on May 2, 2022, the City Council adopted Resolution 22-R-57 approving that certain Memorandum of Key Terms with the Developer summarizing the preliminary terms of agreement between the parties regarding the ownership, construction, development, and operation of the Project ("***Memorandum***"); and

WHEREAS, the City and the Developer subsequently negotiated agreements to facilitate the development and operation of the Project in accordance with the Memorandum, including (i) a ground lease over the City-Owned Parcel to allow for the long-term use of the City-Owned Parcel for the Project ("***Ground Lease***") which includes a $30 million purchase option ("***Purchase Option***"); and (ii) a Development and Host Community Agreement to govern Developer's construction, development, and operation of the Project ("***DHCA***"); and

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WHEREAS, pursuant to Section 2-481 of the City of Waukegan Code of Ordinances, the City Council has determined that (i) conveying the City-Owned Parcel to the Developer in accordance with the Ground Lease and the Purchase Option will generate the highest and best economic return to the City, including, but not limited to, increased tax revenue, jobs for local workers, and elimination of blight; and (ii) the terms of the conveyance to the Developer under the Ground Lease and Purchase Option are substantially and materially the same terms presented for consideration and public hearing in 2019; and

WHEREAS, the City Council further determines that the commitments made by the Developer in the Memorandum regarding the development and operation of the Project are substantially and materially incorporated and elaborated upon in the DHCA; and

WHEREAS, the Mayor and the City Council find that it is in the best interests of the City and its residents to approve and authorize the execution of the Ground Lease and the DHCA pursuant to, and in accordance with, its home rule powers; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: RECITALS. The recitals set forth above are incorporated into this Section 1 by this reference as findings of the City Council.

SECTION 2: APPROVAL OF GROUND LEASE. The City Council hereby approves the Ground Lease with the Developer in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by Corporation Counsel.

SECTION 3: APPROVAL OF DEVELOPMENT AND HOST COMMUNITY AGREEMENT. The City Council hereby approves the DHCA with the Developer in substantially the form attached to this Resolution as **Exhibit B**, and in a final form to be approved by Corporation Counsel.

SECTION 4: AUTHORIZATION TO EXECUTE. The City Council hereby authorizes and directs the Mayor and the City Clerk to execute and seal, on behalf of the City, the Ground Lease, the DHCA, and all other documents and consents necessary to effectuate the intent of those instruments.

SECTION 5: EFFECTIVE DATE. This resolution shall be in full force and effect from and after its passage and approval by three quarters of the whole city council.

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PASSED THIS **03rd** DAY OF **JANUARY**, 2023.

RESOLUTION NO. **23—R—03**
CITY OF WAUKEGAN

MAYOR ANN B. TAYLOR

ATTEST:

CITY CLERK JANET E. KILKELLY

ROLL CALL: Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner, Ald Rivera, Ald Florian, Ald Hayes, Ald Bolton.

AYE: Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner, Ald Rivera, Ald Florian, Ald Hayes, Ald Bolton.

NAY: None.

ABSENT: None.

ABSTAIN: None.

EXHIBIT A

GROUND LEASE

EXHIBIT B

DEVELOPMENT AND HOST COMMUNITY AGREEMENT

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EXHIBIT A

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Execution Copy

GROUND LEASE

between

CITY OF WAUKEGAN,
an Illinois home rule municipality
("*Landlord*")

and

FHR-ILLINOIS LLC,
a Delaware limited liability company
("*Tenant*")

For the Premises Located At:

600 Lakehurst Road
Waukegan, Illinois

Date of Lease: January 18, 2023

Execution Copy

Table of Contents

ARTICLE 1 DEFINITIONS 2
Section 1.1 Definitions 2

ARTICLE 2 THE DEMISE FOR THE TERM 8
Section 2.1 Demise 8
Section 2.2 Term 8
Section 2.3 Lease Not Terminable Except as Provided Herein 8
Section 2.4 Purchase Option 8
Section 2.5 Delivery of Possession 9
Section 2.6 Termination of DHCA 9

ARTICLE 3 QUIET ENJOYMENT; "AS IS" CONDITION 9
Section 3.1 Covenant of Quiet Enjoyment 9
Section 3.2 As Is Condition 9

ARTICLE 4 RENT 10
Section 4.1 Rent 10
Section 4.2 Annual Minimum Rent 10
Section 4.3 Proration 11
Section 4.4 Place of Payment 11
Section 4.5 Absolute Net Lease 11
Section 4.6 Rent is Not Contingent 12

ARTICLE 5 PAYMENT OF TAXES, ASSESSMENTS, AND OTHER IMPOSITIONS; UTILITIES 12
Section 5.1 Payment of Impositions 12
Section 5.2 Place of Payment 14
Section 5.3 Limitations 14
Section 5.4 Right to Contest Impositions 14
Section 5.5 Failure to Pay Impositions 14
Section 5.6 Leasehold Parcel Identification Number 15
Section 5.7 Payment of Public Utility Charges 15
Section 5.8 Reduction of Assessed Valuation 15
Section 5.9 Landlord Cooperation 15

ARTICLE 6 CONSTRUCTION 15
Section 6.1 Improvements 15
Section 6.2 Control of Construction 15
Section 6.3 Title to Improvements 16

ARTICLE 7 USE AND OPERATION OF THE PREMISES 16
Section 7.1 Use of the Premises 16
Section 7.2 Compliance with Requirements of Law and Governmental Requirements 16
Section 7.3 Unforeseen Requirements 16
Section 7.4 No Ongoing Interest 17

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

ARTICLE 8 INSURANCE AND INDEMNIFICATION 17
Section 8.1 General Liability and Casualty Insurance 17
Section 8.2 Additional Policy Requirements 17
Section 8.3 Certificates of Insurance and Payment of Premiums 17
Section 8.4 Liability for Premium and Deductible Amounts 17
Section 8.5 Tenant's Indemnity. 18
Section 8.6 Subrogation 19

ARTICLE 9 CONDITION OF IMPROVEMENTS 19
Section 9.1 Tenant Obligation to Maintain 19
Section 9.2 No Landlord Obligation 19
Section 9.3 Alteration of Improvements 20
Section 9.4 Liens. 20
Section 9.5 Environmental Matters. 22

ARTICLE 10 DAMAGE OR DESTRUCTION 23
ARTICLE 11 SUBLETTING AND ASSIGNMENT 23
Section 11.1 No Assignment or Subletting 23
Section 11.2 Transfers of Control 24
Section 11.3 Assignment by Landlord 24

ARTICLE 12 CONDEMNATION 24
Section 12.1 General 24
Section 12.2 Notice 24
Section 12.3 Waiver 25
Section 12.4 Major Condemnation 25
Section 12.5 Partial Condemnation 25
Section 12.6 Allocation of Condemnation Award 25
Section 12.7 Temporary Easement 26
Section 12.8 Benefit of Landlord and Tenant 26
Section 12.9 Reserved 27
Section 12.10 Arbitration 27

ARTICLE 13 EASEMENTS; LANDLORD'S ACCESS 28
Section 13.1 Easements. 28
Section 13.2 Landlord's Access to Premises 28
Section 13.3 Application(s) and Filings 28

ARTICLE 14 DEFAULT PROVISIONS 29
Section 14.1 Tenant's Default. 29
Section 14.2 Landlord's Cure of Tenant's Default 29
Section 14.3 Interest on Unpaid Sums 30
Section 14.4 Default by Landlord 30
Section 14.5 Intentionally Omitted. 30
Section 14.6 Leasehold Mortgagee's Right to Cure 30
Section 14.7 Gaming Laws 31
Section 14.8 Future Modifications 31

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

ARTICLE 15 FINANCING 32
Section 15.1 Landlord's Financing 32
Section 15.2 Tenant's Financing 32

ARTICLE 16 HOLDING OVER AND SURRENDER 36
ARTICLE 17 PROPERTY OF TENANT 36
Section 17.1 Personal Property, Trade Fixtures and Equipment 36
Section 17.2 Abandonment of Property 36

ARTICLE 18 ESTOPPEL CERTIFICATES 37
Section 18.1 Estoppel Certificates 37

ARTICLE 19 NOTICES 37
Section 19.1 Manner of Making Notices 37
Section 19.2 When Notice Deemed Given 39

ARTICLE 20 MISCELLANEOUS 39
Section 20.1 Covenants to Run with the Land 39
Section 20.2 Survival of Indemnity and Payment Obligations 39
Section 20.3 No Merger of Estates 39
Section 20.4 Relationship of Parties 39
Section 20.5 Successors and Assigns 40
Section 20.6 Entire Agreement 40
Section 20.7 Force Majeure Occurrences 40
Section 20.8 Memorandum of Lease 40
Section 20.9 Invalidity of Provisions 40
Section 20.10 Remedies Cumulative 41
Section 20.11 Waiver of Remedies Not to be Inferred 41
Section 20.12 Amendments 41
Section 20.13 Singular and Plural 41
Section 20.14 Captions 41
Section 20.15 Governing Law; Consent to Jurisdiction 41
Section 20.16 Attorneys' Fees 41
Section 20.17 Counterparts 42
Section 20.18 Brokers 42
Section 20.19 Time is of the Essence 42
Section 20.20 No Third Party Beneficiaries 42
Section 20.21 References to DHCA: Conflicts 42
Section 20.22 Guaranty 42
Section 20.23 Landlord's Representations and Warranties 42
Section 20.24 No Consequential Damages 43
Section 20.25 Waiver of Jury Trial 43
Section 20.26 No Waiver of Regulatory Authority 43

ARTICLE 21 EXHIBITS AND ADDENDA TO LEASE 43

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GROUND LEASE FOR CITY-OWNED PARCEL
600 LAKEHURST ROAD, WAUKEGAN, ILLINOIS

THIS GROUND LEASE ("*Ground Lease*"), made and entered into as of the 18th day of January, 2023 (the "*Effective Date*"), by and between the **CITY OF WAUKEGAN**, an Illinois home rule municipality ("*Landlord*"), and **FHR-ILLINOIS LLC**, a Delaware limited liability company ("*Tenant*"). Landlord and Tenant are hereinafter sometimes referred to individually as a "*Party*" and collectively as the "*Parties*."

WITNESSETH:

A. Landlord is the owner of the approximately 31.7-acre parcel of real property commonly known as 600 Lakehurst Road, Waukegan, Illinois ("*Land*").

B. Landlord and Tenant are parties to that certain Development and Host Community Agreement (as may be amended from time to time, the "*DHCA*") of even date herewith and to be recorded in the Lake County Recorder's Office on or about the Effective Date, which contemplates, among other things, for the execution and delivery by the Parties, upon or prior to the satisfaction of conditions precedent set forth therein, of a ground lease for the Premises by Landlord and Tenant, and the development thereon by Tenant of temporary and permanent casino facilities and related improvements on the Land and certain other parcel(s) of land owned by Developer.

C. The Project and the terms and conditions under which Tenant shall design, develop, construct and operate the Project are more particularly described in the DHCA

D. This Ground Lease is being made in conformance with and pursuant to the authority given to Landlord by resolution adopted by the Waukegan City Council on January 3, 2023 as Resolution No. 23-R-03.

E. Landlord and Tenant desire to enter into this Ground Lease to set forth the terms and conditions upon which Tenant will occupy and possess the Premises.

For and in consideration of the rent hereinafter provided, and for and in consideration of the mutual agreements herein set forth and for other good and valuable consideration, Landlord and Tenant hereby agree as follows:

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ARTICLE 1
DEFINITIONS

Section 1.1 Definitions. All defined terms shall have the meanings set forth within the text of this Ground Lease with certain other terms being defined in this Article 1 and each such defined term shall be inclusive, to be interpreted in its broadest sense. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the DHCA.

AAA will have the meaning ascribed thereto in Section 12.10 below.

Access Easement means that certain Site Development, Easement and Amendatory Agreement dated September 6, 2007 and recorded with the Lake County Recorder on September 14, 2007 as document 6242149.

Adjusted Gross Receipts. The term "Adjusted Gross Receipts" has the same meaning given to such term in Section 4 of the Illinois Gambling Act, as amended (230 ILCS 10/1 *et seq.*) (or any successor Act thereto). Adjusted Gross Receipts generated by the Temporary Facility and the Permanent Facility shall be calculated in the same manner as it is calculated for the State of Illinois' assessment of the privilege taxes pursuant to Section 13 of the Illinois Gambling Act, as amended (230 ILCS 10/1 *et seq.*) (or any successor Act thereto) and, if such manner of calculation is modified at any time during the Term, the same shall be deemed to be Adjusted Gross Receipts for purposes of this Ground Lease.

Adjustment Date will have the meaning ascribed thereto in Section 4.2(A) below.

Affiliate means a Person, or group of Persons, that, directly or indirectly, controls or is controlled by or is under common control with another Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person or group of Persons shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Annual Minimum Rent means the net base rental to be paid by Tenant to Landlord, defined as such and set forth in Article 4.

Annual Percentage Minimum Rent will have the meaning ascribed thereto in Section 4.2 below.

Application(s) and Filings (or *Application(s) or Filings* or other variations on such term) shall mean any instrument, document, agreement, certificate, application, or filing (or amendment of any of the foregoing): (a) necessary or appropriate for any alteration, addition, development, redevelopment, modification, expansion, demolition, restoration, or other construction or reconstruction work affecting any or all improvements from time to time constituting part of the Premises and/or the Improvements, or the construction or reconstruction of any new improvements, or repair of any existing improvements, located on or at the Premises, that this Ground Lease or the DHCA requires or allows (collectively, "*Construction Work*"), including any application for any building permit, certificate of

occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision plat, or such other instrument as Tenant may from time to time request in connection with the same; (b) to enable Tenant to obtain any abatement, deferral or other benefit that may otherwise be reasonably available with respect to the Impositions; (c) if and to the extent (if any) this Ground Lease or the DHCA permits, to allow Tenant to change the use or zoning of the Premises and/or the Improvements; (d) to enable Tenant from time to time to seek any approvals from any governmental authority required in connection with any of the matters described in the preceding clause (a) or to use and operate the Premises and/or the Improvements in accordance with this Ground Lease or the DHCA; (e) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Premises and/or the Improvements contemplated by this Ground Lease or the DHCA; or (f) that this Ground Lease otherwise requires Landlord to sign for Tenant.

Casualty means any damage or destruction (including any damage or destruction for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all of the Project.

Collateral Trust Agreement means that certain Collateral Trust Agreement, dated as of February 12, 2021 among Full House Resorts, Inc., a Delaware corporation, Tenant, the other grantors party thereto from time to time, the Collateral Trustee, the Trustee (as defined in the Collateral Trust Agreement), the Administrative Agent (as defined in the Collateral Trust Agreement) and the other Secured Debt Representatives (as defined in the Collateral Trust Agreement) from time to time party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

Collateral Trustee means Wilmington Trust, National Association, as collateral trustee under the Collateral Trust Agreement for the benefit of the Secured Parties (as defined in the Collateral Trust Agreement) pursuant to the Collateral Trust Agreement, in such capacity and together with its successors and assigns in such capacity. Landlord acknowledges that, as of the Effective Date, the Collateral Trustee is, or intends to become, a Leasehold Mortgagee under this Ground Lease.

Declaration means that certain First Amended Declaration of Protective Covenants, Conditions, Restrictions and Easements for Fountain Square of Waukegan dated August 27, 2005 and recorded with the Lake County Recorder on September 2, 2005 as document number 5853181, as amended.

Dispute Notice will have the meaning ascribed thereto in Section 12.10 below.

Effective Date means the date on which the last of Landlord and Tenant executes this Ground Lease, which date shall be reflected on the cover page and preambles to this Ground Lease.

Environmental Laws means the Resource Conservation and Recovery act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and all applicable state and local environmental laws, ordinances, rules, requirements, and

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regulations, as any of the foregoing may have been or may be from time to time amended, supplemented or supplanted and any and all other federal, state or local laws, ordinances, rules, requirements and regulations, now or hereafter existing, relating to the preservation of the environment or the regulation or control of toxic or hazardous substances or materials.

Fee Mortgage means any financing obtained by Landlord, as evidenced by any mortgage, assignment of leases and rents, or other instruments, and secured by the fee ownership interest of Landlord in the Premises and any direct or indirect interest in such fee estate, including Landlord's reversionary interest in the Improvements after the Expiration Date, including any extensions, modifications, amendments, replacements, supplements, renewals, refinancings, and consolidations thereof.

Fee Mortgagee shall mean the holder of a Fee Mortgage.

Force Majeure will have the meaning ascribed thereto in the DHCA.

Gaming will have the meaning ascribed thereto in the DHCA.

Gaming Area will have the meaning ascribed thereto in the DHCA.

Gaming Authority will have the meaning ascribed thereto in the DHCA.

Gaming Laws means the gaming laws or regulations of any jurisdiction or jurisdictions to which the Tenant is, or may at any time after the date of this Ground Lease, be subject, including, without limitation, the Illinois Gambling Act, 230 ILCS 10/1 et seq. and the rules and regulations promulgated thereunder.

Governmental Authority or *Governmental Authorities* will have the meaning ascribed thereto in the DHCA.

Ground Lease Commencement Date means the Effective Date.

Ground Lease Rent Commencement Date means the earlier to occur of (1) the date on which Tenant opens the Temporary Facility for business to the general public on the Premises or (2) the date that is five (5) days after the IGB issues the temporary operating permit for the Temporary Facility.

Guarantor means Full House Resorts, Inc., a Delaware corporation.

IGB means the Illinois Gaming Board.

Impositions will have the meaning ascribed thereto in Section 5.1 below.

Improvements means, collectively, the Pre-Existing Improvements and any buildings, improvements and fixtures hereafter constructed or erected on the Land in accordance with the DHCA, as well as any future additions, replacements, or alterations thereto, and any attachments, appliances, equipment, machinery, and other fixtures attached to said

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buildings and improvements or otherwise located on the Premises, but excludes the Public Improvements.

Institutional Lender means: (1) a bank (state, federal or foreign), trust company (in its individual or trust capacity), insurance company, credit union, savings bank (state or federal), pension, welfare or retirement fund or system, real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner), federal or state agency regularly making or guaranteeing mortgage loans, investment bank, subsidiary of a Fortune 500 company, real estate mortgage investment conduit, or securitization trust; (2) any issuer of collateralized mortgage obligations or any similar investment entity (provided that such issuer or other entity is publicly traded or was or is sponsored by an entity that otherwise constitutes an Institutional Lender or has a trustee that is, or is an Affiliate of, any entity that otherwise constitutes an Institutional Lender), or any Person acting for the benefit of such an issuer; (3) any Person actively engaged in commercial financing and having total assets (on the date when its Leasehold Mortgage is executed and delivered, or on the date of such Leasehold Mortgagee's acquisition of its Leasehold Mortgage by assignment) of at least $10,000,000; (4) any Person that is controlled (as such term is defined in the definition of "Affiliate" in this Section 1.1) by, is a wholly owned subsidiary of, or is a combination of any one or more of the foregoing Persons; (5) any of the foregoing when acting as trustee, agent or similar representative for other lender(s), noteholder(s) or other investor(s), whether or not such other lender(s), noteholder(s) or other investor(s) are themselves Institutional Lenders; (6) any purchase-money Leasehold Mortgagee; or (7) any Person approved by any Gaming Authority (including the IGB) to secure all or any portion of its financing pursuant to a Leasehold Mortgage. The fact that a particular Person (or any Affiliate of such Person) is a partner, member, or other investor of the then Tenant shall not preclude such Person from being an Institutional Lender and a Leasehold Mortgagee provided that: (x) such entity has, in fact, made or acquired a bona fide loan to Tenant secured by a Leasehold Mortgage; (y) such entity otherwise qualifies as an Institutional Lender and a Leasehold Mortgagee (as applicable); and (z) at the time such entity becomes a Leasehold Mortgagee, no Tenant's Default exists, unless simultaneously cured. Landlord agrees that Collateral Trustee and each of the Secured Parties is, or shall be deemed to be, an Institutional Lender

Land means the parcel of land owned by Landlord commonly known as 600 Lakehurst Road, Waukegan, Illinois as described in Exhibit A-1 and depicted in Exhibit A-2 attached hereto and by this reference made a part of this Ground Lease, and including the easements, rights, privileges, hereditaments and other appurtenances now or hereafter appurtenant to, benefiting or serving such parcel and the Improvements (including, without limitation, the easements granted pursuant to Section 5(b) of the Access Easement, Sections 4.2 and 4.3 of the Declaration, and Section 3(b) of the Total Site Agreement), but not including any Improvements or Pre-Existing Improvements.

Landlord. In addition to the meaning ascribed to the term "Landlord" in Section 20.5 of this Ground Lease, the term "Landlord" means the Landlord named herein and any person, firm, corporation or other legal entity who or which shall succeed to Landlord's legal and equitable fee simple title to the Land (any such successor to be conclusively deemed to have assumed the obligations of Landlord herein by virtue of such succession).

Leasehold Mortgage means any encumbrance by way of mortgages, deeds of trust or other documents or instruments intended to grant an interest in real property, in the form of leasehold security, in and to all or any part of Tenant's right, title and interest in and to this Ground Lease and the leasehold estate created hereby to any Person for the purpose of obtaining financing (including but not limited to a mortgage or deed of trust to be executed after the date hereof for the benefit of Collateral Trustee), including any extensions, modifications, amendments, replacements, supplements, renewals, refinancings, and consolidations thereof.

Leasehold Mortgagee means the holder or secured party under a Leasehold Mortgage.

Limited Arbitrable Dispute will have the meaning ascribed thereto in Section 12.10 below.

Permanent Facility will have the meaning ascribed to such term in the DHCA.

Permitted Encumbrances means only the encumbrances identified on Exhibit F to this Ground Lease.

Person means any corporation, partnership, individual, joint venture, limited liability company, trust, estate, association, business, enterprise, proprietorship, governmental body or any bureau, department or agency thereof, or other legal entity of any kind, either public or private, and any legal successor, agent, representative, authorized assign, or fiduciary acting on behalf of any of the foregoing.

Pre-Existing Improvements means any improvements located on the Land on Effective Date (e.g., sewers, utility lines, etc.) including, but not limited to, any improvements constructed on the Land by Tenant in accordance with the TCE, but excludes Public Improvements.

Premises the premises leased by Landlord to Tenant under this Ground Lease, consisting of the Land and the Pre-Existing Improvements.

Project will have the meaning ascribed to such term in the DHCA.

Public Improvements means those improvements either existing as of the Effective Date or to be constructed or installed on the Land and adjoining parcels as part of the Project that are approved and accepted by the corporate authorities or appropriate officers of Landlord as public improvements of the City of Waukegan.

Purchase Option means Tenant's rights to purchase fee title to the Premises from Landlord as set forth in Section 2.4 of this Ground Lease.

Purchase Price means the purchase price for Tenant's purchase of the Premises from Landlord pursuant to its Purchase Option rights set forth in Section 2.4 of this Ground Lease.

Regulated Substance means any, each and all substances or materials now or hereafter regulated pursuant to any Environmental Laws, including, but not limited to, any such substance or material now or hereafter under any Environmental Law defined as or deemed

to be a "regulated substance," pesticide, "hazardous substance" or "hazardous waste" or included in any similar or like classification or categorization thereunder.

Rent will have the meaning ascribed thereto in Section 4.1 below.

Requirements of Law means all building and zoning laws and all other laws, ordinances, orders, rules, regulations and requirements of all Federal, State and municipal governments, including, specifically, the City of Waukegan, and the appropriate departments, commissions, boards and officers thereof, in all cases, applicable to the Land, the Improvements or Tenant.

Restoration means, upon a Casualty, the safeguarding, clearing, repair, restoration, alteration, replacement, rebuilding, and reconstruction of the damaged or remaining Project, substantially consistent with its condition before such Casualty, in compliance with this Ground Lease and the DHCA, subject to any changes in Requirements of Law that would limit the foregoing.

Site Plan means approved by Ordinance No. 22-O-29: "The Temporary Casino – Full House Resorts Site Plan, consisting of 1 sheet, prepared by Gewalt Hamilton Associates, with a latest revision date of March 9, 2022.

Substantial Casualty means a Casualty that: (a) renders thirty percent (30%) or more of the Project not capable of being used or occupied; (b) occurs less than ten (10) years before the end of the Term and renders fifteen percent (15%) or more of the Project not capable of being used or occupied; (c) requires Restoration whose cost Tenant reasonably estimates in writing would exceed One Hundred Fifty Million and No/100 Dollars ($150,000,000.00); or (d) pursuant to Requirements of Law, prevents the Project from being Restored to the same bulk, and for the same use(s), as before the Casualty.

TCE means that certain Temporary Construction Easement Agreement by and between Landlord, as grantor, and Tenant, as grantee, made as of March 22, 2022 and recorded in the Office of the Lake County Recorder on April 1, 2022 as document number 7893327.

Temporary Facility will have the meaning ascribed to such term in the DHCA.

Tenant. In addition to the meanings ascribed to the term "Tenant" in Section 20.5 of this Ground Lease, the term "Tenant" means the Tenant named herein, and any person, firm, corporation or other legal entity to whom or to which Tenant's interest in this Ground Lease shall be assigned.

Total Site Agreement means that certain Total Site Agreement dated March 20, 1970 and recorded with the Lake County Recorder on April 1, 1970 as document number 1454745, as amended.

ARTICLE 2
THE DEMISE FOR THE TERM

Section 2.1 Demise. Upon and subject to the conditions and limitations set forth in this Ground Lease, Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises situated in the County of Lake, State of Illinois, and, as to the Land, described more fully in Exhibit A-1, for the Term.

Section 2.2 Term. This Ground Lease shall remain in full force and effect for a term (the "*Term*") commencing on the Ground Lease Commencement Date and, unless sooner terminated as provided herein, continuing until, and expiring at the end of the day on the date which is ninety-nine years from the Ground Lease Commencement Date (the "*Expiration Date*").

Section 2.3 Lease Not Terminable Except as Provided Herein. Except as otherwise expressly provided for herein or the DHCA (including, without limitation, Section 7.1(d) of the DHCA), this Ground Lease shall not terminate, nor shall Tenant be entitled to any abatement, diminution, deduction, deferment, or reduction of rent, or set-off against the Rent (as defined below), nor shall the respective obligations of Landlord and Tenant be otherwise affected by reason of any damage to or destruction of the Premises by whatever cause; any taking by eminent domain or eviction by paramount title (except to the extent this Ground Lease is effected by operation of law); any lawful or unlawful prohibition of Tenant's use of the Premises for the purposes described herein; any interference with such use by any private person, corporation, or other entity; any default by Landlord under this Ground Lease; any inconvenience, interruption, cessation, or loss of business, or otherwise, caused directly or indirectly by any Requirements of Law whatsoever or by priorities, rationing, or curtailment of labor or materials or by war or any matter or thing resulting therefrom; or for any other cause whether similar to or dissimilar from the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the Parties that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and that the Rent and all other payments to be made by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated or otherwise abated, diminished, deducted, deferred, or reduced pursuant to the express provisions of this Ground Lease or the DHCA (including, without limitation, Section 7.1(d) of the DHCA).

Section 2.4 Purchase Option. Tenant shall also have the right to purchase the Premises under the terms and conditions of this Section 2.4 ("*Purchase Option*"). As long as no uncured Tenant's Default exists, Tenant may exercise the right to purchase the Premises for Thirty Million and 00/100 Dollars, as such purchase price may be adjusted pursuant to Section 12.5 ("*Purchase Price*"). To exercise the Purchase Option, Tenant must provide written notice thereof to Landlord at least six months prior to the expiration of the Term accompanied by Tenant's executed counterpart of the Purchase and Sale Agreement (the "*PSA*") in the form attached hereto as Exhibit B. If such notice is timely provided and subject to the terms and conditions of this Section 2.4, within thirty days after its receipt of such notice, Landlord will deliver to Tenant a fully executed copy of the PSA, and the purchase and sale of the Premises shall be consummated on, and subject to, the terms and conditions of the PSA. The Purchase Option is personal to the Tenant originally named herein and any assignee of Tenant's interest in this Ground Lease pursuant to an assignment consented to by Landlord and may not be exercised by or for the benefit of any other party; provided, however, that the foregoing shall not limit the right of "Buyer" (as defined in the PSA)

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to assign the PSA in accordance with the terms and conditions of the PSA. Notwithstanding anything contained herein to the contrary, in the event that Tenant exercises the Purchase Option prior to the date on which Tenant opens the Permanent Facility for business to the public on the Premises (the "*Phase 1 Opening*"), as additional consideration for the purchase of the Premises, Tenant shall continue to pay quarterly installments of Annual Minimum Rent as and when the same would be due and payable in accordance with this Ground Lease through the date of the Phase 1 Opening. Tenant's obligations under the immediately preceding sentence shall survive the termination of the Ground Lease.

Section 2.5 Delivery of Possession. Landlord shall deliver vacant possession of the Premises to Tenant on the Ground Lease Commencement Date.

Section 2.6 Termination of DHCA. If the DHCA terminates in accordance with the terms thereof, then this Ground Lease shall terminate concurrently with the termination of the DHCA and be of no further force or effect and the Parties shall have no further obligation to each other, except pursuant to the provisions of this Ground Lease that specifically state that they survive termination of this Ground Lease.

ARTICLE 3
QUIET ENJOYMENT; "AS IS" CONDITION

Section 3.1 Covenant of Quiet Enjoyment. Landlord covenants that so long as Tenant is performing every covenant and agreement of this Ground Lease and the DHCA to be observed and performed by Tenant, Tenant shall peaceably and quietly have possession of and enjoy the Premises in accordance with the terms of this Ground Lease, without hindrance or molestation by Landlord or any Persons claiming by, through or under Landlord, subject to the covenants, agreements, terms, provisions, and conditions of this Ground Lease and the DHCA.

Section 3.2 As Is Condition. TENANT ACKNOWLEDGES THAT THE PREMISES ARE BEING LEASED BY TENANT IN AN "AS IS" AND "WHERE IS" CONDITION AND WITH ALL EXISTING DEFECTS AND FAULTS (PATENT AND LATENT) AS A RESULT OF THE INSPECTIONS AND INVESTIGATIONS BY TENANT AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS GROUND LEASE OR THE DHCA, NOT IN RELIANCE ON ANY AGREEMENT, UNDERSTANDING, CONDITION, WARRANTY (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) OR REPRESENTATION MADE BY LANDLORD OR ANY AGENT, EMPLOYEE OR PRINCIPAL OF LANDLORD OR ANY OTHER PARTY AS TO THE FINANCIAL OR PHYSICAL (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL) CONDITION OF THE PREMISES OR THE AREAS SURROUNDING THE PREMISES, OR AS TO ANY OTHER MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS TO ANY PERMITTED USE THEREOF, THE ZONING CLASSIFICATION THEREOF OR COMPLIANCE THEREOF WITH FEDERAL, STATE OR LOCAL LAWS, THE INCOME OR EXPENSES OR AS TO ANY OTHER MATTER IN CONNECTION THEREWITH.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TENANT ACKNOWLEDGES AND AGREES THAT (A) IT IS PROCEEDING WITH THE PROJECT AT ITS SOLE AND ABSOLUTE RISK (PROVIDED THAT THIS CLAUSE (A) SHALL NOT

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LIMIT THE EXPRESS REPRESENTATIONS, WARRANTIES AND COVENANTS OF LANDLORD CONTAINED IN THIS GROUND LEASE OR THE DHCA), AND (B) TENANT IS NOT ENTITLED TO THE ISSUANCE BY LANDLORD OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY FOR THE PROJECT, REGARDLESS OF EXPENDITURES INCURRED BY TENANT IN PROCEEDING PRIOR TO THE EFFECTIVE DATE, OR PURSUANT TO THIS GROUND LEASE OR THE DHCA, UNLESS AND UNTIL TENANT HAS SATISFIED ALL TERMS AND CONDITIONS OF THE DHCA, AND THE TERMS AND CONDITIONS PRECEDENT TO COMMENCING THE PROJECT IMPOSED IN ACCORDANCE WITH THE APPROVAL OF THE SITE PLAN (INCLUDING BUT NOT LIMITED TO, ALL OF THE TERMS AND CONDITIONS OF THE ISSUANCE OF A BUILDING PERMIT OR A CERTIFICATE OF OCCUPANCY, IF APPLICABLE), REQUIRED BY ALL OTHER APPLICABLE CITY OF WAUKEGAN CODES AND ORDINANCES, AND REQUIRED BY THE IGB.

ARTICLE 4
RENT

Section 4.1 Rent. The term "Rent" as used in this Ground Lease shall mean Annual Minimum Rent (as defined below), Additional Rent (as defined below) and all other amounts required to be paid by Tenant under the terms of this Ground Lease.

Section 4.2 Annual Minimum Rent. Tenant covenants to pay to Landlord, without set-off or deduction (except as otherwise expressly provided in Articles 10 and 12 and Section 7.1(d) of the DHCA), as a net base rental ("*Annual Minimum Rent*") for the Premises for each calendar year of the Term from and after the Ground Lease Rent Commencement Date in the amount and in the manner set forth herein. Annual Minimum Rent payable for each calendar year of the Term from and after the Ground Lease Rent Commencement Date shall be in the amount equal to the greater of: (i) $3,000,000.00 ("*Annual Guaranteed Minimum Rent*"), and (ii) 2.5% of Adjusted Gross Receipts generated by the Temporary Facility and/or the Permanent Facility ("*Annual Percentage Minimum Rent*"), as the case may be, and payable as follows:

A. Commencing on the Ground Lease Rent Commencement Date and continuing through and until the day immediately preceding the first (1st) day of the calendar year quarter (i.e. January 1st, April 1st, July 1st and October 1st of any calendar year) next following the first anniversary of the Ground Lease Rent Commencement Date (the first day of such calendar year quarter, the "*Adjustment Date*"), Annual Guaranteed Minimum Rent shall be paid by Tenant to Landlord in equal monthly installments of $250,000 (prorated with respect to any partial calendar month in which the Ground Lease Rent Commencement Date occurs), in arrears, not later than ten (10) days after the last day of the calendar month for which such installment payment applies. In the event the first anniversary of the Ground Lease Rent Commencement Date falls on the first day of a calendar year quarter, the Adjustment Date will be that date.

B. Commencing on the Adjustment Date and continuing throughout the remainder of the Term, Annual Guaranteed Minimum Rent shall be paid by Tenant to Landlord in equal quarterly payments of $750,000, on January 1st, April 1st, July 1st and October 1st of each calendar year, in advance, on or before the tenth (10th) day of each calendar quarter.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

C. Tenant's payment of the first quarterly installment of Annual Guaranteed Minimum Rent due and payable under subparagraph (B) shall not excuse Tenant's payment of its last monthly installment of Annual Guaranteed Minimum Rent due and payable under subparagraph (A), Tenant hereby acknowledging that such installment payments will be due and payable as provided above.

D. Commencing with the calendar year in which the Ground Lease Rent Commencement Date occurs and continuing through and until the expiration of the Term, Tenant shall remit payment ("*Annual True-Up Payment*") to Landlord in the amount, if any, equal to the amount by which the Annual Percentage Minimum Rent for such calendar year exceeds the Annual Guaranteed Minimum Rent paid by Tenant for such calendar year. Each Annual True-Up Payment shall be due and payable to Landlord within thirty (30) days after the expiration of the applicable calendar year and shall be accompanied by Tenant's calculation of the Annual True-Up Payment, which shall be based upon Tenant's reports of Adjusted Gross Receipts delivered to the IGB. Tenant shall provide Landlord with copies of the monthly and annual reports submitted by Tenant to the IGB with respect to Adjusted Gross Receipts for the Temporary Facility and/or the Permanent Facility promptly after the same are submitted to the IGB. Notwithstanding anything contained herein to the contrary, the Annual True-Up Payment with respect to the calendar year in which the Term expires or is otherwise terminated shall be paid by Tenant to Landlord no later than thirty days of the end of the Term.

E. Tenant's obligations under this Section 4.2 shall survive the expiration or earlier termination of the Term or the exercise of the Purchase Option, in all cases, with regard to any payments to be made in arrears that accrue prior thereto.

Section 4.3 Proration. In the event Tenant is obligated to pay Annual Guaranteed Minimum Rent for a period which is less than one calendar year, the installment of Annual Guaranteed Minimum Rent (and the monthly or quarterly payment of Annual Guaranteed Minimum Rent due and payable by Tenant for any partial calendar month or partial calendar year quarter during such partial calendar year, as the case may be) shall be prorated on the basis of the number of days in such period.

Section 4.4 Place of Payment. All rent amounts payable hereunder shall be paid to Landlord at the address set forth at Section 19.1 or in accordance with ACH payment instructions to be provided by Landlord, unless Tenant is otherwise instructed in writing by Landlord.

Section 4.5 Absolute Net Lease. Except as otherwise expressly provided in Articles 12 and Section 5.1 and Section 7.1(d) of the DHCA, it is the purpose and intent of Landlord and Tenant that the Annual Minimum Rent herein provided to be paid to Landlord by Tenant be absolutely net to Landlord and that this Ground Lease shall yield net to Landlord without abatement, set-off or deduction therefrom the Annual Minimum Rent as herein provided, to be paid during the Term, and that all costs, expenses, obligations, assessments or impositions of every kind or nature whatsoever which Tenant assumes or agrees to discharge pursuant to this Ground Lease which may arise or become due during the Term shall be paid by Tenant as "*Additional Rent*." Notwithstanding the foregoing, Landlord shall pay the following expenses: (i) any expenses expressly agreed to be paid by Landlord in this Ground Lease or the DHCA; (ii) debt service and other payments with respect to any Fee Mortgage; (iii) expenses incurred by Landlord to monitor and administer this Ground Lease or the DHCA (except as otherwise expressly provided in this Ground Lease or the DHCA and provided nothing set forth in this Section 4.5 shall be deemed to

impose any obligation to so monitor or administer); and (iv) expenses incurred by Landlord prior to the Ground Lease Commencement Date (except the extent Tenant has expressly agreed in writing to pay or reimburse Landlord for such expenses).

Section 4.6 Rent is Not Contingent. Neither the Annual Minimum Rent or Additional Rent shall be contingent on: (i) the construction and completion of the Project on the Land; (ii) the commencement of casino gambling on the Premises or any other uses, if any, allowed for the Project; (iii) any agreements, or lack thereof, between Tenant and any third party; or (iv) the receipt of any rent payments or any other payments by Landlord from any third party; provided, however, that the foregoing shall not accelerate the Ground Lease Rent Commencement Date.

ARTICLE 5
PAYMENT OF TAXES, ASSESSMENTS, AND OTHER IMPOSITIONS; UTILITIES

Section 5.1 Payment of Impositions. During the Term, Tenant agrees to pay, as Additional Rent, and prior to the imposition of any fines, penalties or interest thereon, subject to Tenant's right to contest Impositions pursuant to Section 5.4 and Landlord's obligation to pay Impositions pursuant to this Section 5.1, the following (collectively, "*Impositions*"):

A. All federal, state, county, or local governmental or municipal real estate taxes, license and permit fees, assessments, charges, commercial rental taxes, in lieu taxes, levies, penalties or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, in each of the foregoing cases, assessed, levied, confirmed or imposed upon the Premises and/or the Improvements in connection with the ownership, leasing or operation of the Premises (collectively, "*Real Property Taxes*"). Without limiting the foregoing, "Real Property Taxes" shall also include, to the extent assessed, levied, confirmed or imposed upon the Premises and/or the Improvements: (a) any assessment, tax, fee, levy or charge imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other services, whether or not such assessment, tax, fee, levy or charge was previously commonly included within the definition of real property tax and whether or not such services were formerly provided without charge to property owners or occupants; and (b) any assessment, tax, fee, levy or charge upon creation of an interest or an estate in the Premises pursuant to this transaction or any document to which Tenant is a party, creating or transferring Tenant's interest or Tenant's estate in the Premises, each as may be amended from time to time. The amount of ad valorem real and personal property taxes against Premises and/or the Improvements (the "*Ad Valorem Taxes*") to be included in Impositions and payable Tenant for a calendar year during the Term shall be the amount levied or imposed for that calendar year, notwithstanding that such ad valorem real and personal property taxes are payable in the following calendar year;

B. All assessments or fees imposed upon the Land pursuant to any easement, license, operating agreement, declaration, private covenant, condition, restriction or other instrument, except to the extent such easement, license, operating agreement, declaration, private covenant, condition, restriction or other instrument is not a Permitted Encumbrance (unless made by either Tenant or Landlord at Tenant's request), but including, without limitation:

1. the Land's proportionate share of the "Shared Maintenance Area Expenses" imposed upon the Land pursuant to that certain First Amended Declaration of Protected Covenants, Conditions and Restrictions and Easements for

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Fountain Square of Waukegan dated August 27, 2005 and recorded with the Lake County Recorder on September 2, 2005 as document number 5853181; and

2. The special assessment levied against the Land by the City of Waukegan payable annually through the year 2030 pursuant to City of Waukegan Special Assessment 04-2.

C. All costs of supplying all utilities to the Land or the Improvements;

D. All taxes that are measured by or reasonably attributable to the cost or value of equipment, furniture, trade fixtures and other personal property located on the Land (excluding the equipment, furniture, trade fixtures and personal property of Tenant whose interest is separately assessed); and

E. Any possessory interest tax that may be imposed on any possessory interest (other than the fee interest) in the Premises.

Tenant's obligations under this Section 5.1 shall extend to all Impositions which, as a result of the existence of the Land or the Improvements or both, are assessed, levied, confirmed, imposed or become a lien upon the Land or upon the Improvements or both accruing after the Ground Lease Commencement Date (also referred to as the "*Imposition Commencement Date*") and continuing during the Term. Any Imposition relating to a fiscal period, a part of which is included after the Imposition Commencement Date and within the Term and a part of which is included in a period of time before the Imposition Commencement Date or after the expiration of the Term, shall be adjusted as between Landlord and Tenant, so that Landlord shall pay an amount which bears the same ratio to such Imposition which that part of such fiscal period included in the period of time on or before the Imposition Commencement Date or after the expiration of the Term, as the case may be, bears to such fiscal period. Tenant's obligation to pay Impositions for the last fiscal period included in whole or in part during the Term shall survive the expiration or earlier termination of this Ground Lease, subject to the foregoing adjustment. For purposes of clarity and the avoidance of doubt, (i) Landlord shall be solely responsible for the payment of Ad Valorem Taxes that are due and payable during the calendar year in which the Imposition Commencement Date occurs, notwithstanding that such Ad Valorem Taxes are attributable to the preceding calendar year, (ii) Ad Valorem Taxes due and payable during the calendar year following the calendar year in which the Imposition Commencement Date occurs shall be adjusted as between Landlord and Tenant as provided in this paragraph (as such Ad Valorem Taxes are attributable to the calendar year in which the Imposition Commencement Date occurs), and (iii) Landlord shall be solely responsible for the payment prior to delinquency of (1) all Ad Valorem Taxes attributable to any calendar year (or periods) prior to the calendar year in which the Imposition Commencement Date occurs and (2) and all other Impositions for any period prior to the Imposition Commencement Date.

Notwithstanding anything in this Ground Lease to the contrary, the "Impositions" shall not include any of the following, all of which Landlord shall pay before delinquent: (i) any franchise, income, gross receipts, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy, or profits tax, or license fee, of Landlord; (ii) the incremental portion of any of the items listed in this Section 5.1 that would not have been levied, imposed or assessed but for any sale or other direct or indirect transfer of the fee estate in the Premises or of any direct or

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

indirect equity or ownership interest(s) in Landlord during the Term; (iii) any items listed in this Section 5.1 that would not have been payable but for any act or omission of Landlord; (iv) any items listed in this Section 5.1 that are levied, assessed, or imposed against the Premises and/or the Improvements during the Term based on the recapture or reversal of any previous tax abatement or tax subsidy, or compensating for any previous tax deferral or reduced assessment or valuation, or correcting a miscalculation or misdetermination, relating to any period(s) before the Imposition Commencement Date; and (vi) interest, penalties, and other charges for the foregoing items (i) through (v).

Section 5.2 Place of Payment. All Impositions payable hereunder shall be paid directly to the relevant payees of such Impositions.

Section 5.3 Limitations. In the event that any Imposition may be paid in installments, Tenant shall have the option to pay such Imposition in installments. Tenant shall pay the general and special real estate taxes and other Impositions as enumerated in this Article 5 of the Ground Lease prior to their becoming delinquent and shall deliver copies of official receipts evidencing such payment to Landlord, at the place at which rental payments are required to be made, prior to accrual of any penalties assessed for late payment.

Section 5.4 Right to Contest Impositions. Subject to Section 5.8 below, Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of this Article 5, payment of such Imposition shall be postponed if, and only as long as: (i) neither the Premises nor any part thereof, or interest therein or any income therefrom, would by reason of such postponement or deferment be in imminent danger of being forfeited or lost or subject to any lien, encumbrance, or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability; and (ii) no Tenant's Default has occurred and is continuing (in which event only Landlord may commence such proceedings but shall have no obligation to do so). Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest, penalties, or other liabilities in connection therewith. Landlord shall not be required to join in any proceedings referred to in this Article 5 unless the provisions of any Requirements of Law at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event, Landlord shall join and reasonably cooperate in such proceedings or permit the same to be brought in its name but shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements. If there shall be any refunds or rebates on account of any Impositions paid by Landlord or Tenant, such refund or rebate shall belong to the Party that paid the Imposition.

Section 5.5 Failure to Pay Impositions. If Tenant fails, refuses, or neglects to make any of the payments in this Article 5 prior to the date when a delinquent rate would be imposed, then, subject to Tenant's right to contest Impositions pursuant to Section 5.4, Landlord may, at its sole and absolute option and without waiver of the default thus committed by Tenant, upon ten days'

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

prior written notice to Tenant, pay or discharge the same, and the amount of money so paid by Landlord, including reasonable attorney's fees and expenses incurred in connection with such payments, together with interest on all of such amounts at the Default Rate (defined below) from date of demand shall be repaid by Tenant to Landlord upon demand, and the payment thereof may be collected by Landlord in the same manner as though said amount were an installment of rent specifically required by the terms of this Ground Lease to be paid by Tenant to Landlord.

Section 5.6 Leasehold Parcel Identification Number. Landlord shall complete such applications or supplemental filings as may be required by Requirements of Law to cause the Chief County Assessment Office of Lake County to divide the current parcel identification number of the Land into one parcel identification number for the fee interest in the Land and one parcel identification number for the leasehold interest in the Land. Promptly following written request from Landlord, Tenant shall cooperate in good faith with such applications or filings.

Section 5.7 Payment of Public Utility Charges. Tenant shall pay or cause to be paid all charges for gas, water, sanitary and storm sewer, electricity, light, heat or power, telephone or other communication service used, rendered or supplied to the Premises in connection with the Improvements during the Term.

Section 5.8 Reduction of Assessed Valuation. Subject to Section 8.2 of the DHCA and the provisions of any Leasehold Mortgage, Tenant may, at Tenant's sole cost and expense, endeavor from time to time to reduce the assessed valuation of the Premises and/or the Improvements for the purpose of reducing the Impositions payable by Tenant. Landlord agrees to offer no objection to such contest or proceeding and, at the request of Tenant, to reasonably cooperate with Tenant in pursuing such contest or proceeding, but without expense to Landlord. If all or any part of an Imposition is refunded to either Landlord or Tenant (whether through cash payment or credit against Impositions), the Party who paid the Imposition to which the refund relates shall be entitled to such refund to the extent such refund relates to any Imposition paid by such Party.

Section 5.9 Landlord Cooperation. Landlord shall, at no cost or expense to Landlord, and at Tenant's request, reasonably cooperate with Tenant and use commercially reasonable efforts to enforce the rights and remedies under any easement, license, operating agreement, declaration, private covenant, condition, restriction or other instrument affecting the Land. For purposes of this Section 5.9, "commercially reasonable efforts" shall not include any obligation to institute legal proceedings unless Tenant agrees in a separate written agreement reasonably acceptable to Landlord to reimburse Landlord's for its actual out-of-pocket costs and expenses incurred in connection with such legal proceedings.

ARTICLE 6
CONSTRUCTION

Section 6.1 Improvements. Tenant, at its sole risk, cost and expense shall construct and develop the Improvements in accordance with the DHCA and the requirements of all applicable building codes and regulations adopted by the City of Waukegan.

Section 6.2 Control of Construction. The construction and development of the Improvements, and any and all subsequent work on or about the Premises shall be done in compliance with the DHCA and all material Requirements of Law.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Section 6.3 Title to Improvements. Title to all Improvements, with the exception of the Public Improvements, are and shall be deemed vested in, and such Improvements belong and shall be deemed to belong to and were, are and shall be deemed to be owned by Tenant for all purposes including, without limitation, income tax purposes. Subject to Section 9.3, any Improvements remaining on the Premises at the end of the Term, unless Tenant exercises its right to purchase the Premises pursuant to Article 2 of this Ground Lease, shall then become the property of Landlord, and Landlord shall thereupon be entitled to possession thereof.

ARTICLE 7
USE AND OPERATION OF THE PREMISES

Section 7.1 Use of the Premises. From the Effective Date until the end of the Term:

A. Tenant shall use the Premises for the operation of the Project, as defined in the DHCA, and for no other purposes whatsoever without the express written consent of Landlord.

B. Tenant shall operate and keep open to the public the Gaming Area (as defined in the DHCA) of the Temporary Facility or the Gaming Area of the Permanent Facility, as the case may be, in accordance with the DHCA.

Section 7.2 Compliance with Requirements of Law and Governmental Requirements. Tenant shall, at its sole cost and expense, obtain all governmental permits, approvals, licenses, and authorizations needed by Tenant to construct any Improvements and to operate the Project to the extent located on the Premises, and shall thereafter maintain same during the Term in accordance with, and to the extent required by, Requirements of Law. Tenant covenants and agrees that it will, at its sole cost and expense, take such actions as may be lawfully required by any public body having jurisdiction over the Premises in order to comply with such material sanitary, zoning, and other similar requirements designed to protect the public, in effect during the Term, applicable to the Premises or the manner of Tenant's use and occupancy of the Premises or otherwise applicable to the Premises. Tenant shall, at Tenant's expense, make any alterations or repairs to the Premises that may be necessary to comply with any of the foregoing, subject to the applicable provisions of Article 9.

Section 7.3 Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section to comply with all present or future material Requirements of Law is a material part of the bargained-for consideration under this Ground Lease. Tenant's obligation to comply with all material Requirements of Law shall include to the extent of such Requirements of Law, without limitation, the obligation to make substantial or structural repairs and alterations Improvements, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Ground Lease, the length of the then-remaining Term of this Ground Lease, the relative benefit of the repairs to Tenant or Landlord, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Requirements of Law involved, or the relationship between the Requirements of Law involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future Requirements of Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Ground Lease in whole or in part or to otherwise seek redress

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against Landlord, except as may be conferred upon it by any existing or future Requirement of Law or express terms of Articles 2.6, 10 or 12 or Section 5.1.

Section 7.4 No Ongoing Interest. Notwithstanding anything contained in this Ground Lease to the contrary, Landlord will not be deemed to have an ongoing ownership interest in the Project. Landlord will not have any management or oversight rights over the Project or the Premises except as otherwise expressly provided in this Ground Lease and those voluntarily provided in the DHCA.

ARTICLE 8
INSURANCE AND INDEMNIFICATION

Section 8.1 General Liability and Casualty Insurance. Tenant will procure and maintain in effect at all times during the Term and at Tenant's expense the types and amounts of insurance coverage as are set forth on Exhibit C attached hereto and incorporated herein. Such casualty insurance coverage shall be in an amount sufficient to prevent Tenant from being a co-insurer of any loss under the policy or policies, but in no event less than 100% of the full replacement cost of the Improvements.

Section 8.2 Additional Policy Requirements. If the Premises is not encumbered by any Leasehold Mortgage or other security instruments evidencing or securing indebtedness of Tenant, Landlord shall be named as a loss payee on Tenant's property insurance policies. All policies to which Landlord is an additional insured shall also contain an endorsement that Landlord, although named as an additional insured, shall nevertheless be entitled to recover for damages caused by the negligence of Tenant. The minimum limits of insurance specified in this Article 8 shall in no way limit or diminish Tenant's liability under this Ground Lease.

Section 8.3 Certificates of Insurance and Payment of Premiums. Tenant shall deliver certificates of insurance evidencing the required coverages and limits of liability. If said certificates are not approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, Landlord shall advise Tenant of its objections thereto and Tenant must satisfy Landlord's reasonable objection. Said certificates shall be so delivered promptly after the writing and effective date of said policies but in no event less frequently than annually, along with receipts evidencing payment of the premiums therefor. Tenant will deliver to Landlord evidence of payment of premiums for all insurance policies which Tenant is obligated to carry under the terms of this Ground Lease before the payment of any such premiums become in default; and Tenant will cause renewals of expiring policies to be written and the binders therefor to be delivered to Landlord at least thirty days before the expiration date of such expiring policies, with certificates to be delivered to Landlord, as set out herein, promptly upon their preparation.

Section 8.4 Liability for Premium and Deductible Amounts. Tenant, as principal named insured for all property insurance required hereunder, retains full responsibility for payment of all premiums and deductibles under each of said policies. Nothing herein contained shall be construed as rendering Landlord personally liable for the payment of any such insurance premiums or deductibles, but if, at any time during the Term or any extensions of this Ground Lease, Tenant shall fail, refuse, or neglect to effect, maintain, or renew any of the policies of insurance required by this Ground Lease, or fail, refuse or neglect to keep and maintain same in full force and effect, or to pay premiums therefor promptly when due, or to deliver to Landlord any of such policies or

certificates, then Landlord, at its sole option but without obligation to do so, may, if Tenant fails to do so within ten (10) days after notice to Tenant, effect, maintain or renew such insurance (as to Tenant, but not as to any Tenant Parties), and the amount of money paid as the premium thereon, plus interest at the Default Rate set forth in Section 14.3 below, shall be collectible as though it were rent then matured hereunder and due and payable forthwith.

Section 8.5 Tenant's Indemnity.

A. To the fullest extent permitted by law, Tenant will defend, indemnify, and hold harmless Landlord and each of its officers, whether appointed or elected, agents, employees, contractors, subcontractors, attorneys, and consultants ("*Indemnified Parties*") from and against actual out-of-pocket liabilities, third party claims, actual out-of-pocket losses, actual damages, actions, judgments, actual out-of-pocket costs, and actual out-of-pocket expenses (including, without limitation, reasonable attorneys' fees and expenses) asserted against the Indemnified Parties or Landlord's title in the Premises arising by reason of or in connection with: (a) Tenant's possession, use, occupancy, or control of the Premises, including, without limitation, the development, construction, and operation of the Premises; (b) any accident, injury to or death of persons, or loss of or damage to property occurring during the Term on or about the Premises or the intersections and entrances to the Premises from the public rights-of-way; (c) Tenant's possession, operation, use, misuse, maintenance, or repair of the Premises; or (d) any failure on the part of Tenant to perform or comply with any of the terms of this Ground Lease (in each case, an "*Indemnified Claim*"). Landlord shall not be responsible for the loss of or damage to property or injury to or death of persons occurring in or about the Premises during the Term by reason of any future condition, defect, matter, or thing in the Premises, or for the acts, omissions, or negligence of other persons in and about the Premises during the Term, and Tenant agrees to defend, indemnify, and hold the Indemnified Parties harmless from and against all third party claims and actual out-of-pocket liability for same.

B. The indemnification provisions of Section 8.5 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Tenant or any contractor or subcontractor of Tenant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. In no event shall the Indemnified Claims include any claims arising solely out of the grossly negligent or willful acts or omissions of the Indemnified Parties.

C. Landlord shall notify Tenant (such notification is herein called a "*Notice of Claim*" or "*Notice of Potential Claim*," as the case may be) of any Indemnified Claim or of any occurrence or event that could give rise to an Indemnified Claim ("*Potential Claim*") for which Landlord or one of the Indemnified Parties is (or believes it is) entitled to be indemnified or defended under this Ground Lease promptly after Landlord obtains actual knowledge of any Indemnified Claim or Potential Claim. A Notice of Claim or Notice of Potential Claim shall specify, in reasonable detail, the nature and estimated amount of any such Indemnified Claim or Potential Claim and the basis for Landlord's belief as to why it or applicable Indemnified Party is entitled to be indemnified or defended. Notwithstanding the foregoing, the failure by Landlord or an Indemnified Party to give such notice shall not relieve Tenant of its indemnification obligations under this Ground Lease, except to the extent that Tenant is materially prejudiced as a result of such failure.

D. If it becomes necessary for Landlord to defend an Indemnified Claim, Landlord may provide Tenant with a Notice of Claims and tender defense of such action to Tenant. Tenant shall accept such tender of defense and Tenant will pay all actual out-of-pocket costs, actual out-of-pocket expenses, and reasonable actual out-of-pocket attorney's fees incurred in effecting such defense, in addition to any other sums which Landlord may be called upon to pay by reason of the entry of a judgment against Landlord in the litigation in which such claim is asserted.

E. The provisions of this Section 8.5 and the respective rights and obligations of Landlord and Tenant hereunder shall continue in full force and effect without regard to the expiration or earlier termination of this Ground Lease.

Section 8.6 Subrogation. Landlord and Tenant agree to have all fire and extended coverage and material damage insurance which may be carried by either of them endorsed with a clause providing that any release from liability of or waiver of claim for recovery from the other Party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder, and providing further that the insurer waives all rights of subrogation which such insurer might have against the other Party. Without limiting any release or waiver of liability or recovery contained in any other provision of this Ground Lease but rather in confirmation and furtherance thereof, Landlord waives all claims for recovery from Tenant and its agents, partners and employees, and Tenant waives all claims for recovery from Landlord and its agents, partners and employees, for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies. Notwithstanding the foregoing or anything contained in this Ground Lease to the contrary, any release or any waiver of claims shall not be operative, nor shall the foregoing endorsements be required, in any case where the effect of such release or waiver is to invalidate insurance coverage or invalidate the right of the insured to recover thereunder or increase the cost thereof (provided that in the case of increased cost the other Party shall have the right, within ten days following written notice, to pay such increased cost, thereby keeping such release or waiver in full force and effect).

ARTICLE 9
CONDITION OF IMPROVEMENTS

Section 9.1 Tenant Obligation to Maintain. During the Term, except to the extent (a) this Ground Lease is terminated pursuant to Articles 10 or 12, or (b) Tenant is performing alterations, modifications, demolition or removal of the Improvements in compliance with this Ground Lease and the DHCA, Tenant shall cause the Improvements to be maintained, preserved and kept in good repair and working order and in a safe condition, ordinary wear and tear excepted.

Section 9.2 No Landlord Obligation. Landlord shall not, in its capacity as the ground lessor under this Ground Lease, under any circumstances be required to furnish any services or facilities or to make any repairs, replacements or alterations of any nature or description in or to the Premises whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever in connection with this Ground Lease, or to maintain the Premises in any way. Tenant hereby waives the right to make repairs at the expense of Landlord, in its capacity as the ground lessor under this Ground Lease, pursuant to any law in effect at the time of the execution of this Ground Lease or thereafter enacted, and assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and

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management of the Premises. Nothing in this Section 9.2 shall be deemed to limit Landlord's obligations to furnish public services to the Premises or the Project or to make any repairs, replacements or alterations to the Public Improvements, in each case, in the ordinary course of providing governmental services in its capacity as a unit of local government.

Section 9.3 Alteration of Improvements. Tenant will not commit any physical waste of the Premises. Tenant may not, without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, alter, modify demolish or remove the Land or the Improvements, except as contemplated or permitted in this Ground Lease or the DHCA. Any such alterations, modifications, demolition or removal consented to by Landlord shall be done in a first-class workmanlike manner, using only good grades of materials and shall comply with all applicable insurance requirements and all material Requirements of Law. Except in the event the Term ends as a result of the exercise of the Purchase Option or Condemnation, Tenant shall, at its election, either remove all Improvements (including foundations, but excluding any Public Improvements) from the Premises at the end of the Term or the end of Tenant's right to remain in possession of the Premises, whichever occurs later, such that the Land is free of debris and from mechanic's liens arising out of such removal and any other liens, easements, exceptions of title, or other encumbrances of record not present on the Ground Lease Commencement Date (unless previously consented by in writing by Landlord or otherwise permitted or contemplated pursuant to terms of this Ground Lease or the DHCA), or Tenant shall deliver all of the Improvements to Landlord at the end of the Term or the end of Tenant's right to remain in possession of the Premises, whichever occurs later, free from mechanic's liens arising by or through Tenant and any other liens, easements, exceptions of title, or other encumbrances of record not present on the Ground Lease Commencement Date (unless previously consented by in writing by Landlord or otherwise permitted or contemplated pursuant to terms of this Ground Lease or the DHCA) and in reasonably good and working condition.

Section 9.4 Liens.

A. Tenant will pay or cause to be paid all charges for all work done by Tenant, including without limitation all labor and materials for all construction, repairs, alterations, additions, and/or demolition work to or upon the Premises during the Term, including such work or portion thereof as is required by any governmental entity having jurisdiction or is otherwise required by applicable law, and will not suffer or permit any mechanic's, materialman's, or similar liens for labor or materials furnished to the Premises during the Term or any extensions of this Ground Lease to be filed against the Premises and/or the Improvements; provided, however, Tenant shall have the right to: (i) contest the amount or validity, in whole or in part, of any such mechanic's, materialman's, or similar liens by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of this 9.4, payment of the charges for such work shall be postponed if, and only as long as, neither the Premises nor any part thereof, or interest therein or any income therefrom would by reason of such postponement or deferment, be reasonably expected to be in imminent danger of being forfeited or lost; or (ii) substitute a bond for the Premises and/or Improvements securing such lien claim in accordance with Requirements of Law (i.e., bond over), in which event Tenant shall have no further obligations with respect to such lien claim pursuant to this Section 9.4.

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B. Neither Tenant, nor any contractor or subcontractor of Tenant, shall have a right, authority or power to bind Landlord for the payment of any claim for labor or material or for engineering or architect's fees, or for any charge or expense incurred in the erection, construction, alteration, restoration, maintenance, operation or management of the Land or Improvements, or to render Landlord's interest in the Land liable for any lien or right of lien for any labor, material, services (including management services) or for any other charge for expenses incurred in connection therewith. In addition, neither Tenant nor any contractor or subcontractor of Tenant shall under any circumstances be considered the agent of Landlord in constructing the Improvements or any other work undertaken in connection with any erection or construction of the Improvements.

C. Tenant shall require all of its contractors, subcontractors, suppliers, mechanics and materialmen to pay all invoices together with waivers of lien or conditional waivers, as appropriate, and shall not pay any invoices unless and until such waivers and releases are submitted. Tenant may elect to obtain "trailing waivers" from any parties other than contractors, reflecting payments made in connection with the prior draw application. Tenant shall not make final payment to any contractor, subcontractor, supplier, mechanic or materialman unless and until Tenant receives a "conditional waiver and release upon final payment" from such subcontractor, supplier, mechanic or materialman, together with appropriate proof of the release of all claims against the Premises for work performed or materials supplied.

D. In case of any lien of mechanics or materialmen or others with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Tenant for the Premises having been filed against Landlord or Landlord's interest in the Premises, if Tenant does not bond over such lien in accordance with Section 9.4(A), then Tenant shall procure and deliver to Landlord a full and complete cancellation and discharge thereof or shall secure Landlord against damage for such failure to discharge or remove the same by either, at the option of Tenant:

(i) depositing with Landlord security in the form of cash in an amount equal to one hundred ten percent (110%) of the total of (i) the amount of the lien, (ii) all interest and penalties payable in connection therewith and (iii) all charges that may or might be assessed against or become a charge on the Landlord or other Improvements, or any part thereof as a result of such lien, such deposit to returned to Tenant upon discharge or satisfaction of such lien; or

(ii) delivering to Landlord security in the amount specified in clause (a) above in the form of a guaranty or bond, provided such guaranty or bond is in a commercially reasonable, industry standard form and is made by a surety reasonably satisfactory to Landlord at such time as to such surety's financial capability; or

(iii) delivering to Landlord security in the form of a title insurance endorsement to Landlord's owner's title insurance policy in form and substance reasonably satisfactory to Landlord.

Any sums held by Landlord pursuant to clause (i) above shall be paid by Landlord to the lienholder at the request of Tenant, provided that such utilization results in a full release or satisfaction of the lien it secures, and any balance shall be returned to Tenant. If Tenant shall fail to procure and deliver to Landlord a full and complete cancellation and discharge of any such lien,

or to deliver to Landlord the required form of security in the amount so specified, or bond over such lien, in any case, within a time period expiring on the earlier of (x) one hundred twenty (120) days after written notice from Landlord demanding such security or (y) fifteen (15) days after the date the lien claimant files a proceeding to foreclose such lien, Landlord may, but shall not be required to, take all action necessary to release and remove such lien and Tenant shall upon demand reimburse Landlord for all reasonable costs incurred by Landlord in connection therewith with interest thereon accruing at the Default Rate.

E. Tenant shall indemnify Landlord against, and save Landlord harmless from, any and all actual out-of-pocket loss, actual damage, third party claims, actual out-of-pocket liabilities, judgments, interest, actual out-of-pocket costs, actual out-of-pocket expenses, and reasonable actual out-of-pocket attorney's fees arising out of the filing of any such lien described in subparagraph (D) of this Section 9.4.

F. The Parties acknowledge and agree, for themselves and their successors and assigns, that Illinois law prohibits the filing of liens of mechanics or materialmen or others with respect to work, materials or services against real property owned by a unit of government. Accordingly, this Section 9.4 shall not be deemed or interpreted as a waiver by Landlord or Tenant of, or any limitation on, such statutory prohibition at any time during which Landlord is a unit of government.

Section 9.5 Environmental Matters.

A. Tenant shall not cause or permit any Regulated Substance to be placed, held, located, released, transported or disposed of on, under, at or from the Premises in violation of any Environmental Laws. Tenant shall, at its own cost and expense, contain at or remove from the Premises and/or the Improvements or perform any other necessary remedial action regarding any Regulated Substance in any way affecting the Premises and/or the Improvements if such containment, removal or other remedial action is required of the owner and/or operator of the Premises and/or the Improvements under any Environmental Laws during the Term (subject to the following paragraph) and, to the extent Tenant takes any remedial action with respect to any Regulated Substance whether or not so required, Tenant shall perform any containment, removal or remediation of any kind involving any Regulated Substance in any way affecting the Premises and/or the Improvements in compliance with the requirements of all material Environmental Laws. Tenant shall promptly provide Landlord with written notice (and a copy as may be applicable) of any of the following: (i) Tenant's obtaining knowledge or notice of any kind of the presence, or any actual or threatened release, of any Regulated Substance in any way affecting the Premises and/or the Improvements in violation of any Environmental Laws; (ii) Tenant's receipt or submission, or Tenant's obtaining knowledge or notice of any kind, of any report, citation, notice or other communication from or to any federal, state or local governmental or quasi-governmental authority regarding any Regulated Substance in any way affecting the Premises and/or the Improvements; or (iii) Tenant's obtaining knowledge or notice of any kind of the incurrence of any cost or expense by any federal, state or local governmental or quasi-governmental authority or any private party in connection with the assessment, monitoring, containment, removal or remediation of any kind of any Regulated Substance in any way affecting the Premises and/or the Improvements, or of the filing or recording of any lien on the Premises and/or the Improvements or any portion thereof in connection with any such action or Regulated Substance in any way affecting the Premises and/or the Improvements.

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Tenant shall defend all actions against the Landlord and pay, protect, indemnify and save harmless Landlord, its directors, officers, employees and agents from and against any and all actual out-of-pocket liabilities, actual out-of-pocket losses, actual damages, actual out-of-pocket costs, actual out-of-pocket expenses (including, without limitation, reasonable attorneys' and consultant's fees, response and cleanup costs, court costs, and litigation expenses), causes of action, suits, third party claims, demands or judgments of any nature relating to any action brought against Landlord arising out of or in any way relating to any violation or claimed violation of Environmental Laws by Tenant with respect to the Premises and/or the Improvements. If at the expiration or other termination of this Ground Lease any response or cleanup of a condition involving Regulated Substances is required of Tenant and/or the Premises and/or the Improvements by any federal, state or local governmental authority and such condition first arose during the Term as a result of Tenant's acts or omissions, then Tenant shall remain solely responsible for such requirement and Landlord's actual damages for breach of this Ground Lease. The foregoing indemnity shall survive the expiration or earlier termination of this Ground Lease.

ARTICLE 10
DAMAGE OR DESTRUCTION

Notwithstanding any contrary law, subject to Tenant's right to terminate this Ground Lease pursuant to this Article 10, Rent shall not be suspended or abated as a result of any damage or destruction to, and/or during any restoration or rebuilding of, the Premises and/or the Improvements. If, at any time during the Term, the Land or the Improvements or any part thereof shall be damaged or destroyed by a casualty (the "*Damaged Facilities*"), Tenant, at its sole cost and expense, shall, except as otherwise provided in this Article 10, commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the casualty. If, however, the Casualty is a Substantial Casualty, then Tenant may, by notice to Landlord given within six (6) months after the Casualty, but only with Leasehold Mortgagee's (if any) consent, terminate this Ground Lease effective sixty (60) days after such notice; provided, however, that (i) Tenant shall remove all Improvements (including foundations, but excluding any Public Improvements) from the Premises in accordance with Section 9.3, and (ii) such termination shall not terminate any of Tenant's obligations or liabilities under this Ground Lease that are expressly stated herein to survive the termination of this Ground Lease.

ARTICLE 11
SUBLETTING AND ASSIGNMENT

Section 11.1 No Assignment or Subletting. Except (i) as permitted in Section 15.2 in connection with or arising out of a grant by Tenant of a Leasehold Mortgage to an Institutional Lender, (ii) as otherwise provided in this Section 11.1 or Section 11.2 below, or (iii) in connection with a Permitted Transfer (as defined in the DHCA), Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed: (a) assign this Ground Lease or any interest hereunder or (b) permit any assignment of this Ground Lease by operation of law, or (c) sublet the Premises or any part thereof. After an assignment and the assumption by assignee of Tenant's obligations under this Ground Lease first arising and accruing thereafter, the assignor shall have no obligation or liability under this Ground Lease for such obligations. Tenant may, without Landlord's consent, sublease space at the Premises or in

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the Improvements to any Person for any use that does not violate the DHCA. Further, Tenant may, without Landlord's consent, enter into occupancy, license or concession agreements with any Person for any use or occupancy of space at the Premises or in the Improvements that does not violate the DHCA.

Section 11.2 Transfers of Control. For purposes of this Article 11, a transfer at any one time or from time to time of more than fifty percent (50%) of an interest in Tenant or in an entity that controls Tenant (whether, directly or indirectly, pursuant to stock, partnership interest or other form of ownership or control, but excluding any transfer of securities listed on a recognized securities exchange) by any Person or Persons or entity or entities having an ownership interest in or other control of Tenant as of the Effective Date shall be deemed to be an "assignment". Notwithstanding the foregoing to the contrary, this Section 11.2 shall not prohibit: (a) transfers among existing members of Tenant; (b) an issuance, assignment or transfer of direct or indirect interests in Tenant related to infusions of new capital into such entity under circumstances where the owners of such entity prior to such issuance, assignment or transfer maintain, directly or indirectly, their capital in and day-to-day operating control of such entities; (c) an assignment or transfer of direct or indirect interests in Tenant by a member thereof to a third party, so long as such transfer or assignment does not result in a change in direct or indirect day-to-day control of Tenant; (d) an assignment or transfer of indirect interests in Tenant resulting from a transfer of an interest in an entity that directly or indirectly owns or controls multiple entities and not only Tenant, provided that the assignment or transfer is not designed to circumvent the requirement of Landlord's consent with respect to certain assignments of this Ground Lease; or (e) any Permitted Transfer.

Section 11.3 Assignment by Landlord. Landlord shall cause any transferee of Landlord's interest in the Premises to assume Landlord's obligations under this Ground Lease.

ARTICLE 12
CONDEMNATION

Section 12.1 General. If at any time during the Term there is a taking or damaging, including severance damage, of all or any part of the Premises, the Improvements and/or the Project, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law (each such event, a "*Condemnation*"), which may occur pursuant to the entry by a court of competent jurisdiction of a final judgment order, or by a voluntary sale of all or any part of the Premises, the Improvements and/or the Project to the condemning authority (or to a designee of the condemning authority), provided that, with respect to such voluntary sale, the Premises, the Improvements and/or the Project or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action, the rights and obligations of the Parties shall be as set forth in this Article 12.

Section 12.2 Notice. In case of the commencement of any proceedings or negotiations which might be in lieu of or result in a Condemnation of all or any portion of the Premises, the Improvements and/or the Project during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe, with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be, and shall include a copy of any notice, information or documentation received from the condemning authority.

Section 12.3 Waiver. The parties intend that this Ground Lease fully govern all of their rights and obligations in the event of a Condemnation with respect to the Premises and/or the Improvements. Accordingly, Landlord and Tenant each hereby waive the provisions of 735 ILCS 30/10-5-90, as such Sections may from time to time be amended, replaced, or restated, with respect to the Premises or the Improvements.

Section 12.4 Major Condemnation. In the event of a Major Condemnation (as defined in the DHCA), this Ground Lease and all of Tenant's right, title, interest and future obligations thereunder shall terminate on the date when title to the condemned property vests in the condemning authority by delivery of a deed or entry of a final judgment order establishing the date on which the vesting of title will occur (the "*Condemnation Date*"); provided, however, that such termination shall not terminate any of Tenant's obligations or liabilities under this Ground Lease that are expressly stated herein to survive the termination of this Ground Lease.

Section 12.5 Partial Condemnation. In the event of a Condemnation other than a Major Condemnation or Temporary Easement (a "*Partial Condemnation*"):

A. This Ground Lease and all of Tenant's right, title and interest thereunder shall terminate on the Condemnation Date only with respect to the portion of the Premises or Tenant's leasehold estate in the Premises so taken; provided, however, that such termination shall not terminate any of Tenant's obligations or liabilities under this Ground Lease that are expressly stated herein to survive the termination of this Ground Lease;

B. This Ground Lease shall remain in full force and effect as to the portion of the Premises and Tenant's leasehold estate in the Premises not so taken that remains immediately after such Partial Condemnation;

C. Tenant shall proceed promptly to restore the Premises in a manner consistent with the terms and conditions set forth in this Ground Lease and the DHCA; and

D. The Annual Guaranteed Minimum Rent and the Annual Percentage Minimum Rent payable hereunder during the unexpired Term and the Purchase Price shall be each reduced to such extent as may be fair and reasonable under the circumstances, and Landlord and Tenant shall negotiate in good faith such reductions in the Annual Guaranteed Minimum Rent, the Annual Percentage Minimum Rent and the Purchase Price. If the parties cannot agree upon the applicable reductions in the Annual Guaranteed Minimum Rent, the Annual Percentage Minimum Rent and the Purchase Price, then the parties agree to settle any such dispute by arbitration as provided in Section 12.10.

Section 12.6 Allocation of Condemnation Award. All amounts, compensation, sums or value paid, awarded or received for a Condemnation attributable to the Premises or the Improvements, whether pursuant to judgment, this Ground Lease, settlement or otherwise (the "*Condemnation Award*") to either Landlord or Tenant on account of a Condemnation, shall, if applicable, be paid in accordance with the following:

FIRST, to the extent required by any Leasehold Mortgage, Tenant's Leasehold Mortgagee, if any, shall receive a sum equal to the unpaid principal balance of any Leasehold Mortgage, with interest thereon at the rate specified therein to the date of payment, or so much thereof as the

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balance of the award is sufficient to pay (such payments to be made in order of lien priority and pari passu to Leasehold Mortgagees with liens of the same priority);

SECOND, Landlord shall receive such portion of the award as shall represent compensation for the fair market value of the Land taken, considered as vacant and unimproved and unencumbered by this Ground Lease and such portion of such award, if separately stated in the award or decree as shall represent consequential damages, if any, to the portion of the Land not taken, considered as vacant and unimproved and unencumbered by this Ground Lease; and

THIRD, Tenant shall receive the entire balance of the award, if any.

Notwithstanding the foregoing to the contrary, if Landlord is the condemning authority with respect to any Condemnation, then Landlord shall not receive any portion of the applicable Condemnation Award (and Tenant shall receive the entire balance of the award after the payment of the portion of the Condemnation Award to any Leasehold Mortgagees as described above).

Notwithstanding anything in this Ground Lease to the contrary, all amounts, compensation, sums or value paid, awarded or received for a Condemnation attributable to the 10-Acre Parcel (as defined in the DHCA) shall be payable entirely to Tenant and Landlord shall have no rights or claims with respect thereto.

Section 12.7 Temporary Easement. In the event of any Condemnation of all or any of the Premises and/or the Improvements or Tenant's leasehold estate in the Premises for a temporary period lasting less than the remaining Term of this Ground Lease, other than in connection with a Partial Condemnation for the remainder of the Term (a "*Temporary Easement*"), this Ground Lease shall remain in full force and effect, and, to the extent feasible, Tenant shall proceed promptly to restore the Premises in a manner consistent with the terms and conditions set forth in in this Ground Lease and the DHCA. In such event, any Condemnation Award shall be payable entirely to Tenant (unless Tenant terminations this Ground Lease and the period of the Temporary Easement shall extend beyond the expiration of the Term, in which case such Condemnation Award shall be apportioned between Landlord and Tenant as of the day of the Term in the same ratio that the part of the entire period for such compensation is made falling on or before the day of expiration and that part falling after, bear to such entire period). Notwithstanding the foregoing to the contrary, if any Condemnation of all or any of the Project or Tenant's leasehold estate in the Premises for a temporary period relates to a period longer than ninety (90) days and renders ten percent (10%) or more of the total useable area of the building (or buildings or other structures) included in the Project or ten percent (10%) or more of the total number of parking spaces available at the Project and/or the building (or buildings or other structures) included in the Project not capable of being used or occupied, then Tenant may, by notice within ninety (90) days after the expiration of such ninety (90) day period, terminate this Ground Lease effective as of the date designated by Tenant in such notice.

Section 12.8 Benefit of Landlord and Tenant. Except as otherwise expressly provided in this Ground Lease, the requirements of this Article 12 are for the benefit only of Landlord and Tenant, and no other Person shall have or acquire any claim against Landlord or Tenant as a result of any failure of Landlord or Tenant to actually undertake or complete any restoration as provided in this Article 12 or to obtain the evidence, certifications and other documentation provided for herein.

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Section 12.9 Reserved.

Section 12.10 Arbitration.

A. The Parties agree that any dispute, claim, or controversy arising under Section 12.5 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 12.10.

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 thirty (30) 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 ninety (90) 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 twenty (20) 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 thirty (30) 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 the 19th Judicial Circuit Court of Lake County, Illinois or, where applicable, in the federal court for the Northern District of Illinois, 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 Ground Lease and applicable law, and shall apply the terms of this Ground Lease without adding

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to, modifying or changing the terms in any respect (except as expressly provided in Section 12.5(D)), and shall apply the laws of the State of Illinois to the extent such application is not inconsistent with this Ground Lease.

F. Any arbitration award may be entered as a judgment in the 19th Judicial Circuit Court of Lake County, Illinois or, where applicable, in the federal court for the Northern District of Illinois. 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 Ground Lease.

ARTICLE 13
EASEMENTS; LANDLORD'S ACCESS

Section 13.1 Easements.

A. Except as provided in Section 13.3, Landlord will not grant any easements, licenses or other rights which would permit any third party to obtain rights to the Premises (other than mortgages or deeds of trust granted by Landlord pursuant to Article 15) and/or the Improvements or modify any of the Permitted Encumbrances.

B. Landlord reserves the right to access and utilize the Land as necessary to complete its obligations under this Ground Lease and the DHCA.

Section 13.2 Landlord's Access to Premises. Except as provided in Section 13.1(B) of this Ground Lease, and other than in the event of an emergency involving an imminent threat to persons or property in the regular exercise of its police and regulatory powers as a home rule municipality in service to the public health, safety, or welfare, in which event Landlord may gain such access to the Premises and Improvements as is necessary, Landlord may not have any entry or access to the Premises or Improvements (i) except at reasonable times, (ii) in any manner which interrupts, interferes with or diminishes the operations of Tenant in the demised premises or would cause Tenant to incur costs or expenses that Tenant would not have incurred but for such entry, or (iii) in any matter that would violate the requirements of the Illinois Gambling Act or regulations promulgated by the IGB.

Section 13.3 Application(s) and Filings. Upon Tenant's request, Landlord shall, without cost to Landlord, promptly join in and execute any Application or Filing as Tenant may from time to time request, provided that: (a) such Application or Filing is in customary form and imposes no material obligations (other than obligations that are ministerial in nature or merely require compliance with Requirements of Law) upon Landlord; (b) no uncured Tenant's Default exists; and (c) Tenant reimburses Landlord's reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in performing under this paragraph. Tenant shall have the right to obtain any approvals from governmental authorities necessary under applicable Requirements of Law, including, without limitation, land use and zoning approvals, to authorize the construction

of the Project or any other Construction Work and the operation of the uses permitted pursuant to Section 7.1 on the Premises.

ARTICLE 14
DEFAULT PROVISIONS

Section 14.1 Tenant's Default.

A. Tenant shall be in default under this Ground Lease ("*Tenant's Default*") if: (i) failure shall be made in the payment of the Rent or any installment thereof or in the payment of any other sum required to be paid by Tenant under this Ground Lease and such failure shall continue for fifteen business days after written notice thereof from Landlord; (ii) Tenant shall fail to maintain the insurance required by Article 8 of this Ground Lease and such failure shall continue for ten days after written notice thereof from Landlord; (iii) failure shall be made in the observance or performance of any of the other covenants or conditions in this Ground Lease which Tenant is required to observe and perform and such failure shall continue for thirty days after written notice to Tenant, unless such failure cannot reasonably be cured within such thirty day period, in which event Tenant shall have such additional reasonable period of time as is necessary to cure such failure provided it is diligently pursing such a cure during such additional period of time, (iv) the interest of Tenant in this Ground Lease shall be levied on under execution or other legal process and the same is not dismissed, stayed or vacated within one hundred eighty days thereafter other than in connection with the exercise by a Leasehold Mortgagee of its rights under a Leasehold Mortgage, or (v) an Event of Default (as defined in the DHCA) occurs under the DHCA, Landlord may treat the occurrence of any Tenant's Default as a breach of this Ground Lease, and thereupon at its option may, with or without further notice or demand of any kind to Tenant or any other person, be entitled to exercise any rights and remedies set forth in Section 14.1(B) of this Ground Lease.

B. Upon Tenant's Default, Landlord, subject to Sections 14.6 and 14.7 below, may, in addition to all other rights and remedies provided by law or equity, from time to time, to which Landlord may resort cumulatively or in the alternative, enter upon and repossess the Premises or any part thereof by legal process, summary proceedings, ejectment or otherwise, and may remove Tenant and all other persons and any and all property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such re-entry or repossession of the Premises or any part thereof by Landlord shall be construed as an election by Landlord to terminate this Ground Lease unless notice of such termination be given to Tenant or unless the termination of this Ground Lease be decreed by a court of competent jurisdiction. Tenant hereby waives the right to interpose counterclaims (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Ground Lease. Landlord shall use reasonable efforts to mitigate its damages arising from, or in connection with, any Tenant's Default.

Section 14.2 Landlord's Cure of Tenant's Default. If Tenant shall default in the performance or observance of any agreement or condition of this Ground Lease other than an obligation to pay money to Landlord and shall not cure such default within the applicable cure period under Section 14.1, Landlord, at its option, without waiving any claim for breach of this Ground Lease, may at any time thereafter cure such default for the account of Tenant, and any amount paid or any contractual liability incurred by Landlord in so doing shall be deemed paid or

incurred for the account of Tenant, and Tenant shall reimburse Landlord therefor and save Landlord harmless therefrom; provided, however, that, if Tenant is not diligently pursuing the cure of such default, Landlord may cure such default as aforesaid prior to the expiration of said waiting period but after notice to Tenant, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Premises or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of rent due hereunder. Tenant hereby agrees to pay Landlord interest on such amount at the Default Rate described below in Section 14.3. No entry by Landlord in accordance with the provisions of this Section 14.2 shall be deemed to be an eviction of Tenant. Nothing in this Section 14.3 shall limit Landlord's rights under Section 13.2.

Section 14.3 Interest on Unpaid Sums. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent due hereunder will cause Landlord to incur costs not contemplated by this Ground Lease, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed encumbering the Premises. Accordingly, if any installment of Rent due from Tenant shall not be received by Landlord or Landlord's designee within fifteen days after the date on which such sum is due, Tenant shall pay to Landlord interest on said rent at the Default Rate (as defined in the DHCA) from the date such Rent was due. Acceptance of interest by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

Section 14.4 Default by Landlord. If any act or omission by Landlord, as the ground lessor under this Ground Lease, would give Tenant the right to sue for damages from Landlord or to claim any rights with respect to this Ground Lease, Tenant will not sue for such damages or exercise any such rights until: (i) it shall have given written notice of the act or omission to Landlord; and (ii) such default shall continue for thirty days after such written notice to Landlord, unless such default cannot reasonably be cured within such thirty day period, in which event Landlord shall have such additional reasonable period of time as is necessary to cure such default provided it is diligently pursing such a cure during such additional period of time.

Section 14.5 Intentionally Omitted.

Section 14.6 Leasehold Mortgagee's Right to Cure.

A. Provided Tenant has provided Landlord with written notice of the existence of a Leasehold Mortgage, together with Leasehold Mortgagee's address and a contact party, simultaneously with the giving to Tenant of any notice of default under this Ground Lease, Landlord shall give a duplicate copy thereof to such Leasehold Mortgagee by registered mail, return receipt requested, and no such notice to Tenant shall be effective unless a copy of the same has been so sent to each such Leasehold Mortgagee. Any Leasehold Mortgagee shall have the right (but not the obligation) to cure any default by Tenant under this Ground Lease within the same period by which Tenant is required to effectuate any such cure plus (a) an additional 30 days for any monetary default hereunder and (b) an additional 90 days for any non-monetary default hereunder; provided that any such 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 90 day period and

Leasehold Mortgagee is diligently prosecuting such cure to completion or otherwise has commenced action to enforce its rights and remedies under any Leasehold Mortgage to recover possession of the Premises and/or the Improvements. In all cases, Landlord agrees to accept any performance by any Leasehold Mortgagee of any obligations hereunder as if the same had been performed by Tenant, and shall not terminate this Ground Lease or Tenant's right to possession until the requisite time periods for cure by each Leasehold Mortgagee have been exhausted pursuant to the terms hereof; provided, however, that no Leasehold Mortgagee shall be obligated to cure any default by Tenant or any other matter. Upon the written request of any Leasehold Mortgagee or prospective Leasehold Mortgagee, and for the exclusive benefit of said Leasehold Mortgagee, Landlord will promptly deliver to said Leasehold Mortgagee such form of Landlord's consent and waiver as may be reasonably required to assure such Leasehold Mortgagee that Landlord will comply with this Section 14.6.

B. In the event of a non-monetary default which cannot be cured without obtaining possession of the Premises and/or the Improvements or that is otherwise personal to Tenant and not susceptible of being cured, Landlord will not terminate this Ground Lease or Tenant's right to possession without first giving Leasehold Mortgagee (or its designee) reasonable time within which to obtain possession of the Premises and/or Improvements, including possession by a receiver, or to institute and complete foreclosure proceedings. Upon acquisition of Tenant's interest in this Ground Lease and performance by such Leasehold Mortgagee of all covenants and agreements of Tenant, except those which by their nature cannot be performed or cured by any Person other than Tenant, Landlord's right to terminate this Ground Lease and right to possession of the tenant hereunder shall be waived with respect to the matters which have been cured by Leasehold Mortgagee. This Section 14(B) shall not limit Section 15.2(H) of this Ground Lease.

Section 14.7 Gaming Laws. This Ground Lease is subject to the Gaming Laws. Notwithstanding anything to the contrary set forth in this Ground Lease, Landlord acknowledges and agrees that certain rights, remedies and powers under this Ground Lease (including its exercise of remedial rights upon the Premises or the Improvements) may be exercised only to the extent that (i) the exercise thereof does not violate any applicable laws, rules and regulations of the Gaming Authorities, including Gaming Laws, and (ii) all necessary approvals, licenses and consents from the Gaming Authorities required in connection therewith are obtained. Notwithstanding any other provision of this Ground Lease, Tenant expressly authorizes Landlord to cooperate with the applicable Gaming Authorities in connection with the administration of their regulatory jurisdiction over Tenant, including, without limitation, to the extent not inconsistent with the internal policies of Landlord and any applicable legal or regulatory restrictions, the provision of such documents or other information as may be requested by any such Gaming Authorities relating to Landlord, Tenant, Guarantor or this Ground Lease. The Parties acknowledge that the provisions of this Section 14.7 shall not be for the benefit of Tenant or any other Person. Each of the Parties hereto acknowledge that this Ground Lease is not effective unless and until approved by the IGB.

Section 14.8 Future Modifications. If any modification of this Ground Lease is required to comply with requirements of the Gaming Laws, as the same may be amended from time-to-time, or an order of the Gaming Authorities or IGB, Landlord and Tenant shall cooperate in good faith to negotiate and enter into such modification.

ARTICLE 15
FINANCING

Section 15.1 Landlord's Financing. Landlord may mortgage its fee interest in the Premises subject to the provisions of this Section 15.1. The following shall apply to Fee Mortgages: (a) all Fee Mortgages shall be expressly subject and subordinate to this Ground Lease, any new lease with a Leasehold Mortgagee or its designee described in subparagraph (O) of Section 15.2, and all amendments, modifications, and extensions thereof and shall include the Fee Mortgagee's agreement to execute and deliver to each Leasehold Mortgagee an agreement in accordance with subparagraph (P) of Section 15.2; and (b) Tenant shall not subordinate this Ground Lease without the prior written consents of all Leasehold Mortgagees. Landlord hereby represents and warrants that no Fee Mortgages are in effect as of the Effective Date. Landlord shall not enter into any Fee Mortgage that violates this Section 15.1.

Section 15.2 Tenant's Financing. Tenant shall have the right, at any time and from time to time, in addition to any other rights herein granted and without any requirement, to obtain Landlord's consent to encumber or to mortgage or grant a security interest in and to all or any part of Tenant's right, title and interest in and to this Ground Lease and Tenant's leasehold interest in this Ground Lease, under one or more Leasehold Mortgages for the purpose of obtaining financing, and/or to assign this Ground Lease as collateral security for such Leasehold Mortgages including but not limited to a mortgage to be executed on or after the Effective Date for the benefit of Collateral Trustee; provided, however, in each such case the Leasehold Mortgagee shall be an Institutional Lender. This Ground Lease shall be freely assignable to a Leasehold Mortgagee, its nominees or designees, or to any purchaser at foreclosure sale or through a power of sale or other enforcement proceeding or by a deed in lieu of foreclosure or otherwise without the consent of Landlord. Each of Landlord and Tenant acknowledges that so long as Tenant has provided Landlord with written notice of the existence of a Leasehold Mortgage, together with Leasehold Mortgagee's address and a contact party, and so long as such Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply in respect of such Leasehold Mortgage notwithstanding any other provisions of this Ground Lease to the contrary:

A. There shall be no cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Ground Lease by joint action of Landlord and Tenant, nor shall Landlord recognize any such action by Tenant alone, without in each case the prior consent in writing of any Leasehold Mortgagee (which shall not be unreasonably withheld, delayed or conditioned). Nor shall any merger result from the acquisition by, or devolution upon, any person or entity of both the fee estate in the Premises and the leasehold estate created by this Ground Lease. Any attempted cancellation, termination, surrender, amendment, modification or merger of this Ground Lease without the prior written consent of all Leasehold Mortgagees (which shall not be unreasonably withheld, delayed or conditioned) shall be of no force or effect;

B. Each Leasehold Mortgagee shall be given notice of any arbitration or action, suit or other proceeding or dispute between the Parties and shall have the right to intervene therein and be made a party thereto if Tenant fails to do so. In any event, each Leasehold Mortgagee shall receive notice, and a copy, of any award, decision or judgment rendered in such arbitration, action, suit or other proceeding.

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C. If there is a Condemnation in respect of the Premises, any award of payment which is to be paid to Tenant shall, if required under any Leasehold Mortgage, be paid instead to the Leasehold Mortgagees in accordance with the priority of their liens and in accordance with the terms of Section 12.6 of this Ground Lease and the applicable Leasehold Mortgage. If a Condemnation results in a termination of this Ground Lease, Tenant's portion of the award or payment shall be paid to the Leasehold Mortgagees in accordance with the priority of their liens and the provisions of their respective Leasehold Mortgages, with any remaining balance paid to Tenant.

D. No payment made to Landlord by any Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Ground Lease; and the Leasehold Mortgagee having made any payment or portion thereof to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided it shall have made demand therefor not later than one year after the date of its payment.

E. In connection with the rights of a Leasehold Mortgagee to cure Tenant's defaults under this Ground Lease and to protect its security, Landlord and Tenant hereby expressly grant to each Leasehold Mortgagee, and agree that each Leasehold Mortgagee shall have, the absolute and immediate right to enter in and upon the Premises and the Improvements or any part thereof to such extent and as often as the Leasehold Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Tenant, without any obligation to do so.

F. In the event any right granted to a Leasehold Mortgagee under this Section 15.2 shall by its nature only be exercisable by one Leasehold Mortgagee, and if there are multiple Leasehold Mortgagees, then only the Leasehold Mortgagee holding the most senior Leasehold Mortgage shall be entitled to do so unless such Leasehold Mortgagee delegates its right to exercise such right to a Leasehold Mortgagee holding a junior Leasehold Mortgage.

G. In the event a Leasehold Mortgagee or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser, acquires Tenant's interest in this Ground Lease, the Leasehold Mortgagee or its designee shall not be bound by any modification or amendment to this Ground Lease entered into after Leasehold Mortgagee acquired a security interest in the Tenant's interest in this Ground Lease not otherwise previously approved by the Leasehold Mortgagee.

H. In the event a Leasehold Mortgagee or its designee (by foreclosure, conveyance in lieu of foreclosure or otherwise), or the purchaser at a foreclosure sale or the assignee or designee of such purchaser, acquires Tenant's interest herein, such party shall thereupon become Tenant under this Ground Lease and hereby agrees to perform each and all of Tenant's obligations and covenants hereunder (including the payment of past due Rent); provided, however, that any defaults by Tenant under this Ground Lease which do not involve the payment of money and which cannot be satisfied or cured by such party shall be deemed waived.

I. Nothing in this Section 15.2 or Section 14.6 shall be deemed or construed to create or impose any obligation, covenant or liability, whatsoever, upon a Leasehold Mortgagee: (a) for the payment of Annual Minimum Rent and Additional Rent or any additional monetary sums due under this Ground Lease; (b) for the performance of any of Tenant's covenants and agreements

hereunder; or (c) to cure any default by the Tenant under this Ground Lease, and neither Tenant nor Landlord shall have any claims against a Leasehold Mortgagee for its failure to make any payment or take any action which it is entitled to take under this Section 15.2 until such time as such Leasehold Mortgagee assumes possession of the Premises or acquires the Tenant's interest in the Ground Lease, and then only for as long as it remains in possession or the owner of the leasehold estate created thereby, and Landlord expressly waives any and all such claims.

J. The liability of any Leasehold Mortgagee, its successors and assigns, under this Ground Lease shall be limited in all respects to its interest in this Ground Lease and the leasehold estate created hereby and such Leasehold Mortgagee shall have no personal liability hereunder and no judgment or decree shall be enforceable beyond the interest of such Leasehold Mortgagee in the leasehold estate created under this Ground Lease or shall be sought or entered in any action or proceeding brought in connection with this Ground Lease.

K. Notwithstanding anything to the contrary contained in this Ground Lease, if a Leasehold Mortgagee or its designee shall acquire title to Tenant's interest in this Ground Lease, by foreclosure of its Leasehold Mortgage thereon or by assignment in lieu of foreclosure, such Leasehold Mortgagee or designee may freely assign this Ground Lease without the consent of Landlord and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in this Ground Lease contained on Tenant's part to be performed and observed from and after the date of such assignment; provided, however, that the assignee shall have assumed, pursuant to legally binding written instruments, the obligations of Tenant under the Ground Lease and the DHCA that first accrue from and after the date of such assumption.

L. Subject to the terms of its Leasehold Mortgage and to the extent permitted therein, should a Leasehold Mortgagee be entitled to the appointment of a receiver for all or any part of the Premises and/or the Improvements (a "*Receiver*"), without regard to whether such Leasehold Mortgagee has commenced an action to foreclose the lien of its Leasehold Mortgage and without regard to the nature of the action in which the appointment of a receiver is sought, Landlord agrees that it will not oppose any such appointment, whether or not entitled by the terms of this Ground Lease to do so. Notwithstanding anything to the contrary contained in this Ground Lease, the appointment of the Receiver for the Premises or the Improvements by any court at the request of a Leasehold Mortgagee or by agreement between Tenant and such Leasehold Mortgagee, or the entering into possession of the Premises or the Improvements by such Receiver, shall not be deemed to make such Leasehold Mortgagee a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Premises or the Improvements and shall not, in and of itself, constitute default under this Ground Lease.

M. Tenant and Landlord agree that the provisions of this Section 15.2 are for the benefit of and shall be enforceable by each Leasehold Mortgagee, its respective successors and assigns, provided that each such Leasehold Mortgagee, and its respective successors and assigns, comply with the provisions of this Section 15.2.

N. Each Leasehold Mortgage shall expressly provide that, the rights granted by Tenant to the Leasehold Mortgagee respecting all rights and interests of Tenant under this Ground Lease are at all times subject and subordinate to the rights and interests of Landlord as fee owner of the Premises. Further, each Leasehold Mortgage shall provide that the Leasehold Mortgagee will execute such reasonable agreements and instruments as may be required by Landlord and/ or its

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

lenders to further evidence such subordination. Tenant acknowledges and agrees that Landlord's title in and to the Land shall at all times be superior to and paramount to the interest in the Land of Tenant and anyone claiming by, through or under Tenant including, without limitation, any Leasehold Mortgagee or other encumbrancer, assignee or subtenant of Tenant.

O. If the Ground Lease is terminated because of a default by Tenant, or because of a disaffirmance or rejection of the Ground Lease by a receiver, liquidator, or trustee for Tenant or Tenant's property that has taken possession of Tenant's business or property because of Tenant's insolvency or alleged insolvency, at the time of such termination, then Landlord shall give notice thereof to Leasehold Mortgagee and upon Leasehold Mortgagee's request made within sixty days after delivery of such notice to Leasehold Mortgagee. Upon payment to Landlord of all rent and other monies due and payable by Tenant under the Ground Lease immediately prior to such termination of the Ground Lease, as well as all sums that would have become payable under the Ground Lease by Tenant to Landlord to the date of execution and delivery of the new lease as provided below, had the Ground Lease not been terminated, together with reasonable attorneys' fees and expenses in connection therewith and in connection with the removal of Tenant from the Premises, and the curing of all defaults under the Ground Lease that are within Leasehold Mortgagee's power to cure, and the performance of all of the covenants and provisions under the Ground Lease that are within Leasehold Mortgagee's power to perform up to the date of the execution and delivery of the new lease as provided below, giving credit, however, for any net income actually collected by Landlord from the Premises and the Improvements, Landlord shall enter into a new lease of the Premises and the Improvements (to the extent thereof as of the date of termination) with Leasehold Mortgagee or its designee for the remainder of the term of the Ground Lease (and, at Leasehold Mortgagee's election, Landlord shall convey to Leasehold Mortgagee, by a customary form of quitclaim deed in the State of Illinois, all of Landlord's right, title and interest in and to the Improvements other than the Pre-Existing Improvements), at the same rent and on the same terms and conditions as contained in the Ground Lease and dated as of the date of termination of the Ground Lease. Leasehold Mortgagee or its designee, as tenant under the new lease, shall have priority equal to Tenant's estate under the Ground Lease (that is, there shall be no charge, lien, or burden upon the Premises or improvements prior to or superior to the estate granted by such new lease that was not prior to or superior to Tenant's estate under the Ground Lease as of the date immediately preceding the date the Ground Lease went into default, except, however, any charge, lien or burden that should not have been permitted and/or should have been discharged by Tenant under the terms of the Ground Lease).

P. Landlord, upon request, shall execute, acknowledge, and deliver to any Leasehold Mortgagee an agreement, by and among Landlord, Tenant, and Leasehold Mortgagee (provided the same has been previously executed by Tenant and Leasehold Mortgagee) agreeing to all of the provisions of this Article 15 and Section 14.6, in form and substance reasonably satisfactory to such Leasehold Mortgagee and Landlord. Tenant shall reimburse Landlord for all of Landlord's reasonable out of pocket costs and expenses including, but not limited to, attorneys' fees, incurred in connection with a request from Tenant or a Leasehold Mortgagee for such an agreement.

Q. Landlord agrees that any insurance proceeds paid in connection with any fire or other casualty affecting the Premises and/or the Improvements shall be paid and applied in accordance with the terms of the most senior Leasehold Mortgage and related loan documents.

ARTICLE 16
HOLDING OVER AND SURRENDER

Except where Tenant exercises its right to purchase the Premises pursuant to Article 2 of this Ground Lease, at the termination of this Ground Lease by lapse of time or otherwise, Tenant shall yield up immediate possession of the Premises to Landlord and, failing so to do, Tenant hereby agrees to pay to Landlord an amount equal to one hundred fifty percent (150%) of the quarterly installments of the Annual Minimum Rent applicable immediately prior to the expiration of the Term, as set forth in Section 4.2 of this Ground Lease, for each quarter or fractional quarter such holding over (prorated on a per diem basis for any partial calendar quarter), plus the actual amount of Additional Rent for the holdover period, plus any other damages prescribed by law; provided, however, that Landlord shall not be entitled to seek any consequential damages due to any holding over unless such holding over continues for more than ninety (90) days after the termination of this Ground Lease.

ARTICLE 17
PROPERTY OF TENANT

Section 17.1 Personal Property, Trade Fixtures and Equipment. Tenant may, at its sole cost and expense, install any trade fixtures, equipment, and other personal property of a temporary or permanent nature used in connection with the development, construction, and operation of the Project on or at the Premises, and Tenant shall have the right at any time during the Term to remove any and all such trade fixtures, equipment, and other personal property that it may have stored or installed upon or at the Premises.

Section 17.2 Abandonment of Property. In case Tenant shall decide not to remove any part of its trade fixtures, equipment, or other personal property upon expiration or earlier termination of this Ground Lease, Tenant shall notify Landlord in writing not fewer than ninety days prior to the scheduled expiration of the Term, or within thirty days after the earlier termination of this Ground Lease, specifying those items of trade fixtures, equipment, installations made pursuant to Section 17.1, or other personal property that Tenant has decided not to remove. If, within thirty days after service of such notice ("*Abandonment Notice*"), Landlord shall request ("*Removal Notice*") Tenant to remove any of said trade fixtures, equipment, or other personal property, Tenant shall, at its own expense, at or before the scheduled expiration of the Term, or, in the event of the earlier termination of this Ground Lease, no later than sixty days after Landlord delivers the Removal Notice to Tenant, remove said trade fixtures, equipment, and other personal property and, in case of damage by reason of such removal, restore the Premises to good order and condition. Any of Tenant's trade fixtures, equipment, and other personal property not removed by Tenant upon the expiration or earlier termination of this Ground Lease shall, after the expiration of the removal period described in this Section 17.2, if any, be considered abandoned by Tenant ("*Abandoned Property*") and may be appropriated, sold, destroyed, or otherwise disposed of by Landlord without liability or obligation on Landlord's part to pay or account for, same. Except for any trade fixtures, equipment, and other personal property identified in the Abandonment Notice and not requested to be removed pursuant to the Removal Notice, Tenant will pay all reasonable costs and expenses incurred by Landlord in removing, sorting, or disposing of Tenant's trade fixtures, equipment, and other personal property and repairing all damage to the Premises caused by removal of Tenant's trade fixtures, equipment, and other personal property which Tenant has

failed to remove despite Landlord's request therefor. At the request of Landlord, Tenant will, at such time, execute, acknowledge, and deliver to Landlord a bill of sale or other appropriate conveyance document evidencing the transfer to Landlord of all right, title and interest of Tenant in and to the Abandoned Property.

ARTICLE 18
ESTOPPEL CERTIFICATES

Section 18.1 Estoppel Certificates. Landlord and Tenant each agree to furnish, at any time and from time to time, so long as this Ground Lease shall remain in effect, upon not less than twenty-one days prior written request by the other Party, a statement (an "*Estoppel Certificate*") in writing certifying (i) that this Ground Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified, stating the modifications), (ii) that the dates to which the Rent and other charges have been paid in advance, if any, (iii) that to the best knowledge of the certifying Party, there are no defaults under the Ground Lease by Landlord or Tenant, as the case may be, except such defaults as may be specified in such statement, (iv) that, in the case of Landlord, to its best knowledge, it is not in default under any mortgage or deed of trust encumbering the Premises and that in the case of Tenant, to its best knowledge, it is not in default under any leasehold mortgage encumbering Tenant's leasehold interest under this Ground Lease, and (v) such other matters as the requesting Party shall reasonably request, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchasers or assignees of Landlord's or Tenant's respective interests, any prospective mortgagee, holder of any mortgage, or assignee of any mortgage upon Tenant's interest in the Premises or the Improvements or any prospective subtenant of all or any portion of the Premises. Notwithstanding anything contained herein to the contrary, in no event shall either Party be required to furnish more than two Estoppel Certificates in any twelve consecutive month period; provided, however, that Tenant may request multiple Estoppel Certificates for the same transaction or financing simultaneously (which shall be deemed to constitute only one Estoppel Certificate). Tenant shall reimburse Landlord for all of Landlord's reasonable out of pocket costs and expenses including, but not limited to, reasonable attorneys' fees, incurred in connection with a request from Tenant for an Estoppel Certificate.

ARTICLE 19
NOTICES

Section 19.1 Manner of Making Notices. In every case where under any of the provisions of this Ground Lease or in the opinion of either Landlord or Tenant, or otherwise, it shall or may become necessary or desirable to make or give any declaration, approval or notice of any kind, it shall be sufficient if a copy of any such declaration, approval or notice is hand delivered, sent by nationally recognized overnight delivery company, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by electronic mail (and if transmitted before 5:00 p.m. Central Time on a business day, then such notice sent by electronic mail shall be deemed given on the same business day, otherwise such notice shall be deemed given on the next business day, provided that no error or failure of delivery message is received by the sender, and provided that in the case notice is sent by electronic mail, a copy must be sent the same business day by one of the other methods set forth in this Section 19.1 unless the recipient affirmatively replies to such message and acknowledges receipt [i.e. not an automated return receipt]), in each case properly

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addressed to Landlord or Tenant (as the case may be) at the following address (or such other address as may hereafter be given in writing as the address for notice hereunder by one Party to the other):

If to Landlord:

City of Waukegan
100 North Martin Luther King, Jr. Avenue
Waukegan, Illinois 60085
Attention: Noelle Kischer-Lepper, Director of Planning & Economic Development
Email: noelle.kischer@waukeganil.gov

with a copy to:

Elrod Friedman LLP
325 North LaSalle Street, Suite 450
Chicago, Illinois 60654
Attention: Stewart J. Weiss
Email: stewart.weiss@elrodfriedman.com

If to Tenant:

FHR-Illinois LLC
c/o Full House Resorts, Inc.
1980 Festival Plaza Drive, Suite 680
Las Vegas, Nevada 89135
Attention: Alex J. Stolyar, SVP & Chief Development Officer
Email: astolyar@fullhouseresorts.com

and

FHR-Illinois LLC
c/o Full House Resorts, Inc.
1980 Festival Plaza Drive, Suite 680
Las Vegas, Nevada 89135
Attention: Elaine Guidroz
Email: eguidroz@fullhouseresorts.com

and

FHR-Illinois LLC
600 Lakehurst Road
Waukegan, Illinois 60085
Attention: Jeff Babinski
Email: jbabinski@americanplace.com

with a copy to:

Taft Stettinius & Hollister LLP
111 East Wacker Drive, Suite 2800

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Chicago, Illinois 60601
Attention: Cezar M. Froelich, Kimberly M. Copp
Email: cfroelich@taftlaw.com, kcopp@taftlaw.com

Copies of all notices shall be given to Leasehold Mortgagee(s) at the address(es) provided by Tenant or by Leasehold Mortgagee(s), as the case may be; provided, however, all notices to Collateral Trustee to be given to:

Wilmington Trust, National Association
50 S. Sixth Street, Suite 1290
Minneapolis, MN 55402
Attn: Full House Resorts Notes Administrator
Facsimile: (612) 217-5651

Section 19.2 When Notice Deemed Given. Whenever a notice which is required by this Ground Lease to be given by either Party hereto to the other Party, the notice shall be considered as having been given on the day on which the notice was hand delivered or delivered by overnight delivery company, or on the day placed in the United States mails as provided by this Article.

ARTICLE 20
MISCELLANEOUS

Section 20.1 Covenants to Run with the Land. All the covenants, agreements, conditions and undertakings in this Ground Lease shall extend and inure to and be binding upon the successors and permitted assigns of each of the parties hereto, the same as if they were in every case named and expressed, and the same shall be construed as covenants running with the land. Wherever in this Ground Lease reference is made to any of the Parties hereto, it shall be held to include and apply to, wherever applicable, also the successors and permitted assigns of each such Party, the same as if in each and every case so expressed.

Section 20.2 Survival of Indemnity and Payment Obligations. Each obligation to indemnify, defend and hold harmless provided for in this Ground Lease and to pay any amounts accruing under this Ground Lease prior to the date of expiration or termination of this Ground Lease shall survive the expiration or termination of this Ground Lease.

Section 20.3 No Merger of Estates. There shall be no merger of this Ground Lease or the leasehold estate created by this Ground Lease with any other estate or interest in the Premises by reason of the fact of the same person, firm, corporation (including the Tenant), or other entity acquiring or owning or holding, directly or indirectly, this Ground Lease or the leasehold interest created by this Ground Lease or any interest in this Ground Lease, and any such other estate or interest in the Premises or any part thereof, and no such merger shall occur unless and until all corporations, firms, and other entities having an interest (including a security interest) in this Ground Lease or the leasehold interest created by this Ground Lease and any such other estate or interest in the Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

Section 20.4 Relationship of Parties. Neither anything in this Ground Lease nor any acts of the Parties shall be construed or deemed by the Parties, or by any third person, to create the

relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Parties.

Section 20.5 Successors and Assigns. The words "Landlord" and "Tenant" and the pronouns referring thereto, as used in this Ground Lease, shall mean, where the context requires or permits, the persons named herein as Landlord and as Tenant, respectively, and their respective heirs, legal representatives, successors, and assigns, irrespective of whether singular or plural, or masculine, feminine, or neuter. The agreements and conditions in this Ground Lease contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its heirs, legal representatives, successors, and assigns, and shall inure to the benefit of Tenant and its heirs, legal representatives, successors, and assigns; and the agreements and conditions on the part of Tenant to be performed and observed hereunder shall be binding upon Tenant and its heirs, legal representatives, successors, and assigns, and shall inure to the benefit of Landlord and its heirs, legal representatives, successors, and assigns.

Section 20.6 Entire Agreement. This Ground Lease (including the DHCA and all Exhibits to both instruments) contains the entire and only agreement between the parties with respect to the subject matter of this Ground Lease, and no oral statements or representations or prior written matter or negotiations not contained in this Ground Lease shall have any force or effect. This Ground Lease shall not be modified, amended, canceled, surrendered, or terminated in any way except by a writing, subscribed by authorized representatives of the Party against whom it is to be enforced, which writing shall contain the written consent of each Leasehold Mortgagee.

Section 20.7 Force Majeure Occurrences. In the event that Landlord or Tenant are delayed or prevented from performing any of their respective obligations during the Term because of an occurrence of Force Majeure, then the period of such delays shall be deemed added to the time herein provided for the performance of any such obligation and the delayed Party shall not be liable for losses or damages caused by such delays; provided, however, that this Section 20.7 shall not apply to the payment of any rent required to be paid by Tenant hereunder.

Section 20.8 Memorandum of Lease. The Parties agree, concurrently with the execution of this Ground Lease, to execute a memorandum of this Ground Lease in the form attached hereto as Exhibit D recording in the chain of title of the Land, setting forth the parties hereto, the date of this Ground Lease and the term of this Ground Lease, and said memorandum shall be promptly recorded by Tenant. Either Landlord or Tenant may record a memorandum of any amendment or modification of this Ground Lease, provided the memorandum shall not include the financial terms of this Ground Lease (as so amended or modified). Each Party shall, upon the request of the other, join in the execution of a memorandum of any amendment or modification of this Ground Lease in proper form for recordation together with any transfer tax returns or forms necessary for such recordation. The Party requesting such memorandum of any amendment or modification of this Ground Lease shall be responsible for the payment of any recording fees.

Section 20.9 Invalidity of Provisions. If any provision of this Ground Lease or the application thereof to any Person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Ground Lease, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

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Section 20.10 Remedies Cumulative. Except as otherwise expressly provided in this Ground Lease: no remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Ground Lease to Landlord or Tenant may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Landlord or Tenant, as the case may be. No delay or omission of Landlord or Tenant to exercise any right or power arising from any default shall impair any such right or power, nor shall it be construed to be a waiver of any such default or an acquiescence therein.

Section 20.11 Waiver of Remedies Not to be Inferred. No waiver of any breach of any of the covenants or conditions of this Ground Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of the same or similar covenant or condition.

Section 20.12 Amendments. None of the covenants, terms or conditions of this Ground Lease to be kept and performed by Landlord or Tenant shall in any manner be waived, modified, changed or abandoned except by a written instrument approved by Landlord's corporate authorities and signed by both Parties (provided that any waiver need only be signed by the Party against whom enforcement of such waiver is sought).

Section 20.13 Singular and Plural. Any word contained in the text of this Ground Lease, including but not by way of limitation "Tenant" and "Landlord", shall be read as the singular or the plural and as the masculine, feminine or neuter gender as may be applicable in the particular context.

Section 20.14 Captions. The captions of this Ground Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Ground Lease.

Section 20.15 Governing Law; Consent to Jurisdiction. This Ground Lease shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. Exclusive jurisdiction with regard to the commencement of any actions or proceedings arising from, relating to, or in connection with this Ground Lease will be in the 19th Judicial Circuit Court of Lake County, Illinois or, where applicable, in the federal court for the Northern District of Illinois, and each Party consents to the jurisdiction of such courts. The Parties waive their respective right to transfer or change the venue of any litigation filed in the 19th Judicial Circuit Court of Lake County, Illinois or the federal court for the Northern District of Illinois. The Parties further acknowledge and agree: (i) that the Parties shall not enter into binding arbitration to resolve any contract dispute, except as provided in Sections 12.5 and 12.10; and (ii) Landlord does not waive any rights, powers, or affirmative defenses provided by the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq.).

Section 20.16 Attorneys' Fees. In the event of a dispute between the parties resulting in litigation, the prevailing Party (as determined by the court, agency, or other authority before which such litigation is commenced) shall have the right to recover its court costs, reasonable attorneys' fees, and reasonable expenses incurred in connection with prosecuting or defending such litigation from the non-prevailing Party.

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Section 20.17 Counterparts. This Ground Lease may be executed in one or more counterparts, with signatures to one being deemed signatures to each such counterpart, each of which shall be deemed one and the same instrument. Electronic signatures appearing on this Ground Lease are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

Section 20.18 Brokers. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Ground Lease, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Ground Lease. Tenant agrees to indemnify, defend and hold harmless Landlord and the Indemnified Parties from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the Tenant's dealings with any real estate broker or agent. Landlord agrees to indemnify, defend and hold harmless Tenant from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the Landlord's dealings with any real estate broker or agent. The terms of this Section 20.18 shall survive the expiration of the Term or earlier termination of this Ground Lease.

Section 20.19 Time is of the Essence. Time is of the essence of this Ground Lease and each of its provisions, subject to Section 20.7 of this Ground Lease.

Section 20.20 No Third Party Beneficiaries. No claim as a third party beneficiary under this Ground Lease by any person, firm, or corporation (except Leasehold Mortgagees) shall be made, or be valid, against Landlord or Tenant.

Section 20.21 References to DHCA: Conflicts. As the context requires, for purposes of this Ground Lease the term "*Developer*" as used in the DHCA shall mean Tenant hereunder, the term "*City*" as used in the DHCA shall mean Landlord hereunder. In the event of any conflict between the provisions of this Ground Lease and the DHCA, the provisions of the DHCA shall control.

Section 20.22 Guaranty. Concurrently with Tenant's execution and delivery of this Ground Lease, Tenant shall provide to Landlord a Limited Guaranty in the form attached hereto as Exhibit E from Tenant's parent company, Full House Resorts, Inc., a Delaware corporation.

Section 20.23 Landlord's Representations and Warranties. Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the Effective Date:

A. Except as otherwise disclosed on Schedule 20.23, there is no existing or, to Landlord's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting Landlord, any constituent entity or individual of Landlord, or the Premises that would, if adversely determined, adversely affect Landlord, the Premises, or Tenant's ability to develop and operate the Premises for the Project;

B. Except for the DHCA, Landlord is not a party to any contract for any alteration, addition, development, redevelopment, modification, expansion, demolition, restoration, or other

construction or reconstruction work affecting any or all improvements from time to time constituting part of the Premises, or the construction or reconstruction of any new improvements, or repair of any existing improvements, located on or at the Premises. No Person has the right to claim any mechanic's or supplier's lien arising from any labor or materials furnished to the Premises before the Effective Date (excluding any labor or materials furnished to Tenant pursuant to the TCE).

C. Tenant is the only lessee of the Premises. No other Person has any right to lease, use, or occupy the Premises.

D. Except for the Purchase Option, neither Landlord nor any of its Affiliates has entered into any, and to the knowledge of Landlord there are no, agreements currently in effect pursuant to which any party has any right of first refusal, option or other right to purchase all or any part of the Premises.

Section 20.24 No Consequential Damages. Except as otherwise provided in Article 16 above, Landlord and Tenant each hereby agrees that, whenever either Party shall be entitled to seek or claim damages against the other Party by reason of a breach of this Ground Lease by such Party, in enforcement of any indemnity obligation, or for misrepresentation or breach of warranty, or otherwise, neither Landlord nor Tenant shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. Except as otherwise provided in Article 16 above, the Parties intend that any damages awarded to either Party shall be limited to the actual, direct damages sustained by the aggrieved Party in question. Except as otherwise provided in Article 16 above, neither Party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

Section 20.25 Waiver of Jury Trial. **LANDLORD AND TENANT EACH WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GROUND LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE PREMISES.**

Section 20.26 No Waiver of Regulatory Authority. The Parties agree and acknowledge that this Ground Lease is entered into by Landlord in accordance with its constitutional authority to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance. Nothing set forth herein shall be deemed to limit, waive or otherwise modify Landlord's regulatory authority as a home rule municipal corporation including, without limitation, the legislative discretion of the City Council (including any subsidiary board thereof) to grant or withhold any approvals, consents, permits, licenses or similar enactments as well as the exercise of Landlord's police powers to preserve the health, safety, and welfare of the City and its residents.

ARTICLE 21
EXHIBITS AND ADDENDA TO LEASE

Attached to this Ground Lease, and incorporated into and made a part of this Ground Lease by this reference, are the following:

(a) EXHIBIT A-1: Legal Description of the Land

(b) EXHIBIT A-2: Depiction of the Land

(c) EXHIBIT B: Purchase and Sale Agreement

(d) EXHIBIT C: Tenant's Required Insurance Coverage

(e) EXHIBIT D: Form of Memorandum of Ground Lease

(f) EXHIBIT E: Form of Guaranty

(g) EXHIBIT F: Permitted Encumbrances

(h) SCHEDULE 20.23: Litigation

[REMAINDER INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Ground Lease, effective as of the day and year first above written.

LANDLORD:

CITY OF WAUKEGAN,
an Illinois home rule municipality

By: Ann B. Taylor
Ann B. Taylor, Mayor

ATTEST:

By: Janet E. Kilkelly
Janet E. Kilkelly, City Clerk

TENANT:

FHR-ILLINOIS LLC,
a Delaware limited liability company

By: ______________________________
Elaine Guidroz, Vice President and Secretary

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Ground Lease, effective as of the day and year first above written.

LANDLORD:

CITY OF WAUKEGAN,
an Illinois home rule municipality

By: ______________________________
Ann B. Taylor, Mayor

ATTEST:

By: ______________________________
Janet E. Kilkelly, City Clerk

TENANT:

FHR-ILLINOIS LLC,
a Delaware limited liability company

By: ______________________________
Elaine Guidroz, Vice President and Secretary

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EXHIBIT A - 1
Legal Description of Land

LOT 1 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 25, AND THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF WAUKEGAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 2004 AS DOCUMENT 5606604, IN LAKE COUNTY, ILLINOIS.

Address of Property:	600 Lakehurst Road, Waukegan, Illinois
PIN:	07-36-104-00

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EXHIBIT A-2

Depiction of Land

[See Attached]

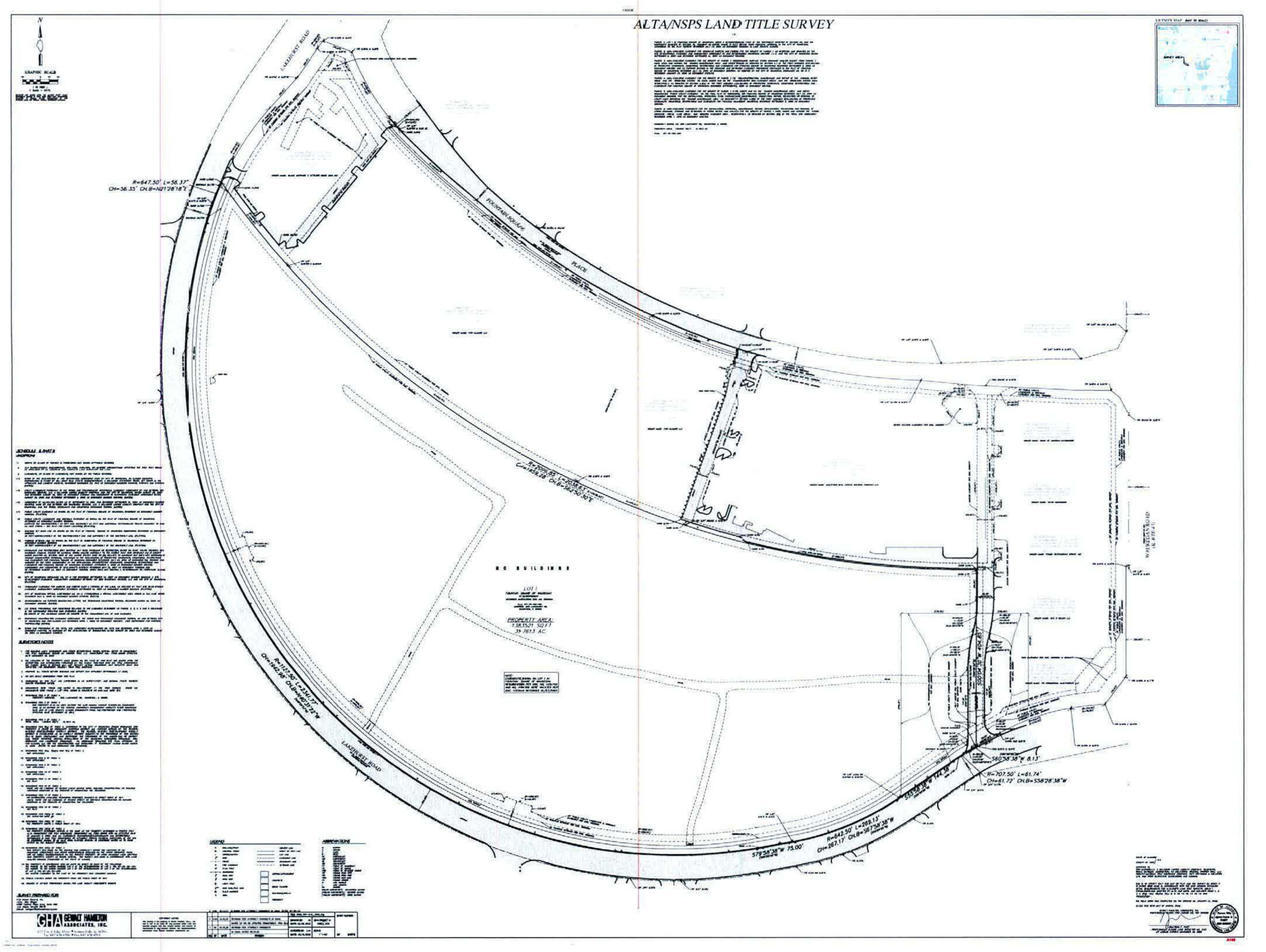
ALTA/NSPS LAND TITLE SURVEY
N
GRAPHIC SCALE
LAKEHURST ROAD
FOUNTAIN SQUARE PLACE
WAUKEGAN ROAD (IL RTE 43)
R=647.50' L=56.37'
CH=56.35' CH.B=N21°28'18"E
R=2095.85' L=2038.63'
CH=1959.28' CH.B=S62°50'10"E
NO BUILDINGS
LOT 1
PROPERTY AREA:
1,383,521 SQ.FT.
31.7613 AC.
R=1127.50' L=2341.77'
CH=1942.98' CH.B=N40°31'22"W
S00°04'30"W 404.85'
S60°58'38"W 8.13'
R=707.50' L=61.74'
CH=61.72' CH.B=S58°28'38"W
S53°58'38"W 144.38'
R=642.50' L=269.13'
CH=267.17' CH.B=S67°58'38"W
S79°58'38"W 75.00'
SCHEDULE B-PART II EXCEPTIONS
SURVEYOR'S NOTES
LEGEND
ABBREVIATIONS
SURVEY PREPARED FOR
GHA GEWALT HAMILTON ASSOCIATES, INC.
VICINITY MAP

EXHIBIT B

Purchase and Sale Agreement

[See Attached]

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REAL PROPERTY PURCHASE AGREEMENT

THIS REAL PROPERTY PURCHASE AGREEMENT ("**Agreement**") is made as of [**_______**], 20[**__**] (the "**Effective Date**"), by and between [***Seller's Name***], a [***Seller's State of Formation & Entity Type**] ("**Seller**"), and [***Buyer's Name***], a [***Buyer's State of Formation & Entity Type**] ("**Buyer**").

RECITALS

WHEREAS, Seller is the owner of that certain parcel of land, located at [***Property Street Address***], in the City of [***Property City***], County of [***Property County***], State of Illinois, and consisting of approximately [***Land Acreage***] acres;

WHEREAS, Seller and Buyer are parties to that certain Ground Lease dated as of [**_______**], 20[**__**] (as amended, the "**Ground Lease**"), pursuant to which Seller leases to Buyer, and Buyer leases from Seller, the Land (as hereinafter defined) and the Pre-Existing Improvements (as defined in the Ground Lease);

WHEREAS, Buyer exercised the Purchase Option (as defined in the Ground Lease) in accordance with the terms and conditions and of the Ground Lease; and

WHEREAS, Buyer desires to purchase, and Seller is willing to sell, the Property, on the terms and conditions documented in this Agreement.

NOW, THEREFORE, in consideration of the respective promises contained in this Agreement, Buyer and Seller agree as follows:

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the following (collectively, the "**Property**"): (a) that certain land described in **Exhibit A** (the "**Land**"), (b) any and all of, the tenements, hereditaments, easements, rights-of-way and appurtenances belonging or in anywise appertaining to the Land (the "**Appurtenances**"); (c) all of Seller's right, title and interest in and to the improvements, structures and fixtures (the "**Improvements**") now or on the Closing Date (as hereinafter defined) located upon the Land, if any; and (d) any and all transferable developmental planning documents, engineering and planning studies, traffic studies, geotechnical soil reports, environmental reports, escrow documents, architecture specifications, permits, governmental agreements, fee credits, utility provider contracts, licenses, water rights, approvals, warranties, guarantees, and declarant or developer rights, solely to the extent relating to the Land or the Improvements (the "**Intangible Property**").

2. Purchase Price. The purchase price (the "**Purchase Price**") for the Property shall be [**_________**] and [**___**]/100 U.S. Dollars ($[**_______.___**]).

3. Payment of Purchase Price. The Purchase Price shall be paid to Seller by Buyer as follows:

A. Deposit. Within five (5) business days after the full execution and delivery of this Agreement, Buyer shall deliver One Hundred Thousand and No/100 U.S. Dollars ($100,000.00) (together with all interest earned thereon, the "**Deposit**") to [***Applicable Title Company***][1], at its offices at [***Title Company Address***], which company, in its capacity as escrow holder hereunder, is called "**Escrow Agent**". The Deposit shall be delivered to Escrow Agent by wire transfer of immediately available federal

[1] Buyer to select Escrow Agent at the time it exercises the Purchase Option.

funds or by bank or cashier's check drawn on a national bank reasonably satisfactory to Escrow Agent. Such amount shall be held by Escrow Agent as a deposit against the Purchase Price in accordance with the terms and provisions of this Agreement. At all times that the Deposit is being held by Escrow Agent, the Deposit shall be invested by Escrow Agent as directed by Buyer. The Deposit shall be held or delivered by Escrow Agent only as provided in this Agreement.

B. Closing Payment. The balance of the Purchase Price, as adjusted by the prorations and credits specified in this Agreement, shall be paid to Escrow Agent by wire transfer of immediately available federal funds on the Closing Date (as hereafter defined). The amount to be paid under this Section 3B is referred to in this Agreement as the "**Closing Payment**".

C. Discharge of Existing Liens. Notwithstanding anything in this Agreement to the contrary, Seller shall cause all mortgages, deeds of trust and encumbrances granted or assumed by Seller that secure payment of a monetary amount (and all indebtedness secured thereby) and all other monetary liens caused or suffered by Seller affecting the Property (including liens for delinquent taxes that are Seller's responsibility under the Ground Lease, mechanics' liens and judgement liens) (the "**Existing Liens**") to be fully satisfied, released and discharged of record on or prior to the Closing Date so that Buyer shall take title to the Property free of the same.

4. Title Commitment and Survey. If not previously delivered to Buyer and Seller, Buyer shall request that [***Applicable Title Company***][2] (which company, in its capacity as title insurer hereunder, is herein called "**Title Company**") promptly deliver to Seller and Buyer a title commitment covering the Property and legible copies of the documents evidencing the exceptions to title stated therein (collectively, the "**Title Commitment**"). Buyer shall be entitled to obtain an ALTA/NSPS survey[3] of the Property (the "**Survey**"), satisfactory to Buyer in its sole and absolute discretion. On or prior to 5:00 p.m. Central Time on the date that is not later than fifteen (15) days after the Effective Date (the period beginning on the Effective Date and ending at such time on such date being herein called the "**Title Review Period**"), Buyer shall give Seller written notice (the "**Title Notice**") of any matters within the Title Commitment or the Survey that are disapproved by Buyer (individually, a "**Disapproved Title Matter**"); provided, however, in no event shall any Permitted Encumbrances (as defined in the Ground Lease) that have not been released of record, the Development and Host Community Agreement entered into by and between Seller and Buyer or its predecessor-in-interest under the Ground Lease, or any monetary or non-monetary encumbrance arising by, through or under Buyer be a Disapproved Title Matter. Any matters within the Title Commitment or the Survey that are not timely disapproved by Buyer in the Title Notice shall be deemed to have been approved by Buyer and shall be "**Permitted Exceptions**" (as defined below), subject to Seller's obligations under Section 3C. Within ten (10) days after receipt of the Title Notice, Seller shall notify Buyer in writing (the "**Title Response Notice**") as to any Disapproved Title Matters that Seller shall remove on or before the Closing Date. Failure of Seller to provide the Title Response Notice as to any Disapproved Title Matter within such ten (10) day period shall be deemed Seller's election not to remove such Disapproved Title Matter. If Seller makes (or is deemed to have made) the election not to remove any Disapproved Title Matter, then Buyer shall have five (5) business days from the earlier of: (i) the date it receives Seller's notice making such election; or (ii) the date that Seller is deemed to have made such election as to such Disapproved Title Matter (but not later than the Closing Date), within which to notify Seller in writing that Buyer elects to either: (x) nevertheless proceed with the purchase and take title to the Property subject to such Disapproved Title Matter (subject to Seller's obligations under Section 3C); or (y) terminate this Agreement. If Buyer makes the election set forth in clause (y) above, then this Agreement shall immediately terminate, Buyer shall be entitled to a return of the Deposit, and Seller and Buyer shall

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[2] Title Company will be the same entity as Escrow Agent.

[3] If applicable, the survey standards will be updated to reflect current survey standards used in commercial real estate transactions.

have no further rights or obligations hereunder, except for the provisions hereof that expressly survive termination of this Agreement. If Buyer fails to notify Seller in writing of its election within said five (5) business days period, then Buyer shall be deemed to have made the election set forth in clause (x) above. Any matters set forth in any update of the Title Commitment or the Survey shall be subject to the express written approval of Buyer.

5. Intentionally Omitted.

6. Closing. The closing ("**Closing**") of the sale and purchase herein provided shall be consummated through escrow with Escrow Agent on [***Closing Date***], 20[**___**][4] (the "**Closing Date**") pursuant to escrow instructions by and among Buyer, Seller and Escrow Agent that are in compliance with the terms and conditions of this Agreement. In addition, either party may provide additional or supplemental escrow instructions in connection with the Closing, as long as the same are not inconsistent with this Agreement.

A. Escrow. On or before 3:00 p.m. Central Time on the Closing Date, the parties shall deliver to Escrow Agent the following:

(1) By Seller. Seller shall deliver (a) a duly executed and acknowledged original special warranty deed covering the Land, in the form of **Exhibit C-1** ("**Special Warranty Deed**"), subject only to the Permitted Exceptions; (b) a duly executed and acknowledged original quitclaim deed covering the Land and the Improvements, in the form of **Exhibit C-2** ("**Quitclaim Deed**"); (c) one (1) duly executed original of the assignment of intangible property covering the Intangible Property, in the form of **Exhibit D**; (d) an original federal certificate of "non-foreign" status in the form required by Section 1445 of the Internal Revenue Code of 1986, as amended from time to time, duly executed by Seller (or its affiliate, if applicable); (e) evidence reasonably satisfactory to Escrow Agent and Title Company that all necessary authorizations of the transaction provided herein have been obtained by Seller, such other documents and instruments, payments, indemnities, releases and agreements (including a gap undertaking and owner's affidavit) and shall perform such other acts as Title Company shall reasonably require in order to issue the Owner's Policy (as hereinafter defined), and such other instruments as may be reasonably requested by Escrow Agent or Title Company in order to consummate the transaction contemplated hereby and issue the Owner's Policy; (f) releases of the Existing Liens ("**Releases**") satisfactory to Buyer, Escrow Agent and Title Company; (g) a closing statement, dated as of the Closing Date and duly executed by Seller, setting forth, among other things, all payments to and from escrow in connection with the purchase and sale of the Property (the "**Closing Statement**"); (h) such transfer tax forms, if any, as are required by state, county and municipal authorities; (i) a certificate (the "**Closing Certificate**"), dated as of the Closing Date and duly executed by Seller, in the form of **Exhibit E**, representing to Buyer that the representations and warranties of Seller contained in this Agreement are true and correct without exception as of the Closing Date as if made on and as of the Closing Date (or, specifying in reasonable detail such exceptions, if any, which then exist); and (j) a duly executed and acknowledged original termination of the Ground Lease (the "**Termination Agreement**"), in form reasonably acceptable to Seller and Buyer.

(2) By Buyer. Buyer shall deliver (a) the Closing Payment by wire transfer of immediately available federal funds; (b) evidence reasonably satisfactory to Escrow Agent and Title Company that all necessary authorizations of the transaction provided herein have been obtained by Buyer, and such other documents and instruments as may be reasonably requested by Escrow Agent or Title Company in order to consummate the transaction contemplated hereby and issue the Owner's Policy; (c) a duly executed Closing Statement; (d) such transfer tax forms, if any, as are required by state, county and

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[4] Buyer to select date not earlier than thirty (30) days nor later than forty-five (45) days after Buyer exercises the Purchase Option in accordance with the Ground Lease.

municipal authorities; (e) a Closing Certificate, dated as of the Closing Date and duly executed by Buyer, representing to Seller that the representations and warranties of Seller contained in this Agreement are true and correct without exception as of the Closing Date as if made on and as of the Closing Date (or, specifying in reasonable detail such exceptions, if any, which then exist); and (f) the Termination Agreement duly executed and acknowledged by Buyer (or the then-current "Tenant" under the Ground Lease).

B. Conditions to Closing; Delivery to Parties. If all conditions precedent to Buyer's obligation to purchase the Property hereunder have been satisfied (or waived by Buyer), then Buyer shall deliver to Escrow Agent a written authorization to proceed with the Closing no later than 3:00 p.m. Central Time on the Closing Date. If all conditions precedent to Seller's obligation to sell the Property hereunder have been satisfied (or waived by Seller), then Seller shall deliver to Escrow Agent a written authorization to proceed with the Closing no later than 3:00 p.m. Central Time on the Closing Date.

C. Closing Costs. Buyer shall pay (a) 50% of all costs and expenses of the escrow arrangements; (b) the cost of all endorsements relating to the Owner's Policy (to the extent such cost exceeds the premium applicable to the ALTA extended coverage Owner's Policy); (c) the cost for the Survey; and (d) the recording fees for the Special Warranty Deed, the Quitclaim Deed and the Termination Agreement. Seller shall pay (a) all state, county and city transfer taxes payable, if any, in connection with the transfer contemplated herein; (b) 50% of the cost of the escrow arrangements; (c) the premium applicable to the ALTA extended coverage Owner's Policy with coverage in the amount of the Purchase Price; and (d) the recording fees for any Releases or the release of other matters not constituting Permitted Exceptions, and any other documents contemplated by this Agreement. All other closing costs not specifically allocated herein shall be paid by the parties as is customary in the county in which the Property is located. Seller and Buyer shall each pay their respective (i) legal fees and expenses (except as otherwise expressly provided in this Agreement), (ii) share of prorations (as provided below), and (iii) cost of all opinions, certificates, instruments, documents and papers required to be delivered, or caused to be delivered, by it hereunder and the cost of all its performances under this Agreement. This Section 6C shall survive the Closing.

D. Credits/Prorations.

(1) Items to be Credited and/or Prorated. At Closing, (a) the Annual Guaranteed Minimum Rent (as defined in the Ground Lease) shall be prorated between Seller and Buyer as of the Closing Date as if the term of the Ground Lease expired on the day immediately preceding the Closing Date and (b) the Annual True-Up Payment (as defined in the Ground Lease) shall be prorated between Seller and Buyer outside of escrow as provided in the Ground Lease as if the term of the Ground Lease expired on the day immediately preceding the Closing Date. Seller shall provide Buyer with a credit at Closing for real estate taxes and assessments on the Property and operating expenses of the Property, in all cases, that are Seller's responsibility under the Ground Lease for the period prior to the Closing Date. No other items of operating income or operating expense shall be apportioned between Seller and Buyer pursuant to this Agreement; provided, however, that this Agreement shall not limit Seller's obligation to pay Impositions (as defined in the Ground Lease) that are allocated to Seller under the Ground Lease.

(2) Calculation. The credits, prorations and payments shall be made on the basis of a written statement approved by Buyer and Seller. In the event any credits, prorations or apportionments made under this Section 6D shall prove to be incorrect for any reason, then any party shall be entitled to an adjustment to correct the same. Any item which cannot be finally determined because of the unavailability of information shall be tentatively determined on the basis of the best data then available and adjusted when the information is available. Notwithstanding the foregoing, any adjustments shall be made, if at all, within ninety (90) days after the Closing Date (except with respect to real estate taxes and

assessments, in which case such adjustments shall be made within thirty (30) days after the information necessary to perform such re-proration is available). This Section 6D shall survive the Closing.

7. Destruction/Condemnation of Property. In the event that, after the Effective Date but prior to the Closing Date, either any portion of the Property is taken pursuant to eminent domain proceedings or any of the improvements on the Property are damaged or destroyed, Seller shall be required to give Buyer prompt written notice of the same if Buyer is not in possession of the Property pursuant to the Ground Lease. Seller shall deliver and assign to Buyer, upon consummation of the transaction herein provided, all claims of Seller respecting any condemnation or casualty insurance coverage (including claims under the Ground Lease), as applicable, and all condemnation proceeds or proceeds from any such casualty insurance received by Seller on account of any casualty (including any condemnation proceeds or insurance proceeds received under the Ground Lease) (except to the extent required for collection costs), as applicable. In connection with any assignment of insurance proceeds hereunder, Buyer shall be credited with an amount equal to the applicable deductible amount under Seller's insurance. Notwithstanding the foregoing, (a) in the event of any Condemnation (as defined in the Ground Lease) of any portion of the Property and as a result thereof the Ground Lease is terminated pursuant to Section 12.4 thereof, or (b) if a Substantial Casualty (as defined in the Ground Lease) occurs and Buyer exercises its right to terminate the Ground Lease pursuant to Article 10 thereof, then this Agreement shall terminate concurrently with the termination of the Ground Lease or the exercise of such termination right pursuant to Article 10, as the case may be, whereupon Buyer shall receive a refund of the Deposit.

8. General Disclaimer; Representations and Warranties; Certain Covenants.

A. General Disclaimer. Except as specifically set forth in this Agreement or in the Closing Documents (as hereinafter defined), the sale of the Property hereunder is and will be made on an "as is" basis, without representations and warranties of any kind or nature, express, implied or otherwise, including any representation or warranty concerning title to the Property, the physical condition of the Property (including the condition of the soil or the Improvements), the environmental condition of the Property (including the presence or absence of hazardous substances on or respecting the Property), the compliance of the Property with applicable laws and regulations (including zoning and building codes or the status of development or use rights respecting the Property), the financial condition of the Property or any other representation or warranty respecting any income, expenses, charges, liens or encumbrances, rights or claims on, affecting or pertaining to the Property or any part thereof. Except as to matters specifically set forth in this Agreement or in the Closing Documents, Buyer will proceed with the Closing contemplated hereby solely on the basis of its own physical and financial examinations, reviews and inspections and the title insurance protection afforded by the Owner's Policy. "**Closing Documents**" means any certificate, instrument, agreement, deed, assignment or other document executed by a party or its affiliate on or after the Effective Date and delivered pursuant to this Agreement.

B. Representations and Warranties of Seller. Seller hereby represents and warrants the following to Buyer:

(1) Due Authority. This Agreement and the Closing Documents herein provided to be executed or to be caused to be executed by Seller is and on the Closing Date will be duly authorized, executed and delivered by and are binding upon Seller. Seller is a [***Seller Entity Type***], duly organized and validly existing and in good standing under the laws of the State of [***Seller State of Formation***], and is qualified to do business in the State of [***Property State***]. Seller has the capacity and authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(2) Consents; No Conflict. Seller has obtained all consents and permissions related to the transactions herein contemplated and required under any covenant, agreement, encumbrance, or Laws (as hereinafter defined). Neither this Agreement nor any agreement, document or instrument executed or to be executed in connection with the same, nor anything provided in or contemplated by this Agreement or any such other agreement, document or instrument, does now or shall hereafter breach, invalidate, cancel, make inoperative or interfere with, or result in the acceleration or maturity of, any agreement, document, instrument, right or interest, affecting or relating to Seller or the Property.

(3) No Bankruptcy or Dissolution. No Bankruptcy/Dissolution Event (as hereinafter defined) has occurred with respect to (a) Seller; or (b) any general partner or managing member of Seller (if Seller is a partnership or limited liability company, respectively).

(4) Compliance. Seller has neither received nor given written notice to the effect that the Property is not in compliance with Laws for which compliance is the obligation of Seller, as landlord, under the Ground Lease.

(5) Default. Seller is not in default in respect of any of its obligations or liabilities pertaining to the Property.

(6) Leases. Except for the Ground Lease (which will be terminated at Closing pursuant to the Termination Agreement), there are no leases (or other agreements regarding use or occupancy) of space in the Property which will be in force on the Closing Date and under which Seller is the landlord (whether by entering into such agreements or acquiring the Property subject to such agreements).

(7) Litigation; Condemnation. There are no actions, suits, condemnation or other proceedings pending or, to the knowledge of Seller, threatened, before or by any judicial, administrative or union body, any arbiter or any governmental authority, against or affecting Seller or its right, title or interest in the Property.

(8) Existing Agreements. Seller has not entered into (and is not a party to) any service agreements, equipment leasing contracts or other contracts relating to the Property that will be in force after the Closing, except for the contracts recorded as of the date of this Agreement in the official records of the county in which the Land is located.

(9) Purchase Options. Neither Seller nor any of its affiliates has entered into any, and to the knowledge of Seller there are no, agreements currently in effect pursuant to which any party has any right of first refusal, option or other right to purchase all or any part of the Property (other than the Ground Lease and this Agreement).

(10) Charges Against Buyer or Property. There are no amounts owed to the State of Illinois (or any agency or department thereof), including the Illinois Department of Revenue or the Director of the Department of Employment Security, or any municipality (or agency or department thereof), by Seller that are chargeable against Buyer or the Property, or both.

(11) Seller's Knowledge Individual. The Seller Knowledge Individual (as hereinafter defined) is an individual in a position to have knowledge about the matters described in this Section 8B.

Seller's representations and warranties in this Section 8B shall survive the Closing for a period of twelve (12) months; provided, however, that any cause of action resulting from a breach of the representations and

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

warranties in this Section 8B that is in litigation as of the expiration of such twelve (12) month period shall continue to survive until the final resolution of such claim.

For purposes of this Section 8B, the phrase "to the knowledge of Seller" or words of similar import means the actual knowledge of [** *Individual***][5], in his/her capacity as [***Title***] of Seller (the "**Seller Knowledge Individual**"), without any duty of separate inquiry and investigation, and shall not include or be deemed to include imputed knowledge or any matter not within the actual knowledge of the Seller Knowledge Individual. In addition, the Seller Knowledge Individual shall not have any personal liability on account of any breach of any representation or warranty made by Seller in this Agreement. This paragraph shall survive the Closing or the termination of this Agreement.

If Buyer obtains knowledge prior to Closing that (i) any of the Seller's representations and warranties shall not be true and correct as of the Effective Date, or (ii) any change in facts or circumstances has made the applicable representation and warranty no longer true and correct, regardless of whether Buyer becomes aware of such fact through the Seller's notification or otherwise, then Buyer may, at the Buyer's option, exercised by written notice to the Seller (and as its sole and exclusive remedy), either (a) proceed with this transaction, accepting the applicable representation and warranty as being modified by such subsequent matters or knowledge and waiving any right relating thereto, if any, or (b) terminate this Agreement and declare this Agreement of no further force and effect, in which event the Deposit shall be immediately returned to the Buyer and, except as otherwise expressly provided in Section 11A, the Seller shall have no further liability or obligation hereunder by reason thereof. For purposes of this paragraph, "Buyer's knowledge" or words of similar import means the actual knowledge of [** *Individual***], in his/her capacity as [***Title***] of Buyer (the "**Buyer Knowledge Individual**"), without any duty of separate inquiry and investigation, and shall not include or be deemed to include imputed knowledge or any matter not within the actual knowledge of the Buyer Knowledge Individual. In addition, the Buyer Knowledge Individual shall not have any personal liability under this Agreement. This paragraph shall survive the Closing or the termination of this Agreement.

C. Representations and Warranties of Buyer. Buyer hereby represents and warrants the following to Seller: (1) this Agreement and all agreements, instruments and documents herein provided to be executed or to be caused to be executed by Buyer are and on the Closing Date will be duly authorized, executed and delivered by and are binding upon Buyer; (2) Buyer is a [***Buyer Entity Type***], duly organized and validly existing and in good standing under the laws of the State of [***Buyer State of Formation***]; and Buyer is duly authorized and qualified to do all things required of it under this Agreement; (3) Buyer has the capacity and authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party (except as otherwise may be set forth in this Agreement); (4) no Bankruptcy/Dissolution Event has occurred with respect to Buyer; and (5) the Buyer Knowledge Individual is an individual in a position to have knowledge about the matters discovered by Buyer prior to Closing. This Section 8C shall survive the Closing for a period of twelve (12) months; provided, however, that any cause of action resulting from a breach of the representations and warranties in this Section 8C that is in litigation as of the expiration of such twelve (12) month period shall continue to survive until the final resolution of such claim.

D. Certain Interim Covenants of Seller. Until the Closing Date or the sooner termination of this Agreement, Seller shall: (a) not sell or otherwise dispose of all or any portion of the Property or encumber the Property in any manner without the prior written consent of Buyer; (b) promptly deliver to Buyer copies of any written notice received by Seller between the Effective Date and the Closing

[5] In the event that the City is the Seller at the time of execution, the Seller Knowledge Individual will be the City's Mayor. If the City is not the Seller, then Buyer will insert the individual it deems appropriate as the Seller Knowledge Individual in its submission of this Agreement to the Seller in accordance with Section 2.4 of the Ground Lease.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

regarding (i) any environmental law, (ii) zoning or building code violation notices, or (iii) all actions, suits or other proceedings affecting the Property, or the use, possession or occupancy thereof; (c) not take any action or omit to take any action that would cause any of Seller's representations and warranties contained in this Agreement to become untrue or inaccurate in any material respect; (d) maintain its existing insurance policies for the Property through the Closing Date, if any; and (e) not enter into any agreement affecting the Property (or any amendment thereto) without the prior consent of Buyer, including any lease or service contract.

E. Bulk Sales. No later than five (5) business days after the Effective Date, Seller shall file: (i) a notice of sale or transfer of business assets with the Illinois Department of Revenue (the "**IDOR**") pursuant to 35 ILCS 5/902(d) and 35 ILCS 120/5j; and (ii) a request for letter of clearance from and appropriate power of attorney and other documents to the Illinois Department of Employment Security (the "**IDES**") in order to allow the IDES to make a determination as to whether Seller has any assessed, but unpaid, amount of contributions, taxes, penalties, or interest. Such notice and request must be in forms reasonably approved by Buyer, and Seller shall, promptly after filing, provide Buyer with evidence of the filing of such notice and request. Buyer shall reasonably cooperate and provide such information as necessary in connection with the filing of such notice and request. In connection with the sale of the Property to Buyer, Seller shall be solely responsible for the payment of any and all contributions, taxes, penalties, and interest arising under the Bulk Sales (as hereinafter defined) laws and, in the event that, as of the Closing Date, Buyer has not received (i) a Bulk Sales release letter from the IDOR, and (ii) a Letter of Clearance or notice of a release from the IDES, Seller shall indemnify, defend and hold harmless Buyer from any and all claims, losses, damages, costs, fines, interest, penalties and charges (including, without limitation, attorneys' fees and costs) related to the Bulk Sales (as defined below) liabilities, which indemnity shall survive Closing; provided, however, in the event that prior to Closing, the IDOR or the IDES issues a certificate or statement (a "**Stop Order**") stating that any contribution, tax, penalty, or interest is assessed against Seller but unpaid or directing Buyer to withhold sales proceeds from the transaction, Buyer may withhold from the Purchase Price an amount equal to the amounts set forth in each such Stop Order and deposit such amounts with Escrow Holder, as escrowee, which shall be held and disbursed by Escrow Holder pursuant to an escrow agreement to be executed by Buyer, Seller, and Escrow Holder, as escrowee, on the Closing Date, which escrow agreement shall be in a form reasonably satisfactory to Buyer and Seller and in compliance with applicable Bulk Sales laws and that in any event shall provide for the immediate release of the deposited funds to the IDOR or the IDES, as applicable, if any such contribution, tax, penalty, or interest is claimed against Buyer ("**Bulk Sales Escrow**"). "**Bulk Sales**" means the bulk sales laws of the State of Illinois, including, without limitation, the Illinois Income Tax Act, the Retailer's Occupation Tax Act and the Unemployment Insurance Act. This Section 8E shall survive Closing.

9. Intentionally Omitted.

10. Conditions to Closing. The obligation of Seller to sell the Property as contemplated by this Agreement is subject to satisfaction of all of the conditions precedent for the benefit of Seller set forth in Section 10A, any of which may be waived prior to the Closing only in writing by Seller on or before the applicable date specified for satisfaction of the applicable condition. The obligation of Buyer to purchase the Property as contemplated by this Agreement is subject to satisfaction of all of the conditions precedent for the benefit of Buyer set forth in Section 10B or expressly provided elsewhere in this Agreement, any of which may be waived prior to the Closing only in writing by Buyer on or before the applicable date specified for satisfaction of the applicable condition. If any of such conditions is not fulfilled (or waived in writing) pursuant to the terms of this Agreement, then the party in whose favor such condition exists may terminate this Agreement and, in connection with any such termination made in accordance with this Section 10, Seller and Buyer shall be released from further obligation or liability hereunder (except for those obligations and liabilities that expressly survive such termination), and the Deposit shall be disposed of in accordance with Section 11. However, the Closing shall constitute a waiver of all conditions precedent.

A. Seller's Conditions to Closing. Seller's obligation to sell the Property is conditioned on (i) the performance by Buyer of each and every undertaking and agreement to be performed by Buyer hereunder in all material respects (except that Buyer's delivery of the Closing Payment shall not be a condition to Seller's obligation to execute and deliver the documents described in Section 6 so long as Buyer is ready, willing and able to deliver the Closing Payment upon satisfaction of the conditions to its obligations to close), (ii) the truth of each representation and warranty made by Buyer in this Agreement in all material respects at the time as of which the same is made and as of the Closing Date as if made on and as of the Closing Date (excluding any matter or change expressly permitted or contemplated by the terms of this Agreement), and (iii) the Ground Lease being in full force and effect on the Closing Date.

B. Buyer's Conditions to Closing. In addition to the conditions provided in other provisions of this Agreement, Buyer's obligation to purchase the Property is conditioned on the following:

(1) Performance by Seller. The performance by Seller of each and every undertaking and agreement to be performed by Seller hereunder in all material respects, and the truth of each representation and warranty made by Seller in this Agreement in all material respects at the time as of which the same is made and as of the Closing Date as if made on and as of the Closing Date (excluding any matter or change expressly permitted or contemplated by the terms of this Agreement). Without limitation on the foregoing, in the event that the Closing Certificate shall disclose any material exception to the representations and warranties of Seller contained in this Agreement or any certificate delivered by Seller in connection herewith which are not otherwise permitted or contemplated by the terms of this Agreement, then Buyer shall have the right to terminate this Agreement upon written notice to Seller.

(2) Title Contingency. The irrevocable and unconditional written agreement of Title Company to record the Special Warranty Deed and the Quitclaim Deed on (or promptly after) the Closing Date and to issue to Buyer effective as of the date and time the later of such deeds is recorded, an ALTA 2006 Form extended coverage owner's policy of title insurance ("**Owner's Policy**"), or equivalent or other form acceptable to Buyer, without required arbitration or including an endorsement eliminating the arbitration provisions, with coverage in the amount of the Purchase Price (or such greater amount as Buyer may elect), indicating title to the Land and the Improvements to be vested of record in Buyer, subject solely to the Permitted Exceptions. As used herein, "**Permitted Exceptions**" means the following: (1) the lien of any real estate taxes and assessments not yet due and payable, provided that the same are prorated in accordance with this Agreement; (2) exceptions to title or survey exceptions as may be approved or deemed approved by Buyer pursuant to the above provisions of Section 4; and (3) the Permitted Encumbrances (as defined in the Ground Lease) that have not been released of record, the Development and Host Community Agreement entered into by and between Seller and Buyer or their predecessors-in-interest thereunder, and any monetary or non-monetary encumbrance arising by, through or under Buyer.

(3) Ground Lease. The Ground Lease being in full force and effect on the Closing Date.

11. Disposition of Deposit.

A. Return to Buyer. If the transaction herein provided shall not close by reason of Seller's default under this Agreement or the failure of satisfaction of the conditions benefiting Buyer under Section 10 or expressly provided elsewhere in this Agreement or the termination of this Agreement by Buyer in accordance with Section 4, 7 or 10, then the Deposit shall be returned to Buyer, and no party shall have any further obligation or liability to the other (except under those provisions of this Agreement that expressly survive a termination of this Agreement); provided, however, if the transactions hereunder shall fail to close by reason of Seller's default, or if any representation or warranty made by Seller in this Agreement is not true in all material respects on the Effective Date, then Buyer shall be entitled, as its sole

and exclusive remedy, to either: (1) specifically enforce this Agreement, or (2) terminate this Agreement upon written notice to Seller and obtain a return of the Deposit, and reimbursement by Seller of up to One Hundred Thousand and No/100 Dollars ($100,000.00) of Buyer's actual out-of-pocket costs and expenses paid in connection with this Agreement.

B. Default by Buyer. **IN THE EVENT THE TRANSACTION HEREIN PROVIDED SHALL NOT CLOSE BY REASON OF BUYER'S DEFAULT IN ITS OBLIGATION TO PROCEED WITH THE CLOSING (ALL CONDITIONS TO BUYER'S OBLIGATIONS HAVING BEEN SATISFIED OR WAIVED), IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE, THE PARTIES HAVE AGREED THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN SUCH EVENT IS AND SHALL BE THE RIGHT TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES, AS SELLER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT. SUCH LIQUIDATED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF APPLICABLE LAWS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF THIS AGREEMENT IS TERMINATED FOR ANY REASON OTHER THAN THE FAILURE OF THE CLOSING TO OCCUR BY REASON OF BUYER'S UNCURED FAILURE TO PROCEED WITH THE CLOSING AS DESCRIBED IN THIS SECTION 11B, THEN THE DEPOSIT SHALL BE RETURNED TO BUYER (WITHOUT LIMITATION ON AND IN ADDITION TO ANY OTHER RIGHTS OR REMEDIES OF BUYER).**

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BUYER'S INITIALS SELLER'S INITIALS

C. Closing. In the event the transaction herein provided shall close, the Deposit shall be applied as a partial payment of the Purchase Price.

D. Failure to Close. If the transaction herein provided shall not close for any reason, other than the termination of this Agreement due to the termination of the Ground Lease, then the Ground Lease shall continue in full force and effect, subject to the terms and conditions thereof.

E. Survival. This Section 11 shall survive the Closing or any termination of this Agreement.

12. Miscellaneous.

A. Brokers. Seller represents and warrants to Buyer, and Buyer represents and warrants to Seller, that no broker or finder has been engaged by it, respectively, in connection with any of the transactions contemplated by this Agreement or to its knowledge is in any way connected with any of such transactions. In the event of a Claim (as hereinafter defined) for broker's or finder's fee or commissions in connection herewith, then Seller shall indemnify, protect, defend and hold Buyer harmless from and against the same if it shall be based upon any statement or agreement alleged to have been made by Seller, and Buyer shall indemnify, protect, defend and hold Seller harmless from and against the same if it shall be based upon any statement or agreement alleged to have been made by Buyer. The indemnification obligations under this Section 12A shall survive the Closing or any termination of this Agreement.

B. Limitation of Liability. No present or future partner, member, director, officer, shareholder, employee, advisor, affiliate or agent of or in Buyer or any affiliate of Buyer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made

or entered into under or in connection with the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Seller and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Buyer's assets for the payment of any Claim or for any performance, and Seller hereby waives any and all such personal liability. No present or future partner, member, director, officer, shareholder, employee, advisor, affiliate or agent of or in Seller or any affiliate of Seller shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or in connection with the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Buyer and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Seller's assets for the payment of any Claim or for any performance, and Buyer hereby waives any and all such personal liability. The limitations of liability contained in this Section are in addition to, and not in limitation of, any limitation on liability applicable to a party provided elsewhere in this Agreement or by law or by any other contract, agreement or instrument. This Section 12B shall survive the Closing or the termination of this Agreement.

C. Successors and Assigns. Seller may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Buyer (in which event such transferee shall assume in writing all of the transferor's obligations hereunder, but such transferor shall not be released from its obligations hereunder). No consent given by Buyer to any transfer or assignment of Seller's rights or obligations hereunder shall be construed as a consent to any other transfer or assignment of Seller's rights or obligations hereunder. Buyer may not assign or transfer its rights or obligations under this Agreement prior to the Closing Date, except to an entity to whom Buyer will enter into a Qualified and Sale Leaseback Transaction (as defined in the DHCA [as defined in the Ground Lease]) at Closing. No transfer or assignment in violation of the provisions hereof shall be valid or enforceable. Subject to the foregoing, this Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties. In the event the rights and obligations of Buyer shall be transferred and assigned as permitted under this Agreement, then such assignor shall be released from any obligation or liability hereunder, and such transferee and assignee ("**Assignee**") will be substituted in place of such assignor in the above-provided-for documents and it shall be entitled to the benefit of and may enforce Seller's covenants, representations and warranties hereunder. Upon any such assignment by Buyer or any successor or assign of Buyer, then the assignor's liabilities and obligations hereunder or under any instruments, documents or agreements made pursuant hereto shall be binding upon Assignee; provided, however, that Assignee shall have the benefit of any limitations of such liabilities and obligations applicable to either the assignor or Assignee, provided by law or by the terms hereof or such instruments, documents or agreements. This Section 12C shall survive the Closing or the termination of this Agreement.

D. Notices. Any notice or other communication permitted or required to be given hereunder shall be in writing, and shall be delivered (a) personally, (b) by United States registered or certified mail, postage prepaid, (c) by FedEx or other reputable courier service regularly providing evidence of delivery (with charges paid by the party sending the notice), or (d) by a PDF or similar attachment to an email, provided that such email attachment shall be followed within one (1) business day by delivery of such notice pursuant to clause (a), (b) or (c) above. Any such notice to a party shall be addressed at the address set forth below (subject to the right of a party to designate a different address for itself by notice similarly given).

To Buyer: ______________________ ______________________

To Seller: ______________________ ______________________

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____
Attention:__________________
Telephone: (__) ___-____
Email: _____________

____
Attention:__________________
Telephone: (__) ___-____
Email: _____________

____
____
____
Attention:__________________
Telephone: (__) ___-____
Email: _____________

With Copy To (for Seller):

____
____
____
Attention:__________________
Telephone: (__) ___-____
Email: _____________

To Escrow Agent:

____
____
____
Attention:__________________
Telephone: (__) ___-____
Email: _____________

Service of any such notice so made shall be deemed effective on the day of actual delivery (whether accepted or refused) (provided that if any notice or other communication to be delivered by email attachment as provided above cannot be transmitted because of a problem affecting the receiving party's computer, the deadline for receiving such notice or other communication shall be extended through the next business day), as shown by the addressee's return receipt if by certified mail, and as confirmed by the courier service if by courier. Except as expressly provided above with respect to certain email attachments and in Section 12J, no communications via electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder. The attorneys for any party hereto shall be entitled to provide any notice that a party desires to provide or is required to provide hereunder.

E. Legal Costs. In the event any action be instituted by a party to enforce this Agreement, the prevailing party in such action (as determined by the court, agency or other authority before which such suit or proceeding is commenced), shall be entitled to such reasonable attorneys' fees, costs and expenses as may be fixed by the decision maker. The foregoing includes, but is not limited to, reasonable attorneys' fees, expenses and costs of investigation incurred in: (1) appellate proceedings; (2) in any post-judgement proceedings to collect or enforce the judgement; (3) establishing the right to indemnification; and (4) any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code (11 United States Code Sections 101 et seq.), or any successor statutes. This Section 12E shall survive the Closing or any termination of this Agreement.

F. Further Instruments. Each party will, whenever and as often as it shall be requested so to do by the other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Agreement. This Section 12F shall survive the Closing or the termination of this Agreement.

SUBMITTED 27086202 Carol Kolberer 4/2/2024 2:54 PM

G. Matters of Construction.

(1) Incorporation of Exhibits. All exhibits attached and referred to in this Agreement are hereby incorporated herein as fully set forth in (and shall be deemed to be a part of) this Agreement.

(2) Entire Agreement. This Agreement and the Ground Lease contain the entire agreement between the parties respecting the matters herein set forth and supersede all prior agreements between the parties hereto respecting such matters.

(3) Time of the Essence. Subject to Section 12G(4) below, time is of the essence of this Agreement.

(4) Non-Business Days. Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-business day, then such period (or date) shall be extended until the immediately following business day. As used herein, "**business day**" means any day other than a Saturday, Sunday or federal or Illinois holiday.

(5) Severability. If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(6) Interpretation. Words used in the singular shall include the plural, and vice-versa, and any gender shall be deemed to include the other. Whenever the words "including", "include" or "includes" are used in this Agreement, they should be interpreted in a non-exclusive manner. The captions and headings of the Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof. Except as otherwise indicated, all Exhibit and Section references in this Agreement shall be deemed to refer to the Exhibits and Sections in this Agreement. Each party acknowledges and agrees that this Agreement (a) has been reviewed by it and its counsel, (b) is the product of negotiations between the parties, and (c) shall not be deemed prepared or drafted by any one party. In the event of any dispute between the parties concerning this Agreement, the parties agree that any ambiguity in the language of the Agreement is to not to be resolved against Seller or Buyer, but shall be given a reasonable interpretation in accordance with the plain meaning of the terms of this Agreement and the intent of the parties as manifested hereby.

(7) No Waiver. Any party may at any time or times, at its election, waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by such party (except that if a party proceeds to Closing, notwithstanding the failure of a condition to its obligation to close, then such condition shall be deemed waived by the Closing). No such waiver shall reduce the rights or remedies of a party by reason of any breach by the other party hereunder. Waiver by one party of the performance of any covenant, condition or promise of the other party shall not invalidate this Agreement, nor shall it be deemed to be a waiver by such party of the performance of any other covenant, condition or promise by such other party (whether preceding or succeeding and whether or not of the same or similar nature). No failure or delay by one party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by such party while the other party continues to be so in default.

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(8) Consents and Approvals. Except as otherwise expressly provided herein, any approval or consent provided to be given by a party hereunder may be given or withheld in the sole and absolute discretion of such party.

(9) Governing Law. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO CONFLICTS OF LAW).

(10) Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, Seller and Buyer do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party (express or implied), and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

(11) Amendments. This Agreement may be amended by written agreement of amendment executed by all parties, but not otherwise.

(12) Survival. Unless otherwise expressly provided for in this Agreement, the representations, warranties, indemnification obligations and covenants of the parties set forth in this Agreement shall not survive the consummation of the transaction contemplated by this Agreement and the delivery and recordation of the Deed. All warranties and representations shall be effective regardless of any investigation made or which could have been made. This Section 12G shall survive the Closing or the termination of this Agreement.

(13) Cumulative Remedies. Except as otherwise expressly provided herein, no remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(14) Certain Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Bankruptcy/Dissolution Event**" means the occurrence of any of the following: (a) the commencement of a case under Title 11 of the U.S. Code, as now constituted or hereafter amended, or under any other applicable federal or state bankruptcy law or other similar law; (b) the appointment of a trustee or receiver of any property interest; (c) an assignment for the benefit of creditors; (d) an attachment, execution or other judicial seizure of a substantial property interest; (e) the taking of, failure to take, or submission to any action indicating an inability to meet its financial obligations as they accrue; or (f) a dissolution or liquidation, death or incapacity.

(b) "**Claim**" means any obligation, liability, claim (including any claim for damage to property or injury to or death of any persons), lien or encumbrance, loss, damage, cost or expense (including any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim [including appellate proceedings], and any collection costs or enforcement costs).

(c) "**Laws**" means all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards, orders, zoning conditions and other governmental requirements (including those relating to the environment, health and safety, or handicapped persons) applicable to the Property, Buyer or Seller.

H. Waiver of Trial by Jury. The parties hereby irrevocably waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement. This waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court. This Section 12H shall survive the Closing or the termination of this Agreement.

I. Intentionally Omitted.

J. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart. The delivery of an executed counterpart of this Agreement as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

K. Exclusivity. For as long as this Agreement is in effect, Seller shall not entertain, solicit or accept offers or expressions of interest regarding the financing or purchase of all or any portion of the Property or the ownership interests in Seller.

L. Anti-Terrorism Law. Each party shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administrated by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network), or any other laws, regulations or executive orders designed to combat terrorism or money laundering, if applicable, to this Agreement. Each party represents and warrants to the other party that it is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this Agreement. This Section 12F shall survive the Closing of this Agreement.

N. Effectiveness of Agreement. In no event shall any draft of this Agreement create any obligations or liabilities, it being intended that only a fully executed and delivered copy of this Agreement will bind the parties hereto

M. Escrow Provisions.[6]

(1) The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that Escrow Agent shall not be deemed to be the agent of any of the parties, and Escrow Agent shall not be liable to any of the parties for any act or omission on its part, other than for its breach of this Agreement or its gross negligence or willful misconduct. Seller and Buyer shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including attorneys' fees and disbursements, incurred in connection with the performance of Escrow Agent's duties hereunder (except to the extent resulting from its breach of this Agreement or its gross negligence or willful misconduct).

(2) If at any time after the Effective Date this Agreement shall be amended by Buyer and Seller in writing, it shall not be necessary for Escrow Agent to join in or execute such amendment, provided that no such amendment may specifically modify Escrow Agent's express obligations set forth in this Agreement. It is understood and agreed that an amendment to any time period or deadline

[6] Section 12M is subject to subject reasonable revisions as may be requested by Escrow Agent at the time of execution of this Agreement.

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set forth in this Agreement shall not be deemed an amendment to Escrow Agent's express obligations of this Agreement requiring Escrow Agent's acknowledgment. Copies of any amendment to this Agreement may be delivered by either party to Escrow Agent. Upon receipt of any such amendment, Escrow Agent shall observe and comply with the terms of any such amendment made in accordance herewith.

(3) Escrow Agent has acknowledged its agreement to these provisions by signing this Agreement in the place indicated following the signatures of Seller and Buyer. Escrow Agent shall hold the Deposit in escrow in an interest-bearing bank account approved by Buyer (the "**Deposit Escrow Account**"). Escrow Agent shall not be liable for any failure, refusal, insolvency, or inability of the depository into which the Deposit is deposited to pay the Deposit at Escrow Agent's direction, or for levies by taxing authorities based upon the taxpayer identification number used to establish this interest bearing account.

(4) Escrow Agent shall hold the Deposit in escrow in the Deposit Escrow Account until the Closing or sooner termination of this Agreement and shall hold or apply such proceeds in accordance with the terms of this Agreement. At the Closing, the Deposit shall be paid by Escrow Agent to, or at the direction of, Seller and credited against the Purchase Price. If for any reason the Closing does not occur and either party makes a written demand upon Escrow Agent for payment of such amount, Escrow Agent shall, within 24 hours give written notice to the other party of such demand. If Escrow Agent does not receive a written objection from such other party within five (5) business days after the giving of such notice, Escrow Agent is hereby authorized to make such payment. If Escrow Agent does receive such written objection within such five (5) Business Day period or if for any other reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold such amount until otherwise directed by joint written instructions from the parties to this Agreement or a final judgment of a court of competent jurisdiction. Escrow Agent shall give written notice of such deposit to Seller and Buyer. Upon such deposit Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder. Notwithstanding anything to the contrary herein, regardless of any contrary or conflicting instructions, if this Agreement is terminated under Section 4, then Escrow Agent shall immediately refund to Buyer the Deposit.

(6) For the purpose of complying with any information reporting requirements or other rules and regulations of the IRS that are or may become applicable as a result of or in connection with the transaction contemplated by this Agreement, including, but not limited to, any requirements set forth in proposed Income Tax Regulation Section 1.6045-4 and any final or successor version thereof (collectively, the "**IRS Reporting Requirements**"), Seller and Buyer hereby designate and appoint Escrow Agent to act as the "Reporting Person" (as that term is defined in the IRS Reporting Requirements) to be responsible for complying with any IRS Reporting Requirements. Escrow Agent hereby acknowledges and accepts such designation and appointment and agrees to fully comply with any IRS Reporting Requirements that are or may become applicable as a result of or in connection with the transaction contemplated by this Agreement. Without limiting the responsibility and obligations of Escrow Agent as the Reporting Person, Seller and Buyer hereby agree to comply with any provisions of the IRS Reporting Requirements that are not identified therein as the responsibility of the Reporting Person, including, but not limited to, the requirement that Seller and Buyer each retain an original counterpart of this Agreement for at least four years following the calendar year of the Closing.

(7) This Section 12M shall survive the Closing or the termination of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

[**______________________________**],
[**______________________________**]

By:______________________________
Name:____________________________
Title:_____________________________

BUYER:

[**______________________________**],
[**______________________________**]

By:______________________________
Name:____________________________
Title:_____________________________

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JOINDER BY ESCROW AGENT

[________________], referred to in this Agreement as the "Escrow Agent," hereby acknowledges that it received this Agreement executed by Seller and Buyer as of _______________, 20[___], and accepts the obligations of Escrow Agent as set forth herein.

[__________________________]

By:____________________________
Name:__________________________
Title:__________________________

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT A

DESCRIPTION OF LAND

LOT 1 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 25, AND THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF WAUKEGAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 2004 AS DOCUMENT 5606604, IN LAKE COUNTY, ILLINOIS.

Address of Property: 600 Lakehurst Road, Waukegan, Illinois

PIN: 07-36-104-00

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EXHIBIT B

INTENTIONALLY OMITTED

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT C-1
FORM OF SPECIAL WARRANTY DEED

Prepared by: ______________________ ______________________ ______________________ ______________________ After Recording return to: ______________________ ______________________ ______________________ ______________________	(For Recorder's Use Only)

SPECIAL WARRANTY DEED
(Illinois)

This SPECIAL WARRANTY DEED is made this __ day of ________, 202_, by [________________________________], a [limited liability company / corporation / general / limited partnership] created and existing under and by virtue of the laws of the State of [__________] ("Grantor"), having an address of [____________________________], to [_______________], a [____________________], having an address of [____] (the "Grantee").

Grantor, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) paid to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED AND SOLD and does hereby GRANT, BARGAIN AND SELL unto Grantee, all of the real property located in Lake County, Illinois and being more particularly described on **Exhibit A** attached hereto (the "Property").

This conveyance is made and accepted subject to the permitted exceptions described on ***Exhibit B*** *attached hereto (collectively, the "****Permitted Exceptions****").*

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, unto Grantee and Grantee's successors and assigns in fee simple forever; subject to the Permitted Exceptions, Grantor, for itself, and it successors and assigns, does hereby covenant with Grantee that it has not done or suffered to be done, anything whereby the Property is, or may be, in any manner encumbered or charged, and that Grantor is lawfully seized of the Property in fee simple;

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and, subject to the Permitted Exceptions, Grantor, for itself, and it successors and assigns, does hereby warrant the title to the Property and will defend the title to the Property against the lawful claims of every person claiming by, through, or under Grantor, but not otherwise.

Send future real estate tax bills to the Grantee at its address set forth above.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed and delivered by its duly authorized officer, as of the day and year first above written.

[______________________________], a
[______________________________]

By:______________________________
Name:____________________________
Title:____________________________

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 [_________________], and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such ______________ of such [_______________], he signed and delivered the said instrument pursuant to authority given by the operating agreement of such [_______________], as his free and voluntary act and as the free and voluntary act and deed of such [___________________], for the uses and purposes therein set forth.

Given under my hand and official seal this ________ day of ________, 202_.

____
Notary Public

My Commission expires: _____________

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Exhibit A to Special Warranty Deed

LEGAL DESCRIPTION

COMMONLY KNOWN AS: ____

PERMANENT TAX INDEX NUMBER: __-__-___-___-____

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Exhibit B to Special Warranty Deed

PERMITTED EXCEPTIONS

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EXHIBIT C-2

FORM OF QUITCLAIM DEED

Prepared by:

____
____
____
____

After Recording return to:

____
____
____
____

(For Recorder's Use Only)

QUITCLAIM DEED

This ___ day of __________, 20__ the GRANTOR, ____________________________, a __________________, having an address of ____________________________, for and in consideration of TEN AND 00/100 DOLLARS, and other good and valuable consideration in hand paid, CONVEYS and QUIT-CLAIMS to the GRANTEE, ______________________________, a ________________, having an address of ________________________, all interest in the real estate legally described on **Exhibit A** attached hereto (the "**Land**"), together with all and singular, adjacent streets, alleys, rights-of-way, rights, benefits, licenses, interests, privileges, easements, tenements, hereditaments and appurtenances on the Land or in anywise appertaining thereto, and the improvements, buildings, structures, fixtures, additions, enlargements, extensions and modifications located upon the Land.

PINs and Common Address(es): See **Exhibit A**

Subject to: (a) all real estate taxes and assessments not yet due and payable, and (b) all easements, covenants, conditions, restrictions and other matters of record

Send future real estate tax bills to the Grantee at its address set forth above.

[Signatures begin on next page]

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IN WITNESS WHEREOF, GRANTOR has executed this Quitclaim Deed as of the date first above written.

GRANTOR:

____

By: _______________________________
Name: _______________________________
Title: _______________________________

STATE OF _____________)
) ss.
COUNTY OF ____________)

I, ___________________________, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _________________, the ______________________ of ____________________, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in such capacity, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this ____ day of _____________, 2022.

____
Notary Public

My Commission Expires: ___________

(Seal)

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT A TO QUITCLAIM DEED

LEGAL DESCRIPTION

COMMONLY KNOWN AS: ______________________

PIN: ____________________

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT D

[FORM OF]

ASSIGNMENT OF INTANGIBLE PROPERTY

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned, [___________], a [____________] ("**Seller**"), hereby sells, transfers, assigns and conveys to [___________], a [____________] ("**Buyer**"), all right, title and interest of Seller, to the extent assignable, in and to the Intangible Property (as hereinafter defined).

This Assignment of Intangible Property is given pursuant to that certain agreement (the "**Purchase Agreement**") dated as of [________], 20[__], between Seller and [Buyer] [_____________________, a ____________________ (as predecessor-in-interest to Buyer)], providing for the sale of certain property in the City of [_________], County of [____________], State of Illinois. The covenants, agreements, and limitations provided in the Purchase Agreement with respect to the property conveyed hereunder are hereby incorporated herein by this reference as if herein set out in full. This Assignment of Intangible Property shall inure to the benefit of and shall be binding upon Seller and Buyer, and their respective successors and assigns. The Intangible Property is conveyed "as is" without warranty or representation, except as expressly provided in (and subject to the limitations of) the Purchase Agreement. As used herein, "**Intangible Property**" shall have the meaning set forth for the same in the Purchase Agreement.

DATED: As of _________, 20___

SELLER:

[____________________],
a [____________________]

By:____________________________
Name:__________________________
Title:___________________________

EXHIBIT E

[FORM OF]

CLOSING CERTIFICATE

This CLOSING CERTIFICATE is made as of this _____ day of _________________, 20___ by [___________], a [____________] ("__________"), in favor of [__________], a [____________] ("___________"):

In accordance with the terms of that certain Real Property Purchase Agreement dated as of [________], 20[__], by and between Seller and [Buyer] [_____________________, a _____________________ (as predecessor-in-interest to Buyer)] (the "**Purchase Agreement**"), and in consideration of the mutual covenants and agreements set forth therein, except as specifically set forth below, [Seller]/[Buyer] hereby represents and warrants to [Buyer]/[Seller] that each and all of [Seller's]/[Buyer's] representations and warranties set forth in the Purchase Agreement are true, correct and complete as of the date hereof as if made on and as of the date hereof.

Exceptions: ____.

This Closing Certificate is subject to the terms and conditions of the Purchase Agreement (including all limitations on liability and survival limitations contained therein).

Very truly yours,

___________________:
[_____________________],
a [____________________]

By:_________________________________
Name:_______________________________
Title:_______________________________

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EXHIBIT C

Tenant's Insurance Requirements

Tenant shall, and shall cause its successors, assigns, contractors and subcontractors (collectively, the "Tenant Parties"), as applicable, to, provide, pay for, and maintain in full force and effect the types and amounts of insurance coverage set forth in this Exhibit C, with insurance companies duly licensed and admitted to do business in the State of Illinois, and having a Best's Rating of A- or better and a Best's financial size category of "Class IX" or larger. All forms of insurance are subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

Tenant shall require all Tenant Parties to maintain and provide evidence of similar coverage as stated herein unless otherwise approved by Landlord.

Each insurance policy required to be obtained and maintained by Tenant in accordance with this Ground Lease shall unconditionally provide that such policy shall not be subject to cancellation or non-renewal except after at least thirty (30) days' prior written notice to Landlord.

Section I Minimum Insurance Requirements

The insurance policies which Tenant and the Tenant Parties (as applicable) shall obtain and maintain in full force and effect pursuant to this Ground Lease shall include the following:

A. Workmen's compensation insurance, in not less than the minimum statutory limits, covering all persons engaged in developing, constructing, or operating the Project on the Premises;

B. Employer's liability insurance, in not less than the following amounts, covering all persons engaged in developing, constructing, or operating the Project on the Premises:

Bodily Injury by Accident	$1,000,000 Each Accident
Bodily Injury by Disease	$1,000,000 Policy Limit
Bodily Injury by Disease	$1,000,000 Each Employee

C. Intentionally Omitted;

D. Commercial general liability insurance, written on an occurrence basis, including premises and operations coverage, products and completed operations, coverage for independent contractors, personal injury coverage and blanket contractual liability (and not excluding explosion, collapse or underground hazard), which commercial general liability insurance shall be maintained in effect by Tenant and the Tenant Parties (as applicable) for the greater of five (5) years after the expiration of this Ground Lease or the limit imposed by the applicable statute of limitations, whichever occurs first, the form of which policy shall be the then most current Insurance Services Office Commercial General Liability Coverage Form No. CG0001, or its equivalent, with the following minimum limits:

Each Occurrence	$5,000,000
Personal & Advertising Injury	$5,000,000
General Aggregate	$10,000,000

The above limits of liability may be met by the combination of both primary and umbrella/excess insurance.

E. Commercial automobile liability insurance for all owned, non-owned, hired or leased vehicles, with limits of not less than $1,000,000 combined single limit for bodily injury and property damage, which coverage must include all automotive and truck equipment used in developing, constructing, or operating the Project on the Premises, and which coverage must include the loading and unloading of same; and if hazardous waste/materials (or materials that would be considered as "pollutants" as defined by the commercial auto policy form's pollutant exclusion) are being transported to or from the Premises, (CA9948 or its equivalent) must be included in the Tenant's and the Tenant Parties' (as applicable) automobile liability policies are on a primary basis with $4,000,000 limits of liability per accident

The above limits of liability may be met by the combination of both primary and umbrella/excess insurance.

Section II Other Policy Provisions

A. Waiver of Subrogation:

To the fullest extent permitted by law, Tenant hereby waives all rights of recovery, whether under subrogation or otherwise, because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, against Landlord. Tenant shall also require that all insurance policies secured by any of the Tenant Parties include clauses providing that each insurance underwriter shall waive all of its rights of recovery by subrogation, or otherwise, against Landlord. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

B. Additional Insured:

The City of Waukegan (and such other persons or entities as may hereafter be reasonably requested by Landlord) shall be named as an additional insured party on the commercial general liability policy and the commercial automobile liability insurance policy required to be obtained and maintained by Tenant in accordance with this Ground Lease. Coverage afforded to the additional insured shall apply on a primary basis.

In the event Tenant or any of the Tenant Parties maintains limits greater than set forth herein, Landlord shall be included therein as an additional insured to the

fullest extent of all such insurance in accordance with all terms and provisions herein.

A copy of such additional insured coverage part/endorsement MUST be attached to the certificate of insurance and shall specifically list all additionally insured parties.

Section III Other Insurance Provisions

1. The insurance provisions set forth in this Exhibit C in no way affect the liability of Tenant or any of the Tenant Parties as may be stated elsewhere in this Ground Lease.

2. In the event, Tenant fails to maintain the coverages or limits as required herein, Landlord may affect such insurance as an agent of Tenant as provided in Section 8.4 of this Ground Lease. Any premiums paid by Landlord to affect such coverages, together with interest thereon from the date paid by Landlord until the date paid by Tenant, shall be payable to Landlord by Tenant as provided in Section 8.4 of this Ground Lease.

3. Except as otherwise provided, it is expressly agreed and understood that the cost of premiums for insurance required to be maintained by Tenant and the Tenant Parties in accordance with the terms of this Ground Lease shall be at their own expense.

4. It is hereby understood that any insurance required to be provided by Tenant and the Tenant Parties shall be primary insurance, and shall not be considered contributory insurance with any insurance policies of Landlord or any of the other additional insureds.

5. Any and all deductibles and/or self-insured retentions in the above-described insurance policies shall be assumed by, for the account of and at the Tenant's and the Tenant Parties' sole risk and expense, as the case may be.

6. Any deficiency in the coverage or policy limits of the insurance required to be maintained by Tenant and the Tenant Parties in accordance with this Ground Lease will be the sole responsibility of Tenant and the Tenant Parties.

EXHIBIT D

Form of Memorandum of Ground Lease

This instrument prepared by
and after recording return to:

____

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "*Memorandum*") is made as of January 18, 2023 by and between the **CITY OF WAUKEGAN**, an Illinois home rule municipality ("*Landlord*"), and **FHR-ILLINOIS LLC**, a Delaware limited liability company ("*Tenant*").

A. Landlord and Tenant have entered into a Ground Lease dated January 18, 2023 (the "*Ground Lease*") whereby Landlord leases, lets and demises unto Tenant, and Tenant rents from Landlord, upon and subject to the terms, covenants and conditions contained in the Ground Lease, the real property commonly known as 600 Lakehurst Road, Waukegan, Illinois and legally described on Exhibit 1 attached hereto and incorporated herein (the "*Premises*").

B. Landlord and Tenant desire to set forth certain terms and provisions contained in the Ground Lease in this Memorandum for recording purposes.

NOW, THEREFORE, for and in consideration of the rents reserved and the covenants and conditions set forth in the Ground Lease, Landlord and Tenant do agree as follows:

1. Definitions. All capitalized terms not defined herein shall have the meaning given to them in the Ground Lease.

2. Grant of Lease. Pursuant to the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord the Premises, together with any improvements located on the Land on the Commencement Date (e.g., sewers, utility lines, etc.) but excluding public improvements of the City of Waukegan, on the terms and conditions set forth in the Ground Lease.

3. Commencement Date. The Term of the Ground Lease commenced on January 18, 2023.

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4. Purchase Option. Tenant has the right to purchase the Premises under the terms and conditions set forth in the Ground Lease.

5. Expiration Date. The Term of the Ground Lease is scheduled to expire on January 17, 2122.

6. Incorporation of Lease. This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Ground Lease, the terms of which are incorporated herein by reference.

This instrument is merely a memorandum of the Ground Lease and is subject to all of the terms, provisions and conditions of the Ground Lease. In the event of any inconsistency between the terms of the Ground Lease and this instrument, the terms of the Ground Lease shall prevail.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Ground Lease effective as of the day and year first above written.

LANDLORD:

CITY OF WAUKEGAN,
an Illinois home rule municipality

By: ____________________________
Ann B. Taylor, Mayor

ATTEST:

By: ____________________________
Janet E. Kilkelly, City Clerk

TENANT:

FHR-ILLINOIS LLC,
a Delaware limited liability company

By: ____________________________
Elaine Guidroz, Vice President and Secretary

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STATE OF __________
) ss:
COUNTY OF ________

The undersigned, a Notary Public, in and for the County and State aforesaid, does hereby certify, that _________________________, personally known to me to be the __________________________ of ________________________________, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that as such _________________, he/she signed and delivered said instrument pursuant to authority duly given to her by said corporation.

Given under my hand and seal this_______day of________________ _____

____
Notary Public

My Commission Expires:

STATE OF ____________
) ss:
COUNTY OF _________

The undersigned, a Notary Public, in and for the County and State aforesaid, does hereby certify, that _________________________, personally known to me to be the __________________________ of ________________________________, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged under oath that as such _________________, he/she signed and delivered said instrument pursuant to authority duly given to her by said corporation.

Given under my hand and seal this_______day of

Notary Public

My Commission Expires:

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Exhibit 1 to Memorandum of Ground Lease

Legal Description of Land

LOT 1 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 25, AND THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF WAUKEGAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 2004 AS DOCUMENT 5606604, IN LAKE COUNTY, ILLINOIS.

Address of Property:	600 Lakehurst Road, Waukegan, Illinois
PIN:	07-36-104-00

EXHIBIT E

Limited Guaranty

This **LIMITED GUARANTY** is made as of January 18, 2023 by FULL HOUSE RESORTS, INC., a Delaware corporation ("Guarantor"), to CITY OF WAUKEGAN, an Illinois home rule municipality ("Landlord").

WITNESSETH

A. Landlord has been requested by **FHR-ILLINOIS LLC**, a Delaware limited liability company ("Tenant"), to enter into a Ground Lease dated as of the date hereof (the "Lease"), whereby Landlord would lease to Tenant and Tenant would rent from Landlord, certain premises located in Lake County, Illinois, as more particularly described in the Lease (the "Premises").

B. As a condition to Landlord entering into the Lease, Landlord has required that this Limited Guaranty (this "Guaranty") be executed to and in favor of Landlord by Guarantor.

C. Guarantor is a direct or indirect owner of Tenant and will receive direct or indirect benefit from the Landlord entering into the Lease with the Tenant.

D. Guarantor acknowledges that Landlord would not enter into the Lease unless this Guaranty accompanied the execution and delivery of the Lease by Tenant.

E. Guarantor acknowledges receipt of a copy of the Lease.

NOW, THEREFORE, in order to induce Landlord to enter into the Lease and for other good and valuable consideration, the undersigned Guarantor hereby agrees as follows:

1. Any capitalized terms not defined herein shall have the same meanings ascribed to such terms in the Lease.

2. Guarantor unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, to Landlord the full, prompt and unconditional performance of and observance by Tenant of Tenant's obligation to pay Annual Guaranteed Minimum Rent due and payable under the Lease, plus any and all costs of collecting such sums or enforcing Landlord's rights to collect Annual Guaranteed Minimum Rent under the Lease or this Guaranty (collectively, the "Payment Obligations"). In the event of a default under the Lease with respect to the Payment Obligations, Guarantor hereby covenants and agrees with Landlord to, upon demand by Landlord, make the due and full punctual payment of all Payment Obligations payable by Tenant under the Lease. This Guaranty is a continuing guaranty of payment and performance and is not conditional or contingent upon any attempt to collect from Tenant or upon any other condition or contingency.

3. If there is Tenant's Default under Lease relating to the Payment Obligations, Landlord may proceed against either Guarantor or Tenant, or both, for the Payment Obligations or Landlord may enforce against Tenant any rights that Landlord has under the Lease relating to the Payment Obligations, in equity or under applicable law. If the Lease terminates and Landlord has

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any rights against Tenant after termination for the Payment Obligations, Landlord may enforce those rights against Guarantor, without giving previous notice to Tenant or Guarantor. Guarantor hereby agrees that no notice of default by Tenant under the Lease need be given to Guarantor, it being specifically agreed and understood that this Guaranty of the Guarantor is a continuing guarantee under which Landlord may proceed forthwith and immediately against Tenant or against Guarantor following any breach or default by Tenant of the Payment Obligations.

4. Guarantor hereby expressly and knowingly waives: (a) the right to require Landlord to proceed against Tenant, proceed against or exhaust any security that Landlord holds from Tenant, or pursue any other remedy in Landlord's power; (b) any defense to its obligations hereunder based on the termination of Tenant's liability (except for the defenses of prior payment or performance); (c) except for any notices or demands expressly required under this Guaranty, all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; (d) all notices of the existence, creation, or incurring of new or additional obligations; (e) notice of default of Tenant under the Lease; (f) any right of setoff or deduction against amounts due under this Guaranty or the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought by or against Guarantor under this Guaranty; (g) the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty; and (h) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or prior performance. Landlord shall have the right to enforce this Guaranty regardless of the acceptance of additional security from Tenant and regardless of the release or discharge of Tenant by Landlord or by others, or by operation of any law.

5. Without limiting the generality of the foregoing, the liability of Guarantor under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by: (a) reason of any waiver or failure to enforce or delay in enforcing any of the Payment Obligations against Tenant, or (b) the granting of any indulgence or extension of time to Tenant, or (c) the assignment of the Lease, or the subletting of the Premises by Tenant, with or without Landlord's consent, or (d) the expiration of the Term, or (e) if Tenant holds over beyond the Term of the Lease, or (f) the rejection, disaffirmance or disclaimer of the Lease by any party in any action or proceeding, or (g) the release of any collateral held for the Payment Obligations, (i) any defect or invalidity of the Lease, or (h) the failure of Landlord to perfect a security interest in Tenant's property and/or impairment of collateral, or (i) the transfer by Guarantor of any or all of the membership interests of Tenant, and shall continue with respect to the periods prior thereto and thereafter, or (j) any modification or amendment to the Lease (including any extension or renewal of the Term), and in the case of any such modification consented to by Tenant with respect to the Payment Obligations, the liability of Guarantor shall be modified in accordance with the term of any such modification of the Lease. Guarantor waives any notice of the modification or amendment of the Lease. The liability of Guarantor shall not be affected by any repossession, re-entry or re-letting of the Premises by Landlord.

6. The obligations of Guarantor under this Guaranty shall remain in full force and effect and Guarantor shall not be discharged by any of the following events with respect to Tenant or Guarantor: (a) insolvency, bankruptcy, reorganization arrangement, adjustment, composition, assignment for the benefit of creditors, liquidation, winding up or dissolution; (b) any merger, acquisition, consolidation or change in entity structure, or any sale, lease, transfer, or other

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disposition of any entity's assets, or any sale or other transfer of interests in the entity (each, an "Event of Reorganization"); or (c) any sale, exchange, assignment, hypothecation or other transfer, in whole or in part, of Landlord's interest in the Premises or the Lease.

7. Guarantor hereby represents and warrants that it has executed this Guaranty based solely on its independent investigation of Tenant's financial condition. Guarantor hereby assumes responsibility for keeping informed of Tenant's financial condition and all other circumstances affecting Tenant's performance of its obligations under the Lease. Absent a written request for such information by Guarantor, Landlord shall have no duty to advise Guarantor of any information known to it regarding such financial condition or circumstances.

8. Guarantor further agrees that it may be joined in any action against Tenant in connection with the Payment Obligations and recovery may be had against Guarantor in any such action solely as to the Payment Obligations. Until the payment and performance of all Payment Obligations and the amounts payable under this Guaranty: (i) Guarantor shall have no right of subrogation against Tenant by reason of any payments or acts of performance by the Guarantor in compliance with the obligations of the Guarantor under this Guaranty; (ii) Guarantor waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor under this Guaranty; and (iii) Guarantor subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to the Landlord under the Lease. If the foregoing waiver is determined by a court of competent jurisdiction to be void or voidable, Guarantor agrees to subordinate its rights of subrogation and reimbursement against Tenant to Landlord's rights against Tenant under the Lease.

9. Guarantor hereby represents and warrants that, as of the date of the execution of this Guaranty by Guarantor, there is no action or proceeding pending or, to Guarantor's actual knowledge, threatened in writing against Guarantor before any court or administrative agency which, if adversely determined against Guarantor, would reasonably be expected to materially adversely affect Guarantor's financial condition in a way which would jeopardize Guarantor's ability to satisfy its obligations under this Guaranty. The foregoing representation and warranty shall survive the execution and delivery of this Guaranty and is expressly made for the benefit and reliance of Landlord, and Landlord's lenders, representatives, successors and assigns.

10. From time to time during the term of this Guaranty, but not more frequently than once in any consecutive twelve (12) month period (except in the event that a Tenant's Default has occurred under the Lease or in the event that Landlord is pursuing a potential sale or refinancing of the Premises, in which case not more frequently than twice in any consecutive twelve (12) month period), and only if the securities of Guarantor are not listed on a recognized securities exchange, (i) Guarantor shall deliver to Landlord, within ten (10) business days following receipt of Landlord's written request therefor, the most currently available audited financial statements of Guarantor; and if no such audited financial statements have been theretofore prepared (or if Guarantor does not prepare audited financial statements) and, therefore, are not available, then Guarantor shall instead deliver to Landlord its most currently available unaudited balance sheet, operating statement, income statement and statements of cash flow and equity; and (ii) upon the delivery of any such unaudited financial information described in clause (i) above, Guarantor shall, as of the respective dates of such unaudited financial information, be deemed (unless Guarantor

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

specifically states otherwise in writing) to represent and warrant to Landlord that such financial information is true, accurate and complete in all material respects.

11. Guarantor shall, from time to time within ten (10) business days after receipt of Landlord's written request therefor, but not more than once per calendar year during the Term (except that such obligation shall be limited to twice per year in the event of (i) a Tenant's Default occurs under the Lease, (ii) a default by Guarantor hereunder, (iii) a potential sale or financing of the Premises by Landlord), execute, acknowledge and deliver to Landlord a statement certifying that this Guaranty is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating such modifications). Such certificate may be relied upon by any prospective purchaser, lessor or lender of all or a portion of the Premises.

12. Intentionally Omitted.

13. Any default or failure by the Guarantor to perform any of the Payment Obligations under this Guaranty that continues for thirty days after written notice from Landlord shall be deemed an immediate Tenant's Default under the Lease. Each of the rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law or in the Lease or this Guaranty.

14. The term "Lease" whenever used in this Guaranty shall be deemed, and interpreted so as, to also include any renewals or extensions of the initial or renewal term(s), as the case may be, and any holdover periods thereunder.

15. All demands, notices and other communications under or pursuant to this Guaranty shall be in writing, and shall be deemed to have been duly given when personally delivered, or three (3) days after the date deposited in the United States Postal Service, first-class postage prepaid, certified with return receipt requested, or the delivery date designated for overnight courier services (e.g., Federal Express), or the date delivery is refused, addressed to the party at the address set forth below, or at such other address as may be hereafter designated in writing by either party to the other.

Landlord:

City of Waukegan
100 North Martin Luther King, Jr. Avenue
Waukegan, Illinois 60085
Attention: Noelle Kischer-Lepper, Director of Planning & Economic Development

with a copy to:

Elrod Friedman LLP
325 North LaSalle Street, Suite 450
Chicago, Illinois 60654
Attention: Stewart J. Weiss

Guarantor:

Full House Resorts, Inc.
1980 Festival Plaza Drive, Suite 680
Las Vegas, Nevada 89135
Attention: Elaine Guidroz

with a copy to:

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

16. Guarantor hereby represents and warrants that it is duly authorized to execute and deliver this Guaranty; that this Guaranty is binding on Guarantor in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law); that the terms and provisions of this Guaranty are intended to be valid and enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law); and that the signatory to this Guaranty is duly authorized to bind Guarantor and execute this Guaranty on Guarantor's behalf.

17. Landlord may assign this Guaranty in conjunction with the assignment of all or any portion of Landlord's interest in the Lease, without the necessity of obtaining Guarantor's consent thereto, and any such assignment shall not affect, or otherwise relieve, Guarantor from its obligations or liability hereunder. Guarantor may not assign or otherwise delegate any of its rights or obligations hereunder without first obtaining Landlord's written consent thereto, which consent may be withheld in Landlord's sole discretion. The provisions, covenants and guaranties of this Guaranty shall be binding upon Guarantor and its successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns, and shall not be deemed waived or modified unless such waiver or modification is specifically set forth in writing, executed by Landlord or its successors and assigns, and delivered to Guarantor.

18. If all or any portion of the Payment Obligations are paid or performed and all or any part of such payment or performance is avoided or recovered, directly or indirectly, from Landlord as a preference, fraudulent transfer or otherwise, then Guarantor's obligations hereunder shall continue and remain in full force and effect as to any such avoided or recovered payment or performance.

19. All representations and warranties made by Guarantor in this Guaranty are intended to and shall be true and correct as of the date of this Guaranty, shall be deemed to be material, shall survive the execution and delivery of this Guaranty, and shall be relied upon by Landlord and Landlord's lenders, representatives, successors and assigns.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

20. As a further inducement to Landlord to enter into the Lease and to accept this Guaranty, Guarantor hereby intentionally, knowingly and voluntarily waives any right to a trial by jury in any lawsuit, proceeding, counterclaim, or any other litigation procedure based upon, or arising out of this Guaranty. In extension of the foregoing, the Guarantor specifically consents to trial before a court respecting any such matter. Guarantor will not seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

21. This Guaranty shall be enforced, governed by and construed in accordance with the laws of the State of Illinois, irrespective of its conflict of law rules. In addition, Guarantor hereby consents to the jurisdiction of any state or federal court located within the County in which the Premises are located and irrevocably agrees that all actions or proceedings arising out of or relating to the Lease and this Guaranty shall be commenced in such courts. Guarantor accepts generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts and waives any defense of forum non conveniens with respect thereto, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Guaranty (subject to Guarantor's right to appeal such judgments). This Guaranty shall be subject to all valid applicable laws and official orders, rules and regulations, and, in the event this Guaranty or any portion thereof is found to be inconsistent with or contrary to any such laws or official orders, rules or regulations, the latter shall be deemed to control, and this Guaranty shall be regarded as modified and shall continue in full force and effect; provided, however, that nothing herein contained shall be construed as a waiver of any right to question or contest any such law, order, rule or regulation in any forum having jurisdiction in the Premises.

22. If any portion of this Guaranty shall be deemed invalid, unenforceable or illegal for any reason, such invalidity, unenforceability or illegality shall not affect the balance of this Guaranty, which shall remain in full force and effect to the maximum permitted extent.

23. This Guaranty and any exhibits hereto constitute the entire agreement between the parties with respect to the matters covered herein and supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

24. In the event a dispute arises concerning the meaning or interpretation of any provision of this Guaranty, the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including without limitation, court costs, expert fees, and reasonable attorneys' fees.

25. Time is of the essence of this Guaranty.

26. The execution of this Guaranty prior to execution of the Lease shall not invalidate this Guaranty or lessen the Payment Obligations of Guarantor hereunder.

27. Notwithstanding anything contained in this Guaranty to the contrary, this Guaranty shall expire on the day immediately preceding the fifth (5th) anniversary of the Ground Lease Rent Commencement Date (the "Guaranty Expiration Date"); provided, however, the expiration of this Guaranty shall not be deemed to release Guarantor from any Payment Obligations accrued through and including the Guaranty Expiration Date.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

28. Notwithstanding anything contained in this Guaranty to the contrary, in no event shall Guarantor be liable to Landlord for any speculative, consequential, collateral, special, punitive, or indirect damages or loss of profits.

29. In connection with a Permitted Transfer (as defined in the DHCA), Guarantor shall have the right to deliver to the Landlord a duly executed and authorized replacement guaranty on the terms and conditions contained herein from a replacement guarantor with at least equivalent expertise in Casino Gaming Operations (as defined in the DHCA) that possesses at least equivalent financial resources as the original Guarantor identified on page one hereof and, in such event, the original Guarantor shall be released from liability arising from and after (but not before) the effective date of such replacement guaranty.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date set forth below.

GUARANTOR:

FULL HOUSE RESORTS, INC.,
a Delaware corporation

By: ______________________________
Name: ____________________________
Its: ______________________________

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT F

Permitted Encumbrances

1. Terms of the declaration of use restriction agreement made by City of Waukegan, an Illinois Municipal Corporation in favor of Wal-Mart Real Estate Business Trust, a Delaware Statutory Trust, set forth in the affidavits and exhibits thereto, recorded November 23, 2011 as document numbers 6791072, 6791073 and 6791074.

2. Utility easements pursuant to the terms and provisions of reciprocal easement agreement by and between Sdc Waukegan Venture, LLC, a Delaware Limited Liability Company, and the City of Waukegan, dated August 28, 2003 and recorded August 29, 2003 as document 5350054 and amendment to reciprocal easement agreement dated August 30, 2005 and recorded September 2, 2005 as document number 5853182.

3. Agreement of allocation dated as of September 13, 2004 and recorded September 21, 2004 as document number 5649742, made by and between Sdc Waukegan Venture, LLC, a Delaware Limited Liability Company and the City of Waukegan, and the terms, covenants and conditions contained therein.

4. Public utility easement as shown on the Plat of Fountain Square of Waukegan recorded as document number 5606604, and as shown on plat of survey prepared by Gewalt Hamilton Associates, Inc. dated March 28, 2022, and designated Project No. 5882.300.

   (Affects the Northeasterly and East 15 feet)

5. Public utility, Landscape and sidewalk easement as shown on the Plat of Fountain Square of Waukegan recorded as document number 5606604, and as shown on plat of survey prepared by Gewalt Hamilton Associates, Inc. dated March 28, 2022, and designated Project No. 5882.300.

   (affects the Southwesterly 45 feet and Southerly 45 feet and additional rectangular tracts adjacent to said 45 foot strips - see plat for exact location)

6. Building set back line as shown on the Plat of Fountain Square of Waukegan Subdivision recorded as document 5606604, and as shown on plat of survey prepared by Gewalt Hamilton Associates, Inc. dated March 28, 2022, and designated Project No. 5882.300.

   45 Feet Northeasterly of the Southwesterly line and Northerly of the Southerly line.

7. Parking setback line as shown on the Plat of Subdivision of Fountain Square of Waukegan recorded as document number 5606604, and as shown on plat of survey prepared by Gewalt Hamilton Associates, Inc. dated March 28, 2022, and designated Project No. 5882.300.

   30 feet Northeasterly of the Southwesterly line and Northerly of the Southerly line.

8. Covenants and Restrictions (but Omitting Any Such Covenant or Restriction Based on Race, Color, Religion, Sex, Handicap, Familial Status or National Origin Unless and Only to the Extent that Said Covenant (A) is Exempt under Chapter 42, Section 3607 of the United States Code or (B) Relates to Handicap but Does Not Discriminate against Handicapped Persons), Contained in the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Fountain Square of Waukegan Document Recorded July 23, 2004 as Document No. 5606601 and Amended by the First Amendment to Declaration of Protective Covenants, Conditions, Restrictions and Easements for Fountain Square of Waukegan Recorded September 2, 2005 as Document Number 5853181.

   Assignment and assumption of declarant's interest recorded May 18, 2017 as document 7395848 and re-recorded August 23, 2017 as document 7422120.

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Which does not contain a reversionary or forfeiture clause.

(A) Terms, provisions, and conditions relating to the Easements contained in the instrument creating said easements.

(B) Rights of the adjoining owner or owners to the concurrent use of said easements.

9. City of Waukegan Ordinance No. 07-O-100 recorded September 14, 2007 as Document Number 6242149, a Site Development, Easement and Amendatory Agreement between the SDC Waukegan Venture, LLC and the City of Waukegan, and as shown on plat of survey prepared by Gewalt Hamilton Associates, Inc. dated March 28, 2022, and designated Project No. 5882.300.

   (A) Terms, provisions, and conditions relating to the Easement contained in the instrument creating said easement.

   (B) Rights of the adjoining owner or owners to the concurrent use of said easement.

10. Permanent easement for ingress and egress over a portion of the Land, as created by that Site Development, Easement and Amendatory Agreement recorded September 14, 2007 as Document Number 6242149, and as shown on plat of survey prepared by Gewalt Hamilton Associates, Inc. dated March 28, 2022, and designated Project No. 5882.300.

    (See instrument for exact location)

11. City of Waukegan Special Assessment No. 04-2, Establishing a Special Assessment Area Order in Tax Case 05TX2 Recorded May 5, 2005 as Document Number 5775196.

    Note: no assessments are currently due or payable.

12. Environmental no further remediation letter, the terms and conditions therein, recorded March 10, 2006 as document 5959951.

    (Affects the Land and other property)

13. Terms and provisions of the total site agreement dated March 20, 1970 and recorded April 1, 1970 as document number 1454745, as amended by the declaration of termination dated August 27, 2003 and recorded August 28, 2003 as document number 5348673.

    (A) Terms, provisions, and conditions relating to the Easement contained in the instrument creating said easement.

    (B) Rights of the adjoining owner or owners to the concurrent use of said easement.

Schedule 20.23

Status as of November 20, 2022

- **Waukegan Potawatomi Casino v. City of Waukegan (Federal Court)**

The City of Waukegan has moved for summary judgment on all claims brought by the Potawatomi. The summary judgment motion has been fully briefed since January 2022, and the parties are simply waiting on a ruling in that case from Judge Kness. There is no other activity in this case.

- **Waukegan Potawatomi Casino v. City of Waukegan and Illinois Gaming Board (Cook County)**

The City of Waukegan and Illinois Gaming Board prevailed on their motions to dismiss in the Cook County Circuit Court, and the Circuit Judge dismissed the Potawatomi's complaint with prejudice. The Potawatomi appealed that ruling and the Potawatomi has submitted their opening brief. The City of Waukegan and the Illinois Gaming Board are due to file their appellate briefs on December 9, 2022. The Potawatomi will get the final word with a reply brief, and then the case will be argued a few months after that.

- **Waukegan Gaming LLC v. City of Waukegan (Lake County)**

The City of Waukegan prevailed on its motion to dismiss in the Lake County Circuit Court. This lawsuit alleged that Waukegan Gaming had the exclusive right to develop and operate the Waukegan casino based on a 2004 Redevelopment Agreement. Waukegan Gaming has filed an appeal of the Circuit Court's decision. The appeal has not been briefed.

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Nos. 130036, 130058

IN THE SUPREME COURT OF ILLINOIS

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellee, vs. 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, Defendants-Appellants.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-22-0883 There heard on Appeal from the circuit court of Cook County, Illinois Chancery Division, No. 21 CH 05784 Presiding Judge: Cecilia A. Horan

APPENDIX TO THE OPENING BRIEF OF THE CITY OF WAUKEGAN
VOLUME II (A219-512)

ORAL ARGUMENT REQUESTED

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Counsel for City of Waukegan

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EXHIBIT B

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THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

Stewart J. Weiss
Elrod Friedman LLP
325 N. LaSalle Street
Suite 450
Chicago, IL 60654

Above Space for Recorder's Use Only

DEVELOPMENT AND HOST COMMUNITY AGREEMENT BETWEEN THE CITY OF WAUKEGAN AND FHR-ILLINOIS, LLC

(THE TEMPORARY BY AMERICAN PLACE AND THE AMERICAN PLACE CASINO)

DATED AS OF JANUARY 18, 2023

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TABLE OF CONTENTS

Page

1. Incorporation of Recitals. 3

2. Definitions. 3

3. General Provisions. 14

3.1 Findings. 14

3.2 Legal Effect of Agreement. 14

3.3 Closing Conditions 14

3.4 Term. 16

4. Project. 16

4.1 Overview of Project; Project Milestones. 16

4.2 Final Project Plan. 19

4.3 Prior Approvals. 19

4.4 Concurrent Approvals. 20

4.5 Future Approvals. 21

4.6 Other Matters Related to Approvals. 21

4.7 2004 Redevelopment Agreement. 23

5. Use, Operations, & Maintenance of the Development Property. 23

5.1 General Project Restrictions. 23

5.2 Operations of Temporary Facility (Phase 0). 24

5.3 Operations of Permanent Facility (Phase 1). 25

5.4 Construction and Operations of Subsequent Phases (Phase 2 and Beyond). 25

6. Demolition and Construction of Project. 26

6.1 General Construction and Contracting Requirements. 26

6.2 Demolition of Structures. 26

6.3 Limits on Vertical Construction. 27

6.4 Diligent Pursuit of Construction. 27

6.5 Construction Site and Traffic Management. 28

6.6 Parking, Stormwater Management, and Erosion Control During Construction. 29

SUBMITTED 27086202 Carol Kolberer - 4/2/2024 2:54 PM

6.7 Issuance of Permits and Certificates. 29
6.8 Completion of Construction; Site Restoration. 30
6.9 Landscaping and Tree Preservation; Lighting. 31

7. Design & Construction of Site Improvements; Performance of Work. 31
7.1 Project Site Improvements. 31
7.2 General Standards. 33
7.3 Construction Schedule; Phasing 33
7.4 [Reserved] 33
7.5 Engineering Services 33
7.6 City Inspections and Approvals. 33
7.7 [Reserved] 34
7.8 Utilities. 34
7.9 Right-of-Way Improvements. 34
7.10 Dedication and Maintenance of the Site Improvements. 35
7.11 Improvement and Maintenance Guarantees. 37
7.12 Submission of As-Built Plans 38

8. Other Developer Obligations. 38
8.1 Developer Contributions and Payments. 38
8.2 Payment of Taxes 39
8.3 Developer's Additional Commitments... **Error! Bookmark not defined.**
8.4 Payment of Reimbursable Costs. 40
8.5 Statutory Basis for Fees; Default Rate. 41
8.6 Covenants Running with the Land. 41
8.7 Financing. 41
8.8 Closing Deliveries. 42

9. Representations and Warranties 43
9.1 Representations and Warranties of Developer. 43
9.2 Representations and Warranties of the City. 44

10. Covenants. 44
10.1 Affirmative Covenants of Developer. 44
10.2 Owner's License Application. 47

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

10.3	Negative Covenants of Developer.	47
10.4	Confidential Deliveries.	48
11.	**Default.**	**48**
11.1	Events of Default.	48
11.2	Remedies.	50
11.3	Termination.	511
11.4	Liquidated Damages.	52
12.	**Transfers of Obligations.**	**52**
12.1	[Reserved]	52
12.2	Transfer of Direct or Indirect Interests in Developer.	52
12.3	Transfer of Real Property.	52
13.	**Insurance.**	**53**
13.1	Maintain Insurance.	533
13.2	Form of Insurance and Insurers.	53
13.3	Insurance Notice.	53
13.4	Keep in Good Standing.	54
13.5	Blanket Policies.	54
14.	**Damage and Destruction.**	**54**
14.1	Damage or Destruction.	54
14.2	Use of Insurance Proceeds.	54
14.3	No Termination; Substantial Casualty.	55
14.4	Condemnation.	55
15.	**Indemnification.**	**56**
15.1	Indemnification by Developer.	56
16.	**Force Majeure.**	**5757**
16.1	Definition of Force Majeure.	57
16.2	Notice of Force Majeure.	59
16.3	Excuse of Performance.	59
17.	**Miscellaneous.**	**59**
17.1	Notices.	59

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

17.2 Waiver; Non-Action or Failure to Observe Provisions of this Agreement. 611
17.3 Consents. 61
17.4 Construction. 61
17.5 Governing Law; Venue; Submission to Jurisdiction; Service of Process. 61
17.6 Complete Agreement. 62
17.7 Calendar Days; Calculation of Time Periods. 62
17.8 Exhibits. 62
17.9 No Joint Venture. 62
17.10 Severability. 62
17.11 No Liability for Approvals and Inspections. 63
17.12 Time of the Essence. 63
17.13 Headings; Captions. 63
17.14 Amendments and Addenda. 63
17.15 Changes in Laws. 63
17.16 Table of Contents. 63
17.17 No Third-Party Beneficiaries. 63
17.18 Cost of IGB Licensing, Approval, or Investigation. 64
17.19 Further Assurances. 64
17.20 Estoppel Certificates. 64
17.21 Counterparts. 64
17.22 Recording. 64
17.23 Deliveries to the City. 64
17.24 City Actions, Consents, and Approvals. 64

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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DEVELOPMENT AND HOST COMMUNITY AGREEMENT BETWEEN THE CITY OF WAUKEGAN AND FHR-ILLINOIS LLC

(THE TEMPORARY BY AMERICAN PLACE AND THE AMERICAN PLACE CASINO)

THIS DEVELOPMENT AND HOST COMMUNITY AGREEMENT ("***Agreement***") is dated as of January 18, 2023 ("***Effective Date***"), by and between the **CITY OF WAUKEGAN, ILLINOIS**, an Illinois home rule municipal corporation ("***City***"), and **FHR-ILLINOIS LLC** a Delaware limited liability company ("***Developer***").

RECITALS

A. Developer seeks to develop the Temporary Facility and the Permanent Facility on an approximately 41-acre land assemblage consisting of three adjacent parcels of real property located within the City (the "***Development Property***") and conduct Casino Gaming Operations thereon.

B. The Development Property consists of: (i) the approximately 31.7 acre parcel of real property commonly known as 600 Lakehurst Road, depicted and legally described in ***Exhibit A*** attached hereto and made a part hereof ("***City-Owned Parcel***"); and (ii) two parcels owned by Developer commonly known as 4001-4011 Fountain Square Place consisting of approximately 10 acres, depicted and legally described in ***Exhibit B*** attached hereto and made a part hereof ("***10-Acre Parcel***").

C. As of the Effective Date, Developer is the fee owner of the 10-Acre Parcel and the City is the fee owner of the City-Owned Parcel. On or before the Closing Date, Developer and the City will execute a 99-year ground lease for the development, construction, operation, and maintenance of the Project (or portion thereof) on the City-Owned Parcel ("***Ground Lease***").

D. On June 28, 2019, the Governor of the State of Illinois ("***State***") signed into law Public Act 101-0031, which amended the Illinois Gambling Act, 230 ILCS 10/1 *et seq*. (the Illinois Gambling Act and all rules and regulations promulgated thereunder, each as amended from time to time, shall hereinafter be referred to as the "***Act***"), and authorized the Illinois Sports Wagering Act, 230 ILCS 45/25 *et seq*. (the Illinois Sports Wagering Act and all rules and regulations promulgated thereunder, each as amended from time to time, shall hereinafter be referred to as the "***Sports Wagering Act***"), to significantly expand gaming throughout the State.

E. 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 casino 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.

F. The Act authorizes the issuance of an Owner's License to conduct casino gambling in the City of Waukegan.

G. On or about July 3, 2019, the City issued its Request for Qualifications and Proposals – Casino Development and Operator ("***RFQ/P***") seeking qualified casino developers/operators to construct and operate a casino to be located within the City. On or about

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August 5, 2019, the Parent Company submitted its response to the RFQ/P proposing its development of the Project.

H. Under Section 7(e-5) of the Act, 230 ILCS 10/7(e-5), for an application for a Waukegan-based Owner's License to be considered by the Illinois Gaming Board ("***IGB***"), the City was required to certify to the IGB that (collectively, the "***(e-5) Requirements***"):

i. the applicant has negotiated with the City in good faith;

ii. the applicant and the City have mutually agreed on the permanent location of the casino;

iii. the applicant and the City have mutually agreed on the temporary location of the casino;

iv. the applicant and the City have mutually agreed on the percentage of revenues that will be shared with the City;

v. 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. the City Council has passed a resolution or ordinance in support of the casino in the City.

I. Following a public hearing regarding the Project, including the (e-5) Requirements, on or about October 19, 2019, the City Council adopted Resolution 2019-R-97 certifying that the Parent Company met the (e-5) Requirements (the "***Certification***").

J. On or about October 28, 2019, the Parent Company submitted the Application to the IGB for issuance of the Owner's License for the development and operation of the Project within the City.

K. On or about December 8, 2021, the IGB determined that the Parent Company is (i) the final applicant for the Owner's License designated for the City and (ii) preliminarily suitable to be issued the Owner's License designated for the City.

L. At its meeting held on January 27, 2022, the IGB unanimously granted approval for the Parent Company to (i) amend its Application pending before the IGB to change the applicant thereunder from the Parent Company to Developer, a wholly-owned subsidiary of the Parent Company, on the express condition that Developer assume all agreements, obligations and commitments made by the Parent Company to the IGB, State of Illinois and City in the Application; and (ii) allow all prior actions, approvals and findings (including the finding of preliminary suitability) made by the IGB with respect to the Parent Company to be applicable, binding and transferable to Developer.

M. Pursuant to that certain Assignment and Assumption Agreement dated January 27, 2022 by and between the Parent Company and Developer, the Parent Company assigned to, and Developer accepted from the Parent Company, all rights, title and interest in and to the Project so that Developer assumes the role of the Parent Company with respect to the Project and the

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Application, and Developer assumed all of the Parent Company's liabilities, duties, obligations and commitments with respect to the Application and Project.

N. The City has determined that the development, construction, operation, and maintenance of the Project by Developer on the Development Property will generate significant financial benefits for the City, its residents, and the greater Lake County region as a whole, including, without limitation, tax revenue, economic development, and increased employment opportunities.

O. The City Council has further concluded that the development and use of the Development Property pursuant to, and in accordance with, this Agreement would further enable the City to regulate the development of the Development Property for the benefit of the City and its residents.

P. Developer has agreed to execute this Agreement to provide for the development, construction, operation, and maintenance of the Project on the Development Property in compliance with this Agreement and the Approvals.

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, and pursuant to the City's statutory and home rule powers, the Parties hereby agree as follows:

1. Incorporation of Recitals.

The Recitals set forth above are true and correct in all material respects, form a material part of this Agreement, and are hereby incorporated by reference.

2. Definitions.

The terms defined in this Section 2 have the meanings indicated for purposes of this Agreement. Capitalized terms which are used primarily in a single Section of this Agreement are defined in that Section.

a. "***Abandon***" and "***Abandonment***" means the stoppage of Work on the construction of a Phase of the Project for more than one hundred twenty (120) consecutive calendar days after construction of the Phase has commenced and prior to Work on the Phase being Complete for any reason other than Force Majeure.

b. "***Act***" is defined in Recital D.

c. "***Affiliate***" means a Person, or group of Persons, that, directly or indirectly, Controls or is Controlled by or is under common Control with another Person.

d. "***Agreement***" or "***DHCA***" means this "Development and Host Community Agreement," including all exhibits and schedules attached hereto, as the same may be amended, addended, or otherwise modified from time to time.

e. "***Application***" means an application for an Owner's License as required by the Act.

f. "***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, an Owner's License issued to Developer, the Development Approvals, and such other permits and licenses necessary to complete the Work, and to develop, construct, operate, and maintain the Project on the Development Property.

g. "***Best Efforts***" means the efforts that a reasonable commercial enterprise in the business of developing and operating first-class, regional casino projects would use, consistent with good faith business judgment, in order to achieve completion of the construction of the applicable project in a timely manner.

h. "***Boutique Hotel***" means the approximately 20-room five-star hotel that will be included and constructed as part of Phase 1 of the Project.

i. "***Building Code***" means collectively, the 2021 International Building Code (IBC); 2020 National Electrical Code (NFPA 70) – NEC; Current State of Illinois Plumbing Code as amended, 2021 International Property Maintenance Code (IPMC); State of Illinois, Energy Efficient Building Act; 2021 International Fuel Gas Code (IFGC); 2021 International Mechanical Code (IMC); 2021 International Fire Code (IFC); 2021 International Residential Code (IRC), as well as any local amendments to each code adopted by reference as set forth in Chapter 6 of the City's Code of Ordinances, as the same may be amended from time to time.

j. "***Building Commissioner***" means the Building Commissioner for the City or their designee.

k. "***Business Day***" means all weekdays except Saturday and Sunday and those that are official legal holidays of the City, the State of Illinois, City of New York, NY, or the United States government. Unless specifically stated as "Business Days," a reference to "days" means calendar days.

l. "***Casino Gaming Operations***" means any Gaming operations permitted under the Act or the Sports Wagering Act and offered or conducted at the Project pursuant to an Owner's License, or permitted under any statutes that may be adopted in the future and offered or conducted at the Project pursuant to the Approvals by Governmental Authorities that may be required by such statutes.

m. "***Casualty***" means any damage or destruction (including any damage or destruction for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all of the Project.

n. "***Casualty Restoration***" means, upon a Casualty or Condemnation, the safeguarding, clearing, repair, restoration, alteration, replacement, rebuilding, and reconstruction of the damaged or remaining Project, substantially consistent with its condition before such Casualty or Condemnation, in compliance with this Agreement and, if applicable, the Ground Lease, subject to any changes in Requirements of Law that would limit the foregoing.

o. "***Certification***" is defined in Recital I.

p. "***City***" is defined in the first paragraph of this Agreement.

q. "***City Council***" means the corporate authorities of the City, consisting of the duly elected mayor and alderpersons.

r. "***City Engineer***" means the City Engineer for the City or their designee.

s. "***City's Property Tax Amount***" is defined in Section 8.2.

t. "***Closing Certificate***" means the certificate to be delivered by Developer in the form as attached hereto as ***Exhibit N***.

u. "***Closing Conditions***" is defined in Section 3.3.

v. "***Closing Date***" means the date on which the Closing Conditions have been satisfied.

w. "***Closing Deliveries***" is defined in Section 3.3.

x. "***Code of Ordinances***" means the City's Code of Ordinances, as the same may be amended from time to time.

y. "***Community Benefit Contribution***" is defined in Section 8.1.b.

z. "***Compendium of Specifications***" means the City's "Compendium of Specifications for Development Within the City of Waukegan, Illinois" as the same may be amended or replaced from time to time.

aa. "***Complete***" or "***Completion***" means the substantial completion of the Work, as evidenced by the issuance of a temporary certificate of occupancy by the City for all Project Components within a Phase of the Project to which a certificate of occupancy would apply (and/or in the case of the retail and restaurant floor spaces, are completed as shells and available for leasing).

bb. "***Concurrent Approvals***" is defined in Section 4.4.

cc. "***Condemnation***" means a taking or damaging, including severance damage, of all or any part of the Development Property, the Project, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the law which may occur pursuant to the entry by a court of competent jurisdiction of a final judgment order, or by a voluntary sale of all or any part of the Development Property and/or the Project to the condemning authority, provided that, with respect to such voluntary sale, the Development Property or Project or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

dd. "***Construction Completion Date (Phase 0)***" means the date by which the Temporary Facility must attain Completion.

ee. "***Construction Completion Date (Phase 1)***" means the date by which the Permanent Facility must attain Completion.

ff. "***Control***" or "***Controlled***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through

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the ownership of voting securities or by contract or otherwise. Includes, with correlative meanings, the terms "*controlled by*" and "*under common control with.*"

gg. "***Corporation Counsel***" means the appointed corporation counsel for the City.

hh. "***Court***" is defined in Section 17.5.

ii. "***CSTM Plan***" is defined in Section 6.5(a).

jj. "***Damage Period***" is defined in Section 11.4.

kk. "***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 under Section 11.1.

ll. "***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 two percent (2%) per annum, or (ii) six percent (6%) per annum, provided, however, the Default Rate may not exceed the maximum rate allowed by applicable law.

mm. "***Developer***" is defined in the first paragraph of this Agreement.

nn. "***Developer Payments***" is defined in Section 8.5.

oo. "***Development Approvals***" means, collectively, the Prior Approvals, the Concurrent Approvals, and the Future Approvals.

pp. "***Development Escrow Agreement***" that certain agreement between the City and Developer dated as of February 28, 2022, regarding the payment of the City's Reimbursable Costs by Developer, as the same may be amended, addended, or otherwise modified from time to time.

qq. "***Development Property***" is defined in Recital A.

rr. "***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.

ss. "***(e-5) Requirements***" is defined in Recital H.

tt. "***Effective Date***" means the date listed on the cover page and preambles to this Agreement.

uu. "***Entertainment Venue***" means the space within the Permanent Facility to be constructed, finished and fitted out for use as a venue to host live music, theater or other entertainment events capable of seating approximately 1,500 attendees.

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vv. "***Escrow Agent***" is defined in Section 14.4.

ww. "***Event of Default***" is defined in Section 11.1.

xx. "***Fee Title Mortgage***" means any encumbrance by way of any mortgage, assignment of leases and rents, or other instruments intended to grant an interest in and to all or any part of Developer's fee ownership interest in the Project or the Development Property to any Person for the purpose of obtaining financing, including any extensions, modifications, amendments, replacements, supplements, renewals, refinancings, and consolidations thereof.

yy. "***Final Completion***" means when (i) Work related to all Project Components comprising a Phase of the Project is Complete; and (ii) 90% of the floor space for that Phase of the Project is ready to be open to the general public for its intended use or ready to be leased to tenants.

zz. "***Final Completion Date (Phase 0)***" means the date by which the Temporary Facility must attain Final Completion.

aaa. "***Final Completion Date (Phase 1)***" means the date by which the Permanent Facility must attain Final Completion.

bbb. "***Final Project Plan***" means, collectively, those plans and specifications for the Project described in Section 4.2.

ccc. "***Financing***" means the act, process or an instance of obtaining specifically designated funds for the Project or any Phase thereof, 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.

ddd. "***Finance Affiliate***" means any Affiliate of Developer created to effectuate all or any portion of a Financing.

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

fff. "***First-Class Project Standards***" means the general standards of quality for construction, maintenance, operations and customer service utilized as of the Effective Date at the Rivers Casino in Des Plaines, Illinois, taken as a whole.

ggg. "***Force Majeure***" is defined in Section 16.1.

hhh. "***Future Approvals***" is defined in Section 4.5.a.

iii. "***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.

jjj. "***Gambling Game***" has the same definition as in the Act.

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kkk. "***Gaming***" means the conduct of Gambling Games and/or Sports Wagering.

lll. "***Gaming Area***" means those spaces within the Project in which Gaming and Casino Gaming Operations occur.

mmm. "***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 and Casino Gaming Operations at the Project, including the IGB, or their respective successors.

nnn. "***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.

ooo. "***Ground Lease***" means that certain 99-year ground lease between the City and Developer for the City-Owned Parcel, as the same may be amended, addended, or otherwise modified from time to time.

ppp. "***IGB***" is defined in Recital H.

qqq. "***Improvement Guarantee***" is defined in Section 7.11.a.

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

sss. "***Indemnitee***" is defined in Section 15.1.a.

ttt. "***Initial Temporary Facility Operation Period***" is defined in Section 5.2.d.

uuu. "***Late Opening Fee***" is defined in Section 4.1.c.

vvv. "***Leasehold Mortgage***" means any encumbrance by way of mortgages, deeds of trust or other documents or instruments intended to grant an interest in real property, in the form of leasehold security, in and to all or any part of Developer's right, title and interest in and to the Ground Lease and the leasehold estate created by the Ground Lease to any Person for the purpose of obtaining financing including any extensions, modifications, amendments, replacements, supplements, renewals, refinancings, and consolidations thereof.

www. "***Maintenance Guarantee***" is defined in Section 7.11.d.

xxx. "***Major Condemnation***" means a Condemnation either (i) of the entire Project or the entire Development Property, (ii) Developer's (or its successor's or assign's) entire leasehold estate in the City-Owned Parcel, or (iii) of a portion of the Project or the Development Property if, as a result of the Condemnation, it would be imprudent or financially impractical to continue to operate the remaining portion of the Project or Development Property even after making all reasonable repairs and restorations.

yyy. "***Material Adverse Effect***" means any event, change, effect, occurrence or circumstances 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,

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

prospects, properties, assets, cash flows or results of operations of Developer, taken as a whole, or the ability of Developer to perform its obligations hereunder in a timely manner; provided, however, that none of the following may 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 Developer, taken as a whole, in a disproportionate manner as compared to similarly situated companies.

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

aaaa. "***Minor Condemnation***" means a Condemnation that is not a Major Condemnation.

bbbb. "***Mortgage***" means either a Leasehold Mortgage or a Fee Title Mortgage on all or part of the Project and/or Development Property.

cccc. "***Mortgagee***" means the holder or secured party from time to time of a Mortgage, including holders of Mortgages on Developer's leasehold interest in the City-Owned Parcel.

dddd. "***Non-Appeal Period***" is defined in Section 8.2.b.

eeee. "***Operations Commencement***" means when a Phase of the Project is Complete and opens for business to the general public.

ffff. "***Operations Commencement Date (Phase 0)***" means the date by which the Temporary Facility must attain Operations Commencement.

gggg. "***Operations Commencement Date (Phase 1)***" means the date by which the Permanent Facility must attain Operations Commencement.

hhhh. "***Owner's License***" means an owner's license (or, if an owner's license has not yet been issued, a temporary operating permit) issued by the IGB pursuant to the Act authorizing the conduct of Casino Gaming Operations in the City.

iiii. "***Parent Company***" means Full House Resorts, Inc., a Delaware corporation and parent company of the Developer, and its successors and assigns.

jjjj. "***Parties***" means the City and Developer.

kkkk. "***Passive Investor***" means any Person owning a Direct or Indirect Interest in Developer who acquired and holds such interest in the ordinary course of business for investment purposes only, and such interest was acquired and is held not for the purpose or effect of (i)

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

causing the election or appointment of any management member of Developer, or (ii) controlling, influencing, affecting or being involved in the business activities of Developer.

llll. "***Permanent Facility***" means the approximately 325,000 square foot Structure in which Gaming and Casino Gaming Operations will be conducted on the Development Property after the Operations Commencement Date (Phase 1) and all Project Components, including the Boutique Hotel and the Entertainment Venue (but excluding Phase 2), located on the Development Property that are connected with, or operated in such an integral manner as to form a part of the same operations, all of which are more specifically described on ***Exhibit C.***

mmmm. "***Permitted Construction Work Hours***" means the hours between 7:00 a.m. and 8:00 p.m. local time daily, during which exterior construction, demolition, and repair work may be conducted.

nnnn. "***Permitted Transfer***" means those Transfers of any Direct or Indirect Interest in Developer to a Permitted Transferee.

oooo. "***Permitted Transferee***" means any Person who is a transferee of any Direct or Indirect Interest in Developer: (i) who, after giving effect to the Transfer, owns less than a ten percent (10%) Direct or Indirect Interest in Developer or, if the Person is a Passive Investor, after the Transfer, owns less than twenty-five percent (25%) in Developer; or (ii) resulting solely from such Person's ownership of a Direct or Indirect Interest in a Publicly Traded Corporation; or (iii) resulting from such Person's purchase of all or substantially all of the equity interests or assets of the Parent Company; or (iv) who is a lender to Parent Company or Developer and, in connection with providing financing to Parent Company or Developer, as applicable, for the Project takes, as collateral for any such financing, a pledge of the equity interests of Developer.

pppp. "***Person***" means any corporation, partnership, individual, joint venture, limited liability company, trust, estate, association, business, enterprise, proprietorship, governmental body or any bureau, department or agency thereof, or other legal entity of any kind, either public or private, and any legal successor, agent, representative, authorized assign, or fiduciary acting on behalf of any of the foregoing.

qqqq. "***Phase***" means a discrete portion of the Project with a defined operations commencement date.

rrrr. "***Phase 0***" means the Phase of the Project during which Developer will develop, construct, operate, and maintain the Temporary Facility.

ssss. "***Phase 0 Engineering Plan***" is defined in Section 4.3.e.

tttt. "***Phase 1***" means the Phase of the Project during which Developer will develop, construct, operate, and maintain the Permanent Facility.

uuuu. "***Phase 1 Engineering Plan***" is defined in Section 4.5.a.

vvvv. "***Phase 1 Site Plans***" is defined in Section 4.5.a.

wwww. "***Phase 2***" means the Phase of the Project that will occur after Phase 1, as further described in Section 5.4.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

xxxx. "***Phase 2 Hotel***" means the approximately 150-key three-star hotel that may be constructed as part of Phase 2 of the Project.

yyyy. "***Prior Approvals***" is defined in Section 4.3.

zzzz. "***Proceeds***" means all amounts, compensation, sums or value paid, awarded or received for a Condemnation attributable to the Development Property or the Project, whether pursuant to judgment, the Ground Lease, this Agreement, settlement or otherwise to either City or Developer on account of a Condemnation, but excluding any compensation paid in connection with a temporary taking.

aaaaa. "***Project***" means, as the case may be, each of, or collectively, the Temporary Facility and the Permanent Facility, along with all appurtenant and accessory buildings and improvements for each Phase, as well as any subsequent Phases approved pursuant to this Agreement as the same may be amended or appended in the future.

bbbbb. "***Project Commencement Impact Payment***" is defined in Section 8.1.a.

ccccc. "***Project Component***" means any of the following included as part of each Phase of the Project: the Gaming Area; hotels; restaurants; bars and lounges; meeting and assembly spaces; retail spaces; back of house and central plant spaces; office spaces; entertainment, recreational facilities and spa; parking; private bus, limousine and taxi parking and staging areas; the other facilities described or depicted in the Project Description (***Exhibit C***) or the Project Concept Plan (***Exhibit D***); and such other major facilities that may be added as components by addendum or amendment to this Agreement.

ddddd. "***Project Concept Plan***" means the 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 4.5.d.

eeeee. "***Project Description***" means the detailed description of the Project as set forth on ***Exhibit C***.

fffff. "***Project Milestones***" is defined in Section 4.1.b.

ggggg. "***Project Phasing Plan***" a component of the Project Concept Plan depicting the proposed Phases of the Project as of the Effective Date.

hhhhh. "***Public Improvements***" means those Site Improvements that will be dedicated to, and accepted by, the City.

iiiii. "***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).

jjjjj. "***Qualified Lessor***" means a third party who, contemporaneously with the acquisition of all or a portion of the Development Property leases all or such portion of the Development Property to the Developer in a Qualified Sale and Leaseback Transaction.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

kkkkk. ***Qualified Sale and Leaseback Transaction***" means an arrangement in which all or any portion of the Development Property is acquired by a Qualified Lessor who contemporaneously with such acquisition leases all or such portion of the Development Property to Developer on a triple net basis and Developer remains responsible for operating the Project and paying all property taxes, insurance, and maintenance costs under terms and conditions customary for similar arrangements in the casino industry.

lllll. "***Redemption Period***" is defined in Section 4.1.c.

mmmmm. "***Reimbursable Costs***" shall have the meaning ascribed to it in, and shall be paid by Developer pursuant to and in accordance with, the provisions of the Development Escrow Agreement.

nnnnn. "***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 O*** attached hereto.

ooooo. "***Requirements of Law***" means the Act, Sports Wagering Act, the Development Approvals, the Code of Ordinances, the Building Code, the Subdivision Ordinance, the Zoning Ordinance, 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, operation, and maintenance 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.

ppppp. "***Restrictions***" is defined in Section 8.6.

qqqqq. "***RFQ/P***" is defined in Recital G.

rrrrr. "***Right-of-Way Improvements***" means those specific Site Improvements to be constructed on or within the public-owned rights-of-way that are adjacent to, or in the vicinity of, the Development Property, as specifically described in Section 7.9.

sssss. "***RoW Improvements Construction License***" is defined in Section 7.9.

ttttt. "***Shortfall Amount***" is defined in Section 8.2.

uuuuu. "***Site Improvements***" are the on-site and off-site improvements to be made in connection with the development and construction of the Project, as provided in Section 7, including, without limitation, the Public Improvements, but specifically excluding vertical construction of the Temporary Facility and the Permanent Facility.

vvvvv. "***Site Plan Approval Ordinance***" is defined in Section 4.3.b.

wwwww. "***Site Restoration***" means site restoration and modification activities to establish a park-like setting suitable for passive outdoor recreational activities, including without limitation, demolition of partially constructed improvements and Structures, regrading, erosion control, and installation of sod or seeding.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

xxxxx. "***Sports Wagering***" has the meaning given to such term in the Sports Wagering Act.

yyyyy. "***Sports Wagering Act***" is defined in Recital D.

zzzzz. "***State***" is defined in Recital D.

aaaaaa. "***Stormwater Improvements***" means the following improvements depicted on the Final Project Plan for the particular Phase: public and private storm sewers, related equipment, appurtenances, Structures, swales, and storm drainage areas installed and maintained on, or in the vicinity of, the Development Property to ensure adequate stormwater drainage and management and to collect and direct stormwater into the City's storm sewer system.

bbbbbb. "**Structure**" means anything constructed or erected, the use of which requires more or less permanent location on the ground, or anything attached to something having a permanent location on the ground, but not including paving or surfacing of the ground. Structure will in all cases be deemed to include, without limitation, the Temporary Facility, the Permanent Facility, the Boutique Hotel, and the Phase 2 Hotel.

cccccc. "***Subdivision Ordinance***" means the Waukegan Subdivision Ordinance, codified as Appendix D to the City's Code of Ordinances, as the same may be amended from time to time.

dddddd. "***Substantial Casualty***" means a Casualty that: (a) renders thirty percent (30%) or more of the Project not capable of being used or occupied; (b) requires Casualty Restoration whose cost Developer reasonably estimates in writing would exceed One Hundred Fifty Million and No/100 Dollars ($150,000,000.00); or (c) pursuant to Requirements of Law, prevents Casualty Restoration of the Project from being Restored to the same bulk, and for the same use(s), as before the Casualty.

eeeeee. "***Temporary Construction Easement***" is defined in Section 4.3.d.

ffffff. "***Temporary Facility***" means the Structure in which Casino Gaming Operations will be conducted by Developer at the Development Property during Phase 0 for such period of time as permitted by Section 5.2 and all buildings and Project Components located on the Development Property that are physically connected with, or operated in such an integral manner as to form a part of the same operation as, that Structure, all of which are more specifically described in ***Exhibit C***.

gggggg. "***Temporary Facility Operation Period***" is defined in Section 5.2.d.

hhhhhh. "***Term***" is defined in Section 3.4.

iiiiii. "***Threshold Amount***" means (i) for the first property tax year occurring after the Non-Appeal Period, an amount equal to $1,200,000; and (ii) for each property tax year thereafter continuing through property tax year 2032 (taxes paid in 2033), an amount equal to the prior property tax year's Threshold Amount multiplied by 103%.

jjjjjj. "***Transfer***" means (i) any sale (including agreements to sell on an installment basis), lease, assignment, transfer, pledge, alienation, hypothecation, merger, consolidation,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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.

kkkkkk. "***Transferee Assumption Agreement***" means the Transferee Assumption Agreement required to be executed by any Person, other than Developer, taking a legal or equitable interest in the fee title to the Development Property or Developer's leasehold interest under the Ground Lease, as set forth in Section 12.3 and in substantially the same form as ***Exhibit J***.

llllll. "***Work***" means demolition and site preparation work at the Development Property for each Phase of the Project, and construction of the Site Improvements and Structures constituting each Phase of the Project in accordance with the Final Project Plan for such Phase and includes labor, materials and equipment to be furnished by a contractor or subcontractor.

mmmmmm. "***Zoning Ordinance***" means the Waukegan Zoning Ordinance, codified as Appendix A to the City's Code of Ordinances, as the same may be amended from time to time.

3. General Provisions.

3.1 Findings.

The City hereby finds that the development, construction, operation, and maintenance of the Project will: (i) be in the best interest of the City; (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 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 and the greater Lake County region; (v) support and promote tourism in the City and the State; and (vi) provide the City with additional revenue.

3.2 Legal Effect of Agreement.

This Agreement, along with the Ground Lease, replaces the Temporary Construction Easement and that certain "Memorandum of Key Terms," dated as of May 3, 2022 between the Parties, both of which are hereby terminated as of the Effective Date and shall have no further legal force or effect. This Agreement, along with the Ground Lease, as both documents may be amended, addended, supplemented, or otherwise modified from time to time, shall govern the relationship between the Parties and the development, construction, operation, and maintenance of the Project on the Development Property. The provisions of this Agreement, unless terminated pursuant to the terms of this Agreement, run with and bind the Development Property and inure to the benefit of, are enforceable by, and obligate the City, Developer, and any of their respective, grantees, successors, assigns, and transferees, including all permitted successor legal or beneficial owners of all or any portion of the Development Property. The City will not have any management or oversight rights over the Project or the Development Property except those voluntarily provided in this Agreement.

3.3 Closing Conditions.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

The City's and Developer's obligations under this Agreement are subject to and contingent upon the satisfaction of the following conditions precedent, each in form and substance reasonably satisfactory to the City (collectively, the "***Closing Conditions***"):

a. Delivery of the following items (the "***Closing Deliveries***"):

(i) From Developer:

A. 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;

B. The Closing Certificate;

C. The Ground Lease and Memorandum of Ground Lease executed by Developer;

D. Evidence of payment of Developer's due and unpaid Reimbursable Costs incurred to date, if any;

E. Evidence of payment to the City's Water Department for any outstanding water fees incurred during the construction of Phase 0;

F. The Releases;

G. Resolutions of Developer, properly certified, approving this Agreement and the Ground Lease and authority to execute same; and

H. A certificate from Developer reasonably acceptable to City certifying that the representations and warranties of the Developer set forth in Section 9.1 are true and correct in all material respects at and as of the Closing Date as though then made.

(ii) From the City:

A. The Ground Lease and Memorandum of Ground Lease executed by the City;

B. Resolutions and ordinances of the City, properly certified, approving the Concurrent Approvals;

C. Resolutions of the City, properly certified, approving this Agreement and authority to execute same;

D. A certificate from the City reasonably acceptable to Developer certifying that the representations and warranties of the City set forth in Section 9.2 are true and correct in all

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

material respects at and as of the Closing Date as though then made;

E. An estoppel certificate, in form and substances reasonably satisfactory to Developer, from the "Declarant" under that certain First Amended Declaration of Protective Covenants, Conditions, Restrictions and Easement for Fountain Square of Waukegan dated as of August 27, 2005 and recorded with the Lake County Recorder on September 2, 2005 as Document Number 5853181;

F. Title clearance documents reasonably required by Fidelity National Title Insurance Company (or its agent) in connection with the issuance of an owner's policy of title insurance, together with the leasehold owner endorsement thereto, to Developer with respect to the Ground Lease and City-Owned Parcel; and

G. The letter of credit Developer previously provided to the City pursuant to the Temporary Construction Easement.

b. No Default or Event of Default has occurred or is continuing hereunder.

c. No Material Adverse Effect has occurred.

3.4 Term.

The term of this Agreement commences on the Effective Date and continues until the expiration of the Owner's License issued to 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 will automatically be extended upon any and each renewal of Developer's Owner's License; provided, that at the time of each extension Developer has received no written notice of an Event of Default for a Default which remains uncured or with respect to which Developer is not in the process of diligently pursuing a cure. The term of this Agreement, including any extensions thereof, is referred to as the "***Term***."

4. Project.

4.1 Overview of Project; Project Milestones.

a. Overview of Project. Developer proposes to develop, construct, operate, and maintain the Project as described in the Project Description. To that end, Developer has prepared that certain Project Concept Plan for the Project. The Project Concept Plan includes a Project Phasing Plan which describes and depicts the projected Phases of the Project contemplated as of the Effective Date of this Agreement. As plans for subsequent phases of the Project are finalized and approved by the City, those plans shall be incorporated into the Final Project Plan and memorialized in addenda to this Agreement.

b. Project Milestones. As further described in Sections 5.2, 5.3, and 6.4, Developer shall achieve the following milestones, as they may be amended or extended pursuant to the provisions of this Agreement (collectively, the "***Project Milestones***"):

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

i. Phase 0 – Temporary Facility.

A. Construction Completion Date (Phase 0): This date will occur no later than January 31, 2023; provided, however, that upon written request of Developer to the City and upon Developer showing that it is diligently pursuing construction of the Temporary Facility, the City may consent to up to two (2) three-month extensions of the Construction Completion Date (Phase 0), the first of which shall be consented to automatically by the City and any subsequent consent not to be unreasonably withheld, conditioned or delayed.

B. Operations Commencement Date (Phase 0): This date will occur no later than three (3) months following the Construction Completion Date (Phase 0); provided, however, that upon a written showing by Developer that it is diligently pursuing Operations Commencement for Phase 0, the Operations Commencement Date (Phase 0) shall be automatically extended as is reasonably necessary for Developer to achieve Operations Commencement for Phase 0, but in no event by more than an additional one (1) month.

C. Final Completion Date (Phase 0): This date will occur no later than three (3) months following the Construction Completion Date (Phase 0); provided, however, that upon a written showing by Developer that it is diligently pursuing Final Completion of Phase 0, the Final Completion Date (Phase 0) shall be automatically extended as is reasonably necessary for Developer to attain Final Completion for Phase 0, but in no event by more than an additional three (3) months.

ii. Phase 1 – Permanent Facility.

A. Construction Completion Date (Phase 1): This date will occur no later than thirty-six (36) months following the Operations Commencement Date (Phase 0); provided, however, that upon written request of Developer to the City and upon Developer showing that it is diligently pursuing construction of Phase 1 of the Project, the City may consent to up to two (2) three-month extensions of the Construction Completion Date (Phase 1), followed by one (1) two-month extension of the Construction Completion Date (Phase 1), the first of which shall be consented to automatically by the City and any subsequent consent not to be unreasonably withheld, conditioned or delayed.

B. Operations Commencement Date (Phase 1): This date will occur no later than three (3) months following the Construction Completion Date (Phase 1); provided,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

however, that upon a written showing by Developer that it is diligently pursuing Operations Commencement for Phase 1, the Operations Commencement Date (Phase 1) shall be automatically extended as is reasonably necessary for Developer to achieve Operations Commencement for Phase 1, but in no event by more than an additional three (3) months.

C. Final Completion Date (Phase 1): This date will occur no later than five (5) months following the Construction Completion Date (Phase 1); provided, however, that upon a written showing by Developer that it is diligently pursuing Final Completion of Phase 1, the Final Completion Date (Phase 1) shall be automatically extended as is reasonably necessary for Developer to attain Final Completion for Phase 1, but in no event by more than an additional three (3) months.

The Parties agree and acknowledge that the above-described Project Milestones represent the outside dates upon which Developer must achieve each such Project Milestone and, if a particular Project Component is Complete and ready to be opened to the public prior to Completion of all Project Components for a particular Phase, Developer may open such Project Component prior to Completion and opening of all other Project Components for such Phase.

c. Phase 1 Project Component Exception. Developer intends for all Phase 1 Project Components, including the Boutique Hotel and Entertainment Venue, to open simultaneously. However, the Parties recognize that unplanned events may cause delays and require the Gaming Area of Permanent Facility to open to the public before the other Project Components of the Permanent Facility. For each day that the Gaming Area of the Permanent Facility is open for business to the general public prior to either the Boutique Hotel or the Entertainment Venue attaining Operations Commencement, a fee equal to $750 per day (the "***Late Opening Fee***") shall accrue. If the Boutique Hotel and Entertainment Venue attain Operations Commencement within 120 days of the Gaming Area of the Permanent Facility attaining Operations Commencement (the "***Redemption Period***"), then the accrued Late Opening Fee shall be fully waived and reduced to zero. If, however, the Boutique Hotel and Entertainment Venue have not attained Operations Commencement by the expiration of the Redemption Period, then the Late Opening Fee accrued for the Redemption Period shall be due and payable to the City on the Business Day immediately following expiration of the Redemption Period and, further, the Late Opening Fee shall continue to accrue for each day thereafter until the Boutique Hotel and Entertainment Venue have both attained Operations Commencement and such accrued Late Opening Fees shall be payable, in arrears, within five Business Days after the end of each calendar month until paid in full. The Redemption Period will be extended day-for-day for any period of time Developer is awaiting permits from the City, County, or other municipal jurisdictions after timely submitting all necessary applications, plans, and fees.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

4.2 Final Project Plan.

The Final Project Plan will be comprised collectively, of those plans and specifications for the Project and each of its Phases to be approved by the City Council or City staff pursuant to the Development Approvals, in accordance with Section 4 and the Requirements of Law.

a. Phase 0. The plans and related documents approved by the City Council through the adoption of the Prior Approvals constitute the Final Project Plan for Phase 0.

b. Phase 1. After adoption by the City Council of the Future Approvals, the plans and related documents approved by the City through the adoption of the Future Approvals will be the Final Project Plan for Phase 1. Upon the date that the Future Approvals for Phase 1 and all plans and specifications for any subsequent Phase of the Project are approved, those plans and specifications will, automatically and without further action by the City Council and the Parties, be deemed to be incorporated into, and made a part of, the Final Project Plan and will replace the Project Concept Plan for that Phase.

4.3 Prior Approvals.

As of the Effective Date of this Agreement, the City has granted Developer the following Development Approvals (collectively, the "***Prior Approvals***"):

a. Certification Resolution. On October 19, 2019, the City Council adopted Resolution No. 19-R-97 "Certifying Full House Resort's Proposal for a Riverboat Gaming Operation to the Illinois Gaming Board." This Resolution confirmed Parent Company's compliance with the IGB's (e-5) Requirements and authorized Full House Resort's Application for the Owner's License to be submitted and considered by the IGB.

b. Temporary Facility (Phase 0) Site Plan Approval. On March 21, 2022, the City Council adopted Ordinance No. 22-O-29 "Granting Site Plan Approval to FHR-Illinois, LLC for the Construction and Operation of a Temporary Casino" ("***Site Plan Approval Ordinance***"), which granted Developer final site plan approval for the Temporary Facility and other Phase 0 Project Components subject to certain conditions and restrictions. A copy of the Site Plan Approval Ordinance is attached hereto as ***Exhibit E***.

c. Extended Hours Authorization Resolution. On May 2, 2022, the City Council adopted Resolution No. 22-R-58, "Authorizing FHR-Illinois LLC to Operate a Temporary Casino Facility with Extended Operating Hours." This Resolution authorizes Developer to operate the Temporary Facility 24-hours a day.

d. Temporary Construction Easement. On March 22, 2022, the City and Developer entered into that certain "Temporary Construction Easement Agreement," recorded in the Office of the Lake County Recorder as Document No. 7893327 on April 1, 2022 ("***Temporary Construction Easement***"), to allow Developer to enter on the City-Owned Parcel and commence construction of the Temporary Facility, including site preparation, foundation construction, utility installation, and transportation and storage of certain construction equipment, tools, and materials.

e. Temporary Facility (Phase 0) Engineering Plan Approval. The City Engineer approved those certain Engineering Plans for the Temporary Facility and other Phase 0 Project Components, prepared by Gewalt Hamilton Associates, Inc. consisting of

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

21 sheets, with a latest revision date of September 20, 2022 a copy of which is attached hereto as ***Exhibit F*** (the "***Phase 0 Engineering Plan***").

f. Foundation Construction Permit for Temporary Facility. The Building Commissioner, pursuant to the rights granted Developer by the Temporary Construction Easement, issued Foundation and Footing building permits for the Temporary Facility on May 10, 2022.

g. Zoning Ordinance Amendments. On October 3, 2022, the City Council adopted Ordinance No. 22-O-174, amending Sections 8.3-9(6)(a)(6), 8.3-9(6)(b)(4), and 8.3-9(6)(b)(9) of the Waukegan Zoning Ordinance, regarding the Western Gateway Overlay District in the B2 Community Shopping District, to add "casinos" as permitted uses and adding definitions for "casino" and "helipad" to Section 13.2 of the Ordinance.

h. Code of Ordinance Amendments. On November 21, 2022, the City Council approved Ordinance Nos. 22-O-219 and 22-O-220 amending the City's Code of Ordinances to enact, among other changes, the following:

i. create a new "Class Q - Casino" liquor license classification for casino gaming facilities;

ii. exclude casino gaming facilities from local regulations and taxes applicable to free-standing video gaming terminals (VGTs) authorized and operated pursuant to the Illinois Video Gaming Act (230 ILCS 40/1 *et seq.*);

iii. permit Casino Gambling Operations to be conducted at a licensed facility located in the City; and

iv. amend the City's Sign Ordinance to accommodate Developer's proposed electronic display sign and light projections.

4.4 Concurrent Approvals.

Concurrently with the consideration of approval and execution of this Agreement, the City will consider adoption of the following Development Approvals (collectively, the "***Concurrent Approvals***"):

a. Ground Lease. The City Council will consider an ordinance authorizing the City to enter into the Ground Lease with Developer for the City-Owned Parcel. This ordinance will acknowledge Developer's option to purchase the City-Owned Parcel in accordance with the terms of the Ground Lease.

b. Liquor License Authorization. The City Council will consider one or more ordinances authorizing the creation of a Class Q - Casino liquor license and multiple Class E- Restaurant licenses to be available for issuance to Developer for the Temporary Facility.

4.5 Future Approvals.

a. Necessary City Approvals. The Parties acknowledge and agree that: (i) the Permanent Facility is a permitted use on the Development Property under the City's Zoning Ordinance, requiring only: (A) approval by the City Council pursuant to Section 3.12 of the City's Zoning Ordinance of the site plans for the Permanent Facility (the "***Phase 1 Site Plans***"); (B) approval by the City Engineer pursuant to Section 11.2 of the City's Subdivision Ordinance of the engineering plans depicting the Site Improvements that will be constructed in connection with the Permanent Facility (the "***Phase 1 Engineering Plan***"); and (C) approval by the Building Commissioner of the City's Building Code of building permits necessary for the construction of the Permanent Facility (collectively, the Phase 1 Site Plans, the Phase 1 Engineering Plan, and such building permits are the "***Future Approvals***"); and (ii) as of the Effective Date, the City Council, the City Engineer, and the Building Commissioner have not yet considered, and have not granted, approval of the Phase 1 Site Plan, the Phase 1 Engineering Plan, and the building permits necessary for the construction of the Permanent Facility, respectively.

b. Permanent Facility (Phase 1) Site Plan Approval. Developer will submit and provide to the City all necessary applications, plans, reports, and documents required by Section 3.12 of the City's Zoning Ordinance to request and obtain site plan approval of the Phase 1 Site Plans. The City will consider such applications, plans, reports, and documents submitted by Developer to request and obtain approval of the Phase 1 Site Plans in accordance with Section 4.6.b.

c. Permanent Facility (Phase 1) Engineering Plan Approval. Developer will submit and provide to the City all necessary applications, plans, reports, and documents required by Section 11.2 of the City's Subdivision Ordinance to request and obtain approval of the Phase 1 Engineering Plan. The City Engineer will consider such applications, plans, reports, and documents submitted by Developer to request and obtain approval of the Phase 1 Engineering Plan in accordance with Section 4.6.b.

d. Permanent Facility (Phase 1) Building Permit Approval. Developer will submit and provide to the City all necessary applications, plans, reports, and documents required by the City's Building Code to request and obtain approval of building permits necessary to construct the Permanent Facility. The Building Commissioner will consider such applications, plans, reports, and documents submitted by Developer to request and obtain approval of such building permits in accordance with Section 4.6.b.

4.6 Other Matters Related to Approvals.

a. Developer's Obligations. As soon as practicable following the Operations Commencement Date (Phase 0), but, in any event within a reasonable time that will permit Developer to achieve the Project Milestones related to Phase 1 of the Project, Developer will use its Best Efforts to promptly apply for and pursue the Future Approvals and any other Approvals necessary to design, develop, construct, and maintain the Permanent Facility. Developer is required to promptly furnish the City with all studies required by applicable provisions of the Code of Ordinances in connection with the Future Approvals. Until all applications for the Future Approvals have been submitted to the City, Developer is required to provide the City, from time to time upon its request, but not more often than once each calendar month following the Effective Date, a written update of the status of such applications. If any Approvals by Governmental Authorities other than the City are

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

denied or delayed, Developer must 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 all necessary Approvals, Developer must develop and construct the Project in material compliance with the Development Approvals, the Final Project Plan, and this Agreement as the same may be amended or addended from time to time.

b. City's Obligations. In every case for which an Approval by the City is required or contemplated under this Agreement or any Requirement of Law, the City shall: (i) review and consider such Approval in good faith, expeditiously, diligently, and in accordance with all processes and procedures required by applicable Requirements of Law; and (ii) in the case of non-discretionary ministerial Approvals that, pursuant to Requirements of Law, are to be granted by City officials and employees other than the City Council after certain standards, criteria, and/or other conditions precedent have been satisfied, grant such Approvals only after Developer has reasonably demonstrated that Developer has satisfied all such standards, criteria, and/or other conditions precedent. In the event that the City denies or does not grant any Approval, or Developer reasonably determines that the City will not grant such Approval, Developer has the right to terminate this Agreement by providing written notice to the City. In the event that the City breaches its obligations pursuant to Section 4.6.b.(i) and Section 4.6.b.(ii), Developer's sole remedy shall be termination of this Agreement or, in the case of breaches of Section 4.6.b.(ii), the filing of a mandamus action in the 19th Judicial Circuit Court of Lake County. In no event shall breach of Section 4.6.b.(i) and Section 4.6.b.(ii) by the City be grounds for the award of monetary damages.

c. Addenda for Material Changes. The City acknowledges and agrees that, notwithstanding specific elements of the Project Description and the Project Concept Plan, the Developer may alter the Project Description, the Project Concept Plan, the Final Project Plan, the Project and the Project Components of any Phase without approval of the City, provided, however, that any Material Change shall require the approval of the City Council in the form of a written addendum to this Agreement, which approval shall not be unreasonably withheld. Addenda for subsequent Phases of the Project will incorporate approved site plan ordinances and engineering plans for that Phase as Exhibits to the addenda. All plans for subsequent Phases adopted by addenda to this Agreement will be incorporated into the Final Project Plan.

d. Owner's License. Developer has submitted its Application for, and is actively pursuing, an Owner's License issued by the IGB to authorize Casino Gaming Operations in the City. As of the Effective Date, Developer has received a determination of "Preliminary Suitability" from the IGB. Developer will diligently take all necessary and commercially reasonable steps to obtain the temporary operating permit (and Owner's License) as necessary under the Act to conduct Casino Gaming Operations.

e. Sports Wagering License. If Developer desires to conduct (or cause to be conducted) Sports Wagering at the Development Property and/or through an internet or mobile application available to Developer as a result of Developer holding an Owner's License, Developer shall apply to IGB for issuance of a master sports wagering license under the Sports Wagering Act to authorize the conduct of Sports Wagering at the Casino and over the internet or through a mobile application as permitted by the Sports Wagering Act and diligently pursue such license.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

4.7 2004 Redevelopment Agreement.

Notwithstanding anything contained in this Agreement or the Ground Lease to the contrary, as between the City and Developer and Developer's successors and assigns, the City shall have no right to enforce the obligations of that certain Redevelopment Agreement entered into by the City and SDC Waukegan Venture, LLC dated as of August 1, 2003 as amended by that certain Amendatory and Supplemental Agreement dated as of August 27, 2005. This Section 4.7 does not limit or waive Developer's obligations to pay the Impositions set forth in Section 5.1(B) of the Ground Lease.

5. Use, Operations, and Maintenance of the Development Property.

5.1 General Project Restrictions.

a. Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Code of Ordinances or the Zoning Ordinance or any other rights Developer may have, during the term of this Agreement, the Development Property may be developed, used, operated, and maintained only pursuant to, and in accordance with, the terms and provisions of this Agreement and its exhibits, including, without limitation, the development conditions set forth in Sections 5.1.b. through 5.1.d as well as in the Approvals. The development, use, maintenance or operation of the Development Property in a manner deviating from these conditions will be deemed a violation of this Agreement and Developer's obligations hereunder.

b. So long as Gaming is permitted by law to be conducted at the Project, the principal business to be operated at the Project shall be Gaming; although accessory business activities, including, without limitation, food and beverage service, entertainment, hospitality, and retail sales will be permitted.

c. If Developer desires to conduct (or cause to be conducted) Sports Wagering at the Project and/or through an internet or mobile application available to Developer as a result of Developer holding an Owner's License, Developer must apply to IGB for issuance of a master sports wagering license under the Sports Wagering Act to authorize the conduct of Sports Wagering at the Casino and over the internet or through a mobile application as permitted by the Sports Wagering Act and use its commercially reasonable efforts to obtain and maintain such license for so long as Sports Wagering is conducted. If Developer obtains such license, Developer must operate all Sports Wagering in accordance with the Sports Wagering Act.

d. The development, construction, operation, and maintenance of the Project on the Development Property, must, except for minor alterations to final engineering and site work approved by the City Engineer, the Building Commissioner, or the City's Director of Planning and Zoning, as appropriate, comply and be in accordance with the following:

(i) this Agreement;

(ii) the Development Approvals applicable to the relevant Phase;

(iii) the Final Project Plan for each Phase of the Project, and all individual plans and documents of which it is comprised;

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(iv) the Zoning Ordinance;

(v) the Building Code;

(vi) the Subdivision Ordinance;

(vii) the Compendium of Specifications; and

(viii) the Requirements of Law.

Unless otherwise provided in this Agreement, either specifically or in context, in the event of a conflict between or among any of the plans or documents listed as or within items (i) through (viii) of this Section 5.1, the plans or documents shall control in the priority order set forth above in items (i) through (viii) of this Section 5.1.

5.2 Operations of Temporary Facility (Phase 0).

a. [Reserved].

b. Standards of Operation. Beginning on the Operations Commencement Date (Phase 0) and continuing to Operations Commencement Date (Phase 1), Developer agrees to diligently operate and maintain the Temporary Facility in full compliance with all material Requirements of Law, First-Class Project Standards, and the terms of this Agreement.

c. Operating Hours. Developer covenants that, at all times following the Operations Commencement Date (Phase 0), it will, directly or indirectly: (i) continuously operate and keep open to the public for the maximum hours permitted under Requirements of Law the Gaming Area of the Temporary Facility; and (ii) continuously operate and keep open to the public during commercially reasonable hours the Project Components of the Temporary Facility other than the Gaming Area. Notwithstanding the foregoing, Developer has the right, from time to time in the ordinary course of business and without advance notice to the City, to close portions of any Project Component of the Temporary Facility: (x) for such reasonable periods of time as may be required for repairs, alterations, maintenance, remodeling, or for any reconstruction required because of Casualty, Condemnation, or Force Majeure; or (y) to respond to then-existing market conditions but only for so long as reasonable commercial practices would so require; or (z) such periods of time as may be directed by a Governmental Authority. Notwithstanding Developer's covenants as set forth in this Section 5.2.c., Developer has the right to alter the operations of the Temporary Facility in accordance with any changes to the Act or the Sports Wagering Act.

d. Temporary Facility Operation Period. So long as Developer is diligently pursuing Approvals for, and construction of, the Permanent Facility, Developer may conduct Casino Gaming Operations at the Temporary Facility for a period of up to twenty-four (24) months after the Operations Commencement Date (Phase 0) (such 24-month period, the "***Initial Temporary Facility Operation Period***"). If, pursuant to Section 7(l) of the Act, Developer shall petition the IGB to extend the Initial Temporary Facility Operation Period for a period of up to twelve (12) additional months and the IGB grants Developer's petition, then Developer shall be permitted to conduct Casino Gaming Operations at the Temporary Facility for such extended period (the Initial Temporary Facility Operation

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Period, as may be extended as provided herein, the "***Temporary Facility Operation Period***"). In no event, however, shall Developer be permitted to conduct Casino Gaming Operations at the Temporary Facility for a period of greater than thirty-six (36) months after the Operations Commencement Date (Phase 0) unless otherwise approved by the IGB.

5.3 Operations of Permanent Facility (Phase 1).

a. [Reserved].

b. Standards of Operation. Beginning on the Operations Commencement Date (Phase 1) and continuing during the Term, Developer agrees to diligently operate and maintain the Permanent Facility in full compliance with all material Requirements of Law, First-Class Project Standards, and the terms of this Agreement.

c. Operating Hours. Developer covenants that, at all times following the Operations Commencement Date (Phase 1), it will, directly or indirectly: (i) continuously operate and keep open to the public for the maximum hours permitted under Requirements of Law the Gaming Area of the Permanent Facility; (ii) when Complete, continuously operate and keep open for business to the general public for the maximum hours permitted under Requirements of Law, the Boutique Hotel and the parking Project Component; and (iii) operate and keep open for business to the general public all Project Components (other than the Gaming Area, the Boutique Hotel, and the parking Project Component) in accordance with commercially reasonable hours of operation. Notwithstanding the foregoing, Developer has the right from time to time in the ordinary course of business and without advance notice to City, to close portions of any Project Component of the Permanent Facility 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, or Force Majeure, or (y) to respond to then-existing market conditions but only for so long as reasonable commercial practices would so require; or (z) such periods of time as may be directed by a Governmental Authority. Notwithstanding Developer's covenants as set forth in this Section 5.3.c., Developer has the right to alter the operations of the Permanent Facility in accordance with any changes to the Act or the Sports Wagering Act.

5.4 Construction and Operations of Subsequent Phases (Phase 2 and Beyond).

The Parties acknowledge the Project Concept Plan and Project Description include a description of Phase 2. As of the Effective Date, Phase 2 consists of Developer's construction of the Phase 2 Hotel on the Development Property. The Parties agree, however, that if the Developer, in consultation with the City, determines that market conditions do not warrant construction of the Phase 2 Hotel, then Developer, in consultation with the City, will consider other casino-related amenities (in lieu of the Phase 2 Hotel) to be constructed on the Development Property as Phase 2. In any event, Developer's investment in Phase 2 will be no less than $50 million, and Developer will commence construction of Phase 2 no later than five (5) years of the Operations Commencement Date (Phase 1). Pursuant to Section 4.6.d., before the construction of Phase 2, Developer shall seek and the City shall consider (in accordance with their respective obligations set forth in Section 4.6.a. and Section 4.6.b.) approval of a Phase 2 site plan by the City Council and approval of a Phase 2 engineering plan by the City Engineer, which approvals and plans shall be incorporated into this Agreement through the execution of an addendum to this Agreement.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

6. Demolition and Construction of Project.

6.1 General Construction and Contracting Requirements.

a. Compliance with Plans and Approvals. Each Phase of the Project must be designed and constructed pursuant to and in accordance with this Agreement, the Final Project Plan, and the Development Approvals. All Work must be conducted promptly and in a good and diligent manner and in compliance with First Class Project Standards. All materials used for construction on the Development Property will be in accordance with the specifications for the Work to be performed. Without limiting the generality of the foregoing sentence, Developer must ensure that all materials used in the construction of the Project are of first-class quality and that the quality of the Finish Work meets or exceeds First-Class Project Standards.

b. Contracts for Work on Development Property. For contracts entered into by Developer following the Effective Date, Developer will include in every contract for Work on the Development Property terms requiring the contractor and its subcontractors to prosecute the Work diligently, and in full compliance with, and as required by or pursuant to this Agreement, the Development Approvals, and all material Requirements of Law, until the Work is properly completed, and terms providing that Developer may take over and prosecute the Work if the contractor fails to do so in a timely and proper manner.

c. City Inspections and Approvals. All Work on the Development Property will be subject to inspection and approval by City representatives at all times to the same extent as any other development project located in the City, subject to safety rules applicable to the Project and the Development Property.

d. Construction of Temporary Facility. The Parties acknowledge and agree that the following actions occurred before the Effective Date of this Agreement: (i) the Parties entered into the Temporary Construction Easement; (ii) the City adopted the Prior Approvals and approved the Final Project Plan for Phase 0; and (iii) Developer commenced Work on the Temporary Facility pursuant to, and in accordance with, the Prior Approvals, the Final Project Plan for Phase 0, and the provisions of the Temporary Construction Easement. As of the Effective Date, significant portions of the Work on the Temporary Facility have been completed. Certain provisions of this Agreement related to the construction of the Project, therefore, apply only prospectively to the construction of the Permanent Facility.

6.2 Demolition of Structures.

Developer will use commercially reasonable efforts to deconstruct and remove the Phase 0 Project Components (to the extent that they are not incorporated into Phase 1) no later than one hundred eighty (180) days after the Operations Commencement Date (Phase 1). Developer will conduct all demolition Work on the Development Property in full compliance with the demolition regulations of the City and Lake County and Permitted Construction Work Hours. Developer will remove and dispose of all debris resulting from demolition activities on the Development Property in compliance with all material Requirements of Law.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

6.3 Limits on Vertical Construction.

In addition to any other applicable provision of this Agreement and the Requirements of Law, after the Final Completion of the Temporary Facility, Developer may not commence any vertical construction for a particular Phase unless the City Engineer has determined that the construction of the following Site Improvements for that Phase are complete as required by this Agreement and Requirements of Law, except as may be authorized in writing by the City Engineer:

a. the Stormwater Improvements;

b. a functional water system that can deliver water to all proposed fire hydrants in the manner required by the City, as depicted on the Final Project Plan; and

c. sufficient paving and circulation Site Improvements to allow fire/EMS vehicles and personnel to access the Development Property.

6.4 Diligent Pursuit of Construction.

After commencement of construction for a Phase of the Project is authorized pursuant to this Agreement, Developer must pursue, or cause to be pursued, all required development, demolition, construction, and installation of Structures, buildings, Project Components and Site Improvements on the Development Property for that Phase in a diligent and expeditious manner, and in compliance with the applicable Development Approvals, the Final Project Plans, and material Requirements of Law. Developer will conduct all exterior construction Work on the Development Property in full compliance with the City's Permitted Construction Work Hours.

a. Developer must Complete construction of the Temporary Facility not later than the Construction Completion Date (Phase 0), commence operation of the Temporary Facility not later than the Operations Commencement Date (Phase 0), and attain Final Completion for the Temporary Facility not later than the Final Completion Date (Phase 0). Upon the occurrence of an event of Force Majeure, the Construction Completion Date (Phase 0), Final Completion Date (Phase 0), and the Operations Commencement Date (Phase 0), 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 construction of the Permanent Facility not later than the Construction Completion Date (Phase 1), commence operation of the Permanent Facility not later than the Operations Commencement Date (Phase 1) and attain Final Completion of the Permanent Facility not later than the Final Completion Date (Phase 1). Upon the occurrence of an event of Force Majeure, the Construction Completion Date (Phase 1), the Operations Commencement Date (Phase 1), and Final Completion Date (Phase 1) shall each be extended on a day-for-day basis but only for so long as the event of Force Majeure is in effect. The Permanent Facility may not commence operations until all Site Improvements for Phase 1 have been completed in accordance with Final Project Plans for Phase 1 and the Compendium of Specifications as verified by the City Engineer, with the exception of landscaping improvements unable to be installed due to weather or seasonality.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

6.5 Construction Site and Traffic Management.

a. Required Plans. Before commencement of construction of the Permanent Facility, Developer must prepare and submit, for review and approval by the Building Commissioner and the City Engineer the following plans applicable to Work related to the construction of the Permanent Facility:

(i) A construction site and traffic management plan ("***CSTM Plan***") that addresses site issues, including, but not limited to: (A) sequencing of construction events; (B) construction milestones; (C) light, noise, dust and traffic mitigation measures; (D) rodent and waste controls; (E) contact information for the Project's general contractor's site manager; (F) the location, storage, and traffic routes for construction equipment and construction vehicles; and (G) the location of alternative off-street parking during construction if construction activity is expected to materially reduce the amount of off-street parking available on the Development Property. The CSTM Plan must include, without limitation, the following:

(a) The schedule and traffic routes for construction traffic accessing the Development Property;

(b) The designation of machinery and construction material storage areas on the Development Property;

(c) Provisions for the screening of construction areas within the Development Property;

(d) The hours of operation and schedule for construction on the Development Property;

(e) The location of areas on the Development Property for the parking of construction vehicles and vehicles operated by construction employees;

(f) The location of alternative off-street parking to replace any parking temporarily lost due to construction; and

(g) The location of temporary and durable off-street parking on the Development Property for construction employees.

The City has no obligation to issue a building permit for any Structure or Site Improvement related to the Permanent Facility or any subsequent Phase of the Project, and no construction may be commenced with respect to those Structures or Improvements, unless and until the Building Commissioner and the City Engineer have approved, in writing, the CSTM Plan, which approval shall not be unreasonably withheld. The City agrees to cause the CSTM Plan to be promptly and expeditiously reviewed by the Building Commissioner and the City Engineer in accordance with the City's obligations under Section 4.6.b.

b. Designated Routes of Access. The City reserves the right to designate certain prescribed routes of access to the Development Property for construction traffic to provide for the protection of pedestrians and to minimize disruption of traffic and damage

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

to paved street surfaces, to the extent practicable; provided, however, that the designated routes must not: (i) be unreasonably or unduly circuitous; nor (ii) unreasonably or unduly hinder or obstruct direct and efficient access to the Development Property for construction traffic.

c. Maintenance of Routes of Access. At all times during the construction of the Structures and Site Improvements, Developer must: (i) keep all routes used for construction traffic free and clear of debris, obstructions, and hazards; and (ii) repair any damage to public rights-of-way caused by construction traffic.

6.6 Parking, Stormwater Management, and Erosion Control During Construction.

During construction of any of the Structures or Site Improvements related to the Permanent Facility on the Development Property, Developer must:

a. Install temporary and durable surface off-street parking on the Development Property for the parking of construction worker vehicles, as necessary, which off-street parking will be constructed in accordance with the approved CSTM Plan.

b. Install and implement commercially reasonable measures to temporarily divert or control any heavy accumulation of stormwater away from or through the Development Property in a manner approved in advance by the City Engineer, which method of diversion should include early installation of storm drains to collect water and convey it to a safe discharge point; and

c. Install erosion control devices to mitigate silt, dirt and other materials from leaving the site and traveling onto other properties.

All installations made pursuant to this Section 6.6 must be maintained by Developer until Work on the Permanent Facility or any subsequent Phase of the Project is Complete.

6.7 Issuance of Permits and Certificates.

a. General Right to Withhold Permits and Certificates. In addition to every other remedy permitted by law for the enforcement of this Agreement, the City has the absolute right to withhold the issuance of any building permit or certificate of occupancy for the Permanent Facility during the existence of an Event of Default or a violation of the Approvals.

b. Pre-Conditions to Issuance of Building Permit. The City will have the right, but not the obligation, to refuse to issue a building permit for any Structure that will be part of the Permanent Facility or a subsequent Phase of the Project prior to the installation by Developer, and approval by the City Engineer, of all Site Improvements required by the Final Project Plan.

c. Completion of Public Roads, Private Driveways, and Parking Areas. No temporary certificate of occupancy or final certificate of occupancy associated with any new Structure to be located on the Development Property will be issued until the final grading, application of final surface course, and where applicable striping of parking space

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

for the roads, private driveways, and parking areas serving the uses within such Structure has been completed.

d. Building Permit Fees for Phases 0 and 1. The Parties acknowledge and agree that Developer submitted the initial Project Concept Plans for Phases 0 and 1 in January of 2022, prior to the City's adoption of revisions to its Building Code and permit fees on March 7, 2022 pursuant to Ordinance 22-O-17. Except as provided in the subsequent sentence, Developer agrees to comply with all requirements and standards of the Building Code as of the Effective Date of this Agreement. However, notwithstanding the provisions of Ordinance 22-O-17 or any other provisions of the Code of Ordinances in effect as of the Effective Date or as of the date that Developer submits building permit applications for Work related to the construction of the Temporary Facility and the Permanent Facility, the City will charge Developer building permit fees for such Work in an amount equal to 2.5% of construction cost. For all Work after the Final Completion Date (Phase 1), the City will assess and charge permit fees to the Developer and their contractors at the rates set forth in the Code of Ordinances as of the date of the permit application submittal.

6.8 Completion of Construction; Site Restoration.

a. Removal of Partially Constructed Structures and Improvements. If Developer Abandons construction of the Project, Developer must, within 60 days after receipt by Developer of written notice from the City, either recommence Work on the Project or: (i) remove any partially constructed or partially completed Structures or Site Improvements associated with that Phase from the Development Property; and (ii) perform Site Restoration on that portion of the Development Property on which Developer has failed to perform Work necessary to achieve the applicable Project Milestone or related to the expired building permit, all in accordance with plans approved by the City.

b. Removal and Restoration by City. In the event Developer fails or refuses to remove any partially completed buildings, Structures, and Improvements, or to perform Site Restoration, as required pursuant to Section 6.8.a., the City will have, and is hereby granted, the right, at its option, to: (i) demolish and/or remove any of the partially completed Structures and Improvements from any and all portions of the Development Property; (ii) perform Site Restoration; and/or (iii) cause the Structures or Improvements to be completed in accordance with the plans submitted. Developer must fully reimburse the City for all costs and expenses, including legal and administrative costs, incurred by the City for such work. If Developer does not so fully reimburse the City, the City will have the right to draw from the Improvement Guarantee or the Maintenance Guarantee, as described in and provided pursuant to Section 7.11, an amount of money sufficient to defray the entire cost of the work, including legal fees and administrative expenses. If Developer does not so fully reimburse the City, and the Improvement Guarantee and Maintenance Guarantee have no funds remaining in them or are otherwise unavailable to finance such work, then the City will have the right to place a lien on the Development Property for all such costs and expenses in the manner provided by law. The rights and remedies provided in this Section 6.8 are in addition to, and not in limitation of, any other rights and remedies otherwise available to the City in this Agreement, at law, and/or in equity.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

6.9 Landscaping and Tree Preservation; Lighting.

a. Landscaping. Prior to the issuance by the City of a final certificate of occupancy for the Permanent Facility or any subsequent Phase of the Project, Developer must install all landscaping on the Development Property, as depicted on the Final Project Plan for Phase 1, which landscaping must be installed and maintained and in accordance with the following:

(i) The Final Project Plan for Phase 1; and

(ii) All applicable landscaping tree preservation regulations set forth in Article IV of Chapter 22 of the City's Code of Ordinances, entitled "Tree Preservation and Landscaping," as the same may be amended from time to time.

b. Lighting. All exterior lighting on the Development Property must comply at all times with and lighting requirements set forth in the Final Project Plan applicable to the particular Phase.

7. Design and Construction of Site Improvements; Performance of Work.

7.1 Project Site Improvements.

In connection with construction of each Phase of the Project, Developer will construct the on and off-site improvements depicted on the Final Project Plan applicable to such Phase (***"Site Improvements"***), including water, sanitary sewer, the Right-of-Way Improvements, and the Stormwater Improvements.

a. Phase 0 Site Improvements. The Site Improvements related to the Temporary Facility are depicted and described on the Phase 0 Engineering Plan and include:

(i) The Stormwater Improvements;

(ii) Sanitary sewer mains and service lines;

(iii) Water mains and service lines;

(iv) Right-of-Way Improvements pertaining to Phase 0, if any;

(v) All landscaping depicted on the Final Project Plan for Phase 0; and

(vi) Parking areas, curbs, site circulation, and parking lot lighting.

b. Phase 1 Site Improvements. The Site Improvements related to the Permanent Facility will be depicted and described on the Phase 1 Engineering Plan. The Parties anticipate that such Site Improvements will include:

(i) Any Phase 1 Stormwater Improvements not completed in Phase 0.

(ii) Sanitary sewer mains and service lines;

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(iii) Water mains and service lines;

(iv) Right-of-Way Improvements pertaining to Phase 1, including all public way and intersection improvements necessary to accommodate traffic generated by the Permanent Facility;

(v) Landscaping, as depicted in the site plan approval ordinance for Phase 1.

(vi) Parking areas, curbs, site circulation, and parking lot lighting;

(vii) Any other Site Improvement determined to be necessary by the City in accordance with the provisions of the Zoning Ordinance and the Subdivision Ordinance in connection with the City's consideration of the Future Approvals.

c. Improvements for Future Phases. All Site Improvements for future Phases of the Project will be depicted and described in addenda to this Agreement and future Development Approvals, as the same will be incorporated into the Final Project Plan for the particular Phase.

d. Off-Site Stormwater Retention Facility. The Parties acknowledge that the Development Property discharges stormwater to an approximately seven-acre retention pond ("***Lakehurst Pond***") situated on privately-owned parcels located to the southwest of the Development Property commonly known as 1100 Lakehurst Drive, pursuant to easements granted by that certain Total Site Agreement dated March 20, 1970, as amended ("***Total Site Agreement***"). The Lakehurst Pond provides stormwater detention and stormwater capacity to the Development Property for the development and operation of the Project and also for the benefit of the other adjacent parcels that previously comprised the site of the former Lakehurst Mall. With respect to the Lakehurst Pond, the Parties shall undertake the following:

(i) The City shall bid out, contract for, and engage third parties to conduct bathymetric surveying and dredging of the Lakehurst Pond to restore the pond to a retention capacity of at least 40 acre/feet, which was the originally intended capacity of the pond set forth in the Total Site Agreement ("***Pond Restoration***"). The City shall cause the Pond Restoration to be completed as promptly as possible but in any event within 18 months of the dated of this Agreement.

(ii) The City shall pay the costs of the Pond Restoration. With respect to such costs, for the initial $350,000 of costs, the City shall designate and utilize accrued TIF increment currently available in the City's Tax Increment Fund #11 in an amount up to $350,000.

(iii) For costs of the Pond Restoration in excess of $350,000, Developer will reimburse the City for costs above the $350,000 of available TIF increment that are actually incurred by the City to complete the Pond Restoration. For any costs of the Pond Restoration reimbursed by Developer, Developer will be permitted to deduct any amounts paid to the

City for the Pond Restoration from Developer's payments to the City of the Annual Minimum Rent under the Ground Lease.

(iv) After the Pond Restoration is complete, Developer will communicate and collaborate with the owners of the other benefitting properties to the drainage and retention easements set forth in the Total Site Agreement to establish a long-term maintenance schedule and cost sharing agreement for the maintenance of the Lakehurst Pond to maintain its retention capacity and operation. Other than the City's obligations provided in this Section 7.1.d, the City hereby disclaims and assigns to Developer all further responsibilities of the City for maintenance of the Lakehurst Pond after the execution of the Ground Lease.

7.2 General Standards.

All Site Improvements must be designed and constructed pursuant to and in accordance with the Final Project Plan and Development Approvals applicable to the particular Phase, and will be subject to the reasonable written satisfaction of the City Engineer in accordance with the Article 11 of the Subdivision Ordinance. All Work performed on the Site Improvements must be conducted in a good and workmanlike manner, and in compliance with the construction and completion requirements for each Phase of the Project, as well as all permits issued by the City for construction of the Site Improvements, and in accordance with all material Requirements of Law and First-Class Project Standards. The Site Improvements will be constructed in accordance with the demolition and construction standards set forth in Section 6.1 and Section 6.2 as well as the specific provisions of this Section 7.

7.3 Construction Schedule; Phasing.

Prior to commencing any construction of any Public Improvement, or of any part of any Phase of the Project that will affect existing utilities or roadways, Developer must meet with the City Engineer, or their designee, to develop a mutually-agreeable schedule for all such construction. The meeting must take place not less than one week prior to the commencement of any such construction. After the meeting, Developer must prepare and submit minutes of the meeting to the City Engineer. No such construction may occur prior to the approval by the City Engineer of the agreed-upon schedule, which approval shall not be unreasonably withheld.

7.4 [Reserved]

7.5 Engineering Services.

Developer must provide, at its sole cost and expense, all engineering services for the design and construction of the Site Improvements, by a professional engineer responsible for overseeing the construction of the Site Improvements. Developer must promptly provide the City with the name of a local owner's representative and a telephone number or numbers at which the owner's representative can be reached at all times.

7.6 City Inspections and Approvals.

All Work on the Site Improvements is subject to inspection and approval by City representatives at all times to the extent and in the same manner as any other development project in the City. Developer will provide immediate access to the Development Property for the

SUBMITTED 27086202 Carol Kolborer - 4/2/2024 2:54 PM

purpose of conducting these inspections during regular operating hours and within 12 hours outside of regular operating hours upon notice by the City. Access to portions of the Development Property or Project regulated by the IGB and subject to regulatory restrictions on public access will be provided by Developer in a manner compliant with the Requirements of Law.

7.7 [Reserved]

7.8 Utilities.

a. Burial and Removal of Utilities. In connection with the Permanent Facility, Developer must, at its sole cost and expense, remove all existing electric poles and cause to be buried all future electric facilities on the Development Property and on rights-of-way immediately adjacent to the Development Property, and as depicted on the Final Project Plan for Phase 1. In performing its obligations under this Section 7.8, Developer shall use its commercially reasonable efforts to coordinate and cooperate with all utility companies and owners of neighboring properties in an effort to mitigate the disruption of utility services to neighboring properties.

b. Connection of Utilities. No utilities located on the Development Property may be connected to the sewer and water utilities belonging to the City except in accordance with the applicable provisions of the Code of Ordinances and upon payment all fees required pursuant to the Code of Ordinances. Developer must open one or more water utility accounts with the City prior to issuance of a Temporary Certificate of Occupancy for the Temporary Facility or any subsequent Phase of the Project. Developer will be responsible for payment of all utilities used on the Development Property commencing from and after the effective date of the Temporary Construction Easement, including any water usage billed through a hydrant meter during the construction of Phase 0.

7.9 Right-of-Way Improvements.

a. Grant of Temporary Construction License. Subject to the terms and conditions set forth in this Agreement, the City hereby grants to Developer, and Developer accepts, a non-exclusive revocable license, for the construction, installation, and completion, at the sole cost and expense of Developer, of any Site Improvements within City-owned rights-of-way and, as necessary, within adjacent City-owned property (such rights-of-way and City-owned property are, collectively, the "***Licensed Premises***"), as such Right-of-Way Improvements are or will be depicted in the Final Project Plan for the respective Phase of the Project, and pursuant to and in strict accordance with the terms and provisions of this Section 7.9 and the other provisions of this Agreement (the license granted by this Section 7.9 is the "***RoW Improvements Construction License***"). Such Right-of-Way Improvements may include sidewalks, pedestrian crossing improvements, traffic signal improvements, and appurtenant landscaping on public rights-of-way adjacent to the Development Property.

b. Limitation of Interest. Except for the RoW Improvements Construction License granted pursuant to this Section 7.9.a., Developer does not and will not have any legal, beneficial, or equitable interest, whether by adverse possession or prescription or otherwise, in any portion of the Licensed Premises, or any City-owned rights-of-way, or any other City-owned property. Specifically, and without limitation of the foregoing, Developer acknowledges and agrees that nothing in this Agreement is to be interpreted

A258

SUBMITTED 27086202 · Carol Kolberer 4/2/2024 2:54 PM

to provide a license to Developer to alter any City-owned right-of-way in any way other than for the installation of the Right-of-Way Improvements.

c. Construction of the Right-of-Way Improvements. Developer must construct the Right-of-Way Improvements in accordance with and pursuant to the Final Project Plan, the Development Approvals, the Requirements of Law, and this Agreement, in a good and workmanlike manner, all at the sole expense of Developer and subject to inspection and approval by the City. Specifically, and without limitation of the foregoing, during the period of installation, Developer must maintain the Licensed Premises and all streets, sidewalks, and other public property in and adjacent to the Licensed Premises in a safe, good and clean condition without hazard to public use at all times, and in accordance with the standards set forth in Sections 6 and 7.

d. City Reservation of Rights Over Licensed Premises. The City hereby reserves the right to use the Licensed Premises in any manner that will not prevent, impede, or interfere in any way with the exercise by Developer of the rights granted pursuant to this Section 7.9 and the performance of Developer's obligations under this Agreement, including the City's reserved right to grant other non-exclusive licenses or easements, including, without limitation, licenses or easements for utility purposes, over, along, upon, or across the Licensed Premises and the right of access to the Licensed Premises for the maintenance of any existing or future utility located thereon.

e. Liens. Developer must, at its sole cost and expense, take all necessary action to keep all portions of the Licensed Premises free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with any Work performed by Developer or its agents. If any lien, claim, or demand is filed purporting to be for Work within the Licensed Premises, Developer may contest the lien, claim, or demand pursuant to all applicable Requirements of Law. If Developer's efforts to contest the lien are unsuccessful, Developer shall cause the lien to be discharged and released at no cost to the City.

f. [Reserved.]

g. Term. The RoW Improvements Construction License granted pursuant to this Section 7.9 will expire upon the acceptance by the City of all Right-of-Way Improvements pursuant to Section 7.10. The City shall use its commercially reasonable efforts to accept the Right-of-Way Improvements as promptly as practical following their completion.

7.10 Dedication and Maintenance of the Site Improvements.

a. Final Inspection and Approval of the Site Improvements. Developer must notify the City when it believes that any or all of the Site Improvements for a particular Phase of a Project are Complete in accordance with the Final Project Plan and applicable Requirements of Law and must request final inspection and approval of the Site Improvements by the City. The notice and request must be given as soon as practicable, but in no event with less than one week's advance notice, to allow the City time to inspect the Site Improvements and to prepare a written punch list of items, if any, requiring repair or correction to bring the Site Improvements into compliance with the Final Project Plan and applicable Requirements of Law and to allow Developer time to make such required repairs and corrections in compliance with the Project Milestones. Developer must

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

promptly commence, and thereafter diligently pursue to completion, all necessary repairs and corrections as specified on the punch list. The City is not required to approve any portion of the Site Improvements until all of the Site Improvements for a particular Phase of the Project, including all punch list items, have been completed in accordance with the Final Project Plan and applicable Requirements of Law, as determined by the City Engineer in accordance with the City's customary practices.

b. Dedication and Acceptance of Public Improvements. Neither the execution of this Agreement, nor the approval of the Development Approvals for any Phase of the Project constitutes acceptance by the City of any Site Improvements that are depicted as "dedicated" on the Final Project Plan, if any. The acceptance of ownership of, and responsibility for, a specific approved Site Improvement as a Public Improvement may be made only by resolution of the City Council duly adopted, and only in compliance with the requirements of Article 11 of the Subdivision Ordinance.

c. Transfer of Ownership of the Public Improvements and Easements to the City. Upon the approval of, and prior to acceptance of, the Public Improvements to be accepted by the City pursuant to Section 7.10.b., Developer must execute, or cause to be executed, all customary documents as the City may reasonably request to transfer ownership of the Public Improvements to, and to evidence ownership of the Public Improvements by, the City, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the City in writing. Developer must, at the same time: (i) grant, or cause to be granted, to the City all easements or other property rights as the City may reasonably require to access, install, operate, maintain, service, repair, and replace the Public Improvements that have not previously been granted to the City, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the City in writing; (ii) provide a written estimate of the monetary value of each Public Improvement to be accepted by the City; and (iii) provide the City with a Bill of Sale for each Public Improvement evidencing the transfer of the Public Improvement.

d. Maintenance of Public Improvements. Developer hereby guarantees the prompt and satisfactory correction of all defects in materials or workmanship of any of the Public Improvements located on or off of the Development Property that occur or become evident within two (2) years after acceptance of the Public Improvement by the City pursuant to this Agreement. In the event the City Engineer determines, that Developer has not corrected any such defect, Developer must, within ten (10) days after receipt of written notice from the City (subject to Force Majeure), correct it or cause it to be corrected; provided, however, that if any such defect cannot reasonably be corrected within such ten (10)-day period, but Developer commences and diligently pursues completion of correction of the defect within such ten (10)-day period, the Developer shall complete correction of the defect within such longer period of time as is reasonably necessary to complete correction of the defect. If Developer fails to correct the defect, commence the correction of the defect, or diligently pursue correction of the defect to completion as set forth in the preceding sentence, the City, after 10 days' prior written notice to Developer, may, but will not be obligated to, enter upon any or all of the Development Property for the purpose of correcting the defect. In the event that the City causes to be performed any work to correct a defect pursuant to this Section 7.10.d. Developer must, upon demand by the City, pay the costs of the work to the City. If Developer fails to pay the costs, the City will have the right to draw from the Maintenance Guarantee required pursuant to Section 7.11.d., based on costs actually incurred, an amount of money sufficient to defray

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

the entire cost of the work, including reasonable legal fees and all out-of-pocket expenses for design, labor, and materials.

e. Public Improvements Costs. The City shall not be responsible for payment of any permit fee, design, development or construction costs for any Public Improvements (including roads, signals, parking, drive aisles, curb cuts, sewer, electricity and other utilities, stormwater management facilities and other improvements) necessary for the Project.

7.11 Improvement and Maintenance Guarantees.

a. General Requirements. As security to the City for the performance by Developer of its obligations to construct and complete the Site Improvements, both private improvements and Public Improvements, before the construction of each Phase of the Project, Developer shall provide the City performance and payment security for the Site Improvements ("***Improvement Guarantee***") in the form of one or more letters of credit in an amount equal to one hundred ten percent (110%) of Developer's engineer's estimated cost or one hundred percent (100%) of the amount of executed construction contracts for the construction of the Site Improvements to be constructed in that Phase, and otherwise in accordance with the terms set forth in Section 11.1 of the Subdivision Ordinance. Any letter of credit provided by Developer must be in form and substance substantially conforming in all material respects with ***Exhibit G*** to this Agreement and reasonably satisfactory to the City's Corporation Counsel. The Improvement Guarantee must be provided to the City prior to the issuance of any permits for the applicable Phase of the Project, and must be maintained at all times until all Site Improvements for that Phase have been approved and, as appropriate, accepted. All Improvement Guarantees will be administered pursuant to Section 11.1 of the Subdivision Ordinance.

b. Use of Improvement Guarantee Funds. If Developer fails or refuses to complete the Site Improvements required for a particular Phase of the Project in accordance with the Project Milestones, and such failure or refusal constitutes a Developer Event of Default, then the City in its reasonable discretion may draw on the funds remaining in the Improvement Guarantee for that Phase in an amount necessary to remedy such failure or refusal. The City thereafter will have the right, if Developer fails to commence correction of such failure within an additional 30 days after receipt by Developer of written notice from the City, to cause such Site Improvements to be completed or corrected, and subject to the terms of the immediately preceding sentence, to reimburse itself from the proceeds of the Improvement Guarantee for all of its actual costs and expenses, including legal fees and out-of-pocket expenses, resulting from or incurred as a result of Developer's failure or refusal. If the funds remaining in the Improvement Guarantee are insufficient to repay fully the City for all such costs and expenses, then Developer must upon demand of the City therefor deposit with the City any additional funds as the City reasonably determines are necessary, within 30 days of a request therefor, to fully repay such costs and expenses.

c. Reductions in Improvement Guarantee. Concurrent with the approval and/or acceptance of Site Improvements in the manner provided in Section 7.10, the Improvement Guarantee shall be reduced by the amount of the cost of constructing the approved and/or accepted Site Improvements; provided, however, that the Improvement Guarantee for a particular Phase of the Project may not be reduced below 20% of the

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

original Improvement Guarantee amount before final approval and acceptance of all Site Improvements for that Phase.

d. Maintenance Guarantee. Immediately after any approval and, where appropriate, acceptance, by the City of the Public Improvements for a particular Phase of the Project pursuant to this Agreement, Developer must post a new guarantee in the amount of ten percent (10%) of the actual total cost of the Public Improvements constructed for that Phase in the form of a letter of credit, as security for Developer's obligations under Section 7.10.d. (each a "***Maintenance Guarantee***"). The Maintenance Guarantee will be held by the City until the date that is two years after acceptance by the City of the Public Improvements secured by the Maintenance Guarantee. If the City is required to draw on any Maintenance Guarantee by reason of Developer's failure to fulfill its obligations under Section 7.10.d., then Developer must within 10 days thereafter cause the Maintenance Guarantee to be replenished to its full original amount.

7.12 Submission of As-Built Plans.

After completion of Site Improvements for any Phase of the Project, Developer must submit to the City Engineer and the Building Commissioner final "as-built" plans: (a) related to drainage, grading, storm sewer, sanitary sewer and water mains, and associated Structures; and (b) for other final construction documents (in paper and, for Improvements, electronic format) as required and approved by the City Engineer and the Building Commissioner. The as-built plans must indicate, without limitation, the amount, in square feet, of impervious surface area on the Development Property. A licensed Professional Engineer (PE) and Professional Land Surveyor (PLS) registered in the State of Illinois must stamp the as-built site construction plans. The PE and/or PLS must stamp and sign the final engineering pages of the site construction plans, and the PLS must stamp and sign the final site survey.

8. Other Developer Obligations.

8.1 Developer Contributions and Payments.

a. Project Commencement Impact Payment. The City expects that the operation of the Project will result in certain costs that should not be borne by the City's taxpayers. No less than 15 days before the opening of the Temporary Facility, Developer will pay to the City an amount equal to $150,000 (the "***Project Commencement Impact Payment***") to be used by the City to defray costs of additional public safety and public works services, including police, fire, EMS, and traffic management that the City may incur addressing concerns resulting from the anticipated surge of activity and influx of patrons to the Temporary Facility during the initial weeks of operation. The City may deposit the Project Commencement Impact Payment in its General Fund and apply payment to costs in its sole and absolute discretion.

b. Community Benefit Contribution. Developer will make one or more contributions with an aggregate amount of not less than $500,000 to charitable programs and causes ("***Community Benefit Contribution***") benefitting the Waukegan community over the course of each annual period following the Operations Commencement Date (Phase 1) and continuing each annual period thereafter during the term of this Agreement. For clarity, the first annual period commences on the Operations Commencement Date (Phase 1) and ends on the one-year anniversary of such date. In making the Community Benefit Contribution, Developer will strongly consider the City's input regarding recipients

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

of such contributions, provided that Developer will make the final determination regarding which local charitable programs and causes will receive contributions as part of the Community Benefit Contribution.

8.2 Payment of Taxes.

a. Developer's Obligation. Developer must pay all real estate and personal property taxes that Developer is obligated to pay pursuant to the Ground Lease.

b. Appeals of Assessments Barred During Phase 0. During the period commencing on the Effective Date and continuing through the end of operations of the Temporary Facility (the "**Non-Appeal Period**"), Developer agrees that it will not appeal or otherwise challenge any property tax assessment of the Development Property or the Project.

c. Appeals of Assessments After Expiration of Non-Appeal Period. After expiration of the Non-Appeal Period, if Developer determines in its good faith analysis that the Development Property or Project has been assessed for property tax purposes by the Lake County Assessor at an amount that exceeds Developer's reasonable estimate of assessed value, then Developer may appeal or otherwise challenge any such property tax assessment of the Development Property or the Project. If, as a result of any such property tax appeal or challenge, the property taxes actually paid by Developer in a given year to Lake County and thereafter transferred to the City (such transferred taxes, the "***City's Property Tax Amount***") equals less than that year's Threshold Amount, then Developer shall pay to the City an amount equal to the difference between the Threshold Amount (or, if a partial year, a proportionate amount of the Threshold Amount) for that year and the City's Property Tax Amount for that same tax year (such difference, the "***Shortfall Amount***"). If the Shortfall Amount is less than zero, Developer is not required make any payment to the City. If the Shortfall Amount is greater than zero, Developer shall pay to the City the Shortfall Amount. For tax year 2033 (taxes paid in 2034) and each year thereafter, Developer may appeal or challenge any property tax assessments in the ordinary course and will have no obligation for payment of any Shortfall Amount.

8.3 Developer's Additional Commitments.

Developer will at all times during the development, construction, operation, and maintenance of the Project, comply with the following additional commitments:

a. 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 IGB, including but not limited to, the following:

(i) Use qualified trainers to train all of its employees on responsible gaming including tiered training in accordance with the employee's exposure to gaming in their job duties;

(ii) Post signage in English and Spanish with the toll-free Problem Gamblers Help Line number and a local help line number in employer and customer-facing areas in the Project;

(iii) Adhere to the IGB's voluntary self-limit or exclusion laws, regulations and policies;

A263

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(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; and

(v) Have its employees participate annually in "Responsible Gaming Education Week" sponsored annually by the American Gaming Association or any successor or equivalent program.

b. Train its employees who have responsibility for verifying the age of patrons, no less frequently than 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.

c. Pay, when due, the City's permit and license fees applicable to the Project, and maintain up-to-date City licenses and required inspections throughout the operation of the Project. Certain permit costs will be reduced by amounts drawn by the City pursuant to, and in accordance with, the Development Escrow Agreement to cover third-party inspection, plan review, and other costs normally reimbursable from permit fees.

d. In the design, construction and operation of the Project, Developer will comply with all material Requirements of Law including, without limitation, the Americans with Disabilities Act. Additionally, during the Term, Developer must provide within the Project gaming tables and electronic gaming machines accessible to persons with disabilities.

e. Upon the Operations Commencement Date (Phase I), Developer will endeavor to meet employment goals of no fewer than 1,800 persons, of which Developer will endeavor that no fewer than approximately 1,080 persons shall be employed on a full-time basis with benefits.

f. Use its Best Efforts to satisfy Developer's commitments to the IGB with regard to historically disadvantaged business entity participation in both construction and operation of the Project, as well as commitments regarding employment of local residents and use of local businesses as vendors, all as more fully set forth in the American Place Diversity and Inclusion Plan attached hereto as **Exhibit H**.

g. Allow the City, without cost, to showcase community activities, entertainment, and promotions on kiosks and other advertising displays located within the Project as may be reasonably agreed upon by the Parties.

h. Operate and maintain the Development Property and all improvements on the Development Property in a unified manner and solely for the operation of the Project.

i. Establish and maintain communication with the Genessee Theatre and use its good faith efforts to coordinate entertainment bookings in an effort to avoid conflicts and minimize competition between the Genesee Theatre and the Entertainment Venue.

8.4 Payment of Reimbursable Costs.

The Parties have entered into that certain Development Escrow Agreement dated as of February 28, 2022 ("***Development Escrow Agreement***"). Reimbursable Costs will be paid by

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Developer to the City in accordance with the procedures set forth in the Development Escrow Agreement.

8.5 Statutory Basis for Fees; Default Rate.

Developer recognizes and acknowledges that the payments to be made by Developer under this Agreement and the Ground Lease (collectively, "***Casino Agreements***", and such payments being referred to collectively as the "***Developer Payments***") are: (a) being charged to Developer in exchange for particular governmental services which benefit Developer in a manner not shared by other members of society; (b) 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 (c) paid not to provide additional revenue to the City but to compensate the City 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.

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.

8.6 Covenants Running with the Land.

The restrictions imposed by and under Sections 8.7 (Financing), 12 (Transfers of Obligations) and 12.2 (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.

8.7 Financing.

a. If any interest of Developer in the Project or the Development Property is Transferred by reason of any foreclosure, deed in lieu of foreclosure, trustee's deed or any other proceeding for enforcement of a Mortgage, then the Mortgagee thereunder (or any Nominee of such Mortgagee) shall agree to assume the obligations of Developer hereunder without the necessity of entering into a Transferee Assumption Agreement, except as otherwise provided in this Section 8.7. As used in this Agreement, the term "***Nominee***" shall mean a Person who is designated by a Mortgagee to act in place of such Mortgagee solely for the purpose of holding title to the Project and/or Development Property 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 any Mortgagee failing to assume the obligations of Developer hereunder unless such Mortgagee or its Nominee fails to do so within three months following such Mortgagee's acquisition of the Project; it being acknowledged that such Mortgagee may intend to Transfer its interest in the Project and/or the Development Property to a Nominee and such Nominee shall assume the obligations of Developer hereunder.

b. 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. Developer agrees to indemnify, defend or hold the City and its respective

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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 8.7.

c. 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 Development Property made in good faith and for value.

d. Provided Developer has provided the City with written notice of the existence of a 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 such 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 each such Mortgagee. Any Mortgagee shall have the right (but not the obligation) 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 and/or Development Property. In all cases, the City agrees to accept any performance by any Mortgagee of any obligations hereunder as if the same had been performed by Developer, and shall not terminate the Agreement until the requisite time periods for cure by each Mortgagee have been exhausted pursuant to the terms hereof; provided, however, that no Mortgagee shall be obligated to cure any default by Developer or any other matter. Upon the written request of any Mortgagee or prospective Mortgagee, and for the exclusive benefit of said Mortgagee, the City will promptly deliver to said Mortgagee such form of the City's consent and waiver as may be reasonably required to assure such Mortgagee that the City will comply with this Section 8.7.

e. In the event of a non-monetary default which cannot be cured without obtaining possession of the Project and/or the Development Property or that is otherwise personal to Developer and not susceptible of being cured, the City will not terminate this Agreement without first giving each Mortgagee (or its designee) reasonable time within which to obtain possession of the Project and/or Development Property, 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 Developer, the City's right to terminate this Agreement shall be waived with respect to the matters which have been cured by any Mortgagee.

8.8 Closing Deliveries.

Within 10 Business Days of the Effective Date or such other date as agreed upon between Developer and the City's Mayor, Developer and the City will deliver or cause to be delivered all of the Closing Deliveries, as the same may be waived or the time for delivery extended by the City and Developer. All costs associated with or arising from the production of the Closing Deliveries will the sole and exclusive responsibility of the Party responsible for the Closing Delivery.

SUBMITTED - 27086202 - Carol Kolboror - 4/2/2024 2:54 PM

9. Representations and Warranties.

9.1 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 are true and accurate as of the Effective Date:

a. Developer is duly organized, validly existing, and in good standing under the Requirements of Law of the State of Delaware, and is registered to do business in 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, execute, deliver, and perform its obligations under this Agreement and all other agreements and undertakings to be entered into by Developer in connection herewith.

b. The execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary corporate action, and does not violate its organizational documents, as amended and supplemented, any of the applicable Requirements of Law, or constitute a breach of or default under, or require any consent under, any agreement, instrument, or document to which Developer is now a party or by which Developer is now or may become bound including any mortgages, secured loans, or instruments granting another party a superior interest the Development Property or the Project.

c. Each document, report, certificate, written statement and description delivered by Developer hereunder was, when delivered, complete and correct in all material respects.

d. The applications, plans, materials, and other submissions Developer has provided to the City in connection with the Temporary Facility accurately and truthfully represent Developer's intentions for the construction of the Project on the Development Property as of the Effective Date.

e. 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.

f. There are no actions or proceedings pending against Developer before any court, governmental commission, board, bureau or any other administrative agency pending, and, to Developer's knowledge, threatened in writing against Developer, which, if adversely determined, would materially impair its ability to perform under this Agreement.

g. Developer is in material compliance with all Requirements of Law, its organizational documents and all agreements to which it is a party which relate to the Project. Neither execution of this Agreement nor discharge by Developer of any of its obligations hereunder shall cause Developer to be in violation of any Governmental Requirement, its organizational documents or any agreement to which it is a party relating to the Project.

h. This Agreement and Developer's Release when duly executed and delivered by Developer will, subject to Force Majeure, 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.

i. Developer has control over, and good, marketable and insurable title to the 10-Acre Parcel.

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

k. Developer has sufficient financial resources to implement and complete its obligations under this Agreement.

l. Developer has no knowledge of any liabilities, contingent or otherwise, of Developer which might be reasonably expected to have a Material Adverse Effect upon its ability to perform its obligations under this Agreement.

9.2 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 Effective Date:

a. The City is a validly existing home rule 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. The City Council has taken all necessary legislative actions to authorize the execution of this Agreement and all ancillary and necessary documents or instruments to accomplish the purposes set forth herein.

c. 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.

d. There are no actions or proceedings pending against City before any court, governmental commission, board, bureau or any other administrative agency pending, and, to Developer's knowledge, threatened in writing against City, which, if adversely determined, would materially impair its ability to perform under this Agreement.

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

10. Covenants.

10.1 Affirmative Covenants of Developer.

Developer covenants that throughout the Term of this Agreement, Developer shall:

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

b. Keep all Approvals in effect that are necessary to conduct, and comply with all Requirements of Law applicable to the operation of, its business and other activities, in all material respects, whether now in effect or hereafter enacted.

c. Furnish to the City:

i. No later than ninety (90) days after the end of each fiscal year of Developer, commencing with the calendar year in which the Operations Commencement Date (Phase 0) occurs, a copy of the non-confidential consolidated balance sheet of the Parent Company and its subsidiaries (including Developer) filed with the United States Securities and Exchange Commission as of the close of such period and the non-confidential consolidated statements of income, retained earnings, and cash flows of the Parent Company and its subsidiaries (including Developer) filed with the United States Securities and Exchange Commission for such period, and accompanying notes thereto, 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 IGB 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 Date (Phase 0) occurs, a copy of the non-confidential consolidated balance sheet of the Parent Company and its subsidiaries (including Developer) filed with the United States Securities and Exchange Commission as of the last day of such period and the non-confidential consolidated statements of income, retained earnings, and cash flows of the Parent Company and its subsidiaries (including Developer) filed with the United States Securities and Exchange Commission for the quarter and for the then elapsed portion of the current fiscal year.

iii. [Reserved].

iv. Within five (5) Business Days after submission to the IGB, accurate and complete copies of all non-confidential financial records submitted to the IGB.

v. To the extent not otherwise covered by reports delivered under Section 10.1.c.iv., no later than one hundred twenty (120) days after the end of each fiscal year of Developer, commencing with the calendar year in which the Operations Commencement Date (Phase 0) occurs, a detailed statistical report covering Developer's diversity and inclusion efforts set forth on ***Exhibit H*** for the then-completed fiscal year.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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.

vii. 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:

A. a detailed report on Developer's compliance with its commitments described in Section 8.3, in such form as may reasonably be requested by the City from time to time; and

B. a written description of any administrative determination, binding arbitration decision, or judgment rendered by a court of competent jurisdiction finding both 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.

d. Deliver to the City prompt written notice of the following (but in no event later than ten (10) Business Days following the actual knowledge thereof by Developer):

(i) The issuance by any Governmental Authority (other than the City) of any injunction, order, decision, notice of any violation or deficiency, asserting a material violation of Requirements of Law applicable to Developer or the Project, together with copies of all relevant documentation with respect thereto.

(ii) The filing 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 other than the City and that: (A) if adversely determined against Developer could result in (i) uninsured net liability in excess of Ten Million Dollars ($10,000,000) in the aggregate or (ii) a Material Adverse Effect on the Project 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 Owner's License) to Developer by the IGB.

(iii) To the knowledge of 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 12 specifying the nature thereof and the action (if any) that is proposed to be taken with respect thereto.

(v) To the knowledge of Developer, any development in the business

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

or affairs of Developer 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 that is reasonably expected to have a Material Adverse Effect.

e. Maintain financial records in accordance with GAAP and permit any authorized representative designated by the City to discuss the affairs, finances and conditions of Developer with any executive officer or other manager or officer of Developer as such representative shall reasonably deem appropriate, and Developer's independent public accountants.

10.2 Owner's License Application.

Developer shall:

a. Promptly and accurately complete and timely submit to the IGB any information as the IGB may, from time to time, require from Developer in connection with its Owner's License Application, and make all payments required under the Act to be made by an applicant for an Owner's License and use its best efforts to satisfy all criteria necessary to be issued an Owner's License by the IGB.

b. Deliver to the City copies of materials submitted to the IGB related to its Application, including, without limitation, amendments to or requests for amendments to its Application, simultaneous with or immediately following its submission to the IGB, excluding, however, personal disclosure forms (including attachments or exhibits related thereto) that are included as a part of the Application.

c. Prior to the IGB issuing an Owner's License to Developer, keep the City informed as to all material contacts and communications between the IGB and its staff and Developer so as to enable the City to evaluate the likelihood and timing of the IGB issuing an Owner's License to Developer.

10.3 Negative Covenants of Developer.

Developer covenants that throughout the Term, Developer shall not:

a. Upon the occurrence of a Default or an Event of Default and continuing until such Default or Event of Default is cured, declare or pay any dividends or distributions except dividends or distributions to be paid to (x) Parent Company or an intermediary company to the extent necessary to pay debt service or (y) any Person owning less than a ten percent (10%) Direct or Indirect Interest in Developer.

b. During the term of the Ground Lease, engage in or permit any Transfer of all or any portion of Developer's fee interest in the 10-Acre Parcel and/or Developer's leasehold interest in the City-Owned Parcel under the Ground Lease except for a Qualified Sale and Leaseback Transaction or a Transfer to an Affiliate of Developer who has entered into a Transferee Assumption Agreement.

10.4 Confidential Deliveries.

To the extent Developer determines, in its reasonable judgment, that items Developer is obligated to furnish to the City under this Agreement contains material, non-public information of Developer or its Affiliates ("***Developer's Confidential Items***"), then the Developer may deliver such information to Developer's legal counsel (or other designee), provide notice to the City of such delivery, and allow the City's representative(s) the opportunity to inspect such information, during commercially reasonable hours and at a time that is mutually convenient for the Parties. The City shall not remove any original versions or copies of Developer's Confidential Items from the offices of Developer's counsel (or other designee), it being understood that Developer's Confidential Items must remain in the possession of Developer's counsel (or other designee) at all times.

11. Default.

11.1 Events of Default.

The following constitute an "***Event of Default***" under this Agreement:

a. If Developer materially defaults in the performance of any (i) Requirement; of Law or (ii) commitment, agreement, covenant, term or condition (other than those specifically described in any other subparagraph of this Section 11.1) of this Agreement, and in such event if Developer fails to remedy any such Default within thirty (30) days after receipt of written notice of default with respect thereto; *provided, however,* that such default will not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default, then Developer shall not during such period of diligently curing be in default hereunder as long as such default is completely cured within sixty (60) days of Developer's receipt of the notice of default with respect thereto.

b. Default by Developer for a period of thirty (30) days after written notice thereof in the performance or breach of any covenant contained in this Agreement concerning the legal existence of Developer; provided, however, that such default or breach will not constitute an Event of Default if such default cannot be cured within said thirty (30) days and Developer, within said thirty (30) days, initiates and diligently pursues appropriate measures to remedy the default and in any event cures such default within 60 days after such notice;

c. [Reserved]

d. Violation of Section 10.3.b. by Developer and failure to cure such violation for a period of thirty (30) days after receipt by Developer of written notice thereof.

e. [Reserved]

f. Developer Abandons the construction of the Project. The failure of Developer to secure any Development Approvals required for the development or construction of the Project will not be a valid defense to abandonment.

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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

h. If Developer files a voluntary petition under any title of the United States Bankruptcy Code, as amended from time to time, or if such petition is filed against Developer and an order for relief is entered, or if Developer files 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 seeks or consents to or acquiesces to or suffers the appointment of any trustee, receiver, custodian, assignee, liquidator or similar official of Developer, or of all or any substantial part of its properties, the Development Property, or of the Project or any interest therein of Developer; provided, however, that Developer shall have the right, within one hundred eight (180) days after filing or receiving notice of any such petition or similar action or proceeding described in this paragraph, to cause such petition or similar action or proceeding to be dismissed, in which case such petition or similar action or proceeding shall not be an Event of Default.

i. If within one hundred eighty (180) 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 has not been dismissed; or if within one hundred eighty (180) 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, the Development Property, or of the Project or any interest therein of Developer, such appointment has not been vacated or stayed on appeal or otherwise, or if within one hundred eighty (180) days after the expiration of any such stay, such appointment has not been vacated

j. If any material representation or warranty made by Developer in this Agreement, or in any certificate, notice, demand or request made by Developer in writing and delivered to the City pursuant to or in connection with this Agreement or the Ground Lease, proves to be untrue, incorrect, false or misleading in any material respect as of the date made or furnished; provided, however, to the extent a representation or warranty is untrue, incorrect, false or misleading for reasons other than an intentional, material misrepresentation by Developer, such untrue, incorrect, false or misleading representation or warranty shall not cause an Event of Default if (i) it is susceptible to cure (i.e., Developer's actions can cause the facts or circumstances relative to the applicable circumstance to change such that the representation or warranty as originally made will become correct), and (ii) such cure is made by Developer within thirty (30) days after written notice to Developer is provided by the City of the same.

k. If Developer fails to maintain in full force and effect policies of insurance meeting the requirements of Section 13 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.

l. Subject to an event of Force Majeure, if the Temporary Facility has not attained Operations Commencement by the Operations Commencement Date (Phase 0); or if the Permanent Facility has not attained Operations Commencement by the Operations Commencement Date (Phase 1); or

A273

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

m. If Developer fails to make any Developer Payments or any other payments required to be made by Developer hereunder or under the Ground Lease as and when due, and fails to make any such payment within fifteen (15) Business Days after receiving written notice of default from the City.

11.2 Remedies.

a. Upon an Event of Default and during the continuance thereof, the City may: (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 11.4; and/or (iv) 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 11.4, 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. Pursuant to and in accordance with Section 6.8, the City may, without prejudice to any other rights and remedies available to the City, require: (a) the demolition and removal of any partially constructed or partially completed Structures or Site Improvements associated with a Phase of the Project from the Development Property; and (b) the performance of Site Restoration.

c. Except as expressly stated otherwise, the rights and remedies of the City whether provided by law or by this Agreement, are cumulative, except as set forth in Section 11.4, 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.

d. Upon a breach of this Agreement by the City, Developer shall have all remedies at law, in equity or otherwise available to it under this Agreement; provided, however, that Developer may not seek, and does not have the right to seek, to recover monetary damages:

i. from any officer, official, or employee of the City in their individual capacity for actions taken by such officer, official or employee in their capacity as an officer, official or employee of the City; or

ii. for consequential or special damages;

arising under or from the terms and conditions of this Agreement, the Ground Lease, or the granting or denial of the Development Approvals to be granted by the City.

e. In case either Party has proceeded to enforce its rights under this Agreement and such proceedings have been discontinued or abandoned for any reason, then, and in every such case, Developer and the City will be restored respectively to their

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

several positions and rights hereunder, and all rights, remedies and powers of Developer and the City will continue as though no such proceedings had been taken.

f. In the event of a judicial proceeding brought by one Party against the other Party, the prevailing Party in the judicial proceeding will be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding. If Developer is the prevailing Party in any judicial proceeding, the City's costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding shall not be deemed to be Reimbursable Costs under the Development Escrow Agreement and Developer shall not be required to pay such costs and expenses incurred by the City in connection with the judicial proceeding.

11.3 Termination.

a. Automatic 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:

i. the Closing Date does not occur prior to June 30, 2023;

ii. the IGB rejects or denies Developer's Application for the Owner's License, and such rejection or denial is final and non-appealable;

iii. Developer's Owner's License (i) is revoked by a final, non-appealable order; (ii) expires and is not renewed by the IGB 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;

iv. Gaming becomes illegal in the State or the United States; or

v. the Ground Lease is terminated for any reason other than by exercise of the option to purchase the City-Owned Parcel in accordance with the terms of the Ground Lease.

The termination events set forth above 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.

b. Termination Right by Developer. The Parties acknowledge and agree that Developer's ability to lawfully construct and operate the Project is contingent upon Developer obtaining all applicable Approvals from Governmental Authorities that are necessary pursuant to the Requirements of Law to construct and operate the Project. Developer will seek to obtain all necessary Approvals from Governmental Authorities in accordance with Developer's obligations set forth in Section 4.6.a. If Developer performs its obligations under Section 4.6.a. but: (i) any necessary Approvals are denied, materially delayed, or otherwise not approved; or (ii) Developer determines, in its reasonable judgment, that any necessary Approvals cannot be obtained using Developer's Best Efforts, then Developer shall have the right in its sole discretion to terminate this Agreement and the Ground Lease by providing written notice to the City.

SUBMITTED - 27080202 - Carol Kolberer - 4/2/2024 2:54 PM

11.4 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 11.1.l.; or (ii) suspension of Developer's Owner's License that results in the Gaming Area to be closed for business, 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, Two Thousand Five Hundred Dollars ($2,500) per calendar day. 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 11.4, the "***Damage Period***" shall commence on the date the City delivers written notice to Developer of its election to receive liquidated damages pursuant to this Section 11.4 and shall continue until the date that such default is cured, the date such suspension expires, or the Gaming Area reopens for business, even if Developer's Owner's License remains suspended.

12. Transfers of Obligations.

12.1 [Reserved]

12.2 Transfer of Direct or Indirect Interests in Developer.

The covenants that Developer must perform under this Agreement for the City's benefit are personal in nature. The City is relying upon Developer in the exercise of its skill, judgment, reputation and discretion with respect to the Project. Developer shall notify the City as promptly as practicable upon Developer becoming aware of any Transfer of any Direct or Indirect Interest in Developer other than such Transfers resulting solely from ownership of a Direct or Indirect Interest in a Publicly Traded Corporation. Any Transfer of a Direct or Indirect Interest in Developer other than a Permitted Transfer to a Permitted Transferee shall require the consent of the City, which consent shall not be unreasonably withheld, provided that the proposed transferee is qualified and approved by the IGB as suitable to be an owner of an Owner's Licensee and Developer continues to be bound by the terms of this Agreement.

12.3 Transfer of Real Property.

To assure that all grantees, successors, assigns, and transferees of Developer and all successor owners of all or any portion of Developer's fee interest in the 10-Acre Parcel and leasehold interest in the City-Owned Parcel under the Ground Lease have notice of this Agreement and the obligations created by it, Developer must, from and after the Effective Date:

a. Deposit with the City Clerk, concurrent with the City's approval of this Agreement, any consents or other documents necessary to authorize the City to record this Agreement in the office of the Lake County Recorder of Deeds;

b. Notify the City in writing at least 30 days prior to any date on which Developer Transfers all or any portion of Developer's fee interest in the 10-Acre Parcel and/or leasehold interest in the City-Owned Parcel under the Ground Lease to a third party;

c. Other than in the case of a Qualified Sale and Leaseback Transaction, require, prior to the transfer of all or any portion of Developer's fee interest in the 10-Acre Parcel and/or either its leasehold interest in the City-Owned Parcel under the Ground Lease or, if the Ground Lease is no longer in effect, its fee interest in the City-Owned Parcel to any third party (including any Affiliate of Developer), the transferee of Developer's fee interest in the 10-Acre Parcel and/or leasehold interest in the City-Owned Parcel under the Ground Lease to execute an enforceable written agreement, in substantially the form of ***Exhibit J***, agreeing to be bound by the provisions of this Agreement ("***Transferee Assumption Agreement***") and to provide the City, upon request, with such reasonable assurance of the financial ability of the transferee to meet those obligations as the City may require. The City agrees that upon a successor becoming bound to the obligation created in the manner provided in this Agreement and providing the financial assurances required pursuant to this Agreement, the liability of Developer for its obligations under this Agreement will be released to the extent of the transferee's assumption of liability for such obligations. The failure of Developer to require a transferee to execute a Transferee Assumption Agreement and, if requested by the City, with assurances of the transferee's financial capability before completing any Transfer of all or any portion of Developer's fee interest in the 10-Acre Parcel and/or leasehold interest in the City-Owned Parcel under the Ground Lease, will result in Developer remaining fully liable for all of its obligations under this Agreement, but will not relieve the transferee of its liability for all such obligations as a successor to Developer.

13. Insurance.

13.1 Maintain Insurance.

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

13.2 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 meeting the requirements set forth in **Exhibit K**. 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.

13.3 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 to the City.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

13.4 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.

13.5 Blanket Policies.

Any insurance provided for in this Section 13 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.

14. Damage and Destruction.

14.1 Damage or Destruction.

In the event of damage to or destruction of Structures or Site Improvements that are components of the Project or any part thereof by fire, Casualty or otherwise, Developer, at its sole expense, shall promptly perform Casualty Restoration of 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. Developer shall obtain a temporary certificate of occupancy as soon as practicable after the completion of such Casualty Restoration. If neither Developer nor any Mortgagee commences the Casualty 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 Casualty Restoration, fails to proceed to complete the same with reasonable diligence in accordance with the terms of this Agreement, the City may, but will have no obligation to, complete such Casualty Restoration at Developer's expense. Upon the City's election to so complete the Casualty 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 applied to the Casualty Restoration, and if such sums are insufficient to complete the Casualty Restoration, Developer, on demand, shall pay the deficiency to the City. Each Casualty Restoration shall be done subject to the provisions of this Agreement.

14.2 Use of Insurance Proceeds.

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

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

(i) give written notice of such damage or destruction to the City and each Mortgagee; and

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(ii) deliver a written notice of Developer's intent to complete the Casualty 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 Casualty 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 Casualty Restoration having a value less than Thirty Million Dollars ($30,000,000) in the aggregate.

14.3 No Termination; Substantial Casualty.

Except as otherwise expressly provided in this Section 14.3, 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. Notwithstanding anything to the contrary in this Agreement, if any Casualty is a Substantial Casualty, Developer may, by notice to the City, given within six (6) months after the Casualty, terminate this Agreement effective sixty (60) days after such notice.

14.4 Condemnation.

If a Major Condemnation of the Project or the Development Property occurs, this Agreement will terminate, and no Party will 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 Casualty 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 and feasible, to its condition immediately before the Condemnation; provided, however, that if the Ground Lease is in effect, the foregoing shall not limit Tenant's right to terminate the Ground Lease in accordance with the terms and conditions of Section 12.7 of the Ground Lease, in which case this Agreement shall terminate pursuant to Section 11.3(a)(v).

Notwithstanding anything in this Agreement to the contrary, if the Ground Lease is in effect, then the following provisions of this Section 14.4 shall apply only to the 10-Acre Parcel and the portion of the Project located on the 10-Acre Parcel. After the termination of the Ground Lease or the exercise of the Purchase Option, the provisions of Section 14.4 shall apply to the entire Development Parcel.

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 ("***Escrow Agent***") selected by (i) the first Mortgagee if the Project is encumbered by a 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 14.4.

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 Casualty Restoration in accordance with the procedure described in Section 14.2(b), (c) and (d). If the cost of the Casualty 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 Casualty Restoration, the Escrow Agent shall distribute the excess Proceeds, subject to the rights of the Mortgagees. Nothing contained in this Section 14.4 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.

15. Indemnification.

15.1 Indemnification by Developer.

(a) Developer shall defend, indemnify and hold harmless the City and each of its officers, whether appointed or elected, agents, employees, contractors, subcontractors, attorneys, consultants (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 to the extent they arise out of or relate in any manner to any of the following: (1) Developer's development, construction, ownership, maintenance, possession, use, condition, occupancy or Abandonment of the Project, of the Development Property, or any part thereof; (2) Developer's operation or management of the Project, the Development Property 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 on the Development Property or any non-public street, curb or sidewalk at the Project, or any vaults, tunnels, passageways or space therein; (7) any breach or default on the part of Developer for the payment, performance or observance of any of its obligations under all agreements entered into by Developer or any of its Affiliates relating to the performance of services or

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supplying of materials to the Project or any part thereof; (8) [Reserved]; (9) any failure of Developer to comply with Requirements of Law or any Development Approval; (10) any breach of any warranty or the inaccuracy of any representation made by Developer contained or referred to in this Agreement or in any certificate or other writing delivered by or on behalf of Developer pursuant to the terms of this Agreement; (11) the environmental condition of the Development Property (including the presence of any hazardous or regulated substance in, on, under or adjacent to such property) on which the Project is located except for those existing on the City-Owned Parcel prior to the Effective Date of this Agreement; (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 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 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 Development Approval, 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, in each case, brought after the Effective Date 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 15.1.a.1., Developer shall not indemnify and shall have no responsibility to any Indemnity for any matter to the extent directly caused by the gross negligence or willful misconduct of such Indemnitee.

16. Force Majeure.

16.1 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 or the Ground Lease:

(a) Strikes, lockouts, labor disputes, disputes arising from a failure to enter into a union or collective bargaining agreement, failure of utilities, or explosions;

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

(c) Actual or threatened health emergencies (including pandemics, epidemics, quarantine, COVID-19, famine, pestilence, and other health risks);

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

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

(f) Concealed and unknown conditions of an unusual nature that are encountered below ground but only to the extent that such conditions could not have been discovered by Developer's exercise of reasonable diligence;

(g) 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;

(h) The failure by, or unreasonable delay of, the City, the State or another 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;

(i) Any impacts to major modes of transportation to the Development Property, whether private or public, which adversely and materially impact access to the Development Property, including but not limited to, sustained and material closure of airports or sustained and material closure of highways servicing the Development Property;

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

(k) The U.S. capital markets shut down making debt or equity financing unavailable to companies in the gaming industry that are of a similar size and stature as Parent Company on customary terms and conditions; or

(l) The inability to procure or obtain on a timely basis or at a reasonable cost labor or materials needed by Developer to construct, furnish, outfit and finish the Project attributable to supply chain disruptions, delays, or limitations; shortages of available labor,

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materials, and supplies; and other market conditions that are beyond the reasonable control of Developer.

16.2 Notice of Force Majeure.

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.

16.3 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.

17. Miscellaneous.

17.1 Notices.

Any notice required to be given under this Agreement must be in writing and must be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic mail. Electronic mail notices will be deemed valid and received by the addressee when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices will be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 17.1, each party will have the right to change the address or the addressee, or both, for all future notices to the other party, but no notice of a change of addressee or address will be effective until actually received.

If to the City:

Hon. Ann Taylor
Mayor, City of Waukegan
100 North Martin Luther King Jr. Avenue
Waukegan, Illinois 60085
mayor.taylor@waukeganil.gov

with copies to:

Noelle Kischer-Lepper
Director of Development and Planning
City of Waukegan
100 North Martin Luther King Jr. Avenue

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Waukegan, Illinois 60085
Noelle.Kischer-Lepper@waukeganIL.gov

and

Stewart Weiss
Hart Passman
Elrod Friedman LLP
325 North LaSalle Street, Ste. 450
Chicago, Illinois 60654
Stewart.Weiss@elrodfriedman.com
Hart.Passman@elrodfriedman.com

If to Developer:

Jeff Babinski
General Manager
FHR-Illinois LLC
600 Lakehurst Road
Waukegan, IL 60085
jbabinski@americanplace.com

with copies to:

Alex J. Stolyar
Chief Development Officer
FHR-Illinois LLC
c/o Full House Resorts Inc.
1980 Festival Plaza Dr., Suite 680
Las Vegas, NV 89135
astolyar@fullhouseresorts.com

and

Elaine Guidroz
General Counsel
FHR-Illinois LLC
c/o Full House Resorts Inc.
1980 Festival Plaza Dr., Suite 680
Las Vegas, NV 89135
eguidroz@fullhouseresorts.com

and

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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

cfroelich@taftlaw.com
kcopp@taftlaw.com

Additionally, if notice is required to be delivered to a Mortgagee pursuant to Section 8.7.e, then it shall be delivered to Mortgagee at the address provided in the mortgage.

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

The failure of either Party 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 such Party may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

Additionally, no waiver of any provision of this Agreement will be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor will any waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

17.3 Consents.

Unless otherwise provided in this Agreement, whenever the permission, authorization, approval, acknowledgement, or similar indication of assent of any Party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent must be in writing. For the purpose of this Section 17.3, email shall be deemed to be "writing."

17.4 Construction.

In construing this Agreement, plural terms are to be substituted for singular and singular for plural, in any place in which the context so requires. 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. This Agreement will be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Every provision of this Agreement will be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. Any rule or construction that a document is to be construed against the drafting party will not be applicable to this Agreement.

17.5 Governing Law; Venue; Submission to Jurisdiction; Service of Process.

This Agreement will be interpreted according to the internal laws, but not the conflicts of laws rules, of the State of Illinois. The Parties expressly agree that the sole and exclusive place, status and forum of this Agreement shall be the City of Waukegan, Illinois. 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 19th Judicial Circuit Court of Lake County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division ("***Court***"). The Parties waive their respective right to transfer or change the venue of any litigation

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

filed in the 19th Judicial Circuit Court of Lake County, Illinois or the Northern District of Illinois, Eastern Division.

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.

17.6 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, including the Memorandum of Key Terms and the Temporary Construction Easement.

17.7 Calendar Days; Calculation of Time Periods.

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. Unless otherwise specified in this Agreement, any reference to days in this Agreement will be construed to be calendar days. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event on which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is not a Business Day, in which event the period shall run until the end of the next day which is neither a Business Day. The final day of any period will be deemed to end at 5:00 p.m., Central prevailing time.

17.8 Exhibits.

Exhibits A through ***O***, referred to and attached to this Agreement, are each an essential part of this Agreement.

17.9 No Joint Venture.

The Parties 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.

17.10 Severability.

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

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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.

17.11 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.

17.12 Time of the Essence.

Subject to Section 17.7, time is of the essence in the performance of this Agreement.

17.13 Headings; Captions.

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

17.14 Amendments and Addenda.

This Agreement may not be amended, addended, supplemented, or otherwise modified except by a written instrument signed by the Parties.

The Parties acknowledge that the IGB may, subsequent to the Effective Date, 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.

17.15 Changes in Laws.

Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law will be deemed to include any modifications of, or amendments to the Requirements of Law as may, from time to time, hereinafter occur.

17.16 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.

17.17 No Third-Party Beneficiaries.

Except as expressly provided in the Releases and Section 15 (Indemnification), the provisions of this Agreement are and will be for the benefit of Developer and City only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

17.18 Cost of IGB Licensing, Approval, or 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 IGB, the reasonable costs of such licensing, approval or investigation shall be paid by Developer no later than ten (10) Business Days following receipt of a written request from the City.

17.19 Further Assurances.

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

17.20 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 L*** or as may be reasonably required by any such lender.

17.21 Counterparts.

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

17.22 Recording.

The City will record this Agreement against the Development Property, at the sole cost and expense of Developer, with the Office of the Lake County Recorder of Deeds promptly following the full execution of this Agreement by the Parties.

17.23 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 17.1 (Notices)) shall be delivered or furnished to the attention of the Director of Planning & Zoning and/or Corporation Counsel of the City.

17.24 City Actions, Consents, and Approvals.

Any action, consent, or approval needed to be taken or given under this Agreement by the City may only be performed by the Mayor or his/her designee, to the extent provided for by the Code of Ordinances and any other Ordinance or Resolution duly adopted by the City subsequent to the Effective Date of this Agreement.

[SIGNATURE PAGE FOLLOWS]

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

CITY:

CITY OF WAUKEGAN, ILLINOIS,
a municipal corporation

By: Ann B. Taylor
Name: Honorable Mayor Ann B. Taylor
Title: Mayor

Attest: Janet E. Kilkelly
Name: Janet E. Kilkelly
Title: City Clerk

DEVELOPER:

FHR-ILLINOIS LLC, a Delaware limited liability company

By: Elaine Guidroz
Name: Elaine Guidroz
Title: Vice President and Secretary

SUBMITTED - 27086202 Carol Kolberer - 4/2/2024 2:54 PM

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

This instrument was acknowledged before me on January 13 2023 by Ann B. Taylor, the Mayor of the **CITY OF WAUKEGAN**, an Illinois municipal corporation.

Given under my hand and official seal this 13 day of January, 2023

Notary Public

My Commission expires: 04-29-2024

SEAL

"OFFICIAL SEAL"
WANDREEKA Q MCBRIDE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 04-29-2024

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

This instrument was acknowledged before me on January 13, 2023 by Janet E. Kilkelly, the City Clerk of the **CITY OF WAUKEGAN**, an Illinois municipal corporation.

Given under my hand and official seal this 13 day of January, 2023.

Notary Public

My Commission expires: 04-29-2024

SEAL

"OFFICIAL SEAL"
WANDREEKA Q MCBRIDE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 04-29-2024

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

STATE OF INDIANA)
) SS.
COUNTY OF Dearborn)

This instrument was acknowledged before me on Jan 13, 2023, by Elaine Guidroz, the Vice President and Secretary of **FHR-ILLINOIS LLC**, a Delaware limited liability company.

Given under my hand and official seal this 13 day of January, 2023

Wanda Plunkett
Notary Public

My Commission expires: 8-18-23

SEAL

NOTARY PUBLIC SEAL STATE OF INDIANA
WANDA PLUNKETT
Commission Number NP0671848
My Commission Expires
August 18th, 2023

EXHIBITS TO DEVELOPMENT AND HOST COMMUNITY AGREEMENT

Capitalized terms used in these Exhibits but not otherwise defined in such Exhibits shall have the meaning ascribed to such terms in the Development and Host Community Agreement to which these Exhibits are affixed.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

INDEX OF EXHIBITS

EXHIBIT A	LEGAL DESCRIPTION OF CITY-OWNED PARCEL	A-1
EXHIBIT B	LEGAL DESCRIPTION OF 10-ACRE PARCEL	B-1
EXHIBIT C	PROJECT DESCRIPTION	C-1
EXHIBIT D	PROJECT CONCEPT PLAN	D-1
EXHIBIT E	TEMPORARY FACILITY (PHASE 0) SITE PLAN APPROVAL ORDINANCE	E-1
EXHIBIT F	TEMPORARY FACILITY (PHASE 0) ENGINEERING PLAN	F-1
EXHIBIT G	FORM LETTER OF CREDIT	G-1
EXHIBIT H	AMERICAN PLACE DIVERSITY AND INCLUSION PLAN	H-1
EXHIBIT I	ORGANIZATIONAL CHART OF DEVELOPER	I-1
EXHIBIT J	FORM OF TRANSFEREE ASSUMPTION AGREEMENT	J-1
EXHIBIT K	MINIMUM INSURANCE COVERAGES	K-1
EXHIBIT L	FORM OF ESTOPPEL CERTIFICATE	L-1
EXHIBIT M	[Reserved]	
EXHIBIT N	FORM OF CLOSING CERTIFICATE	N-1
EXHIBIT O	FORM OF RELEASE	O-1

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT A

LEGAL DESCRIPTION OF CITY-OWNED PARCEL

LOT 1 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 25, AND THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF WAUKEGAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 2004 AS DOCUMENT 5606604, IN LAKE COUNTY, ILLINOIS.

Address of Property: 600 Lakehurst Road, Waukegan, Illinois

PIN: 07-36-104-001

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EXHIBIT B

LEGAL DESCRIPTION OF 10-ACRE PARCEL

PARCEL 1

LOT 2 IN THE RESUBDIVISION OF LOT 2 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST 1/3 OF SECTION 25 AND THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION THEREOF RECORDED NOVEMBER 21, 2006 AS DOCUMENT 6095477, IN LAKE COUNTY, ILLINOIS.

Address of Property: 4011 Fountain Square Place, Waukegan, Illinois
PIN: 07-25-311-004

PARCEL 2

LOT 1 IN THE RESUBDIVISION OF LOT 3 IN THE RESUBDIVISION OF LOT 2 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 25 AND THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION THEREOF RECORDED JUNE 4, 2007 AS DOCUMENT NUMBER 6192724, IN LAKE COUNTY, ILLINOIS.

Address of Property: 4001 Fountain Square Place, Waukegan, Illinois
PIN: 07-25-311-007

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT C

PROJECT DESCRIPTION

Developer proposes to develop the Project in multiple Phases on the Development Property. Below is a summary of the proposed Phases and their respective Project Components as of the Effective Date. Any Material Change requires approval of the City as provided in the Development and Host Community Agreement.

A. Temporary Facility (Phase 0). Developer will construct a 50,000 square foot temporary casino gaming facility in a "Sprung Structure," accessory modular/prefabricated structures, suitable on-site parking facilities, site circulation drives, curbing and gutters, landscaping, and signage on the Development Property. Phase 0 will also include the following features and amenities:

1. Approximately 1,000 electronic gaming devices and 50 table games;

2. A sports wagering area;

3. Three restaurants with approximately 650 seats;

4. Approximately 1,300 parking spaces; including 28dedicated EV charging spaces.

The total budget for the construction, furnishing, and equipping Phase 0 will be no less than $20 million.

B. Permanent Facility (Phase I). Developer will construct an approximately 325,000 square foot permanent casino gaming facility on the Development Property suitable on-site parking facilities, site circulation drives, curbing and gutters, landscaping, and signage. Phase 1 will also include the following features and amenities:

1. Approximately 1,640 electronic gaming devices and 100 table games;

2. The Boutique Hotel;

3. Four full service restaurants;

4. The Entertainment Venue; and

5. A heliport landing pad, subject to approval of all applicable governmental authorities (including, without limitation, if applicable, the Federal Aviation Administration).

C. Permanent Project (Phase II). Developer will construct a 150-room, 4-star hotel on the Development Property or, if it is determined that a hotel is not warranted, then Developer will make an alternative investment to construct alternative casino-related amenities. Developer may construct a structured parking facility on the Project Site to serve the expanded Project.

The total budget for the construction, furnishing, and equipping Phase 2 will be no less than $50 million.

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EXHIBIT D

PROJECT CONCEPT PLAN

A copy of the Project Concept Plan is available for inspection in the office of the Waukegan City Clerk 100 N. Martin Luther King, Jr. Avenue, Waukegan, Illinois 60085.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT E

TEMPORARY FACILITY (PHASE 0) SITE PLAN APPROVAL ORDINANCE

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CITY OF WAUKEGAN

ORDINANCE NO. 22—O—29

AN ORDINANCE GRANTING SITE PLAN APPROVAL TO FHR-ILLINOIS, LLC FOR THE CONSTRUCTION AND OPERATION OF A TEMPORARY CASINO

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN

ON THE 21st DAY OF MARCH, 2022

Published in pamphlet form by authority of the City Council, of the City of Waukegan, Lake County, Illinois, on the 22nd day of MARCH, 2022

Janet E. Kilkelly

CITY CLERK

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ORDINANCE NO. 22—O—29

AN ORDINANCE GRANTING SITE PLAN APPROVAL TO FHR-ILLINOIS, LLC FOR THE CONSTRUCTION AND OPERATION OF A TEMPORARY CASINO

WHEREAS, the Illinois Gaming Board ("***IGB***") approved Full House Resorts, Inc. d/b/a American Place ("***FHR***") as the final applicant for a license to conduct casino gambling operations in Waukegan (an "***Owners License***") and made a finding that FHR is "preliminarily suitable" for an Owners License;

WHEREAS, the IGB subsequently approved a request by FHR to (i) amend its application for the Owners License to designate FHR-Illinois, LLC, a Delaware limited liability company ("***Petitioner***"), a wholly-owned subsidiary of FHR, as the applicant for the Owners License and (ii) to make any prior IGB actions, determinations, and findings with respect to FHR applicable, binding, and transferable to Petitioner;

WHEREAS, Section 8.3-9, paragraph 10 of the Waukegan Zoning Ordinance ("***Zoning Ordinance***") provides for the review and approval of site plans for development within the Western Gateway Redevelopment Overlay District ("***Gateway Overlay District***");

WHEREAS, the City of Waukegan, a home rule municipal corporation ("***City***"), is the owner of the approximately 30-acre property commonly known as 600 Lakehurst Road, Waukegan, Illinois ("***City Parcel***");

WHEREAS, Petitioner is the owner of the approximately 10-acre property commonly known as 4001-4011 Fountain Square Place, Waukegan, Illinois ("***10-Acre Parcel***") (City Parcel and 10-Acre Parcel, together are the "***Subject Property***"), which Subject Property is legally described in **Exhibit A** attached and made a part of this Ordinance;

WHEREAS, Petitioner intends to enter into a long-term ground lease with the City for the City Parcel, resulting in Petitioner having site control of the Subject Property;

WHEREAS, the Subject Property is located within the B2 Community Shopping District ("***B2 District***") and the Western Gateway Redevelopment Overlay District;

WHEREAS, Petitioner submitted, with due authorization from the City as owner of the City Parcel, an application for site plan approval (the "***Site Plan Approval Application***") for the development of the Subject Property with a temporary casino as well as accessory and ancillary facilities including: (1) a 70,000 square foot main building ("***Main Building***") which will be a Sprung Structure containing casino gaming operations, free-standing gaming machines, a central bar, and two restaurants; (2) temporary art installations consisting of projections onto the north-facing elevation of the Main Building ("***Projection Art***"); (3) two prefabricated trailers containing 12,650 square feet of floor area and serving administrative and employee service functions; (4) a prefabricated diner facility; (5) a food truck area; and (6) on-site parking facilities (collectively, the "***Temporary Casino Facility***");

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WHEREAS, the Petitioner desires, at a later date, to seek further approvals to redevelop the Subject Property with a permanent casino facility and ancillary improvements (collectively, the "***Permanent Casino Facility***");

WHEREAS, casino gaming is a permitted use within the Gateway Overlay District;

WHEREAS, as part of its review of the Site Plan Approval Application, the City engaged Sam Schwartz ("***Traffic Consultant***") to conduct a peer review of the Petitioner's preliminary traffic study ("***Traffic Evaluation Memo***");

WHEREAS, the Planning and Zoning Commission considered the Site Plan Approval Application on March 10, 2022 as required by ordinance. The Planning and Zoning Commission thereafter recommended approval of the Site Plan Approval Application, subject to certain specified conditions;

WHEREAS, the Site Plan Approval Application was considered and recommended for approval by the Community Development Committee of the Waukegan City Council on March 21, 2022; and

WHEREAS, the City Council of the City of Waukegan has determined that it is in the public interest and will tend to promote the public health, safety, morals, comfort, convenience, and general welfare of the residents of the City of Waukegan, Illinois, to approve the Site Plan Approval Application.

NOW, THEREFORE, BE IT ORDAINED BY THE City Council of the City of Waukegan, as follows:

SECTION 1. RECITALS. The foregoing recitals are incorporated into, and made a part of, this Ordinance as the findings of the Mayor and City Council.

SECTION 2. SITE PLAN APPROVAL. In accordance with, and pursuant to, Section 8.3-9 of the Zoning Ordinance, and subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 3 of this Ordinance, the City Council hereby approves the Site Plan Approval Application for the Temporary Casino Facility consisting of the following documents (collectively, the "***Site Plan Documents***"):

A. The Site Plan, consisting of 1 sheet, prepared by Gewalt Hamilton Associates, with a latest revision date of March 9, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit B**;

B. The Building Elevations, consisting of 2 sheets, prepared by Legat Architects, with a latest revision date of March 10, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit C**;

C. The Landscape Plan, consisting of 1 sheet, prepared by Legat Architects, Gewalt Hamilton Associates, and IMEG, with a latest revision date of March 10, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit D**;

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D. The Signage Plan, consisting of 1 sheet, prepared by Legat Architects, Gewalt Hamilton Associates, and IMEG, with a latest revision date of March 10, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit E**;

E. The Building Materials Plan, consisting of 1 sheet, prepared by Legat Architects, with a latest revision date of March 10, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit F**;

F. The Drop-Off Area Renderings, consisting of 1 sheet, prepared by Legat Architects, Gewalt Hamilton Associates, and IMEG, with a latest revision date of March 10, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit G**;

G. The Site Lighting and Photometric Calculations, consisting of 1 sheet, prepared by IMEG, and with a latest revision date of March 4, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit H**;

H. The Parking Analysis, consisting of 4 sheets, prepared by BLA, Inc. a copy of which is attached to and made a part of this Ordinance as **Exhibit I**;

I. The Vehicle Movement Plans, consisting of 4 sheets, prepared by Gewalt Hamilton Associates, with a latest revision date of March 7, 2022, a copy of which is attached to and made a part of this Ordinance as **Exhibit J**.

SECTION 3. CONDITIONS. The approval granted pursuant to Section 2 of this Ordinance is subject to and conditioned upon strict compliance by the Petitioner, its successors or assigns, with the following conditions:

1. The development, use, operation, and maintenance of the Temporary Casino Facility must be in compliance with all applicable local, state, and federal laws and must conform to all applicable provisions of the Zoning Ordinance for properties in the B2 District and the Gateway Overlay District.

2. All final fencing design plans for the Temporary Casino Facility must be reviewed and approved by the Waukegan Planning and Zoning Department ("***Planning and Zoning Department***") before the Petitioner submits any applications for fence permits. Pursuant to Section 4.4-1 of the Zoning Ordinance, the Petitioner must obtain fence permits from the Building Department for all proposed fencing.

3. All final, detailed signage plans for the Temporary Casino Facility must be reviewed and approved by the Planning and Zoning Department before the Petitioner submits any applications for sign permits. Pursuant to the Waukegan Sign Ordinance, the Petitioner must obtain sign permits from the Building Department for all proposed signage.

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4. During the building permit and business license application, review, and issuance processes for the Temporary Casino Facility, all building code, engineering, and life safety requirements must be satisfied to the approval of the Building, Engineering, and Fire Departments.

5. The Petitioner must continuously maintain and timely renew all necessary City of Waukegan licenses for the Temporary Casino Facility and the Subject Property.

6. The Petitioner must install building enhancements, including, but not limited to, security cameras, lighting in substantial conformance with the Site Lighting and Photometric Calculations, and other improvements to ensure safety of employees and customers.

7. The Petitioner must apply for and obtain approval of 24-hour operation for the Temporary Casino Facility from the City's Development Review Board and City Council prior to commencing 24-hour operation of the Temporary Casino Facility.

8. Noise generated within the Main Building must not be audible from adjacent properties. Any outdoor events at the Subject Property must be evaluated for their impact on neighboring properties, and approved by the City's Development Review Board.

9. Petitioner and the City will work in good faith to redesign the interior site circulation/porte cochere drop-off area with consideration and reference to best practices in transportation design and safety, to the reasonable satisfaction of the City Engineer, to serve the best interests of the City, including, without limitation, by enhancing pedestrian safety and comfort, reducing the potential points of conflict between vehicles and pedestrians, ensuring safe and convenient parking and access to the Temporary Casino Facility by patrons, and maximizing the Temporary Casino Facility's potential to be a successful regional tourism and entertainment destination.

10. The Petitioner must provide a comprehensive response to the Traffic Evaluation Memo and coordinate with the Traffic Consultant on an ongoing basis during the development of the Subject Property.

11. Petitioner must provide on- and off-site traffic management personnel as the City deems to be reasonably necessary to facilitate safe vehicular movement, pending the results of a final traffic study and/or operations of the Temporary Casino Facility as observed by the City.

12. Upon commencement of operations of the Temporary Casino Facility, the Petitioner must commission transportation engineering professionals to monitor

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and document traffic and parking activity during the following periods and in the following manners:

a. **Opening Period Transportation Monitoring**: During the period from the opening of the Temporary Casino Facility through the date mutually agreed to by the City and the Petitioner ("***Opening Period***"), Petitioner must monitor on- and off-site traffic and parking activity in order to identify operational issues that must be addressed expediently in order to promote transportation functionality and safety

b. **On-going Transportation Monitoring**: Following the Opening Period, Petitioner must monitor and document quantitative data including transportation characteristics that inform site design and transportation management strategies to serve as a case study of the Temporary Facility to inform the design of the Permanent Casino Facility. This on-site evaluation must: (i) include, without limitation, evaluation of the specific characteristics that are identified for monitoring in Traffic Evaluation Memo; and (ii) conform to best practices of the traffic engineering industry with respect to data collection.

13. The Petitioner must work cooperatively with Staff to develop content strategy, art curation guidelines, programming, and programming frequency for the Projection Art. The Projection Art may not contain, point to, or support specific messages, brands, corporate identifiers, scripts, logos, offers of goods or services, or other advertising. The Projection Art must not create a nuisance to neighbors of the Subject Property and must not present any public safety hazards or violate any City laws or codes.

14. Concurrent with any application for Site Plan Approval of the Permanent Casino Facility, the Petitioner must prepare, submit, and obtain approval by the City of a decommissioning plan and/or re-use plan for the Sprung Structure and all of the accessory pre-fabricated buildings and trailers associated with the Temporary Casino Facility.

15. Prior to commencing operations of the Temporary Casino Facility, Petitioner must record a reciprocal easement agreement mutually agreed to by the City and Petitioner or another mutually agreed instrument addressing the unified development and operation of the parcels comprising the Subject Property, including terms for use of the parking facilities located on the 10-Acre Parcel associated with the Temporary Casino Facility and Permanent Casino Facility.

16. Except for minor changes and site work approved by the Zoning Administrator or Planning & Zoning, Building, Engineering, or Fire Department Staff (for matters within their respective permitting authorities), in accordance with all applicable

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City standards, the development, use, operation, and maintenance of the Temporary Casino Facility will substantially conform with the Site Plan Documents.

17. In addition to any other costs, payments, fees, charges, contributions, or dedications required under applicable City codes, ordinances, resolutions, rules, or regulations, the Petitioner must pay to the City, in accordance with the provisions of the Development Escrow Agreement dated February 28, 2022 between the Petitioner and the City, all legal fees, costs, and expenses incurred or accrued in connection with the review, negotiation, preparation, consideration, and review of this Ordinance.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

ORDINANCE NO. 22—O—29

PASSED BY THE COUNCIL THIS **21st** DAY OF **MARCH**, 2022.

SIGNED AND APPROVED BY THE MAYOR THE **21st** DAY OF **MARCH**, 2022.

Ann B. Taylor

MAYOR ANN B. TAYLOR

ATTEST:

Janet E. Kilkelly

CITY CLERK JANET E. KILKELLY

ROLL CALL: Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner, Ald Rivera, Ald Florian, Ald Hayes.

AYE: Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner, Ald Rivera, Ald Florian, Ald Hayes.

NAY: None.

ABSENT: Ald Bolton.

ABSTAIN: None.

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EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

City Parcel

LOT 1 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 25, AND THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF WAUKEGAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 23, 2004 AS DOCUMENT 5606604, IN LAKE COUNTY, ILLINOIS.

Address of Property: 600 Lakehurst Road, Waukegan, Illinois
PIN: 07-36-104-001

10-Acre Parcel – Parcel 1

LOT 2 IN THE RESUBDIVISION OF LOT 2 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 25 AND THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION THEREOF RECORDED NOVEMBER 21, 2006 AS DOCUMENT 6095477, IN LAKE COUNTY, ILLINOIS.

Address of Property: 4011 Fountain Square Place, Waukegan, Illinois
PIN: 07-25-311-004

10-Acre Parcel – Parcel 2

LOT 1 IN THE RESUBDIVISION OF LOT 3 IN THE RESUBDIVISION OF LOT 2 IN FOUNTAIN SQUARE OF WAUKEGAN, BEING A RESUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 25 AND THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 45 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION THEREOF RECORDED JUNE 4, 2007 AS DOCUMENT NUMBER 6192724, IN LAKE COUNTY, ILLINOIS.

Address of Property: 4001 Fountain Square Place, Waukegan, Illinois
PIN: 07-25-311-007

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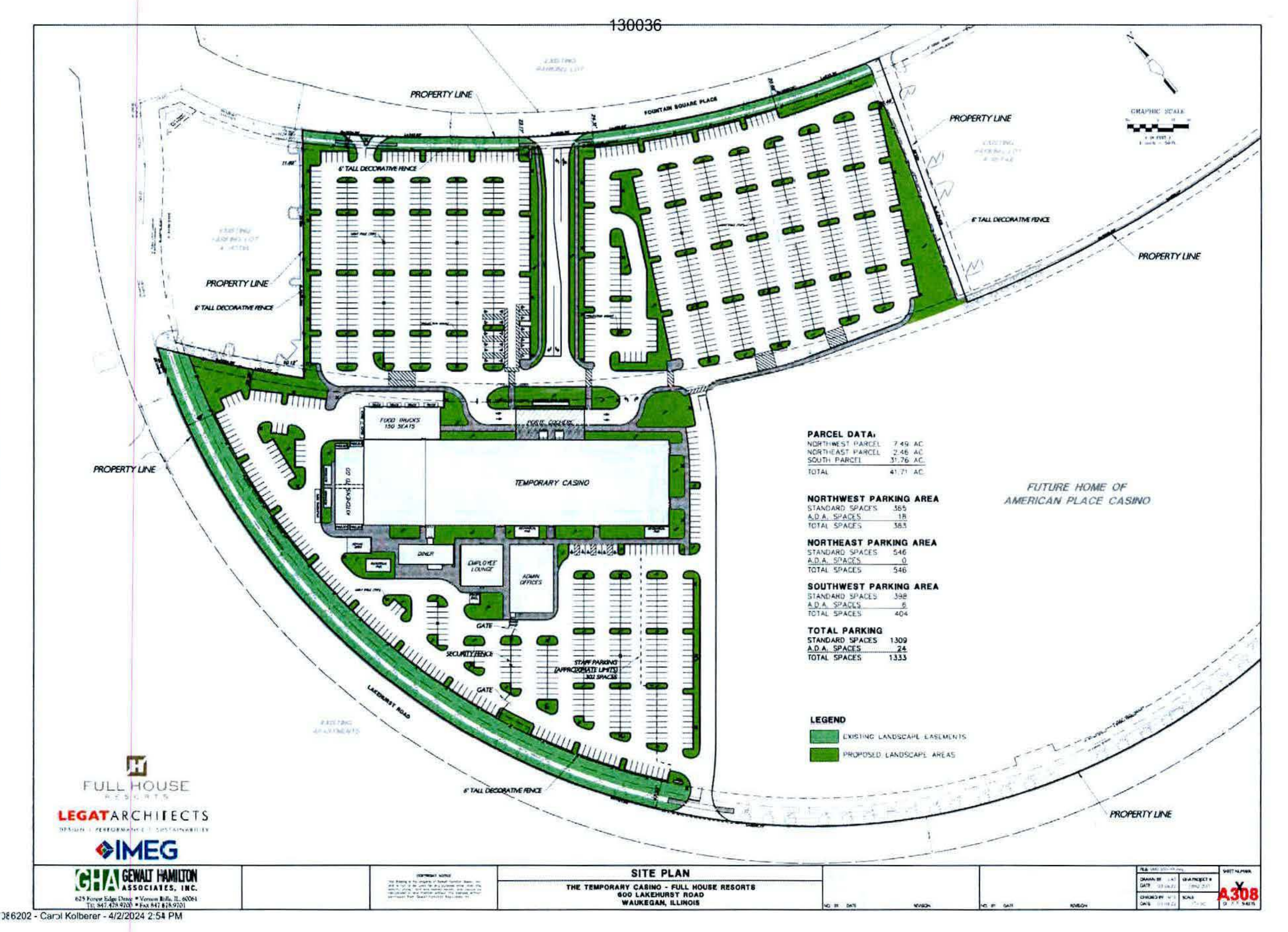
130036



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1 NORTH ELEVATION
1" = 40'-0"

501'-11"
47'-9"
31'-2 3/4"
50'-7 1/2"
94'-0"

PREFINISHED METAL FASCIA
STANDING SEAM METAL ROOF
DECORATIVE LIGHT FIXTURES
FACE BRICK VENEER
STONE BASE
WALL PACK LIGHT
ALUMINUM DOOR WITH GLASS LITES
PREFINISHED METAL CLADDING - WHITE
FOOD SERVICE TRAILERS
TENSIONED MEMBRANE - WHITE

4 SOUTH ELEVATION
1" = 40'-0"

501'-11"
50'-7 1/2"
13'-1"
16'-1"

FOOD SERVICE TRAILERS
PREFAB DINER
PREFAB STAINLESS STEEL ROOF
STAINLESS STEEL CLADDING
EXTERIOR OFFICE TRAILERS, PREFINISHED CORRUGATED METAL CLADDING
TENSIONED MEMBRANE - WHITE

FULL HOUSE RESORTS
LEGAT ARCHITECTS
GHA GEWALT HAMILTON ASSOCIATES, INC
IMEG

AMERICAN PLACE WAUKEGAN

TEMPORARY CASINO

500 LAKEHURST ROAD
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REVISIONS

NO.	DESCRIPTION	DATE

ELEVATIONS

PROJECT NO. 222073.00
DATE OF ISSUE 03/01/22

A4

ISSUED FOR SITE PERMIT

A309

PREFIN SHED CORRUGATED METAL CLADDING

EXTERIOR OFFICE TRAILERS

139'-10 3/8"

51'-8"

31'-2 3/4"

TENSIONED MEMBRANE - WHITE

STANDING SEAM METAL ROOF

PREFINISHED METAL FASCIA

FACE BRICK VENEER

STONE BASE

PREFINISHED STEEL OVERHEAD COILING DOOR

2 EAST ELEVATION
1" = 40'-0"

STANDING SEAM METAL ROOF

PREFINISHED METAL FASCIA

FACE BRICK VENEER

STONE VENEER BASE

51'-8"

139'-10 3/8"

31'-2 3/4"

14'-0"

10'-0"

TENSIONED MEMBRANE - WHITE

PREFINISHED METAL CLADDING - WHITE

FOOD SERVICE TRAILERS

OFFICE TRAILER BEYOND

PRE-FAB DINER, STAINLESS STEEL CLADDING AND ROOF

1 WEST ELEVATION
1" = 40'-0"

FULL HOUSE RESORTS

LEGAT ARCHITECTS
DESIGN · PERFORMANCE · SUSTAINABILITY

GHA GEWALT HAMILTON ASSOCIATES, INC.

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AMERICAN PLACE WAUKEGAN

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REVISIONS

NO.	DESCRIPTION	DATE

ELEVATIONS

PROJECT NO. 222073.00
DATE OF ISSUE 03/01/22

A5

ISSUED FOR SITE PERMIT

A310

SUBMITTED - 27046202 - Carol Kolberer - 4/2/2024 2:54 PM

LEGEND

- EXPOSED GRAVEL DRAINAGE BED (2' PERIMETER OF CASINO BUILDING)
- POURED CONCRETE SIDEWALK
- ASPHALT
- TURFGRASS (KENTUCKY BLUEGRASS, RYE, FESCUE MIX)
- EXISTING LANDSCAPING TO REMAIN AT EASEMENTS
- DECORATIVE ANNUAL PLANTINGS (MIX OF EARLY, SPRING, SUMMER AND FALL POLLINATORS)
- MEDIUM CANOPY TREE (CHINESE ELM, LITTLE LEAF LINDEN, OR SIMILAR) APPROX 30' IN HEIGHT
- LARGE CANOPY TREE (RED OAK, RED MAPLE, BURK RED CEDAR OR SIMILAR) APPROX 60-70' IN HEIGHT
- 6' TALL DECORATIVE FENCE

1 LANDSCAPE PLAN
1" = 150'-0"

FULL HOUSE RESORTS

LEGAT ARCHITECTS
DESIGN | PERFORMANCE | SUSTAINABILITY

GHA GEWALT HAMILTON ASSOCIATES, INC.

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REVISIONS

NO.	DESCRIPTION	DATE

LANDSCAPE PLAN

PROJECT NO. 222073.00
DATE OF ISSUE 03/10/22

A1

ISSUED FOR SITE PERMIT

A311

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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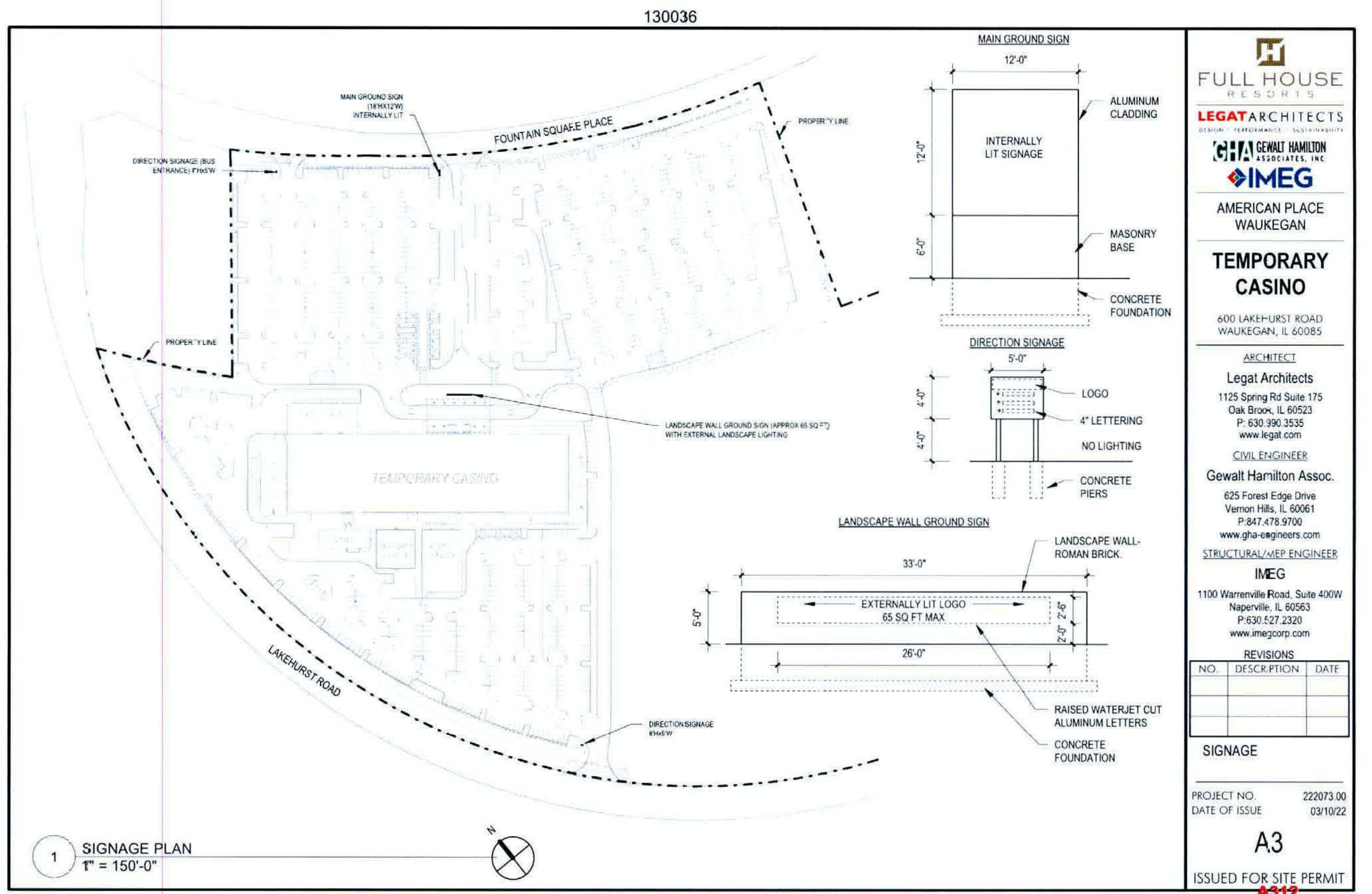

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FULL HOUSE RESORTS

LEGAT ARCHITECTS
DESIGN | PERFORMANCE | SUSTAINABILITY

GHA GEWALT HAMILTON ASSOCIATES, INC

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REVISIONS

NO.	DESCRIPTION	DATE

MATERIALS

PROJECT NO. 222073.00
DATE OF ISSUE 03/01/22

A6

ISSUED FOR SITE PERMIT

A313

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

1 - EXTERIOR PERSPECTIVE

2 - EXTERIOR PERSPECTIVE

FULL HOUSE RESORTS

LEGAT ARCHITECTS
DESIGN · PERFORMANCE · SUSTAINABILITY

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REVISIONS

NO.	DESCRIPTION	DATE

RENDERINGS

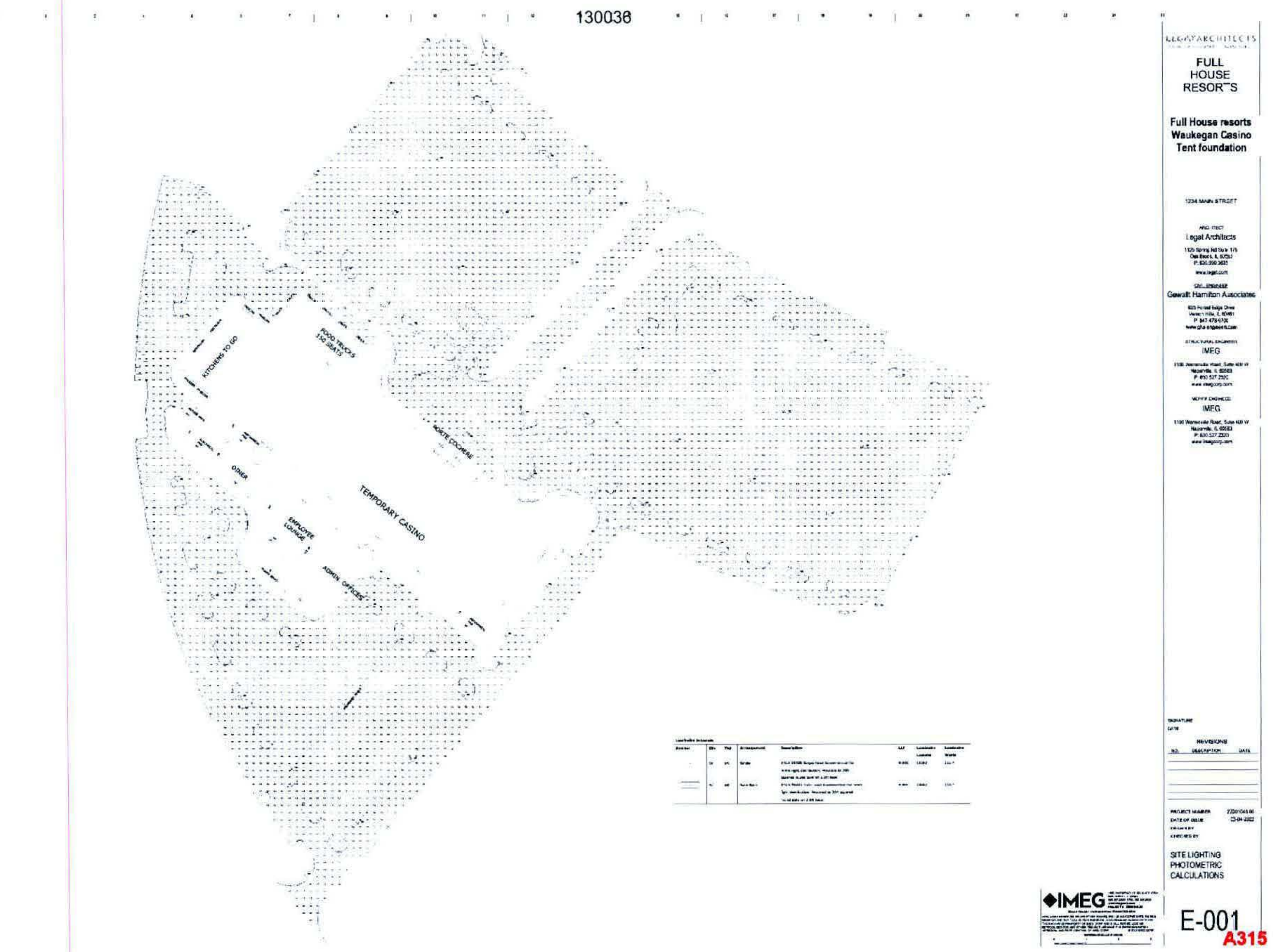
PROJECT NO. 222073.00
DATE OF ISSUE 03/01/22

A7

ISSUED FOR SITE PERMIT

A314

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM



A315

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Executive Summary

BLA, Inc. has conducted a Traffic Impact Study for the proposed American Place temporary casino located at Fountain Square in Waukegan, Illinois. Existing and future conditions in the study area have been described, analyzed and evaluated with respect to traffic operations and the impact of the planned development. Conclusions and recommendations are presented below:

- The existing site is currently vacant.
- The temporary phase of the development will include the construction of an approximately 70,000 square-foot temporary casino, which includes 1,250 gaming positions, food and beverage options, as well as office space. It will be served by 1,438 parking spaces, including 24 accessible spaces. Access is proposed via Fountain Square Place and Lakehurst Road.
- The American Place casino permanent phase is anticipated to include a permanent casino, entertainment venue, boutique hotel with luxury villas, as well as supporting ancillary uses. *The permanent phase is still under development and a separate/expanded traffic and parking study will be performed at a future date.*
- Existing traffic conditions within the study area were established by performing weekday PM commuter, Friday PM casino and Saturday PM casino peak traffic counts in January and February 2022 and included a 5 to 27 percent increase to account for abnormal traffic conditions within the study area associated with school and business closures / hybrid operations due to COVID-19. *Note: no adjustments were made to the Lakehurst Road and Northpoint Boulevard volumes, since the 2022 volumes were higher than historical, pre-COVID conditions.*
- Crash data was reviewed for the last five calendar years (2016-20) from the Illinois Department of Transportation (IDOT) Division of Safety.
- Future (non-site) traffic volume conditions were developed for the anticipated opening year of the development plus five years, year 2027, including a compounded annual growth rate of 1.0 percent along the study area roadways.
- Trip generation for the proposed development was quantified for the weekday PM street peak hour, Friday PM casino peak hour and Saturday PM casino peak hour, as well as daily using the Institute of Transportation Engineers (ITE) trip generation rates contained in the 11th Edition of the Manual *Trip Generation. The ITE data was supplemented with Illinois Gaming Board historical Illinois casino daily admissions data to validate the study assumptions.*
- Analyses have been conducted for all study intersections under existing and future (2027 design year) traffic conditions to determine the impact from the planned temporary phase of the development.
- Our determination is the proposed American Place temporary casino development traffic can be accommodated on the adjacent streets with the proposed site access and recommended transportation improvements that are included in the site plan or recommended as part of this study.
    - Adjust the existing signal timings / phasing splits at the intersection of Fountain Square Place at Lakehurst Road/Northpoint Boulevard to provide optimal operations, minimizing queuing/blocking. Consideration should also be given to placing the Friday and Saturday evening peak periods on a coordinated plan.
    - The site access driveway on Lakehurst Road will provide one inbound lane and one outbound lane, operating under STOP sign control. A STOP bar and sign should be placed in advance of the sidewalk.
    - The west site access driveway on Fountain Square Place will be restricted to right-in/right-out only, operating under STOP sign control. A STOP bar and sign should be placed in advance of the sidewalk.
    - The east site access driveway on Fountain Square Place will provide one inbound lane and two outbound lanes (left-turn and through/right-turn), operating under STOP sign control. A STOP bar and sign should be placed in advance of the sidewalk. Consideration should be given to constructing an eastbound right-turn lane on Fountain Square Place at the proposed site access, if feasible/sufficient right-of-way is available.
    - Monitor the intersections of Fountain Square Place at the Walmart west access/Site east access and Walmart east access/plaza access for traffic control signal installation if when traffic volumes/crash history warrants.
    - Consider placing the intersection of Fountain Square Place and Northpoint Boulevard (North/South) under three-way stop control (eastbound, northbound and southbound).

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- Work with City of Waukegan officials in support of future, regional planned transportation improvements that would enhance access to / from the development: Full interchange at Interstate-94 and westerly extension of McGraw Road over the Canadian Pacific Railroad to O'Plaine Road.
- In recognition of the existing and future traffic demands on the study area street system, transportation demand management (TDM) actions should be implemented to reduce vehicle trips and better manage the traffic generated by the project. This can include working with Pace to provide a bus stop on-site, a shuttle bus serving area hotels, etc.

- The proposed off-street parking supply will be adequate to accommodate the projected parking demand for the proposed development.
- Rideshare and taxi drop-off and pick-up can be adequately accommodated on site.

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Parking Analysis

Parking Demand Requirements

Based on the parking requirements outlined in the City of Waukegan Code of Ordinance (Article 12, Table 1), 1,005vehicular parking spaces are required for the proposed site uses. The City's parking requirements are summarized in ***Table 9***.

Table 9: City Parking Requirements

Class	Use	Size	Parking Requirement	Parking Spaces	
				Required	Provided
15[1]	Casino	1,550 persons (1,250 positions, 300 employees max) / 70,000 SF	10/1,000 SF or 1 per 3-person capacity, whichever is greater	700	1,438
10	Office	12,650 SF	3 per 1,000 SF GFA	38	
16	Dining	10,450 SF / 800 Seats	1/3 seats Design Capacity	267	
Total Development				**1,005**	

[1] Waukegan City Code does not include a casino use, conservatively assumed class 15 of parking code, which includes recreational/entertainment uses such as auction rooms, club or lodge, night club, dance hall and skating rinks.

Parking Demand Projections

To project the peak parking demand for the proposed temporary casino development, BLA referenced the following sources:

- Anticipated peak staff and guest demand.
- ITE Parking Generation, 5th Edition

Peak Staff and Guest Demand

As previously described, the anticipated vehicle occupancy for the casino guests is 1.3 persons per vehicle, of which, approximately 85 percent are anticipated to arrive via personal auto. For, 1,250 gaming positions (assuming full occupancy), this would equate for a parking demand of 817 spaces (1,250 * 0.85 / 1.3). Assuming the restaurant demand would largely be generated via the casino guests, a greater vehicle occupancy of 3 persons per vehicle (similar to demand required per City Code) was assumed, or 267 spaces for the 800 seats. Assuming a 1:1 ratio for casino employees (maximum 300 present at one time, given shift overlap) and a similar ratio of personal auto mode (85%), would equate to an additional demand of 255 spaces. Thus, the anticipated parking demand for all components of the temporary casino would be 1,339 parking spaces (817 casino, 267 restaurant and 255 employee). This would permit for a surplus of 99 spaces, or approximately 7% for vehicle circulation.

ITE Parking Generation

The ITE Parking Generation, 5th Edition publication provides a compilation of parking demand surveys from across the county for a wide variety of uses. ITE LUC 473, Casino, was referenced for the proposed development (see ***Appendix J***). Of note, the ITE data contains limited data points (3 locations were included, with varying degree of ancillary land uses including, hotels, retail, entertainment). Based on the ITE data, the parking demand ratio per gaming position ranged between 0.34 to 1.46 spaces per gaming position, averaging 1.12 spaces per gaming position. Accordingly, based on the ITE data, for 1,250 gaming positions, a peak parking demand of 1,400 spaces would be expected. No additional demand for the ancillary uses (restaurant, offices, etc.) was assumed in connection with these calculations, as the above estimate is assumed to incorporate these demands.

Accordingly, the proposed parking supply of 1,438 spaces is anticipated to be adequate to accommodate the project parking demand for the proposed development.

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Conclusions and Recommendations

A Traffic Impact Study was performed for the proposed American Place temporary casino located at Fountain Square in Waukegan, Illinois. Existing and future conditions in the study area have been described, analyzed and evaluated with respect to traffic operations and the impact of the planned development. Conclusions and recommendations are presented below:

Conclusions:

1. The existing site is currently vacant.
2. The site is well served by alternative travel modes, including two Pace Suburban bus routes.
3. The temporary phase of the development will include the construction of an approximately 70,000 square-foot temporary casino, which includes 1,250 gaming positions, food and beverage options, as well as office space. It will be served by 1,438 parking spaces, including 24 accessible spaces. Access is proposed via Fountain Square Place and Lakehurst Road. *The permanent phase is still under development, and a separate/expanded traffic and parking study will be performed at a future date.*
4. Our determination is the proposed American Place temporary casino development traffic can be accommodated on the adjacent streets with the proposed site access and recommended transportation improvements that are included in the site plan or recommended as part of this study.
5. The proposed off-street parking supply will be adequate to accommodate the projected parking demand for the proposed development.
6. Rideshare and taxi drop-off and pick-up can be adequately accommodated on site.

Recommendations:

1. Adjust the existing signal timings / phasing splits at the intersection of Fountain Square Place at Lakehurst Road/Northpoint Boulevard to provide optimal operations, minimizing queuing/blocking. Consideration should also be given to placing the Friday and Saturday evening peak periods on a coordinated plan.
2. The site access driveway on Lakehurst Road will provide one inbound lane and one outbound lane, operating under STOP sign control. A STOP bar and sign should be placed in advance of the sidewalk.
3. The west site access driveway on Fountain Square Place will be restricted to right-in/right-out only, operating under STOP sign control. A STOP bar and sign should be placed in advance of the sidewalk.
4. The east site access driveway on Fountain Square Place will provide one inbound lane and two outbound lanes (left-turn and through/right-turn), operating under STOP sign control. A STOP bar and sign should be placed in advance of the sidewalk. Consideration should be given to constructing an eastbound right-turn lane on Fountain Square Place at the proposed site access, if feasible/sufficient right-of-way is available.
5. Monitor the intersections of Fountain Square Place at the Walmart west access/Site east access and Walmart east access/plaza access for traffic control signal installation if when traffic volumes/crash history warrants.
6. Consider placing the intersection of Fountain Square Place and Northpoint Boulevard (North/South) under three-way stop control (eastbound, northbound and southbound).
7. Work with City of Waukegan officials in support of future, regional planned transportation improvements that would enhance access to / from the development: Full interchange at Interstate-94 and westerly extension of McGraw Road over the Canadian Pacific Railroad to O'Plaine Road.
8. In recognition of the existing and future traffic demands on the study area street system, transportation demand management (TDM) actions should be implemented to reduce vehicle trips and better manage the traffic generated by the project. This can include working with Pace to provide a bus stop on-site, a shuttle bus serving area hotels, etc.

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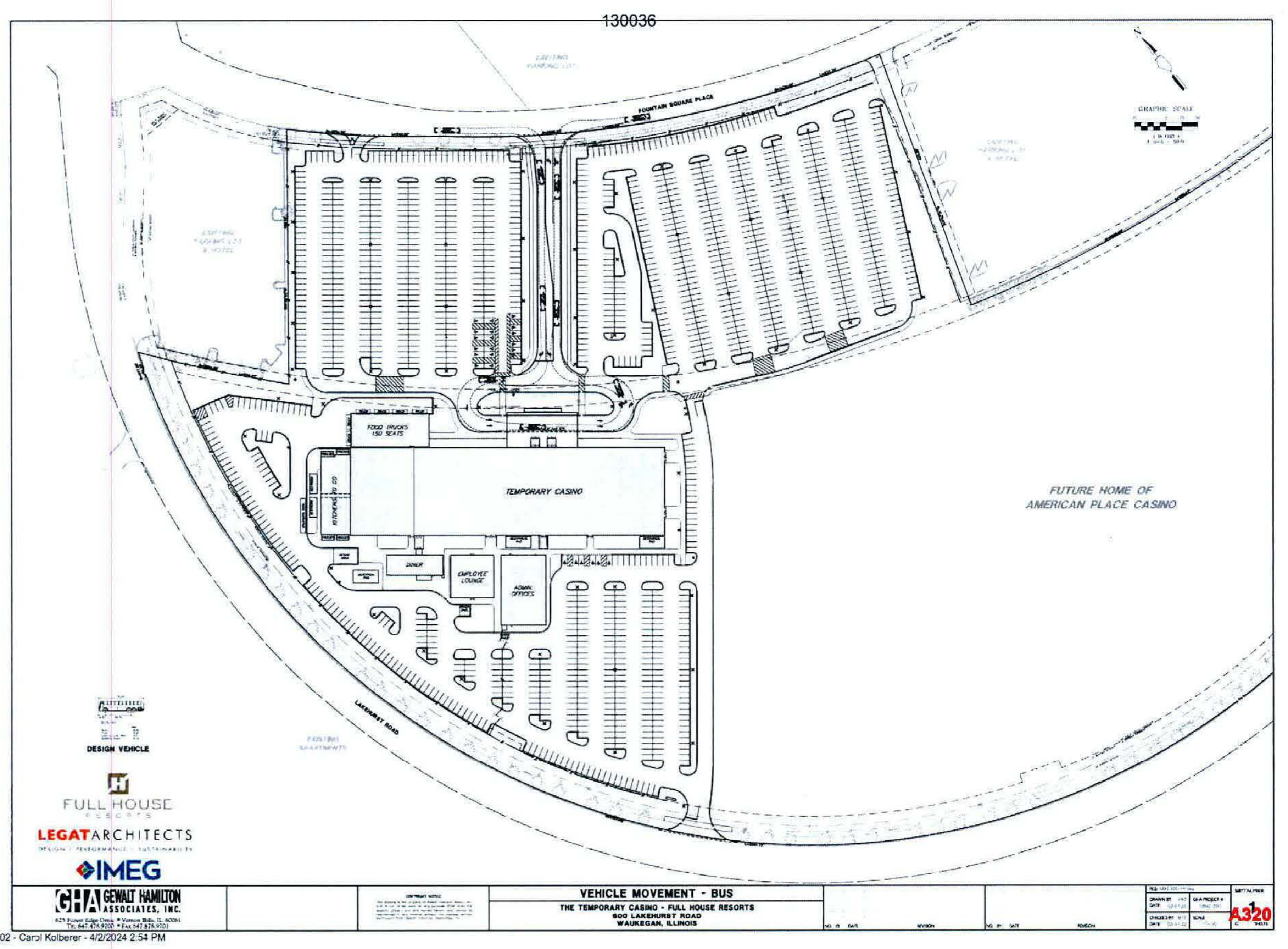

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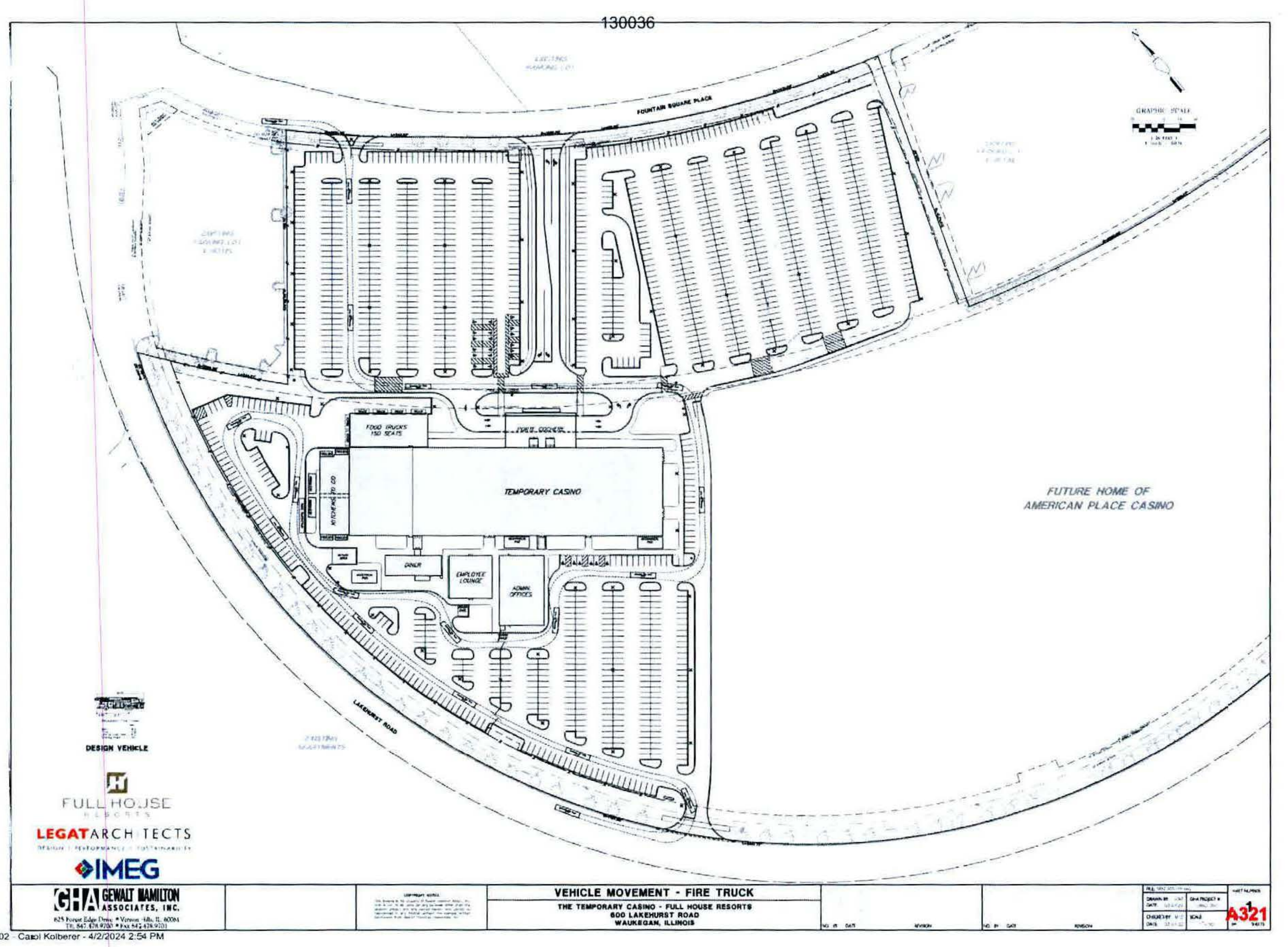

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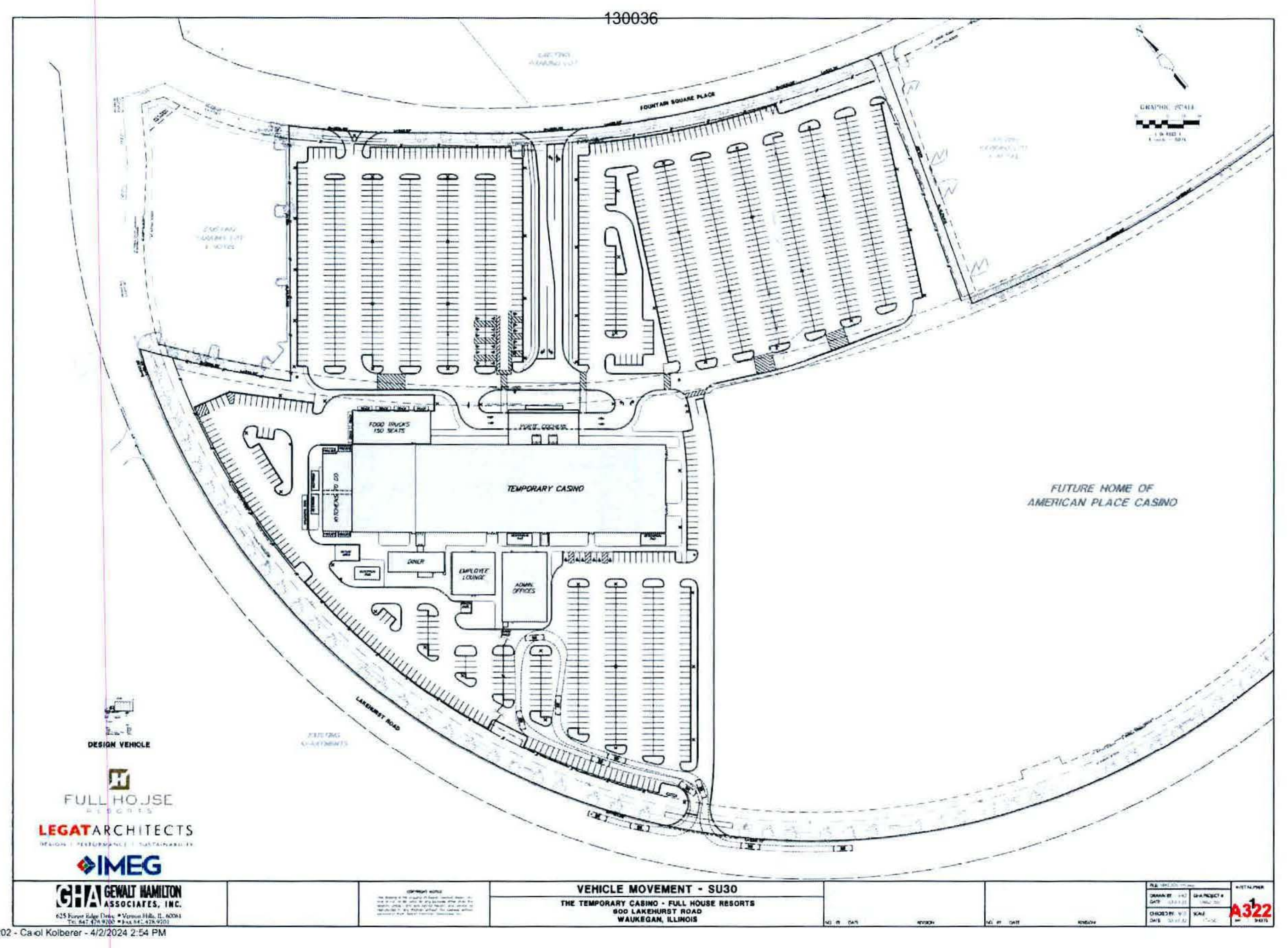

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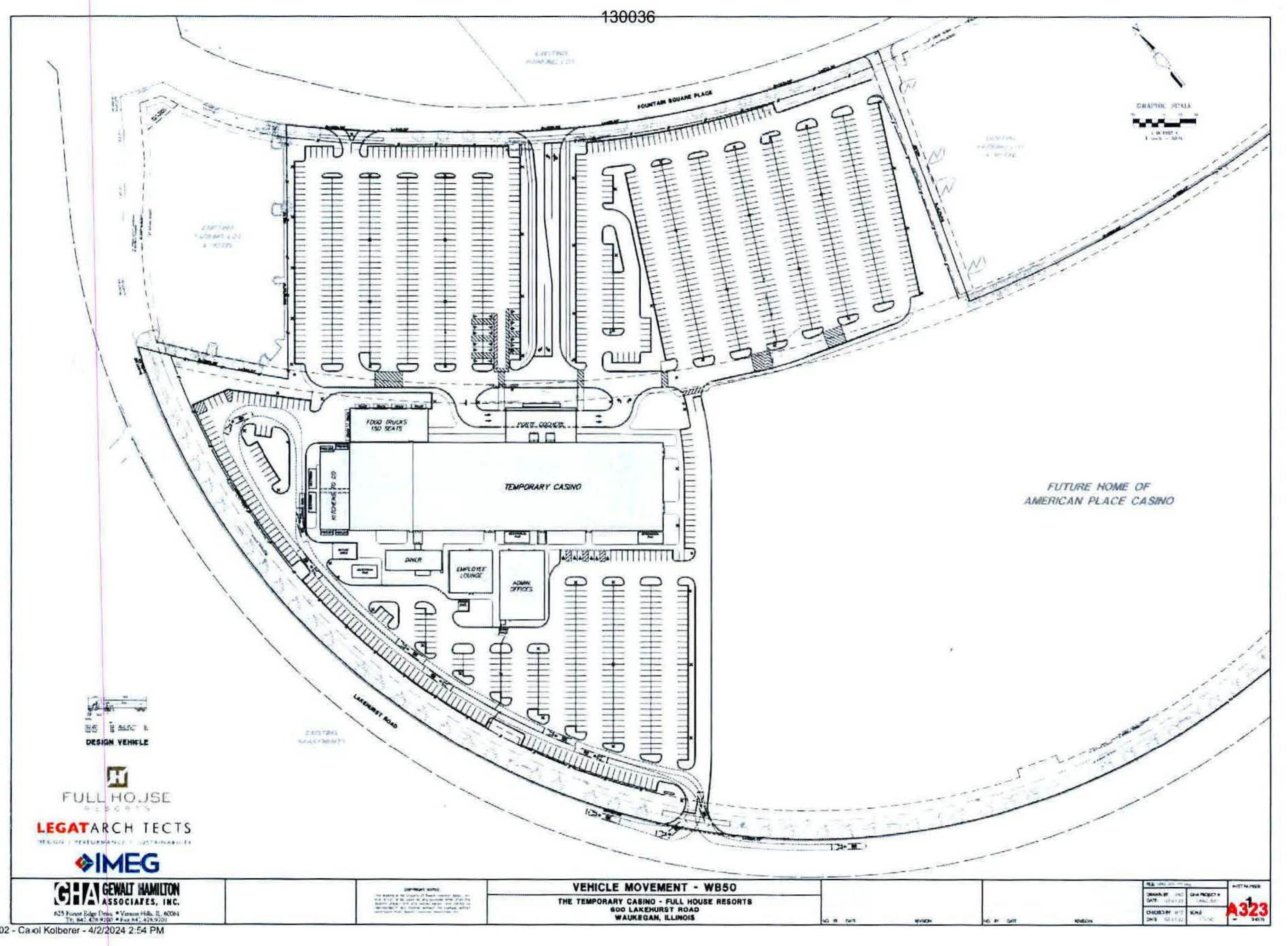

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EXHIBIT F

TEMPORARY FACILITY (PHASE 0) ENGINEERING PLAN

Copies of the following plans, constituting the Engineering Plans for Phase 0 of the Project are available for inspection in the office of the Waukegan City Clerk 100 N. Martin Luther King, Jr. Avenue, Waukegan, Illinois 60085.

The Temporary Casino Full House Resorts – 600 Lakehurst Road, Waukegan, Illinois – Prepared by Gewalt Hamilton Associates, Inc., consisting of 21 sheets:

1. Title Sheet, latest revision date July 21, 2022
2. General Notes & Utility Table, latest revision date July 21, 2022
3. Stormwater Pollution Prevention Plan Notes, latest revision date July 21, 2022
4. Site Plan, latest revision date July 21, 2022
5. Existing Conditions/Demolition Plan – North, latest revision date July 21, 2022
6. Existing Conditions/Demolition Plan – South, latest revision date July 21, 2022
7. Geometric Plan – North, latest revision date July 21, 2022
8. Geometric Plan – South, latest revision date July 21, 2022
9. Utility Plan – North, latest revision date July 21, 2022
10. Utility Plan – South, , latest revision date September 20, 2022
11. Grading Plan – North, latest revision date July 21, 2022
12. Grading Plan – South, latest revision date July 21, 2022
13. Grading Plan – Detention Pond, latest revision date July 21, 2022
14. Soil Erosion & Sediment Control Plan – North, latest revision date July 21, 2022
15. Soil Erosion & Sediment Control Plan - South, latest revision date July 21, 2022
16. Soil Erosion & Sediment Control Plan – Detention Pond, latest revision date July 21, 2022
17. Soil Erosion & Sediment Control Plan – Details, latest revision date July 21, 2022
18. Sanitary Sewer & Water Main Profiles, latest revision date September 20, 2022
19. Details, latest revision date July 21, 2022
20. Details, latest revision date July 21, 2022
21. Details, latest revision date July 21, 2022

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EXHIBIT G

FORM LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NO. __________ AMOUNT: ____________

EXPIRATION DATE: ______________ DATE OF ISSUE:_____________

____
[Name of Bank]

____
[Address]

TO: City
[Address]
Attention: *[INSERT CONTACT]*

WE, [Insert Issuing Bank ("**Issuer**")], HEREBY AUTHORIZE YOU TO DRAW AT SIGHT on this Irrevocable Standby Letter of Credit No. __________ UP TO AN AGGREGATE AMOUNT OF __________________________________ United States Dollars ($__________) for account of [***FHR-Illinois LLC***] (the "***Customer***").

Drafts under this Letter of Credit shall bear upon their face the words:

"Drawn under ___________________________
Credit No. ______________ Dated: ________________"

Drafts may be for all or any portion of the amount of this Letter of Credit, and shall be in the form attached as Exhibit 1 and shall be accompanied by one of the following documents executed by the City's Mayor or the person designated as [insert title] of the City granted written authority to execute this document by the Mayor:

(a) [***To be included if LOC obligations will extend beyond LOC expiration*:** A written statement on the form attached as Exhibit 2 stating that, conditioned upon proper notice to the Mayor, Letter of Credit No. ____________ will expire within 35 days or less and that the Customer has failed to deliver to the Mayor evidence of a renewal of Letter of Credit No. ________;] or

(b) A written statement on the form attached as Exhibit 3 stating that:

[***If for Improvement Guarantee***: "....all or any part of the improvements required to be constructed pursuant to the Development and Host Community Agreement dated ___________________, 2023 by and between the City and FHR-Illinois LLC (the "***Agreement***") have not been constructed in accordance with the Agreement."

[***If for Maintenance Guarantee***: "....all or any part of the maintenance and repair of defects for improvements required to be performed pursuant to the Development and Host Community Agreement dated ___________________, 2023 by and between the City

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and FHR-Illinois LLC (the "***Agreement***") have not been performed in accordance with the Agreement."

WE HEREBY AGREE with the beneficiary that:

1. Drafts drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation to Issuer in person, by registered mail, or by nationally recognized overnight courier at the following place of presentation: [insert address] if presented on or before the above-stated Expiration Date together with the original of this Letter of Credit (and any amendments thereto). Further, one or more drafts may be presented at Issuer's above-stated counters on or before the Expiration Date.

2. If, within three banking days after any draft drawn under this Letter of Credit is presented to Issuer and Issuer fails to honor same, Issuer agrees to pay all attorneys' fees, court costs and other expenses incurred by the City in enforcing the terms hereof.

3. This Letter of Credit shall expire on ___________________, 20____, as stated hereinabove; provided, however, that Issuer shall send notice to the Mayor by certified mail, return receipt requested, or hand-delivered courier at least 35 days prior to said Expiration Date, that this Letter of Credit is about to expire.

4. In no event shall this Letter of Credit or the obligations contained herein expire except upon the prior written notice required herein, it being expressly agreed that the above expiration date shall be extended as shall be required to comply with the prior written notice required herein.

5. No consent, acknowledgment, or approval of any kind from the Customer shall be necessary or required prior to honoring any draft presented in conformance with the terms of this Letter of Credit.

6. The aggregate amount of this Letter of Credit may be reduced or released only upon receipt by Issuer of a document executed by the Mayor, referring thereon the Letter of Credit No. __________ and stating that such aggregate amount shall be:

   [***For Improvement Guarantee***: "...reduced in an amount permitted by the City's subdivision regulations because of the satisfactory completion of all or part of the Site Improvements required to be constructed pursuant to the Development and Host Community Agreement dated ____________________, 2023 by and between the City and FHR-Illinois LLC]

   [***For Maintenance Guarantee***: "...released as permitted by the City's subdivision regulations because of the satisfactory completion of the Maintenance period for the Public Improvements required to be constructed pursuant to the Development and Host Community Agreement dated ____________________, 2023 by and between the City and FHR-Illinois LLC]

7. This Letter of Credit is irrevocable.

To the extent not inconsistent with the express terms of this Letter of Credit, this Letter of Credit shall be governed by, and construed in accordance with, the International Standby Practices

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(1998) Uniform Customs and Practices of the International Chamber of Commerce Publication No. 590 (the "***Uniform Customs***"). In the event of a conflict between this Letter of Credit and the Uniform Customs, this Letter of Credit shall control. This Letter of Credit shall be deemed to be a contract made under the laws of the State of Illinois, including, without limitation, Article 5 of the Uniform Commercial Code as in effect in the State of Illinois, and shall, as to matters not governed by the Uniform Customs, be governed by and construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of law.

AS USED HEREIN, THE TERM "BANKING DAY" MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR A DAY ON WHICH BANKS IN THE STATE OF ILLINOIS ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND A DAY ON WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

______________________________	______________________________
[Signature of Bank Officer]	[Signature of Bank Officer]
______________________________	______________________________
[Officer's Title]	[Officer's Title]

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EXHIBIT 1 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

FORM OF DRAFT

[To Be Supplied by Issuing Bank]

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EXHIBIT 2 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

To:
Attn:

Re: Letter of Credit No. __________

Ladies and Gentlemen:

This is to advise you that Letter of Credit No. __________ dated ____________________________, 20____ in the amount of $__________ will expire within 35 days or less and that __________________ has failed to deliver to the Mayor evidence of a renewal of Letter of Credit No. _________.

Very truly yours,

____
Mayor
City of Waukegan

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EXHIBIT 3 TO FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

***For Improvement Guarantee*:**

To:
Attn:

Re: Letter of Credit No. __________

Ladies and Gentlemen:

This is to advise you that all or any part of the improvements required to be constructed pursuant to the Development and Host Community Agreement dated ____________________, 2023 by and between the City and FHR-Illinois LLC (the "***Agreement***") have not been constructed in accordance with the Agreement."

Very truly yours,

____

Mayor
City of Waukegan

***For Maintenance Guarantee*:**

To:
Attn:

Re: Letter of Credit No. __________

Ladies and Gentlemen:

This is to advise you that all or any part of the maintenance and repair of defects for improvements required to be performed pursuant to the Development and Host Community Agreement dated ____________________, 2023 by and between the City and FHR-Illinois LLC (the "***Agreement***") have not been performed in accordance with the Agreement.

Very truly yours,

____

Mayor
City of Waukegan

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT H
AMERICAN PLACE DIVERSITY AND INCLUSION PLAN

Intent and Objective. Developer acknowledges that an economic development goal of its Permanent Facility (as used in this Exhibit H, the "***Project***") is to capitalize on the creation of opportunities for Minorities, Women, Persons with Disability, Veterans, Local 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 for the Project, 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 Illinois Gaming Board (the "***IGB***").

Definitions.[1]

For purposes of this Plan, 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.

(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

[1] 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).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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) "***Local Resident***" means any person for whom the principal place of residence is within the County of Lake, Illinois 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, utility bill, proof of voter registration or such other proof acceptable to Developer, indicating a permanent residence located within the County of Lake, Illinois.

(e) "***Local Business***" means a business having its headquarters or a substantial location within (i) the City of Waukegan, Illinois, (ii) the County of Lake, Illinois, or (iii) any part of the State of Illinois located within 75 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 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,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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 for the Project pursuant to pre-existing national contracts; and (viii) expenditures for goods and services 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 for the Project.

(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.

(l) "***Woman***" means a person who identifies as being 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.

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Agreement. During operation of the Project, Developer agrees to use its Best Efforts to achieve the following goals for employment and business utilization at the Project:

Category	Employment	Business Utilization*
Local 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. Business Utilization goals are subject to change as corresponding goals are changed for such representative businesses per the Illinois Casino Business Enterprise Program for Minorities, Females, Persons with Disability and Veterans.		

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 Waukegan, Illinois; (2) then, within the County of Lake, Illinois; and (3) thereafter, in any part of the State of Illinois located within 75 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 Waukegan; (2) then, to those persons residing in, or businesses located in, the County of Lake, 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 Local 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 required by the Illinois Gambling Act, 230 ILCS 10/1 *et seq.*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Employment Outreach and Recruitment Efforts by Developer. With respect to the Project, Developer will:

(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 Developer's website and advertising through other media, and use of community organizations targeted to recruit Local 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) Conduct Waukegan-based and Lake County-based job fairs and casino career information sessions;

(e) Provide for online job application processes for easy accessibility including for persons who are disabled; and

(f) Establish a relationship with, and maintain regular communications with, established and reputable recruiting sources for the purpose of:

1. continued establishment of contacts within the local community;
2. active recruitment through local community organizations; and
3. skill development assistance for people with employment barriers.

Training and Career Development. With respect to the Project, Developer will:

(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 and where to submit payrolls.

Construction and Operations Contracting. With respect to the Project, Developer will:

(a) Disseminate information on contracting opportunities to local, MBE, WBE, DBE and VBE professionals, contractors, subcontractors, suppliers and vendors through Developer's or the Project's websites, general media, 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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

advertised through general and special purpose media defined above; said sessions shall be hosted in the City of Waukegan and County of Lake, Illinois;

(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 Waukegan and Lake 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 Waukegan and Lake County, all in an effort to determine appropriate candidates for contract awards by Developer for the Project;

(e) Designate an officer or employee of Developer (i.e., for employment, the Diversity and Inclusion Manager and for procurement opportunities, the Diversity Procurement Specialist) whose principal job responsibility is to administer and monitor Developer's obligations and goals herein relating to the Project;

(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) Cooperate with the City of Waukegan 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.

If desired by the City of Waukegan, to determine reporting requirements, monitor, and determine compliance with this Plan, Developer will work with the City of Waukegan to designate an entity to serve as the City's "Oversight Entity," and Developer and such Oversight Entity will work to determine a procedure and process for reporting Developer's compliance with the Plan.

MONITORING AND COMPLIANCE

Compliance Plan. If requested by the Oversight Entity (if established), Developer will furnish to such 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 in a format that is reasonably acceptable to the Oversight Entity. 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.

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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 and Developer shall negotiate in good faith revisions to this Plan, the goals and/or other remedial measures.

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EXHIBIT I

DEVELOPER'S ORGANIZATIONAL CHART

As of the date of the Development and Host Community Agreement, the officers and directors of Full House Resorts, Inc. are as follows:

- Daniel R. Lee, President, Chief Executive Officer and Director
- Lewis Fanger, Senior Vice President, Treasurer and Director
- John Ferrucci, Chief Operating Officer
- Elaine Guidroz, Senior Vice President, Secretary, General Counsel and Compliance Officer
- Alex Stolyar, Senior Vice President and Chief Development Officer
- Eric Green, Director
- Lynn Handler, Director
- Michael Hartmeier, Director
- Kathleen Marshall, Director
- Michael P. Shaunnessy, Director

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EXHIBIT J

FORM OF TRANSFEREE ASSUMPTION AGREEMENT

THIS AGREEMENT is made as of this ______ day of ___________, 20__, between the **CITY OF WAUKEGAN**, an Illinois home rule municipal corporation (***"City"***), [***FHR-ILLINOIS LLC***], a [*Delaware limited liability company*] (***"Developer"***), and ____________________, a [*form of business entity*] (***"Transferee"***).

WITNESETH:

WHEREAS, pursuant to that certain real estate sale contract dated __________, 20__, the Transferee agreed to purchase from Developer certain real property situated in Lake County, Illinois and legally described in **Exhibit 1** attached to and, by this reference, made a part of this Agreement (***"Development Property"***); and

WHEREAS, following the conveyance of the Development Property by Developer, the Transferee will be the legal owner of the Development Property; and

WHEREAS, as a condition to the conveyance of the Development Property by Developer, the City and Developer require that the Transferee agree to comply with all the terms, requirements, and obligations set forth in that certain Development and Host Community Agreement, dated as of ______________, 20__, and recorded in the office of the Lake County Recorder on ______________, 20__, as Document No. ___________, by and between the City and Developer (***"DHCA"***), pursuant to this Agreement.

NOW, THEREFORE, in consideration of the agreement of Developer to convey the Development Property to the Transferee, and of the City to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between, and among the City, Developer, and the Transferee as follows:

1. **Recitals.** The foregoing recitals are by this reference incorporated herein and made a part hereof as substantive provisions of this Agreement.

2. **Assumption of Obligations.** The Transferee, on its behalf and on behalf of its successors, assigns, heirs, executors, and administrators, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of the DHCA applicable to the "Developer" thereunder, including all exhibits and attachments.

3. **Payment of City Fees and Costs.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the DHCA or by applicable City codes, ordinances, resolutions, rules, or regulations, the Transferee must pay to the City, immediately upon presentation of a written demand or demands therefor, all legal, engineering, and other consulting or administrative fees, costs, and expenses incurred in connection with the negotiation, preparation, consideration, and review of this Agreement.

4. **Acknowledgment and Release of Developer.** The City hereby acknowledges its agreement to the Transferee's assumption of the obligation to comply with the terms, requirements, and obligations of the DHCA, including all exhibits and attachments, and the City

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

hereby releases Developer from any personal liability for failure to comply with the terms, requirements, and obligations of the DHCA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

ATTEST:	**CITY OF WAUKEGAN**, an Illinois home rule municipal corporation
______________________________	By:______________________________
City Clerk	
	Its: City Manager
ATTEST:	**[*FHR-ILLINOIS, LLC*]** a [*Delaware limited liability company*]
By:______________________________	By:______________________________
Its:______________________________	Its:______________________________
ATTEST:	**[TRANSFEREE]**
By:______________________________	By:______________________________
Its:______________________________	Its:______________________________

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ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on _____________, 20__, by ________________, the Mayor of the **CITY OF WAUKEGAN**, an Illinois home rule municipal corporation, and by ________________, the City Clerk of said municipal corporation.

____
Signature of Notary

SEAL

SUBMITTED - 27086202 Carol Kolberer - 4/2/2024 2:54 PM

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on __________, 20__, by ______________ the __________ of **[*FHR-ILLINOIS LLC*]**, a [*Delaware limited liability company*], and by ____________, the ______________ of said [*limited liability company*].

____
Signature of Notary

SEAL

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on __________, 20_, by ______________ the __________ of **[TRANSFEREE]**, and by ______________, the ________________ of **[TRANSFEREE]**.

____
Signature of Notary

SEAL

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EXHIBIT K

INSURANCE REQUIREMENTS

Developer shall, and shall cause its successors, assigns, contractors and subcontractors, (collectively, the "***Developer Parties***"), as applicable, to provide, pay for, and maintain in full force and effect the types and amounts of insurance coverage set forth in this Exhibit K, with insurance companies duly licensed and admitted to do business in the State of Illinois, and having a Best's Rating of A- or better and a Best's financial size category of "Class IX" or larger. All forms of insurance are subject to the approval of City, which approval shall not be unreasonably withheld.

Developer shall require all Developer Parties to maintain and provide evidence of similar coverage as stated herein unless otherwise approved by the City.

Each insurance policy required to be obtained and maintained by Developer in accordance with this Agreement shall unconditionally provide that such policy shall not subject to cancellation or non-renewal except after at least thirty (30) days' prior written notice to the City.

Section I. Minimum Insurance Requirements

The insurance policies which Developer and the Developer Parties involved in the development, construction, maintenance, and operation of the Project shall obtain and maintain in full force and effect pursuant to this Agreement shall include the following:

A. Workmen's compensation insurance, in not less than the minimum statutory limits, covering all persons engaged in developing, constructing, or operating the Project on the Development Property;

B. Employer's liability insurance, in not less than the following amounts, covering all persons engaged in developing, constructing, or operating the Project on the Development Property:

Bodily Injury by Accident	$1,000,000 Each Accident
Bodily Injury by Disease	$1,000,000 Policy Limit
Bodily Injury by Disease	$1,000,000 each Employee

C. [RESERVED];

D. Commercial general liability insurance, written on an occurrence basis, including premises and operations coverage, products and completed operations, coverage for independent contractors, personal injury coverage and blanket contractual liability (and not excluding explosion, collapse or underground hazard), which commercial general liability insurance shall be maintained in effect by Developer and the Developer Parties (as applicable) for the greater of five (5) years after the expiration of this Agreement or the limit imposed by the applicable statute of limitations, whichever occurs first, the form of which policy shall be the then most current Insurance Services Office Commercial General Liability Coverage Form No. CG0001, or its equivalent, with the following minimum limits:

Each Occurrence	$5,000,000

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Personal & Advertising Injury	$5,000,000
General Aggregate	$10,000,000

The above limits of liability may be met by the combination of both primary and excess/umbrella insurance.

E. Commercial automobile liability insurance for all owned, non-owned, hired or leased vehicles, with limits of not less than $1,000,000 combined single limit for bodily injury and property damage, which coverage must include all automotive and truck equipment used in developing, constructing, or operating the Project on the Development Property, and which coverage must include the loading and unloading of same; and if hazardous waste/materials (or materials that would be considered as "pollutants" as defined by the commercial auto policy form's pollutant exclusion) are being transported to or from the Development Property, (CA9948 or its equivalent) must be included in the Developer's and the Developer Parties' (as applicable) automobile liability policies are on a primary basis with $4,000,000 limits of liability per accident;

The above limits of liability may be met by the combination of both primary and excess/umbrella insurance.

Section II. Other Policy Provisions

A. Waiver of Subrogation:

To the fullest extent permitted by law, Developer hereby waives all rights of recovery, whether under subrogation or otherwise, because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, against the City. Developer shall also require that all insurance policies secured by any of the Developer Parties include clauses providing that each insurance underwriter shall waive all of its rights of recovery by subrogation, or otherwise, against the City. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

B. Additional Insured:

The City of Waukegan (and such other persons or entities as may hereafter be reasonably requested by the City) shall be named as an additional insured party on the commercial general liability policy, and the commercial automobile liability insurance policy required to be obtained and maintained by Developer in accordance with this Agreement. Coverage afforded to the additional insured shall apply on a primary basis.

In the event Developer or any of the Developer Parties maintains limits greater than set forth herein, the City shall be included therein as an additional insured to the fullest extent of all such insurance in accordance with all terms and provisions herein.

A copy of such additional insured coverage part/endorsement MUST be attached to the certificate of insurance and shall specifically list all additionally insured parties.

Section III. Other Insurance Provisions

1. The insurance provisions set forth in this Exhibit K in no way affect the liability of Developer or any of the Developer Parties as may be stated elsewhere in this Agreement.

2. In the event, Developer fails to maintain the coverages or limits as required herein, then City may, if Developer fails to do so within 10 days after notice to Developer, affect such insurance as an agent of Developer (as to Developer, but not as to any Developer Parties). Any premiums paid by the City to affect such coverages, together with interest thereon from the date paid by the City until the date paid by Developer shall be payable to the City by Developer.

3. Except as otherwise provided, it is expressly agreed and understood that the cost of premiums for insurance required to be maintained by Developer and the Developer Parties in accordance with the terms of this Agreement shall be at their own expense.

4. It is hereby understood that any insurance required to be provided by Developer and the Developer Parties shall be primary insurance, and shall not be considered contributory insurance with any insurance policies of the City or any of the other additional insureds.

5. Any and all deductibles and/or self-insured retentions in the above-described insurance policies shall be assumed by, for the account of and at the Developer's and the Developer Parties' sole risk and expense, as the case may be.

6. Any deficiency in the coverage or policy limits of the insurance required to be maintained by Developer and the Developer Parties in accordance with this Agreement will be the sole responsibility of Developer and the Developer Parties.

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EXHIBIT L

FORM OF ESTOPPEL CERTIFICATE

[DATE]
[Name of Financial Institution] ("***Addressee***")
[Address of Financial Institution]
Attn:

Re: Development and Host Community Agreement between the City of Waukegan, Illinois and FHR-Illinois LLC, a Delaware limited liability company (the "***Developer***"), dated ________________, 2022 ("***Agreement***")

To Whom it May Concern:

The undersigned, the City of Waukegan, Illinois, a home rule 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:

1. Attached hereto as Exhibit 1 is a true, accurate, and complete copy of the Agreement. The Agreement has not been amended except as set forth in Exhibit 1.

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]. To undersigned's actual knowledge, Developer is not in default under the Agreement and no Event of Default (as defined in the Agreement) exists.

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 on {INSERT DATE}/has not occurred].

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 WAUKEGAN, ILLINOIS,
a home rule municipal corporation

By:________________________________
Its: [Mayor or Corporation Counsel]

SUBMITTED - 27086202 Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT M

[RESERVED]

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT N

FORM OF CLOSING CERTIFICATE

Pursuant to Section 3.3 of that certain Development and Host Community Agreement dated as of _____________, 2022 (the "***Agreement***"), by and among the City of Waukegan, Illinois ("***City***") and FHR-Illinois, a Delaware 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 Delaware Division of Corporations, 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 Delaware Division of Corporations 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: _______, 2022

FHR-ILLINOIS LLC, a Delaware limited liability company

By: ______________________________

Its: ______________________________

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT O

FORM OF RELEASE

THIS RELEASE ("***Release***") is made as of this ________ day of ____________ 20___, by FHR-Illinois LLC, a Delaware limited liability company (the "***Releasor***"), having its office located at _to and for the benefit of the City of Waukegan, Illinois, a home rule municipal corporation (the "***City***").

RECITALS

A. Releasor and the City have executed that certain Development and Host Community Agreement dated ________________, 2022, 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 Mayor, City Council, all departments, agencies and commissions thereof; (ii) Elrod Friedman LLP, its Corporation Counsel; and (iii) 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 submitted pursuant to the City's RFP/Q process; (ii) negotiation of the Agreement between the City and the Releasor; or (iii) any matters pending or coming before the IGB (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.

3. Releasor hereby represents and warrants that:

(a) it is duly organized, validly existing and in good standing under the

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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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

venue of all legal actions and procedures of any nature whatsoever which relate in any way to this Release shall be filed in the 19th Judicial Circuit Court of Lake 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 relating to this Release and such service shall be made as provided by the laws of the State for service upon a non-resident.

Dated as of: ________, 2022

FHR-ILLINOIS LLC, a Delaware limited liability company

By: ____________________________

Its: ____________________________

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

E-FILED
Transaction ID: 1-22-0883
File Date: 6/27/2023 8:34 AM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-22-0883

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellant, vs. 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, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois Chancery Division Circuit Court No. 21 CH 05784 Presiding Judge: Cecilia A. Horan Date of Appeal: June 10, 2022 Date of Judgment: May 13, 2022

CITY OF WAUKEGAN'S MOTION TO DISMISS THE APPEAL AS MOOT

The City of Waukegan moves to dismiss this appeal as moot, pursuant to Supreme Court Rule 361(h). This appeal is moot because Waukegan Potawatomi Casino's lawsuit sought one form of relief: an injunction blocking the Illinois Gaming Board from issuing a formal license to Full House Resorts to operate the casino in Waukegan. This Court can no longer order that relief. On June 15, 2023, the Illinois Gaming Board issued a casino license to FHR-Illinois LLC[1] to operate its American Place casino in the City of Waukegan.

[1] Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the subsidiary company operating the Waukegan casino under the name American Place. *See* Certification of Charles N. Insler at ¶6. On January 27, 2022, the Gaming Board approved Full House Resorts' request to amend its application, so that

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STATEMENT OF FACTS[2]

This Lawsuit and the Quest for Injunctive Relief

On November 15, 2021, the Gaming Board posted its agenda for a special meeting on November 18, 2021. C21 at ¶44. The Gaming Board's agenda included "Consideration of Matters Related to the Pending Applications for the Owners License to Be Located in Waukegan," and "Determination of Preliminary Suitability." C1296. The very next day, Plaintiff Waukegan Potawatomi Casino, LLC ("WPC") filed this lawsuit against the Gaming Board, the members of the Gaming Board, and the City of Waukegan. A202-A1488; C11-C1297.

WPC's Complaint contained a single claim for Declaratory and Injunctive Relief under the Illinois Gambling Act. A213-A214 at ¶¶48-54; C22-C23 at ¶¶48-54. In particular, WPC's lawsuit sought to enjoin the Gaming Board from "taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability" until the City of Waukegan had satisfied the requirements of the Illinois Gambling Act. A214; C23. WPC sought this injunctive relief because it believed that the City of Waukegan had "failed to satisfy the statutory prerequisites for the Gaming Board to consider issuing an owner's license for a casino in Waukegan." A213 at ¶49; C22 at ¶49. This alleged failure, according to WPC, meant the Gaming Board lacked the 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. A213 at ¶50; C22 at ¶50.

Alongside its Complaint, WPC filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction. C1298-C1321. WPC's motion sought to enjoin the Gaming

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its application was on behalf of FHR-Illinois, LLC, instead of Full House Resorts, Inc. *Id.* The brief refers to the two entities, collectively, as "Full House."

[2] The City of Waukegan is only providing those facts necessary for ruling on the current motion. A more complete factual statement can be found in its response brief.

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Board from "taking formal steps toward issuance of license to operate a casino in Waukegan, Illinois, including by issuing a finding of preliminary suitability." C1304. On December 7, 2021, the Circuit Court for Cook County denied WPC's request for a temporary restraining order. A200-A201. WPC petitioned this Court to review the denial of injunctive relief, C1400-C1402, but this Court declined to review the Circuit Court's decision. *See Waukegan Potawatomi Casino, LLC v. The Illinois Gaming Board et al.*, No. 1-21-1561 (1st Dist. Dec. 16, 2021) (Smith, J., Lavin, J., Cobbs, J.).

The Circuit Court Grants the Motion to Dismiss

Back before the Circuit Court, the City of Waukegan (and the Gaming Board) moved to dismiss the Complaint. C1403-C1507; C1510-C1518. On May 13, 2022, the Circuit Court held a hearing and granted the Defendants' respective motions to dismiss, finding WPC lacked standing to proceed with its lawsuit. A33-A35. In particular, the Circuit Court found that even if WPC was granted the relief it was requesting, WPC would not actually receive the relief it wanted. A34. On May 31, 2022, the Circuit Court entered its Order, dismissing the Complaint with prejudice. A4. This appeal followed. A45-A46.

The Gaming Board Issues a Formal License to Full House To Operate the Waukegan Casino

On December 8, 2021, the Gaming Board took formal steps towards issuing a casino license for the City of Waukegan, and made a finding of preliminary suitability in favor of Full House Resorts, Inc. *See* Brief of the City of Waukegan at 9-10. On February 16, 2023, the Gaming Board issued a temporary operating permit to Full House, allowing Full House to operate the temporary casino in Waukegan. *See* Certification of Charles N. Insler at ¶5. The casino opened to the public the following day.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

The license process is no longer at the preliminary stages. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners License to Full House to operate its City of Waukegan casino.[3] *See* Certification of Charles N. Insler at ¶¶7-11; *see also* Illinois Gaming Board, Board Meeting of June 15, 2023 at 1:05:00 to 1:06:30, available here.[4]

LEGAL ARGUMENT

A. Illinois Law Requires a Case with an Actual Controversy

A case with an actual controversy is an essential requisite to appellate jurisdiction. *Davis v. City of Country Club Hills*, 2013 IL App (1st) 123634, ¶10. The appellate courts do not generally decide abstract, hypothetical, or moot questions. *Id.* "A case on appeal becomes moot where the issues presented in the trial court no longer exist" because subsequent events have made it impossible for the appellate court to grant the complaining party effective relief. *Id.* This is true even if the mooting events happened while the appeal was pending. *Id.*

B. This Appeal Is Moot Because this Court Can No Longer Grant WPC the Effective Relief It Seeks

On November 16, 2021, WPC filed this lawsuit against the City of Waukegan, the Gaming Board, and the members of the Gaming Board. C11-C1297. WPC's Verified Complaint for Declaratory and Injunctive Relief asserted a single claim for relief – a claim for declaratory and injunctive relief under the Illinois Gambling Act. C22-C23. WPC sought a declaration that the City of Waukegan had failed to satisfy the requirements for the Gaming Board to consider issuing a license to operate a casino in Waukegan, Illinois and a declaration that the Gaming Board lacks the authority to consider issuing a license to operate a Waukegan casino. C22-C23. Finally, WPC

[3] The Gaming Board also granted FHR-Illinois LLC a Master Sports Wagering License, permitting Full House to offer sports betting at its Waukegan casino. *See* Certification of Charles N. Insler at ¶8.
[4] The full link is available here:
https://www.igb.illinois.gov/ViewMeetingVideo.aspx?BoardDate=6/15/2023%2012:00:00%20AM

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

sought injunctive relief "enjoining the Gaming Board from taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability. . ." C23. WPC's complaint did not request any form of monetary relief. *See* C22-C23.

When WPC sought injunctive relief in the Circuit Court, it sought an injunction "enjoining the Illinois Gaming Board from taking formal steps toward issuance of a license to operate a casino in Waukegan, Illinois, including by issuing a finding of preliminary suitability." C1298; *see also* C1304.

This Court can no longer grant WPC the effective relief that it seeks. On December 8, 2021, the Gaming Board made a finding of preliminary suitability in favor of Full House Resorts, Inc. *See* Brief of the City of Waukegan at 9-10. On February 16, 2023, the Gaming Board issued a temporary operating permit to Full House, allowing Full House to operate the temporary casino. *See* Certification of Charles N. Insler at ¶5. And, most recently, on June 15, 2023, the Gaming Board issued a Casino Owners License to Full House to operate its City of Waukegan casino. *See* Certification of Charles N. Insler at ¶¶7-11. The Gaming Board's website reflects Full House's status as a licensed owner:

FHR-Illinois LLC (Licensed) Hide Details
d/b/a The Temporary by American Place
600 Lakehurst Road
Waukegan, IL 60085
License Status: Licensed - 6/15/2023

See Certification of Charles N. Insler at ¶11 (Exhibit C); *see also* Illinois Gaming Board, Owners Applicants & Licensees, available at https://www.igb.illinois.gov/CasinoLists.aspx. The Gaming Board's license also reflects Full House's status as a licensed owner. *See* Certification of Charles N. Insler at ¶9 (Exhibit A). This Court is now powerless to enjoin the Gaming Board from issuing a Waukegan casino license or to declare that the Gaming Board lacks the authority to issue a

Waukegan casino license, that license now having issued. This appeal should be dismissed because this Court cannot grant WPC the effective relief sought by its complaint.

C. WPC's Own Briefing Concedes the Case is Now Moot

The City of Waukegan raised the issue of mootness before the Circuit Court. *See* C1410-1411, C1543-1544; *see also* Plaintiff-Appellant Waukegan Potawatomi Casino, LLC's Brief on Appeal ("WPC Opening Brief") at 38. Anticipating this same mootness argument on appeal, WPC declared that the appeal was not moot precisely because the Gaming Board had not yet issued the owner's license: "Clearly, until the Gaming Board has issued a Waukegan casino license, it is *possible* to grant effectual relief. There is nothing in the record to suggest that this eventuality has occurred or will occur for some time." WPC Opening Brief at 38. WPC reprised these arguments in its reply brief, arguing that because "no Waukegan casino license has even issued, effectual relief is far from impossible." Plaintiff-Appellant Waukegan Potawatomi Casino, LLC's Reply Brief ("WPC Reply Brief") at 18.

The only eventuality, as argued by WPC, that was keeping the mootness issue at bay has now happened. The Gaming Board has now issued a final Waukegan casino license to Full House. WPC's own arguments on appeal effectively concede this case is now moot.

D. WPC's Interpretation of §3000.230 Was Wrong

Section 3000.230 of the Illinois Administrative Code governs the issuance of a casino owner's license by the Gaming Board. Ill. Admin. Code tit. 86, §3000.230. In arguing against mootness, WPC stated that the Gaming Board would not soon be issuing an owner's license because under "the Board's regulations, no license may issue until the permanent casino has been constructed and the Board has assessed its operations." WPC Reply Brief at 18 (citing 86 Ill.

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Admin. Code §3000.230(a), (f)(1); *see also* WPC Opening Brief at 11 n.2, 39-40 (arguing the same thing). WPC's interpretation of §3000.230 was wrong.

Nothing in §3000.230 of the Administrative Code speaks to a permanent or temporary casino. Instead, §3000.230 speaks of the following "procedures prior to licensure: 1) Investigation of the applicant and application; 2) Finding of preliminary suitability; 3) Assessment of the Riverboat Gaming Operation; 4) Final practice Gaming session; 5) Action of the Board and 6) Different or additional licensing procedures as required of an applicant by the Board. Ill. Admin. Code tit. 86, §3000.230(a). During the June 15, 2023 Board Meeting, Gaming Board Administrator Fruchter discussed each of these procedures, and noted how Full House Resorts had satisfied the regulatory requirements. *See* Illinois Gaming Board, Board Meeting of June 15, 2023, at 40:30 to 42:20, available here (discussing the Rule 230 requirements). The Gaming Board's decision to issue the license shows how WPC's interpretation of §3000.230 was erroneous.

E. This Court Should Dismiss the Appeal in Its Entirety

WPC's complaint seeks only injunctive and declaratory relief; there is no claim for monetary damages. C22-C23. The mootness issue is, therefore, dispositive of the entire appeal. *See* Illinois Rule 361(h)(3)(c).

F. WPC Retains its Federal Court Damages Case

Dismissing this appeal would not leave WPC without a remedy. As its own complaint notes, WPC 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." C12. WPC's federal lawsuit remains pending and a dismissal in this case will not impact WPC's federal case for damages.

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CONCLUSION

This Court should dismiss the appeal as moot pursuant to Illinois Rule 361(h), the Gaming Board having now issued Full House an owners license. Further proceedings, including oral argument, will only impose unnecessary additional costs on the parties and consume the time and resources of the Court.

/s/ Charles N. Insler
Glenn E. Davis
Charles N. Insler
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glenn.davis@heplerbroom.com
charles.insler@heplerbroom.com

Counsel for City of Waukegan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was e-filed with the Court via Odyssey eFileIL and served via e-mail on June 27, 2023, to the following attorneys of record:

Dylan Smith
Martin Syvertsen
Jill Anderson
FREEBORN & PETERS LLP
311 S. Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 360-6000
mkelly@freeborn.com
msyvertsen@freeborn.com
janderson@freeborn.com

Attorneys for Plaintiff-Appellant Waukegan Potawatomi Casino LLC

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 Certificate of Service are true and correct.

/s/ Charles N. Insler

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

No. 1-22-0883

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellant, vs. 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, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois Chancery Division Circuit Court No. 21 CH 05784 Presiding Judge: Cecilia A. Horan Date of Appeal: June 10, 20222 Date of Judgment: May 13, 2022

ORDER

Defendant-Appellee The City of Waukegan has filed a Motion to dismiss this appeal as moot, pursuant to Supreme Court Rule 361(h). The Court hereby ALLOWS / DENIES the motion.

ENTERED: ________________

____
Judge

____
Judge

____
Judge

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

No. 1-22-0883

**IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

WAUKEGAN POTAWATOMI CASINO LLC, an Illinois limited liability company, Plaintiff-Appellant, vs. 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, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois Chancery Division Circuit Court No. 21 CH 05784 Presiding Judge: Cecilia A. Horan Date of Appeal: June 10, 2022 Date of Judgment: May 13, 2022

CERTIFICATION OF CHARLES N. INSLER

Charles N. Insler certifies as follows:

1. My name is Charles N. Insler. I am over the age of twenty-one (21) and under no legal disability.

2. I have personal knowledge of the facts in this §1-109 certification.

3. This certification is given in support of Defendant-Appellee City of Waukegan's Motion to Dismiss the Appeal as Moot.

4. I am an attorney with the law firm of HeplerBroom LLC, licensed to practice in Illinois. I am one of the attorneys for the City of Waukegan.

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5. On February 16, 2023, the Gaming Board issued a temporary operating permit to FHR-Illinois LLC, d/b/a American Place, allowing American Place to operate the temporary casino. *See* Statement of Administrator Marcus Fruchter, Illinois Gaming Board, Board Meeting of June 15, 2023, at 41:20 to 41:55, available here.[1]

6. Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the company operating the Waukegan casino under the name American Place. *See* Statement of Paul Jensen, Illinois Gaming Board, Board Meeting of June 15, 2023, at 43:30 to 43:40, available here. On January 27, 2022, the Gaming Board approved Full House Resorts' request to amend its application, so that its application was on behalf of FHR-Illinois, LLC, and no longer Full House Resorts, Inc. *See* Illinois Gaming Board, Open Session Minutes of January 27, 2022, attached as Exhibit E at 3. All of the Gaming Board's prior actions, approvals, and findings (including the finding of preliminary suitability) transferred to FHR-Illinois LLC. *Id.*

7. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners License to FHR-Illinois LLC to operate its City of Waukegan casino. *See* Illinois Gaming Board, Board Meeting of June 15, 2023, at 1:05:00 to 1:06:30, available here.

8. The Gaming Board also granted FHR-Illinois LLC a Master Sports Wagering License, permitting Full House to offer sports betting at its Waukegan casino. *See* Exhibit B.

9. A true and correct copy of the Owners License issued by the Gaming Board is attached as Exhibit A.

10. A true and correct copy of the June 15, 2023, Press Release from the Gaming Board is attached as Exhibit B.

11. A true and correct copy of the Gaming Board's website, designating Full House

[1] The full cite is: https://www.igb.illinois.gov/ViewMeetingVideo.aspx?BoardDate=6/15/2023%2012:00:00%20AM

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Resorts' subsidiary, FHR-Illinois LLC, as licensed as of June 15, 2023, is attached as Exhibit C.

12. A true and correct copy of the Gaming Board's agenda for June 15, 2023, is attached as Exhibit D.

13. A true and correct copy of the Gaming Board's Open Session Minutes from January 27, 2022, is attached as Exhibit E.

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.

Charles N. Insler

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT A

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

State of Illinois
Illinois Gaming Board

FHR-Illinois LLC d/b/a American Place

Having exhibited to the Members of the Illinois Gaming Board the qualifications for licensure established in the Illinois Gambling Act, we do therefore hereby authorize and license the above to own and operate a casino gambling operation in this State.

Witnessed this 15th day of June, 2023 and expiring in June of 2027

______________, Board Member ______________, Board Member

______________, Board Member ______________, Board Member

Illinois Gaming Board ______________, **Chairman**

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT B

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2021 2:54 PM

ILLINOIS GAMING BOARD

JB Pritzker • *Governor* Charles Schmadeke • *Chairman* Marcus D. Fruchter • *Administrator*

Press release

June 15, 2023
For More Information Contact:
Joe Miller-217-670-9138
joe.miller@illinois.gov

Illinois Gaming Board Finds Chicago Casino Applicant Preliminarily Suitable

Issues Casino and Sports Wagering Licenses to Waukegan Casino, Renews Quad Cities Casino License, and Approves Extensions for Operations at Rockford and Waukegan Temporary Casino Facilities

The Illinois Gaming Board (the "IGB" or "Board") found Chicago casino license applicant Bally's Chicago Operating Company, LLC ("Bally's Chicago") preliminarily suitable at its June 15 public meeting, meaning Bally's can continue preparing its site for gaming and hiring the employees necessary to operate a casino. The Board also awarded casino and sports wagering licenses to the American Place Casino in Waukegan, approved 12-month extensions for temporary casino operations in Waukegan and Rockford, and renewed the license of Bally's Quad Cities Casino and Hotel for another 4-year term during its regularly scheduled meeting today.

"The Board's determination of preliminary suitability for Bally's Chicago Casino is a significant, but not final, step in the regulatory process to open a casino in the City of Chicago," said IGB Administrator Marcus D. Fruchter. "The IGB will continue to work with Bally's Chicago and other stakeholders to complete the remaining statutory requirements in an efficient, ethical and compliant manner."

Preliminary suitability allows an applicant to undertake and complete certain required tasks that will culminate in a pre-opening audit, a practice gaming session, and potential issuance of a temporary operating permit. The casino may open to the public when the next step is achieved: a temporary operating permit allows the holder to open its casino for gambling at either a temporary or permanent facility in advance of licensure. The matters to be assessed prior to commencement of gaming are found under Section (e) of Casino Rule 230.

At the board meeting, the IGB:

- Granted preliminary suitability for Bally's Chicago Operating Company, LLC under Casino Rule 230(d). Actual operation of temporary and permanent casino facilities is subject to future IGB regulatory approvals at the appropriate time after construction is completed;

- Granted FHR-Illinois LLC d/b/a American Place ("FHR"), a Casino Owners License and a Master Sports Wagering License;

- Approved a one-year extension for FHR to operate The Temporary by American Place Casino in Waukegan while it constructs its permanent casino facility. With the extension, FHR may operate its temporary casino facility for a total of three years from the date the temporary casino opened until February 17, 2026;

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- Approved a one-year extension for 815 Entertainment, LLC d/b/a Hard Rock Rockford Casino ("HRCR") to operate the Rockford Casino – A Hard Rock Opening Act while it constructs its permanent casino facility for a total of three years from the date the temporary casino opened until November 10, 2024;

- Approved the renewal of a four-year Casino Owners License for Bally's Quad Cities Casino & Hotel. The casino, which is in Rock Island, began operating in 1992;

- Approved a settlement with Accel Entertainment Gaming, LLC to fully resolve a pending 2020 disciplinary complaint. Under the terms of the settlement, Accel acknowledged that its conduct underlying the disciplinary complaint did not meet the IGB's standards and expectations for licensed video gaming terminal operators; agreed to pay a $1 million fine, plus an additional $125,000 to reimburse the IGB's administrative and investigative costs associated with the disciplinary complaint for a total payment of $1.125M; and committed to enhanced compliance training, monitoring and reporting requirements;

- Granted more than 460 new gaming licenses and related approvals for casino gambling, video gaming and sports wagering along with renewal of existing licenses;

  For video gaming, the IGB approved licenses for:
  - 1 video gaming terminal operators
  - 95 video gaming locations
  - 40 terminal handlers and one technician

  The IGB denied licenses for:
  - 4 locations and 2 terminal handlers

  For casinos, the IGB approved licenses for:
  - 6 level 1 casino occupational licenses
  - 130 level 2 casino occupational licenses
  - 108 level 3 casino occupational licenses

  For sports wagering, the IGB approved licenses for:
  - 66 level 2 sports wagering occupational licenses
  - 5 key persons
  - 1 Master sports wagering license

Illinois is home to 13 casinos, more than 8,300 licensed video gaming establishments and ten sportsbooks. Casino gambling, video gaming and sports wagering generated more than $1.4 billion in tax revenue to the state and local communities in calendar year 2022.

The IGB serves as the state regulatory and law enforcement agency, overseeing all licensed casino gambling, video gaming and sports wagering to ensure the integrity and safety of gambling while generating revenue for the state and gaming host communities.

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EXHIBIT C

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Illinois Gaming Board

JB Pritzker • *Governor* Charles Schmadeke • *Chairman* Marcus D. Fruchter • *Administrator*

Illinois Gaming Board
Casino Gambling
Video Gaming
Applicable Law & Standards
Monthly Reports
Applications & Forms
Lists of Applicants & Licensees
Disclosure Statements
Municipalities Prohibiting Video Gaming
Disciplinary Complaints
Rule 320 Petitions
Frequently Asked Questions (FAQ)
Sports Wagering
Help for Problem Gamblers
Contact Us

Owners Applicants & Licensees

Show All

815 Entertainment, LLC (Licensed) Show Details

Alton Casino, LLC (Licensed) Show Details

Bally's Chicago Operating Company, LLC (Preliminarily Suitable) Show Details

Casino Queen, Inc. (Licensed) Show Details

Danville Development, LLC (Temporary Operating Permit) Hide Details
d/b/a Golden Nugget Danville
204 Eastgate Drive
Danville, IL 61834
License Status: Temporary Operating Permit - 5/26/2023

Des Plaines Development Limited Partnership (Licensed) Show Details

Elgin Riverboat Resort (Licensed) Show Details

FHR-Illinois LLC (Licensed) Hide Details
d/b/a The Temporary by American Place
600 Lakehurst Road
Waukegan, IL 60085
License Status: Licensed - 6/15/2023

HC Aurora, LLC (Licensed) Show Details

HC Joliet, LLC (Licensed) Hide Details
d/b/a Hollywood Casino Joliet
777 Hollywood Blvd.
Joliet, IL 60436
License Status: Licensed - 7/9/1992

Midwest Gaming & Entertainment, LLC (Licensed) Show Details

Par-A-Dice Gaming Corporation (Licensed) Show Details

Southern Illinois Riverboat/Casino Cruises LLC (Licensed) Show Details

The Rock Island Boatworks, LLC (Licensed) Show Details

Walker's Bluff Casino Resort, LLC (Preliminarily Suitable) Show Details

Wind Creek IL LLC (Preliminarily Suitable) Show Details

Organization Gaming Applicants & Licensees

Show All

Fairmount Park, Inc. (Preliminarily Suitable) Show Details

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Hawthorne Race Course, Inc. (Preliminarily Suitable) Show Details

Supplier Applicants & Licensees

Show All

Acres Manufacturing Company (Pending) Show Details

Advantage Promotional Systems, Inc. (Licensed) Show Details

AGS, LLC (Licensed) Show Details

Ainsworth Game Technology, Inc. (Licensed) Show Details

Ainsworth Game Technology, Ltd. (Licensed) Show Details

Aristocrat Technologies, Inc. (Licensed) Show Details

BACHIL001 LLC (Pending) Show Details

Carey Heirs Properties, LLC (Pending) Show Details

Casinomoney, Inc. (Licensed) Show Details

Data Financial, Inc. (Licensed) Show Details

Ditronics Financial Services LLC (Licensed) Show Details

Everi Games, Inc. (formerly Multimedia Games, Inc.) (Licensed) Show Details

Everi Payments Inc. (formerly Global Cash Access, Inc.) (Licensed) Show Details

First American Bankcard, Inc. (Pending) Show Details

Galaxy Gaming, Inc. (Pending) Show Details

Gaming Partners International USA, Inc. (aka: Paul-Son Gaming Supplies, Inc.) (Licensed) Show Details

Genesis Gaming Solutions, Inc. (Licensed) Show Details

Global Payments Gaming Services, Inc. (Licensed) Show Details

GLP Capital, L.P. (Licensed) Show Details

HR Rockford, LLC (Licensed) Show Details

IGT (Licensed) Show Details

Incredible Technologies, Inc. (Licensed) Show Details

Interblock USA L. C. (Licensed) Show Details

International Hole-In-One Association (Licensed) Show Details

JCM American Corporation (Licensed) Show Details

Kehl Management-Williamson County, LLC (Pending) Show Details

Konami Gaming, Inc. (Licensed) Show Details

Landry Holdings, LLC (Licensed) Show Details

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LNW Gaming, Inc. d/b/a Light & Wonder (Licensed) Show Details

Medinah Building LLC (Licensed) Show Details

Medinah Holdings, LLC (Licensed) Show Details

Midwest Game Supply Company (Licensed) Show Details

Novomatic Americas Sales LLC (Licensed) Show Details

NRT Technology Corporation (Licensed) Show Details

Passport Technology USA, Inc. (Pending) Show Details

Patriot Gaming & Electronics, Inc. (Licensed) Show Details

Seminole Hard Rock Support Services, LLC (Pending) Show Details

SUZOHAPP Gaming Solutions, LLC. (formerly Happ Controls, Inc.) (Licensed) Show Details

The United States Playing Card Company (Licensed) Show Details

VEMCO LLC (Pending) Show Details

VICI Properties 1, LLC (Licensed) Show Details

Pending applicants are NOT allowed to sell gaming equipment to Illinois casinos.

Proud member of the:

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EXHIBIT D

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

Notice of Illinois Gaming Board Meeting
Regular Board Meeting

The Illinois Gaming Board will convene a regular meeting of the Board in Open Session on Thursday, June 15, 2023 at 9:00 A.M. The Board will immediately retire to Closed Executive Session. The Board will reconvene its regular meeting in Open Session following the Closed Executive Session. The Board will be present in person to hold the meeting at 160 N LaSalle, Fifth Floor Auditorium, Chicago, Illinois, and through electronic means. **The meeting will be accessible on the morning of June 15, 2023 in person and via livestream at:** https://multimedia.illinois.gov/igb/igb-live.html

The subject matters to be discussed are included on the attached proposed Regular Board Meeting Agenda. Please note that the Board Meeting Agenda is typically posted no fewer than 48 hours prior to the scheduled meeting date.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

ILLINOIS GAMING BOARD
JB Pritzker • *Governor* Charles Schmadeke • *Chairman* Marcus Fruchter • *Administrator*

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

Illinois Gaming Board
Regular Board Meeting Agenda

Thursday, June 15, 2023

I. **Open Session**
   a. Call to Order
   b. Roll Call
   c. Motion to Enter into Closed Session

II. **Closed Session**
   a. Review of Closed Session Minutes
   b. Employment and Performance of a Specific Employee
   c. Discussion of Evidence Received per the Board's Adjudicatory Authority
   d. Litigation
   e. Discussion of Privileged, Proprietary, Confidential and/or Information Related to Trade Secrets, Including Information Related to Pending Applications
   f. Motion to Adjourn Closed Session and Reconvene Open Session

III. **Open Session**
   a. Review of Board Minutes:
      i. Consideration of the minutes of the Regular Board Meeting of Thursday, April 27, 2023
      ii. Amendments to the Board's Open Session Minutes for Its November 2017 and January 2018 Meetings
      iii. Consideration and Review of Closed Session Minutes for Dissemination
   b. Board Member Comments
   c. Administrator's Report
   d. Public Commentary
      i. Kevin McGourty
      ii. Jeff Heimerdinger, President, Lucky Lincoln, LLC
      iii. John Bosca
      iv. Kevin Olson

IV. **Casino**
   a. Owners Licensee Items:
      i. Request for Final Consideration of Owners License
         1. FHR-Illinois LLC d/b/a American Place
      ii. Request to Extend Operations at Temporary Casino Facility
         1. FHR-Illinois LLC d/b/a American Place
         2. 815 Entertainment, LLC d/b/a Hard Rock Casino Rockford

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

iii. Request for Final Consideration of Owners License Renewal
1. The Rock Island Boatworks, LLC d/b/a Bally's Quad Cities Casino & Hotel

iv. Determination of Preliminary Suitability
1. Bally's Chicago Operating Company, LLC

v. Key Person Approvals
1. John Nicholas Ferrucci – FHR-Illinois LLC d/b/a American Place – Sr. Vice President & Chief Operating Officer
2. Maria Elena Jonas – FHR-Illinois LLC d/b/a American Place
3. Dora Maya – FHR-Illinois LLC d/b/a American Place
4. Maria Carmen Patlan – FHR-Illinois LLC d/b/a American Place
5. Ajoyi Stackhouse – FHR-Illinois LLC d/b/a American Place
6. George Papanier – The Rock Island Boatworks, LLC d/b/a Bally's Quad Cities Casino & Hotel – Chief Executive Officer

b. Occupational Licensee Items:

i. Level 1 Approvals
1. Robin Corbeil – Casino Queen, Inc. d/b/a Draftkings at Casino Queen – Controller
2. Albert Crimm – FHR-Illinois LLC d/b/a American Place – Director of Support Operations
3. Nathan Matthew Kirby – FHR-Illinois LLC d/b/a American Place – Director of IT
4. Michael Hastey – Casino Queen, Inc. d/b/a Draftkings at Casino Queen – Sportsbook Supervisor
5. William Vermeulen II – FHR-Illinois LLC d/b/a American Place – Director of Slot Operations
6. Jesse Daniel Wright – FHR-Illinois LLC d/b/a American Place – Director of Surveillance
7. Derek Zelazny – The Rock Island Boatworks, LLC d/b/a Bally's Quad Cities Casino & Hotel – Information Technology Director

ii. Approvals and Denials of Level 2 & 3 Applicants

V. Sports Wagering

a. Initial Master Sports Wagering License:
i. FHR-Illinois LLC d/b/a American Place

b. Occupational Licensee Items:
i. Approvals and Denials of Level 2 & 3 Applicants

VI. Video Gaming

a. Terminal Operator Licenses:
i. Initial Licenses
1. Kings Entertainment LLC

b. Technicians & Terminal Handler Licenses:

A377

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

i. Approvals and Denials

c. Video Gaming Location Applicant Items:

i. Approvals and Denials

ii. Rescission Items

VII. Litigation

VIII. Motion to Adjourn

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

EXHIBIT E

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

ILLINOIS GAMING BOARD
JB Pritzker • *Governor* Charles Schmadeke • *Chairman* Marcus Fruchter • *Administrator*

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

Regular Meeting, Open Session Minutes
Illinois Gaming Board
Chicago, Illinois
January 27, 2022

The Illinois Gaming Board convened for a Regular Meeting on Thursday, January 27, 2022 at 9:00 A.M. On January 7, 2022, Governor JB Pritzker issued a statewide disaster proclamation in response to the COVID-19 pandemic. Pursuant to Section 7(e) of the Open Meetings Act, the Board determined it was not practical or prudent, nor was it feasible, to hold an in person meeting due to the ongoing COVID-19 pandemic. Therefore, the Board held the meeting through electronic means. The meeting was accessible on the morning of January 27, 2022, via livestream at: https://multimedia.illinois.gov/igb/igb-live.html.

A roll call was taken. The following Board members were present: Chairman Charles Schmadeke, Member Marc Bell, Member Anthony Garcia and Member Dionne Hayden. Four members of the Board being present, a quorum was satisfied.

At approximately 9:01 A.M., Member Bell moved that the Board go into closed session pursuant to Section 2(c), paragraphs (1), (4), (11), (21) and (36) of the Open Meetings Act and Section 6(d) of the Illinois Gambling Act to discuss items on the closed session agenda relating to the employment and performance of a specific employee, evidence received per the Board's adjudicatory authority, pending litigation, the review of closed session minutes of the Regular Board Meeting held on December 8, 2021 and to deliberate on decisions of the Illinois Gaming Board in which there is discussed personal, commercial, financial, or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; or information specifically exempted from the disclosure by federal or State law. Member Garcia seconded the motion. The Board approved the motion unanimously by voice vote. Thereafter, the Board held its closed session meeting through electronic means, the minutes of which are separately recorded. The Board's closed session meeting was not accessible via livestream at https://multimedia.illinois.gov/igb/igb-live.html.

At approximately 10:30 A.M., the Board reconvened its Regular Meeting of Thursday, January 27, 2022 pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq*. The meeting was held through electronic means and was accessible via livestream at: https://multimedia.illinois.gov/igb/igb-live.html.

Another roll call was taken. The following Board members were present: Chairman Charles Schmadeke, Member Marc Bell, Member Anthony Garcia and Member Dionne Hayden. Four members of the Board being present, a quorum was satisfied.

APPROVAL OF OPEN SESSION MINUTES

The Board voted unanimously to approve the open session minutes from its Regular Meeting held on December 8, 2022.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

BOARD MEMBER COMMENTS

None.

ADMINISTRATOR'S REPORT

Administrator Fruchter began his report by giving a brief update on casino expansion highlighting the significant progress that the Board has made in this area. The Administrator Fruchter noted that the new gaming measures signed into law in December 2021 include two long-time initiatives supported by the IGB; namely, the harmonization of gaming licensing for entities holding multiple licenses and the licensing of sales agents under the Video Gaming Act. Within the harmonization portion of the new law, the length of licenses for Terminal Handlers, Technicians and Establishments moves from one year to two years. The license term for all other licenses (e.g., Manufacturer, Distributor, Terminal Operator, etc.) moves from one year to four years. These license terms are consistent with similar licenses within the casino and sports wagering industries. Annual license fees will remain due on an annual basis regardless of the length of the license term. With respect to the licensing of sales agents, the Administrator stated that the new systems, processes and rule makings will be necessary for successful, effective, consistent and coordinated implementation of the law. He noted that the requirements and processes currently in place prior to the passage of the law in December, will remain in place until the Gaming Board is ready to implement this change. The Administrator further noted that the December 2021 legislation permits limited wagering on Illinois collegiate teams under a two year pilot program. Additionally, the bill provides a date certain for the sunset of in person registration for sports wagering account registration.

Administrator Fruchter informed the video gaming industry that the IGB will begin timely enforcement Video Gaming Rules 250(p) and 270(f). These rules require Terminal Operators and Establishments, respectively, to immediately remove VGTs that are out of service or otherwise inoperable for more than 72 hours. Given the dramatic increase in organized retail theft in Illinois and across the country, the IGB believes inoperable VGTs are a target for would-be thieves. The Administrator stated that his comments were made specifically to raise awareness within the industry about this important issue.

The Administrator mentioned that the IGB received public comments relating to the Request for Proposals for the Central Communication System. He noted that those comments are available for viewing on the IGB's website and that the IGB is taking them under advisement.

The Administrator reported that there are currently 7,924 licensed establishments operating approximately 42,349 VGTs. In November 2021, VGTs generated Net Terminal Income ("NTI") of $205,366,029, which resulted in $69,825,396 in tax revenue. The State received approximately $59.5 million, while municipalities received $10.2 million. Similarly, in December 2021, VGTs generated NTI of $216,806,326, yielding $73,714,202 in tax revenue. The State received approximately $62.8 million and municipalities earned $10.8 million. Administrator Fruchter further noted that casinos generated Adjusted Gross Receipts ("AGR") of $103,962,512 in November 2021, which resulted in State tax of $27,774,950 and local tax of $5,904,515. In December 2021, casinos had an AGR of $109,807,610, yielding State tax of approximately $29.9 million and local tax of $6.2 million. In November 2021, sports wagering earned the State $11,899,107 in tax revenues while Cook County received another $794,407. The sports wagering results for December were not available. For calendar year 2021, excluding sports wagering in December, total tax revenue generated from video gaming, casinos and sports wagering was $1,232,687,412 with the State earning $1,037,976,284 in tax revenue while local governments received $194,711,128.

PUBLIC COMMENTARY

The Board entertained comments from Attorney James P. Murphy, Clark Hill PLC.

CASINO

OWNERS LICENSEE ITEMS

- Request for Final Consideration of Owners License – 815 Entertainment, LLC d/b/a Hard Rock Casino Rockford

The Board voted unanimously to grant an Owners License to 815 Entertainment, LLC d/b/a Hard Rock Casino Rockford.

- Request to Amend Owners License Application – Full House Resorts, Inc. d/b/a American Place

The Board voted unanimously to approve Full House Resorts, Inc.'s request to amend the application, with the express conditions that FHR-Illinois, LLC shall assume all agreements, commitments, and obligations Full House Resorts, Inc. has with the City of Waukegan, the State of Illinois, or the IGB related to the Waukegan casino project.

The Board additionally voted unanimously to make any prior Board actions, determinations, and findings with respect to Full House Resorts, Inc. be applicable, binding, and transferable to FHR Illinois, LLC.

- Waiver of Illinois Gambling Act Section 6(d) for Section 7.12(c) Written Decision Waukegan applicant selection

The Board voted unanimously to deem it necessary to use and publicly disclose any such information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board in connection of its review of Waukegan casino owners license applications solely to the extent necessary to issue a written decision as required under Section 7.12(c) of the Act.

OCCUPATIONAL LICENSEE ITEMS

Level 2 and Level 3 License Applications – Approvals

The Board voted unanimously to adopt the staff's recommendation to approve 95 Level 2 and 138 Level 3 occupational license applicants.

Occupational License Renewals by the Administrator

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Level 1, 2, and 3 licenses of individuals who were licensed or renewed in January 2021 and who have properly updated their applications and complied with the requirements of the Illinois Gambling Act and the Board's Rules.

SUPPLIER LICENSEE ITEMS

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License Renewals

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Casino Supplier license of AGS, LLC for a period of four years, expiring in January 2026.

SPORTS WAGERING

MANAGEMENT SERVICES PROVIDER LICENSE

- BetMGM, LLC

The Board voted unanimously to grant BetMGM, LLC d/b/a Roar Digital a Management Services Provider license for a period of four years, expiring in January 2026. Furthermore, the Board found the following individuals and entities suitable as key persons:

1. Gary A. Deutsch
2. Gary M. Fritz
3. Adam Bryce Greenblatt
4. Robert G. Hoskin
5. Keith A. Meister
6. Jette Nygaard-Andersen
7. Robert M. Wood
8. MGM Sports & Interactive Gaming, LLC
9. MGM Resorts International
10. GVC Holdings (USA) Inc.
11. Entain Holdings (UK) Limited
12. Entain plc
13. IAC/InterActiveCorp

SPORTS WAGERING OCCUPATIONAL LICENSEE ITEMS

Level 2 and Level 3 License Applications – Approvals

The Board voted unanimously to adopt the staff's recommendation to approve 119 Level 2 and 1 Level 3 sports wagering occupational licenses.

Level 1, 2, and 3 License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Level 1, 2, and 3 Sports Wagering licenses of the individuals who were licensed or renewed in January 2021 who have properly updated their applications and complied with the requirements of the Sports Wagering Act and the Board's Rules.

VIDEO GAMING

VIDEO GAMING MANUFACTURER, DISTRIBUTOR, SUPPLIER LICENSE RENEWALS

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Video Gaming Manufacturer and Distributor licenses of AGS, LLC for a period of four years, expiring in January 2026.

TERMINAL OPERATOR LICENSEE ITEMS

Initial Terminal Operator License

- Lakeview Gaming, LLC

The Board voted unanimously to adopt the staff's recommendation to grant a terminal operator license to Lakeview Gaming, LLC for a period of four years, expiring in January 2026.

License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the following Terminal Operator licenses for a period of four years, expiring in January 2026:

- Admira, LLC
- Andy's Video Gaming Co.
- Heck Gaming, LLC
- Illinois Gold Rush, Inc.
- Illinois Video Slot Management Corp.
- JHey Enterprises, LLC
- J&J Ventures Gaming, LLC
- Lucky Lady, LLC
- Midwest SRO, LLC
- Quad Gaming, Inc.
- Sparrow Gaming, Inc.
- WG-Illinois, LLC

TECHNICIANS & TERMINAL HANDLERS

Initial Licenses – Approvals

The Board voted unanimously to adopt the staff's recommendation to approve 1 Technician and 131 Terminal Handler licenses for a period of two years, expiring in January 2024, subject to licensee's payment of the applicable licensing fee on or before February 28, 2022.

VG Technicians and Terminal Handler License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the licenses of Technicians and Terminal Handlers who were licensed or renewed in January 2021, for a period of two years expiring in January 2024, who have properly updated their applications and complied with the requirements of the Video Gaming Act and the Board's Rules.

VIDEO GAMING ESTABLISHMENT APPLICANT ITEMS

Initial Licenses - Approvals & Denials

The Board voted unanimously to adopt the staff's recommendation to approve 114 Video Gaming Establishment License applications for a period of two years, expiring in January 2024, subject to licensee's payment of the applicable licensing fee on or before February 28, 2022, and issue Notices of Denial to the following applicants:

1. 101 South Commercial, LLC d/b/a Kay's Place (200701694 – Mt. Vernon)
2. 101 South Commercial, LLC d/b/a Kay's Place (200701729 – Mt. Vernon)
3. 101 South Commercial, LLC d/b/a Kay's Place (210701843 - Harrisburg)
4. 101 South Commercial, LLC d/b/a Kay's Place (210702517 - Lincoln)
5. CJ'S gaming, LLC d/b/a CJ'S Gaming (210701280)
6. Dee's Place South Elgin Inc. d/b/a Dees Place South Elgin Inc)200701209)
7. Jum Group LLC d/b/a Jum Group LLC (210700353)
8. Moe's Café, Inc. d/b/a Moe's Café (210702242)
9. Niko's R & R Supper Club LLC d/b/a Niko's R & R Supper Club (180703978)
10. SS Red Apple LLC d/b/a Red Apple (21700065)
11. Taco Madre Mendota, LLC d/b/a Taco Madre Mendota (200702681)
12. Taxco Restaurant Too, Inc. d/b/a Taxco Restaurant (200700390)
13. Wild Wet Grill Inc. d/b/a Wild West Grill Inc (210701413)

VG Location Establishment Applicants – Rescission of Denials

The Board voted unanimously to adopt the staff's recommendation to rescind its previous denial of HATOOM INC. d/b/a VIP FOOD & LIQUOR and grant a location establishment license.

VG Location Establishment Denial – statutorily ineligible

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator denied the Video Gaming Location Establishment license applications of PRIMAL MATTER, INC. d/b/a SPRINGERS BAR N GRILL and GERRY'S PIZZA, INC. d/b/a GERRY'S PIZZA as the applicants are ineligible under the VGA and Rules.

VG Location Establishment Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Video Gaming Location Establishment licenses that were licensed or renewed in January 2021 for a period of two years, expiring in January 2024, who have properly updated their applications and complied with the requirements of the Video Gaming Act and the Board's Rules.

VG Location Establishment License Non-Renewals

The Board voted unanimously to adopt the staff's recommendation to deny the renewal of Joken Inc. d/b/a Kens Viaduct Lounge (140701516).

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The Board voted unanimously to adopt the staff's recommendation to deny the renewal of POST TIME SPORTS BAR AND GRILLE LLC D/B/A POST TIME SPORTS BAR AND GRILLE LLC (160704150).

The Board voted unanimously to adopt the staff's recommendation to deny the renewal of Mac's Convenience Stores LLC d/b/a Circle K #4701331 (161000288).

RULE 320 PETITIONS

- J&J Ventures Gaming, LLC, Petitioner v. Midwest Electronics Gaming, LLC, Respondent, re: Sully's Friendly Tap Inc. d/b/a The Friendly Tavern (19-UP-004)

The Board voted unanimously to adopt the Administrator's Recommended Decision to grant J&J's request to withdraw its petition and make no findings of facts or conclusions of law on the merits of the petition.

- Accel Entertainment Gaming, LLC, Petitioner v. Renville Gaming, LLC, Respondent, re: Goose Lake Association d/b/a Goose Lake (19-UP-014)

The Board voted unanimously to adopt the Administrator's Recommended Decision that the Board grant Accel's request to withdraw its petition and make no findings of facts or conclusions of law on the merits of the petition.

- Illinois Gaming Investors LLC, Petitioner v. Grand River Jackpot, LLC, Respondent, re: Trailblazer Pub, Inc. d/b/a Trailbazer Pub (19-UP-018)

The Board voted unanimously to adopt the Administrator's Recommended Decision to grant Prairie State's request to withdraw its petition and make no findings of facts of conclusions of law on the merits of the petition.

- Randi M. Wagner d/b/a Wagner's Lounge, Petitioner v. Accel Entertainment Gaming, LLC, Respondent, re: Gold Rush Amusement, Inc. agreement (19-UP-024)

The Board voted unanimously to adopt the Administrator's Recommended Decision to dismiss the petition and make no findings of facts or conclusions of law on the merits of the petition.

- Gold Rush Amusements, Inc., Petitioner v. Accel Entertainment Gaming, LLC, Respondent, re: ElPatron Sports Bar, Inc. d/b/a El Patron Slots (19-UP-027)

The Board voted unanimously to adopt the Administrator's Recommended Decision to grant Gold Rush's request to withdraw its petition and make no findings of facts or conclusions of law on the merits of the petition.

RULE 340 REQUEST

- Accel Entertainment Gaming, LLC/Gold Rush Amusements, Inc.

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The Board voted unanimously to deny Accel Entertainment Gaming, LLC's Rule 340(a) request to obtain an equity interest in Gold Rush Amusements, Inc.

LITIGATION

- Villa Napoli L.T.D. v IGB et al. – 2018 CH 03063

The Board voted unanimously to adopt the administrative law judge's recommendation in re the disciplinary action of Villa Napoli L.T.D.

ADJOURN

The Board voted unanimously to adjourn the meeting.

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E-FILED
Transaction ID: 1-22-0883
File Date: 9/30/2022 2:44 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

Case No. 1-22-0883

In the
Appellate Court of Illinois
First Judicial District

WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company, *Plaintiff-Appellant,*	Appeal from the Circuit Court of Cook County, Illinois, Chancery Division
v.	Circuit Court No. 21 CH 05784 Judge Cecilia A. Horan
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, *Defendants-Appellees.*	Date of Judgment: May 13, 2022 Notice of Appeal Filed: June 10, 2022 Jurisdiction Based Upon: Illinois Supreme Court Rules 301, 303

**PLAINTIFF-APPELLANT
WAUKEGAN POTAWATOMI CASINO, LLC'S
BRIEF ON APPEAL**

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ORAL ARGUMENT REQUESTED

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

POINTS & AUTHORITIES

Page

ISSUES PRESENTED FOR REVIEW 1

JURISDICTION 2

Illinois Supreme Court Rule 301 2

Illinois Supreme Court Rule 303 2

STATUTES INVOLVED 2

Illinois Gambling Act, 230 ILCS 10/1 *et seq.* 2

INTRODUCTION 2

230 ILCS 10/7(e-5) 2

STATEMENT OF FACTS 5

Cwikla v. Sheir, 345 Ill. App. 3d 23 (1st Dist. 2003) 5

230 ILCS 10/7(e-5) 6, 7, 8

230 ILCS 10/7(e) 6

Ill. Admin. Code, Title 86, Chapter IV, § 300.230 .... 10, 11

Pennhurst State Sch. & Hosp. v. Halderman,
465 U.S. 89 (1984) 10

735 ILCS 5/2-615 11

735 ILCS 5/2-619(a)(9) 11

735 ILCS 5/2-619.1 11

STANDARD OF REVIEW 12

735 ILCS 5/2-615 12

735 ILCS 5/2-619(a)(9) 12

Cwikla v. Sheir, 345 Ill. App. 3d 23 (1st Dist. 2003) 12

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

ARGUMENT 12

I. By Exceeding Its Statutory Authority, The Board Is Effectuating The City's Gambling Act Violation And Denying WPC The Opportunity To Participate In A Lawful Certification Process. 13

A. The Gaming Board Lacks Any Authority to Consider Issuing a Waukegan License Until the City Satisfies Statutory Preconditions Requiring Agreement on Casino Details Before Certification. 14

230 ILCS 10/3(a) 14

230 ILCS 10/5 14

Prazen v. Shoop, 2013 IL 115035 14

230 ILCS 10/7(e) 14, 16

230 ILCS 10/7(e-5) 14, 15, 16, 17

230 ILCS 10/11.2 15

In re Emerald Casino, 867 F.3d 743 (7th Cir. 2017) 15, 17

B. Because the City Failed to Satisfy the Statutory Preconditions, the Gaming Board Lacks Authority to Consider Issuing a Waukegan Casino License 18

Cwikla v. Sheir, 345 Ill. App. 3d 23 (1st Dist. 2003) 18

230 ILCS 10/7(e-5) 19, 20

C. The Gaming Board's Unlawful Exercise of Licensing Authority Undermines the Legislature's Intent to Ensure a Fair and Transparent Certification Process 21

735 ILCS 5/2-619(a)(9) 24

II. The Circuit Court Erred By Dismissing On Standing Grounds 25

Ill. Rd. and Transp. Builders Ass'n v. County of Cook, 2022 IL 127126 25

Greer v. Ill. Hous. Dev. Auth., 122 Ill. 2d 462 (1988) 25

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Seifert v. Sneckenberg Thompson & Brody, LLP, 2022 IL App (1st) 200966 25

A. WPC Has Suffered Distinct and Palpable Injury. 26

Ill. Rd. and Transp. Builders Ass'n v. County of Cook, 2022 IL 127126 ..... 26, 27

Keefe-Shea Jt. Venture v. City of Evanston, 332 Ill. App. 3d 163 (1st Dist. 2002) 26

U.S. Women's Chamber of Commerce v. (RBW) U.S. Small Business Admin., 2005 WL 3244182 (D.D.C. Nov. 30, 2005) 26, 27

Ill. Rd. and Transp. Builders Ass'n v. County of Cook, 2021 IL App (1st) 190396 ..... 26, 27, 28

Greer v. Ill. Hous. Dev. Auth., 122 Ill. 2d 462 (1988) 27

Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) 27

CC Distribs., Inc. v. United States, 883 F.2d 146 (D.C. Cir. 1989) 27

B. WPC's Injury Is Traceable to Defendants' Conduct and Redressable Through This Action 28

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton,422 F.3d 490 (7th Cir. 2005) 28

Nat'l Mar. Union of Am. v. Commander, Military Sealift Command, 824 F.2d 1228 (D.C. Cir. 1987) 29, 31

Keefe-Shea Jt. Venture v. City of Evanston, 332 Ill. App. 3d 163 (1st Dist. 2002) 29, 31

230 ILCS 10/7(e-10) 30

Ill. Rd. and Transp. Builders Ass'n v. County of Cook, 2021 IL App (1st) 190396 ..... 30, 31

Ill. Rd. and Transp. Builders Ass'n v. County of Cook, 2022 IL 127126 30

W. Virg. Ass'n of Cmty. Health Ctrs., Inc. v. Heckler, 734 F.2d 1570 (D.C. Cir. 1984) 30, 31

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Vill. of Arlington Heights v. Metrop. Hous. Dev. Corp.,
429 U.S. 252 (1977) 31

III. **An Implied Right Of Action Is Necessary To Preserve The General Assembly's Licensing Scheme.** 32

Sawyer Realty Group, Inc. v. Jarvis Corp.,
89 Ill. 2d 379 (1982) 32

Pilotto v. Urban Outfitters West, L.L.C.,
2017 IL App (1st) 160844 .... 32, 33

A. **WPC Is a Beneficiary of the Gambling Act, and Its Injury Is One the Statute Is Designed to Prevent.** 33

Keefe-Shea Jt. Venture v. City of Evanston,
332 Ill. App. 3d 163 (1st Dist. 2002) 33, 35, 36

L.E. Zannini & Co., Inc. v. Bd. of Ed., Hawthorn Sch. Dist. 73,138 Ill. App. 3d 467 (2d Dist. 1985) 33, 34, 35, 36

State Mech. Contractors, Inc. v. Vill. of Pleasant Hill,
132 Ill. App. 3d 1027 (4th Dist. 1985) 33

Cardinal Glass Co. v. Bd. Of Ed. of Mendota Cmty. Consol. Sch. Dist. No. 289,
113 Ill. App. 3d 442 (3d Dist. 1983) 33, 34, 35, 36

Stanley Magic-Door, Inc. v. City of Chicago,
74 Ill. App. 3d 595 (1st Dist. 1979) 33, 34, 36

Court St. Steak House, Inc. v. County of Tazewell,
163 Ill. 2d 159 (1994) 34

Lynch v. Devine, 45 Ill. App. 3d 743 (3d Dist. 1977) 34, 35

Glisson v. City of Marion, 188 Ill. 2d 211 (1999) 35

230 ILCS 10/7(e-5) 35

B. **An Implied Right of Action Is Necessary to Achieve the Gambling Act's Purpose and Remedy the Gaming Board's Unlawful Exercise of Authority.** 36

230 ILCS 10/2(a), (b) 37

230 ILCS 10/5.3(a) 37

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Cwikla v. Sheir, 345 Ill. App. 3d 23 (1st Dist. 2003)............................ 37

Stanley Magic-Door, Inc. v. City of Chicago,
74 Ill. App. 3d 595 (1st Dist. 1979).. 37

Keefe-Shea Jt. Venture v. City of Evanston,
332 Ill. App. 3d 163 (1st Dist. 2002).. 38

L.E. Zannini & Co., Inc. v. Bd. of Ed., Hawthorn Sch. Dist. 73, 138 Ill. App. 3d 467 (2d Dist. 1985)............................... 38

230 ILCS 10/5(b)(1).. 38

IV. This Action Is Not Moot.. 38

Provena Health v. Ill. Health Facilities Planning Bd.,
382 Ill. App. 3d 34 (1st Dist. 2008)... 38, 40, 41

Jackson-Hicks v. E. St. Louis Bd. of Election Comm'rs,
2015 IL 118929... 38, 39

Ill. Admin. Code, Title 86, Chapter IV, § 3000.230(a)........................... 39

Pierce Downers Heritage Alliance v. Vill. of Downers Grove,
302 Ill. App. 3d 286 (2d Dist. 1998).. 40, 41

CONCLUSION... 41

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Waukegan Potawatomi Casino, LLC ("WPC"), an Illinois limited liability company, brought this action seeking a declaration that, because the City of Waukegan (the "City") has not satisfied statutory preconditions, the Illinois Gaming Board lacks authority under the Illinois Gambling Act to consider issuing an owners license for a Waukegan casino. In addition to declaratory relief, WPC's verified complaint seeks to enjoin the Gaming Board from taking formal steps to issue a Waukegan license until the City satisfies the Gambling Act's prerequisites. This appeal is taken from the Circuit Court's order dismissing the complaint with prejudice at the pleading stage.

ISSUES PRESENTED FOR REVIEW

This appeal presents the following issues for review:

1. Where WPC alleges that the Gaming Board's violation of the Gambling Act has denied WPC the right to participate in a fair and lawful casino certification process, whether the Circuit Court erred as a matter of law by dismissing the complaint on standing grounds.

2. Where an express remedy is unavailable and the Gaming Board's unlawful exercise of licensing authority would otherwise go unredressed, whether WPC may pursue an implied right of action to remedy the Board's violation of the Gambling Act.

3. Where the Gaming Board has not yet issued a license for a Waukegan casino, whether it is possible to grant effectual relief such that WPC's claim is not moot.

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Jurisdiction

This Court has jurisdiction over this appeal pursuant to Illinois Supreme Court Rules 301 and 303. WPC filed its Verified Complaint for Declaratory and Injunctive Relief on November 16, 2021. (C11-1297, A202-1488.) On May 13, 2022, following argument on defendants' motions to dismiss, the Circuit Court granted defendants' motions and dismissed the complaint with prejudice for lack of standing. (R17- R56, A5-44.) On May 31, 2022, the Circuit Court issued a written final order, entered *nunc pro tunc* to May 13, 2022, dismissing the complaint with prejudice for the reasons stated at the hearing and resolving all outstanding issues in the case. (C1563, A4.) WPC timely filed a Notice of Appeal in the Circuit Court on June 10, 2022. (C1564-1589, A45-46.)

Statutes Involved

The appeal concerns the Illinois Gambling Act, 230 ILCS 10/1 *et seq.*, which is reprinted in the accompanying appendix. (A47-110.)

Introduction

The year 2019 marked a turning point in the legislature's approach to the licensing of casino gambling in Illinois. That year, the General Assembly enacted a gaming expansion law. The law amended the Gambling Act to authorize six new casino licenses in Illinois, in addition to the ten casino licenses authorized many years earlier. *See* 230 ILCS 10/7(e-5), A67-69.

The law also imposed a new licensing regime for the six new casinos. Unlike for the ten licenses authorized under the pre-amendment Gambling

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Act, for the six new licenses, the Illinois Gaming Board's licensing authority is subject to each host community's satisfaction of certain statutory preconditions. These preconditions foster greater transparency and accountability by requiring a host community to agree with a license applicant on key details about a proposed casino before the Gaming Board may even consider issuing a license to the applicant. Indeed, the gaming expansion law expressly mandates that the Board shall consider issuing a casino license "*only after*" the host community has certified to the Board that the applicant and the community have mutually agreed on the statutorily-required items. *Id.* And the host community may not submit such a certification to the Board until the community has memorialized the details concerning the proposed casino in a resolution adopted by its governing body. *Id.*

Hoping to avail itself of the gaming expansion law, the City issued a request for casino proposals, and in response WPC submitted a qualifying proposal. WPC's verified complaint alleges that the City failed to negotiate with any applicant or otherwise satisfy the statutory preconditions, but the City nevertheless put before its City Council resolutions purporting to "certify" WPC and three other applicants to the Gaming Board. The City's intention was to negotiate "after the fact" with whichever applicant the Gaming Board ultimately tapped for the Waukegan license—the precise opposite of what the gaming expansion law requires.

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The City Council passed the resolutions "certifying" the three other applicants' casino proposals, but not Potawatomi's. As described in materials attached to and incorporated in WPC's complaint, WPC alleges in a pending federal suit against the City that it manipulated the casino process to disfavor WPC and advantage other applicants, including an applicant who was a close ally of the City's then-mayor and benefactor to the campaigns of several City Council members.

Although the City had not satisfied the statutory preconditions to licensure, and its "certifying" resolutions were deficient on their face, in November 2021 the Gaming Board announced its intention to move forward with the process to license a Waukegan casino. That prompted WPC to commence this action, seeking a declaration that, as a result of the City's non-compliant certification process, the Board lacks authority to consider issuing a Waukegan license, and requesting injunctive relief to forestall the Board's unlawful exercise of authority. After the Circuit Court denied WPC's request for a temporary restraining order, the Board issued a preliminary suitability finding in favor of a casino applicant—an initial step in the licensing process. The court subsequently dismissed the complaint, with prejudice, at the pleading stage.

The Gaming Board did not argue below, and the Circuit Court did not hold, that WPC failed to allege the City's non-compliance with the statutory preconditions to the Board's exercise of licensing authority. Rather, the court

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

dismissed on the ground that WPC lacked standing. The court also appeared to give credence to defendants' arguments that WPC could not pursue a private right of action, or that this action was moot notwithstanding the fact that the Board will not issue a Waukegan casino license for some time to come.

At bottom, the Circuit Court appeared to believe that, because the City did not "certify" WPC to the Gaming Board, WPC did not have a cognizable legal interest arising from the Board's unlawful exercise of licensing authority. That reasoning was erroneous. By ignoring the Gambling Act's requirements, the City denied WPC the opportunity to participate in a fair and lawful casino process. Under well-established Illinois law, the right to participate in a fair and lawful process is a protectable legal interest. By thereafter accepting the City's deficient "certifications" and moving forward with licensing, the Board ratified the City's unlawful conduct and relieved it of the obligation to conduct a certification process in accordance with the Gambling Act.

WPC's injury is thus traceable to the Gaming Board's conduct and redressable through this action. Moreover, unless WPC is permitted to pursue its claim for declaratory and injunctive relief, the Board's arrogation of unlawful licensing authority will go unaddressed, and the legislature's licensing scheme, along with the goal of greater public accountability, will be fatally undermined.

STATEMENT OF FACTS

Because the Circuit Court dismissed the complaint at the pleading stage, and the truth of WPC's allegations therefore must be assumed, *Cwikla*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

v. Sheir, 345 Ill. App. 3d 23, 29 (1st Dist. 2003), the following facts are drawn largely from the verified complaint and its incorporated exhibits.

The Gaming Expansion Law's Certification and Licensing Process

In 2019, the General Assembly amended the Illinois Gambling Act to authorize licenses for six new casinos in Illinois, in addition to the ten casino licenses the Act previously authorized. *See* 230 ILCS 10/7(e-5), A67-69. For the six new licenses, the gaming expansion law instituted a licensing process that broke sharply from the process that governed the ten original licenses. *Compare* 230 ILCS 10/7(e) *with* 230 ILCS 10/7(e-5), A67-69. The previous licensing regime did not assign a meaningful role to host communities. *See* 230 ILCS 10/7(e), A67. In contrast, the gaming expansion law conditions the Gaming Board's licensing authority on each host community's satisfaction of certain preconditions. *See* 230 ILCS 10/7(e-5), A67-69.

More specifically, as codified in Gambling Act section 7(e-5), the gaming expansion law mandates that the Gaming Board shall consider issuing a new casino license "only after" the host community's governing body certifies to the Board that certain conditions have been satisfied. 230 ILCS 10/7(e-5). Those conditions include the requirement that the applicant has negotiated in good faith with the host community, and that the host community and the applicant have "mutually agreed" on certain key aspects of the casino, including its permanent and temporary locations, the community's share of casino revenues, and "any zoning, licensing, public health, or other issues that are within the

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

jurisdiction of the municipality." 230 ILCS 10/7(e-5)(i)-(v), A68. Further, "before any certification is sent to the Board," the host community's governing body must "memorialize the details concerning the proposed . . . casino in a resolution that must be adopted by a majority of" the host community's governing body 230 ILCS 10/7(e-5), A68-69.

The City's Non-Compliant Certification Process

The City of Waukegan was one of the places earmarked for a casino license under the gaming expansion law. *See* 230 ILCS(e-5)(3). Accordingly, in July 2019, the City issued a request for qualifications and proposals ("RFQ") soliciting proposals to develop and operate a casino in Waukegan. (C15, A206, Cmplt. ¶ 17.) To be considered, applicants were required to pay a $25,000 "non-refundable application fee." (*Id.*) The Forest County Potawatomi Community formed WPC, an Illinois limited liability company, for the purpose of applying for the Waukegan casino license, paid the $25,000 fee on its behalf, and submitted a casino proposal meeting all the RFQ's requirements. (C12-13, A203-04, *id.* ¶ 4; C15, A206, *id.* ¶ 18.)

Contrary to what section 7(e-5) prescribes, the City did not engage in negotiations with any of the casino applicants. (C17-18, A208-09, Cmplt. ¶¶ 32(a), 33.) The City did not "mutually agree" with any applicant on the required statutory items before the City Council voted on certification. (C17-18, A208-09, Cmplt. ¶ 32(b).) Nor did the City and the certified applicants "memorialize the details" concerning any proposed casino before the City certified applicants to the Gaming Board. (C18, A209, Cmplt. ¶ 32(c); C1158,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

A1349, Cmplt. Ex. 9 ("Long Tr.") at 106:9-106:12 ("[W]e thought that the safest approach for the City was for us to certify multiple candidates and then complete the negotiations after the fact . . . .").)

In October 2019, the Waukegan City Council voted on resolutions purporting to certify four casino proposals, including WPC's proposal, to the Gaming Board. (C15, A206, Cmplt. ¶ 19.) Because the City could not truthfully certify that it had "mutually agreed" on the required statutory items with any applicant prior to certification, as the Gambling Act requires, the "certifying" resolutions presented for the City Council's consideration used language that did not comply with the statutory requirements. In voting on whether to certify each applicant, the City Council had before it resolutions reciting merely that the City had mutually agreed "in general terms" with the applicant. (C17-18, A208-09, Cmplt. ¶ 32(b); C30, A221, Cmplt. Ex. 2 at 2; C299, A490, Cmplt. Ex. 3 at 2; C722, A913, Cmplt. Ex. 4 at 2; C794, A985, Cmplt. Ex. 5 at 2.). None of the "certifying" resolutions was accompanied by an agreement between the City and an applicant purporting to "memorialize the details" concerning any proposed casino, as section 7(e-5) requires. (C18, A209, Cmplt. ¶ 32(c).) In October 2019, the City Council passed resolutions purporting to certify three casino applicants to the Board, but declined to pass the resolution supporting WPC's application. (C16, A207, Cmplt. ¶¶ 24-25.)

WPC's Pending Federal Suit Against the City

Following the City's "certification" votes, WPC sued the City in the Circuit Court of Lake County. (C16, A207, Cmplt. ¶ 26.) As amended, WPC's

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

complaint asserts claims under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, the Gambling Act, and the Open Meetings Act. (*Id.*) The City removed WPC's suit to the United States District Court for the Northern District of Illinois, where discovery is complete and the City has moved for summary judgment. (C16-17, A207-08, Cmplt. ¶¶ 27-28.)

WPC alleges in the federal action, and discovery has confirmed, that the City manipulated its casino review process to exclude WPC in favor of other applicants, including an applicant who was an ally of the then-mayor and had largely bankrolled the campaigns of several City Council members. (C17, A208, Cmplt. ¶ 29; C1108-24, A1299-1315, Cmplt. Ex. 8 at 2-18.) A City Council member has testified at a deposition in the federal case that, just as the special meeting to consider casino proposals was about to start, the City mayor approached the member and told him "what the vote was going to be":

> . . . 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.

(C19, A210, Cmplt. ¶ 37.)

The Gaming Board's Unlawful Exercise of Licensing Authority and Proceedings in the Circuit Court

On November 15, 2021, the Gaming Board posted the agenda for a special meeting to be held three days later. (C21, A212, Cmplt. ¶ 44, C1294, A212.) The agenda items included, for the first time, "Determination of Preliminary Suitability" for a Waukegan casino—indicating that the Board intended to take a formal step toward the licensing of a Waukegan casino.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(C1296, A1487.) Under the Board's rules, once a finding of preliminary suitability is made, the presumptive licensee can be expected to undertake development of the casino. *See* Ill. Admin. Code, Tit. 86, Ch. IV, Sec. 300.230.

WPC could not join the Gaming Board as a defendant in the pending federal action because it enjoys Eleventh Amendment immunity from federal suit for alleged violations of state law. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-106 (1984). Accordingly, on the day after the Gaming Board posted its agenda, WPC filed its verified complaint in the Circuit Court, along with an emergency motion for a temporary restraining order and preliminary injunction. (C11-1297, A202-1488; C1298-1304.) When the matter came before the Circuit Court a day later, the Gaming Board agreed to refrain from taking up the Waukegan casino license at its upcoming meeting, in deference to a pending mediation between WPC and the City in the federal action. (R5-7.)

On December 7, 2021, at a hearing held after the Gaming Board advised that it would move forward on the Waukegan casino license (C1423, A115), the Circuit Court denied WPC's request for a TRO.[1] (C1481-84, A173-76; *see also*

[1] The parties stipulated to supplement the record on appeal with the transcript of the December 7, 2021 TRO hearing, which was omitted from the original record of proceedings; WPC's motion to supplement the record *instanter*, filed September 26, 2022, remains pending. Rather than seek a further extension for its appellant's brief pending a ruling on that motion, WPC has included the December 7, 2021 transcript in the appendix and cited it by reference to the common law record (C1419-1507, A111-99), where it was submitted below as an exhibit to the City's motion to dismiss.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

C1398-99, A200-01 (written order).) The court determined that, because it had "concerns about standing," WPC could not show a likelihood of success on the merits. (C1481, A173.) The court reasoned that "nothing about the [Board's] purported noncompliance affects" WPC (C1481-82, A173-74), and also opined that WPC was not "an entity the statute was designed to protect" (C1483-84, A175-76). The court also appeared to express skepticism that WPC could pursue a private right of action. (C1481-82, A173-74.) This Court subsequently denied a petition for review of the Circuit Court's order denying a TRO. (C1522.)

On the day after the Circuit Court denied WPC's TRO request, the Gaming Board issued a finding of preliminary suitability in favor of a Waukegan casino license applicant known as "Full House." (C1408.)[2]

Subsequently, the Gaming Board moved to dismiss WPC's complaint under sections 2-615, 2-619(a)(9), and 2-619.1 of the Code of Civil Procedure, 735 ILCS 5/2-615, 2-619(a)(9), 2-619.1, and the City moved for dismissal relying only on section 2-615. (C1403, C1511.) Defendants argued that WPC lacked standing, that it could not pursue a private right of action against the

[2] As the name suggests, and as the Board's counsel acknowledged below, a preliminary suitability finding is not the end of the licensing process. (C1478, A170; *see also* C1481-82, A172-73 (Circuit Court confirming there are "many, many steps . . . before we've got a casino in Waukegan"; "nothing is built, right? . . . . there's going to be a land sale. There is going to be a facility constructed, right?") Rather, the license ultimately will issue only after a permanent casino has been constructed and the Board has had the opportunity to evaluate the casino's operations. *See* Ill. Admin. Code, Tit. 86, Ch. IV, Sec. 3000.230(a).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Gaming Board, and that the Gaming Board's preliminary suitability determination rendered this case moot. (C1410-15, C1516-18, C1558.)

On May 13, 2022, following oral argument, the Circuit Court granted defendants' motions and dismissed WPC's complaint with prejudice. (R45-47, A33-35; C1563, A4.) In its oral ruling, the Circuit Court stated that "I am still finding that there's a problem with standing" and suggested that mootness might be a ground for dismissal as well. (R46, A34.) The Circuit Court reasoned that WPC's requested relief "would not give them really the relief they want, which is to have them be able to participate, again, I suppose in the process." (*Id.*) The court's subsequent written order confirmed that dismissal was granted for "the reasons stated in open court." (C1563, A4.) This timely appeal followed. (C1564-90, A45-46.)

STANDARD OF REVIEW

The Gaming Board moved to dismiss under sections 2-615 and 2-619(a)(9) of the Code of Civil Procedure (C1511), while the City moved under section 2-615 (C1403). *See* 735 ILCS 5/2-615, 2-619(a)(9). The Circuit Court did not specify under which section it dismissed the complaint. (C1563, A4; R45-47, A33-35.) Nevertheless, the standard of review "under both sections is *de novo*." *Cwikla*, 345 Ill. App. 3d at 29.

ARGUMENT

The ruling below proceeded from the Circuit Court's erroneous belief that the Gaming Board's unlawful exercise of licensing authority could not impact WPC. As shown in Part I below, that assumption was incorrect, as the

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Gaming Board's consideration of a Waukegan casino license, notwithstanding the City's failure to satisfy the statutory preconditions, has denied WPC the right to participate in a fair and lawful casino certification process. Accordingly, as shown in Part II, the Circuit Court erred as a matter of law by dismissing WPC's complaint on standing grounds. The other purported grounds for dismissal urged by defendants below are also without merit: under well-settled Illinois law, WPC may pursue an implied right of action to redress the Board's unlawful conduct (Part III), and, because the Board has not yet issued a license (and will not for some time), this case is not moot (Part IV).

I. By Exceeding Its Statutory Authority, The Board Is Effectuating The City's Gambling Act Violation And Denying WPC The Opportunity To Participate In A Lawful Certification Process.

In dismissing the complaint, the Circuit Court did not hold that WPC failed to allege a Gambling Act violation. Rather, the court appeared to assume that, because the City had not certified WPC's proposal to the Gaming Board, WPC lacked an interest sufficient to challenge the Board's decision to move forward with the licensing process. That ruling reflects a misunderstanding of the statutory regime governing the licensing of casinos under the 2019 gaming expansion law. Under that legislation, honoring the limits the General Assembly placed on the Board's authority is critical to the integrity of the host community's certification process.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

A. The Gaming Board Lacks Any Authority to Consider Issuing a Waukegan License Until the City Satisfies Statutory Preconditions Requiring Agreement on Casino Details Before Certification.

The legislature has authorized casino gambling in Illinois only to the extent it is carried on in accordance with the Gambling Act. 230 ILCS 10/3(a), A47. While the Gaming Board has broad powers of administration, regulation, and enforcement, those powers exist only in service of "the system of riverboat and casino gambling established by [the] Act." 230 ILCS 10/5, A49. *See generally Prazen v. Shoop*, 2013 IL 115035, ¶ 36 ("[A]n 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.").

Under the Act, the Gaming Board may issue a maximum of sixteen casino licenses—ten under the pre-2019 version of the Act (*see* 230 ILCS 10/7(e)), and six more in places specified in the 2019 gaming expansion law, including the City of Waukegan (*see* 230 ILCS 10/7(e-5)). (A67-69.)

A comparison of the statutory provisions governing the ten original casino licenses to those governing the six new licenses reveals a critical distinction. For the original ten, the Gaming Board's licensing authority does not depend on any prior action by the host community. *See* 230 ILCS 10/7(e), A67. Indeed, those host communities have virtually no role in the licensing process. Other than requiring some of the ten licenses to be located in particular areas and providing broad factors for the Board to consider, the General Assembly left the licensing process largely to the Board's discretion:

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

"The Board shall review all applications for owners licenses, and shall inform each applicant of the Board's decision." *Id.* In 1999, an exception was made for the Emerald Casino license, when the legislature directed the Gaming Board to renew the license and approve the casino's relocation upon approval by a new host community. *See* 230 ILCS 10/11.2, (A89); *In re Emerald Casino*, 867 F.3d 743, 749-50 (7th Cir. 2017) (describing background to section 11.2). To exercise its right of approval, the host community did not need to follow any particular process. *See* 230 ILCS 10/11.2, A89.

By contrast, in the 2019 gaming expansion law, Gambling Act section 7(e-5), the legislature expressly conditioned the Board's authority to "consider issuing" one of the six new licenses on the host community's satisfaction of certain preconditions. *See* 10 ILCS 10/7(e-5). Among other requirements, the Board shall consider issuing one of the six new licenses "*only after*" the host community certifies to the Board that, following good-faith negotiation by the applicant, 230 ILCS 10/7(e-5)(i), the host community and the applicant "have mutually agreed" on certain key features of the proposed casino, 230 ILCS 10/7(e-5)(ii)-(v). (A68.) Those key features include the temporary and permanent locations of the casino, 230 ILCS 10/7(e-5)(ii), (iii), the percentage of revenues to be shared with the host community, 230 ILCS 10/7(e-5)(iv), and "any zoning, licensing, public health, or other issues that are within the jurisdiction of" the host community," 230 ILCS 10/7(e-5)(v). (A68.)

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

The focus of section 7(e-5) is on public vetting and approval of a specific and well-defined casino proposal, at the host-community level, before the Board may even consider issuing a license. In addition to requiring mutual agreement on the items described above, the law mandates that the host community's governing body pass a resolution in support of the casino proposal, 230 ILCS 10/7(e-5)(vi), that the applicant publicly present its proposal, 230 ILCS 10/7(e-5)(vii), that the host community post a summary of the applicant's proposal on a public website, 230 ILCS 7(e-5)(viii), and that the governing body hold a public hearing to discuss the statutorily-required items at least seven days before certification, 230 ILCS 7(e-5). After that public hearing, but "before any certification is sent to the Board," the host community must "memorialize the details concerning the proposed riverboat or casino in a resolution that must be adopted" by a majority of the host community's governing body. *Id.*

The legislature's decision to depart from the regime that governed the ten original licenses must be regarded as deliberate. It would have been easy enough for the General Assembly simply to have authorized the six new licenses while leaving the previous licensing regime unchanged. By the time it enacted the gaming expansion law, however, Illinois had more than twenty-five years' experience with legalized casino gambling. *See* 230 ILCS 10/7(e), A67 (requiring first five licenses to become effective no later than January 1, 1991). That experience included the extended saga involving the Board's

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

revocation of the Emerald Casino license, which resulted in part from Emerald's failure to disclose its dealings with the Village of Rosemont. *In re Emerald Casino*, 867 F.3d at 750-53. With the gaming expansion law—requiring host communities to negotiate with applicants publicly *before* the Gaming Board may act—the legislature limited the Board's authority in favor of greater up-front transparency.

Thus, section 7(e-5) is clear that, before any of the six new casino licenses may be issued—indeed, before the Gaming Board may even *consider* issuing them—the host community (in this case, the City) must certify that it has already reached agreement with the applicant on the required statutory items. 230 ILCS 10/7(e-5)(ii)-(v). Moreover, as noted, even if the host community is in a position to submit the required certification to the Board, it cannot do so until it has "memorialize[d] the details" in a resolution adopted by its governing body. 230 ILCS 10/7(e-5), A68-69.[3]

[3] By way of example, and in contrast to the City of Waukegan, before certifying a casino proposal to the Gaming Board in October 2019, the City of Rockford agreed with a casino developer on the required statutory items and memorialized the details concerning the casino in a lengthy host community agreement. (C20, A211, Cmplt. ¶ 39; C1181, A1372. (Rockford City Council Minutes, Oct. 7, 2019, reflecting passage of resolutions certifying casino application and approving host community agreement); C1182-83, A1373-74 (certifying resolution); C1184-1291, A1375-1482 (host community agreement); C1292-93, A1483-84 (resolution authorizing host community agreement).)

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

B. Because the City Failed to Satisfy the Statutory Preconditions, the Gaming Board Lacks Authority to Consider Issuing a Waukegan Casino License.

The verified complaint's well-pleaded facts establish that the City did not satisfy the statutory prerequisites to the Board's consideration of a Waukegan casino license: the City did not negotiate in any respect with casino applicants, did not mutually agree with any applicant regarding the statutorily-required items, and did not memorialize the details concerning any proposed casino in a resolution adopted by the City's corporate authority. (C17-18, A208-09, Cmplt. ¶¶ 32-34.) Neither the Gaming Board nor the City argued below that the complaint failed to allege statutory non-compliance. (*See* C1406-16 (City's opening memorandum); C1512-18 (Board's opening memorandum); C1542-C1547 (City's reply memorandum); C1556-59 (Board's reply memorandum).) Indeed, the Board's briefs in support of dismissal were notable for their failure to defend the City's certification process.

Regardless, for purposes of this appeal, challenging the Circuit Court's dismissal at the pleading stage, the truth of these allegations must be assumed. *See Cwikla*, 345 Ill. App. 3d at 29 (court accepts all well-pled facts as true on review of dismissals under both section 2-615 and section 2-619(a)(9)). Moreover, the allegations are corroborated by testimony of the attorney who served as the City's corporation counsel during the relevant period. He claimed it was "fundamentally impossible" for the City to comply with the Gambling Act's requirements. (C18, A209, Cmplt. ¶ 34; C1155-57, A1346-48, Cmplt. Ex. 9 (Long 4/272021 Tr.) at 96:5-98:6, 99:22-103:2.) Instead of negotiating with

SUBMITTED - 27080202 - Carol Kolberer - 4/2/2024 2:54 PM

applicants toward mutual agreement on the statutory items, the City elected to certify candidates and then negotiate "after the fact"—i.e., *after* the Gaming Board selected a licensee. (C1158, A1349, Long Tr. at 106:9-106:14 ("[W]e thought the safest approach for the City was to certify multiple candidates and then complete the negotiations after the fact . . . ."); C1159, A1350, Long Tr. at 113:3-113:4 ("You can't complete the negotiations until there's a license in place."). This is the exact opposite of what the legislature mandated in section 7(e-5).

The City argued below that its failure to comply with the Gambling Act was irrelevant, because the City had already rejected WPC's proposal before passing resolutions purporting to certify other candidates. (C1411.) But that is not so. The City had not weeded out WPC's proposal at some earlier stage, and in fact the City's outside consultant advised the City Council just before it voted that it could not go wrong with any of the proposals it considered. (C1122-23, A1313-14, Cmplt. Ex. 8 at 16-17.) The City Council voted on resolutions "certifying" WPC as well as the three other applicants. (C15-16, A206-07, Cmplt. ¶¶ 19,23; C25-28, A216-19, Cmplt. Ex. 1, Oct. 17, 2019 meeting minutes, Oct. 17, 2019; C793-95, A984-86, Cmplt. Ex. 5, "A Resolution Certifying Potawatomi's Proposal for a Riverboat Gaming Operation to the Illinois Gaming Board.") The votes on those resolutions determined which casino proposals would be sent on to the Gaming Board for consideration. (*See*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

C30, A221, Cmplt. Ex. 2 at 2; C299, A490, Cmplt. Ex. 3 at 2; C722, A913, Cmplt. Ex. 4 at 2; C794, A985, Cmplt. Ex. 5 at 2.)

Had the City complied with the Gambling Act, it would have been simple for it 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 Gaming Board that it had done so. So instead of certifying that the City and the applicant had "mutually agreed" on the necessary items, as section 7(e-5) mandates, the City's resolutions recite merely that it had "mutually agreed *in general terms*" with the applicants. (C17-18, A208-09, Cmplt. ¶¶32(b); C30, A221, Cmplt. Ex. 2 at 2; C299, A490, Cmplt. Ex. 3 at 2; C722, A913, Cmplt. Ex. 4 at 2; C794, A985, Cmplt. Ex. 5 at 2.) And instead of memorializing the details concerning the proposed casinos, as the statute requires and the City of Rockford had done (*see supra* n.3 and materials cited therein), the City's resolutions state that "the details of the mutual agreements" can be found in the materials the applicant has submitted in response to the City's request for proposals. (C18, A209, Cmplt. ¶ 32(c); C30, A221, Cmplt. Ex. 2 at 2; C299, A490, Cmplt. Ex. 3 at 2; C722, A913, Cmplt. Ex. 4 at 2; C794, A985, Cmplt. Ex. 5 at 2.) In short, the City's "certifying" resolutions are deficient on their face; they do not even purport to certify what the Gambling Act requires be certified.

Because the City has not satisfied the statutory preconditions, the Gaming Board lacks authority to consider issuing a license. Upon receipt of the

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

City's purported certifying resolutions, which were facially deficient and were unaccompanied by any agreement memorializing casino details, as the statute requires, the Board should have advised the City that the Board could not consider issuing a Waukegan license. When WPC then filed its complaint, the Board had yet another opportunity to respect the statutory limits on its authority. The complaint details the City's failure to satisfy the Gambling Act's certification requirements and even incorporates testimony from the City's former corporation counsel admitting that failure. As described above, given pending mediation between the City and WPC, the Board initially agreed to hold off making a preliminary suitability determination. Ultimately, however, the Board unlawfully proceeded with the licensing process, relying below on procedural arguments rather than substantively defending the City's purported certifications.

By thus ignoring the limits that the Gambling Act places on its licensing authority, the Board is sidestepping statutory safeguards that benefit the broader public and casino applicants, including WPC.

C. The Gaming Board's Unlawful Exercise of Licensing Authority Undermines the Legislature's Intent to Ensure a Fair and Transparent Certification Process.

The Gambling Act does not permit the City merely to identify a preferred applicant or applicants for the Board's consideration, and leave negotiation of the casino's essential features for another day. Under the statute's plain language, the requirement of mutual agreement on key terms, *before* the City certifies an applicant to the Gaming Board, and *before* the

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Board considers issuing a license, works to ensure that the casino ultimately licensed by the Board is, in essential respects, the casino that the host community certified to the Board.

Without that safeguard, an applicant could promise the moon to a community; then, once the community had certified the applicant, the applicant would be free to modify its casino proposals without facing scrutiny by the community or competitive pressure from other applicants. Further, if the host community is free to ignore the applicant's willingness to commit to its casino proposal, then inappropriate considerations are more likely to creep into the certification process—as occurred in Waukegan, based on well-pleaded facts incorporated in the verified complaint. (*See* C17, A208, Cmplt. ¶ 29; C1108-24, A1299-1315, (describing manipulation of casino process in favor of developer who was close ally of and campaign donor to mayor, and who largely bankrolled several City Council campaigns); C19, A210, Cmplt. ¶ 37 (describing mayor's intervention in City Counsel certification vote).) The requirement of mutual agreement *prior* to certification thus protects residents of the home community and, by extension, all citizens of Illinois, against bait-and-switch tactics.

By requiring host communities to certify casino proposals only after determining that they have some basis in reality, the requirement also ensures fairness to applicants. If a municipality is free to certify an applicant without first requiring the applicant to agree on the casino's key features, then a

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

competing applicant with a more realistic, economically viable proposal will be at a disadvantage. A host community might be enamored of a casino proposal with features unlikely ever to be realized, but then find, upon attempting to agree with the applicant on the required statutory items, that the applicant will not commit to delivering the casino as proposed. In that case, the host community would need to give other proposals a fresh look.

In short, contrary to what the Circuit Court appeared to assume, the limits the General Assembly placed on the Board's licensing authority cannot be distinguished from the integrity of the certification process at the host-community level.

This case illustrates that truth. One of the casino proposals the City certified was submitted by a development group known as "North Point." Before the City voted on resolutions purportedly certifying casino proposals, North Point advised certain City officials that its proposal was contingent on being the City's sole selection. (C19, A210, Cmplt. ¶ 36; C1117-18, A1308-09, Cmplt. Ex. 8 at 11-12.) North Point further advised that its proposal would be less favorable if the City certified multiple applicants. (*Id.*) As the City ultimately certified multiple applicants, the contingent nature of North Point's proposal was highly material. Yet the City's resolution purporting to certify North Point does not even acknowledge this critical limitation. (C19, A210, Cmplt. ¶ 36; C29-30, A220-21, Cmplt. Ex. 2.) Similarly, the City certified Full House's proposal even though City Council members who voted in its favor

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

apparently were unaware that Full House proposed to lease rather than buy the City-owned land on which the casino would be built. (C1527-28 (responding to IGB and City's reliance on other affirmative matter under 735 ILCS 5/2-619(a)(9), C1408, C1514-15, by citing publicly posted City Council meeting video.) The City was able to gloss over these serious questions—and not consider their potential impact publicly—only because it failed to negotiate the essential features of these applicants' proposals before purporting to certify them. Had the Gaming Board respected the statutory limits on its own authority, by declining to move forward with the licensing process, it would have been apparent that the City was not yet in a position lawfully to certify *any* proposal.

Honoring the Gambling Act's certification framework does not imply, as the City argued below, that the City "needed to negotiate and agree with all applicants on the statutory items—no matter how poor the applicant's proposal—before it voted to certify any of the applicants' proposals." (C1544.) Rather, to comply with the law and ensure a process fair to all applicants, the City could not end the certification process—*i.e.*, could not certify any applicant—until it had mutually agreed with at least one applicant on the details of its casino proposal. Because the City ignored that requirement, it denied WPC the right to a fair certification process. And by deliberately overlooking the City's failure to satisfy the statutory preconditions to its exercise of licensing authority, the Gaming Board enabled that harm to WPC.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

II. The Circuit Court Erred By Dismissing On Standing Grounds.

"[I]t is defendants' burden to plead and prove lack of standing," which is an affirmative defense. *Ill. Rd. and Transp. Builders Ass'n v. County of Cook*, 2022 IL 127126, ¶ 12. Further, "controversies regarding standing are best resolved by motions for summary judgment rather than motions for judgment on the pleadings." *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 494 (1988); *Seifert v. Sneckenberg Thompson & Brody, LLP*, 2022 IL App (1st) 200966, ¶ 46 (same) (citing *Greer*, 122 Ill. 2d at 494). Nevertheless, the Circuit Court granted defendants' motions to dismiss on the ground that WPC lacked standing. That was legal error necessitating reversal.

Standing requires only that there be "some injury in fact to a legally cognizable interest." *Ill. Rd. and Transp. Builders Ass'n*, 2022 IL 127126, ¶ 13. To satisfy that requirement, the plaintiff's alleged 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.* (internal quotations, brackets, and citation omitted). Where, as here, a complaint seeks declaratory relief, "there must be an actual controversy between adverse parties," with the plaintiff "possessing some personal claim, status, or right which is capable of being affected by the grant of such relief." *Id.* (internal quotations and citation omitted). Defendants have not and cannot sustain their burden to show that WPC's claim fails to satisfy these standing requirements.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

A. WPC Has Suffered 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. and Transp. Builders Ass'n*, 2022 IL 127126, ¶ 17. Having paid the requisite $25,000 fee, participated in the casino certification process, and submitted a qualifying proposal, WPC satisfies this standard.

While WPC has no guarantee of being certified to the Gaming Board or awarded the Waukegan license, it does have a right to compete for the opportunity in a fair and lawful casino certification process, one that forces applicants to address the details and feasibility of their proposals. As the Illinois Supreme Court reaffirmed just this year, that is a legally cognizable interest. *See Ill. Rd. and Builders Ass'n*, 2022 IL 127126, ¶ 27 (standing where plaintiff's injury is "the loss of opportunity to obtain a benefit due to the government's failure to perform a required act"); *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"); *U.S. Women's Chamber of Commerce v. (RBW) U.S. Small Business Admin.*, 2005 WL 3244182, at *9-*12 (D.D.C. Nov. 30, 2005) ("*SBA*") (plaintiff had associational standing based on injury to members' procedural rights arising from SBA's statutory non-compliance); *Ill. Rd. and*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Transp. Builders Ass'n v. County of Cook, 2021 IL App (1st) 190396, ¶¶ 44-48 (citing *SBA* with approval), *aff'd in relevant part*, 2022 IL 127126.[4]

As *SBA* noted, the United States Supreme Court held in *Bakke* "that a non-minority medical school applicant who challenged a school's preferential admission program for disadvantaged minority applicants had standing to make the challenge and was not 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); *CC Distribs., Inc. v. United States*, 883 F.2d 146, 150 (D.C. Cir. 1989) ("[A] plaintiff suffers a constitutionally cognizable injury by the loss of an *opportunity to pursue a benefit*—such as a [government] contract—even though the plaintiff may not be able to show that it was *certain to receive* that benefit had it been accorded the lost opportunity.") (emphasis in original).

Equally here, to have standing, WPC need not demonstrate that it would have been awarded a casino license but for defendants' conduct. Rather, the claim that it was denied the opportunity to compete in a fair and lawful process is sufficient to confer standing. *See Ill. Rd. and Transp. Builders Ass'n*, 2021

[4] Notably, "Illinois law 'tends to vary in the direction of greater liberality' than federal law on matters of standing." *Ill. Rd. and Builders Ass'n*, 2022 IL 127126, ¶ 24 (quoting *Greer*, 122 Ill. 2d at 491).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

IL App (1st) 190396, ¶ 51 ("The *opportunity* to seek that benefit is more than enough to show that" plaintiffs have "skin in the game, with such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues . . . .") (internal quotations and citation omitted) (emphasis in original).

B. WPC's Injury Is Traceable to Defendants' Conduct and Redressable Through This Action.

The Circuit Court appeared to assume that, because the City did not certify WPC's proposal to the Gaming Board, "nothing about" the Board's statutory non-compliance could affect WPC. (C1482, A174.) Given the structure of the gaming expansion law, discussed above, that assumption was erroneous, particularly at the pleading stage. The Board's unlawful exercise of licensing authority, despite the City's deficient "certifying" resolutions, enabled the conduct that injured WPC. That is enough to satisfy the traceability prong of the standing analysis.

For example, in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490 (7th Cir. 2005), the complaint concerned an amended state-tribal compact governing the Ho-Chunk Nation's casinos in Wisconsin. By federal statute, the compact was subject to approval by the U.S. Secretary of the Interior. *Id.* at 493-94. Because the Secretary took no action on the compact within the statutory approval period, the compact was deemed approved. *Id.* at 494. Alleging that the compact's terms could stymie its own application to operate a Wisconsin casino, the Lac du Flambeau Band ("LDF")

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

challenged the Secretary's decision to let the compact take effect. *Id.* at 493-94. The Secretary and Ho-Chunk argued that, "because Wisconsin and Ho-Chunk, not the Secretary, caused any injury suffered by LDF by negotiating the compact," LDF could not show traceability. 422 F.3d at 500.

The Seventh Circuit rejected this argument. The court acknowledged that "the regulable third parties—Ho-Chunk and Wisconsin—have already made the choices that give rise to the potential harm by negotiating the compact." *Id.* at 501. Nevertheless, "[t]he Secretary's silent approval caused that potential to become a reality because, but for her approval, the compact would have no effect." *Id.* In short, "[b]ecause the Secretary's silence enabled the injury, it is fairly traceable to her." *Id.*

The same principle applies here. Had the Board made clear that the City had not satisfied the preconditions to licensure, the City would have needed to take steps necessary to satisfy those preconditions—*i.e.*, to conduct the certification process in compliance with the Gambling Act. *See Nat'l Mar. Union of Am. v. Commander, Military Sealift Command*, 824 F.2d 1228, 1237 (D.C. Cir. 1987) ("An injunction barring the award would correct this alleged injury since it would require the government, if it wants to go ahead with the procurement, to repeat the bidding process under circumstances that would eliminate the taint of the prior proceedings.") (internal quotation and citation omitted); *Keefe-Sea*, 332 Ill. App.3d at 173 (approvingly citing *Nat'l Mar. Union of Am.*, 824 F.2d at 1237). Moreover, to the extent that effort required the City

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

to begin anew, the Gambling Act allows for the possibility that the licensing process might not be completed within its presumptive timelines and thus need to be recommenced. *See* 230 ILCS 10/7(e-10) (providing that if "not all licenses authorized under subsection (e-5) have been issued" and there are no pending applications, "then the Board shall reopen the license application process for those licenses authorized under subsection (e-5) that have not been issued").

Speculation that the City might have declined to certify WPC's proposal under a statutorily compliant process—or that it might do so if WPC obtains the relief requested in this action—is not a basis to deny standing to WPC. As this Court has instructed,

> Particularly 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, much less what precisely will happen in the future if the improper conduct is corrected. If such certainty were required, the doctrine of standing would substantially reduce, if not altogether eliminate, entire categories of lawsuits.

Ill. Rd. and Transp. Builders Ass'n, 2021 IL App (1st) 190396, ¶ 40; *Ill. Rd. and Transp. Builders Ass'n*, 2022 IL 127126, ¶ 27 (quoting same); *see also W. Virg. Ass'n of Cmty. Health Ctrs., Inc. v. Heckler*, 734 F.2d 1570, 1575 (D.C. Cir. 1984) ("Certainty of success in seeking to exploit that opportunity was not required."); *Ill. Rd. and Transp. Builders Ass'n*, 2021 IL App (1st) 190396, ¶ 41 (approvingly citing *W. Virg. Ass'n of Cmty. Health Ctrs.*); *Ill. Rd. and Transp. Builders Ass'n*, 2022 IL 127126, ¶ 27 (rejecting effort to distinguish *W. Virg. Ass'n of Cmty. Health Ctrs.*).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Because WPC's injury is the lost *opportunity* to compete for a casino license on fair and lawful terms, that injury is redressable so long as there is a substantial likelihood that a favorable judicial outcome would provide WPC with that *opportunity*. *See W. Virg. Ass'n of Cmty. Health Ctrs.*, 734 F.2d at 1575 n.6 (standing satisfied by showing that favorable judicial decision was likely to provide plaintiff with opportunity sought) (discussing *Vill. of Arlington Heights v. Metrop. Hous. Dev. Corp.*, 429 U.S. 252 (1977)); *Nat'l Mar. Union of Am.*, 824 F.2d at 1237-38 ("[I]njury to a bidder's *right to a fair procurement* is obviously an injury both traceable to the alleged illegality in a procurement and redressable by any remedy that eliminates the alleged illegality.") (emphasis added); *see also Keefe-Shea*, 332 Ill. App. 3d at 173-74 (irreparable injury from denial of fair bidding procedure "does not depend on whether the disappointed bidder was entitled to the contract").

Indeed, "it would defy logic and fundamental fairness to deny [WPC] standing simply because they cannot demonstrate with certainty that they would have received in the past, or will receive in the future, a particular contract—particularly when the reason they cannot demonstrate it is the very (alleged) misconduct of the government at issue in the lawsuit." *Ill. Rd. and Transp. Builders Ass'n*, 2021 IL App (1st) 190396, ¶ 51.

Accordingly, defendants cannot satisfy their burden to demonstrate WPC lacks standing, and the Circuit Court erred by dismissing on that basis.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

III. An Implied Right Of Action Is Necessary To Preserve The General Assembly's Licensing Scheme.

"[I]t is not necessary to show a specific legislative intent to create a private right of action." *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 386 (1982). "A court may determine that a private right of action is implied in a statute that lacks explicit language regarding whether a private right of action shall be allowed." *Pilotto v. Urban Outfitters West, L.L.C.*, 2017 IL App (1st) 160844, ¶ 22. Indeed, Illinois courts "have continually demonstrated a willingness to imply a private remedy where there exists a clear need to effectuate the purpose of an act." *Sawyer Realty Group*, 89 Ill. 2d at 389.

Yet the City argued below that the Court could not imply a private right of action for the Gambling Act violations alleged in WPC's verified complaint, and the Gaming Board subsequently adopted this argument as well. (C1412-15; C1558.) Although the Circuit Court did not dismiss on this basis, at the TRO stage it appeared to question the availability of an implied remedy. (C1481-82, A173-74.)

Regardless, under well-established Illinois law, there is a private right of action for the Gaming Board's unlawful departure from the legislatively-mandated licensing regime. Moreover, the relevant factors weigh decisively in favor of implying a private remedy: (1) WPC is a member of the class for whose benefit the gaming expansion law was enacted; (2) its injury is one the statute was designed to prevent; (3) a private right of action is consistent with the statute's underlying purpose; and (4) an implied right of action is necessary to

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

provide an adequate remedy for the statutory violation alleged. *See Pilotto*, 2017 IL App (1st) 160844, ¶ 22.

A. WPC Is a Beneficiary of the Gambling Act, and Its Injury Is One the Statute Is Designed to Prevent.

As described above, the City did not and could not properly certify to the Board that the statutory requirements had been satisfied with respect to any casino applicant. Yet the City purported to "certify" three applicants, and the Gaming Board is now moving forward with the licensing process for one of those applicants notwithstanding its failure to satisfy the preconditions necessary even to be considered for a casino license.

In analogous circumstances, a long line of Illinois cases recognizes a right to pursue private remedies for violations of statutes governing the award of public contracts. *See Keefe-Shea*, 332 Ill. App. 3d at 169-72 (reversing denial of injunctive relief and holding that loss of "right to participate in a fair bidding process" constituted irreparable injury); *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*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

of Chicago, 74 Ill. App. 3d 595 (1st Dist. 1979) (reversing dismissal of complaint alleging City awarded contract to ineligible bidder); *see also Court St. Steak House, Inc. v. County of Tazewell*, 163 Ill. 2d 159, 165 (1994) (under contracting provision in Illinois Counties Code, "*mandamus* will issue if a plaintiff alleges and proves fraud, lack of authority, unfair dealing, favoritism, or similar arbitrary conduct by a county").

Presuming the existence of a private remedy, these decisions largely focus on standing. Nevertheless, for at least two reasons, they compel recognition of an implied remedy here. First, these cases imply a private remedy in the absence of express statutory provisions authorizing the disappointed bidders to sue. *See Stanley Magic-Door*, 74 Ill. App. 3d at 597 ("[P]alpable economic injuries have long been recognized as sufficient to lay the basis for standing *with or without a specific statutory provision for judicial review.*") (emphasis added); *L.E. Zannini*, 138 Ill. App. 3d at 477 (observing that statute at issue "contains no remedy for an unsuccessful bidder" and distinguishing authority declining to recognize implied cause of action where statute provided "numerous remedies"). If express statutory authorization existed, there would be little need in these cases to analyze standing.

Second, though purporting to analyze "standing," these decisions actually apply now-abrogated standing requirements that remain relevant to whether a private right of action should be implied. In particular, both *Cardinal Glass* and *L.E. Zannini* cite *Lynch v. Devine*, 45 Ill. App. 3d 743, 748

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

(3d Dist. 1977), for the proposition that standing "requires that the plaintiff 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." *Cardinal Glass*, 113 Ill. App. 3d at 445; *L.E. Zannini*, 138 Ill. App. 3d at 474. Subsequent to those decisions, the Illinois Supreme Court rejected this "*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 substance, however, the *Lynch* test corresponds to at least the first two factors relevant to implying a private right of action. Therefore, the reasoning of *Cardinal Glass*, *L.E Zannini*, and *Keefe-Shea* (which relies heavily on *Cardinal Glass*) militates strongly in favor of recognizing WPC's right to pursue a private remedy.

Of course, the Gambling Act, like almost all legislation, is intended to benefit the broader public. Under the above precedent, however, that fact is consistent with the reality that section 7(e-5) also protects applicants who participate in the statutorily-prescribed casino certification process. *See Keefe-Shea*, 332 Ill. App. 3d at 171 (Although "the principal purpose of the statutory provision was the protection of taxpayers residing in the district, the court [in *Cardinal Glass*] pointed out that the measures in the statute also benefitted and protected the bidders themselves."); *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

SUBMITTED - 27080202 - Carol Kolberer - 4/2/2024 2:54 PM

bidders themselves."); *L.E. Zannini*, 138 Ill. App. 3d at 476 (quoting same). As described above (*supra* at 21-24), the requirement of mutual agreement on casino details before any proposal is certified safeguards the integrity of the process *and* ensures fairness to individual applicants.

Moreover, WPC's interest in ensuring compliance with the Gambling Act accords with the public interest in the same objective. *See Keefe-Shea*, 332 Ill. App. 3d at 171 ("'As a practical matter, securing 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, and greater resources, than an individual taxpayer. In the long run, permitting such suits by bidders will work to advance the public interest behind the statute . . . .'") (quoting *Cardinal Glass*, 113 Ill. App. 3d at 446-47); *L.E. Zannini*, 138 Ill. App. 3d at 476-77 (quoting same); *Stanley Magic-Door*, 74 Ill. App. 3d at 597 ("[I]t is precisely such persons as the plaintiff who would have the incentive to challenge improper governmental action since they are the ones most directly injured by it . . . ."). Accordingly, WPC is within the "zone of protection" afforded by the gaming expansion law. *Cardinal Glass*, 113 Ill. App. 3d at 447.

B. An Implied Right of Action Is Necessary to Achieve the Gambling Act's Purpose and Remedy the Gaming Board's Unlawful Exercise of Authority.

The legislature intended the Gambling Act to benefit the people of the State of Illinois economically, but "recognized that it will do so successfully only if public confidence and trust in the credibility and integrity of the

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

gambling operations and the regulatory process is maintained." 230 ILCS 10/2(a), (b), A47. Notably, along with the new licensing regime, the 2019 gaming expansion law added provisions mandating ethical conduct by host communities' officials and employees, who "must carry out their duties and responsibilities in such a manner as to promote and preserve public trust and confidence in the integrity and conduct of gaming." 230 ILCS 10/5.3(a), A61.

As discussed above, with the 2019 gaming expansion law, the General Assembly determined that the process for awarding the six new casino licenses would involve greater transparency, accountability, and public involvement than did the process for awarding the original ten licenses. (*See supra* at 14-17.) The requirement that a home community and any applicant it intends to certify mutually agree on the statutorily-required items before certification is integral to the new licensing regime.

Again, for purposes of this appeal, it must be assumed, as WPC alleges, that the City failed to satisfy the Gambling Act's prerequisites, and that the Gaming Board is taking steps to license a casino without statutory authority. *Cwikla*, 345 Ill. App. 3d at 29. By insisting that there is no private remedy in this circumstance, the Board and the City are attempting to insulate that unlawful exercise of authority from any judicial scrutiny. Those applicants who were certified to the Board cannot be expected to challenge the validity of the City's certification process. Nor is it realistic to expect some other plaintiff to come forward. Unfortunately, as this case demonstrates, "one cannot assume

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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). It is equally unreasonable "to assume that individual taxpayers, with only limited means, can effectively insure compliance with the statutory requirements." *L.E. Zannini*, 138 Ill. App. 3d at 477.

There is no express statutory mechanism by which WPC or another party may challenge the Board's unlawful consideration or issuance of a license: under the Gambling Act, only parties "aggrieved by an action of the Gaming Board denying, suspending, revoking, restricting or refusing to renew a license may request a hearing before the Board." 230 ILCS 10/5(b)(1). Therefore, unless WPC may pursue an implied cause of action, there will be no remedy for the Board's unlawful exercise of authority, meaning there will be no way to police that unlawful exercise, and the legislature's licensing scheme, along with its aim of greater public accountability, will be fatally undermined.

IV. This Action Is Not Moot.

The Gaming Board and the City argued below that this matter is "moot" because the Gaming Board has made a finding of preliminary suitability in favor of Full House. (C1410-11, City Mem. at 5-6; C1516-17, IGB Mem. at 5-6.) That argument is meritless. Intervening events moot a claim only when they "make it impossible for the reviewing court 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

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

118929, ¶ 12 (same). Because nothing has rendered it impossible to grant effectual relief in this case, it is not moot.

WPC's complaint seeks (i) a declaration "that the City has failed to satisfy the requirements for the Gaming Board to consider issuing a license to operate a casino in Waukegan"; (ii) a declaration "that the Gaming Board lacks the authority to consider issuing a license to operate a Waukegan casino"; and (iii) injunctive relief barring the Gaming Board "from taking formal steps to issue a Waukegan casino license, including by issuing a determination of suitability, until the City has satisfied the Gambling Act's requirements." (C22-23, A213-14.) Clearly, until the Gaming Board has issued a Waukegan casino license, it is *possible* to grant effectual relief. There is nothing in the record to suggest that this eventuality has occurred or will occur for some time.

Indeed, under the Board's rules, a Waukegan casino license may issue only after the permanent casino has been constructed and, among other things, the Board has assessed the casino's operations. *See* Ill. Admin. Code, Tit. 86, Ch. IV, Sec. 3000.230(a). Thus far, the Board has merely issued a finding of preliminary suitability, which, as its counsel acknowledged below, is not "the end-all be-all of the licensing process." (C1478, A170.). Rather, as the Circuit Court correctly noted, there are "many, many steps that need to happen before we've got a casino in Waukegan." (C1482, A173; *see also* C1481, A172 ("I mean, nothing is built, right? . . . there's going to be a land sale. There is going to be

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

a facility constructed, right?").) Given this reality, WPC's claim is far from moot.

Provena Health demonstrates the point. There, Provena challenged a certificate of need permit that the Illinois Health Facilities Planning Board issued to a rival hospital system (Sherman). 382 Ill. App. 3d at 35. The Planning Board approved Sherman's permit in June 2006, and Sherman broke ground on the new hospital later that month. *Id.* at 37, 50. In July 2006, approximately three weeks after Sherman started construction, Provena filed its complaint challenging the issuance of the permit. *Id.* at 37. A year later, in July 2017, the circuit court affirmed the Board's issuance of the permit. *Id.* at 38.

On appeal, the State argued that Provena's claim was moot "because Sherman has begun construction of the new hospital and has spent $29 million in capital expenditures." *Id.* at 50. This Court rejected that argument: "This appeal is not moot. . . . Sherman has spent $29 million of the approximately $310 million earmarked for the project. . . . The resolution of this appeal will directly affect the parties. If we were to reverse the Board's decision, Sherman would not be allowed to proceed with construction of the project or to obtain an operating license without a valid permit." *Id.* at 51; *see also Pierce Downers Heritage Alliance v. Vill. of Downers Grove*, 302 Ill. App. 3d 286, 288-94 (2d Dist. 1998) (where plaintiff claimed that state environmental law required consultation with village and Health Facilities Planning Board, rejecting

SUBMITTED - 27088202 - Carol Kolberer - 4/2/2024 2:54 PM

mootness argument, even though environmental agency had already conducted consultation without village or Board, village had approved facility's construction, and Board had issued certificate of need).

Provena and *Pierce Downers Heritage Alliance* show that defendants' mootness argument fails both factually and legally. In *Provena*, the challenged administrative action was already completed, and millions of dollars had been spent on construction, but the case was not moot. Here, there are "many, many steps that need to happen" before a casino is constructed and a license is issued. Accordingly, it is far from "impossible" to grant effectual relief, and this case is not moot.

CONCLUSION

For the above reasons, WPC respectfully requests that this Court (i) reverse the Circuit Court's May 13, 2022 order dismissing the complaint, (ii) hold that WPC has standing to pursue its claim for declaratory and injunctive relief, that it may do so by means of an implied right of action, and that this case is not moot, (iii) remand for proceedings consistent with those holdings, and (iv) grant such other and further relief in WPC's favor as the Court may deem just and proper.

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Dated: September 30, 2022

Respectfully submitted,

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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 42 pages.

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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Case No. 1-22-0883

In the
Appellate Court of Illinois
First Judicial District

WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company,	)	Appeal from the Circuit Court of Cook County, Illinois, Chancery Division
Plaintiff-Appellant,	)	
v.	)	Circuit Court No. 21 CH 05784 Judge Cecilia A. Horan
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,	)	Date of Judgment: May 13, 2022 Notice of Appeal Filed: June 10, 2022 Jurisdiction Based Upon: Illinois Supreme Court Rules 301, 303
Defendants-Appellees.	)	

NOTICE OF FILING

TO: *See Certificate of Service*

PLEASE TAKE NOTICE THAT on the 30th day of September, 2022, we caused to be filed (electronically submitted), with the Appellate Court of Illinois, First Judicial District, *Appellant's Brief*, a copy of which is hereby served upon you.

Respectfully submitted,

/s/ Dylan Smith

Michael J. Kelly
Dylan Smith
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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2022, I caused the foregoing **Notice of Filing** and **Appellant's Brief** to be electronically filed with the Clerk of the Appellate Court for the First District by using the Odyssey eFileIL system, and to be served by email on counsel of record at the email addresses of record indicated below:

City of Waukegan
Glenn E. Davis
Charles N. Insler
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Illinois Gaming Board
Christina T. Hansen
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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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FILED
6/10/2022 3:59 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH05784
18252224

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOR THE FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company, Plaintiff-Appellant, v. 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, Defendants-Appellees.	)	Case No. 2021 CH 5784 Hon. Cecilia A. Horan

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff-Appellant Waukegan Potawatomi Casino, LLC, by its attorney, Freeborn & Peters LLP, hereby appeals to the Appellate Court of Illinois for the First District, pursuant to Supreme Court Rule 303, from an order of the Honorable Judge Cecilia A. Horan of the Chancery Division of the Circuit Court of the Cook County, Illinois, pronounced orally from the bench on May 13, 2022, and entered nunc pro tunc to that date in a written order dated May 31, 2022, granting Defendants-Appellees' motions to dismiss and dismissing Plaintiff-Appellant's Verified Complaint with prejudice.

The Circuit Court's final written order is attached hereto as **Exhibit A**. The transcript of the May 13, 2022 hearing is attached hereto as **Exhibit B**.

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By this appeal, Plaintiff-Appellant Waukegan Potawatomi Casino, LLC will seek the following relief from the Appellate Court of Illinois for the First Judicial District:

1. Reversal of the Circuit Court's final order granting Defendants-Appellees' motions to dismiss and dismissing Plaintiff-Appellant's Verified Complaint.
2. Remand of this cause to the Circuit Court with directions to reinstate the Verified Complaint for further proceedings consistent with the Appellate Court's opinion, including trial on the merits as to all claims, or for such other and further relief as the Appellate Court may deem proper.

Dated: June 10, 2022

Respectfully submitted,

/s/ Dylan Smith

Michael J. Kelly
Dylan Smith
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Attorneys for Plaintiff
Waukegan Potawatomi Casino, LLC

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Exhibit A

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

Waukegan Potawatomi Casino, LLC, Plaintiff, v. The Illinois Gaming Board, City of Waukegan, *et al.*, Defendants.	Case No. 21 CH 5784 Calendar 9 Hon. Cecilia A. Horan Judge Presiding

ORDER

This matter came before the Court on May 13, 2022 for hearing on the Motion to Dismiss filed by the City of Waukegan and the Motion to Dismiss filed by the Illinois Gaming Board Defendants. The Court, having reviewed the parties' filings and heard argument, and otherwise being fully advised, hereby orders:

1. For the reasons stated in open court, both Motions to Dismiss are granted. The Verified Complaint is dismissed, with prejudice.

2. This is a final order, resolving all outstanding issues in the case.

3. This order is entered *nunc pro tunc* to the original hearing date of May 13, 2022.

ENTER:

/s/ Cecilia A. Horan Judge No: 2186
Meeting ID: 956 5899 1093
Password: 129359
Dial-in: 312-626-6799

Prepared by:
Alex Moe, Assistant Attorney General
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Judge Cecilia A. Horan
MAY 31 2022
Circuit Court-2186

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Exhibit B

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Transcript of Proceedings had in Waukegan Potawatomi Casino, LLC v. The Illinois Gaming Board; et al.

Taken On: May 13, 2022

Royal Reporting Services, Inc.
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Website: royalreportingservices.com

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STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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

WAUKEGAN POTAWATOMI CASINO, LLC,)
an Illinois Limted Liability)
Company,)
)
Plaintiff,)
)
-vs-) No. 21 CH 5874
)
THE ILLINOIS GAMING BOARD, et)
al.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS had at the hearing of the above-entitled cause via videoconference before Krista R. Dolgner, Certified Shorthand Reporter and Registered Professional Reporter, before the HONORABLE CECILIA A. HORAN, of the Richard J. Daley Center, 50 West Washington Street, Room 2008, Chicago, Illinois, on Friday, May 13, 2022, at 10:45 a.m.

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1 APPEARANCES (via videoconference):

2 FREEBORN & PETERS, LLP
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16
on behalf of the City of Waukegan.
17

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Page 3

1 THE COURT: Good morning. I am Judge Horan.
2 We're here on the case of Waukegan versus Illinois
3 Gaming Board, and this is the motion to dismiss
4 filed by both defendants. Do the parties want to
5 introduce themselves for the record, please?
6 MR. DAVIS: Yes. Good morning, Your Honor.
7 Glenn Davis. I'm counsel for the City of Waukegan.
8 THE COURT: Okay.
9 MR. SMITH: And good morning, Your Honor, Dylan
10 Smith for plaintiff, Waukegan Potawatomi Casino.
11 THE COURT: Good morning.
12 MR. SYVERTSEN: Good morning. Martin Syvertsen
13 also with Dylan Smith here.
14 MR. MOE: Good morning. Assistant Attorney
15 General Alex Moe for the Gaming Board.
16 THE COURT: Okay. And so I have reviewed all
17 the materials that the parties have provided to me,
18 and I'm ready to talk about the case today. It is
19 the defendant -- I don't know who wants to take the
20 lead of the two defendants. You can decide among
21 you. But I will allow you -- you can do it however
22 you want to do it. You can either give me a
23 full-blown hearing; you can rely -- you can just
24 point out the high points in your briefs; or you can

Page 4

1 give me -- you can rely on your briefs in total, if
2 that's what you want to do. But I will let the
3 defendant movants make that decision.
4 MR. DAVIS: Good morning, Your Honor. This is
5 Glenn Davis. I just have a couple of comments.
6 THE COURT: Sure.
7 MR. DAVIS: I think I will be very brief.
8 THE COURT: Okay.
9 MR. DAVIS: You know, the first thing I would
10 like to say is that I have the highest regard and
11 respect for Mr. Smith and Mr. Syvertsen. But I
12 think this case has gotten to the point where --
13 this particular case has gotten to the point where
14 it needs to end; and I say that because as set out
15 in our papers, there's really no basis for judicial
16 intervention at this point or what really will
17 require ongoing supervision of the Gaming Board and
18 its interactions with the City going forward.
19 And I think the thing of most importance,
20 the Court will recall that there is a pending
21 federal companion case, if you will, that the
22 Potawatomi have against the City of Waukegan.
23 They're not without any remedy in this situation.
24 There is an ongoing damages case there that's

Page 5

1 preceded this case by a couple of years. And that
2 case is under submission on a summary judgment
3 motion, and it has been for several months now.
4 And as I know you will also recall, we
5 were last here on a TRO motion; and I think you had
6 made some findings in the transcript and on the
7 record about the Potawatomis lacking standing to
8 complain about the Gaming Board's actions at that
9 point in terms of compliance with the Gambling Act
10 and further questioned and I think agreed with us
11 that the Illinois Gaming Act provides no potential
12 private right of action.
13 And I think those things contributed
14 ultimately to your order, which I think provided or
15 at least the basis of which was the lack of any
16 realistic likelihood of success on the merits at
17 that point, and I think that should -- all that
18 discussion, you know, informs how you should
19 continue to look at this case and rule today.
20 And, obviously, we're here on a 2-615
21 motion today, which is a little different. And
22 our -- you know, I think -- I'm not going to go
23 through every detail, but our basic grounds are that
24 the Illinois Gaming Board's actions to make the

Page 6

1 preliminary suitability determination on Full House
2 being the appropriate applicant to go forward with
3 the casino in Waukegan does moot this case.
4 If you look at the actual relief that is
5 sought on the complaint in this case, it is seeking
6 a declaration and injunctive relief only, seeking a
7 declaration that the City of Waukegan failed to
8 satisfy the requirements for the Gaming Board to
9 consider issuing a license to operate a casino in
10 Waukegan, and, two, the Gaming Board lacks authority
11 to consider issuing a license to operate a Waukegan
12 casino. That's from the verified complaint in the
13 wherefore clauses summarizing exactly what is
14 requested.
15 Now, there are other paragraphs that say
16 among other things or in addition or this is
17 including but not limited to, but, you know, I don't
18 think there's any question that what the Potawatomi
19 are seeking in this case is to find that the City
20 violated its obligations somehow under the Illinois
21 Gambling Act and the Illinois Gaming Board somehow
22 lacked authority to act based on that, and it's
23 just -- those are purely issues of law; and I don't
24 think there's any basis to find anything other than

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FILED DATE: 6/10/2022 3:59 PM 2021CH05784

Page 7

1 the broad grant of authority given to the Illinois
2 Gaming Board to conduct its affairs and to deal with
3 all civil matters related to its functions.
4 Looking at 230 ILCS 10/5(b)(2), the Gaming
5 Board has the authority to conduct all hearings
6 pertaining to civil violations of this Act or rules
7 and regulations promulgated hereunder, has extensive
8 authority, granting the board all powers necessary
9 and proper to fully and effectively execute the Act.
10 So we have a situation where it has
11 decided that the City can move forward with the Full
12 House team on their proposal. The process that has
13 gone forward, you know, the parties had every chance
14 to challenge with the Illinois Gaming Board up until
15 the time it made its determination. If it had an
16 objection, to do something, then certainly that
17 avenue would have been open to them. But the
18 Illinois Gaming Board has spoken, and it is moving
19 forward.
20 Now, the Potawatomis seem to want ongoing
21 supervision of this case, and they bring up matters
22 that are totally outside of the pleadings about
23 adjustments in some of the micro terms of the final
24 dealings between the City and Full House on real

Page 8

1 estate and such. And I don't think you should take
2 into account those things that have taken place
3 since the Gaming Board's determination. But if you
4 do, I mean, I think these are nothing but ordinary,
5 normal developments that are going to coincide with
6 the progression of a development project for a major
7 casino. So I don't think that's fair to bring that
8 up and consider it; but beside the fact, it doesn't
9 really address any of the legal arguments that we
10 have made as to why this case should be dismissed.
11 The Gaming Board's actions to date have
12 really mooted the relief that is requested on the
13 face of the complaint in this case. You know, the
14 Gaming Board and Waukegan are dutifully moving
15 forward as appropriate. There's nothing left to
16 enjoin at this point. Even if there was, you know,
17 something there, there really is no private right of
18 action provided for in the Gaming Act to support a
19 cause of action or a claim for relief on this.
20 And as we discussed at some length in the
21 prior hearing, you know, we continue to maintain
22 that the Potawatomi lack standing because
23 determinations were made on who was going to be
24 certified prior to, you know, anything having to do

Page 9

1 with these resolutions that they complain about that
2 are incomplete in their mind. And so, you know, we
3 think this case fails on multiple counts.
4 So as a declaratory judgment action in and
5 of itself, you know, at this point there really is
6 not an actual controversy concerning anything that
7 the Gaming Board has before it; nor given this
8 no lack of private right of action and standing
9 issues is the Potawatomi appropriately an interested
10 party in any such controversy. So we adhere to, you
11 know, what we have written in our briefs, and I
12 think those things speak for themselves. I think
13 they are purely questions of law.
14 You have to look at the actual relief
15 that's requested and not buy into this being sort of
16 an open-ended jurisdictional effort to keep this
17 case alive to keep picking at anything further that
18 goes on between the City of Waukegan and the Full
19 House group in progressing with their project.
20 It is no doubt true that down the road
21 there will be final approval once the Full House
22 facility is built and it's demonstrated capable,
23 ready to go, and exists, and the Gaming Board at
24 that point will make its final decision. That's the

Page 10

1 way it works. But that doesn't provide an ongoing
2 basis to have a dis- -- you know, I don't want to
3 say disgruntled -- I want to say excluded
4 participant in the process because they weren't
5 approved -- standing by and picking at it with a
6 declaratory judgment injunctive claim which appears
7 on the face of how this is proceeding to have no
8 logical end.
9 And so there really isn't any current
10 actual pending controversy. And I don't want to go
11 back over all of the arguments over the -- unless
12 it's addressed, you know, in some fulsome, more
13 fulsome manner by Mr. Smith again. But, you know,
14 the business about the propriety of the actual
15 resolutions that were submitted and used, those
16 things we don't -- we certainly don't agree with
17 their position, but I do want to remind you that
18 this -- the provisions that we're dealing with here
19 on submission of these resolutions is completely --
20 you know, their argument completely turns it on its
21 head.
22 The provision about negotiation or
23 preparation of the resolutions is just to ensure
24 that the applicant has negotiated in good faith and

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FILED DATE: 6/10/2022 3:59 PM 2021CH05784

Page 11

1 has produced a proposal that is meaningful and can
2 be accomplished. And the process that the City of
3 Waukegan provided, while it wasn't willing to
4 negotiate every detail with every participant -- it
5 would be illogical to do that -- up until the time
6 that someone is selected, it did have multiple
7 sessions, hearings with every applicant.
8 Everyone had their chance to have their
9 say. In fact, the Potawatomi had their chance to
10 have their say twice because they sought
11 reconsideration of the denial of their proposal,
12 which was granted. They were, again, voted down for
13 a second time.
14 So there is no lack of good faith on the
15 part of the City in dealing with their proposal.
16 You can quibble with the terms of the resolutions
17 all you wish, but it turns the whole situation on
18 its head because those resolutions are required to
19 make sure the City can certify that this is a
20 meaningful, realistic proposal. And it had that
21 information. It had sufficient information to make
22 those representations based on its resolutions that
23 it provided.
24 So I think that's all I will say about

Page 12

1 that; and, otherwise, unless something else comes up
2 that I feel a need to comment on, I think I will
3 just stand on our briefs.
4 THE COURT: Okay. Thank you, Mr. Davis.
5 Mr. Moe?
6 MR. MOE: Thank you, Your Honor. I won't
7 belabor the points in our papers. I know you have
8 read them and have had extensive experience with
9 this case at other procedural postures. If Your
10 Honor has questions about the mootness or private
11 right of action arguments that we addressed, I would
12 be happy to answer them.
13 With respect to standing though, I would
14 raise one small procedural nugget that was not
15 addressed in the papers. Specifically, the City of
16 Waukegan raises standing in the 615 context as a
17 challenge to whether plaintiff has sufficiently set
18 forth a cause of action for declaratory judgment.
19 The board has raised standing as a 619(a)(9)
20 affirmative matter.
21 At the end of the day, I think the
22 arguments are effectively the same. I don't know
23 whether the specific vehicle affects the outcome. I
24 certainly don't believe it changes the legal

Page 13

1 outcome, which is why I'm not going into the
2 standing argument here. But I did want to identify
3 that though both the City and the board have raised
4 it in slightly different vehicles, it is
5 substantially the same argument. And with that,
6 unless Your Honor has further questions, I would
7 rest.
8 THE COURT: I don't have any further questions.
9 Mr. Smith, I am happy to hear your
10 argument.
11 MR. SMITH: Thank you, Judge Horan. And I'll
12 just add, given Mr. Davis's kind words, that the
13 respect is certainly mutual; and this case is
14 certainly an example of the fact that, you know,
15 counsel can zealously represent their clients and
16 still get on, get on well; and I also want to
17 acknowledge Assistant Attorney General Moe for
18 jumping into the breach here. I know he is maybe
19 the third assistant on the file. So we appreciate
20 him making himself available so we can have the
21 hearing.
22 And, Judge Horan, I will try to hit the
23 high points and be brief, not only because I know
24 from our past appearances before you that you pay

Page 14

1 careful attention to the papers, but also because
2 I'm, as you may hear in my voice, on the upswing
3 from some illness; and I think no one wants to hear
4 me as my voice deteriorates. But let me try to hit
5 the high points.
6 On mootness, Judge, one thing I think is
7 important to point out is that the parties do cite
8 the same standard. The City in its reply brief
9 agrees that the standard is whether it's impossible
10 for the court to grant effectual relief. And,
11 respectfully, I understand the points the City has
12 made, but as a legal matter, given this standard,
13 this case is not moot.
14 And the request for relief includes a
15 declaration that the Gaming Board doesn't have
16 authority to issue a license. The Court can still
17 do that. No license has been issued. You know,
18 again, taking AG Moe's point about the procedural
19 issues, I do think the mootness question is one
20 where the City itself, when they talk about what the
21 Gaming Board did after the filing of the complaint,
22 there's some additional matter in there.
23 I won't get into all of that, but there's
24 no real -- there hasn't been a lease signed. No

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FILED DATE: 6/10/2022 3:59 PM 2021CH05784

Page 15

1 license has issued. A license will not issue for
2 some years, and the case is not moot.
3 I think what you're really hearing about
4 may be arguments that could be relevant to the
5 Court's exercise of its equitable discretion. But
6 it's not a basis for dismissal; and without
7 repeating the arguments, Judge, I would point you to
8 pages 7 to 8 of our brief where we cite in
9 particular Provena Health and the Pierce Downer's
10 case. If there was not mootness there where there
11 was an issue about the issuance of a certificate of
12 need for a hospital, and millions of dollars had
13 already been spent towards construction, and yet the
14 appellate court said the case wasn't moot, we're
15 definitely not in mootness territory here. And,
16 Judge, I will point out that neither of the
17 defendants addressed the authority we cited on those
18 pages in their reply briefs.
19 Judge, with regard to the issue of
20 standing and whether there's a private right of
21 action, I'm going to try to discuss those together
22 because I do think to some extent they blend
23 together legally and to a certain extent factually.
24 Let me quickly address the legal framework.

Page 16

1 We cite, and the City takes us to task for
2 this, primarily cases from the public bidding sphere
3 and competitive bidding, that prong of public
4 contracting. And, you know, the City's answer to
5 that is, one, well, those cases are about
6 competitive bidding. This was a different type of
7 public contracting process. And that's true. But
8 usually one thing you do when you look at case law
9 is you ask, okay, well, do those principles apply
10 here? And I'm talking about these cases, Cardinal
11 Health, STANLEY Magic Door, and L.E. Zannini cited
12 in our brief.
13 And, Judge, we would submit that there are
14 sort of three principles that come out of those
15 cases that are applicable here. One is that just
16 because a statutory regime primarily benefits the
17 public doesn't mean that there aren't protections or
18 ways in which participants in a statutorily
19 prescribed public contracting process is laid out.
20 Second, a recognition that the public
21 ultimately benefits if the standing of participants
22 in that process is recognized, even if it's
23 cumbersome or costly in the immediate case before
24 the Court because it's recognized that those

Page 17

1 participants are in the best position and most
2 likely to try to ensure compliance with the
3 legislature's statutory scheme.
4 And the third principle that comes out of
5 those cases that really is applicable here is that
6 when a municipality invites participation in a
7 statutorily prescribed public contracting process,
8 there is an enforceable expectation that the City's
9 process is going to comply with that statute. So,
10 Judge, we would submit that while those cases arise
11 from competitive bidding regimes, no doubt; those
12 principles really apply, if anything, with greater
13 force here.
14 Now, here's the other thing the City said
15 about those cases in its papers, which is
16 essentially those cases really are more about
17 standing than whether there's a private right of
18 action. For a couple of reasons I don't think
19 that's a fair response. One, because the test for
20 whether there's standing is a legal matter that sort
21 of overlaps with the first couple of factors of
22 whether there's a private right of action; you know,
23 the issue of whether this is intended to benefit the
24 plaintiff; two, what these cases, Cardinal Health or

Page 18

1 Cardinal Glass -- I'm sorry -- STANLEY Magic Door,
2 and L.E. Zannini are talking about, they are framed
3 in terms of standing. But those cases are also
4 clearly identifying a private right of action
5 because, after all, there wouldn't have even been a
6 standing issue if the statutes identified these
7 particular plaintiffs as having a right of action.
8 That's the whole essence of needing to imply a
9 private right of action.
10 And, Judge, if there were any doubt, I
11 would point the Court to the L.E. Zannini case that
12 we cite, which is 138 Ill. App. 3d 467. And at
13 page 477 of that opinion, the Second District draws
14 a distinction between a case called Cook, which
15 involved the Workers' Compensation Act. And the
16 Court distinguishes Cook, and one of the things it
17 says is, you know, okay, in Cook we looked at
18 whether there was an implied private right of
19 action.
20 And this is -- I'm quoting the Court now.
21 "Although the Court found that the plaintiff was
22 within the group the statute was designed to
23 protect, it refused to recognize an implied cause of
24 action, noting that the Workers' Compensation Act

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FILED DATE: 6/10/2022 3:59 PM 2021CH05784

Page 19

1 itself provided numerous remedies. The same cannot
2 be said in the instant case, for the School Code
3 contains no remedy for an unsuccessful bidder who
4 alleges a violation of Section 1021."
5 And it goes on. "As the Court observed in
6 Cardinal Glass, securing compliance with the statute
7 will, as a practical matter, best be served by
8 granting standing to successful" -- I'm sorry -- "to
9 unsuccessful bidders."
10 So, again, taking that principle, you
11 know, the very fact that there aren't prescribed
12 remedies for someone in Potawatomi's position is a
13 factor here in favor of at least considering whether
14 to imply a private remedy; and, you know, as is
15 possible for any litigant on either side of this
16 issue, both briefs cite cases either, you know,
17 expressing caution about implying private remedies
18 or pointing out that it's something that courts in
19 Illinois do. I think it's clear, Judge, that the
20 Illinois Supreme Court has not gotten circuit courts
21 out of the business of deciding whether it's
22 appropriate to imply private remedies.
23 Now, let me address the factual points,
24 which I think was the focus of Mr. Davis's argument.

Page 20

1 There's a strain in the City's brief, and I think
2 the State picked up on this, that argues that
3 basically noncompliance with the statute could have
4 no bearing on unselected applicants. This is really
5 part of the standing argument, but I think it bleeds
6 into the private right of action argument.
7 And the problem factually with the
8 defendants' argument there is it assumes that there
9 was selection and then certification. But here as a
10 practical matter, certification was the selection.
11 That's what the City Council was voting on was
12 resolutions that were before it that are attached as
13 exhibits to our complaint, was whether to certify
14 these applicants. And they were voting based on
15 these defective resolutions.
16 And, again, Judge, the requirement --
17 Mr. Davis suggested we're turning it on -- the
18 requirements on their head because the requirement
19 to negotiate in good faith is really something that
20 is for the City's protection, that applicants
21 negotiate in good faith. That may well be true, but
22 that's only one of the requirements in the statute
23 which, you know, you have sort of seen multiple
24 times now and is quoted in our brief.

Page 21

1 There's a requirement of mutual agreement
2 on certain details concerning the casino proposal,
3 not, you know, mutual agreement in "general terms"
4 as the City inserted into its resolutions. And
5 that's what defined what the finish line of this
6 process could be, again. And that impacts -- that
7 impacts the entire process.
8 If the City needs to reach some meeting of
9 the minds with the applicants and not just do what
10 the well-pleaded allegations of the complaint say
11 the City did, which was basically, look, we're going
12 to send the proposals up to the Gaming Board; it's
13 going to decide; and then we will negotiate later.
14 Those are two very different processes, Judge.
15 And what I would also say is, you know, I
16 think the standing argument, while it's framed as a
17 legal argument, it does take on the element of a
18 factual argument related to causation. Even if, you
19 know, the City may not -- I'm sure they won't --
20 concede my point that, you know, certification and
21 selection were one and the same here, but that's a
22 factual point. And, in fact, the allegations of the
23 complaint and, in fact, what is true is that, you
24 know, it wasn't like Potawatomi was winnowed out at

Page 22

1 some earlier stage. They were there in the voting
2 at the end on these certification resolutions.
3 And I think for purposes of these motions
4 to dismiss, the Court really needs to assume that
5 this process was not compliant with the statute.
6 And, you know, whatever arguments the defendants are
7 making in their briefs, they aren't and they
8 couldn't, and to their credit they are not arguing,
9 that the well-pleaded allegations of the complaint
10 fail to set out noncompliance with the statute. I
11 mean, after all, we're quoting or paraphrasing
12 deposition testimony from the City's former
13 corporation counsel.
14 So what went on clearly is not the
15 procedure the legislature prescribed. And, in fact,
16 I know Mr. Davis doesn't want me to talk about
17 current events; but, again, on this procedural
18 nicety, if we're talking about an additional
19 affirmative matter, the City only just last week
20 entered into a nonbinding memorandum that was a
21 framework for future negotiations. Again, whether
22 you're talking about mootness or standing, there is
23 no claim by the City; and, again, they couldn't --
24 or the Gaming Board -- that there's a lease or a

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

Page 23

1 host community agreement or any of that.
2 Look, I understand that there is a feeling
3 that the way the statute was drafted wasn't all that
4 practically expedient, and I understand that the
5 City is impatient to move forward. I understand the
6 Gaming Board is anxious to move forward. I believe
7 that, you know, there's a desire within the
8 executive branch of the state to get these casinos
9 up and running. But, you know, what is expedient
10 and desired by political actors is not necessarily
11 what the legislature prescribed.
12 You know, there is a rule of law here.
13 And, you know, the last sort of factual point and
14 legal point I would make would be to focus on the
15 Illinois Gaming Board. It just is not accurate for
16 the reasons that I just described to somehow try to
17 disentangle the Gaming Board's willingness to accept
18 these certifications from the harm to Potawatomi
19 from not having the opportunity to participate in
20 the process as the legislature prescribed it because
21 if the Gaming Board had recognized the limits on its
22 authority, the Waukegan City Council could not have
23 declared game over.
24 And, Judge, one of the points that both

Page 24

1 the City and the IGB make, that they believe is a
2 point in their favor, I would submit actually cuts
3 against them as a legal matter. There's, you know,
4 been a fair amount of discussion both at this stage
5 and in the earlier proceedings about the idea that
6 the Gaming Board has exclusive authority over
7 gambling, raw discretion. That makes the language
8 of the statute we're looking at, the gaming
9 expansion law, even more striking.
10 The board shall consider issuing a license
11 only after the corporate authority of the
12 municipality has certified to the board the
13 following -- mutually agreed on this, mutually
14 agreed on that. That's a pretty striking and
15 explicit statement by the legislature circumscribing
16 the Gaming Board's authority in the context of a
17 statute where, yes, the Gaming Board has a lot of
18 authority over gaming.
19 So what we're talking about here is an
20 express legislative restriction on the Gaming
21 Board's authority. And, Judge, we would
22 respectfully submit that the arguments that the City
23 and the Gaming Board have advanced do not allow the
24 Court to dismiss this complaint as matter of law.

Page 25

1 And beyond that, we would rest on the papers, Judge.
2 THE COURT: Mr. Davis, would you like a brief
3 reply?
4 MR. DAVIS: Yeah, just a couple of things for
5 Your Honor. I think the striking statement here or
6 the actual overriding of legislative choice is the
7 wholesale importation of public bidding, competitive
8 bidding principle cases into this mix where you have
9 by ordinance and by statute specific requirements
10 and things that are occurring. And here we're
11 dealing specifically with this Illinois Gaming Act
12 and then this particular statute authorizing this
13 issuance of this license.
14 And the legislature knows what it's doing
15 in this arena, and the Illinois Gaming Board knows
16 what it's doing in this arena, and it does not
17 provide anywhere for any right of action. It
18 doesn't authorize some broad protection for
19 participants outside of a normal request for
20 proposal situation. So this statute -- and I don't
21 think this is really contested -- is enabling
22 legislation. This is simply enabling legislation
23 that -- and the cases strongly support -- you know,
24 typically do not provide for private right of

Page 26

1 action.
2 We have never argued that the Court is not
3 in a position to address the issue of whether or not
4 an implied right of action exists. What we're
5 saying is that there just is no basis to imply a
6 private right of action in the setting that we are
7 examining here.
8 So they're not without their remedy. They
9 talk about, you know, the absence of remedies.
10 They're pursuing aggressively their remedies in
11 federal court, and that's ongoing.
12 You know, the Illinois Gaming Board, if it
13 had some problem with these resolutions, would have
14 said something, would have done something. They're
15 not unsophisticated actors in this situation. And
16 so, you know, they were certainly not disentangled
17 or entangled, however you want to put it. They were
18 very present in this process and acted upon, you
19 know, what was provided to them and understood fully
20 the process it went through.
21 Finally, you know, sort of the underlying
22 implication is here that somehow the Potawatomi were
23 excluded from something; and, you know, whatever
24 process was employed was the same process that

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

Page 27

1 resulted in multiple, multiple applicants' proposals
2 being submitted to the Illinois Gaming Board; and in
3 the end, only the Potawatomi's was the one that was
4 not submitted, and that informs what's really going
5 on.
6 But be that as it may, you know, the
7 Gaming Board received multiple proposals. It saw
8 the resolutions dealing with them. In our -- just
9 so we're clear, in our judgment there's nothing
10 wrong with those -- you know, those documents. They
11 completely satisfy what was required of the City.
12 The City made a good faith effort to do everything
13 required of it under the statute, to go through
14 them, and have put together a rational process to
15 comply with it and went through those steps. And it
16 is just incorrect to suggest that somehow the
17 Potawatomi were somehow excluded in that process
18 altogether. So I'll with that just thank you for
19 your time.
20 THE COURT: Thank you, Mr. Davis. Mr. Moe?
21 MR. MOE: Thank you, Your Honor. I would
22 briefly address the distinction between the standing
23 and private right of action arguments. I think I
24 agree that there is some overlap in terms of the

Page 28

1 issues on the table. But both the standing and
2 private right of action arguments arise from
3 different legal bases. There is some overlap in the
4 issues, but not total overlap.
5 With respect to standing, plaintiff
6 acknowledges -- and this is in the response on
7 page 14 -- that there is "significant gatekeeping
8 authority" that has been issued to the City under
9 Subsection (e)(5). And I think that's telling here
10 because that's an acknowledgment of really what the
11 core of the standing argument is, namely, that with
12 respect to the board, plaintiff never really had a
13 seat at the table because the application was never
14 certified in the first place. That's the standing
15 in a nutshell.
16 The private right of action argument
17 extends far beyond that, and I think one of the
18 cases is I believe was cited by plaintiff in the
19 response papers -- this is the Channon case,
20 C-H-A-N-N-O-N -- goes through the elements in some
21 detail; and to imply a private right of action, that
22 goes far beyond any standing investigation. It gets
23 into the purpose of the statute. It gets into the
24 history of the statute, the intentions of the

Page 29

1 legislature in establishing the statutory scheme and
2 so forth.
3 And here in (e)(5), as plaintiff
4 characterized it, there is substantial gatekeeping
5 authority. It seems fairly clear that no private
6 right of action is necessary here because the
7 statute is fully functional without it; and as a
8 result, plaintiff lacks standing.
9 And as a final bit there, I would observe
10 that the need to imply a private right of action
11 necessarily acknowledges that there is no existing
12 right of action, which goes back to the 615
13 arguments with respect to whether there's a hook
14 here for plaintiff to invoke this Court's
15 jurisdiction in the first place. So, for that and
16 the reasons set forth in the papers, we would
17 request that Your Honor dismiss this case with
18 prejudice. Thank you.
19 THE COURT: All right. Thank you, everybody.
20 There's a lot going on here; isn't there? You know,
21 to really get to the point, I am still finding that
22 there's a problem with standing; and I understand
23 that -- I think Mr. Smith is making an argument that
24 somehow the Potawatomi can act as members of the

Page 30

1 general public in making this complaint. But
2 really, the complaint -- I'm looking at, you know
3 paragraphs 52 and 53 -- talk about irreparable
4 injury and the relief requested here and how they
5 are going to suffer irreparable injury; but the
6 injury that they are really seeking or the relief --
7 the relief that they're seeking, if it was granted,
8 would not give them really the relief that they
9 want, which is to have them be able to participate,
10 again, I suppose in the process. Right?
11 And so I do have a problem with standing.
12 I think as pleaded, the Potawatomi at this point,
13 given the facts and given the law, lack standing to
14 proceed with this lawsuit; and so, for that reason I
15 am going to dismiss the complaint. I don't know
16 that it's impossible that they can plead that they
17 have standing because, you know, then we do get into
18 the mootness argument. But, yeah, I just don't see
19 that any relief that they would be given would have
20 any impact on their application.
21 So I do -- you know, the standing and the
22 actual controversy piece of it I think are a
23 problem. So I will dismiss the claim, and I will
24 dismiss it with prejudice. And, you know, I know

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

1 that there's another case out there under which
2 they're seeking relief, and perhaps they can obtain
3 some relief under that, the federal lawsuit; but
4 here I just don't see it, and so that's my ruling
5 today. Okay? All right.
6 MR. DAVIS: Thank you, Your Honor.
7 THE COURT: Then that -- I think that -- Does
8 that dispose of the case in its entirety?
9 MR. DAVIS: Yes.
10 THE COURT: It does. Okay. All right. Very
11 good. Then whoever prepares the order can indicate
12 that the case is disposed of.
13 MR. SMITH: Thank you, Your Honor.
14 MR. DAVIS: Thank you, Judge.
15 THE COURT: All right. Have a nice day.
16 MR. MOE: Thank you, Your Honor.
17 (Proceedings concluded at
18 11:31 a.m.)
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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

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2 COUNTY OF C O O K)
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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

A

a.m 1:19 31:18
able 30:9
above-entitled 1:13
absence 26:9
accept 23:17
accomplished 11:2
account 8:2
accurate 23:15
acknowledge 13:17
acknowledges 28:6 29:11
acknowledgm... 28:10
act 5:9,11 6:21 6:22 7:6,9 8:18 18:15,24 25:11 29:24
acted 26:18
action 5:12 8:18 8:19 9:4,8 12:11,18 15:21 17:18,22 18:4 18:7,9,19,24 20:6 25:17 26:1,4,6 27:23 28:2,16,21 29:6,10,12
actions 5:8,24 8:11
actors 23:10 26:15
actual 6:4 9:6,14 10:10,14 25:6 30:22
add 13:12
addition 6:16
additional 14:22 22:18
address 8:9 15:24 19:23 26:3 27:22
addressed 10:12 12:11,15 15:17
adhere 9:10
adjustments 7:23
advanced 24:23
affairs 7:2
affirmative 12:20 22:19
aforesaid 32:7
AG 14:18
aggressively 26:10
agree 10:16 27:24
agreed 5:10 24:13,14
agreement 21:1 21:3 23:1
agrees 14:9
al 1:9
Alex 2:8 3:15
alexmoe@ilag... 2:10
alive 9:17
allegations 21:10,22 22:9
alleges 19:4
allow 3:21 24:23
altogether 27:18
amount 24:4
answer 12:12 16:4
anxious 23:6
App 18:12
appearances 2:1 13:24
appears 10:6 32:10
appellate 15:14
applicable 16:15 17:5
applicant 6:2 10:24 11:7
applicants 20:4 20:14,20 21:9
applicants' 27:1
application 28:13 30:20
apply 16:9 17:12
appreciate 13:19
appropriate 6:2 8:15 19:22
appropriately 9:9
approval 9:21
approved 10:5
arena 25:15,16
argued 26:2
argues 20:2
arguing 22:8
argument 10:20 13:2,5,10 19:24 20:5,6,8 21:16,17,18 28:11,16 29:23 30:18
arguments 8:9 10:11 12:11,22 15:4,7 22:6 24:22 27:23 28:2 29:13
assistant 2:8 3:14 13:17,19
assume 22:4
assumes 20:8
attached 20:12
attention 14:1
Attorney 2:8 3:14 13:17
authority 6:10 6:22 7:1,5,8 14:16 15:17 23:22 24:6,11 24:16,18,21 28:8 29:5
authorize 25:18
authorizing 25:12
available 13:20
avenue 7:17

B

back 10:11 29:12
based 6:22 11:22 20:14
bases 28:3
basic 5:23
basically 20:3 21:11
basis 4:15 5:15 6:24 10:2 15:6 26:5
bearing 20:4
behalf 2:7,11,16
belabor 12:7
believe 12:24 23:6 24:1 28:18
benefit 17:23
benefits 16:16 16:21
best 17:1 19:7
beyond 25:1 28:17,22
bidder 19:3
bidders 19:9
bidding 16:2,3,6 17:11 25:7,8
bit 29:9
bleeds 20:5
blend 15:22
board 1:9 2:11 3:3,15 4:17 6:8 6:10,21 7:2,5,8 7:14,18 8:14 9:7,23 12:19 13:3 14:15,21 21:12 22:24 23:6,15,21 24:6,10,12,17 24:23 25:15 26:12 27:2,7 28:12
Board's 5:8,24 8:3,11 23:17 24:16,21
branch 23:8
breach 13:18
brief 4:7 13:23 14:8 15:8 16:12 20:1,24 25:2
briefly 27:22
briefs 3:24 4:1 9:11 12:3 15:18 19:16 22:7
bring 7:21 8:7
broad 7:1 25:18
Broadway 2:13
built 9:22
business 10:14 19:21
buy 9:15

C

C 1:2 32:2
C-H-A-N-N-O... 28:20
called 18:14
capable 9:22
Cardinal 16:10 17:24 18:1 19:6
careful 14:1
case 3:2,18 4:12 4:13,21,24 5:1 5:2,19 6:3,5,19 7:21 8:10,13 9:3,17 12:9 13:13 14:13 15:2,10,14 16:8,23 18:11 18:14 19:2 28:19 29:17 31:1,8,12
cases 16:2,5,10

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

16:15 17:5,10 17:15,16,24 18:3 19:16 25:8,23 28:18
casino 1:5 3:10 6:3,9,12 8:7 21:2
casinos 23:8
causation 21:18
cause 1:13 8:19 12:18 18:23
caution 19:17
CECILIA 1:16
Center 1:17
certain 15:23 21:2
certainly 7:16 10:16 12:24 13:13,14 26:16
certificate 15:11
certification 20:9,10 21:20 22:2
certifications 23:18
certified 1:14 8:24 24:12 28:14 32:4,17
certify 11:19 20:13 32:6
CH 1:8
challenge 7:14 12:17
chance 7:13 11:8,9
CHANCERY 1:4
changes 12:24
Channon 28:19
characterized 29:4
Chicago 1:18 2:4,9 32:13,19
choice 25:6
circuit 1:3 19:20
circumscribing 24:15
cite 14:7 15:8 16:1 18:12 19:16
cited 15:17 16:11 28:18
City 2:16 3:7 4:18,22 6:7,19 7:11,24 9:18 11:2,15,19 12:15 13:3 14:8,11,20 16:1 17:14 20:11 21:4,8 21:11,19 22:19 22:23 23:5,22 24:1,22 27:11 27:12 28:8
City's 16:4 17:8 20:1,20 22:12
civil 7:3,6
claim 8:19 10:6 22:23 30:23
Clark 32:18
clauses 6:13
clear 19:19 27:9 29:5
clearly 18:4 22:14
clients 13:15
Code 19:2
coincide 8:5
come 16:14
comes 12:1 17:4
comment 12:2
comments 4:5
community 23:1
companion 4:21
Company 1:6
Compensation 18:15,24
competitive 16:3,6 17:11 25:7
complain 5:8 9:1
complaint 6:5 6:12 8:13 14:21 20:13 21:10,23 22:9 24:24 30:1,2 30:15
complete 32:8
completely 10:19,20 27:11
compliance 5:9 17:2 19:6
compliant 22:5
comply 17:9 27:15
concede 21:20
concerning 9:6 21:2
concluded 31:17
conduct 7:2,5
consider 6:9,11 8:8 24:10
considering 19:13
construction 15:13
contains 19:3
contested 25:21
context 12:16 24:16
continue 5:19 8:21
contracting 16:4 16:7,19 17:7
contributed 5:13
controversy 9:6 9:10 10:10 30:22
Cook 1:3 18:14 18:16,17
core 28:11
corporate 24:11
corporation 22:13
correct 32:8
costly 16:23
Council 20:11 23:22
counsel 3:7 13:15 22:13
counts 9:3
COUNTY 1:2,3 1:4 32:2
couple 4:5 5:1 17:18,21 25:4
court 1:3 3:1,8 3:11,16 4:6,8 4:20 12:4 13:8 14:10,16 15:14 16:24 18:11,16 18:20,21 19:5 19:20 22:4 24:24 25:2 26:2,11 27:20 29:19 31:7,10 31:15
Court's 15:5 29:14
courts 19:18,20
credit 22:8
CSR 32:22
cumbersome 16:23
current 10:9 22:17
cuts 24:2

D

D 2:2
Daley 1:17
damages 4:24
date 8:11
Davis 2:13 3:6,7 4:4,5,7,9 12:4 20:17 22:16 25:2,4 27:20 31:6,9,14
Davis's 13:12
19:24
day 12:21 31:15
deal 7:2
dealing 10:18 11:15 25:11 27:8
dealings 7:24
decide 3:20 21:13
decided 7:11
deciding 19:21
decision 4:3 9:24
declaration 6:6 6:7 14:15
declaratory 9:4 10:6 12:18
declared 23:23
defective 20:15
defendant 3:19 4:3
defendants 1:10 3:4,20 15:17 22:6
defendants' 20:8
defined 21:5
definitely 15:15
demonstrated 9:22
denial 11:11
DEPARTME... 1:4
deposition 22:12
described 23:16
designed 18:22
desire 23:7
desired 23:10
detail 5:23 11:4 28:21
details 21:2
deteriorates 14:4
determination 6:1 7:15 8:3

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

determinations 8:23
development 8:6
developments 8:5
different 5:21 13:4 16:6 21:14 28:3
dis- 10:2
discretion 15:5 24:7
discuss 15:21
discussed 8:20
discussion 5:18 24:4
disentangle 23:17
disentangled 26:16
disgruntled 10:3
dismiss 3:3 22:4 24:24 29:17 30:15,23,24
dismissal 15:6
dismissed 8:10
dispose 31:8
disposed 31:12
distinction 18:14 27:22
distinguishes 18:16
District 18:13
DIVISION 1:4
documents 27:10
doing 25:14,16
Dolgner 1:14 32:4
dollars 15:12
Door 16:11 18:1
doubt 9:20 17:11 18:10
Downer's 15:9
drafted 23:3
draws 18:13
Drive 2:3
dsmith@freeb... 2:6
dutifully 8:14
Dylan 2:3 3:9,13

E

e 2:13 28:9 29:3
E-mail 2:5,6,10 2:15
earlier 22:1 24:5
effectively 7:9 12:22
effectual 14:10
effort 9:16 27:12
either 3:22 19:15,16
element 21:17
elements 28:20
employed 26:24
enabling 25:21 25:22
enforceable 17:8
enjoin 8:16
ensure 10:23 17:2
entangled 26:17
entered 22:20
entire 21:7
entirety 31:8
equitable 15:5
essence 18:8
essentially 17:16
establishing 29:1
estate 8:1
et 1:9
events 22:17
everybody 29:19
exactly 6:13
examining 26:7
example 13:14
excluded 10:3 26:23 27:17
exclusive 24:6
execute 7:9
executive 23:8
exercise 15:5
exhibits 20:13
existing 29:11
exists 9:23 26:4
expansion 24:9
expectation 17:8
expedient 23:4,9
experience 12:8
explicit 24:15
express 24:20
expressing 19:17
extends 28:17
extensive 7:7 12:8
extent 15:22,23

F

face 8:13 10:7
facility 9:22
fact 8:8 11:9 13:14 19:11 21:22,23 22:15
factor 19:13
factors 17:21
facts 30:13
factual 19:23 21:18,22 23:13
factually 15:23 20:7
fail 22:10
failed 6:7
fails 9:3
fair 8:7 17:19 24:4
fairly 29:5
faith 10:24 11:14 20:19,21 27:12
far 28:17,22
favor 19:13 24:2
federal 4:21 26:11 31:3
feel 12:2
feeling 23:2
file 13:19
filed 3:4
filing 14:21
final 7:23 9:21 9:24 29:9
Finally 26:21
find 6:19,24
finding 29:21
findings 5:6
finish 21:5
first 4:9 17:21 28:14 29:15
focus 19:24 23:14
following 24:13
force 17:13
foregoing 32:8
former 22:12
forth 12:18 29:2 29:16
forward 4:18 6:2 7:11,13,19 8:15 23:5,6
found 18:21
framed 18:2 21:16
framework 15:24 22:21
FREEBORN 2:2
Friday 1:18
Full 6:1 7:11,24 9:18,21
full-blown 3:23
fully 7:9 26:19 29:7
fulsome 10:12 10:13
functional 29:7
functions 7:3
further 5:10 9:17 13:6,8
future 22:21

G

gambling 5:9 6:21 24:7
game 23:23
gaming 1:9 2:11 3:3,15 4:17 5:8 5:11,24 6:8,10 6:21 7:2,4,14 7:18 8:3,11,14 8:18 9:7,23 14:15,21 21:12 22:24 23:6,15 23:17,21 24:6 24:8,16,17,18 24:20,23 25:11 25:15 26:12 27:2,7
gatekeeping 28:7 29:4
general 2:8 3:15 13:17 21:3 30:1
give 3:22 4:1 30:8
given 7:1 9:7 13:12 14:12 30:13,13,19
Glass 18:1 19:6
Glenn 2:13 3:7 4:5
glenn.davis@... 2:15
go 5:22 6:2 9:23 10:10 27:13
goes 9:18 19:5 28:20,22 29:12
going 4:18 5:22 8:5,23 13:1 15:21 17:9 21:11,13 27:4 29:20 30:5,15

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

good 3:1,6,9,11 3:12,14 4:4 10:24 11:14 20:19,21 27:12 31:11
gotten 4:12,13 19:20
grant 7:1 14:10
granted 11:12 30:7
granting 7:8 19:8
greater 17:12
grounds 5:23
group 9:19 18:22

H

hand 32:13
happy 12:12 13:9
harm 23:18
head 10:21 11:18 20:18
Health 15:9 16:11 17:24
hear 13:9 14:2,3
hearing 1:13 3:23 8:21 13:21 15:3 32:7,9
hearings 7:5 11:7
HEPLERBR... 2:12
hereunder 7:7
hereunto 32:12
high 3:24 13:23 14:5
highest 4:10
history 28:24
hit 13:22 14:4
Honor 3:6,9 4:4 12:6,10 13:6 25:5 27:21 29:17 31:6,13 31:16
HONORABLE 1:16
hook 29:13
Horan 1:16 3:1 13:11,22
hospital 15:12
host 23:1
House 6:1 7:12 7:24 9:19,21

I

idea 24:5
identified 18:6
identify 13:2
identifying 18:4
IGB 24:1
ILCS 7:4
Ill 18:12
Illinois 1:1,3,5,9 1:18 2:4,9,11 3:2 5:11,24 6:20,21 7:1,14 7:18 19:19,20 23:15 25:11,15 26:12 27:2 32:1,5,13,17 32:19
illness 14:3
illogical 11:5
immediate 16:23
impact 30:20
impacts 21:6,7
impatient 23:5
implication 26:22
implied 18:18 18:23 26:4
imply 18:8 19:14,22 26:5 28:21 29:10
implying 19:17
importance 4:19
important 14:7
importation 25:7
impossible 14:9 30:16
includes 14:14
including 6:17
incomplete 9:2
incorrect 27:16
indicate 31:11
information 11:21,21
informs 5:18 27:4
injunctive 6:6 10:6
injury 30:4,5,6
inserted 21:4
instant 19:2
intended 17:23
intentions 28:24
interactions 4:18
interested 9:9
intervention 4:16
introduce 3:5
investigation 28:22
invites 17:6
invoke 29:14
involved 18:15
irreparable 30:3 30:5
issuance 15:11 25:13
issue 14:16 15:1 15:11,19 17:23 18:6 19:16 26:3
issued 14:17 15:1 28:8
issues 6:23 9:9 14:19 28:1,4
issuing 6:9,11 24:10

J

J 1:17
Judge 3:1 13:11 13:22 14:6 15:7,16,19 16:13 17:10 18:10 19:19 20:16 21:14 23:24 24:21 25:1 31:14
judgment 5:2 9:4 10:6 12:18 27:9
judicial 4:15
jumping 13:18
jurisdiction 29:15
jurisdictional 9:16

K

K 1:2 32:2
keep 9:16,17
kind 13:12
know 3:19 4:9 5:4,18,22 6:17 7:13 8:13,16 8:21,24 9:2,5 9:11 10:2,12 10:13,20 12:7 12:22 13:14,18 13:23 14:17 16:4 17:22 18:17 19:11,14 19:16 20:23 21:3,15,19,20 21:24 22:6,16 23:7,9,12,13 24:3 25:23 26:9,12,16,19 26:21,23 27:6 27:10 29:20 30:2,15,17,21 30:24,24
knows 25:14,15
Krista 1:14 32:4

L

L.E 16:11 18:2 18:11
lack 5:15 8:22 9:8 11:14 30:13
lacked 6:22
lacking 5:7
lacks 6:10 29:8
laid 16:19
language 24:7
law 6:23 9:13 16:8 23:12 24:9,24 30:13
lawsuit 30:14 31:3
lead 3:20
lease 14:24 22:24
left 8:15
legal 8:9 12:24 14:12 15:24 17:20 21:17 23:14 24:3 28:3
legally 15:23
legislation 25:22 25:22
legislative 24:20 25:6
legislature 22:15 23:11,20 24:15 25:14 29:1
legislature's 17:3
length 8:20
Liability 1:5
license 6:9,11 14:16,17 15:1 15:1 24:10 25:13 32:22

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

likelihood 5:16
limited 6:17
limits 23:21
Limted 1:5
line 21:5
litigant 19:15
little 5:21
LLC 1:5 2:12
LLP 2:2
logical 10:8
look 5:19 6:4 9:14 16:8 21:11 23:2
looked 18:17
looking 7:4 24:8 30:2
lot 24:17 29:20
Louis 2:14

M

Magic 16:11 18:1
maintain 8:21
major 8:6
making 13:20 22:7 29:23 30:1
manner 10:13
Martin 2:2 3:12
materials 3:17
matter 12:20 14:12,22 17:20 19:7 20:10 22:19 24:3,24
matters 7:3,21
mean 8:4 16:17 22:11
meaningful 11:1 11:20
meeting 21:8
members 29:24
memorandum 22:20
merits 5:16
micro 7:23
millions 15:12
mind 9:2
minds 21:9
Missouri 2:14
mix 25:8
Moe 2:8 3:14,15 12:5,6 13:17 27:20,21 31:16
Moe's 14:18
months 5:3
moot 6:3 14:13 15:2,14
mooted 8:12
mootness 12:10 14:6,19 15:10 15:15 22:22 30:18
morning 3:1,6,9 3:11,12,14 4:4
motion 3:3 5:3,5 5:21
motions 22:3
movants 4:3
move 7:11 23:5 23:6
moving 7:18 8:14
msyvertsen@f... 2:5
multiple 9:3 11:6 20:23 27:1,1,7
municipality 17:6 24:12
mutual 13:13 21:1,3
mutually 24:13 24:13

N

necessarily 23:10 29:11
necessary 7:8 29:6
need 12:2 15:12 29:10
needing 18:8
needs 4:14 21:8 22:4
negotiate 11:4 20:19,21 21:13
negotiated 10:24
negotiation 10:22
negotiations 22:21
neither 15:16
never 26:2 28:12 28:13
nice 31:15
nicety 22:18
nonbinding 22:20
noncompliance 20:3 22:10
normal 8:5 25:19
North 2:13 32:18
notes 32:10
noting 18:24
nugget 12:14
numerous 19:1
nutshell 28:15

O

O 1:2,2 32:2,2
objection 7:16
obligations 6:20
observe 29:9
observed 19:5
obtain 31:2
obviously 5:20
occurring 25:10
OFFICE 2:8
okay 3:8,16 4:8 12:4 16:9 18:17 31:5,10
once 9:21
ongoing 4:17,24 7:20 10:1 26:11
open 7:17
open-ended 9:16
operate 6:9,11
opinion 18:13
opportunity 23:19
order 5:14 31:11
ordinance 25:9
ordinary 8:4
outcome 12:23 13:1
outside 7:22 25:19
overlap 27:24 28:3,4
overlaps 17:21
overriding 25:6

P

page 18:13 28:7
pages 15:8,18
papers 4:15 12:7 12:15 14:1 17:15 25:1 28:19 29:16
paragraphs 6:15 30:3
paraphrasing 22:11
part 11:15 20:5
participant 10:4 11:4
participants 16:18,21 17:1 25:19
participate 23:19 30:9
participation 17:6
particular 4:13 15:9 18:7 25:12
parties 3:4,17 7:13 14:7
party 9:10
pay 13:24
pending 4:20 10:10
pertaining 7:6
PETERS 2:2
Phone 2:5,10,15
picked 20:2
picking 9:17 10:5
piece 30:22
Pierce 15:9
place 8:2 28:14 29:15
plaintiff 1:7 2:7 3:10 12:17 17:24 18:21 28:5,12,18 29:3,8,14
plaintiffs 18:7
plead 30:16
pleaded 30:12
pleadings 7:22
please 3:5
point 3:24 4:12 4:13,16 5:9,17 8:16 9:5,24 14:7,18 15:7 15:16 18:11 21:20,22 23:13 23:14 24:2 29:21 30:12
pointing 19:18
points 3:24 12:7 13:23 14:5,11 19:23 23:24
political 23:10
position 10:17 17:1 19:12 26:3
possible 19:15
postures 12:9

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

Potawatomi 1:5 3:10 4:22 6:18 8:22 9:9 11:9 21:24 23:18 26:22 27:17 29:24 30:12
Potawatomi's 19:12 27:3
Potawatomis 5:7 7:20
potential 5:11
powers 7:8
practical 19:7 20:10
practically 23:4
preceded 5:1
prejudice 29:18 30:24
preliminary 6:1
preparation 10:23
prepares 31:11
prescribed 16:19 17:7 19:11 22:15 23:11,20
present 26:18
pretty 24:14
primarily 16:2 16:16
principle 17:4 19:10 25:8
principles 16:9 16:14 17:12
prior 8:21,24
private 5:12 8:17 9:8 12:10 15:20 17:17,22 18:4,9,18 19:14,17,22 20:6 25:24 26:6 27:23 28:2,16,21 29:5,10
problem 20:7
26:13 29:22 30:11,23
procedural 12:9 12:14 14:18 22:17
procedure 22:15
proceed 30:14
proceeding 10:7
proceedings 1:12 24:5 31:17 32:7,9
process 7:12 10:4 11:2 16:7 16:19,22 17:7 17:9 21:6,7 22:5 23:20 26:18,20,24,24 27:14,17 30:10
processes 21:14
produced 11:1
Professional 1:15
progressing 9:19
progression 8:6
project 8:6 9:19
promulgated 7:7
prong 16:3
proper 7:9
proposal 7:12 11:1,11,15,20 21:2 25:20
proposals 21:12 27:1,7
propriety 10:14
protect 18:23
protection 20:20 25:18
protections 16:17
Provena 15:9
provide 10:1 25:17,24
provided 3:17
5:14 8:18 11:3 11:23 19:1 26:19
provides 5:11
provision 10:22
provisions 10:18
public 16:2,3,7 16:17,19,20 17:7 25:7 30:1
purely 6:23 9:13
purpose 28:23
purposes 22:3
pursuing 26:10
put 26:17 27:14

Q

question 6:18 14:19
questioned 5:10
questions 9:13 12:10 13:6,8
quibble 11:16
quickly 15:24
quoted 20:24
quoting 18:20 22:11

R

R 1:14 32:4
raise 12:14
raised 12:19 13:3
raises 12:16
Randolph 2:9
rational 27:14
raw 24:7
reach 21:8
read 12:8
ready 3:18 9:23
real 7:24 14:24
realistic 5:16 11:20
really 4:15,16 8:9,12,17 9:5 10:9 15:3 17:5 17:12,16 20:4
20:19 22:4 25:21 27:4 28:10,12 29:21 30:2,6,8
reason 30:14
reasons 17:18 23:16 29:16
recall 4:20 5:4
received 27:7
recognition 16:20
recognize 18:23
recognized 16:22,24 23:21
reconsideration 11:11
record 3:5 5:7
refused 18:23
regard 4:10 15:19
regime 16:16
regimes 17:11
Registered 1:15
regulations 7:7
related 7:3 21:18
relevant 15:4
relief 6:4,6 8:12 8:19 9:14 14:10,14 30:4 30:6,7,8,19 31:2,3
rely 3:23 4:1
remedies 19:1 19:12,17,22 26:9,10
remedy 4:23 19:3,14 26:8
remind 10:17
repeating 15:7
reply 14:8 15:18 25:3
reported 32:6
Reporter 1:15 1:16 32:5,17
Reporting 32:18
represent 13:15
representations 11:22
request 14:14 25:19 29:17
requested 6:14 8:12 9:15 30:4
require 4:17
required 11:18 27:11,13
requirement 20:16,18 21:1
requirements 6:8 20:18,22 25:9
resolutions 9:1 10:15,19,23 11:16,18,22 20:12,15 21:4 22:2 26:13 27:8
respect 4:11 12:13 13:13 28:5,12 29:13
respectfully 14:11 24:22
response 17:19 28:6,19
rest 13:7 25:1
restriction 24:20
result 29:8
resulted 27:1
reviewed 3:16
Richard 1:17
right 5:12 8:17 9:8 12:11 15:20 17:17,22 18:4,7,9,18 20:6 25:17,24 26:4,6 27:23 28:2,16,21 29:6,10,12,19 30:10 31:5,10

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

31:15
road 9:20
Room 1:18
Royal 32:18
rule 5:19 23:12
rules 7:6
ruling 31:4
running 23:9

S

S 2:8
satisfy 6:8 27:11
saw 27:7
saying 26:5
says 18:17
scheme 17:3 29:1
School 19:2
seat 28:13
second 11:13 16:20 18:13
Section 19:4
securing 19:6
see 30:18 31:4
seeking 6:5,6,19 30:6,7 31:2
seen 20:23
selected 11:6
selection 20:9,10 21:21
send 21:12
served 19:7
Services 32:18
sessions 11:7
set 4:14 12:17 22:10 29:16 32:12
setting 26:6
shorthand 1:15 32:5,6,17
side 19:15
signed 14:24
significant 28:7
simply 25:22
situation 4:23 7:10 11:17 25:20 26:15
slightly 13:4
small 12:14
Smith 2:3 3:9,10 3:13 4:11 10:13 13:9,11 29:23 31:13
sorry 18:1 19:8
sort 9:15 16:14 17:20 20:23 23:13 26:21
sought 6:5 11:10
South 2:3
speak 9:12
specific 12:23 25:9
specifically 12:15 25:11
spent 15:13
sphere 16:2
spoken 7:18
SS 1:1 32:1
St 2:14
stage 22:1 24:4
stand 12:3
standard 14:8,9 14:12
standing 5:7 8:22 9:8 10:5 12:13,16,19 13:2 15:20 16:21 17:17,20 18:3,6 19:8 20:5 21:16 22:22 27:22 28:1,5,11,14 28:22 29:8,22 30:11,13,17,21
STANLEY 16:11 18:1
state 1:1 20:2 23:8 32:1,5,17
statement 24:15 25:5
statute 17:9 18:22 19:6 20:3,22 22:5 22:10 23:3 24:8,17 25:9 25:12,20 27:13 28:23,24 29:7
statutes 18:6
statutorily 16:18 17:7
statutory 16:16 17:3 29:1
stenographic 32:10
steps 27:15
strain 20:1
Street 1:18 2:9 32:18
striking 24:9,14 25:5
strongly 25:23
submission 5:2 10:19
submit 16:13 17:10 24:2,22
submitted 10:15 27:2,4
Subsection 28:9
substantial 29:4
substantially 13:5
success 5:16
successful 19:8
suffer 30:5
sufficient 11:21
sufficiently 12:17
suggest 27:16
suggested 20:17
suitability 6:1
Suite 2:4,14 32:18
summarizing 6:13
summary 5:2
supervision 4:17 7:21
support 8:18 25:23
suppose 30:10
Supreme 19:20
sure 4:6 11:19 21:19
Syvertsen 2:2 3:12,12 4:11

T

table 28:1,13
take 3:19 8:1 21:17
taken 8:2 32:10
takes 16:1
talk 3:18 14:20 22:16 26:9 30:3
talking 16:10 18:2 22:18,22 24:19
task 16:1
team 7:12
telling 28:9
terms 5:9 7:23 11:16 18:3 21:3 27:24
territory 15:15
test 17:19
testimony 22:12
thank 12:4,6 13:11 27:18,20 27:21 29:18,19 31:6,13,14,16
thing 4:9,19 14:6 16:8 17:14
things 5:13 6:16 8:2 9:12 10:16 18:16 25:4,10
think 4:7,12,19 5:5,10,13,14 5:17,22 6:18 6:24 8:1,4,7 9:3,12,12 11:24 12:2,21 14:3,6,19 15:3 15:22 17:18 19:19,24 20:1 20:5 21:16 22:3 25:5,21 27:23 28:9,17 29:23 30:12,22 31:7
third 13:19 17:4
three 16:14
time 7:15 11:5 11:13 27:19
times 20:24
today 3:18 5:19 5:21 31:5
total 4:1 28:4
totally 7:22
transcribed 32:11
transcript 1:12 5:6 32:9
TRO 5:5
true 9:20 16:7 20:21 21:23 32:8
try 13:22 14:4 15:21 17:2 23:16
turning 20:17
turns 10:20 11:17
twice 11:10
two 3:20 6:10 17:24 21:14
type 16:6
typically 25:24

U

ultimately 5:14 16:21
underlying 26:21

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

understand 14:11 23:2,4,5 29:22
understood 26:19
unselected 20:4
unsophisticated 26:15
unsuccessful 19:3,9
upswing 14:2
usually 16:8

V

vehicle 12:23
vehicles 13:4
verified 6:12
versus 3:2
videoconference 1:14 2:1
violated 6:20
violation 19:4
violations 7:6
voice 14:2,4
voted 11:12
voting 20:11,14 22:1
vs- 1:8

W

Wacker 2:3
want 3:4,22 4:2 7:20 10:2,3,10 10:17 13:2,16 22:16 26:17 30:9
wants 3:19 14:3
Washington 1:17
wasn't 11:3 15:14 21:24 23:3
Waukegan 1:5 2:16 3:2,7,10 4:22 6:3,7,10 6:11 8:14 9:18 11:3 12:16 23:22
way 10:1 23:3
ways 16:18
we're 3:2 5:20 10:18 15:14 20:17 21:11 22:11,18 24:8 24:19 25:10 26:4 27:9
week 22:19
well-pleaded 21:10 22:9
went 22:14 26:20 27:15
weren't 10:4
West 1:17 2:9
wherefore 6:13
WHEREOF 32:12
wholesale 25:7
willing 11:3
willingness 23:17
winnowed 21:24
wish 11:17
WITNESS 32:12
words 13:12
Workers' 18:15 18:24
works 10:1
wouldn't 18:5
written 9:11
wrong 27:10

X

Y

yeah 25:4 30:18
years 5:1 15:2

Z

Zannini 16:11 18:2,11
zealously 13:15

0

084-002878 32:22

1

10/5(b)(2) 7:4
10:45 1:19
100 2:9
1021 19:4
11:31 31:18
13 1:19
138 18:12
14 28:7
161 32:18

2

2-615 5:20
2008 1:18
2022 1:19
21 1:8
211 2:13
230 7:4
2700 2:14

3

3000 2:4
3050 32:18
311 2:3
312.360.6000 2:5
312.361.8861 32:19
312.814.3276 2:10
314.241.6160 2:15
3d 18:12

4

467 18:12
477 18:13

5

5 28:9 29:3
50 1:17
52 30:3
53 30:3
5874 1:8

6

60601 2:9 32:19
60606 2:4
615 12:16 29:12
619(a)(9) 12:19
63102 2:14

7

7 15:8

8

8 15:8

9

FILED DATE: 6/10/2022 3:59 PM 2021CH05784

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on June 10, 2022, I caused the foregoing **Notice of Appeal** to be electronically filed via the Court's electronic filing system by using the Odyssey eFileIL system, and to be served by email on counsel of record at the email addresses of record indicated below:

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

Waukegan Potawatomi Casino, LLC, Plaintiff, v. The Illinois Gaming Board, City of Waukegan, *et al.*, Defendants.	Case No. 21 CH 5784 Calendar 9 Hon. Cecilia A. Horan Judge Presiding

ORDER

This matter came before the Court on May 13, 2022 for hearing on the Motion to Dismiss filed by the City of Waukegan and the Motion to Dismiss filed by the Illinois Gaming Board Defendants. The Court, having reviewed the parties' filings and heard argument, and otherwise being fully advised, hereby orders:

1. For the reasons stated in open court, both Motions to Dismiss are granted. The Verified Complaint is dismissed, with prejudice.
2. This is a final order, resolving all outstanding issues in the case.
3. This order is entered *nunc pro tunc* to the original hearing date of May 13, 2022.

ENTER:

/s/ Cecilia A. Horan Judge No: 2186

Meeting ID: 956 5899 1093
Password: 129359
Dial-in: 312-626-6799

4569?
Nunc Pro tunc

Judge Cecilia A. Horan
MAY 31 2022
Circuit Court-2186

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

WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company, Plaintiff, v. 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, Defendants.	)	Case No. 21 CH 05784 Judge Cecilia A. Horan Calendar 9

ORDER

This cause coming to be heard for hearing on Plaintiff's Emergency Motion for Temporary Restraining Order, notice having been given, Defendants having appeared through counsel, and the Court being duly advised on the premises, IT IS ORDERED as follows:

1. Plaintiff's Motion for Temporary Restraining Order is denied for the reasons stated on the record.

2. Solely for purposes of the record on any appeal, Plaintiff is granted to leave to file the proposed order granting a TRO that plaintiff previously transmitted to chambers (and which the Court did not enter).

3. Defendants, through counsel, acknowledge receipt of Plaintiff's Verified Complaint for Declaratory and Injunctive Relief, and waive service of summons. Defendants shall answer or otherwise respond to the Verified Complaint by January 14, 2022.

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4. This case is set for status on February 1, 2022, at 9:30 a.m. via Zoom, which may be accessed as follows:

Copy and paste the link below:
https://circuitcourtofcookcounty.zoom.us/j/95658991093?pwd=VUYvQUZxcTA2K2x4YUhEdnpMTFBIQT09

Alternatively, use the following Zoom log-in number and password:

Meeting ID: 956 5899 1093
Password: 129359

Alternatively, dial-in by calling **(312) 626-6799.**

ENTER:

/s/ Cecilia A. Horan Judge No. 2186

Meeting ID: 956 5899 1093
Password: 129359
Dial-in: 312-626-6799

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Return Date: No return date scheduled
Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 9

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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
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FILED DATE: 12/6/2021 4:27 PM 2021CH05784

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

WAUKEGAN POTAWATOMI CASINO, LLC)
an Illinois limited liability company,)
)
Plaintiff,)
) Case No.: 2021CH05784
vs.)
)
)
THE ILLINOIS GAMING BOARD, et al.)
)
Defendants.)

DEFENDANT CITY OF WAUKEGAN'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Decisions over casino licenses "often involve millions of dollars," which is why there is a "danger that a person who receives an adverse decision will retaliate and seek vengeance in the courts." *Sypolt v. Illinois Gaming Bd.*, No. 19-CV-05991, 2021 WL 1209132, at *4 (N.D. Ill. Mar. 31, 2021). That is exactly what has happened here. On October 17, 2019, the City Council for the City of Waukegan ("City" or "Waukegan"), after an extensive public process, certified three casino license applicants to the Illinois Gaming Board ("IGB"). The City declined, however, to certify Plaintiff Waukegan Potawatomi Casino, LLC's ("WPC") application. WPC sought to have the City reconsider its decision. On October 21, 2019, WPC filed suit against the City, hours before the City Council was even scheduled to vote on its motion for reconsideration.

In its lawsuit against the City of Waukegan, WPC filed an Emergency Motion for Temporary Restraining Order, seeking to block the City "from submitting its certifications to the IGB pursuant to resolutions that were adopted in its October 17, 2019 special meeting. . ." *See* Exhibit 1. WPC's motion argued the City's actions had violated the Open Meetings Act, among

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

other things. *See id.* Now, *more than two years later,* the Potawatomi have filed another lawsuit claiming an "Emergency".

The reasons for WPC's serial lawsuits and "emergency" motions for injunctive relief are transparent. The Forest County Potawatomi Community (the "Potawatomi Tribe")[1] own estimates show a casino in Waukegan is expected to negatively impact the Potawatomi Tribe's Milwaukee Casino by tens of millions of dollars a year.[2] Indeed, using litigation to prevent competing gaming interests has been the long-time strategy of the Potawatomi Tribe, dating as far back as 2001, when they filed suit to block another Tribe's plans to build a casino in Kenosha, Wisconsin. This lawsuit and accompanying motion for injunctive relief are the latest attempt to block any competing casinos and preserve the revenue stream for its nearby Milwaukee casino.

The current motion for injunctive relief should be denied because there is no private right of action under the Illinois Gambling Act ("IGA"). Further, the questions raised by this lawsuit are within IGB's exclusive jurisdiction. Putting these threshold issues aside, WPC cannot satisfy the four necessary factors to impose the drastic remedy of injunctive relief on the defendants.

I. PROCEDURAL HISTORY

WPC filed against the City in the Circuit Court of Lake County, Illinois on October 21, 2019. On January 3, 2020, WPC filed its First Amended Verified Complaint for Damages and Other Relief. On January 31, 2020, Waukegan removed that lawsuit to federal court. On May 17, 2021, fact discovery closed in the federal lawsuit and expert discovery subsequently closed as well.

[1] The Potawatomi Tribe is the organization behind WPC. Verified Complaint at ¶4.
[2] The City is not at liberty to disclose the exact millions in revenue losses the WPC calculated would occur if a casino opened in Waukegan under independent ownership, due to a protective order in place in the federal case.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

On September 21, 2021, the City of Waukegan filed a motion for summary judgment on all claims. On October 29, 2021, WPC filed its opposition to the motion for summary judgment.

On November 15, 2021, the IGB posted the agenda for a special meeting on November 18, 2021. The IGB agenda included "Consideration of Matters Related to the Pending Applications for the Owners License to Be Located in Waukegan," and "Determination of Preliminary Suitability." Exhibit 13 to Plaintiff's Complaint. The next day, WPC filed its' Verified Complaint alleging a single claim for Declaratory and Injunctive Relief for violation of the Illinois Gambling Act. Verified Complaint at 12. On November 17, 2021, the parties appeared before this Court. The motion for injunctive relief was deferred pending a mediation in the federal lawsuit. On November 30, 2021, the parties held a mediation before Magistrate Judge David Weisman. The mediation adjourned without a settlement.

II. LEGAL STANDARD

A temporary restraining order is a *drastic remedy* which may issue only in exceptional circumstances and for a brief duration. *Am. Fed'n of State, Cty., & Mun. Emps., Council 31 v. Ryan*, 332 Ill. App. 3d 965, 966-67 (1st Dist. 2002). To be entitled to temporary injunctive relief, WPC must demonstrate that it: (1) possesses a protectable right; (2) will suffer irreparable harm without the protection of an injunction; (3) has no adequate remedy at law; and (4) is likely to be successful on the merits of its action. *Id.*

Because a TRO is "an extraordinary remedy," the party seeking the TRO must present the Court with "well-pled facts, that it is entitled to the relief sought." *Capstone Fin. Advisors, Inc. v. Plywaczynski*, 2015 IL App (2d) 150957, ¶10. To be considered "well-pleaded," a party's factual allegations must be supported by allegations of *specific* facts; conclusory allegations will not

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

support injunctive relief. *Id.* at ¶11. WPC cannot satisfy any of the four necessary elements to prevail on its motion for injunctive relief.

III. LEGAL ARGUMENT

A. WPC Is Not Likely to Prevail on the Merits Because It Cannot Bring a Claim under the Illinois Gambling Act

WPC's complaint raises a single claim for declaratory and injunctive relief under the IGA, 230 ILCS 10/7(e-5). WPC argues that it is likely to prevail on the merits of this claim. Plaintiff's Mem. at 9-11. This argument, however, *presupposes* that WPC has the right to bring a claim under the IGA in this Court. WPC does not have such a right because: (1) there is no private right of action under the IGA; (2) the IGB has exclusive jurisdiction over this controversy; and (3) WPC has not exhausted its administrative remedies.

1. There is No Private Right of Action Under the Illinois Gambling Act

A party seeking injunctive relief must show that it is likely to be successful on the merits of its action. *Ryan*, 332 Ill. App. 3d at 966-67. "This necessarily means that there must be a recognized cause of action underlying the request for injunctive relief. . . ." *Town of Cicero v. Metro. Water Reclamation Dist. of Greater Chicago*, 2012 IL App (1st) 112164, ¶46. There is no recognized cause of action underlying WPC's request for injunctive relief because the IGA does not provide a private right of action.

Section 7(e-5) of the IGA authorized the IGB to issue a casino license to the City of Waukegan. 230 ILCS 10/7(e-5)(3). Section 7(e-5) is, therefore, enabling legislation. *See id.* And courts examining regulatory or enabling legislation "have found that such legislation does not imply a private right of action." *Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 194 F. Supp. 3d 706, 714 (N.D. Ill. 2016), *aff'd*, 929 F.3d 865 (7th Cir. 2019) (collecting cases from Illinois state and federal courts). *Alarm Detection Systems* and its supporting case law demonstrates that

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

§7 of the Gambling Act is not the "type of legislation that usually provides for a private right of action under Illinois law." *Id.*

This conclusion is buttressed by the four-factor test used to determine whether a statute provides for an implied right of action. Under this test, courts will imply a cause of action when: "(1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violation of the statute." *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (Ill. 2004); *Patel v. Zillow, Inc.*, No. 17-CV-4008, 2017 WL 3620812, at *6 (N.D. Ill. Aug. 23, 2017), *aff'd*, 915 F.3d 446 (7th Cir. 2019). Courts must use "caution in implying a private right of action," because the act of doing so is an exercise of policy-making authority that is more appropriately exercised by the legislature. *Helping Others Maintain Env't Standards v. Bos*, 406 Ill. App. 3d 669, 684 (2d Dist. 2010).

WPC cannot satisfy this four-factor test. The IGA was enacted "to benefit the people of the State of Illinois" by assisting economic development, promoting Illinois tourism, and increasing the amount of revenue available to the state. 230 ILCS 10/2. The IGB is empowered to select among competing license applicants according to which applicant will "best serve the interests of the citizens of Illinois." 230 ILCS 10/5(c)(1). WPC is a corporate organization that is owned by the Potawatomi Tribe. *See* Verified Complaint at ¶4; *see Alarm Detection Sys.*, 194 F. Supp. 3d at 714 ("There is no indication in the statute's language that it is designed to provide a remedy for injury to commercial interests like those Alarm Detection raises here."). To be sure, the statute speaks of situations where a party is aggrieved by "action of the [IGB]." 230 ILCS §10/5(b). But WPC did not suffer any adverse action before the IGB – its complaint is directed

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

toward the City's own certification process. Plaintiff is not a member of the class for whose benefit the statute was enacted, and cannot satisfy the first factor.

Plaintiff's purported injuries – that it was not selected for certification and Waukegan did not mutually agree to certain items *with the certified applicants* – are not the type of injuries the statute was designed to prevent. Instead, the statute is intended to award the City a casino license and to ensure that the *selected applicants* have negotiated *with the City* in good faith (and not the other way around). 230 ILCS 10/7(e-5)(3). The statute also has no bearing on *unselected applicants* like WPC. *See id.* The IGA seeks to protect certain injuries before the IGB, but WPC has not suffered any direct injury from any action by the IGB. Implying a private right of action for a private corporation that was not certified at the initial selection stage by the City, particularly a lawsuit against the IGB, would be inconsistent with the underlying purpose of the statute – namely, awarding casino licenses.[3]

The IGB extensive (and exclusive) authority also counsels against implying a private right of action. The IGA grants the Gaming Board all powers "necessary and proper to fully and effectively execute this Act. . . ." 230 ILCS §10/5(a)(1). The IGB possesses the authority to conduct "*all hearings* pertaining to *civil violations of this Act* or rules and regulations promulgated hereunder." 230 ILCS §10/5(b)(2) (emphasis added). When such "broad discretion is given to an agency, it negates the implication that there was legislative intent to create a private right of action." *Helping Others Maintain Env't Standards*, 406 Ill. App. 3d at 686. WPC has not satisfied the second or third factors.

[3] This does not leave the WPC without any remedy. They have filed their action against the City which is pending in federal court. They also could have sought, but for tactical reasons did not seek, a hearing with the IGB on its process objections in the two years leading up to this point.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

Implying a private right of action for a private corporation is unnecessary to provide an adequate remedy for a violation of the statute; the statute already provides the IGB with the ultimate authority for issuing casino licenses and the authority to ensure that local governments have followed the proper guidelines. 230 ILCS 10/7(a),(b),(e-5). The IGA is effective without the need for an implied private right of action. *See Helping Others Maintain Env't Standards*, 406 Ill. App. 3d at 686 ("A private right of action will be implied only where there is a clear need to uphold and implement the public policy of the statute by providing an adequate remedy for a violation of the statute."). WPC has not satisfied the fourth factor.

Accordingly, WPC cannot meet any of the four factors necessary to show the IGA provides for a private right of action. *See Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 929 F.3d 865, 871 (7th Cir. 2019). WPC lacks the legal authority to seek extraordinary equitable relief or move for an injunction under the IGA.

2. The Illinois Gaming Board Has Exclusive Jurisdiction Over this Case

The Illinois legislature may explicitly vest original jurisdiction in an administrative agency when it enacts a comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity. *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶23. In *J & J Ventures Gaming,* the Illinois Supreme Court found that the IGA represented a "comprehensive statutory scheme," and the General Assembly had intended to vest jurisdiction over certain gaming controversies with the IGB. *Id.* at ¶42. In reaching this conclusion, the Illinois Supreme Court noted that the IGA specifically vested the Gaming Board with extensive authority, granting it "all powers necessary and proper to fully and effectively execute [its] provisions," including the power to determine the eligibility of applicants for licenses. *Id.* at ¶27. In short, the

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

IGA gave the Gaming Board "*jurisdiction over* and [the power to] supervise all gaming operations governed by the Act." *Id.* (quoting 230 ILCS 40/78(a)) (emphasis added).

WPC urges this Court to usurp that exclusive jurisdiction and determine whom should be before the IGB and eligible for the Waukegan casino license.[4] WPC urges this Court to determine that the City of Waukegan's certification process was inadequate under the IGA. *See* Plaintiff's Mem. at 10. WPC also urges this Court to determine the Gaming Board's own authority to act and issue a license, arguing the IGB "lacks any statutory authority" to issue a license. *Id.; see also id.* at 11. These arguments are unavailing under the express terms of the IGA and *J & J Ventures Gaming.* The IGB has exclusive jurisdiction to decide gaming licensing questions. *J & J Ventures Gaming*, 2016 IL 119870, ¶¶27-30. This Court is therefore "precluded from addressing the merits of [WPC's] claims" and the case must be dismissed for lack of subject matter jurisdiction. *Id.* at ¶42.

3. WPC Has Not Exhausted Its Administrative Remedies

Parties aggrieved by the action of an administrative agency cannot ordinarily seek judicial review until they have pursued all of the available administrative remedies. *Castaneda v. Illinois Hum. Rts. Comm'n*, 547 N.E.2d 437, 439 (Ill. 1989); *Emerald Casino, Inc. v. Illinois Gaming Bd.*, 852 N.E.2d 512, 514-15 (Ill. App. Ct. 2006). Requiring exhaustion allows the agency to develop a full record and consider all the relevant facts; the agency to utilize its expertise; and the aggrieved party the chance to ultimately succeed before the agency, making judicial review unnecessary. *Id.; see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (same objectives). Concerns

[4] WPC, for good measure, also urges this Court to make preliminary determinations about the merits of its allegations, even though these same allegations have been pending before the federal court for more than two years and are currently the subject of a motion for summary judgment.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

about exhaustion apply with particular force when proceeding before the agency would allow the agency to apply its special expertise. *Gonzalez*, 355 F.3d at 1017.

Such is the case here. The IGA provides the IGB with broad authority, granting the Board all powers "necessary and proper to fully and effectively execute this Act. . ." 230 ILCS §10/5(a)(1). Among its enumerated powers, the IGB has the authority to conduct "*all hearings* pertaining to *civil violations of this Act* or rules and regulations promulgated hereunder." 230 ILCS §10/5(b)(2) (emphasis added). WPC's complaint that the City has violated provisions of the IGA should be presented to the IGB. If it does so, then the IGB can develop important facts relevant to this lawsuit, provide its expertise on any open questions or interpretations of the IGA, and possibly moot some (or all) of the relief currently being sought before this Court. *See Castaneda,* 547 N.E.2d at 439.

To be sure, WPC is upset with a decision by the City and not IGB. But the term "'administrative agency' is defined to include political subdivisions of the state and municipalities that have the power to make administrative decisions." *Peeples v. Vill. of Johnsburg,* 932 N.E.2d 612, 617 (Ill. App. Ct. 2010) (citing 735 ILCS 5/3-101). When a local government acts in an administrative or quasi-judicial manner, "by determining facts pursuant to a hearing or ruling on the rights of a small number of people, its actions may be appropriately reviewed using the procedures and principles of administrative review." *Id.* But the WPC is complaining the IGB lacks authority to act within its statutory charge. That is a matter for the agency, not the courts to decide. Yet, the WPC has never pursued any remedies before the IGB, despite repeated entreaties to do so. WPC's failure to exhaust important administrative remedies also requires dismissal of this action. *See People v. NL Indus.*, 152 Ill. 2d 82, 96 (Ill. 1992) ("[I]f

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

the exhaustion doctrine applies, the action must be dismissed until administrative remedies are exhausted. . .").

B. Alternatively, this Court Should Defer to the Gaming Board Under the Doctrine of Primary Jurisdiction

The doctrines of exhaustion of remedies and primary jurisdiction are separate doctrines, albeit with similar outcomes: where the doctrines apply, the court will refer the action back to the administrative agency. *NL Indus.*, 152 Ill. 2d at 96. Under the primary jurisdiction doctrine, when "a court has jurisdiction over a matter, it should in some instances stay the judicial proceedings pending referral of a controversy, or some portion of it, to an administrative agency having expertise in the area." *W. Bend Mut. Ins. Co. v. TRRS Corp.*, 2020 IL 124690, ¶34. The purpose of the doctrine is to promote proper relationships between the courts and administrative agencies charged with particular regulatory duties. *Id.* This allows "a matter to be referred from the circuit court to an administrative agency when the agency has specialized or technical expertise that would help resolve the controversy or when there is a need for uniform administrative standards." *Id.* at ¶35.

If this Court believes dismissal is inappropriate, the Court should exercise its discretion and refer the issues in this case to the IGB, which has expertise in the gaming application process and the requirements for approving gaming licenses. The application of this expertise would benefit both the Court and the parties. In the alternative, this Court should refer this lawsuit to the IGB and stay any further proceedings in the case. *NL Indus.*, 152 Ill. 2d at 96.

C. WPC Is Not Likely to Succeed on the Merits of Its Action

WPC argues it is likely to succeed on the merits that the City of Waukegan violated the certifying provisions of the Gambling Act. Plaintiff's Mem. at 9-11. This is not the case because

SUBMITTED 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

WPC lacks standing to pursue a lawsuit alleging any violation of the IGA and because there has been no violation.

1. WPC Lacks Standing to Enjoin a Violation of the Gambling Act

A plaintiff must have standing before it can file suit. *Jenner v. Wissore*, 164 Ill. App. 3d 259, 268 (5th Dist. 1988). The plaintiff must have a direct injury related to a legally recognized interest. *Id.* When a lawsuit "seeks to enjoin the violation of a statute, the doctrine of standing specifically requires [] that the plaintiff 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." *Id.* "The object of the statute, the nature of the duty imposed by it, and the benefits resulting from its performance dictate what persons are entitled to sue thereunder." *Id.*

WPC seeks to enjoin the IGB from taking any further action based on the allegation that the City failed to fulfill certain obligations under the IGA *after certifying the other applicants.* Plaintiff's Mem. at 10. Even assuming the City failed to follow the proper statutory provisions, any shortcomings in the resolutions or agreements with others following the certification vote had no impact on WPC because the City of Waukegan had already decided not to certify WPC. An Order directing the City of Waukegan to fix its resolutions with the successful applicants would have no impact on WPC; with or without a correct resolution, the City Council voted against WPC's proposal. And no amount of haggling over the exact contours of the City's resolutions will change the fact that the City Council *twice voted* against certifying WPC. WPC cannot show the City of Waukegan owed it any duty of compliance to the statute's certification provisions as a non-certified applicant. *See Jenner*, 164 Ill. App. 3d at 268.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

2. There Has Been No Violation of the Statute, Even Assuming Standing

Standing aside, WPC is not likely to prevail on the merits of its IGA claim. WPC argues the City reach agreements on the required items found in the IGA. But the Gambling Act speaks of an agreement between a single "applicant" and the corporate authority. 230 ILCS 10/7(e-5). Here, the City certified three applicants, making a final agreement with a single applicant premature until the final selection by the IGB.

More to the point, the City had reached agreement on the permanent location of the casino – all of the applicants agreed to build the casino on the Fountain Square property. WPC cites a statutory provision regarding the "temporary location" of the casino, Plaintiff's Mem. at 9, but fails to mention that its application (unlike other applications) had no provision for a temporary casino. Each of the certified applicants (unlike the WPC) had provided a clear offer on the purchase price for the property, and the City generally approved the range of the offers, subject to the future three-quarter vote necessary to sell the property, after an IGB license award. Definitive agreements were never required by the IGB's regulations. And, the WPC papers omit reference to the individual meetings between the City review team and each of the applicants to clarify the terms proposed. In light of this, the language of the City's resolutions is not deficient.

Finally, WPC does not explain how these allegedly technical violations serve to prevent the IGB from proceeding with its obligation to select a final casino licensee. WPC does not explain the talismanic significance of the "negotiation requirement" and exactly how or why it would deprive the IGB of its authority to proceed. To the contrary, WPC's position ignores the power of agencies to implement statutes like the IGA. *See City of Chicago v. Illinois Labor Relations Board, Local Panel,* 396 Ill. App. 3d 61, 73 (1st Dist. 2009).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

D. WPC Does Not Possess a Protectable Right

WPC argues it has a clear interest in need of protection and couches this interest as a right to a "fair and lawful certification" process. *See* Plaintiff's Memorandum at 7-9. This is not correct.

WPC's case in federal court alleges Waukegan deprived it of a fair certification process. But that is not the subject of the current injunction. Instead, this lawsuit seeks mandatory injunctive relief against the IGB. *See* Verified Complaint at ¶¶41-47 (referring to the "Developments Necessitating Equitable Relief Against the Gaming Board"). Specifically, WPC seeks to halt the IGB from exercising its authority to issue "a license to operate a casino in Waukegan, Illinois." Plaintiff's Emergency Motion, at 1.

In suing the IGB and seeking to enjoin its authority, WPC is arguing that it has the right to decide the IGB's jurisdiction and the right to be one of the chosen applicants before it. Illinois law does not confer any such right. There is no common-law right in Illinois to engage in gambling. *J & J Ventures Gaming*, 2016 IL 119870, ¶26. Likewise, Illinois courts have concluded that "gambling licenses . . . do not amount to vested rights." *Indeps. Gas & Serv. Stations Associations, Inc. v. City of Chicago*, 112 F. Supp. 3d 749, 756 (N.D. Ill. 2015). WPC does not have a protectable right in the relief sought by this lawsuit.

WPC cites *Keefe-Shea Joint Venture* in support of its protectable right argument. Plaintiff's Memo. at 8 (citing *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 166 (1st Dist. 2002)). But *Keefe-Shea* was concerned with the City of Evanston's decision to award a construction project to a non-responsive bidder. *See World Fuel Servs., Inc. v. City of Chicago*, No. 20-CV-07836, 2021 WL 1533778, at *3 (N.D. Ill. Apr. 19, 2021) (discussing *Keefe-Shea*). In this case, the IGB – and not the City – is the ultimate arbiter of who will receive the casino license. Moreover, the City engaged in an RFP process that is legally distinct from a

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

competitive bidding process. *See Am. Health Care Providers, Inc. v. Cty. of Cook*, 265 Ill. App. 3d 919, 921 (1st Dist. 1994) ("The [RFP] procurement process used by the County in securing the new contracts indisputably did not constitute competitive bidding."). Finally, the plaintiff's request for a preliminary injunction was denied in *Keefe-Shea* and that denial was upheld by the Appellate Court. *See World Fuel Servs.*, 2021 WL 1533778, at *3. WPC's efforts to equate the RFP casino licensing process with the competitive bidding process for public works are unpersuasive.

E. WPC Will Not Suffer Irreparable Harm and Has An Adequate Remedy at Law

WPC argues that it will suffer irreparable harm if the IGB issues a casino license, because that action will "effectively deprive [it] of its ability to obtain relief in the federal action." Plaintiff's Mem. at 11. WPC also argues that money damages cannot adequately compensate it for the "lost opportunity to operate what will be the only casino in Waukegan." Plaintiff's Memorandum at 14. Each of these arguments is unpersuasive.

WPC's ability to obtain relief in the *federal case* cannot form the basis of irreparable harm *in this case.* To hold otherwise, would be to allow WPC to leverage the unproven allegations in one case as a means of obtaining injunctive relief in another. This type of speculation is far too remote to justify irreparable harm. A showing of irreparable harm must be "likely" and not simply "a mere possibility." *Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020)

WPC claims that formal action by the IGB will foreclose the opportunity for meaningful settlement negotiations between WPC and the City. *See* Plaintiff's Mem. at 12. But, there is, no recognized right to a framework for settlement of a dispute, achieved by enjoining a governmental agency from taking action within its' jurisdiction.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

WPC again cites to *Keefe-Shea,* likening itself to a spurned bidder on a public works contract. *See* Plaintiff's Mem. at 12. But Illinois courts frequently deny injunctive relief in the spurned bidder context. *See, e.g., Advanced Seal Tech., Inc. v. Perry*, 873 F. Supp. 1144, 1150 (N.D. Ill. 1995). This is particularly true where the plaintiff offers no evidence that the loss of the contract (or license) "would irreparably harm its business, its viability, or its ability to compete for other contracts." *Id.*

WPC's delay in filing this motion further belies any claim of irreparable harm. The City denied WPC certification in October of 2019. *For more than two years,* WPC has known that the IGB could complete its work and vote on the certified applicants. Yet, WPC never pursued any action before the IGB. Instead, WPC strategically chose to wait until the IGB was poised to vote on "preliminary suitability" of the certified applicants – effectively manufacturing its own emergency and creating another mechanism to delay the start of a competing casino. "Delay in seeking relief, renders [plaintiff] unable to demonstrate that it will sustain irreparable harm in the absence of a temporary restraining order."[5] *Bridgeview Bank Grp. v. Meyer*, 2016 IL App (1st) 160042, ¶23; *see also See Orlando v. CFS Bancorp, Inc.*, No. 2:13-CV-261 JD, 2013 WL 12329547, at *4 (N.D. Ind. Oct. 10, 2013) ("[P]laintiff is unlikely to suffer from irreparable injury without adequate remedy at law where plaintiff manufactured his own emergency by inaction.").

WPC cannot argue it is in danger of irreparable injury because it asserts a quantifiable claim for money damages. Indeed, WPC has engaged an expert to calculate – to the dollar – the harm it is alleged to have suffered from losing the opportunity to seek the casino license. Although fanciful, WPC's expert has calculated these damages to be in excess of $178 million – a far cry

[5] As this Court's standing Order states: "True emergencies are rare." . . . . Motions that have became urgent by reason of a party's failure to exercise diligence do not constitute emergencies."

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

from an inadequate remedy. WPC has been actively pursuing its claimed damages for years and cannot now argue it faces irreparable harm.

The "potential [for] monetary damages" means WPC cannot show serious and irreparable harm. *McMann v. Pucinski*, 218 Ill. App. 3d 101, 108 (1st Dist. 1991). WPC concedes it is seeking "damages" in the federal action, but argues that the City has asserted potentially viable defenses, including defenses that would dispose of "all of plaintiff's claims in the federal action." Plaintiff's Mem. at 13. This lawsuit and motion for injunctive relief is necessarily predicated on the viability of those claims. For WPC to state that it lacks an adequate remedy at law *because* its claims in the federal action *may be dismissed* is to acknowledge that the claims in this case are as meritless as the claims being pursued in the federal action. WPC has not shown irreparable harm and an inadequate remedy at law.

F. The Balance of Equities Favors the City of Waukegan

The balance of equities favors the City of Waukegan. On the one side of the ledger are the purely financial interests of the WPC and the Potawatomi Tribe. On the other side is the City and its residents, which have been waiting the better part of two years to begin reaping the benefits from a new casino and its resulting economic stimulus and tax base. An injunction would adversely impact the City, its residents, and the two remaining casino applicants, who have been standing ready to begin developing the casino in Waukegan.

WPC argues that an improvident injunction would only produce "a brief pause." Plaintiff's Mem. at 14. But there is no telling how "brief" this pause would be. Any "pause" would directly inure to the benefit of the Potawatomi Tribe, since each day without a casino in Waukegan represents additional profit for the Potawatomi Tribe's Milwaukee casino. The equities squarely favor the City of Waukegan.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

IV. CONCLUSION

This lawsuit comes after nearly two years of litigation in federal court over the same casino licensing process, with all facts on the certification process and resolutions long known to the WPC. This Court should deny WPC's so-called emergency motion for injunctive relief because WPC is not entitled to invoke the Illinois Gambling Act, because the Gaming Board has exclusive jurisdiction or primary jurisdiction over this controversy, because WPC has not exhausted its administrative remedies, and because WPC cannot satisfy the necessary elements to obtain an injunction.

Dated: December 6, 2021

Respectfully submitted,

CITY OF WAUKEGAN

/s/ Glenn E. Davis
One of the Attorneys for Defendant

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SUBMITTED - 27080202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

CERTIFICATE OF SERVICE

The undersigned, an attorney of record, states that he caused to have electronically filed on December 6, 2021, with the Clerk of the Court, ***Defendant City of Waukegan's Memorandum in Opposition to Plaintiff's Emergency Motion For A Temporary Restraining Order and Preliminary Injunction,*** and caused the same to be served on all attorneys of record via Odyssey e-file and subsequently served upon the following parties by the manners listed below.

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

EXHIBIT 1

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FILED DATE: 12/6/2021 4:27 PM 2021CH05784

IN THE CIRCUIT COURT OF NINETEENTH JUDICIAL DISTRICT
LAKE COUNTY, ILLINOIS

WAUKEGAN POTAWATOMI CASINO, LLC,)
)
Plaintiff,)
)
v.)
)
CITY OF WAUKEGAN,)
)
Defendant.)

VERIFIED EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff, Waukegan Potawatomi Casino, LLC ("Potawatomi"), by its attorneys, O'Donnell Callaghan LLC, moves pursuant to 735 ILCS 5/11-101 for a temporary restraining order to immediately enjoin defendant, City of Waukegan (the "City"), from submitting its certifications to the Illinois Gaming Board (the "IGB") pursuant to resolutions that were adopted in its October 17, 2019 special meeting in violation of the Illinois Open Meetings Act. In support, plaintiff states as follows:

I. A Temporary Restraining Order Is Required to Preserve the Status Quo.

Plaintiff restates and realleges the allegations in its complaint as if stated fully herein. The City's actions are violative of the Open Meetings Act, 5 ILCS 120 *et seq*., and have injured Potawatomi. Therefore, Potawatomi is seeking emergency, temporary relief for the City's violations of the Act and to prevent future irreparable injury which may result from such violations.

A temporary restraining order is granted to maintain the *status quo* pending hearing of the case on the merits. *Chicago Sch. Reform Bd. of Trs. v. Martin*, 309 Ill. App. 3d 924, 939 (1st Dist. 1999). "Status quo is generally deemed to be the "... last peaceable and uncontested status proceeding the pending controversy." *Eldridge v. Eldridge*, 246 Ill. App. 3d 883, 888 (1st Dist. 1993).

Here, the last, actual, peaceable status was before the City held the October 17, 2019 meeting at which it passed the resolutions without providing an opportunity for public comment, in violation of the Open Meetings Act. This is the status quo, and in order to preserve the status quo,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

Potawatomi needs an injunction from this Court preventing the City from certifying the other three applicants to the IGB until this Court can hold a hearing on the merits to determine whether those certifications should be held void and invalid as a result of the City's violation of the Open Meetings Act. Therefore, this Court should grant the temporary restraining order to temporarily enjoin the City from submitting certifications to the IGB regarding the other three applicants until the validity of the City's actions are established.

Ordinarily, the party seeking injunctive relief must demonstrate four elements; however, there is an exception to this burden where injunctive relief is expressly authorized by statute. *Roxana Cmty. Unit Sch. Dist. No. 1 v. WRB Refining, LP*, 2012 IL App (4th) 120331, ¶ 24 (*citing Postma v. Jack Brown Buick*, 157 Ill. 2d 391, 400 (1993)). This exception applies where (1) injunctive relief is to provide citizens a private right of action to restrain a public official from violating a statute that defines official duties or powers; or (2) where even an isolated violation of the statute is presumed to cause irreparable harm to the public. *Id.*

In these instances, to be entitled to injunctive relief a plaintiff need only allege: (1) the defendant has violated the statute; and (2) the plaintiff has standing. *Id.* (*citing People v. Keeven*, 68 Ill. App. 3d 91, 97 (5th Dist. 1979)). There is no requirement that the plaintiff demonstrate irreparable damage or the absence of an adequate remedy at law. *Id.* A court's decision to grant or deny a preliminary injunction is reviewed for abuse of discretion, which occurs only when the court's ruling is "arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view." *Id.* (*citing* (*citing Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App. 3d 374, 378 (4th Dist. 2010)).

Here, the Open Meetings Act expressly provides for injunctive relief where it is deemed justified. *Id.* at ¶ 26. The courts have noted that, given the Act's purpose of ensuring open meetings that are accessible to the public, the provision allowing for injunctions automatically gives rise to a

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

presumption that a violation of the Act results in a "distinctly public harm." *Id.* Thus, the limited pleading requirements authorized by the Act and as set forth above apply to the facts of this case.

Here, the deadline for submitting an application to the IGB for consideration of a license to operate a casino in the City is October 25, 2019. 230 ILCS 10/7(e-5). The IGB will not consider issuing a license pursuant to an application unless the City certifies the applicant has engaged in good faith negotiations with and has reached an agreement with the City with respect to various items, *e.g.*, the location of the proposed casino, the percentage of revenues that will be shared with the municipality, and any zoning, licensing, public health or other issues. *Id.*

The statute does not contain a limitation on the number of applicants the City may certify to the IGB. *Id.* The statute does not contain a requirement that the City "rank" the bid proposals submitted to it in order to assign a quantitative value to the certification required by the statute. In fact, the certification submitted by the City to the IGB does not contain a quantitative assessment of the applicant's proposal. It merely requires the City to certify that the applicant negotiated with the City in good faith and has agreed with the City on certain specified items. Here, the bid proposal submitted by Potawatomi complied with the City's requirements laid out in the RFQ. Complaint, ¶ 17. Therefore, whatever minimum requirements the City needed satisfied in order to be considered an acceptable casino proposal, Potawatomi "agreed" to.

The City has indicated its intent to certify the other three applicants to the IGB by October 25, 2019. If IGB receives those certifications and the corresponding applications, it will consider those applicants pursuant to the statute. It will not, however, consider Potawatomi's application, without the City's certification. 230 ILCS 10/7(e-5). The IGB will begin the process to approve one of the three applicants to build and operate a casino in the City without considering Potawatomi's valid application, which it submitted and pursued in good faith with the City. This Court should grant Potawatomi's request for a temporary restraining order to enjoin the City from submitting its

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

certifications to the IGB which will begin that process, until the Court can determine whether the process which led to those certifications was valid.

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

II. The City's Adoption of the Resolutions Approving the Certification of Three of the Four Applicants at the October 17, 2019 Special Meeting Violated the Open Meetings Act.

The City's actions are clearly a violation of the Act. The purpose of the Act is "to ensure that deliberations and actions of public bodies be conducted in an open and public session. *Lawrence v. Williams*, 2013 IL App (1st) 130757, ¶ 20 (*citing* 5 ILCS 120/1; *Gerwin v. Livingston County Bd.*, 345 Ill. App. 3d 352 (4th Dist. 2003)). The Act therefore provides that all meetings of public bodies must be open to the public, except as provided by statute. 5 ILCS 120/2. A specific provision of the Act is that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g). Where the provisions of the Act are not complied with, the courts "may grant such relief as it deems appropriate." 5 ILCS 120/3(c). The Act also provides for an award of "reasonable attorney's fees and other litigation costs" by any party who "substantially prevails." 5 ILCS 120/3(d). Where the purpose of the Act is undermined by non-compliance with its provisions, a public body's actions will not be valid. *Lawrence v. Williams*, 2013IL App (1st) 130757, ¶ 21.

Here, the City's actions in approving the resolutions at a special meeting without providing an opportunity for public comment undermine the purpose of the requirements in the Illinois Gambling Act requiring the City's process for the review and certification of bid proposals to be public, good-faith, and transparent. 230 ILCS 10/7(e-5). Potawatomi paid a $25,000 application fee to the City in order to participate in a fair process for the review and certification of its bid proposal to the IGB. Complaint, ¶ 52. The City is required to certify to the IGB that applicants have participated in good-faith negotiation with respect to the City's review. 230 ILCS 10/7(e-5).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

Moreover, the Act specifically directs the City to hold a public hearing to discuss the particular issues the City is required to certify to the IGB with respect to each applicant. *Id.* The Act then requires the City to memorialize the details of its review in a resolution or ordinance adopted by a majority of the corporate authority before it may submit its certification to the IGB. *Id.*

Pursuant to the Open Meetings Act, the City may only adopt resolutions or ordinances at meetings which are open to the public. 5 ILCS 120/2(e). The location and operation of a new casino in the City is a matter of unique concern to the public health, safety, welfare and morals, and it is vital the City be required to adhere to statutes requiring transparency of government actions and ability of public to participate in the process.

Public meetings are required to contain an opportunity for the public to address public officials under the rules established by the public body. 5 ILCS 120/2.06(g). The City's Code of Ordinances provides that the first order of business at each meeting of the City Council, if roll is called and a quorum found to be present, is "audience time," which is the time designated for the public to address public officials under the City's rules. Waukegan Code of Ordinances, §2-62(1). Therefore, the City's public meetings, including special meetings, are required to contain an opportunity for the public to address public officials. 5 ILCS 120/2.06(g).

The consultant who the City hired to analyze and rank the bid proposals presented an erroneous report to the City with an arbitrary "ranking" system that was not supported by the factual information contained in the report, as drawn from the bid proposals themselves. Complaint, ¶¶ 33-37, 39, 45-47; Exhibit 4, Exhibit 5 to Complaint.

The City's October 17, 2019 special meeting did not contain any "audience time" or other opportunity for public comment, in violation of 5 ILCS 120/2.06(g). Complaint, ¶40. The City refused to allow any public participation, including the ability to address the council or correct the consultant's misstatements at the special meeting. Complaint, ¶ 40-42. Nevertheless, the City proceeded to vote

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

on the resolutions approving certification of three of the casino applicants to the IGB, and denying certification of Potawatomi's application to the IGB at the October 17, 2019 special meeting. Complaint, ¶43.

The consultant's report was erroneous and misleading and Potawatomi was not given an opportunity to correct the errors because the City refused to allow public comment at the October 17, 2019 special meeting, in violation of the Open Meetings Act. The City's resolutions adopted at the October 17, 2019 special meeting purporting to certify the other three applicants to the IGB were not adopted pursuant to the requirements of the Open Meetings Act and therefore should be deemed void by this Court.

IGB will not consider Potawatomi's application unless it receives a certification from the City as to that application, but it will consider the other three applications if it receives the City's resolutions approving such certifications. IGB may then decide to issue the single license to one of the other applicants, but Potawatomi will have been denied the right to participate in that process, despite its attempts to negotiate in good faith with the City as required by the statute. 230 ILCS 10/7(e-5).

Moreover, it is within the City's power to remedy the errors made at the October 17, 2019 special meeting. The City can hold another meeting in compliance with the requirements of the Open Meetings Act and pass resolutions or ordinances regarding the proposed certifications, after providing the public all its rights under the Open Meetings Act, including the opportunity to address the public officials pursuant to 5 ILCS 120/2.06(g). *See, Argo High Sch. Council of Local 571, IFT, AFT, AFL-CIO v. Argo Cmty. High Sch. Dist. 217*, 163 Ill. App. 3d 578, 583 (1st Dist. 1987) ("it is well established that where there has been a prior violation of the Open Meetings Act, a board is not prevented from calling a subsequent meeting, noticed in full compliance with the requirements of the Act, and there taking the identical action.")

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

WHEREFORE, plaintiff requests this Court enter a temporary restraining order enjoining the City from issuing certifications to the IGB with respect to its October 17, 2019 resolutions until this Court can reach a determination on the merits as to whether the City's resolutions approving such certifications were made in violation of the Open Meetings Act.

WAUKEGAN POTAWATOMI CASINO, LLC

By: [signature]
One of its attorneys

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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

AFFIDAVIT OF ROBERT T. O'DONNELL

I, Robert T. O'Donnell, under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure certify that the statements set forth herein are true and correct and if called upon to testify could and would competently testify as follows:

1. I am an attorney, licensed in the State of Illinois and have been so since 1979.

2. I am one of the attorneys for Potawatomi Hotel & Casino (a/k/a Waukegan Potawatomi Casino) ("Plaintiff") in this matter, *Potawatomi Hotel & Casino v. City of Waukegan*, which is currently pending in the Circuit Court of the Nineteenth Judicial Circuit. The Verified Complaint for Declaratory Judgment and Injunctive Relief in this matter (the "Complaint") was filed October 21, 2019.

3. This Affidavit is made based upon my personal knowledge. It is provided in support of Plaintiff's Verified Emergency Motion for Temporary Restraining Order (the "Motion"), which Motion was filed October 21, 2019.

4. On October 21, 2019, the Motion, the Complaint, and a Summons were served on the City of Waukegan (the "City") by leaving a copy of each with the City Clerk, Janet E. Kilkelly, at her office located at 100 N. Martin Luther King Jr. Avenue in Waukegan, Illinois.

5. On October 21, 2019, Plaintiff also served the Motion, the Complaint, and a Summons on Robert J. Long electronically and at his office located at 19 N. County Street in Waukegan, Illinois. Robert J. Long is Corporation Counsel for the City.

6. On July 3, 2019, the City released a Request for Qualifications and Proposals ("RFQ") for the development and operation of a casino in the City. Plaintiff is one of five applicants to the RFQ.

7. The City used the RFQ process to determine which one of the applicants it will "certify" to the Illinois Gaming Board (the "IGB"). Thereafter, IGB may issue one owner's license authorizing the operation of a casino in the City.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

FILED DATE: 12/6/2021 4:27 PM 2021CH05784

8. However, pursuant to Illinois law, IGB will only consider an application for an owner's license if the City certifies that entity.

9. As more specifically laid out in the Complaint, Plaintiff alleges that the City failed to perform the RFQ in good faith, and improperly passed a resolution certify certain entitities. In doing so, the City failed to comply with Illinois law, including violations of 735 ILCS 5/2-701 and Section 3 of the Illinois Open Meetings Act (5 ILCS 120/1).

10. Ultimately, the violations alleged of in the Complaint may result in the invalidation of the City's resolution.

11. Plaintiff has notified the City of the alleged violations and notified the City that the resolution may be invalidated. Plaintiff has requested the City reconsider its resolution consistent with Illinois law.

12. Notwithstanding Plaintiff's efforts, the City has informed Plaintiff that it will not reconsider its resolution. Instead, the City will tender its certifications to the IGB on October 25, 2019 without any further process.

13. In its motion, plaintiff asks this Court to enjoin the City from submitting its certifications to IGB until this Court can determine whether the City violated the Illinois Open Meetings Act.

14. Absent a hearing on this matter, the City will certify entities based on a potentially invalid resolution. Pursuant to Illinois law, the IGB will only consider those certified entities and Plaintiff will be permanently removed from consideration for the development and operation of a casino in the City.

FURTHER AFFIANT SAYETH NAUGHT

Robert T. O'Donnell

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

FILED
11/16/2021 10:30 AM
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, Plaintiff, v. 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, 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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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).

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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.

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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").

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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*

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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

SUBMITTED - 27086202 Carol Kolberer - 4/2/2024 2:54 PM

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

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

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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,

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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;

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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
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SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

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

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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 A. Crawford

Jeffrey Crawford, Attorney General
Forest County Potawatomi Community

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

TABLE OF CONTENTS TO RECORD ON APPEAL

Common Law Record

DOCUMENT	DATE	PAGE
Case Summary	11/16/21	C 5-C 9
Chancery Division Civil Cover Sheet General Chancery Section	11/16/21	C 10
Verified Complaint for Declaratory and Injunctive Relief	11/16/21	C 11-C 24
Exhibits 1-3	11/16/21	C 25-C 720
Exhibits 4-13	11/16/21	C 721-C 1297
Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction	11/16/21	C 1298-C 1305
Plaintiff's Memorandum in Support of Motion for a Temporary Restraining Order and Preliminary Injunction	11/16/21	C 1306-C 1321
Appearance	11/17/21	C 1322
Notice of Appearance	11/17/21	C 1323-C 1324
Fee Exempt and Reduced Fee Agency Cover Sheet	11/17/21	C 1325-C 1326
Entry of Appearance	11/17/21	C 1327-C 1328
Order	11/18/21	C 1329-C 1330
Defendant's Opposition to Plaintiff's Emergency Motion for Temporary Restraining Order and Preliminary Injunction	12/03/21	C 1331-C 1343
Notice of Filing	12/03/21	C 1344-C 1345
Order	12/06/21	C 1346-C 1347
Motion for Leave to Exceed Page Limit for Memorandum in Opposition to Plaintiff's Emergency Motion	12/06/21	C 1348-C 1351

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Defendant's Memorandum in Opposition to Plaintiff's Emergency Motion	12/06/21	C 1352-C 1379
Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction	12/06/21	C 1380-C 1388
Plaintiff's Reply to Defendant's Memorandum in Opposition to Plaintiff's Emergency Motion	12/07/21	C 1389-C 1397
Order	12/08/21	C 1398-C 1399
Notice of Interlocutory Appeal	12/09/21	C 1400-C 1402
Defendant's Motion to Dismiss Plaintiff's Verified Complaint for Declaratory and Injunctive Relief	01/14/22	C 1403-C 1405
Memorandum of Law in Support of Defendant's Motion to Dismiss Plaintiff's Verified Complaint	01/14/22	C 1406-C 1507
Notice of Appearance	01/28/22	C 1508-C 1509
Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant	01/28/22	C 1510-C 1511
Defendant's Memorandum of Law in Support of Their Motion to Dismiss Plaintiff's Complaint to Pursuant	01/28/22	C 1512-C 1518
Agreed Order	02/01/22	C 1519-C 1520
Order	02/04/22	C 1521-C 1523
Plaintiff's Consolidated Memorandum in Opposition to Defendant's Motion to Dismiss	02/18/22	C 1524-C 1541
Reply Brief in Further Support of Motion to Dismiss Plaintiff's Verified Complaint for Declaratory and Injunctive Relief	03/11/22	C 1542-C 1548
Defendant's Motion for Extension of Time to File a Reply Brief	03/25/22	C 1549-C 1550
Notice of Filing	03/25/22	C 1551-C 1552
Notice of Motion	03/25/22	C 1553-C 1554

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM

Order	03/30/22	C 1555
Defendant's Reply in Support of their Motion to Dismiss Plaintiff's Complaint Pursuant	04/13/22	C 1556-C 1559
Notice of Filing	04/13/22	C 1560-C 1561
Order	04/26/22	C 1562
Order	05/31/22	C 1563
Notice of Appeal	06/10/22	C 1564-C 1589
Request for Preparation of Record on Appeal	06/24/22	C 1590

Report of Proceedings

	DATE OF PROCEEDING	PAGE
Hearing	11/17/21	R 2-R 16
Hearing	05/13/22	R 17- R 56

SUBMITTED - 27086202 - Carol Kolberer - 4/2/2024 2:54 PM