

Portsmouth Entertainment District Development
Memorandum of Understanding ("MOU")

1. Background

The Economic Development Authority of the City of Portsmouth, Virginia (the "**EDA**") is the owner of an approximately 50 acre site envisioned for an Entertainment District located at 3606 Victory Blvd. (the "**Site**"). The EDA is a political subdivision established by the City of Portsmouth, Virginia (the "**City**"). Rush Street Gaming LLC (together with its affiliates, "**RSG**") is a leading developer and operator of mixed-used entertainment facilities with casino components in the U.S. and in international markets. More information about RSG can be found in Appendix B.

The EDA and RSG (collectively the "**Parties**") wish to enter into this Memorandum of Understanding (this "**MOU**") setting forth the basis for the Parties to negotiate a definitive development agreement ("**Development Agreement**") pursuant to which RSG will acquire the Site and develop and operate first class entertainment and hospitality uses including a casino offering electronic gaming machines, table games and other games of chance as allowed by law, and amenities such as restaurants and entertainment venues, together with other complementary uses to the extent economically viable, such as a hotel and structured parking ("**Entertainment District**"). RSG acknowledges that locating the Entertainment District on the Site and the non-gaming entertainment, amenities and complementary uses are critical components of this MOU and any Development Agreement for EDA and the City as a means of promoting economic growth and employment opportunities for the citizens of Portsmouth.

2. Development Agreement

The EDA and RSG will work collaboratively to promote legislation that will lead to an opportunity to develop a world-class Entertainment District on the Site. Commencing upon the passage and enactment of legislation that authorizes casino gaming in Portsmouth in a manner that is considered commercially viable by RSG (such legislation, "**Authorizing Legislation**"), for 90 days thereafter, the Parties agree to negotiate in good faith the Development Agreement; provided that, if at the end of such 90 day period, the Parties are continuing to negotiate the Development Agreement in good faith, but have not yet finalized and executed the Development Agreement, then, at either Party's option, the Development Agreement negotiating period can be extended for an additional 45 days (the 90 day negotiating period together with any extension thereof, the "**Exclusive Negotiating Period**"). The binding terms upon which the Parties will enter into negotiations for the Development Agreement are set forth in the Appendix A hereto. The Development Agreement will include such representations, warranties, covenants, obligations, and other terms that would be typical for a transaction of this nature and as otherwise shall be mutually agreed between the Parties.

3. Termination

Unless extended by mutual consent of the Parties, this MOU will automatically terminate and be of no further force and effect upon the earlier of (a) the Parties' execution and delivery of the Development Agreement, (b) the expiration of the Exclusive Negotiation Period, (c) July 1, 2020 (the "**Authorizing Legislation Date**"), if by then no Authorizing Legislation has passed and been enacted or (d) the date on which RSG provides the EDA written notice that though legislation allowing for the development and operation of a casino in Portsmouth has passed and been enacted RSG, at RSG's sole discretion, does not consider development and operation of a casino under such legislation commercially viable, which such notice if being provided by RSG must be provided to the EDA by no later than 30 days after enactment of the legislation (the earliest of such dates, the "**Termination Date**"). Notwithstanding anything in this MOU to the contrary, paragraphs 5 through 9 of this MOU shall survive its termination, and the termination of this MOU shall not affect the rights any Party has with respect to the breach of this MOU by the other Party prior to

such termination. Upon expiration of the Exclusive Negotiation Period, the parties may, but are not obligated to, continue negotiations towards the Development Agreement. Notwithstanding the foregoing, in the event legislation authorizing casino gaming in Portsmouth is enacted but either (a) requires the City to conduct a public procurement process to select an operator or (b) provides for the Commonwealth or a state agency to conduct a public procurement process to select an operator and RSG is not the successful bidder, then either Party may terminate this MOU and cause the Termination Date to occur. Notwithstanding the foregoing, in the event the legislation provides for the Commonwealth or a state agency to conduct a public procurement process and the City is not also required to conduct a public procurement process, then the termination right in the preceding sentence shall not apply unless and until such time as RSG is determined by the Commonwealth or state agency not to be the successful bidder.

In the event that no legislation that authorizes casino gaming in Portsmouth is passed and enacted by July 1, 2020, then RSG shall have the right to extend the Authorizing Legislation Date for an additional one-year period upon providing the EDA at least ten days written notice prior to July 1st, 2020 (such right of RSG's, the "Extension Option") and the option payment described in Section 4 below.

In the event that RSG has exercised the Extension Option and no legislation that authorizes casino gaming in Portsmouth is passed and enacted by July 1, 2021, then RSG shall have the right to extend the Authorizing Legislation Date for a second additional one-year period (the "Second Extension Option") upon providing the EDA at least ten days written notice prior to July 1st, 2021 and the option payment described in Section 4 below.

In the event that RSG has exercised the Second Extension Option and no legislation that authorizes casino gaming in Portsmouth is passed and enacted by July 1, 2022, then RSG shall have the right to extend the Authorizing Legislation Date for a third additional one-year period (the "Third Extension Option") upon providing the EDA at least ten days written notice prior to July 1st, 2022 and the option payment described in Section 4 below.

Provided that notwithstanding the foregoing, in the event EDA desires to market the Site for uses other than casino gaming or historic horse racing, then EDA may reject the Second Extension Option or the Third Extension Option by providing written notice to RSG prior to July 1, 2021 or July 1, 2022, as applicable. In such event (1) EDA shall return any extension fee received from RSG for the extension option that is being rejected and (2) EDA shall not market the Site for casino gaming or historic horse racing uses prior to July 1, 2023.

In addition, RSG's right to exercise the Extension Option, Second Extension Option, or Third Extension Option shall not apply if: (1) RSG has been adjudged as bankrupt, or has made a general assignment for the benefit of its creditors, or a receiver has been appointed on account of its insolvency; or (2) the Bluhm family are no longer majority owners of RSG.

4. Option Payments

In recognition of the EDA providing RSG the exclusive right to negotiate and enter into a Development Agreement with the EDA with respect to the Site, upon the execution of this MOU by the Parties, RSG shall pay to the EDA an Option Payment of \$10,000. Further, if it elects to exercise the Extension Option[s], RSG will pay to the EDA additional consideration of \$30,000 for the first extension, \$30,000 for the second extension and \$30,000 for the third extension

5. Public Statements and Confidentiality

All prior Confidentiality Agreements executed in connection with this transaction are hereby terminated as to all parties thereto and shall be of no further force or effect. Each Party shall have

the right to designate in writing materials provided to the other Party which are not publicly available and are by their nature proprietary or confidential as "**Confidential Information**". Neither Party shall disclose Confidential Information provided by the other Party to any third party except to the Party's advisors or consultants on a need-to-know basis, or except as required by law, by any government or other regulatory authority, or by a court or other authority of competent jurisdiction. Provided however that, to the extent it is legally permitted to do so, the disclosing Party shall give the other Party as much advance notice of the disclosure as reasonably possible and, where notice of disclosure is not prohibited, the disclosing Party shall take into account the reasonable requests of the other party in relation to the content of the disclosure.

The Parties shall cooperate in making a joint public announcement of the execution of this MOU and shall thereafter cooperate and coordinate to the extent practicable in the making of public statements or issuance of press releases regarding the Entertainment District.

6. Exclusivity

From the Effective Date (as defined below) until the Termination Date, the Parties agree to work exclusively with each other with respect to the pursuit of obtaining Authorizing Legislation and EDA and the City shall not entertain or enter into any agreement or arrangement of any kind with any party other than RSG with respect to the sale or development of the Site or for a casino or historical horse racing venue development elsewhere in Portsmouth, and RSG agrees not to pursue, negotiate or enter agreements for the development of a casino or historic horse racing venue within the Commonwealth of Virginia. For purposes of clarity, the limitation on RSG in this Section 6 is intended to apply only to the term of this MOU and is not intended to be incorporated into the Development Agreement so as to be binding upon RSG after execution of a Development Agreement (or the termination of this MOU for any other reason).

7. Expenses

The Parties will each pay their own transaction expenses, including the fees and expenses of legal counsel and other advisors, incurred in connection with the negotiation of the MOU and Development Agreement, regardless of whether the Development Agreement is ultimately executed.

8. Binding Nature

Unless terminated, the terms of this MOU are intended by the Parties to be binding on each Party and its successors and assigns. Without limiting the foregoing, and for the avoidance of doubt, each Party acknowledges and agrees that unless and until the Development Agreement has been executed and delivered by the Parties, neither Party, nor any affiliated or related entity thereof, will be under any legal obligation of any kind whatsoever with respect to consummating the proposed relationship by virtue of this MOU or otherwise, other than, unless the MOU has been terminated, a) EDA shall not negotiate or enter agreements with other casino or historic horse racing developers, b) EDA shall not negotiate or enter agreements with other developers to develop the subject site, c) RSG shall not negotiate or enter agreements to develop casinos or historic horse racing venues within the Commonwealth of Virginia (to the extent provided in Section 6 above) and d) that both Parties shall negotiate the Development Agreement in good faith during the Negotiation Period.

9. Governing Law

Unless otherwise stated in an executed agreement, this MOU and any related documents or resulting contracts shall be construed according to the laws of Virginia, without giving effect to any

choice or conflict of law provisions or rules that would cause the application of laws of any jurisdiction other than those of Virginia.

10. Miscellaneous

This MOU may be executed in counterparts, including electronic counterparts transmitted by email or fax, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. The headings of the various sections of this MOU have been inserted for reference only and shall not be deemed to be a part of this MOU. Neither Party shall sell, transfer or assign its rights under this MOU without the express written consent of the other Party.

11. Cooperation Agreement

It shall be a condition precedent to the legal effect of this MOU that City Council shall have adopted, and the City and EDA shall have executed, a Cooperation Agreement in substantially the form attached hereto as Appendix C. Upon execution of the Cooperation Agreement, the City shall be deemed a third party beneficiary of this MOU.

This MOU has been executed between the Parties as of the latest date indicated below (the "Effective Date").

Economic Development Authority of the City of Portsmouth

By: 

Name: Dan Scott

Title: Chairman

Date: Nov. 18, 2019

Rush Street Gaming, LLC

By: 

Name: B. BLUHM

Title: Chairman

Date: Nov 18, 2019

Appendix A

<p>Price of Site</p>	<p>\$400,000 per acre</p> <p>The minimum purchase price for the conveyance for phase 1 of the Project is \$10 million.</p> <p>EDA shall retain the right to market any acreage that is not purchased by RSG in a reasonably timely fashion to other developers. Note, that acreage encompassing the body of water will not count towards usable acreage unless and to the extent RSG is able to use the body of water to satisfy all or part of its stormwater management obligations.</p>
<p>Timing of Payments for the Site</p>	<p>RSG will pay for the Site at the time that RSG is selected by the appropriate agency, commission or other such body of the Commonwealth of Virginia to develop a casino on the Site and there is no pending or threatened legal challenge to the selection, and all other closing contingencies have been satisfied or waived.</p>
<p>Property Taxes</p>	<p>RSG will be responsible for property taxes for any portion of the Site it has acquired.</p>
<p>Revenue Sharing</p>	<p>It is anticipated, based on the experience of other states that have authorized casino gaming, that, by state statute, a certain portion of the tax revenue received by the Commonwealth of Virginia from the project will be dedicated to the City of Portsmouth.</p> <p>Notwithstanding the above, commencing with the first year after the opening of the project, RSG shall make an annual payment to the City in an amount equal to one and one-half percent (1.5%) of RSG's Net Gaming Revenue from the Portsmouth project on the amount above \$150 million up to \$200 million and two percent (2.0%) of RSG's Net Gaming Revenue from the Portsmouth project on the amount above \$200 million.</p> <p>Net Gaming Revenue means all gross gaming revenue (i.e., gross wagers less gross payouts) from the casino located on the Site, minus all promotional credits, free play, match play and bonuses</p>
<p>Expedited Zoning, Permitting, and Other Approvals</p>	<p>To the extent possible, the EDA agrees to cooperate and expedite permitting, zoning and other approvals related to the Entertainment District.</p>
<p>Local Job and Vendor Preferences</p>	<p>RSG casinos typically employ at least 1,000 people and spend millions of dollars each year with local businesses. It is anticipated that the project will create a significant number of jobs and opportunities for local businesses during the development and operations of the Entertainment District.</p> <p>As legally permissible, RSG will give preference to Portsmouth residents and residents of the Hampton Roads region who are qualified for jobs at the project.</p>

	RSG will adopt a 'Local First' policy to vendor purchases.
Commercial Considerations	<p>RSG agrees to develop the Entertainment District if the Authorizing Legislation creates the market dynamics whereby the Entertainment District can be developed in a manner that is financially feasible, at a quality level and size comparable to other RSG projects.</p> <p>Factors that will influence the viability of the development, the size of facility, the amenities and phasing considerations include, but are not limited to, gaming tax rates, number and location of casinos authorized, locations of Historical Horse Racing venues and locations and numbers of skill-based machines particularly to the extent that all of the competing gaming options are located in Virginia and in the Hampton Roads region.</p>
Environmental Issues	<p>RSG recognizes the need to retain the body of water currently located on the Site or move it to another location. The EDA shall cooperate with RSG on finding a reasonable solution to the moving of the body of water to the extent it is determined it is in the commercial interest of the Site to move the body of water.</p> <p>The EDA represents that there are no known environmental issues associated with the Site.</p>
Infrastructure Improvements	RSG will be responsible for all road improvements and flood mitigation costs directly necessary for the project.
Responsible Gaming	RSG will employ industry best practices as it relates to responsible gaming and support the education, awareness and treatment of problem gaming.
Regulatory	RSG would be required to comply with all applicable laws and regulations relating to the development and operation of the Entertainment District.
Cost Reimbursement	At the first closing on conveyance of any portion of the Site, RSG will reimburse EDA and the City for any and all costs and expenses in good faith paid or incurred by EDA or the City to third parties directly incurred as a result of the effort to cause adoption of the Authorizing Legislation in an aggregate amount not to exceed \$400,000. For clarity, RSG will only reimburse for costs that would not have occurred if not for the Authorizing Legislation or the effort to adopt the Authorizing Legislation.
Permitting, Financing and Construction	The Development Agreement shall include terms regarding timing and development of master planning and early stage development, architectural and construction plans and specifications, phasing of the Project, timing for obtaining necessary permitting, development and licensing approvals, the amount and timing of financing to be obtained by RSG sufficient for development of the Entertainment District, and the timing of closing and commencement of construction.
Project Ownership:	RSG will not sell or transfer the Project prior to the Project's opening to the general public unless approved by the EDA. RSG also will agree not to sell or transfer the Project to an unaffiliated third party prior to the fifth anniversary of the Project's opening to the general public unless such sale or transfer is approved by the EDA; provided that, notwithstanding the foregoing, RSG shall have the right to sell or transfer the Project to any unaffiliated third party prior

	<p>to the fifth anniversary of the Project's opening to the general public without need of EDA approval if such sale or transfer is: a) to a gaming operator whose annual revenues for the twelve months prior to the sale or transfer meet or exceed those of RSG's corporate-wide revenues for such twelve month period; b) to a gaming operator who operates facilities at a quality level that is at least comparable to how RSG operated the Project; or c) to any entity provided that after closing of the sale or transfer RSG will continue to operate the Project.</p> <p>Further, regardless of the foregoing or otherwise, nothing in this MOU shall preclude RSG, at any time, from bringing in investment partners or development partners that may participate in the development of complementary uses of the Entertainment District.</p>
Site Planning:	<p>The site plan for the casino shall be designed such that space is available on the Site for future construction of structured parking and a first-class hotel.</p>

Appendix B

RSG was formed in the mid-1990s when legendary real estate developer Neil Bluhm met financier Greg Carlin.

Neil's resume includes marquee developments, such as Boston's Faneuil Hall and Copley Place, the Los Angeles mega-complex Century City, 900 North Michigan (Bloomingdales building) in Chicago, the Chicago Mercantile Exchange and numerous luxury hotels including the Four Seasons and Ritz Carlton hotels in Chicago. Greg, a successful investment banker, had an affinity for facility design and gaming operations. Together, they formed a partnership in the late 1990s to pursue an RFP issued by the Canadian government to build a casino in Niagara Falls. That collaboration resulted in the ground-up development and operation of Fallsview Casino Resort, to this day the highest-grossing casino in Canada.

Neil has a proven track record of upwards of over \$60 billion of real estate developed, owned or operated over the last 50 years, and has a passion for casino design and development—with an early and momentous win with Fallsview—Neil and Greg were just getting started. They were well on their way to forming one of the fastest-growing casino gaming companies in the world. Rush Street is named after the iconic Chicago north-south roadway, which borders the company headquarters. Rush Street has been a storied downtown Chicago thoroughfare since the early 1800s, with its residents and businesses constantly evolving. Known for urban vitality, Rush Street's restaurants, hotels, nightlife and high-end retail are a metaphor for Rush Street the company—an ever-changing, wonderfully compelling destination.

RSG became one of the fastest-growing gaming companies in North America, launching four destination casinos in four years beginning in 2008. Rush Street and its affiliates have invested more than \$3 billion of capital and created more than 9,000 jobs.

Today, RSG is comprised of four full-service destination casinos, internet gaming, a myriad of restaurants, multiple hotels, television production and more. What thematically connects all Rush Street business units is our regional gaming, entertainment and recreation value proposition.

RSG currently operates destination casinos in Des Plaines, Illinois; Pittsburgh and Philadelphia, Pennsylvania; and the Capital Region of New York. Each was developed by RSG and completed on-time and on-budget. Strategically, emphasis on the size of each of these projects has been paramount, so that they can withstand new competition and economic downturns. In total, RSG has spent \$2 billion on these four casinos and has realized the sum of \$1.2 billion in annual Gross Gaming Revenue for the year 2018.

Significant success has not only been observed in RSG's development side, but from its management and oversight as well. All properties managed by RSG have strong, innovative, industry veterans, placed in senior management roles to oversee the day to day operations of their casinos. As a result, RSG properties are leaders in each of their respective markets based on Win Per Unit Per Day (WPUPD), a metric that measures the gaming efficiency of a casino. The following chart details each RSG property's WPUPD and their premium to the other gaming facilities in their markets.

Rush Street Gaming – Market Leading Positions

Greater Chicago Area	Win per Unit per Day	Premium to Market
Rush Street (Des Plaines, IL)	\$ 905	176%
Penn National (Joliet, IL)	263	- 20%
Caesars (Joliet, IL)	364	11%
Penn National (Aurora, IL)	245	- 25%
Eldorado (Elgin, IL)	319	- 3%
Caesars (Hammond, IN)	323	- 2%
Penn National (East Chicago, IN)	295	- 10%
Boyd (Michigan City, IN)	212	-35%
Majestic Star (Gary, IN)	192	-42%
Total Market	\$ 328	--

Greater Pittsburgh Area

Rush Street (Pittsburgh, PA)	\$ 275	25%
Penn National (Washington, PA)	188	- 15%
Eldorado (Farmington, PA)	111	- 50%
Total Market	\$ 220	--

New York State (Commercial Casinos)	Win per Unit per Day	Premium to Market
Rush Street (Capital Region, NY)	\$ 253	41%
Lago (Rochester, NY)	166	- 7%
Resorts World (Catskills, NY)	150	- 16%
Tioga (Binghamton, NY)	178	- 1%
Total Market	179	--

Greater Philadelphia Area

Rush Street (Philadelphia, PA)	\$ 302	- 2%
Parx (Bensalem, PA)	366	18%
Caesars (Chester, PA)	218	-29%
Valley Forge (King of Prussia, PA)	365	18%
Total Market	\$ 310	--

Data is as of the 12 months ended May 2019

Rivers Casino, Pittsburgh, PA

Opened:	Aug. 2009
2018 GGR:	\$357 M
Team Members:	1,600
Annual Direct Labor:	\$66 M
Annual Vendor Spend in PA:	\$26 M



SugarHouse Casino, Philadelphia, PA

Opened:	Sept. 2010
2018 GGR:	\$303 M
Team Members:	1,590
Annual Direct Labor:	\$63 M
Annual Vendor Spend in PA:	\$13 M



Rivers Casino, Des Plaines, IL

Opened:	July 2011
2018 GGR:	\$442 M
Team Members:	1,460
Annual Direct Labor:	\$68 M
Annual Vendor Spend in IL:	\$42 M



Rivers Casino & Resort, Schenectady, NY

Opened:	Feb. 2017
2018 GGR:	\$154 M
Team Members:	1,090
Annual Direct Labor:	\$50 M
Annual Vendor Spend in NY:	\$27 M

(including rent)



In addition to these four properties, RSG and its affiliates, also developed the **Fallsview Casino & Resort in Niagara Falls, Ontario**, in close partnership with the Province. The model in Ontario at the time called for the Province to own the casino. RSG's team capitalized and developed the integrated resort for the Province and took all the development risk. In return, our venture made a small profit on the development and entered into a long-term management contract. The property opened in 2004 and RSG's affiliate company managed it until the contract expired in June of 2019. It is widely considered the most successful casino in all of Canada. RSG also developed and operated the Riverwalk Casino & Resort in Vicksburg, MS. It opened in 2008 and was a successful project that was sold to Churchill Downs in 2012. CDI has owned and operated it since 2012.



Appendix C

**COOPERATION AGREEMENT
for
DEVELOPMENT OF ENTERTAINMENT DISTRICT TO
INCLUDE CASINO GAMING**

THIS COOPERATION AGREEMENT (the "Cooperation Agreement") is entered into as of the ___ day of November, 2019, by and between the CITY OF PORTSMOUTH, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "City"), and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF PORTSMOUTH, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "EDA").

WHEREAS, EDA owns certain property consisting of approximately 50 acres located in the Victory Crossing area of the City with direct interstate access and highway visibility (the "Site"); and

WHEREAS, by Resolution adopted by EDA on July 16, 2019 and Resolution R-19-25 adopted by City Council on July 23, 2019, EDA and the City expressed the joint desire to develop an entertainment district on the Property to include casino gaming; and

WHEREAS, EDA has now entered into, or intends to enter into, a Memorandum of Understanding with Rush Street Gaming LLC regarding the use of the Property for development of an entertainment district to include casino gaming (the "MOU");

NOW THEREFORE IT IS AGREED by the parties to cooperate as follows:

1. The City and EDA agree to cooperate in attempting to cause development of the Site as an entertainment district to include casino gaming as follows:
 - a. The City shall provide such support as is reasonably required for EDA to comply with the terms and conditions of the MOU; and
 - b. The City agrees to comply with all provisions of the MOU binding upon EDA, including expressly and without limitation the exclusivity provision.
2. Nothing herein shall be construed as a waiver of City Council's legislative discretion regarding zoning and permitting applications.
3. This Cooperation Agreement may be executed in counterparts.

IN WITNESS WHEREOF, this Cooperation Agreement has been executed on behalf of the EDA and the City as of the date first above stated.

CITY OF PORTSMOUTH, VIRGINIA

By: _____
Dr. L. Pettis Patton, City Manager

Approved as to form:

Solomon H. Ashby, Jr., City Attorney

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF
PORTSMOUTH, VIRGINIA**

By: _____
Don Scott, Chairman