

PORTSMOUTH ENTERTAINMENT DISTRICT DEVELOPMENT AGREEMENT

THIS PORTSMOUTH ENTERTAINMENT DISTRICT DEVELOPMENT AGREEMENT (this "*Agreement*") is made as of this 26th day of May, 2020 (the "*Effective Date*") between the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF PORTSMOUTH, VIRGINIA ("*Seller*"), and PORTSMOUTH GAMING HOLDINGS, LLC, a Delaware limited liability company ("*Developer*").

WHEREAS, during its 2020 Session, the Virginia General Assembly adopted Senate Bill 36 and House Bill 4 and the Governor signed them into law (as signed into law and amended from time to time, together with regulations and procedures adopted pursuant thereto, the "*Legislation*"); and

WHEREAS, the Legislation establishes Portsmouth as one of five cities in Virginia eligible for the development of a casino; and

WHEREAS, Seller owns certain property located in Portsmouth and containing approximately 50 acres (as defined in Article 4 below, the "*Property*"); and

WHEREAS, Seller and Developer entered into that certain Memorandum of Understanding dated November 18, 2019 (the "*MOU*") for the development of an Entertainment District (as defined in Section 13.1.1) on an approximately fifty acre site, to include a Casino (as defined in Section 13.1.2) and mixed-use entertainment facilities, on the Property; and

WHEREAS, Seller and the City of Portsmouth, Virginia (the "*City*") entered into a Cooperation Agreement dated November 18, 2019 (the "*Cooperation Agreement*") pursuant to which the City agreed to provide support for Seller to comply with its obligations under the MOU; and

WHEREAS, the parties enter into this Agreement for that purpose of causing development of the Entertainment District in accordance with the MOU and the Casino within the Entertainment District in accordance with the Legislation;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

PART I. CASINO LICENSING

ARTICLE 1.

ELIGIBLE HOST CITY CERTIFICATION OF PREFERRED OPERATOR

1.1 **Generally.** Under § 58.1-4107 of the Legislation, each host city eligible for a Casino must select and submit a preferred casino gaming operator to the Virginia Lottery Department (the "*Department*").

1.2 **Submittal of Proposal.** Developer shall submit a proposal to the City (the "*Proposal*") incorporating the terms of the MOU and/or this Agreement, as applicable, and further specifically

addressing each of the nine factors listed in § 58.1-4107(B) of the Legislation as factors that should be considered and given substantial weight in the City's selection of a preferred casino gaming operator, specifically:

1.2.1 The potential benefit and prospective revenues of the proposed casino gaming establishment.

1.2.2 The total value of the proposed casino gaming establishment.

1.2.3 The proposed capital investment and the financial health of the proposer and any proposed development partners.

1.2.4 The experience of the proposer and any development partners in the operation of a casino gaming establishment.

1.2.5 Security plans for the proposed casino gaming establishment.

1.2.6 The economic development value of the proposed casino gaming establishment and the potential for community reinvestment and redevelopment in an area in need of such.

1.2.7 Availability of city-owned assets and privately owned assets, such as real property, including where there is only one location practically available or land under a development agreement between a potential operator and the city, incorporated in the proposal.

1.2.8 The best financial interest of the city.

1.2.9 The proposer's status as a minority-owned business as defined in § 2.2-1604 of the Virginia Code or the proposer's commitment to solicit equity investment in the Casino Phase from one or more minority-owned businesses and the proposer's commitment to solicit contracts with minority-owned businesses for the purchase of goods and services.

1.3 **Minority Participation.** Without limitation, the Proposal shall include both minority equity investment and minority contracting as set forth in Section 1.2.9. The minority contracting portion of the Proposal shall include a detailed plan for outreach programs to aspire to pay thirty percent (30%) of the costs of constructing the Casino and Hotel, to businesses that are either minority-owned or certified as a SWaM or DBE by the Virginia Department of Small Business Supplier Diversity, subject to the limitations and qualifications described in the Proposal. The plan for minority participation, as prepared by Developer and approved by City Council, is referred to as the "**Minority Participation Plan**".

1.4 **Timing of Submittal of Proposal.** Developer shall cause the Proposal to be submitted to the City no later than May 12, 2020 for review by City Council in the context of the MOU, this Agreement, and the requirements of the Legislation.

1.5 **City Approval of Proposal.** Upon the City's approval of the Proposal and selection of the Developer as the City's preferred casino gaming operator, the parties shall take all necessary steps to ensure that the selection of the Developer is submitted to the Department and that all additional information the Department may request during its review is provided expeditiously.

1.6 **Preliminary Approval Deposit.** Within five (5) business days of the City's selection of Developer as the City's preferred casino gaming operator in accordance with Section 1.5 above, Developer shall place the sum of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) (the "**Preliminary**

Approval Deposit”) in escrow with Stewart Title Guaranty Company (the “**Title Company**”). All interest accruing on the Preliminary Approval Deposit, if any, shall become part of the Preliminary Approval Deposit.

1.6.1 The Preliminary Approval Deposit will be held and disbursed by the Title Company pursuant to a joint order escrow agreement among Developer, Seller and Title Company. The Preliminary Approval Deposit may be withdrawn by Developer as reimbursement for the actual, direct third party costs paid by Developer for title, survey, environmental, traffic engineering, site and building plan, architectural design, attorneys’ fees, market analyses, consulting services and permitting work for development of the Entertainment District on the Property from and after March 1, 2020. Any such third party costs incurred by Developer after March 1, 2020 but prior to funding of the Preliminary Approval Deposit shall be deducted from the amount of the Preliminary Approval Deposit required to be deposited with the Title Company, provided that Developer shall have provided Seller documentation and the opportunity to object in accordance with Section 1.6.2 below prior to deducting any such amount.

1.6.2 Developer may draw upon the Preliminary Approval Deposit (whether as reimbursements or direct payments to third parties) at any time and from time to time by sending Seller and Title Company the amount of the draw and reasonable supporting non-privileged documentation (the “**Draw Request**”). Seller’s affirmative approval of a Draw Request shall not be required as long as (a) Seller has received a copy of the Draw Request concurrently with submission to the Title Company and (b) the Draw Request will be applied to the payment of bona fide third party costs and expenses. If Seller objects in whole or in part to the Draw Request, Seller shall provide notice to Developer and Title Company within three (3) business days of delivery of the Draw Request. If Seller objects in whole or in part to the Draw Request, Seller shall simultaneously specify the reason for denial and what, if any, additional documentation is required. If Seller approves the Draw Request or Seller does not respond within the three (3) business day period following delivery of the Draw Request, the Title Company shall release the amount specified in the Draw Request to Developer within five (5) business days after the submittal of such Draw Request.

1.6.3 To the extent the Title Company is holding all or any portion of the Preliminary Approval Deposit as of the Initial Closing (defined in Section 9.3), it shall be released to Developer. To the extent all or any portion of Preliminary Approval Deposit remains in escrow upon termination of this Agreement prior to the Initial Closing, then if this Agreement is terminated prior to the Initial Closing by reason of Developer’s material breach of this Agreement or because Developer is denied a License by the Department, then the Title Company shall (a) deduct from the Preliminary Approval Deposit the amount of any third party costs and expenses then incurred pursuant to a final Draw Request, (b) pay same in accordance with the Draw Request, and (c) deliver the remaining amount of the Preliminary Approval Deposit then held by the Title Company to Seller, and the Preliminary Approval Deposit shall become the property of Seller, and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement. Otherwise, the Title Company shall deliver the remaining balance of the Preliminary Approval Deposit to Developer within ten (10) days of termination of this Agreement.

1.7 **Preliminary Approval.** If the Department does not authorize the City to proceed with the Referendum (as defined in Section 2.1) with the Developer as its preferred casino gaming operator within the timeframe required to undertake the legal steps necessary to hold the Referendum on November 3, 2020, then either party may terminate this Agreement, in which event the Preliminary Approval Deposit then held by the Title Company shall be delivered to Developer and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement, provided, however, (a) if a Judge of the Portsmouth Circuit Court has set a referendum for a date certain other than November 3, 2020, or (b) if the Legislation has been or is reasonably anticipated to

be amended so as to allow for a Referendum on a later date, then neither party shall have the right to terminate this Agreement until such time as the Referendum has been held on such later date and the construction and operation of the Casino has not been approved by the citizens of Portsmouth.

ARTICLE 2. REFERENDUM

2.1 **Referendum Generally.** Under § 58.1-4123 of the Legislation, approval of a local referendum (the “**Referendum**”) authorizing the construction and operation of the Casino in Portsmouth is required prior to issuance of a License (defined in Section 3.2).

2.2 The Referendum cannot be scheduled until Developer has received preliminary approval from the Department. Developer shall use commercially reasonable and good faith efforts to endeavor to obtain preliminary approval from the Department by July 15, 2020 so that the Referendum will be held as part of the General Election on Tuesday November 3, 2020. Seller shall use commercially reasonable and good faith efforts to cause the City to schedule the Referendum for November 3, 2020.

2.3 It is acknowledged that Seller is a political subdivision of the Commonwealth of Virginia and as such will not expend public funds to advocate the passage or defeat of the Referendum.

2.4 It is acknowledged that Developer may make efforts and expend funds to publicize and inform the citizens of Portsmouth about the potential positive impacts of the Casino and the Entertainment District for Portsmouth and to promote the passage of the Referendum.

2.5 If the Referendum is not held November 3, 2020 (or on such later date as may be permitted by an amendment to the Legislation or may be established for the Referendum by a Judge of the Portsmouth Circuit Court), then either party shall have the right to terminate this Agreement, in which event the Preliminary Approval Deposit then held by the Title Company shall be delivered to Developer and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement. If a majority does not vote affirmatively in the Referendum to approve the Casino, then either party shall have the right to terminate this Agreement, in which event the Preliminary Approval Deposit then held by the Title Company shall be delivered to Developer and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement.

ARTICLE 3. LICENSING

3.1 **Generally.** Under the structure established by §§ 58.1-4108 *et seq.* of the Legislation, if a majority of voters in the Referendum vote affirmatively to approve the Casino, the City is to certify Developer as its preferred casino gaming operator and submit such certification (the “**City License Certification**”) to the Department within thirty (30) days, and thereafter Developer is to file with the Department an application for a casino gaming license. Seller shall use commercially reasonable and good faith efforts to cause the City to timely file the City License Certification.

3.2 The term “**License**” means a license issued by the Department and giving Developer or its Affiliate (as defined in Section 12.8) the right to operate a Casino in Portsmouth.

3.3 Developer shall use commercially reasonable and good faith efforts to file a complete application for a License with the Department within thirty (30) days of the submittal of the City License

Certification, but subject to such additional time as may be reasonably necessary to comply with the requirements set forth by the Department.

3.4 If Developer's application for a License is denied by the Department, then, after Developer and City have each exhausted their respective rights to appeal such denial, either party shall have the right to terminate this Agreement, in which event the Title Company shall (a) deduct from the Preliminary Approval Deposit the amount of any third party costs and expenses then incurred pursuant to a final Draw Request, (b) pay same in accordance with the Draw Request, and (c) deliver the remaining amount of the Preliminary Approval Deposit then held by the Title Company to Seller, and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement.

3.5 If Developer is granted a License but the License is revoked prior to the Initial Closing (as defined in Section 9.1) and Developer has exhausted efforts to appeal the Department's decision, Developer shall voluntarily surrender the License to the Department within five (5) business days of termination, in which event, unless the termination resulted from the breach of this Agreement or the terms of the License by Developer, the Preliminary Approval Deposit then held by the Title Company shall be delivered to Developer and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement.

PART II. DEVELOPMENT

ARTICLE 4. PURCHASE AND SALE

4.1 **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Developer, and Developer hereby agrees to purchase from Seller, for the consideration set forth herein including in Article 5, the property (collectively, the "**Property**") described in *Exhibit A-1* and *Exhibit A-2* attached hereto and made a part hereof. The portion of the Property (the "**Casino Phase**") described in Exhibit A-1 will, subject to the terms and conditions of this Agreement, be acquired by Developer at the Initial Closing. The parties acknowledge that the Casino Phase has not yet been described by metes and bounds or created by plat. At such time as the Casino Phase has been surveyed and legally described, this Agreement will be supplemented to include the precise boundaries of the Casino Phase. The parties also acknowledge that Developer has the right, but not the obligation, to acquire the balance of the Property (the "**Remaining Property**"), which is described in *Exhibit A-2*, in one or more closings ("**Additional Closings**") to be held in accordance with Section 9.4 hereof.

ARTICLE 5. PURCHASE PRICE

5.1 **Purchase Price.** The purchase price (the "**Purchase Price**") payable for the portion of the Property acquired by Developer at each Closing shall be FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00) per acre based upon the total amount of Net Acres (as defined below) then being acquired by Developer at the Initial Closing and any Additional Closings (collectively, "**Closings**").

5.2 The term "**Net Acres**" means (a) the gross acreage of the Property then being acquired by Developer minus (b) the acreage of the Property covered by or attributable to all or any portion of the storm

water detention pond (the “*Detention Pond*”) on the Property then serving or benefiting Tidewater Community College (“*TCC*”). By way of example only, if, at the Initial Closing, (I) if Developer is then acquiring 28 gross acres, (II) the Detention Pond is three acres in size, and (III) the portion of the Detention Pond allocated to TCC is one acre, then Developer will be acquiring twenty-seven (27) Net Acres. Moreover, if, at the Initial Closing or any Additional Closing, all or a portion of the Detention Pond is located on the Remaining Property (to which Developer has not yet or is not then taking title), then Seller shall grant Developer easement rights in and to the Detention Pond sufficient to permit Developer to use and maintain the Detention Pond at Developer’s cost, and the area of the Detention Pond (not including the pro rata area serving or benefiting TCC) shall be considered Net Acreage acquired by Developer for the purpose of calculating the Purchase Price. An engineering consultant engaged by Developer shall certify to Seller and Developer the area determined pursuant to clause (b) of the first sentence of this Section 5.2.

5.3 The Purchase Price shall be paid by Developer in cash or equivalent at the Closings.

5.4 The minimum Purchase Price paid at the Initial Closing shall be TEN MILLION AND NO/100 DOLLARS (\$10,000,000). If, at the Initial Closing, Developer acquires less than twenty-five (25) Net Acres, then Developer will receive a credit against any future purchases of the Property in an amount equal to \$10,000,000 minus the product of (a) \$400,000 and (b) the number of Net Acres comprising the portion of the Property acquired by Developer at the Initial Closing.

ARTICLE 6. EARNEST MONEY

6.1 *Earnest Money.* In light of Developer’s agreement to post the Preliminary Approval Deposit, Developer’s need to move expeditiously to ensure it is in compliance with Department deadlines and regulations, and Developer’s agreement to undertake the planning, acquisition and development of the Property, Seller has agreed not to require Developer to post any earnest money.

ARTICLE 7. DUE DILIGENCE AND PERMITTING

7.1 *Due Diligence Documents.* Within five (5) business days after the Effective Date, Seller shall deliver to Developer environmental site assessments, title policies, title materials, surveys, easements and any other relevant documents Developer may reasonably request to the extent the same are in Seller’s or the City’s possession or control.

7.2 *Right of Entry.* From and after the Effective Date until termination of this Agreement or completion of all Closings hereunder, Developer and Developer’s employees, agents, engineers and/or contractors (collectively, “**Developer Parties**”) shall have the right to enter upon the Property (or portions of the Property not yet conveyed to Developer, as applicable) to investigate the condition of the Property, including without limitation to conduct inspections, make analyses, take core drillings and/or other intrusive samples, to conduct any environmental site assessments, and to perform such other tests and inspections as Developer may deem appropriate, all at Developer’s sole cost and expense and in compliance with all applicable laws and necessary permits. Developer shall be entitled to pay (or be reimbursed for) the costs of such work from the Preliminary Approval Deposit. Developer shall conduct such investigations, inspections, analyses, drillings, samplings and assessments at reasonable times upon reasonable prior notice to Seller. If this Agreement is terminated prior to the Initial Closing having occurred, Developer will repair any damage to the Property resulting directly from Developer’s studies and tests conducted on the Property, and such repair costs shall be reimbursed from the Preliminary Approval Deposit. In exercising the rights set forth in this Section 7.2 (referred to as “**Right of Entry**”), Developer shall ensure that Developer Parties

do not cause the Property to be in an unkempt or nuisance condition. Developer shall not permit the introduction of hazardous materials, as said term is defined in applicable federal or state laws or regulations, onto the Property by Developer Parties. Developer shall indemnify and hold harmless Seller, its Commissioners, officers, employees and agents, and the City, its council members, officers, employees and agents (collectively, "**Seller Parties**"), from and against any actual costs, charges, damages or claims, including without limitation reasonable attorneys' fees and court costs, related to any claims which arise or result from the exercise of this Right of Entry by Developer Parties, except to the extent caused by the willful acts or negligence of Seller Parties. The indemnity in the foregoing sentence shall survive any termination of this Agreement for a period of twelve (12) months.

7.3 Feasibility and Permitting Period. Commencing on the Effective Date and continuing through that date which is one hundred twenty (120) calendar days after the date Developer is issued a License (the "**Permitting Period**") and thereafter through the Closing Date, Developer shall perform, at its sole cost (but subject to a right of reimbursement or payment from the Preliminary Approval Deposit), all title, survey, environmental and engineering work it deems necessary or appropriate regarding the Property and the Approved Use (as defined in Section 13.1) and shall obtain, at its sole cost (but subject to a right of reimbursement or payment from the Preliminary Approval Deposit), all governmental authorizations and approvals, including without limitation all site plan approvals, zoning approvals, building plan approvals, right of way permits, site improvement permits and utility connection permits required for the Casino Use and any other Phase (defined in Section 13.2.4) to be constructed as part of the Initial Closing. Provided Developer has submitted a site plan to the City of Portsmouth Department of Engineering prior to expiration of the Permitting Period, Developer (a) shall have the right to extend the Permitting Period for one (1) extension term of ninety (90) calendar days (the "**Extended Permitting Period**") by, prior to expiration of the Permitting Period, delivering written notice to Seller that Developer intends to exercise its right to an extension, and (b) shall have an additional period of sixty (60) days following expiration of the Extended Permitting Period during which to obtain a building permit covering the Improvements to be constructed for the Casino Use and any other Phase to be constructed as part of the Initial Closing. If Developer is unable to obtain all required permits and approvals during the Permitting Period (including any extension) on account of its failure to respond to reasonable submission requirements, then Seller shall have the right to terminate this Agreement upon written notice to Developer, the Preliminary Approval Deposit then held by Title Company shall be delivered to Seller, and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement. If Developer is unable to obtain all required permits and approvals during the Permitting Period (including any extension) for any other reason, then Developer shall have the right to terminate this Agreement upon written notice to Seller, the Preliminary Approval Deposit then held by Title Company shall be delivered to Developer, and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement.

7.3.1 So long as Developer's proposed plans, specifications and designs for the Casino are reasonably acceptable to Seller, Seller shall cooperate with Developer during the Permitting Period, including, without limitation, by executing zoning applications in its capacity as owner of the Property, making efforts to facilitate meetings between Developer and the City regarding the permitting process, and joining Developer in requests to expedite permits and approvals where permissible.

7.4 Title. Within sixty (60) calendar days of the Effective Date, Developer shall, at its sole cost, obtain: (1) a title commitment for an owner's policy of title insurance (the "**Title Commitment**") from the Title Company, covering the entire Property; and (2) if Developer so elects, a survey of the entire Property prepared by a licensed surveyor (the "**Survey**"). In the event the condition of title as set forth in the Title Commitment and/or Survey is not satisfactory to Developer in Developer's sole discretion, then, within ninety (90) calendar days of the Effective Date, Developer shall notify Seller in writing of Developer's objections ("**Title Objections**") to the Title Commitment and/or Survey. In the event any

additional objectionable title or survey condition is first disclosed to Developer after receipt of the Title Commitment and the Survey, Developer shall have the right to supplement the Title Objections by providing notice to Seller within fourteen (14) calendar days of the date the applicable title or survey condition was disclosed to Developer, but in any event no later than Closing on the Phase impacted by the Title Objection. Seller shall use commercially reasonable efforts to clear or remove the Title Objections, and Seller shall clear or remove all Title Objections in the nature of a monetary encumbrance or lien ("**Monetary Lien**"). Any commitment by Seller to use commercially reasonable efforts does not include any obligation to pay in excess of a total of One Hundred Thousand Dollars (\$100,000.00) for the removal of all Title Objections (other than Monetary Liens, which are not limited by amount). In the event that Seller fails or is unable to cure all Title Objections on or before the Initial Closing Date, Developer as its sole remedy may elect either to (i) terminate this Agreement and recover the Preliminary Approval Deposit and any other funds escrowed as of termination, (ii) with respect to any Monetary Lien, deduct the amount of such Monetary Lien from the Purchase Price and cause such Monetary Lien to be released or extinguished, or (iii) close the purchase of the Casino Phase subject to such Title Objections. In the event of termination by Developer, the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement. Any matters of record or matters that would be shown by the Survey to which Developer does not timely object, any Title Objections which Seller does not cure but over which Developer elects to close in accordance with clause (iii) above, and any encumbrances created or permitted by Seller with the consent or at the direction of Developer, shall be deemed to be permitted exceptions to the status of Seller's title (the "**Permitted Exceptions**"). Without limitation on the foregoing, Seller shall, prior to or at Closing, cause to be released or removed (a) any Monetary Liens that encumber the portion of the Property to be conveyed at the Closing and (b) any title and survey matters created after the Effective Date without the Developer's consent as a result of the Seller's actions or inactions.

7.5 TCC Stormwater Obligation. The parties acknowledge that the Detention Pond serves the Property as well as the adjacent TCC property (the "**TCC Storm Water Obligation**").

7.5.1 An agreement (the "**Storm Water Agreement**") will be placed of record prior to the Initial Closing in a form reasonably acceptable to Seller, Developer and TCC addressing the existence, location, use and maintenance of the Detention Pond, potential easement rights and obligations with respect to the Detention Pond, and the scope of the TCC Storm Water Obligation. Developer and Seller shall use commercially reasonable and good faith efforts to procure the execution and delivery of the Storm Water Agreement by TCC. Neither the TCC Storm Water Obligation nor the Storm Water Agreement shall constitute a Title Objection under Section 7.4.

7.5.2 If Developer determines, in its sole discretion, it is necessary or appropriate to relocate and reconstruct more than fifty percent (50%) of the existing Detention Pond on the Property in order to facilitate the development of the Casino, then Seller agrees to reimburse Developer in the amount of fifty percent (50%) of the direct third party costs (the "**Pond Improvement Costs**") payable by Developer for such improvement and relocation up to a maximum contribution of not to exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000) (the "**Seller Stormwater Relocation Contribution**"). An engineering consultant engaged by Developer shall certify to Seller and Developer the estimated amount of the Pond Improvement Costs, which shall include a contingency of ten percent (10%), determined pursuant to this Section 7.5.2. If the Seller Stormwater Relocation Contribution is applicable, then Seller shall, at the Initial Closing, deposit into escrow with the Title Company, pursuant to an escrow agreement reasonably satisfactory to Seller, Developer and the Title Company, the Seller Stormwater Relocation Contribution. All interest accruing on the Seller Stormwater Relocation Contribution, if any, shall become part of the Seller Stormwater Relocation Contribution. The escrowed amount shall be drawn following the same procedures for withdrawal of the Preliminary Approval Deposit set forth in Section 1.6, *et seq.* The balance of the Seller Stormwater Relocation Contribution remaining in escrow with the Title Company

shall be released to Seller after the earlier of (a) completion of the improvement and relocation of the Detention Pond or (b) two years after the Initial Closing (as long as, in both instances, any amounts then owing to Developer have first been disbursed to Developer).

7.5.3 If the Detention Pond is located on the Casino Phase, Developer shall take title to the Detention Pond at the Initial Closing. If the Detention Pond is located on such portion of the Property that Developer will not be acquiring at Closing, then Developer will acquire an easement in and to the Detention Pond as provided in Section 5.2 (and such portion of the Property as may be necessary for Developer to have access to and the use of the Detention Pond).

7.6 *Other Infrastructure.*

7.6.1 Except for the Seller Stormwater Relocation Contribution, Developer shall be solely responsible for all road improvements, flood mitigation and other infrastructure costs directly necessary for development of the Casino, Hotel, Convention Center and Structured Parking Phases. To the extent that Developer or any other Person (as hereinafter defined) undertakes the development of improvements in the Entertainment District other than the Casino Phase, and such development requires the construction or development of road improvements, flood mitigation and other infrastructure, then Developer or such Person will be entitled to request that the Seller or the City consider paying for or making an economic contribution to the costs of same, just as the City would consider such a request from any other Person undertaking a new development. Developer shall not be responsible for (and shall not pay the cost of) any infrastructure costs that (a) arise as a result of any development in the Entertainment District that is not undertaken by Developer or (b) exceed the costs of the necessary infrastructure pertaining to development of all or any portion of the Property.

7.7 *Restrictive Covenants.* Developer and Seller acknowledge a mutual intent and goal that the entire Property be developed as a cohesive Entertainment District (as defined in Section 13.1.1). In that regard, Developer may request that limited restrictive covenants (the “*Covenants*”) be recorded against the entire Property as part of the Initial Closing in a form reasonably acceptable to Developer and Seller. Seller shall not unreasonably refuse the request so long as the Covenants (a) are limited to design standards of a general and not highly detailed nature that are consistent with the Overlay District zoning and/or use restrictions that are consistent with the Overlay District zoning; (b) in the reasonable discretion of Seller, do not materially diminish the marketability of all or a portion of the property that has not yet been conveyed to Developer for uses consistent with the Entertainment District; (c) do not provide for the creation of a community association or for shared common maintenance costs; (d) have a goal of ensuring that any development of the Remaining Property would not be detrimental to the revenue to be derived from the Casino Phase; and (e) are terminable by Seller in its sole discretion in the event the Casino is not open to the public within five (5) years of the Initial Closing Date or the Casino opens to the public but subsequently closes to the public for a period of at least three (3) consecutive calendar years.

ARTICLE 8. REPRESENTATIONS AND AGREEMENTS

8.1 *Representations of Seller.* Seller, to the best of its knowledge, hereby covenants, represents and warrants to Developer that:

- (a) Seller has full right, power and authority to enter into this Agreement and to consummate the sale contemplated hereby without the joinder of any other person, and the party signing on behalf of Seller has been duly authorized to sign on behalf of Seller, provided however, that the parties acknowledge that the Seller does not direct or control the City, including without limitation actions lying within the

City's discretion under the Legislation or actions regarding the granting of permits and governmental approvals.

- (b) Seller has not received any notice of any violations of any applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property.
- (c) Seller has not received any notice of any pending or threatened condemnation or similar proceeding affecting the Property or any portion thereof, nor has Seller knowledge that any such action is presently contemplated.
- (d) There are no leases affecting any portion of the Property and there are no options or contracts granting any rights to acquire any right, title or interest in any portion of the Property (other than the MOU), and no tenants are in possession of the Property.
- (e) Performance of this Agreement will not result in any breach of, or constitute a default under, or result in the imposition of any lien or encumbrance upon the Property pursuant to, any agreement or other instrument to which Seller is a party or by which Seller or the Property might be bound.
- (f) Seller has received no notice regarding any environmental condition on, in or under the Property that violates applicable environmental laws or regulations, nor does Seller have any actual knowledge of hazardous materials existing on, in or under the Property at levels which would necessitate either cleanup or additional investigation under applicable laws or regulations.

The foregoing representations and warranties shall be true and correct on and as of the Effective Date and the date of each Closing.

8.2 *Agreements of Seller.* From the Effective Date until the applicable Closing for any portion of the Property, Seller shall:

- (a) Not suffer or allow the Property (or the portions of the Property owned by Seller, as applicable) to be maintained or operated in any manner inconsistent with applicable statutes, ordinances, rules, regulations or laws, or used in any manner that would violate any past or present statute, ordinance, rule, regulation or law of any federal, state or local governmental body or agency, including, without limitation, any environmental law, or to be used for the operation of "gray machines" or other types of casino-style gaming.
- (b) Notify Developer of any change that would affect any representation, warranty or covenant of Seller set forth in this Agreement.
- (c) Without the prior written consent of Developer, not enter into or modify any written or oral lease, easement, license, service contract or other agreement with respect to the Property that will not be fully performed and terminated by all parties thereto on or before the applicable Closing.

- (d) Advise Developer of any litigation, arbitration or administrative hearing before any governmental agency concerning or affecting the Property or its use which is instituted or threatened after the Effective Date.
- (e) Not sell, assign, or convey any right, title or interest whatsoever in or to the Property, or allow any lien or other encumbrance to attach to the Property or any part thereof except the lien for ad valorem taxes, or grant, create or voluntarily allow the creation of, or amend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease or other right affecting the Property without Developer's prior consent.
- (f) Seller shall make commercially reasonable good faith efforts to ensure Developer receives all necessary permit, zoning and other approvals in order to fully develop the Entertainment District without undue delay. Without limitation on the foregoing, Seller shall make commercially reasonable and good faith efforts to cause the City to review and act on Developer's submittals, proposals and applications promptly.

8.3 ***Representations of Developer.*** Developer, to the best of its actual knowledge, hereby covenants, represents and warrants to Seller that:

- (a) Developer has full right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby without the joinder of any other person, and the party signing on behalf of Developer has been duly authorized to sign on behalf of Developer.
- (b) As of the Effective Date, Affiliates of Developer currently operate multiple casino gaming facilities and a hotel in North America.
- (c) Upon commencement of construction of the Casino Phase, Developer shall be able to satisfy the requirement of § 58.1-4108(B) of the Legislation.
- (d) Based upon its understanding of §§ 58.1-4108, 58.1-4109, 58.1-4110, and 58.1-4111 of the Legislation, Developer has no reason to believe that it will not, and its principals will not, satisfy the requirements for licensure under the Legislation.
- (e) To Developer's knowledge, no basis exists to deny Developer a License or revoke a License issued to Developer pursuant to §58.1-4110(C) of the Legislation.
- (f) Execution of, or performance under, this Agreement will not result in a material breach of any term or condition of any other agreement binding upon Developer.
- (g) Neither Developer nor Rush Street Gaming, LLC has been adjudged as bankrupt, or made a general assignment for the benefit of its creditors, and no receiver has been appointed on account of its insolvency.

The foregoing representations and warranties shall be true and correct on and as of the Effective Date and the applicable Closing for any portion of the Property, except Section 8.3(b) shall be true and correct only as of the Effective Date.

8.4 **Agreements of Developer.** From the Effective Date until that date which is five (5) years after the opening of the Casino to the public:

- (a) Except with respect to conveyances or transfers permitted under Section 15.6, some or all of Neil G. Bluhm, his Affiliates, the lineal descendants of Neil G. Bluhm and their Affiliates shall maintain a controlling interest in Developer or any Affiliate assignee of Developer.
- (b) Developer shall make commercially reasonable and good faith efforts (i) to submit all information reasonably required by the City to construct and open the Casino and (ii) to fully develop the Casino Phase.
- (c) Reserved.
- (d) Developer shall maintain the License in good standing in accordance with the terms of this Agreement.
- (e) Developer shall work in good faith to diligently develop and open the Casino without undue delay in accordance with the terms of this Agreement.
- (f) Developer shall make commercially reasonable good faith efforts to submit all information required for the necessary approvals relating to the Casino Phase, including, without limitation, the License, fully develop the Casino Phase, and open and operate the Casino Phase, in each instance without undue delay on Developer's part.
- (g) Developer and/or its Affiliates shall not enter into any agreement or arrangement with a third party for the purpose of delaying or forestalling (i) obtaining the License or (ii) development of the Casino, in either instance in exchange for a financial benefit.

8.5 **Breach of Representations or Agreements.** In the event of any material breach of any representation, warranty or agreement in Sections 8.1-8.4, the provisions of Article 11 shall apply.

ARTICLE 9. CLOSINGS

9.1 **Initial Closing.** At such time as the closing conditions identified in Sections 13.3 and 13.4 have been satisfied with respect to the Casino Phase, Developer and Seller shall consummate the closing (the "**Initial Closing**") of the conveyance of the Casino Phase of the Property. At such time as the closing conditions identified in Sections 13.3 and 13.4 have been satisfied with respect to the Remaining Property, Developer and Seller shall consummate one or more closings (each an "**Additional Closing**" and collectively "**Additional Closings**") of the conveyance of the Remaining Property. The Initial Closing shall occur on that date which is no later than sixty (60) calendar days after the expiration of the Permitting Period (as defined in Section 7.3), including extensions, provided, however, in the event the closing conditions identified in Sections 13.3 and 13.4 hereof are not satisfied within the sixty (60) day period for any reason other than a breach hereunder by Seller or Developer, then the Initial Closing shall be automatically extended for additional periods of thirty (30) days until such time as the unsatisfied closing conditions have been satisfied (unless the unsatisfied closing conditions are the result of the default of a party hereunder, in which event the party in default shall not be entitled to extend the date of the Initial Closing). The Initial Closing shall be held at the office of the Title Company, on a date elected by Developer

by giving not less than five (5) business days' prior notice to Seller, it being understood that the parties intend to close the transaction through an escrow arrangement without the need for the parties to be physically present.

9.1.1 If the Initial Closing has not occurred on or before December 31, 2022, then by no later than January 15, 2023, Developer shall pay Seller the sum of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000). In the event the Initial Closing has not occurred by December 31st of any year thereafter, Developer shall likewise pay Seller the sum of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000) by no later than January 15th of the following year.

9.2 ***Seller's Obligations at Initial Closing.*** At the Initial Closing and at each Additional Closing, Seller shall deliver to the Title Company the following:

- (a) ***Deed.*** A Special Warranty Deed in customary Virginia form executed by Seller conveying the Property or applicable portion thereof by Special Warranty subject to no exceptions other than the Permitted Exceptions.
- (b) ***Bill of Sale.*** A bill of sale in form reasonably acceptable to Developer conveying any and all intangible personal property rights that Seller has in and to the portion of the Property being conveyed.
- (c) ***Evidence of Authority.*** Copies of Seller's resolutions in form reasonably acceptable to Developer and organizational documents, certified by Seller as true and complete, as of the date of Closing, so as to evidence the authority of the persons signing the Deed and other documents in forms acceptable to Developer to be executed by Seller at the Closing and the power and authority of Seller to convey the applicable portion of the Property to Developer in accordance with this Agreement.
- (c) ***Foreign Person.*** An affidavit of Seller in form reasonably acceptable to Developer certifying that Seller is not a "foreign person," as defined in the federal Foreign Investment in Real Property Tax Act of 1980, and the 1984 Tax Reform Act, as amended.
- (d) ***Tax Certificates.*** Certificates in forms reasonably acceptable to Developer showing that all ad valorem taxes, stand-by fees, assessments, maintenance fees and similar charges assessed against the Property which are payable, have been paid in full.
- (e) ***Other Documents.*** All other documents and instruments, all in forms reasonably acceptable to Developer, that the Seller's or Developer's attorney or the Title Company may reasonably require to consummate properly the transaction contemplated by this Agreement.

9.3 ***Developer's Obligations at Initial Closing.*** At the Initial Closing and at each Additional Closing (other than the provisions of subsection (b), which shall be performed solely at the Initial Closing), Developer shall deliver to the Title Company the following:

- (a) ***Purchase Price.*** The Purchase Price, by cashier's check or wire transfer of immediately available funds, subject to the pro rations and adjustments set forth in this Agreement.

- (b) **Cost Reimbursement.** Developer shall deliver by cashier's check or wire transfer of immediately available funds in an amount equal to all documented out-of-pocket costs and expenses that the Seller and/or the City paid to third parties and directly incurred prior to the Initial Closing Date as a result of the effort to cause adoption of the Legislation, up to an aggregate amount of not to exceed Four Hundred Thousand Dollars (\$400,000) (the "**Cost Reimbursement**"). For clarity, the Cost Reimbursement is intended to reimburse Seller and the City for costs they would not have incurred if not for the Legislation or the effort to adopt the Legislation, and Developer will not be liable for any costs of Seller or the City incurred after the Initial Closing Date. Seller shall provide (and shall cause the City to provide) copies of invoices or statements, redacted as necessary to preserve privileges, to document the amount claimed for the Cost Reimbursement.
- (c) **Plat.** The applicable Plat, as defined in Section 13.2.6, to the extent not previously recorded.
- (d) **Other Documents.** All other documents and instruments, all in forms reasonably acceptable to Seller, that the Seller's or Developer's attorney or the Title Company may reasonably require to properly consummate the transaction contemplated by this Agreement, including without limitation evidence of corporate and signatory authority.

9.4 **Additional Closings.** Each of Developer and Seller shall make commercially reasonable efforts to satisfy all conditions precedent to Closings set forth in Sections 13.3 and 13.4 that are required to be satisfied by such party, respectively, and cause all Additional Closings to occur within eight (8) years after the date of the Initial Closing.

9.4.1 If Developer has not closed on the Remaining Property within four (4) years after the date of the Initial Closing, then Seller shall have the right to solicit other potential developers to partner with Developer to construct other Approved Uses and Developer may negotiate with or reject such other potential developers in its sole discretion.

9.4.2 If Developer has either (a) not closed on all of the Remaining Property within eight (8) years after the date of the Initial Closing or (b) not opened the Casino to the public within five (5) years after the date of the Initial Closing, then Seller shall have the right to terminate this Agreement as to all portions of the Property not yet conveyed to Developer. In the event of such termination, the terms of the Agreement shall remain in effect as to all portions of the Property previously conveyed to Developer, but, except as provided in Sections 5.2, 7.5.3 and 7.7, Developer shall have no further right in or to the portions of the Property not yet conveyed.

9.5 **Proration.** For the Initial Closing or any Additional Closing, all real estate, stormwater fees and other assessments with respect to the portion of the Property being conveyed for the quarter in which the Closing occurs shall be prorated as of 11:59 p.m. on the day immediately preceding the date of the Closing. In the event the portion of the Property being conveyed has been assessed for property tax purposes at such rates as would result in "roll-back" taxes upon the change in land usage or ownership of the Property, Seller agrees to pay all such taxes and indemnify and save Developer harmless from and against any and all claims and liabilities for such taxes. The indemnity in the foregoing sentence shall survive termination of this Agreement. The agreements of Seller and Developer set forth in this Section 9.5 shall survive the Closing for a period of two (2) years.

9.6 **Possession.** Possession of the conveyed portion of the Property shall be delivered to Developer at each Closing, subject to the Permitted Exceptions.

9.7 **Closing Costs.** Seller shall pay, on each Closing Date, all transfer and documentary stamp taxes on the Deed customarily paid by a seller of real property in Portsmouth, Virginia and Developer shall pay all transfer and documentary stamp taxes on the Deed customarily paid by a purchaser of real property in Portsmouth, Virginia. Developer shall pay, on the Closing Date, all mortgage taxes (if any), all other recording costs (other than liens and other encumbrances that Seller is required to have released), all costs related to any title policy Developer may obtain, all costs of the Title Company or other closing agent for conducting the closing, and any other charges customarily paid by a purchaser of real property in Portsmouth, Virginia. The parties shall share equally all costs of the Title Company for holding any funds to be held in escrow hereunder. Except as otherwise provided herein, each party shall pay its own attorneys' fees.

ARTICLE 10. RISK OF LOSS

10.1 **Casualty.** Subject to Section 7.2, Seller assumes all risks and liability for damage, death or injury occurring by reason of fire, storm, accident or any other casualty or cause (a "**Casualty**") to any portions of the Property that have not yet been conveyed to Developer at a Closing. Developer assumes the risks and liability for damage, death or injury occurring by reason of a Casualty on any portion of the Property that it has acquired.

10.2 **Condemnation.** If action is initiated or threatened to take any portion of the Property by eminent domain proceedings or by deed in lieu thereof (a "**Condemnation**") other than for the purpose of providing ingress and egress related to the Entertainment District, Developer may, in its sole discretion, (a) terminate this Agreement with respect to such portion of the Property that it has not yet acquired, (b) if the Initial Closing has not occurred, terminate this Agreement with respect to the entirety of the Property, or (c) terminate this Agreement with respect to the portion of the Property that is subject to the Condemnation and consummate one or more of the Closings on such portion of the Property that is not subject to Condemnation and which it has not yet acquired, in which latter event the award of the condemning authority shall be assigned to Developer at the applicable Closing. In the event Developer elects to terminate this Agreement with respect to the entirety of the Property, the Preliminary Approval Deposit then held by the Title Company shall be released to Developer, and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement. Seller shall not solicit or cause the City of Portsmouth or any other condemning authority to undertake a Condemnation of all or any portion of the Property without the consent of Developer.

ARTICLE 11. DEFAULT

11.1 **Breach by Seller.** If Seller commits a material breach under this Agreement, Developer as its sole remedies and relief may either (a) terminate this Agreement as to any portions of the Property not yet conveyed to Developer, in which event the Agreement shall be of no further force or effect as to any unconveyed portions of the Property, (b) if the Initial Closing has not yet occurred, terminate this Agreement with respect to the entirety of the Property, (c) enforce specific performance hereof, and/or (d) exercise its other rights and remedies under this Agreement. In the event Developer elects to terminate this Agreement with respect to the entirety of the Property, the Preliminary Approval Deposit then held by the Title Company shall be released to Developer, and the parties will have no further rights or obligations hereunder, except those rights and obligations that expressly survive a termination of this Agreement. If Developer elects to terminate this Agreement only as to any portions of the Property not yet conveyed to

Developer, then such termination shall not terminate the obligations of Developer hereunder that are applicable to portions of the Property that were conveyed to Developer prior to termination. Subject to Section 11.4 and the right of Developer to recover escrowed funds pursuant to this Section 11.1, in no event shall Seller be liable to Developer for any actual, punitive, speculative, consequential or other damages. Nothing in this Section 11.1 shall limit or impair the right of Developer to recover any and all losses, costs, damages and expenses (“*Claims*”) covered by any indemnity obligations of Seller hereunder.

11.2 *Breach by Developer.* If Developer commits a material breach of this Agreement, Seller as its sole remedies and relief, may (a) terminate this Agreement as to any portions of the Property not yet conveyed to Developer, in which event the Agreement shall be of no further force or effect as to any unconveyed portions of the Property, and all escrowed funds (no matter which party placed the funds into escrow) shall be released to the Seller, (b) seek an equitable remedy such as injunctive relief or specific performance for the enforcement of the terms of this Agreement and/or (c) exercise its other rights under this Agreement. No termination by Seller for breach by Developer shall terminate the obligations of Developer hereunder that are applicable to portions of the Property that were conveyed to Developer prior to termination. Subject to Section 11.4 and the right of Seller to recover escrowed funds pursuant to this Section 11.2, in no event shall Developer be liable to Seller for any actual, punitive, speculative, consequential or other damages. Nothing in this Section 11.2 shall limit or impair the right of Seller to recover any and all Claims covered by any indemnity obligations of Developer hereunder.

11.3 *Notice and Cure.* Except as provided in Section 11.4, prior to any termination pursuant to Section 8.5, Section 11.1 or Section 11.2, the party declaring the default shall provide written notice to the other party specifying the nature of the default. The other party shall have sixty (60) calendar days from receipt of the notice to cure the default; provided however, that in the event the default is of a nature that reasonably requires more than sixty (60) calendar days to cure, then so long as the other party commences the default within the sixty (60) day period and continuously prosecutes a cure, it shall have such additional time reasonably necessary (but not to exceed one hundred eighty (180) calendar days) to complete the cure.

11.4 *Limitation of Article 11.* This Article 11, including without limitation Section 11.3, applies only to breaches of this Agreement by Developer and Seller, and shall not be deemed to modify other Sections of this Agreement which provide for certain specific rights or remedies in the event of occurrence or non-occurrence of events, such as termination of this Agreement for failure to meet certain specified deadlines. Without limitation, this Article 11 expressly does not limit in any respect the repurchase remedies of Section 13.9 hereof or the Revenue Sharing provisions of Section 15.5; nor shall this Article 11 be deemed to require a party seeking injunctive relief or specific performance to provide notice and opportunity to cure pursuant to Section 11.3 prior to filing a judicial action for such relief.

ARTICLE 12. MISCELLANEOUS

12.1 *Notices.* All notices, demands and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed received immediately when delivered to the notice addresses or email addresses set forth below via hand delivery, e-mail or other electronic transmission; or upon confirmation of delivery by Federal Express or other reputable courier service or confirmation of delivery by certified or registered mail, return receipt requested, postage prepaid. Provided however that no notice by email shall be effective if the noticing party has reason to know or suspect that the individual being emailed no longer receives email at the notice address. Each party may modify the notice addresses set forth below upon notice to the other. The notice addresses are as follows:

If to Seller: Economic Development Authority

200 High Street, Suite 200
Portsmouth, Virginia 23704
Attn: Robert Moore,
Director of Economic Development
Tel: (757) 393-8804
Email: robert.moore@portsmouthva.gov

with a copy to: Solomon H. Ashby, Jr.
City Attorney
801 Crawford Street
Portsmouth, Virginia 23704
Tel: (757) 393-8731
Email: ashbys@portsmouthva.gov

If to Developer: Portsmouth Gaming Holdings, LLC
c/o Rush Street Gaming, LLC
Suite 1600
900 North Michigan Avenue
Chicago, Illinois 60611
Attention: Paul Wierbicki, General Counsel
Tel: (312) 915-2485
Email: wierbicki@lambllc.com

with a copy to: White & Case LLP
111 South Wacker Drive, Suite 5100
Chicago, Illinois 60606
Attention: Eugene J. M. Leone and Reilly M. Gaertner
Tel: (312) 915-3113; (312) 915-3122
Email: Eugene.leone@whitecase.com and
reilly.gaertner@whitecase.com

12.2 **Real Estate Commissions.** Each party hereby represents and warrants to the other that it has not incurred, and shall not have incurred as of any applicable Closing Date, any liability for the payment of any brokerage fee or commission in connection with the transaction contemplated in this Agreement. Seller and Developer hereby agree to defend, indemnify and hold harmless the other from and against any and all claims of any other person claiming a brokerage fee or commission through the indemnifying party. This indemnity shall survive termination of this Agreement.

12.3 **Entire Agreement.** This Agreement embodies the entire agreement between the parties relative to the subject matter of this Agreement, and there are no oral or written agreements between the parties or any representations made by either party relative to the subject matter of this Agreement which are not expressly set forth herein.

12.4 **Amendment.** This Agreement may be amended only by a written instrument executed by both parties. The parties intend that any amendment of this Agreement will be recorded, and accordingly, any amendment of this Agreement shall be in recordable form, acknowledged by a notary public, and placed of record promptly following execution and delivery.

12.5 **Headings.** The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

12.6 **Time of Essence.** Time is of the essence in the performance of this Agreement. However, if the final date of any period or the date by which performance of a certain act is required that is set out in any provision of this Agreement falls on a Saturday, Sunday or a day declared a national or Virginia holiday, the time of such period shall be extended to the next day which is not a Saturday, Sunday or such holiday. References in this Agreement to days are to calendar days unless otherwise specified.

12.7 **Governing Law/Venue.** THE VALIDITY, ENFORCEABILITY, INTERPRETATION, AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF VIRGINIA (OTHER THAN ITS CONFLICT OF LAWS RULES) AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN VIRGINIA. The venue for any dispute arising out of this Agreement shall be the state courts of the City of Portsmouth, Virginia.

12.8 **Successors and Assigns.** This Agreement shall bind and inure to the benefit of Seller and Developer and their respective heirs, executors, administrators, personal and legal representatives, successors and assigns. Developer may assign Developer's rights to acquire the Property or any portion of the Property under this Agreement to an Affiliate or convey or transfer the Casino Phase, Structured Parking, Conference Center and/or the Hotel to an Affiliate, in each case, upon notice to, but without the consent of, Seller. Any assignment of Developer's rights under this Agreement to a non-Affiliate that occurs within five (5) years after the Casino opens to the general public (a) if related to the Casino Phase, shall be subject to Section 15.6, and (b) if related to all or any portion of the Remaining Property, shall require the prior written consent of Seller. Any assignment of Developer's rights under this Agreement to an Affiliate or non-Affiliate that occurs more than five (5) years after the Casino opens to the general public shall not require the prior written consent of Seller. Any assignment of Seller's rights under this Agreement to a Person other than an Affiliate shall be subject to the prior written consent of Developer. Any assignee shall be subject to all terms, conditions and provisions of this Agreement. Any transfer by Developer of its interest in the Property that (a) is permitted by Section 15.6 and this Section 12.8 and (b) is accompanied by an assignment and assumption of Developer's obligations hereunder shall serve to release Developer from any and all of its obligations under this Agreement arising from and after such assignment and assumption. Nothing herein shall limit or restrict the right of Developer to assign its rights hereunder to a Lender (as defined in Section 12.17) or for a Lender, in connection with the rights granted to it under Section 12.17, to acquire the interest of Developer herein. "**Affiliate**" of a Person shall mean (i) any other Person that is directly or indirectly (through one or more intermediaries) controlled by, under common control with, controlling, or controlled for the benefit of such Person, or (ii) any other Person in which such Person has a direct or indirect equity interest constituting at least a majority interest of the total equity of such other Person. For purposes of this definition, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person or the power to veto major policy decisions of any Person, whether through the ownership of voting securities, by contract or otherwise. "**Person**" shall mean an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental authority.

12.8.1 Any assignment by Developer to a non-Affiliated third party of rights in or to the Casino after it opens to the public shall be subject to the provisions of Section 15.6.

12.8.2 Where an assignment requires the consent of the Seller and relates to the development or operation of portions of the Entertainment District other than the Casino, the Seller shall not refuse to consent to the assignment so long as, in the Seller's reasonable discretion, the proposed assignee has a demonstrated capacity to develop and operate the applicable Approved Use at a level of

quality consistent with the standards for the Entertainment District set forth in Section 13.1 and the demonstrated financial capacity to perform the obligations under this Agreement being assigned.

12.8.3 The terms and conditions governing Developer's right of assignment in Section 12.8 and subsections 12.8.1 and 12.8.2 shall apply equally to the assignment or conveyance of the controlling interest in Developer. For purposes of this definition, "controlling interest" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Developer or the power to veto major policy decisions of Developer, whether through the ownership of voting securities, by contract or otherwise.

12.9 **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

12.10 **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

12.11 **Date of this Agreement.** As used in this Agreement, the "**Effective Date**" is defined in the opening paragraph on the first page.

12.12 **Disclaimer/No Joint Venture.** Seller expressly makes no warranty or representation regarding the fitness of the Property for the proposed use, the soil conditions on or under the Property, or the likelihood of economic success of the proposed use. This Agreement does not create a joint venture between Seller and Developer.

12.13 **Compliance with Law.** Each party shall comply with all applicable laws and regulations, including but not limited to the Legislation and any existing or future laws and regulations of the Commonwealth of Virginia allowing for the commercial licensing of casinos, and including but not limited to all applicable laws regarding bribery and graft.

12.14 **Force Majeure.** In the event a party's performance hereunder is delayed by Force Majeure (as defined below), then the applicable deadline for the party's performance shall be extended upon a day for day basis for a period equal to the period during which the party was reasonably unable to perform due to Force Majeure. The term "**Force Majeure**" means (a) strikes, lockouts, labor disputes, disputes arising from a failure to enter into a union or collective bargaining agreement, inability to procure materials attributable to market-wide shortages, failure of utilities, labor shortages or explosions; (b) acts of God, tornadoes, hurricanes, floods, sinkholes, fires and other casualties, landslides, earthquakes, epidemics, quarantine, pestilence, pandemics and/or abnormal inclement weather; (c) acts of a public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrections, riots, civil disturbances, or national or international calamities; (d) concealed and unknown conditions of an unusual nature that are encountered below ground or in an existing structure; (e) any temporary restraining order, preliminary injunction, permanent injunction, mandamus or similar order, governmental order (including an executive or administrative agency order), or any litigation or administrative delay which impedes the ability of Developer to complete any Phase, unless based in whole or in part on the actions or failure to act of Developer; (f) sustained and material closure of airports or sustained and material closure of highways servicing the Property; and (g) events that create an impossibility of performance or frustration of purpose

or any other event sufficient to constitute an excuse to performance of a contract under the laws of the Commonwealth of Virginia (for clarification, this subsection (g) applies only to circumstances under which a court applying Virginia law would determine that an excuse to performance exists regardless of whether this subsection (g) were included in this Agreement)

12.15 **MOU.** The MOU is hereby merged into this Agreement and shall be of no further independent force or effect. Because the MOU is of no further independent force or effect, the parties to this Agreement will not need to read or refer to it in any way in order to interpret the rights and obligations of the parties hereunder, and, from and after the Effective Date, the parties will have no rights or obligations under the MOU.

12.16 **Survival.** Except as otherwise expressly stated in a specific provision of this Agreement, all provisions of this Agreement shall survive any and all Closings. Certain provisions of this Agreement do not survive indefinitely but survive for a limited term as expressly provided herein.

12.17 **Mortgagee Protection.** This Agreement will not affect the right of Developer to encumber all or any portion of the Property owned by Developer by mortgage, deed of trust or other instrument (a "**Permitted Lien**") to secure financing for the Property and/or construction of the Improvements. Seller understands that a non-Affiliate lender providing financing for the Property and/or construction of the Improvements ("**Lender**") may require interpretations of or modifications to this Agreement, and Seller shall cooperate with Developer and its Lenders' representatives in connection with any requests for interpretations or modifications. Seller shall not unreasonably withhold or delay its approval of any requested interpretation or modification if the interpretation or modification is consistent with the intent and purposes of this Agreement. Seller agrees as follows:

12.17.1 No breach of this Agreement will affect any Permitted Lien upon all or any portion of the Property.

12.17.2 The Seller will, upon written request of a Lender given in compliance with Section 12.1, provide such Lender with a copy of any written notice of default given to Developer under this Agreement within five (5) days of the date such notice is given to Developer.

12.17.3. In the event of a default by Developer under this Agreement, a Lender may, but will not be obligated to, cure any default during any cure period extended to Developer, either under this Agreement or under the notice of default.

12.17.4 Any Lender who comes into possession of any portion of the Property by foreclosure or deed in lieu of foreclosure will take such property subject to the terms of this Agreement. No Lender will be liable for any defaults or monetary obligations of Developer arising prior to such Lender's acquisition of title, but a Lender will not be entitled to obtain any permits or approvals with respect to that property until all delinquent fees and other obligations of Developer under this Agreement that relate to the portion of the Property in question have been paid or performed.

12.18 **Certificate of Compliance.** Within ten (10) days of written request by either party given in accordance with Section 12.1, the other party will execute and deliver to the requesting party, addressed to the requesting party and, as applicable, a Lender, a statement certifying that, to the best of its knowledge: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of each modification; (b) there are no current uncured defaults under this Agreement, or specifying the date and nature of each default; and (c) any other information that may be reasonably requested. A party's failure to deliver a requested certification within this 30-day period will conclusively be deemed to constitute a confirmation

that this Agreement is in full force without modification, and that there are no uncured defaults on the part of the requesting party.

12.19 *Intentionally Omitted.*

12.20 *No Third Party Beneficiary.* Except to the extent that the City is expressly described as being an intended beneficiary of Section 15.5 of this Agreement, this Agreement is not intended to create, nor will it be construed as creating, any third-party beneficiary rights in any Person who is not a party. It is expressly understood and agreed that no modification or amendment of this Agreement, in whole or in part, shall require any consent or approval on the part of any Person (except mortgagees to the extent required in such mortgagee's mortgage or other recorded loan documents) other than the parties hereto.

12.21 *No Waiver.* No waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party, whether or not the first party knows of such breach at the time it accepts such payment or performance. No failure or delay by a 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 the first party while the other party continues to be so in default.

12.22 *No Merger.* Notwithstanding that two or more Phases may hereafter be owned by a single Person, the covenants, conditions, restrictions, reservations, and easements established under this Agreement shall not be extinguished by merger or otherwise.

12.23 *Recordation.* This Agreement shall bind and run with the land comprising the Property. Promptly following mutual execution and delivery of this Agreement by Seller and Developer, this Agreement shall be recorded against the Property. Upon the expiration or sooner termination of this Agreement, each of the parties hereto shall, upon written request by another party, execute and acknowledge, in recordable form, a release of this Agreement. Each of Seller and Developer shall obtain the consent or joinder of its mortgagee to the making, execution and recording of this Agreement and a release of this Agreement upon the expiration or sooner termination of this Agreement, and each mortgagee shall acknowledge that the lien of its related mortgage shall be subject and subordinate to this Agreement.

**ARTICLE 13.
EDA DEVELOPMENT PROVISIONS**

13.1 *Use.* Developer shall use the Property for the uses described in *Exhibit B* attached hereto (each an "*Approved Use*" and collectively "*Approved Uses*"), which uses have been approved by Seller, and the other uses ("*Other Entertainment District Uses*") which have not yet been approved by Seller but which are permitted by the City of Portsmouth Zoning Ordinance, and for no other purpose, except as expressly approved in writing by Seller, which approval the Seller may grant or deny in its sole discretion. Subject to compliance with applicable law, including, without limitation the City of Portsmouth Zoning Ordinance, and the issuance of applicable City permits, Developer may, prior to acquiring title to all or any portion of the Remaining Property, be authorized by Seller, which authorization will not be unreasonably withheld or delayed, use from time to time all or a portion of the Remaining Property for concerts, festivals (such as dining festivals and art festivals), outdoor displays, gatherings and conventions. In connection with its use of the Remaining Property, Developer shall, in coordination with Seller, adopt a plan for landscaping, maintenance and event management, including crowd control and parking management, all at

Developer's sole cost. Any such temporary use of the Remaining Property shall include reasonable and appropriate safeguards to minimize negative impacts on residential areas located adjacent to the Property.

13.1.1 The term "**Entertainment District**" means the Victory Village Entertainment Overlay (VVEO) district created under the City of Portsmouth Zoning Ordinance and intended to promote the orderly development and operation of first class entertainment and hospitality uses in the City of Portsmouth, including a casino offering electronic gaming machines, table games, sports betting, internet gaming and other games of chance as allowed by law, and amenities such as restaurants, bars, retail, recreation, e-sports and indoor and outdoor entertainment venues, together with other complementary uses such as a hotel, event and convention venues, convenience/gas operations, residential and surface and structured parking.

13.1.2 The term "**Casino**" means a casino gaming establishment within the meaning of § 58.1-4100 of the Legislation, including at a minimum slot machines and table gaming such as blackjack, poker and roulette wheels, together with multiple restaurant venues located within the establishment and at least equal to the level of quality of the restaurant venues at other casino establishments operated as of the Effective Date by Affiliates of Rush Street Gaming, LLC operating under the Rivers Casino brand. Nothing in this subsection 13.1.2. shall be interpreted as restricting Developer's right to tailor the restaurant venues to the needs and preferences of the casino guests before and after opening of the Casino.

13.1.3 The term "**Hotel**" means a multi-story hotel of quality not less than the current level of quality at The Landing Hotel in Schenectady, New York and similar hotels owned by Affiliates of Rush Street Gaming, LLC operating as part of or alongside the Rivers Casino brand. The Hotel may include one or more restaurants or bars.

13.1.4 The term "**Conference Center**" means a facility, whether as a standalone structure or as part of the Casino or Hotel, that is capable of hosting conferences, musical events, and other similar events or large gatherings, at least equal to the existing level of quality of the conference center facilities at Rivers Casino in Philadelphia, Pennsylvania and similar facilities owned by Affiliates of Rush Street Gaming, LLC and operating as part of or alongside the Rivers Casino brand.

13.1.5 The term "**Structured Parking**" means a multi-level parking garage.

13.1.6 The term "**Other Entertainment District Uses**" is defined in Section 13.1. Developer shall submit proposed Other Entertainment District Uses to Seller for approval, which approval shall not be withheld so long as the proposed use meets this definition of Other Entertainment District Uses. If Seller has not disapproved a proposed Other Entertainment District Use within forty-five (45) calendar days of submittal, it shall be deemed approved by Seller.

13.2. **Phasing.** The acquisition of portions of the Property for construction of Approved Uses may be phased, subject to the limitations in this Section.

13.2.1 The term "**Casino Phase**" is defined in Section 4.1.

13.2.2 The term "**Initial Closing**" is defined in Section 9.1.

13.2.3 The term "**Additional Closing**" is defined in Section 9.1.

13.2.4 The term "**Closing**" means the Initial Closing or any Additional Closing.

13.2.5 The term "**Phase**" means the portion of the Property to be acquired for a particular use and conveyed at a specific Closing, as evidenced by the Plat submitted in accordance with Section 13.2.8. The Phase shall be clearly delineated in any site plan submitted to Seller for approval in connection with Section 13.3.1.

13.2.6 The Initial Closing shall be, at a minimum, for the Casino Phase.

13.2.7 Prior to each Closing, Developer shall, at its sole cost (subject to a right of reimbursement or payment from the Preliminary Approval Deposit), submit, and obtain all required City approvals for, a subdivision plat creating the parcel to be conveyed at the Closing (each, a "**Plat**"). The Plat shall be subject to the Seller's approval, which approval will not be withheld or delayed as long as the Plat conforms with the Approved Uses and the Overlay District. If and to the extent that easements, rights-of-way, curb cuts, turn lanes and similar rights (collectively, "**Easement Rights**") are necessary for the development and use of the Property, then Seller will grant such Easement Rights pursuant to one or more instruments prepared by Developer in form reasonably acceptable to Seller. At Developer's election, such Easement Rights may be established by the Plat. No Plat or Easement Rights shall cause any portion of the Remaining Property that has not yet been conveyed to become an uneconomic parcel or otherwise unfit for use as part of the Entertainment District.

13.2.8 If the Plat approved for the Initial Closing (*i.e.*, the Casino Phase) does not set forth the location of Structured Parking, the Remaining Property shall nevertheless contain sufficient area to account for Structured Parking as part of a future Phase, and the Casino Phase shall not devote an excessive area of the Property to surface parking.

13.2.9 If the Plat approved for the Initial Closing (*i.e.*, the Casino Phase) does not set forth the location of the Hotel, the Remaining Property shall nevertheless contain sufficient area to account for the Hotel as part of a future Phase.

13.2.10 At any time following the Initial Closing, subject to the issuance of necessary permits and authorizations, Developer shall be entitled to commence development of the Hotel and Conference Center, provided, however, unless the Hotel and Conference Center have already been developed, a hotel and conference center are under development by a third party or are the subject of a formal proposal or submission to Seller or the City, Developer must commence development of the Hotel and Conference Center within one year of the occurrence of any of the following: (a) Developer's Net Gaming Revenue under clause (a) of Section 15.5.1 exceeds \$175 million during a consecutive twelve month period and a casino located within fifteen (15) miles of the Entertainment District is open to the public during the entire twelve month period, or (b) Developer's Net Gaming Revenue under clause (a) of Section 15.5.1 exceeds \$250 million during each of two immediately preceding, consecutive twelve month periods, or (c) voters in a city, all or any portion of which is located within fifteen (15) miles of the Entertainment District, defeat a Casino Referendum in that city. In addition, notwithstanding Section 9.4.1 hereof, if at any time after four (4) years from the date the Casino opens to the public, development of the Hotel has not commenced, then, upon written request of Seller, Developer shall enter into a ground lease with Seller for the purpose of allowing Seller to solicit another developer to construct the Hotel. Any such solicitation shall state that any Hotel developer will be required to work collaboratively with Developer on the hotel design and integration of the hotel with the Casino Phase. The ground lease shall: (i) convey sufficient acreage to construct the Hotel; (ii) have a term of twenty (20) years; (iii) provide for an annual rent payment to Developer of One and 00/100 Dollars (\$1.00) per year; and (iv) contain such other terms as are reasonably necessary to permit development and operation of the Hotel in compliance with the standards applicable to the Entertainment District.

13.3 ***Seller's Conditions Precedent to Closings.*** The following shall be conditions precedent to Seller's obligation to close on any Phase hereunder.

13.3.1 ***Approvals.*** Developer shall have obtained (subject only to payment of the applicable permit fee) all site plan, zoning, land disturbance, building plan, right of way, Plat, and other approvals and permits from the City or other governmental entities required to develop the Approved Use for the Phase. Without limitation on the foregoing, Developer shall have obtained a building permit from the City authorizing the construction of the applicable Approved Use (or received approval for issuance of a building permit subject only to payment of the applicable fee).

13.3.2 ***Evidence of Financial Capacity.*** Developer shall have provided to Seller: (1) a detailed cost estimate for the Approved Use for the Phase, including acquisition and development costs; and (2) evidence reasonably satisfactory to Seller of available funds equal to the amount of the cost estimate, which evidence may be in the form of loan commitment letters, demonstrations of available equity, or another form reasonably acceptable to Seller.

13.3.3 ***Minority Participation Plan.*** Developer shall be in compliance with the Minority Participation Plan, and shall provide Seller such non-privileged information as Seller shall reasonably request to demonstrate compliance.

13.3.4 ***Public Safety MOU.*** Developer shall have entered into, and shall not be in material default of, the Public Safety MOU (as defined in Section 14.3).

13.3.5 ***License.*** Developer shall have received a License from the Department and neither the License nor any other license held by Developer to own or operate a casino gaming facility in any other jurisdiction within the Commonwealth of Virginia shall have been revoked, suspended, or terminated, nor shall any proceedings have been commenced that could result in any such revocation, suspension or termination.

13.3.6 ***Construction Contract.*** With respect to the Casino Phase only, Developer shall have demonstrated to Seller's reasonable satisfaction that it has entered into a binding contract with a general contractor to construct the Casino.

13.3.7 ***No Material Breach.*** Developer shall not be in material breach of the terms of this Agreement (including without limitation regarding the construction of prior Phases) or the License.

13.3.8 ***Performance.*** All of Developer's representations and warranties made in this Agreement shall be true and correct in all material respects as provided herein; and Developer shall have performed in all material respects all of its covenants and other obligations under this Agreement.

13.4 ***Developer's Conditions Precedent to Closings.*** The following shall be conditions precedent to Developer's obligation to close on any Phase.

13.4.1 ***Approvals.*** Developer shall have obtained (subject only to payment of the applicable permit fee) all site plan, zoning, land disturbance, building plan, right of way, Plat, and other approvals and permits from the City or other governmental entities required to develop the Approved Use for the Phase. Without limitation on the foregoing, Developer shall have obtained

a building permit from the City authorizing the construction of the Casino (or received approval for issuance of a building permit subject only to payment of the applicable fee).

13.4.2 **Performance.** All of Seller's representations and warranties made in this Agreement shall be true and correct in all material respects as provided herein; and Seller shall have performed in all material respects all of its covenants and other obligations under this Agreement.

13.4.3 **Reserved.**

13.4.4 **Public Safety MOU.** The City shall have entered into, and shall not be in material default of, the Public Safety MOU.

13.4.5 **License.** Developer shall have received a License from the Department and neither the License nor any other license held by Developer to own or operate a casino gaming facility in any other jurisdiction within the Commonwealth of Virginia shall have been revoked, suspended, or terminated, nor shall any proceedings have been commenced that could result in any such revocation, suspension or termination. Prior to the Closing of the Casino Phase, there shall not have been any change in the Legislation, which, in Developer's reasonable judgment, would materially and adversely affect the development, use and operation of the Casino Phase.

13.4.6 **No Material Breach.** Seller shall not be in material breach of the terms of this Agreement or the License.

13.4.7 **Financing.** With respect to the Casino Phase and any Phase involving the Hotel, Developer shall have obtained project financing ("**Financing**") from a Lender on terms and conditions as determined by Developer in its sole discretion exercised reasonably and in good faith. The first funding under the documents evidencing and securing the Financing need not occur simultaneously with Closing of the Casino Phase, but the Financing must, unless Developer waives this requirement, close simultaneously with the Closing of the Casino Phase.

13.5 **Additional Defined Terms.** The term "**Improvements**" means the improvements to be constructed for the Approved Use in accordance with the Plans and Specifications for any Phase. The term "**Plans and Specifications**" means all plans and specifications approved by the City of Portsmouth or other governmental entities for construction of the Improvements for a Phase, including without limitation the site plan, Plat, erosion and sediment control plans, and building plans.

13.6 **Limitation on Conveyance.** Until completion of the Improvements for a Phase as evidenced by the Phase Completion Certificate, Developer shall not convey any title or interest in or to the Property on which the Phase is being constructed or any portion thereof other than to a Lender in connection with its financing for the Property. Without limitation on the foregoing, in connection with a financing, Developer shall be entitled to convey a portion of the Property to a subsidiary or an Affiliate of Developer in accordance with and subject to Section 12.8. The limitations contained in this Section 13.6 shall not preclude or restrict development conveyances such as utility easements or right of way dedications.

13.6.1 **Cross-Collateralization Prohibited.** On the first occasion that a Permitted Lien is recorded against the Casino Phase, (a) it shall secure financing for acquisition of the Property and/or construction of the Improvements on all or a portion of the Property (including the Casino Phase), together with any and all hard and soft costs related to the investigation, underwriting, acquisition and improvement of the Property, and shall not secure financing unrelated to the Entertainment District, and (b) no property, other than the Property, shall serve as collateral for any such financing encumbering the Casino Phase.

The prohibition on cross-collateralization set forth in the preceding sentence shall not apply (a) on any subsequent occasion that a Permitted Lien is recorded against the Casino Phase or (b) on any occasion on which a Permitted Lien is recorded against the Remaining Property.

13.7 Construction Commencement and Completion. Developer shall, subject in each case to *Force Majeure*, (i) commence grading or other significant site work activities for construction of the Improvements for the Casino Phase within ninety (90) calendar days of the Initial Closing, (ii) diligently and in good faith prosecute construction to completion, and (iii) diligently and in good faith work to substantially complete construction of the Improvements on the Casino within two (2) years of the Initial Closing. The failure to commence construction of the Improvements on the Casino Phase in accordance with the preceding sentence shall trigger Seller's rights under Section 13.9 and shall entitle to the Seller to terminate this Agreement with respect to the entirety of the Property.

13.8 Intentionally Omitted.

13.9 Repurchase Right. In the event Developer fails to commence construction of the Improvements for the Casino Phase as required by the License, subject to delays caused by matters outside the reasonable control of Developer and *Force Majeure*, and the License has been revoked, and Developer is unable or unwilling to commence the Improvements within three (3) months of receiving written notice from Seller so demanding, then Seller shall have the right to repurchase the portion of the Property conveyed for the Casino Phase (the "**Pre-Commencement Repurchase Right**") for the Purchase Price paid by Developer (the "**Pre-Commencement Repurchase Price**") in accordance with the process set forth in subsections 13.9.1, 13.9.2 and 13.9.4 below. In the event Developer commences construction of the Improvements for the Casino Phase but prior to seventy-five percent completion of construction of the Casino (based on construction hard costs) both (a) construction activities on the Property entirely cease for eighteen (18) consecutive calendar months and (b) construction of the Casino has not been completed by the date required by the License, subject in each case to delays caused by matters outside the reasonable control of Developer and *Force Majeure*, and Developer is unable or unwilling to commence the Improvements within three (3) months of receiving written notice from Seller so demanding, then Seller shall have the right to repurchase the portion of the Property conveyed for the Casino Phase (the "**Post-Commencement Repurchase Right**") for (x) the Purchase Price paid by Developer plus (y) seventy-five percent (75%) of the documented third party costs paid by Developer for development of the Casino, including without limitation financing costs, construction costs, architectural, engineering and design costs, and attorneys' fees (the "**Post-Commencement Repurchase Price**") in accordance with the process set forth in subsections 13.9.1, 13.9.2, 13.9.3 and 13.9.4 below. The Pre-Commencement Repurchase Right and the Post-Commencement Repurchase Right are collectively referred to as the "**Repurchase Right**."

13.9.1 Notice. To exercise the Repurchase Right, Seller shall send Developer written notice stating its intent to exercise the Repurchase Right and specifying a closing date not less than sixty (60) days and not more than ninety (90) days after the date of the notice (the "**Repurchase Notice**"). Within seven (7) days of Developer's receipt of the Repurchase Notice, Developer shall advise Seller in writing of (a) the outstanding balance of any Permitted Liens secured by the applicable portion of the Property and (b) in the case of the Post-Commencement Repurchase Right, Developer's asserted Post-Commencement Repurchase Price. Seller shall have thirty (30) days thereafter to determine whether to proceed with the exercise of the Repurchase Right or to revoke the Repurchase Notice, at which time the Repurchase Notice shall be irrevocable.

13.9.2 Closing. If Seller elects to proceed with the Repurchase Right, Closing on reconveyance shall occur on the date specified in the Repurchase Notice at the office of the Title Company. At closing, Developer shall deliver a Special Warranty Deed conveying the Casino Phase to Seller, an Owner's Affidavit in form satisfactory to Developer and the Title Company,

such other closing documents as are reasonably required by the Title Company, and possession of the Casino Phase. In the Owner's Affidavit, Developer shall certify that it has paid all amounts, if any, owed to or claimed by contractors or materialmen who have performed work on, or provided materials for, the Casino Phase or the Casino Phase Improvements. Seller shall deliver the Pre-Commencement Repurchase Price or the Post-Commencement Repurchase Price, as applicable.

13.9.3 Closing Costs and Disbursements. At closing: (a) closing costs, closing agent fees, real estate taxes, recordation taxes and storm water fees shall be prorated or paid in accordance with the division of responsibility between a buyer and a seller established in Article 9; (b) the remaining Repurchase Price shall first be applied to any Permitted Liens; and (c) the balance of the Repurchase Price, if any, shall be placed in escrow with the closing agent for a period of one hundred forty (140) days from the last day of the month in which closing occurs (the "**Escrowed Balance**"). If any claim is asserted by a contractor or materialman for amounts allegedly owed for the performance of work on, or the provision of materials for, the Property or the Improvements, then unless Developer at its sole cost has caused this claim to be bonded, the Seller shall have the right to direct that the Escrowed Balance be applied to pay all or a portion of any said claim. At the end of the one hundred forty (140) day period, any remaining portion of the Escrowed Balance shall be released to Developer. No broker shall be entitled to any fee or commission as a result of the repurchase.

13.9.4 Permitted Liens. In no event shall the exercise of a Repurchase Right void or otherwise limit or affect a Permitted Lien, and Seller shall take title to the applicable portion of the Property subject to any Permitted Lien and the rights of any Lender related thereto.

13.10 Intentionally Omitted.

13.11 Tax Exempt Entities. For a period of twenty-five (25) years from the date of any Deed for a Phase, the applicable portion of the Property shall not, without the Seller's written consent (which it may grant or withhold in its sole discretion) be conveyed to any Person other than Seller that is exempt from the payment of City of Portsmouth real estate taxes. This provision is necessary to ensure the benefit for which Seller is entering into this Agreement, specifically economic development within Portsmouth to increase the tax base.

13.12 Survival. Without limitation, all terms, conditions and restrictions in this Article 13, other than Sections 13.2, 13.3 and 13.4 shall survive after a Closing as to the portion of the Property conveyed.

13.13 Commencement and Completion Certificates. Upon commencement of the construction of Improvements on the Casino Phase in accordance with Section 13.7, Seller shall issue and place of record in the Portsmouth Circuit Court Clerk's Office a commence certificate (the "**Casino Commencement Certificate**") and upon substantial completion of the construction of the Casino Phase Improvements Seller shall issue and place of record in the Portsmouth Circuit Court's Office a completion certificate (the "**Casino Completion Certificate**"). The Casino Commencement Certificate shall constitute evidence of satisfaction by Developer with its construction commencement obligations under Section 13.7 and the Casino Completion Certificate shall constitute evidence of the termination of the Repurchase Right under Section 13.9. Seller shall issue and record each of the Casino Commencement Certificate and the Casino Completion Certificate within thirty (30) days of a written request by Developer, subject to Seller's verification of commencement of construction in compliance with Section 13.7 or substantial completion of construction, as applicable. Developer shall allow Seller such access to the Property as is reasonably necessary for Seller to verify commencement or substantial completion of construction. The Casino Commencement Certificate shall not release the Tax Exempt Entities restriction in Section 13.11 hereof, which shall remain in effect for the full twenty-five (25) year period specified in Section 13.11. In addition,

notwithstanding the foregoing, the issuance of a Casino Commencement Certificate for the Casino Phase shall not limit or otherwise modify Developer's obligations related to ownership of the Casino as set forth in Section 15.6.

13.13.1 **Phase Completion Certificate.** Upon substantial completion of the Improvements for any Phase other than the Casino Phase in accordance with the Plans and Specifications, Seller shall issue and place of record in the Portsmouth Circuit Court Clerk's Office a completion certificate (the "**Phase Completion Certificate**"). The Phase Completion Certificate shall release of record the terms, conditions and restrictions contained in Sections 13.1, 13.5 and 13.6 as to the applicable Phase. Seller shall issue and record the Phase Completion Certificate within thirty (30) days of a written request by Developer, subject to Seller's verification of completion of the applicable Improvements. Developer shall allow Seller such access to the Phase as is reasonably necessary to verify completion. The Phase Completion Certificate shall not release the Tax Exempt Entities restriction in Section 13.11 hereof, which shall remain in effect for the full twenty-five (25) year period specified.

13.14 **Injunctive Relief.** Without limitation of other rights or remedies available in this Article 13 or Article 11, in enforcing a post-Closing breach of this Article 13, Seller shall be entitled to request or apply for injunctive relief without the necessity of showing monetary or special damages and without posting bond or security for bond for the award of a permanent injunction.

ARTICLE 14. LEGISLATION AND LICENSE REQUIREMENTS.

14.1 **General.** In developing, constructing and operating the Improvements within the Entertainment District, Developer shall comply with all applicable requirements of the Legislation and the License.

14.2 **Minority Participation Plan.** Developer shall comply with and implement the terms of the Minority Participation Plan and shall provide Seller with regular updates from time to time as Seller shall reasonably request regarding the progress of implementation.

14.3 **Social Impacts.** Prior to the Initial Closing, Developer shall enter into a mutually acceptable memorandum of understanding with the City to coordinate public safety needs that may result from operation of the Casino (the "**Public Safety MOU**"). The Public Safety MOU shall not require Developer to incur extraordinary costs that Developer's Affiliates are not incurring at their casino properties. If the Initial Closing is consummated, Developer will be deemed to have satisfied the requirements of this Section 14.3.

14.4 **Contractor Requirements.** As required by the Legislation (including Lines 2014-2025 of the Legislation) and subject to any future amendments by the Virginia General Assembly, Developer shall require any contractor hired for construction on the site of the Casino to: (a) pay the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 USC § 276 *et seq.*, as amended, to each laborer, workman, and mechanic the contractor employs on the site; (b) participate in apprenticeship programs that have been certified by the Department of Labor and Industry or the U.S. Department of Labor; (c) establish preferences for hiring residents of Portsmouth and adjacent localities, veterans, women, and minorities for work performed on the site; (d) provide health insurance and retirement benefits for all full-time employees performing work on the site; and (e) require that the

provisions of clauses (a) through (d) be included in every subcontract so that the provisions will be binding upon each subcontractor.

PART III. OPERATIONS.

ARTICLE 15.

Operational Requirements.

15.1 ***Hiring and Employment.*** As required by the Legislation (including without limitation Lines 2025-2036) and subject to any future amendments by the Virginia General Assembly, Developer shall (a) pay any of its full-time employees performing work on the Casino site an hourly wage or a salary, including tips, that equates to an hourly rate no less than 125 percent of the federal minimum wage in accordance with the local market; (b) establish preferences for hiring residents of Portsmouth and adjacent localities, veterans, women, and minorities for work performed on the site in compliance with any applicable federal law; (c) provide access to health insurance and retirement savings benefit opportunities for all full-time employees of Developer performing work on the site; and (d) require that any contract for services performed on the site, other than construction, with projected annual services fees exceeding \$500,000, meet the requirements of clauses (a), (b) and (c) with regard to full-time personnel of the subcontractor who will be performing services under the contract between Developer and the subcontractor.

15.2 ***Hotel Hiring and Employment.*** The requirements of Section 15.1 shall also apply to the operation of the Hotel.

15.3 ***Casino and Hotel Vendors.*** To the extent permitted by law, Developer shall adopt a "Local First" policy for purchases from vendors for the operation of the Casino and the Hotel.

15.4 ***Responsible Gaming.*** Developer shall employ industry best practices as it relates to responsible gaming and support the education, awareness and treatment of problem gaming. Without limitation, Developer shall comply with all applicable requirements of the Legislation regarding education, awareness and treatment of problem gaming.

15.5 ***Revenue Sharing.*** Commencing with the first annual period after the date on which the Casino first opens to the public (the "***Opening Date***"), Developer shall make an annual payment (the "***Revenue Sharing Payment***") to the City in an amount equal to one and one-half percent (1.5%) of the amount of Net Gaming Revenue during the prior Operational Year (as defined below) above \$150,000,000 up to \$200,000,000, and two percent (2%) of the Net Gaming Revenue during the prior Operational Year above \$200,000,000 (the "***Revenue Sharing Thresholds***"). If the Opening Date has not occurred within three (3) years from the date the License is issued to Developer or its Affiliate, in each case, who holds a license pursuant to the Sports Betting Law (as defined below) on account of or derived from the Casino, then, not later than thirty (30) days following (i) the third (3rd) anniversary of the issuance of the License and (ii) each anniversary thereafter, Developer shall make a Revenue Sharing Payment to the City based on the Net Gaming Revenue for the prior Operational Year (the "***Sports Revenue Payment Period***") above \$150,000,000. At such time as the Opening Date occurs, the Sports Revenue Payment Period shall cease, all Net Gaming Revenue for the next Revenue Sharing Payment (including both clauses (a) and (b) of the definition of Net Gaming Revenue in subsection 15.5.1 below) shall be calculated based on the Operational Year of the Casino, and Net Gaming Revenue included in the Sports Revenue Payment Period will not be included in the Operational Year of the Casino. The term "***Operational Year***" means, as applicable, (i) the period from the first day on which sports betting is conducted pursuant to the Sports Betting Law through the day immediately preceding the first anniversary of the commencement of sports betting, and each annual

period thereafter, and (ii) subject to the last two sentences of this Section 15.5, the period from the Opening Date through the day immediately preceding the first anniversary of the Opening Date, and each annual period thereafter. In the event that the Opening Date occurs on a day other than January 1st, the first Operational Year shall be a partial year covering the period from the Opening Date through December 31st of that year, the Revenue Sharing Thresholds and the Revenue Sharing Payment shall be prorated based upon the Net Gaming Revenue generated during that partial Operational Year, and the Revenue Sharing Payment for that partial Operational Year shall be paid by Developer to the City not later than January 31st of the following year. Thereafter, the Operational Year shall be the period from January 1st through December 31st of each year.

15.5.1 **“Net Gaming Revenue”** means (a) all gross gaming revenue (*i.e.*, gross wagers less gross payouts) derived from wagers made by gamblers physically present at the Casino (whether such gamblers place their bets physically, on-line or by way of some other electronic format), minus all promotional credits, free play, match play and bonuses, **plus** (b) twenty percent (20%) of gross betting revenue (*i.e.*, gross wagers less gross payouts) derived from any permit or license authorizing sports betting held by Developer or its Affiliate, in each case, who holds a license pursuant to the Sports Betting Law on account of or derived from the Casino, minus all promotional credits, free play, match play and bonuses. The **“Sports Betting Law”** means Article 2 of Chapter 40 of Title 58.1 of the Code of Virginia of 1950, as amended (§§ 58.1-4030, et seq.), enacted on April 22, 2020 as Acts of Assembly Chapter 1218 with an effective date of July 1, 2020, as the same may be amended, moved, restated, re-enacted, or merged from time to time, or any subsequent law enacted by the Commonwealth of Virginia and authorizing sports betting. Notwithstanding the foregoing, for purposes of calculating the sum of clauses (a) and (b), the same revenue shall not be counted twice. For clarification, revenue qualifying as gross gaming revenue under clause (a) shall not also be counted as gross betting revenue under clause (b), and vice versa.

15.5.2 The Revenue Sharing Payment shall be paid to the City no later than January 31st following the completion of an Operational Year (or not later than thirty (30) days following the date on which a Revenue Sharing Payment must be paid during the Sports Revenue Payment Period), and if not paid timely, the Revenue Sharing Payment shall accrue interest and penalties at the rate established by the City for late or non-payment of real property taxes (provided that in no event shall the Revenue Sharing Payment constitute or be deemed real property taxes assessed and due on the Property, or a substitute for real property taxes assessed and due on the Property) and, to the extent permitted by statutory law, if not paid timely the Revenue Sharing Payment shall be collectible by the City in any manner by which the City Treasurer collects past due taxes.

15.5.3 Together with the Revenue Sharing Payment, Developer shall submit such documentation of Net Gaming Revenue as the City shall reasonably require. The City shall, promptly following Developer’s request, provide confirmation that it is satisfied with the documentation provided by Developer. If the City fails to respond to Developer’s request for confirmation within fourteen (14) days of request, it shall be deemed to have been satisfied with the documentation provided by Developer.

15.5.4 The Revenue Sharing Payment is exclusive of and supplemental to any other revenues related to the Casino or the Entertainment District derived by the City or Seller from taxes, fees or other payments, including without limitation the City’s share of any taxes or revenues paid to the state under the Legislation (as the same may be amended from time to time), licensing fees, real property taxes, personal property taxes, admissions or occupancy taxes, meals taxes, or any other type of tax, fee or other payment.

15.5.5 The City shall be deemed a third-party beneficiary with the right to enforce this Section 15.5.

15.6 **Casino Ownership.** Developer shall maintain ownership of the Casino for no less than five years from the date the Casino opens to the general public except as set forth in Section 12.8 and this Section 15.6.

15.6.1. After the Opening Date, Developer may sell or transfer the Casino to an un-Affiliated third party prior to the fifth (5th) anniversary of the Opening Date only if: (a) the sale or transfer is (i) to a casino operator or owner whose annual revenues (along with those of its Affiliates that own or operate casinos and gaming enterprises) for the twelve (12) months prior to the sale or transfer meet or exceed those of Developer (along with those of its Affiliates that own or operate casinos and gaming enterprises, including on-line wagering); or (ii) to a casino operator or owner that operates facilities at a quality level that is at least comparable to the level at which Developer and its Affiliates operates their casinos as of the date of this Agreement; or (iii) to any Person that has engaged an Affiliate of Developer, in the business of managing or operating casinos, pursuant to a written binding agreement, to operate the Casino through at least the fifth (5th) anniversary of the Opening Date; or (b) the sale or transfer is otherwise expressly approved in writing by Seller in its sole discretion. The terms and conditions governing Developer's sale or transfer of the Casino in this Section 15.6.1 shall apply equally to the assignment or conveyance of the controlling interest in the Developer. For purposes of this subsection, "controlling interest" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Developer or the power to veto major policy decisions of Developer, whether through the ownership of voting securities, by contract or otherwise.

15.7 **Reporting.** Subject to any confidentiality obligations imposed by applicable law, Developer shall provide such reports as the Seller or the City may reasonably request from time to time regarding revenues, employment generally, employment of Portsmouth residents, programs operated or initiated by Developer to partner with Tidewater Community College or other community groups, the use of local providers, and crime data.

15.8 **Compliance with Law.** Without limitation, Developer shall comply with all applicable laws related to the development and operation of the Casino.

15.9 **Binding Effect.** Without limitation, all provisions of this Article 15 shall be binding upon Developer and any successor owner or operator of the Casino and, as applicable, the Hotel.


15.10 **Survival.** Without limitation, this Article 15 shall survive all Closings.

[signature page follows]

EXECUTED ON THE DATES SHOWN BELOW BY:

SELLER:

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF PORTSMOUTH, VIRGINIA

By: 
Name: RAY A. SMITH, SR.
Title: CHAIR - EDA
Date: May 26, 2020

DEVELOPER:

PORTSMOUTH GAMING HOLDINGS, LLC

By: _____
Name: _____
Title: _____
Date: _____

EXECUTED ON THE DATES SHOWN BELOW BY:

SELLER:

ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF PORTSMOUTH, VIRGINIA

By: _____

Name: _____

Title: _____

Date: _____

DEVELOPER:

PORTSMOUTH GAMING HOLDINGS, LLC

By: Neil Bluhm _____

Name: Neil Bluhm _____

Title: Chairman _____

Date: 05/26/2020 _____

EXHIBIT A-1

CASINO PHASE

A PORTION TO BE DETERMINED OF THAT CERTAIN PROPERTY LYING, BEING AND SITUATE IN PORTSMOUTH, VIRGINIA AND SHADED IN PINK WITHIN THE RED BOUNDARY LINES ON THE ATTACHMENT HERETO, AS DETERMINED BY DEVELOPER, TOGETHER WITH THE APPURTENANCES THEREUNTO BELONGING AND INCLUSIVE OF THE FEE INTEREST IN ANY RIGHTS OF WAY WITHIN OR ABUTTING SAID PORTION THAT ARE CLOSED PRIOR TO CONVEYANCE OF THE CASINO PHASE.

THE CASINO PHASE MAY BE AS LITTLE AS TWENTY-FIVE ACRES, AND THE BOUNDARIES OF THE CASINO PHASE ARE TO BE DETERMINED MORE SPECIFICALLY BY PLAT PREPARED PRIOR TO CLOSING.

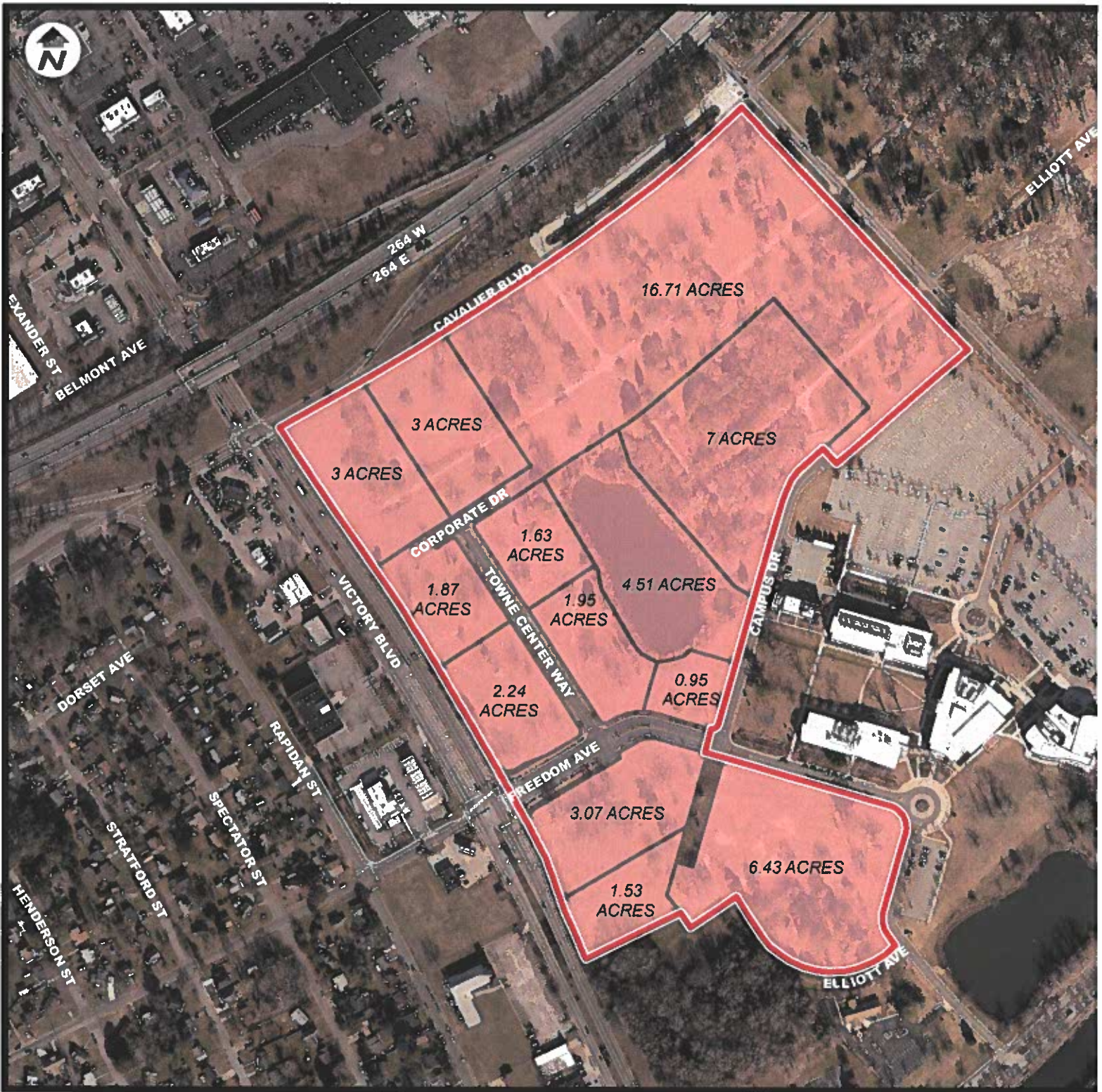
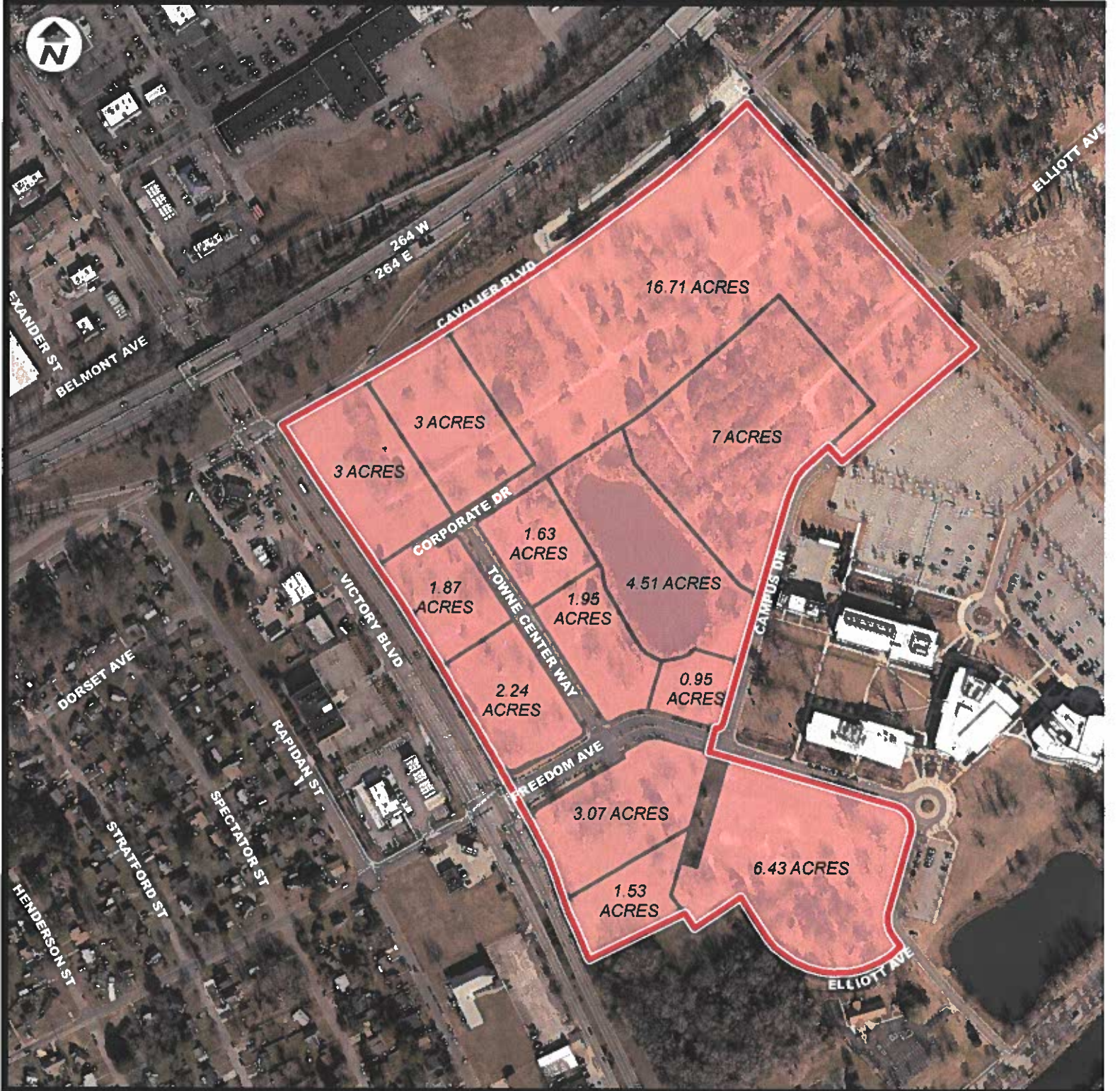


EXHIBIT A-2

REMAINING PROPERTY

ALL OF THAT CERTAIN PROPERTY LYING, BEING AND SITUATE IN PORTSMOUTH, VIRGINIA AND SHADED IN PINK WITHIN THE RED BOUNDARY LINES ON THE ATTACHMENT HERETO, LESS THE CASINO PHASE, TOGETHER WITH THE APPURTENANCES THEREUNTO BELONGING AND INCLUSIVE OF THE FEE INTEREST IN ANY RIGHTS OF WAY WITHIN THE REMAINING PROPERTY (OR ACCRUING TO THE REMAINING PROPERTY UPON CLOSURE) THAT ARE CLOSED PRIOR TO CONVEYANCE OF THE REMAINING PROPERTY.

THE BOUNDARIES OF THE REMAINING PROPERTY ARE TO BE DETERMINED MORE SPECIFICALLY BY PLAT PREPARED PRIOR TO CLOSING.



ELLIOTT AVE

264 W
264 E

CAVALIER BLVD

16.71 ACRES

EXANDER ST
BELMONT AVE

3 ACRES

7 ACRES

3 ACRES

CORPORATE DR

1.63
ACRES

4.51 ACRES

1.87
ACRES

TOWNE CENTER WAY

1.95
ACRES

0.95
ACRES

DORSET AVE

VICTORY BLVD

2.24
ACRES

FREEDOM AVE

3.07 ACRES

6.43 ACRES

CAMPUS DR

1.53
ACRES

RAPIDAN ST

SPECTATOR ST

STRATFORD ST

HENDERSON ST

ELLIOTT AVE

EXHIBIT B

APPROVED USES

1. Casino
2. Hotel
3. Convenience Stores both with and without fueling and charging sales and service
4. Service and Fueling and Charging Stations
5. Entertainment Establishments (examples include music halls, comedy clubs, or other live performance venues but exclude nightclubs, discotheques and cabarets)
6. Restaurants and other eating establishments
7. Residential
8. Parking
9. Retail Sales and Services
10. Indoor and Outdoor Recreation
11. E-Sports
12. Indoor and outdoor entertainment venues
13. Event and Convention Venues
14. Accessory uses associated with any of the above items 1-13