

ORDINANCE #68799
Board Bill No. 211
Committee Substitute

AN ORDINANCE APPROVING A NEW CITY GAMING DEVELOPMENT PLAN KNOWN AS THE GAMING DEVELOPMENT PLAN OF THE CITY OF ST. LOUIS, REPORT TO THE MISSOURI GAMING COMMISSION, NOVEMBER, 2010; TERMINATING THAT CERTAIN LEASE AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND CHAIN OF ROCKS JOINT VENTURE, AS AUTHORIZED BY ORDINANCE NO. 63622; AFFIRMING THE ACTIONS OF THE PORT AUTHORITY OF THE CITY OF ST. LOUIS TO EXECUTE THAT CERTAIN DEVELOPMENT AGREEMENT BETWEEN THE PORT AUTHORITY OF THE CITY OF ST. LOUIS AND CASINO CELEBRATION, LLC, DATED OCTOBER 19, 2010, WITH RESPECT TO A MIXED-USE RECREATION, GAMING, ENTERTAINMENT AND DINING FACILITY AT OR NEAR INTERSTATE 270 AND RIVERVIEW BOULEVARD; AUTHORIZING CERTAIN ACTIONS BY CITY OFFICIALS; CONTAINING A SEVERABILITY CLAUSE.

WHEREAS, the City of St. Louis, Missouri (the "City"), is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri;

WHEREAS, the Land Clearance for Redevelopment Authority of the City of St. Louis ("LCRA") is a body politic and is duly constituted according to Section 99.300 to 99.660 of the Revised Statutes of Missouri, as amended; and

WHEREAS, the Port Authority of the City of St. Louis ("Port") is a political subdivision of the State of Missouri organized and existing under Chapter 68 of the Revised Statutes of Missouri, as amended; and

WHEREAS, pursuant to Section 313.812.1 RSMo., Ordinance No. 66243, that was adopted by the Board of Aldermen and signed by the Mayor of the City on March 30, 2004, approved a gaming development plan titled, "Gaming Development Plan of the City of St. Louis, Report to the Missouri Gaming Commission, February 2004" (the "2004 City Gaming Plan"), which plan, as updated (including an update by the LCRA filed in September of 2010), is on file with the Missouri Gaming Commission; and

WHEREAS, the LCRA and the Port, in cooperation with the St. Louis Development Corporation ("SLDC") published a Request for Proposals for development and operation of a gaming facility development in the City on March 29, 2010, which was published in the St. Louis Post-Dispatch and in the St. Louis American, newspapers of general circulation within the City, soliciting proposals for the construction of a gaming facility development in the City, and made such Request for Proposals available for potential developers; and

WHEREAS, Casino Celebration, LLC ("Developer"), in response to the solicitation of proposals from developers, submitted its development proposal dated June 30, 2010, as amended, and proposed the development of a mixed-use gaming, recreation, entertainment and dining facility (the "Proposal") on certain real property located at or near Interstate 270 and Riverview Boulevard in the City (the "Area"); and

WHEREAS, the Proposal calls for development of an approximately 40,000 square foot gaming floor with 1,400 slot machines and 36 gaming tables and related entertainment, dining, retail and convenience amenities with 1,200 parking spaces in Phase I and, subject to economic feasibility, a hotel with approximately 150 rooms, business center, lounge, museum and an additional 400 slot machines and at least an additional 10 gaming tables in Phase II (the "Development Project"); and

WHEREAS, on August 24, 2010, the LCRA and the Port, acting on a recommendation by a selection committee formed by such bodies, determined by Resolutions Nos. 10-LCRA-9075 and 10-PT-25, to approve the selection of the Developer and its Proposal and to authorize negotiations of a development agreement and any other agreements necessary for the development of the Development Project with the Developer; and

WHEREAS, the Development Project is of economic significance to the City and will promote the public health, safety, morals and general welfare of the City; and

WHEREAS, in order to facilitate the Development Project, the City desires to replace the 2004 City Gaming Plan by adopting an ordinance that approves a new gaming development plan titled "Gaming Development Plan of the City of St. Louis, Report to the Missouri Gaming Commission, November 2010," attached hereto as Exhibit A and incorporated herein by reference as if fully set out (the "2010 City Gaming Plan"); and

WHEREAS, the Port is authorized, pursuant to Chapter 68 of the Revised Statutes of Missouri, as amended, to enter into development agreements pertaining to redevelopment of the Area and the Port authorized the execution of the Development Agreement by Resolutions No. 10-PT-31; and

WHEREAS, the Board of Aldermen finds that the terms of Development Agreement, attached as Exhibit B hereto and incorporated herein by reference as if fully set out, is and in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with public purposes; and

WHEREAS, the Board of Aldermen finds that execution by the Port of the Development Agreement and that performance by the Port and the Developer of their respective obligations under the Development Agreement is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents; and

WHEREAS, the Board of Aldermen finds that the City, by and through the City Counselor or her designee, shall terminate that certain Lease and Development Agreement between the City and Chain of Rocks Joint Venture, dated December 29, 1995 and authorized by Ordinance No. 63622, related to a previously proposed gaming project in the Area.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Board of Aldermen hereby adopts the foregoing recitals as findings.

SECTION TWO. The 2004 City Gaming Plan on file with the Missouri Gaming Commission is hereby rescinded and replaced with the 2010 City Gaming Plan, which is hereby adopted and approved. A copy of the 2010 City Gaming Plan is attached hereto as Exhibit A and incorporated herein by reference as if fully set out.

SECTION THREE. The Board of Aldermen affirms the actions and finds that the Port is authorized, pursuant to Chapter 68 of the Revised Statutes of Missouri, as amended, in entering into the Development Agreement pertaining to redevelopment of the Area, and that negotiation and execution, by the Port, of the Development Agreement, and that performance by Port and the Developer of their respective obligations under the Development Agreement is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents. A copy of the Development Agreement is attached hereto as Exhibit B and incorporated herein by reference as if fully set out.

SECTION FOUR. The Board of Aldermen finds that the City, by and through the City Counselor or her designee, shall terminate that certain Lease and Developer Agreement between the City and Chain of Rocks Joint Venture, dated December 29, 1995 and authorized by Ordinance No. 63622.

SECTION FOUR. It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A
GAMING DEVELOPMENT PLAN**
Is on file in the Register's Office.

DEVELOPMENT AGREEMENT
Between
THE PORT AUTHORITY OF THE CITY OF ST. LOUIS
And
CASINO CELEBRATION, LLC
Dated as of
OCTOBER 19, 2010

CASINO CELEBRATION AT THE CHAIN OF ROCKS

EXECUTION COPY

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into as of this 19th day of October, 2010, by and between the **PORT AUTHORITY OF THE CITY OF ST. LOUIS** (the “*Port*”), a political subdivision of the State of Missouri, and **CASINO CELEBRATION, LLC**, (the “*Developer*”), a limited liability company duly organized and existing under the laws of the State of Missouri. (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in **Article I** of this Agreement.)

RECITALS

- A. The Port is a political subdivision of the State of Missouri, and is duly constituted according to Chapter 68 of the Revised Statutes of Missouri, as amended.
- B. The City of St. Louis (“*City*”) is a municipal corporation of the State of Missouri and a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.
- C. The Missouri Gaming Commission (“*MGC*”) has announced that it will accept applications for the development of a riverboat gaming facility and related facilities and potentially prioritize an application for investigation and evaluation by the MGC, as provided in the Missouri Code of State Regulations, Title 11, Division 45, Chapter 4, Section 60 for licensure utilizing the only available Class B gaming license in Missouri as of July 2010.
- D. There is a limit of thirteen (13) licenses in the State of Missouri and the MGC had previously issued two (2) licenses for riverboat gaming facilities and related facilities within the City, one (1) of which was for the President Riverboat Casino which was voluntarily relinquished by Pinnacle Entertainment, Inc. without the consent of the City.
- E. In order to promote the general welfare and encourage capital investment and economic development within the City, the Port and the Land Clearance for Redevelopment Authority of the City of St. Louis (“*LCRA*”), in cooperation with the St. Louis Development Corporation issued a Request for Proposals for Development and Operation of a Gaming Facility Development in the City of St. Louis, Missouri on March 29, 2010, which was published in the St. Louis Post-Dispatch and the St. Louis American, newspapers of general circulation within the City, soliciting proposals for the construction of a gaming facility development in the City (the “*RFP*,” which term includes any amendments thereto).
- F. The Developer, in response to the RFP, submitted its development proposal dated June 30, 2010, as amended, and proposed the development of a mixed-use gaming, recreation, entertainment and dining facility on real property shown on **Exhibit A** attached hereto (the “*Development Area*”).
- G. The proposed development project contemplates construction of improvements to the Chain of Rocks Bridge, public amenities for users of the bridge and trail system currently located at the Development Area and an approximately 120,000 square foot entertainment and gaming facility within the Development Area, including but not limited to a gaming tables and slot machines, hotel, restaurants, and other entertainment venues (the “*Development Project*”) which Development Project has been divided into two separate and distinct phases. The Essential Elements (as hereafter defined) of each phase are listed on **Exhibit B**, attached hereto.
- H. On August 24, 2010, the Board of Commissioners of the Port and the Board of Commissioners of LCRA, each acting on a recommendation by the RFP Selection Committee formed by such bodies, determined by Resolution No. 10-PT-25 and Resolution No. 10-LCRA-9075, respectively (collectively, the “*Selection Resolutions*”), to approve the selection of the Developer and its proposed development and to authorize the negotiation of a development agreement and any other agreements necessary for development of the Development Project with the Developer.
- I. On October 18, 2010, by Resolution No. 10-PT-31, the Board of Commissioners of the Port authorized the execution of this Agreement with the Developer.
- J. The Mayor, Comptroller and President of the Board of Aldermen of the City have endorsed the Developer and the Development Project as evidenced by letters of support submitted to the MGC recommending the Developer and the

Development Project and have found that performance by the Port and the Developer of their respective obligations under this Agreement and the good faith efforts of the City contemplated herein are necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents.

AGREEMENT

Now, therefore, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

1.1 Definitions

In addition to other defined words and terms set forth herein, as used in this Agreement, the following words and terms shall have the following meanings:

“*Agreement*” means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto in accordance with Section 4.21.

“*Board of Aldermen*” means the Board of Aldermen of the City.

“*Certificate of Commencement of Construction*” means a document substantially in the form of **Exhibit C**, attached hereto and incorporated by reference herein, delivered by the Developer to the Port in accordance with this Agreement and evidencing commencement of construction of each specific phase of the Development Project.

“*Certificate of Substantial Completion*” means a document substantially in the form of **Exhibit D**, attached hereto and incorporated herein by reference, issued by the Developer to the Port in accordance with this Agreement and evidencing the Developer’s satisfaction of all obligations and covenants to construct the Essential Elements of a particular phase of the Development Project in accordance with this Agreement.

“*City*” means the City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri.

“*City Parcel I*” means that approximate four (4) acre tract of vacant land immediately south of and adjacent to the Development Area owned by the City as shown on **Exhibit A**, but not including City Parcel II.

“*City Parcel II*” means that approximate four (4) acre tract of vacant land immediately north of the City’s water treatment operation owned by the City as shown on **Exhibit A**, but not including City Parcel I.

“*Construction Plans*” means plans, drawings, specifications and related documents, and construction schedules for the Work or for the construction of a particular phase of the Project, together with all supplements, amendments or corrections, submitted by the Developer to the Port and City and approved by the City in accordance with applicable law.

“*Default Rate*” means a per annum rate of interest equal to two percent (2%) over the “prime rate” charged by Bank of America, N.A., or its successor identified by the Port, but in no event greater than the highest rate permitted under applicable law in effect from time to time.

“*Design Hearing*” means a hearing conducted by authority of the MGC regarding continuous docking, pursuant to Section 313.805(16) and (17) of the Revised Statutes of Missouri, as amended.

“*Developer*” means Casino Celebration, LLC, a limited liability company duly organized and existing under the laws of the State of Missouri, or its permitted successors or assigns in interest.

“*Development Area*” means the real property generally described above and shown on **Exhibit A**, attached hereto and incorporated herein by reference.

“*Development Project*” or “*Project*” means a mixed-use recreation, gaming and entertainment development within the Development Area constructed in accordance with this Agreement and which shall, at a minimum, contain the elements and features set forth in **Exhibit B** (the “Essential Elements”) with respect to each specific phase of the Development Project.

“*Governmental Approvals*” means all gaming approvals, plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, licenses, variances, vacations, building permits, or other subdivision, zoning, or similar approvals from local, state and federal authorities and agencies required for the commencement of Work and implementation of the applicable phase of the Development Project consistent with this Agreement.

“*Investigation Date*” means the date on which the MGC selects Developer’s application for the Project for suitability investigation.

“*MGC*” means the Missouri Gaming Commission.

“*Port*” means the Port Authority of the City of St. Louis, a political subdivision of the State of Missouri, duly constituted according to Chapter 68 of the Revised Statutes of Missouri, as amended.

“*Property*” means the real property and existing improvements in the Development Area required for construction of the Development Project.

“*Work*” means all work necessary to prepare the Development Area and to construct or cause the construction and completion of each specific phase of the Development Project as specifically described in this Agreement, including, but not limited to: (1) property acquisition; (2) professional services, including, but not limited to, architecture, engineering, surveying, financing, legal and planning and consulting; (3) demolition, site preparation and improvements, (4) construction, reconstruction or rehabilitation of the buildings, including but not limited to interiors, the shell, the façade and the structural elements of the buildings; (5) construction, reconstruction, renovation and/or rehabilitation of related infrastructure and/or improvements, including without limitation surrounding roads, sidewalks and parking facilities; (6) installation of lighting and landscaping; and (7) all other work described in this Agreement.

ARTICLE II. ACCEPTANCE OF PROJECT

2.1 Port Selects Developer

By this Agreement, the Port selects the Developer to perform or cause the performance of the Work in accordance with this Agreement.

The Port will not support another MGC license, within that portion of the City located north of the McKinley Bridge and east of Interstate 70 and Riverview Boulevard, until the earlier of January 1, 2013, termination of this Agreement or conclusion of the current license opportunity, provided that, in the event the Project is licensed, the Port will not support another MGC license in the City located north of Interstate 270 and east of Riverview Boulevard for a period of ten (10) years following issuance of the license to the Developer unless Developer ceases to hold a gaming license for the Project during that period. For purposes of this paragraph, “conclusion of the current license opportunity” includes the withdrawal of Developer’s pending MGC license application, the grant of a license to any other applicant for a gaming project not previously licensed by MGC, or Developer otherwise no longer actively pursuing an MGC gaming license for the Project.

2.2 Developer to Advance Costs

Subject to its rights under Section 4.1.1 of this Agreement, the Developer agrees to pay all Project costs as necessary to acquire or improve the Property and to complete the Work. The Developer shall be obligated to pay, which obligation shall survive the expiration or earlier termination of this Agreement, the following expenses:

- (i) the Developer shall, on or before October 22, 2010, pay to the Port an amount equal to Fifty Seven Thousand and Forty Two Dollars and no/100 (\$57,042.00), which was invoiced on September 27, 2010, as reimbursement to the City, the Port, the LCRA and all other related entities for all outside legal, consultant and related costs, including reasonable attorneys’ and consultants’ fees, related to the RFP process, the evaluation of the Developer’s proposal or the Port, City or MGC processes regarding the Developer’s proposal or the Project, which amount shall represent payment for

all fees incurred and payable through August 31, 2010, except for fees from Armstrong Teasdale LLP, and includes credit for a Ten Thousand and no/100 Dollars (\$10,000.00) filing fee associated with the selection of its proposal pursuant to the RFP;

(ii) the Developer shall, on or before October 22, 2010, pay to the Port an amount equal to Ninety Two Thousand Seven Hundred and Nineteen Dollars and 50/100 (\$92,719.50), to be invoiced on October 19, 2010, as reimbursement to the City, the Port, the LCRA and all other related entities for all outside legal, consultant and related costs, including reasonable attorneys' and consultants' fees, related to the RFP process, the evaluation of the Developer's proposal or the Port, City or MGC processes regarding the Developer's proposal or the Project, which amount shall represent payment for all fees incurred and payable from September 1, 2010 through October 15, 2010 for Thompson Coburn LLP and from August 20, 2010 through October 15, 2010 for Armstrong Teasdale LLP; and

(iii) thereafter, the Developer shall pay on a monthly basis to the Port such additional amounts as invoiced by the Port to reimburse the City, the LCRA and the Port for their actual reasonable outside legal and consultant costs, including reasonable attorneys' and financial consultants' fees, that are incurred after October 15, 2010 related to the Port, City and MGC processes regarding the Project for so long as the Developer is pursuing licensing of the Project from MGC until termination of this Agreement.

Each request for payment by the Port shall contain an itemized breakdown of the expenses incurred, subject to redaction by the Port for privileged matters, together with such supporting documentation as may be reasonably requested by the Developer. Any disagreement by the Developer shall not relieve the Developer of its obligation to make timely payments. The Port shall be solely responsible for the payment of all amounts received from the Developer pursuant to this Section 2.2 on account of costs incurred by the Port, LCRA or the City and to remit payment to the City or LCRA, as appropriate. To the extent permitted by law, the Port shall indemnify, defend and hold the Developer harmless from and against any and all claims for payment of costs incurred by the Port, the City or the LCRA in connection with the Project and which are paid to the Port in accordance with this Agreement.

ARTICLE III. CONSTRUCTION OF DEVELOPMENT PROJECT

3.1 Acquisition of Property

The Developer represents that, as of the date of this Agreement, affiliates of the Developer are the fee owners of or the Developer has written agreements with all necessary parties for the coordinated development of the Project as currently anticipated. Any additional parcels of the Property acquired or controlled by the Developer for completion of the Project shall be held in the name of the Developer and shall be subject to the terms, conditions and covenants contained herein immediately upon acquisition.

3.2 Title Insurance and Survey

The Developer shall, at its sole cost and expense, no later than sixty (60) days after the submission of a Certificate of Commencement of Construction, provide to the Port copies of an owner's title insurance policy evidencing that the Developer has insured fee title or easements to the Property required for development of the applicable phase of the Project, issued by a title company licensed in the State of Missouri of the Developer's choice. The Developer shall, at its sole cost and expense, and no later than sixty (60) days after the submission of a Certificate of Substantial Completion, provide the Port with a copy of a survey or surveys, prepared by a surveyor of the Developer's choice, who is licensed to conduct surveys in the State of Missouri, which is prepared in accordance with the ALTA/ACSM survey standards generally acceptable within the State of Missouri, which survey or surveys shall locate any and all boundaries, present improvements, utilities, sewers, easements, rights-of-way and encroachments concerning the portion of the Property required for development of the applicable phase of the Project.

3.3 Developer to Construct the Work

Subject to its rights under Section 4.1.1 of this Agreement, the Developer shall commence or cause the commencement of the construction of the Work, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement. The Developer may enter into or cause to be entered into one or more construction contracts to complete the Work. Prior to the commencement of construction of any portion of the Work, the Developer shall obtain or shall require that any of its contractors obtain workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry in the St. Louis area for similar type projects. The Developer shall require that such insurance be maintained by all of its contractors for the duration of the construction of such portion of the Work. To the extent that laws pertaining

to prevailing wage and hour apply to any portion of the Work, the Developer agrees to take all actions necessary to apply for the wage and hour determinations and otherwise comply with such laws.

3.4 The Project

Subject to its rights under Section 4.1.1 of this Agreement, the Developer shall construct a gaming development, in accordance with this Agreement, which shall, at a minimum, contain the Essential Elements of the applicable phase of the Project, and shall otherwise comply with the terms and conditions of this Agreement.

3.5 Project Modifications

The Developer may modify the Development Project and the boundaries of the Development Area to include such other property as Developer deems reasonably necessary for successful completion of the Project, including City Parcel I, subject to necessary City legislation and upon advance written notice to the Port, provided that there is no reduction in Essential Elements, except that the Essential Elements may be modified as agreed to by the Developer and the Port.

3.6 Minimum Development Standards

Subject to its rights under Section 4.1.1 of this Agreement, the Developer shall construct the Project as a recreation, entertainment and gaming facility and hotel development in two phases, with each phase being comprised of at least the Essential Elements designated on Exhibit B as part of that phase. Total capital investment by the Developer for the Project is estimated to be approximately \$157.5 million, comprised of \$131.5 million for the Phase I (Casino) Development Project, as defined in Exhibit B hereto, and \$26 million on the Phase II (Hotel) Development Project, as defined in Exhibit B hereto. The Developer has given these original costs as verified estimates which are subject to change due to market conditions, a future competitive bid process, technological advancements, and other factors not contemplated which could provide the Developer with the ability to deliver the Project at a cost different than the originally stated estimates (plus or minus).

3.7 Improvements

3.7.1 Except as may be agreed to by the City and the Developer pursuant to Section 3.7.2 and Section 3.7.3 below, neither the City nor the Port shall be required to contribute any funds with respect to the initial construction of the Project and installation of the Essential Elements. The Developer shall control and own the Project except those areas to be owned by the Metropolitan Parks and Recreation District (a/k/a Great Rivers Greenway) which shall be incorporated into the Project in accordance with the terms of an agreement by and between Developer and said District. The Developer may take advantage of any state or federal funds that might be available for the Project. Neither the City, the LCRA nor the Port shall be obligated to seek state or federal funds on behalf of the Developer, but shall cooperate with the Developer in its efforts to obtain such funding at no cost to the City, the LCRA or the Port.

3.7.2 The Port shall use commercially reasonable efforts to cooperate with the Developer to obtain the City's approval for formation of a Community Improvement District or Transportation Development District specifically permitting the imposition of a sales tax within the Development Area for projects eligible under each respective enabling act upon terms and conditions reasonably satisfactory to the Developer.

3.8 The Phase II Development Project

3.8.1 The Developer shall exercise commercially reasonable efforts to construct the Essential Elements described on Exhibit B as the "Phase II (Hotel) Development Project," including but not limited to the hotel, within the schedule deadlines set forth in Section 3.9 of this Agreement; provided that the Developer's obligation under this Agreement to construct the Phase II (Hotel) Development Project and to make the related capital investment shall be contingent upon the Developer determining that the construction of the Phase II (Hotel) Development Project would be economically feasible and commercially reasonable in the context of the then-current economic conditions.

3.8.2 If requested by the Developer, the City shall consider incentives to assist in assuring the economic feasibility of the Phase II Development Project.

3.9 Schedule and Date

<u>Schedule</u>	<u>Date</u>
Development Agreement executed	October 19, 2010
Submission of Amended City Development Plan to MGC (subject to City legislation)	November 24, 2010
Submission of Design Hearing petition to MGC	Not later than 2 months after the Investigation Date
Submission to the Port of Code compliant plans and specifications and evidence of financing	Not later than 2 months after date of MGC Design Hearing approval with reasonable extensions to be granted by Port
The Phase I (Casino) Development Project Construction initiated	No later than 2 months after the design hearing approval by the MGC, acquisition of all Property interests required for the Phase I (Casino) Development Project and issuance of all other Governmental Approvals including final City approvals and permits
The Phase I (Casino) Development Project completed	Not later than 12 months after issuance of Certificate of Construction of Commencement by the Developer
The Phase II (Hotel) Development Project initiated	Not later than March 2017
The Phase II (Hotel) Development Project completed	Not later than 8 months after date of initiation of construction

The Developer shall have the right to extend one or more of the foregoing dates for one or more periods of sixty (60) days Developer is pursuing the Project in good faith, subject to approval by the Port, which approval shall not be unreasonably withheld.

3.10 Governmental Approvals

The Developer shall apply for and use commercially reasonable efforts to obtain any and all Governmental Approvals from the applicable governmental authorities for the Project. To the extent allowed by law, the Port shall cooperate with the Developer and take expedited actions to timely consider all Governmental Approvals requests to the City in connection with the Project and shall take all other necessary actions to assist the Developer in achieving the objectives of this Agreement. The Port appoints Rodney Crim or his designee and the Developer appoints Garrick Hamilton to serve on the “*Development Assistance Committee*” which shall meet at regularly scheduled intervals as reasonably determined by its members. The City will be asked to designate a business representative to serve on the Development Assistance Committee and to work with the City’s representatives to assure that the Project obtains timely review of Governmental Approval requests. Each of the parties may, at any time, appoint new or substitute members to the Development Assistance Committee. The Port’s and the City’s representatives and the representative of the Developer will also consider reasonable actions to encourage the ultimate development of the Phase II (Hotel) Development Project as provided for in Section 3.8 and will also consider, document and notify the appropriate parties regarding any force majeure events during the Governmental Approvals and construction process.

3.11 Construction Plans; Changes

The Construction Plans for each applicable phase shall be prepared, or reviewed and sealed, by a professional engineer or architect licensed to practice in the State of Missouri and the Construction Plans and all construction practices and procedures with respect to the Work shall be in conformity with all applicable state and local laws, ordinances and regulations. During the progress of the Work, the Developer may make such reasonable changes as may be necessary or desirable to enhance the quality, functionality or economic viability of the Development Project and as may be in furtherance of the general objectives of this Agreement; provided that (a) the Developer shall comply with all laws, regulations and ordinances of the City and (b) prior to any material changes, the Developer shall obtain the advance written consent of the Port, which consent shall not be unreasonably withheld or delayed. For purposes of this Section 3.11, “material change” shall mean any change that reduces or substantially alters the Essential Elements.

3.12 Certificates of Commencement of Construction

3.12.1 The Phase I (Casino) Development Project. Promptly after commencement of construction of the Work related to the Essential Elements described on Exhibit B as the “Phase I (Casino) Development Project,” including but not limited to the casino and certain restaurant and entertainment venues, the Developer shall furnish to the Port, a Certificate of Commencement of Construction, which certificate shall be in substantially the same form as Exhibit C, attached hereto and incorporated herein by reference. The Certificate of Commencement of Construction shall be deemed accepted by the Port upon receipt of the same.

3.12.2 The Phase II (Hotel) Development Project. Promptly after commencement of construction of the Work related to the Essential Elements described on Exhibit B as the “Phase II (Hotel) Development Project,” the Developer shall furnish to the Port, a Certificate of Commencement of Construction, which certificate shall be in substantially the same form as Exhibit C, attached hereto and incorporated herein by reference. The Certificate of Commencement of Construction shall be deemed accepted by the Port upon receipt of the same.

3.13 Certificates of Substantial Completion

3.13.1 The Phase I (Casino) Development Project. Promptly after substantial completion of the Work related to the Phase I (Hotel) Development Project, the Developer shall furnish to the Port a Certificate of Substantial Completion. The Port shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the Port unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the Port furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. In the case where the Port, within thirty (30) days following delivery of the Certificate of Substantial Completion, furnishes the Developer with specific written objections to the status of the Work, the Developer shall have such amount of time as is reasonably necessary to address or respond to such objections and when addressed shall resubmit the Certificate of Substantial Completion to the Port in accordance with this Section. Upon acceptance of the Certificate of Substantial Completion by the Port or upon the lapse of thirty (30) days after delivery thereof to the Port without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the City’s Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer’s agreements and covenants to perform all Work. The Certificate of Substantial Completion shall be in substantially the form of Exhibit D, attached hereto and incorporated by reference herein.

3.13.2 The Phase II (Hotel) Development. Promptly after substantial completion of the Work related to the Phase II (Hotel) Development Project, the Developer shall furnish to the Port a Certificate of Substantial Completion. The Port shall, within thirty (30) days following delivery of the Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the Port unless, within thirty (30) days following delivery of the Certificate of Substantial Completion, the Port furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. In the case where the Port, within thirty (30) days following delivery of the Certificate of Substantial Completion, furnishes the Developer with specific written objections to the status of the Work, the Developer shall have such amount of time as is reasonably necessary to address or respond to such objections and when addressed shall re-submit the Certificate of Substantial Completion to the Port in accordance with this Section. Upon acceptance of the Certificate of Substantial Completion by the Port or upon the lapse of thirty (30) days after delivery thereof to the Port without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the City’s Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer’s agreements and covenants to perform all Work. The Certificate of Substantial Completion shall be in substantially the form of Exhibit D, attached hereto and incorporated by reference herein.

3.14 City Parcel I

The Port agrees to use commercially reasonable efforts to cause the City to grant the Developer an option to buy or lease City Parcel I subject to mutually agreeable terms to further enhance the Development Project. The Port shall use commercially reasonable efforts to cooperate with the Developer to obtain the necessary legislation and consent of the City for any such option.

Further, the Port agrees to use commercially reasonable efforts to cause the City to grant to the Developer a right of first refusal on the sale, lease or other divestiture of the City Parcel I for any commercial purposes throughout the term of this Agreement; provided, that, the City shall not grant to the Developer a right of first refusal on the sale, lease or other divestiture of the City Parcel I in connection with the transfer or encumbrance of City Parcel I for any and all governmental purposes.

3.15 City's Water Treatment Plant

The Developer acknowledges that the Development Area is located north of City Parcel I and City Parcel II, and that immediately south of City Parcel II are the City's water treatment operations (the "*Water Treatment Plant*"). The Developer acknowledges that certain noises, vibrations, and smells are inherently associated with the operation of the Water Treatment Plant as currently existing and as will continue in the future.

The Developer and the Port agree to use commercially reasonable efforts to pursue in a negative easement grant from the City including a waiver of claims by the Developer and covenant that the City Parcel I would not be used in any manner so as to produce noises, vibrations or smells that an ordinary, reasonable person would find to be obnoxious or offensive, considering, however, the proximity of the Water Treatment Plant. The preceding sentence shall not be deemed to include noises, vibrations, and smells attendant to construction activities, and additionally, the preceding sentence shall not be deemed to prevent the City from developing City Parcel I for any lawful use subject to the covenant of the City set forth in Section 2.1 of this Agreement.

Further, the Developer and the Port agree to use commercially reasonable efforts to pursue an agreement from the City including a covenant that the City shall give the Developer timely notice of future EPA regulations or other pertinent laws or regulations that may cause water treatment operations to be placed on City Parcel II. If the Developer reasonably determines that said water treatment operations would produce noises, vibrations or smells that an ordinary, reasonable person would find to be obnoxious or offensive, and which would have a material adverse effect on the Project (as reasonably determined by the Developer), then the City shall, in cooperation with the Developer but at the Developer's sole expense, favorably consider such alternative sites or treatment methods to mitigate such noises, vibrations or smells provided that the Developer shall bear all incremental costs of said alternative method.

3.16 Community Improvements

The Developer shall pay to the City an amount equal to Two Hundred Thousand Dollars and no/100 (\$200,000.00) annually, payable on or before December 31st of each year commencing in the first calendar year of the Project's licensure by the MGC (prorated as necessary for the first year) as a gaming facility towards community improvements located within the City north of Halls Ferry Circle along Riverview Drive to the City's limit on the north, the Mississippi River on the east and two blocks to the west of Riverview Drive. In addition the community improvements may include the corridors along Hall street between Riverview Drive and Grand and along Broadway north to the City's limit and south to Taylor Ave within two blocks on either side of the Riverview, Hall or Broadway streets. The improvements shall include but not be limited to upgrades to that certain City park known as the North Riverfront Park and other community projects. The funds shall not be paid to the City's General Fund but shall be deposited in a segregated account dedicated to the improvements described in this Section 3.16. The Developer shall have the right to make suggestions and participate in decisions concerning appropriate improvements to be funded. Such amount shall be paid annually until the Project no longer operates as a licensed gaming facility.

ARTICLE IV. GENERAL PROVISIONS

4.1 Rights of Termination

The Developer may elect to terminate this Agreement, upon thirty (30) days prior written notice to the Port and City, in the event that:

- (i) prior to the Developer's issuance of a Certificate of Commencement of Construction as to the Phase I Development Project for any reason and upon the effectiveness of such termination, Developer may abandon the Development Project; or
- (ii) the Missouri gaming laws are changed to prohibit excursion gambling boats and/or gambling games and devices in Missouri before or after the opening of the gaming facility at the Project; or

(iii) there is an enactment by a governmental authority of taxes or similar imposition so significant that the operation of a gaming facility within the Development Area is no longer profitable as reasonably substantiated by a financial analysis prepared by an independent third-party analyst reasonable acceptable to the Developer and the Port; or

(iv) there shall be a material uncured default by (i) the Port in the performance of its obligations under this Agreement; or (ii) the City in the performance of its obligations under any agreement with the Developer relating to the Development Project.

In the event this Agreement is terminated by the Developer in accordance with this Section 4.1.1, the parties shall take all reasonable and necessary actions and execute and deliver the necessary documents to terminate this Agreement.

4.1.2 The Port may elect to terminate this Agreement, upon thirty (30) days prior written notice to the Developer, in the event that:

(i) the MGC has not selected the Developer, despite the Developer's best efforts, for priority investigation for the Project within one (1) year from the date of this Agreement, unless the parties mutually agree to an extension which extension shall be promptly granted by the Port in the event the MGC has not granted priority investigation for issuance of an available license as of such date or the Developer is then challenging by judicial action the issuance or priority investigation of another applicant for such available license; or

(ii) there shall be a material uncured default by the Developer in the performance of its obligations under this Agreement.

In the event this Agreement is terminated by the Port or the City in accordance with this Section 4.1.2, the parties shall take all reasonable and necessary actions and execute and deliver the necessary documents to terminate this Agreement.

4.2 Successors and Assigns

4.2.1 Except as otherwise provided in this Section 4.2, the Developer may not sell, assign (whether by operation of law or otherwise), pledge, encumber, hypothecate or transfer or otherwise transfer the all or any part of the Project or all or any part of its rights, duties or obligations under this Agreement without the prior written consent of the Port, which consent shall not be unreasonably withheld.

4.2.2 Prior to licensure by the MGC of the Developer for the Project:

(i) the Developer may sell, assign (whether by operation of law or otherwise), pledge, encumber, hypothecate or otherwise transfer all or any part of its rights, duties or obligations under this Agreement, with notice to but without the express written consent of the Port, provided the following conditions are satisfied: (a) members of Developer or William J. Koman, Jr. or James G. Koman, in the aggregate, retain a membership or voting interest in any successor Developer equal to or in excess of twenty five percent (25%) of the membership or voting interests in such successor Developer; (b) the gaming facility operator which is a member of such successor Developer is licensed to operate a gaming facility in one or more states and (c) the gaming facility operator which is a member of such successor Developer shall complete the Project Essential Elements as set forth in Exhibit B herein, to the extent required under this Agreement;

or

(ii) members of Developer may transfer ownership, voting rights or other interests in Developer to a gaming facility operator (or affiliate thereof) with notice to but without the express written consent of the Port, provided the following conditions are satisfied: (a) William J. Koman, Jr. or James G. Koman, in the aggregate, retain a membership or voting interest in the Developer equal to or in excess of twenty five percent (25%) of all membership or voting interests in the Developer; (b) the gaming facility operator is licensed to operate a gaming facility in one or more states and (c) the gaming facility operator shall complete the Project Essential Elements as set forth in Exhibit B herein, to the extent required under this Agreement.

4.2.3 After licensure by the MGC of the Developer for the Project, the Developer may sell, assign (whether by operation of law or otherwise), pledge, encumber, hypothecate or otherwise transfer all or any part of the Project or all

or any part of its rights, duties or obligations under this Agreement without the express written consent of the Port, provided the following conditions are satisfied: (i) any such transaction is approved by MGC; (ii) the assignee or transferee delivers to the Port a binding and enforceable agreement that assumes and agrees to perform all of the obligations of Developer as developer under this Agreement from and after the effective date of any such transfer; and (iii) Developer promptly provides the Port with at least ten days' prior written notice of any such transaction. The initial Developer shall be relieved of any obligations under this Agreement arising after the effective date of any such transfer.

4.2.4 Developer may assign this Agreement to one or more of its lending institutions on a collateral basis without the express written consent of the Port.

4.2.5 William J. Koman Sr., William J. Koman, Jr., and James G. Koman may transfer their membership interests in the Developer by and among themselves and any of their respective trusts or majority controlled limited liability companies or other entities in which they respectively have the majority of membership interest or voting rights, without the prior written consent of the Port, provided that William J. Koman, Jr., and James G. Koman in the aggregate retain a membership or voting interest in the Developer equal to or in excess of twenty five percent (25%) of all membership of voting interests in the Developer.

4.2.6 A consent by the Port to any assignment or other transaction under Sections 4.2.1 shall not be deemed a consent to any subsequent assignment or transaction, and any such assignment or transaction made by the Developer or any of its successors or permitted assigns without the prior written consent of the Port shall be void and shall, at the option of the Port, constitute an Event of Default by the Developer or any of its successors or permitted assigns under this Agreement.

4.2.7 This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective legal representatives, successors and assigns.

4.3 Events of Default

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

(i) any failure by the Developer to make timely and complete payments of monies referenced in this Agreement within thirty (30) days following receipt by the Developer of written notice of such failure; provided, however, that if the Developer defaults in the performance of any such payment obligation two (2) or more times within any five (5) year period, then, notwithstanding that each of such defaults shall have been cured by the Developer, the Developer shall have ten (10) days in which to cure any further default in the performance of any such payment obligation until such time as there has been less than two (2) defaults in the prior five (5) year period; or

(ii) any failure or neglect or breach of a material provision by the Developer or the Port to observe or perform any term, provision, covenant or agreement contained in this Agreement (other than a provision as to payment) within thirty (30) days after written notice to the defaulting party that such term, provision, covenant or agreement has not been observed or performed; provided, however, that in the event that such failure or neglect by its nature cannot be cured within such thirty (30) day period, then such thirty (30) day period shall be extended until such failure or neglect is cured, but in no event longer than six (6) months from the date of the original written default notice, without the written consent of the non-defaulting party, such consent not to be unreasonably withheld, so long as the defaulting party reasonably commences its efforts to cure within such period and thereafter diligently pursues the same to completion; or

(iii) if any material representation or warranty by the Developer or the Port is made in this Agreement or any written communication between the parties in connection with the Project, shall prove to have been materially incorrect or incomplete when made; or

(iv) any other act or occurrence which constitutes a default or event of default under the terms of this Agreement which is not cured as provided in part (ii) above after notice to Developer; or

(v) if the Developer shall seek relief under the United States Bankruptcy Code or any other law pertaining to insolvency or bankruptcy; or fail to controvert in a timely and appropriate manner (not to exceed ninety (90) days), or acquiesce in writing to, any petition filed against it in an involuntary case under the United States Bankruptcy Code; or shall make any assignment for the benefit of creditors; or shall suffer any receiver to be appointed for any of its property;

or shall be unable to meet its debts as they mature; or shall admit such inability in writing; or

(vi) if the Developer shall suspend its business, or dissolve or terminate its existence; or

(vii) except as otherwise permitted under this Agreement, if the Developer shall cease to operate the Project for a period of six (6) consecutive months.

4.4 Remedies

4.4.1 Except as otherwise provided in this Agreement and subject to the Developer's and the Port's respective rights of cure and/or termination, in the Event of Default or in default or breach of any material terms or conditions of this Agreement by either party, or any successor or permitted assigns, the aggrieved party may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to cure and remedy such default or breach, including without limitation proceedings to compel specific performance by the defaulting or breaching party. In addition to any and all remedies at law or in equity, the Port and/or the City shall have the right to report the actions of the Developer to the MGC.

4.4.2 Payments Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other party under the provisions of this Agreement, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said party to institute permitted actions for the recovery of such sum, and if it shall be finally determined that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Agreement, together with interest thereon at the Default Rate.

4.5 Force Majeure

Neither the Port nor the Developer nor any successor in interest or permitted assign shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any breach, default or delay caused by force majeure, including without limitation damage or destruction by fire or casualty; litigation, strike; lockout; civil disorder; war; terrorist act; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other like causes beyond the parties' reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Development Project or this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by the Developer, the Port or the City in bad faith, and further provided that the Developer or the Port must notify the other party in writing within thirty (30) days of the commencement of any such claimed event of force majeure.

4.6 Notices

All notices, demands, consents, approvals and other communications required by this Agreement to be given by either party hereunder shall be in writing and shall be hand delivered, including by air courier or expedited mail service such as Federal Express to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other or by facsimile. The telecopy of facsimile numbers set out below also may be changed by notice to all persons set forth below. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three (3) days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or facsimile machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its courier delivered notice or communication. Notices given by a party's counsel shall be considered notices by such party.

- (i) In the case of the Developer, to:
 Casino Celebration, LLC
 6 CityPlace Drive, Suite 430
 St. Louis, MO 63141
 Attention: General Counsel
 Fax: 314.787.1986

With a copy to:

Husch Blackwell Sanders LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Attention: Gregory R. Smith
Fax: 314.480.1505

(ii) In the case of the Port, to:

Port Authority
1015 Locust Street, Suite 1200
St. Louis, Missouri 63101
Attention: Rodney Crim
Facsimile: 314.259.3442

With a copy to:

Armstrong Teasdale LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, MO 63105
Attention: James E. Mello
Facsimile: 314.621.5065

With a copy to:

Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
Attention: Gregory D. Omer
Facsimile: 314.552.7480

4.7 Conflict of Interest

No member of the Board of Aldermen, the Port, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Development Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any business entity in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Board of Aldermen, Port, or any branch of City's government, as applicable, the nature of such interest and seek a determination by the Board of Aldermen, Port, or any branch of City's government, as applicable, with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

4.8 Damage or Destruction of Development Project

In the event of total destruction or damage to the Development Project by fire, flood or other casualty, during construction or thereafter during the term of this Agreement, the Developer shall determine and advise the Port in writing within six (6) months of such destruction or damage whether the Developer wishes to restore, reconstruct and repair any such destruction or damage so that the Project will be completed or rebuilt in accordance with this Agreement. Should the Developer determine not commence to restore, reconstruct and repair the Development Project, this Agreement shall terminate one (1) year after the casualty event.

4.9 Inspection

The Port or the City may conduct such periodic inspections of the Work as may be generally provided in the Building Code of the City. In addition, the Developer shall allow other authorized representatives of the Port or the City reasonable access to the Work site from time to time upon reasonable advance notice (which may be oral) prior to the completion of the Work for inspection thereof. The Developer shall not unreasonably deny the Port or the City or their elected or appointed officials, employees, agents and independent contractors the right to inspect, upon request, all architectural, engineering, demolition, construction and other

contracts and documents pertaining to the construction of the Work as the Port determines is reasonable and necessary to verify the Developer's compliance with the terms of this Agreement.

4.10 Representatives Not Personally Liable

No elected or appointed officials, agent, employees, attorneys or representatives of the City or the Port shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

Except in those circumstances wherein the Developer asserts as a defense that the acts or conduct of its elected or appointed officials, officers, agents, employees, attorneys or representatives were negligent, unauthorized, ultra vires, unlawful, or otherwise without expressed or implied authority of the Developer, no elected or appointed officials, officers, agents, employees, attorneys or representatives of the Developer shall be personally liable to the Port or the City in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

4.11 Release and Indemnification

The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

4.11.1 The City, the Port and their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors shall not be liable to the Developer for damages or otherwise in the event that all or any part of any ordinance adopted in connection with either this Agreement or the Development Area, is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City or the Port is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof.

4.11.2 The Developer covenants and agrees that the City, the Port and their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors shall be released from and shall not be liable for, and agrees to indemnify and hold harmless the Port, the City and their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed (excluding consequential and punitive damages), to persons or property occurring or allegedly occurring as a result of any negligent or malicious acts or omissions of the Developer, its elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors, in connection with its or their activities conducted pursuant to this Agreement.

4.11.3 The City, the Port and their elected or appointed officials, officers, agents, employees, representatives and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, employees, representatives, independent contractors or any other persons who may be about the Property or the Work except for matters arising out of the negligence or willful misconduct of the City, the Port and their elected or appointed officials, officers, agents, employees, representatives and independent contractors.

4.11.4 All covenants, stipulations, promises, agreements and obligations of the Port contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Port and not of any of its elected or appointed officials, officers, agents, attorneys, employees, representatives or independent contractors in their individual capacities.

4.11.5 The Developer covenants and agrees that the City and the Port, their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors shall be released from and shall not be liable for, and agrees to indemnify and hold the City, the Port, their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors, harmless from and against any and all third party suits, interest, claims and cost of reasonable attorneys fees incurred by any of them, resulting from, arising out of, or in any way connected with: (i) the enforcement against such third party of this Agreement or the enforcement or validity of any other agreement or obligation made in connection therewith against such third party and their approvals (excluding opinions of counsel and of the City and Port's financial advisors whenever such claim is based on such party's own willful misconduct or negligent); (ii) negligence or willful misconduct of the Developer or its officers, agents, employees, representatives or

independent contractors in connection with the design, management, development and construction of the Work, or (iii) the compliance by the Developer with all applicable state, federal and local environmental laws, regulations and ordinances as applicable to the Property. The foregoing release and indemnification shall not apply in the case of such liability arising directly out of the negligence, willful misconduct or malicious acts or omissions of the City, the Port or their elected or appointed officials, officers, agents, attorneys, employees, representatives and independent contractors in connection with its or their activities conducted pursuant to this Agreement or which arises out of matters undertaken by the City or the Port following termination of this Agreement as to the Development Project or any particular portion thereof.

4.12 Maintenance of the Property

The Developer shall remain in compliance with all provisions of the City's ordinances relating to maintenance and appearance of the Property during the construction of the Development Project or any portion thereof. Upon substantial completion of the Phase I Development Project, the Developer or its successor(s) in interest or permitted assigns, as owner or owners of the affected portion(s) of the Property, shall, during the remainder of the term of this Agreement maintain or cause to be maintained the buildings and improvements within the Development Area which it owns in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations. If there are separately-owned or ground leased parcels of real estate on the Property during the term of this Agreement, the Developer shall use commercially reasonable efforts to cause each such owner or lessee as a successor in interest to the Developer to maintain or cause to be maintained the buildings and improvements on its parcel in a good state of repair and attractiveness and in conformity with applicable state and local laws, ordinances and regulations, and to maintain or cause to be maintained reasonable casualty and liability insurance with respect to the same in accordance with this Agreement.

4.13 Non-Discrimination

The Developer agrees that as an independent covenant running with the land during the term of this Agreement there shall be no discrimination upon the basis of race, creed, color, national origin, sex, age, marital status or physical handicap in the sale, lease, rental, occupancy or use of any of the facilities under its control within the Development Area or any portion thereof and said covenant may be enforced by the City or the United States of America or any of their respective agencies. The Developer further agrees that a provision containing the covenants of this paragraph may be included in a covenant binding the Property owned by the Developer and all successor and assigns and recorded in the real property record for the City of St. Louis, Missouri.

4.14 Employment

The employment representations by Developer provided on Exhibit B are considered Essential Elements. In order to encourage employment of City residents, minorities and women, the Developer agrees to work with the St. Louis Agency for Training and Employment ("SLATE") and the Federal Empowerment Zone to develop a recruitment and job training program designed to achieve and maintain the Developer's MBE/WBE objectives. In an effort to provide employment for those living in the community, a preference will be given to qualified residents living in the 63107, 63147, 63136 and 63137 zip codes.

4.15 MBE/WBE

The Developer agrees to use its reasonable best efforts to comply with the Mayor's Executive Order #28, as the same may be amended, during the design, construction and operation of the Project and with respect to ongoing services provided by third parties to the Developer. Within ten (10) days after the Investigation Date, Developer shall provide the City with a compliance plan for the Project. Within ten (10) days after submission of the Construction Plans to the City, Developer shall update the construction phase section of its compliance plan. At the time of obtaining the initial gaming license from the MGC for the Project, Developer shall provide the City with an ongoing and comprehensive compliance plan. Said plans, which will include the aforementioned elements of design, construction and operation must be reasonably approved by the City and will be monitored by the City's MBE/WBE Contract Compliance Officer. A goal of 25% MBE and 5% WBE utilization has been established for the overall compliance plan in connection with this Agreement in accordance with the requirements of Executive Order #28, subject to any amendment to Executive Order #28 as may occur from time to time. If the goals are not met, the Developer shall continue good faith efforts throughout the term of this Agreement to increase MBE/WBE participation and to meet this goal. The Developer shall, at its option, be permitted to include all its predevelopment activities for the Project with respect to meeting said MBE/WBE participation goals for the design and construction phases of the Project.

4.16 Union Matters

The Developer has represented that it intends to use union construction trades in the construction of the Project. The Developer agrees to enter into a mutually desirable standard form of Neutrality Agreement with unions applicable to the operations of the Project. Notwithstanding the preceding sentence, the Developer reserves the right to generally educate and inform employees about company benefits, policies and the workplace. Further, nothing in this Section shall prevent the Developer from requiring any union to follow and comply with, or from the Developer itself utilizing NLRB's campaign and election law, regulations and procedures.

4.17 Home Dock City Recommendation to MGC and Gaming Licensing

4.17.1 The Port shall use commercially reasonable efforts to cause the City to amend its gaming development plan on file with the MGC pursuant to Section 313.812.1 of the Revised Statutes of Missouri, as amended, and 11 CSR 45-4.040, as amended, to recommend the granting of a gaming license to the Developer for the Project not later than November 24, 2010. The parties hereby agree that design changes required by the MGC shall be accepted by the parties and implemented by the Developer using its commercially reasonable efforts and shall not be considered material modifications to the Project unless said changes or requirements have the effect of reducing in quantity or quality, or both, any of the Essential Elements.

4.17.2 The Port shall, and use commercially reasonable efforts to cause the City to support (i) a recommendation during all phases of licensing (which the parties hereto agree include only those phases during the period in which Developer is actively pursuing its initial license for the Project and ending upon the earlier of the grant of the initial gaming license for the Project or the grant of a license to any other applicant for a gaming project not previously licensed by MGC) that the MGC grant a license for the Project; and (ii) to approve and implement design changes and regulatory requirements dictated by MGC or other governmental authorities which shall not be considered material modifications to the Project unless such changes or requirements have the effect in quality or quantity of reducing any of the Essential Elements.

4.18 Performance Guaranty

In order to secure the timely opening of the casino and other components of the Phase I Development Project, the Developer agrees to enter into construction contracts including liquidated damages or penalties for the contractors failing to meet completion dates. In any subsequent agreement with the City, the parties shall seek to provide for reimbursement of the City for any out of pocket costs the City incurs in connection with the Developer's construction of the Phase I Development Project.

4.19 Confidentiality

Except as otherwise required by law, the parties agree that each will treat in confidence all documents, materials and other information which each party shall have obtained during the course of the negotiations leading to, and its performance of, this Agreement (the "Confidential Information"). Such Confidential Information shall not be communicated to any third party, including the media with the prior written consent of the other party or, in the case of any disclosure mandated by law, as much prior written notice as possible to the other party but not less than twenty-four hours advance written notice. The obligation of the parties to treat the Confidential Information in confidence shall not apply to any information which (i) is or becomes available from a source other than a party or such party's counsel or representatives, (ii) is or becomes available to the public other than as a result of disclosure by one of the parties or their agents, or (iii) is a public document or is required to be disclosed under applicable law, by a regulatory agency, administrative process or judicial process, but only to the extent it must be disclosed and subject to the prior written notice requirement above. Notwithstanding the foregoing, the parties hereto may provide, on a need to know basis, Confidential Information to Port or City officials, a party's counsel, accountants, financial advisors, corporate parents, affiliates, officers, directors or employees thereof, provided that any such disclosure shall be subject to the foregoing confidentiality provisions.

4.20 Choice of Law

This Agreement is subject to the laws of the State of Missouri, the Charter and ordinances of the City and shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents.

4.21 Entire Agreement; Amendment

The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

4.22 Counterparts

This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

4.23 Severability

In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

4.24 Captions

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

4.25 Disclaimer of Relationship

Neither anything contained in this Agreement nor any act of the Port or the City on the one hand, and the Developer on the other hand, shall be deemed or construed by any person to create any relationship of limited or general partnership or joint venture between the Port/City and the Developer or any third party beneficiary in favor of any person.

4.26 Gender

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular numbers shall be held to include the plural, unless the context otherwise requires.

4.27 No Waiver

No waiver by any party hereto or any violation or breach of any of the terms, provisions and covenants of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the other terms, provisions and covenants herein contained.

4.28 Attorneys' Fees

In the event that any party hereto brings an action or proceeding for a declaration of rights of the parties under this Agreement, for injunctive relief; or for an alleged breach or default of this Agreement, or any other action arising out of this Agreement or the transactions contemplated hereby, the party substantially prevailing in any such action shall be entitled to an award of reasonable attorneys' fees and any court costs incurred in such action or proceeding against the other party(s), in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

**ARTICLE V.
REPRESENTATIONS OF THE PARTIES**

5.1 Representations and Covenants of the Port

(i) The Port hereby represents and warrants that it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing have been or will be duly and validly authorized and approved by all necessary Port proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Port, enforceable in accordance with its terms.

(ii) The Port shall consider in good faith any request for amendments to this Agreement as may be

reasonably necessary to complete the Project or address unforeseen events and conditions.

5.2 Representations and Covenants of the Developer

(i) The Developer hereby represents and warrants that it is a duly organized and validly existing limited liability company in good standing under the laws of the State of Missouri, with perpetual existence, and has the full corporate power and authority to own its properties and to transact the business in which it is engaged or presently proposes to engage. The Developer further represents and warrants that it has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

(ii) The Developer shall consider in good faith any request for amendments to this Agreement as may be reasonably necessary to complete the Project or address unforeseen events and conditions.

ARTICLE VI. OTHER ACTIONS AND AGREEMENTS BY THE PARTIES

6.1 Standard and Times for Consents and Approvals

Where any provision of this Agreement requires the consent or approval of another party, each party agrees that it will not unreasonably withhold, condition, or delay such consent or approval, except as otherwise expressly provided in this Agreement (such as by words to the effect of: "sole", "absolute" and/or "complete" discretion), and the reasonableness of each party's determination shall be evaluated in accordance with any particular standards governing such particular consent or approval as expressly set forth in this Agreement, or if no standards are expressly set forth, then in accordance with all relevant facts and circumstances. Where any provision of this Agreement requires one party to do anything to the satisfaction of another party, the first party agrees that it will not unreasonably refuse to state its satisfaction with such action. If no time is given hereunder for a party to respond to a written request by another party for an action or a consent or approval by the other party hereunder, the responding, approving or consenting party shall have fifteen (15) days to take such action, or give such consent or approval, or affirmatively refuse in writing to do the same; and if such party does neither, the requesting party shall have the right to send the other party a notice of default.

6.2 Termination of Earlier Agreement

The Developer shall cause the Chain of Rocks Joint Venture by and through its joint venturers to take all necessary actions to terminate that certain Lease and Development Agreement between the City of St. Louis, Missouri and the Chain of Rocks Joint Venture dated December 29, 1995, as authorized by City Ordinance No. 63622 on or before November 1, 2010. To the extent that any portions of said Lease and Development Agreement are in conflict with this Agreement, said Lease and Development Agreement, to the extent that it is still in effect, shall control until such time as it is terminated.

6.3 Termination

Notwithstanding Section 4.5, this Agreement shall automatically terminate January 1, 2013, unless Developer obtains a license from the MGC, with the Developer responsible for any costs as described in Section 2.2. herein to the date of termination.

6.4 Term of Agreement

Unless earlier terminated as provided herein, the term of this Agreement shall commence on the date first written above and end when the Developer, or any successor or permitted assign is no longer operating the Project as a gaming casino for a continuous period of two (2) years, if all of the Developer's, or the Developer's successors' or permitted assigns' obligations and duties to the Port and the City hereunder are satisfied at such termination date.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Port, the City and the Developer have caused this Agreement to be executed in their respective names as of the date first above written.

"PORT"

PORT AUTHORITY OF THE

CITY OF ST. LOUIS

By: _____
Rodney Crim, Executive Director

“DEVELOPER”

CASINO CELEBRATION, LLC

By: _____
Name: _____
Title: _____

List of Exhibits

- Exhibit A - Description of the Development Area
- Exhibit B - Project Essential Elements
- Exhibit C - Form of Certificate of Commencement of Construction
- Exhibit D - Form of Certificate of Commencement of Substantial Completion

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

On this 18th day of October, 2010, before me appeared Rodney Crim, to me personally known, who, being by me duly sworn, did say that he is the Executive Director of the PORT AUTHORITY OF THE CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, organized under the laws of the State of Missouri, and said instrument was signed in behalf of said Authority by authority of its Board of Commissioners and said individual acknowledged said instrument to be the free act and deed of said Authority and said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public

(SEAL)

My Commission Expires:

STATE OF MISSOURI)
) SS
_____ OF _____)

On this 18th day of October, 2010, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is the _____ of CASINO CELEBRATION, LLC, a Missouri limited liability company, and that he/she is authorized to sign the instrument on behalf of said limited liability company by authority of its Members, and acknowledged to me that he/she executed the within instrument as said limited liability company’s free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County or City and State aforesaid, the day and year first above written.

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT A
Description of the Development Area

EXHIBIT B
Project Essential Elements

The following are all “Essential Elements” as defined in the Agreement:

The Phase I (Casino) Development Project Essential Elements

- Not less than a 40,000 square foot gaming floor including approximately 1,400 slot machines and 36 gaming tables;
- Not less than 80,000 square feet of additional entertainment, dining, retail and convenience amenities potentially including formal dining, buffet, gift shop, café, deli, and bars/entertainment venues;
- Not less than 1,200 parking spaces; and
- Amenities for improvement of the Chain of Rocks Bridge, public parking, public trail relocation and public restrooms as more thoroughly set forth in an agreement between the Metropolitan Parks and Recreation District and the Developer.

The Phase II (Hotel) Development Project Essential Elements

- Not less than 150 room hotel;
- Business center, lounge, museum; and
- Not less than 400 additional slot machines and not less than 10 additional gaming tables.

The foregoing represents an estimated \$157,500,000 investment commitment anticipated to create approximately 565 jobs, in two phases: the Phase I Development Project and the Phase II Development Project. The Phase II Development Project is contingent upon Developer determining that the construction is economically feasible. Developer has given these original costs as verified estimates which are subject to change due to market conditions, a future competitive bid process, technological advancements, and other factors not contemplated which could provide Developer with the ability to deliver the Project at a cost different than the originally stated estimates and requiring jobs varying from the original estimate (plus or minus). The cost of the Project and the number of jobs ultimately created shall be a function of sound business practices consistently applied.

As for both phases of the Development Project, the parking lot and façade will be lighted to insure safety; however, the lighting will be positioned in a manner to shine on the immediate Property and minimize effects on the surrounding neighborhood. There will be no exterior music unless specifically permitted by the City. Security commensurate with similar apportioned gaming facilities shall be provided 24 hours a day, seven days a week.

Developer shall obtain all traffic studies and reports reasonably required by the Port, City and the Missouri Department of Transportation (“MODOT”) and include such improvements within the Project as reasonably recommended by such studies and reports for efficient access to and from the Development Area or as may be otherwise required by MODOT.

The Developer shall comply with all mandates of the Clean Water Act in the development of the Development Area. The Developer shall use commercially reasonable efforts to construct the Project in accordance with LEED certification specifications; provided, however the Port acknowledges and agrees that smoking will be permitted at the Project.

EXHIBIT C

Form of Certificate of Commencement of Construction

DELIVERED BY

CASINO CELEBRATION, LLC

The undersigned, Casino Celebration, LLC (the "Developer"), pursuant to that certain Development Agreement dated as of October 19, 2010, between the Port Authority of the City of St. Louis (the "Port") and the Developer (the "Agreement") hereby certifies to the Port as follows:

1. All property within the Development Area necessary for the construction of Phase ___ of the Development Project has either been acquired or leased by the Developer in accordance with the Agreement or the Developer holds adequate development rights and easements to complete said Phase ___ of the Development Project.
2. The Developer has entered into an agreement with a contractor or contractors to construct Phase ___ of the Development Project.
3. The Developer has obtained all necessary financing to complete Phase ___ of the Development Project.
4. This Certificate of Commencement of Construction is being issued by the Developer to the Port in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to commencement of construction of Phase ___ of the Development Project.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this day of _____, 20__.

CASINO CELEBRATION, LLC

By: _____
Name: _____
Title: _____

EXHIBIT D

Form of Certificate of Substantial Completion

CASINO CELEBRATION, LLC

The undersigned, Casino Celebration, LLC, a Missouri limited liability company (the "Developer"), pursuant to that certain Development Agreement dated as of October 19, 2010, between the Port Authority of the City of St. Louis (the "Port") and the Developer (the "Agreement"), hereby certifies to the Port as follows:

1. That as of _____, _____, the construction of Phase ___ of the Development Project (as that term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. That the Work specific to Phase ___ of the Development Project has been substantially completed or funded pursuant to the Agreement.
3. The Work specific to Phase ___ of the Development Project has been performed in a workmanlike manner and substantially in accordance with the Construction Plans (as those terms are defined in the Agreement) for such Phase.
4. This Certificate of Substantial Completion is accompanied by the project architect's or owner representative's certificate of substantial completion on [AIA Form G-704] (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and incorporated herein by reference, certifying that Phase ___ of the Development Project has been substantially completed in accordance with the Agreement.

5. Lien waivers for applicable portions of said Work specific to Phase ___ of the Development Project in excess of Five Thousand Dollars (\$5,000) have been obtained.

6. This Certificate of Substantial Completion is being issued by the Developer to the Port in accordance with the Agreement to evidence the Developer's satisfaction of all material Project construction obligations and covenants with respect to Phase ___ of the Development Project.

7. The acceptance (below) or the failure of the Port to object in writing to this Certificate within thirty (30) days of the date of delivery of this Certificate to the Port (which written objection, if any, must be delivered to the Developer prior to the end of such thirty (30) days) shall evidence the satisfaction of the Developer's agreements and covenants to perform said Work.

Upon such acceptance by the Port (deemed or actual), the Developer may record this Certificate in the office of the City's Recorder of Deeds. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20__.

CASINO CELEBRATION, LLC

By: _____
Name: _____
Title: _____

ACCEPTED:

PORT AUTHORITY OF THE CITY OF ST. LOUIS

By: _____
Name: _____
Title: _____

(Insert Notary Form(s) and Legal Description)

Approved: November 23, 2010