

December 30

**AMENDED AND RESTATED LOCAL AGREEMENT**

THIS AMENDED AND RESTATED LOCAL AGREEMENT (this "*Agreement*") is made and entered into as of this 17<sup>th</sup> day of ~~September~~, 2019 by and among (i) the City of Gary, an Indiana municipal corporation (the "*City*") and The Majestic Star Casino, LLC, an Indiana limited liability company ("*Majestic I*"), and The Majestic Star Casino II, LLC, a Delaware limited liability company ("*Majestic II*" and, together with Majestic I, the "*Company*").

**RECITALS**

A. The City and Majestic I entered into that certain Development Agreement dated as of March 26, 1996 (as amended, restated, or supplemented from time to time, the "*Majestic 1996 Agreement*"); and

B. The City and Trump Indiana, Inc., as predecessor in interest to Majestic II, entered into that certain Development Agreement dated as of May 1, 1996 (as amended, restated, or supplemented from time to time, the "*Trump 1996 Agreement*"); and

C. Gary New Century, LLC ("*GNC*") and the City entered into that certain Assignment of Purchase Agreement and Development Agreement, dated as of August 25, 1999 (as amended, restated, or supplemented from time to time, including by the Addendum to Assignment of Purchase Agreement and Development Agreement between the City and GNC dated August 23, 2000, the "*GNC Development Agreement*"). The GNC Development Agreement, to the extent it was assigned in part to the Company pursuant to that certain Assignment and Assumption Agreement between GNC and Majestic I dated as of February 11, 2004, is referred to herein as the "*1999 Agreement*"; and

D. The City, Majestic I and Trump Indiana, Inc., entered into that certain Amendment Number One to the Development Agreement dated as of October 19, 2005, which terminated the Trump 1996 Agreement and amended the Majestic 1996 Agreement (the "*2005 Amendment*" and, collectively with the Majestic 1996 Agreement, the Trump 1996 Agreement and the 1999 Agreement, the "*Old Development Agreements*"); and

E. The City, the Company, and the Gary Redevelopment Commission ("*GRC*"), along with certain other Parties whose interests have since been mooted, entered into that certain Term Sheet dated as of March 11, 2011 (the "*2011 Term Sheet*"), setting forth the agreed resolution of certain disputes that had arisen under the Old Development Agreements; and

F. The City, the Company, the Majestic Gary Land Trust and the GRC entered into that certain Amended Term Sheet dated as of October 16, 2013 (the "*2013 Amended Term Sheet*"), setting forth the agreement of the Parties thereto on construction of the Overpass Project and other matters (as defined and addressed therein) and the new agreed resolution of certain disputes that had arisen under the Old Development Agreements, and superseding the 2011 Term Sheet and Old Development Agreements as to the matters addressed in the 2013 Amended Term Sheet; and

G. The City and the Company entered into that certain Local Agreement dated February 21st, 2018, desiring to set forth their mutual rights and obligations going forward on the matters addressed therein, entirely superseding and replacing any and all prior agreements, by or among the City, the Company and the GRC and any of their predecessors, including the 2011 Term Sheet, 2013 Amended Term Sheet and the Old Development Agreements (the "*Local Agreement*"); and

H. The City and the Company desire to Amend and Restate the Local Agreement in its entirety.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer, intending to be legally bound, agree as follows:

## **ARTICLE I. DEFINITIONS**

**Section 1.01 Defined Terms.** For purposes of this Agreement, the following terms shall have the meanings specified or referenced below:

"*Act*" means Indiana Code Sections 4-33, *et seq.*

"*Affiliate*" means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"*AGR*" means adjusted gross receipts, as defined in Indiana Code Section 4-33-2-2, from the operation of the Casinos.

"*AGR Commitment*" has the meaning set forth in Section 5.01.

"*Agreement*" has the meaning set forth in the first paragraph of this Agreement.

"*Business Day*" means any day that is not a Saturday, Sunday or other day on which banks are authorized or required to close in the State of Indiana.

"*Casinos*" means the two riverboat casinos owned by the Company and located in the Buffington Harbor area of the City.

"*City*" has the meaning set forth in the first paragraph of this Agreement.

"*City Effectiveness Conditions*" has the meaning set forth in Section 2.01.

"*Commercially Reasonable Efforts*" means acting in good faith, those efforts that reasonable business people would expect to be made. The efforts and actions must be calculated to achieve the stated objective.

"*Company*" has the meaning set forth in the first paragraph of this Agreement.

**"Company Effectiveness Conditions"** has the meaning set forth in Section 2.02.

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership interests, by contract or otherwise, and **"Controlling"** and **"Controlled"** shall have meanings correlative thereto.

**"Effective Date"** means the date that the City Effectiveness Conditions and Company Effectiveness Conditions have, been satisfied.

**"Future Projects"** has the meaning set forth in Section 6.03.

**"Governmental Permits"** has the meaning set forth in Section 3.07.

**"IGC"** means the Indiana Gaming Commission.

**"GRC"** means the Gary Redevelopment Commission.

**"Lakefront Fund"** means a restricted use, non-reverting fund established by the Company to be used for the purposes set forth in Section 5.01.

**"Legal Opinion"** means an opinion issued by the Office of the City's Corporation Counsel, in form and substance acceptable to the Company, opining, among other things, that (i) the City has the authority to enter into and perform its obligations under this Agreement, (ii) the City has obtained all necessary administrative, legislative and regulatory approvals to enter into and perform its obligations under this Agreement, and (iii) this Agreement is the valid and legally enforceable obligation of the City without exception for the conditions herein and/or in the 2013 Amended Term Sheet limiting the City's entitlement, rights and/or interests in the AGR Commitment payments.

**"Lehigh Property"** means the approximately 200 acres East of Buffington harbor Road and bordering Majestic owned property and Buffington Harbor portions of which are currently owned by GRC and/or Carmeuse Lime, Inc.

**"Local"** means located in the City or in Lake County, Indiana.

**"Majestic 1996 Agreement"** has the meaning set forth in Recital A.

**"1999 Agreement"** has the meaning set forth in Recital C.

**"Old Development Agreements"** has the meaning set forth in Recital D.

**"Other Agreements"** means (i) the Contract for Purchase of Real Estate/Offer to Purchase Real Estate dated September 1, 1999, by and between the City and Lehigh Portland Cement Company, (ii) the Agreement for Purchase and Sale of Real Estate dated as of September 29, 2000, by and among GNC, Buffington Harbor Parking Associates, LLC, Buffington Harbor Riverboats, L.L.C., and Remark Land Company, Inc. and (iii) the Assignment and Assumption

of the 1999 Agreement, and all such agreements in clauses (i) through (iii) as amended, restated or otherwise modified from time to time in accordance with their terms.

**"Overpass Project"** means the Access Road Overpass Project which consists solely of Segment 3 of Phase 2A of the original project described in the 1999 Agreement pursuant to a contract between the City and the Indiana Department of Transportation that has already been completed and such obligation satisfied fully by the City.

**"Party"** and **"Parties"** means each Party or all parties, as the case may be, to this Agreement.

**"Person"** means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other entity of whatever nature.

**"Professional Services"** means a service requiring specialized knowledge and skill, and requiring a license, certification, or registration. Professional Services include, but will not be limited to, attorneys, accountants and insurance brokers.

**"Reasonable Best Efforts"** means acting in good faith, actions reasonably calculated to achieve the stated objective.

**"Reconciliation"** has the meaning set forth in Section 5.02.

**"Sports Wagering"** means wagering conducted under Indiana Code 4-38-1-1 et seq. on athletic and sporting events involving human competitors and other events approved by the IGC.

**"TIF Funds"** means tax increment financing funds.

**"Trump 1996 Agreement"** has the meaning set forth in Recital B.

**"2005 Amendment"** has the meaning set forth in Recital D.

**"2013 Amended Term Sheet"** has the meaning set forth in Recital F.

**Section 1.02 Rules of Construction.** In this Agreement, (a) the singular includes the plural and the plural includes the singular; (b) words importing any gender include the other gender; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; (d) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; and (e) references to Persons include their respective successors and permitted assigns. All references herein to Recitals, Articles, Sections and Exhibits shall be deemed references to Recitals in, Articles and Sections of, and Exhibits to, this Agreement unless the context shall otherwise require. All the agreements or instruments herein referenced shall mean such agreements or instruments as the same may from time to time be modified, supplemented, amended or amended and restated, or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof and of this Agreement.

## **ARTICLE II. EFFECTIVE DATE CONDITIONS PRECEDENT**

**Section 2.01 City Effective Date Conditions Precedent.** The City shall have the right to terminate this Agreement by giving written notice to the Company within ninety (90) Business Days after the execution date if the following conditions (the "*City Effectiveness Conditions*") have not been satisfied:

- (a) The IGC shall have approved this Agreement, and any terms required by the IGC as a condition to such approval shall have been incorporated herein; and
- (b) The Gary Common Council shall have adopted an ordinance, which approved this Agreement.

**Section 2.02 Company Effective Date Conditions Precedent.** The Company shall have the right to terminate this Agreement by giving written notice to the City within ninety (90) Business Days after the execution date if the following conditions (the "*Company Effectiveness Conditions*") have not been satisfied:

- (a) The IGC shall have approved this Agreement, and any terms required by the IGC as a condition to such approval shall have been incorporated herein.
- (b) The Company shall have received the Legal Opinion.
- (c) The Company shall have received copies of all legally necessary administrative, legislative and regulatory approvals, orders, ordinances, resolutions and other documents evidencing the City's authority to enter into and perform all of its obligations under this Agreement.

## **ARTICLE III. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**Section 3.01 Authority of the Parties.** The Company represents and warrants to the City, and the City represents and warrants to the Company, that each has the authority and has obtained all necessary consents and approvals to enter into and perform its obligations under this Agreement.

**Section 3.02 Insurance.** The Company shall secure and maintain, at its sole cost and expense, all insurance, in no less than the minimum amounts required by the IGC. The Company shall name the City as an additional insured on its commercial general liability policy relating to the Casinos. The Company shall maintain workers compensation insurance as required by applicable law.

**Section 3.03 Navigational Aids.** The Company covenants and agrees to maintain two navigational aids and lighthouse, if any, located on Buffington Harbor in the same manner as the Company has undertaken before the date of this Agreement. With the written consent of City, which shall not be unreasonably withheld or delayed, the Company may assign this obligation to the owner of Buffington Harbor, its successors or assigns.

**Section 3.04 Employment Matters.**

- (a) The Company shall use its Reasonable Best Efforts to recruit, train, and upgrade minorities in all employment classifications, and (i) offer each employee employed at the Gary riverboat shall be offered a similar position at the inland location, and (ii) consider hiring and training individuals who have been laid off from the riverboat operating in East Chicago before considering other applicants for similar job openings, and (iii) give preferential hiring to qualified applicants who are residents of the City, for employment positions at the inland Casino and upon request will provide an annual report to the City, c/o the Office of the Mayor, and the Gary Common Council.
- (b) In connection with Future Projects, the Company shall provide periodic reports no less than annually with respect to employment and training to the City, c/o the Office of the Mayor, and the Gary Common Council.

**Section 3.05 Unionized Labor.** The Company covenants and agrees to endeavor to maximize its use of unionized labor paid at prevailing rates, consistent with the applicable trade, in connection with the construction of any Future Projects, to the extent that such unionized labor can provide quality labor at competitive prices as determined by the Company in its sole discretion. The City and the Company agree to use their Commercially Reasonable Efforts to encourage building trades to enter into project agreements with local contractors with the objective of giving preferential hiring to qualified residents of Gary, Indiana and then to qualified residents of Lake County, Indiana. The Company shall reasonably cooperate with the City in connection with achieving the goals set forth in this Section and, upon request, will provide annual reports with respect thereto to the City, c/o the Office of the Mayor, and the Gary Common Council.

**Section 3.06 Local Vendors.** Company covenants and agrees to use Commercially Reasonable Efforts to endeavor to meet certain utilization thresholds with regard to the use of Local suppliers and vendors to support the operations of the Casino, including any development, construction, and equipping of any Future Projects, with particular emphasis on the inclusion of "minority-owned business enterprises", "women-owned business enterprises", and veteran-owned business enterprises" (as those terms are defined in the Act); *provided*, that such suppliers and vendors can provide quality goods and/or Professional Services at competitive prices. The City encourages and the Company agrees to use their Commercially Reasonable Efforts to foster the formation of "joint ventures" (as defined in the Act) and to use such joint ventures in any Future Projects. The Company shall reasonably cooperate with the City in connection with its efforts under this Section and, upon request will provide annual reports with respect thereto to the City, c/o the Office of the Mayor, and the Gary Common Council. The utilization thresholds established by this section shall be as follows:

- 40% minority-owned business enterprises;
- 10% women-owned business enterprises; and

5% veteran-owned business enterprises.

Company non-compliance with the provisions contained in Section 3.06 above shall be considered a breach of the LDA and subject to arbitration. For the purposes of calculating utilization thresholds established by this Section, minority-owned business enterprises, women-owned business enterprises, and veteran-owned business enterprises are not required to be certified under the Act or IC 4-13-16.5. Whenever the Company issues a request for proposals for goods or services or issues a bid package for construction related work (collectively and individually, "Competitive Process"), it shall simultaneously provide a general summary of the type of work or services that are the subject of the Competitive Process to the Public Works Department of the City of Gary. If the Company receives a request to be included in the Competitive Process from minority owned business or a women owned business, as defined in the Act, which is located in the City of Gary ("Interested Business"), it shall allow the Interested Business the opportunity to participate in the Competitive Process. The Company, at its option, may require the Interested Business to provide the Company with a confidentiality agreement as a condition precedent to receiving information about the Competitive Process.

**Section 3.07 Governmental Permits.** The Company covenants and agrees to endeavor to obtain and maintain all licenses, permits, and certifications required for the lawful construction of any Future Project (except for those which, by their nature, are customarily required to be obtained by the City) and the operation of the Casinos, including, but not limited to, zoning reclassifications and/or variances, site plan approval, permits and approvals of the Army Corps of Engineers and U.S. Coast Guard, and such other federal, state, and local agencies as are necessary to provide alcoholic beverage service, food service, construction, operation, maintenance, and overall public health (collectively, the "***Governmental Permits***"). The City agrees to cooperate with the Company's efforts to secure the Governmental Permits, including, but not limited to, joining in such proceedings and applications as may be necessary to obtain or maintain Governmental Permits, the Company's right to bring such proceedings and applications in the City's name, the City's provision of such Governmental Permits from the City, and the City's commencement and prosecution of such condemnation and other proceedings as may be necessary to furnish utilities or other property rights to or for any Future Project; *provided*, that the City shall not be liable for the payment of any costs or expenses in connection with any such proceedings or applications. The Company shall reimburse and indemnify the City for its share of any and all reasonable costs or expenses that the City may incur in connection any such proceedings or applications. In no event, however, shall the City's cooperation be deemed to require the City or any agency or instrumentality thereof to surrender or refrain from exercising its customary municipal authority regarding zoning approval, site plan approval, demolition and/or building permits or certificates of inspection and/or occupancy.

**Section 3.08 Compliance Reporting.** During the pendency of any Future Projects, the Company covenants and agrees to provide, at its own expense, to the City, and the Gary Common Council, information showing the amounts, percentages, identity and nature of the work force of and unionized labor used by the Company and the goods and services purchased from Local suppliers and vendors in connection with any such Future Project. The Company agrees to conduct an outreach program assisting minority-owned business enterprises and women-owned business enterprises in becoming aware of the Company's contracting needs and requirements.

**Section 3.09 Sanitary Sewer Access.** The Company covenants and agrees to use the sanitary sewer system of the City's Gary Sanitary District in connection with the inland Casino and any Future Project.

**Section 3.10 Emergency Response Plan.** The Company covenants and agrees to maintain an emergency response plan in accordance with applicable governmental laws, rules and regulations. A copy of the emergency response plan will be provided to the City.

**Section 3.11 Meetings with the City.** The Company covenants and agrees to meet jointly with representatives of the Mayor's Office on an annual basis to discuss and explain (a) the Company's plans with respect to the Casinos and any Future Project, and (b) the Company's efforts as described in Sections 3.04, 3.05, and 3.06.

**Section 3.12 Marketing Program.** The Company covenants and agrees to cooperate with the City to formulate and execute a marketing program for the City to promote the Casinos and the City; provided, neither party shall be required to contribute any funds to formulate and/or execute such marketing program.

**Section 3.13 Charitable Foundation Contribution.** Before May 30 of each year, after this Agreement remains in full force and effect, in accordance with the directive of the Mayor of the City of Gary, the Company or an Affiliate thereof shall make an annual contribution to a charity foundation that complies with Section 501(c) (3) of the Internal Revenue Code of Fifty Thousand and 00/100 Dollars (\$50,000.00) to provide scholarships for residents of the City to attend postsecondary educational institutions. Any charitable organization that is to receive funds hereunder must consent and agree to utilize ninety percent (90%) of all funds for direct scholarship contributions and no more than ten percent (10%) thereof shall be used for administrative or non-scholarship costs.

**Section 3.14 Transition Fee.** The Company, after the passage of a resolution (agreement) by the legislative body of the City of Gary to allow gaming operations to move to an inland casino within the City, shall provide the City with an upfront Five Million Dollar (\$5,000,000) payment (the "Transition Fee") provided that it is able to borrow \$5MM to pay the Transition Fee. The timing of the payment of the Transition Fee, amortization and other details are all contingent upon the Company's ultimate agreement with its lenders. Company agrees to utilize its best efforts to secure funding for payment of the Transition Fee. In exchange for the Transition Fee, the Company shall receive a credit of not less than eighty three thousand, three hundred thirty three dollars and thirty three cents (\$83,333.33) per month for a total of sixty (60) months.

**Section 3.15 Reimbursement of Legal Fees.** The Company shall reimburse the City on the Effective Date, for legal expenses incurred on its behalf in conjunction with the negotiation of this Agreement by Ice Miller, LLP, in the amount of \$108,950.

**Section 3.16** The Company shall consider entering into a joint venture with the Gary Port Authority and State of Indiana for development of the existing gaming site, Buffington Harbor, for the benefit of the City and Company.



#### **ARTICLE IV. TERMINATION, WAIVERS AND RELEASES**

**Section 4.01 Termination of Old Development Agreements and 2011 Term Sheet.** As of the Effective Date, the 2013 Amended Term Sheet, the 2011 Term Sheet, and the Old Development Agreements are terminated, and shall have no further force or effect.

**Section 4.02 Mutual Releases.** Each of the Company and the City on behalf of themselves and their respective constituents (predecessors, successors, assigns, etc.), hereby waive and fully release any and all claims against the others arising out of the: (1) 2013 Amended Term Sheet, (2) 2011 Term Sheet, (3) Old Development Agreements or rejection thereof, (4) Other Agreements, including, without limitation, claims by the Company arising out of past nonfulfillment of the City's obligations, and claims by the City arising out of the Company's payments with respect to the AGR Commitment into the LDA Account rather than making AGR Commitment payments to the City, claims arising in bankruptcy or otherwise, and (5) the Local Development Agreement dated February 21, 2018. Releases will have no effect on (i) ordinary course liabilities not related to the 2013 Amended Term Sheet, 2011 Term Sheet, the Old Development Agreements or this Agreement (e.g. ordinary tax obligations); and (ii) claims against Don H. Barden and/or his Estate and/or any non-Company entity controlled or owned by Don H. Barden and/or his Estate and/or his its affiliates, and such entities' respective members, officers, directors, agents, financial advisors, attorneys, employees, partners, affiliates and representative.

#### **ARTICLE V. PAYMENT OBLIGATIONS**

**Section 5.01 AGR Commitment Payments.** Except as otherwise provided in this Agreement, and subject to the provisions hereof commencing on the tenth (10th) day of the first full calendar month after the Effective Date and continuing on the tenth (10th) calendar day of each month thereafter that this Agreement remains in full force and effect, the Company shall pay the City, for each of Majestic I and Majestic II (or any successor entity or operations within the City):

- (a) an amount equal to three (3%) of Adjusted Gross Receipts (AGR Commitment); and
- (b) an amount equal to three percent (3%) of the Company's net commission received from any sports wagering vendor (as that term is defined by the Indiana Code), before any other fees are deducted or other adjustments are made to such commission by the Company.

Beginning January 1, 2020, in no event should the combined total AGR Commitment for the Company in any calendar year be less than Six Million, One Hundred Fifty Thousand Dollars and 00/100 (\$6,150,000). If the combined total amount of the payments on account of the aggregate AGR Commitments for the Company exceeds Six Million, One Hundred Fifty Thousand Dollars and 00/100 (\$6,150,000) in any calendar year, the amount of the excess of Six Million, One Hundred Fifty Thousand Dollars and 00/100 (\$6,150,000) shall be deposited into the Lakefront Fund, which is maintained by Majestic. Notwithstanding the above, the minimum

AGR Commitment for calendar year 2019 shall be Six Million, Fifty Thousand Dollars and 00/100 (\$6,050,000).

Funds currently or in the future held in the Lakefront Fund may be used by the Company in its sole discretion for: (a) Infrastructure improvements; (b) Capital expenditures; (c) Property improvements related to the Company's Gary Indiana Casino; (d) Financial support of governmental and not for profit organizations, which enhance the health, well-being, quality of life and education of Gary residents; (e) Financial support of governmental and not for profit organizations, whose mission is to beautify and redevelop the City of Gary, including but not limited to, the demolition of structures and the acquisition of real estate for redevelopment, provided that the Company shall account for such funds and their uses in an annual report delivered to the City; and (f) expenditures in furtherance of the maintenance, improvement, promotion, development, and preservation of Buffington Harbor and its vicinity. The use of the Lakefront Funds in a manner inconsistent with this Agreement will be considered a Material Breach, whereby Company will repay to the City a 50% portion of those funds used inappropriately, representing the City's share thereof.

**Section 5.02 New Casino AGR Commitment Payment(s).** Except as otherwise provided in this Agreement, and subject to the provisions hereof commencing on the tenth (10th) day of the first full calendar month after the Effective Date and continuing on the tenth (10th) calendar day of each month thereafter that this Agreement remains in full force and effect, the Company shall pay the City an additional one-half percent (.5%) of Adjusted Gross Receipts ("AGR") as defined in Indiana Code Section 4-33-2-2 from the operation of all gaming at any Vigo County casino established by the Company, as well as an additional one-half percent (.5%) of the Company's net commission received from any sports wagering vendor (as that term is defined by the Act) (before any other fees are deducted or other adjustments are made to such commission by the Company), should the Company or an affiliate of the Company be the successful bidder of gaming operations in Vigo County. This payment will commence for a period of ten years from the date of opening of the new location, and will be separate from and in addition to the payment obligations arising under Section 5.01 of this Agreement. This payment will be made by the entity holding the gaming license in Vigo County, be it the Company or an Affiliate of the Company. The Company shall ensure payments due under this Section 5.02 are made to the City until such time as the Vigo County entity executes and delivers to the City an agreement substantially in the form of Exhibit A attached hereto, at which time, the Company shall be relieved of any further obligations under this Section 5.02.

**Section 5.03 Reconciliation.** The City and the Company shall perform a reconciliation (each a "Reconciliation") of the payments of the AGR Commitment made by the Company with the actual AGR for each calendar quarter within thirty (30) days after the last day of each calendar quarter. Any overpayment of the AGR Commitment with respect to a calendar quarter shall be deducted from the next monthly AGR Commitment installment(s) due and payable. The Company agrees to pay any underpayment of the AGR Commitment with respect to a calendar quarter with the next monthly AGR Commitment installment due and payable.

**Section 5.04 Financial Reporting.** The Company shall maintain and keep or cause to be maintained and kept full and accurate books and records within the City or such other accessible location, which may reasonably assist the City in determining the revenues supporting

the AGR Commitment and all other financial commitments of the Company hereunder. If the Company maintains permanent records in a computerized format, the Company shall provide to the City, on reasonable request, a detailed index thereto.

**Section 5.05 Periodic Review.** Every five (5) years or as requested by Company or City following a material event or change to market, legislative, or operational conditions, the City and the Company shall review and reconsider the provisions of this Agreement and their ongoing respective rights and obligations to assess the equity thereof with respect to each Party in light of then-current market conditions affecting the operation and maintenance of the Casinos. The Company and the City shall negotiate in good faith any modification of this Agreement necessary to implement the results of such review and reconsideration.

## **ARTICLE VI. CONTINUING SUPPORT OBLIGATIONS**

**Section 6.01 License Renewal.** The City shall affirmatively support future renewals of the Company's gaming licenses before the IGC unless the Company (i) is in material breach of this Agreement, as the same may be amended, modified, restated or superseded, or (ii) has failed to negotiate in good faith in connection with the Periodic Review as defined in Section 5.04 above conducted at the time of the license renewal application then being considered.

**Section 6.02 Future Company Development.** The Company agrees to discuss with the City its plans for Future Projects relating to the economic development, infrastructure and facilitating available TIF Funds through the GRC including the development of additional casino facilities and/or land-based facilities in the City of Gary.

**Section 6.03 Acknowledgment of Fulfilled Obligations.** The Parties acknowledge that they (a) have fulfilled any and all development obligations under the Old Development Agreements, including those obligations that relate to any portion of the Company Lehigh Property and the Company's other real property used in connection with or related to the operation of the Casinos, and (b) neither has any current obligation to undertake any development activities or predevelopment activities with respect to the Company Lehigh Property and the Company's other real property used in connection with or related to the operation of the Casinos. The City has fulfilled all obligations related to the Overpass Project.

**Section 6.04 Condition to Entitlement to Future AGR Commitment Payments.** Subject at all time to events of *force majeure*, the absence of a material breach by the City under this Agreement of its obligations as set forth in the provisions above titled License Support Obligations which breach is not cured by the City following notice and a reasonable opportunity to cure (an "Other Material Breach") shall be a further condition to the City's entitlement to receive any AGR Commitment payments that would otherwise have been payable after such Other Material Breach, up to the full amount of such AGR Commitment payments that are necessary to cure such Other Material Breach.

If the City fails to cure any such Other Material Breach within a reasonable period not to exceed fifteen (15) Business Days after receipt of such notice (each, an "Other Material Breach"), the Company shall have the right, in its sole discretion, (a) to withhold from any payment of AGR Commitment otherwise payable to the City an amount equal to the cost of

curing such Other Material Breach, and (b) to use the amount so withheld to cure such Other Material Breach and/or to deposit such amount into a segregated interest-bearing account pending resolution of any dispute with the City regarding such Other Material Breach.

**Section 6.05 Easement for Company Signage.** The City hereby grants the Company and its successors and assigns, at no cost, an easement to place signage on the property owned by the City and located between Cline Avenue and the City pond at Cline Avenue and Buffington Harbor Drive as long as the Casinos are in operation at current location.

## **ARTICLE VII. MISCELLANEOUS**

**Section 7.01 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Indiana, without reference to the choice-of-law principles thereof.

**Section 7.02 Arbitration.** Except to the extent that administrative remedies are required to be exhausted under the rules of the IGC, all controversies and claims arising hereunder shall be settled by binding arbitration in Lake County, Indiana in accordance with the rules of the American Arbitration Association. The City and the Company shall each select an arbitrator, and the two arbitrators so selected shall select a third arbitrator to constitute the arbitration panel. The costs and expenses of the arbitration shall be borne equally by the Parties. All judicial actions or proceedings brought in connection with such arbitration shall be litigated in the courts of Lake County, Indiana or the United States District Court for the Northern District of Indiana.

**Section 7.03 Entire Agreement.** This Agreement constitutes the entire understanding of the Parties with respect to the matters addressed herein. All prior or contemporaneous agreements, understandings, representations, warranties, and statements, whether oral or written are replaced hereby and shall have no force or effect. This Agreement, may not be waived, modified, amended, discharged or terminated except by an instrument in writing signed by both Parties.

**Section 7.04 Counterparts.** This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed to be an original instrument, and all counterparts shall together constitute but one agreement.

**Section 7.05 Assignment.** The City may not assign its rights or obligations under this Agreement. The Company may, without the prior consent and upon written notice to the City, assign its rights or obligations under this Agreement to any successor entity that purchases or assumes ownership of all or substantially all of the assets or stock of the Company.

**Section 7.06 Previous Settlement.** The City and Company completed an environmental remediation settlement in October 2013. The City and Company have fully satisfied and/or complied with its part in the environmental remediation settlement of October 2013. The City and Company agree that the City shall not take any action (i) reasonably likely to cause an applicable government or other party to assert a claim that seeks remediation or other environmental compliance-related activity or (ii) to compromise, admit any fact, concede

liability or otherwise materially prejudice the Company's ability to defend any actual or potential claim or to complete the remediation activities. In the event the Company, the Trust or any Affiliate acquires from GNC, the 6-acre parcel located on the Harbor, this Release shall also apply to the 6-acre parcel.

The City represents and warrants that it has furnished the Company with all reports and other pertinent materials it has received with respect to any environmental remediation that may be needed or liabilities that may be incurred in connection with the Company Lehigh Property and any other land owned or used by the Company in connection with the operations of its Gary, Indiana casinos, including, but not limited to, the land for the Overpass-Project. The Company shall not be required by the City to undertake any remediation activities with respect to the Lehigh Property. The City shall not be required by the Company to undertake any further remediation activities with respect to the Lehigh Property.

The Company, the Trust or any Affiliate shall continue to fully comply with the Environmental Restrictive Covenant filed by the Company, dated November 25, 2013 and recorded in the Lake County Recorder's Office on December 12, 2017. The document filed includes: "A No Further Action Letter" (NFA) / "No Further Correction Letter," prepared and issued from the Indiana Department of Environmental Management attached as Exhibits.

**Section 7.07 Successors and Assigns.** This Agreement shall be binding on and its benefits shall inure to the Parties hereto and their respective successors and assigns. Nothing herein shall be deemed to create rights on behalf of any person or entity which is not a Party to this Agreement.

**Section 7.08 Notices.** All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be sent by nationally recognized overnight courier (subject to written delivery confirmation thereof) or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt or refusal. The initial addresses of the Parties shall be:

To the City: City of Gary, Indiana  
Office of the Mayor  
Mayor Karen Freeman-Wilson  
401 Broadway  
Gary, Indiana 46402

And: City of Gary, Indiana  
City of Gary Law Dept.  
Gregory Thomas, Corporation Counsel  
401 Broadway, Suite 101  
Gary, Indiana 46402  
Email: [Glthoms@ci.gary.in.us](mailto:Glthoms@ci.gary.in.us)  
Fax: 219-881-1362

with a copy to: Ice Miller LLP

One American Square  
Suite 2900  
Indianapolis, IN 46282  
Attn: Joseph L. Champion  
Telephone: 317-236-5967  
Email: [Joseph.Champion@icemiller.com](mailto:Joseph.Champion@icemiller.com)

To the Company: Majestic Star Casino, LLC and Majestic Star Casino II, LLC  
Attn: Janae Erpenbach  
One Buffington Harbor Dr.  
Gary, IN 46406  
Email: [jerbenbach@majesticstar.com](mailto:jerbenbach@majesticstar.com)  
Telephone: : 219-972-7720

And: Majestic Star Casino, LLC and Majestic Star Casino II, LLC John  
S. Keeler, General Counsel  
111 Monument Circle, Suite 777  
Indianapolis, Indiana 46204  
Email: [jkeeler@spectacleentertainment.com](mailto:jkeeler@spectacleentertainment.com)  
Fax: 317-536-9339

with a copy to: Peter J. Rusthoven, Esquire  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Email: [peter.rusthoven@btlaw.com](mailto:peter.rusthoven@btlaw.com)  
Fax: (317) 231-7433

Upon at least ten (10) days' prior written notice, each Party shall have the right to change its address to any other address. Nothing herein shall be deemed to relieve the Company from compliance with any state or federal law or rule respecting service of process.


**Section 7.09 Compliance with Indiana Code Section 4-33-23-8.** All Parties to this Agreement recognize the authority of the IGC over this Agreement, including, without limitation, the authority to disapprove all or part of this Agreement, to verify and ensure payments made under this Agreement, to verify and ensure expenditures by recipients, to verify and ensure compliance with the purposes of the Agreement, and to act concerning modification to the Agreement. All Parties to this Agreement agree to comply fully with any requests for information or directives related to the exercise of the IGC's authority.

*[Signature Page Follows]*


IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the day and year first written above.

**The BOARD OF PUBLIC WORKS of the  
CITY OF GARY, INDIANA, an Indiana  
municipal corporation**

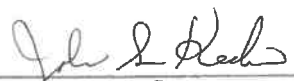
By:   
Name: Dayna Bennett  
Title: President

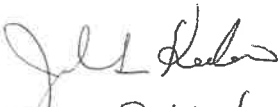
By:   
Name: Angelia Hayes  
Title: Vice President

By:   
Name: Coteal LaBroi  
Title: Secretary

By:   
Name: Karen Freeman-Wilson  
Title: Mayor

The Majestic Star Casino, LLC  
[•], an Indiana [limited liability  
company/incorporation]

By:   
Name: [•] John S. Keelen  
Title: [•] Vice President & General Counsel

The Majestic Star Casino II, LLC,  
a Delaware Limited Liability Company  
By:   
John S. Keelen  
Vice President & General Counsel

**EXHIBIT A**  
**GUARANTEED PAYMENT AGREEMENT**

THIS GUARANTEED PAYMENT AGREEMENT (this "*Agreement*") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and among (i) the City of Gary, an Indiana municipal corporation (the "*City*") and [•], an Indiana [limited liability company/incorporation] (the "*Company*").

**RECITALS**

A. The City and an affiliate of the Company entered into that certain Local Agreement dated February 21st, 2018, desiring to set forth their mutual rights and obligations going forward on the matters addressed therein, entirely superseding and replacing any and all prior agreements, by or among the City, the Company and the GRC and any of their predecessors, including the 2011 Term Sheet, 2013 Amended Term Sheet and the Old Development Agreements (the "*Local Agreement*"); and

B. The City and the Company Amended and Restated the Local Agreement in its entirety (the "*Amended and Restated Local Agreement*"); and

C. Pursuant to Section 5.02 of the Amended and Restated Local Agreement, the Company is obligated to pay the City certain fees in exchange for the City's approval of a transfer of a gaming license to the Company.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer, intending to be legally bound, agree as follows:

**ARTICLE I. AGREEMENT**

**Section 1.01** The Company hereby agrees that:

- (a) Commencing on the tenth (10th) day of the first full calendar month after the Effective Date of the Amended and Restated Local Agreement and continuing on the tenth (10th) calendar day of each month thereafter that the Amended and Restated Local Agreement remains in full force and effect, the Company shall pay the City one-half percent (.5%) of Adjusted Gross Receipts ("AGR") as defined in Indiana Code Section 4-33-2-2 from the operation of all gaming at any inland casino established by the Company, as well as an additional one-half percent (.5%) of the Company's net commission received from any sports wagering vendor (as that term is defined by the Act) (before any other fees are deducted or other adjustments are made to such commission by the Company). This payment will commence for a period of ten years from the date of opening of the new location, and will be separate from and in addition to the payment obligations arising under Section 5.01 of the Amended and Restated Local Agreement.



IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the day and year first written above.

**The BOARD OF PUBLIC WORKS of the  
CITY OF GARY, INDIANA, an Indiana  
municipal corporation**

By: \_\_\_\_\_  
Name: Niquelle Allen Winfrey  
Title: President

By: \_\_\_\_\_  
Name: M. Celita Green  
Title: Vice President

By: \_\_\_\_\_  
Name: Cloteal LaBroi  
Title: Secretary

By: \_\_\_\_\_  
Name: Karen Freeman-Wilson  
Title: Mayor

[•], an Indiana [limited liability  
company/incorporation]

By: \_\_\_\_\_  
Name: [•]  
Title: [•]