

JOINT DEVELOPMENT AGREEMENT [Proposed Version 11-13-13]

This Joint Development Agreement is entered into by and between the City of Davenport (the “City”), Scott County Casino, LLC (“SCC”) and the Riverboat Development Authority (“RDA”) as of this ____ day of _____, 2013.

WHEREAS, City wishes to enter into an agreement to maximize the value of a new gaming operation to the citizens of the City of Davenport; and

WHEREAS, SCC wishes to enter the Quad City market and establish a gaming operation and related amenities that will be the most popular and most successful in the area; and

WHEREAS, RDA is the qualified sponsoring organization (“QSO”) and holder of the gaming license pursuant to which it is authorized to conduct gaming in Scott County with SCC as its operator; and

WHEREAS, RDA and SCC are jointly licensed by the Iowa Racing & Gaming Commission in order to maximize development opportunities for Scott County and the State of Iowa; and

WHEREAS, RDA and SCC have entered into the RDA Rhythm City Operations Agreement dated September 16, 2013 (the “Operations Agreement”); and

WHEREAS, City has agreed to cooperate with RDA as the licensee/QSO and SCC as the licensee/operator of a casino complex on the terms and conditions of this non-exclusive Agreement;

NOW, THEREFORE, in consideration of the obligations expressed herein which both parties acknowledge are adequate, the parties agree as follows:

1. The Development. SCC will construct a casino complex (the “Casino Complex”), at a location to be determined by SCC, subject to City zoning and development approvals. The Casino Complex shall be constructed on land and will be constructed within the Casino Overlay District. The Casino Complex may be constructed in phases, but the casino must be open within thirty-six months of the date of this agreement and all elements must be completed and open to the public for business within 5 years, of the date that the Iowa Racing & Gaming Commission approves SCC’s operator’s license for a Davenport location.

2. Casino Complex Minimum Elements. The Casino Complex area shall consist of the following elements 2.a. - 2.d. at a minimum, with a documented total investment, in addition to the acquisition of the existing Rhythm City casino from the Isle of Capri, of at least \$100 million, to include all investments made by or on behalf of SCC and comprised of hard costs (including furniture, fixtures and equipment), soft costs, debt, equity, development fees, taxes, fees and expenses associated with the Casino Complex and all other parking, hotel, dining, entertainment and similar facilities and amenities described in this Agreement:

a) a Casino with a minimum of 30,000 square feet, 900 slot machines, 25 table games, poker room high stakes/VIP, players club and guest services;

- b) a hotel containing at least 95 hotel rooms (five suites), spa/fitness center, retail/gift shop, private meeting rooms and business center;
- c) a performance theatre with 1,500 tiered seats and private balcony suites; and
- d) dining venues including a 50 seat sports bar/grille, 250-seat action buffet, 80-seat fine dining steak house, 24-hour grab-n-go deli, two level center feature show lounge/bar and centralized kitchen.

3. Casino Complex Minimum Assessed Value. SCC agrees that the total fair market value on a cost basis for taxable improvements and land for real estate tax appraisal purposes (State, County and City) for the elements described as 2.a. through 2.d. above, as of January 1st following substantial completion shall be at least \$60 million.

SCC agrees not to appeal its assessed values below \$55 million at any time unless an event, natural or otherwise, causes physical damage to the element and reduces its fair market value to less than 75% of the assigned value above or the casino is not operating due to legislative or regulatory action beyond the control of SCC. SCC agrees to execute a memorandum for recording purposes setting forth the requirements of this Section to be filed with the Scott County Recorder.

4. Casino Complex Development Fee to City. Commencing on the date SCC closes the purchase of the Rhythm City casino, SCC shall pay 2.165% of its Adjusted Net Gaming Win, defined as adjusted gross receipts (gross receipts less winnings paid to wagerers) less taxes paid under 99F, to the City calculated on a weekly basis and paid monthly (by the 20th day following the end of each month) as a Development Fee. On the fourth anniversary of the date the Casino Complex opens, the Development Fee shall be as set forth in the Operations Agreement. Each of the Development Fees shall include and be in lieu of any admission fee which the City might otherwise be authorized to adopt pursuant to 99F.10(3) of the Code of Iowa. Additionally, SCC agrees that if it is no longer required to pay the additional 0.5% (of AGR) Gaming Tax (including any substitute tax) to City for whatever reason, the Development Fee shall be increased by any commensurate savings. Regardless of the foregoing, in no event shall the weekly calculation of the Development Fee be less than \$15,000.

Should SCC, and all associated development partners, not complete the minimum \$100 million investment described in Section 2 within 5 years of the date the Iowa Racing and Gaming Commission approves SCC's operator's license for a Davenport location, the Development Fee will increase to 5%, provided however if and at such time as the investment is at least \$100 million the Development Fee shall be determined according to the foregoing paragraph.

Pursuant to the Operations Agreement commencing on the fourth anniversary date of the Casino Complex opening, the City and RDA agree that the City's beneficial interest in the License Fee shall be 2.5% of Adjusted Net Gaming Win as set forth below:

- (i) One and Three Fourths Percent (1.75%) of Adjusted Net Gaming Win, in

accordance with written payment instructions provided by the City;

- (ii) Thirty-Five Hundredths Percent (.35%) of the Adjusted Net Gaming Win to Downtown Davenport Partnership (“DDP”), with the understanding that DDP will assume responsibility of SCC’s sky bridge maintenance obligation commencing on the date the Casino Complex opens; and
- (iii) Four-Tenths Percent (0.4%) of Adjusted Net Gaming Win from the Six and Four-Tenths Percent (6.4%) set forth in paragraph 1(c)(iii) of the Operations Agreement for casino district improvements/expenditures as determined by City. An advisory board/committee consisting of six members (three of whom shall be appointed by the RDA and three by the City, of whom one shall be Rory Washburn or another labor representative) shall assist with the definition and development of the district and recommend expenditures for City approval. These improvements/expenditures are intended to be in addition to the City’s usual and customary development expenditures and supplemental to any designated improvements pursuant to any tax increment financing, and will commence on the fourth anniversary of the date the Casino Complex opens and will terminate on the twelfth (12th) anniversary unless extended thereafter by the City and RDA.

The parties acknowledge that the Development Fee of One and Three-Fourths Percent (1.75%) payable to the City under 4(i) above is part of, and not in addition to, the City’s One and Three-Fourths Percent (1.75%) share of the License Fee under Section 1(c) of the Operations Agreement, and pursuant to the Operations Agreement, the City may direct SCC to make the One and Three-Fourths Percent (1.75%) payment directly to the City in which event the License Fee under the Operations Agreement payable to RDA will be reduced by the same amount.

5. Casino Complex Design Approval. Final exterior design and materials to be employed in the construction of the Casino Complex are subject to approval of the City which approval shall not be unreasonably withheld. Further, approval shall be deemed granted by the City if the City does not respond to a request for approval within thirty (30) days after delivery of the request to the City.

6. Further Cooperation. SCC and the City both agree to cooperate in good faith in connection with the performance of all the activities contemplated herein and to use all reasonable efforts to promptly respond to any reasonable requests or notices received by it from the other party. The parties further agree to diligently work toward executing all documents necessary to effectuating the purposes of this Agreement.

The City shall expedite all permitting, shall assist with IDOT permitting, if necessary, and will expedite City right-of-way vacations as may be mutually determined for development purposes.

7. Termination of IOC Davenport, Inc’s Agreements. Any conflicts between the IOC Davenport lease agreements and agreements between City and SCC shall be governed by the Consent to Assignment Agreement by and between City and IOC Davenport entered into as of October 23,

2013 and this Agreement. Accordingly, the following clarifies the parties' understandings concerning certain matters:

- a. Lease Termination. The Amendment to the Master Addendum, dated September 29, 2000, provides that the Promenade Lease, the Natatorium Site Lease, and the Oscar Mayer Lease all terminate effective March 31, 2017, subject to renewal terms. There is a separate Parking Agreement dated December 18, 2002 for 454 spaces in the Redstone Ramp parking facility at 101 Main Street. These leases are hereafter sometimes jointly referred to as the "Leases". SCC may terminate the Leases, and all tenant obligations thereunder will cease, even prior to March 31, 2017, upon commencement of gaming operations at the Casino Complex on 30 days written notice from SCC to the City. Further, SCC shall have no further obligations to the City under the Leases as of the effective date of termination by the tenant, including any obligation on SCC to remove any improvements installed by prior tenants; provided that, SCC shall remove the porte cochere upon written request from the City to do the same, if such request is made within ninety (90) days of SCC ceasing gaming operations on the riverfront.
- b. Lease Extensions. The parties confirm that SCC has the right to extend the Promenade Lease, Natatorium Lease and Oscar Mayer Lease beyond March 31, 2017, in their current form (no reduction in the number of spaces and continuing increases in rent as provided in such leases) for three additional one year periods, with each renewal exercisable in six month increments, until gaming operations at the Casino Complex commence and gaming operations at the riverboat cease.
- c. Development Fee. The Development Fee shall be in consideration of and also in lieu of any dock rent, levee fee, and in lieu of any rent under the Promenade and Natatorium Leases. To avoid confusion, it is the intent of the parties that the Oscar Mayer Lease and the Parking Agreement relating to the Redstone parking ramp shall continue as provided therein, subject to termination under 7(a) above, including SCC's obligations to make the required rental and other payments due thereunder.
- d. Docking Rights. The current casino docking privileges are set forth in Section 21 (p. 38) of the original Amended and Restated Davenport-Connelly Development Agreement dated November 29, 1990. Given that it is intended that all prior development agreements, including this 1990 Development Agreement, will be terminated, City hereby grants to SCC the necessary docking rights for SCC's operations to the same extent that such rents were granted in the 1990 Development Agreement.
- e. Blackhawk Lease. The parties acknowledge that this lease has previously been terminated by the parties.
- f. Lender Matters. City agrees to consent to the assignment of the Leases for SCC's financing purposes and to provide Landlord Estoppel Certificates and a Landlord's Consent substantially in the form of that attached hereto as Exhibit A.
- g. Dock Building Lease Area. The area leased to SCC under the Leases shall not include the area designated on Exhibit B, which area is intended for the Dock building

development.

8. Term and Termination. This Agreement shall be co-terminus with SCC's or its successors' or assigns' right to conduct gaming operations within Scott County, including any periods of renewal or extension. So long as SCC or its successors or assigns can legally conduct a gaming operation in Davenport, this Agreement shall be in effect.

However, a party may elect to terminate this Agreement due to an uncured default. A Notice to Terminate due to an uncured default shall be given 30-days in advance and only after a reasonable period to cure (not to exceed 90 days) has been given and expired without cure. When determining a reasonable period to cure, consideration should not be given to the subjective financial circumstances of the party in default.

The City may terminate this Agreement by letter, without Notice to Cure, if SCC has not:

- a) applied for an operator's license for a Davenport casino by December 31, 2013,
- b) secured an operator's license for a Davenport casino by March 31, 2014,
- c) commenced excavation for the foundation for a Davenport casino by November 1, 2014.
- d) opened a land based casino consistent with Section 2.a. within thirty-six months of the date of this agreement.

9. Contingent. The performance of the obligations under this Agreement are conditioned upon the IRGC approving SCC's operator's license for a Davenport location. If no such approval occurs, this Agreement shall terminate.

10. Default. The occurrence of any one or more of the following events shall constitute a material default under and breach of this Agreement (subject to cure under Section 9):

- a) Failure to pay any amount due and payable hereunder upon the date when such payment is due;
- b) Failure to observe or perform any material obligation or covenant under this Agreement, other than the payment of Rent or other monies due, after the party in default receives notice of such failure specifying the alleged default and the applicable provision(s);
- c) SCC violates or allows a violation of any applicable law, rule, statute, order, or regulation applicable to its gaming operations which results in termination of its operating agreement with the RDA or otherwise results in its license revocation by the IRGC; or
- d) The appointment of a receiver to take possession of all or substantially all of SCC's assets, an assignment by SCC for the benefit of its creditors, or the filing of a voluntary or involuntary petition in bankruptcy by SCC or its creditors, if such appointment, assignment, or petition remains undischarged for a period of thirty (30) days.

11. Third-party beneficiary. This Agreement shall not create nor shall it be construed to create any rights for or obligations to any third-party beneficiary.

12. Modification. This Agreement may be modified or supplemented by the parties. Any such amendment shall be in writing and signed by a duly authorized representative of the parties.

13. State of Iowa. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to City.

14. Integration. This Agreement represents the entire Agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in this Agreement.

15. Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent entity acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

16. Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of a party, failure or delay by either party at any time to require performance by the other party or to claim a breach of any provision of the contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

17. Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to SCC:

Scott County Casino, LLC
Attn: Dan Kehl
3184 Highway 22
Riverside, IA 52327

If to the City:

City Administrator
226 W 4th Street
Davenport, IA 52801

Each such notice shall be deemed to have been provided at the time it is actually received; or, within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or, within Three (3) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

18. Cumulative Rights. The various rights, powers, options, elections and remedies of any party provided in this Agreement, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

19. Authorization. Each party to this Agreement represents and warrants to the other party that: it has the right, power and authority to enter into and perform its obligations under this Agreement, it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

20. Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

21. Counterparts. The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

22. Delay or Impossibility of Construction Activity. Neither party shall be in default under this Agreement if construction activity required hereunder is delayed or made impossible by an act of God, flood, fire or similar events or civil insurrection or war. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the party. If delay results from a party's conduct, negligence or failure to perform, the party shall not be excused from compliance with their terms and obligations of this Agreement.

SCC and City have caused this Agreement to be signed by their authorized representatives as of the date set forth above.

Scott County Casino, LLC

City of Davenport

By _____
Daniel J. Kehl
Chief Executive Officer

By _____
William E. Gluba
Its Mayor

Riverboat Development Authority

By: _____
Name: _____
Title: _____

STATE OF IOWA)
) ss:
COUNTY OF RIVERSIDE)

On this _____ day of _____, 2013, before me a notary in and for said county and state, personally appeared Daniel J. Kehl, to me known, who being by me duly sworn (or affirmed) did say that he is the Chief Executive Officer of Scott County Casino, LLC; that said instrument was signed on behalf of the said organization by the authority of its board of managers and that Daniel J. Kehl acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it and by him voluntarily executed.

Notary Public

STATE OF IOWA)
) ss:
COUNTY OF SCOTT)

On this ____ day of _____, 2013 before me, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, and, who, being duly sworn, did say that s/he is the _____ of the City of Davenport, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Motion adopted by the City Council, under No. _____ on the ____ day of _____, 2013 and that _____ acknowledged the execution of the instrument to be her/his voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public

STATE OF)
) ss:
COUNTY OF)

On this _____ day of _____, 2013, before me a notary in and for said county and state, personally appeared _____, to me known, who being by me duly sworn (or affirmed) did say that he/she is a _____ of Riverboat Development Authority that said instrument was signed on behalf of the said organization by the authority of its board of _____ and that _____ acknowledged the execution of said instrument to be the voluntary act and deed of said company by it and by her/him voluntarily executed.

Notary Public