

LOCAL DEVELOPMENT AGREEMENT

THIS LOCAL DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this 15th day of March, 2022 by and among (i) the Board of Commissioners of Vigo County, Indiana (the “**County**”) and CDITH, LLC, a Delaware limited liability company (the “**Company**”).

RECITALS

WHEREAS, the 2019 Regular Session of the Indiana General Assembly enacted House Enrolled Act 1015, which was signed by the Governor on May 8, 2019 (“**HEA 1015**”);

WHEREAS, HEA 1015 authorized the Indiana Gaming Commission (“**IGC**”) to award one license to conduct inland gaming in the County subject to the satisfaction of certain conditions (“**License**”);

WHEREAS, one of the conditions is that an applicant for a License must have a local development agreement with the County;

WHEREAS, the Company has a License by the IGC and wishes to enter into a local development agreement with the County; and

WHEREAS, the County and the Company agree that this Agreement should be strategically aligned with the goals, pillars, and action items of Terre Haute and the County’s established community planning processes.

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, County and Company, 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 4-33-6-1, *et seq.*

“AGR” means adjusted gross receipts, as defined in Indiana Code Section 4-33-2-2, from the operation of the Casino, excluding Sports Wagering.

“AGR Commitment” has the meaning set forth in Section 4.01.

“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.

“Casino” means an inland casino owned by the Company and located in the County.

“Company” has the meaning set forth in the first paragraph of this Agreement.

“Company Commitment” has the meaning set forth in Section 4.01.

“Company Effectiveness Conditions” has the meaning set forth in Section 2.02.

“County” has the meaning set forth in the first paragraph of this Agreement.

“County Effectiveness Conditions” has the meaning set forth in Section 2.01.

“Effective Date” means the date that the County Effectiveness Conditions and Company Effectiveness Conditions have been satisfied.

“Foundation” means Queen of Terre Haute Foundation, Inc., an Indiana Not For Profit Corporation, qualified under the provisions of Section 501(c) (3) of the Internal Revenue Code, to be formed at the expense of the Company created to benefit Terre Haute, Vigo County and the surrounding West Central Indiana region. The foundation will be governed by a Eight (8) member Board of Directors appointed as follows: One (1) member consisting of the County Commissioner District 1 or their appointee; One (1) member consisting of the County Commissioner District 2 or their appointee; One member consisting of the County Commissioner District 3 or their appointee; Two (2) members consisting of the Mayor of the City of Terre Haute or their appointees; Two (2) members who are employees of the Company or its ultimate parent, Churchill Downs Incorporated; and One (1) member of the Chamber of Commerce.

“Governmental Permits” has the meaning set forth in Section 3.07.

“HEA 1015” has the meaning set forth in the first paragraph of this Agreement.

“IGC” has the meaning set forth in the Recitals.

“Legal Opinion” means an opinion issued by the Office of the County’s Attorney, in form and substance acceptable to the Company, opining, among other things, that (i) the County has the authority to enter into and perform its obligations under this Agreement, and (ii) the County has obtained all necessary administrative, legislative and regulatory approvals to enter into and perform its obligations under this Agreement.

“License” has the meaning set forth in the Recitals.

“Local” means located in Vigo County, Clay County, Parke County, Putnam County, Sullivan County or Vermillion County.

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

“Person” means an individual, a sole proprietorship, a partnership, an association, a fiduciary, a corporation, a limited liability corporation, or any other business entity.

“Reconciliation” has the meaning set forth in Section 4.02.

“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.

“Sports Wagering Commitment” has the meaning set forth in Section 4.01.

“Taxable Sports Wagering AGR” means sports wagering adjusted gross revenue eligible for taxation, defined as Handle (wagers) less the payouts on winning wagers and amounts uncollectable as outlined in 68 IAC 27-1-2.

“Third Party Sports Wagering Vendor” means any sports wagering operator that operates a sports wagering platform in the State of Indiana via a sports wagering license held by the Company.

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 County Effective Date Conditions Precedent. The County shall have the right to terminate this Agreement by giving written notice to the Company within one hundred and eighty (180) Business Days after the execution date if the following conditions (the ***“County 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

Section 2.02 Company Effective Date Conditions Precedent. The Company shall have the right to terminate this Agreement by giving written notice to the County within one hundred and eighty (180) Business Days after the execution date if the following conditions (the ***“Company Effectiveness Conditions”***) have not been satisfied: 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.

- 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; and
- c) The Company shall have received copies of all legally necessary administrative, legislative and regulatory approvals, orders, ordinances, resolutions and other documents evidencing the County'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 County, and the County 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 Casino. The Company shall maintain workers compensation insurance as required by applicable law.

Section 3.03 Employment Matters. Subject to applicable laws and regulations, the Company shall use commercially reasonable efforts to prioritize the recruitment, training, and promotion of Local residents.

Section 3.04 Construction Labor. The County 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 Local residents.

Section 3.05 Local Vendors. As permitted by all applicable laws and regulations and subject to any Company policies around MBE/WBE vendor requirements, Company covenants and agrees to use commercially reasonable efforts to endeavor to use Local suppliers and vendors to support the Casino, including in development, construction, equipping and operations; *provided*, that such suppliers and vendors can provide quality goods and/or services at competitive prices as determined by the Company in its sole discretion.

Section 3.06 Foundation Priorities. The County and the Company agree to use commercially reasonable efforts to ensure that the Foundation will prioritize goals and pillars such as the City of Terre Haute & Vigo County 2025 Community Plan and the West Central 2025 initiative, including for example, but not limited to:

- a) Economic Development;
- b) Health and Wellness;
- c) Infrastructure;
- d) Quality of Life;
- e) Talent Attraction/ Retention; and
- f) Tourism.

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 the Casino (except for those which, by their nature, are customarily required to be obtained by the County) and the operation of the Casino, including, but not limited to, zoning reclassifications and/or variances, site plan approval, permits and approvals of 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 County 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 County’s name, the County’s provision of such Governmental Permits from the County, and the County’s commencement and prosecution of such condemnation and other proceedings as may be necessary to furnish utilities or other property rights to or for the Casino; *provided*, that the County 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 County for its share of any and all reasonable costs or expenses that the County may incur in connection any such proceedings or applications. In no event, however, shall the County’s cooperation be deemed to require the County 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 Support of County. The County agrees that it shall not adopt any ordinance or resolution or take any other action term of any agreement pursuant to which the Company operates the Casino (the “**Term**”) which would support, incent, encourage or, to the extent within their powers, allow any other gaming in their respective jurisdictions during the Term and, to the extent within their powers, shall adopt ordinances banning all other gaming within their jurisdictions during the Term. The County agrees to use its best efforts to enforce any applicable law related to other forms of legal and illegal gaming in the County. Additionally, the County shall oppose and lobby against any increase or reallocation of the applicable gaming tax levied upon the Casino or other legislation that will have a direct or indirect adverse impact on the Casino and/or the Casino’s support facilities.

Section 3.09 Marketing Program. The Company covenants and agrees to cooperate with the County to formulate and execute a marketing program for the County to promote the Casino and the County; provided, neither party shall be required to contribute any funds to formulate and/or execute such marketing program. Nothing contained in this Agreement shall be deemed to restrict the Company’s right or ability to alter the marketing plan promoting the Casino as the Company deems advisable in its sole discretion.

ARTICLE IV. PAYMENT OBLIGATIONS

Section 4.01 Company 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 Foundation:

- a) An amount equal to three percent (3%) of AGR up to one-hundred and seventy-five million dollars (\$175,000,000) per calendar year and an amount equal to three point two five percent (3.25%) of AGR exceeding one-hundred and seventy-five million dollars (\$175,000,000) per calendar year (the “**AGR Commitment**”); and
- b) An amount equal to three percent (3%) of the Company’s Taxable Sports Wagering AGR generated from operations or received from any Third-Party Sports Wagering Vendor (the “**Sports Wagering Commitment**” and, together with the AGR Commitment, the “**Company Commitment**”).

Section 4.02 Reconciliation. The County and the Company shall perform a reconciliation (each a “**Reconciliation**”) of the payments of the Company Commitment made by

the Company each calendar quarter within thirty (30) days after the last day of each calendar quarter. Any overpayment of the Company Commitment with respect to a calendar quarter shall be deducted from the next monthly Company Commitment installment(s) due and payable. The Company agrees to pay any underpayment of the Company Commitment with respect to a calendar quarter with the next monthly Company Commitment installment due and payable.

Section 4.03 Financial Reporting. The Company shall maintain and keep or cause to be maintained and kept full and accurate books and records within the County or such other accessible location, which may reasonably assist the County in determining the revenues supporting the Company 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 County, on a reasonable request, a detailed index thereto.

Section 4.04 Periodic Review. Every five (5) years or as requested by the Company or County following a material event or change to market, legislative, or operational conditions, the County 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 Casino. The Company and the County shall negotiate in good faith any modification of this Agreement necessary to implement the results of such review and reconsideration.

ARTICLE V. CONTINUING SUPPORT OBLIGATIONS

Section 5.01 License Renewal. The County 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 4.04** above conducted at the time of the license renewal application then being considered.

Section 5.02 Annual Meetings. The Company agrees to meet jointly with the County on an annual basis to discuss economic development and its efforts as described in **Sections 3.03, 3.04, and 3.05.**

Section 5.03 Condition to Entitlement to Future Company Commitment Payments. Subject at all time to events of *force majeure*, the absence of a material breach by the County under this Agreement of its obligations as set forth in the provisions above titled License Support Obligations which breach is not cured by the County following notice and a reasonable opportunity to cure (an "***Other Material Breach***") shall be a further condition to the County's entitlement to receive any Company Commitment payments that would otherwise have been payable after such Other Material Breach, up to the full amount of such Company Commitment payments that are necessary to cure such Other Material Breach.

If the County fails to cure any such Other Material Breach within a reasonable period not to exceed fifteen (15) Business Days after receipt of such notice, the Company shall have the right, in its sole discretion, (a) to withhold from any payment of Company Commitment otherwise payable to the County 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 County regarding such Other Material Breach.

Section 5.04 Easement for Company Signage. The County hereby agrees to grant the Company and its successors and assigns, at no cost, an easement to place signage on property owned by the County at a location mutually agreed to by the parties.

ARTICLE VI. MISCELLANEOUS

Section 6.01 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 6.02 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 Vigo County, Indiana in accordance with the rules of the American Arbitration Association. The County 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 Vigo County, Indiana or the United States District Court for the Southern District of Indiana.

Section 6.03 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 6.04 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 6.05 Assignment. The County may not assign its rights or obligations under this Agreement. The Company may, without the prior consent and upon written notice to the County, 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 6.06 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 6.07 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 County:

Vigo County Commissioners Office
Attn: Chris Switzer, President
650 South First Street
Terre Haute, Indiana 47807
Email: chris.switzer@vigocounty.in.gov
Telephone: 812-462-3367

And:

Vigo County Commissioners Office
Attn: Tammy York-Allen
650 South First Street
Terre Haute, Indiana 47807
Email: tammy.york-allen@vigocounty.in.gov
Telephone: 812-462-3367

To the Company:

CDITH, LLC
Attn: Dawn Ostertag
600 North Hurstbourne Parkway, Suite 400
Louisville, Kentucky 40222
Email: dawn.ostertag@kyderby.com
Telephone: 502-638-3916

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 6.08 Compliance with Indiana Code Section 4-33-23-8. All Parties to this Agreement recognize the authority of the IGC over this Agreement, including 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.

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

The BOARD OF COMMISSIONERS OF VIGO COUNTY, INDIANA

By:  _____

Name: Chris Switzer
Title: President

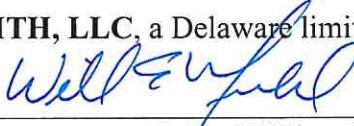
By:  _____

Name: Mike Morris
Title: Member

By:  _____

Name: Brendan Kearns
Title: Member

CDITH, LLC, a Delaware limited liability company

By: 

Name: William E. Mudd
Title: President