

AGREEMENT

This Agreement (the “**Agreement**”) is dated February 5, 2024, by and between the City of Chicago, Illinois, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois (“**City**”) and Bally’s Chicago Operating Company, LLC, a Delaware limited liability company (“**Developer**”)(together the “**Parties**”). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Host Community Agreement, dated as of June 9, 2022 (the “**HCA**”), by and between the City and Developer.

RECITALS

WHEREAS, pursuant to the terms and conditions of the HCA, the City, among other things, approved development of the Project by Developer;

WHEREAS, Developer is obligated to develop and construct the Project in compliance with the Concept Design Documents and Project Description;

WHEREAS, the Project Description includes a Hotel Tower to be constructed as part of the Permanent Project on the north end of the Project Site (Permanent);

WHEREAS, the Hotel Tower, among other items, is to contain a total of 500 hotel rooms, 100 of which are required to be guest suites, and a rooftop bar (the “**Rooftop Bar**”);

WHEREAS, the HCA obligates Developer initially to construct the Hotel Tower to include: (i) a minimum of 100 Initial Hotel Rooms; (ii) the Rooftop Bar; and (iii) all necessary infrastructure (hotel core and shell) for an additional 400 hotel rooms to be built-out and placed in operation at a later date described below (the “**Additional Rooms**”, and together with such infrastructure being referred to herein as the “**Hotel Tower Infrastructure**”);

WHEREAS, the HCA obligates Developer to begin the build-out and operationalization of the Additional Rooms upon Developer reaching an annual trailing 12 months EBITDAM of at least \$170 million or within five years of opening the Permanent Project, whichever comes first (the “**Hotel Tower Build-Out Date**”);

WHEREAS, under certain circumstances described in the HCA, Developer may extend the time period in which Developer must perform its obligations under the HCA;

WHEREAS, Developer became aware of the existence of shallower-than-expected infrastructure located beneath the Project Site and beneath or near the proposed location of the Hotel Tower (the “**Infrastructure**”);

WHEREAS, since becoming aware of the existence of the Infrastructure, Developer, the City and an international engineering firm studied Developer’s construction plans for the Hotel Tower to determine methods to protect the Infrastructure from damage due to the construction of the Hotel Tower;

WHEREAS, the engineering firm advised that it could not definitively conclude that the construction of the Hotel Tower would not damage or otherwise interfere with the Infrastructure for its intended use;

WHEREAS, upon Developer's request from time to time, the City granted certain extensions for Developer's delivery of any notice of an event of force majeure under Section 12.2 of the HCA;

WHEREAS, on January 29, 2024 Developer, in accordance with the procedure set forth in the HCA, notified the City that due to the existence of the Infrastructure, it could not fulfill its obligation to build the Hotel Tower on the north end of the Project Site (Permanent);

WHEREAS, due to the foregoing circumstances, Developer is seeking the City's: (i) waiver of Developer's obligations under the HCA to (1) construct the Hotel Tower on the north end of the Project Site (Permanent) as depicted in the HCA and (2) complete construction of the Hotel Tower Infrastructure by the Construction Completion Date (Permanent Project); and (ii) consent and approval to (1) redesign the Hotel Tower for the Additional Rooms and relocate it to a different location within the Project Site (Permanent); (2) relocate the Initial Hotel Rooms and Rooftop Bar from the Hotel Tower to a location over the Casino gaming floor; and (3) delay commencement of construction of the redesigned Hotel Tower to no later than the Hotel Tower Build-Out Date (together, the "**Modifications**");

WHEREAS, the Modifications do not constitute a material amendment or change to the HCA as defined in Sec. 2-32-031(h)(2) of the Municipal Code of Chicago;

WHEREAS, Bally's Corporation ("**Guarantor**"), the ultimate parent of Developer, and as a closing condition of the HCA, made in favor of the City a guaranty ("**Guaranty**"), dated June 24, 2022, pursuant to which Guarantor guarantees the performance by Developer of its obligations under the HCA ("**Developer's Obligations**"); and

WHEREAS, as consideration for City entering into this Agreement, City has required Guarantor to reaffirm its guaranty of Developer's obligations as set forth in the Guaranty pursuant to the terms of a reaffirmation agreement ("**Reaffirmation Agreement**") executed and delivered to City by Guarantor concurrently herewith.

NOW THEREFORE, pursuant to Section 2-32-031(h)(1) of the Municipal Code of Chicago which authorizes the City's Chief Financial Officer to provide consents, waivers, approvals and non-material amendments to, under and in connection with the HCA:

1. Incorporation of Recitals

The above recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

2. Waiver

The City hereby waives Developer's obligations under the HCA to: (i) construct the Hotel Tower on the north end of the Project Site (Permanent) as depicted in the HCA; (ii) complete construction

of the Hotel Extension Infrastructure by the Construction Completion Date (Permanent Project); and (iii) to submit Concept Design Documents within 120 days after the Finding of Preliminary Suitability and further, the City acknowledges receipt of Concept Design Documents on December 19, 2023.

3. Consent and Approval

The City hereby consents to and approves the Modifications.

4. Limitations

The foregoing waiver, consent and approval shall not: (i) obligate the City to waive any future obligation of Developer or Developer's nonperformance of any term, covenant, condition or provision under the HCA; or (ii) constitute the City's approval of or consent to the specific location of the Hotel Tower and Initial Hotel Rooms or any redesign of the Hotel Tower or the Initial Hotel Rooms.

5. Non-Material Amendments to the HCA

In order to effectuate and implement the Modifications, the Parties hereby amend and restate certain provisions of the HCA in the manner set forth on Exhibit A, attached hereto and by this reference made a part hereof.

6. Governing Law

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois.

7. Binding Obligation

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, heirs and assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers on the date first set forth above at Chicago, Illinois.


CITY:

CITY OF CHICAGO, ILLINOIS, a municipal corporation

By:

Name:

Title:



Jill Jaworski

Chief Financial Officer

Bally's Chicago Operating Company, LLC, a
limited liability company


By: 
Name: Ameet Patel
Title: SVP Regional Operations & GM West

EXHIBIT A

SECTION 1, FINAL COMPLETION (PERMANENT PROJECT)

Section 1, the definition of “Final Completion (Permanent Project),” of the HCA is hereby amended in its entirety by deleting the existing provision and substituting the following in its place:

“Final Completion (Permanent Project)” means the completion of the Work, as evidenced by the issuance of a temporary certificate of occupancy by the City’s Department of Buildings for all Components comprising the Permanent Project to which a certificate of occupancy would apply, and, in any case, that not less than:

- (i) ninety percent (90%) of the Parking Spaces are open for their intended use by patrons and employees of the Project;
- (ii) ninety percent (90%) of the Gaming Area is open to the general public for its intended use;
- (iii) ~~[omitted] ninety percent (90%), taken as a whole, of the Hotel Tower shall be completed and the Hotel Extension Infrastructure installed;~~
- (iv) ninety percent (90%) of the Initial Hotel Rooms are rented or available for rental by overnight guests;
- (v) ninety percent (90%), taken as a whole, of the Retail Floor Space, the Restaurant Floor Space, the Event Space, the Exhibition Space, the Visitor Center Space, the Greenspace, the Riverwalk Running Length and all of the remaining Components is open to the general public for its intended use, including at least the Rooftop Bar and five (5) other distinct food and beverage outlets (counting a ‘food hall’, ‘marketplace’, ‘food truck stand’, cafeteria or other venue featuring multiple outlets but common patron seating as a single outlet); and
- (vi) the Riverwalk Running Length is open for traverse by the general public for at least the length of adjacency with the ~~Hotel Tower and~~ Casino and continuing north to the Project Site (Permanent) boundary.

SECTION 1, HOTEL EXTENSION INFRASTRUCTURE

Section 1, the definition of “Hotel Extension Infrastructure,” of the HCA is hereby amended in its entirety by deleting the existing provision:

~~**“Hotel Extension Infrastructure”** means interior space of the Permanent Project of sufficient square footage to contain the Hotel Extension Rooms, and related patron and employee circulation spaces, which is designed and constructed as unfinished ‘raw space’ but is equipped with sufficient life safety systems and equipment to allow all of the other Components to fully open on an indefinite basis, together with elevator, stairwells and other means of ingress and egress and with electricity, fresh water, wastewater, domestic hot water, standpipe, telephone, cable television, internet and other utilities sufficient to serve the Hotel Extension Rooms.~~

SECTION 1, INITIAL HOTEL ROOMS

Section 1, the definition of “Initial Hotel Rooms,” of the HCA is hereby amended in its entirety by deleting the existing provision and substituting the following in its place:

“Initial Hotel Rooms” means not less than 100 hotel guest rooms and suites located ~~in the Hotel Tower above the Gaming Area~~ and which have been designed, constructed, finished and fitted in accordance with First-Class Project Standards and Government Requirements.

SECTION 1, HOTEL ROOMS

Section 1, the definition of “Hotel Rooms,” of the HCA is hereby amended in its entirety by deleting the existing provision and substituting the following in its place:

“Hotel Rooms” means the Initial Hotel Rooms and the Hotel Extension Rooms, *provided*, for the avoidance of doubt, that the Hotel Tower would contain a total of not less than ~~500~~ 400 ~~Hotel Rooms if the Hotel Extension Rooms are once constructed,~~ *provided further*, that “Hotel Rooms” does not include the Gaming Area, the Retail Floor Space, the Restaurant Floor Space, the Hotel Tower, the Event Space, the Exhibition Space or the Visitor Center Space.

SECTION 1, HOTEL TOWER

Section 1, the definition of “Hotel Tower,” of the HCA is hereby amended in its entirety by deleting the existing provision and substituting the following in its place:

“Hotel Tower” means Components related to the Hotel Extension Rooms, including lobby areas, administrative offices, housekeeping and other back of house areas, fitness center, spa, pool, hot tub, all of which have been designed, constructed, finished and fitted out in accordance with First-Class Project Standards and Government Requirements; provided that “Hotel Tower” does not include the Initial Hotel Rooms.

SECTION 1, ROOFTOP BAR

Section 1, the definition of “Rooftop Bar,” of the HCA is hereby amended in its entirety by deleting the existing provision and substituting the following in its place:

“Rooftop Bar” means a portion of the Restaurant Floor Space ~~located on the highest floor above the Gaming Area of the Hotel Tower having space~~ which is lawfully occupiable for use by the general public together with additional contiguous exterior square footage located on the roof area of the ~~Hotel Tower~~ Gaming Area (which roof area, for the avoidance of doubt, is not includable in the Restaurant Floor Space because it is not interior space) which, collectively, is designed, constructed, finished and fitted out for use as one or more bar or lounge spaces accommodating not less than 100 simultaneous patrons in accordance with First-Class Project Standards and Government Requirements.

SECTION 3.3(d) DUTY TO COMPLETE/COMMENCE OPERATIONS

Section 3.3(d), of the HCA is hereby amended in its entirety by deleting the existing provision and substituting the following in its place:

(d) Developer shall commence the build-out of the Hotel Tower and Hotel Extension Rooms ~~within the Hotel Extension Infrastructure~~ not later than the first to occur of (i) the date which is twelve (12) months after the last day of the calendar month when, on a trailing 12-month basis, Developer achieves \$170 million of EBITDAM and (ii) the fifth (5th) anniversary of Operations Commencement (Permanent Project). Developer shall thereafter diligently prosecute construction of the Hotel Tower and the build-out, finishing and furnishing of the Hotel Extension Rooms until the Hotel Extension Rooms are complete, the City has issued a temporary occupancy permit for the Hotel Extension Rooms, and the Hotel Extension Rooms are available to rent to the general public, which shall be not later than the first to occur of (i) the date which is eighteen (18) months after the last day of the calendar month when, on a trailing 12 months, Developer achieves \$170 million of EBITDAM and (ii) the date which is five years and six months after Operations Commencement (Permanent Project).

HCA EXHIBIT B-1, "HOTEL"

Exhibit B-1, the definition "Hotel," of the HCA is hereby amended in its entirety by deleting the existing provision and substituting the following in its place:

Hotel: 100 suites, 500 rooms total, it being understood that initially, Developer commits to building the Initial Hotel Rooms ~~the entire hotel tower including a minimum of 100 guest suites, a and the Rooftop Bar rooftop bar, and all necessary infrastructure (hotel core and shell) construction necessary for the additional 400 rooms.~~ Developer will commit to begin construction of the Hotel Tower and Hotel Extension Rooms ~~400-room buildout and operationalization of the remaining floors of the tower or alternative development of the hotel tower space~~ upon reaching an annual trailing 12 months \$170 million of EBITDAM threshold but in any case, not later than five years after the opening of the Permanent Project. All hotel suites will be of five-star quality and the 400 remaining guest rooms will be comparable to other high-end luxury hotels.