



MEMORANDUM

Date: May 18, 2018
To: Mayor Bogusz and Aldermen of the City Council
From: Michael G. Bartholomew, City Manager *MB*
Subject: Redevelopment Reimbursement Agreement Between the City of Des Plaines and Midwest Gaming & Entertainment, LLC

Please see attached Redevelopment Reimbursement Agreement Between the City of Des Plaines and Midwest Gaming & Entertainment, LLC. This agreement clarifies how Midwest Gaming will reimburse the City for the purchase and renovation of the Des Plaines Theatre. You have seen this document before. The only difference between the first agreement and this one is that this is the finalized agreement and is binding on both parties.

Attachments:
Resolution R-118-18
Exhibit A – Redevelopment Reimbursement Agreement

CITY OF DES PLAINES

RESOLUTION R - 118 - 18

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A REDEVELOPMENT REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF DES PLAINES AND MIDWEST GAMING & ENTERTAINMENT, LLC REGARDING ACQUISITION AND RENOVATION OF DES PLAINES THEATER.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

WHEREAS, Midwest Gaming & Entertainment, LLC d/b/a Rivers Casino (“*Rivers*”) operates a gaming facility commonly known as the Rivers Casino in the City of Des Plaines; and

WHEREAS, the Des Plaines Theater is a historical theater (“*Theater*”) located in the City’s central business district at 1476 Miner Street (“*Property*”); and

WHEREAS, the Theater was constructed in 1925 and is a prime example of Art Deco, Spanish Moorish and Spanish Renaissance architecture styles and design; and

WHEREAS, the Theater has fallen into severe disrepair and was declared uninhabitable by the City on February 20, 2014 after its owners failed to repair and remediate numerous health safety code violations; and

WHEREAS, the City and Rivers entered into that certain Memorandum of Understanding (“*MOU*”), dated as of August 7, 2017, describing the City’s intention to acquire, revitalize, renovate, and repurpose the Theater as an educational and performing arts venue serving the residents of the City and the northwest Cook County region, and Rivers’ intention to contribute financially toward this effort; and

WHEREAS, on March 5, 2018, the City entered into a “Real Estate Purchase and Sale Agreement” (“*PSA*”) for the Property; and

WHEREAS, the City Council has determined that it is now in the best interest of the City to enter into a formal agreement with Rivers memorializing the commitments conceptually set forth in the MOU;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF AGREEMENT. The City Council hereby approves an Redevelopment Reimbursement Agreement (“*Agreement*”) between Rivers and the City in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE AGREEMENT. The City Council hereby authorizes and directs the City Manager and the City Clerk to execute and seal, on behalf of the City, the Agreement only after receipt by the City Clerk of at least two executed copies of the Agreement from Rivers; provided, however, that if the City Clerk does not receive such executed copies of the Agreement from Rivers within 30 days after the date of adoption of this Resolution, then this authority to execute and seal the Agreement shall, at the option of the City Council, be null and void.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

[SIGNATURE PAGE FOLLOWS]

PASSED this ____ day of _____, 2018.

APPROVED this ____ day of _____, 2018.

VOTE: AYES ____ NAYS ____ ABSENT ____ ABSTAIN ____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

REDEVELOPMENT REIMBURSEMENT AGREEMENT BETWEEN
THE CITY OF DES PLAINES AND MIDWEST GAMING & ENTERTAINMENT, LLC
(DES PLAINES THEATER – 1476 MINER STREET)

THIS REDEVELOPMENT REIMBURSEMENT AGREEMENT ("**Agreement**") is made and entered into as of the ___ day of _____, 2018 ("**Effective Date**"), and is by and between the **CITY OF DES PLAINES**, an Illinois home rule municipal corporation ("**City**") and **MIDWEST GAMING & ENTERTAINMENT, LLC**, a Delaware limited liability company d/b/a **RIVERS CASINO** ("**Rivers**") (collectively, "**Parties**").

IN CONSIDERATION OF, and in reliance upon, the recitals and the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

SECTION ONE. RECITALS.

A. The City is a home rule municipal corporation located in Cook County, Illinois and is authorized by Article VII, Section 10 of the 1970 Illinois Constitution to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance.

B. Rivers operates a gaming facility commonly known as the Rivers Casino in City.

C. The Des Plaines Theater is a historical theater ("**Theater**") located in the City's central business district at 1476 Miner Street ("**Property**"), which Property is legally described in **Exhibit A** attached to, and by this reference, made a part of this Agreement.

D. The Theater was constructed in 1925 and is a prime example of Art Deco, Spanish Moorish and Spanish Renaissance architecture styles and design.

E. The Theater has fallen into severe disrepair and was declared uninhabitable by the City on February 20, 2014 after its owners failed to repair and remediate numerous health safety code violations.

F. The Parties entered into that certain Memorandum of Understanding ("**MOU**"), dated as of August 7, 2017, describing the City's intention to acquire, revitalize, renovate, and repurpose the Theater as an educational and performing arts venue serving the residents of the City and the northwest Cook County region (the "**City's Purpose**"), and Rivers' intention to contribute financially toward the City's Purpose.

G. The MOU obligated Rivers to make certain contributions to the City contingent upon the City's satisfaction of specific conditions involving the acquisition of the Property and the renovation and operation of the Theater.

H. On March 5, 2018, the City entered into a "Real Estate Purchase and Sale Agreement" ("**PSA**") for the Property with FNBW Bank, formerly known as the First National Bank of Wheaton, as trustee under Trust Agreement dated October 27, 2003 and known as Trust No. 1528 and Dhitendra N. Bhagwakar, Dharmesh N. Bhagwakar and Ashwin N. Bhagwaker (collectively, the "**Seller**") for a purchase price of \$1,257,500.

I. In consideration of the recitals and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION TWO. INITIAL CONTRIBUTIONS FROM RIVERS.

A. Matching Contributions. Based on the City's declared intent to acquire, renovate, and operate the Theater as a public venue for educational and performing arts programming, Rivers agrees to reimburse the City for the following costs, all of which would be contingent on the City contributing funds in an amount equal to or greater than Rivers' committed financial contribution for each of the purposes set forth below:

1. Acquisition Costs. Rivers will reimburse the City fifty percent (50%) of the costs the City pays in acquiring fee simple title to the Property, including legal fees, environmental testing, preparations of surveys, and resolution of title issues in addition to the purchase price ("**Acquisition Costs**"); provided, however, that River's obligation to reimburse the City for its Acquisition Costs shall not exceed \$1,000,000. The City shall provide Rivers with a full accounting of its Acquisition Costs, including the purchase price for the Property, at the end of the "Due Diligence Period" identified in the PSA.
2. Renovation Costs. Rivers will reimburse the City fifty percent (50%) of the costs paid by the City, up to \$1,000,000, for the purpose of repairing, reconstructing, and renovating the Theater, including (a) addressing life safety code violations, (b) historical preservation/restoration, and (c) modernizing the Theater to bring it up to modern building and accessibility standards. (collectively, "**Renovation Costs**"). The City shall provide Rivers with an accounting of its Renovation Costs upon the completion of the renovation work but prior to the issuance of a Certificate of Occupancy for the Theater.

The City's accounting of its Acquisition Costs and Renovation Costs shall include construction contracts, professional service agreements, invoices, purchase orders, as well as any other documentation that Rivers may reasonably request. All reimbursement payments to the City will be made by Rivers no later than 60 days after receipt of a payment demand by the City accompanied by the necessary accounting records, which must include proof of payment by the City. The final amounts to be paid by Rivers as reimbursement for the Acquisition Costs and the Renovation Costs shall in no instance exceed funds paid for those same purposes by the City.

SECTION THREE. CONTINUING CONTRIBUTIONS TO AND USE OF THEATER.

A. Operation of Theater. The Theater shall be operated in accordance with the highest quality standards, including management of the operations, selection of programming, security, maintenance and repairs. The City shall retain ownership of the Property and the Theater at all times. Rivers shall have no liability whatsoever for any damage, liabilities, losses or any other consequences that may be incurred in connection with the acquisition, renovation or operation of the Theater.

B. Theater Revenue. As the owner of the Theater, the City will retain all revenue generated by the Theater (including any programming sponsorship revenue) and, except as

otherwise provided in this Agreement, will be solely responsible for all expenses incurred in the operation of the Theater, including any fees charged by a third party operator.

C. Annual Contribution. During the first five years from the date a Certificate of Occupancy is issued for the Theater and the Theater is open to the general public, Rivers will provide an annual contribution to the City, in the amount of \$50,000 ("**Annual Contribution**"). Rivers' obligation to make the Annual Contribution is expressly contingent upon the continued use of the Theater as a venue for educational and performing arts programming and Rivers' annual receipt of an itemized list of the City's annual anticipated expenses and/or costs in connection with the Theater's educational and performing arts programming, which shall in total equal or exceed \$50,000 (the "**City's Annual Submission**"). Rivers shall, in its sole discretion, select those expenses identified in the Annual Submission to which its Annual Contribution shall be allocated. The First Annual Contribution will be made no more than 60 days after the Theater is opened to the general public and Rivers receives the City's first Annual Submission, whichever date is later. Each subsequent Annual Contribution will be made on the anniversary of the date the first Annual Contribution was paid or 30 days after the Annual Submission for the current annual period was received by Rivers, whichever date is later.

D. Periodic Use of Theater. In exchange for the contributions set forth in this Agreement, Rivers will be entitled to the exclusive use of the Theater for eight (8) events each year. The specific dates and usage guidelines will be agreed upon by the Parties in a separate license and use agreement ("**License and Use Agreement**").

E. Corporate Recognition. In exchange for the contributions to be made by Rivers as set forth in this Agreement, the City will incorporate Rivers' corporate name and branding/trade dress in interior signage and promotional materials associated with the Theater, subject to Rivers' prior written approval. The specific usage of Rivers' name and trademarks will be agreed upon by the Parties in the License and Use Agreement.

SECTION FOUR. REGULATORY COMPLIANCE.

The City hereby acknowledges that this Agreement and any subsequent Agreement(s) between the Parties are subject to the Illinois Riverboat Gambling Act (230 ILCS 10/1 *et seq.*) and the rules and requirements of the Illinois Gaming Board (collectively, the "**Gaming Laws**"), and may be disclosed to and subject to approval of the Illinois Gaming Board ("**IGB**"). The City agrees, at its own cost and expense, to comply with all Gaming Laws and to assist Rivers Casino, as necessary, in complying with the Gaming Laws. The City agrees that Rivers may immediately terminate this Agreement, in whole or in part, without liability on the part of Rivers or any qualified party to this Agreement or any related agreement, if the IGB disapproves of this Agreement or any part hereof or if Rivers determines, in its good faith opinion, that the City, or any entity or individual associated with the City, is not suitable or eligible to conduct business with an Illinois gaming company.

SECTION FIVE. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement shall be given by a party by (i) personal delivery, (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon, or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section. The address of any party may be changed by written notice to all other parties. Any mailed notice shall be deemed to have been

given and received within three days after the same has been mailed and any notice given by overnight courier shall be deemed to have been given and received within 24 hours after deposit.

If to Rivers:

Midwest Gaming & Entertainment, LLC
3000 S. River Rd.
Des Plaines, IL 60018
ATTN: Legal Department

With a copy to:

Midwest Gaming & Entertainment, LLC
c/o LAMB PARTNERS
900 N. Michigan Avenue #1900
Chicago, Illinois 60611
Attn: Legal Department

If to the City:

City of Des Plaines
1420 Miner Street
Des Plaines, Illinois 60016
Attn: City Manager

B. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement are cumulative and are not exclusive of any other such rights, remedies, and benefits allowed by law.

D. Consents. Whenever the consent or approval of any Party to this Agreement is required, the consent or approval must be in writing and may not be unreasonably withheld, delayed or conditioned, and, in all matters contained herein, all parties will have an implied obligation of reasonableness, except as may be expressly set forth otherwise.

G. Governing Law. This Agreement is to be governed by, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

H. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, firm, corporation, or property will not be impaired thereby, but the remaining provisions are to be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

I. Entire Agreement. This Agreement constitutes the entire agreement between the parties, superseding any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

J. Interpretation. This Agreement is to be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Each provision of this Agreement is to be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. Any rule or construction that a document is to be construed against the drafting party is not applicable to this Agreement.

K. Headings. The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

L. Amendments and Modifications. No amendment or modification to this Agreement will be effective unless and until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all applicable statutory procedures.

M. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation may be made, or be valid, against the City or Developer.

N. Counterparts. This Agreement may be executed in counterparts, each of which will constitute an original document and together will constitute the same instrument.

[END OF TEXT - SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MIDWEST GAMING & ENTERTAINMENT LLC, a
Delaware limited liability company

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

(SEAL)

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____ day of _____, 2018
by _____, the _____, and
_____, the _____ of **MIDWEST
GAMING & ENTERTAINMENT, LLC**, a Delaware limited liability company.

Signature of Notary

SEAL
My Commission expires:

CITY OF DES PLAINES, an Illinois home rule municipal corporation

By: _____

Michael G. Bartholomew, City Manager

ATTEST:

By: _____

Jennifer L. Tsalapatani, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing instrument was acknowledged before me on ___ day of _____, 2018 by Michael G. Bartholomew, the City Manager of the **CITY OF DES PLAINES**, an Illinois home rule municipal corporation, and by Jennifer L. Tsalapatani, the City Clerk of said municipal corporation.

Signature of Notary

SEAL

My Commission expires:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

LOTS 68 AND 69 (EXCEPT THE NORTHEASTERLY 8 FEET TAKEN FOR ALLEYS) IN ORIGINAL TOWN OF RAND (NOW VILLAGE OF DES PLAINES), A SUBDIVISION OF PARTS OF SECTION 16, 17, 20, AND 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

1476 Miner Street, Des Plaines, Illinois

PIN 09-17-415-010-0000