

**AGENDA ITEM SUMMARY**

**REQUESTED MOTION:**

Hold first public hearing for enactment of the development agreement with Bonita-Fort Myers Corporation, a Florida corporation for Naples Fort Myers Greyhound Racing and Poker facility in the event slot machines are approved by referendum in the November election.

**MEETING DATE:** September 19, 2012

**AGENDA:**

**REQUIREMENT/PURPOSE: (Specify)**

**REQUESTOR OF INFORMATION:**

	PRESENTATIONS	X	STATUTE 163.3220-3243
	CONSENT		ORDINANCE
X	PUBLIC HEARING		ADMIN. CODE
	APPEALS		OTHER
	MAYOR AND COUNCIL MEMBER'S REPORTS		
	CITY ATTORNEY		
	CITY MANAGER		

Carl L. Schwing  
City Manager  
and  
Audrey E. Vance  
City Attorney

**BACKGROUND:**

Bonita-Fort Myers Corporation, the operator of the Naples Fort Myers Greyhound Racing and Poker facility (hereinafter referred to as Owner and Racetrack, respectively), have asked the City of Bonita Springs to consider a development agreement that would go into effect should the referendum pass AND slot machines are operating on the property. The City of Bonita Springs benefits by voluntarily receiving the revenue and knowing what the redevelopment plans are intended (over time). Likewise, the Owners also benefit because they can redevelop the site without fear that the City may increase rates in order to capture additional payments from the development or interference (guaranteed development rights). This is not contract zoning because it is framed under a development agreement, as permitted by state law, The development agreement statute provides greater stability for long-term projects which may require major upfront infrastructure commitments. The Racetrack does not want to make a substantial investment in a facility it might not get approvals for, and therefore, a development agreement affords a mechanism that allows Bonita Springs to insulate certain development approvals against future planning and regulatory changes as an inducement.

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Is this a Strategic Decision?  YES  NO

If YES, related to which Strategic Objective? **1 Revitalize Downtown Bonita; 2 Foster Economic Development; and 3 Strengthen City Infrastructure**

**STAFF RECOMMENDATIONS:**

At this time, the Development Agreement terms have not been fully finalized, and areas still under discussion are marked on the greensheet to summarize those points. Any changes to the development agreement or changes of position to staff will be reported prior to the Public Hearings on the agreement for City Council to approve or deny the agreement. Florida Statutes §163.3225 requires two (2) public hearings. City Council can make direction stating what changes they believe are appropriate so that a final agreement may be provided to City Council at their October 3, 2012 meeting.

**REVIEWED BY:**

City Manager: \_\_\_\_\_

City Attorney: \_\_\_\_\_

City Clerk: \_\_\_\_\_

Department Director: \_\_\_\_\_

**COUNCIL ACTION:**

- \_\_\_ APPROVED
- \_\_\_ DENIED
- \_\_\_ DEFERRED
- \_\_\_ OTHER

## AGENDA ITEM SUMMARY

**BACKGROUND: (Continued)**

Pursuant to Florida law, the City must conduct two (2) public hearings prior to entering into this agreement, with special notice requirements, thus a conceptual review was held on September 5, 2012 to make sure City Council concurred with staff actions. The Slot Machines at Naples Fort Myers Dog Track Development Agreement can be summarized as follows:

- ✘ This Development Agreement is for the entire land owned by the Owner (track, clubhouse, vacant land in front, vacant triangular piece near Old 41 and Kennel Club parcel).
- ✘ This Development Agreement contains ongoing monthly compensation once the slot machines are approved and placed on site. Discussions of monthly "percentage payments" 1 ½ % for first 250,000,000 and 2 ½ % for any in excess (still under discussion)
- ✘ The Agreement also has what is proposed over the long term, with
  - Greyhound dog track
  - Clubhouse facilities consisting of 5,000 seats and 200,000 square feet
  - Up to 15,000 square feet of restaurant use
  - Up to 20,000 square feet of bar/nightclub
  - Up to 250,000 square feet of retail
  - Up to 100,000 square feet of office

(The Owner is committed to use the redevelopment area as guidance for design, as well as having multiple structures in the project area complement each other)

- ✘ This agreement provides vested rights to the developer from concurrency.
- ✘ The Agreement is for a rolling 30 years, meaning every five years it will come back to City Council and if not renewed, will expire 25 years later. This will help the Owner with any financing to show they have certain rights vested, and will continue generating revenue for the City.
- ✘ In addition to the Revenue, the Owner will pay the costs for the redevelopment (impact fees, building permit fees, etc.) to an amount up to the Development fee Cap. City will rebate the owner from any City fees paid in excess of a Development Fee Cap. The monthly "percentage payments" will include all occupational or license fees on the facilities. (Amount of development fee cap still under discussion).
- ✘ City cannot downzone (force a different use) and it does not stagnate the development to any certain way in the future. New land use laws will only be effective if they are mutually agreed to or in the event they will not agree, the City can impose those requirements following the procedures in pursuant to Florida Statutes §163.3233.
- ✘ Parties will cooperate in maximizing the gross slot revenues (give expedited service from Community Development for their contractors).
- ✘ City will allow special event permits on the site as is customary, and will approve them as long as any amplified performance is not held outdoors after 10:00 p.m. and the sound emanating from any performance does not exceed 65 dBA's as measured from the nearest residential property. Alcohol will be permitted to be consumed indoors to the hours of 4:00 a.m., (and on the outdoor terraces adjacent to the clubhouse and racetrack buildings until 2:00 a.m. with stepped up enforcement against noise issues).
- ✘ Owner will give a 40% preference to city residents in employment.
- ✘ Owner will rename its facility to take out Naples Fort Myers Dog Track (using Bonita Springs as part of the name, identifying information and address). City Council not involved in making the new name, but will have 30 days advance notice of any name change.

At the time of preparing this greensheet, the City has received the attached September 12, 2012 draft showing the most recent changes. The Racetrack is preparing the Development Agreement and we will keep City Council informed as the Development Agreement gets closer to the final version.

**DEVELOPMENT AGREEMENT BETWEEN  
CITY OF BONITA SPRINGS, FLORIDA  
AND BONITA-FORT MYERS CORPORATION REGARDING  
SLOT MACHINES AT NAPLES FORT MYERS DOG TRACK**

**THIS AGREEMENT** is entered this \_\_\_ day of October, 2012, by and between **BONITA-FORT MYERS CORPORATION**, a Florida corporation (hereinafter referred to as "Bonita Springs Owner"), and the **CITY OF BONITA SPRINGS, FLORIDA**, a municipal corporation of the State of Florida (hereinafter referred to as the "City"; together with the Bonita Springs Owner; collectively, the "Parties").

WITNESSETH:

**WHEREAS**, pursuant to Resolution No. 12-01-21 adopted by the Lee County Board of County Commissioners (BOCC) on January 31, 2012, reconfirming and formally approving the January 24, 2012 BOCC direction to County staff to draft an ordinance and resolution and conduct a public hearing requesting the Supervisor of Elections conduct a countywide special election to be held by the County on Tuesday, November 6, 2012 (the "Special Election") for the purpose of submitting to the qualified electors of Lee County (the "County") the question of whether to authorize slot machines in the existing, licensed pari-mutuel facility located within the County as provided in Chapter 551, Florida Statutes;

**WHEREAS**, the City and Bonita Springs Owner recognize that each entity has an impact on the health and general welfare of the residents of the City;

**WHEREAS**, Bonita Springs Owner owns and operates the Naples Fort Myers Greyhound Racing and Poker facility and its related business operations of the clubhouse building, the actual race track oval, and the related parking facilities as well as certain parcels of land on which the Naples Fort Myers Greyhound Racing and Poker facility and its related business operations of the clubhouse building, the actual race track oval and the related parking facilities are located within

Sept. 12, 2012 Draft

the boundaries of the City located at 10601 Bonita Beach Road, Bonita Springs, Florida, the legal descriptions of which and property tax folio numbers for which are attached hereto as composite Exhibits "A" (collectively, the "Property");

**WHEREAS**, expansion of wagering capabilities to include slot machines in the business operations at the Property will generate substantial additional revenues for the City;

**WHEREAS**, the property is approximately 99.05 acres in size and has the following zoning designations:

The existing dog track and clubhouse are designated AG-2 with a Special Exception to allow for the Greyhound racing use.

The parcel located just south of Bonita Beach Road and west of Racetrack Road is vacant with a Commercial Planned Development (Bonita-Ft. Myers Pitch & Putt 97-066) with an expired master concept plan.

The triangular parcel east of Old US 41 is zoned AG-2 and vacant.

The Kennel Club parcel located on the north side of Compound road is zoned RM-2 and has an existing structure on the property.

Those parcels designated as AG-2 have maintained their existing zoning from 1963 because no change in use has ever occurred. The Property is designated "General Commercial" in the City's Future Land Use Map, and Bonita Springs Owner and the City mutually desire that the Property be developed as permitted in the City's comprehensive plan and zoning code (the "Project"); and

**WHEREAS**, the Bonita Springs Owner intends to redevelop the Property in connection with the expansion of the existing facilities and the addition of slot machine uses, as more specifically described in this agreement; and

**WHEREAS**, the City and Bonita Springs Owner recognize that the residents of the City have legitimate concerns over increased development, and the possible impacts to the City in the nature of traffic, congestion, and the quality of life in the City;

**WHEREAS**, Bonita Springs Owner desires to assist the City in mitigating, minimizing, offsetting and defraying governmental impacts, including the costs of local and regional law enforcement, public safety, human services, mass transit operation, public improvements, and to mitigate lost revenues such as sales tax surcharges that the City may incur as a result of Bonita Springs Owner's slot machine operations at the Property in the City;

**WHEREAS**, Bonita Springs Owner and the City desire that the redevelopment of the Property serve as a catalyst in helping the Bonita Historic River District area develop as a secondary result of the redevelopment of the Property for more entertainment purposes and uses;

**WHEREAS**, the City Council pursuant to Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 2012 (a copy of which is attached hereto as Attachment A) has authorized the Mayor to execute this Agreement upon the terms and conditions as set forth below, and the Board of Directors of Bonita Springs Owner pursuant to its Corporate Resolution adopted \_\_\_\_\_, 2012 (a copy of which is attached hereto as Attachment B) has authorized \_\_\_\_\_ to execute this Agreement upon the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually agree and bind themselves as follows:

**SECTION 1. RULES OF LEGAL CONSTRUCTION.**

For all purposes of the Agreement, unless otherwise expressly provided:

- (a) A defined term has the meaning assigned to it;
- (b) Words in the singular include the plural, and words in plural include the singular;
- (c) A pronoun in one gender includes and applies to other genders as well;

(d) The terms "hereunder", "herein", "hereof", "hereto" and such similar terms shall refer to the instant Agreement in its entirety and not to individual sections or articles;

(c) The Parties hereto agree that this Agreement shall not be more strictly construed against either the City or Bonita Springs Owner as both parties are the drafters of this Agreement; and

(f) The recitals are true and correct and are hereby incorporated into and made a part of this Agreement. All attachments, exhibits and appendices attached hereto shall be deemed hereby adopted and incorporated herein.

**SECTION 2. DEFINITIONS AS USED HEREIN:**

*"Agreement"* means this Agreement between the City and Bonita Springs Owner.

*"Annual Gross Slot Revenues"* means the combined total amount of Gross Slot Revenues realized in any Bonita Springs Owner Fiscal Year.

*"Applicable Laws"* means those applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs, policies and procedures and orders which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.

*"Bonita Springs Owner"* shall have the meaning assigned in the recital clauses above.

*"Bonita Springs Owner Fiscal Year"* means Bonita Springs Owner's fiscal year, which begins on July 1 and ends on June 30 of each calendar year.

*"City"* means the City of Bonita Springs, a municipal corporation of the State of Florida, and all departments, agencies and instrumentalities thereof.

"*Comprehensive Plan*" means the plan adopted by the City pursuant to Chapter 163, Florida Statutes ("F.S."), meeting the requirements of Section 163.3177, and Section 163.3221(2), F.S., which is in effect as of the Effective Date.

"*County*" means Lee County, a political subdivision of the State of Florida.

"*Development*" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels and such other activities described in Section 163.3221(4), Florida Statutes (2011).

"*Development Approval*" means the Existing Zoning, which at time of approval of this Agreement had the following zoning designations:

The existing dog track and clubhouse - AG-2 with a Special Exception to allow for the Greyhound racing use.

The parcel located just south of Bonita Beach Road and west of Racetrack Road is vacant with a Commercial Planned Development (Bonita-Ft. Myers Pitch & Putt 97-066) with an expired master concept plan.

The triangular parcel east of Old US 41 is zoned AG-2 and vacant.

The Kennel Club parcel located on the north side of Compound road is zoned RM-2 and has an existing structure on the property.

"*Downzone*" shall refer to any change in regulations that govern the use or development of land (including but not limited to comprehensive plans, land development regulations, subdivision regulations, and any other such regulations), which change would have the effect of imposing more restrictive limitations on the use of the Property than those (A) which exist on the Effective Date of this Agreement, or (B) in the event that the proposed Project is approved by the City, those set forth in the Zoning Ordinance approving the proposed Project.

"*Effective Date*" is the latter of the dates of recordation of this instrument or thirty days after this instrument has been received by the state land planning agency pursuant to Section 163.3239, F.S.

*"Existing Facilities"* shall mean the physical improvements and uses that exist on the Property as of the date of this Agreement as more specifically described in Section 9 hereunder.

*"Existing Zoning"* is comprised of City of Bonita Springs Ordinance No. 11-02, adopted January 19, 2011, and amended through 2012, which adopts the effective land development regulations governing development of the Property.

*"Governing Body"* means the board of county commissioners of a county, the commission or council of an incorporated municipality, or any other chief governing body of a unit of local government.

*"Gross Slot Revenues"* means slot machine revenues (as defined in Section 551.102(13), Florida Statutes (2012)) generated at the Property.

*"Land"* means the earth, water, and air, above, below, or on the surface and includes any improvements or structures customarily regarded as land.

*"Land Development Regulations"* means ordinances, rules and policies enacted or customarily implemented by the City for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulation or any other regulations controlling the development of or construction upon land in effect as of the Effective Date.

*"Laws"* means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by a local government affecting the development of land.

*"Local government"* means any county or municipality or any special district or local governmental entity established pursuant to law which exercises regulatory authority over, and grants development permits for, land development.

*"Monthly Gross Slot Revenues"* means all Gross Slot Revenues generated by Bonita Springs Owner during any particular calendar month.

*"Project"* means the anticipated development more particularly described in Section 10 hereunder.

*"Property"* shall have the meaning assigned in the recital clauses above.

*"Public Facilities"* means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

*"Slot Machine"* means any machine as defined by subsection (8) of section 551.102 Florida Statutes (2011), or any other Applicable Laws.

**SECTION 3. Intent.** It is the intent of Bonita Springs Owner and the City that this Agreement should be construed and implemented so as to effectuate the purposes and intent of the parties and the purpose and intent of the Florida Local Government Development Agreement Act, Section 163.3220, F.S., et al.

**SECTION 4. TERM AND EFFECTIVE DATE.** This Agreement shall become effective on the Effective Date. The Agreement shall be recorded in the public records of Lee County and with the City Clerk and shall have a rolling term of thirty (30) years from the Effective Date and shall constitute a covenant running with the land.

At the end of each fifth year anniversary hereof, this Development Agreement shall automatically be renewed for an additional five year term (for a total term of thirty [30] years) under the same terms and conditions as set forth herein, provided that at least six (6) months prior to the expiration of each such five year period Bonita Springs Owner shall notify City of its intent to renew for an additional five year term. Within sixty (60) days of such notice, City will each

schedule at a regular public meeting, the decision as to whether or not to renew. In the event the City decides not to renew, the Development Agreement shall terminate twenty-five years after the expiration of the last five year period approved. The terms of this Agreement may be changed, including release or partial release, upon execution of a written instrument by the City Council and by Bonita Springs Owner (or its assigns, which may include, but not be limited to a Community Development District and/or a master property owners' association with appropriate authority over the Property) and with the consent of the City Council and the then owner(s) of a majority of the Property, provided that such change has been approved in advance by the City Council after public hearings, pursuant to Sections 163.3225, and 163.3229, F.S. The City may apply subsequently adopted laws and policies to the Property pursuant to the procedures of Section 163.3233(2), Florida Statutes. This Agreement may not be terminated during its term except as expressly provided herein. Notwithstanding any other provision to the contrary, this Agreement shall terminate immediately at the earliest of such time that (a) the voters do not approve by majority vote the issue of whether to permit slot machines during the Special Election or (b) any vote approving such issue is overturned or held invalid (following the expiration of all appeals periods).

**SECTION 5. COMPENSATION.**

(a) Beginning on the date that any slot machines are authorized and operating at the Property, and continuing through the term of the Agreement, Bonita Springs Owner agrees to pay the City an amount equal to the sum of (x) one and one-half percent (1.5%) of the amount of Annual Gross Slot Revenues for the applicable Bonita Springs Owner Fiscal Year that are not in excess of \$250,000,000 plus (y) two and one-half percent (2.5%) of the amount of Annual Gross Slot Revenues for the applicable Bonita Springs Owner Fiscal Year that are in excess of \$250,000,000 (the resulting amount, the "Percentage Payment"). For example, if Annual Gross

Slot Revenues were \$280,000,000 during the Bonita Springs Owner Fiscal Year, the total amount of Percentage Payment due the City for that Bonita Springs Owner Fiscal Year would be \$4,500,000. Bonita Springs Owner shall pay the Percentage Payment to the City in monthly installments (each such installment, a "Monthly Percentage Payment") based on the amount of Monthly Gross Slot Revenues generated in the prior month and such Monthly Percentage Payment shall become due and payable in arrears on the fifteenth (15<sup>th</sup>) day of the calendar month following its accrual. Any Monthly Percentage Payment not timely paid to the City by the fifteenth (15<sup>th</sup>) of each month shall accrue a late fee in an amount of one percent (1%) of the amount then due per month or portion thereof until the amount owed has been paid to the City and if such late amount plus accrued late fee(s) have not been paid within thirty (30) days of the original required payment date, then Bonita Springs Owner may be declared by the City to be in default pursuant to the provisions of Section 26 below. The foregoing Monthly Percentage Payments shall be made as an advance on the total amount of any Percentage Payment owed by Bonita Springs Owner to the City during any Bonita Springs Owner Fiscal Year. A subsequent change of the Bonita Springs Owner Fiscal Year shall not alter the annual basis unless agreed to in writing by the parties as an amendment to this Agreement and any subsequent change of the Bonita Springs Owner Fiscal Year shall not decrease the amount of any type of payments to the City.

(b) Bonita Springs Owner shall submit payment of any fees required to be paid by the terms and conditions of this Agreement by corporate check or wire transfer made payable to the City by delivery to the following address:

City of Bonita Springs  
Attn: Finance Department  
9101 Bonita Beach Road  
Bonita Springs, Florida 34135

(c) Together with each Monthly Percentage Payment due pursuant to the terms and conditions of this Agreement, Bonita Springs Owner shall submit to the City an accounting of the operation of the slot machines and the computation of any fees imposed pursuant to this Agreement for the relevant period of time during which any such fees accrued.

(d) In consideration for the rights outlined in this Agreement, Bonita Springs Owner agrees that the City shall be entitled to the monetary and non-monetary benefits as outlined in this Agreement. As additional enticement to enter this Agreement, City shall be entitled to renegotiate any terms on a most favored nations basis with Bonita Springs Owner in connection with any terms agreed to by Bonita Springs Owner with other municipalities. The foregoing shall be in addition to any compensation which City receives in connection with this Agreement.

#### **SECTION 6. AUDITING AND INSPECTION RIGHTS AND RECORD RETENTION.**

The City shall have the rights to inspect and/or to cause to be inspected by any of its duly authorized representatives Bonita Springs Owner's place of business at the Property and the track and to audit and/or cause to be audited by any of its duly authorized representatives the books, records, documents, papers, and accounts of Bonita Springs Owner, in each case as required by law and to the extent directly relating to the calculation of Gross Slot Revenues and the Monthly Percentage Payments and any other payments to the City pursuant to this Agreement, and upon reasonable notice, in a reasonable manner, at a reasonably mutually-agreeable time and place within the City, in order to ascertain the correctness of the Gross Slot Revenues, the Monthly Percentage Payments, and any other payments required to be made to the City pursuant to this Agreement, including the accurate reporting of Gross Slot Revenues and the determination of Monthly Percentage Payments and the determination of any other payments required to be made to

the City under this Agreement. Bonita Springs Owner shall keep such books, electronic media, records, documents, papers, and accounts within the City at its principal place of business and as may be necessary in order to record complete and correct entries related to the calculation of Gross Slot Revenues, the Monthly Percentage Payments, and any other payments required to be made to the City pursuant to this Agreement. All books, electronic media, records, documents, papers, and accounts of Bonita Springs Owner relating to Gross Slot Revenues shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, Bonita Springs Owner shall make same available at no cost to the City in written form.

Audited financial statements of Bonita Springs Owner which in addition details the amount of Annual Gross Slot Revenues, the final Monthly Percentage Payments, and any other payments to the City for that fiscal year shall be provided to the City within four (4) months of the close of each fiscal year of Bonita Springs Owner.

Bonita Springs Owner agrees to provide access to the City or to any of its duly authorized representatives, to any books, documents, papers, accounts, and records of Bonita Springs Owner that are directly pertinent to this Agreement, for the purpose of audit, inspection, examination, excerpts, and transcripts. Bonita Springs Owner shall preserve and make available at a location within the City, at reasonable times following receipt of written notice, for examination, inspection, and audit by the City and/or its duly appointed representatives, all financial records, supporting documents, statistical records, account records, related papers and electronic media, and any other documents pertinent to the calculation of Gross Slot Revenues and the Gross Slot Revenues payments, Monthly Percentage Payments, and any other payments required to be made to the City pursuant to this Agreement for the required retention period of the Florida Public

Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the creation of the record or from the date of final payment, whichever is longer. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, electronic media, records, documents, papers and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined to be applicable to Bonita Springs Owner's records relating to Gross Slot Revenues, Monthly Percentage Payments, and any other payments required to be made to the City, Bonita Springs Owner shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Bonita Springs Owner.

Bonita Springs Owner agrees to maintain its records in the format required under Florida Statutes §551.101 et. seq. Any departures from GAAP by Bonita Springs Owner will be disclosed to City auditors in accordance with Rule 203 – Accounting Principles.

Any incomplete or incorrect entry or entries in excess of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) of cumulative, annual funds that should have been paid to the City as a Gross Slot Revenues payment, a Monthly Percentage Payment, or any other payments required to be made to the City, in a particular fiscal year in such books, documents, papers, records and accounts shall be a basis for the City's applying an administrative fee of ten percent (10%) of any amount owed to the City plus interest in an amount of one percent (1%) per month or portion thereof until the amount owed has been paid. Any underpayment of any amount shall be paid by Bonita Springs Owner to the City within ten (10) days of notice of the audit finding, including any underpayments accruing interest and the administrative fee if owed.

Bonita Springs Owner's failure to adhere to, or refusal to comply with, the provisions of this Section 6 shall result in an Event of Default under this Agreement, subject to applicable cure and/or grace period(s).

**SECTION 7. REGULATORY COST REIMBURSEMENT**

If the Florida Legislature passes any act of law establishing an affirmative obligation on the part of the City to regulate slot machine operations, the Bonita Springs Owner agrees to reimburse the City for any cost to the City attributable to such a law.

**SECTION 8. DEVELOPMENT FEES AND LICENSE FEES.**

Bonita Springs Owner will receive back from the City from the Percentage Payments, all occupational and any other license fees as may be required by the Codes of the City as such fees become due and payable with respect to the business operations at the Property and the track (those fees, collectively, the "License Fees"), with exception to the Pari-Mutuel Wagering Facilities Tax adopted pursuant to Ordinance No. 05-08, in accordance with Florida Statutes §550.105.

(a) Bonita Springs Owner will receive back from the City an amount equal to all permit, processing, review and impact fees as may be required pursuant to the Codes of the City (those fees, collectively, the "Development Fees") that Bonita Springs Owner pays to the City in excess of \$[ ] (the "Development Fee Cap"). After the payment of any Development Fees to the City in excess of the Development Fee Cap, Bonita Springs Owner will receive back from the City any excess amount of Development Fees paid to the City from the amount of any subsequent Monthly Percentage Payment. Bonita Springs Owner will receive back from the City any amount of the fees assessed by the City as set forth in the Codes of the City for the administrative processing and review of applications for development permits, submitted to the City for review and approval to the extent such fees exceed the Development Fees Cap. By way of

illustration, and not limitation, in the event the total amount of Development Fees incurred by Bonita Springs is \$x.xx, then Bonita Springs shall pay the entire amount of those Development Fees to the City, but of that amount, \$x.xx shall be refunded to the Bonita Springs Owner from subsequent Monthly Percentage Payments made by Bonita Springs Owner. Subject to the foregoing provisions, any payments for land development permits, processing and reviews, and impact fees will be required to be paid in the amount assessed all other property owners in accordance with the Land Development Code. For any removal, demolition or replacement of existing facilities, Bonita Springs Owner will be entitled to a credit for any road impact fees at the future prevailing rate based on the square footage removed, regardless of whether any impact fee credit was paid at time of that building, or segment thereof, construction.

(b) Bonita Springs Owner and the City acknowledge that the City does not collect a business license tax. In the event the City decides to implement a business license tax, Bonita Springs Owner will be required to obtain the City occupational license related to slot machine operations pursuant to the Codes of the City and the County during the term of this Agreement and that the City shall charge only one occupational license fee for Bonita Springs Owner's entire slot machine operations at the Property unless the City is otherwise required to charge more than one occupational license fee pursuant to State statutes or County ordinances, and that any such occupational license fee(s) imposed by ordinance of the City shall comport with State and County requirements in a non-discriminatory manner; provided, however, that in any case, the City shall not charge any fees or any other amounts in connection with any of the foregoing, it being the parties' intention that such fees and other amounts shall be deemed paid as part of the Percentage Payments. City will not assess an occupational license tax or business license receipt on a per machine basis.

**SECTION 9. Existing Zoning and Facilities.**

(a) *Existing Zoning.* Prior to the adoption and acceptance of this Agreement, the parties agree the property has the following zoning designations:

The parcel located just south of Bonita Beach Road and west of Racetrack Road is vacant with a Commercial Planned Development (Bonita-Ft. Myers Pitch & Putt 97-066) with an expired master concept plan.

The triangular parcel east of Old US 41 is zoned AG-2 and vacant.

The Kennel Club parcel located on the north side of Compound road is zoned RM-2 and has an existing structure on the property.

Upon execution of this Agreement and for the duration thereof, the City confirms and agrees that the Property may be used for its current use, and may be developed and used for the purposes established in the City's Comprehensive Plan and Land Development Regulations in effect as of the Effective Date of this Agreement, or such laws and policies subsequently adopted and applied to the Property solely pursuant to the procedures of Section 163.3233(2), Florida Statutes.

(b) *Existing Facilities.* The Property is currently improved with an existing greyhound dog track and clubhouse, together with associated kennels, administrative office space and parking facilities (the "Existing Facilities"). The City acknowledges that all of the Existing Facilities are either permitted under the Existing Zoning or are lawful nonconforming uses or structures.

**SECTION 10. PROJECT APPROVAL.**

(a) *Proposed Project.* The Bonita Springs Owner anticipates the redevelopment and expansion of the Existing Facilities to provide for the following development program (the "Project"):

Greyhound dog track

Clubhouse facilities consisting of 5,000 seats and 200,000 square feet

Up to 15,000 square feet of restaurant use

Up to 20,000 square feet of bar/nightclub

Up to 250,000 square feet of retail

Up to 100,000 square feet of office

(b) *Further Development Review.* The City acknowledges that an application to allow the development permitted by this Agreement will need to be filed, requesting a modification of the Property's zoning designation and such other approvals as may be necessary to accommodate the Project. It is the desire of all Parties that such application be considered as soon as reasonably possible. The Developer will look to the City's redevelopment program for the Bonita Historic River District area for guidance in designing the entertainment uses in the Project. If the Project provides for multiple structures, their design shall reflect a unified or complementary architectural style.

(c) *Downzoning.* For the duration of this Agreement, the City shall not downzone the Property or otherwise limit the ability of Bonita Springs Owner to develop the Property in accordance with the Development Approvals and nothing shall prohibit the issuance of further development orders and approvals in conformity with same for the Property. However, the City may apply subsequently adopted laws and policies to the Property, solely pursuant to the procedures of Section 163.3233(2), Florida Statutes.

(d) *No Obligation to Redevelop.* Nothing herein shall be construed to require the Bonita Springs Owner to develop the Project, or prevent the Bonita Springs Owner from requesting approval for development that differs from the Project in any way. The Project description represents those development approvals that, if granted, will be prohibited from future downzoning pursuant to Paragraph 10.c. above.

(c) Nothing herein shall be construed as a development limit restricting the square footage to that described in Section 10a. above if the parties agree to increase such limits during any subsequent public hearings for an amendment to any approved zoning designation by planned development, so long as there is no prohibition against that increase in the comprehensive plan or state law. As part of any increase in the development limits set forth in Section 10a., the parties hereto shall also agree upon an equitable adjustment to the "Development Fee Cap" in Section 8a. of this Agreement.

**SECTION 11. PUBLIC SERVICES AND FACILITIES: CONCURRENCY.**

For the purposes of concurrency review, it is hereby found that, throughout the duration of this Agreement, sufficient infrastructure capacities will be reserved and remain available to serve this Project to the extent such capacities are within the jurisdiction of the City, ~~subject to the City's ability to require the street improvements described on Schedule [ ] attached hereto.~~ All subsequent development orders or permits sought to be issued which are in conformity with this Agreement are hereby found to meet concurrency standards set forth in the Comprehensive Plan as such standards may be amended from time to time (concurrency regulations) and to be consistent with Land Development Regulations, so long as Bonita Springs Owner develops the Property in compliance with the terms and conditions contained within the Existing Zoning (or if approved, the proposed Project) and this Agreement. Notwithstanding the foregoing, Bonita Springs Owner acknowledges that the City is not responsible (i) for water and sewer service provided by BSU; (ii) other services provided by the County or (iii) for any commercial solid waste removal and/or recycling contract that Bonita Springs Owner may have from time to time with a private hauler (collectively, the "Non-City Services"), and as such, the City can not guarantee adequate capacity with respect to Non-City Services.

**SECTION 12. RESERVATION OR DEDICATION OF LAND.**

Except as otherwise provided below and pursuant to applicable subdivision regulations, Bonita Springs Owner shall not be required to dedicate or reserve any land within the Property for municipal purposes.

**SECTION 13. LOCAL DEVELOPMENT PERMITS.**

The development of the Property in accordance with Paragraph 10 is contemplated by Bonita Springs Owner. The City may need to consider certain additional development permits in order for Bonita Springs Owner to complete the Project in a manner consistent with the Development Approvals and the Land Development Regulations in effect as of the Effective Date and Comprehensive Plan designations affecting the Property, such as:

- (a) Zoning
- ~~(b) Site Plan approvals, including plats;~~
- ~~(b) (e) Land Improvement Permits, including local~~ Local development orders or site improvement plans;
- ~~(c) (d) Subdivision plat and or waiver of plat approvals;~~
- ~~(d) (e) special permits;~~
- ~~(e) (f) Covenant or Unity of Title acceptance or the release of existing unities or covenants;~~
- ~~(f) (g) Certificates of use and/or occupancy; and~~
- ~~(g) (h) Any other official action of the City having the effect of permitting the development of land.~~

**SECTION 14. CONSISTENCY WITH COMPREHENSIVE PLAN.**

The City hereby finds that the Existing Facilities and the Project are consistent with the City's Land Development Regulations and Comprehensive Plan designation as of the Effective Date and shall not be subject to any future changes to the City's Land Development Regulations and Comprehensive Plan designation after the Effective Date; provided, however, the City may apply subsequently adopted laws and policies to the Property for any redevelopment of the Property not specifically stated in this Development Agreement.

**SECTION 15. NECESSITY OF COMPLYING WITH LOCAL REGULATIONS RELATIVE TO DEVELOPMENT PERMITS.**

Bonita Springs Owner and the City agree that the failure of this Agreement to address a particular permit, condition, fee, term, license, or restriction in effect on the Effective Date of this Agreement shall not relieve Bonita Springs Owner of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms, licenses, or restrictions as long as compliance with said regulation and requirements do not require Bonita Springs Owner to develop the Property in a manner that is inconsistent with the Development Approvals.

**SECTION 16. RESERVATION OF DEVELOPMENT RIGHTS.** For the term of this Agreement, the City hereby agrees that it shall permit the development of the Property as specified in this Agreement in accordance with the City's Land Development Regulations, the City's Comprehensive Plan, and existing laws and policies as of the Effective Date of this Agreement which are or may be applicable to the Property, subject to the conditions of this Agreement. However, nothing herein shall prohibit an increase in developmental density or intensity within the Property in a manner consistent with the City's Comprehensive Plan and Land Development Regulations, or any change requested or initiated by Bonita Springs Owner in accordance with applicable provisions of law, which will trigger the laws and policies then in effect at time of request. Moreover, the City may apply subsequently adopted laws and policies to the Property with the mutual agreement of the City and the Developer or, if no such agreement is obtained, solely pursuant to the procedures of Section 163.3233(2), Florida Statutes.

There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, regarding the development of the Property between the Parties. The expiration or termination of this Agreement, for whatever reason, shall not be considered a waiver



With copies to:

Holland & Knight LLP  
701 Brickell Ave., Ste. 3000  
Miami, FL 33131  
Attention: Josias N. Dewey

Any Party to this Agreement may change its notification address(es) by providing written notification to the remaining parties pursuant to the terms and conditions of this section.

**SECTION 18. AGREEMENT NOT A LEASE.**

It is agreed that this Agreement is not a lease, and that no interest or estate in, or lien on, real property or improvements is created by this Agreement.

**SECTION 19. INDEMNIFICATION; RISK OF LOSS, AND INSURANCE.**

(a) Indemnification: Bonita Springs Owner agrees to indemnify, protect, defend, release, and hold harmless the City, its officials, agents, employees, and contractors, and each of them from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, costs and liabilities of every kind or description to which the City, its officials, agents, employees, or contractors may be subjected which are caused by or arise out of, in whole or in part, (i) the negligent acts (whether active or passive or in strict liability), intentional misconduct, omissions, or defaults of Bonita Springs Owner or its agents, employees, officers, or contractors, which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the City or its officials, employees, agents or contractors, and (ii) the failure of Bonita Springs Owner to comply materially with any of the requirements herein, or the failure of the Bonita Springs Owner to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, local, federal or state, in connection with the performance of this Agreement. This indemnity obligation shall apply regardless of whether such suits, actions,

claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom the City, its officials, agents, employees, or contractors may become liable. Upon request of the City, Bonita Springs Owner shall undertake to defend, at its sole cost and expense, any and all suits brought against the City in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence, omission, or default by Bonita Springs Owner or its agents, employees, officers, or contractors. Bonita Springs Owner shall have the right to cooperate in the defense, including the selection of private counsel, if any, at its sole cost and expense, against any suit, action, claim, demand, damage, loss, penalty or fine made by any party to this Agreement or any third party that could reasonably and foreseeably result in a material adverse impact on the amount of Gross Slot Revenues generated or capable of being generated at the Property.

(b) Risk of Loss: The City and its officials, employees, agents, and contractors assume no responsibility whatsoever for any person(s) or property that enter Bonita Springs Owner's Property for the Project as a result of, or in connection with, this Agreement. In consideration of the execution of this Agreement by the City, the Bonita Springs Owner releases and waives all claims against the City, its officials, employees, agents, and contractors from any and all liability for any loss, injury, death, theft, damage or destruction to any persons or property which may occur in or about the Property regardless of the cause.

(c) Insurance: Bonita Springs Owner fully understands that it shall be its responsibility to secure its own insurance coverage(s). Bonita Springs Owner shall, at all times during the term hereof, maintain such insurance coverage(s) as may be required by Bonita Springs Owner for the Building, the Property, and the Project and all persons entering thereon, and all equipment and instruments stored thereon, including any of Bonita Springs Owner's equipment and instruments required for development of the Project and its ongoing operations. Bonita

Springs Owner shall be responsible for assuring that the insurance coverages remain in full force and effect for the duration of this Agreement, including any extensions hereof. To the extent applicable to the right-of-way and surrounding property, Bonita Springs Owner will name City as an additional insured (to the extent permitted under the policy) as a term of this Agreement. Compliance with the foregoing insurance requirements shall not relieve Bonita Springs Owner of its liabilities and obligations under this Agreement.

**SECTION 20. EXCLUSIVE VENUE, CHOICE OF LAW, SPECIFIC PERFORMANCE.**

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in the County. In addition to any other legal rights, the City and Bonita Springs Owner shall each have the right to specific performance of this Agreement in court. Each party shall bear its own attorney's fees. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction. The parties irrevocably waive any rights to a jury trial.

**SECTION 21. VOLUNTARY PAYMENT AND VOLUNTARY COMPLIANCE.**

Bonita Springs Owner and the City each agree that in the event all or any part of this Agreement is struck down by judicial proceeding or preempted by legislative action, Bonita Springs Owner and the City shall continue to honor the terms and conditions of this Agreement to the extent allowed by law.

**SECTION 22. NO ORAL CHANGE OR TERMINATION.**

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

**SECTION 23. COMPLIANCE WITH APPLICABLE LAWS.**

Throughout the Term of this Agreement, Bonita Springs Owner shall comply with all Applicable Laws, subject to the terms and conditions of this Agreement.

**SECTION 24. REPRESENTATIONS; REPRESENTATIVES.**

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms. The City Manager shall be the City's representative in connection with the terms and conditions of this Agreement. [BarbaraIsadore](#) Havenick, [Vice](#) President, shall be Bonita Springs Owner's representative in connection with the execution of and the terms and conditions of this Agreement. The foregoing provisions are not intended to impose any personal liability on the City Manager or [BarbaraIsadore](#) Havenick for the City's or Bonita Springs Owner's obligations and liabilities under this Agreement.

**SECTION 25. NO EXCLUSIVE REMEDIES.**

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default

of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

**SECTION 26. FAILURE TO EXERCISE RIGHTS NOT A WAIVER; WAIVER PROVISIONS.**

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein. No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

**SECTION 27. EVENTS OF DEFAULT.**

(a) Bonita Springs Owner shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:

(i) Bonita Springs Owner fails to comply timely with any payment obligation which is not cured within fifteen (15) days from Bonita Springs Owner's failure to meet such payment obligation.

(ii) Bonita Springs Owner fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the City specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then Bonita Springs Owner shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

(iii) If Bonita Springs Owner shall be adjudicated bankrupt, or if Bonita Springs Owner shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of Bonita Springs Owner are commenced and not

dismissed within sixty (60) days of filing or a receiver is appointed for all the property of Bonita Springs Owner which is not dismissed within sixty (60) days of such appointment.

(b) The City shall be in default under this Agreement if the City fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from Bonita Springs Owner specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the City shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

**SECTION 28. REMEDIES UPON DEFAULT.**

Upon the occurrence of a default by Bonita Springs Owner under this Agreement not cured within the applicable grace period, Bonita Springs Owner and the City agree that the City, in addition to any other rights provided by law, shall have the right to impose a lien on the land on which the Property is located.

**SECTION 29. SEVERABILITY.**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, hereafter be determined by a court of law to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect. The parties have the continuing obligation to make a good faith effort to cure or remedy the term or provision held invalid and shall do so by amending this Development Agreement pursuant to Florida Statutes §163.3237.

**SECTION 30. ASSIGNMENT AND TRANSFER.**

This Agreement shall be binding on Bonita Springs Owner and its heirs, successors and assigns. Bonita Springs Owner shall not assign this Agreement without the prior written consent of the City which shall not be unreasonably withheld or denied, except that Bonita Springs Owner may assign this Agreement, without the consent of the City, to a transferee of all or a portion of the Property. Any such transferee shall be bound by the terms and conditions of this Agreement.

**SECTION 31. OBLIGATIONS SURVIVING TERMINATION HEREOF.**

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations (including but not limited to obligations to defend, release, and hold harmless), risk of loss provisions, and insurance provisions hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein; (iv) rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, and (v) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

**SECTION 32. LACK OF AGENCY RELATIONSHIP.**

Nothing contained herein shall be construed as establishing an agency relationship between the City and Bonita Springs Owner and neither Bonita Springs Owner nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the City for any purpose hereunder, and the City, its

contractors, agents, and employees shall not be deemed contractors, agents, or employees of Bonita Springs Owner or its subsidiaries, divisions or affiliates.

**SECTION 33. NON-EXCLUSIVITY.**

Nothing in this Agreement is intended to create any exclusive rights in Bonita Springs Owner to conduct slot machine operations within the County or the City. In the event that by operation of law other persons are authorized to conduct slot operations within the County or the City, then the County or City (to the extent that additional slot machines may be authorized within the City) may permit, authorize and regulate such business and may enter into contracts to the same or similar effect as contemplated by this Agreement without incurring any liability, contractual or otherwise, to Bonita Springs Owner.

**SECTION 34. ADVERSE CHANGE.**

If the City takes affirmative action by way of ordinance, resolution or otherwise regarding the Property and that would have the reasonable or foreseeable result of negatively impacting the generation or capacity of generation of Gross Slot Revenues at the Property, then the City and Bonita Springs Owner agree to negotiate in good faith to revise the terms and conditions of this Agreement. By exception, the City shall have no good faith obligation to revise this Agreement in the event the City's affirmative action is mandated by County or State law. If and until such time as an amendment or revised agreement is executed, all terms and conditions of this Agreement shall remain in place. Nothing herein shall be construed to obligate the City to revise any term or condition of this Agreement.

**SECTION 35. COVENANT NOT TO SUE.**

Bonita Springs Owner hereby covenants that it shall not commence or maintain any lawsuit, administrative proceeding, or other action, whether at law or in equity, which challenges

the validity or enforceability of this Agreement, any provision of this Agreement or any payment obligation under this Agreement. This covenant shall be binding upon, and inure to, the benefit of the parties, their successors, assigns, heirs, legal representatives, and personal representatives.

**SECTION 36. COOPERATION, EXPEDITED PERMITTING AND TIME IS OF THE ESSENCE.**

The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence in all aspects of their respective and mutual responsibilities pursuant to this Agreement. The Parties agree to work together, to the extent practicable and allowed by Law, towards the goal of maximizing the Gross Slot Revenues generated at Bonita Springs Owner's Property at the earliest possible time.

The City shall use its best efforts to expedite to the extent reasonably practical the permitting and approval process in an effort to assist the Bonita Springs Owner in achieving its re-development and construction milestones, to be provided to the City and incorporated into this Agreement. The City will accommodate requests from Bonita Springs Owner's general contractor and subcontractors for review of multiple permitting packages, such as those for site work and foundations, and building shell, core and interiors. In addition, the City will designate an individual within the City Manager's office who will serve as the City's point of contact and liaison with Bonita Springs Owner in order to facilitate expediting the processing and issuance of all permit applications. The City will provide responses to Bonita Spring Owner's submittals no later than the thirtieth (30<sup>th</sup>) day after Bonita Spring Owner has submitted same to the City, provided that the submittals are deemed sufficient and in accordance with state and local laws. Notwithstanding the foregoing, and subject to the provisions of Section 550, Florida Statutes, the City shall not be obligated to issue development approvals or permits to the extent Bonita Springs

Owner does not comply with the applicable requirements of the City's land development code and applicable building codes.

**SECTION 37. Acknowledgement of Application with Chapter 550, Florida Statutes.**

Nothing contained in this Agreement is intended to (i) limit or abridge any of Bonita Springs Owner's rights or privileges for Pari-Mutuel Wagering under Chapter 550, Florida Statutes, or (ii) permit the City to require any permits, approvals or licenses in connection with the Development or operation of the Project in contravention of the provisions of Chapter 550, Florida Statutes, including, without limitation. Section 550.155.

**SECTION 38. NOISE ORDINANCE / SPECIAL EVENT PERMIT.**

Bonita Springs Owner anticipates holding performances at the Property from time to time that would require a Special Event Permit. Each year during the term of this Agreement, the City shall grant such Special Event Permits to Bonita Springs Owner subject only to such conditions of approval that are customary to performances of the type proposed by the Bonita Springs Owner, and shall not object to the proposed date and hours of any performance so long as any amplified performance is not held outdoors during the hours of 10:00 p.m. and 7:00 a.m., with the sound emanating from any performance not to exceed 65 dBAs as measured from the nearest occupied residential property. Alcohol will be permitted to be consumed indoors (and on any outdoor terraces adjacent to the clubhouse and racetrack buildings) from the time of the current permit, to the hours of 4:00 a.m. (or in the case of outdoor areas, 2:00 a.m.), with the City of Bonita Springs administratively approving any changes, if necessary. Bonita Springs Owner shall ensure that sufficient on-site security personnel (including off-duty police officers) are present at the Property to avoid creating any nuisance as a result of the extended drinking hours.

**SECTION 39. CANCELLATION AND ENFORCEMENT.**

In the event that Bonita Springs Owner, its successors and/or assigns fails to act in accordance with the terms of the Existing Zoning, the City shall seek enforcement of said violation upon the Property. Enforcement of this Agreement shall be by action against any parties or person violating, or attempting to violate, any covenants set forth in this Agreement, or violations of the Land Development Code then in effect if not specifically permitted in this Agreement. The prevailing party in any action or suit pertaining to or arising out of this Agreement shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his/her/its attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

The Bonita Springs Owner shall not commit any nuisance or do or permit to be done anything that may result in the creation or commission of a nuisance in or around the PARI-MUTUEL FACILITIES in violation of any applicable ordinance.

**SECTION 40. FIRST SOURCE HIRING; LOCAL AND MINORITY PREFERENCE COMMITMENT.**

Bonita Springs Owner hereby acknowledges and agrees that it will adopt and implement an employment policy pursuant to which it will give a preference in the hiring process to residents of the City, including but not limited to hiring not less than forty percent (40%) of such employees at entry levels, when faced with otherwise equally-qualified applicants for positions at Bonita Springs Owner. City Manager will be permitted to review such policy and comment. At the end of each year, Bonita Springs Owner will provide City with a report of the hiring, with sufficient identifying information to determine whether Bonita Springs Owner is providing the first source preference in accordance with this Agreement. In the event the preference policy does not

generate at least forty percent (40%) of new-hire employees at entry levels, City and Bonita Springs Owner will review the policy, as well as available training programs, to jointly work on correcting the issue.

City and Bonita Springs Owner both agree that this policy will be supplement but subordinate to any Equal Employment Opportunity hiring requirements imposed by state or federal laws.

**SECTION 41. USE OF NAME; RENAMING OF FACILITY.**

Bonita Springs Owner agrees that it will rename its facility from Naples Fort Myers Dog Track to a name referring to the City of Bonita Springs as part of the name, identifying information and address for the Property. Notwithstanding, Bonita Springs Owner has exclusive rights to rename the facility as long as Bonita Springs is in part of the name and Naples Fort Myers is removed from the name. [Bonita Springs Owner shall provide the City with thirty \(30\) days prior written notice of before changing its facility's namege.](#)

**SECTION 42. NO THIRD-PARTY BENEFICIARY; GOVERNMENTAL IMMUNITY.**

No persons or entities other than the Bonita Springs Owner and the City (and their heirs, successors and assigns) shall have any rights whatsoever under this Agreement. Nothing herein is intended to serve as a waiver of sovereign immunity by City, nor shall anything be construed as consent to be sued by third parties in any matter arising out of this Agreement.

**SECTION 43. COUNTERPARTS.**

This Agreement may be executed in three or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same agreement.

NOW, WHEREOF, the City and Bonita Springs Owner have caused this Agreement to be duly executed.

**CITY:**

ATTEST:

**CITY OF BONITA SPRINGS**, a municipal corporation under the laws of Florida

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor Ben Nelson

Approved as to Form and Legal Sufficiency

By: \_\_\_\_\_  
Audrey E. Vance, City Attorney

BONITA-FORT MYERS CORPORATION,  
a Florida corporation

By: \_\_\_\_\_

~~Barbara Havenick~~, President

Isidore Vice -  
Havenick

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

THE FOREGOING INSTRUMENT was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of BONITA-FORT MYERS CORPORATION, a Florida corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My Commission Expires:

\_\_\_\_\_  
Notary Public

Print/Type Name of Notary

Commission No. \_\_\_\_\_

Document comparison by Workshare Professional on Wednesday, September 12, 2012 9:01:11 PM

Input:	
Document 1 ID	interwovenSite://HKDMS/Active/11535902/1
Description	#11535902v1<Active> - Development Agreement - Slot Machines at Bonita Springs (9/12/12)
Document 2 ID	interwovenSite://HKDMS/Active/11535902/2
Description	#11535902v2<Active> - Development Agreement - Slot Machines at Bonita Springs (9/12/12)
Rendering set	standard

Legend:	
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<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
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Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	11
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	25