

## **MUNICIPAL ORDER 13-2022**

**A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF OWENSBORO AND ELLIS ENTERTAINMENT, LLC BY WHICH THE COMPANY SHALL LOCATE A HISTORICAL HORSE RACING GAMING FACILITY IN THE CITY OF OWENSBORO IN EXCHANGE FOR A REBATE OF FIFTY PERCENT (50%) OF THE GENERAL FUND OCCUPATIONAL FEE ON GROSS WAGES FOR FIVE (5) YEARS.**

**WHEREAS**, Ellis Entertainment, LLC desires to locate a historical horse racing gaming facility in the City of Owensboro, Kentucky which will create jobs and further stimulate local commerce; and

**WHEREAS**, the City of Owensboro recognizes the economic impact of the Company's facility in Owensboro and hereby agrees to incentivize the Company for its job creation initiative in our community; and

**WHEREAS**, the Parties wish to enter into an Agreement that memorializes the benefits and specific obligations of each, a copy of which is attached hereto as Exhibit "A" and incorporated by reference.

**NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** That the Mayor be, and hereby is, authorized and directed to execute an Agreement between the City of Owensboro and Ellis Entertainment, LLC for the purpose of establishing the benefits and obligations of each Party, including a rebate of fifty percent (50%) of the General Fund Occupational Fee on the Company's gross wages.

**Section 2.** That the Mayor, City Manager and other appropriate staff members are hereby authorized and directed to execute any and all other agreements, instruments, or documents necessary and appropriate to effectuate and implement the intentions of the City of Owensboro and Ellis Entertainment, LLC.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING,** this the 19<sup>th</sup> day of April, 2022.

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Thomas H. Watson, Mayor

ATTEST:

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Beth Davis, City Clerk

## AGREEMENT

This Agreement dated April \_\_\_\_\_, 2022, between the CITY OF OWENSBORO, a municipal corporation of the Home Rule Class created and existing under the laws of the Commonwealth of Kentucky, 101 East Fourth Street, P.O. Box 10003, Owensboro, Kentucky 42302-9003 (the “**City**”), and ELLIS ENTERTAINMENT, LLC, a Kentucky limited liability company, 700 Comanche Rd. NE, Albuquerque, NM 87107 (the “**Company**”).

## RECITALS

WHEREAS, the Company desires to locate a historical horse racing gaming facility (racetrack extension) (the “**Facility**”) in Owensboro, Kentucky which will create jobs and further stimulate economic development; and

WHEREAS, the City recognizes the economic impact of the Company locating the Facility in Owensboro and hereby agrees to incentivize the Company for its job creation initiative in the community; and

WHEREAS, the City recognizes that the horse racing industry is crucial to the economy of the Commonwealth; and

WHEREAS, the Kentucky General Assembly grants municipalities such as the City the power to levy taxes, including an occupational license tax; and

WHEREAS, Chapter 16, Article II, Section 16-22 of the Owensboro Municipal Code requires every business entity to pay an occupational license tax or fee for the privilege of engaging in business within the City (the “**General Fund Occupational Fee**”); and

WHEREAS, under Kentucky and local law, the City may grant a rebate of the

General Fund Occupational Fee to a business entity for the public purpose of economic development.

NOW THEREFORE, in consideration of these premises, the City and the Company hereby agree as follows:

**Section 1. City Obligation.** In consideration of the Company locating the Facility in the City of Owensboro, the City shall hereby grant to the Company, as an incentive, a rebate equal to fifty percent (50%) of the General Fund Occupational Fee levied on the Company's gross employee wages for a period of five (5) years (the "Incentive Rebate"). The five-year Incentive Rebate period will commence upon satisfaction of the following conditions: (1) approval by the Owensboro Board of Commissioners of this Agreement and (2) the Facility opening to the general public.

**Section 2. Company Obligations.** In consideration of the incentive provided by the City, the Company agrees to:

- (1) Retain the Facility in Owensboro for a period of least ten (10) years; and
- (2) Obtain and maintain an active City business license, as well as timely comply with all contractual and financial obligations to the City under this Agreement.

**Section 3. Condition Precedent.** The Company acknowledges that this Agreement is conditioned upon approval by the Owensboro Board of Commissioners.

**Section 4. Termination for Convenience.** If, as a result of a statutory or regulatory change, or a judicial ruling, either (a) the Company's authority to conduct historical horse racing machines, pari-mutuel wagering, satellite track facilities, or other gaming-related activities ("**Business Activities**") becomes or is held unlawful or (b) there

is a material adverse impact on the financial viability of Company's Business Activities, then upon notice to the City the Company may terminate this Agreement for convenience and the Company shall not be required to repay any Incentive Rebate previously provided to the Company by the City.

**Section 5. Assignment.** The Company may not assign its rights or obligations under this Agreement without the prior written consent of the City. Provided, however, the Company may assign any of its rights or obligations under this Agreement to another party without the written consent of the City in connection with the transfer or sale of all or substantially all of the business to which this Agreement relates.

**Section 6. Governing Law; Dispute Resolution.** The laws of the Commonwealth of Kentucky govern all matters of construction, validity, performance, and adversarial proceedings arising out of this Agreement. Any dispute arising out of this Agreement will be brought in the State or Federal Courts of Daviess County, Kentucky.

**Section 7. Notice.**

(a) For a notice of breach or other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national courier company (with all fees prepaid), or (3) by registered or certified mail, return receipt requested and postage prepaid.

(b) Subject to section 7(d), a valid notice or other communication under this agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:

(1) If it is delivered by hand, delivered by a national courier company (with all fees prepaid), or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt; and

(2) If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

(c) For a notice or other communication to a party under this agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this section 7.

To the City:                      City of Owensboro  
   101 East Fourth Street  
   P. O. Box 10003  
   Owensboro, Kentucky 42302-9003  
   Attention: Nate Pagan, City Manager

To the Company:                Ellis Entertainment, LLC  
   3300 US-41  
   Henderson, Kentucky 42420  
   Attention: General Manager

(d) If a notice or other communication addressed to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day.

**Section 8. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement.

**Section 9. Amendment; Waiver.** No amendment of this Agreement will be effective unless it is in writing and signed by the Parties. No waiver under this Agreement will be effective unless it is in writing and signed by the Party granting the waiver (in the case of the Company, by an individual authorized by its board of managers). A waiver granted on one occasion will not operate as a waiver on other occasions.

**Section 10. Entire Agreement; Binding Effect.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the parties.

**IN TESTIMONY WHEREOF,** witness the signatures of the Parties hereto on this the day and date first hereinabove written.

**CITY OF OWENSBORO:**

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Thomas H. Watson, Mayor

ATTEST:

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Beth Davis, City Clerk

**ELLIS ENTERTAINMENT, LLC:**

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Tim Perkins, Managing Member

ATTEST:

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COMMONWEALTH OF KENTUCKY     )  
   )  
COUNTY OF DAVIESS                     )     Sct.

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Thomas H. Watson, as Mayor, and attested by Beth Davis, as City Clerk, for and on behalf of the City of Owensboro, Kentucky, on this the \_\_\_\_ day of April, 2022.

\_\_\_\_\_  
Notary Public, State of Kentucky at Large  
Notary ID# \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF NEW MEXICO                     )  
   )  
COUNTY OF BERNALILLO                     )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Tim Perkins, as Managing Member, and attested by \_\_\_\_\_, as \_\_\_\_\_, for and on behalf of Ellis Entertainment, LLC, on this the \_\_\_\_ day of April, 2022.

\_\_\_\_\_  
Notary Public  
Notary ID# \_\_\_\_\_  
My commission expires: \_\_\_\_\_