

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“the Agreement”) is entered into this ___ day of _____, 2021 (the “Effective Date”), by and among Bankroll Club LLC (“Tenant”), Chestnut Square Associates, LP (“Owner”), the Center City Residents’ Association (“CCRA”), William Penn House Cooperative Association (“WPH”), 1920 Chestnut Street Condominium Association (“1920 Chestnut”), and Robin Apartments, Inc. (“Robin Apartments”). Each of Tenant, Owner, CCRA, WPH, 1920 Chestnut and Robin Apartments may be referred to herein as a “Party,” and collectively, as the “Parties.”

WHEREAS, Owner owns certain real property known as 1910 Chestnut Street, Philadelphia, PA with Office of Property Assessment number 882043203 (“the Property”), including, but not limited to, the former Boyd Theater;

WHEREAS, Owner has leased a portion of the Property to Tenant, which Tenant intends to operate as “Bankroll,” a proposed sports-themed restaurant operated by Starr Restaurants, that is anticipated, among other things, to display sports scores, stats and live games for patrons who may use internet-based sports betting platforms on their personal devices in the premises, as permitted throughout Pennsylvania (“Bankroll”);

WHEREAS, in connection with the Bankroll concept, Tenant has submitted an application (the “Application”) to the Philadelphia Department of Licenses & Inspections (“L&I”), for, *inter alia*, the erection of a mezzanine at the first floor of the existing structure for use as an eat-in restaurant on the first floor on the same lot as existing sit-down restaurant on the first floor in the same lot as part of a previously approved unity of use with all other previously approved uses (the “Project”);

WHEREAS, in connection with the Project, under the Philadelphia Zoning Code (the “Code”), in its current form, Tenant requires special exception zoning approval (the “Relief”) from the Philadelphia Zoning Board of Adjustment (the “ZBA”) for the operation of Bankroll at the Property;

WHEREAS, CCRA is the registered community organization (“RCO”) under the Philadelphia Zoning Code authorized to represent the interests of the residents who live in the territory encompassing the south side of John F. Kennedy Boulevard to the north side of South Street, and from west side of Broad Street to the Schuylkill River and which such territory includes the Property;

WHEREAS, WPH is the cooperative association organized under Delaware law that represents the owners of units at the William Penn House, 1919 Chestnut Street, Philadelphia, PA, 19103, which is located within 250 feet of the Property;

WHEREAS, 1920 Chestnut is the condominium association organized under Pennsylvania law that represents the owners of units at 1920 Chestnut Street, Philadelphia, PA, 19102, which is located within 250 feet of the Property;

WHEREAS, Robin Apartments is the owner of certain real property known as 2003 Chestnut St, Philadelphia, PA 19103 that is located within 250 feet of the Property;

WHEREAS, CCRA, WPH, 1920 Chestnut, and Robin Apartments (collectively, “Community Parties”) have expressed to Owner and Tenant concerns of the community (including members of CCRA) regarding potential negative impacts on the quality of life that could be caused by the operation of Bankroll; and specifically, Community Parties have expressed the concerns of those who reside within 250 feet or less of the Property, who could be impacted if the aforesaid Relief is granted and Owner and Tenant do not take steps to mitigate activities of concern to CCRA and its members;

WHEREAS, Owner and Tenant wish to attempt to respond to the concerns of Community Parties and their respective members, if any; are willing to enter into an agreement with the Community Parties imposing certain restrictions; and understand and agree that such restrictions will be binding on Owner, Tenant and their respective successors and assigns;

WHEREAS, the Community Parties have agreed with Owner and Tenant to certain conditions upon which they will provide their support for the Relief as set forth herein;

NOW THEREFORE, in consideration of the mutual promises and obligations contained herein, the adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, and intending to be legally bound, the parties hereby enter into this Agreement and agree to the following terms:

1. Owner and Tenant agree to the following conditions with respect to the Property:
 - (a) No Gaming Requested in Connection with this Application. Owner and Tenant confirm that the Application does not include gaming and agree and affirm that they have not and will not apply to the Pennsylvania Gaming Control Board (or any comparable governmental agency) for a Category 1, 2, 3, or 4 Casino License, or any other type of Casino License that would allow for the operation of gaming on the premises of the Property.
 - (b) Hours and Capacity. Tenant agrees that it will close no later than 2:00 a.m. every night. Tenant also agrees that the maximum capacity of patrons shall never exceed 490 at any one time.
 - (c) Security.
 - (i) Tenant will hire well-trained, security personnel, including former police officers when possible, to provide security coverage during events at the premises on the Property expected to draw patrons in an amount near the maximum capacity of the premises.
 - (ii) Tenant, at its sole expense, agrees to retain a sufficient number of private security guards and/or doorpersons who shall be responsible

for, *inter alia*: (A) ensuring that patrons peacefully disburse from the premises of the Property when exiting; and (B) requiring that rideshare vehicles (including, but not limited to taxicabs, Uber and Lyft vehicles) respect the flow of traffic on the 1900 block of Chestnut Street and circle the block if necessary. For the avoidance of doubt, there shall be no less than two (2) private security guards and/or doorpersons from 5:00 p.m. until closing; and additional private security guards/ doorpersons depending upon customer occupancy of the premises during professional football game days and during special and/or promotional events at the Property.

- (iii) Tenant agrees to instruct its private security personnel to notify the Philadelphia Police Department immediately in the event such personnel witnesses a disturbance, crime or other emergency occurring on the 1900 block of Chestnut St.
 - (iv) Tenant agrees to install no less than three (3) exterior mounted cameras and two (2) pan-tilt zoom cameras to the exterior of the premises of the Property in order to monitor both sides of the 1900 block of Chestnut Street; and Tenant further agrees to share security footage captured by such cameras with the Philadelphia Police Department to aid in the investigation of any criminal activity alleged to have occurred near the vicinity of the premises of the Property.
 - (vi) Tenant agrees to maintain lighting with respect to the exterior of the premises of the Property on the 1900 block of Chestnut Street so as to ensure that the area around the Property is safe for patrons and the community.
- (d) No Outdoor Seating.
- (i) Tenant agrees and affirms that the Application does not include and that Tenant will not provide any outdoor seating or outdoor areas serving alcoholic beverages (including open air areas within the Property's applicable property line) with respect to the Property.
 - (ii) Tenant agrees that it will not have a roof deck at the premises of the Property where patrons may gather or be present.
- (e) Nuisance Abatement and Alcohol.
- (i) Tenant agrees that it will not seek permission for an extension of the premises to serve alcohol or food on the sidewalk at or adjacent to the Property, nor serve alcohol or food to patrons on the sidewalks

or rooftop, nor allow patrons to consume alcohol on the sidewalk or any outdoor space with respect to the Property.

- (ii) Tenant agrees that there will be no amplified music outside, or audible outside, the premises of the Property.
 - (iii) Tenant agrees that there will be no dance floor or live music performed at the premises of the Property.
 - (iv) Tenant agrees that the premises shall be sufficiently sound proofed so that no noise generated inside the premises of the Property will be audible outside of the Chestnut Street curb line of the Property.
 - (v) Tenant agrees that all windows at the premises of the Property will not be operable and will remain closed at all times.
 - (vi) Tenant agrees that it will discourage patrons from queuing outdoor of the premises of the Property and will utilize an electronic based reservation system.
 - (vii) Tenant agrees to require patrons waiting for rideshare vehicles (including, but not limited to taxicabs and Uber and Lyft vehicles) to wait inside the premises on the Property.
 - (ix) Tenant agrees to soundproof any exterior HVAC units in accordance with all applicable laws and regulations.
- (f) Traffic Concerns. Tenant will not offer any discounts, incentives, and/or promotions that direct patrons to park vehicles at the William Penn House Garage.
- (g) Signs and Lighting.
- (i) Tenant agrees that it will not install or use any spotlights that will be visible from neighboring properties.
 - (ii) Tenant agrees not to install, or seek to install, any lights that are directed into the windows of any neighboring properties.
 - (iii) Tenant agrees not to install, or seek to install, any neon, strobing, crawling, moving, or animated lighting on the marquee or façade of the building.
 - (iv) Tenant agrees that all signs installed on the marquee and façade of the building shall be internally illuminated and shall use ambient

light sensors to automatically reduce the intensity of the illumination during periods of darkness.

- (v) Tenant agrees that the intensity of the luminance of any signs installed on the marquis and façade of the building shall not exceed a maximum of 7,500 nits and shall not exceed 0.3 foot candles of light above the ambient light levels.

(h) Green Elements.

- (i) Tenant agrees to retain and/or maintain the existing street trees outside of the Property that fronts Chestnut Street so long as the Philadelphia Department of Parks and Recreation and Streets Department permits the same; and shall further use commercially reasonable efforts to add additional planters outside of the Property that fronts Chestnut Street and will seek approval for the same by City Council ordinance.

- (ii) Tenant agrees to incorporate sustainable design elements.

(i) Standard Restaurant Provisos.

- (i) Tenant agrees that all trash/waste generated at the premises will be internally stored until such trash/waste is removed by a reputable and licensed trash disposal company that is provided access to remove such trash/waste from the premises. Tenant further agrees that no trash/waste will be present on the exterior of the premises at any time; and will not be placed in exterior dumpsters.

- (ii) Tenant agrees that trash/waste will not be picked up before 7:00 a.m. Monday through Friday, nor before 8:00 a.m. on Saturdays or Sundays.

- (iii) Tenant agrees that deliveries to the premises will not take place before 7:00 a.m. Mondays through Fridays, nor before 8:00 a.m. on Saturdays or Sundays.

- (iv) Tenant agrees to provide ventilation for all cooking apparatuses, which will fully extend to a roof and will include vents for all cooking fumes in accordance with all applicable laws and regulations.

- (v) Tenant agrees that on-site cutlery and eating utensils shall be non-disposable.

- (vi) Tenant agrees that take-out service for the premises will not be the primary sales source.

2. Tenant agrees to indemnify, defend and hold harmless Community Partners from and against any and all claims, losses, demands, proceedings, causes of action, costs, judgments, and other liabilities of any kind- and all reasonable expenses associated therewith- arising out of or on account of any and all damages, injuries, losses and acts of vandalism which are reasonably demonstrated to have been caused by Tenant's patrons, up to \$50,000 per incident of damage, injury, loss and/or act of vandalism.

3. As consideration for Owner and Tenant entering into this Agreement, the Community Parties agree that, except as otherwise provided by this Agreement, they shall not protest, oppose, contest, or appeal the Application for Relief and all reasonable changes and/or adjustments to same. For the avoidance of doubt, such affirmative support for the Relief shall include, but shall not be limited to, submitting a letter of support of the Project to the ZBA, and, at the request of Owner and/or Tenant, sending a representative to appear and offer testimony at any ZBA hearing on the Project to indicate support for the granting of Relief.

- a. The Community Parties shall not protest, oppose, contest, or appeal any application for a permit, licensing or approval submitted by or on behalf of Owner or Tenant with respect to the Project, including but not limited to, any application relating to zoning, planning, streets, building, art, historic, or utilities.
- b. In the event the Community Parties, or any of them, appeals or opposes any permit, license, or approval obtained by or on behalf of Owner or Tenant, Owner and Tenant shall have the right to unilaterally terminate this Agreement and all of their respective obligations hereunder.

4. Owner and Tenant agree to indemnify and hold the Community Parties harmless from and against any and all claims, suits, proceedings, liabilities, obligations, costs and expenses (including, without limitation, defense costs and reasonable attorneys' fees and other professional fees and expenses) incurred in connection with or arising out of Owner's or Tenant's (a) performance of their respective obligations hereunder, or (b) breach of any of Owner's or Tenant's obligations, representations or covenants herein.

5. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, a Party shall notify the other Parties of any such dispute in writing and shall receive a response from the Party or Parties claimed to be in breach within five (5) business days following receipt of such notice substantively responding to the dispute notice and proposing a time and place for meeting within five (5) business days following the date of the response if such response does not fully resolve the dispute.

- a. The Party in breach shall be given an opportunity to cure such breach within ten (10) days following notice thereof, or, in the event such breach cannot be remedied in such period but the Party in breach is diligently pursuing a remedy, such cure period shall be extended for sixty (60) days.

- b. If the dispute is not settled through negotiation or an alleged breach is cured within the period set forth above, the Parties agree first to try in good faith to settle the dispute by mediation within thirty (30) days administered under the Rules of the American Association of Arbitration before pursuing any judicial resolution. In the event that the Parties are unable to agree on a mediator, a mediator shall be appointed by the named administrator.
- c. For the avoidance of doubt, any one (1) or more of Community Party(ies) may enforce their rights under this Section, either alone or in concert with any other Community Party(ies).

6. After exhausting the mediation procedure set forth in the immediately preceding Section and the expiration of any applicable cure periods, a Party may bring suit against another Party or otherwise pursue all remedies available at law or in equity at such Party's own cost and expense.

7. It is expressly agreed by all Parties that all Community Parties have, and shall have, standing to request and receive relief under this Agreement. It is expressly agreed by all Parties that this is a private agreement, and that Community Parties retain all remedies at law and in equity to enforce this Agreement. If any governmental agency, body or board shall fail to adopt or shall lessen any of the restrictions stated in Section 1 of this Agreement, such restrictions shall nonetheless remain in full force and effect among the Parties as provided above.

8. Owner and Tenant acknowledge that the provisions contained in Section 1 of this Agreement are reasonable to protect Community Parties' interests; and that any violation thereof would result in irreparable harm to Community Parties. Therefore, Owner and Tenant agree that in the event of a violation of Section 1 of this Agreement, any aggrieved Community Party(ies) shall have the right and remedy, in addition to any other remedy that may be available at law or in equity, to seek injunctive relief in any court having equity jurisdiction. Owner and Tenant further expressly acknowledge that any such violation of Section 1 of this Agreement will cause irreparable harm to Community Parties and that money damages will not provide an adequate remedy to Community Parties. In addition, Owner and Tenant acknowledge that any injunction issued in accordance with this Section shall be available without the posting by Community Parties of any bond or other security, and without proof of damages; Owner and Tenant hereby consent to the issuance of such injunction; and Owner and Tenant agree that any such injunction obtained by any Community Party(ies) shall be in addition to, and not in lieu of, monetary damages and any other relief to which such Community Party(ies) may be entitled. For the avoidance of doubt, any one (1) or more of Community Party(ies) may enforce their rights under this Section, either alone or in concert with any other Community Party(ies).

9. The Parties are authorized and have the authority to enter into this Agreement and have obtained all necessary approvals in order to do so. Each Party represents that the person signing this Agreement on its behalf is authorized to do so. The Parties further represent that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the rights, claims, demands, obligations, or causes of action referred to in this Agreement.

10. The terms and conditions set forth herein are covenants intended by the Parties to apply to and bind Owner, Tenant and the Community Parties, and each of their respective successors and assigns. The provisions of Paragraph 1(a) shall be contained in a Deed Restriction Agreement (in the form attached hereto as Exhibit "A" and made a part hereof) which the Owner shall record in the Office of the Recorder of Deeds of the City of Philadelphia promptly upon execution of this Agreement; and its terms and conditions shall be covenants running with the land.

11. Owner agrees to provide a copy of this Agreement to any prospective successor or assign and require that any successor or assign agree to be bound by this Agreement as a condition of any sale or conveyance; and this Agreement shall be solely binding upon such successors and assigns, and any previous owner shall be released from any liability hereunder. Owner and/or Tenant, as applicable, shall immediately after entering into any Successor Agreement, provide written notice to Community Parties of the existence of the Successor Agreement, including the full address and contact information of the Successor.

12. All notices and other communications required herein shall be sent by email *and* U.S. first class mail (or in lieu of U.S. first class mail, by other recognized overnight delivery service) to the following addresses:

(1) If to the Owner:
Chestnut Square Associates, LP

(2) If to CCRA:
Center City Residents' Association
1900 Market Street, 8th Fl.
Philadelphia, PA 19103
Attn: Travis Oliver
Managing Director
Email: centercity@centercityresidents.org

with a copy to:

with a copy to:
Wade D. Albert, Esquire
Stevens & Lee, P.C.
1500 Market Street
East Tower, Suite 1800
Philadelphia, PA 19102
Email: wade.albert@stevenslee.com

(3) If to the Tenant:
Bankroll Club LLC

(4) If to William Penn House Cooperative Association:

with a copy to:

with a copy to:

(5) If to the 1920 Chestnut Street Condominium Association:

(6) If to Robin Apartments, Inc.:

with a copy to:

with a copy to:

or in each case, at such other addresses as may, from time-to-time, be specified in writing, provided that no change shall be deemed to have been given until it is actually received by the other Party.

13. The Parties acknowledge and represent that each has had the opportunity to thoroughly discuss all aspects of this Agreement with an attorney, that each has carefully read and fully understood all of the provisions of this Agreement, and that each is voluntarily entering into this Agreement. The Parties acknowledge that the drafting of this Agreement is a mutual effort among the Parties and (as applicable) their counsel, and that this Agreement is not to be construed against any Party or group of Parties on the basis of that Party or its counsel being a drafter of any portion or the whole of this Agreement.

14. The Parties hereby consent to the jurisdiction of any state or federal court in Philadelphia County, Pennsylvania, and irrevocably agree that all actions and proceedings relating to this Agreement may and shall promptly be litigated in such courts. Each Party further waives any objection it may have to the conduct of any action or proceeding in any such court based on improper venue or *forum non conveniens*.

15. In the event that L&I does not issue a final zoning permit for the Application or if there is a third-party appeal of the final zoning permit or any other zoning permit, building permit, license or approval for the Project which is not finally and conclusively decided in favor of the Owner or the Project, or if the Owner or Tenant or their successors are unable to begin construction of the Project for any reason within two (2) years of the Effective Date, then this Agreement shall be null and void and the Parties shall have no further obligation to each other unless a substantially similar project is pursued thereafter by Owner or Tenant, in which case this Agreement shall be revived and remain in force.

16. Additional Terms.

- (a) This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. All other agreements, understandings, and negotiations, by the Parties with respect to the subject matter hereof, as of the date hereof, are merged into this Agreement.
- (b) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
- (c) In the event that any court or governmental agency of competent jurisdiction finds that any provision of this Agreement, or part thereof, is illegal, invalid, or unenforceable in any respect, the court or governmental agency may limit, alter or reform such provision to render it valid and enforceable. In the event that any court or governmental agency of competent jurisdiction finds that any part of this Agreement is illegal, invalid, or unenforceable in any respect, and that limitation, alteration, or reformation of the provision is not possible, then the validity, legality, and enforceability of the remainder shall not be affected.
- (d) Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law.
- (e) The terms of this Agreement may be changed, waived, discharged, or terminated only by an agreement in writing signed by all Parties.
- (f) No waiver by a Party of any condition or of any breach of any term, covenant, representation or warranty contained herein shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.
- (g) The recitals contained in this Agreement are incorporated herein as if set forth at length. The headings in this Agreement are for convenience of the Parties and are not part of the substance thereof.
- (h) This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same Agreement.
- (i) Community Parties agree to consider modifications to this Agreement in good faith should any of the statutes, rules or regulations governing operation of Bankroll's business be amended or rescinded effective at the date that is five (5) years following the execution of this Agreement.

Remainder of page intentionally blank.

IN WITNESS WHEREOF, this Agreement is hereby executed by the Parties as of the date and year first stated above.

Bankroll Club LLC

Chestnut Square Associates, LP
By CH GP LLC, its general partner

By: _____
Name:
Title:

By: _____
Name:
Title:

Center City Residents' Association

William Penn House Cooperative Association

By: Richard Gross
Name: Richard Gross
Title: President

By: _____
Name:
Title:

1920 Chestnut Street Condominium Association

Robin Apartments, Inc.

By: Richard Gross
Name: Richard Gross
Title: President

By: _____
Name:
Title:

EXHIBIT A
FORM OF DEED RESTRICTION