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CLARK COUNTY MONORAIL FRANCHISE AGREEMENT  
GRANTED TO  
MGM GRAND-BALLY'S MONORAIL LIMITED LIABILITY COMPANY

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## CLARK COUNTY MONORAIL FRANCHISE AGREEMENT

### GRANTED TO

### MGM GRAND-BALLY'S MONORAIL LIMITED LIABILITY COMPANY

THIS MONORAIL FRANCHISE is granted this 2nd day of December, 1998, by Clark County, Nevada, a political subdivision of the State of Nevada, acting by and through its Board of County Commissioners which is its governing body (hereafter called "County"), to MGM Grand-Bally's Limited Liability Company, a Nevada limited liability company (hereafter called "Franchisee").

### WITNESSETH:

WHEREAS, the Franchisee, a limited liability company organized and existing under and by virtue of the laws of the State of Nevada, and duly qualified to transact business within the State of Nevada, is engaged in the business of designing, constructing, financing and operating a Monorail for public transportation in Clark County; and

WHEREAS, the County is authorized, pursuant to Nevada Revised Statutes (NRS), to grant a franchise to install and operate a Monorail on County Rights-of-Way; and

WHEREAS, Chapter 5.04 of the Clark County Code provides for the issuance of Monorail franchises, and establishes the terms and conditions of Monorail franchise agreements; and

WHEREAS, after a public hearing on December 2, 1998, the Board of County Commissioners of the County of Clark, State of Nevada, approved this Franchise to be awarded subject to the terms and conditions hereinafter set forth; and

WHEREAS, the Franchisee's Application to the County to obtain this Monorail Franchise is attached hereto as Exhibit A and is made a part hereof, and all statements, representations, warranties and promises made therein by the Franchisee have been relied upon by the County in its consideration of this grant, and shall be binding upon the Franchisee.

NOW, THEREFORE, in consideration of the premises and of the performance by Franchisee of the requirements hereinafter set forth, and subject to the following terms and conditions, the County hereby grants to the Franchisee this Monorail Franchise.

## SECTION 1. DEFINITIONS

Capitalized terms in this Franchise Agreement not otherwise defined herein shall be the same as those definitions listed in Clark County Code Chapter 5.04. When not inconsistent with the text, words used in the present tense include future tense, words used in the singular number include the plural number and vice versa, and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. In addition, the following definitions shall apply:

- 1.1 "Clark County Code" or "Code" means the official code of all the ordinances of a general and permanent character of the County of Clark, State of Nevada, as may be adopted and amended by the County Commission.
- 1.2 "Effective Date" means the date on which the County Commission granted this Franchise.
- 1.3 "Force Majeure" means acts of God, acts of another franchisee, epidemics, quarantine restrictions, freight embargoes, explosions, strikes, sabotage, riots or civil disturbances, acts of public enemies, unusually severe weather and natural disasters such as floods, earthquakes, landslides, and fires.
- 1.4 "Lender" means (i) purchasers of debt obligations issued to finance or refinance the Monorail; (ii) any bank, trust company, corporation or other institution lending money to the Franchisee to finance or refinance the Monorail; and (iii) any municipal bond insurer, issuer of a letter of credit, surety or other security instrument supporting such debt obligation. Lender's rights under this Agreement may only be exercised through the Lender's Agent.
- 1.5 "Lender's Agent" means the trustee for the debt obligations issued to finance or refinance the Monorail, together with any successors or assigns thereof, and representative of the Lenders, who provides notice of his status as the same to the County; at any given time there may be only one Lender's Agent to exercise the rights of all Lenders.
- 1.6 "Substituted Entity" means any person or entity selected by the Lender's Agent and approved by the County Commission in accordance with this Franchise Agreement to perform the obligations and succeed to the rights hereunder of Franchisee, after any Lender has acquired the Franchisee's rights hereunder.

## SECTION 2. MONORAIL FRANCHISE GRANTED

2.1 The Franchisee is hereby granted, during the term of this Agreement, a Franchise to install and operate the Monorail in, on, along, under or over the County Rights-of-Way within the route on the legal description attached as Exhibit B and made a part hereof, a general

description of which is also attached with Exhibit B, and pursuant to Chapter 5.04, Chapter 6.14 and applicable provisions of Titles 22, 27, and 29 of Clark County Code. Except as otherwise provided in this Franchise Agreement or applicable provisions of Titles 5, 6, 22, 27 and 29, and subject to subsection 2.5 below, the Franchisee shall have the right:

- (i) to establish and to revise from time to time the frequency of service and schedules of operation of the Monorail;
- (ii) to charge and collect fares from passengers;
- (iii) to establish, modify and adjust from time to time the fares to be charged;
- (iv) to establish promotional and fare programs and to enter into arrangements with hotel and resort owners for discounted and/or free use of the Monorail by patrons;
- (v) to display advertising and to establish concessions in connection with the Monorail, except for advertising which is installed directly on non-moving structures which is easily visible to motorists or pedestrians utilizing such County Rights-of-Way; and
- (vi) to lease space on the Monorail to vendors, merchants, advertisers, public utilities or cable companies pursuant to this Franchise Agreement.

2.2 The Franchise by this Agreement is a privilege and will not impart to the Franchisee any right in any County Rights-of-Way, or right to obstruct or interfere with the flow of vehicular or pedestrian traffic in any County Rights-of-Way.

2.3 The Franchisee shall have the right, privilege and authority to make any and all improvements, upgrades and capacity enhancements to the Monorail (including the addition of trains) consistent with the terms of this Franchise Agreement and subject to the additional approvals required pursuant to Clark County Code as amended from time to time.

2.4 There is hereby specifically excluded from the right, privilege, permission, and authority hereby given, the right, privilege, permission, and authority to, in any way, engage in activities other than those reasonably necessary to install, maintain, and operate a Monorail and those described in paragraph 2.1 above. No right, privilege, permission, or authority is granted by, or to be inferred from, this Agreement, except those specifically described herein.

2.5 The Franchisee may not expand the Franchise to install, maintain and operate its facilities in the County's Rights-of-Way beyond the original geographic route legally described in Exhibit B of this Agreement without first obtaining approval of an amended Franchise Agreement from the County Commission.

2.6 Changes, additions and amendments to this Agreement shall be in accordance with Clark County Code Section 5.04.140. In the event that an amendment of this Franchise Agreement is approved by the County Commission, such amendment shall be subject to all the terms and conditions of applicable provisions of Titles 5, 6, 22, 27 and 29 of the Clark County Code, and as amended from time to time.

2.7 In the event that the Franchisee fails, for reasons other than Force Majeure or any other reason permitted by this Franchise Agreement or applicable provisions of Clark County Code Titles 5, 6, 22, 27 and 29, to Commence Construction of the Monorail within two years after the Effective Date of this Franchise Agreement, or to Complete Construction in County Rights-of-Way within four years following Commencement of Construction, upon 45 days' written notice specifying such failure and after giving the Franchisee and/or the Lender's Agent an opportunity to be heard, the County Commission may terminate the Franchise. The County Commission may reinstate the Franchise at its sole discretion upon such terms as it deems appropriate.

2.8 In satisfaction of the requirements of NRS 705.700, the County and the Franchisee hereby incorporate as Exhibit C hereto the Technical Memorandum of Understanding between MGM Grand-Bally's Monorail LLC and the Regional Transportation Commission addressing the compatibility of the Monorail for connection with a system of transportation operated on a public Fixed Guideway.

2.9 The County and the Franchisee conclude and agree that no provision of this Agreement is in conflict with the intent or the language of NRS Sections 705.610 through 705.700. The Franchisee hereby waives any current or future claim to the contrary, and agrees that neither it nor any affiliate will raise any claim or defense to the contrary, in any forum.

### **SECTION 3. FRANCHISE AGREEMENT DURATION, CONDITIONS**

3.1 This Franchise shall be non-exclusive (except to the extent provided in Section 7 below) and shall be in force and effect from the Effective Date for a fifty-year period, until 2048.

3.2 All applicable provisions of the Clark County Code and all provisions of this Franchise Agreement shall be binding upon the Franchisee, its successors, or assignees. In the event of any conflict between any applicable provisions of the Clark County Code and any provisions of this Franchise Agreement, the Code provision shall control.

3.3 Franchisee acknowledges that this Franchise is for installation of facilities in County Rights-of-Way as identified in Exhibit B only, and that installation in, on, under, along or above other County property or private property may be permitted only through an agreement with the property owner or acquisition of the necessary property rights.

3.4 The Franchisee shall at all times during the term of the Franchise Agreement be subject to all lawful exercise of the police power by the County, including any and all ordinances.

rules or regulations which the County has adopted or may adopt, which apply to the public generally. Any conflict between the provisions of this Franchise Agreement and any other present or future lawful exercise of County police powers shall be resolved in favor of said County police powers.

3.5 The Franchisee shall not permit another person to own or use public utility facilities as defined in Clark County Code Chapter 5.01, or cable facilities as defined in Clark County Code Chapter 5.02, in, on, along, under or above Franchisee's authorized Monorail route located in County Rights-of-Way or within or on Franchisee's Monorail unless the person so owning or using such facilities has obtained all necessary business licenses, franchises, permits or rights-of-way licenses from the County.

3.6 The Franchisee shall not conduct business activities which require background investigation for licensure or which require licensing, franchising or permitting under Chapters 5.01, 5.02 or 6.13 of the Clark County Code without first obtaining such licensing, franchising or permitting, including but not limited to liquor sales, gaming, room rental, public utility services and cable television services.

3.7 In the event that the County desires the Franchisee to remove or relocate any portion of the Monorail from County Rights-of-Way to accommodate a needed public project and/or public improvement, the County (a) shall first provide the Franchisee with at least 60 days prior written notice and an opportunity to be heard before the County Commission, and (b) shall design the public project and/or public improvement so as to minimize the need to remove or relocate the Monorail (together the "Conditions"). If the Conditions are satisfied and the public project and/or public improvement is included in an adopted County capital improvement plan or master plan, then Franchisee shall pay and bear the full cost of such removal or relocation, including all lost revenues and increases in operating expenses for the Monorail (the "Relocation Costs"), but only to the extent that a qualified financial consultant selected by the Franchisee and approved by the County Manager (which consent shall not be unreasonably withheld) shall conclude in writing, within three months of the original notice and at no cost to the County, after reviewing the financial impact of the removal and relocation caused thereby on the Franchisee and its debt obligations that such Relocation Costs shall not have a material adverse effect on the ability of the Franchisee to timely satisfy such debt obligations. The County's share of said Relocation Costs will not exceed the amount of County funds that are budgeted and made available for such a purpose and the Board of County Commissioners have approved such payment. The security provisions of Section 16 herein shall be utilized by the County to ensure Franchisee's compliance with this Subsection 3.7.

3.8 Based on its review of the financial consultant's report specified in subsection 5.04.090(g) of the Clark County Code, the County Commission may impose additional terms and conditions upon this Franchise, which must be fully satisfied by the Franchisee prior to the sale of any debt obligation for the Monorail and/or prior to encroachment in any County Rights-of-Way. Such additional terms and conditions shall be determined at the public hearing at which this Agreement is approved and shall be specified as Exhibit F hereto and made a part hereof.

#### **SECTION 4. PERMITS, LICENSES AND APPROVALS**

4.1 The County hereby grants, contemporaneously with the grant of this Franchise, a conditional use permit subject to the conditions imposed by the County Commission in accordance with Title 29 of the Clark County Code.

4.2 The County hereby grants, contemporaneously with the grant of this Franchise, a Monorail Master Business License in accordance with Chapter 6.14 of the Clark County Code.

4.3 Pursuant to NRS 705.700, 1, and 2., and except as provided in sections 4.1 and 4.2 above, this Franchise places restrictions on the issuance of those permits, licenses and approvals required for the construction and operation of the Monorail by requiring that any such permits, approvals, licenses, conformity requirements or permissions required from the County shall require approval pursuant to applicable provisions of Clark County Code.

#### **SECTION 5. INSTALLATION REQUIREMENTS**

5.1 Installation of the Monorail shall utilize substantially the same technology as shown in the Franchisee's Application.

5.2 Installation of the Monorail shall be in accordance with the provisions of Clark County Code Section 5.04.120 and with the Performance Standards provided in Exhibit D hereof.

#### **SECTION 6. OPERATING REQUIREMENTS**

6.1 The Franchisee shall cause the Monorail to be operated and maintained in accordance with applicable provisions of Titles 5, 6, 22, 27 and 29 of Clark County Code, and with the plans of operation submitted in its Application.

6.2 The Franchisee may contract with another person to act as the Operator of the Monorail. In any event, the County shall look solely to the Franchisee for compliance with all requirements in this Franchise Agreement and Clark County Code.

#### **SECTION 7. COMPETING TRANSPORTATION FACILITIES**

7.1 The County acknowledges that competitive Monorails may adversely affect Franchisee's revenues and materially impede the repayment of project debt. In consideration thereof, for a period commencing on the Effective Date and ending on the expiration or earlier termination of this Franchise Agreement, the County shall not grant another Monorail franchise and shall exercise all discretionary authority available to it under applicable law to prevent any other governmental or private entity from developing an elevated Monorail, as defined in Clark County Code Chapter 5.04 on the Effective Date, within the geographic area described on

Exhibit E attached hereto, subject to connectivity provisions of NRS Section 705.700 as of the Effective Date.

7.2 In the event a public or private party (other than the County, Regional Transportation Commission or the Franchisee) proposes to install and operate a Fixed Guideway transport system in another corridor in the unincorporated County that would connect in some manner to the Monorail, the County shall give notice of the proposal to the Franchisee and provide the Franchisee reasonable opportunity to submit, for consideration by the County Commission, Franchisee's own application for an extension of this Franchise for such corridor. The County Commission may grant, with or without conditions, or deny any such amendment in its sole discretion.

## **SECTION 8. FRANCHISE PAYMENTS AND FEES**

8.1 The Rights-of-Way within the authorized route granted under this Franchise are valuable properties acquired, operated, and maintained by the County at considerable expense to County taxpayers. The rights and privileges granted by this Franchise to use the Rights-of-Way described in Exhibit B hereof have a value without the use of which the Franchisee would be required to invest substantial capital in Rights-of-Way acquisition. Upon Commencement of Construction of the Monorail, the Franchisee shall pay all payments and fees assessed in accordance with its County Monorail Master Business License pursuant to Chapter 6.14 of the Clark County Code.

## **SECTION 9. FRANCHISE REPORTING**

9.1 Each year during the term of the Franchise Agreement, the Franchisee shall submit a written report to the County's Director of Administrative Services and Director of Business License as required by Clark County Code Section 5.04.170.

9.2 The Franchisee shall submit with its annual report required in paragraph 9.1 a list of any and all persons using the Franchisee's facilities, pursuant to paragraph 3.5 of this Agreement, during the prior year.

9.3 The Franchisee shall retain all records and reports and shall allow for audits of its records in accordance with applicable provisions of Clark County Code Titles 5 and 6.

## **SECTION 10. REVOCATION AND PENALTIES**

10.1 In the event that the Franchisee has failed to comply with the applicable provisions of the Clark County Code, this Franchise Agreement, or the applicable laws or regulations of the State of Nevada or of the United States, the Franchisee and Lender's Agent shall be given 60 days from receipt of written notification of same from the County to remedy such failure; provided that,

if the Franchisee or Lender's Agent submits a written request to the County within such 60 days, the request shall be placed before the County Commission and the Franchisee and/or Lender's Agent shall be given an opportunity to be heard. Such 60-day period may be extended by the County Commission if it determines that the cause of such failure may be corrected but cannot reasonably be corrected within 60 days. In the event that the failure has not been remedied within the 60-day period or other amount of time authorized by the County Commission, the County Commission may, in its sole discretion, choose to:

- (i) impose monetary fines and other penalties upon the Franchisee and/or Operator, including but not limited to (A) assessment of penalties upon the Franchisee in an amount deemed appropriate by the County Commission, but not exceeding the amount of the security deposit established in the applicable paragraphs of Section 16 of this Agreement; (B) suspension of construction or operation of the Monorail; or (C) restriction of business activities of the Monorail Franchise and Monorail Master Business License; or
- (ii) revoke or suspend the Monorail Franchise or Monorail Master Business License and impose terms for reinstatement or continuance of either; or
- (iii) make or cause to be made appropriate claims under any completion or performance security provided pursuant to the applicable paragraphs of Section 16 of this Franchise Agreement.

Notwithstanding paragraph (ii) above, unless the Franchisee has abandoned the Monorail as described in Section 11 hereof, the County shall not revoke or suspend the Monorail Franchise or Monorail Master Business License unless the County has obtained a final judgment from a court of competent jurisdiction that the Franchisee has defaulted on its obligations under applicable provisions of the Clark County Code, this Franchise Agreement, or the applicable laws or regulations of the State of Nevada or of the United States, provided (A) the judgment is unappealable or (B) the losing party has failed to file an appeal in the time permitted under applicable law.

10.2 Any such monetary fines or penalties shall be due within 30 days of written notification by County, made payable to the County Treasurer, and delivered to the County's Director of Administrative Services at the County's address indicated in Section 21 of this Franchise Agreement. A late charge of five percent of the fine or penalty imposed shall be assessed if the fine or penalty is not paid within 30 days of the written notification.

10.3 If a fine or penalty which has been imposed by the County Commission is not paid within 30 days from the date of written notification from the County to the Franchisee and/or Lender's Agent, Franchisee and Lender's Agent hereby grant the County authorization to deduct the amount of the fine or penalty plus late charges, if any, from the security deposit provided for such purposes, pursuant to the applicable paragraphs of Section 16 of this Agreement and the applicable sections of Clark County Code Titles 5 and 6. If at any time the County has drawn upon such security deposit, the Franchisee shall within 30 days of deficiency of funds replenish

such security to the original minimum amount established in the applicable paragraph of Section 16 of this Franchise Agreement.

## **SECTION 11. ABANDONMENT OF MONORAIL**

11.1 In the event that:

- (i) all or a material portion of the Monorail, or any portion located in, on, along, under or above County Rights-of-Way, has not been in continuous operation transporting passengers for a period in excess of 180 days, unless such failure to operate is permitted by Chapter 5.04 of the Clark County Code, including without limitation Section 5.04.290 thereof (Force Majeure), or the terms of this Franchise Agreement; and
- (ii) such failure to operate has not been remedied within 60 days after receipt by the Franchisee and/or the Lender's Agent of written notice from the County specifying the same, provided that if the Franchisee or Lender's Agent submits a written request to the County within such 60 days, the request shall be placed before the County Commission and such 60-day period may be extended by the County Commission if it determines that the cause of such failure may be corrected but cannot reasonably be corrected within 60 days; and
- (iii) the Franchisee and/or Lender's Agent are given an opportunity to be heard;

then the County Commission may declare all or such portion of the monorail to be abandoned and may terminate this Franchise Agreement and the Monorail Master Business License with respect to all of the Monorail or such portion of the Monorail so determined to be abandoned

## **SECTION 12. TRANSFERS AND ASSIGNMENTS**

12.1 The Franchise shall be a privilege that is in the public trust and personal to the Franchisee. The Franchisee's obligations under its Franchise involve personal services whose performance involves personal credit, trust, and confidence in the Franchisee. No Transfer or Assignment of this Franchise shall occur except as provided in Chapter 5.04 of the Clark County Code. Request for Transfer and Assignment of this Franchise pursuant to this Section 12 shall not be unreasonably withheld or delayed by the County Commission.

## **SECTION 13. LENDERS' RIGHTS**

13.1 At any time, and from time to time during the term of this Franchise Agreement, the Franchisee shall have the right, at its sole cost and expense, to grant a security interest in, mortgage, pledge, hypothecate, grant a deed in trust or otherwise encumber, or assign revenues,

issues and profits of the Monorail or collaterally assign, pursuant to Chapter 5.04 of the Clark County Code, its interest in the Franchise and to assign or pledge the same as security for any loans or other debt obligations.

13.2 The Lender's Agent shall register with the County its name and address in writing. The County shall provide the Lender's Agent with all notices sent to the Franchisee.

13.3 In the event the County issues a notice under Section 10 or 11 hereof, the Lender's Agent may, within the cure period specified in such notice, remedy the failure of the Franchisee, and County shall accept such performance by the Lender's Agent as if the same had been done by the Franchisee.

13.4 The Lender's Agent may propose a Substituted Entity to act in place of the Franchisee. The County shall have no obligation to approve such Substituted Entity unless that entity demonstrates to the County's satisfaction that it has the financial resources and experience to timely perform the obligations of Franchisee under this Franchise Agreement. A Substituted Entity may not act in place of the Franchisee for more than one year from the date approved by the County. The Franchisee and/or Lender's Agent may apply for Transfer and Assignment of the Franchise to the Substituted Entity, which may be approved by the County Commission in its sole discretion.

13.5 In the event the County determines to terminate this Franchise Agreement, the Lender's Agent shall thereupon have the option to have all rights, obligations and duties of the Franchisee under this Franchise Agreement Transferred and Assigned by the County, pursuant to the requirements of Section 12 of this Agreement, to the Lender's Agent or to a Substituted Entity approved by the County effective upon the Lender's Agent or Substituted Entity: (i) executing an agreement, acceptable to the County, by which such Lender's Agent or Substituted Entity assumes all rights, obligations and duties of the Franchisee under this Franchise Agreement, (ii) paying any and all sums which would, at the time of such assumption, be due under this Franchise but for such assumption, and (iii) fully remedying any existing deficiencies under this Franchise Agreement and Clark County Code.

## **SECTION 14. INDEMNIFICATION**

14.1 To the maximum extent permitted by Nevada law, the Franchisee shall indemnify, save harmless, and defend the County, its officers and employees, individually and collectively, from all damages, fines, liens, suits, claims, demands, actions, costs of investigation and litigation, attorneys' fees and expenses, consultants' fees and expenses, and expert witnesses' fees and expenses, judgments or liability of any kind arising out of or in any way connected with the installation, construction, operations, maintenance, or condition of the Monorail, except to the extent caused by, resulting from or arising out of the active negligence or intentional actions, bad faith or fraud, of one or more officers or employees of the County.

14.2 The following procedures shall apply to all claims for indemnification under this Section 14.

(i) If the County receives notice of or otherwise has actual knowledge of a claim which it believes is within the scope of indemnification owed to it under this Section 14 by Franchisee, it shall by writing as soon as practicable:

(A) inform the Franchisee of such claim;

(B) send to Franchisee a copy of all written materials the County has received asserting such claims; and

(C) notify Franchisee that either (1) the defense of such claims is being tendered to the Franchisee or (2) the County has elected to conduct its own defense for a reason set forth in subsection 14.2 (v) below.

(ii) If the insurer under any applicable insurance policy accepts tender of defense, the Franchisee and the County shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then subsections 14.2 (iii), (iv), (v) and (vi) below shall apply.

(iii) If the defense is tendered to the Franchisee, it shall within 45 days of said tender deliver to the County a written notice stating that the Franchisee:

(A) accepts the tender of defense and confirms that the claims are subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter,

(B) accepts the tender of defense but with a "reservation of rights" in whole or in part, or

(C) rejects the tender of defense if it reasonably determines it is not required to indemnify against the claims under this Section 14.

If such notice is not delivered within such 45 days, the tender of defense shall be deemed rejected.

(iv) If the County gives notice under subsection 14.2 (i)(C)(1) above, the Franchisee shall have the right to select legal counsel for the County, and the Franchisee shall otherwise control the defense of such claims, including settlement, and bear the fees and costs of defending and settling such claims. During such defense:

(A) the Franchisee shall at the Franchisee's expense, fully and regularly inform the County of the progress of the defense and of any settlement discussions; and

(B) the County shall, at the Franchisee's expense, (1) fully cooperate in said defense, (2) provide to the Franchisee all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the County, and (3) maintain the confidentiality of all communications between it and the Franchisee concerning such defense.

(v) County shall be entitled to select its own legal counsel and otherwise control the defense of such claims if:

(A) the defense is tendered to the Franchisee and it refuses the tender of defense, or fails to accept such tender within 45 days, or reserves any right to deny or disclaim such full indemnification thereafter; or

(B) County, at the time it gives notice of the claims or at any time thereafter, reasonably determines that (1) a conflict exists between it and the Franchisee which prevents or potentially prevents the Franchisee from presenting a full and effective defense, (2) the Franchisee is otherwise not providing an effective defense in connection with the claims or (3) the Franchisee lacks the financial capacity to satisfy potential liability or to provide an effective defense.

County may assume its own defense pursuant to this subsection 14.2 (v) by delivering to the Franchisee written notice of such election and the reasons therefor. A refusal of, or failure to accept, a tender of defense may be treated by County as claims against the Franchisee.

(vi) If County is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending claims for which it is entitled to indemnification hereunder shall be reimbursed by the Franchisee on a current basis. In the event the County is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claims with the Franchisee's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of the Franchisee's indemnity.

## **SECTION 15. INSURANCE**

15.1 The Franchisee shall secure, maintain and provide certification of all insurance coverages in the amounts, kinds and form required pursuant to Clark County Code Section 5.04.240 prior to commencement of any work in County's Rights-of-Way. Such insurance shall be in the amounts adopted by resolution by the County Commission, and as amended from time to time, if available at commercially reasonable terms, in accordance with Section 5.04.240 of the Clark County Code.

## **SECTION 16. SECURITY FOR PERFORMANCE**

16.1 Within 30 days after the execution of this Franchise Agreement, the Franchisee shall provide to the Director of Administrative Services security in the amount adopted by resolution by the County Commission, and as amended from time to time, in accordance with Section 5.04.250 of the Clark County Code for payment of any unpaid fees, penalties, or to recover other actual costs that may be incurred as a result of the Franchisee's failure to comply with the provisions of this Franchise Agreement, Chapter 5.04 or Chapter 6.14 of the Clark

County Code. Franchisee hereby grants the County authorization to deduct assessed fines or penalties and late charges, if any, pursuant to Section 10 of this Agreement and the applicable provisions of Clark County Code Chapter 5.04, from such security deposit.

16.2 Prior to Commencement of Construction, the Franchisee shall provide the Director of Administrative Services security in a form approved by the Director which guarantees completion or removal of the Monorail within Rights-of-Way in accordance with Section 5.04.260 of Clark County Code.

16.3 After Completion of Construction, the Franchisee shall provide the Director of Administrative Services security in a form approved by the Director of Finance which guarantees either (a) demolition and removal of any structures within the Rights-of-Way, and restoration of those Rights-of-Way in accordance with the improvement standards of Title 27 of the Clark County Code, or (b) payment of ongoing operating and maintenance costs (net of revenues) if the County determines not to remove the Monorail in the event the Monorail is abandoned or the franchise is terminated in accordance with Sections 10 or 11 hereof or by agreement. The amount of security shall be in accordance with Section 5.04.260 of the Clark County Code.

## **SECTION 17. RIGHTS RESERVED TO COUNTY**

17.1 The County does hereby expressly reserve its rights, powers, and authorities pursuant to Section 5.04.270 of the Clark County Code and the NRS.

## **SECTION 18. COUNTY INSPECTIONS**

18.1 The Director of the Building Department shall inspect all work performed by the Franchisee relating to the rail structures, maintenance facilities, passenger stations and associated structures of the Monorail. The Director of Public Works shall inspect all work performed by the Franchisee relating to facilities placed in, on, along, under or above Rights-of-Way and any restoration of Rights-of-Way. The Franchisee shall notify the respective director when facilities and/or Rights-of-Way restoration are ready for inspection. Any inspection and subsequent approvals undertaken by the County pursuant to this Agreement are undertaken solely to ensure compliance with this Agreement and are not undertaken for the safety or the benefit of any individual or group of individuals as members of the public. Provisions in this Agreement dealing with inspection or approval by the County do not expand the County's general law duties.

## **SECTION 19. SEVERABILITY**

19.1 If any provision, section, subsection, paragraph, sentence, clause, phrase, or other portion of this Agreement is for any reason held to be invalid or unconstitutional, in whole or in part, by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and

effect. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County and shall thereafter be binding on the Franchisee and County. If the terms of this Agreement are materially altered due to changes in or rulings regarding governing law, then the parties agree to amend this Agreement so as to restore the original intent of the Franchisee and the County and preserve the benefits bargained for by each party.

## **SECTION 20. GIFTS**

20.1 No officer or employee of Franchisee shall offer to any officer or employee of the County, either directly or indirectly, any rebate, contribution, gift, money, service without charge, or other thing of value whatsoever, except where given for the use and benefit of the County.

## **SECTION 21. NOTICE**

21.1 All notices shall be sent to the County or Franchisee at the addresses indicated below. The Franchisee shall notify the County's Director of Administrative Services of any change of address within ten working days of such occurrence. Failure to provide notification, and any resulting delay in receipt of notice, shall not excuse the Franchisee from any obligation imposed by this Franchise Agreement, nor shall it serve as cause for reduction or removal of any restriction, fine or penalty imposed by the County.

### **COUNTY:**

Director of Administrative Services  
Clark County Manager's Office  
500 S. Grand Central Pkwy.,  
P.O. Box 551712  
Las Vegas, NV 89155-1712

### **FRANCHISEE:**

MGM Grand-Bally's Monorail Limited  
Liability Company  
3980 Howard Hughes Parkway, Suite 550  
Las Vegas, Nevada 89109

copy to: Mr. Scott Langsner  
Secretary/Treasurer  
MGM Grand, Inc.  
3799 Las Vegas Blvd. South  
Las Vegas 89109

21.2 Notices shall be sent to the approved Lender's Agent at the address provided in writing to the County. The Lender's Agent shall notify the County's Director of Administrative Services of any change in its status as Lender's Agent or in its address within ten working days of such occurrence. Failure to provide notification, and any resulting delay in receipt of notice, shall not serve as cause for reduction or removal of any restriction, fine or penalty imposed by the County.

IN WITNESS WHEREOF the parties hereto have set their hands the day and year first above written.

CLARK COUNTY BOARD OF COMMISSIONERS

By *Yvonne Atkinson Gates*  
YVONNE ATKINSON GATES, Chair

ATTEST:

*Loretta Bowman*  
LORETTA BOWMAN, Clerk

APPROVED AS TO FORM:  
DISTRICT ATTORNEY

*E. Lee Thomson*  
By: E. LEE THOMSON  
Deputy District Attorney

MGM GRAND-BALLY'S  
LIMITED LIABILITY COMPANY

By *Robert N. Broadbent*  
NAME: ROBERT N. BROADBENT  
TITLE: General Manager