

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15 (d) of the
Securities Exchange Act of 1934

Date of Report — February 12, 2010
(Date of earliest event reported)

PENN NATIONAL GAMING, INC.

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction
of incorporation)

0-24206
(Commission File Number)

23-2234473
(IRS Employer
Identification
Number)

825 Berkshire Blvd., Suite 200, Wyomissing, PA 19610
(Address of principal executive offices) (Zip Code)

Area Code (610) 373-2400
(Registrant's telephone number)

Check the appropriate box below if the form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 to Form 8-K):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

On February 12, 2010, Kansas Entertainment, LLC (“Kansas Entertainment”), a 50/50 joint venture of Penn Hollywood Kansas, Inc., a subsidiary of Penn National Gaming, Inc. (the “Company”), and Kansas Speedway Development Corporation, a wholly-owned subsidiary of International Speedway Corporation (“ISC”) (NASDAQ: ICSA; OTC: ICSB), received the final approval under the Kansas Expanded Lottery Act, along with its gaming license from the Kansas Racing and Gaming Commission, to proceed with the development of a Hollywood-themed destination casino overlooking Turn 2 at Kansas Speedway (the “Facility”).

In 2009, the Unified Government of Wyandotte County/Kansas City, Kansas (the “Unified Government”) endorsed the project and Kansas Entertainment, which had negotiated a proposed management agreement with the Kansas Lottery Commission (the “Management Agreement”). The Management Agreement was subsequently approved by the Lottery Gaming Facility Review Board and the Management Agreement, and the obligations under the agreement, became effective upon the receipt of the final approval and the issuance of the license. The Management Agreement, which has a 15-year term commencing upon public opening, establishes the ownership of Facility assets and provides, among other things, for Kansas Entertainment’s management obligations, the compensation due to Kansas Entertainment for its management services and contains certain construction commitments.

In addition to the Management Agreement, Kansas Entertainment is a party to a Development Agreement with the Unified Government (the “Development Agreement”) that is coterminous with the Management Agreement. The Development Agreement provides for the development of the Facility, certain construction commitments, including alternatives for future construction phases, and certain local charitable commitments. The first phase of the Facility is budgeted at approximately \$386 million for the construction of a 100,000-square-foot casino floor with capacity for 2,300 slot machines and 86 table games, a high-energy lounge and a variety of dining and entertainment options. Following completion of the first phase, Kansas Entertainment’s plans also include additional phases for the development of a hotel, expanded gaming space, a spa, convention center and an entertainment retail district, subject to market demands. Pursuant to the terms of the joint venture with ISC, Kansas Speedway Development Corporation contributed 101 acres at Kansas Speedway for the development of the Facility. The Company and ISC will equally share the full project development costs and the Company may under certain circumstances provide financing for the project.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
99.1	Lottery Gaming Facility Management Contract dated August 25, 2009 between the Kansas Lottery and Kansas Entertainment, LLC
99.2	Development Agreement dated as of September 8, 2009 by and between the Unified Government of Wyandotte County/Kansas City, Kansas and Kansas Entertainment, LLC

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: February 19, 2010

PENN NATIONAL GAMING, INC.

By: /s/ Robert S. Ippolito
Robert S. Ippolito
Vice President, Secretary and Treasurer

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EXHIBIT INDEX

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LOTTERY GAMING FACILITY MANAGEMENT CONTRACT
(Pursuant to the Kansas Expanded Lottery Act)

This LOTTERY GAMING FACILITY MANAGEMENT CONTRACT is for the development, construction, and management of a Lottery Gaming Facility, the business of which will be owned and operated by the Kansas Lottery, to be located in the Northeast Gaming Zone.

This Agreement is between the Kansas Lottery, which is acting on behalf of the State of Kansas in accordance with the Kansas Expanded Lottery Act, K.S.A. 2008 Supp. 74-8733 through 74-8773, and Kansas Entertainment, LLC, a Delaware limited liability company ("Manager").

NOW THEREFORE, in consideration for the mutual promises and covenants between the parties, it is agreed that:

1. **Certain Defined Terms.** The capitalized terms listed below will have the following meanings. Any other capitalized terms not specifically defined in this Agreement will have the meanings attributed to them in the Kansas Lottery Act, the Kansas Expanded Lottery Act, or the rules and regulations implementing those Acts, as the case may be, and as amended from time to time.

- a) "Ancillary Lottery Gaming Facility Operations" means additional non-lottery facility game products and services not owned and operated by the state which may be included in the overall development associated with the Lottery Gaming Facility. Such operations may include, but are not limited to, restaurants, hotels, motels, museums or entertainment facilities.
- b) "Application for Lottery Gaming Facility Manager" means the competitive proposal and all attachments submitted to the Kansas Lottery by Manager under the Kansas Expanded Lottery Act for the privilege of being designated the Lottery Gaming Facility Manager in the Northeast Gaming Zone.
- c) "Business Plan" means the document prepared by Manager and approved by the Executive Director, at least annually, setting out the management activities anticipated for the Lottery Gaming Facility as provided below in Paragraph 11 for an upcoming Fiscal Year or portion of Fiscal Year as the case may be.
- d) "Commencement Date" means the date specified in writing when the Executive Director first determines Manager has satisfied all conditions required by this Agreement so that Lottery Facility Games may be offered for play at the Lottery Gaming Facility.
- e) "Commission" means the Kansas Lottery Commission.
- f) "Effective Date" means the date this Agreement is signed by all the parties and all required approvals for the Agreement are obtained in accordance with the Kansas Expanded Lottery Act and rules and regulations promulgated pursuant thereto.

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- g) "Electronic Gaming Machine" means any electronic, electromechanical, video or computerized device, contrivance or machine authorized by the Kansas Lottery which, upon insertion of cash, tokens, electronic cards or any consideration, is available to play, operate or simulate the play of a game authorized by the Kansas Lottery pursuant to the Kansas Expanded Lottery Act, including, but not limited to, bingo, poker, roulette, blackjack, keno and slot machines, and which may deliver or entitle the Player operating the machine to receive cash, tokens, merchandise or credits that may be redeemed for cash, tokens, service or merchandise. Electronic Gaming Machines may use bill validators and may be single-position reel-type, single or multi-game video and single-position multi-game video electronic game, including, but not limited to, poker, blackjack and slot machines. Electronic Gaming Machines are one type of Lottery Facility Games.
- h) "Executive Director" means the executive director of the Kansas Lottery.
- i) "Fiscal Year" means the accounting year established for the Lottery Gaming Facility, which is specified here to be the twelve month period commencing December 1 and ending on November 30, and includes any partial (short) year.
- j) "Gray Machine" means any mechanical, electro-mechanical or electronic device, available to the public for play that is capable of being used for gambling, that is: (1) not authorized by the Kansas Lottery; (2) not linked to the lottery central computer system as required by the Kansas Expanded Lottery Act; or (3) capable of simulating a game played on an Electronic Gaming Machine or any similar gambling game authorized pursuant to the Kansas Expanded Lottery Act.
- k) "Immediately" means as soon as practicable given the circumstances of the incident but in no case more than 24 hours.
- l) "Kansas Expanded Lottery Act" means the provisions contained in K.S.A. 2008 Supp. 74-8733 *et seq.*, and amendments thereto which may become effective during this Agreement's term.
- m) "Kansas Lottery" means the state agency created by the Kansas Lottery Act, K.S.A. 74-8701, *et seq.*, as amended, to operate a lottery or lotteries pursuant to the Kansas Lottery Act or the Kansas Expanded Lottery Act.
- n) "Lottery Facility Games" means any Electronic Gaming Machines and any other games authorized, as of January 1, 2007, to be conducted or operated at a tribal gaming facility, as defined in K.S.A. 74-9802, and amendments thereto, located within the State of Kansas' boundaries and are owned and operated by the Kansas Lottery.
- o) "Lottery Gaming Enterprise" means the entertainment enterprise and all facilities and operations associated therewith, including a Lottery Gaming Facility and Ancillary

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Lottery Gaming Facility Operations, as more fully set forth in the Manager's Application for Lottery Gaming Facility Manager.

- p) "Lottery Gaming Facility" means (i) that portion of the Lottery Gaming Enterprise used for the purposes of operating, managing and maintaining Lottery Facility Games, as more fully described in the Application for Lottery Gaming Facility Manager filed by Manager with the Kansas Lottery or (ii) a temporary facility for the purposes of operating, managing and maintaining Lottery Facility Games as approved by the Executive Director.
- q) "Lottery Gaming Facility Revenues" means the total revenues from the play of Lottery Facility Games operated at the Lottery Gaming Facility after all related Prizes are paid. This term does not include (i) money generated from Ancillary Lottery Gaming Facility Operations (to which the Kansas Lottery has no financial interest) even if the revenue is generated within the Lottery Gaming Facility or (ii) Promotional Credit(s).
- r) "Player" means a person who: (1) takes part in a Lottery Facility Game by paying consideration or using Promotional Credit for the chance of winning a Prize; and (2) is lawfully eligible to play a Lottery Facility Game under the Kansas Expanded Lottery Act or applicable rules and regulations.
- s) "Progressive Electronic Game" means a game played on one or more Electronic Gaming Machines for which at least one payoff increases uniformly as the game is played and the Prize is determined by application of a formula to the income of independent, local, or interlinked Electronic Gaming Machines.
- t) "Promotional Credit" means any non-cashable credit, coupon or voucher redeemable by a Player at a Lottery Gaming Facility for use in playing Lottery Facility Games that is provided to a Player by Manager on a discretionary basis for purposes of promoting the Lottery Gaming Facility in accordance with a promotional program approved by the Executive Director.
- u) "Promotional Item" means any non-cash, complimentary service or discount provided to a Player by Manager on a discretionary basis for purposes of promoting the Lottery Gaming Facility in accordance with a promotional program approved by the Executive Director.
- v) "Prize" means any money, cash, tokens, merchandise, or credits redeemable for cash or play in a Lottery Facility Game that a Player may be entitled to as an award for playing a Lottery Facility Game under the rules of that game. For any Electronic Gaming Machines offering progressive winnings to a Player based on the use of Electronic Gaming Machines in a Progressive Electronic Game, "Prize" also includes a percentage of every wager played on a Progressive Electronic Game that is contributed to a growing jackpot amount to a successful Player as an award for playing an Electronic Gaming Machine under the rules of that Progressive Electronic Game, but does not include the reset amount. "Prize" does not include any

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administrative fees or other expenses associated with an Electronic Gaming Machine's acquisition, operation, maintenance or replacement that are not payable to a winning Player.

- w) "Unified Government" means the Unified Government of Wyandotte County/Kansas City, Kansas.

2. **Date Agreement Becomes Binding.** This Agreement will become effective and binding on the Effective Date; except that the parties agree that Paragraphs 2, 8, 20, 28, 30, 31, 54, 57, 58, 60, 66, 70, 71 and 72 will become effective and binding on the parties immediately upon this Agreement's approval by the Commission.

3. **Term of Agreement.** This Agreement will terminate fifteen (15) years after the Commencement Date or by operation of law, unless this Agreement is terminated earlier, renegotiated, or renewed, in accordance with the terms set out below.

4. **Commencement Date Deadline.** The Commencement Date will occur no later than thirty six (36) months after the Effective Date. This deadline will be extended by the number of days determined by the Executive Director that Manager is unable to perform its responsibilities under this Agreement due to:

- a) Court order restricting the authority of the Commission or the Kansas Lottery to own and operate Lottery Facility Games at the Lottery Gaming Facility under the Kansas Expanded Lottery Act or under this Agreement, or enjoining Manager from performing under this Agreement;
- b) Any force majeure cause as provided in Paragraph 63;
- c) Any other reason determined by the Executive Director in his sole discretion that adversely impacted Manager's ability to perform; or
- d) Any delay, not caused or enhanced by Manager, in Manager securing any and all licenses, credentials, permits and approvals necessary to construct and operate the lottery Gaming Enterprise, or any aspect thereof, provided that Manager shall have made timely application for such permits and approvals, and shall have diligently prosecuted the same.

5. **Renewal of Agreement.** Prior to the expiration of this Agreement the Commission may negotiate a new Lottery Gaming Facility management contract with Manager if the new contract is substantially the same as this agreement. This new agreement will be in writing and will set out the terms under which the renewal is to be effective.

6. **Manager's Representations and Warranties.** Manager represents and warrants to the Kansas Lottery as follows:

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- a) Manager is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to do business as such in Kansas.
- b) Manager has full power, authority, and legal right to perform and observe the provisions in this Agreement, the requirements imposed by the Kansas Expanded Lottery Act, the rules and regulations imposed by the Commission, and the rules and regulations imposed by the Kansas Racing and Gaming Commission.
- c) Subject to the condition that all approvals required by the Kansas Expanded Lottery Act are obtained, this Agreement constitutes a valid and binding obligation on Manager that is fully enforceable in accordance with its terms, and does not constitute a breach of, or default under, any other agreement to which Manager is a party or any of its assets are bound or affected.
- d) During this Agreement's term, Manager will, at its own expense, keep in full force and affect its legal existence, rights and franchises required in order for it to observe all of this Agreement's terms and conditions. Upon receiving any information or notice contrary to the representations contained in this subsection during this Agreement's term, Manager must immediately notify the Executive Director in writing with full details regarding the same.
- e) Manager has acquired full title or the ability to acquire full title to the premises on which the Lottery Gaming Facility will be located, free and clear of any liens, encumbrances, covenants, charges, burdens or claims, except (i) those which do not materially and adversely affect the use by Manager of the premises as a Lottery Gaming Enterprise, and (ii) any secured liens directly related to the Lottery Gaming Enterprise, which will be disclosed to the Executive Director concurrently with Manager's acquisition of the property or for which the Executive Director's prior approval has been obtained.
- f) The Lottery Gaming Enterprise and the operations thereof at all times will conform in all material respects with all applicable material zoning, planning, building, licensing, and environmental laws and regulations of governmental authorities (federal, state, or local) having jurisdiction over the Lottery Gaming Enterprise, including any amendments to such laws or regulations occurring after this Agreement's execution. Such laws include, but are not limited to, the federal Money Laundering Control Act of 1986, the Bank Secrecy Act of 1970, and the USA Patriot Act of 2001, and amendments thereto. The Manager shall defend, indemnify and hold the Kansas Lottery and the State of Kansas and all employees of the Kansas Lottery and the State of Kansas harmless from any liability or expenses resulting from any failure by the Manager to comply with the provisions of this subsection (f).
- g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Manager, threatened against or affecting the Manager or its principals, and in which an adverse result would in any way diminish or adversely impact the Manager's

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ability to fulfill its obligations under this Lottery Gaming Facility Management Contract. No revenue bonds, state tax abatement, local tax abatement, tax increment financing or similar financing will be used to finance or will be applied to any part of Manager's Lottery Gaming Enterprise.

- h) The Lottery Gaming Enterprise will comply in all material respects with all environmental laws and regulations, and, except in material compliance with environmental laws and regulations agrees that to the best of its knowledge (1) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist at the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, except in compliance with all applicable laws; (2) Manager will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations or onto any other property; (3) that no asbestos will be incorporated into or disposed of on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations; (4) that no underground storage tanks will be located on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, except as approved by the Executive Director; and (5) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence with respect to the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations. Upon receiving any information or notice contrary to the representations contained in this subsection, Manager must promptly notify the Executive Director in writing with full details regarding the same. Manager and its principals have executed the Environmental Compliance Agreement attached as Exhibit A. Manager shall defend, indemnify and hold the Kansas Lottery and the State of Kansas harmless from any liability or expenses resulting from any failure by Manager to comply with the provisions of this subsection (h).
- i) Manager will provide to the Executive Director a certificate or certificates of insurance containing all of the insurance provision requirements provided in this Agreement as follows: as respects the builder's risk and liability including worker's compensation covering construction activities, prior to the commencement of construction activities, and as respects all other insurance, prior to the commencement of any operations presenting an insurable risk. Each insurance policy obtained by Manager to comply with the insurance provision requirements must provide that if the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Kansas Lottery or the State of Kansas until at least thirty (30) days after receipt by the Executive Director of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.
- j) Manager will comply with all requirements imposed by the Kansas Racing and Gaming Commission now or in the future for the oversight of all operations at the Lottery Gaming Facility including, but not limited to: oversight of internal controls;

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adherence to technical standards adopted by the Kansas Racing and Gaming Commission; oversight of security; performance of background investigations; determinations of qualifications and any required certifications, credentialing or licensing of Manager's officers, directors, board members, employees, contractors and agents; auditing of Lottery Gaming Facility Revenues; maintenance and integrity of all Lottery Facility Games approved by the Executive Director for play at the Lottery Gaming Facility; maintenance of facility exclusion lists; player tracking, rewards, clubs, coupons or other incentive programs; oversight of progressive payout systems and programs; oversight of unclaimed winnings; oversight of lost patron monies; or responsible gaming. Manager understands and agrees that failure to adhere to the Kansas Racing and Gaming Commission's rules, regulations, or technical standards may result in the imposition of fines, or other sanctions or penalties against Manager. Upon receiving any information or notice claiming a violation of any requirement of the Kansas Racing and Gaming Commission or any other governmental entity with jurisdiction over gaming-related activities after the Effective Date, Manager must immediately notify the Executive Director in writing with full details regarding the same.

- k) Manager, at a minimum, meets and will continue to meet the following criteria: (1) has sufficient access to financial resources to support the activities required of it by this Agreement and the Kansas Expanded Lottery Act; (2) is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas and any taxing subdivisions where the Manager is located in the state of Kansas, excluding items under formal appeal pursuant to applicable statutes; and (3) Manager or its direct or indirect principals, affiliates or officers and/or members have at least three consecutive years' experience in the management of gaming which would be class III gaming, as defined in K.S.A. 46-2301, and amendments thereto, operated pursuant to state or federal law.
- l) Manager will comply with all applicable rules and regulations imposed now, or in the future, by the Kansas Lottery.
- m) Except as may be authorized by applicable law and confirmed in writing by the Executive Director, Manager will not own, lease, license, or control the rights to: (1) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on the Lottery Facility Games, (2) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device containing information regarding or affecting an Lottery Facility Game's chance of winning, awarding of Prizes, or setting the consideration paid by a Player, such as the random number generator or payout tables; (3) any CPUs or other electronic components involved in the operation and calculation or display of game play (e.g., game controller electronics and components housing the game or system firmware program storage media or EPROMS); or (4) any communication controller electronics, and components housing the communication control program that is used for communicating financial data, program information and security events to the central

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computer authorized by the Executive Director for purposes of security, real-time monitoring and auditing, as well as ticket validation and any other system used that affects the integrity of the Lottery Facility Games made available at the Lottery Gaming Facility.

- n) Manager acknowledges and agrees the State of Kansas, acting through the Commission and the Kansas Lottery, pursuant to their statutory authority, has the sole right to own, lease and operate the Lottery Facility Games placed at the Lottery Gaming Facility and has the full, complete and ultimate ownership and operational control of the gaming operation of the Lottery Gaming Facility. Manager further acknowledges and agrees the Lottery explicitly retains the power to overrule any action of Manager affecting the gaming operation without prior notice and the Lottery retains full control over all decisions concerning Lottery Facility Games. No Gray Machines will be permitted at the Lottery Gaming Facility.
- o) Manager, on behalf of the Kansas Lottery, will be responsible at all times for processing payment of all Prizes and matters relating thereto, including the withholding of income taxes and reporting of Prizes in accordance with all applicable laws and regulations.
- p) Manager has a resolution of endorsement from the Unified Government where the Lottery Gaming Facility will be located, which is attached as Exhibit B.
- q) The undersigned is duly authorized to execute and deliver this Lottery Gaming Facility Management Contract on behalf of Manager.

7. **The Kansas Lottery's Representations and Warranties.** The Kansas Lottery represents and warrants to Manager as follows:

- a) The Kansas Lottery is duly established under the Kansas Lottery Act and the Kansas Expanded Lottery Act, and has the power to enter into the transactions contemplated by this Lottery Gaming Facility Management Contract and to carry out its obligations. Based upon the representations of Manager as to the utilization of the Lottery Gaming Facility, the Kansas Lottery has the authority to take the actions contemplated by applicable statute.
- b) The Executive Director is duly authorized to execute and deliver this Lottery Gaming Facility Management Contract.
- c) Neither the execution and delivery of this Lottery Gaming Facility Management Contract, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any other contract to which the Commission or Kansas Lottery is a party or by which either is bound, or will constitute default under any of the foregoing.

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8. **Kansas Expanded Lottery Act Litigation.** Manager acknowledges it enters into this Agreement with the understanding that the Kansas Expanded Lottery Act and/or the implementation of that Act by the Kansas Lottery or the Commission, may come under review by courts of competent jurisdiction from time to time during this Agreement's term. Manager agrees it will proceed with its responsibilities under this Agreement at its own risk as to the Kansas Expanded Lottery Act's validity, or the validity of the implementation of that Act by any state agency, except that nothing in this section will be interpreted to restrict, waive or delete any rights Manager may have to seek repayment of Managers' privilege fee if the Kansas Expanded Lottery Act were to

be amended or repealed by a legislative body or declared unconstitutional in a future proceeding. At the time of the execution of this agreement, anything contained in this agreement notwithstanding, Kansas Lottery hereby represents and warrants, to the knowledge of Kansas Lottery, that there is no action, suit, proceeding, at law or in equity, before or by any court, public board or body, naming the Kansas Lottery as a party, arising out of or in connection with the Kansas Expanded Lottery Act (including constitutionality and the applicant contracting process.) In the event litigation is commenced, against Manager or the Kansas Lottery, arising out of or in connection with the Kansas Expanded Lottery Act (including constitutionality, implementation, and the applicant contracting process) related to this agreement and requesting relief in the form of an injunction or termination of this agreement or the invalidation of the Kansas Expanded Lottery Act, and the Plaintiff's constitutional claims are successful through trial court rulings on motions for summary judgment, Manager may suspend construction, if not yet complete, until receipt of an order, at the trial level or on appeal, upholding the Kansas Expanded Lottery Act or its implementation as applied to this agreement.

9. **Required Approvals Prior to this Agreement Becoming Effective.** Subject to the terms of Paragraph 2, this Agreement will not become effective until it is approved, as required by the Kansas Expanded Lottery Act, by all three of the following public entities: (a) the Commission; (b) the Lottery Gaming Facility Review Board; and (c) the Kansas Racing and Gaming Commission.

10. **Conditions Precedent to Lottery Gaming Facility Opening.** Prior to permitting initial public access to the Lottery Gaming Facility, Manager must (as and when applicable):

- a) Be in compliance with all statutory requirements imposed by the Kansas Expanded Lottery Act, as amended, for placing Lottery Facility Games at the Lottery Gaming Facility.
- b) Be in compliance with all rules and regulations, written policies, or written standards imposed by the Kansas Lottery Commission for placing Lottery Facility Games at the Lottery Gaming Facility.
- c) Be in compliance with all rules and regulations, licensing requirements, written policies, or written standards imposed by the Kansas Racing and Gaming Commission for placing Lottery Facility Games at the Lottery Gaming Facility.
- d) Have in an operational condition Manager's portion of the central communication system specified by the Executive Director for the purposes of security, monitoring and auditing of Electronic Gaming Machines placed at the Lottery Gaming Facility.
- e) Have current written approvals from the Executive Director for all Lottery Gaming Facility activities as required by this Agreement.

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- f) Be in compliance with all material local zoning requirements applicable to the Lottery Gaming Facility.
- g) Have delivered to the Secretary of State, with a copy to Executive Director, Manager's irrevocable consent to the jurisdiction and courts of the State of Kansas in accordance with K.S.A. 2008 Supp. 74-8755.
- h) Obtain and maintain all necessary governmental permits and licenses/certifications when and as may be required by law in connection with the operation of the Lottery Gaming Enterprise.
- i) Be in compliance with all other requirements in this Agreement as and when applicable.

11. **Manager's Business Plan.** The Executive Director and Manager will jointly develop a Business Plan, which will be based upon and not inconsistent with Manager's Application for Lottery Gaming Facility Manager, promptly after the Effective Date. This Business Plan will provide for the Lottery Gaming Facility's pre-opening activities in preparation for operation after the Commencement Date, hours of operation with 24 hour operations seven days a week being permitted by the Executive Director, advertising, marketing, public relations, number and type of Lottery Facility Games to be available to the public, process for selection of such games, Prizes, theoretical hold percentages, budget, Promotional Credits and procedures for controlling and accounting for the use of Promotional Credits, Promotional Items and procedures for controlling and accounting for the use of Promotional Items, special events or activities planned or anticipated by Manager during the period of time covered by the Business Plan, and other management activities to be performed by Manager consistent with the Kansas Expanded Lottery Act and applicable law that either the Manager or the Executive Director wants to address in the Business Plan. Once approved by the Executive Director, Manager will implement the approved Business Plan. The Executive Director, in consultation with Manager, may amend the Business Plan from time to time to promote the Lottery Gaming Facility's competitive position in the market in order to enhance, to the extent profitable to Manager, Lottery Gaming Facility Revenues. At any time, Manager may propose to the Executive Director for his approval any amendments to the Business Plan. The initial Business Plan will include Manager's proposed name for the Lottery Gaming Facility, which must be approved by the Executive Director. Any subsequent change to the facility's name must be approved by the Executive Director.

12. **Ancillary Lottery Gaming Facility Operations.** At the same time that Manager and the Executive Director develop a proposed Business Plan for the Lottery Gaming Facility, Manager separately will provide the Executive Director with Manager's anticipated business plan and budget for all Ancillary Lottery Gaming Facilities Operations that Manager anticipates developing in conjunction with the Lottery Gaming Facility, such as restaurants, hotels, motels or entertainment facilities. Manager agrees not to conduct any Ancillary Lottery Gaming Facility Operations that the Executive Director determines in his sole discretion would: (a) result in an appearance that reflects adversely on the Kansas Lottery or the Kansas Lottery Commission as the owner and operator of the Lottery Facility Games; or (b) violate any regulatory standards or local zoning laws.

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13. **Lottery Gaming Facility Construction.** Manager will diligently construct at its own expense the Lottery Gaming Facility substantially in accordance with Manager's Application for Lottery Gaming Facility Manager and the plans and specifications. Prior to beginning construction, the Executive Director must approve the final plans and specifications for the Lottery Gaming Facility (or in lieu thereof such other construction-related documents acceptable to the Executive Director that are suitable for this purpose) to ensure construction will conform with the Manager's Application for Lottery Gaming Facility Manager and Manager's representation to the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, or the Unified Government where the Lottery Gaming Facility is to be located. With the approval of the Executive Director, Manager

retains the option, but is not obligated, to construct a temporary Lottery Gaming Facility under the terms of this agreement and the Kansas Expanded Lottery Act. All construction of the Lottery Gaming Facility must be completed and the Lottery Facility Games ready for play by the public within that facility no later than thirty six (36) months after the Effective Date, unless a time extension is approved by the Executive Director. The schedule setting out Manager's anticipated benchmarks for construction completion is attached as Exhibit C. For each month between the Effective Date and the Commencement Date, Manager will report no less than monthly as directed by the Executive Director on Manager's progress toward completing construction, implementing the Business Plan, and opening the Lottery Gaming Facility to the public. No material alterations to the scope and design of the plan for the Lottery Gaming Facility increasing or decreasing the total costs by more than one percent (1%) of the total cost provided for in Manager's Application for Lottery Gaming Facility Manager may be made without the Executive Director's written approval unless such change materially affects the floor plan, surveillance, or security for the Lottery Gaming Facility in which case the Executive Director's approval is required for any material change regardless of the dollar amount. The Executive Director will promptly notify Manager of his approval or rejection of any proposed change. Manager will not need to obtain the Executive Director's approval for expenditures covered by the Manager's contingency budget.

14. **Construction Related to Ancillary Lottery Gaming Facilities Operations.** Manager must diligently construct at no expense to the Kansas Lottery the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations substantially in accordance with Manager's Application for Lottery Gaming Facility Manager and Exhibit C. In addition to any other remedy available to the Executive Director under this Agreement, solely with respect to this Paragraph 14, Manager's failure to substantially perform its Ancillary Lottery Gaming Facility Operations obligations according to objectively verifiable standards (for example, if the plans provide for the building of a restaurant and the restaurant is not built) and, provided such failure cannot be disputed in good faith, will authorize the Executive Director to withhold payment of Manager's compensation for which it would otherwise be entitled under Paragraph 26, less such amounts necessary for Manager to meet all cash operating payments, obligations and liabilities payable pursuant to the Budget and debt service payments payable to third-party lenders, after the date that is forty-five (45) days following the Executive Director's written notice to Manager of such failure, until the breach is cured. If the Executive Director determines to withhold Manager's compensation as provided in this paragraph, he will deposit the applicable funds in an interest bearing account, which account (to the extent of Manager's interest therein) can be pledged to Lender subject to Executive Director's rights therein, until the Executive Director determines the breach is cured, at which time the compensation and interest held by the Executive Director will be promptly returned to Manager. Provided, however, if within 180 days of the date each amount is withheld as provided herein, Manager has not cured such default or has commenced a cure for such

default but is not prosecuting the same to completion, the Kansas Lottery shall be entitled to retain each amount and interest so withheld.

15. **Manager's Construction-Related Responsibilities.** Manager will be responsible for the management and construction of all aspects of construction-related activities concerning the Lottery Gaming Facility and the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations. These responsibilities include, but are not necessarily limited to, the following:

- a) The direction of all construction activities;
- b) The direction and coordination of the performance of the architect, the other consultants and contractors;
- c) Causing all construction activities to be carried out in a good and workmanlike manner, all in substantial compliance with the Manager's Application for Lottery Gaming Facility Manager;
- d) Preparing the Lottery Gaming Facility to accommodate the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, including installation of all specified power and communication services;
- e) Correcting or remedying or causing to be corrected or remedied, any violations of applicable law;
- f) Arranging for the preparation of all working drawings and specifications;
- g) Preparing or arranging for the preparation of all construction contracts and arranging for the preparation and execution of all other related documentation required in accordance with the development obligations undertaken by Manager;
- h) Securing financing, if necessary, including mortgage liens on the real property and improvements and liens on personal property, for the construction of the Lottery Gaming Facility or the building and improvements related to the Ancillary Gaming Facility Operations, including completing the necessary documentation therefor;
- i) Maintaining appropriate cost-accounting records in accordance with generally accepted accounting principles;
- j) Obtaining all necessary government approvals, consents, permits, and licenses/certifications;
- k) Providing legal support related to the development and construction responsibilities undertaken by Manager; and
- l) Ensuring all required insurance is maintained in force.

- m) Provide information to any representative of the Kansas Lottery on any and all construction issues and allow periodic inspection of the construction progress, to ensure the statutory minimum required investment is met, that the manager's application proposal is being met, and that budgets are adhered to. This independent representative will be hired by the Kansas Lottery at Manager's cost or may be a third party construction monitor already engaged at the Lottery Gaming Facility by or on behalf of a lender, as approved by the Executive Director.

16. **Exclusive Use of Lottery Gaming Facility.** The Lottery Gaming Facility will be used exclusively for the playing of Lottery Facility Games owned and operated by the Kansas Lottery, and the ancillary management activities approved by the Executive Director, which may include, but are not limited to, beverage service, food service, entertainment, retail, promotional, and ATM facilities. Manager may not permit any other business activities within the Lottery Gaming Facility unless approved in writing by the Executive Director.

17. **Approval of Manager's Floor Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed floor plan to the Executive Director for approval. This floor plan must show the location of all Lottery Facility Games, count rooms, cages and other equipment and facilities to be contained within the Lottery Gaming Facility. No material change affecting surveillance or security, or any other material aspect of operations may be made to the approved floor plan without the Executive Director's prior written approval. Manager must perform its duties in accordance with the floor plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan. The Executive Director, after consultation with Manager, will determine the location within the floor plan for each game, or type of game, to be offered to the public at the Lottery Gaming Facility.

18. **Approval of Manager's Surveillance Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed surveillance plan to the Executive Director for approval. This surveillance plan at a minimum must contain all items required by applicable rule and regulation. No material change to the approved surveillance plan may be made without the Executive Director's prior written approval. Manager must perform its duties in accordance with the surveillance plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan.

19. **Approval of Manager's Security Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed policies and procedures relating to security to the Executive Director for approval. This security plan at a minimum must contain all items required by applicable rule and regulation. No material change to the approved security plan may be made without the Executive Director's prior written approval. Manager must perform its duties in accordance with the security plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan.

20. **Privilege Fee Payment.** No later than thirty (30) days after the Commission approves this Agreement, Manager must pay to the state treasurer of the State of Kansas a privilege fee of \$25 million. This payment to the state treasurer will be deposited into the state treasury and credited to the Lottery Gaming Facility Manager Fund, which is a temporary fund created pursuant to the

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Kansas Expanded Lottery Act. Notwithstanding any other provision in this Agreement, if Manager fails to pay this privilege fee within 30 days after the Commission's approval, this Agreement will be void and Manager will forfeit any rights it may have to be a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act. Once all required approvals for this Agreement are obtained in accordance with the Kansas Expanded Lottery Act, the Manager's privilege fee will be transferred on the Effective Date from the Lottery Gaming Facility Manager Fund to the Expanded Lottery Act Revenues Fund as provided by law. If (a) the required approvals for this Agreement are not obtained in accordance with the Kansas Expanded Lottery Act or (b) if Manager withdraws its application to be Lottery Gaming Facility Manager in the Northeast Gaming Zone prior to approval of the Kansas Racing and Gaming Commission, the Executive Director will promptly direct the state treasurer to refund, without interest, Manager's privilege fee payment.

21. **Lottery Facility Game Ownership.** The Manager must purchase or lease, on behalf of the State of Kansas, for the Kansas Lottery all Lottery Facility Games, including all necessary equipment such as approved tables, felt, dice, cards, chips, layouts, or intellectual property rights as determined by the Executive Director. Manager has no authority under this Agreement to own, purchase or lease any Lottery Facility Games, except on behalf of the State of Kansas and through the Kansas Lottery. The Executive Director, in consultation with Manager, will select the Lottery Facility Games to be offered for play at the Lottery Gaming Facility and determine the Prizes to be awarded for the play of such games. The Executive Director will determine and approve all rules of play and gaming policies that are applicable to the play of all Lottery Facility Games offered at the Lottery Gaming Facility. Notwithstanding the foregoing, Manager may grant a security interest in all Lottery Facility Games arising in connection with the financing and/or lease of same. So long as Manager complies with its duties to the Kansas Lottery under this Agreement and the Kansas Expanded Lottery Act, the Kansas Lottery agrees that the Manager may manage the Lottery Gaming Facility and its investment in the Lottery Gaming Facility in a manner that maximizes its profitability.

22. **Control Software Licensing and Ownership.** The Kansas Lottery will be the licensee, owner and possessor of the right to use all control software and logic chips required to operate the games available on the Lottery Facility Games at the Lottery Gaming Facility. This includes: (a) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on the Lottery Facility Games, (b) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device containing information regarding or affecting a Lottery Facility Game's chance of winning, awarding of prizes, or setting the consideration paid by a Player, such as the random number generator or payout tables; (c) CPUs and other electronic components involved in the operation and calculation or display of game play (e.g., game controller electronics and components housing the game or system firmware program storage media or EPROMS); or (d) communication controller electronics, and components housing the communication control program that is used for communicating financial data, program information and security events to the central computer authorized by the Executive Director for purposes of security, real-time monitoring and auditing, as well as ticket validation and any other system used that affects the integrity of the Lottery Facility Games made available to Players at the Lottery Gaming Facility. Manager will transfer to the Kansas Lottery any rights obtained by Manager to use all control software and logic chips required to operate the games available on the Lottery Facility Games available to Players at the Lottery Gaming

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Facility. The Executive Director must approve all agreements concerning software licensing and ownership affecting the Lottery Facility Games made available to Players at the Lottery Gaming Facility.

23. **Daily Electronic Payment of Lottery Gaming Facility Revenues.** Manager must pay all Lottery Gaming Facility Revenues daily to the Executive Director as provided by applicable regulation. Manager will make this payment electronically in accordance with the Executive Director's written instructions, which will conform to necessary banking practices. These instructions may be changed from time to time in the Executive Director's sole discretion with reasonable notice to Manager. The Executive Director, in consultation with Manager, will develop a process so that Manager may audit and

reconcile Lottery Gaming Facility Revenues after the daily payments are made. Notwithstanding any other provision in this Agreement, Manager's failure to make a daily electronic payment of Lottery Gaming Facility Revenues as required by this Agreement will be deemed an event of default unless the payment cannot be achieved due to the unavailability of bank services, force majeure events, or malfunctions in the central communications system not within Manager's control in which case the payment must be made on the first succeeding day that such services are available or such events or malfunctions cease. Manager's failure to comply with this paragraph will authorize the Executive Director in his sole discretion to immediately terminate this Agreement if Manager does not cure its failure within 24 hours of receiving written notice of Manager's failure to comply, provided that Manager's failure to make the required daily payment is not intentional.

24. **Payment Obligation is Unconditional.** Manager's obligation to make the daily payments of all Lottery Gaming Facility Revenues required above is a general obligation of Manager and is absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim Manager may otherwise have against the Commission, the Kansas Lottery, or any agency of the State of Kansas. Manager agrees it will not suspend, discontinue or abate any daily payment required above for any cause whatsoever including, without limiting the generality of the foregoing, failure of consideration, destruction of or damage to the Lottery Gaming Facility, commercial frustration of purpose, any change in the tax or other laws, any administrative rulings of or administrative actions by the State of Kansas or any political subdivision thereof, or any failure by any agency or entity acting on behalf of the State of Kansas to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lottery Gaming Facility Management Contract, or otherwise. Subject to the foregoing provisions, nothing contained in this paragraph shall be construed to release the Kansas Lottery from the performance of any of the agreements on its part contained in this Lottery Gaming Facility Management Contract or to affect Manager's right to seek reimbursement or damages from the Kansas Lottery as provided in this Agreement. Manager must not grant, authorize or permit any interest in the Lottery Gaming Facility Revenues that are to be remitted daily to the State to be given to anyone.

25. **Setoff Right Against Manager.** Any amounts owed to Manager under this Agreement are subject to set off by the state, municipalities, or certain others in accordance with K.S.A. 75-6201, *et seq.*, and amendments thereto.

26. **Total Compensation Paid to Lottery Gaming Facility Manager.** As its sole compensation for the management services for the Lottery Gaming Facility as set out in this

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Agreement, Manager will be paid the following percentages of the Lottery Gaming Facility Revenues generated at the Lottery Gaming Facility calculated with respect to the then current Fiscal Year, as follows: (a) 73% on all Lottery Gaming Facility Revenues up to \$350 million; (b) 70% on all Lottery Gaming Facility Revenues above \$350 million up to \$400 million; and (c) 67% on all Lottery Gaming Facility Revenues above \$400 million.

The Executive Director will direct this payment to Manager on a monthly basis, in arrears, based on the previous month's Lottery Gaming Facility Revenues after first deducting Manager's share of Kansas Lottery expenses and share of Kansas Racing and Gaming Commission expenses incurred for oversight and regulation as provided in Paragraph 28 below. Manager may pledge, encumber or grant any interest in the compensation to be paid Manager, subject to the deductions and setoffs provided for in this Agreement and subject further to the Executive Director's authority under Paragraph 14.

27. **Payments to Problem Gaming and Addictions Grant Fund and Local Governments.** Manager acknowledges and agrees the Executive Director will cause two percent (2%) of Lottery Gaming Facility Revenues to be paid to the problem gaming and addictions grant fund established by K.S.A. 2008 Supp. 79-4805, and amendments thereto. Manager further acknowledges and agrees the Executive Director will cause three percent (3%) to be paid to the Unified Government in which the Lottery Gaming Facility is located to comply with K.S.A. 2008 Supp. 74-8734(h)(15), and amendments thereto. It is hereby acknowledged and agreed that such payments shall not be paid from the compensation payable to Manager pursuant to paragraph 26.

28. **Manager's Payments for Kansas Lottery's Expenses and Kansas Racing and Gaming Commission's Costs for Oversight and Regulation.** Manager must pay the expenses of the Kansas Lottery and the Kansas Racing and Gaming Commission, as follows:

- a) Manager's share of the Kansas Lottery's expenses directly attributable to Manager and the Kansas Lottery's proportionate share of other expenses incurred for the implementation and operation of the Kansas Expanded Lottery Act and this Agreement will be paid in accordance with this sub-paragraph (a). Expenses incurred by the Kansas Lottery will be billed directly to Manager by the Kansas Lottery within thirty (30) days of the Commission's approval of this Agreement and must be paid by Manager within thirty (30) days of billing. Thereafter, and prior to the Commencement Date, the Executive Director will bill Manager periodically for the Kansas Lottery's expenses and Manager will pay such expenses within thirty (30) days of billing. After the Commencement Date, the Executive Director will deduct Manager's share of Kansas Lottery expenses before making Manager's monthly compensation payment as provided above in Paragraph 26. Manager's share of Kansas Lottery expenses will be calculated by taking the costs incurred by the Kansas Lottery that are directly attributed to Manager and Manager's Lottery Gaming Facility, and adding to that amount the Kansas Lottery's common expenses attributable to all racetrack and lottery gaming facility managers as a result of the Kansas Lottery's activities pursuant to the Kansas Expanded Lottery Act, which common expenses will be divided equally among all managers.

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- b) All costs incurred by the Kansas Racing and Gaming Commission for its oversight and regulation of Manager and the Lottery Gaming Facility in accordance with the requirements for calculating and paying such costs as determined by the executive director of the Kansas Racing and Gaming Commission. Manager acknowledges and agrees this obligation includes the requirement that Manager pay its *pro rata* share of the anticipated expenses of the Lottery Gaming Facility Review Board, which will be billed to Manager after the Kansas Lottery Commission's approval of this Agreement. If Manager fails to pay these expenses when due, this Agreement may be void, and Manager may forfeit any rights it may have to be a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act ten (10) days after receiving written notice from the Kansas Racing and Gaming Commission of Manager's failure to timely pay. Manager further acknowledges that the executive director of the Kansas Racing and Gaming Commission will assess each manager, whose agreement is approved by the Lottery Gaming Facility Review Board, a proportionate share of all costs incurred by the Kansas Racing and Gaming Commission since 2007 Senate Bill 66 became effective on April 19, 2007, that are attributable to that agency's responsibilities under the Kansas Expanded Lottery Act.

- c) Manager's share of the expenses incurred for the central computer system, which share will be based proportionately on Lottery Gaming Facility Revenues generated by the Electronic Gaming Machines placed at Manager's Lottery Gaming Facility in comparison to the revenues generated by the Kansas Lottery at Racetrack Gaming Facilities and Lottery Gaming Facilities that are part of the central computer system.
29. **Manager's Maintenance Responsibilities.** Manager must:
- a) Keep the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in good repair and in a reasonably safe condition;
- b) Make all necessary repairs and replacements to the Lottery Gaming Facility, including maintaining in an operational condition Manager's portion of the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen);
- c) Maintain the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in first class condition, ordinary wear and tear excepted, including, without limitation, interior and exterior cleaning, painting and decorating, replacement of lighting fixtures, wall coverings, floors and floor coverings, furnishings, plumbing, electrical, HVAC and any structural or mechanical repairs and any other maintenance or replacement requirements that may be commercially reasonable.

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30. **Prohibitions Applicable to the State.** The Kansas Lottery, acting on behalf of the State of Kansas, agrees by entering into this Agreement that:
- a) Neither the Kansas Lottery nor the State of Kansas will enter into a management contract for, or otherwise authorize, more than four (4) lottery gaming facilities or similar facilities in the four gaming zones outlined in the Kansas Expanded Lottery Act with one lottery gaming facility in each gaming zone;
- b) Neither the Kansas Lottery nor the State of Kansas will designate additional areas of the state where operation of Lottery Gaming Facilities or similar gaming facilities will be authorized, other than those set out in the Kansas Expanded Lottery Act; or
- c) Neither the Kansas Lottery nor the State of Kansas will operate an aggregate of more than 2,800 Electronic Gaming Machines at all parimutuel licensee locations.

31. **State Payment for Breach.** Manager will be entitled, as its sole monetary remedy, to payment in an amount equal to the actual privilege fee paid by Manager, plus interest on such amount, compounded annually at the rate of ten percent (10%), if the State of Kansas violates any provision in Paragraph 30 above during the term of this Agreement. The parties acknowledge and agree that nothing in this paragraph will be interpreted to prevent or limit any rights Manager may have to seek specific performance or other equitable relief against the Kansas Lottery or the State of Kansas to enforce the prohibitions contained in Paragraph 30. Nothing in this paragraph will be deemed a waiver of the immunities and protections reserved to the State of Kansas under the Eleventh Amendment to the Constitution of the United States.

32. **Executive Director's On-Site Personnel.** The Executive Director may appoint one or more persons to oversee on-site the Lottery Facility Games at the Lottery Gaming Facility and Manager's performance under this Agreement. Such person(s) will report to the Executive Director, and have such authority as the Executive Director in writing may determine. Such person(s) will oversee operations, observe gaming activities, enforce gaming rules and policies, resolve disputes between Manager and Players, and perform such other tasks as directed by the Executive Director. All determinations made by such persons will be subject to review by the Executive Director, provided that Manager may act and rely upon written and verbal determinations made by the Executive Director's on-site personnel until Manager receives written notice from the Executive Director amending or reversing any such determination.

33. **Deactivation and Possession of Lottery Facility Games.** Upon order of the Executive Director, any or all Lottery Facility Games located at the Lottery Gaming Facility will be subject to immediate deactivation and/or cessation of operation. At any time, the Executive Director will be entitled to physically secure or take possession of any or all Lottery Facility Games and any related equipment necessary to play such games.

34. **Insurance Required.** At the time provided in Paragraph 6(i) above, and at all times thereafter, including without limitation during any period of construction of the Lottery Gaming Facility, Manager must maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

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- a) Insurance against loss or damage by fire, lightning, and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Lottery Gaming Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by Manager or an amount not less than the maximum foreseeable loss, as determined by a property insurance carrier provided the policy provides a replacement cost endorsement up to the limit of the policy with customary and reasonable deductibles approved by the Executive Director; or as an alternative to the foregoing, Manager may insure the Lottery Gaming Facility under a blanket insurance policy or policies covering not only the Lottery Gaming Facility but other properties as well, provided a periodic appraisal is performed at intervals determined by the Executive Director and provided to the Executive Director.
- b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which Manager is required by law to provide, covering loss resulting from injury, sickness, disability or death of Manager's employees who are located at or assigned to the Lottery Gaming Facility.

- c) Commercial General Liability Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$10,000,000 per accident or occurrence on account of personal injury, including death resulting there from, and \$10,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon Manager by any applicable worker's compensation law. These liability limits may be satisfied by any combination of primary and excess liability policies. The primary general liability insurance may have a self-insured retention and the excess liability policy may have a commercially-reasonable deductible, as determined by the Executive Director. These liability insurance requirements may be satisfied by blanket policies in the aggregate amount of not less than \$10,000,000.
- d) Business interruption insurance against the perils enumerated in subparagraph (a) and in amounts determined by the Executive Director to be appropriate and commercially reasonable to protect both the Kansas Lottery's and Manager's financial interests in the revenue produced by the Lottery Gaming Facility.
- e) Employer's practices liability coverage providing customary coverage for alleged violations of local, state or federal civil rights laws or ordinances, or employment discrimination laws.
- f) Employee Dishonesty Combination Crime coverage in amount sufficient to cover all employees employed by Manager who are, or may be, responsible for handling any Lottery Gaming Facility Revenues or other monies belonging to the Kansas Lottery that come under the Manager's custody or control.

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35. **Additional Provisions Regarding Insurance.** In addition to the above, Manager must ensure that:

- a) All insurance required in Paragraph 34 above names the Commission, the Kansas Lottery, and the State of Kansas as named insureds, or additional named insureds. All insurance will be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Manager, but authorized to write such insurance in Kansas. Such insurance may be written with deductible or self-insured retentions approved by the Executive Director in amounts comparable to those on similar policies carried by other companies engaged in the gaming industry for facilities similar in size, character and other respects to the Lottery Gaming Facility. All policies evidencing such insurance must provide for (1) payment of the losses of the Commission, the Kansas Lottery, the State of Kansas, and the Manager as their respective interest may appear, and (2) at least thirty (30) days written notice of the cancellation thereof to the Executive Director and the Manager. Policies referred to in this subparagraph (a) must include both the Kansas Lottery and the Manager as loss payees as their interest may appear.
- b) All certificates of insurance from the insurers that such insurance is in force and effect, must be deposited with the Executive Director on or before the Effective Date, except as provided in paragraph 6(i) above. Prior to expiration of the policy evidenced by said certificates, Manager must furnish the Executive Director with evidence that the policy has been renewed or replaced or is no longer required by this Agreement. Copies of the actual insurance policies will be provided to the Executive Director promptly at his request.
- c) Within one hundred twenty (120) days after the end of each Fiscal Year, the Manager must file with the Executive Director a certificate executed by the Manager to the effect that the insurance it maintains with respect to the Lottery Gaming Facility complies with this Agreement and that duplicate copies of all policies or certificates were filed with the Executive Director and are in full force and effect.

36. **Kansas Lottery's Right to Pay Insurance, Taxes, or Other Charges.** If Manager fails (a) to pay any tax, assessment or other governmental charge required to be paid and not being formally contested by Manager in an appropriate forum with jurisdiction to hear such contests, or (b) to maintain any insurance required to be maintained, the Executive Director, in his discretion, and following written notice to Manager, may authorize the Kansas Lottery to make payment of such tax, assessment, or other governmental charge or the premium for such insurance. Manager will reimburse the Kansas Lottery for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum. The Kansas Lottery may set off such payments from any money otherwise due Manager.

37. **Lottery Gaming Facility Damage, Destruction or Condemnation.** If the Lottery Gaming Facility is damaged, destroyed or condemned (in whole or in part) at any time during the term of this Agreement, Manager must promptly replace, repair, rebuild, or restore the Lottery Gaming Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, to the extent insurance proceeds are available to cover such costs,

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with such changes, alterations and modifications as may be desired by Manager and approved by the Executive Director, and may use insurance or condemnation proceeds for all such purposes. If the Lottery Gaming Facility is damaged to an extent that it must be closed for business and Manager elects to rebuild the Lottery Gaming Facility at any point during the term of this agreement, the term of this agreement will be tolled until such time repairs and reconstruction of the Lottery Gaming Facility are sufficiently completed so as to allow Lottery Facility Games to be offered for play as determined by the Executive Director. The Kansas Lottery agrees to remit any insurance proceeds it receives as a result of the damage or destruction of the Lottery Gaming Facility or Lottery Facility Games (unless those proceeds are to cover the Kansas Lottery's losses under Sections 23 or 26 of this agreement) to the Manager for the specific replacement, repair, rebuilding or restoration loss for which the Kansas Lottery received any insurance proceeds. Manager will have no obligation to rebuild the Lottery Gaming Facility if such damage, destruction, or condemnation impacts at least 33% of the Lottery Gaming Facility and occurs within five years prior to the end of this Agreement's term. Manager shall have one hundred-twenty (120) days from the damage or destruction to elect to rebuild. If Manager so elects not to rebuild the Lottery Gaming Facility within the last five years remaining on the term of this Agreement, the term of this agreement as defined under Section 3 of this Agreement will immediately end and the Kansas Lottery shall have the ability to exercise any rights available to it under the terms of the Kansas Expanded Lottery Act.

38. **Advertising, Marketing, and Promotion.** Manager must use its commercially reasonable efforts to advertise, market, and promote the Lottery Gaming Facility in order to attract the public to the facility and reasonably enhance to the extent profitable to Manager Lottery Gaming Facility Revenues. Manager must comply with all applicable regulatory requirements imposed for such materials and activities. All advertising, marketing and promotion materials employed by Manager must be approved by the Executive Director prior to their first use. Manager agrees that such materials may be disapproved if the Executive Director determines in his sole discretion that such materials would reasonably be expected to offend a substantial number of people, or violate any regulatory standards applicable to such materials. In addition, Manager must make available to the public the odds of winning any prize or prizes for games played on all Lottery Facility Games offered at the Lottery Gaming Facility to the extent possible given the nature of such games and subject to the Executive Director's approval. Advertising, marketing and promotion materials shall include information regarding problem gambling as directed by the Executive Director. Subject to the approval of the Executive Director, Manager may also include the Lottery Gaming Facility in marketing programs which benefit other properties of Manager and its affiliates.

39. **Players' Club.** The Executive Director may institute a Player's club or similar incentive or promotional program applicable to some or all Racetrack Gaming Facilities or Lottery Gaming Facilities owned and operated by the Kansas Lottery. If the Executive Director institutes a Player's club, the Executive Director agrees that: (a) Manager will have no direct or indirect responsibility to fund such a program; (b) Manager will not be required to provide the Executive Director with any customer data under Manager's control for purposes of a Player's club instituted by the Executive Director; and (c) the Executive Director will not institute an incentive or awards programs in such Player's club that is applicable to another Racetrack Gaming Facility or Lottery Gaming Facility without also making it available to Manager for use at the Lottery Gaming Facility. As to subparagraph (b), Manager acknowledges that nothing in subparagraph (b) will be read to restrict the Executive Director's access to any customer data for regulatory, security, responsible gaming oversight, or auditing purposes; and the Executive Director agrees customer data provided by

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Manager will not be used for any Player's club or similar incentive or promotion program instituted by the Executive Director. Nothing in this paragraph will be read to prevent Manager from instituting its own Player's club or similar incentive or promotional program at the Lottery Gaming Facility provided that such club or program is authorized by the Executive Director. The Executive Director agrees Manager has the right to establish a Player's club that awards to Players credits based on their play at the Lottery Gaming Facility, provided that such awards programs are approved by the Executive Director.

40. **Players' Tracking System.** The Executive Director may institute a Players' tracking system applicable to some or all Racetrack Gaming Facilities or Lottery Gaming Facilities owned and operated by the Kansas Lottery. Manager will administer such program at the Lottery Gaming Facility as the Executive Director may provide. Nothing in this paragraph will be read to prevent Manager from instituting its own Player's tracking system at the Lottery Gaming Facility provided that such system is authorized by the Executive Director.

41. **Use of Trademarks, Service Marks, Trade Names and Proprietary Information.** Manager is authorized to employ any of the Kansas Lottery's trademarks, trade names, and service marks in any advertising, marketing or promotion for the Lottery Gaming Facility or the Lottery Facility Games placed therein, subject to the Executive Director's right to approve such advertising, marketing or promotion. Manager acknowledges it has no other right regarding the Kansas Lottery's trademarks, service marks, and trade names. Manager will not be required to pay any royalty or other fee for this usage. In addition, the Executive Director may require Manager to place Kansas Lottery's trademarks, trade names, or service marks at locations within the Lottery Gaming Facility as designated by the Executive Director in order to identify the games and gaming equipment as being owned and operated by the Kansas Lottery on behalf of the State of Kansas.

The Kansas Lottery is authorized to employ any of Manager's trademarks, trade names, and service marks in any advertising, marketing or promotion for the Lottery Gaming Facility or the Lottery Facility Games placed therein, subject to the Manager's right to approve such advertising, marketing or promotion. The Kansas Lottery acknowledges it has no other right regarding the Manager's trademarks, service marks, and trade names. The Kansas Lottery will not be required to pay any royalty or other fee for this usage.

To the extent the Kansas Lottery obtains or has access to any Proprietary Information or Trade Secrets as defined in K.S.A. 60-3320 (4)(i) (ii) ("Information") of Manager or its affiliates, the Kansas Lottery agrees: (a) to maintain the confidentiality of such Information; (b) not to use such Information for any purpose other than as permitted under this Agreement; and (c) upon the termination of this Agreement, to return same to Manager (including all copies thereof), including, but not limited to, documents, notes, memoranda, lists, computer programs and any summaries of such Information in the Kansas Lottery's possession or control, but excluding any Information which the Kansas Lottery may retain pursuant to the express terms of this Agreement and that immediately upon termination of this Agreement the Kansas Lottery shall cease using all Information.

To the extent the Manager obtains or has access to any Proprietary Information or Trade Secrets as defined in K.S.A. 60-3320 (4)(i) (ii) ("Information") of the Kansas Lottery, the Manager or its affiliates agree: (a) to maintain the confidentiality of such Information; (b) not to use such Information for any purpose other than as permitted under this Agreement; and (c) upon the termination of this Agreement, to return same to the Kansas Lottery (including all copies thereof), including but not limited to documents,

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notes, memoranda, lists, computer programs and any summaries of such Information in the Manager's possession or control, but excluding any Information which the Manager may retain pursuant to the express terms of this Agreement and that immediately upon termination of this Agreement the Manager shall cease using all Information.

Subject to the requirements of the Kansas Expanded Lottery Act and with Executive Director approval, Manager may purchase, lease, license, or otherwise obtain and have installed and maintained, either through Manager and its affiliates or Manager's designated suppliers, any computer and other systems that Manager determines to be necessary for management of the Lottery Gaming Facility in accordance with the approved Budget and Business Plans; provided that such systems may not adversely affect the Kansas Lottery's central computer system or affect a Lottery Facility Game's elements of chance, consideration or prize.

42. **Personnel.** Manager will provide, supervise, direct the work of, discharge, and determine the compensation and other benefits of all personnel necessary to provide for the play of Lottery Facility Games at the Lottery Gaming Facility, except as otherwise noted in this Agreement, based upon a staffing plan approved by the Executive Director. Such personnel will not be considered employees of the Kansas Lottery or any other agency or

department of the State of Kansas. Manager may determine the compensation to be paid to all of its personnel working at the Lottery Gaming Facility provided that such compensation is within the budget for personnel compensation approved by the Executive Director. Manager must ensure its personnel meet all applicable regulatory requirements imposed by the Commission or the Kansas Racing and Gaming Commission. Manager will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, or national origin nor violate any applicable law, regulation or local ordinance governing employer obligations.

43. **Personnel Training.** Manager will provide and direct employee recruitment, instructional programs, incentives, and on-the-job training necessary to ensure a first class facility for the playing of Lottery Facility Games by the public. Such trainings and other programs for personnel are subject to the Executive Director's approval, but may be conducted on or off site, on the job, or by instructors at or from educational training facilities.

44. **Key Employees.** Manager agrees the personnel, or positions, as well as any independent contractors designated in Exhibit D, are considered Key Employees, whose ability to participate in the operation or management of the Lottery Gaming Facility are subject to the Executive Director's approval within his sole discretion; provided, however, that nothing in this paragraph will restrict the right of either the Kansas Lottery or the Kansas Racing and Gaming Commission to take action regarding the license/certification held by any of Manager's employees in accordance with applicable statutes or rules and regulations promulgated pursuant to law. The Executive Director may amend the Key Employees list at any time for any reason.

45. **Books and Records; Financial Statements.** Manager must maintain an accurate accounting system in connection with its management of the Lottery Gaming Facility. The books and records will be kept in accordance with generally accepted accounting principles maintained in accordance with current industry standards for similar gaming businesses. The books and records shall be maintained at all times either at the Lottery Gaming Facility or at such other locations as may be specified by regulation. The Executive Director, or his designees, shall have the right and privilege of examining these books and records at any time. In addition, the Executive Director may

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at any time obtain and pay for an audit performed by an independent certified public accountant. If this audit reveals a discrepancy greater than \$10,000 in Lottery Gaming Facility Revenues or a cumulative discrepancy greater than \$100,000 on any other line items previously reported to the Executive Director from the books and records provided by Manager, the audit's cost will be reimbursed by Manager as a set off from the compensation to be paid Manager pursuant to Paragraph 25 above. On or before the 20th day following the close of each month, Manager must furnish the Executive Director with a reasonably detailed operating statement for the Lottery Gaming Facility for that period, including year-to-date results.

46. **Records Retention and Access.** Manager must maintain all books and records regarding the Lottery Gaming Facility for a minimum period of five (5) years, or such other longer period as may be imposed by regulation or statute. Manager must permit access to such books and records as is legally required by law, regulation, or this Agreement, including giving access to the Post Auditor for the Kansas Legislature, the Executive Director or his designee, authorized representatives for the Kansas Racing and Gaming Commission, or any authorized representative of the United States government.

47. **Budget and Business Plans for Each Fiscal Year.** No later than forty-five (45) days prior to the commencement of each Fiscal Year, Manager must submit to the Executive Director a budget (the "Budget") and a proposed Business Plan for the Lottery Gaming Facility for such Fiscal Year, containing reasonably detailed revenue and expense projections and providing projections for all expenditures that Manager anticipates to be made, as well as all capital expenditures and expenditures for replacements. The Budget will accompany and be compatible with Manager's proposed Business Plan for the upcoming Fiscal Year. The Budget is intended as, and will represent only, an estimate of the projected revenues and expenditures for the Fiscal Year based upon assumptions believed by Manager to be reasonable at the time of preparation. The Budget and proposed Business Plan for each upcoming Fiscal Year will be subject to the Executive Director's approval and/or amendment. Thereafter, Manager will use reasonable efforts to achieve the budgetary goals reflected in the Budget, but the parties both recognize the Budget cannot be relied upon as an assurance of actual results for such Fiscal Year. Manager must promptly notify the Executive Director of any need to depart in any material way from the Budget if, in Manager's judgment, adherence to the Budget is impractical or if such departure is necessary or desirable for the Lottery Gaming Facility's efficient or profitable operation. Any such deviations from the Budget are subject to the Executive Director's approval. Until such time as a Budget or Business Plan is approved for any fiscal year, Manager may operate in accordance with the previous fiscal year's Budget or Business Plan as approved by the Executive Director. Notwithstanding the foregoing, if the Executive Director objects to any portion of a proposed Budget, Executive Director shall advise Manager of such objection (and deliver to Manager a reasonably detailed description of such objections, the "Disapproved Items") and Manager shall promptly revise the Budget to address the Disapproved Items and shall resubmit the same to Executive Director until Executive Director approves such Disapproved Items. In addition, if any Disapproved Item is required to be paid pursuant to applicable federal, state or local law, rule, regulation, order or statute or by any governmental authority with jurisdiction with respect thereto, the cost and expense of which were approved pursuant to previous Budgets, then Manager shall be permitted to pay the same. Until such time that Executive Director approves such Disapproved Items, the most recently approved Budget shall apply other than with respect to the Disapproved Items with respect to which the previously approved Budget shall apply.

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48. **Bank Accounts.** Manager will establish a special bank account (the "Collection Account") in its name at a Kansas bank approved by the Executive Director in order to make the payments to the Executive Director required pursuant to Paragraph 23. Manager will establish an additional bank account in its name at a bank of its choice (subject to the Executive Director's approval) into which the Executive Director will deposit all amounts due and payable to Manager in accordance with Paragraph 26 (the "Operations Account"). Manager will give the Executive Director written notice of the account information necessary for the Executive Director to make deposits into the Operations Account. The Executive Director will cause Manager's portion of the Lottery Gaming Facility Revenues to be deposited electronically on a monthly basis into the Operations Account. Manager may establish additional accounts and subaccounts at its election, provided that all payments required to be made to the Executive Director must continue to be deposited into the Collection Account. Manager may grant a security interest in the Operations Account and any other accounts established by Manager (other than the Collection Account) to any Lender.

49. **Events of Default.** Each of the following will constitute an event of default by Manager:

- a) Manager's failure to pay any amount owed the Kansas Lottery in the manner provided for in this Agreement, subject to Manager's right to cure as provided in Paragraph 23, if the Kansas Lottery decides in its sole discretion to give notice of such default to Manager and, other

than with respect to Paragraph 23, if Manager fails to cure such nonpayment within seven (7) days after the date on which such notice was received,

- b) The filing of a voluntary assignment in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Manager;
- c) The consent to an involuntary petition in bankruptcy by Manager;
- d) Entry of an order, judgment or decree by any court of competent jurisdiction, on application of a creditor, adjudicating Manager a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of Manager's assets, if such order, judgment or decree continues unstayed and in effect for a period of 120 consecutive days; or
- e) Manager's failure to perform, keep or fulfill any other covenant, undertakings, obligations or conditions set out in this Agreement for a period of thirty (30) days after written notice of said failure from the Executive Director (unless a shorter period of time is specified in this Agreement); provided, however, that if the default is not susceptible of being cured within this thirty (30) day period and the defaulting party with due diligence takes and continues action to cure, then no event of default will be deemed to have occurred until the failure to take or to continue to take such action; or
- f) Withdrawal of any approval granted, loss or suspension of any license/certification issued to Manager by the Kansas Racing and Gaming Commission or any other

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regulatory entity with jurisdiction over Manager's activities unless such withdrawal, suspension or loss is being contested by Manager in the appropriate forum with jurisdiction over the agency action at issue.

50. **Remedies on Default.** If an event of default occurs as provided above, the Executive Director may, without prejudice to any other legal or equitable remedy which he may have, give Manager notice of the Kansas Lottery's intention to terminate this Agreement after the expiration of thirty (30) days from the date of such notice and upon the expiration of such period, unless another cure period is expressly provided for, this Agreement will be deemed terminated; provided, however, that nothing in this paragraph, or in this Agreement, will be construed to restrict the Executive Director's authority to: (a) immediately cease operation of any or all Lottery Facility Games at the Lottery Gaming Facility for any reason; or (b) physically secure or take possession of any or all Lottery Facility Games and any related equipment necessary to play such games. Manager acknowledges and agrees that once this Agreement is terminated, the Kansas Lottery thereafter will be free to enter into a management contract with a new manager for another Lottery Gaming Facility in the Kansas gaming zone without penalty to the Kansas Lottery or further recourse by Manager. During the thirty (30) day period between Manager's receipt of notice of termination from the Executive Director and such termination becoming effective, the Executive Director shall cooperate in good faith with Manager in any effort undertaken by Manager to locate a third party to acquire the Lottery Gaming Enterprise and assume the obligations of Manager hereunder; provided, however, the Manager expressly acknowledges and agrees that any third party must comply with all statutory and licensure requirements and be able to perform all such obligations hereunder. Notwithstanding the foregoing, Manager further acknowledges that its failure to make any daily electronic payment of Lottery Gaming Facility Revenues as required by Paragraph 23 will authorize the Executive Director in his sole discretion to immediately terminate this Agreement.

51. **Remedies Cumulative.** No remedy conferred upon or reserved to the Kansas Lottery in this Agreement is intended to be exclusive of any other available remedy, but each and every such remedy will be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient in favor of the Kansas Lottery.

52. **Surrender Upon Termination.** At the Executive Director's request, Manager agrees that at the expiration or earlier termination of this Agreement, Manager will deliver to the Executive Director, or his designee, all books, records, accounting documents, computerized files, contracts, leases, licenses/certifications, permits or other governmental authorizations, files, supplies, keys, locks safe combinations, insurance policies not maintained as part of Manager's blanket policies, warranty contracts and cards, operating instructions and other information, warranties and guaranties concerning all equipment relating to the Lottery Facility Games, as well as any maintenance or preventive maintenance programs, schedules and logs, records, inventories of personal property and equipment purchased on behalf of the Kansas Lottery or the State of Kansas, and all other information regarding the Lottery Facility Games, and all accounts and sums held or maintained by Manager on behalf of the Kansas Lottery. Manager will have a reasonable period of time, not to exceed forty-five (45) days from the termination date, to complete all accounting functions with respect to the Lottery Gaming Facility. Manager must cooperate with the Executive Director in

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changing any bank accounts maintained for the Kansas Lottery's benefit. Manager must take all actions reasonably necessary to facilitate the orderly transition or termination of the management of the Lottery Gaming Facility and must perform all reporting and accounting functions required by this Agreement for the period from the date of the last report or accounting to the termination date. If, at the termination of this Agreement, there are any Lottery Facility Games that were purchased by Manager on behalf of the Kansas Lottery with ownership transferred to the Kansas Lottery, then the Executive Director will transfer ownership of such games to Manager or Manager's designee, if such transfer is lawful; but if such transfer is not lawful, then the Executive Director will refund to Manager the residual value received by the Executive Director in a sale of such game to an eligible buyer.

53. **Agreement to Pay Attorneys' Fees and Expenses.** If Manager defaults under any provision of this Agreement and the Kansas Lottery should employ attorneys or incur other expenses for the collection of amounts payable or to enforce performance or observance of Manager's obligations under this Agreement, Manager must pay, on demand, the reasonable fees of such attorneys and such other expenses incurred by the Kansas Lottery, if the Kansas Lottery is the prevailing party.

54. **Manager's Indemnification Responsibilities.** In addition to any other indemnification obligations provided in this Agreement or by law, to the fullest extent allowed by law, Manager agrees as follows:

- a) To hold and save harmless the State of Kansas, Commission, Commission members, the Executive Director, the Kansas Lottery, Kansas Lottery staff, Kansas Racing and Gaming Commission, Kansas Racing and Gaming Commission members, the Kansas Racing and Gaming Commission's executive director, and Kansas Racing and Gaming Commission staff (each an "Indemnified Party") from liability for injury to persons or damages to property by reason of any cause whatsoever, either in and about the Lottery Gaming Facility or elsewhere, when Manager is carrying out the provisions of, or any way connected with, this Agreement.
- b) To hold and save harmless any Indemnified Party upon demand for any money or other property which they are required to pay out for any reasons whatsoever, whether the payment is for a budgeted expense or any other charges or debts incurred or assumed by Manager, or any other party, or judgments, settlement or expenses in defense of any claim, civil action, proceeding, charge, or prosecution made, instituted or maintained against Manager or an Indemnified Party jointly or severally, affecting or because of the condition or use of the Lottery Gaming Facility, or acts or failure to act by Manager or Manager's agents, or arising out of or based upon any law, regulation, requirement, contract or award related to the hours of employment, working conditions, wages and/or compensation of employees or former employees at the Lottery Gaming Facility, or any other cause in connection with the Lottery Gaming Facility's management or Manager's activities related to any Ancillary Lottery Gaming Facility Operations. This entire Paragraph 54 does not include any action against the Kansas Lottery or its staff regarding the constitutionality of the Kansas Expanded Lottery Act or misconduct by an Indemnified Party that is found to be negligent or criminal.

- c) To hold and save harmless any Indemnified Party from liability for any claim arising as a result of the selection of Manager under the Kansas Expanded Lottery Act to manage the Lottery Gaming Facility, the denial of some other potential manager in making that selection, the process used in making the selection, or the process used in applying to become a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act.
- d) To hold and save harmless any Indemnified Party from liability for any violation or breach of this Agreement by Manager, its employees, or agents.
- e) To hold and save harmless any Indemnified Party from liability for any claims alleging negligent acts or omissions by Manager, its officers, employees, agents, board members, contractors, subcontractors or agents in the performance of this Agreement.
- f) To hold and save harmless any Indemnified Party from liability for any claims alleging violations of any intellectual property right for any intellectual property supplied by Manager under this Agreement, including but not limited to, infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from Manager's performance under this Agreement.

Manager's duties under this paragraph will survive the termination or expiration of this Agreement. To the extent Manager is responsible to defend any Indemnified Party as required under this Agreement, Manager agrees to defend (with counsel approved by the Executive Director), at Manager's sole expense, any Indemnified Party, and to pay on demand all costs and expenses related to such defense regarding any indemnification right provided for in this paragraph. The Kansas Lottery shall cooperate in any such defense and will promptly provide notice to Manager of any potential liability arising under this Paragraph 54. Manager's obligations under this paragraph may be satisfied in whole, or in part, by insurance purchased at Manager's expense, provided that Manager will be responsible for any indemnified liabilities in excess of insurance limits. Notwithstanding any provision to the contrary in this Agreement, Manager shall in no event be liable under any indemnification obligation provided in this Agreement to the extent such liability arises out of or is related to the negligence of or willful or malicious misconduct of any Indemnified Party or resulting from actions taken by Manager at the specific direction of the Executive Director. The provisions of this paragraph in no way eliminate or cancel the insurance protection and rights granted to the Kansas Lottery, the Commission, the State of Kansas and their agents and employees as set forth in Paragraphs 34 and 35 of this Agreement.

55. **Compliance with Orders, Ordinances, Etc.** Throughout this Agreement's term, Manager will promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses/certifications, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Lottery Gaming Facility or any part thereof, or to any use, manner of use or condition of the Lottery Gaming Facility or any part thereof.

Notwithstanding these requirements, Manager may in good faith contest the validity of the applicability of any requirement of the nature referred to in this paragraph. In such event, Manager may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, so long as such non-compliance is permitted by law. Manager will give notice to the Executive Director of any such non-compliance.

56. **Discharge of Liens and Encumbrances.** Manager shall not permit or create or suffer to be permitted or created any lien upon the Lottery Gaming Facility Revenues or the Lottery Gaming Facility, or any part thereof, by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Lottery Gaming Facility or any part thereof, except any liens expressly approved by the Executive Director. Notwithstanding these requirements, Manager may in good faith contest any such lien. In such event, Manager, upon prior written notice to the Executive Director, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal, unless the Executive Director requires Manager to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Executive Director, thereby causing a lien to be removed. Manager agrees this Agreement is not to be considered property, and will not permit this Agreement to be attached, garnished, or executed upon by any creditor for any reason, but such attachment, garnishment or execution shall not be grounds for default if Manager promptly contests and obtains vacation of such writs or secures a bond that causes the lien thereof to be removed. This Agreement is not transferable in bankruptcy without the Executive Director's approval, provided that the Manager's trustee, if Manager is insolvent or bankrupt, may continue to operate the Lottery Gaming Facility pursuant to this Agreement under order of the appropriate court for no longer than one year after the bankruptcy or insolvency of Manager.

57. **Assignment.** This Agreement may not be assigned in whole or in part without the Executive Director's express written consent, which may be granted or withheld in his sole and absolute discretion, except that this agreement may be assigned in whole or in part to any Lender as provided in paragraph 78 hereto subject to Lender's compliance with all statutory requirements, regulatory procedures, (including those related to suitability), and Executive Director approval. Notwithstanding the above, up to a 50% interest in Manager may be transferred by an existing member, or members, of Manager to another person or entity that is not then a member of Manager, provided such transferee obtains all approvals required by applicable statute, regulation or this Agreement.

58. **Notices.** All notices and other communications provided for under this Agreement, or any applicable statute or regulation, must be in writing and sent via (a) U.S. Mail, certified mail, return receipt requested, (b) recognized national overnight courier (e.g. FedEx, UPS, DHL, etc.), (c) hand delivery or (d) fax, if followed by notice under (a) or (b) at the addresses set forth below, or at such other address as such party may specify by written notice to the other parties hereto:

If to the Executive Director:

Ed Van Petten
Kansas Lottery
128 N. Kansas Avenue
Topeka, KS 66603-3638
Telephone: 785-296-5703
Facsimile: 785-296-5722

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If to Manager:

Kansas Entertainment, LLC
c/o The Cordish Company
601 East Pratt Street
6th Floor
Baltimore, Maryland 21202
Telephone: 410-752-5444
Facsimile: 410-659-9491

With a copy to:

Joe Weinberg
The Cordish Company
601 East Pratt Street
6th Floor
Baltimore, Maryland 21202
Telephone: 410-752-5444
Facsimile: 410-659-9491

And to:

Jeff Boerger
Kansas Speedway Development Corp.
400 Speedway Boulevard
Kansas City, Kansas 66111
Telephone: 913-328-3303
Facsimile: 913-328-3372

And to:

James I. Hisiger
Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Telephone: 212-906-1371
Facsimile: 212-751-4864

Notice will be deemed given three days after mailing, if by certified mail, return receipt requested, the next business day after delivery to an overnight delivery service for next business day delivery, or on the date sent by fax if confirmation of receipt is obtained and retained and provided that notice under (a) or (b) above is sent the same day.

59. **Amendments.** Except as otherwise provided in this paragraph, no amendment, waiver, or consent as to any provision in this Agreement will be effective unless it is in writing and agreed to by the Executive Director and Manager, and each such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. In addition, and notwithstanding any other provision in this Agreement, Manager acknowledges and agrees the Executive Director may overrule any action by Manager affecting operations within the Lottery Gaming Facility without prior notice to Manager, and that the Kansas Lottery maintains at all times full control over all decisions concerning the Lottery Facility Games placed at the Lottery Gaming Facility. This Agreement will also be modified, in whole or in part, in order to comply with future statutory enactments or judicial interpretations of applicable law by a court of competent jurisdiction. This Agreement is subject to modification, in whole or in part, or cancellation, as deemed necessary

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by the Executive Director to comply with any future statutory enactments, subsequent regulatory changes, or judicial interpretations of applicable law by a court of competent jurisdiction occurring after this Agreement's execution, without additional consideration being exchanged between the parties. The parties agree nothing in this paragraph will be read to limit the remedies provided to Manager in Paragraphs 31 or 65.

60. **No Recourse; Special Obligation.**

- (a) The Kansas Lottery's obligations and agreements contained herein and any other instrument or document executed in connection with this Agreement, and any other instrument or document supplemental thereto or hereto, are deemed the obligations and agreements of the Kansas Lottery, and not of any member, officer, contractor (other than Manager), or employee of the Commission or Kansas Lottery in his or her individual capacity, and such individuals will not be liable personally hereon or thereon or be subject to any personal liability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.
- (b) The Manager's obligations and agreements contained herein and any other instrument or document executed in connection with this Agreement and any other instrument or document supplemental thereto or hereto, are deemed the obligations and agreements of Manager, and not of any direct or indirect equity owner, member, partner, officer, director, contractor, or employee of Manager in his or its individual capacity, and such entities and individuals will not be liable personally hereon or thereon or be subject to any personal liability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby, with the exception of agreements, documents or instruments that are signed by any person or entity in his or its individual capacity, such as an individual disclosure form.

61. **Severability.** If any provision in this Agreement is determined to be invalid or unenforceable by any court with competent jurisdiction, such holding will not invalidate or render unenforceable any other provision, and the parties may renegotiate this Agreement to conform to any such court holding.

62. **Binding Effect.** This Agreement will inure to the benefit of, and will be binding upon, the State of Kansas, the Kansas Lottery, Manager, and their respective successors and assigns.

63. **Force Majeure.** With respect to any obligation to be performed by a party during this Agreement's term, no party will be liable for failure to perform when prevented by any force majeure cause beyond the reasonable control of such party such as an act of God, strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, delay in obtaining any approval required by any governmental authority (and such delay is not caused by Manager), failure of supply or inability, by the exercise of reasonable diligence, to obtain supplies, parts or employees necessary to perform such obligation, or war or other emergency. The time within which such obligation must be performed will be extended for a period of time equivalent to the delay from such cause. But failure to perform by Manager's subcontractors or agents will not be considered a force majeure unless such subcontractor or supplier is prevented from timely performance by a force majeure as described above. This paragraph will not apply to any financial difficulties of Manager, or any parent, subsidiary, or affiliated or associated company of Manager, but will apply to orders of the

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Kansas Racing and Gaming Commission or court orders preventing Manager's ability to perform. The provisions of this paragraph 63 notwithstanding, the parties agree the litigation components of the force majeure definition do not apply to Manager's obligations to pay the privilege fee as required by Paragraph 20 above or to Manager's obligations to pay the expenses of the Kansas Lottery or the Kansas Racing and Gaming Commission as required by Paragraph 28, except, in each case, if such litigation components restrict, prohibit or disallow Manager from making such payments (or any portion thereof), in which case Manager shall be permitted to comply with such litigation components and such compliance shall not be, nor shall it be deemed to be, an event of default hereunder.

64. **Emergency Closings.** If at any time during this Agreement's term it becomes necessary in the Executive Director's or Manager's reasonable opinion to cease operations at the Lottery Gaming Facility in order to protect the facility or the health, safety and welfare of guests or employees for reasons of force majeure such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, environmental risks or other casualty, then the Lottery Gaming Facility may be closed and cease operation of all or part of the facility. If this occurs based on Manager's determination, Manager must immediately notify the Executive Director, who will then determine when the Lottery Gaming Facility is reopened without jeopardy to the facility, its guests or employees.

65. **Manager's Right to Cease Management Activities.** Manager may cease management of the Lottery Gaming Facility and terminate this Agreement with no less than six months advance written notice if:

- a) K.S.A. 2008 Supp. 74-8734(h)(1) or other applicable statute or regulation is amended to reduce the term of this Agreement;
- b) Either K.S.A. 2008 Supp. 74-8734(h)(12) or (13) or other applicable statute or regulation are amended to increase the minimum percentages stated in K.S.A. 2008 Supp. 74-8734(h)(12) or (13) above the amounts provided for in this Agreement;
- c) K.S.A. 2008 Supp. 74-8734 (h)(16) or other applicable statute or regulation is amended to increase above the aggregate the minimum percentages stated in K.S.A. 2008 Supp. 74-8734(h)(16) above the amounts provided for in this Agreement;
- d) The Kansas Lottery fails to effect payment of Manager's compensation as due under this Agreement and not otherwise in dispute, provided such failure of payment is not cured within ten (10) business days of notice by Manager to the Executive Director;
- e) K.S.A. 2008 Supp. 74-8739 is amended to no longer permit the sale or service of alcoholic beverages at the Lottery Gaming Facility or Ancillary Lottery Gaming Facility Operations;
- f) The Kansas Expanded Lottery Act is amended to preclude the Kansas Lottery from owning and operating table games at the Lottery Gaming Facility;

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- g) A court of competent jurisdiction, after all appropriate appeals are exhausted, invalidates paragraph 30 above or the corresponding provisions of the Kansas Expanded Lottery Act;
- h) The Lottery Gaming Facility operates at a financial loss to Manager at the net income level (as defined by GAAP and verified by an independent audit by an auditor approved by the Executive Director) during a full Fiscal Year and Manager gives the Executive Director at

least 180-days' advance written notice of Manager's intent to cease management activities within forty-five (45) days after the end of the Fiscal Year in which the financial loss occurs; or

- i) The Executive Director exercises his right under Paragraph 33 or the Kansas Expanded Lottery Act to physically secure, deactivate or cease operation of such a substantial number of Lottery Facility Games that the Lottery Gaming Facility is no longer commercially viable.

The parties agree that in addition to, or in lieu of, Manager's right to cease management activities under this paragraph, Manager will have available to it any legal or equitable remedy against the State of Kansas, including any impairment of the obligations of this contract prohibited by Article I, Section 10, Clause 1 of the Constitution of the United States of America, if any of the circumstances stated above in sub-paragraphs (a), (b), (c), (d), (e) or (f) occur. Nothing in this paragraph will be deemed a waiver of the immunities and protections reserved to the State of Kansas under the Eleventh Amendment to the Constitution of the United States.

66. **Manager's Ability to Withdraw Application.** Manager may withdraw its application to be a Lottery Gaming Facility Manager at any time prior to its approval by the Kansas Racing and Gaming Commission. Notice of Manager's withdrawal must be given in writing to the Executive Director. If at the time of Manager's withdrawal, Manager has paid a privilege fee to the state treasurer and credited to the Lottery Gaming Facility Manager Fund, the Executive Director will promptly notify the state treasurer of Manager's withdrawal and direct the state treasurer to refund Manager's privilege payment without interest. Manager acknowledges and agrees that if it withdraws its application pursuant to this paragraph, this agreement will be void (with the exceptions of Sections 8, 28, (except that with respect to Section 28, Manager shall only be liable for any obligations which accrued prior to the date of its withdrawal), 54, 58, 60, 70, 71 and 72) and it will not be permitted to re-apply as a Lottery Gaming Facility Manager in the Northeast Gaming Zone unless the application process is reopened. Manager will not be permitted any refund for payments made by Manager to reimburse the Kansas Lottery or the Kansas Racing and Gaming Commission's expenses as required by this Agreement.

67. **Financing Commitment for Construction and Commitment for Expansion of Speedway and Racing Events.**

- a) In accordance with K.S.A. 2008 Supp. 74-8734(h)(9), Manager attaches as Exhibit E its financing commitment for construction of the Lottery Gaming Facility and ancillary facilities.
- b) If Manager is designated the Lottery Gaming Facility Manager no later than April 30, 2010, then following the Effective Date, International Speedway Corporation ("ISC")

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shall request the approval of the National Association for Stock Car Auto Racing, Inc. ("NASCAR") to add a second NASCAR Sprint Cup Series event to be held at Kansas Speedway (the "Event") no later than the 2011 NASCAR Sprint Cup Series season. ISC has authorized the realignment of the Event from its current portfolio of events, subject to NASCAR's approval. If the Event is not held at Kansas Speedway no later than the 2011 NASCAR Sprint Cup Series season, Manager shall pay Ten Million Dollars (\$10,000,000) to be allocated as follows: Five Million Dollars (\$5,000,000) to the Kansas Lottery and Five Million Dollars (\$5,000,000) to the Unified Government of Wyandotte County. Such payment shall be made no later than ninety (90) days following written notice from Kansas Lottery to Manager that the Event was not held in accordance with this Section 67. The Kansas Lottery hereby acknowledges and agrees that payments made pursuant to this Section 67 shall not be due if the Event is held in accordance with the terms of this Section 67. ISC's commitment to the above is memorialized in the attached Commitment Letter from ISC, which is included as Exhibit G to this Agreement.

- c) If Manager is designated the Lottery Gaming Facility Manager no later than April 30, 2010, then following the Effective Date, the Manager shall dedicate such funds as necessary to construct a road racing course at Kansas Speedway, which shall be suitable for the holding of major road racing motorsports events. As part of same, Kansas Speedway agrees to promote a race sanctioned by the Grand American Road Racing Association following the completion of such road racing course and no later than the 2011 racing season. Kansas Speedway shall also provide to the Kansas Lottery with two (2) trackside billboards during each year of the term hereof. The two (2) trackside billboards shall be 20' x 60' in size, shall be used solely by the State of Kansas for purposes of promoting tourism for the State of Kansas and, accordingly, the rights to use such billboards may not be transferred or assigned by the State of Kansas. Kansas Speedway's commitments to the above are memorialized in the attached Commitment Letter from Kansas Speedway, which is included as Exhibit H to this Agreement.

68. **Executive Director's Approval.** When it is provided in this Agreement that the Manager will submit a budget, plan or other issue for the Executive Director's approval, the Executive Director will respond within 30 days, provided that any request from Manager in which the Executive Director fails to respond in that time will be deemed denied. The Executive Director will not exercise his discretionary authority provided to him in this Agreement in an unreasonable, arbitrary or capricious manner.

69. **Central Computer System.** Manager acknowledges and agrees that all Electronic Gaming Machines at the Lottery Gaming Facility will be directly linked to a central computer at a location determined by the Executive Director for purposes of security, monitoring, auditing, and providing other available program information to the Kansas Lottery. The Executive Director will have sole authority to determine the functions and operational capacities to be performed through this central computer system by Manager, as well as the services provided by the vendor engaged by the Executive Director to provide the central computer system. In addition to all other functions to be performed by the central computer system, the Executive Director expressly reserves the authority to determine if this central computer system will be used to validate or redeem tickets issued by an Electronic Gaming Machine commonly referred to as "Ticket-in Ticket Out."

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70. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original and all of which will constitute one and the same instrument.

71. **Applicable Law.** This Agreement will be governed, construed, and enforced in accordance with Kansas law for contracts to be wholly performed within the state.

72. **Jurisdiction and Venue.** Any action by or between the parties challenging the constitutionality of, or arising out of, any provision of the Kansas Expanded Lottery Act, this Agreement, or any rule or regulation promulgated pursuant to the Kansas Expanded Lottery Act must be brought in the district court of Shawnee County, Kansas, unless a dispute is first subject to proceedings under the Kansas Administrative Procedure Act.

73. **Headings Not Controlling; Construction; Survival.** Each paragraph heading is prepared for convenience only and is not to control, affect the meaning, or be taken as an interpretation for any provision in this Agreement. Use of the word “including” in this Agreement does not mean including in a restrictive sense, but rather means in the sense of providing a non-exclusive illustration, as if the words “including without limitation” were included in the text. The terms and provisions of Paragraphs 31, 48, 52, 54, 58, 65, 71, 72, 74 and 78 shall survive the termination of this Agreement.

74. **No Joint Venture Created.** Manager and the Kansas Lottery agree and acknowledge that by entering into this Agreement they are not entering into a joint venture.

75. **Covenant for Continued Disclosure.** Within 30 days after the close of the Fiscal Year, Manager must update all exhibits to this Agreement as designated by the Executive Director. Upon the Executive Director’s written request, Manager will provide such other information regarding the financial or legal undertakings of Manager, the Lottery Gaming Facility, or the Ancillary Lottery Gaming Facility Operations.

76. **No Endorsement Made.** By executing this Agreement the Kansas Lottery, the Kansas Racing and Gaming Commission, and the State of Kansas have not considered or endorsed the marketability of Manager’s securities or marketability of any securities of Manager’s affiliates.

77. **Contractual Attachment.** It is further agreed that the provisions found in the Contractual Provisions Attachment (Form DA-146a), and is attached as Exhibit F, are incorporated in this Agreement as though set out in full.

78. **Lender Protections.** The Kansas Lottery expressly recognizes the need for Manager to obtain favorable financing terms and the need for any third party lender (“Lender”) associated with the development of the Lottery Gaming Enterprise to protect its investment. Therefore, in connection with any financing from a Lender during the term of this Agreement or in connection with the construction of the Lottery Gaming Enterprise, the following provisions will apply:

- a) The Kansas Lottery acknowledges that Manager may grant a security interest in, and/or grant a mortgage encumbering, the Lottery Gaming Enterprise, Lottery Facility Games, and any bank accounts of Manager referenced in Paragraph 48 but excluding any Collection Accounts;

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- b) If any default occurs for which the Kansas Lottery intends to terminate this agreement, the Kansas Lottery shall promptly give Lender a notice of such default. Any notice from the Kansas Lottery to Manager shall have no effect as and against Lender only unless Lender receives a copy of same;
- c) Notwithstanding anything in the Agreement to the contrary, upon a default by Manager under the financing agreements, without Kansas Lottery’s or Executive Director’s consent, at any time, any Lender may initiate and complete any foreclosure, deed in lieu or similar proceeding to acquire the Lottery Gaming Enterprise and exercise any other rights and remedies against Manager or its affiliates and the Lottery Gaming Enterprise. If any such actions by Lender cause Manager to be in default under this Agreement, the Kansas Lottery and/or Executive Director may enforce all of their rights against Manager, including termination of this Agreement.
- d) Upon a bankruptcy of Manager, or if the Kansas Lottery elects to terminate this Agreement for any other reason, it shall notify Lender, and Lender may request, within thirty (30) days of receiving such notice, that the Kansas Lottery promptly enter into a new management agreement on substantially the same terms as this Agreement (New Management Agreement) with a new, Third Party Manager. Kansas Lottery need not consider such a request, however, unless a Lender has first: (i) cured all reasonably curable defaults to the extent required hereunder; (ii) reimbursed Kansas Lottery’s costs and expenses (including reasonable attorneys’ fees and expenses) to terminate this Agreement, recover the Lottery Gaming Facility, and enter into the New Management Agreement; and (iii) ensured that any new Third Party Manager and/or the New Management Agreement are in compliance with any and all statutory requirements, approvals or consents, and any regulatory procedures, including those related to suitability. The Kansas Lottery agrees to co-operate with a Lender in good faith to find a new acceptable Third Party Manager upon any such termination of Manager.
- e) The Kansas Lottery agrees to notify Lender of any material amendments made under Section 59 of this Agreement. No such amendment shall be effective as and against Lender without the prior written consent of Lender, such consent not to be unreasonably withheld.
- f) Manager agrees to notify the Lottery of any Lender’s contact information and keep it current with the Lottery at all times. Manager’s failure to keep a Lender’s contact information current will nullify the Kansas Lottery’s duty of notice under (a), (b) (c) or (d) of this Section.
- g) The rights of Lender hereunder shall inure to the benefit of a Lender’s affiliate, assignee, designee, nominee, subsidiary, or others designated by Lender. To the extent any of Lender’s rights under this Agreement apply after this Agreement terminates, they shall survive such termination.

The Kansas Lottery agrees to provide any standard business consents, estoppels or similar instruments reasonably requested by Manager or Lender in connection with any such financing of the Lottery Gaming Enterprise or Lottery Facility Games.

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79. **No Third Party Beneficiaries.** In no event shall any person or entity that is not a party to this Agreement be an express, implied, or intended third party beneficiary.

IN WITNESS WHEREOF, the Executive Director, on behalf of the Kansas Lottery, and Manager have caused this Agreement to be executed in their respective names, all as of the date first above written.

THE KANSAS LOTTERY

By: /s/ Ed Van Petten
Ed Van Petten, Executive Director

Dated: 8-25-09

KANSAS ENTERTAINMENT, LLC, a Delaware limited liability company

By: /s/ Joseph Weinberg
Authorized Representative

Dated: 8-14-09

EXHIBIT SCHEDULE

EXHIBIT A — Environmental Compliance and Indemnification Agreement

EXHIBIT B — County Endorsement

EXHIBIT C —Expected Construction Sequence

EXHIBIT D —Key Employees

EXHIBIT E— Financing Commitment Description

EXHIBIT F — DA-146a

EXHIBIT G—Commitment letter from ISC

EXHIBIT H—Commitment letter from Kansas Speedway

DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into as of the 8th day of September, 2009, by and between the UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS ("Unified Government") and KANSAS ENTERTAINMENT, LLC ("Entertainment"), a Delaware limited liability company.

RECITALS:

- A. In 2007, the Kansas Legislature enacted the Kansas Expanded Lottery Act ("KELA") which authorizes the establishment of one (1) Lottery Gaming Facility (as defined in KELA) in four (4) separate gaming zone locations with the State of Kansas (the "State").
- B. KELA provides that one (1) gaming zone and authorized Lottery Gaming Facility may be located within the northeast zone of the State, which is defined as the geographical boundaries of Wyandotte County (the "Northeast Zone").
- C. KELA requires that an applicant seeking to manage a gaming facility must receive an endorsement from the governing body of the city or county in which the facility is located.
- D. In order to streamline the endorsement process, the Unified Government issued RFP 29-154, requesting prospective Lottery Gaming Facility Managers (as defined in KELA) to provide certain documentation and information to the Unified Government with respect to their proposed Lottery Gaming Facility.
- E. In response, Entertainment submitted a proposal (the "Proposal") to the Unified Government that describes a project (the "Project") including a Lottery Gaming Facility (the "Gaming Facility"), hotel (the "Hotel") and retail and entertainment facilities. The Project will be developed in phases as set out in the Proposal.
- F. On November 8, 2007, the Unified Government Planning Commission reviewed the Proposal and recommended approval of rezoning, special use permit, and preliminary plat applications submitted by Entertainment.
- G. On June 4, 2009, the Board of Commissioners of the Unified Government approved the rezoning, special use permit, and preliminary plat applications submitted by Entertainment.
- H. On June 11, 2009, the Board of Commissioners of the Unified Government adopted resolutions pursuant to which the Unified Government endorsed the Proposal.
- I. Entertainment has submitted an application to the State (acting through the Kansas Lottery Commission (the "Lottery Commission")) in accordance with KELA to be named the Lottery Gaming Facility Manager (as defined in KELA) for the Northeast Zone.
- J. The parties now desire to enter into this Agreement to set forth their understandings and agreements relating to the development of a Lottery Gaming Facility by Entertainment in the Northeast Zone.

NOW THEREFORE, for good and valuable considerations; the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I: TERM AND LOTTERY GAMING CONTRACT

1.01 Term. This Agreement shall be effective upon execution by both parties ("Effective Date") and shall expire upon the occurrence of any of the following: (i) a party other than Entertainment is selected as the Lottery Gaming Facility Manager for the northeast zone of Kansas, (ii) a final unappealable judgment holding KELA unconstitutional, (iii) at such time as Entertainment, or its assigns, is no longer a Lottery Gaming Facility Manager for the northeast zone, regardless of the reason Entertainment is no longer a Lottery Gaming Facility Manager, (iv) the expiration or termination of the Lottery Gaming Facility Management Agreement or (v) Entertainment, in its sole and absolute discretion, withdraws itself from consideration to be the Lottery Gaming Facility Manager for the Northeast Kansas gaming zone at any point prior to final written confirmation. as Manager of the Northeast Kansas gaming zone by the Kansas Racing and Gaming Commission. If at any time following Entertainment's final written approval by the Kansas Racing and Gaming Commission, the Kansas Lottery Commission and the Lottery Gaming Facility Review Board, Entertainment determines, in its sole and absolute discretion, that the construction, operation or management of the Project, or any portion thereof, is not economically favorable to Entertainment, Entertainment may terminate this Agreement and shall have no further obligations hereunder beyond the payment to the Unified Government the sum of \$200,000 and the reasonable and documented out of pocket costs incurred by the Unified Government in administering the current 2009 bid process. Further, in the event (i) the State of Kansas, or any commissions or agencies thereof, or any Unified Government entity or municipality with jurisdiction over development or operation of the Lottery Gaming Facility or Ancillary Lottery Gaming Facilities issue additional ordinances, rules and regulations or modify any existing rules, ordinances or regulations, or (ii) KELA is amended or modified by legislative action or by final unappealable order from a court with competent jurisdiction, either of which have an adverse impact on Entertainment's operations or profitability, the parties agree to use commercially reasonable efforts to amend this Agreement in order to comply with such amendments or modifications which modifications will, among other things, place Entertainment in roughly the same economic position as existed prior to such additional orders, rules, regulations, modifications or amendments. Except to the extent of a Force Majeure (as defined below) event or as caused by the Unified Government or a division, department or agency thereof, any commercially reasonable efforts agreed upon to amend this Agreement shall not include a reduction in the direct financial benefits required to be paid to the Unified Government by the terms of this Agreement or by State law whether directly or through rebate, refund or other transaction.

1.02 Gaming Facility Contract. The terms of the Gaming Facility Contract shall be in a form and substance that is acceptable to Entertainment in its sole and subjective discretion. The parties acknowledge and agree that this Agreement shall terminate and be of no further force or effect if (i) the Gaming Facility Contract is terminated, or (ii) if Entertainment has become the Lottery Gaming Facility Manager for the Northeast Zone, and subsequently resigns as the Lottery Gaming Facility Manager.

ARTICLE II: PROJECT DEVELOPMENT

2.01 Project Development.

(a) Entertainment has budgeted in excess of \$300,000,000 for the first phase of the Project (i.e., Phase 1A of the Proposal). The Project is anticipated to be substantially completed no later than 36 months after the Effective Date of the Lottery Gaming Facility Management Contract between the State and Entertainment (as same may be amended from time to time, the "Gaming Facility Contract"), and at a minimum, shall consist of:

- casino floor with 2,300 slot machines and 86 table games; and
- 28,000 square foot of dining and entertainment space.

In addition, Entertainment may include a hotel containing no less than 250 rooms as part of the first phase of the Project. However, if the first phase of the project does not include such a hotel, then Section 2.01 (b) of this Agreement shall apply.

Future phases, if and when determined as economically viable by Entertainment, may include:

- Convention Facilities
- Expanded Gaming Floor
- Spa & Fitness Center
- Retail, Dining & Entertainment complex
- Live Music Venue
- Residential and/or Hotel/Condominium Units
- Other compatible commercial uses

(b) In addition, in the event that the first phase of the Project does not include a hotel, within two (2) years of the initial opening date of the first phase of the Project, Entertainment shall commence construction of a hotel, containing a minimum of 250 guest rooms, and diligently pursue completion of same within a commercially reasonable period of time.

(c) Entertainment contemplates branding the Hotel and the Gaming Facility as a Hard Rock hotel and casino.

(d) Entertainment has included the following commitments in its draft Gaming Facility Contract with the Kansas Lottery (Each capitalized term used therein has the meaning ascribed to it in its draft of the Gaming Facility Contract):

(i) If Manager is designated the Lottery Gaming Facility Manager no later than April 30, 2010, then following the Effective Date, International Speedway Corporation ("ISC") shall request the approval of the National Association for Stock Car Auto Racing, Inc. ("NASCAR") to add a second NASCAR Sprint Cup Series event to be held at Kansas Speedway (the "Event"), no later than the 2011 NASCAR Sprint Cup Series season. ISC has authorized the realignment of the Event from its current portfolio of events, subject to NASCAR's approval. If the Event is not held at Kansas Speedway by the 2011

NASCAR Sprint Cup Series season, Manager shall pay Ten Million \$10,000,000 to be allocated as follows: Five Million \$5,000,000 to the Kansas Lottery and Five Million \$5,000,000 to the Unified Government of Wyandotte County. Such payment shall be made no later than ninety (90) days following written notice from Kansas Lottery to Manager that the Event was not held in accordance with this Section 67. The Kansas Lottery hereby acknowledges and agrees that payments made pursuant to this Section 67 shall not be due if the Event is held in accordance with the terms of this Section 67. ISC's commitment to the above is memorialized in the attached Commitment Letter from ISC, which is included as Exhibit G to this Agreement.

(ii) If Manager is designated the Lottery Gaming Facility Manager no later than April 30, 2010, then following the Effective Date, the Manager shall dedicate such funds as necessary to construct a road racing course at Kansas Speedway, which shall be suitable for the holding of major road racing motorsports events. As part of same, Kansas Speedway agrees to promote a race sanctioned by the Grand American Road Racing Association following the completion of such road racing course and no later than the 2011 racing season. Kansas Speedway's commitments to the above are memorialized in the attached Commitment Letter from Kansas Speedway, which is included as Exhibit H to this Agreement.

The above provisions are hereby incorporated into this Agreement and shall run to the benefit of the Unified Government.

2.02 Control of Property. Prior to the date of execution of this Agreement, Entertainment shall own or have contract(s) to purchase or otherwise acquire all of the real property upon which the Project is to be constructed (the "Project Real Estate") and Entertainment shall be vested with fee simple title to all Project Real Estate prior to commencement of construction of the Gaming Facility.

2.03 Proposal and Development Approvals. In connection with the construction of the Project, Entertainment shall comply with: (A) the zoning, special use, and preliminary site plan approvals for the Project and the conditions and stipulations thereof as such may be amended pursuant to the Unified Government Zoning Ordinance and Subdivision Regulations and the laws of the State of Kansas, and (B) this Agreement, as it may be modified or revised from time to time

2.04 Development Approvals. The Unified Government hereby agrees to cooperate and coordinate with Entertainment and use its best reasonable efforts to timely review and approve all plans and issue necessary permits and other approvals which are required for Entertainment to construct and operate the Project.

2.05 Land Development and Building Codes. The Unified Government and Entertainment acknowledge that the contemplated uses and occupancies of the Project shall comply with all applicable federal, state, and local building codes, subdivision, zoning, environmental, and other development regulations,

and that the Project shall be constructed in compliance with all such applicable codes and regulations. The Unified Government agrees to work with Entertainment to identify all applicable codes as they become applicable to the Project. Additionally,

Entertainment acknowledges that green technologies will be used when possible on the Project. The overall design of the Project will incorporate environmentally friendly design elements and green building principals, such as elements of Leadership in Energy and Environmental Design (“LEED”) suggested criteria, that are commercially reasonable and feasible for the Project.

2.06 Assistance to Developer. The Unified Government agrees to use reasonable efforts, without hindrance or delay, to help Entertainment, its agents, contractors, subcontractors, tenants, or land purchasers, to obtain building permits from the Unified Government and any permits or approvals required from any federal, state, or local governmental body or agency, whenever reasonably requested to do so.

2.07 Utilities and Fees. The Unified Government agrees that Entertainment shall have the right to connect to any and all water lines, sanitary and storm sewer lines, and other applicable Unified Government facilities and/or services constructed or provided in the vicinity of the Project subject to compliance with the Unified Government’s standard codes and procedures for such connections/provision of service. Entertainment shall complete or pay for the, completion of all on- and off-site utility improvements or required extension of utilities as required by the approved rezoning, plat approvals, final development plans, approved final utility plans or which are otherwise reasonably required as the result of the impacts of the Project. Entertainment acknowledges that it will be responsible for securing and paying for all utilities of the Gaming Facility. Entertainment agrees that it will utilize electric and water utilities provided solely by the Board of Public Utilities of Kansas City, Kansas (“BPU”) for the Project, provided that: (i) BPU is capable of providing utility service in the quantities and quality of service required for the operation of the Project; (ii) the rate charged for such service shall be no greater than that charged other customers of BPU for utility usage in quantities that are greater than or equal to that of the Project; and (iii) in the event that the rate charged by BPU for such service (the “BPU Rate”) is ten percent (10%) or more greater than the rate that any other utility provider (a “Competitor”) would charge for such service (a “Competitor Rate”), and BPU fails to lower the BPU Rate for such utility service to a rate that is equal to or less than such Competitor Rate within thirty (30) days after Entertainment delivers written notice thereof to the Unified Government, then Entertainment shall have the right thereafter to utilize such utility service provided by such Competitor for the Project. The Unified Government agrees that Entertainment shall be obligated to pay only those water, sanitary sewer, storm sewer, building permit, engineering inspection, and other fees of general applicability. Entertainment acknowledges that the Unified Government shall have no financing obligations in connection with the Project except as expressly provided herein.

2.08 Modifications. The Unified Government acknowledges that Entertainment shall be permitted to make enhancements and modifications to the Project from the details provided in the Proposal, subject to appropriate development approvals, so long as such changes are consistent with the overall scope and level of quality of the Project as described in the Proposal. Modifications to the Project that change the overall scope and/or level of quality of the Project as described in the Proposal are subject to the written approval of the Unified Government, provided, however, the phasing of the Project, and, after the completion of the initial phase of the Project, the election to proceed with the development of a subsequent phase of the Project shall not require the written approval of the Unified Government (however, the plans for each phase of the Project that is undertaken by Entertainment shall be subject to final plan review by the

applicable governmental authority to the extent required by applicable law). Further, the Unified Government acknowledges that certain factors necessary for the successful development of the Project exist outside of the control of Entertainment, and that in accordance therewith modifications to the Project may be required in the event of adverse changes in the financial, banking or capital markets or the applicable legal and regulatory environment affecting the Project. All such modifications that are of a material nature shall be subject to the written approval of the Unified Government, in its reasonable discretion, which approval shall not be unduly delayed.

ARTICLE III: PROJECT IMPROVEMENTS

The parties agree that Entertainment shall be responsible for funding all on-site infrastructure improvements required for the Project and the off-site infrastructure improvements relating to the Project described in Sections 3.01 and 3.02, below.

3.01 Sanitary Sewer. Based upon a final engineering study submitted by Entertainment and approved by the Unified Government, if necessary for the Project, Entertainment shall upsize a sanitary sewer pipe on the east side of 110th Street.

3.02 Transportation. In order to mitigate traffic impacts in conjunction with the traffic study completed by BWR (the “BWR Study”) and submitted with the Proposal, the following minimum improvements shall be made:

- (a) At the intersection of Village West Parkway and 110th Street, restripe the westbound lanes to operate with an exclusive left-turn lane and a shared right-turn lane.
- (b) Restripe the I-70 Westbound exit ramp to operate with an exclusive right-turn lane and a shared right-turn and left-turn lane.
- (c) At the intersection of State Avenue and Village West Parkway, provide an additional westbound left-turn lane such that the westbound traffic operates with dual left-turn lanes.
- (d) Install traffic signals along 110th Street and Village West Parkway, I-70 Westbound ramps and I-70 Eastbound ramp intersections.
- (e) Based on the magnitude of the traffic volumes projected at the driveways serving the Gaming Facility on Village West Parkway, it is recommended that 250-foot left-turn and 200-foot right-turn lanes be provided on Village West Parkway at these drives and the intersections be monitored for the need for installation of traffic signals. While through traffic volumes on Village West Parkway are relatively low at this time, they are expected to increase as development continues in the area.
- (f) On the driveways exiting the Gaming Facility site, separate outbound left and right-turn lanes should be provided at Village West Parkway.

- (g) On 110th Street at the intersection with the I-70 Eastbound ramps, restripe the southbound lanes to provide dual left-turn lanes to the eastbound ramp and a single through lane.
- (h) During Saturday P.M. peak hour, the intersection operation at State Avenue and Village West Parkway operates at a level of service F, similar to the existing plus approved development conditions. As the overall development in the area increases traffic at funnel points such as this intersection, system wide improvements will need to be evaluated to provide additional access to the area. These options are being evaluated by TranSystems in a separate study of the overall development plan for the Speedway area. In case of the Gaming Facility, alternative routes are available to bypass this intersection, including shifting more of the Gaming Facility traffic to the 110th and I-70 interchange.

3.03 Construction Addendum, Completion Schedule & Further Study. After the Effective Date of the Gaming Facility Contract, Entertainment and the Unified Government will agree upon a construction addendum to this Agreement which will provide specific on site and off site infrastructure improvements to be constructed, the timing of such construction, payment by Entertainment of all costs, and a schedule for the completion of the first phase of the Project. Within three (3) years after Project Completion, Entertainment, at its cost, shall cause an updated traffic study (the "Updated Study") to be prepared to update the BWR. Study. The Updated Study shall be prepared by an engineer selected by Entertainment, provided that the Unified Government consents to such selection (such consent shall not be unreasonably withheld, conditioned or delayed). In the event that the Updated Study identifies additional off-site infrastructure improvements that are necessary as the direct result of impacts created by the Project after Project Completion ("Additional Improvements"), then Entertainment and the Unified Government shall negotiate in good faith to reach agreement on what Additional Improvements, if any, shall be funded by Entertainment. If Entertainment and the Unified Government are unable to reach agreement on what Additional Improvements shall be funded by Entertainment after such good faith negotiations, then such disagreement shall be submitted to binding arbitration administered by the American Arbitration Association (the "AAA") by a single arbitrator selected by the AAA, (with the fees and expenses of such arbitrator shared equally by the Unified Government and Entertainment), provided that the total sum of all Additional Improvements that Entertainment may be obligated to fund shall not exceed One Million and no/100 Dollars (\$1,000,000.00).

3.04. Suspension of Performance. Notwithstanding anything to the Contrary contained herein, Entertainment shall not have any obligation to commence or continue construction of the Project or any improvements described herein or engage in any plans and specifications or other preconstruction activities: (i) prior to the Effective Date of the Gaming Facility Contract; or (ii) during any period of time in which there is a pending or threatened legal challenge, by any third party, to KELA, any aspect of the Proposal, the Unified Government's endorsement of the Proposal, Entertainment's selection as Lottery Gaming Facility Manager for the Northeast Zone, the Gaming Facility Contract or any performance thereunder, this Agreement or any performance hereunder, the construction or design of the Project or any portion thereof, or the construction or design of any of the improvements described herein.

ARTICLE IV: TRANSPORTATION SERVICE

4.01. Free Shuttle System. From and after completion of construction of the Gaming Facility ("Project Completion"), Entertainment will, at its expense, cause to be operated a free one route shuttle bus system that connects the Village West shopping center to the Project with stops at The Great Wolf Lodge, Cabela's, Nebraska Furniture Mart, Schlitterbahn, Plaza at the Speedway, T-Bones Ball Park, and the Transit Park and Ride Center. The shuttle bus system shall tie in with the Unified Government's Transit State Avenue service. The Project/Village West/Schlitterbahn shuttle buses will run in approximate ten minute intervals during peak hours of the Project to facilitate the highest possible usage by both patrons and employees of the Project, Village West, and Schlitterbahn. Notwithstanding anything contained herein to the contrary: (i) Entertainment shall have the right to adjust the routes and schedules of the shuttle bus system described herein from time to time as Entertainment deems reasonably necessary or appropriate to reflect actual usage of the system and development in the area after meeting and conferring with the Unified Government with respect to such adjustment; and (ii) Entertainment's obligations to locate a shuttle terminus or stop as described in this Section shall be subject to Entertainment obtaining the written agreement of the owner and tenant of such terminus or stop location for the use of such location for such purpose, and subject to the terms and conditions set forth in such written agreement.

Entertainment shall procure, at its own expense, all equipment necessary to operate the shuttle bus system. The Unified Government acknowledges that Entertainment shall be permitted, subject to the written consent of the Unified Government, to select the equipment for the shuttle bus system.

Entertainment will coordinate its shuttle bus system service with the transportation service of the Unified Government and Kansas City Area Transportation Authority ("ATA") in full compliance with the Americans with Disabilities Act "ADA").

ARTICLE V: FINANCING

5.01. Budget. The first phase of the Project shall be constructed substantially in accordance with the budget attached to the Proposal ("Budget") which is attached hereto as **Exhibit A**, which has been approved by the Unified Government. The parties recognize and agree that the Budget is an estimate of the costs to construct the first phase of the Project and is subject to change due to modification of the first phase of the Project and market and other factors outside of Entertainment's control.

5.02. Private Financing. Entertainment agrees that the acquisition of the Project Real Estate and the construction of the Gaming Facility by Entertainment, including the extension of any utilities, shall be financed solely by private equity and debt and acknowledges that no public funds, TIFF, STAR bonds, TDD, or any other public subsidies will be utilized in funding such acquisition or construction.

5.03. Right to Inspect and Audit. At the sole cost and expense of the Unified Government, the Unified Government, with reasonable advance notice to Entertainment, and during normal business hours and at the location where such records are customarily maintained, but no more than once for each fiscal year of Entertainment, shall have the right and authority to review, audit, and copy, all of Entertainment's books and records concerning "Lottery Gaming Facility Revenues" (as that term is

defined in the Gaming Facility Contract) for the three (3) fiscal years of Entertainment that preceded the date of such review or audit, provided that all such books and records shall be considered confidential and the Unified Government shall enter into a written confidentiality agreement in form and content reasonably required by Entertainment reflecting same.

ARTICLE VI: PUBLIC SAFETY

6.01 Police Protection. From and after commencement of construction of the Project, Entertainment agrees to maintain a professional security department on a 24/7 schedule at the Project. The purpose of the department will be to enhance the safety and security of the Project guests and employees and the Project assets. Entertainment agrees to provide land, free of charge, for the construction of a fire/emergency services facility, in a location near the Project to be mutually agreed to between Entertainment and the Unified Government, provided that Entertainment shall not have any obligation to construct or operate or finance any portion of the construction or operation of such facility. Entertainment does not anticipate having an undue impact on the police services currently provided in the community and shall not be required to provide funding or facilities for additional services.

6.02 Fire Protection and Emergency Medical Services. Entertainment's professional security personnel will include trained and certified paramedic personnel or EMT trained and certified personnel on each shift. Additionally, all security officers will be qualified in cardiopulmonary resuscitation (CPR) and Automatic External Defibrillators (AEDs) will be positioned throughout the complex. While Entertainment does not anticipate having an undue impact on fire protection and emergency medical services as provided by the Kansas City Kansas, Fire Department ("KCKFD"), and shall not be required to provide funding or facilities to the KCKFD, Entertainment shall work with the KCKFD to identify required appropriate fire fighting equipment and/or emergency medical equipment to be used by the local fire station.

ARTICLE VII: COMMUNITY CONTRIBUTIONS

7.01 Charitable Contribution. Entertainment has voluntarily and independently pledged to make the following charitable contributions to the Unified Government so long as Entertainment is the Lottery Gaming Facility Manager for the Northeast Zone and the Gaming Facility is substantially open to the public for business: (i) annual contributions of Five Hundred Thousand and no/100 Dollars (\$500,000.00) to be distributed by the Unified Government to the three non- host school districts pursuant to a yet uncompleted interlocal Agreement or formula decided upon by the Unified Government; (ii) annual contributions of Five Hundred Thousand and no/100 Dollars (\$500,000.00) to fund Wyandotte County social services and charitable community activities (while these funds are to be dispersed at the Unified Government's sole discretion, Entertainment urges and supports that each year \$50,000 of such annual contribution be allocated to Dotte Promise); (iii) annual contributions of One Hundred Thousand and no/100 Dollars (\$100,000.00) for use by the Unified Government Parks and Recreation division; (iv) annual contributions of Twenty- five Thousand and no/100 Dollars (\$25,000.00) to be distributed to CVB; and (v) an annual contribution of Ten Thousand and no/100 Dollars (\$10,000.00) to the Wyandotte County Chambers of Commerce, to be allocated and distributed by Entertainment as follows: Four Thousand and no/100 Dollars (\$4,000.00) to the Kansas City Kansas Area

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Chamber of Commerce; One Thousand Five Hundred and no/100 Dollars (\$1,500.00) to the Bonner Springs Edwardsville Area Chamber of Commerce; One Thousand Five Hundred and no/100 Dollars (\$1,500.00) to KBCC, Inc. - A Kansas Black Chamber of Commerce; One Thousand and no/100 Dollars (\$1,000.00) to the Women's Chamber of Commerce of KCK; One Thousand and no/100 Dollars (\$1,000.00) to the Asian-American Chamber of Commerce of Kansas City and One Thousand and no/100 Dollars (\$1,000.00) to the Hispanic Chamber of Commerce. Notwithstanding the designation of the agencies and other organizations intended to benefit from said charitable contributions described in the preceding sentence, Entertainment consents to the Unified Government, in its sole discretion, using the charitable contributions described in this Section to reimburse the Unified Government for the cost of the southern portion of Village West Parkway (Southeast Loop Road). The funds used by Entertainment to make any and all voluntary contributions described in this Section and in Section 7.02 shall come from a source other than gaming revenues from the Gaming Facility. Under no circumstance shall Entertainment use funds from or against gaming revenues from the Gaming Facility to make voluntary contributions described in this Section or Section 7.02.

7.02 Additional Contributions. So long as Entertainment is the Lottery Gaming Facility Manager for the Northeast Zone, beginning January 1, 2010, Entertainment shall contribute to the Unified Government an additional annual contribution to be utilized solely at the discretion of the Unified Government in order to best benefit the community as a whole. The amount of such annual contribution shall be determined as follows:

(a) For the period commencing January 1, 2010, and ending on the date the casino floor of the first phase of the Project is initially opened for business (the "Construction Period"), Entertainment shall contribute to the Unified Government an annual amount equal to one percent (1%) of the Year 1 Lottery Gaming Facility Revenues projected by the Innovation Group in its report entitled "Gaming Market Assessment" dated March 2009, which, for all purposes of this Agreement, shall be deemed to equal Two Million Fourteen Thousand Six Hundred Ninety-One and 00/100 Dollars (\$2,014,691). This payment shall be payable in equal monthly installments of One Hundred Sixty-Seven Thousand Eight Hundred Ninety and 92/100 Dollars (\$167,890.92) commencing on January 1, 2010 and continuing on the first day of each month thereafter, until such time as the casino floor of the first phase of the Project is initially opened for business ("Phase 1A Opening"). The total payments made by Entertainment during the Construction Period pursuant to this Section 7.02 (a) shall hereafter be referred to as the "Construction Period 1% Payments".

(b) On and after the Phase 1A Opening, Entertainment shall therefore annually contribute to the Unified Government one percent (1%) of the "Lottery Gaming Facility Revenues" (as that term is defined in the Gaming Facility Contract). However, Entertainment shall receive a credit against such monies due to the Unified Government equal to the Construction Period 1% Payments. That is, for the sake of clarity, following the Phase 1A Opening, Entertainment shall not be responsible for any payments to the Unified Government under this Section 7.02 until after such time as 1% of actual Lottery Gaming Facility Revenues equals the Construction Period 1% Payments. The Construction Period 1% Payments shall not accrue or include any interest.

Entertainment acknowledges that the Unified Government, in exercising its discretion described in this Section, may elect to utilize funds contributed to the Unified Government by

Entertainment pursuant to this Section to reimburse the Unified Government for the cost of the southern portion of Village West Parkway (Southeast Loop Road).

ARTICLE VIII. USE AND OPERATION

8.01 Initial Operation. Subject to Section 12.07, below and all applicable laws and ordinances regarding business operations, Entertainment covenants that, it will, at its expense, occupy the Gaming Facility as soon as possible after Project Completion and thereafter will commence operating the Gaming Facility in accordance with the Gaming Facility Contract.

ARTICLE IX: TAXES AND TAXATION

9.01 Payment of Taxes. The Unified Government shall not be responsible for, nor indemnify Entertainment for any federal, state, or local taxes which may be imposed or levied upon the subject matter of this Agreement. Entertainment agrees that to the extent it is obligated by law to pay any occupation taxes, real property taxes and special assessments for the land and improvements constituting the Project, Entertainment shall pay such taxes promptly on or before the due date of such taxes. The parties agree, however, that Entertainment is not waiving its right to pay such taxes under protest and dispute such taxes in accordance with applicable law.

ARTICLE X: LIABILITY

10.01 Disclaimer of Liability. The Unified Government shall not hold harmless or indemnify Entertainment for any liability whatsoever, other than liability caused by the gross negligence or willful misconduct of the Unified Government, or any of its employees, agents or contractors.

ARTICLE XI: UNIFIED GOVERNMENT PROVISIONS

11.01 Prevailing Wage. Entertainment and its subcontractors shall define the jobs of workmen, laborers and craftsmen engaged in all construction activities, including construction activities typically reserved as tenant finish, on the Project by classifications listed in the United States Department of Labor General Wage Decision for Wyandotte County, Kansas. Entertainment and its subcontractors, its tenants, and their subcontractors shall pay their respective employees performing work at the Project, including those employees performing work on tenant finish, at a rate not less than the current prevailing per diem wage rate applicable to each job classification. Entertainment further commits to include (and enforce) in all tenant leases for space at the Project provisions that would require all tenants to comply with prevailing wage standards in all construction work performed at the Project. Apprentices and trainees registered in training programs approved by the Department of Labor may be paid less, but not less than seventy percent (70%) of the applicable rate.

11.02 Anti-Discrimination Requirements. In addition to the requirements of the LBE/MBE/WBE Participation and Employment Opportunity Agreement, which is attached as **Exhibit B**, Entertainment agrees to the following:

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Entertainment will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, age, national origin, or ancestry. Entertainment will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, disability, age, national origin or ancestry. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; the recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. Entertainment agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Unified Government, setting forth the provisions of this nondiscrimination clause.

Entertainment will, in all solicitations or advertisements for employees placed by or on behalf of Entertainment; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, disability, age, national origin, or ancestry.

Entertainment will cause the foregoing antidiscrimination provisions to be included in all subcontracts for any work covered by this Agreement so that such provisions shall apply to contracts or subcontracts for standard commercial supplies or raw materials.

Entertainment shall assure that it is in compliance with and shall maintain sufficient records to document that, under all aspects of this Agreement, it has acted in a manner which is in full compliance with all applicable sections of the Equal Employment Section of this Agreement, and the following, as applicable: Title VI of the Civil Rights Act of 1964 (as amended) (42 USCS '2000d et seq.); Title VII of the Civil Rights Act of 1964 (42 USCS '2000e et seq.); Title VII of the Civil Rights Act of 1968 (42 USCS '3601 et seq.); The Americans with Disabilities Act of 1990. 42 U.S.C. '12191, and amendments thereto; the Kansas Act Against Discrimination, K.S.A. '44-101 through 1004 (1992 Supp.) and amendments thereto; Chapter 11 of the Procurement Code and Regulations of the Unified Government of Wyandotte County/Kansas City, Kansas, and amendments thereto; and, '18-86 and 87 of the 1988 Code of Ordinances of the Unified Government of Wyandotte County/Kansas City, Kansas, and amendments thereto. Such records shall at all times remain open to inspection by an individual designated by the Unified Government for such purpose.

Entertainment and the Unified Government, in carrying out this Agreement, shall also comply with all other applicable existing federal, state and local laws relative to equal opportunity and nondiscrimination, all of which are incorporated by reference and made a part of this Agreement. Entertainment will be required to conform to Equal Employment Opportunity and Affirmative Action requirements prior to the execution of this Agreement.

11.03 Representations. Entertainment makes the following representations:

Entertainment has not knowingly influenced a Unified Government employee or former Unified Government employee to breach any of the ethical standards set forth in Article 12 of the Procurement Regulations.

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Entertainment has not violated, and is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in R-12-106 (Gratuities and Kickbacks) of the Procurement Code.

Entertainment has not retained and will not retain a person to solicit or secure a Unified Government contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

11.04 Indemnification. Entertainment shall indemnify, defend, and hold the Unified Government of Wyandotte County/Kansas City, Kansas harmless from and against all claims, losses, damages, or costs arising from or in any way related to Entertainment's breach of the warranties set forth in Section 11.03. This indemnification shall not be subject to any limitation of remedies or warranties which are contained in this or any other agreement and shall survive termination of this or any other agreement between the parties hereto or thereto.

ARTICLE XII: GENERAL PROVISIONS

12.01 Law of Kansas. This Agreement shall be governed by and construed according to the laws of the State of Kansas.

12.02 Kansas Cash Basis Law. This Agreement shall be subject to the Kansas Cash Basis Law, provided that if the Unified Government fails to perform any of its obligations hereunder by reason of the Kansas Cash Basis Law, Entertainment shall have the right to set off its obligations under this Agreement against said obligations of the Unified Government.

12.03 Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of the Unified Government approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

12.04 No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter of this Agreement, including that certain Development Agreement, dated December 31, 2007, between the Unified Government and Entertainment, and is a full integration of the agreement of the parties. The provisions of this Section 12.04 shall become effective immediately upon the full execution of this Agreement.

12.05 Assigns and Transfers. This Agreement shall be binding upon the parties and their respective successors and assigns. The Unified Government hereby authorizes and consents to: (a) Entertainment entering into a joint venture or other business combination with another applicant which has submitted a proposal (and attachments to the Lottery Commission under KELA) for the privilege of being designated a Lottery Gaming Facility Manager ("Other Applicant"), and has been endorsed by the Unified Government during calendar year 2009; (b) Entertainment issuing an equity and/or membership interest in Entertainment to Other Applicant; or (c) a member of Entertainment assigning or transferring all or any part of its interest in Entertainment to Other Applicant. The term "Other Applicant" includes the direct or indirect parent and any affiliate and/or subsidiary of the Other Applicant.

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12.06 Severability. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

12.07 Delay. For the purposes of any of the provisions of this Agreement, neither the Unified Government nor Entertainment, nor any successor in interest, shall be considered in breach of or default in its obligations under this Agreement in the event of any delay caused by: damage; destruction by fire or other casualty; strike; shortage of material; unusually adverse weather conditions, including but not limited to: severe rain storms, below freezing temperatures of an abnormal degree or quantity for an abnormal duration, and/or tornadoes; failure of Entertainment to secure all necessary governmental approvals; and other events or conditions beyond the reasonable control of the party affected which interferes with the ability of such party to discharge its respective obligations.

12.08 Notice. All notices and requests required pursuant to this Agreement shall be in writing and shall be sent as follows:

To Entertainment:

Mr. Joseph Weinberg
Kansas Entertainment, LLC
The Power Plant
601 E Pratt Street
Baltimore, MD 21202

And

Kansas Entertainment, LLC
Attn: General Counsel
The Power Plant
601 E. Pratt Street
Baltimore, MD 21202

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With copies to:

Mr. Jeff Boerger
Kansas Speedway
400 Speedway Boulevard

Kansas City, KS 66111

And

Stinson Morrison Hecker LLP
Attn: David Frantze
1201 Walnut Street
Suite 2600
Kansas City, MO 64106

To the Unified Government:

Mr. Dennis Hays
County Administrator
Unified Government of Wyandotte County/ Kansas City, Kansas
701 N. 7th Street
Kansas City, KS 66101

With copies to:

Mr. Harold T. Walker
City Attorney
Unified Government of Wyandotte County/ Kansas City, Kansas
701 N. 7th Street
Kansas City, KS 66101

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

12.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement. Signature and transmission by facsimile transmission shall be deemed effective as if original signatures on the original documents.

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12.10 Consent or Approval. Except as otherwise provided in this Agreement, whenever consent or approval of either party is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

12.11 Language, Captions, Reference. Whenever the context requires, the following shall apply:

- (a) References to single number shall include the plural and the plural number shall include the singular;
- (b) Words denoting gender shall include the masculine, feminine, and neuter;
- (c) Section headings in this Agreement are for convenience of reference only and shall not be considered in construing or interpreting this Agreement;
- (d) The terms “hereof”, “hereto”, “herein” and words of similar import used in this Agreement shall be deemed references to this Agreement as a whole, and not to a particular section, paragraph or other provision of this Agreement unless the context specifically indicates to the contrary;
- (e) Any reference to a particular section shall be construed as referring to the indicated section of this Agreement unless context indicates to the contrary; and
- (f) Whenever the term “including” is used in this Agreement, it shall mean including without limitation.

12.13 Ambiguities. The general rule of contract construction that any ambiguity in a contract will be construed against the party drafting such contract shall not apply to this Agreement.

12.14 Incorporation by reference. The following documents are incorporated by reference as if fully set forth in this agreement. This agreement shall control in case of conflict.

RFP 29-154 and addendums

The Proposal

Matrix (**Exhibit C**)

Letter from Entertainment to the Unified Government concerning the Matrix (**Exhibit D**)

ARTICLE XIII—REMEDIES

13.01. Remedies on Default. Subject to the provisions of Sections 13.02, 13.03 and 13.04 hereof, whenever any event of default by a party to this Agreement shall have occurred and be continuing, the non-defaulting party may pursue all remedies at law or in equity.

13.02. Failure to use good faith efforts as defined in the LBE/MBE/WBE Participation and Employment Opportunity Agreement. If a court of competent jurisdiction finds as part of a final non-appealable judgment that Entertainment failed to use good faith efforts as defined in

the LBE/MBE/WBE Participation and Employment Opportunity Agreement, Entertainment, as liquidated damages, shall pay \$250,000 to fund a small business incubator program in Wyandotte County. Said liquidated damages and the remedy of specific performance shall be the Unified Government's sole remedies for such failure.

13.03. Failure to Timely Develop a Hotel. In the event that the first phase of the Project does not include a hotel and, subject to the provisions of Section 12.07 hereof, Entertainment fails to commence construction of a hotel, containing a minimum of 250 guest rooms, before the second anniversary of the initial opening date of the first phase of the Project, Entertainment shall be liable to the Unified Government for liquidated damages as follows: from the second anniversary of the initial opening date of the first phase of the Project until such time as Entertainment commences construction of the above-referenced hotel, Entertainment shall pay to the Unified Government liquidated damages equal to one percent (1%) of the "Lottery Gaming Facility Revenues" (as that term is defined in the Gaming Facility Contract) to be utilized solely at the discretion of the Unified Government.

Any liquidated damage liability arising under this Section 13.03 shall be due and payable from Entertainment within thirty (30) days after the date the Unified Government provides Entertainment with a written demand for such payment. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section 13.03 constitute the exclusive remedy of the Unified Government for the failure of Entertainment to comply with its obligation contained in Section 2.01 (b) hereof.

13.04. No Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY WITH THE EXCEPTION OF SECTION 13.03, IN NO EVENT SHALL ENTERTAINMENT OR THE UNIFIED GOVERNMENT EVER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, ANY OTHER DEVELOPMENT DOCUMENTS, OR OTHERWISE. FOR THE PURPOSE OF THIS SECTION 13.04 HEREOF, CONSEQUENTIAL DAMAGES SHALL INCLUDE, BUT NOT BE LIMITED TO, LOST PROFITS, LOST TAX REVENUES, OR OTHER SIMILAR LOSSES WHICH ARE NOT DIRECT OUT-OF-POCKET COSTS INCURRED BY THE NON-DEFAULTING PARTY.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY,
KANSAS

By: /s/ Joe Reardon
Joe Reardon, Mayor

KANSAS ENTERTAINMENT, LLC

By: /s/ Joseph Weinberg
Joseph Weinberg, Authorized Representative

/s/ Carol Godsil
Deputy UG Clerk