

## AGENDA

### KANSAS RACING AND GAMING COMMISSION 10:00 a.m., Thursday, April 16, 2009

AUDITORIUM A  
Dwight D. Eisenhower State Office Building  
700 SW Harrison, Suite 450  
Topeka, Kansas

#### A. CALL TO ORDER

#### B. APPROVAL OF THE AGENDA

#### C. APPROVAL OF MINUTES

1. [Minutes of March 13, 2009](#)

#### D. CONSENT AGENDA

*Items listed on the consent agenda are a variety of different contract and items which are routine in nature. If requested by a Commissioner, an item on the consent agenda may be removed from the Consent Agenda and placed under Commission Items for further discussion and consideration.*

1. Eureka Downs – review and approve contracts
  - a. [4 State Maintenance Supply](#), Coffeyville, Kansas, janitorial supplies
  - b. [Cook's Refrigeration](#), Eureka, Kansas, servicing and maintenance of A/C units
  - c. [Diamond S Welding & Machine Shop](#), Eureka, Kansas, welding & repair
  - d. [Eastside Service](#), Eureka, Kansas, fuel and service
  - e. [Gene Wilson & Associates](#), Pond Creek, Oklahoma, video & photofinish services
  - f. [Greenwood County Emergency Medical Services](#), Eureka, Kansas, ambulance service
  - g. [Jim's Repair Service](#), Eureka, Kansas, equipment repairs
  - h. [NAPA Auto Parts](#), Eureka, Kansas, auto parts
  - i. [Prairie Pots](#), El Dorado, Kansas, portable toilets
  - j. [Stanley's Hardware](#), Eureka, Kansas, maintenance supplies
  - k. [True Center Gates](#), Phoenix, Arizona, starting gate

#### E. PRESENTATIONS TO THE COMMISSION

1. [James Maida, president, Gaming Laboratories International](#)
2. [Kevin Mullally, general counsel & director of government affairs, Gaming Laboratories International](#)
3. [Jeffrey Marotta, Ph.D., clinical associate professor, Oregon Health & Science University](#)

#### F. KANSAS LOTTERY COMMISSION REPORT

#### G. LOTTERY GAMING FACILITY REPORTS/ITEMS

1. Butler National Service Corp./Boot Hill Casino and Resort

## H. COMMISSION ITEMS

1. Waiver of Fingerprint Requirements for 2009 at Eureka Downs and Anthony Downs  
*Commission Action:*                      *Commission review and discussion*  
Staff Presentation:                      Don Brownlee, Director of Security  
Staff Recommendation:                      Staff recommends approval as outlined in Staff Memo
  - a. [Staff Memo](#)
  - b. [Policy 4-02, Fingerprinting for Licensure](#)
2. KHA Reimbursement from Kansas Bred Program  
*Commission Action:*                      *Commission review and discussion*  
Staff Presentation:                      Neysa Thomas, Chief Fiscal Officer  
Staff Recommendation:                      Staff recommends approval
  - a. [Staff Memo](#)
  - b. [KHA Letter](#)
  - c. [Kansas Bred Registry Income and Cash Flow](#)
3. TRAK East's request to award horse purse money to Eureka Downs and Anthony Downs  
*Commission Action:*                      *Commission review and discussion*  
Staff Presentation:                      Charles LaBoy, Director of Audit and Electronic Security  
Staff Recommendation:                      Staff recommends approval
  - a. [Staff Memo](#)
  - b. [TRAK East Recommendation](#)
4. Woodlands request to let surety bond lapse  
*Commission Action:*                      *Commission review and discussion*  
Staff Presentation:                      Charles LaBoy, Director of Audit and Electronic Security  
Staff Recommendation:                      Staff recommends approval
  - a. [Staff Memo](#)
  - b. [Request from The Woodlands](#)
  - c. [Woodlands Tax Status](#)
5. 2008 Audited Financial Statements of Kansas Racing, LLC  
*Commission Action:*                      *Commission review and discussion*  
Staff Presentation:                      Brandi Baer, Internal Controls Auditor  
Staff Recommendation:                      Staff recommends approval
  - a. [Staff Memo](#)
  - b. [Report on 2008 Audit](#)
  - c. [Financial Report](#)
  - d. [Management Letter](#)
6. 2008 Audited Financial Statements of The Racing Association of Kansas East  
*Commission Action:*                      *Commission review and discussion*  
Staff Presentation:                      Brandi Baer, Internal Controls Auditor  
Staff Recommendation:                      Staff recommends approval

- a. [Staff Memo](#)
  - b. [Report on 2008 Audit](#)
  - c. [Financial Report](#)
  - d. [Management Letter](#)
7. 2008 Audited Financial Statements of Wichita Greyhound Park, Inc. and Subsidiary
- Commission Action:*                      *Commission review and discussion*
- Staff Presentation:                      Brandi Baer, Internal Controls Auditor
- Staff Recommendation:                      Staff recommends approval
- a. [Staff Memo](#)
  - b. [Report on 2008 Audit](#)
  - c. [Financial Report](#)
  - d. [Management Letter](#)
8. 2008 Audited Financial Statements of Wichita Greyhound Charities, Inc.
- Commission Action:*                      *Commission review and discussion*
- Staff Presentation:                      Brandi Baer, Internal Controls Auditor
- Staff Recommendation:                      Staff recommends approval
- a. [Staff Memo](#)
  - b. [Report on 2008 Audit](#)
  - c. [Financial Report](#)
  - d. [Management Letter](#)
9. Organizational license for Eureka Downs
- Commission Action:*                      *Commission review and discussion*
- Staff Presentation:                      Charles LaBoy, Director of Audit and Electronic Security
- Staff Recommendation:                      Staff recommends approval as outlined in Staff Memo
- a. [Staff Memo](#)
  - b. [KTA letter](#)
  - c. [Order Granting 2009 Conditional Organization License](#)
10. Anthony Downs 2009 Fair Race Meet Application
- Commission Action:*                      *Commission review and discussion*
- Staff Presentation:                      Charles LaBoy, Director of Audit and Electronic Security
- Staff Recommendation:                      Staff recommends approval as outlined in Staff Memo
- a. [Staff Memo](#)
  - b. [Anthony Fair Association 2008 Parimutuel Application](#)

I. PUBLIC COMMENTS

J. STAFF REPORTS

- 1. Executive Director
  - a. [Directive regarding temporary and permanent reciprocal certification for gaming suppliers](#)
- 2. Assistant Attorney General

3. Director of Administration
  - a. [Commission Meeting Calendar](#)

K. EXECUTIVE SESSION

1. Attorney-client communication
2. Background reports

L. OTHER BUSINESS/FURTHER COMMISSION ACTION

1. Discussion, consideration and possible action on background report items
  - a. Rita Osborn
  - b. Angie Lowe
2. Approval of Racing Officials for Eureka Downs

*Commission Action:*                      *Discussion, consideration, and possible action*

Staff Presentation:                      Charles LaBoy, Director of Audit and Electronic Security

Staff Recommendation:                Staff recommends approval

a. [Staff Memo](#)

- Rita Osborn – General Manager, Racing Secretary, and Backup for all Positions; Eureka Downs
- Angie Lowe – Mutuel Manager; Eureka Downs
- Tim Mitchell – Starter, Paddock Judge, Identifier; Eureka Downs

M. ADJOURNMENT

## KANSAS RACING AND GAMING COMMISSION

### MINUTES – March 13, 2009

CALL TO ORDER:  
(A.)

Chair Sader called the March 13, 2009, meeting to order at 10:03 am at 700 SW Harrison, Auditorium A, Suite 450, Topeka, Kansas. Commissioners Sader, Braun, Falstad, and Schwan were present at the meeting. Others present included Executive Director Stephen Martino; Assistant Attorney General Patrick Martin; Director of Audit/Electronic Security Charles LaBoy; Director of Security Don Brownlee; Director of Communications/Responsible Gaming Mike Deines; Director of Administration Don Cawby; Commission Recording Secretary Linda Pendarvis and other staff.

MOTION, APPROVE  
AGENDA:  
(B.)

Mr. Martino suggested the following amendment to the agenda:

- Schedule an Executive Session for the purpose of attorney-client communication after agenda item “C” and re-letter the remainder of the agenda accordingly.

Commissioner Braun (Schwan) moved to approve the amended agenda as suggested. Motion passed unanimously.

MOTION, APPROVE  
FEBRUARY 18, 2009,  
MEETING MINUTES:  
(C.)

Commissioner Falstad (Schwan) moved to approve the minutes of the February 18, 2009, commission meeting as submitted. Motion passed unanimously.

MOTION, EXECUTIVE  
SESSION:  
(D.)

Commissioner Falstad (Braun) moved that the commission go into executive session for 30 minutes from 10:15 am until 10:45 am for the purpose of attorney-client communication. In addition to the commission, those included in the executive session were Mr. Martino and Mr. Martin. No action is to be taken in executive session, and the subjects discussed are to be limited as previously described. A full record of this motion is to be maintained as a part of the permanent record of the Kansas Racing and Gaming Commission. At the conclusion of the executive session, the meeting is to be continued in open session. Motion passed unanimously.

RECONVENE:

The commission meeting reconvened at 10:45 am with members present as previously noted.

BUTLER NATIONAL/ BOOT  
HILL CASINO AND  
RESORT REPORT:  
(E.1.)

The commission heard Mr. Clark Stewart, president of Butler National Service Corporation, give an update on construction at the Boot Hill Casino and Resort.

DISCUSSION, EUREKA  
DOWNS 2008 COMPLIANCE  
AUDIT:  
(F.1.)

The commission heard Charles LaBoy, Director of Audit and Electronic Security, report on the 2008 compliance audit of Eureka Downs.

March 13, 2009

Page 2

MOTION, APPROVE 2008  
EUREKA DOWNS  
COMPLIANCE AUDIT:  
(F.1.)

Commissioner Schwan (Braun) moved to approve the 2008 Eureka Downs compliance audit as submitted.

DISCUSSION,  
APPORTIONMENT OF  
HORSE PURSE MONEY:  
(F.2.)

The Commission heard Mr. LaBoy discuss apportionment of horse purse money.

MOTION, APPORTION-  
MENT OF HORSE PURSE  
MONEY:  
(F.2.)

Commissioner Falstad (Schwan) moved that the horse purse money from simulcast (\$1,124,241.79) be apportioned 50% to Eureka Downs and 50% to Anthony Downs for their 2009 race meets. TRAK East will be notified of the live horse purse funds (\$11,124.79) that is available for its distribution as horse purses. The Woodlands Recognized Horse Owners Group will be notified of the split of the outbound horse simulcast purse money (\$44,469) that is available for its distribution as horse purses. Motion passed unanimously.

DISCUSSION, EUREKA  
DOWNS 2009 FAIR RACE  
MEET APPLICATION:  
(F.3.)

The commission heard Mr. LaBoy present the 2009 fair race meet application for the Kansas Quarter Horse Racing Association/Greenwood County Fair Association d/b/a Eureka Downs.

MOTION, EUREKA DOWNS  
2009 FAIR RACE MEET  
APPLICATION:  
(F.3.)

Commissioner Falstad (Schwan) moved that the staff be directed to draft an organizational license order for the Kansas Quarter Horse Racing Association/Greenwood County Fair Association d/b/a/ Eureka Downs 2009 horse meet, for commission review and final action at the next commission meeting. Motion passed unanimously.

DISCUSSION, FINAL  
APPROVAL ON NEW  
REGULATIONS:  
(F.4.)

The commission heard Mr. Martin discuss final approval of new regulations as follows:

- a. K.A.R. 112-12-15. Live horse racing purse supplement fund.
- b. K.A.R. 112-13-6. Kansas greyhound breeding development fund.

MOTION, FORMAL  
ADOPTION OF NEW  
GAMING REGULATIONS:  
(F.4.)

Commissioner Braun (Falstad) moved to approve the new gaming regulations as listed above. On a roll call vote, the motion passed unanimously.

DISCUSSION, FINAL  
APPROVAL ON ARTICLES:  
(F.4.)

The commission heard Mr. Martin discuss final approval of gaming articles as follows:

- a. Article 101 – Facility manager certification
- b. Article 102 – Gaming supplier and non-gaming supplier certification (excluding K.A.R. 112-102-2)
- c. Article 103 – Employee certification
- d. Article 107 – Electronic gaming machines

- e. Article 110 – Technical standards
- f. Article 111 – Involuntary exclusions
- g. Article 113 – Sanctions
- h. Article 114 – Rules of hearings

MOTION, EXECUTIVE  
SESSION:  
(F.4.)

Commissioner Schwan (Braun) moved that the commission go into executive session for 15 minutes from 12:45 pm until 1 pm for the purpose of attorney-client communication. In addition to the commission, those included in the executive session were Mr. Martino and Mr. Martin. No action is to be taken in executive session, and the subjects discussed are to be limited as previously described. A full record of this motion is to be maintained as a part of the permanent record of the Kansas Racing and Gaming Commission. At the conclusion of the executive session, the meeting is to be continued in open session. Motion passed unanimously.

RECONVENE:

The commission meeting reconvened at 1 pm with members present as previously noted.

MOTION, FORMAL  
ADOPTION OF ARTICLES:  
(F.4.)

Commissioner Braun (Schwan) moved for approval of articles as follows:

- a. Article 101 – Facility manager certification
- b. Article 103 – Employee certification
- c. Article 107 – Electronic gaming machines
- d. Article 110 – Technical standards
- e. Article 111 – Involuntary exclusions
- f. Article 113 – Sanctions
- g. Article 114 – Rules of hearings

Action on Article 102 is tabled pending further discussion.

On a roll call vote, the motion passed unanimously.

DISCUSSION,  
PRESENTATION OF NEW  
REGULATIONS:  
(F.5.)

The commission heard Mr. Martin present new gaming regulations for preliminary approval, as follows:

- a. Article 108 – Table games
- b. Article 104 – Minimum accounting and internal control standards (K.A.R.s 112-104-34 through 41 only)

MOTION, PRELIMINARY  
APPROVAL OF NEW  
REGULATIONS:  
(F.5.)

Commissioner Falstad (Braun) moved for preliminary approval of the above articles as presented.

CALL FOR PUBLIC  
COMMENTS:  
(G.)

Chair Sader called for public comments.

- Gary Smith, Kansas Thoroughbred Association, spoke with concerns about K.A.R. 112-12-15 and promised to provide detail on those concerns. Additionally, Mr. Smith stated that the KTA would not oppose the 2009 fair meets proceeding.

STAFF REPORT, MARTINO:  
(H.1.) The commission heard a staff report from Mr. Martino.

STAFF REPORT,  
ASSISTANT ATTORNEY  
GENERAL:  
(H.2.) The commission heard a staff report from Mr. Martin.

STAFF REPORT, CAWBY:  
(H.3.) The commission heard a staff report from Mr. Cawby.

MOTION, EXECUTIVE  
SESSION:  
(I.1.) Commissioner Braun (Schwan) moved that the commission go into executive session for 20 minutes from 2:15 pm until 2:35 pm for the purpose of attorney-client communication. In addition to the commission, those included in the executive session were Mr. Martino and Mr. Martin. No action is to be taken in executive session, and the subjects discussed are to be limited as previously described. A full record of this motion is to be maintained as a part of the permanent record of the Kansas Racing and Gaming Commission. At the conclusion of the executive session, the meeting is to be continued in open session. Motion passed unanimously.

RECONVENE: The commission meeting reconvened at 2:35 pm with all members present as previously noted.

ADJOURN: Commissioner Braun (Schwan) moved to adjourn at 2:36 pm. Motion passed unanimously.

SUBMITTED BY:

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William Falstad  
Secretary

APPROVED BY:

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Carol H. Sader  
Chair

# Contract Review Cover Sheet

Contract Title:

Maintenance Supply

Licensee:

Eureka Downs

Name/Address of

4 State Maintenance Supply

Other Party(ies):

503 N. Cline  
Coffeyville, KS 67337

Subject Matter:

janitorial supplies

Contract Date/

'09

Duration:

Racing Season

Renewal:

Yes

No

Changes:

Yes (see attached changes)

No Changes

Modification of  
Existing Agreement:

Yes (see attached)

Executed By:

Rita Osborn

Payment Terms:

as billed

Date Submitted:

March 09

Submitted By:

Rita Osborn

# Contract Review Cover Sheet

Contract Title:

Servce & Maintenance

Licensee:

Eureka Downs

Name/Address of  
Other Party(ies):

Cook's Refrigeration

Eureka, KS 67045

Subject Matter:

Sourcing & maintenance of  
A/C units

Contract Date/

Duration:

Renewal:

Yes

No

Changes:

Yes (see attached changes)

No Changes

Modification of  
Existing Agreement:

Yes (see attached)

Executed By:

Rita Osborn

Payment Terms:

as billed monthly

Date Submitted:

March 09

Submitted By:

Rita Osborn

# Contract Review Cover Sheet

Contract Title: Welding & Repair

Licensee: Eureka Downs

Name/Address of Other Party(ies): Diamond S Welding & Machine Shop  
820 N. Main  
Eureka KS 67045

Subject Matter: welding & repairs

Contract Date/Duration: Jan 1 - Dec 31<sup>st</sup>  
open account - racing season

Renewal:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Changes:	<input type="checkbox"/> Yes (see attached changes)	<input type="checkbox"/> No Changes

Modification of Existing Agreement:	<input type="checkbox"/> Yes (see attached)
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Executed By: Rita Osborn

Payment Terms: as billed

Date Submitted: March 09

Submitted By: Rita Osborn

# Contract Review Cover Sheet

Contract Title:

Fuel + Service

Licensee:

Eureka Downs

Name/Address of

Other Party(ies):

Eastside Service  
1500 E. River  
Eureka, KS 67045

Subject Matter:

Fuel Supply + Service

Contract Date/

Duration:

Jan 1<sup>st</sup> - Dec 31<sup>st</sup>  
Jan 1<sup>st</sup> - Dec 31<sup>st</sup>

Renewal:

Yes

No

Changes:

Yes (see attached changes)

No Changes

Modification of  
Existing Agreement:

Yes (see attached)

Executed By:

Rita Osborn

Payment Terms:

as billed

Date Submitted:

March 09

Submitted By:

Rita Osborn

# Contract Review Cover Sheet

Contract Title: Video + Photo Services

Licensee: Eureka Downs

Name/Address of Other Party(ies): Gene Wilson + Associates

Harvey Phelps, President  
PO Box 417  
Pond Creek, OK 73766

Subject Matter: video + photo finish services

Contract Date/  
Duration: contract good for 07-09

Renewal:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Changes:	<input checked="" type="checkbox"/> Yes (see attached changes)	<input type="checkbox"/> No Changes

Modification of Existing Agreement:	<input checked="" type="checkbox"/> Yes (see attached)
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Executed By: Rita Osborn

Payment Terms: as billed \$1155.00 Per Race Day

Date Submitted: \_\_\_\_\_

Submitted By: Rita Osborn

# Contract Review Cover Sheet

Contract Title:

Ambulance Service

Licensee:

Name/Address of

Other Party(ies):

Greenwood Co Emergency Medical Service  
400 S Jefferson  
PO Box 51 Eureka, KS 67045

Subject Matter:

Ambulance service

Contract Date/

Duration:

5-25-09 thru 09 racing  
season

Renewal:

Yes

No

Changes:

Yes (see attached changes)

No Changes

Modification of  
Existing Agreement:

Yes (see attached)

Executed By:

Rita Osborn  
Eureka Downs

Payment Terms:

within 15 days  
\$60 per hour + \$75 per hour Holidays

Date Submitted:

3-'09

Submitted By:

Rita Osborn

# Contract Review Cover Sheet

Contract Title: Equipment Repairs

Licensee: Eureka Downs

Name/Address of Other Party(ies): Gemis Repair Service  
1106 E 14th Street  
Eureka, KS 67045

Subject Matter: repairs to tractors, loader,  
trucks & equipment

Contract Date/  
Duration: Jan - Dec 31 '09  
'09 racing season

Renewal:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Changes:	<input type="checkbox"/> Yes (see attached changes)	<input type="checkbox"/> No Changes

Modification of Existing Agreement:	<input type="checkbox"/> Yes (see attached)
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Executed By: Rita Osborn

Payment Terms: as billed monthly

Date Submitted: March '09

Submitted By: Rita Osborn

# Contract Review Cover Sheet

Contract Title: Auto Parts

Licensee: Eureka Downs

Name/Address of Other Party(ies): NAPA Auto Parts

Eureka, KS

Subject Matter: parts for loader, tractors, trucks & equipment

Contract Date/Duration: Jan 1 - Dec 31<sup>st</sup>  
open account

Renewal:  Yes  No

Changes:  Yes (see attached changes)  No Changes

Modification of Existing Agreement:  Yes (see attached)

Executed By: Rita Osborn

Payment Terms: as billed monthly

Date Submitted: March '09

Submitted By: Rita Osborn

# Contract Review Cover Sheet

Contract Title: Prairie Pots

Licensee: Eureka Downs

Name/Address of Other Party(ies): Prairie Pots LLC  
Box 805  
El Dorado, Ks

Subject Matter: Portable Toilets

Contract Date/Duration: march '09  
march-july '09

Renewal:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Changes:	<input type="checkbox"/> Yes (see attached changes)	<input type="checkbox"/> No Changes

Modification of Existing Agreement:	<input type="checkbox"/> Yes (see attached)
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Executed By: Rita Osborn

Payment Terms: as billed monthly  
\$90.00 Per Pot Per month

Date Submitted: March '09

Submitted By: Rita Osborn

# Contract Review Cover Sheet

Contract Title: Maintenance Supplies

Licensee: Eureka Downs

Name/Address of Other Party(ies): Stanleys Hardware  
East River  
Eureka, KS 67045

Subject Matter: nuts, bolts, wiring, etc needed  
to make repairs

Contract Date/Duration: Jan - 1 - Dec 31<sup>st</sup>  
Open account

Renewal:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Changes:	<input type="checkbox"/> Yes (see attached changes)	<input type="checkbox"/> No Changes

Modification of Existing Agreement:	<input type="checkbox"/> Yes (see attached)
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Executed By: Rita Osborn

Payment Terms: as billed monthly

Date Submitted: March 09

Submitted By: Rita Osborn

# Contract Review Cover Sheet

602-568-8090

Contract Title:

True Center Gate

Licensee:

Eureka Downs

Name/Address of

True Center Gates

Other Party(ies):

PO Box 32221

Phoenix, Arizona 85064

Subject Matter:

Starting gate

Contract Date/

May - July 4

Duration:

2009 racing season

Renewal:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Changes:	<input type="checkbox"/> Yes (see attached changes)	<input type="checkbox"/> No Changes

Modification of Existing Agreement:	<input type="checkbox"/> Yes (see attached)
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Executed By:

*[Signature]*

Payment Terms:

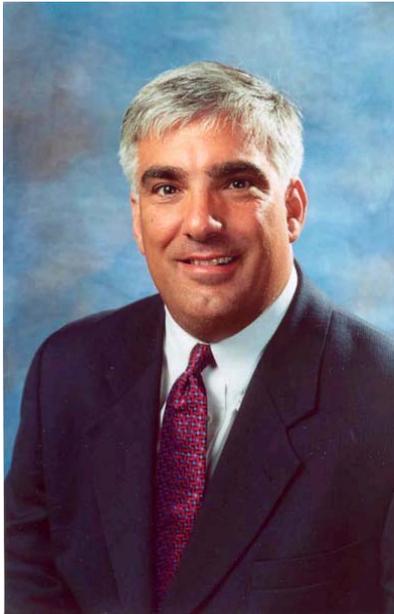
16.20 per day - payable last day of the month

Date Submitted:

Submitted By:

*[Signature]*

8 / 341 D.I.K



# James R. Maida

President

Gaming Laboratories International, LLC

World Headquarters

600 Airport Road

Lakewood, New Jersey 08701

Telephone: (732) 942-3999

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## PROFILE

James R. Maida is the President and Chief Executive Officer of Gaming Laboratories International, LLC, with its corporation located in Lakewood, New Jersey. Mr. Maida began his career testing gaming equipment with the New Jersey Division of Gaming Enforcement in Atlantic City, New Jersey from 1985 to 1987. In 1987 he left the Division to study law and to begin an independent game testing and consulting business. Gaming Laboratories International was co-founded with Paul J. Magno in June 1989. The company has grown to more than 540 people, in thirteen offices worldwide. Gaming Laboratories International, LLC currently consults and tests more than 30 State agencies, 149 Tribal Gaming Commissions, 400 Jurisdictions, and 90 equipment suppliers from its offices in the United States, Europe, South Africa, Asia, and Australia. The firm, the largest of its kind, provides more than 120,000 equipment certifications a year.

Mr. Maida has testified as an expert witness in numerous gambling cases on both the State and Federal level. He has appeared before the U.S. Senate, U.S. House of Representatives, and the National Indian Gaming Commission along with numerous appearances before state legislative committees. He testified before the U.S. House Committee on Indian Affairs and the Senate Select Committee on Indian Affairs as a witness, regarding the adoption of the Class II and Class III regulations and their application to finite video pull-tab devices.

## AREAS OF EXPERTISE

- Gaming Law
- Gaming Regulations
- Gaming Standards
- Electronic Game Testing
- U.S. Tax Law

## BAR ADMISSIONS

- Colorado, February 1995
- District of Columbia, January 1994
- Florida, May 1992
- New Jersey, December 1990
- Pennsylvania, December 1990

## EDUCATION

- Rutgers School of Law, Juris Doctorate Degree with High Honors, and Honors in Taxation, 1990
- Lehigh University, Bachelors of Science Degree in Computer Science Engineering, 1985

## Expert Testimony

- Rumsey v. Wilson
- California Horsemen's Benevolent Assoc. v. The California State Lottery
- "Cabazon II" class in the D.C. circuit
- Infinity Group Inc. v. Manzagol
- Table Mountain Rancheria v. Magarian
- Yselta del sur Pueblo v. the State of Texas
- Diamond Games v. U.S. Department of Justice
- Pueblo Santa Ana v. Kelly
- Shoshone Bannock Tribes v. United States
- Poppen v. Walker
- Johnson v. State of South Carolina
- Broward Vending v. State of Florida
- Trump v. Perle
- Premier v. State of Oregon
- State of Wisconsin v. Twin States
- State of Wisconsin v. Hahn
- Curtis v. Vliet
- Grasso v. New Jersey Division of Taxation
- Zausner v. New Jersey Division of Taxation
- Lyles v. Harrahs, patron jackpot dispute
- Grand Casino of Lallc – Coushata v Victor, et al., patron jackpot dispute
- Poulous, et al., v Ceasars World, Inc, et al.

## Published Works

Mr. Maida has written many articles in national publications in the gaming industry from a legal and a technical engineering point of view.

### **Slot Manager**

*"No More Near Misses", July 1997*

*"Formulating Payback Success", November 1997*

*"Randomness: Its All About Volatility", January 1998*

*"Solving Jackpot Disputes Forensically", April 1998*

*"It's a Big World Out There", July 1998*

*"Year 2000", October 1998*

*"Demystifying On-Line Systems", January 1999*

*"Involve Regulators Early", April 1999*

*"Foiling Random Number Cheating", July 1999*

*"Writing Regulations: No Easy Task", October 1999*

*"Seeking a Standard Approach", January 2000*

*"Hints for Streamlining the Testing Process", April 2000*

*"Surviving Slot Floor Certification", July 2000*

*"EPROMs Give Way to Newer Technology", October 2000*

*"California, New Standards New Horizons", January 2001*

*"Too Many Meters", April 2001*  
*"Plug and Play Closer Than You Think", July 2001*  
*"It's Time for Credit Transfer Statements", October 2001*  
*"Staying abreast of new technology", January 2002*  
*"Best of Times – for Technology, That is", April 2002*  
*"Nevada Ponders Proposed New Slot Regs.", July 2002*  
*"Taking the Pulse of the Pacific Region", October 2002*  
*"More Scrutiny for Associated Equipment", January 2003*  
*"Correcting Misconceptions about the Gaming Laboratory Testing Process - Part I", April 2003*  
*"Correcting Misconceptions about the Gaming Laboratory Testing Process - Part II", July 2003*  
*"IT Departments Becoming Cornerstone of the Slot Floor - Are You Ready?", September 2003*  
*"Two Wires, One Wire, How About No Wires?", January 2004*  
*"Technology Changes Electronic Gaming", April 2004*  
*"Class II Gaming: Clarity is Near, Maybe", July 2004*  
*"Technology and Regulatory Practices", September 2004*  
*"Looking Forward at Gaming in 2005", January 2005*  
*"Game Device Testing Protects Everyone", May 2005*  
*"People Make a Qualified Test Lab", July, 2005*  
*"Electronic Table Games and Systems – Gaming Technology Grow Up", Summer 2006*

### **Casino Enterprise Management**

*"Class II Gaming Comes of Age Part One: Where We Have Come", February 2004*  
*"Class II Gaming Comes of Age Part Two: The Light at the End of the Tunnel", May 2004*  
*"Outsourcing Gaming Device Testing", January 2005*

## Professional Associations

- International Association of Gaming Attorneys (IAGA), Member
- North American Gaming Regulators Association (NAGRA), Member
- European Gaming Organization (EGO), Member

## Community Memberships

- Kimball Medical Center Foundation, Trustee
- Lavallette Yacht Club, Past Commodore
- Barnegat Bay Yacht Racing Association, Member



## Kevin P. Mullally, Esq.

General Counsel & Director of Government Affairs  
Gaming Laboratories International, Inc.

Las Vegas Service Center

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Las Vegas, Nevada 89119

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Facsimile: (702) 914-7642

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[www.gaminglabs.com](http://www.gaminglabs.com)

[k.mullally@gaminglabs.com](mailto:k.mullally@gaminglabs.com)

### PROFILE

Kevin P. Mullally is the General Counsel and Director of Government Affairs of Gaming Laboratories International, Inc. (GLI) with its Headquarters located in Lakewood, New Jersey. He serves as GLI's primary liaison to elected officials at the state and federal level, regulatory agencies, key organizations devoted to developing gaming and casino policy as well as senior level executives of gaming equipment manufacturing companies. He is also a key liaison with regulators internationally.

Mr. Mullally brings to GLI 24 years of diversified leadership in law, management, public policy, public relations, economic analysis, and organizational administration. Mr. Mullally began his career in the gaming industry as Deputy Director of the Missouri Gaming Commission for seven years and subsequently served as the Executive Director MGC for six years. He is a competitive team builder who has a record of successful achievement throughout his career. Mr. Mullally possesses leadership abilities that have been utilized by numerous professional and community organizations, including serving as the Vice-President of the North American Gaming Regulators Association (NAGRA), Chairman of the NAGRA Policy Committee, and a Member of the National Center for Responsible Gaming (NCRG) Board of Directors and Chairman of the Regulator's Internet Gambling Task Force. Prior to his service at MGC, Mr. Mullally was Chief of Staff for Senator Harry Wiggins for eight years.

### CAREER ACHIEVEMENTS

Since arriving at GLI in 2006, Mr. Mullally has created a Government Relations unit that assists GLI's clients with public policy and regulatory issues relating to the implementation of new gaming

technology. In addition, he served as the Project Manager for GLI's consulting to assist the Kansas Lottery and the Kansas Racing and Gaming Commission implement the Kansas Expanded Lottery Act, as well as serving as project manager for consulting work in Ohio, Texas and Iowa. Mr. Mullally is the author of GLI's White Paper on Internet Gambling Law, which has been used as a reference by the Regulator's Internet Gambling Task Force. Mr. Mullally has also worked with Racing Commissioners International and pari-mutuel regulators around the country to develop technical standards and testing procedures for pari-mutuel totalisator systems.

Prior to joining GLI, Mr. Mullally helped develop the regulatory structure for Missouri's controversial gaming industry. He is one of the principle authors of Senate Bills 10 & 11, creating the Missouri Gaming Commission in 1993. During his tenure as Deputy Director and later as Executive Director of MGC, the MGC staff implemented strict but fair policies that gained the public's trust in the regulatory system, thus giving the industry the opportunity to gain widespread community acceptance. The result is a healthy industry that employs more than 11,000 people, has invested over \$2.0 billion in capital into the state and generates over \$400 million annually in state and local taxes.

Mr. Mullally conceived and drafted the first government-sponsored self-exclusion program for problem gamblers. The program is the largest of its kind, currently serving over 11,000 problem gamblers. It has been imitated in jurisdictions around the world and is currently the subject of a study by Harvard University's Institute on Addictions. Mullally also acted as the lead lobbyist to gain passage of dedicated funding for problem gambling treatment in Missouri. In addition, Mr. Mullally twice served as President of the Missouri Alliance to Curb Problem Gambling. He remains the only person to have held the position two times.

Mr. Mullally also served as lead lobbyist for two gaming regulation reform bills in 1994, both of which passed with emergency clauses requiring two-thirds majorities in the House and Senate.

During his nine-year tenure as Chief of Staff for Senator Harry Wiggins, Mr. Mullally staffed the handling of nearly all major legislative initiatives for the Kansas City area as well as key legislation of state-wide significance including the creation of a state Department of Health, mandatory DNA testing of convicted felons, the crime victims compensation act, the nation's first Parents as First Teachers program, major revisions of the Uniform Commercial Code, the Student Hunger Prevention Act, the High Speed Rail Act and many others.

Mr. Mullally drafted and facilitated the passage of the Bi-State Cultural District Act, which is used in the Kansas City metropolitan area to build community assets. This required bringing together diverse political subdivisions within the Kansas City area that span two states. He also drafted and helped facilitate passage of the Neighborhood Improvement District Act, which has been a useful tool to provide financing for infrastructure for hundreds of residential developments throughout the state.

Mr. Mullally is a frequent teacher, author, and speaker on administrative and business law topics, public policy development, regulatory issues, and problem gambling. He also is involved in a number of professional organizations and community activities.

## EDUCATION

- 1988 J.D., Law – University of Missouri–Columbia School of Law. Columbia, Missouri
- 1989 B.A., Political Science – University of Missouri–Columbia. Columbia, Missouri

## HIGHLIGHTS OF PUBLISHED WORKS

- Internet Gambling Resource Guide for the Internet Gambling Task Force, February 2006.
- St. Louis Market Study: Evaluating Proposals for Casino Expansion in the St. Louis Metropolitan Area, (with Jim Oberkirsch), August 2004.
- Summary of U.S. Gambling Laws for the Missouri Joint Committee on Gaming & Wagering, November 2004.
- Self-Exclusion Committee Report for the National Council on Problem Gambling, June 2003.
- NAGRA Problem Gambling Resource Guide, September 2002.
- "Missouri Riverboat Gaming Laws." 2002 Update Missouri Taxation and Law Practice Desk Book. Missouri Bar, January 2002.
- North American Gaming Association Problem Gambling Resource Guide, June 2001.
- Editorial Response to "What the Gaming Industry Can Learn from Yucca Mountain" by Marvin Karlins, Ph.D., The Wager, Internet magazine published by Harvard University Medical School, December 2002.
- "Building an Alliance of Organizations to Create and Promote Resources to Help Problem Gamblers", Paper Presented to the National Council on Problem Gambling Annual Meeting, October 7, 2000, Philadelphia, Pennsylvania.
- St. Louis Market Study: Evaluating Proposals for Casino Expansion in the St. Louis Metropolitan Area, (with Jim Oberkirsch), August 2000.
- "Missouri Riverboat Gambling Laws" – 1999 Update Taxation Law and Practice, Volume III, Third Edition, Missouri Bar CLE Deskbook

## LICENSES

- Member - Missouri Bar Association, 1989

## TRAINING

- Strategic Management for Regulatory and Enforcement Agencies – Harvard University, Kennedy School of Government. Harvard University, 2002
- UNLV 2nd Annual International Regulator Seminar, March 2001
- Managing Knowledge Workers, Missouri Executive Institute, November 1998
- Conducting the Trial – National Judicial College. Las Vegas, Nevada, 1995

## HONORS

- Missouri Alliance to Curb Problem Gambling, Outstanding Contributor Award, August 2006
- North American Gaming Regulators Association, Service Award, June 2006
- 40 Under 40 in Jefferson City, June 2002
- North American Gaming Regulators Association, Service Award, May 2000

## PROFESSIONAL ASSOCIATIONS

- Past Vice-President – North American Gaming Regulators Association
- Board of Directors – National Center for Responsible Gaming
- Editorial Board – Gaming Law Review
- Past President – Missouri Alliance to Curb Problem Gambling
- Missouri Bar, Gaming Law Subcommittee
- International Association of Gaming Attorneys
- Former Member of the International Association of Gaming Regulators
- Editorial Board of the Wager Webzine at Harvard University
- Board of Directors of the Missouri Council on Problem Gambling Concerns
- Cole County Bar Association
- University of Missouri Alumni Association
- Sigma Chi Alumni

## COMMUNITY MEMBERSHIPS

- 2002 – 2006 Board of Directors of the Jefferson City YMCA
- 2005 – 2006, President of the Helias High School Athletic Boosters
- Member of the St. Peter School Athletic Committee
- 2000 – Present Capital City Parochial Basketball Club  
Director of Basketball Operations. Developmental basketball program for grades six through eight
- 1998 – Present Member of the Board and Past-President – Samaritan Center  
Interfaith social service agency that provides food, clothing, medical and dental assistance to the working poor, elderly, handicapped and less fortunate
- 1996 – 1998, St. Joseph Cathedral School, Home & School Board

## BIOGRAPHICAL SKETCH

### JEFFREY J. MAROTTA, PH.D., CGACII

---

Dr. Jeffrey Marotta provides training and consultation services through his company Problem Gambling Solutions while concurrently serving as Clinical Associate Professor at Oregon Health & Science University. Dr. Marotta has a doctoral degree in clinical psychology from the University of Nevada, Reno and certifications as an advanced Alcohol & Drug Addiction Counselor, Gambling Addiction Counselor, and Board Approved Clinical Consultant. As Director of Oregon Problem Gambling Services from 2000 to 2007, he developed the State of Oregon's highly acclaimed problem gambling treatment and prevention system and served the Oregon Lottery and Oregon Legislature as their chief advisor on matters relating to problem gambling. Since beginning his consulting business, he has assisted with the development of programs and policies to address problem gambling in ten states and three countries. He has produced over 100 professional presentations and publications including statewide strategic plans and responsible gambling materials for lotteries and casinos. When not working, Dr. Marotta enjoys his volunteer work on two community councils and spending time with his wife, 5-year old son, and 2-year old daughter.

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Waiver of Fingerprint Requirements for 2009 at Eureka Downs and Anthony Downs race meets.**

**PRESENTER:** Don Brownlee, Director of Security

**ISSUE SUMMARY:** The current commission fingerprint policy, requires parimutuel employees licensed to work at a Kansas parimutuel race track have fingerprints on file with the commission within the past five years. Fingerprints for occupational license holders at Eureka Downs and Anthony Downs have not been required in the past. Most employees, unless recently backgrounded by the commission, will have to submit fingerprints and pay the \$50.00 processing fee. This creates a burden on the two fair meets and their potential employees who are hired for temporary work during the short race schedule.

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review, discussion and possible approval.

**STAFF RECOMMENDATIONS:** Staff recommends the commission waive the fingerprint requirement for employees licensed to work at Eureka Downs and Anthony Downs for the 2009 race meets, provided they are not required to undergo a background investigation.

# KANSAS

KANSAS RACING AND GAMING COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

<b>Subject</b> <b>Fingerprinting for Licensure</b>		<b>Number</b> <b>4-02</b>	<b>Draft #</b> <b>(2007-011)</b>
<b>Adopted</b> November 2, 2007	<b>Last Revision</b>	<b>Rescinds</b> KRCPOL9400005, KRCPOL9400006 LIC960002, LIC990002	
<b>Executive Director Authorization</b>		<b>Commission Authorization</b>	
Signatures on file.			
Stephen L. Martino, Executive Director	Date	Carol H. Sader, Chairperson, KRGC	Date

## A. Purpose/Background

To ensure a thorough and objective background investigation is conducted of all applications for racing or gaming licenses, licensee applicants shall follow the following procedures when asked to provide completed fingerprint cards or meet fingerprint reciprocity requirements.

## B. Definitions

1. *Agency*: The staff of the Kansas Racing and Gaming Commission.
2. *Commission*: The Kansas Racing and Gaming Commission (KRGC).
3. *Corporate Applicant*: An individual, company or corporation who desires to provide gaming supply or non-gaming supply services at a licensed gaming facility, or an individual, company or corporation seeking to obtain a facility, organization or gaming license for operating or associating with a gaming, pari-mutuel or county fair racing facility in the state of Kansas that is required to obtain a license before performing duties for which a license is required.
4. *Individual Applicant*: An individual who desires to work for or at a gaming facility, pari-mutuel racetrack, county fair race meet, or ancillary lottery gaming facility in the state of Kansas who is required to obtain a license before actually working at the facility, meet, racetrack or ancillary facility.
5. *Reciprocating Jurisdiction*: Other state gaming or racing agencies that process fingerprints through the Federal Bureau of Investigation (FBI) for licensure. Current states recognized by the KRGC as meeting this requirement are: California, Colorado, Illinois, Indiana, Iowa, Minnesota, Nebraska, New Mexico, Ohio, Oklahoma, Texas and Wisconsin.

## C. Policy/Procedure

1. Fingerprint Processing Requirements.
  - a. The following individuals shall be required to submit fingerprints to the agency as outlined in this policy:

- i. An individual applicant for Level I, II or III gaming or pari-mutuel occupation license.
  - ii. An individual required by the agency to submit to a background investigation as part of the license approval process for a corporate applicant.
- b. An applicant for a gaming occupation license must have provided within the past two years one of the following:
  - i. two blue and white applicant fingerprint cards and the \$50.00 processing fee; or
  - ii. digitally scanned fingerprints for processing and the \$50.00 processing fee.
- c. An individual required to submit to a background investigation as part of the license approval process for a corporate applicant for a gaming supplier, non-gaming supplier or gaming facility license must have provided within the past two years one of the following:
  - i. two blue and white applicant fingerprint cards and the \$50.00 processing fee; or
  - ii. digitally scanned fingerprints for processing and the \$50.00 processing fee.
- d. An individual applicant for a 2008 pari-mutuel license or an individual required to submit to a background investigation as part of the license approval process for a corporate applicant for a pari-mutuel license, except as provided in following subsection, must submit one of the following within the current year or the previous four years:
  - i. two blue and white applicant fingerprint cards and the \$50.00 processing fee; or
  - ii. digitally scanned fingerprints for processing and the \$50.00 processing fee.
- e. An applicant applying for the following 2008 occupational licenses—pari-mutuel owner, kennel owner, trainer or assistant trainer license—must submit one of the following within the current year or previous four calendar years:
  - i. two blue and white applicant fingerprint cards and remit the \$50.00 processing fee;
  - ii. digitally scanned fingerprints for processing and the \$50.00 processing fee; or
  - iii. provide the appropriate forms and documentation to receive reciprocal approval as follows:
    - 1. a completed Kansas Record Release Form;
    - 2. proof of fingerprints having been processed through the FBI by one of the commission approved reciprocating jurisdictions within the current calendar year or within the previous four years; and
    - 3. proof of a current license in the current year or previous two years in the same jurisdiction where fingerprints were processed.

## 2. Processing Procedure.

- a. When fingerprint cards or digitally scanned fingerprints are provided to the agency, the fingerprints are forwarded to the Kansas Bureau of Investigation (KBI) for processing. The KRGC expects that the KBI then will execute a background investigation and provide the fingerprints to the FBI for processing.

- b. Where proof of fingerprinting in an approved reciprocating jurisdiction is provided, along with the required supplemental documentation, no further processing is required by the KBI.
3. Submission Requirements.
- a. All fingerprints shall be provided on forms, or in a format, specified by the agency.
  - b. All fingerprints shall be classifiable.
    - i. An applicant, whose fingerprints are determined to be unclassifiable, shall be sent a letter requesting them to re-submit fingerprint cards and, if necessary, the processing fee to maintain their current license status.
  - c. If an applicant fails to submit the required documents or fee, he or she shall be placed on the KRGC Prohibit List, and a report of alleged violation shall be prepared and forwarded to legal staff.

#### **D. Citations/References**

K.S.A. 74-8816 Occupation Licenses and K.A.R. 112-4-1 Occupation and Concessionaire Licenses

#### **E. Attachments**

Kansas Record Release Form

#### **F. Action**

This policy supersedes all other existing Kansas Racing and Gaming policies on this topic and shall be implemented upon approval by the Commission.

# KANSAS RECORD RELEASE FORM

-----  
**Kansas Racing and Gaming Commission**  
**700 SW Harrison, Suite 420**  
**Topeka, KS 66603-3754**  
**Phone: (785) 296-5800 \*\*\* Fax: (785) 296-0900**

**Office Use Only:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

APPLICANT: Complete this form and submit with fingerprint reciprocity documentation required by the Kansas Racing and Gaming Commission (KRGC).

I, \_\_\_\_\_ born \_\_\_\_\_  
(print full name) (date of birth)

hereby state that I have submitted to the Kansas Racing and Gaming Commission proof of fingerprinting this year or the previous four years and a license this year or the previous two years in:

**(Check box that corresponds with racing jurisdiction where fingerprinted)**

- |                                     |                                    |                                   |                                     |
|-------------------------------------|------------------------------------|-----------------------------------|-------------------------------------|
| <input type="checkbox"/> CALIFORNIA | <input type="checkbox"/> COLORADO  | <input type="checkbox"/> ILLINOIS | <input type="checkbox"/> INDIANA    |
| <input type="checkbox"/> IOWA       | <input type="checkbox"/> MINNESOTA | <input type="checkbox"/> NEBRASKA | <input type="checkbox"/> NEW MEXICO |
| <input type="checkbox"/> OHIO       | <input type="checkbox"/> OKLAHOMA  | <input type="checkbox"/> TEXAS    | <input type="checkbox"/> WISCONSIN  |

for purposes of fingerprint reciprocity when applying for my Kansas occupation license. The fingerprint reciprocity information is for the purpose of checking any criminal history record which I may have that is maintained by the Federal Bureau of Investigation (FBI) or a state, county, or city criminal investigatory agency.

I hereby grant permission to the KRGC Director of Security, or his designee, to request copies of records maintained by the racing jurisdiction indicated above or by any other means deemed necessary by the KRGC. I hereby authorize the release of any information in any agency's file, which pertains to any criminal history records obtained by submission of my fingerprint cards to the FBI or an equivalent criminal investigatory agency, to the KRGC Director of Security. I understand this release form is submitted as part of my application for an occupation license.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **KHA Reimbursement from Kansas Bred Program**

**PRESENTER:** Neysa Thomas, Chief Fiscal Officer

**ISSUE SUMMARY:** The Kansas Horsemen's Association (KHA) is requesting approval and reimbursement of \$2,849.03 for expenses incurred for the operation of the Kansas Bred Program in December 2008. The expenses presented for reimbursement are consistent with expenses incurred by the KHA in the past.

The Kansas Horsemen's Association's request is subject to availability of funds and the KHA is aware that funds are currently not available to cover all expenses for December 2008. The account balance as of 3/31/09 is \$1,220.25.

The Commission is authorized by K.S.A. 74-8830 to "contract with and designate an official registering agency to implement the registration of horses." The Commission's contract with the KHA provides that funds shall be withdrawn from the Kansas Bred Program account only for maintaining and administering the program in accordance with the agreement and only with the prior approval of the Commission or the Commission's executive director.

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission discussion, consideration and possible action on the request for reimbursement.

**STAFF RECOMMENDATIONS:** Staff recommends approval of the expenses and a partial reimbursement in the amount of \$1,000.00. The KHA may request the balance of December 2008 operating expenses when funds become available with the remaining payment(s) to be approved by the executive director.

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2009 APR -7 P 1:27

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KANSAS RACING AND  
GAMING COMMISSION

APRIL 7, 2009

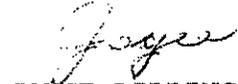
NEYSA THOMAS  
KANSAS RACING COMMISSION  
700 SW HARRISON  
TOPEKA, KANSAS 66603

DEAR MS. THOMAS,

THE KANSAS HORSEMEN'S ASSOCIATION WOULD LIKE TO REQUEST  
THAT THE EXPENSES FOR THE MONTH OF DECEMBER 2008 BE  
APPROVED FOR PAYMENT BY THE KANSAS RACING COMMISSION.

THE MONEY WOULD BE PAID OUT ON THE AVAILABILITY OF FUNDS.  
AS OF NOW ONLY \$1,000.00 OF THE COMPLETE EXPENSE OF  
\$2849.03 FOR DECEMBER WOULD BE ABLE TO BE PAID.

SINCERELY,



JOYCE BILLINGS  
KANSAS HORSEMEN'S ASSOCIATION

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

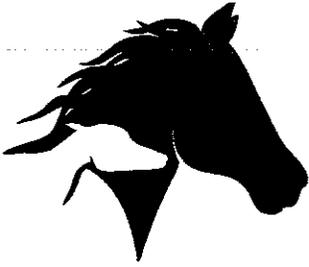
**AGENDA ITEM:** **Discussion, consideration and possible action on TRAK EAST's request to award horse purse money to Eureka Downs and Anthony Downs**

**PRESENTER:** Charles LaBoy, Director of Audit and Electronic Security

**ISSUE SUMMARY:** TRAK EAST has recommended that the \$11,124.79 in horse purse funds generated from live handle during their 2007 horse race meet be split evenly between the Eureka Downs and Anthony Downs 2009 horse race meets. See K.S.A. 74-8820(a).

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review and approval.

**STAFF RECOMMENDATIONS:** Staff recommends approval of this request.



**BOARD OF DIRECTORS**

STEPHEN F. REHM  
President

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Vice-President

RANDALL P. KANCEL  
Secretary

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Treasurer

WILLIAM M. EPPERHEIMER  
Board Member

WILLIAM GARDINER  
Administrative Director

CARLA GALLAGHER  
Legal Counsel

March 24, 2009

Eureka Downs  
c/o Rita Osborn  
P.O. Box 228  
Eureka, KS 67045

Anthony Downs  
c/o Dan Bird  
P O Box 444  
Anthony, KS 67003

Dear Rita and Dan:

TRAK East and Kansas Racing, LLC recommends the \$11,124.79 in horse purse funds generated from live horse handle during The Woodlands 2007 race meet be split evenly between Eureka Downs and Anthony Downs.

These funds will be available as horse purses for your 2009 fair meets once approved by the Kansas Racing & Gaming Commission.

Please contact Jayme LaRocca or myself at (913) 299-9797 if you have any questions.

Sincerely,

William E Gardiner  
Administrative Director

Cc: Charles LaBoy, KRGC

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2009 MAR 27 A 9:19

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KANSAS RACING AND  
GAMING COMMISSION



*(A Not for Profit Corporation)*

P.O. Box 12036 \* 9700 Leavenworth Road \* Kansas City, KS 66112

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Discussion, consideration and possible action on allowing the Woodlands request to let their surety bond lapse**

**PRESENTER:** Charles LaBoy, Director of Audit and Electronic Security

**ISSUE SUMMARY:** Woodlands has requested Commission approval to allow their surety bond in the amount of \$292,000 currently held with Continental Western Insurance Company to lapse on April 16, 2009. Surety bonds are required to secure future liabilities of operating tracks with respect to unpaid taxes, purses, and distribution of parimutuel winnings. The Woodlands ceased parimutuel racing on August 23, 2008, and consequently, does not incur the liabilities covered in K.A.R. 112-3-11 (f).

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review and approval.

**STAFF RECOMMENDATIONS:** Staff recommends approval of this request to allow the surety bond at the Woodlands to lapse.

the  
WOODLANDS



*Kansas City, Kansas*

PROCESSED

2009 MAR 25 P 12: 29

RECEIVED  
KANSAS RACING AND  
GAMING COMMISSION

March 24, 2009

**Charles LaBoy**  
**Kansas Racing & Gaming Commission**  
700 SW Harrison, Suite 420  
Topeka, KS 66603

Re: Surety Bond

Dear Mr. LaBoy:

This letter will serve as Kansas Racing, L.L.C.'s request to allow our surety bond to lapse.

We are aware of and agree that we must post a new surety bond in the event we re-open in the future.

Thank you for your consideration.

Very truly yours,

**KANSAS RACING, LLC**

  
Larry Seckington  
Legal Counsel

LS/th

the  
WOODLANDS



*Kansas City, Kansas*

PROCESSED

2009 APR -6 P 1:43

RECEIVED  
KANSAS RACING AND  
GAMING COMMISSION

April 3, 2009

Mr Charles LaBoy  
Kansas Racing & Gaming Commission  
700 SW Harrison, Suite 420  
Topeka, Kansas 66603-3754

Dear Mr. LaBoy,

I am responding to a request by your staff for representation on behalf of The Woodlands with regard to the current status of all federal, state and local taxes.

To the best of my knowledge, The Woodlands is current on all federal, state and local taxes.

Should you need any additional information, do not hesitate to contact me at (913) 299-9797 x210 or email me at [wmalotte@woodlandskc.com](mailto:wmalotte@woodlandskc.com)

Sincerely,

A handwritten signature in cursive script that reads "Wendy Malotte".

Wendy Malotte  
Assistant Controller

Cc: Jayme LaRocca  
Larry Seckington

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Discussion, consideration and possible action on annual audited financial statements of Kansas Racing, LLC for the year ended December 31, 2008.**

**PRESENTER:** Brandi Baer CPA MBA, Internal Controls Auditor

**ISSUE SUMMARY:** Kansas Racing, LLC has submitted copies of their 2008 audited financial statements to the Commission for review and approval. Staff review is complete and a report is included in the agenda material.

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review and approval of the audit report.

**STAFF RECOMMENDATIONS:** Staff recommends approval.

# Memo

To: Charles LaBoy, Director of Audit & Electronic Security  
From: David J. Schultz, Chief Audit Officer  
CC:  
Date: April 7, 2009  
Re: Kansas Racing LLC – 2008 Audit

I have reviewed the audited financial statements of Kansas Racing, LLC for the year ended December 31, 2008.

Clifton Gunderson LLP has issued an unqualified opinion on the financial statements of Kansas Racing LLC for the year ended December 31, 2008. An unqualified independent auditors report means that all required statements are included in the report, auditing standards were followed during the engagement, sufficient evidence has been accumulated and the financial statements are presented in accordance with generally accepted accounting principles. Disclosures in the Notes to Financial Statements report the cessation of racing on August 23, 2008. Additionally the disclosures indicate that several factors, including continued financial support from the owner group and the potential future gaming revenues, have been considered by management in contemplating that the Company can continue as a going concern.

Property and Equipment: Property and equipment-net decreased in 2008 by approximately \$57,000. This decline is attributable to the excess of depreciation expense in 2008 over the minor additions in fixed assets.

Note payable-bank: A bank note payable of approximately \$47,400 is shown in the 2008 financial statements as current. This note, totaling \$96,657 matures in 2010, when the non-current balance of \$49,262 will be due and payable.

Accounts Payable and Accrued Liabilities: Accounts payable and Accrued Liabilities, owed to non affiliates, declined by approximately \$127,000 from their 2007 levels. The combined amount at December 31, 2008, is approximately \$586,000 and is currently payable. Since current assets, less prepaid expenses, approximate \$555,500, additional financing will be required, either from external sources or the ownership group to extinguish these debts.

Member's Equity: Member's Equity increased by approximately \$1,473,000 in 2008. This increase resulted from additional investment by the member and the conversion to equity of a payable to member totaling \$5,511,000, less the net loss in 2008 of \$4,038,000.

Communications to the Board of Directors-Management letter: Independent auditing firms communicate certain matters to the Board of Directors in connection with the examination of the entity's financial statements. This communication to Kansas Racing LLC, in the form of a management letter, reports several significant deficiencies in internal control, including:

1) Inadequate segregation of duties: The comments from the auditing firm addressed lack of segregation over cash transactions, accounts payable transactions and the lack of review of account coding done on disbursements.

2) Security levels over general ledger software: A general comment by the independent auditor indicate that a review of security levels of all software, including general ledger software, would enhance internal controls.

The contraction of the accounting department has contributed to the lack of segregation of duties. We have requested a copy of management's responses to the auditor's comments.

KANSAS RACING, L.L.C.  
Kansas City, Kansas

FINANCIAL STATEMENTS  
December 31, 2008 and 2007



**Clifton  
Gunderson LLP**

Certified Public Accountants & Consultants

**TABLE OF CONTENTS**

	<b>PAGE</b>
<b>INDEPENDENT AUDITOR'S REPORT</b> .....	<b>1</b>
 <b>FINANCIAL STATEMENTS</b>	
Balance Sheets .....	2
Statements of Operations .....	4
Statements of Member's Equity .....	5
Statements of Cash Flows .....	6
Notes to Financial Statements .....	7



**Clifton  
Gunderson LLP**  
Certified Public Accountants & Consultants

## Independent Auditor's Report

Board of Directors  
Kansas Racing, L.L.C.  
Kansas City, Kansas

We have audited the accompanying balance sheets of Kansas Racing, L.L.C. as of December 31, 2008 and 2007, and the related statements of operations, member's equity, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Kansas Racing, L.L.C. as of December 31, 2008 and 2007, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 10 to the financial statements, the Company has not been able to negotiate an economically feasible agreement with the State of Kansas to allow the addition of Class III gaming to its facilities. Without the potential for this additional source of revenue, the Company suspended racing operations on August 23, 2008. The Company continues to support legislation that would allow the addition of economically feasible Class III gaming; however, it is uncertain as to whether such legislation will be passed in 2009. Without this legislation, the Company expects to materially change the nature of its operations.

*Clifton Gunderson LLP*

St. Joseph, Missouri  
March 25, 2009

**KANSAS RACING, L.L.C.**  
**BALANCE SHEETS**  
December 31, 2008 and 2007

**ASSETS**

	<u>2008</u>	<u>2007</u>
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 199,702	\$ 12,995
Accounts receivable - net	354,847	19,152
Inventories	-	52,197
Prepaid expenses	<u>124,192</u>	<u>94,814</u>
Total current assets	<u>678,741</u>	<u>179,158</u>
<b>PROPERTY AND EQUIPMENT</b>		
Land	3,943,000	3,943,000
Land improvements	1,365,799	1,365,799
Buildings and improvements	5,816,829	5,759,443
Construction in progress	633,281	491,583
Equipment	<u>4,575,909</u>	<u>4,361,132</u>
Total, at cost	16,334,818	15,920,957
Less accumulated depreciation	<u>6,410,837</u>	<u>5,940,068</u>
Total property and equipment	<u>9,923,981</u>	<u>9,980,889</u>
<b>DEPOSITS</b>	<u>-</u>	<u>3,000</u>
 <b>TOTAL ASSETS</b>	 <u>\$ 10,602,722</u>	 <u>\$ 10,163,047</u>

**LIABILITIES AND MEMBER'S EQUITY**

	<u>2008</u>	<u>2007</u>
<b>CURRENT LIABILITIES</b>		
Current maturities of:		
Notes payable	\$ 47,395	\$ 82,808
Capital lease	10,642	9,836
Accounts payable:		
Trade	282,119	402,357
Real estate and property taxes	244,582	153,462
Affiliates	113,091	94,186
Related parties	882,978	518,805
Member	-	1,290,877
Accrued liabilities	59,492	157,379
Deferred revenue	-	2,250
	<hr/>	<hr/>
Total current liabilities	1,640,299	2,711,960
	<hr/>	<hr/>
<b>LONG-TERM LIABILITIES</b>		
Notes payable, less current maturities	49,262	-
Capital lease, less current maturities	11,513	22,155
	<hr/>	<hr/>
Total long-term liabilities	60,775	22,155
	<hr/>	<hr/>
Total liabilities	1,701,074	2,734,115
	<hr/>	<hr/>
<b>MEMBER'S EQUITY</b>	8,901,648	7,428,932
	<hr/>	<hr/>
<b>TOTAL LIABILITIES AND MEMBER'S EQUITY</b>	\$ 10,602,722	\$ 10,163,047
	<hr/>	<hr/>

The accompanying notes are an integral part of the financial statements.

**KANSAS RACING, L.L.C.**  
**STATEMENTS OF OPERATIONS**  
Years Ended December 31, 2008 and 2007

	<u>2008</u>	<u>2007</u>
<b>REVENUES</b>		
Leases and management fees, affiliate	\$ 440,914	\$ 1,174,187
Admissions, programs, and other racing income	194,962	448,343
Concession sales	727,181	1,158,906
Other income	54,400	122,377
	<hr/>	<hr/>
Total revenues	1,417,457	2,903,813
<b>COST OF GOODS SOLD</b>		
	<hr/>	<hr/>
	308,618	511,090
	<hr/>	<hr/>
Gross profit	1,108,839	2,392,723
<b>OPERATING EXPENSES</b>		
Salaries, wages, and employee benefits	2,600,640	2,865,575
Operation of facilities	635,126	1,334,862
Professional and consulting services	329,345	112,649
Legislative efforts	54,000	80,229
Rent	23,006	72,221
Utilities	649,720	754,998
Marketing	136,714	250,729
Administrative	272,366	231,008
Depreciation	470,769	409,303
	<hr/>	<hr/>
Total operating expenses	5,171,686	6,111,574
	<hr/>	<hr/>
Net loss from operations	(4,062,847)	(3,718,851)
<b>OTHER INCOME (EXPENSE)</b>		
Interest income	37,275	-
Interest expense and finance charges	(12,589)	(10,310)
	<hr/>	<hr/>
Total other income (expense)	24,686	(10,310)
	<hr/>	<hr/>
<b>NET LOSS</b>	<u>\$ (4,038,161)</u>	<u>\$ (3,729,161)</u>

The accompanying notes are an integral part of the financial statements.

**KANSAS RACING, L.L.C.**  
**STATEMENTS OF MEMBER'S EQUITY**  
**Years Ended December 31, 2008 and 2007**

<b>ENDING BALANCE, DECEMBER 31, 2006</b>	<b>\$ 6,627,093</b>
Additional investment by member	4,531,000
Net loss - 2007	<u>(3,729,161)</u>
<b>ENDING BALANCE, DECEMBER 31, 2007</b>	<b>7,428,932</b>
Additional investment by member	4,220,000
Debt to member converted to Equity	1,290,877
Net loss - 2008	<u>(4,038,161)</u>
<b>ENDING BALANCE, DECEMBER 31, 2008</b>	<b><u>\$ 8,901,648</u></b>

The accompanying notes are an integral part of the financial statements.

**KANSAS RACING, L.L.C.**  
**STATEMENTS OF CASH FLOWS**  
Years Ended December 31, 2008 and 2007

	<u>2008</u>	<u>2007</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net loss	\$ (4,038,161)	\$ (3,729,161)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	470,769	409,303
Effects of changes in operating assets and liabilities:		
Accounts receivable	(335,695)	(9,625)
Inventories	52,197	6,792
Prepaid expenses	(29,378)	114,886
Accounts payable	(29,118)	(33,510)
Accrued liabilities	(97,887)	(245,141)
Accounts payable - affiliates	18,905	(426,241)
Deferred revenue	(2,250)	(8,711)
	(3,990,618)	(3,921,408)
Net cash used in operating activities		
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchases of property and equipment	(24,430)	(836,522)
Construction deposits	-	(3,000)
	(24,430)	(839,522)
Net cash used in investing activities		
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Cash account overdrafts	-	(21,319)
Member contributions	4,220,000	4,531,000
Advances from member	-	31,543
Advances from related party	120,000	268,878
Payments on long-term liabilities	(138,245)	(37,244)
	4,201,755	4,772,858
Net cash provided by financing activities		
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	186,707	11,928
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF YEAR</b>	12,995	1,067
<b>CASH AND CASH EQUIVALENTS, END OF YEAR</b>	\$ 199,702	\$ 12,995

The accompanying notes are an integral part of the financial statements.

**KANSAS RACING, L.L.C.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2008 and 2007**

**NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Kansas Racing, L.L.C. (the Company) was formed as a Kansas Limited Liability Company in July 1998 to operate and manage racing and gaming facilities in Kansas. On December 31, 1998, Kansas Racing purchased, out of a bankruptcy proceeding, 100% of the common stock of S.R. Food and Beverage Company (SRFB) and substantially all of the assets of adjacent greyhound and horse racing tracks in Kansas City, Kansas known as The Woodlands. The Woodlands was an established facility where greyhound racing began in September of 1989, with thoroughbred and quarter horse racing commencing in May of 1990. It began accepting year-round greyhound and horse simulcast signals in May of 1992.

SRFB supplied all concession services for The Woodlands. On December 30, 2004, SRFB was dissolved into Kansas Racing, L.L.C.

The Company is a one-member limited liability company wholly owned by Mid-Continent Racing and Gaming III.

The Kansas Racing and Gaming Commission (the Commission) has granted Kansas Racing an ownership and management license to operate these tracks. In accordance with Kansas law, the license to conduct pari-mutuel greyhound and horse racing at The Woodlands was granted to The Racing Association of Kansas East (TRAK East), a Kansas not-for-profit organization. All of the licenses related to The Woodlands were initially granted until 2013, subject to periodic review by the Commission.

Kansas Racing, L.L.C. and TRAK East executed an agreement, last modified on April 17, 2008, whereby TRAK East leases The Woodlands' facilities from Kansas Racing, L.L.C. and Kansas Racing, L.L.C. provides management services to TRAK East.

The Company suspended all racing and simulcast activities in August 2008, pending future actions of the Kansas legislature to authorize favorable conditions for the addition of Class III gaming to the facilities. The Company's ownership and management license is being held in abeyance by the Kansas Racing and Gaming Commission until the close of the legislative session in May 2009.

**USE OF ESTIMATES IN PREPARING FINANCIAL STATEMENTS**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates incorporated into the Company's financial statements include the estimated useful lives of depreciable assets. Actual results could differ from those estimates.

**CASH AND CASH EQUIVALENTS**

The Company considers all liquid investments with initial maturity dates of less than three months as cash equivalents.

**KANSAS RACING, L.L.C.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2008 and 2007**

**NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**PROMOTIONAL ALLOWANCES**

In accordance with common racing and gaming industry practice, the retail value of food and beverages furnished gratuitously to customers and employees is excluded from reported revenue.

**ACCOUNTS RECEIVABLE**

Accounts receivable consist of uncollateralized returned checks and are stated at the check amount. Management reviews returned checks periodically and writes off balances as they deem them uncollectible. Other receivables include a refund for previous years' property taxes and related interest income.

**INVENTORIES**

Inventories consist principally of clubhouse food, concessions, liquor, gift shop, and print shop items. Inventory items are valued at the lower of cost or market. Cost is calculated using the first-in, first-out (FIFO) method.

**PROPERTY AND EQUIPMENT**

Property and equipment are recorded at cost and depreciated on the straight-line method over their estimated useful service lives. Estimated lives range from 15 to 39 years for buildings and land improvements and 3 to 12 years for equipment. Maintenance and repair expenditures are charged to current expenses, while improvements are capitalized.

**IMPAIRMENT OF LONG-LIVED ASSETS**

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of carrying amount or the fair value less costs to sell.

**ADVERTISING**

The Company expenses advertising costs as incurred.

**INCOME TAXES**

Kansas Racing, L.L.C. operates as a single-member limited liability company, which is considered a disregarded entity under the Internal Revenue Code. Accordingly, the Company's taxable income (loss) is included in that of its sole member, a Subchapter S corporation, and no provision or liability for income taxes is included in these financial statements.

**KANSAS RACING, L.L.C.**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2008 and 2007

**NOTE 2 – NOTES PAYABLE – BANK**

	2008	2007
Note payable matures October 10, 2010, payable in bi-annual payments of \$25,354 including interest of 3.9%. Collateralized by a tractor.	\$ 96,657	\$ -
Note payable bearing interest of 9.5%.	-	82,808
Total	96,657	82,808
Less current portion	47,395	-
Long-term portion	\$ 49,262	\$ 82,808

**NOTE 3 – CAPITAL LEASE**

Kansas Racing, L.L.C. leases equipment under an agreement that is classified as a capital lease. The leased asset had a cost of \$49,484 and accumulated depreciation of \$29,690 and \$19,794 as of December 31, 2008 and 2007, respectively. The total balance due on this lease was \$22,155 at December 31, 2008 and \$31,991 at December 31, 2007, with monthly payments of \$1,001. The interest on this lease is imputed at 7.9%.

Minimum future lease payments under the capital lease, at December 31, 2008, for each of the remaining years and in the aggregate are:

2009	12,012
2010	12,012
Total	24,024
Less: Amount representing interest	1,869
Present value of lease payments	\$ 22,155

**NOTE 4 – MANAGEMENT AGREEMENT**

Under Kansas statutes, Kansas Racing, L.L.C. is not granted any race days and does not generate any pari-mutuel commissions. The Commission has granted Kansas Racing, L.L.C. the facility ownership and management licenses.

**KANSAS RACING, L.L.C.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2008 and 2007**

**NOTE 4 – MANAGEMENT AGREEMENT (CONTINUED)**

TRAK East has executed an agreement with the Company for the lease of The Woodlands, plus management and consulting services through November 2008. The lease will be renegotiated should the race track be reopened. The agreement has been approved by the Commission and has an original term of 25 years with renewal options. Kansas Racing, L.L.C. had the ability, within the agreement, to close the dog or horse racing facilities and cease pari-mutuel operations altogether. The Company guaranteed minimum net revenue levels for TRAK East to be available for distribution to charitable organizations. TRAK East incurs statutory expenses, mutuels department and racing department expenses, direct legal and accounting fees, and all other expenses necessary to its operations. The Company incurs all other operating expenses, including debt service, of The Woodlands. TRAK East is charged for lease and management fees under a formula that is based on operating cash flow, as defined in the agreement, reduced by the guaranteed net revenues to be available for distribution to charitable organizations. The charitable donation for 2008 was \$62,500 and 2007 was \$75,000.

Total revenue under the lease and management fee agreement was \$440,914 for the year ended December 31, 2008 and \$1,174,187 for the year ended December 31, 2007. The Company had a payable due to TRAK East of \$113,091 and \$94,186 at December 31, 2008 and 2007, respectively.

**NOTE 5 – PROMOTIONAL ALLOWANCES**

The retail value of merchandise, food, and beverages furnished gratuitously to customers and employees during the years ended December 31, 2008 and 2007 was \$11,553 and \$14,162, respectively.

The estimated cost to the Company of providing the above benefits was \$4,903 for 2008 and \$6,245 for 2007.

**KANSAS RACING, L.L.C.**  
**NOTES TO FINANCIAL STATEMENTS**  
December 31, 2008 and 2007

**NOTE 6 – RELATED PARTY ACTIVITIES**

The Company has various amounts that are payable to related parties at December 31, 2008 and 2007. None of these balances are interest bearing.

<u>Description</u>	<u>Accounts Payable</u>	
	<u>2008</u>	<u>2007</u>
St. Joseph Riverboat Partners	\$ 143,386	\$ 142,229
Grace Family Development Co.	50,000	-
Grace Entertainment	14,240	16,144
Grace Development	457,534	160,432
Grace Financial	<u>217,818</u>	<u>200,000</u>
Subtotal	882,978	518,805
Mid Continent Racing and Gaming III	<u>-</u>	<u>1,290,877</u>
Total Related Parties	<u>\$ 882,978</u>	<u>\$ 1,809,682</u>

During 2008, the Company's Parent contributed cash of \$4,220,000 as an additional investment and the debt to the Parent of \$1,290,877 was converted to equity.

During 2007, the Company's Parent contributed cash of \$4,531,000 as an additional investment.

**NOTE 7 – ADVERTISING**

Advertising expenses for the years ended December 31, 2008 and 2007 were \$136,714 and \$250,729 respectively.

**NOTE 8 – CASH FLOW DISCLOSURES**

	<u>2008</u>	<u>2007</u>
Cash paid for interest	\$ 12,589	\$ 10,310
Fixed assets purchased and included in accounts payable	\$ -	\$ 284,434
Fixed assets purchased and included in related party payables	\$ 244,173	\$ 88,058
Fixed assets purchased with a note payable	\$ 142,258	\$ -
Debt to member converted to equity	\$ 1,290,877	\$ -

**KANSAS RACING, L.L.C.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2008 and 2007**

**NOTE 9 – PENSION PLAN**

The Company participates in a defined contribution pension plan (the Plan) that is qualified under Internal Revenue Code Section 401(k). The Plan provides for annual Company contributions equal to 25 percent of each eligible participant's individual contribution of up to 6 percent of compensation. Employees may make additional contributions to the Plan up to a specified limit. The funds of the Plan are deposited with a trustee and invested at the employee's option in one or more investment funds. Total Company expense for the Plan amounted to \$13,297 and \$5,678 for 2008 and 2007, respectively.

**NOTE 10 – COMMITMENTS AND CONTINGENCIES**

**Commitments**

There are various legal actions that have arisen in the ordinary course of business and are now pending against the Company. Such actions are usually for amounts greatly in excess of the payments, if any, that may be required to be made. It is the opinion of management, after reviewing such actions with counsel, that the outcome of any lawsuit or claims which are pending or threatened will not have a material adverse effect on the Company's financial position.

The Company is subject to various federal and state regulations regarding the care, use and containment of various products, which the Company either does or has handled. The Company is contingently liable for any associated costs which could arise from the handling, use, and containment of these products.

Items included in construction in progress consist of the renovation and construction of a temporary facility to accommodate casino type gaming. There are no additional commitments related to completing the facility as of the date of these financial statements.

**NOTE 11 – MANAGEMENT PLANS**

The Company's financial statements have been prepared in conformity with generally accepted accounting principles, which contemplate continuation of the Company as a going concern. The Company has consistently incurred substantial losses since its inception and through the financial statement date. In response to these losses, management has made a number of changes, including the suspension of racing operations on August 23, 2008. During 2008, the owners contributed capital of \$4,220,000 and converted debt to member's equity for \$1,290,877.

**KANSAS RACING, L.L.C.**  
**NOTES TO FINANCIAL STATEMENTS**  
**December 31, 2008 and 2007**

**NOTE 11 – MANAGEMENT PLANS (CONTINUED)**

**Contingencies (Continued)**

Legislation allowing electronic gaming machines (slots) to be placed at Kansas pari-mutuel race tracks was passed and signed in 2007. In order to qualify for the machines, the track owner must negotiate a contract with the Kansas Lottery Commission. However, a contract that provided an acceptable economic return to the Company was not able to be negotiated. This led to management's decision to suspend gaming operations. Concurrent with this decision, the Company reduced staff to the minimal level necessary to continue upkeep on the facility and to appropriately wind down operations. The Kansas Racing and Gaming Commission has agreed to hold the Company's ownership and management license in abeyance until the closing of the 2009 Kansas legislative session. If legislation has not been enacted in that session that would give realistic opportunity for the Company to add slots to the facility, the Company intends to permanently close the racing operations and to pursue other options with the 400 acres of prime development property currently used for those operations. Management believes that significant opportunities are available for development of the property for alternative use and that those alternative uses would provide sufficient cash flows to support the carrying values of long-lived assets, and would enable the Company to continue as a viable operating entity.

While this process continues, the Company's parent, who is also the Company's primary lender, has pledged the necessary continued support to maintain the Company's cash flow and continued operations.

These efforts and alternative options are the basis for management's assertion that the financial statements appropriately contemplate the Company's continuation as a going concern.

This information is an integral part of the accompanying financial statements.

Board of Directors  
Kansas Racing, L.L.C.

In planning and performing our audit of the financial statements of Kansas Racing, L.L.C. (the Company) as of and for the year ended December 31, 2008, in accordance with auditing standards generally accepted in the United States of America, we considered the Company's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we do not express an opinion on the effectiveness of the Company's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis.

### **Significant Deficiencies**

A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control. We consider the following deficiencies to be significant deficiencies in internal control:

#### **Inadequate Segregation of Duties**

Inadequate segregation of duties is not uncommon in small organizations. With a limited number of individuals to share responsibilities for access to assets and accounting systems, it is generally difficult to cost effectively achieve optimum segregation. Examples of segregation issues present within the Company include the following:

##### Cash Transactions

The Assistant Controller has the ability to receive mail, make deposits, record deposits, prepare checks, and can access the blank check stock.

##### Recommendation – Cash Transactions

We recommend that the Company evaluate its control system with a goal of maximizing controls with the best use of all available staff. This may include utilizing some non-financial staff for specific control functions.

### Accounts Payable

The assistant controller has the ability to prepare checks, record purchases, disbursements and accounts payable transactions, she maintains check stock, receives the signed checks back from management, changes online master files and reconciles the accounts payable subsidiary records to the general ledger.

### Recommendation – Accounts Payable

We recommend that signed checks be issued by someone who does not have access to the accounts payable general ledger system.

### Fixed Assets

All purchases are reviewed, signed and coded by the supervisor. The accounting clerk enters the payable and records the expense into the accounting system. We noted that there is no review of account coding during the payment process. In 2008, we noted numerous fixed asset items that were improperly expensed.

### Recommendation – Fixed Assets

We recommend that procedures be put in place for review of account coding by the supervisor. Fixed assets with extended lives should be properly recorded and capitalized.

## **Other Matters**

In addition to the significant deficiencies discussed above, we noted the following matter which we would like to bring to your attention:

### **Information Technology**

As part of our review over the Company's control process, we noted the following issue that would present risks for the accounting department of the Company:

The security levels over the general ledger software have not been reviewed. Certain staff have levels that could result in segregation issues.

### Recommendation:

We recommend that the Company review its security levels for all software.

This communication is intended solely for the information and use of the Board of Directors and management, and is not intended to be, and should not be, used by anyone other than these specified parties.



St. Joseph, Missouri  
March 25, 2009

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Annual audited financial statements of The Racing Association of Kansas East for the year ended December 31, 2008.**

**PRESENTER:** Brandi Baer CPA MBA, Internal Controls Auditor

**ISSUE SUMMARY:** The Racing Association of Kansas East has submitted copies of their 2008 audited financial statements to the Commission for review and approval. Staff review is complete and a report is included in the agenda material.

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review and approval of the audit report.

**STAFF RECOMMENDATIONS:** Staff recommends approval.

# Memo

To: Charles LaBoy, Director of Audit & Electronic Security  
From: David J. Schultz, Chief Audit Officer  
CC:  
Date: April 7, 2009  
Re: The Racing Association of Kansas East ("TRAK East") – 2008 Audit

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I have reviewed the audited financial statements of TRAK East for the year ended December 31, 2008.

McGladrey & Pullen has issued an unqualified opinion on the financial statements of TRAK East for the year ended December 31, 2008. An unqualified independent auditors report means that all required statements are included in the report, auditing standards were followed during the engagement, sufficient evidence has been accumulated and the financial statements are presented in accordance with generally accepted accounting principles.

Significant changes noted in the financial statements:

Statement of Financial Position- TRAK East discontinued all racing activity in August, 2008. The auditing firm issued a going concern opinion, based on the cessation of racing by the organization, and disclosures related to the going concern are discussed in footnote 4 of the financial statements. Both assets and liabilities declined by approximately \$1,144,000 from 2007 levels.

Statement of Activities- Revenues and expenses, other than charitable contributions, each declined in 2008 by approximately 35%, with the residual amount (the excess of revenue over expenses) of \$64,000 earmarked for distribution to charitable organizations. These decreases result from the cessation of racing in August, 2008.

Statement of Cash Flows- The significant transactions reflected in this financial statement principally relate to the receipt of cash from Kansas Racing LLC and the use of that cash in operations and payments of liabilities.

Other comments- The Notes to Financial Statements include the normal disclosures required by generally accepted accounting principles and do not indicate any information that should be further disclosed in this report.

Management letter- The management letter received from the audit firm indicates a lack of timely reconciliation of bank accounts, a lack of segregation with respect to the account payable function and some inability to locate requested accounts payable source documents. The contraction of the accounting department contributed to these weaknesses and we have requested management's responses to the auditor's comments.



**Contents**

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Independent Auditor's Report	1
<hr/>	
Financial Statements	
Statements of Financial Position	2
Statements of Activities	3
Statements of Cash Flows	4
Notes to Financial Statements	5

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# McGladrey & Pullen

Certified Public Accountants

## Independent Auditor's Report

To the Board of Directors  
The Racing Association of Kansas East  
Kansas City, Kansas

We have audited the accompanying statements of financial position of The Racing Association of Kansas East as of December 31, 2008 and 2007, and the related statements of activities and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly in all material respects, the financial position of The Racing Association of Kansas East as of December 31, 2008 and 2007, and the results of its operations and cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 4 to the financial statements, The Racing Association of Kansas East discontinued all greyhound and horse racing in August 2008. This raises substantial doubt about The Racing Association of Kansas East's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 4. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

*McGladrey & Pullen, LLP*

Kansas City, Missouri  
March 27, 2009

The Racing Association of Kansas East

Statements of Financial Position  
December 31, 2008 and 2007

<b>Assets</b>	<b>2008</b>	<b>2007</b>
Cash and Cash Equivalents		
Cash, general	\$ 26,743	\$ 601,784
Cash, reserve fund	-	421,526
	<u>26,743</u>	<u>1,023,310</u>
Receivables:		
Trade, less allowance for uncollectible accounts of \$26,455, 2008 and \$0, 2007	40,963	201,282
Kansas Racing, L.L.C.	113,091	94,185
Other	1,227	-
Prepaid expenses	-	7,400
	<u>\$ 182,024</u>	<u>\$ 1,326,177</u>
<b>Liabilities and Net Assets</b>		
<b>Liabilities</b>		
Payables		
Trade	\$ 179,943	\$ 807,928
Other	-	274,691
Accrued expenses	2,081	243,558
	<u>182,024</u>	<u>1,326,177</u>
Net Assets, unrestricted	-	-
	<u>\$ 182,024</u>	<u>\$ 1,326,177</u>

See Notes to Financial Statements

The Racing Association of Kansas East

Statements of Activities  
Years Ended December 31, 2008 and 2007

	2008	2007
Revenue		
Pari-mutuel commissions	\$ 6,633,873	\$ 10,179,107
Host fee and other	246,973	450,250
	<u>6,880,846</u>	<u>10,629,357</u>
Expenses, Other Than Charitable Contributions		
Program expenses		
Statutory		
Kansas pari-mutuel taxes	1,105,048	1,695,108
Purses	1,815,227	2,715,101
Daily license fees	40,400	78,485
Other	381,090	382,755
Mutuels department		
Payroll	385,088	539,930
Other	98,236	138,346
Racing department		
Payroll	491,288	813,507
Other	485,326	656,009
Simulcasting department		
Payroll	29,587	46,039
Other	1,310,288	2,088,199
Supplemental purses	123,673	177,901
Supporting services		
General and administrative	110,674	48,790
Lease and management fees (Note 2)	440,914	1,174,187
	<u>6,816,839</u>	<u>10,554,357</u>
Increase in unrestricted net assets before charitable distributions	64,007	75,000
Charitable distributions	<u>64,007</u>	<u>75,000</u>
Change in unrestricted net assets	-	-
Net Assets, Unrestricted		
Beginning	-	-
Ending	<u>\$ -</u>	<u>\$ -</u>

See Notes to Financial Statements.

The Racing Association of Kansas East

Statements of Cash Flows  
Years Ended December 31, 2008 and 2007

	2008	2007
<b>Cash Flows From Operating Activities:</b>		
Change in net assets	\$ -	\$ -
Adjustments to reconcile change in unrestricted net assets to net cash (used in) operating activities:		
Change in assets and liabilities:		
(Increase) decrease in receivables	159,092	(59,471)
(Increase) decrease in prepaid expenses	7,400	(200)
(Decrease) in trade and other payables	(902,676)	(414,405)
Increase (decrease) in accrued expenses	(241,477)	82,202
<b>Net cash (used in) operating activities</b>	<b>(977,661)</b>	<b>(391,874)</b>
<b>Cash Flows Provided by (Used In) Investing Activities:</b>		
(Advances to) payments from affiliate, net	(18,906)	426,241
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>(996,567)</b>	<b>34,367</b>
<b>Cash and Cash Equivalents:</b>		
Beginning	1,023,310	988,943
Ending	<b>\$ 26,743</b>	<b>\$ 1,023,310</b>

See Notes to Financial Statements

## The Racing Association of Kansas East

### Notes to Financial Statements

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#### Note 1. Nature of Business and Significant Accounting Policies

Nature of business: The Racing Association of Kansas East (TRAK East) was incorporated in February 1988, as a Kansas not-for-profit corporation. In July 1988 the Kansas Racing and Gaming Commission (KRGC) granted TRAK East an organization license to conduct pari-mutuel greyhound and horse racing in Wyandotte County, Kansas. The license has a term of 25 years, subject to periodic reviews by KRGC. Simulcasting legislation was approved in 1992 for Kansas pari-mutuel racetracks. Simulcast signals are accepted from and sent to various dog and horse tracks throughout the United States.

KRGC has granted Kansas Racing, L.L.C. (Kansas Racing) an ownership and management license to operate these racetracks, known as "The Woodlands." Kansas Racing and TRAK East have executed an agreement whereby TRAK East leases The Woodlands' facilities from Kansas Racing and Kansas Racing provides management services to TRAK East. See Note 2.

Following is a summary of TRAK East's significant accounting policies:

Accounting estimates and assumptions: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and cash equivalents: TRAK East considers all cash accounts, which are not subject to withdrawal restrictions or penalties, and all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents. At times throughout the year cash in the bank may be in excess of FDIC insurance limits. TRAK East has not experienced any losses due to this.

Cash reserve fund: The cash reserve fund is cash held in a segregated account to provide for payment of statutory liabilities under the Kansas Parimutuel Racing Act (the Act). TRAK East also provides the State of Kansas with a bond as additional security for payment of these liabilities.

Receivables: Receivables are carried at original invoice amount less an estimate made for doubtful receivables based on a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful accounts by identifying troubled accounts and by using historical experience applied to an aging of accounts. Receivables are written off when deemed uncollectible. Recoveries of receivables previously written off are recorded when received. Receivables are considered past due after 30 days. Interest is not charged on past due accounts.

# The Racing Association of Kansas East

## Notes to Financial Statements

### Note 1. Nature of Business and Significant Accounting Policies (Continued)

Revenue recognition: Revenues are derived from legislated pari-mutuel commissions withheld from total dollars wagered (pari-mutuel handle). The legislated pari-mutuel commissions are 18% for win, place and show bets and up to 23% for multiple and exotic bets. Total pari-mutuel handle for the years ended December 31, 2008 and 2007 is as follows:

	2008	2007
Dog, live	\$ 6,093,009	\$ 9,038,063
Horse, live	-	1,253,969
Simulcast	25,119,506	37,549,296
	<u>\$ 31,212,515</u>	<u>\$ 47,841,328</u>

Statutory expenses: Statutory expenses are determined and paid in accordance with the Act.

Distribution of net revenues: The lease and management agreement requires a minimum \$75,000 (\$6,250 per month) distribution of net revenues (change in unrestricted net assets from operations) to charitable tax-exempt organizations meeting certain other criteria as specified in the Act. As discussed in Note 4, TRAK East discontinued all greyhound and horse racing in August 2008. Because racing was discontinued, the minimum distribution requirement per the lease and management agreement was not met. For the years ending December 31, 2008 and 2007, distributions were \$64,007 and \$75,000.

Current and deferred income taxes: TRAK East is subject to federal and state income taxes. A private letter ruling has been received from the IRS allowing the charitable distributions as ordinary and necessary business expenses.

Recently Issued Accounting Standards: In July 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with Statement No. 109, *Accounting for Income Taxes*. FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition of tax benefits, classification on the balance sheet, interest and penalties, accounting in interim periods, disclosure, and transition.

In December 2008, the FASB provided for a deferral of the effective date of FIN 48 for certain nonpublic enterprises to annual financial statements for fiscal years beginning after December 15, 2008. The Company has elected this deferral and, accordingly, will be required to adopt FIN 48 in its 2009 annual financial statements. Prior to adoption of FIN 48, the Company will continue to evaluate its uncertain tax positions and related income tax contingencies under Statement No. 5, *Accounting for Contingencies*. SFAS No. 5 requires the Company to accrue for losses it believes are probable and can be reasonably estimated. Management is currently assessing the impact of FIN 48 on its financial position and results of operations and has not yet determined if the adoption of FIN 48 will have a material effect on its financial statements.

## The Racing Association of Kansas East

### Notes to Financial Statements

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#### Note 2. Lease Commitments and Management

TRAK East has an agreement with Kansas Racing for the lease of The Woodlands and management and consulting services through July 2013. The agreement has been approved by KRGC and had an original term of 25 years with renewal options. However, Kansas Racing has the ability to close the dog or horse racing facilities, or cease pari-mutuel operations altogether. The agreement provides that Kansas Racing has guaranteed minimum net revenue levels for TRAK East to be distributed to charitable organizations. TRAK East incurs statutory expenses, mutuels department and racing department expenses, direct legal and accounting fees and all other expenses necessary to make charitable distributions. Kansas Racing incurs all other operating expenses, including debt service, of The Woodlands. TRAK East is charged for lease and management fees as determined based on operating cash flow, as defined in the agreement, reduced by the guaranteed net revenues to be distributed to charitable organizations.

Total expense under the lease and management fee agreement was \$440,914 and \$1,174,187 for the years ended December 31, 2008 and 2007, respectively.

TRAK East also leases automatic totalisator services, closed circuit television equipment, artificial lure equipment and photo finish equipment under operating leases. Rent for the other equipment is charged on a daily or performance basis. Total rent expense applicable to the leases was approximately \$664,000 and \$905,000 for the years ended December 31, 2008 and 2007, respectively. As all racing has been discontinued as of August 24, 2008 no rents are due on these leases in succeeding years.

#### Note 3. Simulcast Racing

TRAK East accepts simulcast signals from various dog and horse tracks throughout the country. Under agreements with these host facilities, TRAK East is allowed to present their races for pari-mutuel wagering at The Woodlands. The host tracks are paid stipulated fees for the use of their signals. There are additional agreements between TRAK East and designated dogmen and horsemen groups which provide for the distribution of a percentage of net simulcasting proceeds as purses after allowing for specified simulcast operating expenses.

During the year ended December 31, 2007 and through August 23, 2008, TRAK East also had agreements with various dog and horse tracks throughout the country to send out a simulcast signal from The Woodlands. Under these agreements, the tracks receiving the signal from The Woodlands are allowed to present races held at The Woodlands for pari-mutuel wagering at their facilities. TRAK East is paid stipulated fees for the use of their signals.

#### Note 4. Going Concern

TRAK East has discontinued all greyhound and horse racing as of August 23, 2008. Because of this, TRAK East earned no revenues from August 24, 2008 through December 31, 2008. As a result of TRAK East voluntarily discontinuing operations, they are in non-compliance with the Kansas pari-mutuel racing act, K.S.A. 74-8801. TRAK East has been granted an extension of their license until thirty days after the Sine Die close of the 2009 Kansas Legislative session, or until thirty days after June 5, 2009, whichever is earlier. At that time, TRAK East is required to resume racing activities by providing proposed race dates and a re-opening plan to the Commission, or its license will be automatically revoked by the Commission. These conditions have created doubt about TRAK East's ability to continue as a going concern.

**The Racing Association of Kansas East**

**Notes to Financial Statements**

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**Note 4.      Going Concern (Continued)**

Management of The Racing Association of Kansas East is currently lobbying the Kansas Legislature for changes to be made in the Kansas Expanded Lottery Act to allow electronic gaming machines at pari-mutuel facilities.

Based upon the above factors, this raises substantial doubt about The Racing Association of Kansas East's ability to continue as a going concern. The financial statements do not include any adjustments that might result from this uncertainty.

the  
WOODLANDS



*Kansas City, Kansas*

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KANSAS RACING AND  
GAMING COMMISSION

April 3, 2009

Mr. Charles LaBoy  
Kansas Racing & Gaming Commission  
700 SW Harrison, Suite 420  
Topeka, Kansas 66603-3754

Dear Mr. LaBoy,

Please find enclosed the management letter for The Racing Association of Kansas East for the years ended December 31, 2008 and 2007 as promised in my letter to you dated March 31<sup>st</sup>, 2009.

Please feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Wendy Malotte".

Wendy Malotte  
Assistant Controller

# McGladrey & Pullen

Certified Public Accountants

McGladrey & Pullen, LLP  
4801 Main St., Ste. 400, Kansas City MO 64112-2543  
O 816.753.0030 F 816.753.3299  
www.mcgladrey.com

To the Board of Directors  
The Racing Association of Kansas East  
Kansas City, Kansas

In planning and performing our audit of the financial statements of The Racing Association of Kansas East (TRAK East) as of and for the year ended December 31, 2008 in accordance with auditing standards generally accepted in the United States of America, we considered TRAK East's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the TRAK East's internal control. Accordingly, we do not express an opinion on the effectiveness of the TRAK East's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A deficiency in design exists when a control necessary to meet the control objective is missing, or when an existing control is not properly designed, so that, even if the control operates as designed, the control objective is not always met. A deficiency in operation exists when a properly designed control does not operate as designed or when the person performing the control does not possess the necessary authority or qualifications to perform the control effectively.

A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles, such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected. We consider the following significant deficiencies to be material weaknesses:

## **Bank Reconciliations**

Bank statements for several months are accumulated without reconciliation to the general ledger controls. Reconciliation of general ledger and bank balances should be completed on a timely basis, to provide assurance that all transactions have been entered by the bank and recorded in the books properly. Ideally, all bank accounts should be reconciled no later than the 10th working day of the following month or within a week of

receipt of the bank statements. If bank reconciliations are to serve as an effective control over the cash accounts, they must be prepared on a timely basis and all reconciling items should be investigated and disposed of properly.

### Accounts Payable

With regard to accounts payable, we noted the following:

- Two individuals have the ability to add vendors to the financial accounting system, approve and enter invoices, perform wire transfers, and mail checks.
- Invoice support could not be located for three items that were requested

We recommend that the controls surrounding the accounts payable function be reviewed and that invoice support be maintained for all expenditures

This communication is intended solely for the information and use of the Board of Directors, management, and others within the organization and is not intended to be and should not be used by anyone other than these specified parties.

*McGladrey & Pullen, LLP*

Kansas City, Missouri  
March 27, 2009

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Annual audited consolidated financial statements of Wichita Greyhound Park, Inc. and Subsidiary for the year ended December 31, 2008.**

**PRESENTER:** Brandi Baer CPA MBA, Internal Controls Auditor

**ISSUE SUMMARY:** Wichita Greyhound Park, Inc. had submitted copies of their 2008 audited consolidated financial statements to the Commission for our review. Our review is complete and our report is included in the agenda material.

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review and approval of the audit and the related Commission report.

**STAFF RECOMMENDATIONS:** Staff recommends approval.

# Memo

To: Charles LaBoy, Director of Audit & Electronic Security  
From: David J. Schultz, Chief Audit Officer  
CC:  
Date: April 7, 2009  
Re: Wichita Greyhound Park, Inc. and Subsidiary – 2008 Audit

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I have reviewed the audited financial statements of Wichita Greyhound Park, Inc. and Subsidiary for the year ended December 31, 2008.

Piercy, Bowler, Taylor & Kern (“PBTk”) has issued an unqualified opinion on the financial statements of Wichita Greyhound Park, Inc. (WGP) and Subsidiary for the year ended December 31, 2008. An unqualified independent auditors report means that all required statements are included in the report, auditing standards were followed during the engagement, sufficient evidence has been accumulated and the financial statements are presented in accordance with generally accepted accounting principles. The audit report noted that there is a substantial doubt as to WGP’s ability to continue as a going concern.

Property and Equipment: Property and equipment increased in 2008 by approximately \$2,910,000, with most of the increase attributable to the Construction in Progress at Camptown racetrack, less the accumulated depreciation recorded in 2008. The footnotes to the financial statements disclose the suspension of construction pending a mutually satisfactory agreement for the operation of gaming devices at the Camptown location.

Current portion of long term debt: A bank note payable of approximately \$6,410,000 is shown in the 2008 financial statements as current. Unless this note can be renegotiated, the entire balance will be due and payable in 2009.

Guarantor: The footnotes to the financial statements disclose that WGP is contingently liable for an additional amount approximating \$8,500,000, as a guarantor of loans made to certain other affiliated companies by lending institutions.

Accounts payable and accrued expenses: Accounts payable and accrued expenses have decreased approximately \$2,558,000 over the amount shown in 2007, and the decrease is attributable to payments made to reduce these liabilities.

Long term debt: All of the long term debt of \$26,855,303 is due to the stockholder, is not collateralized and has no definite due date. The controller of the Company has represented to us that no payments will be demanded on this payable in 2009.

Required Communications to the Board of Directors: Independent auditing firms are required to communicate certain matters to the Board of Directors in connection with the examination of the entity's financial statements. I have reviewed these communications and management's response, and there is nothing of any significance in this document to report.

P B T K

**PIERCY BOWLER TAYLOR & KERN**

Certified Public Accountants • Business Advisors

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KANSAS RACING AND  
GAMING COMMISSION

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**

**CONSOLIDATED FINANCIAL STATEMENTS**

**YEARS ENDED  
DECEMBER 31, 2008  
AND 2007**

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY  
DECEMBER 31, 2008 AND 2007**

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**CONTENTS**

	<b>Page</b>
<b>Independent auditors' report</b>	1
<b>Consolidated financial statements</b>	
Balance sheets	2
Statements of operations and deficit	3
Statements of cash flows	4
<b>Notes to consolidated financial statements</b>	5 - 8
<b>Supplemental consolidating schedules:</b>	
Balance sheets	9 - 10
Statements of operations and retained earnings (deficit)	11 - 12

**INDEPENDENT AUDITORS' REPORT**

Board of Directors  
Wichita Greyhound Park, Inc  
Wichita, Kansas

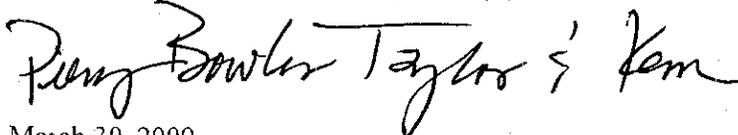
We have audited the accompanying consolidated balance sheets of Wichita Greyhound Park, Inc. and Subsidiary (the Company) as of December 31, 2008 and 2007, and the related statements of operations and deficit and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2008 and 2007, and the consolidated results of its activities and cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States.

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. However, the Company has been highly dependent upon financial support from its sole stockholder; it has a working capital deficiency of approximately \$6.5 million, a history of substantial losses resulting in an operating deficit of approximately \$18.5 million, and as discussed in Note 7d, has suspended operations indefinitely effective October 6, 2007. These matters and current economic conditions and related uncertainties also discussed in Note 7d raise substantial doubt as to the Company's ability to continue as a going concern. Management's plans regarding these matters are also discussed in Note 7d. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Despite the foregoing, we have neither determined nor opined as to whether the Company is solvent or insolvent for bankruptcy or other purposes since such would be a legal determination that may be made only by a court.

Our audits were conducted for the purpose of forming an opinion of the basic 2007 and 2006 financial statements taken as a whole. The accompanying supplemental consolidating schedules are presented for the purposes of additional analysis, are not a required part of the basic financial statements and, in our opinion, are fairly stated in all material respects to the basic financial statements taken as a whole.



March 30, 2009

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY  
CONSOLIDATED BALANCE SHEETS  
DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
<b>ASSETS</b>		
<b>Current assets</b>		
Cash	\$ 67,442	\$ 123,006
Accounts receivable		4,746
Due from Wichita Greyhound Charities, Inc.	50,932	21,516
Prepaid expenses	<u>3,353</u>	<u>106,139</u>
	121,727	255,407
Property and equipment, net of accumulated depreciation and amortization	14,839,790	11,929,826
Deposits		<u>2,000</u>
	<u>\$ 14,961,517</u>	<u>\$ 12,187,233</u>
<b>LIABILITIES AND STOCKHOLDER'S EQUITY DEFICIENCY</b>		
<b>Current liabilities</b>		
Current portion of long-term debt	\$ 6,410,397	\$ 6,799,984
Accounts payable	18,977	2,441,951
Accrued expenses	<u>153,649</u>	<u>288,716</u>
	6,583,023	9,530,651
Long-term debt, net of current portion	<u>26,855,303</u>	<u>19,812,542</u>
	<u>33,438,326</u>	<u>29,343,193</u>
<b>Stockholder's equity deficiency</b>		
Common stock, \$1 par, 500,000 shares authorized, 250,000 shares issued and outstanding	250,000	250,000
Deficit	<u>(18,726,809)</u>	<u>(17,405,960)</u>
	<u>(18,476,809)</u>	<u>(17,155,960)</u>
	<u>\$ 14,961,517</u>	<u>\$ 12,187,233</u>

See notes to consolidated financial statements

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**CONSOLIDATED STATEMENTS OF OPERATIONS AND DEFICIT**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
<b>Sales</b>		
Food and beverage		\$ 548,211
Programs		101,268
Other		<u>58,323</u>
		<u>707,802</u>
<b>Cost of sales</b>		
Food and beverage		516,930
Programs		110,497
Other		<u>9,252</u>
		<u>636,679</u>
<b>Gross profit</b>		71,123
Parimutuel management fees		<u>2,578,310</u>
		<u>2,649,433</u>
<b>Operating costs and expenses</b>		
Parimutuel cost reimbursements		599,689
Parimutuel costs and expenses		1,429,257
Land lease cost	\$ 80,500	80,500
Other selling, general, and administrative	763,354	2,026,121
Goodwill impairment adjustment		4,451,657
Depreciation and amortization	<u>221,656</u>	<u>235,363</u>
	<u>1,065,510</u>	<u>8,822,587</u>
<b>Loss from operations</b>	(1,065,510)	(6,173,154)
<b>Other income (expense)</b>		
Interest expense	(255,263)	(466,369)
Other, net	<u>(76)</u>	<u>478</u>
<b>Net loss</b>	\$ <u>(1,320,849)</u>	\$ <u>(6,639,045)</u>
<b>Deficit, beginning of year</b>	\$ (17,405,960)	\$ (10,766,915)
Net loss	<u>(1,320,849)</u>	<u>(6,639,045)</u>
<b>Deficit, end of year</b>	\$ <u>(18,726,809)</u>	\$ <u>(17,405,960)</u>

See notes to consolidated financial statements

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
<b>Operating activities</b>		
Net cash used in operating activities	\$ <u>(3,577,390)</u>	\$ <u>(302,873)</u>
<b>Investing activities</b>		
Renovations in progress, suspended in January 2008	(3,371,522)	(7,288,092)
Proceeds from sale of property and equipment	<u>240,174</u>	<u>12,500</u>
Net cash used in investing activities	<u>(3,131,348)</u>	<u>(7,275,592)</u>
<b>Financing activities</b>		
Proceeds from borrowings	7,042,761	8,090,227
Repayment of borrowings	<u>(389,587)</u>	<u>(460,421)</u>
Net cash provided by financing activities	<u>6,653,174</u>	<u>7,629,806</u>
<b>Net (decrease) increase in cash</b>	(55,564)	51,341
<b>Cash, beginning of year</b>	<u>123,006</u>	<u>71,665</u>
<b>Cash, end of year</b>	<u>\$ 67,442</u>	<u>\$ 123,006</u>

See notes to consolidated financial statements

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
YEARS ENDED DECEMBER 31, 2008 AND 2007**

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**1. Nature of operations and background information:**

**Business activities.** Wichita Greyhound Park, Inc. (WGP), a wholly-owned subsidiary of Ruffin Holdings, Inc. (RHI), and its wholly-owned subsidiary, WGP Concessions, Inc. (collectively, the Company), are licensed by the State of Kansas Racing and Gaming Commission (KRGC) to operate racetrack facilities with parimutuel wagering. However, the only two racetrack facilities of the Company in the State of Kansas are Wichita Greyhound Park (Park), which suspended operations indefinitely on October 6, 2007 (Note 7d), and Camptown Greyhound Park (Camptown), which is currently idle and has been for several years. The Company is also licensed by KRGC to operate food and beverage activities at Park.

**WGP management agreements.** WGP has a management agreement with Wichita Greyhound Charities, Inc., a Kansas not-for-profit corporation (Charities). By virtue of the management agreement, Charities is a related party. It is also licensed by the KRGC to conduct greyhound and horse races at Park with parimutuel wagering permitted, including the operation and conduct of simulcast racing. The fees from Charities are, in substance, a combination of both management fees and contingent rent for use of the facility, but they cannot be separated.

Under terms of the management agreement, WGP reimbursed Charities for salaries and related expenses of the race and mutuel operations plus \$100,000 per year (pro-rated for periods of operation) for administrative expenses and wages to employ an executive director and staff, and up to a maximum of \$10,000 annually for the cost of any annual audit. WGP also provides accounting services for Charities at no charge.

The management agreement continues concurrently with the terms of the respective licenses granted by the KRGC to WGP and Charities, both have agreed to seek renewals of their respective licenses. However, under certain circumstances, the management agreement may be terminated by either party with a 30- or 45- day notice depending on the circumstance.

WGP has a management agreement with The Racing Association of Kansas Southeast, a Kansas not-for-profit corporation (TSE), an organization licensee formerly licensed by the State of Kansas to conduct greyhound and horse races on which parimutuel wagering is permitted at Camptown as a greyhound race track, including the operation and conduct and of simulcast racing. The terms of the agreement are similar to the Charities agreement described above, but will not be effective until the Company and TSE are fully licensed and begin operations at the renovated Camptown facility.

**Concentrations.** Because the Company is currently licensed to operate exclusively in Kansas, its future operations, if any, could be affected by adverse economic conditions in the area and nationwide in areas where the inbound simulcast tracks are located (Note 7d).

The Company manages its concentrations of credit risk by evaluating the credit worthiness of customers and other racing tracks from which simulcast races are broadcast before entering into simulcast agreements and extending credit, and monitoring it thereafter. The maximum losses that the Company would incur if a customer or track failed to pay amounts would be limited to the carrying value after any allowances provided.

**2. Summary of significant accounting policies:**

**Basis of accounting and presentation.** The Company has not elected to adopt the option available under Financial Accounting Standards Board (FASB) No. 159, *The Fair Value Option for Financial Assets and Liabilities*, to measure any of its eligible financial instruments or other items. Accordingly, the Company continues to measure all of its assets and liabilities on the historical cost basis of accounting.

The consolidated financial statements include the accounts of WGP and its subsidiary. All significant intercompany accounts and transactions have been eliminated in the consolidation.

**Use of estimates.** Timely preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect reported amounts, which estimates may require revision in future periods.

**Property and equipment.** Property and equipment (Note 3) is stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, which for leasehold improvements is limited to the term of the lease, including renewal option periods so long as management intends to exercise them.

In accordance with Statement of Financial Accounting Standards No. 144, *Accounting for the Impairment or Disposal of Long-lived Assets*, depreciation at the currently idle facilities continues even though operations have ceased, at least temporarily. The Company performs a review of long-lived assets annually or whenever there might be an impairment "triggering" event. No impairments of property and equipment were identified as a result of these impairment reviews.

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

**Goodwill.** Goodwill consisted primarily of the excess of the purchase price over fair value of net assets acquired in connection with the acquisition of Park. Goodwill was not amortized for financial reporting but was evaluated annually for possible impairment.

In 2007 subsequent to suspending operations at Park, management evaluated the goodwill related to Park and concluded that it was impaired. Accordingly, the total balance of Park goodwill was charged to operations.

**Sales taxes.** Sales taxes collected from customers are excluded from revenue but rather are recorded as a liability payable to the appropriate taxing authority and included in accrued expenses.

**Advertising.** Advertising which totaled \$4,302 in 2007, is expensed as incurred and is included in other selling, general and administrative expenses

**Legal defense costs.** The Company does not accrue for estimated future legal and related defense costs, if any, to be incurred in connection with outstanding or threatened litigation and other disputed matters but rather records such as period costs when the related services are rendered

**Income taxes.** WGP and its subsidiary, with the consent of RHI, have elected under the Internal Revenue Code to be taxed as qualified "S Corporation" subsidiaries of RHI. Accordingly, no provision or liability for federal income tax or benefit has been included in the accompanying financial statements.

The Company has elected to defer adoption of Financial Accounting Standards Board (FASB) Interpretation No. 48, *Accounting for Uncertainty in Income Taxes - An Interpretation of FASB Statement No 109 (FIN 48)*, until its fiscal year ending December 31, 2009, as permitted by FASB Staff Position FIN 48-3, *Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises*. Although applicable to flowthrough entities such as S Corporations, the adoption of FIN 48 is not expected to have a material effect on the Company's income tax provision/benefit. Accordingly, the Company presently evaluates and recognizes the effect on its financial statements of uncertain tax positions relating to the S Corporation status of its components, if any, pursuant to FASB Statement No. 5, *Accounting for Contingencies*, only when it is probable that a loss will occur in an amount that can be reasonably estimated

**3. Property and equipment, less accumulated depreciation and amortization:**

As of the balance sheet dates presented, property and equipment consists of the following:

	<u>2008</u>	<u>2007</u>
Land	\$ 452,750	\$ 452,750
Land improvements and buildings	2,148,338	2,148,338
Leasehold improvements to land and buildings	2,721,267	3,032,107
Machinery and equipment	2,189,365	2,181,112
Furniture and fixtures	161,149	179,724
Renovations in progress	<u>10,592,301</u>	<u>7,229,032</u>
	18,265,170	15,223,063
Less accumulated depreciation and amortization	<u>(3,425,380)</u>	<u>(3,293,237)</u>
	<u>\$ 14,839,790</u>	<u>\$ 11,929,826</u>

**4. Due (to) from Wichita Greyhound Charities, Inc.:**

Amounts due (to) from Charities, as of the balance sheet dates presented, are summarized as follows:

	<u>2008</u>	<u>2007</u>
Balance, beginning of year	\$ 21,516	\$ (131,999)
Management fees/rent		2,578,310
Racing and parimutuel payroll and related		505,022
General and administrative		15,657
Reimbursed costs and expenses		(599,689)
Cash payments	29,416	
Cash receipts		<u>(2,345,785)</u>
Balance end of year	<u>\$ 50,932</u>	<u>\$ 21,516</u>

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

**5. Long-term debt:**

Long-term debt consists of the following:

	<u>2008</u>	<u>2007</u>
Bank note payable at LIBOR (1.08% at December 31, 2008) plus 1% collateralized by Park property and equipment, historically payable in monthly principal installments aggregating to \$425,004 annually, plus interest, with the remaining balance due in total on November 29, 2009	\$ 6,410,397	\$ 6,799,984
Due to stockholder (Note 6)	<u>26,855,303</u>	<u>19,812,542</u>
	33,265,700	26,612,526
Less current portion	<u>(6,410,397)</u>	<u>(6,799,984)</u>
	<u>\$ 26,855,303</u>	<u>\$ 19,812,542</u>

The bank note payable is associated with a credit agreement entered into between the bank and the sole stockholder of RHI under which the sole stockholder and two commonly-owned affiliates not included in these financial statements have borrowings outstanding, all of which are guaranteed by each other. As a result, as of December 31, 2008, the Company is contingently liable as guarantor for the obligations of others approximating \$8.5 million.

As of the latest balance sheet date presented, maturities of long-term debt are as follows:

2009	\$ 6,410,397
2010	<u>26,855,303</u>
	<u>\$ 33,265,700</u>

**6. Due to stockholder:**

Due to stockholder consists of the balance of non-interest bearing amounts advanced to the Company without collateral and without definite due date. The stockholder has agreed, however, not to demand repayment during the next 12 months (Note 7d). Changes in this obligation for the operating periods presented are as follows:

	<u>2008</u>	<u>2007</u>
Balance, beginning of year	\$ 19,812,542	\$ 11,722,315
Proceeds from new advances	<u>7,042,761</u>	<u>8,090,227</u>
	<u>\$ 26,855,303</u>	<u>\$ 19,812,542</u>

**7. Commitments and contingencies:**

**a. Lease commitments.** The Company has operating lease commitments with Sedgwick County, Kansas, for the land on which the Park racing facility is situated. The land lease contains several automatic renewal options of five years each, and is presently in the second of which ending September 2014. In 2007, the Company had various long-term noncancelable operating lease commitments for equipment and services that included both minimum and contingent rentals. Future minimum lease payments for operating leases with remaining noncancellable terms in excess of one year is as follows:

2009	\$ 81,506
2010	84,525
2011	84,525
2012	84,525
2013	84,525

Rent expense for all operating leases was approximately \$80,500 and \$637,647 during the periods presented, of which \$504,953 in 2007 was contingent rents.

**b. Miscellaneous legal matters.** The Company is involved in various claims and legal actions that relate to routine matters incidental to its business. In the opinion of management, the ultimate disposition of these matters and minimum costs, if any, to be incurred, cannot be estimated; however, management believes they will not have a material adverse effect on the Company's future financial position, operations or cash flows. Accordingly, no estimated losses have been provided for in connection with these matters.

**c. Profit-sharing plan.** The Company participates in a defined contribution plan qualified under IRS regulations sponsored by an affiliated company owned by its stockholder. Participation in the plan is available to all eligible Company employees. Contributions to the plan are made annually at the discretion of management. For the operating period presented, contributions were not material.

**d. Going concern uncertainty and management's plans.** The accompanying financial statements contemplate continuation of the Company as a going concern. However, in 2007, subsequent to approval by the Kansas legislature and requisite others, the Company began renovations at its Camptown facility to re-open the idle racetrack facility with gaming devices, but the respective regulatory bodies have been unable to reach a mutually satisfactory agreement for the operation of gaming devices.

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)  
YEARS ENDED DECEMBER 31, 2008 AND 2007**

Accordingly, the Company suspended renovations indefinitely in January 2008 pending a mutually satisfactory agreement for the operation of gaming devices. In addition, on October 6, 2007, the Company suspended its Park operations indefinitely. At this time there are no plans to resume Park racing operations without legislative and voter approval of re-opening the facility with the addition of gaming devices.

In addition, the United States is experiencing a widespread recession accompanied by, among other things, instability in the commercial and investment banking systems, reduced credit availability and highly curtailed gaming and other recreational activities, and it is engaged in a war on terrorism. These conditions result in risks and uncertainties that are likely to continue to have far-reaching effects on economic activity in the country for an indeterminate period. The long-term impact on the regional and national economies and the Company's future operations, if any, including the Company's sole stockholder's intent and ability to continue to provide financial support, cannot be predicted at this time but may be substantial.

Accordingly, the continued management and operation of the Company as a going concern will be dependent upon the outcome of the foregoing uncertainties and the success of management's plans as described below. Management plans, for the foreseeable future, to continue to fully support efforts to obtain legislative approval to operate gaming devices at Park and to reach a mutually satisfactory agreement for the operations of gaming devices at Camptown, which activity has proven at similar facilities in locations to be capable of generating substantial additional revenues. If expanded gaming activity is not approved by the Kansas legislature and requisite others, and if a mutually satisfactory agreement for the operation of gaming devices is not reached, the Company's sole stockholder will likely discontinue financial support, and management will likely discontinue operations at Park and/or Camptown permanently.

**8. Supplemental cash flow information:**

	<u>2008</u>	<u>2007</u>
<b>Reconciliation of net loss to net cash used in operating activities:</b>		
Net loss	\$ (1,320,849)	\$ (6,639,045)
Depreciation and amortization	221,384	235,363
Goodwill impairment adjustment		4,451,657
Bad debts		6,613
Increase in operating assets (liabilities)		
Accounts receivable	4,746	67,050
Due from Wichita Greyhound Charities, Inc.	(29,416)	(21,516)
Inventories		31,373
Prepaid expenses	102,786	(86,269)
Deposits	2,000	(1,105)
Accounts payable	(2,422,974)	1,866,537
Accrued expenses	(135,067)	(81,532)
Due to Wichita Greyhound Charities, Inc.		(131,999)
<b>Net cash used in operating activities</b>	<b>\$ (3,577,390)</b>	<b>\$ (302,873)</b>
<b>Supplemental cash flow information:</b>		
Cash paid for interest	<u>\$ 272,564</u>	<u>\$ 486,228</u>

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY  
CONSOLIDATING BALANCE SHEETS  
DECEMBER 31, 2008**

	Wichita Greyhound Park, Inc.				
	Wichita Greyhound Park Division	Camptown Greyhound Park Division	WGP Concessions, Inc.	Eliminations	Consolidated Totals
<b>ASSETS</b>					
<b>Current assets</b>					
Cash	\$ 46,024	\$ 21,418		\$	\$ 67,442
Due from Wichita Greyhound Charities, Inc.	50,932				50,932
Due from affiliates	84	768	\$ 487,659	\$ (487,659)	
Prepaid expenses	97,040	22,186	2,501		3,353
Property and equipment, net of accumulated depreciation and amortization	2,050,315	12,789,475	490,160	(487,659)	121,727
Deposits	10,325			(10,325)	
	\$ 2,157,680	\$ 12,811,661	\$ 490,160	\$ (497,984)	\$ 14,961,517
<b>LIABILITIES AND OWNERS' EQUITY DEFICIENCY</b>					
<b>Current liabilities</b>					
Current portion of long-term debt	\$ 6,410,397			\$	\$ 6,410,397
Accounts payable	18,731	246			18,977
Accrued expenses	93,152	60,497			153,649
Due to affiliates	462,589	25,070		\$ (487,659)	
Long-term debt, net of current portion	6,984,869	85,813		(487,659)	6,583,023
	10,633,194	16,222,109			26,855,303
	17,618,063	16,307,922		(487,659)	33,438,326
<b>Stockholder's equity (deficiency)</b>					
Common stock	250,000		\$ 1,000	(1,000)	250,000
Additional paid-in capital	(15,710,383)	(3,496,261)	9,325	(9,325)	(18,726,809)
Deficit	(15,460,383)	(3,496,261)	479,835	(10,325)	(18,476,809)
	\$ 2,157,680	\$ 12,811,661	\$ 490,160	\$ (497,984)	\$ 14,961,517

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**CONSOLIDATING BALANCE SHEETS**  
**DECEMBER 31, 2007**

	Wichita Greyhound Park, Inc.			Eliminations	Consolidated Totals
	Wichita Greyhound Park Division	Camptown Greyhound Park Division	WGP Concessions, Inc.		
<b>ASSETS</b>					
<b>Current assets</b>					
Cash	\$ 119,794	\$ (529)	\$ 3,741	\$	\$ 123,006
Accounts receivable	4,746				4,746
Due from Wichita Greyhound Charities, Inc.	21,516				21,516
Due from affiliates		46,336	484,290	\$ (530,626)	
Prepaid expenses	958	102,680	2,501		106,139
	147,014	148,487	490,532	(530,626)	255,407
Property and equipment, net of accumulated depreciation and amortization	2,437,385	9,492,441			11,929,826
Deposits	10,325	2,000		(10,325)	2,000
	\$ 2,594,724	\$ 9,642,928	\$ 490,532	\$ (540,951)	\$ 12,187,233
<b>LIABILITIES AND OWNERS' EQUITY DEFICIENCY</b>					
<b>Current liabilities</b>					
Current portion of long-term debt	\$ 6,799,984			\$	\$ 6,799,984
Accounts payable	49,803	2,392,148			2,441,951
Accrued expenses	252,378	36,338			288,716
Due to affiliates	485,023	45,603		\$ (530,626)	
	7,587,188	2,474,089		(530,626)	9,530,651
Long-term debt, net of current portion	9,642,032	10,170,510			19,812,542
	17,229,220	12,644,599		(530,626)	29,343,193
<b>Stockholder's equity (deficiency)</b>					
Common stock	250,000		1,000	(1,000)	250,000
Additional paid-in capital	(14,884,496)	(3,001,671)	480,207	(9,325)	(17,405,960)
Deficit	(14,634,496)	(3,001,671)	490,532	(10,325)	(17,155,960)
	\$ 2,594,724	\$ 9,642,928	\$ 490,532	\$ (540,951)	\$ 12,187,233

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**CONSOLIDATING STATEMENTS OF OPERATIONS AND RETAINED EARNINGS (DEFICIT)**  
**YEAR ENDED DECEMBER 31, 2008**

	Wichita Greyhound Park, Inc.			WGP Concessions, Inc.	Consolidated Totals
	Wichita Greyhound Park Division	Camptown Greyhound Park Division			
Other operating costs and expenses					
Land lease cost	\$ 80,500				\$ 80,500
Other selling, general and administrative	342,985	\$ 420,006	\$	363	763,354
Depreciation and amortization	147,168	74,488			221,656
	<u>570,653</u>	<u>494,494</u>		<u>363</u>	<u>1,065,510</u>
<b>Income (loss) from operations</b>	(570,653)	(494,494)		(363)	(1,065,510)
<b>Other income (expense)</b>					
Interest expense	(255,158)		(96)	(9)	(255,263)
Other, net	(76)				(76)
<b>Net income (loss)</b>	(825,887)	(494,590)		(372)	(1,320,849)
<b>Retained earnings (deficit), beginning of year</b>	(14,884,496)	(3,001,671)		480,207	(17,405,960)
<b>Retained earnings (deficit), end of year</b>	<u>\$ (15,710,383)</u>	<u>\$ (3,496,261)</u>	<u>\$</u>	<u>479,835</u>	<u>\$ (18,726,809)</u>

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**CONSOLIDATING STATEMENTS OF OPERATIONS AND RETAINED EARNINGS (DEFICIT)**  
**YEAR ENDED DECEMBER 31, 2007**

	Wichita Greyhound Park, Inc.			WGP Concessions, Inc.	Consolidated Totals
	Wichita Greyhound Park Division	Camptown Greyhound Park Division			
<b>Sales</b>					
Food and beverage Programs			\$ 548,211	\$	548,211
Other	43,891		101,268		101,268
	43,891		14,432		58,323
			663,911		707,802
<b>Cost of sales</b>					
Food and beverage Programs			516,930		516,930
Other			110,497		110,497
			9,252		9,252
			636,679		636,679
<b>Gross profit</b>	43,891		27,232		71,123
Parimutuel management fees/rent	2,578,310				2,578,310
	2,622,201		27,232		2,649,433
<b>Other operating costs and expenses</b>					
Cost and expense reimbursements	599,689				599,689
Other parimutuel costs and expenses	1,429,257				1,429,257
Land lease cost	80,500				80,500
Other selling, general and administrative	1,708,976	\$ 256,411	60,734		2,026,121
Goodwill impairment adjustment	4,451,657				4,451,657
Depreciation and amortization	161,516	73,847			235,363
	8,431,595	330,258	60,734		8,822,587
<b>Income (loss) from operations</b>	(5,809,394)	(330,258)	(33,502)		(6,173,154)
<b>Other income (expense)</b>					
Interest expense	(466,290)				(466,290)
Other, net	(1,126)	1,604	(79)		478
<b>Net income (loss)</b>	(6,276,810)	(328,654)	(33,581)		(6,639,045)
<b>Retained earnings (deficit), beginning of year</b>	(8,607,686)	(2,673,017)	513,788		(10,766,915)
<b>Retained earnings (deficit), end of year</b>	\$ (14,884,496)	\$ (3,001,671)	\$ 480,207	\$	\$ (17,405,960)

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GAMING COMMISSION

Michelle Beneke, Controller  
Wichita Greyhound Park, Inc. and Subsidiary  
1522 S. Florence  
Wichita, Kansas 67209

Michelle:

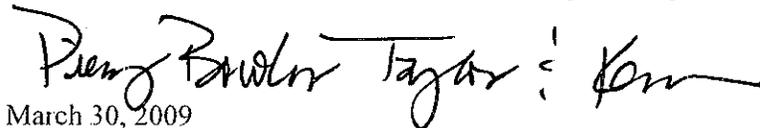
As part of our engagement to audit the financial statements of Wichita Greyhound Park, Inc. and Subsidiary (the Company) as of December 31, 2008 and for the year then ended, we are pleased to provide you with the following comments to help improve your internal control over financial reporting (ICFR) and to assist you in meeting your responsibilities with regard to the financial reporting process.

During our procedures, we noted that, in various bank accounts, there are outstanding checks that are several years old. We recommend that the Company investigate send these checks and comply with the unclaimed property laws of the state of Kansas.

The matters reported herein were considered in forming our opinion on the Company's financial statements and these matters do not change that report

We sincerely appreciate the courtesy and cooperation extended to us by the Company's officers and employees during the conduct of our engagement and while developing these comments and suggestions. We will be pleased to further discuss our recommendations at your convenience and assist in implementing them

This communication is intended solely for the confidential information and use of those charged with governance and management responsibilities for the Company and others identified below, either receiving a copy or being approved to receive a copy from management. It is not intended to be and should not be used by anyone other than these specified parties.

  
March 30, 2009

P B T K

**PIERCY BOWLER TAYLOR & KERN**

Certified Public Accountants • Business Advisors

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**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**

**REQUIRED  
COMMUNICATIONS  
LETTER**

**TO THE  
BOARD OF DIRECTORS**

**DECEMBER 31, 2008**

**WICHITA GREYHOUND PARK, INC. AND SUBSIDIARY**  
**REQUIRED COMMUNICATIONS LETTER**

**CONTENTS**

	<b>PAGE</b>
Transmittal letter	1
Significant audit adjustments	2
Difficulties encountered in performing the audit	2
Matters involving internal controls	2
Other governance matters	3

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GAMING COMMISSION

Board of Directors  
Wichita Greyhound Park, Inc and Subsidiary  
1522 S. Florence  
Wichita, Kansas 67209

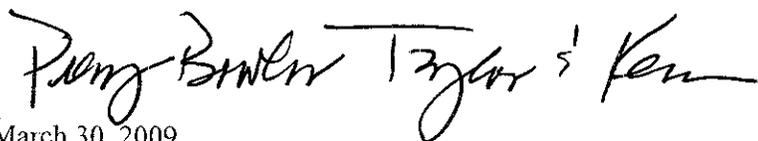
RE: Required Communications

Ladies and gentlemen:

As part of our engagement to audit the consolidated financial statements of Wichita Greyhound Park, Inc. and Subsidiary (the Company) as of December 31, 2008 and for the year then ended, we are required under applicable auditing standards to communicate certain matters to those charged with governance responsibilities for the Company for the purpose of assisting them in meeting their responsibilities with regard to the financial reporting process. This report contains those required communications.

The matters reported herein were considered in forming our opinion on the Company's consolidated financial statements contained in our report dated March 30, 2009, and these matters do not change that report.

This communication is intended solely for the confidential information and use of those charged with governance and management responsibilities for the Company and others identified below, either receiving a copy or being approved to receive a copy from management. It is not intended to be and should not be used by anyone other than these specified parties.



March 30, 2009

Copies provided to:  
Michelle Beneke, Controller  
Phillip Ruffin, Jr., Director of Operations

## SIGNIFICANT AUDIT ADJUSTMENTS

Our audit resulted in no significant adjustments to the consolidated financial statements.

## DIFFICULTIES ENCOUNTERED IN PERFORMING THE AUDIT

Management cooperated fully, and no significant difficulties were encountered in completing the December 31, 2008, audit.

## MATTERS INVOLVING INTERNAL CONTROL

We planned and performed our audit of the consolidated financial statements of the Company as of December 31, 2008 and for the year then ended, in accordance with auditing standards generally accepted in the United States.

Accordingly, we considered the Company's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the consolidated financial statements.

Such procedures were not performed for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we do not express an opinion on the effectiveness of the Company's internal control.

The principal objectives of effective internal control are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that all transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States. The concept of reasonable assurance requires that management, in fulfilling its responsibility, make estimates and judgments to assess the expected benefit and related costs of control procedures. Because of inherent limitations in any internal control, errors or fraudulent acts, particularly when involving forgery and collusion, may occur and not be detected. In addition, there is a risk that procedures may become inadequate in future periods because of changes in conditions and the degree of compliance with the procedures may deteriorate.

### Definitions

A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A *significant deficiency* is a control deficiency, or combination of control deficiencies, that adversely affects the Company's ability to initiate, authorize, record, process, or report financial data reliably in accordance with accounting principles generally accepted in the United States such that there is more than a remote likelihood that a misstatement of the Company's financial statements that is more than inconsequential will not be prevented or detected by the Company's internal control. A *material weakness* is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the Company's internal control. Our consideration of internal control would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses

### Findings

Our procedures did not identify any internal control deficiencies that we consider to be a material weakness.

We have reported other matters and/or made certain recommendations in a separate letter to management, dated March 30, 2009, which matters we believe do not constitute significant deficiencies or other matters required by applicable auditing standards to be included in this letter.

### OTHER GOVERNANCE MATTERS

**Auditors' responsibility under auditing standards generally accepted in the United States.** As stated in the first paragraph of our report on the Company's consolidated financial statements, our responsibility as independent auditors, under auditing standards generally accepted in the United States, is to express an opinion, based on our audit, on the consolidated financial statements, which are the responsibility of the Company's management. Our responsibilities, as contrasted with management's, are spelled out more fully in our letter of engagement.

Despite any limited assistance we may have provided to management in its preparation, our responsibility for information accompanying the consolidated financial statements is limited to (1) reading such information to ascertain that it is materially consistent with information presented in the Company's audited consolidated financial statements (2) considering whether any statements contained therein may appear to be materially misstated, and (3) assuring the satisfactory resolution of our concerns, if any. In this instance, we performed the required procedures, and any changes requested by us in this process were satisfactorily made and all questions satisfactorily resolved.

In considering the matters reported herein, you should be cognizant of your responsibility for oversight of the financial reporting process and management's responsibilities for establishing and maintaining an effective internal control subject to regulatory and ownership approval, and for the consolidated financial statements.

**Significant accounting policies.** The significant accounting policies employed by the Company are disclosed in the notes to the consolidated financial statements and are essentially as prescribed, recommended or permitted under applicable authoritative literature for, or commonly used by, other entities in your industry. The accounting policies have been consistently applied and are not controversial.

**Significant estimates.** The consolidated financial statements do not contain any significant management estimates except with regard to depreciation or amortization, useful lives and impairment considerations relative to property and equipment.

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Annual audited financial statements of Wichita Greyhound Charities, Inc. for the year ended December 31, 2008.**

**PRESENTER:** Brandi Baer CPA MBA, Internal Controls Auditor

**ISSUE SUMMARY:** Wichita Greyhound Charities has submitted copies of their 2008 audited financial statements to the Commission for our review. Our review is complete and our report is included in the agenda material.

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review and approval of the audit and the related Commission report.

**STAFF RECOMMENDATIONS:** Staff recommends approval.

# Memo

To: Charles LaBoy, Director of Audit & Electronic Security  
From: David J. Schultz, Chief Audit Officer  
CC:  
Date: April 7, 2009  
Re: Wichita Greyhound Charities, Inc. – 2008 Audit

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I have reviewed the audited financial statements of Wichita Greyhound Charities, Inc. for the year ended December 31, 2008.

Piercy, Bowler, Taylor & Kern (“PBTk”) has issued an unqualified opinion on the financial statements of Wichita Greyhound Charities, Inc. (“Charities”) for the year ended December 31, 2008. An unqualified independent auditors report means that all required statements are included in the report, auditing standards were followed during the engagement, sufficient evidence has been accumulated and the financial statements are presented in accordance with generally accepted accounting principles. The audit report noted that there is a substantial doubt as to Charities ability to continue as a going concern.

Balance Sheet: The balance sheet reflects a significant reduction in virtually every account balance due to the cessation of operations on October 6, 2007. Assets of \$33,700 consist of cash and property and equipment-net while liabilities of \$119,000 consist of a payable to affiliate and customer deposits, as described below.

Due to Wichita Greyhound Park: A payable to Wichita Greyhound Park of \$50,932 is shown on the balance sheet of Charities. There are currently no plans to make a payment to WGP to extinguish this payable.

Customer deposits: Customer deposits payable of approximately \$68,000, at December 31, 2008 and 2007, is a liability that had grown over an extended period of years and is the unredeemed betting vouchers that patron’s hold and have not presented to the betting window for liquidation or to place a bet. The identity of the patrons holding these vouchers is unknown and with the cessation of operations at the track, it is unlikely this payable will have to be paid off.

Statement of Operations: Charities incurred a net loss of \$175 in 2008.

Required Communications to the Board of Directors: Independent auditing firms are required to communicate certain matters to the Board of Directors in connection with the examination of the entity’s financial statements. I have reviewed this written communication and there is nothing of any significance in this document to report.

P B T K

**PIERCY BOWLER TAYLOR & KERN**

Certified Public Accountants • Business Advisors

PROCESSED

2009 APR -6 A 9:32

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KANSAS RACING AND  
GAMING COMMISSION

**WICHITA GREYHOUND CHARITIES, INC.**

**FINANCIAL STATEMENTS**

**YEARS ENDED  
DECEMBER 31, 2008  
AND 2007**

**CONTENTS**

	<b>Page</b>
<b>Independent auditors' report</b>	1
<b>Financial statements</b>	
Balance sheets	2
Statements of operations and deficit	3
Statements of cash flows	4
<b>Notes to financial statements</b>	<b>5 - 7</b>

**INDEPENDENT AUDITORS' REPORT**

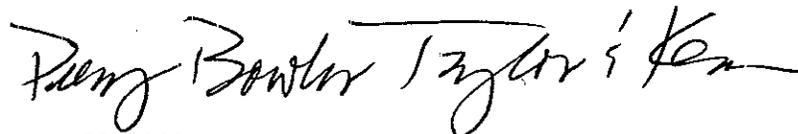
Board of Directors  
Wichita Greyhound Charities, Inc.  
Wichita, Kansas

We have audited the accompanying balance sheets of Wichita Greyhound Charities, Inc. (Charities) as of December 31, 2008 and 2007, and the related statements of operations and deficit and cash flows for the years then ended. These financial statements are the responsibility of Charities' management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Charities as of December 31, 2008 and 2007, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States.

The accompanying financial statements have been prepared assuming Charities will continue as a going concern. As discussed in Note 5d, Wichita Greyhound Park, Inc. which managed and operated the facility from which Charities has historically derived all of its revenues, has suspended operations indefinitely effective October 6, 2007. In addition, Charities has a working capital deficiency of approximately \$83,000 and an operating deficit of approximately \$85,000. These matters and current economic conditions and related uncertainties also discussed in Note 5d raise substantial doubt as to Charities ability to continue as a going concern. Management's plans regarding these matters are also discussed in Note 5d. The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Despite the foregoing, we have neither determined nor opined as to whether Charities is solvent or insolvent for bankruptcy or other purposes since such would be a legal determination that may be made only by a court.



March 30, 2009

**WICHITA GREYHOUND CHARITIES, INC.**  
**BALANCE SHEETS**  
**DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
<b>ASSETS</b>		
<b>Current assets</b>		
Cash and equivalents	\$ 33,585	\$ 33,836
Accounts and notes receivable, net of allowance	<u>                    </u>	<u>24,996</u>
	33,585	58,832
Property and equipment, net of accumulated depreciation	<u>161</u>	<u>346</u>
	<u>\$ 33,746</u>	<u>\$ 59,178</u>
<b>LIABILITIES AND DEFICIT</b>		
<b>Current liabilities</b>		
Accounts payable and accrued expenses		\$ 54,673
Due to Wichita Greyhound Park, Inc.	\$ 50,932	21,516
Customer deposits	<u>68,061</u>	<u>68,061</u>
	118,993	144,250
Deficit	<u>(85,247)</u>	<u>(85,072)</u>
	<u>\$ 33,746</u>	<u>\$ 59,178</u>

See notes to financial statements.

**WICHITA GREYHOUND CHARITIES, INC.**  
**STATEMENTS OF OPERATIONS AND DEFICIT**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
<b>Parimutuel commission revenues</b>		
Live racing		\$ 755,446
Dog simulcast		2,041,017
Horse simulcast		<u>1,763,334</u>
		<u>4,559,797</u>
<b>Parimutuel costs and expenses, excluding payroll and related</b>		
Taxes		750,540
Purses		1,137,764
Management fees		2,578,310
Industry development		<u>51,432</u>
		<u>4,518,046</u>
<b>Excess of selected parimutuel costs and expenses over revenues</b>		41,751
Reimbursed costs and expenses		599,689
Racing and parimutuel payroll and related		(505,022)
General and administrative	\$ (175)	(113,004)
Charitable contributions		(43,499)
Other		<u>327</u>
<b>Net loss</b>	<u>\$ (175)</u>	<u>\$ (19,758)</u>
<b>Deficit, beginning of year</b>	\$ (85,072)	\$ (65,314)
Net loss	<u>(175)</u>	<u>(19,758)</u>
<b>Deficit, end of year</b>	<u>\$ (85,247)</u>	<u>\$ (85,072)</u>

**WICHITA GREYHOUND CHARITIES, INC.**  
**STATEMENTS OF CASH FLOWS**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

	<u>2008</u>	<u>2007</u>
<b>Operating activities</b>		
Net cash used in operating activities and net decrease in cash	\$ (251)	\$ (440,922)
Cash, beginning of year	<u>33,836</u>	<u>474,758</u>
Cash, end of year	<u>\$ 33,585</u>	<u>\$ 33,836</u>
<b>Reconciliation of net loss to net cash used in operating activities</b>		
Net loss	\$ (175)	\$ (19,758)
Depreciation	185	2,341
Increase in operating (assets) liabilities		
Accounts receivable	24,996	81,981
Due from Wichita Greyhound Park, Inc.		131,999
Accounts payable and accrued expenses	(54,673)	(475,442)
Due to Wichita Greyhound Park, Inc.	29,416	21,516
Unpaid winning tickets		(183,640)
Customer deposits		<u>81</u>
Net cash used in operating activities	<u>\$ (251)</u>	<u>\$ (440,922)</u>

See notes to financial statements

**WICHITA GREYHOUND CHARITIES, INC.  
NOTES TO FINANCIAL STATEMENTS  
YEARS ENDED DECEMBER 31, 2008 AND 2007**

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**1. Nature of operations and background information:**

**Business activities.** Wichita Greyhound Charities, Inc. (Charities), is licensed by the State of Kansas Racing and Gaming Commission (KRGC) to conduct greyhound and horse races on which parimutuel wagering is permitted. However, Wichita Greyhound Park, Inc. (WGP), which managed and operated the facility from which Charities has historically derived all of its revenues, has suspended operations indefinitely on October 6, 2007 (Note 5d).

**Management agreement.** Charities operated under a management agreement with WGP, a KRGC licensed facility and manager, to maintain, improve, repair, manage, and operate Wichita Greyhound Park (the Facility), in which WGP holds long-term leasehold rights as a greyhound race track, including simulcast racing. Charities retained 1% of the daily wagers ("handle") on live races and up to 7% on simulcast races and pays the balance as winning parimutuel tickets, purses, taxes, breakage, and a fee to WGP. The fees to WGP are, therefore, in substance, a combination of both management fees and contingent rent for use of the facility, but they cannot practicably be separated. By virtue of the management agreement, WGP is a related party.

However, WGP, which managed and operated the Facility from which Charities has historically derived all of its revenues, suspended operations indefinitely on October 6, 2007. At this time, there are no plans to resume the racing operations without legislative and voter approval of re-opening the Facility with the addition of gaming devices.

Under the terms of its management agreement, Charities was reimbursed by Park for salaries and related expenses of the race and parimutuel operations, plus \$100,000 per year (pro rated for periods of operation) for administrative expenses and wages to employ an executive director and staff, and up to a maximum of \$10,000 annually for the cost of any annual audit. Park also provides accounting services for Charities at no charge.

The management agreement continues concurrently with the terms of the respective licenses granted by KRGC to Charities and WGP, and both have agreed to seek renewals of their respective licenses. However, under certain circumstances, the management agreement may be terminated by either party with a 30- or 45-day notice depending on the circumstance.

**Concentrations.** Because Charities is currently licensed to operate exclusively in the Wichita, Kansas, its future operations, if any, could be affected by adverse economic conditions in the area and nationwide in areas where the inbound simulcast tracks are located (Note 5d).

Charities manages its concentrations of credit risk by evaluating the credit worthiness of other racing tracks from which simulcast races are broadcast before entering into simulcast agreements and extending credit and monitoring it thereafter. The maximum losses that Charities would incur if a track failed to pay amounts would be limited to the carrying value after any allowances provided.

**2. Summary of significant accounting policies:**

**Basis of accounting and presentation.** Charities has not elected to adopt the option available under Financial Accounting Standards Board (FASB) No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*, to measure any of its eligible financial instruments or other items. Accordingly, Charities continues to measure all of its assets and liabilities on the historical cost basis of accounting.

Although organized under state law as a nonprofit corporation, for financial reporting purposes, Charities does not qualify as a not-for-profit organization as defined by the Financial Accounting Standards Board and, therefore, presents its financial statements in a format appropriate for a business enterprise.

**Use of estimates.** Timely preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates that affect reported amounts, which estimates may require revision in future periods.

**Property and equipment.** Property and equipment (Note 4) is stated at cost. Depreciation is computed using the straight-line and declining balance methods over the estimated useful lives of the assets.

**Revenues, costs and expenses.** Parimutuel revenue is the commission from parimutuel wagering activities known as the "takeout" and ranges from 18 to 25% of the total parimutuel handle. Parimutuel costs and expenses other than payroll and related include taxes, purses, management fees, rent and industry development assessments paid or payable to others as required by state regulations and its management agreement.

All costs and expenses reimbursed by Park are shown gross pursuant to Emerging Issues Task Force Issue No. 01-14, *Income Statement Characterization of Reimbursements Received for "Out-of-Pocket" Expenses Incurred*.

**WICHITA GREYHOUND CHARITIES, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

**Legal defense costs.** Charities does not accrue for estimated future legal and related defense costs, if any, to be incurred in connection with outstanding or threatened litigation and other disputed matters but rather records such as period costs when the related services are rendered.

**Income taxes.** Although organized as a nonprofit corporation under state law, Charities was denied exemption from federal income tax by the Internal Revenue Service (IRS). Accordingly, there are no invested capital accounts, and it is technically subject to both federal and state income taxes. Although it has accumulated net operating loss carryforwards of approximately \$50,000 that expire through 2024, as a result of the state law requiring distributions to qualified charitable organizations (Note 5), it is unlikely that Charities will ever have taxable income in material amounts. Accordingly, a 100% allowance has been effectively provided for the unrealized tax benefit of the accumulated net operating losses

Charities has elected to defer adoption of FASB Interpretation, *Accounting for Uncertainty in Income Taxes - An Interpretation of FASB Statement No. 109* (FIN 48), until its fiscal year ending December 31, 2009, as permitted by FASB Staff Position FIN 48-3, *Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises*. The adoption of FIN 48 is not expected to have a material effect on Charities income tax provision/benefit. Accordingly, Charities presently evaluates and recognizes the effect on its financial statements of uncertain tax positions, if any, pursuant to FASB Statement No. 5, *Accounting for Contingencies*, only when it is probable that a loss will occur in an amount that can reasonably be estimated.

**3. Due (to) from Wichita Greyhound Park, Inc.:**

Amounts due (to) from WGP and its wholly-owned subsidiary, as of the balance sheet dates presented, are summarized as follows:

	<u>2008</u>	<u>2007</u>
Balance, beginning of year	\$ (21,516)	\$ 131,999
Management fees/rent		(2,578,310)
Racing and parimutuel payroll and related		(505,022)
General and administrative		(15,657)
Reimbursed costs and expenses		599,689
Cash receipts	(29,416)	
Cash payments		2,345,785
	<u>\$ (50,932)</u>	<u>\$ (21,516)</u>

**4. Property and equipment, less accumulated depreciation:**

As of the balance sheet dates presented, property and equipment consists of the following:

	<u>2008</u>	<u>2007</u>
Equipment, furniture, and fixtures	\$ 8,930	\$ 8,930
Less accumulated depreciation	<u>(8,769)</u>	<u>(8,584)</u>
	<u>\$ 161</u>	<u>\$ 346</u>

**5. Commitments and contingencies:**

**a. Licensing conditions.** Charities is required under state statute and the terms of its KRGC license to distribute all of its net earnings, as defined, if any, to qualified organizations domiciled in Kansas that use the money for charitable purposes within the state. In addition, no more than 25% of the annual amounts distributed in any year may be distributed to any one such organization.

Charities is also required to remit unpaid winnings for the year to KRGC within 61 days of the earlier of year end or suspension of operations.

**b. Miscellaneous legal matters.** Charities is involved in various claims and legal actions that relate to routine matters incidental to its business. In the opinion of management, the ultimate disposition of these matters and minimum costs, if any, to be incurred, cannot be estimated; however, management believes they will not have a material adverse effect on Charities' future financial position, operations or cash flows. Accordingly, no estimated losses have been provided for in connection with these matters.

**c. Profit-sharing plan.** Charities participates in a defined contribution plan qualified under IRS regulations sponsored by an entity also owned by the sole owner of Park. Participation in the plan is available to all eligible Charities employees. Contributions to the plan are made annually at the discretion of management of WGP. For the operating period presented, contributions not reimbursed by WGP were not material.

**d. Going concern uncertainty and managements' plans.** The accompanying financial statements contemplate continuation of Charities as a going concern. However, on October 6, 2007, WGP which managed and operated the facility from which Charities has historically derived all of its revenues, suspended operations indefinitely. At this time there are no plans to resume racing operations at the facility without legislative and

**WICHITA GREYHOUND CHARITIES, INC.**  
**NOTES TO FINANCIAL STATEMENTS (Continued)**  
**YEARS ENDED DECEMBER 31, 2008 AND 2007**

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voter approval of re-opening the facility with the addition of gaming devices.

In addition, the United States is experiencing a widespread recession accompanied by, among other things, instability in the commercial and investment banking systems, reduced credit availability and highly curtailed gaming and other recreational activities, and it is engaged in a war on terrorism. These conditions result in risks and uncertainties that are likely to continue to have far-reaching effects on economic activity in the country for an indeterminate period. The long-term impact on the regional and national economies and Charities' future operations, if any, and cash flows, cannot be predicted at this time but may be substantial.

Accordingly, the continued management and operation of the facility by WGP and of Charities, as going concerns will be dependent upon the outcome of the foregoing uncertainties, the continuing financial support of WPG's sole stockholder, and the success of management's plans as described below. Management of both Charities and WGP plan, for the foreseeable future, to continue to support legislative and voter approval to operate gaming devices at the Facility, which has proven to generate additional revenues at similar facilities in locations that allow gaming devices. Unless expanded gaming is approved by the Kansas legislature and requisite others, the sole stockholder of WGP will likely discontinue financial support, and its management will likely discontinue operations permanently.

PIERCY BOWLER TAYLOR & KERN

Certified Public Accountants • Business Advisors

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2009 APR -6 A 9:32

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KANSAS RACING AND  
GAMING COMMISSION

Michelle Beneke, Controller  
Wichita Greyhound Charities, Inc  
1522 S. Florence  
Wichita, Kansas 67209

Michelle:

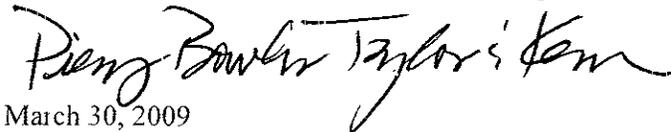
As part of our engagement to audit the financial statements of Wichita Greyhound Charities, Inc. (Charities) as of December 31, 2008 and for the year then ended, we are pleased to provide you with the following comments to help improve your internal control over financial reporting (ICFR) and to assist you in meeting your responsibilities with regard to the financial reporting process.

During our procedures, we noted that, in various bank accounts, there are outstanding checks that are several years old. We recommend that Charities investigate these checks and comply with the unclaimed property laws of the state of Kansas.

The matters reported herein were considered in forming our opinion on Charities's financial statements and these matters do not change that report.

We sincerely appreciate the courtesy and cooperation extended to us by Charities's officers and employees during the conduct of our engagement and while developing these comments and suggestions. We will be pleased to further discuss our recommendations at your convenience and assist in implementing them.

This communication is intended solely for the confidential information and use of those charged with governance and management responsibilities for Charities and others identified below, either receiving a copy or being approved to receive a copy from management. It is not intended to be and should not be used by anyone other than these specified parties.

  
March 30, 2009

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**WICHITA GREYHOUND CHARITIES, INC.**

**REQUIRED  
COMMUNICATIONS  
LETTER**

**TO THE  
BOARD OF DIRECTORS**

**DECEMBER 31, 2008**

**WICHITA GREYHOUND CHARITIES, INC.**  
**REQUIRED COMMUNICATIONS LETTER**

**CONTENTS**

	<b>PAG</b>
Transmittal letter	
Significant audit adjustments	
Difficulties encountered in performing the audit	
Matters involving internal controls	
Other governance matters	

PIERCY BOWLER TAYLOR & KERN

Certified Public Accountants • Business Advisors

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GAMING COMMISSION

Board of Directors  
Wichita Greyhound Charities, Inc  
1522 S. Florence  
Wichita, Kansas 67209

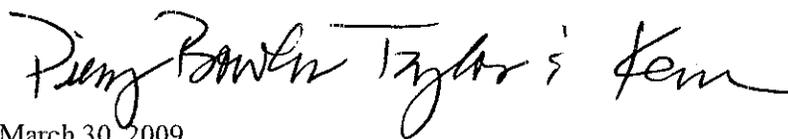
RE: Required Communications

Ladies and gentlemen:

As part of our engagement to audit the financial statements of Wichita Greyhound Charities, Inc. (the Company) as of December 31, 2008 and for the year then ended, we are required under applicable auditing standards to communicate certain matters to those charged with governance responsibilities for the Company for the purpose of assisting them in meeting their responsibilities with regard to the financial reporting process. This report contains those required communications.

The matters reported herein were considered in forming our opinion on the Company's financial statements contained in our report dated March 30, 2009, and these matters do not change that report.

This communication is intended solely for the confidential information and use of those charged with governance and management responsibilities for the Company and others identified below, either receiving a copy or being approved to receive a copy from management. It is not intended to be and should not be used by anyone other than these specified parties.



March 30, 2009

Copies provided to:  
Michelle Beneke, Controller  
Phillip Ruffin, Jr., Director of Operations

## SIGNIFICANT AUDIT ADJUSTMENTS

Our audit resulted in no significant adjustments to the financial statements.

## DIFFICULTIES ENCOUNTERED IN PERFORMING THE AUDIT

Management cooperated fully, and no significant difficulties were encountered in completing the December 31, 2008, audit.

## MATTERS INVOLVING INTERNAL CONTROL

We planned and performed our audit of the financial statements of the Company as of December 31, 2008 and for the year then ended, in accordance with auditing standards generally accepted in the United States.

Accordingly, we considered the Company's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements.

Such procedures were not performed for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we do not express an opinion on the effectiveness of the Company's internal control.

The principal objectives of effective internal control are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that all transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with accounting principles generally accepted in the United States. The concept of reasonable assurance requires that management, in fulfilling its responsibility, make estimates and judgments to assess the expected benefit and related costs of control procedures. Because of inherent limitations in any internal control, errors or fraudulent acts, particularly when involving forgery and collusion, may occur and not be detected. In addition, there is a risk that procedures may become inadequate in future periods because of changes in conditions and the degree of compliance with the procedures may deteriorate.

### Definitions

A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A *significant deficiency* is a control deficiency, or combination of control deficiencies, that adversely affects the Company's ability to initiate, authorize, record, process, or report financial data reliably in accordance with accounting principles generally accepted in the United States such that there is more than a remote likelihood that a misstatement of the Company's financial statements that is more than inconsequential will not be prevented or detected by the Company's internal control. A *material weakness* is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the Company's internal control. Our consideration of internal control would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses.

### Findings

Our procedures did not identify any internal control deficiencies that we consider to be a material weakness

We have reported other matters and/or made certain recommendations in a separate letter to management, dated March 30, 2009, which matters we believe do not constitute significant deficiencies or other matters required by applicable auditing standards to be included in this letter.

#### **OTHER GOVERNANCE MATTERS**

**Auditors' responsibility under auditing standards generally accepted in the United States.** As stated in the first paragraph of our report on the Company's financial statements, our responsibility as independent auditors, under auditing standards generally accepted in the United States, is to express an opinion, based on our audit, on the financial statements, which are the responsibility of the Company's management. Our responsibilities, as contrasted with management's, are spelled out more fully in our letter of engagement.

Despite any limited assistance we may have provided to management in its preparation, our responsibility for information accompanying the financial statements is limited to (1) reading such information to ascertain that it is materially consistent with information presented in the Company's audited financial statements (2) considering whether any statements contained therein may appear to be materially misstated, and (3) assuring the satisfactory resolution of our concerns, if any. In this instance, we performed the required procedures, and any changes requested by us in this process were satisfactorily made and all questions satisfactorily resolved.

In considering the matters reported herein, you should be cognizant of your responsibility for oversight of the financial reporting process and management's responsibilities for establishing and maintaining an effective internal control subject to regulatory and ownership approval, and for the financial statements.

**Significant accounting policies.** The significant accounting policies employed by the Company are disclosed in the notes to the financial statements and are essentially as prescribed, recommended or permitted under applicable authoritative literature for, or commonly used by, other entities in your industry. The accounting policies have been consistently applied and are not controversial.

**Significant estimates.** The financial statements do not contain any significant management estimates.

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Order for issuance of an organizational license to the Kansas Quarter Horse Racing Association/Greenwood County Fair Association d/b/a Eureka Downs to conduct horse racing.**

**PRESENTER:** Charles LaBoy, Director of Audit and Electronic Security  
KQHRA/GCFA Representative

**ISSUE SUMMARY:** The Kansas Quarter Horse Racing Association and Greenwood County Fair Association have submitted a joint application for a organizational license to conduct ten days of live horse racing in Eureka, KS in 2009 on the following dates: May 25, 30, June 6, 13, 14, 20, 21, 27, 28 and July 4. Commission staff has drafted an order for the issuance of an organizational license to the applicants to conduct the requested race days. See K.S.A 74-8813, 74-8814, K.A.R 112-17-1 *et seq.*

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review, discussion and possible action on the approval of the order for issuance of an organizational license to the Kansas Quarter Horse Racing Association and Greenwood County Fair Association to conduct a 2009 county fair race meet.

**STAFF RECOMMENDATIONS:** Staff has examined the application submitted by the Kansas Quarter Horse Racing Association and Greenwood County Fair Association for an organizational license to conduct horse races on May 25, 30, June 6, 13, 14, 20, 21, 27, 28 and July 4 and have determined that the application complies with applicable statutes, rules and regulations. Staff recommends that the Commission approve the order as being in the best interest of horse racing within this state, and recommends that the conditional license be issued upon payment of the \$50 license fee and submission of the surety bond in the amount of \$80,769.

At a general K.T.A. meeting on March 31, 2009, called by President David Assmann, there were ten (10) K.T.A. Board of Directors present and two (2) other K.T.A. members present. At this meeting those present voted unanimously in favor of the following recommendations.

The 2008 "Live Horse Purse Fund" money should be spent at the Woodlands Horse Track. These dollars were earned at the Woodlands from simulcast and live horse races and the Woodlands still has their license. The people who generated this money should run for this money. The money should stay where it was generated.

Historically the Woodlands has distributed these funds and races at 70% Thoroughbred and 30% Quarter Horse. We would expect these percentages to be used wherever the funds and races are used.

Of the 106 total races proposed at Eureka Downs and Anthony Downs, 70 Thoroughbred Races, 32 Quarter Horse Races, 4 Minor breeds, should be run.

Of the approximately \$1,179,000.00 to be spent, \$800,000.00 should be spent on the 70 Thoroughbred races; \$25,000.00, on 4 minor breed races; and \$354,000 on 32 Quarter Horse races. Funds and races to be split 70% Thoroughbred and 30% Quarter Horses with the purses for the minor breed races to be taken from the Thoroughbred purse money.

There should be no preference on 870 yard races - all 870 yard races should be open to all breeds with ½ of the purse money for these races to come from Thoroughbred money and ½ from Quarter Horse money or based on the percentage of each breed starting.

Safety is a big concern. Ambulance availability and jockey weight are two of these safety concerns.

A vote by all present was unanimously in favor of the above recommendations.

Using the above figures the K.T.A. would like to see the following purse distributions in the condition books:

Maiden Special Weights - Kansas Bred - Purse: \$20,000 + KBDF  
Maiden Special Weights - Open - Purse: \$15,000  
\$7500 Maiden Claiming - Kansas Bred - Purse: \$12,500 + KBDF  
\$7500 Maiden Claiming - Open - Purse \$10,000  
\$2500 Claiming - Kansas Bred - Purse: \$8,000 + KBDF  
\$2500 Claiming - Open - Purse: \$6,000  
\$5000 Claiming - Kansas Bred - Purse: \$10,000 + KBDF  
\$5000 Claiming - Open - Purse: \$8,000  
Allowance - Kansas Bred - Purse: \$15,000 + KBDF  
Allowance - Open - Purse: \$12,500

20% to Kansas Breeds in overnight races

## **Stakes Races:**

### **Eureka Downs:**

2008 K.T.A. Stallion Auction Stakes for 3 year olds  
6 furlongs -- \$25,000 + \$7500 KBDF

2008 K.T.A. Stallion Auction Stakes for 4 year olds  
6 furlongs -- \$25,000 + \$7500 KBDF

Sunflower Stakes for Kansas Bred only, 3 year olds and up, colts and geldings  
6 furlongs -- \$25,000 + \$10000 KBDF

Manhattan Stakes for Kansas Bred only, 3 year olds and up, fillies and mares  
6 furlongs -- \$25,000 + \$10000 KBDF

### **Anthony Downs**

KTA Derby for 3 year olds, colts and geldings, eligible from Stallion Auction  
6 furlongs -- \$25,000 + \$7500 KBDF

KTA Oaks for 3 year olds, fillies, eligible from Stallion Auction  
6 furlongs -- \$25,000 + \$7500 KBDF

KTA Futurity for 2 year old colts and geldings, eligible from Stallion Auction  
4 - 4 ½ furlongs -- \$25,000 + \$10000 KBDF

KTA Futurity for 2 year old fillies, eligible from Stallion Auction  
4 - 4½ furlongs -- \$25,000 + \$10000 KBDF

There should be a “Kansas Bred” Thoroughbred race written each day in the condition book and at least 1 Sub race written for Kansas Bred Thoroughbreds each day.

There should be 5 Thoroughbred races written each day in the Condition Book and at least 3 Thoroughbred races written as Sub races each day.

Following are a list of suggested “Kansas Bred” Thoroughbred races to be written at Eureka Downs and Anthony.  
Eureka:

**STATE OF KANSAS  
KANSAS RACING AND GAMING COMMISSION  
700 SW HARRISON, SUITE 500  
TOPEKA, KS 66603-3754  
(785) 296-5800**

In the Matter of: )  
)  
The Application of )  
)  
**THE GREENWOOD COUNTY FAIR** )  
**ASSOCIATION** )  
)  
and )  
)  
**KANSAS QUARTER HORSE RACING** )  
**ASSOCIATION** )  
)  
for a Horse Fair Race Meet )  
Organization License. )  
\_\_\_\_\_ )

**93 KRC 168  
041609**

**ORDER GRANTING 2009 CONDITIONAL ORGANIZATION LICENSE**

On this 16<sup>th</sup> day of April 2009, and pursuant to its authority under K.S.A. §§ 74-8813, 74-8814, and K.A.R. 112-17-1 *et seq.*, the Kansas Racing and Gaming Commission (KRGC) considered the joint application of the Greenwood County Fair Association (GCFA) and the Kansas Quarter Horse Racing Association (KQHRA) for an organization license to conduct live horse racing at Eureka Downs during the calendar year 2009.

Co-applicants GCFA and KQHRA appeared by Fred Puthoff, Eureka Downs Management Committee representative. Commissioners present are Carol H. Sader, Chair; Glenn Braun, Kristine McKechnie, William J. Falstad, and Barry Schwan. Also present were Executive Director Stephen

L. Martino and Commission counsel Patrick D. Martin, as well as other Commission staff and members of the public.

After reviewing the application and exhibits, the amendments, the reports of staff, comments of counsel and public comments, and being otherwise advised in the premises, the Commission finds, concludes and orders as follows:

### **FINDINGS OF FACT**

1. KQHRA is a non-profit corporation whose principal officers are Robert Rodgers, President; Garry Stwalley, Vice-president; and Fred Puthoff, Treasurer and 2<sup>nd</sup> Vice President. [2009 Racing License Application (*App.*), Attachment A-2; Attachment A-3.]

2. GCFA is a non-profit corporation whose principal officers are Paul Hendrickson, President; Hurley Breech, Vice-president; and Jeff Davidson, Secretary/Treasurer. [*App.*, Attachments A-2 and A-3.]

3. On March 3, 2009, co-applicants filed with the Commission a horse fair organization licensee application for 2009.

4. Co-applicants have not paid an application fee in the amount of \$50.00 to the Commission pursuant to K.A.R. 112-17-1(e)(1).

5. Co-applicants request an organization license to conduct a live horse fair race meet during 2009, for the following ten days: May 25 and 30; June 6, 13, 14, 20, 21, 27, and 28; and July 4, 2009. [*App.*]

6. The co-applicants' verified application titled 2009 Racing License Application, its amendments, attachments, and correspondence relating to that application are incorporated herein.

7. Co-applicants request post times for all live race days at 1:30 p.m. [*App.*, Section VI., subsection i., at p. 19.]

8. Co-applicants intend to write seven live horse races per day with races sufficient to allow all breeds of horses adequate opportunity to race. [*App.*, Section VI., subsection i., at p. 19.]

9. Additionally, co-applicants intend to sponsor certain futurities and derbies in conjunction with all breed organizations. [*App.*, Section VI., subsection i., at p. 19.]

10. Co-applicants' horse purse formula for payout is 55 percent, 20 percent, 15 percent, and 10 percent for first through fourth places, respectively. Horses finishing from 5<sup>th</sup> place to last place will each receive \$545. [*App.*, Section VI., subsection j., at p. 20.]

11. Co-applicants have represented that the payouts for any futurities and derbies will be stated on the entry forms for the respective races and will be submitted at a later date for Commission approval by the organizations that sponsor them. [*App.*, Section VI., subsection j., at p. 20.]

12. Co-applicants intend to raise additional money for purses through local and regional sponsors. [*App.*, Section VI., subsection j., at p. 20.]

13. Co-applicants intend to hold certain quarter horse and thoroughbred futurities and derbies with additional money from the breed organizations. Co-applicants intend to allocate \$25,000 of horse purse money to futurity purses. [*App.*, Section VI., subsection j., at p. 20.]

14. Co-applicants intend to contract with a bank or bonding company, to be approved by the Commission, to furnish the bond required by K.S.A. 74-8813(e). [*App.*, Section VI., subsection k., at p. 20.]

15. Co-applicants' parimutuel wagering plan for the 2009 live horse race meet will be similar to that of the 2008 race meet. [*App.*, Section VI., subsection l., at p. 20.]

16. With respect to concessions, it is the intention of the co-applicants to enter into an agreement with a for-profit corporation (under common control) that will be responsible for

obtaining any required alcoholic beverage licenses. Specifically, co-applicants intend to contract with *Copper Kettle Restaurant*, subject to approval by the Commission. [*App.*, Section VI., subsection m., at p. 20.]

17. GCFA has entered into a lease agreement with KQHRA for the premises needed to conduct the fair meet. [*App.*, Section V., subsection g., at p. 15.]

18. The co-applicants and their officers and directors have complied with K.S.A. 74-8810, and are avoiding the prohibited acts listed therein. [*App.*, Section I., subsection j., at p. 6.]

19. The co-applicants have the financial capability, manpower, and technical expertise by themselves or through contractual relations to conduct a live horse fair race meet with live horse racing, and the parimutuel system of wagering. [*App.*]

20. Co-applicants KQHRA and GCFA have provided to the Commission various copies of their articles of incorporation, bylaws, and other agreements or documents, which create or govern the co-applicants' organizations. [See *App.*, Attachments A1 - A4.]

21. Co-applicants will conduct races in only one county, Greenwood County, Kansas. The majority of qualified electors in Greenwood County have approved the constitutional amendment permitting the conduct of horse races with parimutuel wagering thereon. [*App.*, Section II., subsection a., at p. 6.]

22. No director, officer, employee, or agent of the co-applicants has been convicted of any of the crimes or offenses identified in K.S.A. 74-8813(c)(6). [*App.*, Affidavits of Co-applicants.]

23. No director or officer of the co-applicants is addicted to, and a user of, alcohol or a controlled substance. [*App.*, Affidavits of Co-applicants.]

24. Co-applicants have requested, pursuant to K.A.R. 112-17-14, that certain rules and regulations exceptions be granted for the 2009 racing season, including:

A. Waiver of the requirement of K.A.R. 112-11-14(a), which requires that ambulance service be available on site during any training period since the response time for local ambulance service on non-race days is minimal [*App.*, Section VII., subsection a., at p. 21];

B. waiver of the requirement of K.A.R. 112-11-14(g), which requires a first aid station at the facility staffed by an emergency medical technician and equipped with medical equipment and supplies required in a type II ambulance. It is anticipated that an emergency medical technician will be on the racetrack grounds associated with an ambulance and that medical equipment as required by the Commission's director of security will be present in the first aid office at the track [*App.*, Section VII., subsection b., at p. 21];

C. waiver of the requirement of K.A.R. 112-11-14(d), which requires that a staffed horse ambulance be at the track each day that horses are on the racetrack. Applicants agree to provide a staffed horse ambulance during all live race days [*App.*, Section VII., subsection c., at pp. 21-22];

D. waiver of the requirement of K.A.R. 112-7-23(d), which requires that any horse that has not raced in 45 days shall not start any race before it completes one (1) workout and a horse that has not raced in 12 months shall not start any race before it completes two (2) workouts. Applicants request that the number of days required by K.A.R. 112-7-23(d) be changed from 45 days to 60 days. Additionally, applicants request that the number of workouts be reduced from two (2) workouts for a horse which has never raced or has not raced in the last 12 months to one (1) workout provided, however, that the stewards

or animal health officers shall have discretion to require additional workouts [App., Section VII., subsection d., at p. 22];

E. waiver of the requirement of K.A.R. 112-7-6, which prohibits persons from entering or starting a race if an ownership transfer for a horse is being forwarded to a breed registry. Applicants request that no person enter a horse in a race if an ownership transfer for a horse is being forwarded to a breed registry *unless otherwise approved by the stewards prior to entry*. This exception is requested so that a horse being transferred is eligible to run (not scratched if sold or claimed) while the paper work is in the process of being changed, if the transfer papers are sent in to the breed registry by the Racing Office [App., Section VII., subsection f., at p. 22];

F. waiver of the requirement of K.A.R. 112-7-14(a)(2), which provides that penalties and sex allowances shall be obligatory. Penalties or allowances shall be claimed at time of entry. Each horse shall not enter or start a race with less than 102 pounds unless the race is a handicap or stakes. Applicants request that trainers be permitted to waive sex allowances at the time of entry. This exception is requested due to the shortage of jockeys and the weights of the jockeys [App., Section VII., subsection g., at p. 22-23];

G. waiver of the requirement of K.A.R. 112-7-18(e), which states that without permission of the owner or trainer, no jockey shall weigh out if the jockey weighs more than two (2) pounds over the weight assigned to the horse. Under no circumstances shall the margin over the weight limit exceed seven (7) pounds. In such case, no jockey mount fee shall be due to the overweight jockey. Applicants have requested that due to a shortage of jockeys and the weight of the jockeys, that upon agreement of the Commission staff, stewards, and Eureka Downs (General Manager and Racing Secretary), the weight margin

may be changed. All of the above parties must be in agreement before any changes are permitted [*App.*, Section VII., subsection h., at p. 23];

H. waiver of the requirement of K.A.R. 112-4-1(l), which requires that an occupational licensee be at least sixteen (16) years of age, for the limited purpose of allowing valets and runners (with prior steward approval) to be licensed at fourteen (14) or fifteen (15) years of age [*App.*, Section VII., subsection i., at p. 23];

I. waiver of the requirement of K.A.R. 112-7-6(a)(3), which provides that no person shall enter or start a horse in a race unless the horse is in the care of a licensed trainer and owned by an owner licensed by scratch time, except that for the first ten (10) days of a race meeting or for stakes races, an owner must be licensed by one (1) hour before first post on the day of the race. Applicants request that for the duration of the 2009 Eureka Downs horse race meet, all owners must be licensed by one (1) hour before first post on the day of the race. For all stakes races to be run at Eureka Downs, entries may be accepted by the Racing Office from unlicensed trainers provided that such trainer has, prior to making such an entry, faxed to the Commission Licensing Office at Eureka Downs or the Racing Office at Eureka Downs an application for licensure and thereafter fulfilled all requirements for licensure prior to 11:00 a.m. on the day of the race [*App.*, Section VII., subsection j., at pp. 23-24];

J. waiver of the requirement of K.A.R. 112-11-4(a), which requires that all officers be required to attend a basic security course [*App.*, Section VII., subsection k., at p. 24];

K. waiver of the requirement of K.A.R. 112-11-5(a), which requires 20 hours of continuing education for all security officer's prior to renewal of each security officer's license [*App.*, Section VII., subsection l., at p. 24];

L. waiver of the requirement of K.A.R. 112-7-8(b), which prohibits an owner or trainer from entering more than two horses in an overnight event [*App.*, Section VII, subsection m., at p. 24]; and

M. waiver of the requirement of K.A.R. 112-11-20(f)(3), which provides for 24 hour security for the compound enclosure provided by the organization licensee during the official racing season. [*App.*, Section VII, subsection n., at pp. 24-25].

N. waiver of the requirement of K.A.R. 112-17-5(a), which requires financial projections for each of the first and the next three racing years. [*App.*, Section VII, subsection o., at pp. 25]

### **CONCLUSIONS OF LAW**

1. Pursuant to K.S.A. 74-8813, the granting or denying of an organization license is not subject to the Kansas administrative procedure act.
2. Pursuant to K.S.A. 74-8813, the granting or denying of an organization license is a matter to be determined in the sole discretion of the Commission, and that decision is final.
3. GCFA is the organization referred to in K.S.A. 74-8814(a)(2).
4. GCFA is a fair association as that term is defined in K.S.A. 74-8802(j).
5. KQHRA is the organization referred to in K.S.A. 74-8814(a)(2).
6. KQHRA is a nonprofit horsemen's organization as that term is defined in K.S.A. 74-8802(m).

7. Co-applicants KQHRA and GCFA have the legal ability to operate a race meeting at Eureka Downs racetrack facility subject to approval and regulation by the Commission.
8. The co-applicants meet the legal requirements to be permitted to conduct a horse fair race meet with live horse racing and the parimutuel system of wagering as provided in K.S.A. 74-8813, K.S.A. 74-8814, and K.S.A. 74-8836.
9. K.S.A. 74-8814 authorizes the Commission to adopt regulations permitting the waiver of Commission rules and regulations for horse fair meets.
10. The Commission may waive rules and regulations for horse fair meets.
11. The Commission may authorize a refund for any fee paid for any racing day that is canceled with advance notice to and with the approval of the Commission. K.S.A. 74-8813(g).
12. It is in the best interests of racing for the Commission to grant the co-applicants a horse fair race meet organization license to conduct a horse fair race meet with horse racing and parimutuel wagering at Eureka Downs for the 2009 season.

### ORDERS

Based upon the foregoing findings of fact and conclusions of law, the verified responses contained in the application, the exhibits, and other representations made by KQHRA, GCFA, and Commission staff, the Commission hereby enters the following orders, to wit:

1. **IT IS HEREBY ORDERED**, that a conditional co-organization license be granted to KQHRA and GCFA for the purpose of conducting a horse fair race meet with parimutuel wagering at Eureka Downs, in Eureka, Greenwood County, Kansas, for 2009.
2. **IT IS FURTHER ORDERED**, that the term of the organization license shall include 10 days of live racing.

3. **IT IS FURTHER ORDERED**, that this horse fair meet organization license shall terminate upon the conclusion of the 10-day horse fair live race meeting. In no event shall this organization license extend beyond December 31, 2009.

4. **IT IS FURTHER ORDERED**, in the event that the licensees are forced to cancel one (1) or more days of live racing due to inclement weather, the licensees, upon obtaining prior approval from the executive director or his designee, may be permitted to make up one (1) day of live racing on a day to be determined.

5. **IT IS FURTHER ORDERED**, that this license shall be subject to the authority of the Commission to review, modify, impose further conditions, or, in an appropriate case, suspend or revoke the license in accordance with the Kansas parimutuel racing act, K.S.A. 74-8801, *et seq.*

6. **IT IS FURTHER ORDERED**, pursuant to K.A.R. 112-17-1(e)(1) that the application fee in the amount of \$50.00 shall be paid to the Commission no later than May 1, 2009.

7. **IT IS FURTHER ORDERED**, pursuant to K.S.A. 74-8814(a) and K.A.R. 112-17-1(e) and (f), that the Commission hereby establishes the license fee for 10 days of live racing with parimutuel wagering at the sum of \$1,000.

8. **IT IS FURTHER ORDERED**, that the foregoing license fees shall be paid to the Commission within 100 days no later than May 25, 2009 after the granting of the co-applicants' horse fair meet organization license.

9. **IT IS FURTHER ORDERED**, that all breakage shall be distributed no later than the 15th day of the month following the race from which the breakage is derived (no later than June 15, July 15, and August 17, 2009, respectively).

10. **IT IS FURTHER ORDERED**, that the licensees retain all unclaimed ticket proceeds from parimutuel wagering on live horse races and remit to the Commission no earlier or later than September 3, 2009.

11. **IT IS FURTHER ORDERED**, that the tax on parimutuel wagering shall be remitted to the Commission by the licensees by the next business day following the day on which wagers took place.

12. **IT IS FURTHER ORDERED**, that each, every, and all of the representations, promises, covenants, assurances, and every other term and condition set forth in the co-applicants' racing applications described herein and any amendments or additions thereto and any other representations made by the co-applicants, either in writing or orally at the Commission meetings at which these applications have been under consideration, are hereby made a part of this conditional license order.

13. **IT IS FURTHER ORDERED**, that post times for live race days shall be at 1:30 p.m.

14. **IT IS FURTHER ORDERED**, that there shall be a minimum of seven (7) live horse races per day with a minimum of five (5) wagering interests per race.

15. **IT IS FURTHER ORDERED**, that Commission approval shall be obtained for any change in race dates or substantial changes in post times.

16. **IT IS FURTHER ORDERED**, that the co-applicants' organization license is conditioned upon the co-applicants forwarding the following information and documentation to the Commission's offices by the date specified, unless extended by the Commission for good cause:

A. A copy of each contract and agreement which the co-applicants propose to enter into, and any proposed modification of any such contract or agreement, is to be submitted by May 8, 2009, including but not limited to those involving:

- (1) any person to be employed by the co-applicants;
  - (2) any person supplying goods and services to the co-applicants, including management, consulting, or other professional services;
  - (3) any lease of facilities, including real estate or equipment or any other personal property; or
  - (4) the operation of any concession within or adjacent to the racetrack facility;
- B. proof of insurance, to include workers' compensation, jockey insurance, public liability, and directors' and officers' liability;
- C. co-applicants shall make daily bank deposits and shall provide proof of an irrevocable letter of credit or surety bond from a financial institution to be approved by the Commission in the minimum amount of \$80,769 to be sufficient to pay the licensees' potential liability for unpaid taxes, purses, and distribution of parimutuel winnings and breakage pursuant to K.S.A. 74-8813(e);
- D. provide the names of and obtain Commission approval of all management personnel, racing officials, backup officials, and volunteers prior to the same undertaking any official functions or duties;
- E. the management committee contemplated under the joint application must designate one of their members to act as liaison between the management committee and the Commission;
- F. co-applicants shall designate a horsemen's bookkeeper and bookkeeping system subject to approval by the Commission's designee;

G. co-applicants shall forward to the Commission copies of all pleadings and documents filed in any court with respect to litigation involving the co-applicants;

H. co-applicants shall obtain the Commission's Director of Racing's approval of the track surface prior to the opening of the live horse race meet and submit a written plan delineating what will be done to improve the track surface, including projected costs, amounts of materials to be used, and a description of the work to be done;

I. co-applicants shall obtain the Commission's Director of Racing's approval of the starting gates prior to the opening of the live horse race meet;

J. a full test of all racing operation systems and equipment, to ensure that all such systems and equipment are fully operational to the satisfaction of the Commission stewards and auditor, shall be conducted prior to the beginning of live racing on May 25, 2009;

K. a test of all phone lines, radios, and speakers shall be conducted at least one (1) week prior to the beginning of live racing;

L. the tote room at the facility shall be maintained by one (1) tote operator from Am Tote during all hours parimutuel wagering activity is occurring;

M. co-applicants shall maintain in the tote room the minimum number of phone lines specified by Am Tote, including a backup line;

N. co-applicants shall adequately maintain records sufficient to determine the number of free admissions to the racetrack facility for the Commission's auditors to determine the appropriate amount of admissions tax due and payable resulting from such free admissions;

O. co-applicants shall provide specifics with respect to what promotional activities will be undertaken by the co-applicants;

P. any condition book, which shall include an equal number of scheduled to run Quarterhorse and Thoroughbred races whereby reflecting an equal distribution of purses, funded from the funds allocated in accordance with K.S.A 74-8836(g)(4), among each respective breed, shall be reviewed and approved by the Commission prior to the publication of same. Such condition book shall contain a clear depiction of the amount of entry fees charged, the purpose of such entry fees and a matrix outlining all possible purse payout variations;

Q. the distribution of purses with 55 percent, 20 percent, 15 percent, and 10 percent going to the first through fourth place finishers shall not be changed without further order from the Commission. No more than an amount equal to 75% of the entry fee being paid out as purses to the fifth through last place finishers shall be funded from the funds allocated in accordance with K.S.A 74-8836(g)(4);

R. co-applicants have submitted to the executive director for approval a wagering format specifically delineating the types of wagers to be accepted on live horse races as well as the take out structure relating thereto;

S. any organization formed by or contracted with to provide concessions at Eureka Downs shall obtain a concessionaire license pursuant to K.S.A. 74-8817 prior to the commencement of any sales at the Eureka Downs racing facility;

T. any organization providing racing and wagering equipment or services at Eureka Downs shall obtain a racing and wagering equipment or services license pursuant to K.S.A. 74-8837 prior to the commencement of any sales at the Eureka Downs racing facility;

U. KQHRA board members or officers and members of the Eureka Downs management team who are Commission-licensed owners or trainers may not serve in any capacity as race officials or mutuel employees;

V. the following dates are hereby established for the Eureka Downs 2009 horse fair race meet:

**(1) May 25, 30; June 6, 13, 14, 20, 21, 27, 28; and July 4, 2009; and**

effective at noon on May 22, 2009, no one shall be permitted on the backside or in any other restricted area unless they are properly licensed;

W. an individual shall be designated as "stall manager" who shall be the liaison between Eureka Downs management and the board of stewards;

X. co-applicants shall ensure that the air conditioning climate control in the stewards' tower operates in such a manner as to not interfere with the operation of the computerized video photo finish system;

Y. co-applicants shall identify all volunteers working the racing facility and specify what role or function such volunteer is to fulfill. Any such volunteers having access to restricted areas of the racing facility shall be required to obtain an occupation license in the same manner as a paid employee;

Z. co-applicants shall maintain logs for all restricted areas within the racetrack facility that show the name, date, time of entry of any person entering such restricted area, and a brief statement of the purpose for which such person is accessing such restricted area;

AA. no KQHRA board member shall be permitted to serve on the association's board of directors until such director has submitted to a background and been approved by the Commission to serve on the association's board; and

BB. without exception, all horse entries shall be signed prior to a horse racing by the horse's licensed trainer, or such trainer's licensed authorized agent, as previously designated on an official Commission authorized agent form on file in the Commission's licensing office.

17. **IT IS FURTHER ORDERED**, that the co-applicants' organization license is further conditioned upon the co-applicants completing the following:

A. Background investigations on each officer and each director of KQHRA as required by K.S.A. 74-8814(c)(2);

B. background investigations on the president, vice-president, secretary, and treasurer of GCFA as required by K.S.A. 74-8814(c)(1);

C. background investigations on such other members or shareholders of KQHRA and GCFA that the Commission considers necessary to determine eligibility for an organization license [K.S.A. 74-8814(c)(1) and (2)]; and

D. the filing of background disclosure forms with the Commission on the following individuals:

( 1) Board of Directors of:

(a) the organization licensee;

(b) the facility owner licensee;

(c) the facility manager licensee;

( 2) officers of fair associations seeking organizational licenses;

( 3) board of directors/officers of nonprofit horsemen's organizations seeking organizational licenses;

( 4) chief executive officer of organizational/facility licensee;

- ( 5) general manager;
- ( 6) assistant general manager;
- ( 7) horse racetrack official;
- ( 8) backup horse racetrack official;
- ( 9) director of security or any assistant;
- (10) money room manager and mutuel manager;
- (11) concession manager/operator; and
- (12) any other position designated for good cause by the Commission;

and an affirmative finding by the Commission that such background investigations and disclosures do not reveal any disqualifying information.

18. **IT IS FURTHER ORDERED**, that pursuant to K.A.R. 112-17-15, the grant to Eureka Downs shall be payable by the Commission on a weekly basis, as reimbursement for purses allowed under K.A.R. 112-17-15, upon receipt of supporting documentation. Prepayment of purses shall be in the amount of the surety bond, not to exceed \$80,769. The grant award is in the amount of money from the Horse Purse Fund, with \$562,120.50 from the fund to be used for horse purses. Any profit as a result of the operation of horse meet shall be used to retire Eureka Downs current debt, enhance purses or be used to refund entry fees on a prorated basis.

19. **IT IS FURTHER ORDERED**, that in accordance with K.A.R. 112-17-14, the Commission makes some of the requested exceptions to its rules and regulations for the 2009 Eureka Downs horse fair race meet for the purpose of simplifying procedures and reducing costs during the 10-day Eureka Downs horse fair race meet as follows; not all requests for waivers were granted:

- A. The Commission grants an exception from the requirement of K.A.R. 112-11-14(a), which requires that ambulance service be available on site during any training

period. This exception is granted by the Commission for the 2009 race meet based upon co-applicants' representations that the response time for local ambulance service on non-race days is an average of five (5) minutes;

B. the Commission grants an exception from the requirement of K.A.R. 112-11-14(g), which requires a first aid station at the facility staffed by an emergency medical technician and equipped with medical equipment and supplies required in a type II ambulance. This exception is granted by the Commission for the 2009 racing season based on the co-applicants' representations that there will be an emergency medical technician on the racetrack grounds associated with the ambulance and that medical equipment as required by the Commission's director of security will be present in the first aid office at the track;

C. the Commission grants an exception from the requirement of K.A.R. 112-11-14(d), which requires the co-applicants to provide a staffed horse ambulance each day horses are on the racetrack provided, however, that during official works training periods and on all live race days a staffed horse ambulance shall be present at the racetrack facility and further provided, however, that the co-applicants shall provide to the Commission a written explanation of the chain of events to be followed in the event a horse break down occurs at a time when the horse race ambulance is not staffed;

D. the Commission grants an exception from the requirement of K.A.R. 112-7-23(d), which provides that any horse that has not raced in 45 days shall not start any race before it completes one (1) workout and a horse that has not raced in 12 months shall not race before it completes two (2) workouts. For purposes of the Eureka Downs horse race meet, the number of days specified in K.A.R. 112-7-23(d) shall be changed from 45 days to 60 days. Additionally, the number of workouts shall be reduced from two (2) workouts for

a horse which has never raced or has not raced in the last 12 months to one (1) workout provided, however, that the stewards or animal health officers shall have discretion to require additional workouts;

E. the Commission grants an exception from the requirement of K.A.R. 112-7-6, which prohibits persons from entering or starting a race if an ownership transfer for a horse is being forwarded to a breed registry. The Commission approves waiver of this regulation so long as there is prior approval by the stewards;

F. the Commission grants the waiver of the requirement of K.A.R. 112-7-14(2), which provides that penalties and sex allowances shall be obligatory. Each horse shall not enter or start a race with less than 102 pounds unless the race is handicap or stakes. The Commission approves this exception to permit the trainers to waive sex allowances at the time of entry;

G. the Commission grants the waiver of the requirement of K.A.R. 112-7-18(e), which states that without permission of the owner or trainer, no jockey shall weigh out if the jockey weighs more than two (2) pounds over the weight assigned to the horse. Under no circumstances shall the margin over the weight limit exceed seven (7) pounds. The Commission approves this exception to allow a change in the weight allowance upon full and united agreement of the following persons: Commission staff, Commission stewards, and Eureka Downs' General Manager and Racing Secretary;

H. the Commission grants an exception from the requirement of K.A.R. 112-7-6(a)(3), which provides that no person shall enter or start a horse in a race unless the horse is in the care of a licensed trainer and owned by an owner licensed by scratch time, except that for the first ten (10) days of a race meeting or for stakes races, an owner must be

licensed by one (1) hour before first post on the day of the race. The Commission hereby orders that for entries into any horse race to be conducted at Eureka Downs, entries may be accepted by the Racing Office from unlicensed trainers provided that such trainer has, prior to making such an entry, faxed to the Commission Licensing Office at Eureka Downs or the Racing Office at Eureka Downs an application for licensure and thereafter fulfilled all requirements for the licensure prior to 11:00 a.m. on the date of the race. For the duration of the 2009 Eureka Downs horse race meet, all owners must be licensed by one (1) hour before first post on the day of the race. For all stakes races to be run at Eureka Downs, entries may be accepted by the Racing Office from unlicensed trainers provided that such trainer has, prior to making such an entry, faxed to the Commission Licensing Office at Eureka Downs or the Racing Office at Eureka Downs an application for licensure and thereafter fulfilled all requirements for licensure prior to 11:00 a.m. on the day of the race. All other provisions of K.A.R. 112-7-6 remain in full force and effect;

I. the Commission grants an exception from the requirement of K.A.R. 112-4-1(l), which requires that an occupational licensee be at least sixteen (16) years of age, for the limited purpose of allowing valets and runners (with prior steward approval) to be licensed at fourteen (14) or fifteen (15) years of age;

J. the Commission grants an exception from the requirement of K.A.R. 112-11-4(a), which requires that all officers be required to attend a basic security course;

K. the Commission grants an exception from the requirement of K.A.R. 112-11-5(a), which requires 20 hours of continuing education for all security officers;

L. the Commission grants an exception from the requirement of K.A.R. 112-7-8(b), which requires that no owner or trainer enter more than two horses in an overnight race; and

M. the Commission denies a waiver of K.A.R. 112-11-20(f)(3), which requires 24 hour security for the compound enclosure provided by the organization licensee during the official racing season.

N. the Commission grants an exception from the requirement of K.A.R. 112-17-5(a), which requires financial projections for each of the first and the next three racing years.

O. the Commission grants an exception from following the requirements in K.A.R. 112-112-1, *et. seq.*, which establish a responsible gaming program primarily for lottery gaming and racetrack gaming facilities.

20. **IT IS FURTHER ORDERED**, that occupation licenses shall be required for all persons, paid or volunteer, working at the Eureka Downs fair meet and the requirements of K.A.R. 112-4-1, *et seq.*, shall be enforced together with the occupation license guidelines approved by the Commission for the Eureka Downs fair meet. The Commission hereby grants a waiver of fingerprint requirements for persons working at Eureka Downs who are issued a county fair license, including concession employees working for *Copper Kettle Restaurant*, during the 2009 racemeet who are not required to undergo a background investigation.

21. **IT IS FURTHER ORDERED**, that if co-applicants accept this conditional organization license, they shall agree to be subject to all of the provisions of the Kansas parimutuel racing act and all of the Commission rules and regulations previously or hereafter promulgated by the Commission except for those rules and regulations to which the licensees have been expressly granted exceptions as explicitly set forth herein. By accepting this conditional organization license,

GCFA and KQHRA certify that they will operate and conduct horse racing, with parimutuel wagering thereon, as provided in the Kansas constitution. Failure to abide by or fulfill the conditions of this conditional organization license shall, in addition to any other legal reason, constitute just cause for the suspension or revocation of the organization license granted to GCFA and KQHRA or the imposition of any other legally permitted penalty against said license.

22. **IT IS FURTHER ORDERED**, that GCFA and KQHRA shall immediately file all amendments or modifications to their application, including current copies of any documents which support such modification, as required by the terms of this order.

23. **IT IS SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**IT IS SO ORDERED.**

**KANSAS RACING AND GAMING COMMISSION**

**CAROL H. SADER, Chair**

By: \_\_\_\_\_  
Stephen L. Martino  
Executive Director

The attached **Order Granting 2009 Conditional Organization License** is hereby accepted  
this \_\_\_ day of \_\_\_\_\_, 2009 by the Greenwood County Fair Association.

By: \_\_\_\_\_  
Paul Hendrickson, President  
Greenwood County Fair Association

DRAFT 04-07-09

The attached **Order Granting 2009 Conditional Organization License** is hereby accepted  
this \_\_\_ day of \_\_\_\_\_, 2009 by the Kansas Quarter Horse Racing Association.

By: \_\_\_\_\_  
Robert Rodgers, President  
Kansas Quarter Horse Racing Association

DRAFT 04-07-09

## **JUDICIAL REVIEW**

Pursuant to K.S.A. 74-8813(v), any action for judicial review of this order shall be by appeal to the supreme court in accordance with the act for judicial review and civil enforcement of agency actions, except that the scope of review shall be limited to whether the action of the Commission was arbitrary or capricious or constituted abuse of discretion. Any such appeal shall have priority over other cases except those having statutory priority.

DRAFT 04-07-09

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing **ORDER GRANTING 2009**  
**CONDITIONAL ORGANIZATION LICENSE** was served, via United States Mail, first-class postage  
prepaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2009, to the following:

Robert Rodgers, President  
Kansas Quarter Horse Racing Association  
9237 N. West Rd.  
Hesston, KS 67062

Garry Stwalley, Vice-President  
Kansas Quarter Horse Racing Association  
1583 E. 293rd Street  
Lyndon, KS 66451

Fred Puthoff, Treasurer  
Kansas Quarter Horse Racing Association  
3650 S. 119th Street West  
Wichita, KS 67215

Albert Hogoboom  
Kansas Quarter Horse Racing Association  
767 Oil Hill Road  
El Dorado, KS 67042

Paul Hendrickson, President  
Greenwood County Fair Association  
326 Mission Rd.  
Eureka, KS 67045

Hurley Breech, Vice-President  
Greenwood County Fair Association  
1153 140th Street  
Eureka, KS 67045

Jeff Davidson, Secretary/Treasurer  
Greenwood County Fair Association  
1681 K99 Highway  
Eureka, KS 67045

Rita Osborn  
General Manager  
Eureka Downs  
314 N. Mulberry  
Eureka, KS 67045

and a copy hand delivered to:

Patrick D. Martin  
Assistant Attorney General  
Kansas Racing and Gaming Commission  
700 SW Harrison, Suite 500  
Topeka, KS 66603-3754

\_\_\_\_\_  
Commission representative

*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **The Anthony Fair Association d/b/a Anthony Downs application for an organizational license to conduct horse and greyhound racing.**

**PRESENTER:** Charles LaBoy, Director of Audit and Electronic Security  
AFA Representative

**ISSUE SUMMARY:** The Anthony Fair Association has submitted a application for a organizational license to conduct six days of live horse and greyhound racing in Anthony, KS in 2009 on the following dates: July 10, 11, 12, 17, 18 and 19. See K.S.A 74-8813, 74-8814, K.A.R 112-17-1 *et seq.*

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review, discussion and direction of staff to draft an organizational license order for the Anthony Fair Association d/b/a Anthony Downs' 2009 horse and greyhound meet for Commission review and final action at the next Commission meeting.

**STAFF RECOMMENDATIONS:** Staff has reviewed the application and recommends that the noncompliant issues be reconciled with the Anthony Fair Association and outlined in the organizational license order.

**ALBRIGHT & GAFFNEY, CHARTERED**

A Legal Services Professional Corporation

March 12, 2008

JOHN M. GAFFNEY

RONALD D. ALBRIGHT  
(1921-2005)

123 N. Bluff - P.O. Box 334  
Anthony, Kansas 67003  
Telephone 620-842-5357  
Fax 620-842-3792

Mr. Stephen L. Martino, Executive Director  
Kansas Racing and Gaming Commission  
Dwight D. Eisenhower State Office Building  
700 SW Harrison, Suite 420  
Topeka, Kansas 66603

Re: The Anthony Fair Association  
2008 Parimutuel Application

Dear Mr. Martino:

Enclosed are the original and ten conformed copies of the Association's parimutuel application for 2008, together with the check for the \$50 application fee.

The Association is seeking approval of the following 2008 race dates: July 11, 12, 13, 18, 19 and 20.

The Association is requesting approval of all of the regulation exceptions approved in prior years.

Let me know if you have any questions or need any further information. Also, let me know when you want representatives from the Association to appear before the Commission.

Very truly yours,

  
John M. Gaffney

JMG:mk

pc: Dan Bird, Association President

**KANSAS RACING COMMISSION**

**AFFIDAVIT AND WAIVER**

**BY**

**COUNTY FAIR ASSOCIATION OR HORSEMEN'S  
NONPROFIT ORGANIZATION APPLICANT**

STATE OF KANSAS, HARPER COUNTY, ss:

Daniel M. Bird, President of The Anthony Fair Association, duly sworn, states:

1. Applicant, The Anthony Fair Association, seeks the granting of a privilege from the state of Kansas and acknowledges the burden of proving this applicant's qualifications rests at all times with the applicant.

2. Applicant has filed herewith its completed application for an organization license, consisting of responses to the application and attachments thereto.

3. Applicant acknowledges any license which may be granted to applicant is predicated upon the information contained in this verified application. For any material false or misleading statement or answer in an application, the application may be rejected, or if a license has already been granted, the licensee may be fined or such license may be suspended or revoked or any combination thereof.

4. Applicant verifies that no director, officer, employee or agent of the applicant has been convicted of any of the following in any court of any state or of the United States, or has been adjudicated in the last five years in any court of committing as a juvenile an act which, if committed by an adult, would constitute any of the following: (a) fixing of horse or greyhound races; (b) illegal gambling activity; (c) illegal sale or possession of any controlled substance; (d) operation of any illegal business; (e) repeated acts of violence; or (f) any felony.

5. Applicant verifies that no director or officer of the applicant is addicted to and a user of alcohol or a controlled substance.

6. The undersigned, as the agent of applicant, its officers, directors, shareholders and operating personnel, accepts any risk of adverse public notice, embarrassment, criticism or other circumstance, including financial loss, which may result from action with respect to this application and expressly waives any claim which may otherwise be brought against the Kansas racing

commission, its members and staff and the state of Kansas on behalf of applicant, its officers, directors, shareholders and operating personnel from action by the Kansas racing commission with respect to this application and expressly waives and claim for damages as a result.

7. Affiant has read the enclosed 2008 application, and the attachments thereto, and knows the contents thereof, and the same is true as to his own knowledge, information and belief, and as to those matters he believes them to be true.

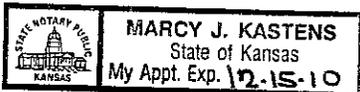
The Anthony Fair Association

by Daniel M. Bird  
Applicant

Daniel M. Bird  
Name of Authorized Officer

President  
Title

Subscribed and sworn to before me this March 12, 2008.



Marcy J. Kastens  
State Notary Public

My Appointment expires: 12-15-10

TABLE OF CONTENTS  
(by page number)

SECTION I. ORGANIZATION INFORMATION . . . . . 1

SECTION II. SITE AND PHYSICAL PLANT . . . . . 4

SECTION III. FINANCES . . . . . 9

SECTION IV. GOVERNMENTAL ACTIONS . . . . . 12

SECTION V. DEVELOPMENT PROCESS . . . . . 13

SECTION VI. MANAGEMENT . . . . . 16

SECTION VII. REQUESTED EXCEPTIONS . . . . . 25

ATTACHMENTS . . . . . A-1 to A-9

ACCOUNTANTS REPORT AND FINANCIAL PROJECTIONS . . . . . 22 pages

I. ORGANIZATION INFORMATION  
COUNTY FAIR ASSOCIATION OR HORSEMAN'S  
NONPROFIT APPLICANT

Each county fair association or horsemen's nonprofit organization applicant shall provide the following information:

a. The Anthony Fair Association

full name of applicant

Post Office Box 444

business address

<u>Anthony</u>	<u>KS</u>	<u>67003</u>	<u>(620) 842-5989</u>
city	state	zip	telephone

1904

year of organization

- b. This application shall contain a certified copy of the applicant's current articles of incorporation, bylaws, rules and regulations or any other agreements or documents that create or govern the applicant's organization. This certified copy shall be included in the attachments to this application. Also, any amendments to the documents shall be filed immediately with the commission, so that, at all times, a current copy of the applicant's organization documents will be recorded in the commission office.

**Applicant specifically requests an exception and waiver from K.A.R. 112-17-2(a)(1)(D), which relates to this paragraph. See Section VII. The same exception and waiver has been approved since 1996.**

- c. The applicant shall provide a statement of good standing from the secretary of state. This statement shall be included in the attachments to this application.

**See attachment A-1.**

- d. This application shall include the full names, including any aliases or previous names, dates of birth and addresses of the applicant's officers. As to each officer, the applicant shall disclose the nature and extent of any voting interest in the applicant. The applicant also shall state the full names, including any aliases or previous names, dates of birth and addresses of any shareholder or member with an interest of three percent or more in the applicant. As to each member or

shareholder, the applicant shall disclose the nature and extent of voting interest in the applicant.

Daniel M. Bird, also known as Dan Bird, President, d/o/b, 07-25-39, 702 N Springfield, Anthony, KS 67003, one share of stock (0.33% voting interest);

Allen Thomas, Vice President, d/o/b, 08-13-51, 620 N Springfield, Anthony, KS 67003, one share of stock (0.33% voting interest);

Connie Shellhammer, Secretary, d/o/b/, 10-15-55, 998 SE 10 Avenue, Anthony, KS 67003, one share of stock (0.33% voting interest); and

Melvin E. Kitts, also known as Mel Kitts, Treasurer, d/o/b, 11-02-49, PO Box 444, Anthony, KS 67003, one share of stock (0.33% voting interest).

No shareholder owns or controls an interest of three percent or more in the applicant.

e. Was applicant organized within the past five years? No  
yes/no  
("If yes", response requests deleted)

f. State whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant shall disclose the identity of the controlling entity and a description of the nature and extent of control.

**The applicant is not directly or indirectly controlled to any extent or in any manner by another individual or entity.**

g. Provide one copy of each contract and agreement that the applicant has executed or proposes to execute and any modification or proposed modification of each contract or agreement. If the contract or agreement is an oral one, a written statement explaining the substance of the oral agreement shall be included. These copies shall be included in the attachments to this application.

**Applicant has no current contract commitments except United Tote.**

- h. State whether the applicant, or any director, officer, policy-making manager, principal shareholder or principal member owns or has owned any interest in any racing-associated or gambling-associated firm, partnership, association or corporation licensed by a governmental authority. If so, a description of the circumstances surrounding the interest or participation shall be provided, including the identity of the license or permit holder, the nature of the license or permit, the identity of the issuing authority and the dates of the issuance and any termination of the license or permit.

**Neither the applicant, nor any director, officer, policy-making manager, principal shareholder or principal member owns or has owned any interest in any racing-associated or gambling-associated firm, partnership, association or corporation licensed by a governmental authority.**

- i. Is there any pending legal proceeding to which the applicant or any subsidiary or related organization is a party? No  
yes/no

**("If yes", response requests deleted)**

**Also, there is no pending legal proceeding involving the property of applicant, any subsidiary or related organization.**

- j. State whether the applicant, any officer, any director, any principal shareholder or any principal member has complied with and is in compliance with K.S.A. 74-8810, as amended.

**The applicant and its officers and directors have complied with and are in compliance with K.S.A. 74-8810. The applicant has no principal shareholders or members.**

- k. Any entity or individual identified for investigation in commission regulations or found to be material to the racing program shall submit to a background investigation conducted by the director of security, director of the Kansas Bureau of Investigation or other person designated by the commission. Each individual or entity so identified shall execute and verify a personal background disclosure form provided by the commission. Those individuals who are required to execute and verify a personal background disclosure form provided by the commission. Those individuals who are required to execute and verify personal background disclosure forms include the president, vice-president, secretary and treasurer of a county fair association and each officer and each director of a horsemen's nonprofit organization. The forms shall be assembled and filed as outlined in the instructions for applicants.



the finish line are approximately concurrent. There are 12 rows of bleacher bench seats.

The concessions are located 30 feet behind the grandstand in the West end of the new administration building. There are no clubs or special facilities.

Rest rooms are located 30 feet behind the grandstand and have the following facilities: Women's rest room - three stalls; Mens' rest room - two stalls and one urinal. Port-A-Potties will be rented as needed.

There are no drinking fountains. Free drinking water is available near the concession stand, at a water cooler, with free cups.

e. State the racetrack dimensions by circumference, width, banking, location of starting gates or boxes, length of stretch, and type of surface, as well as a description of equipment that will be used to maintain the track surface. If the applicant proposes more than one racetrack, the applicant shall provide the details for each.

1. The circumference: horse track 2640 feet, dog track 1342 feet;
2. the width: horse track 50 feet, dog track 20 feet with 2 to 4 feet apron;
3. the banking: horse track 6%, dog track 15% (1.75" per foot);
4. the location of the starting gates or the starting boxes: The horse track starting gate can be placed in either of the two chutes located at the Southwest and Northeast corners of the track; in addition, there is a gate location on the North side of the track. This allows racing distances of 250 yards, 2.5 furlongs, 3 furlongs, 4.5 furlongs, 5 furlongs, 5.5 furlongs, 6 furlongs, 6.5 furlongs, and 7 furlongs. Longer distances can be attained by running additional laps around the track (starting gate distance plus 4 furlongs); and

The starting box for the dog track is not mobile and is 233 feet from the finish line, with a total race distance of 1575 feet;

5. the length of the stretch: horse track 500 feet, dog track 110 feet;
  6. the distance between the finish line and the first turn: horse track 165 feet, dog track 170 feet;
  7. the type of track surface: horse track is sandy loam from native soils, dog track is fine finish (Chicaskia River) sand; and
  8. the maintenance equipment for both racing surfaces: water truck to wet surface, and tractor with packer or drag harrow to smooth and even surface.
- f. For horse racetracks, describe the horse stalls, including the dimensions, separation, location and total number of stalls.

There are six horse barns located East of the track. There are a total of 110 individual stalls of wooden/timber construction. The stall size varies from barn to barn, but is at least 10 feet by 10 feet. The stalls are separated by wooden/timber partitions.

- g. For greyhound racetracks, describe the facilities to accommodate greyhounds, including the location, number, method of construction and size of crates, as well as the location, size and number of any turnout pens.

The greyhound enclosure is located West of the grandstand, and is 30 feet by 40 feet. There is no kennel building. The greyhound enclosure is an insulated pole shed with a tin roof and a cement slab floor, and it is enclosed on the North and West sides. A Misty Mate fan is used to cool the dogs participating in each day's races. There are 64 portable dog crates of standard metal construction and dimensions, with removable wooden floors. There is no dog paddock. The public views the dogs being blanketed for each race through the enclosure fence. There are no turn out pens or sprint paths. There is an exercise area West of the enclosure. There is a cooling out area South of the enclosure, with water hydrant and wash rack.

- h. Describe the testing facilities.

The horse test barn is located 40 feet East of the paddock, and has two sampling stalls currently used by the KRGK staff. There is a small building for supplies and equipment adjacent to the test barn, and a water hydrant outside the test barn.

There is no dog testing facility. The dogs are tested under the greyhound enclosure.

- I. For horse racetracks, describe the jockeys' or drivers' quarters, including the changing areas and a list of any equipment to be located in the quarters.

There are no jockeys' quarters. When not riding, the male jockeys stay in a small air-conditioned, shed-roofed enclosure at the paddock area, and the female jockeys stay in an air-conditioned 20 foot travel trailer, parked behind the paddock. A port-a-potty is located outside the paddock.

- j. If wagering is to be conducted, describe the totalizator system, including the approximate location of better's windows, the money room, totalizator equipment and, if known, the identity of the totalizator provider.

Prior to the 1993 race meet, applicant built a prefabricated metal building that houses all administrative and tote system functions. This building houses the money room, tote equipment room and 24 betting windows. This building is located about 40 feet from the Southeast corner of the grandstand. United Tote provides tote services with its "Horizon System", including a 12 feet by 48 feet portable tote board.

- k. Describe the parking, including the road surface on the parking areas, the distance between parking and the grandstand, the access to parking from surrounding streets and highways and the number of public and other parking spaces available.

The parking may be accessed from Madison Avenue, Sherman Street, or Garfield Street. Garfield Street may be accessed from Highway 2 and Madison Avenue may be accessed from Highway 44. The parking area is about eleven acres of unmarked parking spaces, and will easily accommodate 1,500 vehicles. The parking surface is grass and the parking roadways are

dirt/sand. The parking area is approximately 30 feet from the entrance gates and another 30 feet to the grandstand.

1. Describe any improvements and equipment to be used for security, fire and safety purposes, including the identity of the provider of the equipment, if known.

The Anthony Chief of Police, John Blevins, is applicant's director of security. Chief Blevins arranges for local sheriff's deputies and police officers to provide security for the races. Chief Blevins and the security officers are hourly, at-will employees, without contracts. They supply their own equipment and radios. Back up is available from the Harper County Sheriff's Office and the Anthony Police Department.

The Anthony Fire Department back-up equipment is available at the fire station 12 blocks away.

The Harper County Emergency Medical Service keeps at least one ambulance at the track, with two EMTs, and back-up equipment is available at the Anthony Hospital 8 blocks away.

- m. Describe the starting, timing, video replay and photo finish equipment, including the provider of the equipment, if known.

Applicant provides its own eight horse starting gate and eight dog starting box. Applicant will contract for horse starting services and for greyhound starting services.

Applicant will contract with Gene Wilson and Associates to provide video replay equipment and personnel. One camera is located on top of the grandstand. At extra cost, another camera and operator provide home stretch head-on video.

Applicant will contract with Gene Wilson and Associates to provide the timing and photo finish equipment and personnel. The equipment provided is an automatic camera, with instant development and a wire relay to the horse gate and dog box.

- n. Describe the work areas to be used by the commission, its employees and agents.

The building described at section II.j. above houses the commission work area. The office is 20 feet by 24 feet and is furnished with folding tables and chairs provided by applicant.

### III. FINANCES

Each application for a county fair association or horsemen's nonprofit organization license shall provide the following information:

- a. Attached to this application is a financial statement that reflects the applicant's current assets, including investments, loans and advances receivable, and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity.

**See six page Report of Accountants (last section of this application).**

- b. State financial projections for each of the first and the next three racing years, with separate schedules based upon the number of racing days and types of parimutuel wagers the applicant requires to break even and the optimum number of racing days and types of wagers applicant requests for each year.

**See eight page 2008 and eight page 2009 - 2010 Projected Financial Statements (last section of this application).**

- c. State the following assumptions:

1. average daily attendance;
2. average daily per capita handle and average wager;
3. retainage;
4. admissions to the racetrack, including paid and free admissions;
5. parking volume, fees and other revenues;
6. concessions and program sales;
7. purses;
8. parimutuel expense;
9. breed funds;
10. payroll including reimbursement to the commission as authorized by the act;
11. operating supplies and services;
12. utilities;
13. repairs and maintenance;
14. insurance;
15. membership expense;
16. security expense;
17. legal and audit expense;
18. debt service; and
19. reimbursement from county fair horse racing benefit fund.

**See first four pages of both 2008 and 2008 - 2010 Projected Financial Statements (last section of this application).**

- d. State the following projected profit and loss elements:
1. total revenue, including projected revenues from retainage and breakage, admissions, parking, concessions, program operations, and the county fair horse racing benefit fund;
  2. total operating expenses, including projected anticipated expenses for the following:
    - A. purses, including those from county fair horse racing benefit fund;
    - B. parimutuel;
    - C. state and local taxes;
    - D. breed funds;
    - E. cost of concession goods and programs;
    - F. advertising and promotion;
    - G. payroll;
    - H. operating supplies and service;
    - I. maintenance and repairs;
    - J. security;
    - K. legal and audit; and
    - L. background investigations.
  3. nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of the method used, and equipment depreciation and identification of the method used.

**See page 6 of both 2008 and 2008 - 2010 Projected Financial Statements (last section of this application).**

- e. State the projected cash flow, including an assessment of:
1. income, including equity contributions, debt contributions, interest income, operating revenue, and revenues from the county fair horse racing benefit fund; and
  2. disbursements, including land, improvements, equipment, debt service, operating expense and organizational expense.

**See pages 7 and 8 of both 2008 and 2008 - 2010 Projected Financial Statements (last section of this application).**

- f. Attach to this application copies of the projected balance sheets as of the end of any development period and the first and the next three racing years setting forth current, fixed and other noncurrent assets, current and long-term liabilities, and capital accounts.

**See page 5 of both 2008 and 2008 - 2010 Projected Financial Statements (last section of this application).**

IV. GOVERNMENTAL ACTIONS

Each application for a county fair association or horsemen's nonprofit organization license in which the applicant proposes to own or to construct a racetrack facility shall provide the following information:

- a. Is the applicant required to secure any governmental approval for the ownership, operation or development of the racetrack facility.  
yes \_\_\_\_\_ no  X

**("If yes" response requests deleted)**

- b. State whether the racetrack facility complies with all statutes, charter provisions, ordinances and regulations pertaining to the ownership, operation and development of a racetrack facility. If not in compliance, the applicant shall state the reasons why it is not.

**The racetrack facility complies with all statutes, charter provisions, ordinances and regulations pertaining to the ownership, operation and development of a racetrack facility.**

- c. Has a majority of qualified electors in the county named above approved either:
1.  X  \_\_\_\_\_ the constitutional amendment permitting the  
yes no conduct of horse and greyhound races and  
parimutuel wagering; or
  2. \_\_\_\_\_ \_\_\_\_\_ a proposition permitting horse or greyhound  
yes no wagering within the county boundaries.

V. DEVELOPMENT PROCESS

Each application for a county fair association or horsemen's nonprofit organization license in which the applicant proposes to construct a racetrack facility or to improve an existing racetrack facility shall contain the following information:

- a. State the total costs of construction of the facility, distinguishing between fixed costs and projections.

**The total cost of improvements and repairs to applicant's existing facility for the 2008 race meet is projected to be no more than \$10,000 for general repairs to the grounds and facilities.**

- b. Individually identify the following costs, distinguishing between fixed costs and projections:

1. facility design; **None.**
2. land acquisition; **None.**
3. site preparation; **None.**
4. improvements and equipment, individually identifying the costs of the items listed in subparagraphs (e) through (n) of K.A.R. 112-17-3 and other categories of improvements and equipment;

**Projected costs for the facility improvements and equipment: see section V.a. above.**

5. interim financing; **(see below)**
6. permanent financing; **(see below)** and
7. organization, administrative, accounting and legal services. **(see below)**

**Neither interim nor permanent financing for improvements will be possible in 2008, because operating margins will not be adequate to satisfy the cost of financing.**

**Applicant sought a basic operating assistance grant of forty percent (40%) for 2008 from the county fair horse racing benefit fund, and applicant will use these funds to pay the costs of services, supplies, equipment rental, operations and for additional purse money. See attachment A-5.**

- c. Document fixed costs. **All costs are projected.**

- d. State the schedule for construction of the facility including the estimated completion date.

**Applicant estimates that the miscellaneous repairs will be ready by July 1, 2008.**

- e. Attach schematic drawings to this application. **Not applicable.**
- f. Attach to this application copies of any contracts with and performance bonds from the:
1. architect or other design
  2. project engineer;
  3. construction engineer;
  4. contractor and subcontractor; and
  5. equipment procurement personnel.

**There are no contracts or bonds at this time.**

- g. State whether the site is owned or leased. If so, the applicant shall attach to this application the documentation for the acquisition. If not, the applicant shall state what actions it must take to secure use of the site.

**The site is owned. See attachment A-6.**

- h. Describe the equity and debt sources of financing, including:
1. with respect to each source of equity contribution, an identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts; and
  2. with respect to each source of debt contribution, an identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts.

**No equity or debt financing is anticipated. Neither interim nor permanent financing for capital improvements or equipment purchases will be possible in 2008, because operating margins will not be adequate to satisfy the cost of financing. Applicant sought a basic operating assistance grant of forty**

percent (40%) from the county fair horse racing benefit fund, and applicant will use these funds to pay the costs of repairs, services, supplies, equipment rental, operations and purse supplements. See attachment A-5.

- i. Identify and describe the sources of additional funds, if needed, due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or any other cause.

**Applicant has line-of-credit commitments from both local banks, if contingencies arise.**

## VI. MANAGEMENT

Each application for a county fair association or horsemen's nonprofit organization license shall provide the following information:

- a. State the applicant's management plan, including a budget and the identification of each management position by function, job description and qualification. The applicant shall attach to this application a copy of an organization chart that depicts the chain of command for each management position.

Applicant's directors, under the general direction of its president, supervise all operating functions of the race meet. Applicant will continue the same management structure for its 2008 parimutuel race meet under the overall supervision of commission personnel, with the exception that applicant will contract for the services of certain key management personnel for its parimutuel operations, as follows: Connie Shellhammer (mutuel manager/line supervisor), Tim Horan (greyhound director of racing/racing secretary/paddock judge/backup chart writer/backup clerk of scales), Jan Jones by Tim Horan (assistant greyhound director of racing/racing secretary/chart writer/clerk of scales) and Norris E. Gwin (horse racing secretary).

For applicant's current list of management positions, see attachments A-7 through A-9.

At this time, Applicant has no management contracts for its 2008 race meet.

- b. Identify management personnel or volunteers and, to the extent known, state for each:
  1. a legal name, any alias and any previous names;
  2. a current residence and business address and a telephone number for each;
  3. any qualification and experience in the following areas:
    - A. general business;
    - B. marketing, promotion and advertising;
    - C. finance and accounting;
    - D. horse or greyhound racing;
    - E. parimutuel wagering;
    - F. security; and
    - G. human and animal health and safety; and

**Director/Volunteers.**

Daniel M. Bird, also known as Dan Bird, 702 N Springfield, or 101 West Main, Anthony, KS 67003, business owner and real estate agent;

Melvin E. Kitts, also known as Mel Kitts, Post Office Box 444, Anthony, KS 67003, certified public accountant;

Terry Allen, 711 N Lincoln, Anthony, KS 67003, retired school teacher;

Gary Gerber, 511 S Lincoln, Anthony, KS 67003, retired school principal, ham radio technician, Anthony, Kansas;

Allen Thomas, 620 N Springfield, Anthony, KS 67003, realtor;

Larry Dunn, PO Box 31, Anthony, KS 67003, newspaper publisher and print shop owner;

Connie Shellhammer, 998 SE 10 Avenue, Anthony, KS 67003, director Harper County Council of Aging; and

Vicky Knapic, 1044 N Springfield, Anthony, KS 67003, bank manager.

**Independent Contractors.**

For contracted services, see section VI.a. above.

4. a description of the terms and conditions of employment and a copy of any written agreement.

For contracted services, see section VI.a. above.

- c. Identify consultants and other contractors, to the extent known, who have provided or will provide management-related services to the applicant, and state for each:

1. a full name;
2. a current address and telephone number;
3. the nature of service provided;
4. any qualification and experience; and
5. a description of the terms and conditions of any agreement and a copy of any written agreement.

- d. Describe memberships in racing organizations held by the applicant, its management personnel and its consultants;

**The only known membership is applicant's membership in the Kansas Thoroughbred Association.**

- e. Describe the applicant's security plan, including:

1. the number and deployment of security personnel serving the applicant during a race meeting;
2. the specific security plans for the stable or kennel area, detention area, parimutuel areas, money from and other restricted areas;
3. the specific security plans for detecting persons at the racetrack facility who are subject to the provisions of K.S.A. 1991 Supp. 74-8804 (f) (1) through (3) or who have violated commission regulations or the racing act; and
4. a description of the coordination of the security plan with other law enforcement agencies.

**The Anthony Chief of Police, John Blevins, will be in charge of the security personnel, as applicant's director of security, and he will be on call 24 hours per day/seven days per week.**

**The security personnel will be responsible for crowd control, control of access to secured areas, and law enforcement duties.**

**The security personnel will be composed of active sheriff department and police department personnel, who are graduates of the Kansas Law Enforcement Training Center, and reserve officers who have received in-house training at the Harper County Law Enforcement Center. The Director of Security will provide input as to the assigned responsibilities within the race track facility.**

**During applicant's racemeet, while horses are stabled at applicant's racetrack facility, a horse backside gate attendant or night watchman will be on duty at all times (24/7) at the horse backside access gate to monitor access and to provide security watch and fire watch.**

**On each race day, beginning one hour before race time, there will be one paddock officer between the paddock and the**

administration building. This officer will be responsible for security at the paddock, the East public admission gate, the administration building and the East end of the grandstand.

On each race day, beginning one hour before race time, there will be one greyhound lockout kennel officer at the greyhound enclosure. This officer will be responsible for security at the West public admission gate and the West end of the grandstand.

All officers at the race track facility are equipped with two-way radios which allow them to communicate with the other security personnel at the track and to communicate with the law enforcement center.

Officers on duty at the law enforcement center will respond to any situation at the track which may require an arrest or transport of any person to the law enforcement center.

During applicant's racemeet, while horses are stabled at applicant's racetrack facility, the horse backside gate attendant or the night watchman will patrol the areas around the administration building and the horse barns at night during the race meet period. No greyhounds stay at the track overnight, so no patrol of the greyhound enclosure is required. No money is kept at the track at night. By special arrangement with the local banks, all money is deposited each night.

Detection of non-local persons subject to K.S.A. 74-8804(f) (1) - (3) will depend in large part on information provided to security personnel by the commission staff. Local persons subject thereto will be known to security personnel, who are all law enforcement officers.

- f. Describe the applicant's plans for human health and safety, including emergencies.

A full crew of emergency medical technicians and at least one ambulance are on hand at the race facility during the race meet. The race track is located approximately one-half mile from the nearest medical facility. There are first-aid kits available in the concession stand and the administrative building.

Immediately following the races, a patrol of the area is made to make sure no fires have ignited from burning cigarettes. Prior to the races, and during the racing season, weeds are controlled so that they will not provide fuel to a fire. No smoking is allowed in the horse barns or in the dog enclosure. A fire hydrant is located directly behind the grandstand, and water hydrants are located at various places throughout the facility.

Fire extinguishers are located in the concession stand and the administrative building.

The response time for the local fire department is estimated at five minutes.

- g. Describe the applicant's plans for animal health and safety, including provisions for maintenance of the racing surface and removal of injured racing animals from the track;

There is a licensed veterinarian at the track while the races are in progress. Injured greyhounds are hand carried from the track to receive treatment. Injured horses are screened from the grandstands and treated on the track, as applicable, and then removed with a truck and trailer.

The horse ambulance is a horse trailer, of no more than four-horse capacity. The horse ambulance has a ramp for easy loading of injured horses, and it is continuously hooked to a truck or tractor during live racing.

The racing surfaces are watered regularly to maintain a "fast track". The commission's animal health officer may call for additional water on both tracks during live racing.

Immediately following the races, a patrol of the area is made to make sure no fires have ignited from burning cigarettes. Prior to the races, and during the racing season, weeds are controlled so that they will not provide fuel to a fire. No smoking is allowed in the horse barns or in the dog kennels. A fire hydrant is located directly behind the grandstand, and water hydrants are located at various places throughout the facility.

Electrical boxes located in the horse barns have overload protection. Fire extinguishers are located at the concession

stand and in the administrative building and at or in each horse barn.

The response time for the local fire department is estimated at five minutes.

- h. Describe the applicant's marketing, promotion and advertising plans;

The marketing promotion and advertising budget is \$10,000, which will be spent on newspaper, radio and flier advertising and promotion, and increased television advertising and exposure. Target areas for advertising and promotion include Wichita, Hutchinson, Pratt, and Wellington in Kansas, and Enid, Oklahoma City, and Woodward in Oklahoma.

- i. Describe the applicant's plan for the conduct of racing, including types of racing, specific dates, number of races per day, post times and special events;

For 2008, the actual dates of racing requested by applicant are: July 11, 12 and 13 and July 18, 19 and 20. Historically, the Anthony races have always been scheduled on the second and third or third and fourth weekends of July, depending on the calendar.

Between 1904 and 1944, applicant conducted a horse race meet at the present site, and, beginning with 1944, applicant has conducted a combined or dual race meet, with dogs and horses racing on the same dates before the same grandstand crowd. This is accomplished by the dog track being located on the infield of the horse track and by alternating dog races and horse races.

Applicant's Friday racing schedule will start at 5:30 p.m., with a maximum of 10 dog races and 10 horse races (contingent upon availability of animals and jockeys). Applicant's Saturday and Sunday racing schedule will start at 2:00 p.m., with a maximum of 10 dog races and 10 horse races (contingent upon availability of animals and jockeys). Applicant allows 15 minutes between the end of one race and the start of the next race.

Special horse racing events are identified in the horse racing conditions book, copies of which are provided to the commission by the horse racing secretary.

Special greyhound racing events are identified on the greyhound racing schedule and on the greyhound racing secretary's letter to greyhound owners, copies of which are provided to the commission by the greyhound racing secretary.

- j. Describe the applicant's plan for purses, including total purses, formulas, stakes races, purse-handling procedures, and estimated revenues from the county fair horse racing benefit fund;

Applicant estimates total purses for 2008 of \$108,733.

The horse racing purse distribution formulas are stated in the horse racing conditions book, copies of which are provided to the commission by the horse racing secretary.

The greyhound racing purse distribution formulas are stated in the greyhound racing conditions book, copies of which are provided to the commission by the greyhound racing secretary.

In the past, most of the horse races have paid added money through sponsorships and donations, and some of the greyhound races have also. Applicant will continue to raise such added money and allocate more to the greyhound races.

Purses are calculated at the close of each race. Horse purses are available to be paid out the next race day, or mailed upon request, unless held up because of drug testing. Greyhound purses are paid out weekly.

Depending on availability of funds, applicant will allocate \$52,800 of benefit fund money to horse purses and \$18,000 to greyhound purses.

- k. State the applicant's plan for furnishing the surety bond or other financial security required by K.S.A. 1991 Supp. 74-8813 (e).

Applicant has arranged to provide irrevocable letters of credit from each of the two local banks. The commission's staff determines the amount each year.

- l. If wagering is to be conducted, describe the applicant's plan for parimutuel wagering, including the number of line divisions, windows, selling machines and tellers, stating the

uses and duties of each, and accounting procedures, stating any internal audit and supervisory controls;

Applicant has 24 betting windows in the administration building, each with a teller operated wagering terminal connected to the tote system computer.

Applicant requests commission approval of the following betting pools and takeouts: win/place/show, daily double (one early/one late), quiniela, exacta, trifecta and superfecta, with takeouts of 18% for win/place/show and 25% for the other pools.

The teller's duties will be to accept and verify the better's cash wager and pools selected, enter the information in the terminal, and dispense and verify the ticket issued by the terminal.

Periodically during each day of the race meet, each teller's cash receipts are taken to the money room for counting and tallying.

The tote system computer will provide the main accounting and internal audit controls; however, applicant's mutuel manager will maintain manual accounting and audit controls.

Regulatory oversight will be provided by Commission personnel and applicant's money room manager and assistant mutuel manager.

- m. Describe the applicant's plan for concessions, including whether the licensee will operate the concessions and, if not, who will, to the extent known;

The concession stand will be operated by applicant. All food and supplies are purchased from local retailers and route salespersons, off the shelf at wholesale prices.

Beverages sell for \$1.00 and \$3.00 (projected).

Food items (candy, gum, chips, nachos, sandwiches) range in price from \$0.50 to \$5.00 (projected).

- n. Describe the applicant's plan for training its personnel.

Applicant's personnel are experienced in conducting the race meet. The only instruction that will be necessary will be

instruction concerning the tote machines, and other aspects of parimutuel wagering, which will be provided by United Tote and applicant's mutuel manager.

- o. Describe the applicant's plans for compliance with employment laws.

Applicant pays at least minimum wage and does not operate enough hours to generate overtime. Applicant pays social security and unemployment taxes, as required. Applicant's employment is seasonal, temporary and part-time, so most employment laws would not apply. Applicant provides workers compensation insurance.

## VII. REQUESTED EXCEPTIONS

In accordance with K.A.R. 112-17-14, each county fair association or horsemen's nonprofit organization applicant shall provide the following information if it is requesting any exception from commission regulations:

- a. Separately identify each exception requested.
- b. For each exception, state:
  1. a citation to the specific regulations for which the exception is requested; and
  2. a statement of justification for the request, which details how the exception will facilitate less costly and simplified procedures and requirements for the race meeting, as provided in K.S.A. 1991 Supp. 74-8814(c).

Applicant requests the following exceptions from commission regulations, which are all exceptions granted to applicant by the commission in prior years, and which are justified by the commission's prior approval thereof:

(a) Waiver of the K.A.R. 112-4-1(1) requirement that an occupational licensee be at least 16 years old, for the limited purpose of allowing greyhound leadouts, concession employees, administrative support runners and video operators (with prior steward approval only) to be licensed at 14 or 15 years of age;

(b) Approval of an exception to K.A.R. 112-4-4(b), to allow a commission-licensed horse or greyhound owner, who is also a licensed, practicing veterinarian, to be licensed by the commission as a track veterinarian, if the commission needs to use the services of a local veterinarian at applicant's race meet, conditioned upon such licensee not racing any animals at applicant's race meet, and conditioned upon such licensee returning the veterinarian license badge issued by the commission to the commission after applicant's race meet, and presenting a written statement to the commission that he/she will no longer practice as a commission-licensed track veterinarian during the remainder of the current calendar year [the veterinarian for whom this exception is requested is Dean Bertholf, Anthony, Kansas;

(c) Waiver of the K.A.R. 112-4-4a(c)(2), prohibition against the same person holding a Commission license as a greyhound racing

official and holding a Commission license as a greyhound owner, conditioned upon the licensee being licensed as a county air racing official and returning the racing official license at the end of the Anthony race meet and upon the licensee not racing any greyhounds owned by licensee at the Anthony race meet;

(d) Waiver of the K.A.R. 112-7-6(a)(3) requirement that no person shall enter or start a horse in a race unless the horse is in the care of a licensed trainer and owned by an owner licensed by scratch time, except that for the first 10 days of a race meeting or for stakes races, an owner must be licensed by one hour before first post on the day of the race. The commission hereby orders that for entries into any horse race to be conducted at Anthony Downs, entries may be accepted by the racing office from unlicensed trainers provided that such trainer has, prior to making such an entry, faxed to the Kansas Racing and Gaming Commission licensing office at Anthony Downs or the racing office at Anthony Downs an application for licensure and thereafter fulfilled all requirements for the licensure prior to 11:00 a.m. on the date of the race. For the duration of the 2007 Anthony Downs horse race meet, all owners must be licensed by one hour before first post on the day of the race. For all stakes races to be run at Anthony Downs, entries may be accepted by the racing office from unlicensed trainers provided that such trainer has, prior to making such an entry, faxed to the Kansas Racing and Gaming Commission licensing office at Anthony Downs or the racing office at Anthony Downs an application for licensure and thereafter fulfilling all requirements for licensure prior to 11:00 a.m. on the date of the race. All other provisions of K.A.R. 112-7-6 remain in full force and effect.

(e) Waiver of the K.A.R. 112-7-14(a)(2) requirement that provides that penalties and sex allowances shall be obligatory, but only to the extent that trainers may waive sex allowances;

(f) Waiver of the K.A.R. 112-7-18(e) requirement that provides that no jockey shall weigh out without the permission of the owner or trainer if the jockey weighs more than two (2) pounds over the weight assigned to the horse, and that under no circumstances shall the margin over the weight limit exceed seven (7) pounds (in which case, no jockey mount fee shall be due to the overweight jockey), subject to the stewards having the discretion to set a weight cap;

(g) Approval of an exception to K.A.R. 112-7-23(d), to allow a horse which has raced within 60 days to start a race without a workout, and to allow a horse which has not raced within the last 12 months to start a race, if it completes one (1) satisfactory workout, subject to the discretion of the stewards and/or animal health officers;

(h) Waiver of the K.A.R. 112-8-4(d)(6) requirement that each greyhound that is scratched because of overweight or underweight shall school back before starting in an official race, so that such greyhound will be allowed to draw back into the races without schooling;

(i) Waiver of the K.A.R. 112-8-5(g) requirements for photographing the finish of, and for videotaping, the greyhound schooling races, conditioned upon review and approval by the racing judges;

(j) Waiver of the K.A.R. 112-8-8(c) requirement that the racing judges scratch a greyhound if there is a variation of more than one and one-half pounds above or below the established weight of the greyhound at weighing-in time, to allow an additional one-half ( $\frac{1}{2}$ ) pound variation, with the approval of the animal health officer and the racing judges;

(k) Waiver of the K.A.R. 112-8-8(f) requirement that the racing judges scratch a greyhound if there is a variation of more than two pounds between the greyhound's weighing-in weight for the present race and the weighing-in weight for its last race, so that such greyhound will be allowed to race with a variation of more than two pounds, with the approval of the animal health officer and the racing judges;

(l) Waiver of the K.A.R. 112-8-8(g)(1) requirement that a greyhound that changes weight by more than one (1) pound be schooled at least once at the new weight before being eligible to start a race, because greyhounds are only schooled once at Anthony Downs;

(m) Waiver of the K.A.R. 112-11-14 requirement that an ambulance be available during any horse training period;

(n) Waiver of the K.A.R. 112-11-14(d) requirement that a staffed horse ambulance be at the track each day that horses are on the racetrack. Applicant agrees to provide a staffed horse

ambulance during all official works and during all live race days. Applicants shall submit a plan for dealing with horse breakdowns occurring at any other time horses are on the grounds or a dead horse is found in a stall. Also, the Commission's animal health officer must be notified within twelve (12) hours of any/all horses that die on the grounds, regardless of cause of death;

(o) Waiver of the K.A.R. 112-11-14(f) and (g) requirements that a first aid station, equipped equivalently to be a type II ambulance, be staffed and operational during each scheduled race, conditioned upon a staffed type II ambulance being present at the track during each scheduled race;

(p) Modification of the requirement of K.A.R. 112-11-19(b), to allow obstacles to be located 10 to 12 feet from the back of the bottom of the rail post of the horse track, provided that any obstacle is padded to the satisfaction of the animal health officers;

(q) Waiver of the requirements of the following greyhound race meet standards: K.A.R. 112-11-20(c)-(i), concerning lockout kennels, covered walkways, kennel buildings and sprint paths; and

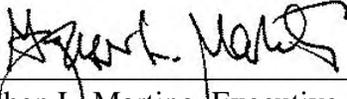
(r) Waiver of K.A.R. 112-17-2(a)(1)(D) requirement that applicant supply copies of its organizational documents with each application. Once applicant has supplied the commission with certified copies of its articles of incorporation and its other documents, it is an unnecessary expense for applicant to resupply such documentation each year, unless such documentation has been amended or changed. Applicant has supplied such documentation to the commission with its 1993, 1994, 1995 and 1996 applications, and there has been no amendments or changes thereto since 1993.

Pursuant to KSA 74-8751(b), the executive director issues the following directive regarding reciprocal certification for gaming suppliers:

1. A gaming supplier may be granted temporary reciprocal certification if it meets all of the following conditions:
  - a. Provides evidence of current licensure or certification in these states, which have standards that are comprehensive, thorough and provide similar adequate safeguards as are required by Kansas' certification requirements:
    - i. Illinois,
    - ii. Indiana,
    - iii. Iowa,
    - iv. Missouri, and
    - v. New Jersey.

A variance for not being licensed in one of these states may be sought from the executive director and only will be granted upon a showing of good cause and at the discretion of the executive director.
  - b. Completes all business entity and personal (Level I, II and III) background disclosures as required by applicable rules, regulations and policies of the Racing and Gaming Commission. Such forms must be completed in their entirety but only include information or disclosures for persons or entities owning 5 percent or more of the supplier.
  - c. Submits a deposit for background investigation fees in an amount as determined by the executive director.
  - d. Attaches to its submission a letter declaring that the supplier:
    - i. is seeking temporary reciprocal certification;
    - ii. that it has completed all required business entity and personal (Level I, II and III) background disclosure forms for those persons and entities owning 5 percent or more of the supplier;
    - iii. agrees to comply with the KRGC's rules, policies, and regulations, to the extent not in conflict with this directive; and
    - iv. has attached the required background investigation fee, made payable to the Kansas Racing and Gaming Commission.
2. Upon submission of all required documents and a completion review by KRGC licensing and security staff, a temporary reciprocal certification may be issued.
3. A permanent reciprocal certification may be issued when the gaming supplier meets the following conditions:

- a. The gaming supplier has received a temporary reciprocal certification;
  - b. The KRGC's security division has completed its investigation of the supplier's background; and
  - c. The investigation has been presented to and approved by the Racing and Gaming Commission.
4. If issued, a permanent reciprocal certification will be for an initial term of two years and will be renewable.
  5. A gaming supplier's failure to apply or qualify for a temporary or permanent reciprocal certification does not prohibit the supplier from seeking certification by any other applicable rules, regulations or policies of the Racing and Gaming Commission.
  6. This directive is effective April 9, 2009.

By:   
\_\_\_\_\_  
Stephen L. Martino, Executive Director  
Racing and Gaming Commission

Date: April 9, 2009

# April 2009 - March 2010

## Commission Planner

Apr 2009						
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### APRIL

*16 Commission Meeting*

### MAY

*15 Commission Meeting*

### JUNE

*12 Commission Meeting*

### JULY

*17 Commission Meeting (tentative)*

### AUGUST

*14 Commission Meeting (tentative)*

### SEPTEMBER

*11 Commission Meeting (tentative)*

### OCTOBER

*16 Commission Meeting (tentative)*

### NOVEMBER

*13 Commission Meeting (tentative)*

### DECEMBER

*11 Commission Meeting (tentative)*

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*Kansas Racing and Gaming Commission*

**STAFF AGENDA MEMORANDUM**

**DATE OF MEETING:** April 16, 2009

**AGENDA ITEM:** **Approval of Race Officials at Eureka Downs**

**PRESENTER:** Charles LaBoy, Director of Audit and Electronic Security  
KQHRA/GCFA Representative

**ISSUE SUMMARY:** The Kansas Quarter Horse Racing Association d/b/a Eureka Downs has submitted the following list of race officials for commission approval. See K.A.R. 112-5-1(a) & (e).

Rita Osborn – General Manager  
Rita Osborn – Racing Secretary  
Rita Osborn – Backup for all Positions  
Angie Lowe – Mutuel Manager  
Tim Mitchell – Starter  
Tim Mitchell – Paddock Judge  
Tim Mitchell – Identifier

**COMMISSION ACTION REQUIRED/REQUESTED:** Commission review and approval.

**STAFF RECOMMENDATIONS:** Staff recommends approval.