
AGENDA
KANSAS LOTTERY GAMING FACILITY REVIEW BOARD
10 a.m., Wednesday, March 3, 2010
Telephone Conference

Dial (866)620-7326

When prompted, enter the Conference ID: 6099765378
(You will then be placed into the conference. You will
hear music on hold until the Host speaks.)

- A. CALL TO ORDER
- B. APPROVAL OF THE AGENDA
- C. BOARD ITEMS
 - 1. Regarding the south central gaming zone:
 - a. Presentation by Kansas Lottery regarding amendments to the Chisholm Creek Casino and Resort LLC contract
 - b. Review Board questions regarding the Chisholm Creek Casino and Resort LLC amended contract
 - c. Review Board requests for information from Chisholm Creek Casino and Resort LLC, Review Board staff and consultants, and the Kansas Lottery regarding the amended contract
- D. STAFF REPORTS
 - 1. Executive Director
- E. OTHER MOTIONS
- F. ADJOURNMENT

LOTTERY GAMING FACILITY MANAGEMENT CONTRACT

(Pursuant to the Kansas Expanded Lottery Act)

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

This Agreement is between the Kansas Lottery, which is acting on behalf of the State of Kansas in accordance with the Kansas Expanded Lottery Act, K.S.A. 2008 Supp. 74-8733 through 74-8773, and Chisholm Creek Casino Resort, LLC (“Manager”).

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

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

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

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

2. **Date Agreement Becomes Binding.** This Agreement will become effective and binding on the Effective Date; except that the parties agree that Paragraphs 2, 8, 20, 28, 30, 31, 54, 57, 58, 60, 63, 66, 70, 71 and 72 will become effective and binding on the parties immediately upon this Agreement's approval by the Commission.

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

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

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

5. **Renewal of Agreement/Renegotiation of new agreement.** Prior to the expiration of this Agreement but not before completion of the minimum infrastructure investment and provided Manager has maintained the Lottery Gaming Facility in accordance with the terms of the Lottery Facility Management Contract, as certified by the Executive Director, Manager or the Kansas Lottery may request to negotiate renewal of this Agreement under K.S.A. 2008 Supp. 74-8734(h)(1) for the maximum extended term allowed under the law. If prior to the expiration of this Agreement the parties do not renew this Agreement as provided herein, the parties shall enter into good faith negotiations for a new lottery gaming facility management contract consistent with and on substantially the same terms as this Agreement, as provided in K.S.A. 2008 Supp. 74-8734(p). Neither the renewal of this Agreement nor any new lottery gaming facility management contract shall require or be conditioned upon Manager making an additional investment in infrastructure. The parties shall negotiate in good faith and in the event the parties are unable to agree the Kansas Lottery shall proceed in accordance with any options available to it under the Kansas Expanded Lottery Act, in existence at that time. Nothing in this Agreement is intended to be interpreted to restrict or to be prejudicial to any right or remedy Manager may have at law or equity to compel the Lottery to comply with the provisions of this Section 5.

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

- a) Manager is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Kansas, and is duly qualified to do business as such in Kansas.
- b) Manager has full power, authority, and legal right to perform and observe the provisions in this Agreement, the requirements imposed by the Kansas Expanded Lottery Act, the rules and regulations imposed by the Commission, and the rules and regulations imposed by the Kansas Racing and Gaming Commission.
- c) Subject to the condition that all approvals required by the Kansas Expanded Lottery Act are obtained, this Agreement constitutes a valid and binding obligation on Manager that is fully enforceable in accordance with its terms, and does not constitute a breach of, or default under, any other agreement to which Manager is a party or any of its assets are bound or affected.
- d) During this Agreement's term, Manager will, at its own expense, keep in full force and effect its legal existence, rights and franchises required in order for it to observe all of this Agreement's terms and conditions. Upon receiving any information or notice contrary to the representations contained in this subsection during this Agreement's term, Manager must Immediately notify the Executive Director in writing with full details regarding the same.
- e) Manager has acquired full title or has the ability to acquire full title to the premises on which the Lottery Gaming Facility will be located, free and clear of any liens, encumbrances, covenants, charges, burdens or claims, except (i) those which do not materially and adversely affect the use by Manager of the premises as a Lottery Gaming Enterprise, and (ii) any secured liens directly related to the Lottery Gaming Enterprise, which will be disclosed to the Executive Director concurrently with Manager's acquisition of the property or for which the Executive Director's prior approval has been obtained.
- f) The Lottery Gaming Enterprise and the operations thereof at all times will conform in all material respects with all applicable material zoning, planning, building, licensing, and environmental laws and regulations of governmental authorities (federal, state, or local) having jurisdiction over the Lottery Gaming Enterprise, including any amendments to such laws or regulations occurring after this Agreement's execution. Such laws include, but are not limited to, the federal Money Laundering Control Act of 1986, the Bank Secrecy Act of 1970, and the USA Patriot Act of 2001, and amendments thereto. The Manager shall defend, indemnify and hold the Kansas Lottery and the State of Kansas and all employees of the Kansas Lottery and the State of Kansas harmless from any liability or expenses resulting from any failure by the Manager to comply with the provisions of this subsection (f).

- g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Manager, threatened against or affecting the Manager or its principals, and in which an adverse result would in any way diminish or adversely impact the Manager's ability to fulfill its obligations under this Lottery Gaming Facility Management Contract. No revenue bonds, state tax abatement, local tax abatement, tax increment financing or similar financing will be used to finance or apply to any part of Manager's Lottery Gaming Enterprise.
- h) The Lottery Gaming Enterprise will comply in all material respects with all environmental laws and regulations, and, except in material compliance with environmental laws and regulations agrees that to the best of its knowledge (1) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist at the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, except in compliance with all applicable laws; (2) Manager will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations or onto any other property; (3) that no asbestos will be incorporated into or disposed of on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations; (4) that no underground storage tanks will be located on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, unless the use and operation of such storage tanks are compliant with all applicable law ; and (5) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence with respect to the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations. Upon receiving any information or notice contrary to the representations contained in this subsection, Manager must Immediately notify the Executive Director in writing with full details regarding the same. Manager and its members will execute the Environmental Compliance Agreement attached as Exhibit A. Manager shall defend, indemnify and hold the Kansas Lottery and the State of Kansas harmless from any liability or expenses resulting from any failure by Manager to comply with the provisions of this subsection (h).
- i) Manager will provide to the Executive Director a certificate or certificates of insurance containing all of the insurance provision requirements provided in this Agreement as follows: as respects the builder's risk and liability including worker's compensation covering construction activities, prior to the commencement of construction activities, and as respects all other insurance, prior to the commencement of any operations presenting an insurable risk. Each insurance policy obtained by Manager to comply with the insurance provision requirements must provide that if the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Kansas Lottery or the State of Kansas until at

least thirty (30) days after receipt by the Executive Director of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

- j) Manager will comply with all rules, regulations or policies imposed by the Kansas Racing and Gaming Commission now or in the future for the oversight of all operations at the Lottery Gaming Facility including, but not limited to: oversight of internal controls; adherence to technical standards adopted by the Kansas Racing and Gaming Commission; oversight of security; performance of background investigations; determinations of qualifications and any required certifications, credentialing or licensing of Manager's officers, directors, board members, employees, contractors and agents; auditing of Lottery Gaming Facility Revenues; maintenance and integrity of all Lottery Facility Games approved by the Executive Director for play at the Lottery Gaming Facility; maintenance of facility exclusion lists; player tracking, rewards, clubs, coupons or other incentive programs; oversight of progressive payout systems and programs; oversight of unclaimed winnings; oversight of lost patron monies; or responsible gaming. Manager understands and agrees that failure to adhere to the Kansas Racing and Gaming Commission's rules, regulations, or technical standards may result in the imposition of fines, or other sanctions or penalties against Manager. Upon receiving any information or notice claiming a violation of any requirement of the Kansas Racing and Gaming Commission or any other governmental entity with jurisdiction over gaming-related activities after the Effective Date, Manager must Immediately notify the Executive Director in writing with full details regarding the same.
- k) Manager, at a minimum, meets and will continue to meet the following criteria: (1) has sufficient access to financial resources to support the activities required of it by this Agreement and the Kansas Expanded Lottery Act; (2) is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas and any taxing subdivisions where the Manager is located in the state of Kansas, excluding items under formal appeal pursuant to applicable statutes; and (3) Manager or its principals, affiliates or officers and/or members have at least three consecutive years' experience in the management of gaming which would be class III gaming, as defined in K.S.A. 46-2301, and amendments thereto, operated pursuant to state or federal law.
- l) Manager will comply with all applicable rules and regulations imposed now, or in the future, by the Kansas Lottery.
- m) Except as may be authorized by applicable law and confirmed in writing by the Executive Director, Manager will not own, lease, license, or control the rights to: (1) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on the Lottery Facility Games, (2) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device containing information regarding or affecting an Lottery Facility Game's chance of winning, awarding of Prizes, or setting the consideration paid by a Player, such as the random number

generator or payout tables; (3) any CPUs or other electronic components involved in the operation and calculation or display of game play (e.g., game controller electronics and components housing the game or system firmware program storage media or EPROMS); or (4) any communication controller electronics, and components housing the communication control program that is used for communicating financial data, program information and security events to the central computer authorized by the Executive Director for purposes of security, real-time monitoring and auditing, as well as ticket validation and any other system used that affects the integrity of the Lottery Facility Games made available at the Lottery Gaming Facility.

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

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

- a) The Kansas Lottery is duly established under the Kansas Lottery Act and the Kansas Expanded Lottery Act, and has the power to enter into the transactions contemplated by this Lottery Gaming Facility Management Contract and to carry out its obligations. Based upon the representations of Manager as to the utilization of the Lottery Gaming Facility, the Kansas Lottery has the authority to take the actions contemplated by applicable statute.
- b) The Executive Director is duly authorized to execute and deliver this Lottery Gaming Facility Management Contract.

- c) Neither the execution and delivery of this Lottery Gaming Facility Management Contract, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any other contract to which the Commission or Kansas Lottery is a party or by which either is bound, or will constitute default under any of the foregoing.

8. **Kansas Expanded Lottery Act Litigation.** Manager acknowledges it enters into this Agreement with the understanding that the Kansas Expanded Lottery Act and/or the implementation of that Act by the Kansas Lottery or the Commission, may come under review by courts of competent jurisdiction from time to time during this Agreement's term. Except as provided in Paragraph 63, Manager agrees it will proceed with its responsibilities under this Agreement at its own risk as to the Kansas Expanded Lottery Act's validity, or the validity of the implementation of that Act by any state agency, except that nothing in this section will be interpreted to restrict any rights Manager may have to seek repayment of Manager's privilege fee if the Kansas Expanded Lottery Act were to be amended or repealed by a legislative body or declared unconstitutional in a future proceeding. The parties herein agree that this Agreement represents a contract, and not a license or franchise to manage a Lottery Gaming Facility on behalf of the State of Kansas.

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

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

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

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

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

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

13. **Lottery Gaming Facility Construction.** Manager will diligently construct at its own expense the Lottery Gaming Facility substantially in accordance with Manager's Application for Lottery Gaming Facility Manager, Exhibit C to this Agreement, attached hereto, and the plans and specifications. Prior to beginning construction, the Executive Director must approve the final plans and specifications for the Lottery Gaming Facility (or in lieu thereof such other construction-related documents acceptable to the Executive Director that are suitable for this purpose) to ensure construction will conform with the Manager's Application for Lottery Gaming Facility Manager, Exhibit C to this Agreement attached thereto any written Predevelopment Agreement entered into with any County or City, and any written representations or agreement made by Manager or oral representation made by Manager which was recorded with audio equipment or transcribed by a certified court reporter at an official meeting of the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, or the county or city governing body where the Lottery Gaming Facility is to be located, provided however, that Manager cannot be held in breach of this paragraph for any oral statements, representations or obligations without being first presented with a copy of the actual recording and/or verified court reporter transcript of the Manager's actual statement(s) alleged to create such representation and/or obligations. All construction of the Lottery Gaming Facility must be approved for occupancy and the Lottery Facility Games ready for play by the public within that facility no later than the Commencement Date, unless a time extension is approved by the Executive Director. The schedule setting out Manager's anticipated benchmarks for construction completion is attached as Exhibit C to this Agreement and all such construction shall be completed no later than one hundred and forty four months from the Commencement Date. For each month between the Effective Date and the Commencement Date, Manager will report no less than monthly as directed by the Executive Director on Manager's progress toward completing construction, implementing the Business Plan, and opening the Lottery Gaming Facility to the public. No material alterations to the scope and design of the plan for the Lottery Gaming Facility as provided for in Manager's Application for Lottery Gaming Facility Manager may be made without the Executive Director's written approval including changes which affect the floor plan, surveillance, or security for the Lottery Gaming Facility. The Executive Director will promptly notify Manager of his approval or rejection of any proposed change. Manager will not need to obtain the Executive Director's approval for expenditures covered by the Manager's contingency budget.

14. **Construction Related to Ancillary Lottery Gaming Facilities Operations.** Manager must diligently construct at no expense to the Kansas Lottery the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations substantially in accordance with Manager's Application for Lottery Gaming Facility Manager and Exhibit C to this Agreement, but in no event shall the Manager's minimum investment in infrastructure under K.S.A. 2008 Supp. 74-8734 be completed later than one hundred and forty four months from the Commencement Date. The terms infrastructure and Investment in Infrastructure are defined in Exhibit "G." In addition to any other remedy available to the Executive Director under this Agreement, with respect to this Paragraph 14, Manager's failure to substantially perform its Ancillary Lottery Gaming Facility Operations obligations according to objectively verifiable standards and, provided such failure cannot be disputed in good faith, will authorize the Executive Director to withhold payment of Manager's compensation for which it would otherwise be entitled under Paragraph 26, less such amounts necessary for Manager to meet its cash operating expenses and debt service payment (for all debts to independent third party lenders for construction or equipping of the Lottery Gaming Enterprise), after the date that is forty-five (45) days following the Executive Director's written

notice to Manager of such failure, until the breach is cured. If the Executive Director determines to withhold Manager's compensation as provided in this paragraph, he will deposit the applicable funds in an interest bearing account until the Executive Director determines the breach is cured, at which time the compensation and interest held by the Executive Director will be promptly returned to Manager. Provided, however, if the breach is not cured within 180 days of the date each amount is withheld as provided herein, the Kansas Lottery shall be entitled to retain each amount and interest so withheld.

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

- a) The direction of all construction activities;
- b) The direction and coordination of the performance of the architect, the other consultants and contractors;
- c) Causing all construction activities to be carried out in a good and workmanlike manner, all in substantial compliance with the Manager's Application for Lottery Gaming Facility Manager and Exhibit C to this Agreement;
- d) Preparing the Lottery Gaming Facility to accommodate the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, including installation of all specified power and communication services;
- e) Correcting or remedying or causing to be corrected or remedied, any violations of applicable law;
- f) Arranging for the preparation of all working drawings and specifications;
- g) Preparing or arranging for the preparation of all construction contracts and arranging for the preparation and execution of all other related documentation required in accordance with the development obligations undertaken by Manager;
- h) Securing financing, if necessary, including mortgage liens, a lease or other financing secured by the real property and improvements and liens on personal property, including, without limitation, Lottery Facility Games and other equipment, for the construction of the Lottery Gaming Facility or the building and improvements related to the Ancillary Gaming Facility Operations, including completing the necessary documentation therefor;
- i) Maintaining appropriate cost-accounting records in accordance with generally accepted accounting principles;

- j) Obtaining all necessary government approvals, consents, permits, and licenses/certifications;
- k) Providing legal support related to the development and construction responsibilities undertaken by Manager; and
- l) Ensuring all required insurance is maintained in force.
- m) Provide information to any representative of the Kansas Lottery relating to costs and/or completion of work, including information related to Manager's compliance with its minimum investment in infrastructure requirements and that Manager's application proposal is being met, including periodic site inspections. An independent representative may be hired by the Kansas Lottery to verify such investment. Manager shall reimburse the Kansas Lottery for all expenses reasonably incurred for or by such representative in a sum not to exceed \$5,000 per month.

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

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

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

19. **Approval of Manager's Security Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed policies and procedures relating to security to the

Executive Director for approval. This security plan at a minimum must contain all items required by applicable rule and regulation. No material change to the approved security plan may be made without the Executive Director's prior written approval. Manager must perform its duties in accordance with the security plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan, in all material respects.

20. Privilege Fee Payment. No later than thirty (30) days after the Commission approves this Agreement, Manager must pay to the state treasurer of the State of Kansas a privilege fee of \$25 million. This payment to the state treasurer will be deposited into the state treasury and credited to the Lottery Gaming Facility Manager Fund, which is a temporary fund created pursuant to the Kansas Expanded Lottery Act. Notwithstanding any other provision in this Agreement, if Manager fails to pay this privilege fee within 30 days after the Commission's approval, this Agreement will be void and Manager will forfeit any rights it may have to be a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act. Once all required approvals for this Agreement are obtained in accordance with the Kansas Expanded Lottery Act, the Manager's privilege fee will be transferred on the Effective Date from the Lottery Gaming Facility Manager Fund to the Expanded Lottery Act Revenues Fund as provided by law. If (a) the required approvals for this Agreement are not obtained in accordance with the Kansas Expanded Lottery Act or (b) if Manager withdraws its application to be Lottery Gaming Facility Manager in the South Central Gaming Zone prior to approval of the Kansas Racing and Gaming Commission, the Executive Director will promptly direct the state treasurer to refund, without interest, Manager's privilege fee payment. Nothing in this Agreement will be interpreted to restrict or to be prejudicial to any right or remedy Manager may have at law or equity (i) to compel the Executive Director to make any direction to the state treasurer as provided in this Paragraph 20, (ii) if the state treasurer fails to comply with such direction, to compel the state treasurer to refund Manager's privilege fee, or (iii) to exercise any other right Manager may have under this Agreement or at law or equity to a refund of the privilege fee.

21. Lottery Facility Game Ownership. The Manager must purchase or lease, on behalf of the State of Kansas, for the Kansas Lottery all Lottery Facility Games, including all necessary equipment such as approved tables, felt, dice, cards, chips, layouts, or intellectual property rights as determined by the Executive Director. Manager has no authority under this Agreement to own, purchase or lease any Lottery Facility Games, except on behalf of the State of Kansas and through the Kansas Lottery. Notwithstanding the foregoing or anything to the contrary in this Agreement, the Manager shall be entitled to all depreciation or amortization deductions related to the Lottery Facility Games. The Executive Director, in consultation with Manager, will select the Lottery Facility Games to be offered for play at the Lottery Gaming Facility and determine the Prizes to be awarded for the play of such games. The Executive Director will determine and approve all rules of play and gaming policies that are applicable to the play of all Lottery Facility Games offered at the Lottery Gaming Facility. Subject to the prior approval of the Executive Director, Manager may purchase, lease, sell, transfer and trade-in the Lottery Facility Games at the Lottery Gaming Facility on behalf of the State of Kansas.

22. Control Software Licensing and Ownership. The Kansas Lottery will be the licensee, owner and possessor of the right to use all control software and logic chips required to operate the games available on the Lottery Facility Games at the Lottery Gaming Facility. This includes: (a) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on

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

23. **Daily Electronic Payment of Lottery Gaming Facility Revenues.** Manager must pay all Lottery Gaming Facility Revenues daily to the Executive Director as provided by applicable regulation. Manager will make this payment electronically in accordance with the Executive Director's written instructions, which will conform to necessary banking practices. These instructions may be changed from time to time in the Executive Director's sole discretion with reasonable notice to Manager. The Executive Director, in consultation with Manager, will develop a process so that Manager may audit and reconcile Lottery Gaming Facility Revenues after the daily payments are made. Notwithstanding any other provision in this Agreement, Manager's failure to make a daily electronic payment of Lottery Gaming Facility Revenues as required by this Agreement will be deemed an event of default unless the payment cannot be achieved due to the unavailability of bank services, force majeure events, or malfunctions in the central communications system not within Manager's control in which case the payment must be made on the first succeeding day that such services are available or such events or malfunctions cease. Manager's failure to comply with this paragraph will authorize the Executive Director in his sole discretion to immediately terminate this Agreement if Manager does not cure its failure within 24 hours of receiving written notice of Manager's failure to comply, unless Manager's failure to make the daily payment as required is repetitive or intentional and in that event the Agreement may be terminated with no cure period.

24. **Payment Obligation is Unconditional.** Manager's obligation to make the daily payments of all Lottery Gaming Facility Revenues required above is a general obligation of Manager and is absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim Manager may otherwise have against the Commission, the Kansas Lottery, or any agency of the State of Kansas. Manager agrees it will not suspend, discontinue or abate any daily payment required above for any cause whatsoever including, without limiting the generality of the foregoing, failure of consideration, destruction of or damage to the Lottery Gaming Facility, commercial frustration of purpose, any change in the tax or other laws, any administrative rulings of or administrative actions by the State of Kansas or any political subdivision thereof, or any failure by any agency or entity acting on behalf of the State of Kansas to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lottery Gaming Facility Management Contract, or otherwise. Subject to the foregoing

provisions, nothing contained in this paragraph shall be construed to release the Kansas Lottery from the performance of any of the agreements on its part contained in this Lottery Gaming Facility Management Contract or to affect Manager's right to seek reimbursement or damages from the Kansas Lottery as provided in this Agreement. Manager must not grant, authorize or permit any interest in the Lottery Gaming Facility Revenues that are to be remitted daily to the State to be given to anyone.

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

26. **Total Compensation Paid to Lottery Gaming Facility Manager.** As its sole compensation for the management services for the Lottery Gaming Facility as set out in this Agreement, Manager will be paid the following percentage of the Lottery Gaming Facility Revenues generated at the Lottery Gaming Facility as follows: 73% of Lottery Gaming Facility Revenues.

The Executive Director shall cause this payment to be made not less than monthly in arrears to Manager in immediately available funds by electronic transfer into a bank account specified by the Manager, which account may be changed from time to time in the Manager's sole discretion upon reasonable written notice to the Kansas Lottery. The Executive Director will direct this payment to Manager on a not less than monthly basis, in arrears, based on the previous month's Lottery Gaming Facility Revenues after first deducting Manager's share of Kansas Lottery expenses and share of Kansas Racing and Gaming Commission expenses incurred for oversight and regulation as provided in Paragraph 28 below. Manager may pledge, encumber or grant any interest in the compensation to be paid Manager, subject to the deductions and setoffs provided for in this Agreement and subject further to the Executive Director's authority under Paragraph 14.

27. **Payments to Problem Gaming and Addictions Grant Fund and Local Governments.** Manager acknowledges and agrees the Executive Director will cause two percent (2%) of Lottery Gaming Facility Revenues to be paid to the problem gaming and addictions grant fund established by K.S.A. 2006 Supp. 79-4805, and amendments thereto. Manager further acknowledges and agrees the Executive Director will cause three percent (3%) to be paid to the county or city pursuant to the requirements of K.S.A. 2008 Supp. 74-8734(h)(16). Additionally, the Manager agrees the Executive Director shall cause to be paid additional Lottery Gaming Facility Revenues to Sumner County in the amount of one percent (1%) of Lottery Gaming Facility Revenues between Three Hundred Million Dollars (\$300,000,000) and Three Hundred and Fifty Million Dollars (\$350,000,000) generated in any Fiscal Year of operation, and to pay additional Lottery Gaming Facility Revenues to Sumner County in the amount of two percent (2%) of Lottery Gaming Facility Revenues over Three Hundred and Fifty Million Dollars (\$350,000,000) generated in any Fiscal Year of operation.

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

- a) Manager's share of the Kansas Lottery's expenses directly attributable to Manager and the Kansas Lottery's proportionate share of other expenses incurred for the

implementation and operation of the Kansas Expanded Lottery Act and this Agreement will be paid in accordance with this sub-paragraph (a). Expenses incurred by the Kansas Lottery will be billed directly to Manager by the Kansas Lottery within thirty (30) days of the Commission's approval of this Agreement and must be paid by Manager within thirty (30) days of billing. Thereafter, and prior to the Commencement Date, the Executive Director will bill Manager periodically for the Kansas Lottery's expenses and Manager will pay such expenses within thirty (30) days of billing. After the Commencement Date, the Executive Director will deduct Manager's share of Kansas Lottery expenses 10 days after providing a statement of such expenses, from Manager's monthly compensation payment as provided above in Paragraph 26. Manager's share of Kansas Lottery expenses will be calculated by taking the costs incurred by the Kansas Lottery that are directly attributed to Manager and Manager's Lottery Gaming Facility, and adding to that amount the Kansas Lottery's common expenses attributable to all racetrack and lottery gaming facility managers as a result of the Kansas Lottery's activities pursuant to the Kansas Expanded Lottery Act, which common expenses will be divided equally among all managers.

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

29. **Manager's Maintenance Responsibilities.** Manager must:

- a) Keep the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in good repair and in a reasonably safe condition;
- b) Make all necessary repairs and replacements to the Lottery Gaming Facility, including maintaining in an operational condition Manager's portion of the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen);
- c) Maintain the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in first class condition, ordinary wear and tear excepted, including, without limitation, interior and exterior cleaning, painting and decorating, replacement of lighting fixtures, wall coverings, floors and floor coverings, furnishings, plumbing, electrical, HVAC and any structural or mechanical repairs and any other maintenance or replacement requirements that may be commercially reasonable.
- d) Manage the Lottery Gaming Facility and all of Ancillary Lottery Gaming Facility Operations in a sound, diligent, and prudent manner in accordance with this Agreement.

30. **Prohibitions Applicable to the State.** The Kansas Lottery, acting on behalf of the State of Kansas, agrees by entering into this Agreement that:

- a) Neither the Kansas Lottery nor the State of Kansas will enter into a management contract for, or otherwise authorize, more than four (4) lottery gaming facilities or similar facilities in the four gaming zones outlined in the Kansas Expanded Lottery Act with one lottery gaming facility in each gaming zone;
- b) Neither the Kansas Lottery nor the State of Kansas will designate additional areas of the state where operation of Lottery Gaming Facilities or similar gaming facilities will be authorized, other than those set out in the Kansas Expanded Lottery Act, as originally enacted; or
- c) Neither the Kansas Lottery nor the State of Kansas will operate an aggregate of more than 2,800 Electronic Gaming Machines at all parimutuel licensee locations.

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

deemed a waiver of the immunities and protections reserved to the State of Kansas under the Eleventh Amendment to the Constitution of the United States.

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

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

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

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

with limits of not less than \$10,000,000 per accident or occurrence on account of personal injury, including death resulting there from, and \$10,000,000 per accident or occurrence on account of damage to the property of others , excluding liability imposed upon Manager by any applicable worker's compensation law. These liability limits may be satisfied by any combination of primary and excess liability policies. The primary general liability insurance may have a self-insured retention and the excess liability policy may have a commercially-reasonable deductible, as determined by the Executive Director. These liability insurance requirements may be satisfied by blanket policies in the aggregate amount of not less than \$10,000,000.

- d) Business interruption insurance against the perils enumerated in subparagraph (a) and in amounts determined by the Manager to be appropriate and commercially reasonable to protect the Manager's financial interests in the revenue produced by the Lottery Gaming Facility.
- e) Employer's practices liability coverage providing customary coverage for alleged violations of local, state or federal civil rights laws or ordinances, or employment discrimination laws.
- f) Employee Dishonesty Combination Crime coverage in amount sufficient to cover all employees employed by Manager who are, or may be, responsible for handling any Lottery Gaming Facility Revenues or other monies belonging to the Kansas Lottery that come under the Manager's custody or control.

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

- a) All insurance required in Paragraph 34 above, except the business interruption insurance described in paragraph 34(d), names the Commission, the Kansas Lottery, the State of Kansas and Manager's lenders and permitted assigns as named insureds, or additional named insureds. All insurance will be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Manager, but authorized to write such insurance in Kansas. Such insurance may be written with deductible or self-insured retentions approved by the Executive Director in amounts comparable to those on similar policies carried by other companies engaged in the gaming industry for facilities similar in size, character and other respects to the Lottery Gaming Facility. All policies evidencing such insurance must provide for (1) payment of the losses of the Commission, the Kansas Lottery, the State of Kansas, and the Manager as their respective interest may appear, and (2) at least thirty (30) days written notice of the cancellation thereof to the Executive Director and the Manager. Policies referred to in this subparagraph (a) must include both the Kansas Lottery and the Manager as loss payees as their interest may appear.
- b) All certificates of insurance from the insurers that such insurance is in force and effect, must be deposited with the Executive Director on or before the Effective Date, except as provided in paragraph 6(i) above. Prior to expiration of the policy evidenced by said certificates, Manager must furnish the Executive Director with

evidence that the policy has been renewed or replaced or is no longer required by this Agreement. Copies of the actual insurance policies will be provided to the Executive Director promptly at his request.

- c) Within one hundred twenty (120) days after the end of each Fiscal Year, the Manager must file with the Executive Director a certificate executed by the Manager to the effect that the insurance it maintains with respect to the Lottery Gaming Facility complies with this Agreement and that duplicate copies of all policies or certificates were filed with the Executive Director and are in full force and effect.

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

37. **Lottery Gaming Facility Damage, Destruction or Condemnation.** If the Lottery Gaming Facility is damaged, destroyed or condemned (in whole or in part) at any time during the term of this Agreement, Manager must promptly replace, repair, rebuild, or restore the Lottery Gaming Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by Manager and approved by the Executive Director, and may use insurance or condemnation proceeds for all such purposes. If the Lottery Gaming Facility is damaged to an extent that it must be closed for business and Manager elects to rebuild the Lottery Gaming Facility at any point during the term of this Agreement, the term of this Agreement will be tolled until such time repairs and reconstruction of the Lottery Gaming Facility are sufficiently completed so as to allow Lottery Facility Games to be offered for play as determined by the Executive Director. The Kansas Lottery agrees to remit any insurance proceeds it receives as a result of the damage or destruction of the Lottery Gaming Facility or Lottery Facility Games (unless those proceeds are to cover the Kansas Lottery's losses under Sections 23 or 26 of this agreement) to the Manager for the specific replacement, repair, rebuilding or restoration loss for which the Kansas Lottery received any insurance proceeds. Notwithstanding the foregoing, Manager's obligations to repair or replace the Lottery Gaming Facility or any Ancillary Lottery Gaming Facility Operations shall be limited to the extent of insurance proceeds made available as a result of such damage, casualty or accident. Manager will have no obligation to rebuild the Lottery Gaming Facility if such damage, destruction, or condemnation impacts at least 50% of the Lottery Gaming Facility and occurs within five years prior to the end of this Agreement's term. Manager shall have sixty (60) days from the damage or destruction to elect to rebuild. If Manager so elects not to rebuild the Lottery Gaming Facility within the last five years remaining on the term of this Agreement, the term of this agreement as defined under Section 3 of this Agreement will immediately end and the Kansas Lottery shall have the ability to exercise any rights available to it under the terms of the Kansas Expanded Lottery Act.

38. **Advertising, Marketing, and Promotion.** Manager must use its commercially reasonable efforts to advertise, market, and promote the Lottery Gaming Facility in order to attract the public to the facility. Manager must comply with all applicable regulatory requirements imposed for such materials and activities. All advertising, marketing and promotion materials employed by Manager must be approved by the Executive Director prior to their first use. Manager agrees that such materials may be disapproved if the Executive Director determines in his sole discretion that such materials would reasonably be expected to offend a substantial number of people, (for reasons other than objections to lotteries or gaming activities generally), or violate any regulatory standards applicable to such materials. Notwithstanding the above, the Kansas Lottery shall not exercise this authority or discretion in an arbitrary or capricious manner. In addition, Manager must make available to the public the odds of winning any prize or prizes for games played on all Lottery Facility Games offered at the Lottery Gaming Facility to the extent possible given the nature of such games and subject to the Executive Director's approval. Advertising, marketing and promotion materials shall include information regarding problem gambling as directed by the Executive Director. Subject to the approval of the Executive Director, Manager may also include the Lottery Gaming Facility in marketing programs which benefit other properties of Manager and its affiliates.

39. **Players' Club.** The Executive Director may institute a Player's club or similar incentive or promotional program applicable to some or all Racetrack Gaming Facilities or Lottery Gaming Facilities owned and operated by the Kansas Lottery. If the Executive Director institutes a Player's club, the Executive Director agrees that: (a) Manager will have no direct or indirect responsibility to fund such a program; (b) Manager will not be required to provide the Executive Director with any customer data under Manager's control for purposes of a Player's club instituted by the Executive Director; (c) the Executive Director will not institute an incentive or awards programs in such Player's club that is applicable to another Racetrack Gaming Facility or Lottery Gaming Facility without also making it available to Manager for use at the Lottery Gaming Facility; and (d) the Executive Director shall reimburse Manager for any direct costs or indirect costs documented to and preapproved by the Executive Director incurred by Manager or the Lottery Gaming Enterprise as a result of the implementation, operation or maintenance of such Player's club or program. As to subparagraph (b), Manager acknowledges that nothing in subparagraph (b) will be read to restrict the Executive Director's access to any customer data for regulatory, security, responsible gaming oversight, or auditing purposes; and the Executive Director agrees customer data provided by Manager will not be used for any Player's club or similar incentive or promotion program instituted by the Executive Director. Nothing in this paragraph will be read to prevent Manager from instituting its own Player's club or similar incentive or promotional program at the Lottery Gaming Facility provided that such club or program is authorized by the Executive Director. The Executive Director agrees Manager has the right to establish a Player's club that awards to Players credits based on their play at the Lottery Gaming Facility, provided that such awards programs are approved by the Executive Director.

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

Manager in developing a Player's tracking system in an effort to avoid materially impairing any similar system being implemented by Manager.

41. Use of Trademarks, Service Marks, Trade Names and Proprietary Information.

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

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

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

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

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

42. **Personnel.** Manager will provide, supervise, direct the work of, discharge, and determine the compensation and other benefits of all personnel necessary to provide for the play of Lottery Facility Games at the Lottery Gaming Facility, except as otherwise noted in this Agreement, based upon a staffing plan in accordance with industry standards and approved by the Executive Director. Such personnel will not be considered employees of the Kansas Lottery or any other agency or department of the State of Kansas. Manager may determine the compensation to be paid to all of its personnel working at the Lottery Gaming Facility provided that such compensation is within the budget for personnel compensation approved by the Executive Director. Manager must ensure its personnel meet all applicable regulatory requirements imposed by the Commission or the Kansas Racing and Gaming Commission. Manager will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, or national origin nor violate any applicable law, regulation or local ordinance governing employer obligations.

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

44. **Key Employees.** Manager agrees the personnel, or positions, as well as any independent contractors designated in Exhibit D, are considered Key Employees, whose ability to participate in the operation or management of the Lottery Gaming Facility are subject to the Executive Director's approval within his sole discretion; provided, however, that nothing in this paragraph will restrict the right of either the Kansas Lottery or the Kansas Racing and Gaming Commission to take action regarding the license/certification held by any of Manager's employees in accordance with applicable statutes or rules and regulations promulgated pursuant to law. The Executive Director may amend the Key Employees list at any time for any reason. Any notice of disapproval of a Key Employee or the amendment of the Key Employee list shall be in writing. Any Key Employee disapproved or deleted from the Key Employee list shall have a right to file a written request for reconsideration to the Executive Director, within thirty (30) days.

45. **Books and Records; Financial Statements.** Manager must maintain an accurate accounting system in connection with its management of the Lottery Gaming Facility. The books and records will be kept in accordance with generally accepted accounting principles maintained in accordance with current industry standards for similar gaming businesses. The books and records shall be maintained at all times either at the Lottery Gaming Facility or at such other locations as may be specified by regulation. The Executive Director, or his designees, shall have the right and privilege of examining these books and records at any time. In addition, the Executive Director may at any time obtain and pay for an audit performed by an independent certified public accountant. If this audit reveals a discrepancy greater than \$10,000 in Lottery Gaming Facility Revenues or a cumulative discrepancy greater than \$250,000 on any other line items previously reported to the Executive Director from the books and records provided by Manager, the audit's cost will be reimbursed by Manager as a set off from the compensation to be paid Manager pursuant to Paragraph 25 above. On or before the 20th day following the close of each month, Manager must furnish the Executive Director with a reasonably detailed operating statement for the Lottery Gaming Facility for that period, including year-to-date results.

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

47. **Budget and Business Plans for Each Fiscal Year.** No later than forty-five (45) days prior to the commencement of each Fiscal Year, Manager must submit to the Executive Director a budget (the "Budget") and a proposed Business Plan for the Lottery Gaming Facility for such Fiscal Year, containing reasonably detailed revenue and expense projections and providing projections for all expenditures that Manager anticipates to be made, as well as all capital expenditures and expenditures for replacements. The Budget will accompany and be compatible with Manager's proposed Business Plan for the upcoming Fiscal Year. The Budget is intended as, and will represent only, an estimate of the projected revenues and expenditures for the Fiscal Year based upon assumptions believed by Manager to be reasonable at the time of preparation. The Budget and proposed Business Plan for each upcoming Fiscal Year will be subject to the Executive Director's approval. Thereafter, Manager will use reasonable efforts to achieve the budgetary goals reflected in the Budget, but the parties both recognize the Budget cannot be relied upon as an assurance of actual results for such Fiscal Year. Manager must promptly notify the Executive Director of any need to depart in any material way from the Budget if, in Manager's judgment, adherence to the Budget is impractical or if such departure is necessary or desirable for the Lottery Gaming Facility's efficient or profitable operation. Any such deviations from the Budget are subject to the Executive Director's approval. Until such time as a Budget and or Business Plan is approved for any fiscal year, Manager may operate in accordance with the previous fiscal year's Budget and or Business Plan, as approved by the Executive Director.

48. **Bank Accounts.** Manager will establish a special bank account (the "Collection Account") in its name at a Kansas bank approved by the Executive Director in order to make the payments to the Executive Director required pursuant to Paragraph 23. Manager will establish an additional bank account in its name at a bank of its choice (subject to the Executive Director's approval) into which the Executive Director will deposit all amounts due and payable to Manager in accordance with Paragraph 26 (the "Operations Account"). Manager will give the Executive Director written notice of the account information necessary for the Executive Director to make deposits into the Operations Account. The Executive Director will cause Manager's portion of the Lottery Gaming Facility Revenues to be deposited electronically not less frequently than on a monthly basis into the Operations Account. Manager may establish additional accounts and subaccounts at its election, provided that all payments required to be made to the Executive Director must continue to be deposited into the Collection Account. Manager may grant a security interest in the Operations Account and any other accounts established by Manager (other than the Collection Account) to any Lender.

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

- a) Manager's failure to pay any amount owed the Kansas Lottery in the manner provided for in this Agreement, subject to Manager's right to cure as provided in Paragraph 23, if the Kansas Lottery decides in its sole discretion to give notice of such default to Manager and, other than with respect to paragraph 23, if Manager fails to cure such nonpayment within seven (7) days after the date on which such notice was given.
- b) The filing of a voluntary assignment in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Manager;
- c) The consent to an involuntary petition in bankruptcy by Manager;
- d) Entry of an order, judgment or decree by any court of competent jurisdiction, on application of a creditor, adjudicating Manager a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of Manager's assets, if such order, judgment or decree continues unstayed and in effect for a period of 120 consecutive days; or
- e) Manager's material failure to perform, keep or fulfill any other covenant, undertakings, obligations or conditions set out in this Agreement for a period of thirty (30) days after written notice of said failure from the Executive Director (unless a shorter period of time is specified in this Agreement); provided, however, that if the default is not susceptible of being cured within this thirty (30) day period and the defaulting party with due diligence takes and continues action to cure, then no event of default will be deemed to have occurred until the failure to take or to continue to take such action.
- f) Withdrawal of any approval granted, loss or suspension of any license/certification issued to Manager by the Kansas Racing and Gaming Commission or any other regulatory entity with jurisdiction over Manager's activities unless such withdrawal, suspension or loss is being contested by Manager in the appropriate forum with jurisdiction over the agency action at issue; or

50. **Remedies on Default.** If an event of default occurs as provided in Paragraph 49, the Executive Director may, without prejudice to any other legal or equitable remedy which he may have, give Manager notice of the Kansas Lottery's intention to terminate this Agreement after the expiration of thirty (30) days from the date of such notice and upon the expiration of such period, unless another cure period is expressly provided for, this Agreement will be deemed terminated; provided, however, that nothing in this paragraph, or in this Agreement, will be construed to restrict the Executive Director's authority to: (a) immediately cease operation of any or all Lottery Facility Games at the Lottery Gaming Facility for any reason; or (b) physically secure or take possession of any or all Lottery Facility Games and any related equipment necessary to play such games. Manager acknowledges and agrees that once this Agreement is terminated, the Kansas Lottery thereafter will be free to enter into a management contract with a new manager for another Lottery Gaming Facility in the Kansas gaming zone without penalty to the Kansas Lottery or further recourse by Manager.

During the thirty (30) day period between Manager's receipt of notice of termination from the Executive Director and such termination becoming effective, the Executive Director shall cooperate in good faith with Manager in any effort undertaken by Manager to locate a third party to acquire the Lottery Gaming Enterprise and assume the obligations of Manager hereunder; provided however, the Manager expressly acknowledges and agrees that any third party must comply with all statutory and licensure requirements and be able to perform all such obligations hereunder. Manager further acknowledges that its failure to make any daily electronic payment of Lottery Gaming Facility Revenues as required by Paragraph 23 will authorize the Executive Director in his sole discretion to immediately terminate this Agreement.

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

52. **Surrender Upon Termination.** At the Executive Director's request, Manager agrees that at the expiration or earlier termination of this Agreement, Manager will deliver to the Executive Director, or his designee, all books, records, accounting documents, computerized files, contracts, leases, licenses/certifications, permits or other governmental authorizations, files, supplies, keys, locks safe combinations, insurance policies not maintained as part of Manager's blanket policies, warranty contracts and cards, operating instructions and other information, warranties and guaranties concerning all equipment relating to the Lottery Facility Games, as well as any maintenance or preventive maintenance programs, schedules and logs, records, inventories of personal property and equipment purchased on behalf of the Kansas Lottery or the State of Kansas, and the Collection Account and all sums held or maintained therein. Notwithstanding the foregoing, manager shall be entitled to retain copies of all documents, records, books, files and other materials delivered to the Executive Director. Manager will have a reasonable period of time, not to exceed forty-five (45) days from the termination date, to complete all accounting functions with respect to the Lottery Gaming Facility. Manager must cooperate with the Executive Director in changing any bank accounts maintained for the Kansas Lottery's benefit. Manager must take all actions reasonably necessary to facilitate the orderly transition or termination of the management of the Lottery Gaming Facility and must perform all reporting and accounting functions required by this Agreement for the period from the date of the last report or accounting to the termination date. If, at the termination of this Agreement, there are any Lottery Facility Games that were purchased by Manager on behalf of the Kansas Lottery with ownership transferred to the Kansas Lottery, then the Executive Director will transfer ownership of such games to Manager or Manager's designee, if such transfer is lawful; but if such transfer is not lawful, then the Executive Director will refund to Manager the residual value received by the Executive Director in a sale of such game to an eligible buyer. The Kansas Lottery will also vacate the physical space where the Lottery Gaming Facility was located within ninety (90) days of this Agreement's termination.

53. **Agreement to Pay Attorneys' Fees and Expenses.** If Manager defaults under any provision of this Agreement and the Kansas Lottery should employ attorneys or incur other expenses for the collection of amounts payable or to enforce performance or observance of Manager's

obligations under this Agreement, Manager must pay, on demand, the reasonable fees of such attorneys and such other expenses incurred by the Kansas Lottery, if the Kansas Lottery is the prevailing party.

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

- a) To hold and save harmless the State of Kansas, Commission, Commission members, the Executive Director, the Kansas Lottery, Kansas Lottery staff, Kansas Racing and Gaming Commission, Kansas Racing and Gaming Commission members, the Kansas Racing and Gaming Commission's executive director, and Kansas Racing and Gaming Commission staff (each an "Indemnified Party") from liability for injury to persons or damages to property by reason of Manager's activities in carrying out the provisions of, or any way connected with, this Agreement.
- b) To hold and save harmless any Indemnified Party upon demand for any money or other property which they are required to pay out for any reasons whatsoever, whether the payment is for a budgeted expense or any other charges or debts incurred or assumed by Manager, or any other party, or judgments, settlement or expenses in defense of any claim, civil action, proceeding, charge, or prosecution made, instituted or maintained against Manager or an Indemnified Party jointly or severally, affecting or because of the condition or use of the Lottery Gaming Facility, or acts or failure to act by Manager or Manager's agents, or arising out of or based upon any law, regulation, requirement, contract or award related to the hours of employment, working conditions, wages and/or compensation of employees or former employees at the Lottery Gaming Facility, or any other cause in connection with the Lottery Gaming Facility's management or Manager's activities related to any Ancillary Lottery Gaming Facility Operations.
- c) To hold and save harmless any Indemnified Party from liability for any claim arising as a result of the selection of Manager under the Kansas Expanded Lottery Act to manage the Lottery Gaming Facility in the South Central zone, the denial of some other potential manager in making that selection, the process used in making the selection, or the process used in applying to become a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act, in the South Central zone.
- d) To hold and save harmless any Indemnified Party from liability for any violation or breach of this Agreement by Manager, its employees, or agents.
- e) To hold and save harmless any Indemnified Party from liability for any claims alleging negligent acts or omissions by Manager, its officers, employees, agents, board members, contractors, subcontractors or agents in the performance of this Agreement.
- f) To hold and save harmless any Indemnified Party from liability for any claims alleging violations of any intellectual property right for any intellectual property

supplied by Manager under this Agreement, including but not limited to, infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from Manager's performance under this Agreement.

Manager's duties under this paragraph will survive the termination or expiration of this Agreement. To the extent Manager is responsible to defend any Indemnified Party as required under this Agreement, Manager agrees to defend (with counsel approved by the Executive Director), at Manager's sole expense, any Indemnified Party, and to pay on demand all costs and expenses related to such defense regarding any indemnification right provided for in this paragraph. The Kansas Lottery shall cooperate in any such defense and will promptly provide notice to Manager of any potential liability arising under this Paragraph 54. Manager's obligations under this paragraph may be satisfied in whole, or in part, by insurance purchased at Manager's expense, provided that Manager will be responsible for any indemnified liabilities in excess of insurance limits. Notwithstanding any provision to the contrary in this Agreement, Manager shall in no event be liable under any indemnification obligation provided in this Agreement to the extent such liability arises out of or is related to the willful or malicious misconduct of any Indemnified Party or resulting from actions taken by Manager at the specific direction of the Executive Director or the Executive Director's on-site personnel (as provided in Section 32). The provisions of this paragraph in no way eliminate or cancel the insurance protection and rights granted to the Kansas Lottery, the Commission, the State of Kansas and their agents and employees as set forth in Paragraphs 34 and 35 of this Agreement.

55. Compliance with Orders, Ordinances, Etc. Throughout this Agreement's term, Manager will promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses/certifications, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, which now or at any time hereafter may be applicable to the Lottery Gaming Facility or any part thereof, or to any use, manner of use or condition of the Lottery Gaming Facility or any part thereof. Notwithstanding these requirements, Manager may in good faith contest the validity of the applicability of any requirement of the nature referred to in this paragraph. In such event, Manager may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, so long as such non-compliance is permitted by law. Manager will give notice to the Executive Director of any such non-compliance.

56. Discharge of Liens and Encumbrances. Manager shall not permit or create or suffer to be permitted or created any lien upon the Lottery Gaming Facility Revenues or the Lottery Gaming Facility, or any part thereof, by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Lottery Gaming Facility or any part thereof, except any liens expressly approved by the Executive Director. Notwithstanding these requirements, Manager may in good faith contest any such lien. In such event, Manager, upon prior written notice to the Executive Director, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal, unless the Executive Director requires Manager to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Executive Director, thereby causing a lien to be removed and Manager may assign its compensation under this Agreement, and related rights and remedies, to lenders in connection with financing of the Lottery Gaming Facility Enterprise. Manager agrees this

Agreement is not to be considered property, and will not permit this Agreement to be attached, garnished, or executed upon by any creditor for any reason, but such attachment, garnishment or execution shall not be grounds for default if Manager promptly contests and obtains vacation of such writs or secures a bond that causes the lien thereof to be removed. This Agreement is not transferable in bankruptcy without the Executive Director's approval, provided that the Manager's trustee, if Manager is insolvent or bankrupt, may continue to operate the Lottery Gaming Facility pursuant to this Agreement under order of the appropriate court for no longer than one year after the bankruptcy or insolvency of Manager.

57. **Assignment.** This Agreement may not be assigned in whole or in part without the Executive Director's express written consent, which may be granted or withheld in his sole and absolute discretion except that the Executive Director acknowledges that any owner or member of Manager may transfer its ownership interest in Manager to a current owner or member upon notice to the Executive Director, provided no new owner or member is being admitted into the ownership of Manager, provided such party or parties receive all approvals required by applicable statute or regulation. The Executive Director acknowledges that a joint venture or other business combination or transfer of an equity interest involving Manager and suitable third party or parties is permissible, provided such party or parties receive all approvals required by applicable statute or regulations. Notwithstanding the above, the Kansas Lottery shall not exercise this authority or discretion in an arbitrary or capricious manner.

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

If to the Executive Director:	Ed Van Petten Kansas Lottery 128 N. Kansas Avenue Topeka, KS 66603-3638 Telephone: 785-296-5703 Facsimile: 785-296-5722
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If to Manager:	Chisholm Creek Casino Resort, LLC 8860 Ladue Road, Suite 130 St. Louis, Missouri 63124 Telephone: 314-8621400 Facsimile: 314-862-1402
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Notice will be deemed given three days after mailing, if by certified mail, return receipt requested, the next business day after delivery to an overnight delivery service for next business day delivery, or on the date sent by fax if confirmation of receipt is obtained and retained and provided that notice under (a) or (b) above is sent the same day.

59. **Amendments.** Except as otherwise provided in this paragraph, no amendment, waiver, or consent as to any provision in this Agreement will be effective unless it is in writing and agreed to by the Executive Director and Manager, and each such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. In addition, and notwithstanding any other provision in this Agreement, Manager acknowledges and agrees the Executive Director may overrule any action by Manager affecting operations within the Lottery Gaming Facility without prior notice to Manager, and that the Kansas Lottery maintains at all times full control over all decisions concerning the Lottery Facility Games placed at the Lottery Gaming Facility. This Agreement will also be modified, in whole or in part, in order to comply with judicial interpretations of applicable law by a court of competent jurisdiction. This Agreement is subject to modification, in whole or in part, or cancellation, as deemed necessary by the Executive Director to comply with any subsequent judicial interpretations of applicable law by a court of competent jurisdiction occurring after this Agreement's execution, without additional consideration being exchanged between the parties. The parties agree nothing in this paragraph will be read to limit the remedies provided to Manager in Paragraphs 31 or 65.

60. **No Recourse; Special Obligation.** The Kansas Lottery's obligations and agreements contained herein and any other instrument or document executed in connection with this Agreement, and any other instrument or document supplemental thereto or hereto, are deemed the obligations and agreements of the Kansas Lottery, and not of any member, officer, contractor (other than Manager), or employee of the Commission or Kansas Lottery in his or her individual capacity, and such individuals will not be liable personally hereon or thereon or be subject to any personal liability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

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

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

63. **Force Majeure.** With respect to any obligation to be performed by a party during this Agreement's term, no party will be liable for failure to perform when prevented by any force majeure cause beyond the reasonable control of such party such as an act of God, strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, failure of supply or inability, by the exercise of reasonable diligence, to obtain supplies, parts or employees necessary to perform such obligation, or war or other emergency. The time within which such obligation must be performed will be extended for a period of time equivalent to the delay from such cause. In the event litigation is commenced against Manager or the Kansas Lottery, arising out of or in connection with the Kansas Expanded Lottery Act (including constitutionality, implementation, and the applicant contracting process) related to this agreement and requesting relief in the form of an injunction or termination of this Agreement or the invalidation of the Kansas Expanded Lottery Act, Manager may suspend construction, if not yet complete, until receipt of an order, at the trial level or on appeal, upholding the Kansas Expanded Lottery Act or its implementation as applied to this Agreement. But failure to perform by Manager's subcontractors or agents will not be considered a force majeure unless such subcontractor or supplier is prevented from timely performance by a force majeure as

described above. This paragraph will not apply to any financial difficulties of Manager, or any parent, subsidiary, affiliated or associated company of Manager, but will apply to orders of the Kansas Racing and Gaming Commission or court orders preventing Manager's ability to perform. The provisions of this paragraph notwithstanding, the parties agree the litigation components of the force majeure definition do not apply to Manager's obligations to pay the privilege fee as required by Paragraph 20 above or to Manager's obligations to pay the expenses of the Kansas Lottery or the Kansas Racing and Gaming Commission as required by Paragraph 28. It is understood that Manager has estimated a four month timeframe for obtaining all, building or use permits, access rights or similar developmental and construction approvals.

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

65. **Manager's Right to Cease Management Activities.** Manager may cease management of the Lottery Gaming Facility and terminate this Agreement with no less than ninety (90) days advance written notice if:

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

otherwise (i) preclude the Kansas Lottery from owning and operating the Lottery Facility Games permitted as of the date of this Manager's Application for Lottery Gaming Facility Manager, or (ii) reduces the number of Lottery Facility Games to a number that is less than the number of Lottery Facility Games contemplated for all phases of the project by this Manager's Application for Lottery Gaming Facility Manager;

- g) A court of competent jurisdiction, after all appropriate appeals are exhausted, invalidates paragraph 30 above or the corresponding provisions of the Kansas Expanded Lottery Act;
- h) The Lottery Gaming Facility operates at a financial loss to Manager at the net income level (as defined by GAAP and verified by an independent audit by an auditor approved by the Executive Director) during any rolling twelve (12) month period; and Manager gives the Executive Director at least 90-days' advance written notice of Manager's intent to cease management activities within forty-five (45) days after the end of said period;
- i) The Executive Director exercises his right under Paragraph 33 or the Kansas Expanded Lottery Act to physically secure, deactivate or cease operation of such a substantial number of Lottery Facility Games that the Lottery Gaming Facility is no longer commercially viable; or
- j) The Kansas Lottery or Kansas Racing and Gaming Commission prevents the Lottery Gaming Facility from operating 24 hours a day, 7 days a week, except as may be ordered by the Kansas Lottery or the Kansas Racing and Gaming Commission as a sanction within the legal exercise of their respective regulatory authority or by the Kansas Lottery under its contract or statutory authority.

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

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

Manager will not be permitted any refund for payments made by Manager to reimburse the Kansas Lottery or the Kansas Racing and Gaming Commission's expenses as required by this Agreement.

67. **Financing Commitment for Construction.** In accordance with K.S.A. 2008 Supp. 74-8734(h)(9), Manager attaches as Exhibit E its financing commitment for construction of the Lottery Gaming Facility and ancillary facilities.

68. **Executive Director's Approval.** When it is provided in this Agreement that the Manager will submit a budget, plan or other issue for the Executive Director's approval, the Executive Director will respond within thirty (30) days, except that for any approval required by Paragraphs 13, 21, 38 the Executive Director will respond within five (5) days, provided that any request from Manager in which the Executive Director fails to respond in a commercially reasonable time will be deemed denied. The Executive Director will not exercise any discretionary authority provided to him in this Agreement in an arbitrary or capricious manner. The Kansas Lottery agrees that if the Executive Director's position becomes vacant, it will promptly designate an employee to fulfill the Executive Director's responsibility under this Agreement.

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

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

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

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

73. **Headings Not Controlling; Construction; Survival.** Each paragraph heading is prepared for convenience only and is not to control, affect the meaning, or be taken as an interpretation for any provision in this Agreement. Use of the word "including" in this Agreement does not mean including in a restrictive sense, but rather means in the sense of providing a non-exclusive illustration, as if the words "including without limitation" were included in the text. The terms and provisions of Paragraphs 2, 8, 20, 31, 48, 52, 54, 58, 60, 65, 66, 70, 71, 72, 73, 74 and 78 shall survive the termination of this Agreement.

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

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

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

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

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

- a) The Kansas Lottery acknowledges that Manager may grant a security interest in, and/or grant a mortgage encumbering, the Lottery Gaming Enterprise, Lottery Facility Games, and any bank accounts of Manager referenced in Paragraph 48 but excluding any Collection Accounts
- b) Upon a bankruptcy of Manager, or if the Kansas Lottery elects to terminate this Agreement for any other reason, it shall notify Lender, and Lender may request that the Kansas Lottery promptly enter into a new management agreement on substantially the same terms as this Agreement (New Management Agreement) with a new, Third Party Manager. Kansas Lottery need not consider such a request, however, unless a Lender has first: (i) cured all reasonably curable defaults to the extent required hereunder; (ii) reimbursed Kansas Lottery's costs and expenses (including reasonable attorneys' fees and expenses) to terminate this Agreement, recover the Lottery Gaming Facility, and enter into the New Management Agreement; and (iii) ensured that any new Third Party Manager and/or the New Management Agreement are in compliance with any and all statutory requirements, approvals or consents, and any regulatory procedures, including those related to suitability. The Kansas Lottery agrees to co-operate with a Lender in good faith to find a new acceptable Third Party Manager upon any such termination of Manager.
- c) The Kansas Lottery agrees to notify Lender of any material amendments made under Section 59 of this Agreement.

- d) Manager agrees to notify the Lottery of any Lender's contact information and keep it current with the Lottery at all times. Manager's failure to keep a Lender's contact information current will nullify the Kansas Lottery's duty of notice under (a), (b) or (c) of this Section.
- e) The rights of Lender hereunder shall inure to the benefit of a Lender's affiliate, assignee, designee, nominee, subsidiary, or others designated by Lender.
- f) The Kansas Lottery agrees to provide any standard business consents, estoppels or similar instruments reasonably requested by Manager or Lender in connection with any such financing of the Lottery Gaming Enterprise or Lottery Facility Games.

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

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

THE KANSAS LOTTERY

By: Ed Van Petten Dated: 8/25/09
Ed Van Petten, Executive Director

CHISHOLM CREEK CASINO RESORT, LLC

By: Gary D. Armentrout Dated: 8/25/09
Gary D. Armentrout, Manager

EXHIBIT SCHEDULE

EXHIBIT A – Environmental Compliance and Indemnification Agreement

EXHIBIT B – County Endorsement

EXHIBIT C –Expected Construction Sequence

EXHIBIT D –Key Employees

EXHIBIT E– Financing Commitment Description

EXHIBIT F – DA-146a

EXHIBIT G- Definitions of “Infrastructure” and “Investments in Infrastructure.”

EXHIBIT "A"

ENVIRONMENTAL COMPLIANCE AND
INDEMNIFICATION AGREEMENT

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

**ENVIRONMENTAL COMPLIANCE
AND INDEMNIFICATION AGREEMENT**

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "Environmental Compliance Agreement"), dated as of _____, is given by CHISHOLM CREEK CASINO RESORT, LLC ("Manager"), a Delaware limited liability company having offices at 8860 Ladue Road, Suite 130, St. Louis, MO 63124, and the persons, firms or corporations, if any, identified as Indemnitors at the end of this Environmental Compliance Agreement (collectively "Indemnitors"), to the **Kansas Lottery**, an agency of the State of Kansas having its principal office at 128 N. Kansas Avenue, Topeka, KS 66603-3638.

RECITALS

WHEREAS, the Manager is the owner of, or is acquiring title to or other interest in, certain real property located in the County of Sumner, State of Kansas and described more fully in Schedule "A" attached and made a part hereof (the "Premises"); and

WHEREAS, the Manager is contracting with the Kansas Lottery to be a Lottery Gaming Facility Manager, as that term is defined in the Kansas Expanded Lottery Act, K.S.A. 2007 Supp. 74-8733 through 74-8773, which will consist of a Lottery Gaming Facility and certain Ancillary Lottery Gaming Facility Operations, as referenced in a Lottery Gaming Facility Management Contract dated _____ (the "Management Contract"), to which the form of this Environmental Compliance Agreement is attached (collectively referred to as the "Project"); and

WHEREAS, the Lottery Gaming Facility Management Contract contemplates that Manager will construct and maintain the Project in which a certain portion will be used to house a Lottery Gaming Facility, the business of which will be owned and operated by the Kansas Lottery ; and

WHEREAS, the Kansas Lottery is unwilling to consummate the Lottery Gaming Facility Management Contract unless the Manager and the Indemnitors execute and deliver this Environmental Compliance Agreement to the Kansas Lottery.

NOW, THEREFORE, in consideration of the foregoing and to induce the Kansas Lottery to consummate the Lottery Gaming Facility Management Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Manager and the Indemnitors covenant and agree with the Kansas Lottery as follows:

1. **DEFINITIONS**. All capitalized terms used in this Environmental Compliance Agreement and not defined will have the meanings set forth below.

(a) **Environment** means any water, groundwater, water vapor, land (including

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

land surface or subsurface), soil vapor, air, fish, wildlife, biota, and all other natural resources.

(b) Environmental Laws mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances (as defined below) and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(c) Environmental Permits mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, use and/or operation of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances.

(d) Hazardous Substance means any substance (i) the presence of which requires investigation or remediation under any Environmental Law; or (ii) which is or becomes defined as a "hazardous waste", "hazardous substance", "toxic substance", "solid waste", pollutant and/or or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. section 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. section 6901 *et seq.*), as amended, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, *et seq.*), the Clean Water Act, as amended (33 U.S.C. Sections 1251 *et seq.*), the Occupational Safety and Health Act, as amended (29 U.S.C.A. Section 651 *et seq.*), and/or any other applicable Environmental Law or any regulations promulgated under any of the foregoing; or (iii) which is toxic (including, but not limited to, toxic mold), explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Kansas or any political subdivision thereof; or (iv) the presence of which on the Premises causes or threatens to cause hazardous conditions upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

(e) Improvements mean any buildings, structures and other improvements (if any) presently or hereafter located on the Premises.

(f) Indemnitee means the Kansas Lottery, the Kansas Lottery Commission, and the State of Kansas, and their successors and assigns, and their respective officers, directors,

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

employees, agents, representatives, contractors and subcontractors.

(g) Lottery Gaming Enterprise shall have the meaning assigned to it in the Management Contract.

(h) Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance).

2. REPRESENTATIONS AND WARRANTIES: The Manager represents and warrants to the Kansas Lottery that to the best of the Manager's knowledge (without inquiry) and, in each case, except to the extent in compliance with applicable law (including any Environmental Law):

(a) The Premises is not being nor has been used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Premises, except as set forth in Schedule "B" hereto.

(c) The soil, subsoil, bedrock, soil vapor, surface water and groundwater of the Premises are free of any Hazardous Substances.

(d) There has been no Release nor is there the threat of a Release of any Hazardous Substance on, at or from the Premises, which through soil, subsoil, soil vapor, bedrock, surface water or groundwater migration could come to be located on the Premises, and the Manager has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Premises with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises.

(e) All Environmental Permits necessary for the acquisition, construction, equipping, use or operation of the Premises either have been obtained or shall be obtained prior to the commencement of construction of the Lottery Gaming Enterprise.

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

(f) No event has occurred with respect to the Premises which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, notices of violations, demand letters, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Premises which require any change in the present condition of the Premises with respect to Environmental Law or Hazardous Substances or any work, repairs, construction, containment, clean-up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Premises with respect to Environmental Law or Hazardous Substances.

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs which seek money damages, injunctive relief, investigations, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or (iii) human exposure to any Hazardous Substance, to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof.

3. COVENANTS OF MANAGER: The Manager covenants and agrees with the Kansas Lottery as follows (except, in each case, in compliance with applicable law, including Environmental Law):

(a) Except in the ordinary course of the Lottery Gaming Enterprise's business, the Manager shall keep, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to keep, the Premises free of all Hazardous Substances and shall not cause or permit the Premises or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substances.

(b) The Manager shall comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to comply with, all

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

applicable Environmental Laws, and shall obtain and comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to obtain and comply with, all Environmental Permits.

(c) Except in the ordinary course of the Lottery Gaming Enterprise's business, the Manager shall not cause or permit any change to be made in the present or intended use of the Premises which would (i) involve the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or the use of the Premises as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Manager shall promptly provide the Kansas Lottery with a copy of all notifications which the Manager gives or receives with respect to any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) The Manager shall undertake and complete or shall cause to be undertaken and completed all investigations, studies, sampling and testing and all removal and other remedial actions necessary to contain, remove and clean up all Hazardous Substances that are determined to be present at the Premises in accordance with all applicable Environmental Laws and all Environmental Permits.

(f) The Manager or its affiliates shall at all reasonable times allow the Kansas Lottery and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Premises for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions, provided, however, that the Kansas Lottery shall not conduct any invasive testing without the prior consent of the Manager.

(g) If at any time the Manager obtains any evidence or information which suggests that potential environmental problems may exist at the Premises, the Kansas Lottery may require that a full or supplemental environmental investigation and environmental assessment report (including a Phase II environmental investigation if recommended by a Phase I environmental

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

investigation) with respect to the Premises of a scope and level of detail satisfactory to the Kansas Lottery to be prepared by an environmental engineer or other qualified person acceptable to the Kansas Lottery, at the Manager's expense. Said investigation may include a physical inspection of the Premises, a visual inspection of any property adjacent to or within the immediate vicinity of the Premises, personnel interviews and a review of all Environmental Permits. If the Kansas Lottery requires, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, soil vapor, bedrock, surface water and/or groundwater. If the investigations indicate the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises other than in compliance with applicable law, including Environmental Law, the Manager shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, and other remedial actions, using methods recommended by the engineer or other person who conducted the investigations and acceptable to the appropriate federal, state and local agencies or authorities.

(h) Attached hereto as Schedule "C" is a complete list of all Environmental Permits presently required for the ownership, use or operation of the Premises and the businesses located thereon. The Manager agrees to notify the Kansas Lottery of any additions, deletions, or modifications of any Environmental Permits and the list thereof. Upon written request of the Kansas Lottery, the Manager shall furnish true and complete copies of all Environmental Permits.

4. INDEMNIFICATION PROVISIONS: The Manager and the Indemnitors hereby jointly and severally covenant and agree, at their sole cost and expense, to indemnify, protect, defend, and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees for attorneys and experts selected by the Indemnitee) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (a) the use of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (b) the presence or claimed presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, (c) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, (d) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof, (e) a violation of any applicable Environmental Law, (f) non-compliance with any Environmental Permit, (g) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Manager in this Environmental Compliance Agreement, and (h) the designation by any state or governmental entity, the United States Environmental Protection Agency or any other governmental authority of an Indemnitee as a party responsible or potentially responsible for the remediation of any condition on the Premises (collectively, the "Indemnified Matters").

The liability of the Manager and the Indemnitors to the Kansas Lottery and each Indemnitee shall be perpetual and shall survive, and shall in no way be limited, abridged, impaired or otherwise affected, by (i) any amendment or modification of any of the Lottery Gaming Facility Management Contract, (ii) the invalidity or unenforceability of any of the terms or provisions of the Lottery Gaming Facility Management Contract, (iii) any applicable statute of limitations, (iv) any investigation or inquiry conducted by or on the behalf of the Kansas Lottery or any other Indemnitee or any information which the Kansas Lottery or any other Indemnitee may have or obtain with respect to the environmental or ecological condition of the Premises, (v) the sale, transfer or conveyance of all or part of the Premises, (vi) the dissolution or liquidation of the Manager, (vii) the death or legal incapacity of any Indemnitor, (viii) the release or discharge, in whole or in part, of the Manager or any Indemnitor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (ix) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Manager under of any Indemnitor under this Environmental Compliance Agreement, (x) the expiration or termination of the Lottery Gaming Facility Management Contract or (xi) the reconveyance of title to the Premises by the Manager or any other person, whether in accordance with the terms of a lease, by foreclosure or deed in lieu of foreclosure, sale or otherwise.

Notwithstanding anything to the contrary contained herein, neither Manager nor the Indemnitor shall indemnify, protect, defend or save harmless from any Indemnitee from and against any damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, reasonable attorneys' and experts' fees for attorneys and experts selected by the Indemnitee) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (i) any such Indemnitee(s)' gross negligence or willful misconduct; or (ii) any

EXHIBIT A

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circumstance arising from and after the date on which Manager or its affiliates transfers title to the Premises to a third party, whether by sale, foreclosure, deed in lieu of foreclosure or otherwise.

The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement given to the Kansas Lottery or any other Indemnitee, as part of the application of the Kansas Expanded Lottery Act or any other applicable statute or regulation.

5. GOVERNING LAW: This Environmental Compliance Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of Kansas.

6. COUNTERPARTS: This Environmental Compliance Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument.

7. SUCCESSORS AND ASSIGNS: This Environmental Compliance Agreement shall be binding upon the Manager, its successors and assigns, all subsequent owners of the Premises, the Indemnitors and their respective successors, assigns, executors, administrators, legal representatives, distributees and fiduciaries and shall inure to the benefit of each Indemnitee.

SIGNATURES APPEAR ON FOLLOWING PAGE

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

IN WITNESS WHEREOF, the Manager and the Indemnitors have caused this Environmental Compliance Agreement to be duly executed as of the day and year first above written.

CHISHOLM CREEK CASINO RESORT,
LLC

By: _____
Name:
Title:

FOXWOODS DEVELOPMENT
COMPANY, LLC

By: _____
Name:
Title:

THE KANSAS LOTTERY

By: _____
Ed Van Petten, Executive Director

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

State of _____)
County of _____) ss.:

On the ____ day of _____ in the year 2009, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of _____)
County of _____) ss.:

On the ____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of _____)
County of _____) ss.:

On the ____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

SCHEDULE "A"
(Premises)

To be provided.

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

SCHEDULE "B"
(Underground Storage Tanks)

None

EXHIBIT A

Chisholm Creek Casino Resort, LLC- 4-15-09

SCHEDULE "C"
(Environmental Permits)

To be provided.

EXHIBIT "B"

**ENDORSEMENT BY LOCAL
GOVERNMENT**

*City of Mulvane - Endorsement
Chisholm Creek
I-35 & Hwy 53*

RESOLUTION NO. 2009-8

A RESOLUTION OF THE GOVERNING BODY OF MULVANE, KANSAS ENDORSING THE OPERATION OF A LOTTERY GAMING FACILITY BY CHISHOLM CREEK CASINO RESORT, LLC (FOXWOODS – SOUTHWEST OF I-35 AND HIGHWAY K-53 AT EXIT 33 BOUNDED BY HIGHWAY US-81 TO THE WEST), IN THE CITY OF MULVANE, SUMNER COUNTY, KANSAS.

WHEREAS, Senate Bill 66, the Kansas Expanded Lottery Act (the "Act"), was approved by the Kansas Legislature, signed by the Governor and was published in the Kansas Register, Volume 26, on April 19, 2007; and

WHEREAS, the Act requires a Resolution of Endorsement from the governing body for any prospective Lottery Gaming Facility Manager whose proposed facility is to be located in the City; and

WHEREAS, Chisholm Creek Casino Resort, LLC (Foxwoods) has submitted a proposal to the governing body of the City of Mulvane, Sumner County, Kansas for a destination resort gaming facility to be located at Exit 33 of the Kansas Turnpike, which the City believes to be within the corporate limits of the City of Mulvane, Sumner County, Kansas; and

WHEREAS, after duly considering all information provided, the governing body has determined that Chisholm Creek Casino Resort, LLC (Foxwoods) possesses the qualifications to operate a Lottery Gaming Facility in the City of Mulvane, Sumner County, Kansas; and

WHEREAS, Chisholm Creek Casino Resort, LLC (Foxwoods) controls parcel(s) of land at Exit 33, and proposes this as the location for development and operation of a Lottery Gaming Facility; and

WHEREAS, the governing body of the City of Mulvane, Kansas has determined the proposed location is well suited to attract tourism and enhance the economic development prospects of the City, Sumner County and of overwhelming benefit to the State of Kansas; and

WHEREAS, the proposed location has been endorsed by the Sumner County Board of County Commissioners and the City desires to bolster and fully secure said endorsement by also endorsing the proposal so as to leave no doubt as to the local government support for such location; and

WHEREAS, to facilitate the location of the South-Central Kansas Lottery Gaming Facility in this gaming zone, the governing body of the City has determined it is in the best interest of region and State based on the information available to issue a Resolution of Endorsement at this time.

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF MULVANE, SUMNER COUNTY, KANSAS, AS FOLLOWS:

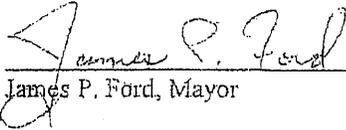
The City of Mulvane, Kansas hereby issues Chisholm Creek Casino Resort, LLC (Foxwoods), including its Application and proposed Management Contract for a lottery gaming facility to be located southwest of the intersection of I-35 and Highway K-53 at Exit 33, bounded by Highway US-81 to the west, any and all manner of endorsement required in accordance with Act, as now set forth at K.S.A. 74-8734(h)(10).

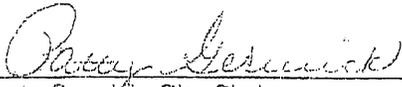
This Endorsement of the City of Mulvane is given in reliance upon the ultimate execution by Chisholm Creek Casino Resorts, LLC of a Development Agreement with the City, in a form satisfactory to the City.

RESOLVED, PASSED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF MULVANE, SUMNER COUNTY, KANSAS THIS 15TH DAY OF JUNE, 2009.

CITY OF MULVANE, KANSAS




James P. Ford, Mayor


Patty Gerwick, City Clerk

Resolution No. 2009-26

A RESOLUTION OF ENDORSEMENT FOR THE OPERATION OF A LOTTERY GAMING FACILITY LOCATED AT BY CHISHOLM CREEK CASINO RESORT, LLC, A KANSAS LIMITED LIABILITY COMPANY IN SUMNER COUNTY, KANSAS:

WHEREAS, Senate Bill 66, the Kansas Expanded Lottery Act (the "Act"), was approved by the Kansas Legislature, signed by the Governor, and was published in the Kansas Register, Vol. 26, No. 16, Pg. 518 on April 19, 2007; and

WHEREAS, the Act provides for the development of one lottery gaming facility per Gaming Zone in the State, as defined in the Act; and

WHEREAS, Sedgwick County and Sumner County are the counties located in the Southcentral Kansas Gaming Zone; and

WHEREAS, the Act provides that each county in each gaming zone must submit to the qualified voters a resolution to permit the operation of a Lottery Gaming Facility within the County; and

WHEREAS, Sedgwick County called an election on August 7, 2007, presenting the question of whether to permit a Lottery Gaming Facility in Sedgwick County; and

WHEREAS, the qualified voters in Sedgwick County voted against the development and operation of Lottery Gaming Facility in Sedgwick County; and

WHEREAS, Sumner County called an election on December 20, 2005, presenting the following question on the ballot:

"Question: Do you support a destination resort casino in Sumner County, Kansas, in the event such is legally permitted by the state and is otherwise deemed in the best interest of the County by the Board of County Commissioners?"

WHEREAS, the question was approved with 4,842 votes in favor and 2,838 against; and

WHEREAS, the election was duly noticed, conducted, and the votes counted and canvassed in the manner provided under Kansas law; and

WHEREAS, the qualified voters voted in favor of the development and operation of Lottery Gaming Facility in Sumner County and the certified results were transmitted to the Lottery Commission; and

WHEREAS, the Lottery Commission waived the requirement that an election be held in Sumner

County after the effective date of the Act as the previous election regarding destination casinos held on December 20, 2005, was determined to be in substantial compliance with the election required under the Act; and

WHEREAS, the Act requires a Resolution of Endorsement from the County of any prospective Lottery Gaming Facility Manager submitting a Lottery Gaming Facility Management Contract to the Lottery Commission; and

WHEREAS, Sumner County solicited statements of qualifications for parties seeking a Resolution of Endorsement from the County as a Lottery Gaming Facility Manager; and

WHEREAS, the County called a public hearing ("Public Hearing") to receive information and testimony in support of prospective Lottery Gaming Facility Managers regarding their qualifications, proposed sites for the Lottery Gaming Facility, and specific development plans for the Lottery Gaming Facility and ancillary development; and

WHEREAS, the following parties presented statements of qualification at the Public Hearing: South Central Gaming Partners, L.C, Chisholm Creek Casino Resort, LLC, and Lakes Kansas Development, LLC; and

WHEREAS, after duly considering all information and testimony provided at the Public Hearing the County determined that Chisholm Creek Casino Resort, LLC possessed the qualifications and financial resources to operate a Lottery Gaming Facility in Sumner County, Kansas, and

WHEREAS, Chisholm Creek Casino Resort, LLC has options to purchase a parcel of land in close proximity to Exit 33 of Interstate 35 and proposes this as the location for development and operation of a Lottery Gaming Facility; and

WHEREAS, Sumner County has determined this location is well suited to attract tourism and enhance the economic development prospects of the County and State; and

WHEREAS, to facilitate the location of the Southcentral Kansas Lottery Gaming Facility in Sumner County the County has determined it is in the best interest of the County based on the information and testimony provided at the Public Hearing and independent investigations of prospective Lottery Gaming Facility Managers to issue a Resolution of Endorsement at this time.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE BOARD OF COMMISSIONERS OF SUMNER COUNTY, KANSAS:

Chisholm Creek Casino Resort, LLC is hereby provided the Endorsement of the County for the position of Lottery Gaming Facility Manager for a Sumner County Lottery Gaming Facility.

The Endorsement of the County is subject to and conditioned upon the execution of a

Predevelopment Agreement between the County and Chisholm Creek Casino Resort, LLC, in a form satisfactory to the County.

PASSED BY THE BOARD OF COUNTY COMMISSIONERS OF SUMNER COUNTY,
KANSAS, THIS 11th DAY OF MAY, 2009.

Gary E. Martin

Gary E. Martin, Chairman,
County Commissioner, District 1

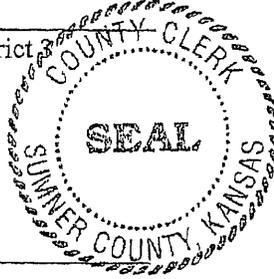
Jim D. Newell

Jim D. Newell,
County Commissioner, District 2

Eldon Gracy

Eldon Gracy, County Commissioner, District 3

Attest:



Shane J. Skott

Sumner County Clerk

Approved as to Form:

John "Jack" A. Potucek, II

John "Jack" A. Potucek, II, County Counselor

MEMORANDUM OF UNDERSTANDING

WHEREAS, the Board of County Commissioners of Sumner County, Kansas, provided an endorsement for the application of Chisholm Creek Casino Resort, LLC, to become a lottery gaming facility manager in the South Central Zone;

WHEREAS, subsequent to the endorsement, certain changes occurred in the membership and makeup of the Chisholm Creek Casino Resort, LLC, and other aspects of the management and development of the Chisholm Creek casino project, the basic nature of which has been communicated to the Board of County Commissioners, including identification of the members of Chisholm Creek Casino Resort, LLC;

WHEREAS, the applicant has indicated an interest and willingness to develop this project, including amenities or ancillary development under its control, within an unincorporated area of Sumner County in a good faith partnership and cooperative working relationship with Sumner County;

WHEREAS, the applicant seeks a reaffirmation of the endorsement for the application of Chisholm Creek Casino Resort, LLC, by the Board of County Commissioners;

WHEREAS, in exchange for such reaffirmation, the applicant promises and affirms the following:

1 Chisholm Creek Casino Resort, LLC, reaffirms each and every promise and agreement made in Section 2 of its Predevelopment Agreement previously executed with Sumner County.

2 In addition, Chisholm Creek Casino Resort, LLC, will not consent to annexation by any municipality seeking to annex any land owned by Chisholm Creek Casino Resort, LLC upon which amenities or ancillary development are planned to be constructed.

3 In addition, Chisholm Creek Casino Resort, LLC, agrees that in the development of the Project, it shall construct, cause to be constructed, or provide the funds to utility districts, the County (or other appropriate public body) for construction of adequate infrastructure to serve the Project without regard to jurisdictional boundaries. Adequate infrastructure shall mean roadways, utilities, and public safety and emergency service facilities in a size and type to serve the employees and patrons of the Project as determined by mutual agreement of the professional planning, engineering, and technical consultants of Applicant and County. Applicant shall purchase and supply designated police, emergency and fire equipment and technology necessitated by the Project as agreed to in writing between the parties.

4 Chisholm Creek Casino Resort, LLC agrees, upon obtaining title to any land for which a previous land owner consented to annexation by a municipality, to execute and file with such municipality a revocation of such consent.

Memorandum of Understanding Page 2

CHISHOLM CREEK CASINO RESORT, LLC

By: [Signature]

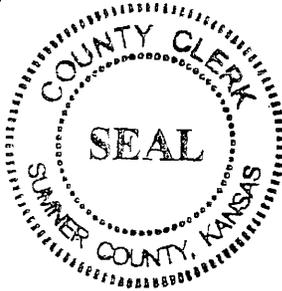
Title: MANAGER

THE BOARD OF COUNTY COMMISSIONERS OF
SUMNER COUNTY, KANSAS

[Signature]
Garey E. Martin, Chairman
County Commissioner, District 1

[Signature]
Jim D. Newell
County Commissioner, District 2

[Signature]
Eldon Gracy
County Commissioner, District 3



Attest:

[Signature]
Sumner County Clerk

Approved as to Form:

[Signature]
John "Jack" A. Potucek, II, County Counselor

EXHIBIT "C"

EXPECTED CONSTRUCTION

SEQUENCE

EXHIBIT C***

Section 1 - Lottery Gaming Facility- Phase 1

CASINO PROGRAM	UNITS	SEATS	U/SF	PROGRAMMED AREA		TOTAL	GRAND TOTAL
				F.O.H.	B.O.H.		
Casino - Slots****	1600		30	45,000		45,000	
Casino - Tables / Poker	30		200	6,000		6,000	
Cage				1,200	3,200	4,400	
Promotions / Slot Club	1		800	800		800	
Kansas Gaming					3,800	3,800	
Armored Truck Dock					1,000	1,000	
Slot Shop					1,650	1,650	
Table Games					1,200	1,200	
Security					1,750	1,750	
Surveillance					1,500	1,500	
Surveillance Podium					12	12	
CASINO PROGRAM SUBTOTAL				63,000	14,112	-	67,112
Misc. Stairs & Elevators / BOH Circ.			10%			-	6,711
CASINO PROGRAM TOTAL						-	73,823

*** In the event of a conflict or inconsistency between this Exhibit C and the program, scope and construction schedule in the Application for Lottery Gaming Facility manager and its exhibits, this Exhibit C controls.

*** The square footage as set forth in Section 1 and 2 are subject to design allowances.

**** Casino constructed with capacity to accommodate up to 1,500 slot machines and will open with no fewer than 1,300 slot machines.

Exhibit C***

Section 2 - Ancillary Lottery Gaming Facilities- Phase 1

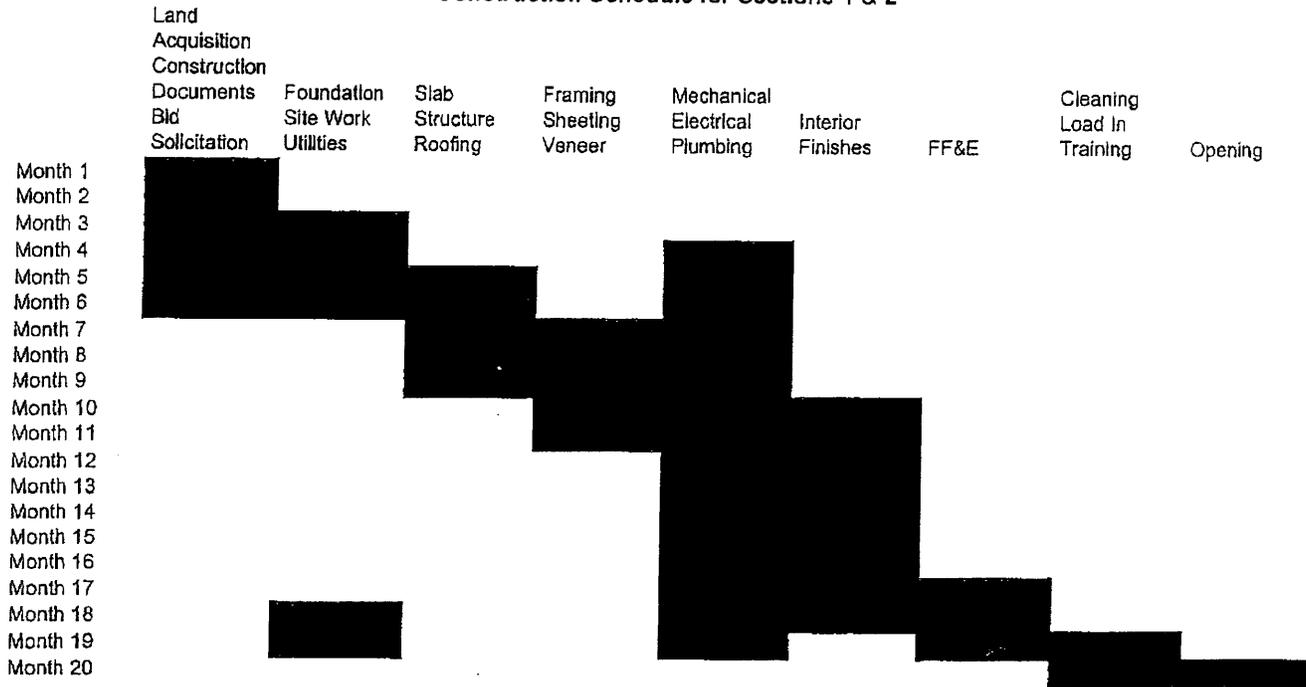
	PROGRAMMED AREA					TOTAL	GRAND TOTAL
	UNITS	SEATS	U/SF	F.O.H.	B.O.H.		
FOOD/BEVERAGE/ENTERTAINMENT PROGRAM**							
Coat Rooms	1		800		800	800	
Storage							1,000
Steakhouse*		50	30	1,500	1,000	1,500	
Lounge / Bar				500		500	
Kitchen					1,200	1,200	
Buffet*		250	25	6,250		6,250	
Buffet Servery				2,000		2,000	
Buffet Kitchen					3,500	3,500	
Deli*		30	30	900	260	1,150	
Services Bars	2		750	1,500		1,500	
Storage					450	450	
Valet					200	200	
Entrance Lobby				1,000		1,000	
Casino Restrooms	3		1,500	4,500		4,500	
FBE PROGRAM SUBTOTAL				18,150	7,400		25,550
Misc. Stairs & Elevators / BOH Circ.			10%				2,555
FBE PROGRAM TOTAL							28,105
SUPPORT PROGRAM**							
Offices**							
Casino Offices							
Accounting							
Purchasing							
Computer Room							
IT							
Total Offices					6,000	6,000	
Human Resources**					1,000	1,000	
Men's Locker**					1,500	1,500	
Women's Locker**					1,500	1,500	
Uniform**					1,000	1,000	
Warehouse**					2,500	2,500	
Facilities / Maintenance/Engineering**					2,000	2,000	
Mechanical / Electrical**					400	400	
Central Plant**					5,580	5,580	
Dock Staging**					1,900	1,900	
Cold Storage**					3,630	3,630	
Freezer**					1,000	1,000	
Beer / Wine Cooler**					1,250	1,250	
Liquor Storage**					750	750	
Dock Office**					100	100	
Cooler**					1,000	1,000	
SUPPORT PROGRAM SUBTOTAL					31,110		31,110
Misc. Stairs & Elevators/ BOH circ			25%				7,778
SUPPORT PROGRAM TOTAL							38,888
MISCELLANEOUS PROGRAM**							
Porte Cochere					5,000	5,000	
Trash	2				2,500	2,500	
Loading Dock	2				2,400	2,400	
Electrical Yard					1,500	1,500	
E.M.S. Building					1,200	1,200	
MISCELLANEOUS PROGRAM TOTAL							12,600
CASINO PROGRAM TOTAL							73,823
FBE PROGRAM TOTAL							28,105
SUPPORT PROGRAM TOTAL							38,888
MISCELLANEOUS PROGRAM TOTAL							12,600
							153,416

*** In the event of a conflict or inconsistency between this Exhibit C and the program, scope and construction schedule in the Application for Lottery Gaming Facility manager and its exhibits, this Exhibit C controls.

*** Everything set forth in Section 1 and 2 of Exhibit C is subject to design allowances.

Exhibit C***

**Section 3 - Lottery Gaming Facility & Ancillary Lottery Gaming Facility
Construction Schedule for Sections 1 & 2**



**Lottery Gaming Facility & Ancillary Lottery Gaming Facility
Construction Schedule - Future**

Year 5
Year 6
Year 7
Year 8
Year 9
Year 10
Year 11
Year 12

TBD

*** *** In the event of a conflict or inconsistency between this Exhibit C and the program, scope and construction schedule in the Application for Lottery Gaming Facility manager and its exhibits, this Exhibit C controls.

*** As of the twelfth anniversary of the Commencement Date, Manager's Investment in Infrastructure to acquire, develop and construct the Lottery Gaming Facility and Ancillary Lottery Gaming Facility Operations shall be at least \$225 million.

EXHIBIT "D"

KEY EMPLOYEES

EXHIBIT D
TO
LOTTERY GAMING MANAGEMENT CONTRACT

KEY EMPLOYEES OF GAMING FACILITY MANAGER

The following positions or their equivalents shall be considered Key Employees of Lottery Gaming Facility Manager Chisholm Creek Casino Resort, LLC.

1. President and General Manager – Responsible for the operations of the Lottery Gaming Facility and related services.
 2. Vice President of Finance (Chief Financial Officer) – Plans, directs, supervises and coordinates the property's accounting, casino cashiering, credit, count room, purchasing and financial analysis functions in accordance with approved internal controls and procedures.
 3. Vice President of Gaming Operations – Plans, directs, supervises and coordinates the property's gaming activities.
 4. Vice President of Marketing – Responsible for long range and daily planning and operations of Marketing Department including public relations, advertising, player development.
 5. Director of Security and Surveillance – Oversees the operation of the Security and Surveillance Department in accordance with approved internal controls and procedures. Supervises all security and surveillance staff.
-

EXHIBIT "E"

FINANCING COMMITMENT

EXHIBIT E
TO
LOTTERY GAMING MANAGEMENT CONTRACT

FINANCING COMMITMENT

The Lottery Gaming Facility and Ancillary Lottery Gaming Facilities set forth in Sections 1 and 2 of Exhibit C are expected to be funded with 100% cash equity contributed by the direct or indirect owners of the Manager and, as such, financing commitments are not applicable.

EXHIBIT "F"

DA-146a CONTRACTUAL

ATTACHMENT

Exhibit F

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. Terms Herein Controlling Provisions: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. Agreement With Kansas Law: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 30 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. Disclaimer Of Liability: Neither Except as otherwise provided for in the Lottery Gaming Facility Management Contract neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. Anti-Discrimination Clause: The contractor agrees will use the best efforts to: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. Acceptance Of Contract: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. Arbitration, Damages, Warranties: ~~Notwithstanding any language to the contrary Except as otherwise provided for in the Lottery Gaming Facility Management Contract,~~ no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. Representative's Authority To Contract: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. Responsibility For Taxes: The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. Insurance: The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. Information: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. The Eleventh Amendment: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

EXHIBIT "G"

INFRASTRUCTURE DEFINITIONS

EXHIBIT G
TO
LOTTERY GAMING MANAGEMENT CONTRACT

INFRASTRUCTURE DEFINITIONS

(b) "Infrastructure" means all reasonable and necessary costs and expenses required by a Manager's contract with the Kansas lottery to acquire, design, construct and make ready to open to the general public a Lottery Gaming Enterprise, and all reasonable and necessary costs and expenses to expand the operation and development of the Lottery Gaming Enterprise after its opening to the general public as required by a Manager's contract with the Kansas lottery, including the following:

- (1) land;
- (2) buildings;
- (3) furniture fixtures and equipment;
- (4) purchase or lease of Lottery Facility Games and related equipment;
- (5) software, including operating, accounting and slot player tracking systems;
- (6) public off-site improvements and certain private improvements including restaurants, hotels, motels, museums and entertainment facilities approved by the Kansas lottery and made part of the Lottery Gaming Enterprise whether or not owned by Manager;
- (7) parking lots, landscaping and related structures;
- (8) construction of utility and related services, including, but not limited to, water, sanitary and storm sewers, drainage conduit channels and levees, lift stations, gas, water, heating and electrical lines, services and facilities, power grids, telecommunications, and related connections located within or without the public right-of-way;
- (9) fire and law enforcement protection services facilities;
- (10) highways, streets, and other roadways;
- (11) street light fixtures and pedestrian underpasses or overpasses;
- (12) surveillance, information technology, telephone, and related equipment;

(13) cash handling equipment, including cash redemption machines and currency counters;

(14) legal fees, architectural fees, engineering fees, design fees, contractor fees, material supplier fees, permit fees, leases, and other professional service costs and fees related to the acquisition and construction of the Lottery Gaming Enterprise;

(15) financing related costs, including capitalized or accrued interest;

(16) pre-opening expenses, including operating supplies and equipment, working capital and employee salaries and other employee costs;

(17) construction-period "carrying" costs, including taxes, insurance and utility expenses;

(18) the costs of wiring, hardware, and interface required to be installed at the Lottery Gaming Enterprise related to the central computer system, but not including any fees or expenses paid to or on behalf of the supplier of the central computer system; and,

(19) such other structures, improvements, equipment, or other items that support or complement the operation of a Lottery Gaming Enterprise as agreed to in writing between Manager and the Lottery;

(c) "Investment in Infrastructure" means all reasonable and necessary costs and expenditures or other forms of investment associated with the acquisition, development and construction of Infrastructure, but shall not include any of the following:

(1) any privilege fee paid by a Manager;

(2) the fees, costs, and other expenses of the Kansas racing and gaming commission paid by a Manager;

(3) the fees, costs and other expenses of the Kansas lottery paid by a Manager;

(4) costs and expenses related to the central computer system paid by a Manager;

(5) the costs of maintenance, refurbishing, or replacement of the following: buildings; on-site or off-site improvements; furniture; fixtures; equipment; Lottery Facility Games; and other specific items identified in subsection (b), above; and,

(6) any other costs and expenditures or other forms of investment not set forth in subsection (b), above.

AMENDMENT #1
TO LOTTERY GAMING FACILITY MANAGEMENT CONTRACT
(Pursuant to the Kansas Expanded Lottery Act)

This AMENDMENT #1 TO LOTTERY GAMING FACILITY MANAGEMENT CONTRACT (“Amendment”) is entered into between the Kansas Lottery, which is acting on behalf of the State of Kansas in accordance with the Kansas Expanded Lottery Act, K.S.A. 2008 Supp. 74-8733 through 74-8773 (“KELA”), and Chisholm Creek Casino Resort, LLC (“Manager”).

WHEREAS, Manager and the Kansas Lottery entered into that certain Lottery Gaming Facility Management Contract, dated August 25, 2009 (the “Management Contract”), pursuant to which the Kansas Lottery agreed to engage Manager to develop, construct and manage a Lottery Gaming Facility, the business of which is to be owned and operated by the Kansas Lottery, to be located in the South Central Gaming Zone: and

WHEREAS, on December 1st, 2009, the Kansas Lottery Gaming Facility Review Board requested that the Executive Director renegotiate certain portions of the Management Contract pursuant to §5(d)(2) of the KELA (K.S.A. 2008 Supp. 74-8736(d)(2)); and

WHEREAS, Manager and the Kansas Lottery have renegotiated certain provisions of the Management Contract and now desire to amend and restate the Management Contract.

NOW THEREFORE, in consideration for the mutual promises and covenants between the parties, the Management Contract is hereby amended as follows:

1. Section 1 is hereby amended to add the following definition:

1 (w) “Tribal Gaming Facility” means, for the purpose of this Contract, a gaming facility which meets all of the following: (i) is located on the approximate 10.5 acres of land in Park City, Kansas, currently owned by the Wyandotte Tribe of Oklahoma (ii) that has been taken into trust by the Department of the Interior of the United States of America as per The Wyandotte Tribe of Oklahoma’s land into trust application dated on or about April 13, 2006 (or any subsequent amendments thereto), (iii) which land becomes eligible for gaming by the Wyandotte Tribe of Oklahoma, and, (iv) on which land a facility of any kind is constructed by the Wyandotte Tribe of Oklahoma in which they operate more than 500 electronic gaming devices.

2. Section 5 is hereby amended to incorporate the following additional provision:

In addition to the foregoing, in the event that a Tribal Gaming Facility operates in the South Central Gaming Zone after the Effective Date of this Contract, if requested by Manager, the Lottery will immediately exercise its right under K.S.A. 2008 Supp. 74-8734(p) to negotiate and enter into a new Contract on substantially the same terms as contained herein to be effective at the end of the current term of this Contract or at the request of manager will renew this management Contract at the end of the term. Any new

Contract or renewals of this Contract shall be conditioned upon the Manager performing its obligations under this Contract, using sound business practices and procedures, and being in compliance with this Contract. That, however, any such new or renewed Contract shall not relieve the Manager from complying with the construction requirements of this Contract as provided herein, and within one hundred forty four months of the Commencement Date completion of the minimum investment in infrastructure requirements set forth in K.S.A. 74-8734(g)(2). Manager also agrees that Manager and/or its subsidiaries, or successors, shall have no involvement with, or be any part of the financing of, a Tribal Gaming Facility in order for said Tribal Gaming Facility to become operational.

3. Section 13 is amended and restated as follows:

13. Lottery Gaming Facility Construction. Manager will diligently construct at its own expense the Lottery Gaming Facility substantially in accordance with Exhibit C to this Contract, attached hereto, the building plans and specifications, the Final Plat approved by Sumner County, Kansas (as may be amended from time to time), and the Master Plan Phases approved by Sumner County as part of Resolution #2009-66 (appended hereto as Exhibit "I") (as may be amended from time to time), including all public infrastructure, roadway improvements, utilities, parking and public safety and emergency services facilities. Prior to beginning construction, the Executive Director must approve the final plans and specifications for the Lottery Gaming Facility (or in lieu thereof such other construction-related documents acceptable to the Executive Director that are suitable for this purpose) to ensure construction will conform with Exhibit C to this Contract and any written representations or agreement made by Manager or oral representation made by an authorized representative of Manager, to the extent any such written oral representations or agreements were made after the date of this Amendment to the Contract which was recorded with audio equipment or transcribed by a certified court reporter at an official meeting of the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, the Board of County Commissioners of Sumner County or City of Mulvane City Council. Provided however, Manager cannot be held in breach of this paragraph for any oral statements, representations or obligations without being first presented with a copy of the actual recording and/or verified court reporter transcript of the Manager's actual statement(s) alleged to create such representation and/or obligations.

All construction of the Lottery Gaming Facility must be approved for occupancy and the Lottery Facility Games ready for play by the public within that facility no later than the Commencement Date, unless a time extension is approved by the Executive Director. The schedule setting out Manager's anticipated benchmarks for construction completion is attached as Exhibit C to this Contract but in no event shall the Manager's minimum investment in infrastructure under K.S.A. 2008 Supp. 74-8734(g)(2) be completed later than one hundred and forty four months from the Commencement Date. The terms "infrastructure" and "investment in infrastructure" are defined in Exhibit "G" appended hereto.

For each month between the Effective Date and the Commencement Date, Manager will report no less than monthly as directed by the Executive Director on Manager's progress toward completing construction, implementing the Business Plan, and opening the Lottery Gaming Facility to the public. No material alterations to the scope and design of the plan for the Lottery Gaming Facility as provided for in this Contract may be made without the Executive Director's written approval including changes which affect the floor plan, surveillance, or security for the Lottery Gaming Facility. The Executive Director will promptly notify Manager of his approval or rejection of any proposed change. Manager will not need to obtain the Executive Director's approval for expenditures covered by the Manager's contingency budget. Nothing in this Section shall relieve Manager from any other responsibilities or attestations expressed in the Manager's Application for Lottery Gaming Facility Manager that are unrelated to construction schedules or costs.

4. Section 14 is amended and restated as follows:

14. Construction Related to Ancillary Lottery Gaming Facilities

Operations. Manager must diligently construct at no expense to the Kansas Lottery the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations substantially in accordance with Exhibit C to this Contract, the building plans and specifications, the Final Plat approved by Sumner County, Kansas (as may be amended from time to time, as approved by the Executive Director), and the Master Plan Phases approved by Sumner County as part of Resolution #2009-66 (appended hereto as Exhibit "I", as may be amended from time to time and approved by the Executive Director), including all public infrastructure, roadway improvements, utilities, parking and public safety and emergency services facilities and any written representations or agreement made by Manager or oral representation made by an authorized representative of Manager, to the extent any such written oral representations or agreements were made after the date of this Amendment to the Contract which was recorded with audio equipment or transcribed by a certified court reporter at an official meeting of the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, the Board of County Commissioners of Sumner County or City of Mulvane City Council. Provided however, that Manager cannot be held in breach of this paragraph for any oral statements, representations or obligations without being first presented with a copy of the actual recording and/or verified court reporter transcript of the Manager's actual statement(s) alleged to create such representation and/or obligations, but in no event shall the Manager's minimum investment in infrastructure under K.S.A. 2008 Supp. 74-8734(g)(2) be completed later than one hundred and forty four months from the Commencement Date. The terms "infrastructure" and "investment in infrastructure" are defined in Exhibit "G" appended hereto.

In addition to any other remedy available to the Executive Director under this Contract, with respect to this Paragraph 14, Manager's failure to substantially perform its Ancillary Lottery Gaming Facility Operations obligations according to objectively verifiable standards and, provided such failure cannot be disputed in good faith, will authorize the Executive Director to withhold payment of Manager's compensation for which it would

otherwise be entitled under Paragraph 26, less such amounts necessary for Manager to meet its cash operating expenses and debt service payment (for all debts to independent third party lenders for construction or equipping of the Lottery Gaming Enterprise), after the date that is forty-five (45) days following the Executive Director's written notice to Manager of such failure, until the breach is cured. If the Executive Director determines to withhold Manager's compensation as provided in this paragraph, he will deposit the applicable funds in an interest bearing account until the Executive Director determines the breach is cured, at which time the compensation and interest held by the Executive Director will be promptly returned to Manager. Provided, however, if the breach is not cured within 180 days of the date each amount is withheld as provided herein, the Kansas Lottery shall be entitled to retain each amount and interest so withheld. Nothing in this Section shall relieve Manager from any other responsibilities or attestations expressed in the Manager's Application for Lottery Gaming Facility Manager that are unrelated to construction schedules or costs.

5. Exhibit C to the Management Contract is hereby amended as attached and dated 02-11-2010.

6. Exhibit G to the Management Contract is hereby amended as attached and dated 02-11-2010.

7. Exhibit H to the Management Contract is hereby added as attached.

8. Exhibit I to the Management Contract is hereby added as attached.

9. The remainder of the Lottery Gaming Facility management Contract entered into between the Kansas Lottery and Chisholm Creek Casino Resort, LLC dated August 25, 2009 shall remain in full force and effect, unless specifically amended herein.

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

THE KANSAS LOTTERY

By: _____

Ed Van Petten, Executive Director

Dated: _____

CHISHOLM CREEK CASINO RESORT, LLC

By: Kansas Gaming Partners, LLC, its sole member

Steven E. Orbuch, Authorized person

Title: _____

Dated: _____

Exhibit C

This Exhibit C together with the Application for Lottery Gaming Facility Manager sets forth the program, scope and construction schedules of the Lottery Gaming Facility and Ancillary Lottery Gaming Facility Operations. In the event of a dispute or inconsistency between Exhibit C and the Application for Lottery Gaming Facility Manager, Exhibit C shall control as to scope and construction schedules. Nothing in this Exhibit shall relieve manager from any other responsibilities or attestations expressed in the Manager's Application for Lottery Gaming Facility Manager that are unrelated to construction schedules or scope.

Everything set forth in this Exhibit C is subject to design allowances.

Section 1 – Lottery Gaming Facility program elements

	Units	SF/Unit	Total SF
Slots	1,300	29	37,700
Tables	30	210	6,300
Poker	10	250	2,500
Cage Area			
Cashier			500
Main Bank			300
Cage Manager Office			120
Mantrap			80
Soft Count			1,200
Print Ticket Paper Storage			100
Total Cage Area			2,300
Host			150
Surveillance			1,020
Slot Repair			1,750
Table Operations			225
Players Club			1,200
Restrooms			2,500
Lobby Vestibule			200
KRGC/KSL			3,800
Security			750
Casino Program Total			60,395

Section 2 – Ancillary Lottery Gaming Facilities program elements

	Total SF
F&B Program	
Sports Bar	1,200
Café Grande Front-of-House	4,500
Café Grande Back-of-House	2,000
Service Bars	1,800
Beer/Liquor/Ice Storage	1,250
Soda Storage	<u>470</u>
F&B Program Total	11,220
Support Program	
MIS	
MIS Panels	1,540
MIS Storage	240
Office	120
Support	<u>600</u>
MIS Total	2,500
Electrical/Data Room (Gaming Floor)	1,500
Employee Area	
Locker Room - Men	750
Locker Room - Women	750
Associates Dining Room	1,000
Housekeeping	1,000
Janitor Closets	<u>150</u>
Total Employee Area	3,650
Administration	
Executives	
GM Office	150
Security VP Office	130
Surveillance Office	130
Tables VP Office	130
Slots VP Office	130
Exec. Admin. Support	<u>250</u>
Total Executive Area	920
Finance	380
Payroll	380
Electrical	1,100
Bulk Storage / Staging	1,000
Uniforms	<u>1,000</u>
Total Administration	4,780
Total Support Program	12,430

**Section 3(a) – Lottery Gaming Facility & Ancillary Lottery Gaming Facility
Construction Schedule for Sections 1&2**

Construction sequence reflects Manager’s current estimate and is subject to delay caused by force majeure events including but not limited to excessive delays not caused by Manager associated with offsite utilities, road improvements and any permitting, inspection, or other delays associated with local governmental bodies.

	Land Acquisition Construction Documents Bid Solicitation	Foundation Site Work Utilities	Slab Structure Roofing	Framing Sheeting Veneer	Mechanical Electrical Plumbing	Interior Finishes	FF&E	Cleaning Load In Training	Opening
Month 1	█								
Month 2	█								
Month 3	█								
Month 4	█								
Month 5	█								
Month 6	█								
Month 7		█							
Month 8		█	█						
Month 9		█	█	█					
Month 10			█	█	█				
Month 11				█	█	█			
Month 12					█	█			
Month 13						█			
Month 14									
Month 15									
Month 16							█		
Month 17								█	
Month 18									█

**Section 3(b) – Lottery Gaming Facility & Ancillary Lottery Gaming Facility
Construction Schedule - Future**

Additional Investments in Infrastructure shall be at Manager’s discretion, provided Manager complies with the Kansas Expanded Lottery Act and the requirements of this Contract and Amendment #1.

Section 4 – Clarifications to Construction Schedules

Phase I- In all cases, within 18 months of the Effective Date Manager will at a minimum construct the following:

- a. A Lottery Gaming Enterprise that shall encompass not less than 72,000 square feet.
- b. A Lottery Gaming Enterprise with not less than 1,300 Electronic Gaming Machines
- c. A Lottery Gaming Enterprise with not less than 40 assorted table games, including a minimum of ten poker tables.
- d. A Lottery Gaming Enterprise with a 200 seat, on-site restaurant.
- e. Cause to be built, or enter into a 3rd Party agreement providing for the construction of, a hotel with not less than 100 guest rooms that conforms

with the agreement entered into with Double Down Development, L.C., on or about October 23, 2009, that shall have such amenities as a minimum of seven luxury guest suites, a swimming pool, and 5,000 square feet of multi-function meeting and conference facilities.

Phase II – The second phase of construction is dependent upon whether a Tribal Gaming Facility commences operations within certain timeframes, as set forth in the following five Scenarios:

Scenario I - A Tribal Gaming Facility commences operations within 60 months of the Commencement Date;

Within 144 months of the Commencement Date Manager will at a minimum have completed the following amenities to the Lottery Gaming Enterprise:

- a. Have a total of 1,700 Electronic Gaming Machines.
- b. Have a total of 50 assorted table games.
- c. Have three additional restaurants on-site, including a 250-seat buffet, 30-seat café, and 50-seat steakhouse, as approved by the Executive Director.
- d. Have increased the size of the on-site hotel to not less than 150 total rooms.
- e. Have added at least another 10,000 square feet of on-site convention space.

Scenario II – No Tribal Gaming Facility is in operation within 60 months of the Commencement Date:

Within 84 months of the Commencement Date Manager will at a minimum make the following additions to the Lottery Gaming Enterprise (to the extent not already present):

- a. An additional 200 Electronic Gaming Machines, for a grand total of not less than 1,500 Electronic Gaming Machines.
- b. An on-site buffet restaurant that shall seat no less than 250 guests.
- c. An on-site café style restaurant that shall seat no less than 30 guests.
- d. An on-site entertainment venue that shall seat no less than 125 guests.

Scenario III - No Tribal Gaming Facility is in operation between 60 and 120 months of the Commencement Date:

1. Same as Scenario II, above; and additionally,
2. Within 144 Months of the Commencement Date Manager will at a minimum have completed the following amenities to the Lottery Gaming Enterprise:
 - a. Have a total of 2,000 Electronic Gaming Machines.
 - b. Have a total of 50 assorted table games.
 - c. Have two additional restaurants on-site that are of the Manager's choosing with approval of the Executive Director.

- d. Have increased the size of the on-site hotel to not less than 150 total rooms.
- e. Have a total of not less than 17,000 square feet of on-site convention space.
- f. Have on-site entertainment space of not less than 30,000 square feet.

Scenario IV -- A Tribal Gaming Facility is in operation later than 60 months from the Commencement Date, but prior to 120 months from the Commencement Date:

1. Same as Scenario II above; and additionally
2. Same as Scenario I, above.

Scenario V— If the conduct of gaming described in clause (iv) of the definition of Tribal Gaming Facility commences but is subsequently halted as a result of legal proceedings and not restarted after any and all appeal processes have been exhausted, such event shall be referred to as a “Tribal Gaming Cessation.” In the event of a Tribal Gaming Cessation, Manager shall complete the respective requirements described above assuming no Tribal Gaming Facility was in operation at such time; provided, if a Tribal Gaming Cessation occurs within 24 months of a date by which Manager would be obligated to complete additional program elements, the deadline for completing such elements shall be extended to 24 months from the date of the Tribal Gaming Cessation.

Minimum investment in infrastructure. In all “Scenarios” above, no later than 144 months from the Commencement Date Manager must comply with its contractual and statutory obligation to make an Investment in Infrastructure of no less than \$225 million, as otherwise set forth in the Agreement and the Kansas Expanded Lottery Act.

Section 5 - Hotel Agreement

The Manager represents that it has entered into an agreement with Double Down Development, L.C., dated as of October 23, 2009, regarding the development and operation of a hotel in conjunction with Manager’s development and management of the Lottery Gaming Facility (the “Hotel Agreement”). The Hotel Agreement is attached to Amendment #1 as Exhibit H. Manager agrees that it shall fulfill its obligations under the Hotel Agreement pursuant to the terms and conditions thereof and in good faith enforce its rights and duties thereunder. The Kansas Lottery acknowledges that qualifying amounts expended on such development shall qualify as “Investment in Infrastructure” for purposes of Exhibit G hereof so long as the hotel is on the Enterprise site

EXHIBIT G
TO
LOTTERY GAMING MANAGEMENT CONTRACT

INFRASTRUCTURE DEFINITIONS

(a) "Infrastructure" means all reasonable and necessary costs and expenses required by a Manager's contract with the Kansas lottery to acquire, design, construct and make ready to open to the general public a Lottery Gaming Enterprise, and all reasonable and necessary costs and expenses to expand the operation and development of the Lottery Gaming Enterprise after its opening to the general public as required by a Manager's contract with the Kansas lottery, including the following:

- (1) land;
- (2) buildings;
- (3) furniture fixtures and equipment;
- (4) initial purchase or lease of Lottery Facility Games and related equipment;
- (5) software, including operating, accounting and slot player tracking systems;
- (6) public off-site improvements and certain private improvements including restaurants, hotels, motels, museums and entertainment facilities approved by the Kansas Lottery and made part of the Lottery Gaming Enterprise whether or not owned by Manager;
- (7) parking lots, landscaping and related structures;
- (8) construction of utility and related services, including, but not limited to, water, sanitary and storm sewers, drainage conduit channels and levees, lift stations, gas, water, heating and electrical lines, services and facilities, power grids, telecommunications, and related connections located within or without the public right-of-way;
- (9) fire and law enforcement protection services facilities;
- (10) highways, streets, and other roadways;
- (11) street light fixtures and pedestrian underpasses or overpasses;
- (12) surveillance, information technology, telephone, and related equipment;

(13) cash handling equipment, including cash redemption machines and currency counters;

(14) legal fees, architectural fees, engineering fees, design fees, contractor fees, material supplier fees, permit fees, leases, and other professional service costs and fees related to the acquisition and construction of the Lottery Gaming Enterprise;

(15) financing related costs, including capitalized or accrued interest;

(16) pre-opening expenses, including operating supplies and equipment, working capital and employee salaries and other employee costs;

(17) construction-period "carrying" costs, including taxes, insurance and utility expenses;

(18) the initial costs of wiring, hardware, and interface required to be installed at the Lottery Gaming Enterprise related to the central computer system, but not including any fees or expenses paid to or on behalf of the supplier of the central computer system;

(19) in the event a Tribal Gaming Facility (as that term is defined in the Contract between the Kansas Lottery and Manager) commences operation, upgrades and improvements (excluding ordinary-course facilities refurbishing, repairs and maintenance) will be considered Infrastructure, including gaming equipment upgrades, new computer or software systems and cost of re-theming or repositioning the Lottery Gaming Enterprise; and

(20) such other structures, improvements, equipment, or other items that support or complement the operation of a Lottery Gaming Enterprise as agreed to in writing between Manager and the Lottery.

(b) "Investment in Infrastructure" means all reasonable and necessary costs and expenditures or other forms of investment associated with the acquisition, development and construction of Infrastructure, but shall not include any of the following:

(1) any privilege fee paid by a Manager;

(2) the fees, costs, and other expenses of the Kansas racing and gaming commission paid by a Manager;

(3) the fees, costs and other expenses of the Kansas lottery paid by a Manager;

(4) costs and expenses related to the central computer system paid by a Manager;

(5) the costs of maintenance, refurbishing, or replacement of the following: buildings; on-site or off-site improvements; furniture; fixtures; equipment; Lottery Facility Games; and other specific items identified in subsection (a), above; and,

(6) any other costs and expenditures or other forms of investment not set forth in subsection (a), above.

October 23, 2009

Chisholm Creek Casino Resort, LLC
c/o Och-Ziff Real Estate Acquisitions LP
9 West 57th Street
38th Floor
New York, NY 10019
Attention: Nick Hecker

Double Down Development, L.C.
3501 SW Fairlawn Road
Suite 200
Topeka, Kansas 66614
Attention: Jeff Ungerer

Re: Chisholm Creek Casino Resort Project – Ancillary Hotel Development

Chisholm Creek Casino Resort, LLC ("CCC") is seeking the necessary governmental approvals for a casino project in the South Central Gaming Zone of Kansas (the "Casino Project"). This letter agreement sets forth the terms agreed upon by CCC and Double Down Development, L.C. ("DD") for the development, construction and operation of a hotel in connection with the Casino Project.

Lodging Facility DD, or its affiliate, will develop and construct a 100-room or larger limited service lodging facility (the "Lodging Facility") on a site (the "Lodging Site") in close proximity to the casino as part of the Casino Project. The Lodging Facility will have at least seven luxury suites and include the following amenities: pool, exercise room, and a minimum of 5,000 square feet multi-function meeting and conference facilities. Based upon a transfer of the Lodging Site to DD at least six months prior to the opening of the casino in accordance with the Land Closing provisions of this letter below and timely completion of CCC's other obligations set forth in the Lodging Site provisions of this letter below (excluding any delays directly caused by DD), DD will cause the Lodging Facility to be constructed and open to the public within six months after the casino opens to the public.

Quality DD may brand the Lodging Facility, provided such brand shall be of comparable (or higher) quality and reputation to a mid-scale hotel. The design, construction, operation and marketing of the Lodging Facility will be in conformity with the standards, from time to time, generally prevailing for hotels operating under branding requirements comparable (or higher) in quality and reputation to a mid-scale hotel. DD will obtain the prior reasonable approval of CCC of the exterior architectural design for compatibility of the Lodging Facility with the Casino Project. DD will comply with all laws applicable to the Lodging Facility or its ownership and management of the Lodging Facility, including any applicable licensing and permitting requirements or as may be otherwise required by any governmental or regulatory authority.

Lodging Site DD acknowledges that CCC will develop a master plan for the property which CCC acquires for the Casino Project and the Lodging Site must be at a location consistent with such master plan and mutually agreeable to both parties and in conformity with the following (by the time of the Land Closing, defined below):

- The Lodging Site will include land reasonably necessary for construction and

Chisholm Creek Casino Resort, LLC

October 23, 2009

Page 2 of 3

development of the Lodging Facility (with appurtenant access and utility easements, as applicable) and sufficient for such parking areas as required by law or ordinance; provided, however, the Lodging Site will not exceed 3 acres.

- The Lodging Site will be within fifty feet of reasonably adequate access to utility facilities (which CCC, at its expense, will cause to be installed and available, if not already existing) for connection (such connection and the utility facilities from the point of such connection to the Lodging Site and Lodging Facility shall be at DD's expense).
- The Lodging Site shall be designed to provide adequate vehicle access to the Lodging Facility from adjacent public streets and a reasonable walking path to the casino.
- At CCC's expense, the Lodging Site will be a separately platted lot, with a rough-graded building pad.

Land Closing CCC will convey the Lodging Site without charge or fee (but subject to closing costs, transfer taxes and prorations, as allocated and made between the parties consistent with local custom) to DD on a mutually agreeable date at least six (6) months prior to the opening of the casino to the public (the "Land Closing"). Prior to the Land Closing, DD shall have demonstrated its readiness to promptly commence and, within 12 months thereafter, complete construction of the Lodging Facility. The Land Closing will take place pursuant to a conveyance agreement consisting of customary terms, including as to title insurance and closing documents (together with such other agreements embodying the terms set forth herein and other items customary for a transaction of this nature). The Lodging Site will be conveyed on an as-is, where-is basis, subject to the grading and other requirements set forth in this letter. CCC agrees to pay DD, upon 50% completion of the Lodging Facility structure, the sum of \$1,500,000 to be used for construction of the Lodging Facility.

Room Purchase CCC will rent from DD a minimum of 40% of the rooms within the Lodging Facility (not to exceed 60 rooms) at a price to be agreed upon, but not less than ninety-nine dollars (\$99) per night, for each night for a period of five years from opening of the Lodging Facility.

Right of First Refusal: Lodging Facility DD will provide CCC (which will run to future owners of the casino) with a continuing right of first refusal to acquire the Lodging Facility on the same terms as a third party is willing to acquire the Lodging Facility. CCC will have 10 days to accept or reject such terms, as outlined in a binding term sheet signed by said third party or its agent and provided by DD.

Future Hotel (Non-Connected) Prior to the expiration of the period of five years after the opening of the Lodging Facility, CCC will not construct or permit construction on any land owned or controlled by CCC of any other lodging facility (other than a lodging facility directly connected to the casino as described below) unless and until CCC provides DD with a right of first refusal to develop such lodging facility on the same terms as a third party is willing to develop such lodging facility. DD will have 10 days to accept or reject such terms, as outlined in a binding term sheet signed by said third party or its agent and provided by CCC.

Future Hotel (Connected) If CCC develops a lodging facility with an enclosed physical connection to the casino within the period of five years after the opening of the Lodging Facility, CCC will agree

Chisholm Creek Casino Resort, LLC

October 23, 2009

Page 3 of 7

to pay DD a fee upon the opening to the public of such new lodging facility, the amount of which will be depend upon the date on which such opening occurs, in accordance with the following schedule:

Year(s) since the Lodging Facility opens	Amount of Fee
1-2	\$2,000,000
3	\$1,500,000
4	\$1,000,000
5	\$500,000
6 and beyond	\$0

It is acknowledged that CCC is currently seeking the governmental approvals needed for CCC to be designated the Lottery Gaming Facility Manager in the South Central Gaming Zone under the Kansas Expanded Lottery Act, K.S.A. 2008 Supp. 74-8733 et seq. (all such approvals, the "Casino Approvals"). This letter shall terminate in the event CCC (in its sole and absolute discretion) decides to withdraw its application for the Casino Approvals or otherwise abandons the Casino Project or in the event the Casino Approvals are not obtained for any reason.

Agreed to and Accepted:

CHISHOLM CREEK CASINO RESORT, LLC

By: Kansas Gaming Partners, LLC, its sole member

By: [Signature]
Steven E. Orbuch, Authorized Person

DOUBLE DOWN DEVELOPMENT, L.C.

By: [Signature]
Name: Jeffrey L. Wagner
Title: Manager

LEGAL PUBLICATION

(First Published in the Wellington Daily News, December 24, 2009) 1t

RESOLUTION # 2009-66

INDEXED
DIRECT
INDIRECT
PHOTO
COMPARED WITH
COPY

A RESOLUTION ALLOWING A CONDITIONAL USE ON CERTAIN LANDS LOCATED IN SUMNER COUNTY, KANSAS:

WHEREAS, the Planning Commission of Sumner County, Kansas, held a public hearing hereon following due notice to the public as required by K.S.A. 12-701 et seq; and

WHEREAS, the Planning Commission has provided to the Governing Body of Sumner County, Kansas, a written summary of the hearing thereon together with their recommendation of approval; and

WHEREAS, the Governing Body of Sumner County, Kansas, finds it advisable to approve the conditional use subject to the provisions of the zoning classifications described in Articles 24 and 33 of the Zoning Regulations of Sumner County, Kansas.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SUMNER COUNTY, KANSAS, THAT:

SECTION 1: The Conditional Use as recommended by the Planning Commission, meeting the conditions prescribed in K.S.A. 12-701 et seq, is hereby approved as follows:

CASE NUMBER: 40PC-09

APPLICATION BY: Dewayne J. and Lucille Gerlach, Owners, and MKEC Engineering Consultants, Inc., Agent.

PURPOSE: Conditional Use to allow an amendment to the existing Conditional Use Case No. 21PC-07; approved 01-08-2008. This request is filed to adjust the boundary of the conditional use for a casino to match that of the current casino development property. (C-4 Highway Service District with Gambling Casino as an allowed use.)

Page 2 of 3

Resolution # 2008-

66

Board of County Commissioners-Legal Publication-C#40PC-09

LEGAL DESCRIPTION: Tracts of land lying in the Southwest Quarter of Section 4, Township 30 South, Range 1 East of the Sixth Principal Meridian, Sumner County, Kansas, said tracts being more particularly described as follows: "1A" Commencing at the southwest corner of said Southwest Quarter; thence along the south line of said Quarter on a Kansas coordinate system 1983 south zone bearing on N88°35'48"E, 59.63 feet; thence N02°10'22"W, 1369.67 feet along the east right of way of U.S. Highway 81 as described in Book 158, Page 157 to the Point of Beginning; thence N02°10'22"W, 1301.27 feet along said east right of way to the north line of said Quarter, said point being 59.75 feet east of the northwest corner of said Quarter; thence N88°41'10"E, 1259.21 feet along the north line of said Quarter and the south line of Government Lot 3 to the southwest corner of Government Lot 4; thence N88°38'07"E, 860.95 feet along the south line of said Lot 4; thence S02°02'50"E, 1041.02 feet along the west right of way of the Kansas Turnpike Authority right of way as described in Book 294, Page 596; thence continuing S02°02'50"E, 663.64 feet; thence S87°40'51"W, 1329.06 feet; thence N47°19'09"W, 620.74 feet; thence S87°49'29"W, 347.09 feet to the Point of Beginning. Said tract of land contains 78.04 acres, more or less. TOGETHER WITH, "2A" Commencing at the southeast corner of said Southwest Quarter; thence along the south line of said Quarter on a Kansas coordinate system 1983 south zone bearing of S88°35'48"W, 750.42 feet; thence N01°24'14"W, 30.00 feet along the west right of way of the Kansas Turnpike Authority as described in Condemnation Case No. 20481 to the Point of Beginning; thence N01°24'12"W, 386.27 feet; thence N88°35'48"E, 743.76 feet parallel with said south line; thence S02°19'09"E, 344.52 feet along the west right of way of the Kansas Turnpike Authority as described in said Condemnation Case; thence S85°24'15"W, 750.44 feet along the northerly right of way of said Kansas Turnpike Authority to the Point of Beginning. Said tract of land contains 6.26 acres, more or less.

Said tracts collectively containing 84.3 acres more or less.

Parent tract contains 145.5 acres more or less.

Location: NE Corner of Broadway (81 Hwy) and 140th Ave, Peck, KS

SECTION 2: The approved Conditional Use shall take effect and be in force when the Official Zoning Map change becomes effective following final plat approval by the Board of Sumner County Commissioners and filing the approved final plat at the Office of the Sumner County Register of Deeds. The Conditional Use shall be null and void if the above site is not chosen for a casino by the State of Kansas.

SECTION 3: CONDITIONS. Construction plans and specifications for the following items of site development, but not limited to; shall be reviewed and approved by the Board of Sumner County Commissioners, Planning Commission, Planning and Zoning Director, or their designee, prior to initiation of construction procedures.

Page 3 of 3
Board of County Commissioners-Legal Publication-C#40PC-09

Resolution # 2009- 66

- | | |
|------------------------------------|------------------------------------|
| 1. Access/Ingress/Egress | 10. Roads, Internal & External |
| 2. Drainage/Storm Water Management | 11. Site Plan |
| 3. Dust/Air Control | 12. Sewer |
| 4. Environmental Impact | 13. Signs |
| 5. Fire, EMS, and Law Enforcement | 14. Traffic Impact |
| 6. Landscaping | 15. Water |
| 7. Lighting | 16. Wildlife Impact |
| 8. Parking and Loading | 17. Structural Heights as approved |
| 9. Power | |

SECTION 4: All structures shall be constructed and inspected by the County or their designee in accordance with the current applicable sections of the International Building Code.

SECTION 5: This Resolution shall be adopted, published one time in the Official County Newspaper, and take effect and be in force effective December 24, 2009.

ADOPTED AND APPROVED by the Board of County Commissioners of Sumner County, Kansas, this 21st Day of December, 2009.

Commissioners present and voting are:

Garey E. Martin	<input checked="" type="radio"/> Yes	No	Abstain
Jim D. Newell	<input checked="" type="radio"/> Yes	No	Abstain
Eldon B. Gracy	<input checked="" type="radio"/> Yes	No	Abstain

Slate of Kansas, Sumner County SS:
 Filed for record on the 5th Day of
January 2010 A.D. at 3:45
 o'clock PM and recorded in photo
 Book 799 at page 157
 fees \$no fee
Joyce M. L. L. Registrar of Deeds p12



ATTEST: (Seal)

Shane J. Shields
 SHANE J. SHIELDS County Clerk

BOARD OF COUNTY COMMISSIONERS
SUMNER COUNTY, KANSAS

Garey E. Martin
 GAREY E. MARTIN First District
 Chairman

Jim D. Newell
 JIM D. NEWELL Second District

Eldon B. Gracy
 ELDON B. GRACY Third District



11/23/2009

CHISHOLM CREEK
CASINO RESORT
LAND DEVELOPMENT



MASTER PLAN PHASE 2

LAKES
Entertainment, Inc.
MKC



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**COMPARISON OF
ORIGINAL CHISHOLM CREEK CONTRACT
TO AMENDED CONTRACT**

NOTE: Verbiage in red colored type with strike through (for example, “~~and~~”) was in the original Contract, while verbiage in underlined red colored type was added per the Amendment.

Section 1: A new definition was added to Section 1 of the Contract, as follows:

1 (w) “Tribal Gaming Facility” means, for the purpose of this Contract, a gaming facility which meets all of the following: (i) is located on the approximate 10.5 acres of land in Park City, Kansas, currently owned by the Wyandotte Tribe of Oklahoma (ii) that has been taken into trust by the Department of the Interior of the United States of America as per The Wyandotte Tribe of Oklahoma’s land into trust application dated on or about April 13, 2006 (or any subsequent amendments thereto), (iii) which land becomes eligible for gaming by the Wyandotte Tribe of Oklahoma, and, (iv) on which land a facility of any kind is constructed by the Wyandotte Tribe of Oklahoma in which they operate more than 500 electronic gaming devices.

Section 5: The original Section 5 remains, with the following paragraph being added thereto:

In addition to the foregoing, in the event that a Tribal Gaming Facility operates in the South Central Gaming Zone after the Effective Date of this Contract, if requested by Manager, the Lottery will immediately exercise its right under K.S.A. 2008 Supp. 74-8734(p) to negotiate and enter into a new Contract on substantially the same terms as contained herein to be effective at the end of the current term of this Contract or at the request of manager will renew this management Contract at the end of the term. Any new Contract or renewals of this Contract shall be conditioned upon the Manager performing its obligations under this Contract, using sound business practices and procedures, and being in compliance with this Contract. That, however, any such new or renewed Contract shall not relieve the Manager from complying with the construction requirements of this Contract as provided herein, and within one hundred forty four months of the Commencement Date completion of the minimum investment in infrastructure requirements set forth in K.S.A. 74-8734(g)(2). Manager also agrees that Manager and/or its subsidiaries, or successors, shall have no involvement with, or be any part of the financing of, a Tribal Gaming Facility in order for said Tribal Gaming Facility to become operational.

Section 13: Section 13 of the Contract was amended and restated as follows:

13. Lottery Gaming Facility Construction. Manager will diligently construct at its own expense the Lottery Gaming Facility substantially in accordance with ~~Manager's Application for Lottery Gaming Facility Manager, Exhibit C to this Agreement, attached hereto, and the plans and specifications.~~Exhibit C to this Contract, attached hereto, the building plans and specifications, the Final Plat approved by Sumner County, Kansas (as may be amended from time to time), and the Master Plan Phases approved by Sumner County as part of Resolution #2009-66 (appended hereto as Exhibit "I") (as may be amended from time to time), including all public infrastructure, roadway improvements, utilities, parking and public safety and emergency services facilities. Prior to beginning construction, the Executive Director must approve the final plans and specifications for the Lottery Gaming Facility (or in lieu thereof such other construction-related documents acceptable to the Executive Director that are suitable for this purpose) to ensure construction will conform with ~~the Manager's Application for Lottery Gaming Facility Manager, Exhibit C to this Agreement attached thereto any written Predevelopment Agreement entered into with any County or City, Contract~~ and any written representations or agreement made by Manager or oral representation made by Manager an authorized representative of Manager, to the extent any such written oral representations or agreements were made after the date of this Amendment to the Contract which was recorded with audio equipment or transcribed by a certified court reporter at an official meeting of the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, ~~or the county or city governing body where the Lottery Gaming Facility is to be located, provided however, that~~the Board of County Commissioners of Sumner County or City of Mulvane City Council. Provided however, Manager cannot be held in breach of this paragraph for any oral statements, representations or obligations without being first presented with a copy of the actual recording and/or verified court reporter transcript of the Manager's actual statement(s) alleged to create such representation and/or obligations.

All construction of the Lottery Gaming Facility must be approved for occupancy and the Lottery Facility Games ready for play by the public within that facility no later than the Commencement Date, unless a time extension is approved by the Executive Director. The schedule setting out Manager's anticipated benchmarks for construction completion is attached as Exhibit C to this ~~Agreement and all such construction~~Contract but in no event shall the Manager's minimum investment in infrastructure under K.S.A. 2008 Supp. 74-8734(g)(2) be completed no later than one hundred and forty four months from the Commencement Date. The terms "infrastructure" and "investment in infrastructure" are defined in Exhibit "G" appended hereto.

For each month between the Effective Date and the Commencement Date, Manager will report no less than monthly as directed by the Executive

Director on Manager's progress toward completing construction, implementing the Business Plan, and opening the Lottery Gaming Facility to the public. No material alterations to the scope and design of the plan for the Lottery Gaming Facility as provided for in Manager's Application for Lottery Gaming Facility Manager this Contract may be made without the Executive Director's written approval including changes which affect the floor plan, surveillance, or security for the Lottery Gaming Facility. The Executive Director will promptly notify Manager of his approval or rejection of any proposed change. Manager will not need to obtain the Executive Director's approval for expenditures covered by the Manager's contingency budget. Nothing in this Section shall relieve Manager from any other responsibilities or attestations expressed in the Manager's Application for Lottery Gaming Facility Manager that are unrelated to construction schedules or costs.

Section 14: Section 14 of the Contract was amended and restated as follows:

14. Construction Related to Ancillary Lottery Gaming Facilities Operations. Manager must diligently construct at no expense to the Kansas Lottery the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations substantially in accordance with Manager's Application for Lottery Gaming Facility Manager and Exhibit C to this Agreement Exhibit C to this Contract, the building plans and specifications, the Final Plat approved by Sumner County, Kansas (as may be amended from time to time, as approved by the Executive Director), and the Master Plan Phases approved by Sumner County as part of Resolution #2009-66 (appended hereto as Exhibit "I", as may be amended from time to time and approved by the Executive Director), including all public infrastructure, roadway improvements, utilities, parking and public safety and emergency services facilities and any written representations or agreement made by Manager or oral representation made by an authorized representative of Manager, to the extent any such written oral representations or agreements were made after the date of this Amendment to the Contract which was recorded with audio equipment or transcribed by a certified court reporter at an official meeting of the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, the Board of County Commissioners of Sumner County or City of Mulvane City Council. Provided however, that Manager cannot be held in breach of this paragraph for any oral statements, representations or obligations without being first presented with a copy of the actual recording and/or verified court reporter transcript of the Manager's actual statement(s) alleged to create such representation and/or obligations, but in no event shall the Manager's minimum investment in infrastructure under K.S.A. 2008 Supp. 74-8734(g)(2) be completed later than one hundred and forty four months from the Commencement Date. The terms "infrastructure" and Investment "investment in Infrastructure infrastructure" are defined in Exhibit "G" appended hereto.

In addition to any other remedy available to the Executive Director under this Agreement Contract, with respect to this Paragraph 14, Manager's failure to substantially perform its Ancillary Lottery Gaming Facility Operations obligations according to objectively verifiable standards and, provided such failure cannot be disputed in good faith, will authorize the Executive Director to withhold payment of Manager's compensation for which it would otherwise be entitled under Paragraph 26, less such amounts necessary for Manager to meet its cash operating expenses and debt service payment (for all debts to independent third party lenders for construction or equipping of the Lottery Gaming Enterprise), after the date that is forty-five (45) days following the Executive Director's written notice to Manager of such failure, until the breach is cured. If the Executive Director determines to withhold Manager's compensation as provided in this paragraph, he will deposit the applicable funds in an interest bearing account until the Executive Director determines the breach is cured, at which time the compensation and interest held by the Executive Director will be promptly returned to Manager. Provided, however, if the breach is not cured within 180 days of the date each amount is withheld as provided herein, the Kansas Lottery shall be entitled to retain each amount and interest so withheld. Nothing in this Section shall relieve Manager from any other responsibilities or attestations expressed in the Manager's Application for Lottery Gaming Facility Manager that are unrelated to construction schedules or costs.

Exhibit C, Section 4, "Clarifications to Construction Schedules":

Exhibit C, Section 4 was modified to reflect the various potential construction sequence scenarios. See the document attached hereto summarizing those changes entitled "Chisholm Creek Casino & Resort Summary of Minimum Requirements for Phases I and II", or refer to Section 4 of Amended Exhibit C itself.

Exhibit C, Section 5, "Hotel Agreement":

Exhibit C, Section 5 was added to codify Chisholm Creek's agreement regarding the building of a hotel, as follows:

The Manager represents that it has entered into an agreement with Double Down Development, L.C., dated as of October 23, 2009, regarding the development and operation of a hotel in conjunction with Manager's development and management of the Lottery Gaming Facility (the "Hotel Agreement"). The Hotel Agreement is attached to Amendment #1 as Exhibit H. Manager agrees that it shall fulfill its obligations under the Hotel Agreement pursuant to the terms and conditions thereof and in good faith enforce its rights and duties thereunder. The Kansas Lottery acknowledges that qualifying amounts expended on such development shall qualify as "Investment in Infrastructure" for purposes of Exhibit G hereof so long as the hotel is on the Enterprise site.

Exhibit G, “Infrastructure Definitions”:

Sub-paragraphs (a)(18), (a)(19) and (a)(20) of Exhibit G were added and/or amended, as follows (NOTE: Due to a drafting error in the original Exhibit C, the sub-paragraphs denoted as “b” and “c” should have been “a” and “b”):

(18) the initial costs of wiring, hardware, and interface required to be installed at the Lottery Gaming Enterprise related to the central computer system, but not including any fees or expenses paid to or on behalf of the supplier of the central computer system; and

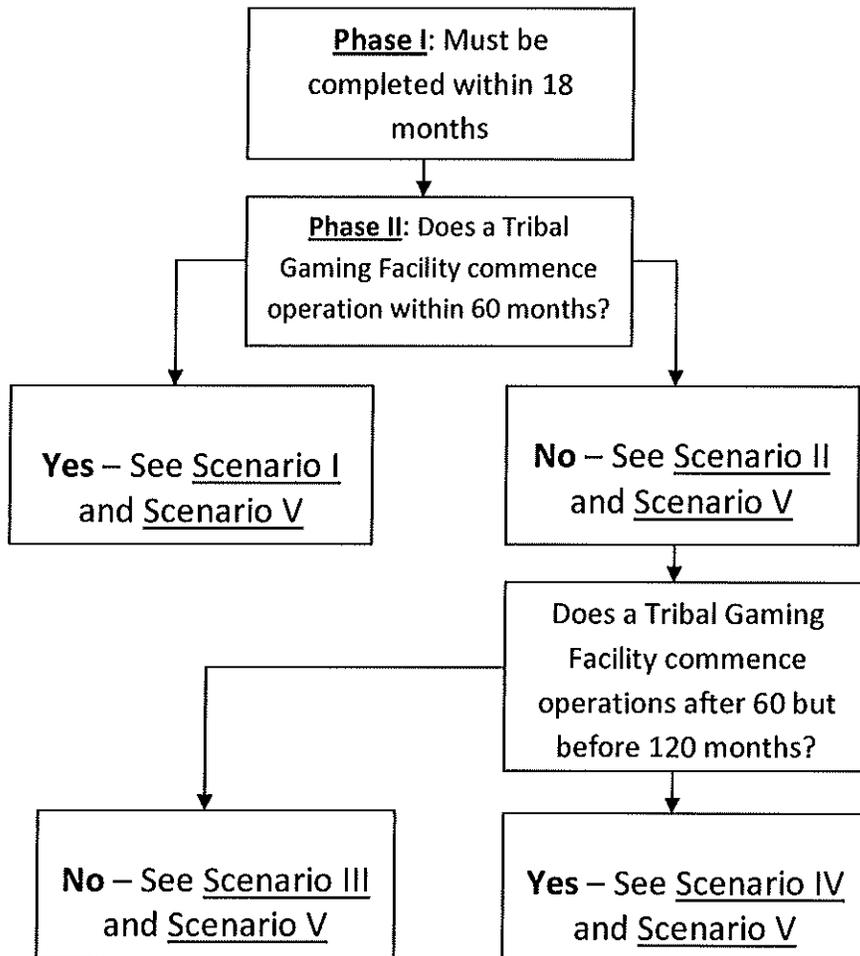
(19) in the event a Tribal Gaming Facility (as that term is defined in the Contract between the Kansas Lottery and Manager) commences operation, upgrades and improvements (excluding ordinary-course facilities refurbishing, repairs and maintenance) will be considered Infrastructure, including gaming equipment upgrades, new computer or software systems and cost of re-theming or repositioning the Lottery Gaming Enterprise; and

(20) such other structures, improvements, equipment, or other items that support or complement the operation of a Lottery Gaming Enterprise as agreed to in writing between Manager and the Lottery.

Exhibit H is the letter agreement between Chisholm Creek Casino and Double Down Development regarding the building of a hotel, as per the “Hotel Agreement” (see “Exhibit C, Section 5,” above).

Exhibit I contains the documents from Sumner County to which reference is made in Section 14 of the Amendment to Contract (see above).

CHISHOLM CREEK CASINO & RESORT
Summary of Minimum Requirements for Phases I and II*



Phase I – Regardless of whether a “Tribal Gaming Facility” commences operations, within 18 months 72,000 ft² Enterprise; 1,300 machines; 40 table games; 200-seat restaurant; 100-room hotel.

Phase II, Scenario I – Within 144 months a total of 1,700 machines; a total of 50 table games; three additional restaurants; 50 additional hotel rooms; 10,000 ft² on-site convention space.

Phase II, Scenario II – Within 84 months 200 additional machines; additional 250-seat buffet restaurant; additional 30-seat café; additional 125-set entertainment venue.

Phase II, Scenario III – Within 144 months have a total of 2,000 machines; a total of 50 table games; two additional restaurants; a total of 150 hotel rooms; a total of 17,000 ft² convention space; a total of 30,000 ft² entertainment space.

Phase II, Scenario IV – Same as Scenario II plus Scenario I, above.

Phase II, Scenario V – If gaming commences at the Tribal Gaming Facility but subsequently ceases, Manager shall timely complete the applicable Phase II Scenario(s), except that if the cessation occurs within 24 months of a Scenario deadline, the deadline will be extended to 24 months from the date of cessation.

*See “Exhibit C” for details. All dates calculated from contractual “Commencement Date” of Lottery Gaming Facility.