

ORDINANCE NO. 2022-011

ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF FRANKLIN, KENTUCKY AND KENTUCKY DOWNS, LLC; AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT; AND DECLARING AN EMERGENCY TO EXIST

WHEREAS, Kentucky Downs, LLC is in the process of constructing a new hotel and convention center at their property located on 31-W South in Franklin, Kentucky; and

WHEREAS, while reviewing the additional sewer needs for the project, the Parties determined that the southernmost end of the line that will connect with the newly constructed facility will need to be larger to handle the additional effluent generated by the new Kentucky Downs' facilities; and

WHEREAS, while the City's wastewater treatment facility has more than ample capacity to handle the effluent for the existing needs and all foreseeable growth in the City, the end of the line that Kentucky Downs' new facilities will need to utilize must be upsized and upgraded to handle the additional wastewater; and

WHEREAS, Kentucky Downs has agreed to pay all costs associated with the upgrading of the sewer line and lift stations as a result of their expansion; and

WHEREAS, the Parties desire to enter into an Agreement (hereinafter "the Agreement") describing each parties duties and obligations thereunder; and

WHEREAS, it is provided in KRS 83A.060(7) that publication of an Ordinance, in order to make it effective, need not be done in an emergency, upon the affirmative vote of two-thirds (2/3) of the membership of the City's legislative body, provided that the legally required publication requirement is carried out within ten (10) days of the date of enactment of the emergency ordinance; and,

WHEREAS, it is essential and in the public interest that the City adopt this ordinance immediately and any postponement would be detrimental to the residents of the City due to the imminent need for the lift stations and upgraded lines to be ordered and installed to service Kentucky Downs' new facilities in order to meet Kentucky Downs' completed construction timeframe, and, therefore, an emergency exists so that it is necessary and in the public interest to issue this ordinance immediately, and the City hereby declares such emergency to exist.

NOW, THEREFORE, be it ordained by the City of Franklin, Kentucky, acting by and through its Board of Commissioners as follows:

SECTION I.

DECLARATION OF AN EMERGENCY

1. It is hereby found, determined, and declared that the facts and recitals set forth in the preamble of this ordinance are true and correct and are hereby affirmed, and all acts described in preamble are hereby ratified. Such facts and recitals, including any terms defined therein, are adopted and incorporated as a part of this ordinance.
2. In accordance with KRS 83A.060(7), an emergency is hereby declared to exist for the reasons described in the preamble of this ordinance and the Board of Commissioners suspends the requirement of publication of the ordinance in order for it to become effective, so that the ordinance is and shall be effective upon the adoption of this ordinance; and further, this ordinance, because of said emergency hereby declared, shall be effective upon its adoption on first reading, without publication, as provided in KRS 83A.060(7), and the Board of City Commissioners having hereby suspended the requirements of second reading and publications. The ordinance shall be published within ten (10) days of the adoption of this ordinance as provided by law.

SECTION II.

APPROVAL OF AGREEMENT AND AUTHORIZATION FOR MAYOR'S SIGNATURE

1. The Board of Commissioners of the City of Franklin, Kentucky hereby approves and adopts the Agreement between the City of Franklin, Kentucky and Kentucky Downs, LLC, a copy of which is attached hereto and incorporated herein by reference.
2. The Mayor of the City of Franklin, Larry Dixon, is hereby authorized to execute any and all documents necessary and appropriate to effectuate the intent of this ordinance and the Agreement including, but not limited to the Agreement. If any section, subsection, sentence, clause, or phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION III.

EFFECTIVE DATE

This Ordinance shall be effective immediately upon the reading of the ordinance at the meeting being specifically approved and adopted for the purposes of first and only reading and for the purposes of publication according to law.

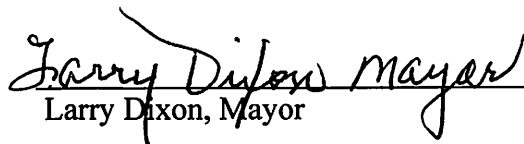
If any section, subsection, sentence, clause, or phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

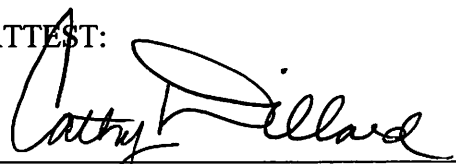
ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FRANKLIN, KENTUCKY, by the affirmative vote of at least two-thirds (2/3) of its membership upon one reading and upon declaration of an emergency as described above, all in accordance with and pursuant to KRS 83A.060(7) at a meeting held on March 14, 2022, and ordered to be published according to KRS 83A.060(7) within ten (10) days from the adoption of this ordinance and declared to be in full force and effect immediately according to law. On motion made by Commissioner Bennett and seconded by Commissioner Williams the foregoing ordinance was adopted, after full discussion, by the following vote:

<u>YES</u>	HERBERT WILLIAMS
<u>YES</u>	JAMIE POWELL
<u>YES</u>	BROWNIE BENNETT
<u>ABSENT</u>	WENDELL STEWART
<u>YES</u>	LARRY DIXON, MAYOR

APPROVED BY:


Larry Dixon, Mayor

ATTEST:


Cathy Dillard, City Clerk
City of Franklin, Kentucky

AGREEMENT BETWEEN CITY OF FRANKLIN AND KENTUCKY DOWNS, LLC

This Agreement is made on this 10 day of March, 2022, between Kentucky Downs, LLC, a Delaware limited liability company registered to do business in the Commonwealth of Kentucky, with a principal office address of 8978 Spanish Ridge Avenue, Suite 100, Las Vegas, Nevada 89148 ("KD"), and the City of Franklin, Kentucky, a home rule city organized under the laws of Kentucky, having its governmental offices at 117 West Cedar Street, P. O. Box 2805, Franklin, Kentucky 42135 ("City").

RECITALS

WHEREAS, KD owns properties located at 5629 Nashville Road, Franklin, Kentucky, which properties are located in the corporate limits of City; and,

WHEREAS, KD has sanitary sewer services at its existing facilities, currently provided by the City through a city-maintained sanitary sewer system, and KD desires to construct additional facilities including, but not limited to a hotel and convention center on its property, which will require more sewer capacity than is currently available through the existing City sewer system; and,

WHEREAS, KD has agreed to reimburse City for the cost of sewer improvements needed to serve its proposed new facilities, with the City owning and maintaining said improvements, in accordance with the terms and conditions herein; and,

WHEREAS, KD has agreed to provide City with an Irrevocable Letter of Credit in such amounts acceptable to the City to adequately provide security for the payment of the amounts owed for the sewer improvements plus one (1) year's total of Community Conduit Support Payments; and,

WHEREAS, KD desires for City to construct additional lines or systems in order to provide the capacity needed by KD; and,

WHEREAS, KD and City agree to the terms and conditions of this Agreement relating to the "Community Conduit Support Payments" as necessary to fund charities and the parties agree that these Community Conduit Support Payments are an integral part of the consideration for the City to improve the sanitary sewer lines for KD's facilities.

WHEREAS, KD desires the support of the City in refraining from enacting laws, ordinances, rules

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or regulations which would eliminate or circumscribe the use of tobacco products in KD's business premises (a "Smoking Ban").

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

SECTION ONE. DEFINITIONS

As used in this Agreement, the following words and definitions shall have the following meanings:

- (a) "City of Franklin, Kentucky" or "City" shall mean the City of Franklin, Kentucky, a home rule city and municipal government as defined and organized in the Commonwealth of Kentucky with an address as set forth hereinabove.
- (b) "Community Conduit Support Payments" or "Community Payments" shall mean the payments made to the City by KD to offset losses from charitable gaming (i.e., bingo) by certain governmental or quasi-governmental community organizations supported financially in whole or in part by the City or other government funding which payments shall be distributed to said organizations and not retained by City.
- (c) "Irrevocable Letter of Credit" or "Letter of Credit" shall mean an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank with a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's, but not both, substantially in the form set forth in Exhibit 1 attached hereto, with such changes to the terms in such form as the issuing bank may require and as may be acceptable to the City of Franklin, Kentucky.
- (d) "Kentucky Downs, LLC" or "KD" shall mean Kentucky Downs, LLC a Delaware company licensed to do business in the Commonwealth of Kentucky with an address as set forth hereinabove.
- (e) "Project" shall mean the construction, engineering, easement and land acquisition, installation and/or contingent costs associated with and/or related to a new or upgraded sanitary sewer line and lift stations along a portion of U.S. Highway 31-W South near Exit 2 of Interstate I-65 of adequate and increased size and capacity to accept, remove, and treat the effluent from the property of KD after the new development consisting of a hotel and convention center on KD's property is constructed and placed into service. The Project is more specifically and technically described in the plans and specifications from Barge Design Solutions attached hereto as Exhibit 1 and incorporated herein by reference.

**SECTION TWO.
WORK TO BE PERFORMED**

City will cause to be completed the necessary engineering and preparation of plans and specifications for the Project from KD's property to be connected to the sanitary sewer collection system of City. The Project will be constructed in accordance with the standards of and permitted by the Commonwealth of Kentucky and any applicable permits required from other governmental agencies. City shall obtain all such required permits and/or approvals at KD's expense.

**SECTION THREE.
ACCEPTANCE OF BIDS, AWARD OF CONTRACT AND SUPERVISION OF PROJECT**

City shall submit the approved plans for the Project to bid by responding contractors and shall award a contract for construction to the lowest and best responsive, responsible bidder, in accordance with the City's policies and ordinances and Kentucky law, for which City agrees to pay with reimbursement by KD as provided herein. Further, City shall supervise, by and through its own representatives or its engineers, the construction of the Project to assure compliance with applicable laws, rules and regulations. The parties understand and agree that the cost of the sewer line upgrades, lift stations, design and engineering, and all other improvements included within the total construction costs (the "Work") is currently estimated to be approximately One Million Nine Hundred Thousand Dollars (\$1,900,000.00). Provided, however, the parties understand and agree that this is an estimate only and the price is subject to change due to the nature of the current economy and the potential for increases in material costs, and KD agrees to pay the final, total amount incurred by City to complete the Project.

**SECTION FOUR.
INITIAL CONSIDERATION AND REIMBURSEMENTS**

KD has paid to the City, prior to the time this Agreement is executed, the sum of Seventy-Five Thousand Dollars (\$75,000.00). Such sum will be applied to the amount that City had previously expended for design/engineering costs for the Project. In addition, KD shall pay to City the actual cost of the Project including, but not limited to all remaining engineering, construction, land and easement acquisition, and any and all contingent costs necessary and required to complete construction of the Project. City agrees, through its engineers and staff, to use its reasonable best efforts to provide the Project at the lowest possible cost, while providing the highest quality lines, lift stations, and construction standards. All amounts remaining to be paid, during and after complete construction of the Project, shall be paid by KD to the City when billed by the City. City agrees to bill KD after invoices are sent to and approved by the City. KD understands and agrees to pay each invoices within thirty (30) days of receipt of the invoice.

**SECTION FIVE.
CONNECTION TO DEVELOPED LAND**

KD shall be entitled to permanently connect to the Project in accordance with the provisions of the City of Franklin's Code of Ordinances unless prohibited by applicable law or regulation outside the control of City or if KD fails to pay the sewer bill owed to City for providing sewer services. The cost of such connection is to be at the expense of KD, however, KD shall not be required to pay City any additional fees as "tap on" fees for the hotel and convention center improvements currently being constructed on KD's property or a proposed RV park, even if otherwise required by City ordinance. KD shall be responsible for all ordinary monthly fees for sewer service, based upon the appropriate City ordinance.

**SECTION SIX.
LIABILITY FOR MALFUNCTION**

City shall retain ownership of and be responsible for the maintenance of the Project, but no liability shall attach to City as a result of any malfunction of such system.

**SECTION SEVEN.
COMPLIANCE WITH LAWS**

KD shall comply with all existing ordinances of City relating to connection to and use of the sanitary sewer system of City, provided, that KD shall not be liable for any connection fees or assessments other than those payments required as set forth in this agreement for the Project and Community Payments.

**SECTION EIGHT.
IRREVOCABLE LETTER OF CREDIT**

To secure the satisfactory performance of all financial obligations under this Agreement, KD shall deposit with City an irrevocable bank letter of credit endorsed and acceptable to the City, in the amount of: (a) Two Million Five Hundred Thousand Dollars (\$2,500,000.00). The Irrevocable Letter of Credit shall be in the form attached hereto as Exhibit 2. The Irrevocable Letter of Credit shall be issued for a term of two (2) years beginning on the date that the City executes this Agreement. Provided, however, that City shall allow KD to provide an automatically renewable irrevocable letter of credit for a lesser amount of time than two (2) years, so long as the letter of credit remains in effect continuously during the time any amounts are still due and owing on the Project.

The following conditions or occurrences will constitute a default (an "Event of Default") by KD which will automatically allow City to make a demand upon the bank or financial institution issuing the Irrevocable Letter of Credit (the "Issuing Bank"), and bank or financial institution shall make payment to City for the amounts demanded:

- (a) KD's failure or refusal to make any payments required under the terms of this Agreement within thirty (30) days after the payment becomes due and payable (i.e. sixty (60) days after receipt of the invoice from City);
- (b) KD's breach of the terms of Section Twenty-Three hereinbelow;
- (c) KD's insolvency, the appointment of a receiver for KD or the filing of a voluntary or involuntary petition in bankruptcy respecting KD; in such event the City may immediately declare a default without prior written notification to KD; and/or
- (d) Failure to renew the Irrevocable Letter of Credit no later than thirty (30) days before the expiration of the then current Irrevocable Letter of Credit while KD is obligated to make payments in respect of the Project.

SECTION NINE. LETTER OF CREDIT DRAWS

City may automatically draw upon the Irrevocable Letter of Credit at any time (i) in order to satisfy any payment obligations of KD set forth in this Agreement not met within the timeframe set forth herein or, (ii) in the event the Irrevocable Letter of Credit is not renewed at least thirty (30) days prior to the stated expiration date thereof if the KLC Financing is still owed and outstanding by the City or, (iii) if an "Event of Default" occurs as set forth in Section Nine above. The proceeds of any drawing on the Irrevocable Letter of Credit pursuant to clause (ii) above not applied to amounts then owing to City hereunder shall be held by City as security for any future payment obligations of KD to City under this Agreement. City shall not be required to hold any such cash proceeds described in the preceding sentence in any separate account but may comingle such proceeds with other funds of City, provided that City shall account for the disposition of all such proceeds at the request of KD.

SECTION TEN. RELEASE OF IRREVOCABLE LETTER OF CREDIT

The Issuing Bank shall only release the Irrevocable Letter of Credit or reduce the Irrevocable Letter of Credit Sum upon receipt of a written authorization from the Mayor of the City, and approved by the City Commission, addressed to the Issuing Bank at the time the costs of the Project have been paid in full as verified by the City Manager of the City, in writing.

SECTION ELEVEN. COMMUNITY CONDUIT SUPPORT PAYMENTS

The parties agree that an integral part of the consideration for this Agreement is the Community Payments set forth in this Section Eleven. Based upon information received by the City, KD's Historic Horse Racing gaming has significantly decreased all other charitable gaming revenues in Franklin and Simpson County to the extent that certain governmental and quasi-governmental agencies including, but not limited to the Franklin Simpson Parks, that have previously relied on these mechanisms for funding

are now having financial struggles. In addition to the other considerations stated herein, KD agrees to pay City the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) per year beginning April 1, 2022, and ending March 31, 2042, as Community Conduit Support Payments. These amounts shall be payable in equal quarterly installments of Sixty-Two Thousand Five Hundred Dollars (\$62,500.00), due on January 15, April 15, June 15, and September 15 of each calendar year through March, 2042. The parties understand and agree that these payments may be treated as charitable contributions or as any other designation applicable or allowed by or under the Internal Revenue Code with regard to deductions from the AGI (adjusted gross income) of KD. The City shall provide KD with a list of payments made to the charitable and governmental organizations described in this Section 12, if requested by KD, as soon as practicable following the close of the City's then current fiscal year ending on June 30th of each year.

With regard to the foregoing, the parties agree that KD shall be allowed to decrease or cease to pay the Community Payments in the event of a significant decrease in revenue only as set forth herein or if the City enacts a Smoking Ban. If the City Commission (or other form of City government, if it is changed or amended pursuant to the Kentucky Revised Statutes) implements a Smoking Ban, as that term is defined herein, KD's obligation to make Community Conduit Support Payments shall immediately cease, and KD shall have no further obligation with respect to this paragraph. Otherwise, for purposes of this Section Twelve, the "base year" for the calculation of revenues shall be the calendar year ending December 31, 2021. KD has provided information to the City that the total revenues for KD for that year were \$171, 339,065. KD agrees to provide a letter from KD's auditors to the City attesting to gross revenues. The parties agree to revise this "base year" total revenue number, if necessary, after receipt of the audited financial statements to reflect the actual audited number. If, in any calendar year after the execution of this Agreement, KD's total gross revenues decrease from the total gross revenues from the "base year" by fifteen percent or more, Community Payments shall be decreased in the following amounts:

- (a) If KD's total gross revenues decrease by at least fifteen percent (15%) but less than twenty percent (20%) less than the "base year", the Community Payments KD shall make to City for the next calendar year shall be decreased by a proportionate amount. As an illustration only, should KD's total gross revenues decrease by Seventeen Percent (17%) for a calendar year below the "base year," KD's Community Payments for the next calendar year would be Two Hundred Seven Thousand Five Hundred Dollars (\$207,500.00), payable quarterly (calculated as follows: $\$250,000.00 \times .17 = \$42,500.00$; $\$250,000.00 - \$42,500.00 = \$207,500.00$);
- (b) If KD's total gross revenues decrease by at least twenty percent (20%) but less than thirty percent (30%) less than the "base year," the Community Payments for the next calendar year shall be decreased by fifty percent (50%), to One Hundred Twenty-Five Thousand Dollars (\$125,000.00), payable quarterly; and,
- (c) If KD's total gross revenues decrease by thirty percent (30%) or more less than the "base year," KD shall not be required to make the Community Payments for the next calendar year.

With regard to the foregoing, if the Community Payments are ever decreased due to KD's decreased revenues, the parties will review KD's revenues annually to determine the difference in KD's total gross revenues for the then current calendar year compared to the "base year." If KD's total gross

revenues increase in any subsequent calendar year, the above-referenced calculations shall apply to determine the amount of the Community Payments owed to City by KD, and said payments shall be increased or reinstated to reflect KD's then current total gross revenues in comparison with the "base year."

**SECTION TWLEVE.
GOVERNING LAW; SMOKING REGULATION**

This agreement shall be governed by, construed, and enforced in accordance with the laws of Commonwealth of Kentucky and the venue shall be Simpson County, Kentucky. During the term of this Agreement, the City Commission shall not enact any law, ordinance or regulation that prevents the smoking of tobacco products within KD's business premises. If the City Commission enacts a provision which prohibits the smoking of tobacco products within or affecting KD's business premises, the provisions of Section Twelve shall govern, and KD shall no longer be obligated to pay any Community Conduit Support Payments. Provided, however, that if the City Commission is mandated or required by the Commonwealth of Kentucky or other governmental or regulatory agency having jurisdiction over the City to adopt an ordinance or a Smoking Ban, or if the Commonwealth of Kentucky adopts legislation requiring a Smoking Ban at KD's facilities through state-wide legislation or otherwise, then the provisions of Section Twelve shall remain in full force and effect, subject to any decreased revenue provisions contained therein.

**SECTION THIRTEEN.
ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.

**SECTION FOURTEEN.
MODIFICATION OF AGREEMENT**

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

**SECTION FIFTEEN.
NO WAIVER**

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The failure of either party to this agreement to insist on the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

SECTION SIXTEEN. SEVERABILITY

The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

SECTION SEVENTEEN. ATTORNEYS' FEES

If any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the attorneys' fees, costs, and expenses of the successful party.

SECTION EIGHTEEN. SECTION HEADINGS

The titles to the sections of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

SECTION NINETEEN. NOTICES

Any notice provided for or concerning this agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this agreement.

SECTION TWENTY DRAFTSMANSHIP

This Agreement shall not be interpreted against, or in favor of either party by reason of

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SECTION TWENTY-ONE FORCE MAJEURE

Neither party to this agreement shall be liable to the other for any loss, cost, or damage, arising out of, or resulting from, any failure to perform in accordance with the terms of this agreement where such failure shall be beyond the reasonable control of such party, which, as employed in this agreement, shall be deemed to mean, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental actions, explosions, fire, floods, earthquake, or any other cause not within the reasonable control of either party.

SECTION TWENTY-TWO PRINCIPAL AND AGENT

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third-party to create the relationship of principal and agent or of partnership or of joint venture or of any association between the City and KD.

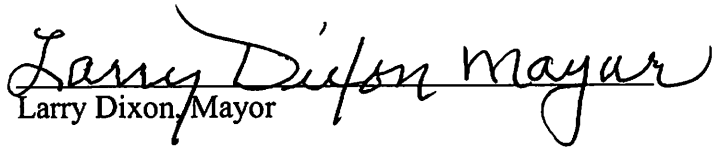
SECTION TWENTY-THREE ASSIGNMENT OR SALE

This Agreement shall inure to the benefit of and be binding upon the successors in interest and/or the legal representatives of the respective parties hereto. This Agreement shall not be assigned or transferred by KD without the written consent of the City being first had and obtained, which consent shall not be unreasonably withheld, conditioned or delay, and which consent shall be given if the proposed transferor provides the city with a new Irrevocable Letter of Credit, acceptable to the City, in an amount equal to the then unpaid principal balance due pursuant to Section Five plus any other amounts as required by the City for the Conduit Community Support Payments. Further should the current owner of KD sell or transfer more than fifty percent (50%) of the interest in KD to any person or entity not currently affiliated with an owner of KD's parent company, all financial obligations created under the terms of this Agreement shall immediately become due and payable in full, unless the prior written consent of the City is obtained, but which consent shall be given if the proposed transferor provides the city with a new Irrevocable Letter of Credit, acceptable to the City, in an amount equal to the then unpaid principal balance of the KLC Financing plus any additional amounts as required herein.

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The parties have executed this agreement at Franklin, Kentucky on the day and year first set forth above.

CITY OF FRANKLIN


Larry Dixon, Mayor

Attest:


Cathy Dillard, City Clerk

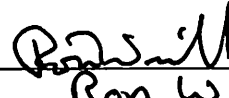
KENTUCKY DOWNS, LLC., a Delaware
Limited liability company

By Its Manager
ECL Gaming Management, LLC, a Nevada
limited liability company

By:

Name:

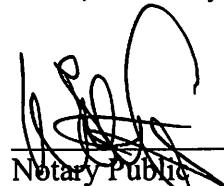
Title: Manager


Ron Winchell

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

The foregoing Agreement was on this 14th day of March, 2022 acknowledged before me by Larry Dixon, Mayor of the City of Franklin, Kentucky and attested by Cathy Dillard, City Clerk.



Notary Public

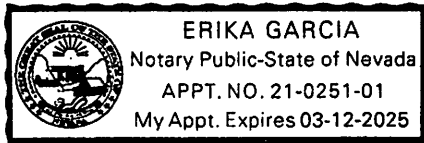
My Commission Expires: 6/27/2025

Notary Public #: KYNP29783

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

The foregoing Agreement was on this 11 day of March, 2022 acknowledged before me by Ronald W. Winchell as a Manager of ECL Gaming Management, LLC, as the Manager of Kentucky Downs, LLC.



Erika Garcia
Notary Public
My Commission Expires: 3-12-2025
Notary Public #: 21-0251-01

**WRITTEN CONSENT OF
MANAGER AND SOLE MEMBER OF
KENTUCKY DOWNS, LLC**

March 11, 2022

The undersigned, being the sole member (the “**Member**”) and the manager (the “**Manager**”), respectively, of KENTUCKY DOWNS, LLC, a Delaware limited liability company (the “**Company**”), do hereby adopt the following resolutions effective as of the date first set forth above. Capitalized terms not otherwise defined herein have the meaning given such terms in the Company’s Operating Agreement, dated as of April 26, 2021 (the “**Company Operating Agreement**”).

WHEREAS, the Manager has recommended to the Member that the Company enter into an agreement with the City of Franklin Kentucky for construction of sewer improvements in connection with the Mint Hotel construction in substantially the form of the Agreement Between the City of Franklin and Kentucky Downs, LLC attached hereto as Exhibit A and by this reference incorporated herein {the “**City Sewer Agreement**”).

NOW THEREFORE, be it

RESOLVED, that the City Sewer Agreement and the terms thereof are fair to the Company and in the best interests of the Company and its subsidiaries, and the Member and Manager hereby approve the execution, delivery and performance of the Company and its subsidiaries of City Sewer Agreement and any other instruments, agreements, control agreements, indemnities, guaranties, certificates, and other documents described therein, ancillary thereto, or otherwise to be executed in connection therewith or which are necessary, appropriate, or advisable under the circumstances or otherwise required to effectuate the transactions contemplated thereby (collectively as the “**Financing Documents**”) and the consummation by the Company and its subsidiaries of any and all transactions to effectuate or otherwise in connection with any of the foregoing; and be it further

RESOLVED, that (a) the Manager, as manager of the Company and (b) the Manager, as direct or indirect manager of each subsidiary of the Company (collectively, the “**Authorized Persons**” and each, an “**Authorized Person**”) be and hereby are individually authorized, appointed, empowered, and directed, on behalf of the Company and its subsidiaries, as applicable, to negotiate the terms of the City Sewer Agreement; and be it further

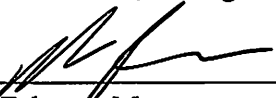
RESOLVED, that each Authorized Person of the Company shall be and hereby is authorized, appointed, empowered, and directed, in the name of, and on behalf of the Company or any subsidiary of the Company, as the case may be, to execute and deliver the Financing Documents to which the Company or such subsidiary of the

THE MANAGER:

ECL GAMING MANAGEMENT, LLC, a
Nevada limited liability company

By: 

Ronald Winchell, Manager

By: 

Marc Falcone, Manager

Company is to be a party, and to further authorize each subsidiary of the Company to do the same; and be it further

RESOLVED, that all Amended Financing Documents may be so executed and delivered in such final form as the Authorized Person executing the same may, in such Authorized Person's judgment and discretion, approve, and shall contain such final terms and conditions as the Manager deems to be in the best interest of the Company or subsidiary thereof on whose behalf such Authorized Person is acting, with the execution and delivery thereof to be conclusive evidence of such Authorized Person's authority therefor and the approval and ratification thereof by the Company or subsidiary thereof on whose behalf such Authorized Person has acted; and be it further

RESOLVED, that any acts of the Manager or any other Authorized Person, and of any person or persons designated and authorized to act by any such person, which acts would have been authorized by any of the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as the acts of the Company.

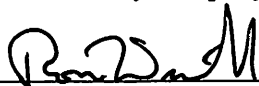
This Written Consent may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Written Consent. Counterpart signature pages may be delivered by facsimile or electronic transmission.

APPROVED:

THE MEMBER:

ECL ENTERTANMENT, LLC, a
Delaware limited liability company

By: ECL GAMING MANAGEMENT, LLC, a
Nevada limited liability company, its Manager

By: 
Ronald Winchell, Manager

By: 
Marc Falcone, Manager

Exhibit “A”

Agreement between the City of Franklin and Kentucky Downs, LLC

[attached]