

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FILED
POLK COUNTY, IA.
13 JUN 10 PM 3:43

BELLE OF SIOUX CITY, L.P.,)

Plaintiff/Defendant to Counterclaim,)

v.)

MISSOURI RIVER HISTORICAL)
DEVELOPMENT INC.,)

Defendant/Counter-claimant.)

Case No. CL 126161

PETITION FOR APPOINTMENT
OF RECEIVER

MISSOURI RIVER HISTORICAL)
DEVELOPMENT, INC.)

Third Party Plaintiff,)

v.)

PENN NATIONAL GAMING, INC.,)

Third Party Defendant.)

SIOUX CITY ENTERTAINMENT, INC.)

Intervenor,)

v.)

BELLE OF SIOUX CITY, L.P. and PENN)
NATIONAL GAMING, INC.,)

Intervention Defendants.)

The Belle of Sioux City, L.P. (the "Belle"), pursuant to Iowa Code § 680.1, hereby petitions the Court to appoint a receiver in this matter. In support of its petition, the Belle states as follows:

INTRODUCTION

1. Since 2005, the Belle has paid defendant Missouri River Historical District (“MRHD”)—the Belle’s “qualified sponsoring organization” (“QSO”) under Iowa gaming law—3% of the Belle’s adjusted gross monthly receipts from its operation of Argosy Casino. MRHD has in turn passed those funds on to various charitable organizations, less the funds MRHD retains for its operating expenses. The Belle has made these payments to MRHD under the terms of the operating agreement between the parties (the “Operating Agreement”) that is the subject of this suit. The Belle believes, and has asserted in this suit, that the Operating Agreement remains in full force and effect until March 31, 2015. MRHD, on the other hand, has taken the position that the Operating Agreement expired in July 2012. Nevertheless, in clear contradiction to its position that the Operating Agreement no longer is in effect, MRHD has demanded that the Belle continue to make these payments to it, and it has threatened to attempt to have Argosy Casino shut down if the Belle fails to do so.

2. Whether the Operating Agreement remains in effect, and if so, whether MRHD has breached the Operating Agreement through its efforts to replace the Belle with another gaming company operator, are the ultimate questions to be decided in this suit. For present purposes, however, MRHD’s disavowal of the Operating Agreement has created an untenable and highly inequitable situation that, the Belle submits, is appropriate for the Court’s involvement at this time. Specifically, if, as MRHD so stridently contends, the Operating Agreement is no longer in effect, then the Belle has no obligation to pay MRHD 3% of its revenues each month. In that case, the Belle should be free to make these statutory payments to another charitable organization that can ensure the Belle’s revenues are used to the fullest extent possible for charitable purposes. If the Belle pays another charitable organization, however,

MRHD may later (and ironically) claim that the Belle breached the Operating Agreement by failing to make payments to it. Likewise, MRHD may claim that the Belle's conduct in paying another charitable organization instead of MRHD evidences the Belle's understanding that the Operating Agreement is no longer in effect.

3. MRHD's inconsistent positions concerning the viability of the Operating Agreement have placed the Belle in a veritable "Catch-22," and have caused it to file this Petition. By this Petition, the Belle seeks the appointment of a receiver who, during the course of this suit and until the parties' respective rights and obligations under the Operating Agreement are finally adjudicated, can maintain the status quo by receiving and holding, or distributing to charity, the Belle's statutory payments of 3% of its adjusted gross revenues.

RELEVANT BACKGROUND

4. The Belle (through a predecessor entity) and MRHD entered into the Operating Agreement in 1992. Among other things, the Operating Agreement,¹ as amended in 2005, provides that the Belle is required to pay 3% of its adjusted gross receipts to MRHD, so that MRHD can distribute those revenues to charity. *See* Exhibit B at 1, section C. The Belle's obligation to pay 3% of its revenue to MRHD exists only by virtue of the Operating Agreement. Pursuant to this Agreement, the Belle has timely made such payments to MRHD every month since it opened.

5. As the Court is aware, the central dispute in this case is whether the parties extended the Operating Agreement until March 2015 through an "Extension Agreement" that both parties executed in June 2012, before MRHD disavowed its validity at a public meeting of the Iowa Racing and Gaming Commission ("IRGC") in August 2012. After MRHD's disavowal

¹ The Operating Agreement and its amendment are attached as Exhibits A and B to this petition.

of the Extension Agreement, the IRGC did not take further action on the licenses held by MRHD and the Belle relating to Argosy Casino. The propriety of both MRHD's actions and the IRGC's actions are the subject of litigation before this Court. The IRGC has continued to permit the Belle to operate Argosy Casino.

6. On September 21, 2012, the Belle filed the Petition in this lawsuit, asserting claims against MRHD for injunctive relief, breach of contract, breach of the implied covenant of good faith and fair dealing and declaratory relief. In its Petition, the Belle asserts that the Operating Agreement, as extended, remains in effect until March 2015, and that MRHD has breached that contract in several respects, including by actively soliciting – since at least early 2012, when it is undisputed that the Operating Agreement was still in effect – a different gaming company to replace the Belle as the operator of a gaming facility in Woodbury County. MRHD did this notwithstanding the fact that the Operating Agreement requires MRHD to use its “best efforts” to ensure that the Belle remains the exclusive licensee of a gaming facility in Woodbury County. In seeking a temporary injunction concurrently with the filing of its Petition, the Belle noted that MRHD had continued through the date of that filing to accept monthly payments from the Belle pursuant to the Operating Agreement, thus evidencing MRHD's understanding that the Operating Agreement was, in fact, still effective. *See* Brief in Support of Motion for Temporary Injunction at 4-5.

7. On October 10, 2012, the Belle sent another check to MRHD. This time, MRHD did not cash the check. MRHD did not communicate any reason to the Belle for not accepting the payment. The Belle continued to make payments to MRHD through April 10, 2013, and MRHD continued to hold the checks without cashing them.

8. On April 18, 2013, the IRGC selected a bid proposed by MRHD, as the QSO, and Sioux City Entertainment (an intervenor in this case), as the gaming company operator, to develop a land-based casino in Woodbury County to ostensibly replace Argosy Casino, and thus supplant the Belle's business operations. That same day, MRHD cashed all outstanding payments that the Belle had sent it since October 2012, in the total sum of \$998,404.

9. On April 22, MRHD explained in a letter to the Belle (attached to this petition as Exhibit C) that it was "depositing all checks issued to it to date (and going forward) as such payments constitute the statutory minimum payment to a [QSO] under [Iowa Code] 99F.6." MRHD added that its "processing of these payments, which MRHD believes is required under law, has no bearing on the former operating agreement with Belle of Sioux City, which expired by its terms in July of 2012." Finally, MRHD threatened that the Belle's "continued operation [of Argosy Casino] under our license is conditioned upon [the Belle's] payment of the minimum statutory fee."

10. On May 10, the Belle made its next contractual payment to MRHD. In an accompanying cover letter (attached hereto as Exhibit D), the Belle stated that its payment of \$138,143 is being made pursuant to the Operating Agreement, which is "the only possible basis upon which MRHD is entitled to receive this payment." MRHD cashed this check. On May 13, MRHD responded that it "continue[s] to believe that the payments . . . constitute the statutory minimum payment to a [QSO] under [Iowa Code] 99F.6, following the IRGC's decision concerning the extension of the Belle of Sioux City/MRHD license by operation of law." (This letter is attached hereto as Exhibit E.)

11. The Belle's next payment to MRHD under the Operating Agreement would be due on June 10, 2013.

ARGUMENT

12. As discussed below, the Court should appoint a receiver to hold or distribute to charity, during the course of this suit, the Belle's statutory payments of 3% of the adjusted gross receipts of Argosy Casino.

13. Chapter 680 of the Iowa Code governs the appointment of receivers. Pursuant to Iowa Code § 680.1, if a party shows it has an "interest in [] any property which is the subject of the controversy, and that such property . . . [is] in danger of being lost or materially injured or impaired," the Court may appoint a receiver to "take charge and of and control . . . property under its direction during the pendency of [an] action." Whether to appoint a receiver when the statutory conditions are met is committed to the Court's discretion. *South Ottumwa Sav. Bank v. Sedore*, 394 N.W.2d 349, 352 (Iowa 1986). For the reasons discussed below, the Court should exercise its discretion to appoint a receiver here.

14. *First*, the Belle's payments of 3% of its revenues to MRHD under the Operating Agreement are plainly "property which is the subject of the controversy" raised by the pleadings in this case. Under Iowa Code § 99F.6(4)(a), a licensee is required to "distribute at least three percent of the adjusted gross receipts for each license year for educational, civic, public, charitable, patriotic, or religious uses" Pursuant to the parties' Operating Agreement (as amended in 2005), the Belle agreed to make these statutory payments to MRHD, which would then distribute the money to charities. This contractual provision represents the sole source of any legal obligation the Belle has to pay a percentage of its revenues from the operation of Argosy Casino to MRHD (as opposed to some other charitable organization(s) in Iowa). No statute or regulation compels payments from the Belle to MRHD. Because the Belle's payments to MRHD are solely the creature of the Operating Agreement that is at the heart of this lawsuit,

the payments are clearly “property which is the subject of the controversy” in this case. Indeed, the very purpose of this case is to determine if the parties’ Operating Agreement remains in effect, and if so, whether the parties are obligated to perform (or have breached) their respective obligations pursuant to that contract, including the Belle’s obligation to make payments to MRHD and MRHD’s obligation to use its best efforts to ensure that the Belle remains the exclusive licensee in Woodbury County.

15. The Belle, moreover, has an obvious interest in its revenues, and further in ensuring that the portion of its revenues that it is required by Iowa law to distribute to charities is, in fact, distributed to charities to the fullest extent possible, rather than spent on this lawsuit (or pursuing the development of a new casino). Accordingly, the status of the Belle’s contractual requirement to make payments to MRHD is plainly one of the issues at the heart of this case. The first requirement for the appointment of a receiver is therefore satisfied.

16. *Second*, the appointment of a receiver is further justified because if the Belle continues to make the payments that MRHD is insisting are due, but MRHD later prevails on its theory that the Operating Agreement expired in July 2012, then the Belle will have had no obligation to make those payments and it would be entitled to recover them from MRHD, under a theory of unjust enrichment or otherwise. However, by the time the Belle recovers any such damages award, it is very likely that MRHD, which is a pass-through entity that has no employees and no business operations other than to spend the money the Belle pays to it, will have already distributed the funds it received from the Belle or spent them on this lawsuit (or pursuing development of a new casino). As such, there is a “danger” that the Belle’s statutory payments will be “lost or materially injured or impaired” during the course of this suit.

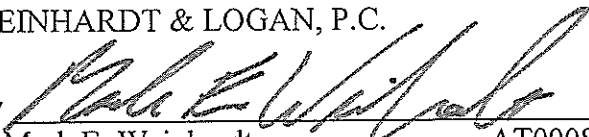
17. MRHD has therefore placed the Belle in the impossible position of having to choose whether to make payments to MRHD with the prospect of never being able to recover them if it is ultimately determined that MRHD was not entitled to them in the first place, or to withhold payments to MRHD, and risk that MRHD may later (and ironically) assert breach of contract claims against the Belle on the grounds that the Operating Agreement is in effect such that the Belle's payments were due. Accordingly, both requirements for the appointment of a receiver are met.²

WHEREFORE, the Plaintiff, Belle of Sioux City, L.P., respectfully requests that the Court appoint a receiver to receive and hold or distribute to charity the Belle's monthly payments of 3% of the adjusted gross receipts of Argosy Casino until such time as the Court adjudicates the status of the parties' respective rights and obligations under the Operating Agreement.

Respectfully submitted,

WEINHARDT & LOGAN, P.C.

By


Mark E. Weinhardt

AT0008280

Holly M. Logan

AT0004710

Danielle M. Shelton

AT0007184

Todd M. Lantz

AT0010162

2600 Grand Avenue, Suite 450

Des Moines, IA 50312

Telephone: (515) 244-3100

E-mail: mweinhardt@weinhardtlogan.com

hlogan@weinhardtlogan.com

dshelton@weinhardtlogan.com

tlantz@weinhardtlogan.com

² The Belle is prepared to submit a check for 3% of its adjusted gross receipts to the Court or a Court-ordered receiver as the Court directs.

QUINN EMANUEL URQUHART &
SULLIVAN, LLP
Christopher Tayback
Daniel Posner
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
E-mail: christayback@quinnemanuel.com
danposner@quinnemanuel.com

ATTORNEYS FOR PETITIONER BELLE OF
SIOUX CITY, L.P.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was
served upon the parties to this action by serving a copy upon each
of the attorneys listed below on June 10, 2013 by

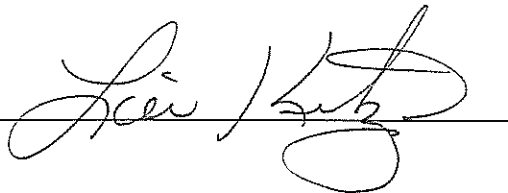
- ☒ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Electronic Mail
☐ FedEx/ Overnight Carrier ☐ Other

Douglas L. Phillips
Klass Law Firm, L.L.P
4280 Sergeant Road
Mayfair Center, Suite 290
Sioux City, IA 51106
Phillips@klasslaw.com

Robert Liubicic
Milbank, Tweed
601 South Figueroa Street
30th Floor
Los Angeles, CA 90017
rliubicic@milbank.com

James Quilty
Crawford, Quilty & Mauro
666 Grnd Avenue, Suite 1701
Des Moines, IA 50309
quiltyclf@aol.com

Signature: _____



MANAGEMENT AND OPERATION AGREEMENT

This MANAGEMENT AND OPERATION AGREEMENT (hereinafter the "Agreement") is entered into this 17th day of June, 1992, between the MISSOURI RIVER HISTORICAL DEVELOPMENT, INC., an IOWA non-profit corporation (hereinafter "MRHD") and SIOUX CITY RIVERBOAT CORP., INC., an IOWA Corporation (hereinafter "Operator").

RECITALS

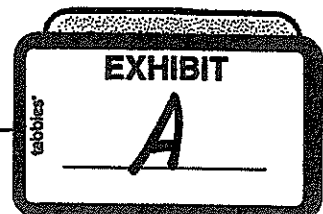
A. Iowa Code Chapter 99F (the "Act") authorizes the operation of gambling games on excursion boats to be operated in the State of Iowa. The Act provides that a license for operating gambling games may be granted to a non-profit entity that is a "qualified sponsoring organization." The Act also provides that a license to operate the excursion boat, on which the gambling games will be conducted, may be granted to any partnership or corporation. Furthermore, the Act authorizes a qualified sponsoring organization, that is licensed to operate gambling games, to enter into a management and operation agreement with a person who is an excursion boat licensee, for the operation of the gambling games.

B. MRHD is a qualified sponsoring organization, and holds a license under the Act for the operation of Gambling Games on an excursion boat on the Missouri River, in Woodbury County, Iowa (hereinafter the "Gambling Games"). Operator is a corporation that intends to obtain a license under the Act for the operation of the excursion boat on which the Gambling Games will be operated (hereinafter the "Riverboat"). MRHD and Operator desire to cooperate in a joint license application to pursue these activities.

C. MRHD and Operator desire to establish an operation and management agreement, whereby MRHD will authorize Operator as its sole and exclusive Operator and manager of the gambling games that MRHD is licensed to operate during the term of this Agreement unless terminated as hereinafter provided or non-approval of Operator by the Iowa Racing and Gaming Commission. The operation of such Gambling Games will be conducted exclusively on the Riverboat to be operated by Operator.

D. After licenses for the operation of the Gambling Games and Riverboat have been granted, the operation of the Gambling Games and Riverboat shall be in accordance with the act, the regulations of the Racing and Gaming Commission and the Division of Criminal Investigations.

NOW, THEREFORE, in consideration of the mutual agreements herein contained MRHD and Operator AGREE:



1. Appointment of Operator and Manager.

A. Subject to the terms and conditions of this Agreement, MRHD hereby selects and appoints operator as its exclusive Operator for the purpose of conducting Gambling Games on the Riverboat to be operated by Operator during the term of this Agreement unless terminated as hereinafter provided or non-approval of Operator by the Iowa Racing and Gaming Commission. MRHD also agrees to act as the "Qualified Sponsoring Organization," as that term is used in Iowa Code Chapter 99F, in connection with the license application(s) of MRHD and Operator to the Iowa Racing and Gaming Commission. The appointment of Operator as exclusive operating and management agent is subject to the conditions subsequent that: (i) prior to August 1, 1992 Operator obtain a license from the Iowa Racing and Gaming Commission to operate the Riverboat; and (ii) at no time during the term of this Agreement shall Operator cause such license (or any renewal or replacement license) be suspended, revoked or terminated for a period in excess of one hundred twenty (120) days.

B. Subject to the terms and conditions of this Agreement, Operator hereby accepts the Responsibility of operating and managing Gambling Games for MRHD; to the extent that such Gambling Games are hereafter authorized by the Iowa Racing and Gaming Commission and in accordance with the provisions of Iowa Code Chapter 99F. Operator agrees to commence operation of a Riverboat in Sioux City no later than July 1, 1993.

2. License Applications

A. MRHD and Operator agree to cooperate fully and quickly in the preparation and filing of all documentation required the Iowa Racing and Gaming Commission. MRHD and Operator will seek approval for a license to conduct the Gambling Games and the Riverboat under Iowa Code Chapter 99F, in conformance with the rules and regulations of the Iowa Racing and Gaming Commission.

B. Both MRHD and Operator acknowledge that an important part of the license application procedure is the completion of background investigations by the Iowa Division of Criminal Investi-

gation. Such investigations will require disclosure by all officers, directors, agents and principal equity holds (hereinafter collectively referred to as "Insiders") of both MRHD and Operator. Both MRHD and Operator agree to compile such information from their respective Insiders with the utmost haste. In the event that such information reveals that an Insider exists who would not meet the requirements of the Division of Criminal Investigation, or the Racing and Gaming Commission, or the requirements of Chapter 99F, such individual shall be terminated (if he or she is an employee), or removed (if he or she is a director), or their interest in Operator eliminated (if he or she is a partner or stockholder in Operator).

C. MRHD and Operator agree to utilize their best efforts for the financial success of the Gambling Games Operations. MRHD agrees throughout the term of the Agreement to undertake all actions necessary to: (i) continue its corporate status, in good standing, as an Iowa non-profit corporation; (ii) obtain and continue its status as an exempt non-profit entity under §501 of the Internal Revenue Code; and (iii) continue its status as a qualified sponsoring organization under Iowa Code Chapter 99F.

3. Costs of License Applications; Money Advance for MRHD

A. The full costs of all license applications, including application fees and other fees charged by the Iowa Racing Gaming Commission shall be paid by Operator.

B. Operator shall advance the sum of \$25,000.00 to MRHD for its expenses. The sum of \$10,000.00 is to be paid upon approval of the license application by the Iowa Racing and Gaming Commission. The balance is to be paid at the commencement of Riverboat operations. However, MRHD reserves the right to request further advances for actual out-of-pocket expenses prior to commencement of Riverboat operations, which advances shall not exceed the balance of the \$25,000.00. All funds so advanced pursuant to this Agreement shall be reimbursed to Operator by MRHD from the admission fees to be received by MRHD in accordance with Section 5.C. below, without interest, finance charges or similar charges.

4. Services to Be Performed by Agent

A. MRHD hereby appoints Operator as its sole and exclusive agent, and Operator agrees as such agent, to perform the following services for MRHD:

- (i) To assist MRHD in retaining its license to operate the Gambling Games and to assist MRHD in meeting all requirements for the satisfaction of all legal and fiscal requirements for the maintenance and continuation of such license.
- (ii) To provide all personnel, equipment and services necessary for the operation of the Gambling Games, including but not limited to: croupiers, cashiers and other Gambling Games employees, training, janitorial, garbage removal, security, insurance, legal and accounting services, advertising, program printing and distribution, and other related operational services. Operator shall have secure exclusive control over the management affairs in the operation of the Gambling Games.
- (iii) To generally perform all management functions and to make all management decisions necessary or appropriate for the operation of the Gambling Games. Operator agrees to prepare any and all reports to the Racing and Gaming Commission as may be required by the rules and regulations of said Commission and the Act. All books and records of the Gambling Games shall be available for inspection during normal business hours. Operator shall cooperate with MRHD and its accountants in providing operational information that is required by the Racing and Gaming Commission.
- (iv) Operator shall indemnify and hold MRHD, its directors and officers harmless from any and all liability arising from the performance by Operator of the above-described services.

B. All costs, expenses, fees, salaries and compensation advanced or incurred by Operator under this Section 4 shall be paid by Operator at its sole costs.

5. Proceeds from Boat Operations, Gambling Games and Admissions

A. All proceeds received by Operator from the operation of the Riverboat (gambling or non-gambling) shall

be the sole and exclusive property of Operator, subject to the terms of this Agreement, the Development Agreement with the City of Sioux City, Iowa, and Chapter 99F of the Iowa Code. Such proceeds include, but are not limited to, gambling income, passenger fares, food and beverage sales, entertainment, souvenir and gift sales, and beauty and other personal services.

B. MRHD shall be paid one-third (1/3) of the amount of any reduction in the maximum wagering tax rate of 20% presently established by Section 99F.11 of the Iowa Code imposed on adjusted gross receipts of Operator as defined in Iowa Code 99F.1(12). Payment to MRHD under this paragraph, if any, shall be paid when wagering taxes are paid by Operator to the Treasurer of the State of Iowa as provided in Section 99F.11.

C. MRHD Admission Fee. For each calendar year of operations MRHD shall be paid by Operator for each person admitted on the excursion gambling boat, including any person admitted through use of free passes or complimentary tickets other than actual and necessary officials and employees of Operator or other persons actually working on the excursion gambling boat (hereinafter "Passengers") as follows:

- (i) Fifty Cents (\$.50) for each Passenger up to 300,000 during the first year of operations and for each year thereafter.
- (ii) One Dollar and Twenty-Five Cents (\$1.25) for each Passenger over 300,000 but not over 500,000 during the first year of operation and for each year thereafter; and
- (iii) One Dollar and Seventy-Five Cents (\$1.75) for each Passenger over 500,000 during the first year of operation and for each year thereafter.
- (iv) The admission fee for each calendar month shall be distributed to MRHD on or before the thirtieth (30th) day following the last day of the calendar month in which the admission proceeds have been collected. In accordance with Regulation 20.11(a) (4) of the Racing and Gaming Commission, Operator and its partners and officers are not entitled to keep, nor may they share in any portion of the admission proceeds.

D. Woodbury County Admission Fee. In addition to all other payments set out pursuant to this agreement, an admission fee shall be paid to Woodbury County, Iowa

for each person admitted on the excursion gambling boat including any person admitted through use of free passes or complimentary tickets other than actual and necessary officials and employees of Operator or other persons actually working on the excursion gambling boat as per Section 99F.10(3) of the Code of Iowa. Such fee shall commence to be paid in the second year of operations and for each year thereafter to Woodbury County, Iowa in the amount of Twenty-Five Cents (\$.25) for each passenger up to 300,000.00.

E. For purposes of this Section 5, the operation of the Gambling Games will be deemed to have commenced on the day that customers first pay an admission fee to enter the Gambling Games and Riverboat.

6. Budgets, Books & Records

A. Operator shall prepare proposed budgets for: (a) the construction and opening of the Gambling Games facility; (b) an initial operations budget; and, thereafter (c) annual operating budgets. The parties agree that any budgets so prepared are the best estimate of the parties at the time of making the same, and the failure of the operations to meet such budgets shall not constitute a default hereunder by either party.

B. Operator shall arrange for an annual audit of the Gambling Games operations by a certified public accounting firm registered or licensed in the State of Iowa. MRHD shall have the right to approve the accounting firm but such approval shall not be unreasonably withheld.

C. Operator shall arrange for the submission to the Racing and Gaming Commission of all reports, audits or other financial information that may be required or requested by the Racing and Gaming Commission, including the monthly audits required under Iowa Code Section 99F.13. Operator shall maintain accurate books and records of the Gambling Games operations.

D. Operator will comply with Iowa Code Section 99F.12, with regard to the segregation of: (i) gross receipts and adjusted gross receipts from the Gambling Games, from (ii) all other moneys received from operation of the Riverboat or related, non-gambling businesses. Operator agrees to allow a designated representative of the Racing and Gaming Commission and a designated representative of MRHD to have full access to all places within the enclosure of the boat and to directly observe the handling and accounting of the gross and adjusted gross receipts from the Gambling Games, and to observe and check the admissions to the boat.

Compensation of the designated representative of the Iowa Racing and Gaming Commission, as fixed by the Iowa Racing and Gaming Commission shall be paid by Operator directly to the Iowa Racing and Gaming Commission.

2. Except as provided in the preceding paragraph, all costs, expenses, fees, salaries and/or compensation advanced or incurred by Operator under this Section 6 shall be paid by Operator.

7. Term

The term of this Agreement shall be ten (10) years following the granting of license by the Racing and Gaming Commission, subject to renewal of the license and approval of Operator by the Iowa Racing and Gaming Commission. In the event of non-renewal of the license and/or non-approval of Operator by the Iowa Racing and Gaming Commission, MRHD has the right to terminate this Agreement by notifying Operator in writing. Developer shall have the option to extend the contract for two additional five-year periods under the same terms and conditions, which option must be exercised by notice to MRHD at least 60 days prior to the expiration of its current term.

This Agreement shall be contingent upon the granting of a three-year exclusivity clause to MRHD and Sioux City Riverboat Corp., Inc. by the Iowa Racing and Gaming Commission for all gambling excursion boats on the Missouri River in Iowa from the Minnesota border to the Missouri border, said term of exclusivity to run for three years from the date of the first receipt of admission fees and gaming revenues by MRHD and Sioux City Riverboat Corp., Inc., or April 1, 1996, whichever occurs first.

8. Default; Arbitration; Verification

A. Default Defined. In the event that one part to this Agreement believes that the other party is in default hereunder, the non-defaulting party shall send written notice of such alleged default to the allegedly defaulting party. During the thirty-day period following receipt of such notification, the allegedly defaulting party shall have the right to cure any alleged default.

B. Rights of MRHD. In the event the Operator is in default, and such default is not cured within 30 days after receipt of written notice of default, then MRHD shall have the option to terminate this Agreement, by

notifying Operator of such termination in writing. Upon such termination, Operator shall pay to MRHD any of the Gambling and Non-Gambling Proceeds being held for MRHD under Section 5. Operator shall also make available to MRHD a final accounting of income and expenses and return to MRHD any property owned by MRHD.

C. Rights of Operator. In the event that MRHD is in default, and such default is not cured within 30 days after receipt of written notice thereof, then Operator shall have the option to terminate this Agreement by notifying MRHD of such termination in writing. If Operator elects to terminate this Agreement, Operator shall make available to MRHD a final accounting of income and expenses and shall pay to MRHD any of the Gambling and Non-Gambling Proceeds being held for MRHD under Section 5. Upon termination Operator shall return to MRHD any property owned by MRHD.

D. Verification. Each of the parties to this Agreement shall have the right to verify performance by the other party. To facilitate such verification, each party agrees to allow representatives of the other party reasonable access to each party's books and records of the Riverboat and on-shore related facilities and activities, including but not limited to Gambling Games, and the Gambling Games facilities. Operator shall furnish to MRHD copies of all reports and documents filed by Operator with the Iowa Racing and Gaming Commission, and shall furnish to MRHD annual audited statements.

9. Insurance Indemnification

A. Indemnification: Operator shall indemnify and hold MRHD, and its directors and officers, harmless against and from any liability and/or claims for loss or damage to property, or for the injury to or death of any person arising out of Operator's operation of the Gambling Games, the Riverboat, the docking facilities or on-shore facilities and activities.

B. Insurance: Beginning on the date that Operator receives possession of the completed Riverboat, Operator shall maintain a policy or policies of liability insurance covering the Riverboat and any docking facilities and on-shore facilities owned or leased by Operator, providing personal injury, death and property damage liability coverage not less than One Million Dollars (\$1,000,000.00). Operator shall also maintain workers compensation insurance as required by law. Such policies of insurance shall name MRHD as an additional or co-insured party.

10. Iowa Goods and Services: Union Labor:

In connection with the operation of the excursion gambling boat, Operator will use reasonable efforts to utilize goods, services and products provided or produced in Woodbury County and/or the State of Iowa. Operator will also use reasonable efforts, subject to economic considerations, to employ union labor in connection with Riverboat related facilities.

11. Miscellaneous:

A. Support of MRHD: MRHD agrees that Operator is the exclusive licensee to operate a gambling enterprise within the Woodbury County area and agrees to use its best efforts to insure that Operator maintains its exclusivity. Further MRHD agrees to use its best efforts to assist Operator in obtaining necessary licensing and permits for liquor, food, signage, amusements and similar permitted activities.

B. No Partnership: The parties hereunder are acting as independent contractors and this agreement shall not be construed to create any partnership or joint venture. Operator is acting in the limited capacity set forth herein and neither party hereto shall have the authority to bind the other or create any liability on behalf of the other. No provision hereof shall be construed to confer any rights or benefits on any other persons than the parties hereto.

C. No Subcontracting of Gambling Games Operations: As required by Regulation 20.11(a)(4) of the Racing and Gaming Commission, Operator may not subcontract any of its duties relating to the Gambling Games.

D. Entire Agreement: This instrument contains the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by the parties.

E. Approval of Racing and Gaming Commission. Compliance with Iowa Law: This Agreement, and any future amendments to this Agreement, shall not be a binding obligation of either Operator or MRHD until such time as this Agreement, or future amendments, if any, and license renewal applications of MRHD, are approved by the Iowa Racing and Gaming Commission. The parties agree to cooperate in the submission of this Agreement and any future amendments to the

Iowa Racing and Gaming Commission. Both MRHD and Operator jointly accept responsibility for compliance with the laws of Iowa and the rules of the Iowa Racing and Gaming Commission.

F. Approval and Consent: Wherever in this Agreement a party is given the right to grant or withhold approval or consent, such party shall have 30 days following the request for approval or consent, to grant or deny such approval or consent. Failure to respond within 30 days shall be deemed the granting of approval or consent.

G. Ownership of Gambling Games Equipment: All Gambling Games equipment and supplies shall be the property of Operator. Nothing in this Agreement shall be construed to grant the MRHD any interest in the personal or real property owned by Operator, including, without limitation, (i) the Riverboat and the fixtures and personal property attached to or located on the Riverboat; (ii) the docking facilities, landings and real property.

H. Notices: Any notices required by this Agreement shall be sent by postage-paid certified mail to the following addresses and shall be effective when received:

MISSOURI RIVER HISTORICAL
DEVELOPMENT, INC.
P. O. Box 5143
Sioux City, IA 51102

SIOUX CITY RIVERBOAT CORP.,
INC.
c/o Bruce Gray
P. O. Box 27
Sioux City, IA 51102.

I. Partial Invalidation: If any portion of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall, to the full extent permissible by law or equity, be unaffected thereby and continue in full force and effect.

J. Modification/Governing Law: This Agreement may not be modified or changed except by an agreement in writing and subject to the approval of the Iowa Racing and Gaming Commission. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Iowa. The provisions of this Agreement shall bind Operator and MRHD, their legal representatives, successors and assigns and inure to their respective benefits. This Agreement is subject to the approval of the Iowa Racing and Gaming Commission.

K. Prohibition of Indirect Action. Any action which Operator or MRHD are prohibited from doing shall not be done indirectly through an affiliate or by any other indirect means.

L. Assignment to Limited Partnership. MRHD acknowledges that Operator (Sioux City Riverboat Corp., Inc.) intends to assign its rights under this Agreement to a limited partnership in which the Operator will be the general partner. Said limited partnership will be organized on or before August 1, 1992 and none of the limited partners will own more than 5% of the partnership.

M. Titles. The section titles herein are for the convenience only and do not define, limit or construe the contents of such sections.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year first above written.

MISSOURI RIVER HISTORICAL
DEVELOPMENT, INC.

BY [Signature]
President

Date May 19, 1992

SIoux CITY RIVERBOAT CORP.,
INC., an Iowa Corporation

BY [Signature]
President

Date May 27, 1992

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT is entered into this 31st day of December 2004, by an between Missouri River Historical Development, Inc., a non-profit corporation organized and existing under the laws of the state of Iowa (hereinafter "MRHD"), and Belle of Sioux City, L.P., a Limited partnership organized and existing under the laws of the state of Iowa (hereinafter "Sioux City").

RECITALS:

WHEREAS, MRHD is a qualified sponsoring organization and holder of a license to conduct gambling games on an excursion gambling boat on the Missouri River in Woodbury County, Iowa, pursuant to Chapter 99F of the Code of Iowa, and

WHEREAS, Sioux City is an operator of a excursion gambling boat on the Missouri River in Woodbury County, Iowa, pursuant to Chapter 99F of the Code of Iowa, and

WHEREAS, MRHD has permitted Sioux City to use MRHD's license to conduct gambling games on such excursion gambling boat on the Missouri River in Woodbury County, Iowa, and

WHEREAS, the parties or their predecessors in interest previously entered into a Management and Operation Agreement (hereinafter "Agreement") for the operation of an excursion gambling boat on the Missouri River in Woodbury County, Iowa, and

WHEREAS, the parties wish to amend the Agreement by deleting the current Paragraph 5 C, *MRHD Admission Fee*, and deleting the current Paragraph 5 D, *Woodbury County Admission Fee*, of such Agreement and substitute the following Paragraph 5C, *MRHD Admission Fee*, and substitute the following Paragraph 5 D, *Monthly Flat Fee*, in lieu of the same.

NOW, THEREFORE, the Agreement is amended by deleting the current Paragraph 5 C, *MRHD Admission Fee*, and by deleting the current Paragraph 5 D, *Woodbury County Admission Fee*, of the Agreement and substituting in lieu thereof the following:

"C. MRHD Admission Fee. Sioux City shall pay to MRHD for the use of such license a fee equal to three percent (3%) of the adjusted gross receipts (as defined in Chapter 99F of the Code of Iowa) ("Fee") resulting from the operation of such excursion gambling boat by Sioux City as operator on the Missouri River in Woodbury County, Iowa. Such Fee shall be paid monthly by Sioux City to MRHD on or before the tenth (10th) day of the subsequent month commencing with the month of January of 2005 to be paid on or before February 10, 2005, and on or before the tenth (10th) day of each month thereafter for the term of the Agreement. Any delinquent fees shall bear interest at the rate of ten percent (10%) per annum. Sioux City and the City of Sioux City, Iowa, ("City") are in the process of renegotiating their Agreement regarding the operation of the excursion gambling boat on the Missouri River in Woodbury County, Iowa. In the event Sioux City shall as a result of such renegotiations or at any time during the term of the Agreement as amended agree to pay the City, an amount that equates to a percentage of the monthly adjusted gross receipts that is higher than three percent (3%), Sioux City shall pay to MRHD such equivalent higher percentage retroactive to the effective date of such new agreement with the City, including but not limited to any minimum guaranty. Further, I.C.A. §99F.5(1) was amended effective July 1, 2004 to provide in part as follows:



"An operating agreement entered into on or after the effective date of this section of the Act between a qualified sponsoring organization and an operator shall provide for a minimum distribution by the qualified sponsoring organization for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b", that averages at least three percent of the adjusted gross receipts for each license year."

The rules and regulations regarding such amendment have not been issued to date, nor have any attorney general opinions or court decisions been rendered regarding the interpretation and applicability of such amendment. In the event such amendment is found to apply to the Agreement as amended and MRHD is found in violation of such amendment under the terms of the Agreement as amended because it has not disbursed the required amount due to reasonable administrative and operational expenses of MRHD, which shall include but not be limited to MRHD's accounting fees, legal fees, postage and printing expenses, copy costs, meeting expenses, equipment and other operational expenses, Sioux City agrees to pay to MRHD such additional amounts retroactively and in each license year thereafter in a timely fashion as necessary for MRHD to be in compliance with such amendment and the applicable law."

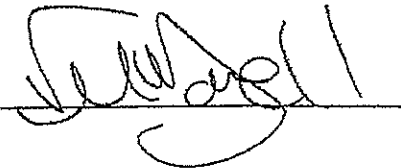
"D. Monthly Flat Fee. Sioux City shall also pay to MRHD a monthly flat fee in the sum of Six Thousand Two Hundred Fifty Dollars (\$6,250.00) per month commencing with the month of January of 2005 to be paid on or before January 10, 2005, and a like sum on or before the tenth (10th) day of each month thereafter for the term of the Agreement. Said payments shall then be paid to Woodbury County by MRHD. Any delinquent monthly flat fees shall bear interest at the rate of ten percent (10%) per annum."

Subject to the foregoing, the remaining terms and provisions of the Agreement are hereby ratified, approved and confirmed.

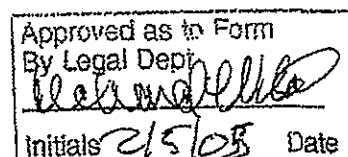
Dated the day, month and year first above written.

BELLE OF SIOUX CITY, L.P.
d/b/a/ ARGOSY CASINO SIOUX CITY
BY IOWA GAMING COMPANY
Its General Partner

MISSOURI RIVER
HISTORICAL DEVELOPMENT, INC.

By: 

By: 
Mark Monson, President



Joe R. Lane (1858-1931)
Charles M. Waterman (1847-1924)
C. Dana Waterman III
David A. Dettmann*
Terry M. Giebelstein*
Rand S. Wonio
Curtis E. Beason
Robert V. P. Waterman, Jr.*
Peter J. Benson*
R. Scott Van Vooren*
Richard A. Davidson*
Michael P. Byrne*
Edmund H. Carroll*
Theodore F. Olt III*
Jeffrey B. Lang*
Cameron A. Davidson*
Judith L. Herrmann*
Robert B. McMonagle*
Christopher J. Curran*
Joseph C. Judge*
Jason J. O'Rourke*
Troy D. Venner*
Troy A. Howell*
Diane M. Reinsch*
Catherine E. E. Hult*
Mikkie R. Schiltz*
Diane E. Puthoff*
Wendy S. Meyer*

**LANE
& WATERMAN** LLP
ATTORNEYS AT LAW SINCE 1854
IOWA & ILLINOIS

220 North Main Street, Suite 600
Davenport, Iowa 52801-1987
Telephone (563) 324-3246
Fax (563) 324-1616

Writer's Direct Dial: (563) 333-6617
E-Mail Address: cbeason@l-wlaw.com
www.L-WLaw.com

April 22, 2013

Via Email

Ian J. Russell*
Benjamin J. Patterson*
Douglas R. Lindstrom, Jr.*
Rian D. Waterman*
Abbey C. Furlong*
Samuel J. Skorepa*
Kurt P. Spurgeon*
Joshua J. McIntyre*
Brett R. Marshall
Kelsey A. W. Marquard

Registered Patent Attorney
April A. Price*

Of Counsel
Robert A. Van Vooren*
Thomas N. Kamp
William C. Davidson*
Charles E. Miller*
James A. Mezvinsky
Michael L. Noyes
Jeffrey W. Paul*

*Also Admitted in Illinois

Illinois Office
3551 7th Street, Suite 110
Moline, IL 61265

Lorraine J. May (lmay@hhlawpc.com)
Hopkins & Huebner, P.C.
2700 Grand Avenue, Suite 111
Des Moines, IA 50312-5213

Re: Belle of Sioux City / MRHD License Extension

Dear Lorraine:

When the Iowa Racing & Gaming Commission ("IRGC") granted a new license to Missouri River Historical Development ("MRHD") last Thursday, its action clearly delineated our client's respective rights in our ongoing license arrangement. The new license commencement date of April 18, 2013 conclusively reaffirms the IRGC's decision concerning the extension of the Belle of Sioux City / MRHD license by operation of law. Accordingly, I advised Brian Ohorilko immediately following the decision that MRHD would be depositing all checks issued to it to date (and going forward) as such payments constitute the statutory minimum payment to a qualified sponsoring organization ("QSO") under 99F.6. MRHD will only accept these statutory payments and other payments required by the IRGC. MRHD believes that 99F requires the QSO to process such payments in order to maintain our license. Our processing of these payments, which MRHD believes is required under law, has no bearing on the former operating agreement with Belle of Sioux City, which expired by its terms in July of 2012. Further, continued operation under our license is conditioned upon your client's payment of the minimum statutory fee.

If you have any questions concerning the foregoing, please call me at your convenience.

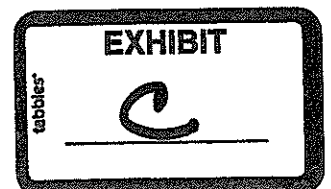
Very truly yours,

LANE & WATERMAN LLP

By 
Curtis E. Beason

CEB/emh

Cc: Brian Ohorilko (Brian.Ohorilko@iowa.gov)



ARGOSY®

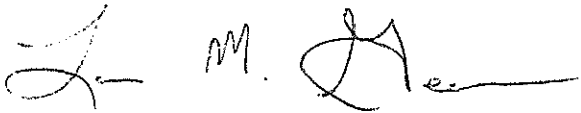
CASINO

May 10, 2013

MRHD
P.O. Box 131
Salix, IA 51052

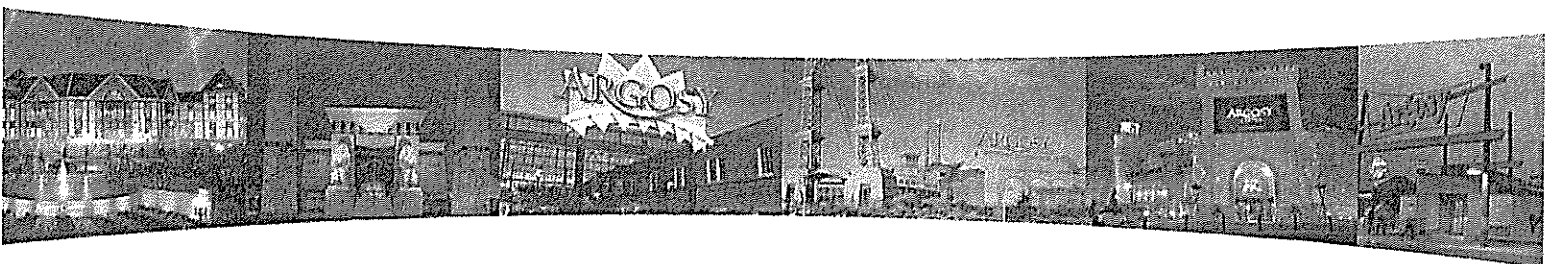
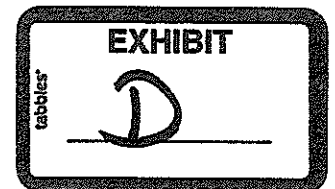
Attn: MRHD Board Members:

The enclosed check in the amount of \$138,143.00 (representing 3% of adjusted gross revenue from gaming during the month of April) is delivered to you pursuant to the Management and Operation Agreement between Belle of Sioux City, LP and MRHD. Regardless of MRHD's protestations to the contrary, that is the only possible basis upon which MRHD is entitled to receive this payment. Therefore, Belle of Sioux City, LP will consider MRHD's negotiation of the enclosed check as yet further evidence and admission of the existence of the contract between the parties.



Lance George

Vice President/ General Manager



From: "Mark Monson" <mark@mudflap.com>
To: "GEORGE LANCE" <lance.george@pngaming.com>
Cc: "BEASON CURT" <CBeason@L-WLAW.com>, "Doug Phillips" <Phillips@klasslaw.com>
Subject: Letter of May 10th

Attn: Lance George:

Thank you for your letter of May 10, 2013. We continue to believe that the payments referenced in your letter constitute the statutory minimum payment to a qualified sponsoring organization ("QSO") under 99F.6, following the IRGC's decision concerning the extension of the Belle of Sioux City / MRHD license by operation of law.

Mark Monson

