

## EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "*Agreement*") is effective as of the date that the Executive has resigned as Mayor of Buffalo and received his New York State Gaming License (the "*Effective Date*"), by WESTERN REGIONAL OFF TRACK BETTING CORPORATION, a New York State public benefit corporation (the "*Employer*") having an address at 8315 Park Road, Batavia, New York 14020 and Byron W. Brown, residing at [REDACTED] (the "*Executive*").

**WHEREAS**, the Board of Directors of the Employer (the "*Board*") has adopted resolutions of the Employer expressing its desire to enter into an employment agreement with Executive to ensure his employment with the Employer as President & Chief Executive Officer and for the Executive to agree to certain restrictive covenants, including confidentiality, non-compete and non-solicit provisions.

**WHEREAS**, each of the parties wish to enter into this Agreement, the terms of which are intended to be in compliance with the requirement of Section 409A ("*Section 409A*", see also Section 26 hereof) of the Internal Revenue Code of 1986, as amended (the "*Code*") and Section 457 of the Code; and

**NOW, THEREFORE**, in exchange for the mutual promises described herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Employment.** As of the Effective Date and subject to the terms contained herein, the Employer hereby agrees to employ Executive as the President & Chief Executive Officer of the Employer and Executive hereby accepts such employment.

As of the Effective Date, Executive shall report and be accountable to and work under the authority and direction of the Board. The Executive shall have the usual and customary duties, responsibilities and authority of a President & Chief Executive Officer, including, but not be limited to the following:

- (a) Overall direction, development, and day-to-day management of the Employer, including, without limitation, over (i) the gaming operations and (ii) the hotel, food and beverage, and other gaming-related amenities, which shall be consistent with the Employer policies and procedures and pursuant to the direction and approval of the Board as to such matters when required by Employer policy;
- (b) Overall direction, development, and day-to-day management of the vendors, consultants, and employees of the Employer, including, without limitation, the right to select, assign and terminate such individuals and entities, and the implementation of personnel and wage and benefit policies established by the Board for the employees;

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- (c) Preparation of annual operating and capital budgets of the Employer and of required modifications to budgets, and implementation, monitoring and evaluation of such budgets in the course of operations;
- (d) Development and implementation of programs for training of employees of the Employer for supervisory and management positions in accordance with the policies established by the Board;
- (e) Development of policies and procedures for the Employer, provided, however, that policies and procedures and material changes to such policies and procedures will be subject to the prior approval of the Board;
- (f) Diligent attention to ensuring the compliance of the operations of the Employer with the requirements of the New York State Gaming Commission, and other applicable laws relating to the integrity and operations of the Employer;
- (g) Diligent attention to maintenance of the integrity of all operations for the protection of the Employer, its patrons, and the public;
- (h) Assistance in development of strategic plans and preparation of related pro-formas for the expansion of the Employer and of required modifications to such pro-formas, and implementation of such development budgets in the course of such expansion projects;
- (i) Overall direction, development, and day-to-day management of the process to market, sell and account for the Employer's products and services and for developing, implementing, monitoring and adopting measures to improve customer service;
- (j) Negotiate agreements on behalf of the Employer consistent with the policies of the Employer and subject to the approval of the Board, when required by Employer policy;
- (k) Negotiate employment offers for management of the Employer consistent with the policies of the Employer and subject to approval of the Board, when required by Employer policy;
- (l) Lead the interaction with federal, state and local governments, including legislative bodies;
- (m) Participate as the Employer's representative to the New York Gaming Association;
- (n) Serve as the Trustee to the Employer's Deferred Compensation Plan;

Executive shall devote his full time best efforts and ability and all required business time to the performance of his duties and responsibilities hereunder to achieve the goals set forth in the Employer's annual business plan for the Employer. Executive shall perform all of his duties to the Employer faithfully, competently, diligently and in the best interests of the Employer. Executive shall comply with the Employer's policies, as amended from time-to-time.

Except for actions of the Executive that could be the basis for termination for Cause (as defined in Section 5(c) below), the Employer will indemnify, defend, and hold Executive harmless, including the payment of reasonable attorney fees, if the Employer does not directly provide Executive's defense, from and against all claims made by anyone, including but not limited to, a corporate entity, company, other employee, agent, patron, or any member of the general public with respect to any claim that asserts as a basis, any acts, omissions, or other circumstances involving the performance by Executive of his duties and services under this Agreement.

2. **Term.** This Agreement shall govern Executive's employment with the Employer from the Effective Date through and including December 31, 2027 (the "**Initial Term**"). This Agreement shall automatically renew for an additional term of two (2) years (each a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless (a) either party shall notify the other of its intention not to renew or (b) unless otherwise terminated as provided herein. Any such notice of intention not to renew shall be delivered no later than three (3) months prior to the end of the Initial Term or Renewal Term, as the case may be, and shall be effective at the scheduled end of such Initial Term or Renewal Term, except as otherwise provided herein. . If (a) Executive elects to provide notice to the Employer pursuant to Section 6(a) or (b) upon the completion of Executive's Term, he may, at his option, with the consent of the Employer, remain in an executive advisory position for an additional sixty (60) days from the end of such notice period or Term, as applicable. In either instance covered by (a) or (b) above, Executive shall be paid Ten Thousand Dollars (\$10,000) per month (or such pro rata portion) for his executive advisory role. Notwithstanding anything in this Agreement to the contrary, Sections 11 through 28 shall survive until the expiration of any applicable time periods set forth in Sections 11, 12 and 13.

3. **Compensation.**

(a) **Base Annual Salary.** Commencing with the Effective Date, the Employer shall pay Executive, a minimum annual base salary of \$295,000.00 ("**Base Salary**"). The Board may conduct a salary review each fiscal year after the Effective Date at which time the Board may determine whether, in its sole discretion, to increase the Executive's Base Salary. Commencing January 1, 2026, the Employer shall pay Executive a minimum annual base salary of \$305,000.00 contingent upon continued growth and a satisfactory performance evaluation. Commencing January 1, 2027, the Employer shall pay Executive a minimum annual base salary of \$315,000.00 contingent upon continued growth and a satisfactory performance evaluation. If a force majeure event, including a government shut-down order, closes the video gaming machines at Batavia Gaming & Hotel to the public for more than thirty (30) days (consecutive or non-consecutive) in any ninety (90) day period, the Board, in his sole discretion, may reduce the Executive's Base Salary for all or any portion of the period the video gaming machines are closed to the public; provided further, if such force majeure event is for more than forty-five (45) days

(consecutive or non-consecutive) in any ninety (90) day period, the Board may furlough the Executive for all or any portion of the period the video gaming machines are closed to the public. Said Base Salary shall be payable periodically in accordance with the Employer's regular payroll procedures following the Effective Date.

4. **Reimbursement of Certain Expenses; Vacation; Medical Benefits**

(a) The Employer will reimburse Executive for necessary and reasonable business expenses incurred by him in the performance of his duties hereunder, provided, that he shall obtain the approval for such expenditures in accordance with the procedures adopted by the Employer from time-to-time and generally applicable to its Executive-level employees, including such procedures with respect to submission of appropriate documentation and receipts ("***Business Expenses***"). Failure by Executive to follow such procedures shall entitle the Employer to refuse to reimburse Executive for such expenses until such time as such failure has been cured. It is understood and agreed that the Employer shall not be responsible for any expense of Executive for leasing or operation of a vehicle for Executive (except that Executive shall be paid a monthly car allowance of \$800.00), nor for any expense of Executive for legal expenses or tax planning expenses incurred by Executive in interpreting this or any other agreement between Executive and the Employer.

(b) Executive shall be entitled to a minimum of two (2) weeks paid vacation per full fiscal year of employment, subject to the terms and conditions of the Employer's vacation policy then in effect.

(c) Executive may participate in such employee benefit plans and programs (including but not limited to medical, retirement and life insurance programs) as are generally made available by the Employer to their employees, subject to the terms of said plan or plans. The terms of such plans are subject to change or termination at any time, with or without notice, at the discretion of the Employer.

5. **Termination by the Employer.**

(a) **Termination.** The Employer may terminate Executive's employment (i) in its sole discretion at any time without Cause, (ii) for Cause as such term is defined in subsection (c) below, (iii) due to disability, death or termination of all of the Employer's operations, or (iv) at the end of the Term by non-renewal of this Agreement.

(b) **Without Cause.** The Employer may terminate Executive's employment at any time without Cause based upon the two-thirds vote of disinterested Directors effective immediately upon delivery of written notice to Executive, which notice shall set forth the effective date of such termination.

(c) **With Cause.** The Employer may terminate Executive's employment at any time for Cause effective immediately upon delivery of written notice to Executive. As

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used herein, the term "**Cause**" shall mean, as determined in the reasonable judgment of two-thirds of disinterested directors of the Board, any of the following:

(i) Any act of fraud, embezzlement, theft, intentional dishonesty or misrepresentation or willful breach of fiduciary duty by Executive with respect to the Employer as determined by a non-appealable judicial determination;

(ii) Executive's gross negligence or willful misconduct in the performance of his duties to the Employer;

(iii) Executive's willful failure or refusal (other than by reason of death or Disability) to follow any reasonable, lawful and customary directive of the Board, and if such failure and refusal is curable, if such failure or refusal is not cured within thirty (30) days after the Employer's written notice to Executive of such failure or refusal;

(iv) Executive's (1) breach of Sections 8, 10, 11, 12 or 14 of this Agreement; (2) breach of any material written policy of the Employer which if curable, is not cured within thirty (30) days after the Employer's written notice of such breach; or (3) material breach of this Agreement, which if curable, is not cured within thirty (30) days after the Employer's written notice of such breach;

(v) Executive's non-appealable judicial conviction of, or a guilty plea or plea of no contest or nolo contendere with respect to any felony involving an act of moral turpitude; or

(vi) Executive is suspended, found (or is reasonably likely to be found) disqualified or not suitable to hold a gaming license by the New York State Gaming Commission or any other governmental gaming authority in any jurisdiction where Executive is required to be found qualified, suitable or licensed;

The Employer may suspend Executive without pay upon Executive's loss or suspension of Executive's gaming license or his arrest for any alleged crime against the Employer or any of its affiliates. In the event the Executive's gaming license is restored or if Executive is not found guilty or otherwise exonerated for an alleged crime against the Employer or any of its affiliates, and Executive is not otherwise terminated for Cause, Executive's suspended pay shall be reimbursed to him.

(d) **Due to Death, Disability or Termination of Operations.** The Employer may terminate Executive's employment for the reasons set forth below effective immediately upon delivery of written notice to Executive (or his estate), which notice shall set forth the effective date of such termination.

(i) Executive shall die or Employer for any reason permanently ceases all of the Employer's operations; or

(ii) Executive shall become unable to perform the duties and responsibilities set forth in this Agreement for ninety (90) days (consecutive or non-consecutive) in any 365 day period by reason of long-term physical or mental disability.

6. **Termination by Executive.**

(a) **Termination by Executive without Good Reason.** In the event that Executive terminates his employment for any reason other than for Good Reason (defined below), Executive must provide the Employer one hundred and twenty (120) days advance written notice of such resignation. The Employer shall have the right to waive the notice period and accept such resignation, effective immediately upon the Employer's waiver of notice; provided, that the Employer pays Executive an amount equivalent to his Base Salary for the balance of the original notice period.

(b) **Termination by Executive for Good Reason.** Executive may terminate his employment hereunder for Good Reason. "***Good Reason***" means any of the following without Executive's consent (i) a material and sustained diminution in Executive's duties under this Agreement or a reduction of Executive's title, (ii) a material breach by the Employer of this Agreement, or (iii) a reduction in the Base Salary or Executive's benefits, unless such reduction is part of an across the board reduction for senior executives of the Employer; provided that any such action shall not constitute Good Reason; unless (A) Executive provides written notice to the Employer of any such action within thirty (30) days of the date on which such action first occurs and provides the Employer with fifteen (15) days to remedy such action (the "***Cure Period***"), (B) the Employer fails to remedy such action within the Cure Period, and (C) Executive resigns within thirty (30) days of the expiration of the Cure Period.

7. **Severance Pay and Benefits.** Subject to the terms and conditions set forth in this Agreement, if Executive's employment is terminated by the Employer or Executive under Sections 5(b) or (d) or 6(b) prior to the end of the Term, then the Employer will provide Executive with the following severance pay and benefits (except in the event of a breach of the Release, as defined below). Notwithstanding any severance related provisions of this Agreement, the parties acknowledge and agree that it is their intent that (a) a non-renewal of this Agreement, (b) a resignation by Executive without Good Reason or (c) a termination with Cause shall not trigger any severance benefits and in such instances, the Employer shall at that time pay Executive the Base Salary earned through the date Executive is terminated and, in accordance with Employer policy, accrued vacation, together with any unreimbursed Business Expenses through the date of termination (collectively, the "***Accrued Benefits***"), whereupon all of the parties' respective rights hereunder shall terminate upon the Termination Date (defined below) pursuant to Sections 5(a)(iv), 5(c) or 6(a), except Executive's obligations and the Employer's rights under Sections 11 through 28 of this Agreement shall survive such termination or resignation; provided, that in the instance of (i) a resignation by Executive without Good Reason, the Employer shall pay to Executive his Base Salary accrued through the Termination Date and if the Employer waives the balance of the notice period provided by Executive, it shall pay Executive an amount equivalent to his Base

Salary for the balance of such notice period and (ii) a termination with Cause, the Employer shall only pay Executive the Accrued Benefits.

(a) **Amount of Post-Employment Severance Payments.** Subject to Sections 7(c) and 26, if Executive is terminated pursuant to Section 5(b) or resigns pursuant to Section 6(b), the Employer shall pay to Executive an amount equal to his Base Salary for a period equal to the remaining weeks of the Term, such weeks not to exceed four (4) months of Base Salary (the "***Severance Period***") at the rate in effect on the date of Executive's separation from service (the "***Termination Date***") and his Accrued Benefits; whereupon all of the parties' respective rights and obligations hereunder shall terminate upon the Termination Date except that Executive's obligations and the Employer's rights under Sections 11 through 28 of this Agreement shall survive such termination or resignation. Such amount shall be paid in accordance with the Employer's regular payroll procedures following the Termination Date. The Executive shall have a duty to mitigate damages as follows: during the Severance Period, Executive shall endeavor to mitigate damages by actively seeking employment as an Executive of another entity in the United States, with duties and salary comparable to those provided herein, and if he shall obtain such employment, he shall reimburse the Employer the amount of the compensation he has received from such other entity for such period, but not to exceed the amount of the compensation that the Employer shall have paid him for such period. Subject to Sections 7(c) and 26, if Executive is terminated pursuant to Section 5(d), the Employer shall pay to Executive (or his estate), his Base Compensation earned through the date Executive is terminated; whereupon the Employer shall have no further liability or obligation to Executive under this Agreement or otherwise.

(b) **Continued Medical Benefits Coverage.** Executive shall be eligible to receive medical benefits in accordance with the Employer's policies, which are subject to change from time to time. For each year that executive shall choose not to use the medical benefits he shall be eligible for a \$1,500.00 annual stipend.

(c) **Release Agreement.** Executive's entitlement to any severance pay or post-employment benefit entitlements under this Section is conditioned upon Executive's first entering into a release substantially in the form attached as **Exhibit A** ("***Release***"), a draft of which shall be delivered to Executive within seven (7) days after the Termination Date. Notwithstanding any other provision hereof, all severance payments to Executive shall be delayed until after the expiration of any applicable revocation period with respect to the release.

8. **Licensing Issues.** Executive represents to the Employer that he has applied for such licenses as may be required by the New York State Gaming Commission, as may be necessary, to enable him to engage in his employment hereunder. Executive will maintain such licenses in good standing as a pre-condition of his employment by the Employer.

9. **Life Insurance.** The Employer may, within its discretion, at any time during the Term of this Agreement, apply for and procure as owner and for its own benefit insurance on the life of Executive, in such amounts and in such form as the Employer may choose. Executive shall

have no interest whatsoever in any such policies, but he shall upon request by the Employer submit to such medical examinations, supply such information, and execute such documents as may be required by the Employer or the insurance companies to whom the Employer has made application.

10. **No Conflicts of Interest.** Executive agrees that throughout the period of Executive's employment hereunder, Executive will not perform any activities or services, or accept other employment, which would materially interfere with or present a conflict of interest concerning Executive's employment with the Employer. Executive agrees and acknowledges that Executive's employment is conditioned upon Executive adhering to and complying with the business practices and requirements of ethical conduct set forth in writing from time to time by the Employer in its employee manual, code of conduct or similar publication. Executive represents and warrants that no other contract, agreement or understanding to which Executive is a party or may be subject to will be violated by the execution of this Agreement by Executive. Executive further agrees to not accept any position on the board of a for-profit company without the written consent of the Employer's Board Chairman.

11. **Confidentiality.**

(a) **Definition.** "Confidential Information" means data and information relating to the business of the Employer or its affiliates, (i) which the Employer or its affiliates have disclosed to Executive, or of which Executive became aware as a consequence of or in the course of his employment with the Employer, (ii) which have value to the Employer or its affiliates, and (iii) which are not generally known to its competitors. Confidential Information will not include any data or information that the Employer or its affiliates have voluntarily disclosed to the public (except where Executive made or caused that public disclosure without authorization), that others have independently developed and disclosed to the public, or that otherwise enters the public domain through lawful means.

(b) **Restrictions.** Executive agrees to treat as confidential and will not, without the prior written approval of the Employer in each instance, directly or indirectly use (other than in the performance of his duties of employment with the Employer or its affiliates), publish, disclose, copyright or authorize anyone else to use, publish, disclose or copyright, any Confidential Information obtained during his employment with the Employer or its affiliates, whether or not the Confidential Information is in written or other tangible form. This restriction will continue to apply for a period of two (2) years after the Termination Date. Executive acknowledges and agrees that the prohibitions against disclosure and use of Confidential Information recited in this Section are in addition to, and not in lieu of, any rights or remedies that the Employer or its affiliates may have available under applicable laws.

12. **Non-Competition.**

(a) As used in this Section 12, the term "Restriction Period" shall mean a period equal to: (i) the twelve-month period immediately following the Termination Date if Executive's employment terminates under circumstances where he is not entitled to



payments under Section 7 or (ii) the Severance Period, if Executive's employment terminates under circumstances where she is entitled to payments under Section 7.

(b) During the term of this Agreement and for the duration of the Restriction Period thereafter, Executive shall not, except with the prior written consent of the Employer, directly or indirectly, own, manage, operate, join, control, finance or participate in the ownership, management, operation, control or financing of, or be connected as an officer, director, employee, partner, principal, agent, representative, consultant or otherwise with, or use or permit Executive's name to be used in connection with, any business or enterprise which owns or operates, or is publicly seeking to own or operate, a gaming facility located within a 100 miles radius of any facility in which Employer or its affiliates owns or operates or is actively seeking to own or operate a facility at such time.

(c) The foregoing restrictions shall not be construed to prohibit Executive's ownership of less than 5% of any class of securities of any corporation which is engaged in any of the foregoing businesses and has a class of securities registered pursuant to the Securities Exchange Act of 1934, provided that such ownership represents a passive investment and that neither Executive nor any group of persons including Executive in any way, either directly or indirectly, manages or exercises control of any such corporation, guarantees any of its financial obligations, otherwise takes any part in its business, other than exercising Executive's rights as a shareholder, or seeks to do any of the foregoing.

(d) Executive acknowledges that the covenants contained in Sections 11 through 14 hereof are reasonable and necessary to protect the legitimate interests of the Employer and its affiliates and, in particular, that the duration and geographic scope of such covenants are reasonable given the nature of this Agreement and the position that Executive will hold within the Employer. Executive further agrees to disclose the existence and terms of such covenants to any employer that Executive works for during the Restriction Period.

13. **Non-Solicitation.** Executive will not, except with the prior written consent of the Employer, during the term of this Agreement and for a period of twelve (12) months after the Termination Date, directly or indirectly, (i) solicit or hire, or encourage the solicitation or hiring of, any person who is, or was within a six (6) month period prior to such solicitation or hiring, an employee of the Employer or any of its affiliates for any position as an employee, independent contractor, consultant or otherwise for the benefit of any entity not affiliated with the Employer or (ii) solicit, contact, interfere with, or endeavor to entice away from the Employer any of its current or potential vendors or patrons or any such persons or entities that were vendors or patrons of the Employer within the one (1) year period immediately prior to Executive's termination of employment.

14. **Non-disparagement.** Each of Employer and Executive agrees not to make, or cause any other person to make, any public statement that criticizes or disparages the other party (or any of its executive officers, employees, directors or services and products in the case of the Employer). Nothing set forth herein shall be interpreted to prohibit either party from responding publicly to incorrect public statements, making truthful statements when required by law,

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subpoena, court order, or the like and/or from responding to any inquiry about this Agreement or its underlying facts and circumstances by any regulatory or investigatory organization and/or from making any truthful statements in the course of any litigation.

15. **Property Surrender.** Upon termination of Executive's employment for any reason, Executive shall immediately surrender and deliver to the Employer all property that belongs to the Employer, including, but not limited to, any keys, equipment, computers, phones, credit cards, disk drives and any documents, correspondence and other information, including all Confidential Information, of any type whatsoever, from the Employer or any of its agents, servants, employees, suppliers, and existing or potential customers, that came into Executive's possession by any means during the course of employment.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of New York.

17. **Jurisdiction; Waiver of Jury Trial.** Except as set forth below, no claim may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the County of Genesee or in the United States District Court for the Western District of New York, which courts shall have exclusive jurisdiction over the adjudication of such matters, and the Employer and Executive consent to the jurisdiction of such courts and personal service with respect thereto. Each of the Employer and Executive agree that a final judgment with respect to any claim brought in any such court shall be conclusive and binding upon the Employer and the Executive and may be enforced in any other courts to the jurisdiction of which the Employer or Executive is or may be subject to suit upon such judgment. **Each of Executive and the Employer waives all right to trial by jury in any proceeding or claim (whether based upon contract, tort or otherwise) arising out of or in any way relating to this Agreement.** Employer and Recipient each agree to accept service by any recognized courier, of any and all process, which may be served in any proceeding arising out of or relating to this Agreement.

18. **Attorneys' Fees.** If any action, suit, or other proceeding for the enforcement of this Agreement is brought with respect to or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions hereof, the successful or prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and other costs incurred in that proceeding, in addition to any other relief to which it may be entitled. In the event different parties are the prevailing parties on different issues, the reasonable attorneys' fees, disbursements and court costs shall be apportioned in proportion to the value of the issues decided for and against the parties.

19. **Notices.** All notices and other communications required or permitted under this Agreement or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when hand delivered, delivered by guaranteed next-day delivery or sent by facsimile (with confirmation of transmission) or shall be deemed given on the third business day when mailed by registered or certified mail, as follows (provided that notice of change of address shall be deemed given only when received):

**If to the Employer, to:**

Western Regional Off Track Betting Corporation  
8315 Park Road  
Batavia, New York 14020  
Attention: General Counsel

**If to Executive, to:**

His then current home address as provided by Executive to the Employer.

or to such other names or addresses as the Employer or Executive, as the case may be, shall designate by notice to each other person entitled to receive notices in the manner specified in this Section 19.

20. **Contents of Agreement; Amendment and Assignment.** This Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements or understandings with respect to thereto. This Agreement cannot be changed, modified, extended, waived or terminated except upon a written instrument signed by the party against which it is to be enforced. Executive may not assign any of his rights or obligations under this Agreement. The Employer may assign its rights and obligations under this Agreement to any successor to all or substantially all of its assets or business by means of liquidation, dissolution, merger, consolidation, transfer of assets, stock transfer or otherwise.

21. **Severability.** If any provision of this Agreement or application thereof to anyone under any circumstances is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any other provision or application of this Agreement which can be given effect without the invalid or unenforceable provision or application and shall not invalidate or render unenforceable such provision or application in any other jurisdiction. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances. In addition, if any court determines that any part of Sections 11, 12 or 13 hereof is unenforceable because of its duration, geographical scope or otherwise, such court will have the power to modify such provision and, in its modified form, such provision will then be enforceable.

22. **Remedies.** No remedy conferred upon a party by this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a party in exercising any right, remedy or power under this Agreement or existing at law or in equity shall be construed as a waiver thereof, and any such right, remedy or power may be exercised by such party from time to time and as often as may be deemed expedient or necessary by such party in its sole discretion. Executive acknowledges that money damages would not be a sufficient remedy for any breach of this Agreement by Executive and that the Employer shall be entitled to specific performance and injunctive relief as remedies for any such breach, in addition to all other remedies available at law or equity to the Employer.

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23. **Construction.** This Agreement is the result of thoughtful negotiations and reflects an arms' length bargain between two sophisticated parties, each with an opportunity to be represented by counsel. The parties agree that, if this Agreement requires interpretation, neither party should be considered "the drafter" nor be entitled to any presumption that any ambiguities are to be resolved in such party's favor.

24. **Beneficiaries/References.** Executive shall be entitled, to the extent permitted under any applicable law, to select and change a beneficiary or beneficiaries to receive any compensation or benefit payable under this Agreement following Executive's death or incapacity by giving the Employer written notice thereof. In the event of Executive's death or a judicial determination of Executive's incompetence, reference in this Agreement to Executive shall be deemed, where appropriate, to refer to Executive's beneficiary, estate or other legal representative. Except as provided in this provision or Employer affiliates, no third-party beneficiaries are intended.

25. **Withholding.** All payments under this Agreement shall be made subject to applicable tax withholding, and the Employer shall withhold from any payments under this Agreement all federal, state and local taxes, as the Employer is required to withhold pursuant to any law or governmental rule or regulation. Executive shall bear all expense of, and be solely responsible for, all federal, state and local taxes due with respect to any payment received under this Agreement.

26. **Section 409A.** The payments due under this Agreement are intended to be exempt from Code Section 409A, but to the extent that such payments are not exempt, this Agreement is intended to comply with the requirements of Section 409A and shall be construed accordingly. Any payments or distributions to be made to Executive under this Agreement upon a separation from service (as defined in Section 409A) of amounts classified as "nonqualified deferred compensation" for purposes of Code Section 409A and do not satisfy an exemption from the time and form of payment requirements of Section 409A, shall in no event be made or commence until six months after such separation from service if Executive is a specified employee (as defined in Section 409A). Each payment of nonqualified deferred compensation under this Agreement shall be treated as a separate payment for purposes of Code Section 409A. Any reimbursements made pursuant to this Agreement shall be paid as soon as practicable but no later than 90 days after Executive submits evidence of such expenses to the Employer (which payment date shall in no event be later than the last day of the fiscal year following the fiscal year in which the expense was incurred). The amount of such reimbursements during any fiscal year shall not affect the benefits provided in any other fiscal year, and the right to any such benefits shall not be subject to liquidation or exchange for another benefit. Notwithstanding anything herein to the contrary, the Employer shall not have any liability to the Executive or to any other person if the payments and benefits provided in this Agreement that are intended to be exempt from or compliant with Code Section 409A are not so exempt or compliant.

27. **Regulatory Compliance.** The terms and provisions hereof shall be conditioned on and subject to compliance with all laws, rules, and regulations of all jurisdictions, or agencies,

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boards or commissions thereof, having regulatory jurisdiction over the employment or activities of Executive hereunder.

28. **Defend Trade Secrets Act.** Pursuant to the Defend Trade Secrets Act of 2016, Executive acknowledges that he will not have criminal or civil liability under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if Executive files a lawsuit for retaliation by the Employer for reporting a suspected violation of law, he may disclose the trade secret to his attorney, and may use the trade secret information in the court proceeding, if Executive (X) files any document containing the trade secret under seal; and (Y) does not disclose the trade secret, except pursuant to court order.


29. **Counterparts; Electronic Signature.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Counterparts may be executed and/or delivered via facsimile, email (including PDF or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method, and any counterpart so executed and/or delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

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**IN WITNESS WHEREOF**, the undersigned, intending to be legally bound, have executed this Agreement as of September 26, 2024.

**WESTERN REGIONAL OFF TRACK  
BETTING CORPORATION**

By:   
Name: Dennis Bassett  
Title: Chairman of the Board of Directors

**EXECUTIVE**

By:   
Name: Byron W. Brown  
Title: President & Chief Executive Officer

