

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is entered into this 23<sup>rd</sup> day of June, 2014 by and between the City of Topeka, Kansas, a municipal corporation of Shawnee County, Kansas ("City"), Visit Topeka, Inc. ("Visit Topeka"), Jayhawk Racing Properties, LLC, a Kansas limited liability company ("Jayhawk") and the Kansas Department of Commerce ("KDOC").

RECITALS

Whereas, on January 12, 1988, the City and Lario Enterprises, Inc. entered into a Development and Management Agreement relating to the development, operation and management of a motorsports facility in Topeka-Shawnee County which Management Agreement was amended by the execution of a First Amendment to Development and Management Agreement Related to Site Development and Technical Amendments, (collectively referred to as the "Management Agreement"); and

Whereas, on or about March 21, 2003, the Management Agreement and all rights and entitlements thereto was assigned to Jayhawk wherein Jayhawk agreed to assume all rights, entitlements and obligations under the Management Agreement; and

Whereas, the Management Agreement vested in Jayhawk as assignee certain reversionary rights entitling Jayhawk to the ownership of fee simple title to the land and project subject to certain terms and conditions contained therein; and

Whereas, on January 31, 2005, the City and Jayhawk entered into an Amendment to the Development and Management Agreement wherein the parties agreed, in part, to extend the Term of the Management Agreement and amend certain of its terms and provisions; and

Whereas, September 27, 2005, the City established the Heartland Park Topeka Redevelopment District and designated Heartland Park of Topeka as a major motorsports complex with boundaries coextensive with the entire geographical area of the Heartland Park Topeka Redevelopment District ("District"); and

Whereas, on December 6, 2005 the City approved and adopted a project plan, determining that a major motorsports plan was in the best interests of the City; and

Whereas, on December 14, 2005, the City authorized the issuance of full faith and credit sales tax reimbursement or sales tax and revenue ("Star") bonds in the amount of \$10,520,000.00 to finance a portion of the authorized redevelopment project costs; and

Whereas, on January 30, 2006, the Secretary of KDOC approved the redevelopment project plan for the Heartland Park of Topeka Major Motorsports complex and authorized the issuance of Star bonds in an amount totalling approximately \$10,460,000.00; and

Whereas, Heartland Park Topeka is an important economic tool for Topeka and the Topeka metropolitan area creating a significant economic impact to the city by hosting over 200 event days a year bringing approximately 200,000 guests to its facility each season with a total annual economic impact of over \$159,891,977.00 per year; and

Whereas, the City, Jayhawk and the KDOC have been engaged in discussions regarding their mutual desire to continue and enhance the economic viability and stability of HPT in order to assure the continued economic benefit created by HPT activities; and

Whereas, the parties have concluded that it is in the best interest of the City of Topeka, and the State of Kansas for the City to own both the fee simple interest in the property and the reversionary interest owned by Jayhawk; and accordingly the City desires to purchase from Jayhawk all right, title and interest of Jayhawk under the Management Agreement and first Amendment including the reversionary interest, and Jayhawk desires to sell its reversionary interest and consents to the cancellation of Management Agreement and last Amendment, all as more fully set forth in this Memorandum and Letter of Intent; and

Whereas, in connection with the purchase of Jayhawk's reversionary interest and cancellation of the Management Agreement, the City will commence the process of expanding the District, amend the project plan, seek approval of the Secretary of Commerce for the issuance of the additional Star Bonds and Issue bonds sufficient to acquire Jayhawk's reversionary interest and pay certain security interests.

#### AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth, the City and Jayhawk agree as follows:

1. Ownership Interests. The parties acknowledge that the City owns certain real property described in Exhibit "A" (alternatively referred to as "the Property" or "HPT") and that Jayhawk has a reversionary interest in the real property as more fully set forth in the Management Agreement and Amendment.

2. Indebtedness. The parties acknowledge that certain indebtedness was incurred in connection with the operation and development of the real property which is more specifically identified on Exhibit "B".



3. Purchase Price. The City agrees to purchase and Jayhawk agrees to sell its reverslony interest to the City for the sum of \$2,392,117.00 ("Purchase Price") to be paid on the date of closing.

4. Payment, Obligations of Parties. In connection with the above proposed transaction the City agrees to pay, as of the date of closing, the balance of the indebtedness listed in Exhibit B, including principal and interest and associated costs. Jayhawk shall assume and pay, on the date of closing, to CoreFirst Bank and Trust Co., ("CoreFirst") a certain promissory note in the amount of approximately \$300,000.00, plus any accrued unpaid interest, obtained pursuant to a certain Workout Agreement by and between CoreFirst, Jayhawk, the City and other parties and in addition shall pay all unpaid vendors which obligations accrued prior to closing. City agrees to execute all documents necessary for Jayhawk to secure the proceeds from the above loan within five (5) days of the approval by the City Council of the Workout Agreement. The parties acknowledge an indebtedness of \$276,351.00 to the NHRA which sum shall be paid to the NHRA by the City within five (5) days of the approval of this MOU by the City Council. At closing Jayhawk shall reimburse the City the sum of \$184,234.00; 2/3rds the amount of the NHRA indebtedness.

5. Date of Payment of Purchase Price. The City agrees to pay Jayhawk the purchase price by February 1, 2015 or within 90 days of the approval by the Topeka City Council of the Star Bond Project Plan. In the event of a protest under the provisions of K.S.A. 12-17,169, payment shall be made within 60 days of the approval of the Plan by a majority of the voters of the City of Topeka.

6. Assumption of Costs. The City agrees to assume and pay its own costs associated with the issuance of the Star Bonds, including payment of reasonable attorney fees and bond counsel fees.

7. Payment of Transient Guest Tax. HPT has been approved as a recipient of transient guest tax distribution for the year 2014 in the amount of approximately \$340,000.00, with the first quarter having been paid to or on behalf of HPT. "Visit Topeka" agrees to pay the transient guest tax to or on behalf of HPT for the second, third and fourth quarters subject to the availability of funds and the contractual terms of the current agreement. Jayhawk agrees to utilize the transient guest tax distribution for marketing, in accordance with past practice.

8. Agreement Contingency. The parties acknowledge that this Agreement is contingent on fulfillment of the current contract between NHRA and Jayhawk and increasing the size of the Star Bond district to include the area shown on Exhibit "C", the approval of the Secretary of Commerce of the State of Kansas approving the redevelopment project plan for the Heartland Park of Topeka Major Motorsports complex and authorization by the City of the issuance of Star Bonds in an amount equal to the financial obligations set forth in this

Agreement including all costs associated therewith. It is estimated that approximately \$4.8M-\$5.5M of Star Bonds will be issued to cover the acquisition and associated costs of issuance.

9. Kansas Department of Commerce. The KDOC acknowledges the significant state-wide economic benefit of HPT and the importance of HPT remaining a strong entertainment attraction for Kansans and those residing outside the State of Kansas and agrees to support the proposal contained in this Agreement, including the issuance of additional Star Bonds and expansion of the Star Bond District in order to provide for the continued economic stability of HPT, subject to all necessary governmental approvals, review of an amended Star Bond Project Plan, feasibility study and fulfillment of all other statutory requirements

10. Parties Cooperation. The City and Jayhawk agree that they will make commercially good faith reasonable efforts to accomplish the objectives set forth in paragraph 8 of this Agreement in a cooperative manner and the City further agrees to comply with the requirement of good faith and fair dealing.

11. Jayhawk Closing Obligations. On the date of closing, Jayhawk shall convey its interest in the property described in Exhibit "A" to the City and will execute such additional documents as necessary to cancel the Management Agreement and all Amendments related thereto, and it shall provide to the City books and records relating to the operations of HPT and, if requested by the City, Jayhawk shall then cease operating HPT and cooperate in the transition of management and control.

12. Release of Claims. On the date of closing, the City and Jayhawk, on behalf of themselves and their predecessors, successors, assigns, agents, affiliates and related persons and companies or entities and representatives, and each of them, hereby generally releases and forever discharges each of the other parties to this Agreement and their predecessors, successors, assigns, affiliates and related companies or entities, partners, joint venturers, associations, members, managers, stockholders, insurers, attorneys, customers, suppliers, brokers, officers, directors, employees, agents, representatives, and any other person, firm, corporation or other entity or association with whom each of them is now or may hereafter be affiliated, from any and all claims, demands, damages, costs, expenses, fees (including attorneys' and consultants' fees and costs), of and from each and every action and cause of action, whether known or unknown, suspected or unsuspected, that existed or may exist as of the date of closing, arising from or in any manner related to the Management Agreement or any Amendments related thereto, HPT and/or the operation of HPT.

13. Release of Unknown Claims. Each of the parties understands and agrees that such party may have rights and claims they do not now know about but may learn about or become aware of in the future. Each of the parties intends to and does hereby release fully and forever and give up all such claims, including, but not limited to, any and all claims they may have for any such injuries and damages, whether or not now known.

14. Mutual Representations and Warranties. Each of the parties represents and warrants that (a) the signatory on behalf of such party has the authority to bind such party to this Agreement and (b) such party has not sold, assigned, factored or otherwise transferred any interest in the claims released hereby.
15. Incorporation of Recitals. Each of the recitals set forth above are hereby incorporated into this Agreement by this reference and are made a part hereof.
16. Nondisparagement. As a material condition of this Agreement, the parties agree not to disparage in any way, orally or in writing, the other parties or their respective agents, employees or affiliates.
17. Entire Agreement. Unless otherwise modified by mutual agreement of the parties, this Agreement shall remain in full force and effect. The parties further agree and acknowledge that neither they nor any agent has made any representation, warranty, promise or covenant whatsoever, express or implied, not contained in this Agreement to induce the other to execute this Agreement.
18. Amendment. This Agreement may not be supplemented, amended, or modified except through a new written agreement signed by all parties.
19. Severability. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable as a result of any action or proceeding, the validity of the remaining parts, terms, and provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.
20. Successors. This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties. No party shall delegate its or their duties, obligations, benefits or rights hereunder without the written consent of the other parties.
21. Further Assurances. Each of the parties hereto shall execute and deliver such further instruments, documents and agreements and do such further acts and things as may be useful or required to carry out the purpose and intent of this Agreement and which are not inconsistent with the provisions hereof.
22. Fees and Expenses. Each party to this Agreement shall pay his or its own expenses incurred, including the negotiation, preparation and execution of the Agreement, including attorney fees.
23. Execution in Counterparts. This Agreement may be signed by faxed or electronic signature, which shall be deemed to be an original signature. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall be

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deemed to constitute one and the same instrument.

24. Agreement Voluntarily Executed. Each of the parties acknowledge and represent that it has voluntarily executed this Agreement after consulting with, or having the opportunity to consult with, independent legal counsel chosen by it and representing such party's interests. Each party acknowledges and represents that it (a) has fully and carefully read this Agreement prior to execution, (b) has been fully apprised by attorneys of its own choosing of the legal effect and meaning of this document and its terms, (c) has been afforded the opportunity to negotiate as to any and all terms of this Agreement, (d) is executing this Agreement voluntarily and free of any undue influence, duress or coercion, and (e) has had the opportunity to make such investigation or inquire as it deemed necessary and appropriate in connection with the subject matter of this Agreement.

25. Drafted with Assistance of Counsel. The parties acknowledge that they have all participated in the drafting of this Agreement with the assistance of their individual counsel. This Agreement has been negotiated at arms' length by parties of equal bargaining power, who are each represented by competent counsel of their own choosing. In entering into this Agreement, each of the parties agrees that they have relied on their own judgment, belief, knowledge and advice of their affiliates and agents and other representatives and consultants as to the extent and effect of the terms and conditions contained herein without any reliance upon any statement or representation of any other party or any officer, director, employee, agent, servant, adjustor or attorney on behalf of any other party, other than as set forth in this Agreement. In the event that any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

The undersigned have entered into and executed this Agreement as of the date below.

CITY OF TOPEKA, KANSAS

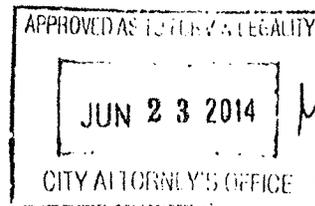


(SEAL)

ATTEST:

Brenda Younger  
Brenda Younger - City Clerk

By: Jim Colson  
Jim Colson - City Manager



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STATE OF KANSAS )  
 )  
COUNTY OF SHAWNEE )  
\_\_\_\_\_ )

ss:

BE IT REMEMBERED, THAT ON THIS 23<sup>rd</sup> day of June 2014, before me, the undersigned, a notary public in and for the county and state aforesaid, same Jim Colson, City Manager of the City of Topeka, a municipal corporation duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Kansas, and Brenda Younger, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

*Keya C. Downing*

Notary Public



My Commission Expires:

*(Handwritten initials)*

JAYHAWK RACING PROPERTIES, LLC

By: Raymond S. Irwin  
Raymond S. Irwin - President

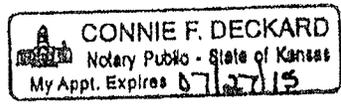
STATE OF KANSAS )  
                          ) SS:  
COUNTY OF SHAWNEE )  
\_\_\_\_\_ )

BE IT REMEMBERED, THAT ON THIS 19<sup>th</sup> day of June 2014, before me, the undersigned, a notary public in and for the county and state aforesaid, same Raymond S. Irwin, President of Jayhawk Racing Properties, LLC, a Kansas limited liability company, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of Jayhawk Racing Properties LLC, and such person duly acknowledged the execution of the same to be the act and deed of Jayhawk Racing Properties LLC.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Connie Deckard  
Notary Public

My Commission Expires: 07/27/15



*(Handwritten initials)*





EXHIBIT A

Tract 1

Lot 1, Block I, Heartland Park Topeka Subdivision in the City of Topeka, Shawnee County, Kansas.

Tract 2

A part of Lot 1, Lot H, Heartland Park Topeka Subdivision in the City of Topeka, Shawnee County, Kansas, described as follows: Beginning at the Northernmost corner of said Lot 1; thence Southeast on Az 133 degrees 07 minutes 18 seconds, 364.05 coincident with the South right of way of Heartland Parkway; thence on Az 223 degrees 07 minutes 18 seconds, 295.00 feet to the North right of way of Paddock Drive; thence on Az 313 degrees 07 minutes 18 seconds, 364.05 feet coincident with the last said right of way line; thence on Az 43 degrees 07 minutes 18 seconds, 295.00 feet coincident with the East right of way line of Denise McCluggage to the point of beginning.

Tract 3

Lots 1, 2, 3 and 4, Block A; Lot 1, Block B; Lot 1, Block C; Lots 1 and 2, Block D; Lot 1, Block E; Lot 1, Block H, except the following described tract: Beginning at the Northernmost corner of said Lot 1; thence Southeast on Az 133 degrees 07 minutes 18 seconds, 364.05 coincident with the South right of way of Heartland Parkway; thence on Az 223 degrees 07 minutes 18 seconds, 295.00 feet to the North right of way of Paddock Drive; thence on AZ 313 degrees 07 minutes 18 seconds, 364.05 feet coincident with the last said right of way line; thence on Az 43 degrees 07 minutes 18 seconds, 295.00 feet coincident with the East right of way line of Denise McCluggage to the point of beginning; Lot 1, Block J; Lot 1, Block K; Lot 1, Block L; Lot 1, Block M; Lot 1, Block N; Lot 1, Block O; Lot 1, Block P; Lot 1, Block Q; Lot 1, Block R; Lot 1, Block S, Heartland Park Topeka Subdivision in the City of Topeka, Shawnee County, Kansas.

EXHIBIT B

COREFIRST BANK & TRUST

<u>Loan No.</u>	<u>Date Executed</u>	<u>Amount</u>
***6342	03/31/2003	\$1,175,000.00
***3131	03/25/2008	\$150,000.00
***9514	08/10/2010	\$619,335.47

<u>Date Executed</u>	<u>Amount</u>	<u>Book/Page</u>
03/31/2003	\$1,175,000.00	3800/595
08/19/2004	\$150,000.00	4087/786
08/19/2004	\$105,000.00	408/797
1/27/2005	\$250,000.00	4151/171
1/31/2007	\$750,000.00	4466/48

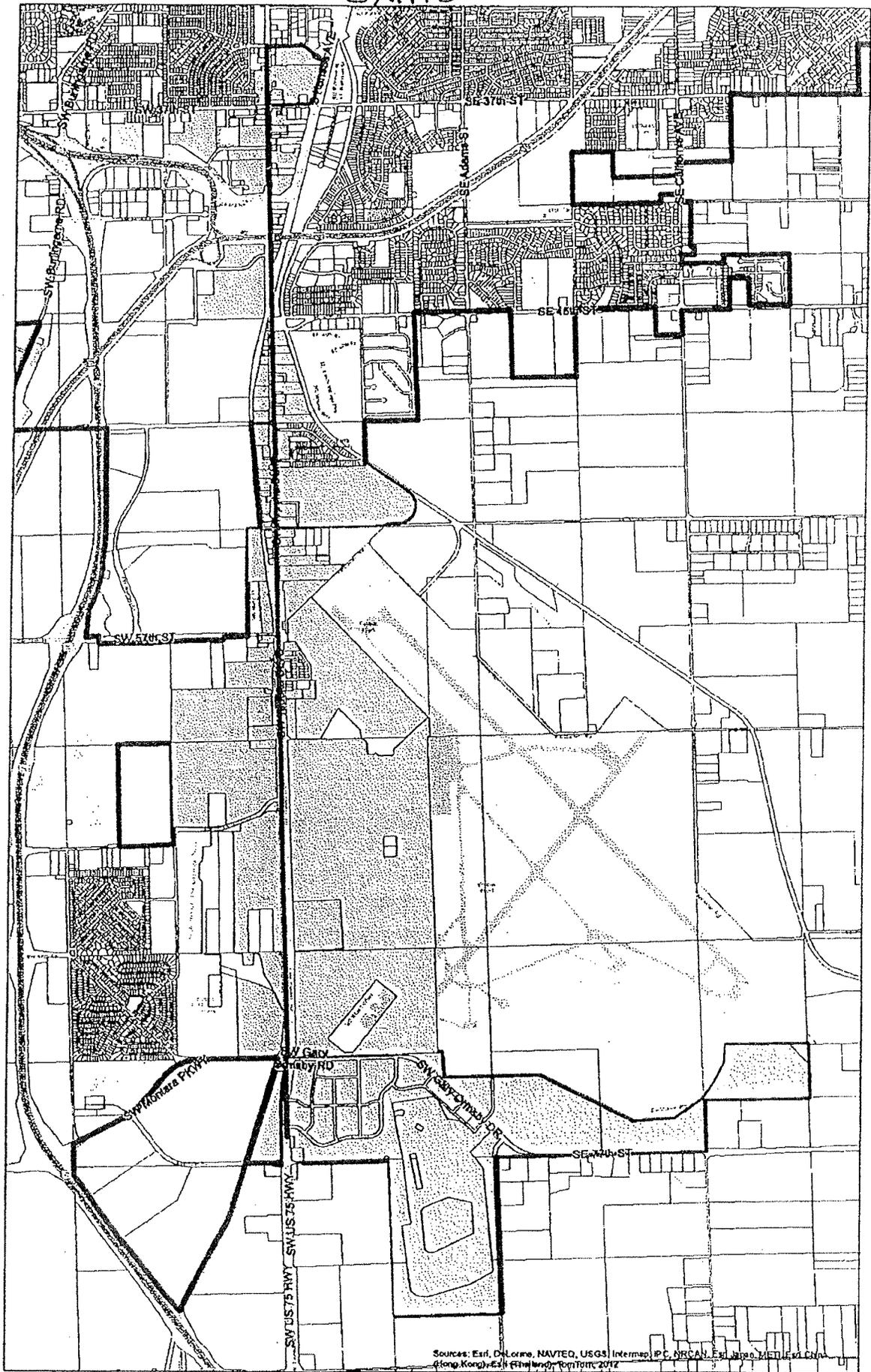
SMALL BUSINESS ADMINISTRATION

\$531,868.99

KANSAS DEPARTMENT OF COMMERCE

\$500,000

# EXHIBIT C



Sources: Esri, DeLorme, NAVTEQ, USGS, Intermap, iPC, NRCAN, Esri, Swisstopo, MTELE, GEBCO, China, Hong Kong, Esri, Thailand, TerraTech, 2012