

COUNTY COMMISSION

Monday, October 3, 2016

5:00 PM

Ellis County Administrative Center – Commission Room

Order of Business

- I. Opening
 - A. Call to Order
 - B. Pledge of Allegiance
 - C. Clerk Calls the Roll
 - D. Order of Business
Consideration of Amendments

- II. Prior Minutes
September 19, 2016

- III. Consent Agenda
 - A. Approval of Employee Status Changes as presented
 - B. Approval of Refunding Warrants as presented
 - C. Approval of Tax Roll Adjustments as presented
 - D. Approval of Escape Tax Orders as presented
 - E. Approval of Adds and Abates as presented
 - F. Approval of Accounts Payable and Payroll as presented

- IV. Issues from Persons Not on the Order of Business
- V. Cereal Malt Beverage License Application, Knights of Columbus, #11492, Munjor Enclosure
- VI. Selection of Voting Delegate and Alternate Delegate for KCAMP Annual Meeting (County Administrator Phillip Smith-Hanes) Enclosure
- VII. Selection of Voting Delegate and Alternate Delegate for KWORCC Annual Meeting (County Administrator Phillip Smith-Hanes) Enclosure
- VIII. Three-Party Lease Agreement between Ellis County, Fair Association and RPM Speedway, Inc. (County Administrator Phillip Smith-Hanes) Enclosure
- IX. Resolution Regarding Sale of Tholen Building (County Administrator Phillip Smith-Hanes) Enclosure
- X. County Counselor Reports (County Counselor Bill Jeter)
- XI. County Administrator Report (County Administrator Phillip Smith-Hanes)
- XII. County Commission Reports
- XIII. Executive Session(s)
- XIV. Adjournment

ELLIS COUNTY
AGENDA ITEM COVER SHEET
COMMISSION AGENDA DATE: *October 3, 2016*

TOPIC:

Cereal Malt Beverage License Application, Knights of Columbus, #11492, Munjor

ACTION REQUESTED:

Approve application for cereal malt beverage license for above applicant.

DISCUSSION:

Township Board and Sheriff have approved application.

FINANCIAL IMPACT:

None

PRESENTED BY:

Ellis County Clerk Donna J Maskus

REVIEWED BY COUNTY ADMINISTRATOR:

Yes No N/A

REVIEWED BY COUNTY COUNSELOR:

Yes No N/A

ATTACHMENTS:

Application for License to Sell Cereal Malt Beverages
Township Board Recommendation
Cereal Malt Beverage License for signature

**PARTNERSHIP, FIRM OR ASSOCIATION
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**
(This form has been prepared by the Attorney General's Office)

City or County of Ellis

SECTION 1 - LICENSE TYPE	
Check One: <input type="checkbox"/> New License <input type="checkbox"/> Renew License <input checked="" type="checkbox"/> Special Event Permit	
Check One: <input checked="" type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.	

SECTION 2 - APPLICANT INFORMATION	
Kansas Sales Tax Registration Number (required):	
Name of Partnership/Firm/Association <u>Knights of Columbus</u>	Phone No. <u>(785) 432-0258</u>
Place of Business Street Address <u>833 Moscow St.</u>	City <u>Munjer KS</u> Zip Code <u>67601</u>

SECTION 3 - LICENSED PREMISE	
Licensed Premise (Business Location or Location of Special Event)	Mailing Address (If different from business address)
DBA Name <u>Ellis Co. Fairgrounds</u>	Name <u>Tom Fross</u>
Business Location Address <u>1344 Fairgrounds Rd</u>	Address <u>506 W 23rd</u>
City <u>Hays</u> State <u>KS</u> Zip <u>67601</u>	City <u>Hays</u> State <u>KS</u> Zip <u>67601</u>
Business Phone No. <u>628-8820</u>	<input type="checkbox"/> I own the proposed business location. <input checked="" type="checkbox"/> I do not own the proposed business location.
Business Location Owner Name(s)	

SECTION 4 - PARTNER AND FIRM/ASSOCIATION MEMBER INFORMATION			
List each partner or member of a firm/association and their spouse, if applicable. Attach additional pages if necessary.			
Partner/Member Name <u>Alex Leiker</u>	Title <u>2nd Yr Trustee</u>	Date of Birth <u>11-28-87</u>	
Residence Street Address <u>807 Cathedral</u>	City <u>Victoria</u> State <u>KS</u>	Zip Code <u>67671</u>	
Spouse Name <u>N/A</u>	Title	Date of Birth	
Residence Street Address	City	State	Zip Code
Partner/Member Name <u>Gleason Stramel</u>	Title <u>Financial Secretary</u>	Date of Birth <u>9-2-55</u>	
Residence Street Address <u>1970 Munjer Rd</u>	City <u>Munjer</u> State <u>KS</u>	Zip Code <u>67601</u>	
Spouse Name <u>Rhonda</u>	Title	Date of Birth	
Residence Street Address <u>1970 Munjer Rd.</u>	City	State	Zip Code
Partner/Member Name <u>Sess Richmeier</u>	Title <u>1st Yr trustee</u>	Date of Birth <u>7-1-73</u>	
Residence Street Address <u>2906 Hillcrest Dr.</u>	City <u>Hays</u> State <u>KS</u>	Zip Code <u>67601</u>	
Spouse Name <u>Wendy</u>	Title	Date of Birth	
Residence Street Address <u>2906 Hillcrest Dr.</u>	City	State	Zip Code

Mail To

SECTION 4 – PARTNER AND FIRM/ASSOCIATION MEMBER INFORMATION (CONTINUED)

Partner/Member Name	Title	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Title	Date of Birth
Residence Street Address	City	State Zip Code

Partner/Member Name	Title	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Title	Date of Birth
Residence Street Address	City	State Zip Code

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Spouse Name	Title	Date of Birth
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Partner/Member Name	Title	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Title	Date of Birth
Residence Street Address	City	State Zip Code

Partner/Member Name	Title	Date of Birth
Residence Street Address	City	State Zip Code
Spouse Name	Title	Date of Birth
Residence Street Address	City	State Zip Code

SECTION 5 – MANAGER OR AGENT INFORMATION

My place of business or special event will be conducted by a manager or agent. Yes No

If yes, provide the following:

Manager or Agent Name	Phone No.	Date of Birth
Residence Street Address	City	State Zip Code

Manager or Agent Spousal Information

Manager or Agent Spouse Name	Phone No.	Date of Birth
Residence Street Address	City	State Zip Code

SECTION 6 – QUALIFICATION FOR LICENSURE	
Applies to each partner or member of a firm or association AND their spouses.	
Are all persons identified in Sections 4 & 5 are Citizens of the United States ¹ ?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Have all persons identified in Sections 4 & 5 have been a resident of Kansas for at least one year prior to application ² ?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Have all persons identified in Sections 4 & 5 been residents of this county for at least six months ³ ?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
All persons identified in Sections 4 & 5 are at least 21 years old ⁴ ?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, have any of the persons identified in Sections 4 & 5 have been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the partnership, firm or association have a manager, officer or director who was an officer, manager, director or stockholder owning in the aggregate more than 25% of the stock of a corporation that had a CMB license revoked or was convicted of a violation of the Club and Drinking Establishment Act or the CMB laws.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the spouse of any partner or member been convicted of any of the crimes identified in Section 6 during the time the spouse held a CMB license?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

SECTION 6 – DURATION OF SPECIAL EVENT		
Start Date	November 1, 2016	Time 1:00 pm <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
End Date	November 1, 2016	Time 11:59 pm <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct and that I am authorized by the partnership/firm/association to complete this application. (K.S.A. 52-601)

SIGNATURE *John J. Rehm* DATE 9-21-16

Print Form

FOR CITY/COUNTY OFFICE USE ONLY:	
<input type="checkbox"/> License Fee Received Amount \$ _____ Date _____ (\$25 - \$50 for Off-Premise license or \$25-200 for On-Premise license)	
<input type="checkbox"/> \$25 CMB Stamp Fee Received Date _____	
<input checked="" type="checkbox"/> Background Investigation <input checked="" type="checkbox"/> Completed Date <u>9-26-16</u> <input checked="" type="checkbox"/> Qualified <input type="checkbox"/> Disqualified	
<input type="checkbox"/> New License Approved Valid From Date _____ to _____ By: _____	
<input type="checkbox"/> License Renewed Valid From Date _____ to _____ By: _____	
<input type="checkbox"/> Special Event Permit Approved Valid From Date _____ to _____ By: _____	

A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE STAMP FEE REQUIRED BY K.S.A. 41-2702(e), MUST BE SUBMITTED WITH YOUR QUARTERLY REPORT (ABC-307) TO THE ALCOHOLIC BEVERAGE CONTROL, 915 SW HARRISON STREET ROOM 214, TOPEKA, KS. 66625-3512.

¹ Spouse not required to be U.S. citizen. K.S.A. 41-2703(b)(9)
² Spouse not required to be Kansas resident. K.S.A. 41-2703(b)(9)
³ Spouse not required to be a resident of the county. K.S.A. 41-2703(b)(9)
⁴ Spouse not required to be over 21 years of age. K.S.A. 41-2703(b)(9)

ADVISORY RECOMMENDATION

State of Kansas, Ellis County, ss.

To the Board of County Commissioners of said County:

After due consideration of the matter of application for a license to sell cereal malt beverages filed by Bo. Sgt of Columbus and contained in your notice dated Sept 23-2016, 2016, and a careful canvass of the sentiment prevailing in this township generally, we are of the opinion that the application for a license for the sale of cereal malt beverages in this township by the said applicant should be Granted and we hereby so recommend.

Granted - Denied

Witness our hands, this 26 day of Sept, 2016.
[Signature] Trustee

Treasurer

Clerk
Township Board Big Creek Township.

KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIMES

30.00Lic
Fee, \$ 25.00 Rev Stamp

No. 2016-5

RETAIL DEALER'S LICENSE

TO ALL WHOM IT MAY CONCERN:

License is hereby granted to Knights of Columbus #11492 to sell at retail

CEREAL MALT BEVERAGES

Consumption on premise
(State if for consumption on the premises, or for sale in original and unopened containers and not for consumption on the premises.)

at 1344 Fairgrounds Rd. Hays, KS 67601
(Give exact location, with street number, if any.)

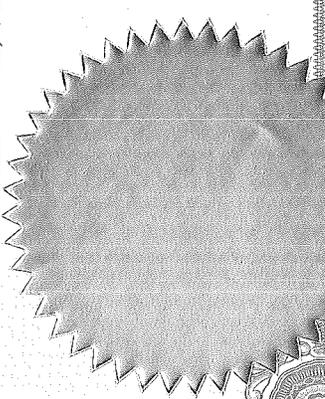
in the Township of Big Creek in Ellis County, Kansas.
Application therefor, on file in the office of the County Clerk of said County, having been approved by the governing body of said Township, as provided by the Laws of Kansas, and the regulations of the Board of County Commissioners.

This License is for year beginning November 1, 2016 1:00 PM and will expire November 1, 2016 11:59 PM
unless sooner revoked, is not transferable, nor will any refund of the fee be allowed thereon.

Done by the Board of County Commissioners or Ellis County, Kansas,

this 3rd day of October 2016

Attest: _____
County Clerk
Chairman



ELLIS COUNTY
AGENDA ITEM COVER SHEET
COMMISSION AGENDA DATE: 10-3-16

TOPIC:

Selection of Voting Delegate and Alternate Delegate for KCAMP Annual Meeting

ACTION REQUESTED:

Select a voting delegate and an alternate and authorize the Chair to assign the attached form.

DISCUSSION:

Ellis County is a member of the Kansas County Association Multiline Pool (KCAMP) for property and liability insurance coverage. KCAMP will hold its annual meeting on Tuesday, November 15, in conjunction with the annual conference of the Kansas Association of Counties – which all Commissioners are registered to attend. KCAMP asks that each member county nominate one elected official to serve as the county's voting delegate at the annual meeting and a second elected official to serve as an alternate. Staff requests that your Commission select those delegates and authorize the Chair to sign the certification form so that it may be transmitted to KCAMP.

FINANCIAL IMPACT:

This item has no financial impact.

PRESENTED BY:

Phillip Smith-Hanes, County Administrator

REVIEWED BY COUNTY ADMINISTRATOR:

Yes No N/A

REVIEWED BY COUNTY COUNSELOR:

Yes No N/A

ATTACHMENTS:

1. KCAMP Certified Voting Delegate and Alternate Form

**KCAMP CERTIFIED VOTING DELEGATE
AND ALTERNATE**

This form must be returned to David Luke postmarked by **October 20, 2016**. We **must** have this form for your county to be able to vote on KCAMP matters.

DATE: _____, 2016

_____, _____ has been named voting
Name (please print) Position
delegate for **Ellis County** for matters pertaining to KCAMP.

_____, _____ has been named Alternate.
Name (please print) Position

These delegates have been approved and have the support of the Board of Ellis County Commissioners.

Chairman of the Ellis County Board of Commissioners

ATTEST:

Ellis County Clerk

Please return this form to KCAMP, 5425 SW. 7th Street, Topeka, Kansas 66606, or fax to (785) 267-2383 by October 20, 2016.

ELLIS COUNTY
AGENDA ITEM COVER SHEET
COMMISSION AGENDA DATE: 10-3-16

TOPIC:

Selection of Voting Delegate and Alternate Delegate for KWORCC Annual Meeting

ACTION REQUESTED:

Select a voting delegate and an alternate and authorize the Chair to sign the attached form.

DISCUSSION:

Ellis County is a member of the Kansas Workers Risk Cooperative for Counties (KWORCC) for workers' compensation insurance and risk management purposes. KWORCC will hold its annual meeting on Tuesday, November 15, in conjunction with the annual conference of the Kansas Association of Counties – which all Commissioners are registered to attend. KWORCC asks that each member county nominate one elected official to serve as the county's voting delegate at the annual meeting and a second elected official to serve as an alternate. Staff requests that your Commission select those delegates and authorize the Chair to sign the certification form so that it may be transmitted to KWORCC.

KWORCC has also transmitted nomination forms for three trustee positions: the Northeast (Brown, Doniphan, Jackson, Jefferson, Lyon, Marshall, Osage and Pottawatomie counties), the Southwest (Clark, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny, Lane, Meade, Morton, Ness, Scott, Stanton and Stevens counties) and an at-large position. Currently, these positions are held by Jefferson County Clerk Linda Buttron (Northeast), Stanton County Clerk Sandy Barton (Southwest), and Morris County Clerk Michelle Garrett (at-large). All three individuals are seeking re-election. Your Commission could choose to nominate any or all of these individuals, nominate another elected official from any or all of these regions, or make no nomination. Forms are attached should your Commission choose to make a nomination.

FINANCIAL IMPACT:

This item has no financial impact.

PRESENTED BY:

Phillip Smith-Hanes, County Administrator

REVIEWED BY COUNTY ADMINISTRATOR:

Yes No N/A

REVIEWED BY COUNTY COUNSELOR:

Yes No N/A

ATTACHMENTS:

1. Certification of Voting Delegate and Alternate to KWORCC Annual Meeting
2. KWORCC Trustee Nomination – Northeast District
3. KWORCC Trustee Nomination – Southwest District
4. KWORCC Trustee Nomination – At Large



CERTIFICATION OF VOTING DELEGATE AND ALTERNATE TO KWORCC ANNUAL MEETING

For the upcoming annual meeting on Tuesday, November 15, 2016 at 5:30 p.m., we ask that you identify the delegate and alternate for your County. This will enable your County to be represented and to vote at the meeting. **The delegate and alternate must be an elected official from your County.**

Please return this form to the attention of KWORCC Administrator, James W. Parrish, 700 SW Jackson Street, Suite 200, Topeka, Kansas 66603, postmarked by Friday, October 21, 2016. Or FAX the completed form to (785) 233-5440 on or before Friday, October 21, 2016.

If you have questions or otherwise wish to discuss this matter, please call Jim, Dortha or Carl toll-free: 1-877-357-1069. Your participation is needed and greatly appreciated.

Date: _____

Name <i>(please print)</i>	Position
----------------------------	----------

has been named voting delegate for _____ County at the KWORCC 2016 annual meeting and any special meeting(s).

And, _____
Name *(please print)* Position

has been named Alternate for said purposes.

The undersigned hereby certifies that the foregoing delegates have been appointed by the Board of County Commissioners.

Chairman of the Board of Commissioners

ATTEST:

County Clerk

**KWORCC TRUSTEE NOMINATION
NORTHEAST DISTRICT**

We _____
(County)

Nominate _____
(Name)

From the Northeast District, which includes the following counties:
**Brown, Doniphan, Jackson, Jefferson, Lyon, Marshall, Osage, and
Pottawatomie, to serve on the KWORCC Board of Trustees.**

Date: _____

County Commissioner

County Commissioner

County Commissioner

Please return this form to James W. Parrish, KWORCC, 700 SW Jackson, Suite 200, Topeka, KS 66603, or fax to (785) 233-5440 by Friday, October 21, 2016.

**KWORCC TRUSTEE NOMINATION
SOUTHWEST DISTRICT**

We _____
(County)

Nominate _____
(Name)

From the Southwest District, which includes the following counties:
Clark, Ford, Grant, Gray, Hamilton, Haskell, Hodgeman, Kearny,
Lane, Meade, Morton, Ness, Scott, Stanton, and Stevens, to serve
on the KWORCC Board of Trustees.

Date: _____

County Commissioner

County Commissioner

County Commissioner

Please return this form to James W. Parrish, KWORCC, 700 SW Jackson, Suite 200, Topeka, KS 66603, or fax to (785) 233-5440 by Friday, October 21, 2016.

**KWORCC TRUSTEE NOMINATION
AT LARGE**

We _____
(County)

Nominate _____
(Name)

for the At Large position to serve on the KWORCC Board of Trustees,
who is an elected official from a KWORCC Member County (list on
reverse of this form).

Date: _____

County Commissioner

County Commissioner

County Commissioner

Please return this form to James W. Parrish, KWORCC, 700 SW
Jackson, Suite 200, Topeka, KS 66603, or fax to (785) 233-5440 by
Friday, October 21, 2016.

ELLIS COUNTY
AGENDA ITEM COVER SHEET
COMMISSION AGENDA DATE: 10-3-16

TOPIC:

Three-Party Lease Agreement between Ellis County, Fair Association and RPM Speedway, Inc.

ACTION REQUESTED:

Approve the attached lease agreement and authorize the Chair to sign.

DISCUSSION:

In 2006, the Board of County Commissioners entered into a three-party agreement with the Ellis County Fair Association and RPM Speedway, Inc. to lease space at the County Fairgrounds to RPM for operation of a racetrack, in exchange for a payment by RPM in support of the County Fair. That agreement expired at the end of the 2015 racing season.

The attached agreement would apply retroactively to the 2016 racing season. It largely continues the same terms as the previous agreement, but does address one issue about which the County has received complaints – late-night noise generated by the race track. RPM is committed to reporting any late races to the County and the Fair. The agreement has been approved and signed by both RPM and the Fair Association and now comes before your Commission for final approval.

FINANCIAL IMPACT:

The lease benefits the Fair Association but has no financial impact for general county operations.

PRESENTED BY:

Phillip Smith-Hanes, County Administrator

REVIEWED BY COUNTY ADMINISTRATOR:

Yes No N/A

REVIEWED BY COUNTY COUNSELOR:

Yes No N/A

ATTACHMENTS:

1. Lease Agreement

LEASE AGREEMENT

This Agreement is made and entered into this _____th day of _____, 2016, by and between the **Board of County Commissioners of Ellis County, Kansas** ("County"), the **Ellis County Fair Association** ("Fair"), and **RPM Speedway, Inc.** ("Promoter").

WITNESSETH:

WHEREAS, Promoter desires to operate a grandstand, restrooms, parking area and track for the purposes of dirt track racing, and

WHEREAS, County owns and Fair has operational control over fairground property more fully described as follows:

A tract of land located in the East Half of the Northwest Quarter (E/2 NW/4) of Section Nineteen (19), Township Thirteen (13) South, Range Eighteen (18) West of the 6th p.m., Ellis County, Kansas, and

WHEREAS, Promoter has previously constructed facilities for dirt track racing in the southwest corner of the above-described fairground property, and

WHEREAS, Fair desires to rent the same to the Promoter for the sole purpose of dirt track racing and County consents to this usage,

NOW THEREFORE, for good and valuable consideration and the mutual covenants and promises of the parties contained herein, it is agreed as follows:

SECTION 1: TERM, RENTAL AND TIME OF PAYMENT

The initial term shall be for a period of three (3) years commencing on April 1, 2016, and terminating on March 31, 2019. Promoter shall have the right to renew this lease for two additional three-year terms by giving Fair notice of intent to exercise each option to renew no later than 120 days prior to the expiration of the primary or first renewal term.

Promoter will pay rent to the Fair in the amount of ten percent (10%) of the gross receipts from such dirt track stock car races, which amount shall include receipts from front gate, but shall not include receipts from pit passes or race entry fees. Such rental payment shall not be less than one hundred dollars (\$100) per event. The payment provided under this section shall be made no later than the 10th calendar day after each race. Rental payment for go-cart races and special events will be negotiated at a later date.

**SECTION 2:
PROMOTER'S RESPONSIBILITIES**

Promoter hereby agrees to provide, be responsible for or pay at its sole expense the following:

- A. All utilities, including water and electricity. Promoter will install separate meters for such utilities as necessary.
- B. Cleaning the parking area and infield area following each race. If grounds are not cleaned within two calendar days, subject to weather delays, Fair will clean these areas and assess the cost of such services to Promoter.
- C. All other expenses, including but not limited to repair and maintenance of the fenced dirt track area and mowing of all grassy areas. Any use of foreign materials, substances or agents of any kind on the track are forbidden without the prior consent of Fair.
- D. Provide the Fair with an accounting of the receipts from all tickets sold for each race. Said accounting shall be delivered to the Fair Secretary with the payment of the rent specified in Section 1.
- E. Any and all construction costs associated with the installation, maintenance, operation or change in location of Fair's leased parcel of land (see description) shall be paid by Promoter, unless otherwise agreed upon in writing by the parties.
- F. Promoter shall install, maintain, and operate its race track(s) in a safe, workmanlike, reasonably aesthetic, proper and lawful manner, and in accordance with the requirements of all applicable insurance underwriters as well as applicable ordinances, laws, rules and regulations of any city, state, county or federal instrumentality or agency having jurisdiction over the use and operation of the Property.
- G. Any damage to the leased premises or property caused by or in connection with the installation, maintenance, operation or existence of Promoter's equipment shall be repaired by Promoter or, if Promoter fails to repair such damage in a timely fashion, Fair at Promoter's expense may repair such damage. Upon the expiration of this lease, Promoter agrees to relinquish the property in a condition consistent with Fair's specifications, or as the parties can agree.
- H. Promoter shall obtain and keep in force and effect during the term and any renewal thereof of this Agreement such comprehensive insurance with a company or companies in amounts reasonably acceptable to Fair and County covering public liability and property damage. Such insurance shall name Fair

and County as additional insured. Promoter agrees to deliver to County a certificate of insurance within twenty (20) days of execution of this Agreement.

- I. Fair and Promoter may both solicit, either individually or jointly, commercial advertising and track sponsorships on such terms and conditions as the parties shall agree.
- J. All alterations and improvements made to the property by Promoter shall become the property of County upon the surrender of the leased premises.
- K. Promoter will not directly or indirectly create or suffer to exist any lien with respect to the leased premises unless with the consent of County. Promoter at its sole expense shall take such action as is necessary to release and discharge any lien which is not permitted by County.
- L. All initial improvements and subsequent additions, alterations or other changes to the leased property shall require the prior approval of Fair which approval shall not be unreasonably withheld or delayed.

SECTION 3: NUISANCE

County and Fair acknowledge that Promoter's stated use of this property – dirt track racing – is an activity that generates impacts including but not limited to noise and blowing dust which may impact neighboring property owners. Promoter acknowledges that these impacts may generate complaints to County and Fair. Therefore, the parties will work together to minimize these impacts. Promoter will attempt to end all races by 11:00 p.m. to provide a quiet environment for neighbors. In the event that races cannot be ended by 11:00 p.m., Promoter will contact County and Fair the next business day to explain the occurrence.

SECTION 4: LIABILITY AND INDEMNIFICATION

Promoter agrees to indemnify and release the Fair and County from the following:

- A. Promoter does hereby release and indemnify the Fair and County of all liability on claims, actions, demands, costs, losses, damages, expenses and causes of action of any kind including attorney fees which may arise out of events allowed under this Agreement including all direct or consequential damages.
- B. Promoter does hereby release and agrees to indemnify the Fair and County against any liability, expense, costs and attorney fees whatsoever arising by reason of any claims made as a result of this agreement.
- C. The parties released and indemnified include the Fair Board, the Board of County Commissioners and their agents, representatives and assigns.

- D. This Release and Indemnification is the result of contract negotiations between the parties and shall never at any time be considered an admission of liability or responsibility on the part of any party herein released, and each such party to continue to deny any such liability and to disclaim such responsibility and intends merely to avoid any possible litigation.
- E. No promise, inducement or agreement not herein expressed has been made to Promoter and this Release contains the entire agreement between Promoter and the parties herein released.

**SECTION 5:
NO COMPETE CLAUSE**

Fair agrees, for the duration of this Agreement, that so long as the terms and conditions of this Agreement are fulfilled by Promoter, Fair will not seek to compete for other promoters providing this type of entertainment.

**SECTION 6:
MISCELLANEOUS**

This Agreement shall bind and inure to the parties, their successors and assigns. Promoter may not assign its rights hereunder or any part thereof to any party without the prior consent in writing of Fair, which consent Fair will not unreasonably withhold. Fair shall provide written notice to Promoter within thirty (30) days of assignment of this Agreement by Fair.

This Agreement contains the entire agreement between the parties hereto, and it may be modified only by an agreement in writing signed by the parties. No provision may be waived except in a writing signed by all parties. Except as otherwise provided herein, no surrender of the leased premises or of the remainder of the terms of this Agreement shall be valid unless accepted by Fair in writing. Promoter acknowledges and agrees that Promoter has not relied upon any statement, representation, prior written or contemporaneous oral promises, agreements or warranties of Fair except such as are expressed herein. Any variance by the parties from the terms and conditions contained in this agreement renders this Agreement null and void.

This agreement shall be governed by the laws of the State of Kansas.

County and Fair warrant that Fair controls the leased premises and has right of access thereto; that Fair has full right to enter into this Agreement; and that Promoter shall have quiet and peaceful possession of the Promoter's leased space.

The parties further agree that Fair may schedule events at times other than Promoter's scheduled races which events shall require the prior approval of Promoter which Promoter shall not unreasonably withhold.

All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery to an officer of the other party, or (ii) when properly deposited for delivery by commercial overnight delivery service, prepaid, or by deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, on the date that is two days after the date set forth in the records of such delivery service or on the return receipt and addressed as follows, unless and until either of such parties notifies the other in accordance with this paragraph of a change of address.

This agreement may be executed in counter parts and signature on any copy shall constitute execution of the original. This agreement shall extend to and be binding upon the heirs, executors, administrators, representatives, trustees and assigns of the respective parties hereto.

The relationship between the parties is that of Lessor(s) and Lessee, and it is expressly understood and agreed that neither Fair nor County will in any way or for any purpose become a partner or a joint venturer of Promoter in the conduct of Promoter's business and neither Fair nor County shall be responsible for any of Promoter's obligations arising from the installation and operation of Promoter's race track(s) on the leased premises.

If any provision, clause or part of this Agreement or the application thereof under certain circumstances is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being agreed that agents of each party have participated in the preparation hereof.

Promoter hereby indemnifies and holds harmless Fair and County against any and all claims, judgments, penalties, fines, costs, liabilities or losses including without limitation attorney fees and fees for the employment of any environmental expert or consultant as a result of the presence upon the leased property of any hazardous substance which is caused or permitted to be present upon the property by Promoter and its invitees. Promoter shall not cause or permit any hazardous substance to be brought upon, kept or used in or about the leased premises by its agents, employees, contractors or invitees except those that are kept, stored or disposed of in a manner that complies with environmental laws. Promoter shall not install or permit the installation of any underground storage tanks for the purpose of storing any petroleum based products or any hazardous substance.

**SECTION 7:
DEFAULT**

The occurrence of any of the following shall constitute a default by Promoter under this lease agreement:

- A. If Promoter shall fail to pay any payment of rent when due and such failure shall continue for a period of ten (10) days after receipt by Promoter of notice that rent is late.
- B. If Promoter shall violate or fail to perform any covenant or agreement (other than rent) to be performed or observed by Promoter under the terms of this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof.
- C. In the event of bankruptcy to Promoter, dissolution of Promoter or liquidation of substantially all of Promoter's assets.

If there be any default by Promoter under this Agreement, Fair shall have the right at its sole option to terminate this lease. In addition thereto, Fair may re-enter or terminate Promoter's right of possession and take possession of the leased property. If there be any default under this Agreement by Promoter, then whether or not this Agreement is terminated by reason of Promoter's default, Promoter nevertheless shall remain liable for any rent or damages that may be due or sustained prior to recovery of possession by Fair including all reasonable costs, fees, attorney fees and expenses.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers, agents or representatives on the date first written above.

ELLIS COUNTY FAIR ASSOCIATION

Noreen Knoll
Secretary

By Gale Pfannenstiel
President

BOARD OF COUNTY COMMISSIONERS OF
ELLIS COUNTY, KANSAS

ATTEST:

By _____
Chairperson

ELLIS COUNTY
AGENDA ITEM COVER SHEET
COMMISSION AGENDA DATE: 10-3-16

TOPIC:

Resolution Regarding Sale of Tholen Building

ACTION REQUESTED:

Adopt the attached Resolution and direct the County Clerk to publish it.

DISCUSSION:

On September 19, your Commission found that the County property located at 209 W. 12th Street in Hays (known as the "Tholen Building") was no longer needed for County business purposes and authorized the County Administrator to advertise for bids and schedule a public hearing regarding sale of real property. As noted at that time, this action also requires adoption of a resolution. At this time, staff asks your Commission to adopt the attached resolution for this purpose.

FINANCIAL IMPACT:

There is a potentially positive impact through sale of the building. One-time proceeds from the building sale could be placed into the County's capital reserve fund for future improvements to other County buildings. In addition, sale of the building to a private party would place the property back on the tax rolls and generate future tax revenue to fund ongoing operations.

PRESENTED BY:

Phillip Smith-Hanes, County Administrator

REVIEWED BY COUNTY ADMINISTRATOR:

Yes No N/A

REVIEWED BY COUNTY COUNSELOR:

Yes No N/A

ATTACHMENTS:

1. Resolution No. 2016-10

RESOLUTION NO. 2016-10

RESOLUTION OF THE BOARD OF ELLIS COUNTY COMMISSIONERS

WHEREAS, the Board of County Commissioners of Ellis County, Kansas, by the power vested in it by K.S.A 19-211, may sell or dispose of County property, and

WHEREAS, K.S.A 19-211 specifically authorizes the Board of County Commissioners to adopt a resolution establishing an alternate methodology for disposal of property,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ELLIS COUNTY, KANSAS, that pursuant to K.S.A 19-211(b), the following methodology for disposing of property is adopted:

1. The real estate and improvements located at 209 West Twelfth Street, Hays, Ellis County, Kansas, will be of no further use to Ellis County as of October 3, 2016, and the same should be sold upon sealed bids with Ellis County reserving the right to reject any and all bids and to waive any informalities in the bid procedure.
2. The public should be notified by the publication of this resolution of the Board of County Commissioners' intent to sell the above described property by sealed bids to the highest bidder.
3. Before finalizing any agreement to accept the highest bid, the Board of County Commissioners shall schedule a public hearing for the purpose of allowing input from the public regarding approving the sale of 209 West Twelfth Street, Hays, Ellis County, Kansas to the highest bidder.

This resolution will take effect immediately upon publication in the official county newspaper.

Dated this 3rd day of October, 2016.

BOARD OF COUNTY COMMISSIONERS

Dean F. Haselhorst, Chair

Martha L. McClelland, Commissioner

Barbara K. Wasinger, Commissioner

ATTEST:

Donna J. Maskus, County Clerk