

**FIRST AMENDMENT TO
PARTICIPATING LOAN AGREEMENT**

THIS FIRST AMENDMENT TO PARTICIPATING LOAN AGREEMENT (this "Agreement") is made and entered into as of the 16 day of JULY 2019, by and between ERIE COUNTY GAMING REVENUE AUTHORITY, an Economic Development Financing Authority created pursuant to the Economic Development Financing Law, 73 P.S. §§ 371 *et seq.*, and a body corporate and politic ("ECGRA"), and BLUE HIGHWAY CAPITAL PARTNERS, LLC, a corporation, organized and existing under the laws of Delaware, with offices at 4 13th Street, Boston, Massachusetts 02129 company ("Borrower").

WITNESSETH:

WHEREAS, Borrower and ECGRA entered into a Participating Loan Agreement dated JANUARY 8, 2019 (the "Agreement"); and

WHEREAS, Borrower and ECGRA have identified that an error was included within the Agreement; and

WHEREAS, Borrower and ECGRA desire to enter into this First Amendment to Participating Loan Agreement to ensure that the Agreement reflects the desires of the Parties.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. AMENDMENT

That the definition of "Fixed Interest" as contained within Section 1 of the Agreement, entitled **DEFINITIONS; CONSTRUCTION**, be amended through the deletion of the terms struck out, and the inclusion of the underlined terms, as follows:

"Fixed Interest" means simple interest calculated at the rate of ~~six~~ three percent (~~6~~ 3%) per annum on the outstanding balance of the Drawdown Amount.

SECTION 2. MISCELLANEOUS

2.1 No Waiver. No delay or failure by ECGRA in exercising any right, power, or privilege, nor any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such a right, power or privilege, shall preclude any further exercise thereof. Any waiver, permit, consent or approval of any kind or character on the part of ECGRA of any breach or default under this Agreement or any waiver of any provision or condition of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing.

2.2 Modification or Waiver. The terms, conditions and covenants of this Agreement, the Note, the Notification Agreement and all supporting documentation may only be modified or waived by a written document executed by Borrower and ECGRA.

2.3 Notices and Consents. All notices and consents required or permitted hereunder shall be in writing and deemed to be properly given when personally delivered to the party entitled

to receive such notice or when sent by facsimile (with a copy sent by first class U.S. Mail) or certified or registered mail, or nationally recognized overnight delivery service, in each case postage prepaid, properly addressed to the party entitled to receive such notice at the address listed below:

To Borrower:

Attention: Karin A. Gregory, Esq.
Email: kgregory@bluehighwaycapital.com
4 13th Street, Boston, MA 02129

With a copy to (which shall not constitute notice):

Attention: Donald R. Furman, Jr.
Furman Gregory, LLC
Email: don@fgd-law.com
Telephone: 207-571-9365
Fax Number: 207-391-1LAW

To ECGRA:

Erie County Gaming Revenue Authority
Knowledge Park, Suite 201
5340 Fryling Road
Erie, PA 16510
Attention: Tom Maggio

Telephone: 814-897-2690
Email: tmaggio@ecgra.org

With a copy to (which shall not constitute notice):

Knox McLaughlin Gornall & Sennett, P.C.
120 West 10th
Erie, PA 16510
Attention: Timothy S. Wachter
Telephone: 814-459-2800
Email: twachter@kmgslaw.com

Any change in the above addresses shall be made by sending a notice thereof as provided in this Section 10.3.

2.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower and ECGRA and their respective successors and assigns, except that neither party may assign or transfer any of its rights or interests hereunder (other than in the case of such an assignment or transfer by ECGRA to any other agency or instrumentality of the Commonwealth of Pennsylvania) without the prior written consent of the other, which shall not be unreasonably withheld.

2.5 **Captions.** The captions of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to define, expand or limit the provisions hereof.

2.6 **Severability.** Any provision of this Agreement or the Note which is rendered or declared invalid or unenforceable by or pursuant to law or governmental rules or regulations shall not invalidate or affect the legality and enforceability of the remaining provisions hereof or the Note.

2.7 **Controlling Law.** This Agreement and the Note are to be executed in the Commonwealth of Pennsylvania and shall be construed under, and the rights and obligations of the parties hereunder and thereunder shall be controlled by, the laws of the Commonwealth of Pennsylvania.

2.8 **Survival of Representations and Warranties.** All representations, warranties, covenants and agreements of Borrower and ECGRA contained herein or made in writing in connection herewith shall survive the execution and delivery of this Agreement and the making of the Loan, except as otherwise expressly provided. The obligations of Borrower under this Agreement shall continue until the Loan is repaid in full or is deemed to be repaid in full as set forth herein.

2.9 **Integration.** This Agreement, together with any exhibits and schedules attached hereto, is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, commitments and writings.

2.10 **Counterparts.** This Agreement may be executed in any number of counterparts, and when so executed, all of such counterparts shall constitute a single instrument binding upon all parties hereto. Signatures of the parties transmitted by facsimile or as PDF attachments shall be deemed to be their original signatures for any purpose whatsoever.

2.11 **Conflict of Interest.** No member, official, or employee of ECGRA shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested. No member, official, or employee of ECGRA shall be personally liable to Borrower or to any successor in interest to Borrower, (i) in the event of any default or breach by ECGRA of any of the terms of this Agreement, (ii) for any amount which may become due hereunder to Borrower or to any successor in interest to Borrower, or (iii) with respect to any obligation of ECGRA to Borrower hereunder.

2.12 **Limitation on Applicability of Certain Provisions.** The parties acknowledge that as provided in this Agreement, Borrower will use the proceeds of the Loan to fund part of Borrower's Capital Contributions to the Fund, and the Fund will use Borrower's Capital Contributions along with Capital Contributions of the other Partners and any borrowing by the Fund for any purposes permitted by the Partnership Agreement including, but not limited to, acquiring debt and equity interests in publicly and privately held business enterprises and paying fees and expenses of the Partnership. The parties hereby agree that none of the provisions of this Agreement (including but

not limited to Sections 6.6, 6.7, 10.13, 10.14 and 10.15), shall apply to the portfolio companies of the Fund. Without limiting the foregoing, no portfolio company of the Fund shall be considered a Contractor or subcontractor for purposes of such provisions or the requirements of such Exhibits.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their duly authorized representatives as of the day and year first above written.

WITNESS/ATTEST:

James L. Michalec

ERIE COUNTY GAMING REVENUE
AUTHORITY

[Signature]

Name: Perry Wood
Title: Executive Director

BLUE HIGHWAY CAPITAL, LLC
Partners

By: *[Signature]*

Name: *Karina A. Gregory*
Title: *Managing Partner*

EXHIBIT "A"

NOTE

\$250,000

JULY 16, 2019
~~2018~~

FOR VALUE RECEIVED, BLUE HIGHWAY CAPITAL, LLC, a Delaware limited liability company ("Borrower"), hereby promises to pay to the order of ERIE COUNTY GAMING REVENUE AUTHORITY, an Economic Development Financing Authority created pursuant to the Economic Development Financing Law, 73 P.S. §§ 371 *et seq.*, and body politic and corporate entity with offices at 5340 Fryling Road, Suite 201, Erie, PA 16510 ("Payee") as provided in the Loan Agreement (as hereinafter defined) on or before the Maturity Date (as defined in the Loan Agreement), the principal amount of **Two Hundred Fifty Thousand and 00/100 Dollars** (\$250,000.00), in lawful money of the United States of America, together with interest as provided in the Loan Agreement, payable only in the manner and on the payment dates set forth in the Loan Agreement.

The principal and interest and all other amounts due hereunder shall be payable at Payee's principal office in Erie, Pennsylvania, or at such other place as Payee may specify from time to time.

This Note is the Note referred to in that certain Participating Loan Agreement dated JANUARY 8, 2019 ~~2018~~, between Borrower and Payee (the "Loan Agreement"), and capitalized terms used but not defined in this Note shall have the meanings ascribed thereto in the Loan Agreement.

This Note may not be prepaid in whole or in part except as set forth in the Loan Agreement.

Payment of this Note is secured by a security interest in (i) the Dedicated Account; (ii) the Dedicated Funds; and (iii) the proceeds thereof, all as set forth in the Loan Agreement (the "Collateral").

Upon the occurrence of any Event of Default (as defined in the Loan Agreement), Payee, at its option, may declare this Note to be immediately due and payable, whereupon the outstanding principal amount of this Note, together with interest accrued thereon in the manner set forth in the Loan Agreement, and all other amounts payable hereunder, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Loan Agreement to the contrary notwithstanding.

This Note is non-recourse to the members of Borrower (*i.e.*, such parties shall have no liability for repayment of this Note) and the assets of Borrower other than the Collateral, and Payee will look solely to the Collateral for repayment of this Note.

This Note shall be binding upon and inure to the benefit of Borrower and Payee and their respective successors and assigns, except that neither party may assign or transfer this Note or any of its rights or interests hereunder without the prior written consent of the other.

This instrument shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, this Note has been duly signed and delivered by the undersigned at the place and on the day and year first above written.

BLUE HIGHWAY CAPITAL
PARTNERS, LLC

By: 

Name: Karin A. Gregory

Title: Managing Partner