



February 28, 2011

VIA FACSIMILE (334)793-6603

G. David Johnston
Johnston, Hinesley, Flowers, Clenney & Turner, P.C.
Attorneys at Law
P.O. Box 2246
Dothan, AL 36302

Re: Removal of Multimedia's Electronic Bingo Equipment from VictoryLand

Dear David:

As was expressed during our recent conversations, Multimedia Games, Inc. ("Multimedia") regrets that it now finds it necessary to remove its Electronic Bingo Equipment ("Equipment") from the State of Alabama. This letter is in confirmation of our agreement to remove Multimedia's Equipment from VictoryLand during the week of February 28, 2011.

As you are aware, before Multimedia initially placed its Equipment at VictoryLand, in or around 2004, it took steps to ensure that the Equipment complied with the Macon County Constitutional Amendment 744 and the specific regulations promulgated by the Macon County Sheriff. Additionally, the Equipment complied with the National Indian Gaming Commission's standards for Class II bingo. Moreover, the Equipment was recently tested and certified by Gaming Laboratories International, an internationally recognized independent gaming laboratory.

Multimedia's decision to remove its Equipment is the result of a unique set of legal uncertainties and political circumstances that presently exist in Alabama with regard to electronic bingo. Multimedia has reached an agreement with the Attorney General that will result in the immediate removal of Multimedia's Equipment from Alabama. If state law and public policy coalesce in the future to allow electronic bingo's return to Alabama, however, Multimedia would like to resume doing business in Alabama.

Sincerely,

Uri Clinton, General Counsel

AGREEMENT

This agreement ("Agreement") is entered into by and between Multimedia Games, Inc. and/or its wholly-owned subsidiary MegaBingo, Inc. (together "Multimedia") and the State of Alabama ("State") (collectively the "Parties"). The Parties agree as follows:

1. Multimedia currently has certain gaming-related property ("Electronic Bingo Equipment") located at VictoryLand in Macon County, Country Crossing in Houston County, and White Hall Entertainment Center ("White Hall") in Lowndes County (hereinafter collectively referred to as the "Known 'Electronic Bingo' Facilities"). Multimedia also has "Electronic Bingo" Equipment in possession of the State, which was seized by the Task Force on Illegal Gambling at White Hall Entertainment Center in Lowndes County, Alabama, and is currently subject to a forfeiture proceeding styled *State of Alabama v. Chad Dickie, et al.*, Case No. CV-09-900027, in the Circuit Court of Lowndes County, Alabama ("White Hall Forfeiture"). This property consists of machines, servers, and other equipment that play a game that has come to be known as "Electronic Bingo." Nothing in the terminology or any other aspect of this agreement is intended to convey that the State believes that this game is in fact the traditional game of "bingo" or that these machines are in any way legal under Alabama law. The Known "Electronic Bingo" Facilities are the only locations in the State of Alabama, other than on Indian lands, where Multimedia is aware that it has "Electronic Bingo" Equipment.

2. Beginning on a mutually agreeable date to be determined ("Commencement Date"), Multimedia will commence removing from the Known "Electronic Bingo" Facilities all of its "Electronic Bingo" Equipment subject to any exceptions set forth herein ("Equipment Removal"). Multimedia agrees to complete the Equipment Removal within 60 days of the Commencement Date. Multimedia agrees that if it becomes aware that it has any other "Electronic Bingo" Equipment in other locations in the State of Alabama, other than Indian lands, it will immediately notify the State and make arrangements for the expeditious removal of that "Electronic Bingo" Equipment from those additional locations.

3. Multimedia is a party to *Ozetta Hardy, et al. v. Whitehall Gaming Center, LLC, et al.* ("Hardy"), a civil lawsuit pending in the United States District Court for the Middle District of Alabama. The court has entered a preservation order in *Hardy* that requires the defendants, including Multimedia, to keep a limited amount of equipment at the White Hall facility. The State, therefore, understands that it may be necessary for Multimedia to retain a certain amount of equipment at White Hall for evidentiary purposes. Multimedia agrees that it will store the retained equipment at the White Hall facility or another secure location in the State and will not use the retained equipment for any other purpose. Multimedia agrees to provide the State with an inventory of any assets that remain following the Equipment Removal.

4. Multimedia is a party to several civil lawsuits (in both federal and state courts), in addition to *Hardy*, in which the legality of Multimedia's bingo equipment at VictoryLand may be at issue. The State understands that Multimedia likely will need to address some evidentiary issues in these cases and that it may be necessary for Multimedia to make arrangements for, or to follow court instructions on, retaining some of its property currently located at VictoryLand. Multimedia agrees that it will store the retained equipment at the VictoryLand facility or another secure location in the State and will not use the retained equipment for any other purpose.

Multimedia agrees to provide the State with an inventory of any assets that remain following the Equipment Removal.

5. The State agrees not to attempt to seize, raid, or confiscate any property located within the "Electronic Bingo" Facilities during the Equipment Removal, or otherwise use the Equipment Removal as a basis for any seizure, raid, or confiscation at the "Electronic Bingo" Facilities.

6. So long that they act in accordance with all applicable laws other than those that apply to gambling, Multimedia, and any person or entity working on its behalf, shall be allowed to conduct the Equipment Removal and to transport the "Electronic Bingo" Equipment out of the State without interference from law enforcement, the State, or any entities working on the State's behalf. Provided, however, that the State Department of Public Safety may, if necessary to effectuate the Equipment Removal, provide Multimedia and the persons working on its behalf during the Equipment Removal an escort to the State border, and that escort will ensure that Multimedia does not deliver the "Electronic Bingo" Equipment to any other location in the State of Alabama (except as provided for in this Agreement). Moreover, Multimedia will provide the State with a general accounting of all "Electronic Bingo" Equipment removed during the Equipment Removal.

7. The State agrees that by entering into and performing this Agreement, including removing Multimedia's "Electronic Bingo" Equipment from the State, Multimedia does not concede, and expressly denies, that any of its Bingo Equipment or any of its activities in the State heretofore have been or are unlawful. Multimedia agrees that by entering into and performing this Agreement, including allowing Multimedia to remove its "Electronic Bingo" Equipment from the State without forfeiture of the equipment or criminal prosecution, the State does not concede that any of Multimedia's "Electronic Bingo" Equipment or any of Multimedia's activities in the State heretofore have been or are lawful.

8. So long as Multimedia removes its Electronic Bingo Equipment from the State of Alabama immediately and does not deliver it to any other location within the State of Alabama (except as provided for in this Agreement) and acts in accordance with Alabama law other than Alabama law regarding gambling, the State agrees not to publicly criticize Multimedia for its act of agreeing to and conducting the Equipment Removal and agrees not to initiate or prosecute any criminal or civil actions against Multimedia or the "Electronic Bingo" Equipment under the gambling laws for any acts, events, or conduct prior to and/or in conjunction with the Equipment Removal.

9. The Parties agree to work cooperatively to resolve the White Hall Forfeiture in a mutually acceptable manner.

10. Multimedia agrees that it will not return to the State with any "Electronic Bingo" Equipment. Provided, however, that Multimedia may return to the State with any "Electronic Bingo" equipment if either (1) the Alabama Supreme Court holds that the game that is known as "Electronic Bingo," as played on machines of the kind heretofore used in the Known "Electronic Bingo" Facilities is lawful; or (2) the Alabama Constitution and/or Alabama Code is amended in a manner that makes the game that is known as "Electronic Bingo," as played on machines of the

kind heretofore used in the Known "Electronic Bingo" Facilities, lawful. Multimedia agrees to give the State 15-days' written notice prior to any reintroduction by Multimedia of any "Electronic Bingo" Equipment to the State subsequent to the Equipment Removal.

11. The State agrees not to assert that this Agreement applies to "Electronic Bingo" Equipment currently on Native American land. Multimedia agrees not to assert that this agreement in any way concedes or acknowledges that the legality of "Electronic Bingo" Equipment located on or transported to Native American Land. The State represents that it is currently attempting to work with federal authorities concerning the question of the legality of "Electronic Bingo" Equipment on Native American Land.

Entered into this the 21st day of February, 2011.

Luther Strange
Attorney General Luther Strange

C. Z. C.
Multimedia Games, Inc.
By its: General Counsel

AGREEMENT

This agreement ("Agreement") is entered into by and between IGT and the State of Alabama ("State") (collectively the "Parties"). The Parties agree as follows:

1. IGT currently has electronic bingo-related property ("Electronic Bingo Equipment") located at VictoryLand in Macon County, Country Crossing in Houston County (hereinafter collectively referred to as the "Known 'Electronic Bingo' Facilities"), and various facilities owned by the Poarch Band of Creek Indians. IGT also has Bingo Equipment in possession of the State, which was seized by the Task Force on Illegal Gambling at Greenetrack in Greene County, Alabama, and is currently subject to a forfeiture proceeding styled *State of Alabama v. 825 Electronic Gambling Devices, et al.*, Case No. CV-10-020, in the Circuit Court of Greene County, Alabama ("Greenetrack Forfeiture"). This property consists of machines, servers, and other equipment that play a game that has come to be known as "Electronic Bingo."

2. Beginning on a mutually agreeable date to be determined ("Commencement Date"), IGT will commence removing from the Bingo Facilities all of its Bingo Equipment subject to any exceptions set forth herein ("Equipment Removal"). IGT agrees to complete the Equipment Removal within 60 days of the Commencement Date.

3. The State agrees not to attempt to seize, confiscate or impair any property located within the Bingo Facilities during the Equipment Removal, or otherwise use the Equipment Removal as a basis for any seizure, raid, or confiscation at the Bingo Facilities.

4. IGT, and any person or entity working on its behalf, shall be allowed to conduct the Equipment Removal and to transport the Bingo Equipment out of the State without interference from local, county or State law enforcement, or any entities working on their behalf. Provided, however, that the State Department of Public Safety may, if necessary to effectuate the Equipment Removal, provide IGT and the persons working on its behalf during the Equipment Removal an escort to the State border, and that escort will ensure that IGT does not deliver the "Electronic Bingo" Equipment to any other location in the State of Alabama (except as provided for in this agreement). Moreover, IGT will provide the State with a general accounting of all "Electronic Bingo" Equipment removed during the Equipment Removal.

5. The State agrees that by entering into and performing this Agreement, including removing IGT's Bingo Equipment from the State, IGT does not concede, and expressly denies, that any of its Bingo Equipment or any of its activities in the State heretofore have been or are unlawful. Nothing in the terminology or any other aspect of this agreement is intended to convey that the State believes that this game is in fact the traditional game of bingo or that these machines are in any way legal under Alabama law. The State agrees not to publicly or privately criticize IGT during or at any time after the Equipment Removal. Both parties agree that they will not disparage the other party or make derogatory oral or written statements regarding the other party.

6. So long as IGT removes its Bingo Equipment from the State of Alabama and acts in accordance with Alabama law other than Alabama law regarding gambling, the State agrees not to initiate or prosecute any criminal or civil actions against IGT, or any of its employees,

agents, or affiliates, or the Bingo Equipment under the gambling laws of Alabama for any acts, events, or conduct prior to and/or in conjunction with the Equipment Removal.

7. The Parties agree to work cooperatively to resolve the Greenetrack Forfeiture in a mutually acceptable manner.

8. IGT agrees that it will not return to the State with any gaming-related equipment until one of the following occur: (1) the Alabama Supreme Court holds that the game of electronic bingo, as played on the Bingo Equipment heretofore used in the Bingo Facilities (hereinafter "Electronic Bingo"), is lawful; or (2) the Alabama Constitution and/or Alabama Code is amended in a manner that makes clear that the game of Electronic Bingo, as played on machines of this kind heretofore is lawful. IGT agrees to give the State 15-days written notice prior to the reintroduction by IGT of any "Electronic Bingo" Equipment to the State subsequent to the Equipment Removal.

9. This Agreement does not apply to any IGT property located on or transported to the Poarch Band of Creek Indians' facilities including, but not limited to, WindCreek in Atmore, Creek Casino in Wetumpka; and Creek Casino in Montgomery. IGT agrees not to assert that this agreement in any way concedes or acknowledges the legality of "Electronic Bingo" Equipment located on or transported to Native American Land. The State represents that it is currently attempting to work with federal authorities concerning the question of the legality of "Electronic Bingo" Equipment on Native American Land.

Entered into this the _____ day of February, 2011.



Attorney General Luther Strange

IGT
By: Robert C. Melendres
Its: Chief Legal Officer



February 9, 2011

MARK LERNER
Senior Vice President
for Law and Government
General Counsel/Secretary

Attorney General Luther Strange
Office of the Attorney General
501 Washington Avenue
Montgomery, AL 36130

Dear Attorney General Strange:

This is in response to your January 31 letter to Bally Technologies CEO Richard Haddrill. Bally Technologies respectfully disagrees with many of the assertions contained in your letter, and would like to explain the reasons for its disagreement. Nevertheless, because you are Alabama's chief law enforcement official, we respect your position and would like to explore ways in which we may cooperate.

We disagree with the characterization of our electronic bingo machines as "slot machines" and "gambling devices." No court ruling supports that conclusion. The Alabama Supreme Court had the opportunity in *Cornerstone* to declare that electronic bingo machines were slot machines, but did not do so. To the contrary, it said that the legality of the machines would be determined according to whether they satisfy the definition of bingo set forth in the opinion:

We further note that, if the trial court knows the legal characteristics of a bingo game, then any further proceedings can focus on whether *Cornerstone* and FTV have demonstrated that the electronic gaming machines at issue qualify under the legal definition of the term.

Cornerstone, 42 So.3d 65, 76 n.7 (Ala. 2009). Moreover, we further note that, under Alabama law, "items" used in the "playing phase" of a "lottery" are excluded from the definition of "gambling device" and "slot machine." See *Ala. Code* § 13A-12-20(5). Because Bally's terminals are linked so that multiple players compete for prizes, the system constitutes a "lottery" within the meaning of *Ala. Code* § 13A-12-20(6), which means that the devices cannot be gambling devices. The only courts to have addressed the issue have held that the definition of "slot machine" excludes video lottery terminals that have bill acceptors and resemble slot machines. *Dalton v. Pataki*, 835 N.E. 2d 1180, 1192-93 & n.8 (N.Y. 2005) (affirming in relevant part *Dalton v. Pataki*, 11 A.D.3d 62, 94-95 (N.Y. App. Div. 3d Dept. 2004)). Given that the Alabama statutes are taken virtually verbatim from New York's, these rulings by New York's appellate courts should be highly persuasive.

Bally entered the Alabama market in reliance upon, among other things, statements by Alabama's then Attorney General to the effect that the games of bingo as played on equipment such as that supplied by Bally were legal. Even the former Governor at one time acknowledged

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that Alabama laws permitted the use of equipment such as Bally's. Bally takes its obligations to comply with applicable law seriously and entered the Alabama market only after obtaining guidance from state and local officials, their counsel, and Bally's own counsel of the legality of its activities.

It is evident from your letter that you disagree with the former Attorney General and these other authorities. Accordingly, we will contact Sonny Reagan as suggested in your letter to discuss next steps. In the meantime, if you or Mr. Reagan needs any additional information, please contact Will Somerville, our lawyer in Alabama (205-250-8375), or me.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Mark Lerner', with a long, sweeping horizontal line extending to the right.

Mark Lerner

ML:cad

AGREEMENT

This agreement ("Agreement") is entered into by and between Bally Technologies, Inc. and/or its wholly-owned subsidiary Bally Gaming, Inc. (together "Bally") and the State of Alabama ("State") (collectively the "Parties"). The Parties agree as follows:

1. Bally currently has certain gaming-related property ("Electronic Bingo Equipment") located at VictoryLand in Macon County, Country Crossing in Houston County, and White Hall Entertainment Center ("White Hall") in Lowndes County (hereinafter collectively referred to as the "Known 'Electronic Bingo' Facilities"). This property consists of player terminals, servers, and other equipment that play a game that has come to be known as "Electronic Bingo." Nothing in the terminology or any other aspect of this agreement is intended to convey that the State believes that this game is in fact the traditional game of "bingo" or that these machines are in any way legal under Alabama law. The Known "Electronic Bingo" Facilities are the only locations in the State of Alabama, other than on Indian lands, where Bally is aware that it has "Electronic Bingo" Equipment.

2. Beginning on a mutually agreeable date to be determined ("Commencement Date"), Bally will commence removing from the Known "Electronic Bingo" Facilities all of its "Electronic Bingo" Equipment subject to any exceptions set forth herein ("Equipment Removal"). Bally agrees to complete the Equipment Removal within 30 days after the Commencement Date. Bally agrees that if it becomes aware that it has any other "Electronic Bingo" Equipment in other locations in the State of Alabama, other than Indian lands, it will immediately notify the State and make arrangements for the expeditious removal of that "Electronic Bingo" Equipment from those additional locations.

3. Bally is a party to *Ozetta Hardy, et al. v. Whitehall Gaming Center, LLC, et al.* ("*Hardy*"), a civil lawsuit pending in the United States District Court for the Middle District of Alabama. The court has entered a preservation order in *Hardy* that requires the defendants, including Bally, to keep a limited amount of equipment at the White Hall facility. The State, therefore, understands that it may be necessary for Bally to retain a certain amount of equipment at White Hall for evidentiary purposes. The parties agree that Bally will store the retained equipment at the White Hall facility or another secure location in the State and will not use the retained equipment for any other purpose. Bally agrees to provide the State with an inventory of any assets that remain following the Equipment Removal.

4. Bally is a party to several civil lawsuits (in both federal and state courts), in addition to *Hardy*, in which the legality of Bally's bingo equipment at VictoryLand may be at issue. The State understands that Bally likely will need to address some evidentiary issues in these cases and that it may be necessary for Bally to make arrangements for, or to follow court instructions on, retaining some of its property currently located at VictoryLand. Bally agrees that it will store the retained equipment at the VictoryLand facility or another secure location in the State and will not use the retained equipment for any other purpose. Bally agrees to provide the State with an inventory of any assets that remain following the Equipment Removal.

5. The State agrees not to attempt to seize, raid, or confiscate any property located within the "Electronic Bingo" Facilities during the Equipment Removal, or otherwise use the

Equipment Removal as a basis for any seizure, raid, or confiscation at the "Electronic Bingo" Facilities.

6. So long as they act in accordance with all applicable laws other than those that apply to gambling, Bally, and any person or entity working on its behalf, shall be allowed to conduct the Equipment Removal and to transport the "Electronic Bingo" Equipment out of the State without interference from law enforcement, the State, or any entities working on the State's behalf. Provided, however, that the State Department of Public Safety may, if necessary to effectuate the Equipment Removal, provide Bally and the persons working on its behalf during the Equipment Removal an escort to the State border, and that escort will ensure that Bally does not deliver the "Electronic Bingo" Equipment to any other location in the State of Alabama (except as provided for in this agreement). The State recognizes, understands, and acknowledges that it may be necessary for Bally to store the "Electronic Bingo" Equipment at a temporary location within the Alabama for a period of time following the Equipment Removal, prior to the ultimate transshipment of the Equipment out of state. Moreover, Bally will provide the State with a general accounting of all "Electronic Bingo" Equipment removed during the Equipment Removal and notify the State when the "Electronic Bingo" Equipment leaves the temporary storage facility for final shipment. The State will not criticize Bally's removal of its equipment contemplated herein. The parties acknowledge that any critical statements could jeopardize Bally's business in other jurisdictions.

7. The State agrees that by entering into and performing this Agreement, including removing Bally's "Electronic Bingo" Equipment from the State, Bally does not concede, and expressly denies, that any of its Bingo Equipment or any of its activities in the State heretofore have been or are unlawful. Bally agrees that by entering into and performing this Agreement, including allowing Bally to remove its "Electronic Bingo" Equipment from the State without forfeiture of the equipment or criminal prosecution, the State does not concede that any of Bally's "Electronic Bingo" Equipment or any of Bally's activities in the State heretofore have been or are lawful.

8. So long as Bally removes its Electronic Bingo Equipment from the State of Alabama immediately and does not deliver it to any other location within the State of Alabama (except as provided for in this Agreement) and acts in accordance with Alabama law other than Alabama law regarding gambling, the State agrees not to publicly criticize Bally for its act of agreeing to and conducting the Equipment Removal and agrees not to initiate or prosecute any criminal or civil actions against Bally or the "Electronic Bingo" Equipment under the gambling laws for any acts, events, or conduct prior to and/or in conjunction with the Equipment Removal.

9. Bally agrees that it will not return to the State with any "Electronic Bingo" Equipment. Provided, however, that Bally may return to the State with any "Electronic Bingo" equipment if either (1) the Alabama Supreme Court holds that the game that is known as "Electronic Bingo," as played on machines of the kind heretofore used in the Known "Electronic Bingo" Facilities is lawful; or (2) the Alabama Constitution and/or Alabama Code is amended in a manner that makes the game that is known as "Electronic Bingo," as played on machines of the kind heretofore used in the Known "Electronic Bingo" Facilities, lawful. Bally agrees to give the State 15-days' written advance notice prior to the reintroduction of "Electronic Bingo" Equipment in the future.

10. The Parties agree to work cooperatively to resolve the pending civil forfeiture actions relating to Greentrack and the White Hall Entertainment Center in a mutually acceptable manner.

11. The State agrees not to assert that this Agreement applies to "Electronic Bingo" Equipment currently on Native American land. Bally agrees not to assert that this agreement in any way concedes or acknowledges that the legality of "Electronic Bingo" Equipment located on or transported to Native American Land.

Entered into this the 17th day of February, 2011.



Attorney General Luther Strange



Bally Gaming, Inc.
By: Mark Lerner
Its: General Counsel



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

January 31, 2011

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.STATE.AL.US

Richard Haddrill, CEO
Bally Technologies
6601 South Bermuda Road
Las Vegas, Nevada 89119

Dear Mr. Haddrill:

As the new Attorney General of the State of Alabama, it is my duty to uniformly enforce Alabama's laws against illegal gambling. As a result of investigations conducted by state law-enforcement agents, it has been discovered that several manufacturers of gambling devices have allowed machines to be brought into this State, under the guise of so-called "electronic bingo," that are unlawful gambling machines in Alabama. It is my understanding that former Governor Riley previously provided you with notice of the law and a fair window of opportunity: (1) to withdraw from any business activity in Alabama that could be determined to constitute unlawful gambling activity and (2) to remove your machines and equipment from the State. I am writing to firmly reiterate that message.

Slot machines and other gambling devices, as defined in Ala. Code § 13A-12-20 (1975), are patently illegal in all 67 Alabama counties under § 13A-12-27 of the Code of Alabama and § 65 of the Alabama Constitution.¹ While several local constitutional amendments have authorized "bingo" in certain counties, no constitutional amendment has authorized slot machines or other illegal gambling devices in any county. Machines that accept cash or credit and then dispense cash value prizes based upon chance are slot machines under Alabama law and are not made legal by any bingo amendment. Likewise, no local bingo rule, regulation or ordinance can legally authorize slot machines. Two of the most respected trial judges in Alabama have issued rulings holding as much in the last two years.² For reasons of their own, in both of those instances, the gambling interests consciously chose not to appeal the rulings. I find it troubling that while the gambling interests have not appealed those rulings (as well as other adverse rulings arising out of venues such as Walker County), manufacturers and casinos have chosen to leave their machines in the State, and various casinos have threatened to open their doors. This suggests that rather than seeking an earnest resolution of these matters through the courts, casinos and manufacturers are hoping to delay and avoid a ruling by the appellate courts that the "slot machine" statute makes their conduct illegal.

¹ See *State ex rel. Tyson v. Ted's Game Enterprises*, 893 So. 2d 376, 380 (Ala. 2004) ("[W]e hold that Article IV, § 65, means what it says, and prohibits the Legislature from authorizing 'lotteries or gift enterprises' that involve games or devices in which chance predominates the outcome of the game, even if 'some skill' is involved" (emphasis added)).

² See *State v. American Gaming Sys.*, No. CV 08-1837 (Jefferson Cnty. Cir. Ct. Oct. 26, 2009) (Vowell, P.J.) (slip op. at 9-12); *Dep't of Tex. Veterans v. Dorning*, No. 07-S-2144-NE (N.D. Ala. Sept. 28, 2009) (Smith, J.) (slip op. at 29-52). If your attorneys have not provided you with copies of these opinions, I would be happy to do so.

Moreover, even putting to the side the question of the slot-machine statute, the Alabama courts have repeatedly held, in no uncertain terms, that the term "bingo" in these local constitutional amendments references only the game commonly or traditionally known as bingo. The Court's ruling in the recent *Cornerstone*³ case considered the application of that principle to the "electronic bingo" issue. The Court laid out six factors that, at a minimum, a game must possess to be considered legal "bingo" for the purposes of these amendments. These factors include the following:

1. Each player uses one or more cards with spaces arranged in five columns and five rows, with an alphanumeric or similar designation assigned to each space.
2. Alphanumeric or similar designations are randomly drawn and announced *one by one*.
3. In order to play, each player *must pay attention* to the values announced; if one of the values matches a value on one or more of the player's cards, the player *must physically act by marking his or her card accordingly*.
4. A player can fail to pay proper attention or to properly mark his or her card, and thereby miss an opportunity to be declared a winner.
5. A player must recognize that his or her card has a "bingo," i.e., a predetermined pattern of matching values, and in turn *announce to the other players* and the announcer that this is the case before any other player does so.
6. The game of bingo contemplates a group activity in which multiple players compete against each other to be the first to properly mark a card with the predetermined winning pattern and announce that fact.⁴

The Supreme Court also held that "the bingo amendments are exceptions to the lottery prohibition, and the exception should be narrowly construed."⁵ Consistent with that principle, my Office will strictly apply these six factors. These factors cannot be changed, diluted, waived, redefined or reinterpreted by local rule, local regulation, or local definitions. As the emphasized portions of those factors indicate, it appears to be impossible that the fully automated game called "electronic bingo" can be legal "bingo" for these purposes of these amendments.

Companies engaged in the electronic bingo business are taking an extraordinary risk of criminal liability if they assume that the Alabama Constitution's "narrow exception" for "the ordinary game of bingo" somehow authorizes the use of machines that meet the definition of a slot machine or gambling devices as defined in § 13A-12-20 (1975). As the Alabama Supreme Court has previously held in another case finding gambling machines illegal, it is not "unfair to require that one who deliberately goes perilously close to an area of

³ See *Barber v. Cornerstone Community Outreach, Inc.*, 42 So. 3d 65 (Ala. 2009).

⁴ *Id.* at 86.

⁵ *Id.* at 78.

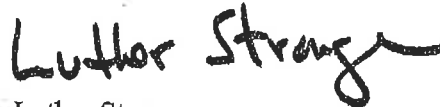
proscribed conduct shall take the risk that he may cross the line.”⁶ Having “take[n] the risk that” their venture “may cross the line,” it is not “unfair to require” that the owners bear the consequences of failure.”⁷

That consequence will be that any machine that meets the definition of a slot machine or gambling device will be seized, gambling proceeds will be seized, and forfeiture actions will be pursued. Moreover, persons who are in the possession of illegal slot machines or who are promoting illegal gambling will be subject to prosecution. The Supreme Court of Alabama has repeatedly said there is simply no other way to resolve this matter, short of the voluntary and immediate withdrawal of the machines from the State by the casinos and manufacturers.⁸

As the Attorney General, I am deeply concerned that many manufacturers and business operators may have a mistaken impression about the State’s willingness to enforce the law. It is out of this concern that I write this letter. So that there is no misunderstanding, I fully intend to carry out my duty to enforce the laws of Alabama.

Thank you for your consideration and quick action to address this matter. If you would like to discuss removing your equipment from the State without risk of prosecution during this window of opportunity, please contact Deputy Attorney General Sonny Reagan at your earliest opportunity. Mr. Reagan’s phone number is (334) 353-2186.

Sincerely,



Luther Strange
Attorney General

LS:la

⁶ See *Barber v. Jefferson County Racing Assoc.*, 960 So. 2d 599, 616 (Ala. 2006).

⁷ *Id.*

⁸ See *Tyson v. Macon County Greyhound Park*, 43 So. 3d 587, 589 (Ala. 2010) (“[a] declaratory judgment will generally not be granted where its only effect would be to decide matters which properly should be decided in a criminal action”); *Ex parte State*, No. 1090808, 2010 WL 2034825, at *25 n.20 (Ala. May 21, 2010) (holding that declaratory-judgment actions proposed by the Attorney General would have been “nullit[ies]” because, in part, “with certain exceptions not applicable here, the courts of this State do not have subject-matter jurisdiction in independent civil actions to interfere with the enforcement of the criminal laws”); *Tyson v. Jones*, Nos. 1090878 & 1090939, 2010 WL 2983188, at *5 (Ala. July 30, 2010) (noting that the Macon County DA had brought a declaratory-judgment action “despite this Court’s decision in” *Tyson*); *Barber v. Houston Economic Development Center, et al.*, No. 1090444 (Ala. Jan. 15, 2010) (unpublished order) (holding that “trial court lacks subject matter jurisdiction to interfere with criminal proceeding by civil action”); *State v. 825 Electronic Gambling Devices et al.*, Nos. 10901316, 1091317 (Ala. June 28, 2010) (unpublished order) (vacating orders enjoining law enforcement from seizure of gambling devices); *State v. 825 Electronic Gambling Devices et al.*, Nos. 1091340, 1091342 (Ala. July 1, 2010) (unpublished order) (vacating discovery orders enjoining law enforcement from seizure); *Redtop Market, Inc. v. State of Alabama*, No. 1060855, --- So. 3d ---, 2010 WL 5396112 (Dec. 30, 2010) (holding that trial court lacked subject matter jurisdiction over a case in which a gambling operator sought a declaratory judgment that its machines were legal).

AGREEMENT

This agreement ("Agreement") is entered into by and between Bally Technologies, Inc. and/or its wholly-owned subsidiary Bally Gaming, Inc. (together "Bally") and the State of Alabama ("State") (collectively the "Parties"). The Parties agree as follows:

1. Bally currently has certain gaming-related property ("Electronic Bingo Equipment") located at VictoryLand in Macon County, Country Crossing in Houston County, and White Hall Entertainment Center ("White Hall") in Lowndes County (hereinafter collectively referred to as the "Known 'Electronic Bingo' Facilities"). This property consists of player terminals, servers, and other equipment that play a game that has come to be known as "Electronic Bingo." Nothing in the terminology or any other aspect of this agreement is intended to convey that the State believes that this game is in fact the traditional game of "bingo" or that these machines are in any way legal under Alabama law. The Known "Electronic Bingo" Facilities are the only locations in the State of Alabama, other than on Indian lands, where Bally is aware that it has "Electronic Bingo" Equipment.
2. Beginning on a mutually agreeable date to be determined ("Commencement Date"), Bally will commence removing from the Known "Electronic Bingo" Facilities all of its "Electronic Bingo" Equipment subject to any exceptions set forth herein ("Equipment Removal"). Bally agrees to complete the Equipment Removal within 30 days after the Commencement Date. Bally agrees that if it becomes aware that it has any other "Electronic Bingo" Equipment in other locations in the State of Alabama, other than Indian lands, it will immediately notify the State and make arrangements for the expeditious removal of that "Electronic Bingo" Equipment from those additional locations.
3. Bally is a party to *Ozetta Hardy, et al. v. Whitehall Gaming Center, LLC, et al. ("Hardy")*, a civil lawsuit pending in the United States District Court for the Middle District of Alabama. The court has entered a preservation order in *Hardy* that requires the defendants, including Bally, to keep a limited amount of equipment at the White Hall facility. The State, therefore, understands that it may be necessary for Bally to retain a certain amount of equipment at White Hall for evidentiary purposes. The parties agree that Bally will store the retained equipment at the White Hall facility or another secure location in the State and will not use the retained equipment for any other purpose. Bally agrees to provide the State with an inventory of any assets that remain following the Equipment Removal.
4. Bally is a party to several civil lawsuits (in both federal and state courts), in addition to *Hardy*, in which the legality of Bally's bingo equipment at VictoryLand may be at issue. The State understands that Bally likely will need to address some evidentiary issues in these cases and that it may be necessary for Bally to make arrangements for, or to follow court instructions on, retaining some of its property currently located at VictoryLand. Bally agrees that it will store the retained equipment at the VictoryLand facility or another secure location in the State and will not use the retained equipment for any other purpose. Bally agrees to provide the State with an inventory of any assets that remain following the Equipment Removal.
5. The State agrees not to attempt to seize, raid, or confiscate any property located within the "Electronic Bingo" Facilities during the Equipment Removal, or otherwise use the

Equipment Removal as a basis for any seizure, raid, or confiscation at the "Electronic Bingo" Facilities.

6. So long as they act in accordance with all applicable laws other than those that apply to gambling, Bally, and any person or entity working on its behalf, shall be allowed to conduct the Equipment Removal and to transport the "Electronic Bingo" Equipment out of the State without interference from law enforcement, the State, or any entities working on the State's behalf. Provided, however, that the State Department of Public Safety may, if necessary to effectuate the Equipment Removal, provide Bally and the persons working on its behalf during the Equipment Removal an escort to the State border, and that escort will ensure that Bally does not deliver the "Electronic Bingo" Equipment to any other location in the State of Alabama (except as provided for in this agreement). The State recognizes, understands, and acknowledges that it may be necessary for Bally to store the "'Electronic Bingo' Equipment" at a temporary location within the Alabama for a period of time following the Equipment Removal, prior to the ultimate transshipment of the Equipment out of state. Moreover, Bally will provide the State with a general accounting of all "Electronic Bingo" Equipment removed during the Equipment Removal and notify the State when the "Electronic Bingo" Equipment leaves the temporary storage facility for final shipment. The State will not criticize Bally's removal of its equipment contemplated herein. The parties acknowledge that any critical statements could jeopardize Bally's business in other jurisdictions.

7. The State agrees that by entering into and performing this Agreement, including removing Bally's "Electronic Bingo" Equipment from the State, Bally does not concede, and expressly denies, that any of its Bingo Equipment or any of its activities in the State heretofore have been or are unlawful. Bally agrees that by entering into and performing this Agreement, including allowing Bally to remove its "Electronic Bingo" Equipment from the State without forfeiture of the equipment or criminal prosecution, the State does not concede that any of Bally's "Electronic Bingo" Equipment or any of Bally's activities in the State heretofore have been or are lawful.

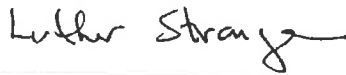
8. So long as Bally removes its Electronic Bingo Equipment from the State of Alabama immediately and does not deliver it to any other location within the State of Alabama (except as provided for in this Agreement) and acts in accordance with Alabama law other than Alabama law regarding gambling, the State agrees not to publicly criticize Bally for its act of agreeing to and conducting the Equipment Removal and agrees not to initiate or prosecute any criminal or civil actions against Bally or the "Electronic Bingo" Equipment under the gambling laws for any acts, events, or conduct prior to and/or in conjunction with the Equipment Removal.

9. Bally agrees that it will not return to the State with any "Electronic Bingo" Equipment. Provided, however, that Bally may return to the State with any "Electronic Bingo" equipment if either (1) the Alabama Supreme Court holds that the game that is known as "Electronic Bingo," as played on machines of the kind heretofore used in the Known "Electronic Bingo" Facilities is lawful; or (2) the Alabama Constitution and/or Alabama Code is amended in a manner that makes the game that is known as "Electronic Bingo," as played on machines of the kind heretofore used in the Known "Electronic Bingo" Facilities, lawful. Bally agrees to give the State 15-days' written advance notice prior to the reintroduction of "'Electronic Bingo' Equipment" in the future.

10. The Parties agree to work cooperatively to resolve the pending civil forfeiture actions relating to Greentrack and the White Hall Entertainment Center in a mutually acceptable manner.

11. The State agrees not to assert that this Agreement applies to "Electronic Bingo" Equipment currently on Native American land. Bally agrees not to assert that this agreement in any way concedes or acknowledges that the legality of "Electronic Bingo" Equipment located on or transported to Native American Land.

Entered into this the 17th day of February, 2011.



Attorney General Luther Strange



Bally Gaming, Inc.
By: Mark Lerner
Its: General Counsel