

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2005**

**A N A C T**

**ENABLING THE DIVISION OF LOTTERIES TO ENTER INTO A MASTER VIDEO LOTTERY TERMINAL CONTRACT WITH UTGR, INC. AND TO ENTER INTO A MASTER VIDEO LOTTERY TERMINAL CONTRACT WITH NEWPORT GRAND JAI ALAI, INC.**

Introduced By: Senators J Montalbano, and Connors

Date Introduced: March 17, 2005

Referred To: Senate Constitutional & Gaming Issues

It is enacted by the General Assembly as follows:

1           SECTION 1. Purpose. The purpose of this act is to induce UTGR, as the applicant for  
2 the video lottery terminal license at Lincoln Park, to construct, develop and invest (or to cause to  
3 be constructed, developed and invested) an aggregate one hundred twenty-five million dollars  
4 (\$125,000,000) of total project costs, including "hard" and allowable "soft" costs, in or related to  
5 improvements, renovations and additions to Lincoln Park and appurtenant real and personal  
6 property in order that the state's revenues from Lincoln Park will be increased, thereby increasing  
7 the total funds available to the state and its citizens. It is the intent of the general assembly that  
8 this act, being necessary for the welfare of the state and its citizens, shall be liberally construed so  
9 as to effectuate its purposes, including without limitation, the state's attempt to minimize certain  
10 commercial risks faced by UTGR when it operates the facility and the business conducted  
11 thereon.

12           The further purpose of this act is to induce NGJA, as the applicant for the video lottery  
13 terminal license at Newport Grand, to construct, develop and invest (or to cause to be constructed,  
14 developed and invested) an aggregate twenty million dollars (\$20,000,000) of total project costs,  
15 including "hard" and allowable "soft" costs, in or related to improvements, renovations and  
16 additions to Newport Grand and appurtenant real and personal property in order that the state's  
17 revenues from Newport Grand will be increased, thereby increasing the total funds available to

1 the state and its citizens. It is the intent of the general assembly that this act, being necessary for  
2 the welfare of the state and its citizens, shall be liberally constructed so as to effectuate its  
3 purposes, including, without limitation, the state's attempt to minimize certain commercial risks  
4 faced by NGJA when it operates the facility and the business conducted thereon.

5 SECTION 2. Definitions. For purposes of this act, the following terms shall have the  
6 following meanings:

7 (a) "Acquisition" means the acquisition of the Wembley US Group by BLB or a BLB  
8 Affiliate.

9 (b) "Advisory committee" has the meaning set forth in Section 3(a) (6) of this act.

10 (c) "BLB" means BLB Investors, L.L.C., a Delaware limited liability company.

11 (d) "BLB affiliate" means any entity controlling, controlled by or under common control  
12 with BLB.

13 (e) "Division" means the division of lotteries within the department of administration  
14 and/or any successor as party to the master contract.

15 (f) "Effective date" for Lincoln Park means the first date on which all the conditions in  
16 Section 6(a) of this act have been satisfied.

17 (g) "Force majeure" means any one or more causes beyond the reasonable control of the  
18 state or any party to the master contract, including, but not limited to, strikes, lockouts and other  
19 labor disputes, accidents, war, terrorism, invasions, riot, rebellion, civil commotion or  
20 disturbances, the inability of any party to secure the necessary governmental permits to carry out  
21 its obligations under the master contract notwithstanding the exercise of commercially reasonable  
22 efforts, any act or judgment of any court granted in any legal proceeding, acts of God such as fire,  
23 wind or lightning, earthquakes or other severe weather, delays by subcontractors to provide  
24 services due to circumstances such as those cited above.

25 (h) "Gambling game" means any game having the attributes of chance, consideration and  
26 prize, including without limitation any banking or percentage game played with cards, dice,  
27 dominoes, or any electronic, electrical or mechanical device or machine for money, property, or  
28 any representation of value.

29 (i) "Gaming facility" means any facility or venue offering one or more gambling games  
30 that is physically located, in whole or in part, in the state, but excluding: (i) bingo; (ii) facilities  
31 or venues that only on an occasional basis host such games and then only for the benefit of  
32 religious, charitable, educational or fraternal organizations, volunteer fire and rescue companies  
33 or other similar non-profit organizations; and (iii) facilities or venues operated pursuant to the  
34 IGRA, where such operation is authorized without state consent and does not operate any

1 gambling games other than gambling games specifically authorized under Rhode Island law as of  
2 the effective date of this act unless the right of such facility to operate gambling games other than  
3 those specifically authorized under Rhode Island law as of the effective date of this act is not  
4 derived from an act of the Rhode Island General Assembly, an amendment to the Rhode Island  
5 constitution, or a voter referendum conducted pursuant to the Rhode Island constitution  
6 permitting the operation of such other gambling games elsewhere in the state other than Lincoln  
7 Park or Newport Grand.

8 (j) "Gaming facility revenues" means any and all gross receipts derived from all  
9 gambling games at a gaming facility less the total of all sums paid out as winnings to patrons,  
10 including the cash equivalent of any merchandise or thing of value included in a jackpot or  
11 payout.

12 (k) "IGRA" means the Indian Gaming Regulatory Act, 25 U.S.C. Sections 2701-2721, 18  
13 U.S.C. Sections 1166-1168.

14 (l) "Lincoln Park Investment requirement" has the meaning set forth in Section 3(b) (l)  
15 of this act.

16 (m) "Lincoln Park Investment requirement assets" has the meaning set forth in Section  
17 3(b)(l) of this act.

18 (n) "Lincoln Park, Inc." means Lincoln Park, Inc., a Rhode Island corporation, f/k/a  
19 Burrillville Racing Association, Inc.

20 (o) "Lincoln Park" means the gaming and entertainment facility located at 1600  
21 Louisquisset Pike, Lincoln, Rhode Island.

22 (p) "Master contract" means that certain master video lottery retailer contract to be  
23 entered into by and between the division and UTGR as authorized herein or between the division  
24 and NGJA as authorized herein.

25 (q) "Net terminal income" has the same meaning presently given the term in section 42-  
26 61.2-1(3) of the general laws of the state.

27 (r) "NGJA" means Newport Grand Jai Alai, LLC, a Rhode Island limited liability  
28 company. References herein to "NGJA" shall include its permitted successors and assigns under  
29 the master contract.

30 (s) "NGJA affiliate" means any entity controlling, controlled by or under common control  
31 with NGJA.

32 (t) "Newport Grand Investment requirement" has the meaning set forth in section 4(b)(1)  
33 of this act.

34 (u) "Newport Grand Investment requirement assets" has the meaning set forth in section

1 4(b)(1) of this act.

2 (v) "Newport Grand" means the gaming and entertainment facility located at 150 Admiral  
3 Kalbfus Road, Newport, Rhode Island.

4 (w) "Subsequent year" means each consecutive twelve (12) month period ending on the  
5 last day of the calendar month preceding an anniversary of the opening of a new gaming facility.

6 (x) "Adjusted Base Year Net Terminal Income" means Lincoln Park's or Newport  
7 Grand's, as applicable, two (2) year average net terminal income during the twenty-four (24)  
8 calendar months ending on the last day of the calendar month preceding the opening of a new  
9 gaming facility increased by the change in the December Consumer Price Index – All Urban  
10 Consumers (CPI-U) for the immediately preceding year published by the Bureau of Labor  
11 Statistics of the United States Government or its successor agency from the index for the  
12 December immediately preceding the opening of a new gaming facility, not to exceed three  
13 percent (3.0%) per year change in any year.

14 (y) "Slippage protection" shall mean: for any subsequent year (other than the first  
15 subsequent year occurring after the base year), whenever the net terminal income is less than the  
16 adjusted base year net terminal income, the blended rate shall be increased to that rate that would  
17 have eliminated the resulting adverse impact from that difference upon UTGR or NGJA.  
18 Provided, however, that for any subsequent year (including the first subsequent year) in which an  
19 amount equal to twice the first six (6) months' net terminal income for such subsequent year shall  
20 not exceed ninety percent (90%) of the adjusted base year net terminal income for such  
21 subsequent year, the aforesaid increase to the blended rate shall occur beginning in the seventh  
22 month of such subsequent year.

23 (z) "Blended Rate" for Lincoln Park means [(number of Existing Authorized Terminals in  
24 operation)/ total number of video lottery terminals in operation for the calculation period) x  
25 .2885; plus (number of Additional Authorized Terminals in operation for the calculation period  
26 /total number of video lottery terminals in operation for the calculation period) x .2600].  
27 "Blended Rate" for Newport Grand means [(number of Existing Authorized Terminals in  
28 operation)/ total number of video lottery terminals in operation for the calculation period) x  
29 .2600; plus (number of Additional Authorized Terminals in operation for the calculation period  
30 /total number of video lottery terminals in operation for the calculation period) x .2600].

31 (aa) "State" means the state of Rhode Island.

32 (bb) "State consent" means the failure by the state to exhaust all of its administrative and  
33 judicial remedies to oppose the taking or the conversion of land in Rhode Island into trust under  
34 25 U.S.C. section 465 where such taking or conversion is for the purpose of gaming under IGRA.

1 (cc) "Term" means the term of the master contract, which is five (5) years from the  
2 Effective Date of the master contract; provided further that UTGR shall have two successive five  
3 (5) year extension options and NGJA shall have one five (5) year extension option, which shall be  
4 considered part of the term, subject to the following:

5 (i) UTGR's right to exercise the extension options shall be subject to UTGR not being in  
6 default of any material covenant, term or condition of the master contract that has not been cured  
7 within the applicable cure periods therefore set forth in the master contract; and further subject to  
8 the requirement that there shall be not less than one thousand three hundred (1,300) full time  
9 equivalent employees at Lincoln Park at the time the option is exercised and on average for the  
10 one year period preceding the date the option is exercised, as confirmed by the department of  
11 labor and training. For purpose of satisfying this requirement, full time equivalent employee  
12 means any employee who (1) works a minimum of thirty (30) hours per week or two (2) or more  
13 part time employees whose combined weekly hours equal or exceed thirty (30) hours per week  
14 and (2) earns no less than one hundred fifty percent (150%) of the hourly minimum wage  
15 prescribed by Rhode Island law. In addition to those employees of UTGR, employees with  
16 lessees, concessionaires, or other third parties, but excluding any state employees, shall be  
17 included for purposes of meeting this requirement.

18 (ii) NGJA's right to exercise its extension option shall be subject to NGJA not being in  
19 default of any material covenant, term or condition of the master contract that has not been cured  
20 within the applicable cure periods therefore set forth in the master contract; and further subject to  
21 the requirement that there shall be not less than three hundred sixty (360) full time equivalent  
22 employees at Newport Grand at the time the option is exercised and on average for the one year  
23 period preceding the date the option is exercised, as confirmed by the department of labor and  
24 training. For purpose of satisfying this requirement, full time equivalent employee means any  
25 employee who (1) works a minimum of thirty (30) hours per week or two (2) or more part time  
26 employees whose combined weekly hours equal or exceed thirty (30) hours per week and (2)  
27 earns no less than one hundred fifty percent (150%) of the hourly minimum wage prescribed by  
28 Rhode Island law. In addition to those employees of NGJA, employees with lessees,  
29 concessionaires, or other third parties, but excluding any state employees, shall be included for  
30 purposes of meeting this requirement.

31 (dd) "UTGR" means UTGR, Inc., a Delaware corporation and member of the Wembley  
32 US Group, and, upon the Effective Date of the Acquisition, a direct or indirect wholly-owned  
33 subsidiary of BLB, and including any UTGR business affiliate. References herein to "UTGR"  
34 shall include its permitted successors and assigns under the master contract.

1 (ee) "UTGR business affiliate" means any corporation, trust, partnership, joint venture or  
2 any other form of business entity that controls, is controlled by or is under common control with,  
3 UTGR.

4 (ff) "Video lottery terminal" has the meaning given the term in section 42-61.2-1(7) of  
5 the General Laws of the state as in effect on the date hereof and as operated by the division on the  
6 date hereof.

7 (gg) "Wembley" means Wembley, plc, an entity formed under the laws of the United  
8 Kingdom.

9 (hh) "Wembley US Group" means the United States direct and indirect subsidiaries of  
10 Wembley in existence on the Effective Date of the Acquisition.

11 (ii) Base Year means the consecutive twelve (12) month period ending on the last day of  
12 the calendar month preceding the opening of a new gaming facility.

13 SECTION 3. Authorized procurement of UTGR master contract

14 (a) Notwithstanding any provisions of the general laws or regulations adopted thereunder  
15 to the contrary, including, but not limited to, the provisions of Chapter 2 of Title 37 and Chapter  
16 61 of Title 42 of the General Laws, and the provisions of section 42-61.2-7, the division is hereby  
17 expressly authorized and empowered to enter into the master contract with UTGR for the term  
18 and for the following purposes, all of which shall be set forth in more particular detail in the  
19 master contract. The division is further authorized to approve the transfer of the video lottery  
20 retailer license held by Lincoln Park, Inc. to UTGR and:

21 (1) To license 4,752 video lottery terminals at Lincoln Park to UTGR during the term,  
22 including first the 3,002 existing authorized video lottery terminals, and replacements thereof  
23 from time to time, at Lincoln Park (herein, the "Existing Authorized Terminals"), and then 1,750  
24 additional video lottery terminals, and replacements thereof from time to time, as are hereby  
25 authorized for Lincoln Park (herein, the "Additional Authorized Terminals");

26 (2) Subject to adjustment as provided herein, to fix in the master contract the allocation of  
27 net terminal income attributable to the Existing Authorized Terminals as follows:

28 (i) To UTGR when it shall become the licensed video lottery retailer: twenty-eight and  
29 eighty-five hundredths percent (28.85%);

30 (ii) The division shall have the authority to determine the placement and location of the  
31 Existing Authorized Terminals under the terms of this act and the master contract.

32 (3) Subject to adjustment as provided herein, to fix in the master contract the allocation of  
33 net terminal income attributable to the Additional Authorized Terminals as follows:

34 (i) To UTGR when it shall become the licensed video lottery retailer: twenty-six percent

1 (26%);

2 (ii) The division shall have the authority to determine the placement and location of the  
3 Terminals under the terms of this act and the master contract.

4 (4) To provide in the master contract that the allocations set forth above in Section  
5 3(a)(2)(i) and Section 3(a)(3)(i) shall be calculated on a pro rata basis as follows:

6 (i) net terminal income x [(number of Existing Authorized Terminals in operation)/total  
7 number of video lottery terminals in operation for the calculation period) x .2885; plus

8 (ii) (number of Additional Authorized Terminals in operation for the calculation period  
9 /total number of video lottery terminals in operation for the calculation period) x .2600].

10 (5) To include in the master contract all other terms and conditions appropriate to  
11 contracts of this type, as acceptable to the division.

12 (6) To establish an advisory committee (the “advisory committee”), the purpose of which  
13 shall be to consider and advocate programs and initiatives from time to time to benefit all  
14 constituencies with an interest in the continued economic success of Lincoln Park, and in  
15 particular, the recommendation of steps to coordinate the operation of Lincoln Park with the state  
16 and municipal agencies to maximize the efforts of joint marketing campaigns designed to benefit  
17 both Lincoln Park and other state-based businesses. The advisory committee shall meet  
18 quarterly, shall select from one of its members a chairperson and shall adopt by-laws to govern its  
19 meetings. The advisory committee shall consist of seven (7) members as follows: One (1)  
20 member representing UTGR or a UTGR business affiliate appointed by UTGR; one (1) member  
21 representing the town of Lincoln, Rhode Island, appointed by the Lincoln town administrator  
22 with the advice and consent of the Lincoln town council; one (1) member representing the Rhode  
23 Island Convention Center Authority, which may be either a member of the board of ~~divisioners~~  
24 commissioners or a designee appointed by the board; one (1) member representing the Greater  
25 Providence Chamber of Commerce appointed by that entity; one (1) member representing the  
26 Northern Rhode Island Chamber of Commerce appointed by that entity, one (1) member  
27 representing the Providence-Warwick Convention Visitors Bureau appointed by that entity, and  
28 one public member appointed by the governor.

29 (7) To provide for the following limitations on the use of Lincoln Park during the term:  
30 no hotel will be constructed or operated at Lincoln Park or by the then owner or operator of  
31 Lincoln Park (or their respective commonly controlled affiliates) in close proximity to the  
32 facility; and the facility will not be marketed as a venue for conventions or events of the type  
33 which are part of the target market for the Rhode Island convention center authority, the  
34 Providence Performing Arts Center, or the Veterans Memorial Auditorium, including Broadway

1 or Broadway-type plays, or any theatrical performances of a musical, non-musical, or comedic  
2 variety (except that this limitation shall not prohibit the facility from being marketed to hold, and  
3 from holding, holiday fairs for local businesses, concerts, sporting and other entertainment events  
4 which are open generally to the public and if held in an indoor events venue at Lincoln Park, with  
5 no stage house, and with a non-fixed seating capacity of such venue not to exceed 1,500 people  
6 for musical concerts and comedy shows, and 2,100 people for all other events).

7 (8) To provide in the Master Contract for slippage protection as defined in Section 2(y).

8 (9) To provide in the Master Contract for adjustment in the blended rate during the  
9 eleventh through fifteenth years of the term as set forth in Section 5(b).

10 (b) Under the terms of the master contract authorized under this act, UTGR shall agree  
11 that during the term it shall undertake, among others, the following obligations:

12 (1) UTGR will invest, in the aggregate, within three (3) years following the effective date  
13 of the master contract in accordance with a schedule set forth in the master contract (but subject  
14 to an extension of the original three (3) year period as set forth in Section 3(c) below), at least one  
15 hundred twenty-five million dollars (\$125,000,000) of total project costs, including “hard” and  
16 allowable “soft” costs (the “Lincoln Park investment requirement”), in connection with: (i)  
17 additions, renovations and/or improvements to Lincoln Park and to appurtenant real or personal  
18 property, including without limitation, improvements designed and constructed to provide access  
19 to Lincoln Park; and (ii) performing UTGR's obligations regarding investment requirements  
20 under the master contract (“Lincoln Park investment requirement assets”). “Hard costs” shall  
21 mean all costs that in accordance with United States generally accepted accounting principles  
22 (“GAAP”) are appropriately chargeable to the capital accounts of UTGR or would be so  
23 chargeable either with an election by UTGR or but for the election of UTGR to expense the  
24 amount of the item, and “soft costs” shall mean all other costs appropriately chargeable to the  
25 investment requirement which are not hard costs in accordance with GAAP. In determining  
26 whether the investment requirement has been satisfied, soft costs in excess of ten million dollars  
27 (\$10,000,000) shall be excluded. Provided further, that none of the expenditures in this subsection  
28 shall qualify as eligible expenditures for purposes of any credit, including historic tax credits as  
29 provided in chapter 44-33.2 and enterprise zone credits as provided in chapter 42-64-3.

30 (2) On or before the dates set forth in the master contract and in all events on that date  
31 which is 90 days after the third anniversary of the effective date of the master contract (as such  
32 original three (3) year period may have been extended as set forth in Section 3(c) below), UTGR  
33 shall submit to the division UTGR's certification, certified by a certified public accounting firm  
34 acceptable to the division and using procedures approved by the division not inconsistent with



1 GAAP, providing its professional opinion, on behalf of itself and its applicable UTGR business  
2 affiliates as to the aggregate amounts expended, allocated between “hard” and allowable “soft”  
3 costs in respect of the investment requirement, so as to enable the division to measure UTGR's  
4 investment requirement assets and to confirm UTGR's compliance with its obligation under  
5 Section 3(b)(1) hereof. UTGR shall pay all costs of obtaining and preparing the professional  
6 opinion obtained from the certified public accounting firm required by this subsection; and

7 (c) The master contract shall also provide, without limitation, that the division shall be  
8 entitled to, among other things, terminate the master contract if UTGR fails to fulfill the  
9 aggregate investment requirement pursuant to Section 3(b)(1) hereof prior to that date which is  
10 three (3) years from the effective date of the master contract, unless such failure is attributable to:  
11 (i) the failure to receive the necessary local approvals in connection with the improvements,  
12 construction and other activities referenced in Section 3(b)(1), notwithstanding the use of UTGR's  
13 commercially reasonable efforts to obtain such approval; (ii) delays attendant to any litigation  
14 brought by any third-party contesting in any way the construction of the improvements and  
15 having the effect of delaying the expenditure of the investment requirement and which litigation  
16 is ultimately resolved in a manner allowing the expenditure of the investment requirement to  
17 proceed; or (iii) the occurrence of one or more force majeure events beyond the control of UTGR.  
18 The aforesaid original three (3) year period shall be extended by the number of days delay  
19 occurring as a result of any one or more of the events described in clauses (i), (ii) or (iii) of the  
20 preceding sentence.

21 (d) The master contract shall also provide that, following completion of the investment  
22 requirement, UTGR shall maintain Lincoln Park in a manner substantially consistent with first  
23 class racinos operated elsewhere in the United States pursuant to regulations adopted by the  
24 division and approved by the permanent joint committee on state lottery.

25 SECTION 4. [Authorized procurement of NGJA master contract](#)

26 (a) Notwithstanding any provisions of the general laws or regulations adopted thereunder  
27 to the contrary, including, but not limited to, the provisions of Chapter 2 of Title 37 and Chapter  
28 61 of Title 42 of the General Laws, and the provisions of section 42-61.2-7, the division is hereby  
29 expressly authorized and empowered to enter into the master contract with NGJA for the term  
30 and for the following purposes, all of which shall be set forth in more particular detail in the  
31 master contract; and

32 (1) To license 2,101 video lottery terminals at Newport Grand during the term, including  
33 first the 1,301 currently authorized video lottery terminals, and replacements thereof from time to  
34 time, at Newport Grand (herein, the “Existing Authorized Terminals”), and then 800 additional

1 video lottery terminals, and replacements thereof from time to time, as are hereby authorized for  
2 Newport Grand (herein, the “Additional Authorized Terminals”);

3 (2) Subject to adjustment as provided herein, to fix in the master contract the allocation of  
4 net terminal income of twenty-six percent (26%).

5 (i) The division shall have the authority to determine the placement and location of the  
6 Terminals under the terms of this act and the master contract.

7 (3) To include in the master contract all other terms and conditions appropriate to  
8 contracts of this type, as acceptable to the division.

9 [\(4\) To provide in the Master Contract for slippage protection as defined in 2\(y\).](#)

10 (b) Under the terms of the master contract authorized under this act, NGJA shall agree  
11 that during the term it shall undertake, among others, the following obligations:

12 (1) NGJA will invest, in the aggregate, within three (3) years following the effective date  
13 of the master contract in accordance with a schedule set forth in the master contract (but subject  
14 to an extension of the original three (3) year period as set forth in Section 4(c) below), at least  
15 twenty million dollars (\$20,000,000) of total project costs, including “hard” and allowable “soft”  
16 costs (the “Newport Grand investment requirement”), in connection with: (i) additions,  
17 renovations and/or improvements to Newport Grand and to appurtenant real or personal property,  
18 including without limitation, improvements designed and constructed to provide a hotel of at least  
19 ninety (90) rooms; and (ii) performing NGJA's obligations regarding investment requirements  
20 under the master contract (“Newport Grand investment requirement assets”). “Hard costs” shall  
21 mean all costs that in accordance with United States generally accepted accounting principles  
22 (“GAAP”) are appropriately chargeable to the capital accounts of NGJA or would be so  
23 chargeable either with an election by NGJA or but for the election of NGJA to expense the  
24 amount of the item, and “soft costs” shall mean all other costs appropriately chargeable to the  
25 investment requirement which are not hard costs in accordance with GAAP. In determining  
26 whether the investment requirement has been satisfied, soft costs in excess of two million five  
27 hundred thousand dollars (\$2,500,000) shall be excluded. Provided further, that none of the  
28 expenditures in this subsection shall qualify as eligible expenditures for purposes of any credit,  
29 including historic tax credits as provided in chapter 44-33.2 and enterprise zone credits as  
30 provided in chapter 42-64.3.

31 (2) On or before the dates set forth in the master contract and in all events on that date  
32 which is 90 days after the third anniversary of the effective date of the master contract (as such  
33 original three (3) year period may have been extended as set forth in Section 4(c) below), NGJA  
34 shall submit to the division NGJA's certification, certified by a certified public accounting firm

1 acceptable to the division and using procedures approved by the division not inconsistent with  
2 GAAP, providing its professional opinion, on behalf of itself and its applicable NGJA business  
3 affiliates as to the aggregate amounts expended, allocated between “hard” and allowable “soft”  
4 costs in respect of the investment requirement, so as to enable the division to measure NGJA's  
5 investment requirement assets and to confirm NGJA's compliance with its obligation under  
6 Section 4(b)(1) hereof. NGJA shall pay all costs of obtaining and preparing the professional  
7 opinion obtained from the certified public accounting firm required by this subsection; and

8 (c) The master contract shall also provide, without limitation, that the division shall be  
9 entitled to, among other things, terminate the master contract if NGJA fails to fulfill the aggregate  
10 investment requirement pursuant to Section 4(b)(1) hereof prior to that date which is three (3)  
11 years from the effective date of the master contract, unless such failure is attributable to: (i) the  
12 failure to receive the necessary local approvals in connection with the improvements,  
13 construction and other activities referenced in Section 4(b)(1), notwithstanding the use of NGJA's  
14 commercially reasonable efforts to obtain such approval; (ii) delays attendant to any litigation  
15 brought by any third-party contesting in any way the construction of the improvements and  
16 having the effect of delaying the expenditure of the investment requirement and which litigation  
17 is ultimately resolved in a manner allowing the expenditure of the investment requirement to  
18 proceed; or (iii) the occurrence of one or more force majeure events beyond the control of NGJA.  
19 The aforesaid original three (3) year period shall be extended by the number of days delay  
20 occurring as a result of any one or more of the events described in clauses (i), (ii) or (iii) of the  
21 preceding sentence.

22 (d) The master contract shall also provide that, following completion of the investment  
23 requirement, NGJA shall maintain Newport Grand in a first class manner pursuant to regulations  
24 adopted by the division and approved by the permanent joint committee on state lottery.

25 SECTION 5. Slippage protection. -- (a)(1) In view of the current and prospective  
26 economic benefits afforded to the state and to all other parties benefiting from the commercial  
27 activities operated at Lincoln Park and Newport Grand, and in order to better assure, throughout  
28 the term, that Lincoln Park and Newport Grand and the businesses conducted thereon will be able  
29 to compete fairly with any other gaming facilities operating from time to time within the state,  
30 during the term, the state, including any agency or instrumentality thereof, does hereby expressly  
31 pledge and agree that the owners of Lincoln Park and Newport Grand and the business operated  
32 thereon shall be afforded slippage protection subject to the following: Lincoln Park shall be  
33 afforded slippage protection if:

34 (i) During the term of the master contract, a new gaming facility in Rhode Island

1 becomes operational;

2 (ii) Neither UTGR nor any UTGR business affiliate is involved in any way in the  
3 operation or ownership of such new gaming facility; and

4 (iii) UTGR is not in default of any material covenant, term or condition of the master  
5 contract that has not been cured within the applicable cure periods therefore set forth in the  
6 master contract.

7 (a)(2) Newport Grand shall be afforded slippage protection if:

8 (i) During the term of the master contract, a new gaming facility in Rhode Island  
9 becomes operational;

10 (ii) Neither NGJA nor any NGJA business affiliate is involved in any way in the  
11 operation or ownership of such new gaming facility; and

12 (iii) NGJA is not in default of any material covenant, term or condition of the master  
13 contract that has not been cured within the applicable cure periods therefore set forth in the  
14 master contract.

15 (b) During the eleventh through fifteenth years of the UTGR term, in addition to slippage  
16 protection as provided in this section, the blended rate shall be adjusted by twenty five percent  
17 (25%) of the annual change in the December Consumer Price index – All Urban Consumers  
18 (CPI-U) for the immediately preceding year, published by the Bureau of Labor Statistics of the  
19 United States Department of Labor and ~~(ii)~~ minus the annual growth rate in net terminal income  
20 for the prior year. In no case shall the annual adjustment increase or decrease the blended rate as  
21 the same may have been adjusted for slippage protection as provided for in this section by more  
22 than one percent (1.0%).

23 (c) Except as currently exists for Lincoln Park and Newport Jai Ali under the provisions  
24 of subsection 42-61.2-7(a)(2) and except as hereinafter expressly provided in Section 5 hereof,  
25 the state hereby expressly agrees under this act: (i) not to enter into any agreement or adopt,  
26 modify or amend any law, rule or regulation that would impair the rights of UTGR or NGJA  
27 under this act and under the master contract; and (ii) that the failure to provide UTGR or NGJA  
28 with slippage protection as described in Section 5 and in the master contract shall constitute a  
29 violation of this act and a breach of the master contract, and shall entitle UTGR or NGJA to bring  
30 a claim against the division and the state for actual damages and/or specific performance and/or  
31 other equitable relief, notwithstanding any limitation on such damages imposed by the laws of the  
32 state. For purposes of computing the actual damages with respect to any claim by UTGR or  
33 NGJA against the state or the division for a failure to provide slippage protection pursuant to the  
34 provisions of this act and the master contract, “actual damages” means the positive difference

1 between: (i) the gaming facility revenues UTGR or NGJA would have retained had the state or  
2 the division provided slippage protection for the period of time that the state or division fails to  
3 provide slippage protection during the term of the master contract; and (ii) the gaming facility  
4 revenues actually retained by UTGR or NGJA.

5 (d) Notwithstanding anything in this Section 5 to the contrary, nothing in this act shall  
6 limit the authority of the division to enforce its rights under the master contract or the state to  
7 enact, adopt and enforce laws and regulations which are of general application.

8 SECTION 6 Prerequisites to state undertaking construction so as to provide additional  
9 access/egress to Lincoln Park.

10 (a) As a prerequisite to the state's obligation to provide improvements to the access  
11 and/or egress to Lincoln Park pursuant to the provisions of subsection (b) hereof, it shall be  
12 required that all the conditions set forth in the master contract be satisfied, including the  
13 following:

14 (1) The passage of this act by the General Assembly;

15 (2) The closing of the Acquisition by BLB, or a BLB Affiliate, of the Wembley US  
16 Group, including without limitation, UTGR;

17 (3) The master contract has been signed by UTGR and the director or the acting director  
18 of the division of lotteries. Provided, however, in the absence of a director or acting director, the  
19 governor shall be authorized to sign the initial master contract on behalf of the division.

20 (4) The completed transfer to UTGR by Lincoln Park, Inc. of the video lottery retailer  
21 license issued to Lincoln Park, Inc. by the division, including the approval by the division of  
22 UTGR as a licensed video lottery retailer; and

23 (5) The completed transfer to UTGR by Lincoln Park, Inc. of the pari-mutuel license  
24 issued to Lincoln Park, Inc. by the department of business regulation, including the approval by  
25 the department of business regulation of UTGR as a pari-mutuel licensee.

26 (b) The state, acting through the Rhode Island department of transportation or other  
27 relevant agency shall provide the necessary road cuts, bridges, tunnels, highway widening, traffic  
28 lights and the related signage on and from Route 146 as may be necessary in order to improve  
29 access to and egress from Lincoln Park (and as set forth in the final highway improvement plans  
30 provided by BLB or a BLB affiliate that are approved by the Rhode Island department of  
31 transportation). Such construction shall be designed so as to minimize the amount of motor  
32 vehicle traffic use and/or travel upon secondary roads and/or through residential neighborhoods  
33 surrounding Lincoln Park. UTGR shall provide and pay for the design of such improvements and  
34 upon completion thereof and approval by the state, the state shall take all reasonable steps to have

1 such improvements included in the state transportation improvement plan or to cause such  
2 improvements to be exempt therefrom. UTGR shall pay all costs for the construction of such  
3 improvements.

4 SECTION 7. Inconsistent provisions. Insofar as the provisions of this act are inconsistent  
5 with the provisions of any other general or special law, including, without limitation, the  
6 provisions of Chapter 2 of Title 37 and Chapter 61 of Title 42, the provisions of this act shall be  
7 controlling.

8 SECTION 8. State's Lincoln Park Obligations Contingent Upon Acquisition Completion.  
9 The obligations of the state, including the department of transportation and/or the division, set  
10 forth under the provisions of this act shall be and are hereby declared to be expressly contingent  
11 upon the acquisition of the Wembley US Group by BLB or a BLB Affiliate taking place, as  
12 contemplated in this act. Except as may be permitted by the master contract, this act shall not be  
13 deemed and/or construed to create and or vest any rights in BLB or a BLB Affiliate which may be  
14 assigned, delegated, and/or otherwise transferred to any other entity.

15 SECTION 9. Section 42-61.2-7 of the General Laws in Chapter 42-61.2 entitled "Video  
16 Lottery Terminal" is hereby amended to read as follows:

17 **42-61.2-7. Division of revenue.** – (a) Notwithstanding the provisions of section 42-61-  
18 15, the allocation of net terminal income derived from video lottery games is as follows:

19 (1) For deposit in the general fund and to the state lottery commission fund for  
20 administrative purposes: Net terminal income not otherwise disbursed in accordance with  
21 subdivisions (a)(2) through (a)~~(5)~~ (6) herein; provided the revenue estimators shall establish at  
22 the Revenue Estimating Conferences pursuant to chapter 35-16 the amount of the net terminal  
23 income and the state's share of net terminal income that is solely attributable to the introduction  
24 of newly authorized machines at Lincoln Park and Newport Grand pursuant to Sections 3 and 4  
25 herein. Said amount shall be distributed as follows:

26 (i) 12.50% up to a maximum of twenty million dollars (\$20,000,000) shall be equally  
27 allocated to the distressed communities as defined in section 45-13-12 provided that no eligible  
28 community shall receive more than twenty-five percent (25%) of that community's currently  
29 enacted municipal budget as its share under this specific subsection. Distributions made under  
30 this specific subsection are supplemental to all other distributions made under any portion of  
31 general laws section 45-13-12.

32 (ii) 3.125% up to a maximum of five million dollars (\$5,000,000) shall be appropriated to  
33 property tax relief to fully fund the provisions of section 44-33-2.1. Once there are sufficient  
34 additional funds, the maximum credit defined in subsection 44-33-9(2) shall increase by

1 increments of fifty dollars (\$50.00) until a maximum credit of five hundred dollars (\$500) is  
2 obtained.

3 (iii) 78.125% to fund section 44-34.1-1, entitled "Motor Vehicle and Trailer Excise Tax  
4 Elimination Act of 1998", to the maximum amount to the nearest five hundred dollar (\$500)  
5 increment within the allocation. In no event shall the exemption in any fiscal year be less than the  
6 prior fiscal year.

7 (iv) 6.25% to a maximum of ten million dollars (\$10,000,000) for supplemental  
8 distribution to communities not included in (a)(1)(i) above distributed proportionately on the  
9 basis of general revenue sharing distributed for that fiscal year.

10 (v) Any amounts in excess of the limits in (i) through (iv) above shall be allocated to the  
11 general fund.

12 (2) To the licensed video lottery retailer: ~~(a) Lincoln Greyhound Park twenty eight and~~  
13 ~~eighty five hundredths percent (28.85%) minus seven hundred sixty seven thousand six hundred~~  
14 ~~eighty seven dollars (\$767,687);~~ (a)(i) Prior to the effective date of the NGJA Master Contract,  
15 Newport Jai Ali twenty-six percent (26%) minus three hundred eighty four thousand nine  
16 hundred ninety six dollars (\$384,996);

17 (ii) On and after the effective date of the NGJA Master Contract, to the licensed video  
18 lottery retailer who is a party to the NGJA Master Contract, all sums due and payable under said  
19 Master Contract minus three hundred eighty four thousand nine hundred ninety six dollars  
20 (\$384,996).

21 (b)(i) Prior to the effective date of the UTGR Master Contract, to the present licensed  
22 video lottery retailer at Lincoln Park which is not a party to the UTGR Master Contract, twenty  
23 eight and eighty-five one hundredths percent (28.85%) minus seven hundred sixty seven thousand  
24 six hundred eighty seven dollars (\$767,687);

25 (ii) On and after the effective date of the UTGR Master Contract, to the licensed video  
26 lottery retailer who is a party to the UTGR Master Contract, all sums due and payable under said  
27 Master Contract minus seven hundred sixty seven thousand six hundred eighty seven dollars  
28 (\$767,687).

29 (3) (i) To the technology providers who are not a party to the GTECH Master Contract as  
30 set forth and referenced in Public Law 2003, Chapter 32, seven percent (7%) of the net terminal  
31 income of the provider's terminals;

32 (ii) To contractors who are a party to the Master Contract as set forth and referenced in  
33 Public Law 2003, Chapter 32, all sums due and payable under said Master Contract;

34 (iii) Notwithstanding subsections (i) and (ii) above, there shall be subtracted

1 proportionately from the payments to technology providers the sum of six hundred twenty eight  
2 thousand seven hundred thirty seven dollars (\$628,737);

3 (4) To the city of Newport ~~or town in which the licensed video retailer is licensed:~~ one  
4 percent (1%) plus one quarter percent (0.25%) of net terminal income that is solely attributable to  
5 the introduction of newly authorized machines at Newport Grand pursuant to sections 3 and 4  
6 herein as determined by the Revenue Estimating Conference; and to ~~provided, however,~~  
7 ~~beginning January 1, 2005,~~ the town of Lincoln ~~shall receive~~ one and one quarter percent (1.25%)  
8 plus one quarter percent (0.25%) of net terminal income that is solely attributable to the  
9 introduction of newly authorized machines at Lincoln Park pursuant to sections 3 and 4 herein as  
10 determined by the Revenue Estimating Conference; and

11 (5) To the Narragansett Indian Tribe, five percent (5%) of net terminal income that is  
12 solely attributable to the introduction of newly authorized machines at Lincoln Park as  
13 determined by the revenue estimators at the Revenue Estimating Conferences pursuant to chapter  
14 35-16 up to a maximum of ten million dollars (\$10,000,000) per year, which shall be paid to the  
15 Narragansett Indian Tribe for the account of a Tribal Development Fund to be used for the  
16 purpose of encouraging and promoting: home ownership and improvement, elderly housing,  
17 adult vocational training; health and social services; childcare; natural resource protection; and  
18 economic development consistent with state law. Provided, however, such distribution shall  
19 terminate upon the opening of any gaming facility in which the Narragansett Indians are entitled  
20 to any payments or other incentives; and provided further any monies distributed hereunder shall  
21 not be used for, or spent on previously contracted debts.

22 ~~(5)~~ (6) Unclaimed prizes and credits shall remit to the general fund of the state;

23 ~~(6)~~ (7) Payments into the state's general fund specified in subdivisions (a)(1) and (a)(6)  
24 shall be made on an estimated monthly basis. Payment shall be made on the tenth day following  
25 the close of the month except for the last month when payment shall be on the last business day.

26 SECTION 9. Severability. If any clause, sentence, paragraph, section, or part of this act  
27 shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not  
28 affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to clause,  
29 sentence, paragraph, section or part directly involved in the controversy in which such judgment  
30 shall have been rendered.

31 SECTION 10. This act shall take effect upon passage.



EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

ENABLING THE DIVISION OF LOTTERIES TO ENTER INTO A MASTER VIDEO  
LOTTERY TERMINAL CONTRACT WITH UTGR, INC. AND TO ENTER INTO A  
MASTER VIDEO LOTTERY TERMINAL CONTRACT WITH NEWPORT GRAND JAI  
ALAI, INC.

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- 1 This act would enable the Rhode Island Lottery Division to enter into a Master Video
- 2 Lottery Terminal Contract with UTGR, Inc.
- 3 This act would take effect upon passage.

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LC02842/SUB B/  
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