

**Supplemental  
Meeting Materials for  
3/6/2024**

**Items  
2.1. & 7.8.**

## MEMORANDUM

To: The Florida Gaming Control Commission  
From: Office of the General Counsel  
Re: Petition for Waiver or Variance of Rule 75-14.047 of the Florida Administrative Code by PPI, Inc. d/b/a Harrah's Pompano Beach  
Date: March 4, 2024

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### *Executive Summary*

PPI, Inc. d/b/a Harrah's Pompano Beach ("PPI"), a pari-mutuel wagering permit holder licensed to conduct slot machine gaming, submitted a petition for a waiver from Rule 75-14.047 of the Florida Administrative Code, "Facility Based Monitoring System and Computer Diagnostics" (the "Petition"). The initial Petition and two subsequent responses submitted by PPI are deficient. In addition, the first response submitted by PPI raised a new matter that is not adequately addressed in the Petition. Therefore, the Commission should deny the Petition without prejudice.

### *Authorizing Law*

A. Section 120.542, Florida Statutes. Pursuant to Section 120.542, Florida Statutes, an agency, such as the Florida Gaming Control Commission (the "Commission") may grant a person subject to regulation a variance or waiver<sup>1</sup> to the requirements of its rules provided that the requirements of Section 120.542 and chapter 28-104, Florida Administrative Code are met.

Section 120.542(2) provides that:

Variations and waivers shall be granted when the person subject to the rule *demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness*. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

(emphasis added)

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<sup>1</sup> A variance is a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. § 120.52(21), Fla. Stat. (2023). A waiver is a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. § 120.52(22), Fla. Stat. (2023).

Section 120.542(5) provides that:

A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:

- (a) The rule from which a variance or waiver is requested.
- (b) The type of action requested.
- (c) The specific facts that would justify a waiver or variance for the petitioner.
- (d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

Within 30 days after receipt of a petition for a variance or waiver, an agency may request additional information. § 120.542(7), Fla. Stat. Within 30 days after receipt of such additional information, the agency may request information that is needed to clarify the additional information or to answer new questions raised by or directly related to the additional information. *Id.* Within 90 days after receipt of the original petition, the last item of requested additional material, or the petitioner's written request to finish processing the petition, the agency shall grant or deny the petition for variance or waiver. § 120.542(8), Fla. Stat. (2023). A petition that is not granted or denied within 90 days after receipt of a completed petition is deemed approved. *Id.* The agency's decision to grant or deny the petition shall be supported by competent, substantial evidence.

B. Chapter 28-104, Florida Administrative Code.

Rule 28-104.002(2) provides that a petition for a waiver shall include, among other things, the following information: (i) the applicable rule or portion of the rule for which the waiver is sought; (ii) a citation to the statute the rule is implementing; (iii) the specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner; (iv) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; and (v) a statement whether the variance or waiver is permanent or temporary.

Rule 28-104.003, Florida Administrative Code, provides that “[a]ny interested person or other agency may submit written comments on the petition for a variance or waiver within 14 days after the notice required by Section 120.542(6), F.S.”

## *The Petition*

On July 17, 2023, PPI filed the Petition with the agency clerk<sup>2</sup>, requesting a waiver from Rule 75-14.047, Florida Administrative Code “to store our SDS back-up data to cloud storage instead of a physical back-up tape.” Rule 75-14.047 (the “FBMS Rule”) imposes requirements on facility based monitoring systems (“FBMS”) used by slot machine licensees, such as PPI, for operational and accounting functions.<sup>3</sup> The Petition further stated that the “Caesars Entertainment Las Vegas Datacenter where this data will be stored on servers meets all standards set forth in 75-14.047(9)(a).” The July 17, 2023, Petition did not include: (i) any facts demonstrating a substantial hardship or violation of principles of fairness that would justify the waiver from the FBMS Rule; (ii) the reason why the requested waiver would serve the purposes of the underlying statute; and (iii) a statement of whether the waiver is permanent or temporary. Therefore, the July 17, 2023, Petition did not meet the requirements of Section 120.542(5) and Rule 28-104.002.

On August 14, 2023, the Commission requested from PPI additional information required by Section 120.542 and Rule 28-104.002. On October 13, 2023, 60 days following the Commission’s request, PPI submitted a written response (the “First Response”).

The First Response included some, but not all, of the information required by law. Specifically, the First Response did not include: (i) any facts demonstrating a substantial hardship or violation of principles of fairness that would justify the waiver from the FBMS Rule; and (ii) the reason why the requested waiver would serve the purpose of the underlying statute.<sup>4</sup> Therefore, the First Response did not cure the deficiency in the Petition. Further, the First Response expanded the scope of the waiver from saving and storing backup data to “increased auditing and accessibility for PPI” and included a description of Caesars Entertainment Business Services (“CEBS”), a shared services center located in Las Vegas, Nevada, which provides accounting services to Caesars properties. Importantly, in the First Response, PPI stated that CEBS will access “Property systems” remotely “as needed in order to complete daily audits and/or investigate any discrepancies.”

On November 9, 2023, the Commission asked PPI to explain the reason why the requested waiver would serve the purpose of the underlying statute and to provide the specific facts that would demonstrate a substantial hardship or violation of principles of fairness.

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<sup>2</sup> In addition to filing a Petition with the agency clerk, PPI is also required to submit a copy of the Petition with the Joint Administrative Procedures Committee (“JAPC”). § 120.542(5), Fla. Stat. Upon information and belief, JAPC has not received a copy of the Petition as of February 29, 2024.

<sup>3</sup> A Facility Based Monitoring System is a central site computer system “to which all slot machines at a gaming facility communicate for the purpose of auditing capacity, real-time information retrieval of the details of any financial event that occurs in the operation of a slot machine facility, door openings and closings, power failure, and disabling of slot machines. Fla. Admin. Code R. 75-14.001(9); *see also* § 551.104(4)(f), Fla. Stat.

<sup>4</sup> As explained in detail in the “Relevant Law” section of this memo, the statutes underlying, or implementing, Rule 75-14.047 are sections 551.103(1)(e),(g), (i) and 551.104(4)(f), Florida Statutes.

On December 18, 2023, 39 days following the Commission’s request, the Commission received a response from PPI with additional information (the “Second Response”). The Second Response did not cure the deficiency in the Petition.

The Petition comprises the July 17, 2023, submission, the October 13, 2023, response, and the December 18, 2023, response.

### *Relevant Law*

A. Rule Identified in the Petition. The FBMS Rule provides that:

(1) The facility based monitoring system’s slot machine communication protocol shall have the ability to immediately act upon commands received from the facility based monitoring system (FBMS), which provide:

- (a) The ability to suspend play on a slot machine;
- (b) Daily reports of events; and,
- (c) Reports providing:

- 1. All accounting data contained in the FBMS;
- 2. Information on individual events and transactions contained in the FBMS; and,
- 3. The history of a specific slot machine transaction contained in the FBMS.

(2) The FBMS shall:

- (a) Capture all information required for tickets enumerated in subsection 75-14.040(2), F.A.C.;
- (b) Not permit a configuration setting change that causes an obstruction or interruption to the electronic accounting meters, affect the integrity of the slot machine, or communications without a RAM clear as provided in subsection 75-14.044(11), F.A.C.

(3) For the purposes of this rule, an interface element is any system component external to the operation of a slot machine that assists in the collection and processing of data sent to the FBMS, such as a slot machine interface board (SMIB). All interface elements shall:

- (a) Be installed in a locked compartment in the machine or system;
- (b) Maintain separate electronic meters that shall allow for review on demand at the interface element level;
- (c) Retain the required information after a power loss for at least 72 hours;
- (d) Provide a means to preserve all meter information required by Rule 75-14.042, F.A.C., and event information required by Rule 75-14.046, F.A.C., until it is communicated to the FBMS; and,
- (e) Allow for the association of a slot machine asset number used in conjunction with a slot machine file on the FBMS. The slot machine asset number shall be used by the FBMS to:

- 1. Track all information regarding an individual slot machine; and,
- 2. Identify only one slot machine in the FBMS.

(4) An interface element that serves as a data collector for the FBMS shall:

- (a) Provide an error detection and correction scheme to ensure an accuracy of 99 percent or better of messages received; and,
  - (b) Secure all accounting data communications in accordance with the facility's internal controls.
- (5) Each system critical to the operation of the slot machine's interface element and the FBMS shall be tested to verify that it performs within its manufactured design specifications. Each system shall be tested:
- (a) Under controlled laboratory conditions prior to installation at a slot machine licensed facility; and,
  - (b) At the installation site (a slot machine licensed facility) upon the initial installation of the system to ensure proper configuration of the equipment and installation of the security applications.
- (6) The FBMS shall maintain an internal master clock that reflects time in 24-hour format and data that shall be used to provide:
- (a) Time stamp of events;
  - (b) Reference clock for reporting; and,
  - (c) Updated clocks in the system servers, networked systems, or distributed systems.
- (7) The FBMS shall create an audit log for any alterations of any accounting or event log information. The audit log must include at least:
- (a) The name of the data element altered;
  - (b) The value of the data element:
    1. Prior to data alteration; and,
    2. After data alteration.
      - a. The time and date of alteration for each data element alteration event; and,
      - b. The identification of the individual who performed the alteration.
- (8) The FBMS shall provide:
- (a) Redundant copies of each log file or system database or both; and,
  - (b) Open support for backups and restoration of each log file or system database.
- (9) *The data contained in the FBMS shall be backed-up daily on removable computer storage media. The back-up data records shall be sufficient to reconstruct the entire day's activity.*
- (a) *In addition to the requirements of Rule 75-14.080, F.A.C., a readily accessible copy of the back-up data records shall be stored for a minimum of 120 days secured in an industry standard two-hour fire and water resistant storage device either on- or off-site.*
  - (b) The slot machine licensee shall provide the contact information, address, and telephone number of each off-site storage location to the division when:
    1. The off-site location is first used for storage; and,
    2. Each time a new off-site location is used or an off-site location is changed.
  - (c) Off-site storage contact information should be sent to the Office of Slot Operations, Division of Pari-Mutuel Wagering, North Broward Regional Service Center, 1400 West Commercial Boulevard, Suite 165, Ft. Lauderdale, Florida 33309-3787.
- (10) The FBMS shall only be reloaded using data contained in the most recent complete back-up data records that contains at least:

- (a) An events log;
  - (b) All accounting information;
  - (c) All auditing information; and,
  - (d) Specific site information such as device file or employee file.
- (11) The FBMS shall:
- (a) Implement self-monitoring for all interface elements;
  - (b) Keep a log of all error conditions;
  - (c) Monitor the operation of each slot machine in real-time;
  - (d) Retrieve all financial accounting information for each slot machine on a daily basis;
  - (e) Report all events in real-time;
  - (f) Employ security systems, support measures, or networks to ensure that there is no alteration of any information as it is being communicated from a slot machine to the FBMS; and,
  - (g) Annually test data recovery and reload procedures, and report such results to the division.
- (12) A slot machine or progressive slot machine shall not be enabled to play following the receipt of any error listed in subsection 75-14.044(13), F.A.C., until the control program is authenticated.
- (13) The FBMS shall collect and store the following information from each slot machine:
- (a) Total credits-in;
  - (b) Total credits-out;
  - (c) Total value of all bills, tickets, and vouchers collected by the slot machine;
  - (d) Total value of all handpays;
  - (e) Cancelled unpaid credits;
  - (f) Total monetary value of all bills accepted;
  - (g) Total number of each type of bill accepted by denomination;
  - (h) Games played;
  - (i) Cabinet door openings;
  - (j) Drop door openings;
  - (k) Total monetary value of all tickets accepted; and,
  - (l) Total monetary value of all tickets produced.
- (14) The FBMS shall recognize an electronic identification card which card shall:
- (a) Only be issued to specifically designated licensed employees;
  - (b) Be inserted into the slot machine prior to the opening of a slot machine door; and,
  - (c) Only be inserted after surveillance has been notified of and approves the opening.

(emphasis added).

B. Law Implemented.

The FBMS Rule implements sections 551.103(1)(e), (g), (i) and 551.104(4)(f), Florida Statutes.

Section 551.103(1), provides, in pertinent part, that:

(1) The commission shall adopt, pursuant to the provisions of ss. 120.536(1) and 120.54, all rules necessary to implement, administer, and regulate slot machine gaming as authorized in this chapter. Such rules must include:

...

(e) Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machine gaming that allow the commission and the Department of Law Enforcement to audit the operation, financial data, and program information of a slot machine licensee, as required by the commission or the Department of Law Enforcement, and provide the commission and the Department of Law Enforcement with the ability to monitor, at any time on a real-time basis, wagering patterns, payouts, tax collection, and compliance with any rules adopted by the commission for the regulation and control of slot machines operated under this chapter. Such continuous and complete access, at any time on a real-time basis, shall include the ability of either the commission or the Department of Law Enforcement to suspend play immediately on particular slot machines if monitoring of the facilities-based computer system indicates possible tampering or manipulation of those slot machines or the ability to suspend play immediately of the entire operation if the tampering or manipulation is of the computer system itself. The commission shall notify the Department of Law Enforcement or the Department of Law Enforcement shall notify the commission, as appropriate, whenever there is a suspension of play under this paragraph. The commission and the Department of Law Enforcement shall exchange such information necessary for and cooperate in the investigation of the circumstances requiring suspension of play under this paragraph.

...

(g) Procedures for requiring licensees to maintain specified records and submit any data, information, record, or report, including financial and income records, required by this chapter or determined by the commission to be necessary to the proper implementation and enforcement of this chapter.

...

(i) Minimum standards for security of the facilities, including floor plans, security cameras, and other security equipment.

Section 551.104(4) provides, in pertinent part, that:

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(f) Ensure that the facilities-based computer system that the licensee will use for operational and accounting functions of the slot machine facility is specifically structured to facilitate regulatory oversight. The facilities-based computer system shall be designed to provide the commission and the Department of Law Enforcement with the ability to monitor, at any time on a real-time basis, the wagering patterns, payouts, tax collection, and such other operations as necessary to determine whether the facility is in compliance with statutory provisions and rules adopted by the commission for the regulation and control of slot machine gaming. The commission and the Department of Law Enforcement shall have complete and continuous access to this system. Such access shall include the ability of either the commission or the Department of Law Enforcement to suspend play immediately on particular slot machines if monitoring of the system indicates possible tampering or manipulation of those slot machines or the ability to suspend play immediately of the entire operation if the tampering or manipulation is of the computer system itself. The computer system shall be reviewed and approved by the commission to ensure necessary access, security, and functionality. The commission may adopt rules to provide for the approval process.

### *Analysis of the Petition*

A. Burden of Proof. PPI must prove, by a preponderance of evidence, that it is entitled to a variance or waiver under section 120.542, Florida Statutes, by demonstrating that the purpose of the underlying statute will be or has been achieved by other means and that the application of FBMS Rule would create a substantial hardship or would violate principles of fairness.<sup>5</sup>

B. Saving and Storing FBMS Backup Data.

In the July 17, 2023, submission, PPI identified the FBMS Rule in its entirety as the subject of the Petition, but only with respect to saving and storing “SDS back-up data” to cloud storage instead of saving the data to a physical tape and storing the tape on-site. While the Petition does not clearly identify the portion of FBMS Rule from which it seeks a waiver, the requirement to back up, or save, and store FBMS data is set forth in subsection (9) of the FBMS Rule and Rule 75-14.080, “Retention, Storage and Destruction of Books, Records, and Documents” (the “Retention Rule”).

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<sup>5</sup> See *Dept. of Banking and Finance, Div. of Securities and Investor Protection v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996); *Florida Dep’t of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981); *Balino v. Dep’t of Health and Rehab. Serv.*, 348 So. 2d 349 (Fla. 1st DCA 1977). See also *Terry Buckley v. Bd. of Physical Therapy Prac.*, DOAH Case No. 07-3370 (DOAH 2007).

Specifically, subsection (9) of the FBMS Rule requires FBMS data to be backed up daily to a removable storage media and stored in compliance with the Retention Rule. In addition, a copy of the backup data records must be stored for a minimum of 120 days secured in an industry standard two-hour fire and water resistant storage device either on- or off-site.

The Retention Rule sets forth retention schedules for books, records, and documents related to a slot machine licensee's operation. Pursuant to the Retention Rule, FBMS backup data is required to be stored on-site for a period of at least one year from the date of its creation.

In the Second Response, PPI provided information to support its assertion that the application of the FBMS Rule would result in a substantial hardship or violate principles of fairness for PPI. The supporting information focuses on the fact that PPI's current system to store back-up data on-site is either at capacity or requires additional expense to operate; an expense that would not be borne by PPI if the FBMS back-up data is stored on the cloud rather than at its facility. Specifically, PPI stated that "the on-premises system is at capacity and risks not having enough space for new backups. Enabling cloud storage would allow [the backup solution] to operate per our standard design, moving on-premises backup data to long-term cloud storage, and freeing space on the on-premises system for new backups."

Based on the explanation of the substantial hardship in the Second Response, it appears that PPI is requesting a waiver from both: (i) the requirements of the FBMS Rule, relating to backing up FBMS data to removable computer storage media; and (ii) the Retention Rule, relating to storing FBMS backup data on-site for a period of one year. Further, based on representations made by PPI in the Petition, it appears that the substantial hardship or violation of principles of fairness mainly arises because PPI is storing FBMS data at its facility, which is a requirement of the Retention Rule.

However, the Petition neither specifically requests a waiver from the Retention Rule nor provides a reason why the requested waiver from the FBMS Rule would serve the purposes of Section 551.103(1)(g), which authorizes the Commission to promulgate into rule procedures for requiring licensees to maintain specified records.<sup>6</sup> For instance, if the Petition included a request for a waiver from the Retention Rule, then the Petition could have also provided an explanation that backup data stored on servers located in Nevada would be maintained and available in the same manner as the backup data stored on removable storage devices on-site and detail how the Commission would be able to ascertain that PPI is complying with the requirements of the FBMS Rule and the Retention Rule. Alternatively, if PPI only wishes to save the backup data to the cloud instead of the removable storage device but store such data on on-site servers, then PPI could have provided an explanation that backup data stored on on-site servers would be maintained and accessible in the same manner as backup data stored on removable storage devices and detail how the

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<sup>6</sup> Section 551.103(1)(g) is the pertinent underlying statute for the FBMS Rule and the Retention Rule.

Commission would be able to ascertain compliance with the FBMS Rule and the Retention Rule. No such explanation was provided.

Even if the waiver from the FBMS Rule does, in practice, serve the purposes of the underlying statute, the Commission cannot infer a basis for the waiver, let alone speculate on what such a basis might be.<sup>7</sup> Accordingly, for purposes of waiver from the Retention Rule, the Petition does not meet the requirements of section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code.

As discussed above, the Petition states that PPI will experience a substantial hardship if it is required to store backup data on-site, i.e., if the requirements of the Retention Rule apply. The Petition does not contain facts sufficient to demonstrate a substantial hardship or violation of principles of fairness relating to the requirements of the FBMS Rule, i.e., that backup data must be stored on a removable storage device. And, again, even if the back up of data to a removable storage device creates a substantial hardship regardless of whether the data is stored on servers located at the PPI facility in Florida or off-site in Nevada, the Commission cannot infer that such a substantial hardship exists; PPI must demonstrate it.<sup>8</sup> Accordingly, for purposes of waiver from the FBMS Rule, the Petition does not meet the requirements of section 120.542, Florida Statutes, and chapter 28-104, Florida Administrative Code.

### C. Remote Access of Property Systems.

In the First Response, PPI expanded the scope of the waiver to include remote access of PPI's "Property systems" by CEBS for auditing purposes. However, Rule 75-14.074, "Security Requirements, System Access, and Firewalls," (the "Remote Access Rule") generally prohibits remote access into a FBMS.<sup>9</sup>

Specifically, subsection (2) of the Remote Access Rule provides, in pertinent part, that:

Except as provided in this section, the facility based monitoring system *shall not allow for remote access and all access to the facility based monitoring system shall be conducted from within the slot machine licensee's facility.* A slot machine licensee shall provide in its system of internal controls a method of providing limited remote access to the facility based monitoring system for a business or person licensed as a business occupational license pursuant to Section 551.107(2)(a)3., F.S., for performance of maintenance or diagnostics of the facility

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<sup>7</sup> Pursuant to Section 120.542, PPI bears the burden of demonstrating that the purpose of the underlying statute will be or has been achieved by other means by the person and that the application of a rule would create a substantial hardship or would violate principles of fairness.

<sup>8</sup> § 120.542(2), Fla. Stat.

<sup>9</sup> The FBMS Rule implements section 551.103(1)(d), (g), (i) Florida Statutes.

based monitoring system that cannot be performed by the slot machine licensee's onsite personnel.

(emphasis added)

While it is not clear from the language of the Petition whether "Property systems" includes PPI's facility based monitoring system, the FBMS Rule regulates facility based monitoring systems. Accordingly, the Petition appears to request a waiver from the Remote Access Rule in order to allow CEBS staff located outside of Florida to remotely access PPI's facility based monitoring system. However, PPI did not include the Remote Access Rule in the Petition. The Commission cannot infer or speculate that the Petition is intended to cover the Remote Access Rule; nor can the Commission speculate that, despite an explanation of remote access to undefined Property systems, PPI intends to comply with the Remote Access Rule. Therefore, with respect to CEBS' remote access of PPI's "Property systems" for auditing purposes, the Petition does not meet the requirements of section 120.542, Florida Statutes, and chapter 28-104 of the Florida Administrative Code.

#### *Recommendation*

Based on competent, substantial evidence, the Petition fails to demonstrate that the purpose of the underlying statute will be or has been achieved by other means and that the application of Rule 75-14.047 of the Florida Administrative Code would create a substantial hardship or would violate principles of fairness.

Accordingly, the Florida Gaming Control Commission should deny, without prejudice, the Petition for Waiver or Variance of Rule 75-14.047 of the Florida Administrative Code by PPI, Inc. d/b/a Harrah's Pompano Beach.



## AGREEMENT

This agreement (the "Agreement") is made and entered into as of this 6<sup>th</sup> day of March, 2023 (the "Effective Date"), by and between West Flagler Associates LTD ("WFA") and Hecht Investments Limited (HIL) (hereinafter, the "Parties").

### RECITALS

WHEREAS, WFA is the holder of a jai alai pari-mutuel wagering permit (the "Magic City Permit") for the conduct of jai alai performances, at the permitted facility located at 401 NW 38th Court, Miami Florida 33126; and

WHEREAS, HIL is the holder of a commercial lease under an Agreement with Gretna Racing LLC dated March 6, 2023, for the facility located at 401 NW 38th Court, Miami Florida; and

WHEREAS, section 550.054, Florida Statutes, provides for a valid pari-mutuel Permitholder to lease premises for the conduct of any jai alai games; and

WHEREAS, WFA is desirous of leasing a portion of the HIL Facility for the conduct of its live jai alai performances at its permitted location during the 2023-2025 fiscal years, and HIL is willing to lease a portion of the HIL Facility to WFA, under the terms and conditions set forth below.

### TERMS OF THE AGREEMENT

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The foregoing recitals are true and correct.
2. Subject to Division's approval of WFA annual pari-mutuel wagering license

application, HIL shall lease to WFA the portion of the HIL Facility required for the conduct of live jai alai performances (the "Jai Alai Premises") commencing 12:01 a.m. on July 1, 2023 (the "Commencement Date") until 11:59 p.m., December 31, 2025 (the "Termination Date").

3. The period beginning at the Commencement Date and ending at the Termination Date shall be known as the "Lease Term."

4. WFA shall manage and operate the Jai Alai Premises during the Term. The Parties agree that the Commissions are not a part of the Performance Fee. WFA will employ all of the personnel necessary to provide the Management Services, at WFA's cost. WFA will also pay the costs of operating the HIL Facility during the Lease Term. It is the intent of the Parties and this Agreement that, except for the Performance Fees, this Agreement be revenue and expense neutral to HIL. WFA shall provide Management Services during the Lease Term. Without limiting the foregoing, the Parties recognize and agree that WFA's obligation to provide Management Services, during the Lease Term are subject to rules of the Division and to force majeure. HIL shall under no circumstances, including its own negligence and/or the negligence of its agents or employees, have any liability to WFA in the event that live performances cannot be conducted for all or any portion of the Lease Term. WFA's use of the premises shall comply with all applicable laws. This Agreement is subordinate to the Lease between Gretna Racing LLC and HIL dated March 6, 2023, and any termination of the Lease shall terminate this Agreement. Should the HIL insurance coverage required under the Lease with Gretna Racing LLC not include WFA as an additional insured, then WFA is required to maintain the same insurance coverage required of HIL under the HIL lease with Gretna Racing LLC.

5. WFA shall be responsible for all reporting requirements required by the Division.

6. All purses paid on live jai alai performances conducted pursuant to the WFA Permit during the Lease Term shall be paid at rates no less than the purse rates applicable to the WFA Permit in compliance with Florida law.

7. Nothing herein shall be interpreted to make any person or entity a third party beneficiary of this Agreement, and the only parties who have any rights or responsibilities in connection with it are HIL and WFA.

8. The Parties agree to reasonably cooperate with the other party as may be necessary to effectuate the matters referred to herein or contemplated hereby.

9. WFA shall and hereby does indemnify and hold HIL harmless from and against any and all claims, damages, losses, costs and expenses (including but not limited to reasonable attorney's fees, at all levels) arising out of or in connection with any of the following: (i) any claim or demand by the Division or any other State or Federal agency for payment of taxes or fees in connection with the live jai alai performances conducted by WFA at the permitted Jai Alai Premises. (ii) any claim or demand by any agent, employee, vendor, service provider, equipment lessor or other person or entity, to the extent arising out of the relationship between such claimant and WFA.

10. This Agreement may be terminated by either party, at any time, upon ten (10) business days written notice to the other, in the event that: (i) either party is notified by the Division (or any other agency of the State of Florida) that (X) conducting jai alai games under the WFA Permit at the Premises is not permitted under applicable law, or (Y) either party must pay fees or taxes or expenses not contemplated by this Agreement and which render the intent (including the

financial implications) of this Agreement materially unobtainable; or (ii) in the reasonable opinion of either party, continuing to operate under this Agreement threatens the ability of such party to continue to enjoy the benefits of its permits and licenses with the State of Florida, or any agency thereof.

11. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to be reimbursed for its costs, including reasonable attorneys' fees. Venue for any action arising out of or in connection with this Agreement shall be exclusively in the state courts of Dade County, Florida, and each party consents to such jurisdiction. Any notice required to be given to either party shall be in writing, and provided by hand delivery, or by recognized overnight carrier (such as Federal Express), or by e-mail or facsimile (with a copy to follow by hand or overnight carrier), at the address, e-mail address, and/or fax number set forth below each party's signature, with a copy to each party's counsel (also identified below such party's signature). Notice shall be deemed given upon receipt, when delivered by hand, or electronically, and the first business day after delivery to the recognized overnight carrier, with cost of delivery prepaid.

12. This Agreement shall be construed, governed by, and interpreted, and the legal relations between the Parties hereto shall be determined, in accordance with the substantive laws of the State of Florida. The Parties agree that they have each contributed to the preparation of this Agreement, and that it shall not be construed more strongly against one party than the other.

13. This Agreement constitutes the sole and entire Agreement between the Parties concerning this subject matter and supersedes all other agreements between the Parties whether written or oral relating to the subject matter hereof. There are no covenants, assurances, or representations, either express or implied, other than those expressly stated herein. No

modification, rescission, or waiver of this Agreement, or any provision thereof, shall be binding on any party unless evidenced by an instrument in writing duly signed by such party.

14. Each party is solely responsible for its own costs in connection with the preparation and execution of this Agreement, and with respect to all costs incurred by it (including but not limited to professional fees) in connection with the transaction contemplated by this Agreement and the live jai alai performances conducted at the Jai Alai Premises, except as specifically set forth to the contrary herein. WFA shall have no obligation to hire or engage any employee, agent, vendor, service provider, equipment lessor or other person or entity currently working for or providing services or equipment to EJA for the live jai alai performances at the Jai Alai Premises, and EJA is and shall remain responsible for payment to its employees, agents, vendors, service providers, equipment lessors and similar persons and entities.

15. Each party to this Agreement agrees: (i) that it will consult with the other concerning any proposed press release or public announcement pertaining to the running of the live jai alai performances at the Jai Alai Premises, and shall not issue any press release or public announcement without the prior consent of the other party; and (ii) that it will keep the specific terms of this Agreement confidential; provided, however, that nothing herein shall restrict any public announcement or other disclosure which a party deems in good faith to be required to be made by law (in which case such party shall advise the other party prior to making the disclosure).

16. This Agreement shall be binding upon and inure solely to the benefit of each party to it, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person or persons any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. The benefits of this Agreement are personal and may not be assigned by

either party to any person or entity, without the express prior written consent of the other party, which may be withheld in such other party's sole discretion. Any attempt to assign such benefits, or this Agreement itself, in violation of this provision, shall be deemed void ab initio.

17. This Agreement may be executed in several counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, WFA and HIL have caused this Agreement to be executed, effective as of the day and year first above written.

SIGNATURE PAGE FOLLOWS:\

Hecht Investments Limited

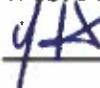
By:



SCOTT SAVIN

With a copy of notices sent  
to: [insert our info]

West Flagler Associates LTD



ISADORE HAVERICK

With a copy of notices sent to:  
[insert our info]