Memorandum

MIAMI-DADE COUNTY

Date: April 10, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Report on Existing Slot Machine Agreements with Pari-mutuel Facilities

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Pursuant to Resolution R-130-14, staff has prepared the following report regarding the existing slot machine agreements with pari-mutuel facilities. As requested, the report also provides an analysis of the revenues generated from these agreements, the use of those funds, and any resolutions approved by the Board of County Commissioners (Board) related to those uses.

Background

In November 2004, an amendment to the Florida Constitution was approved authorizing the electors of Miami-Dade and Broward counties to decide through an election whether to allow slot machines at existing licensed and active pari-mutuel facilities. Miami-Dade County has three facilities that qualify under the Constitutional amendment: Calder Race Course, Flagler Greyhound Track, and Miami Jai Alai.

In the months leading up to the March 8, 2005 special election, at the request of the Board Chair at that time, the County Attorney and the Administration negotiated, and the Board subsequently adopted on January 20, 2005 an agreement (through Resolution R-81-05) between the County and the three facilities (Attachment 1). The agreement detailed the terms under which the facilities would operate their expanded slot machine operations and also sought to mitigate the impacts of these activities on county government. As indicated in the agreement, these impacts included increased development, traffic, and congestion and revenues were intended to mitigate costs of regional law enforcement, human services, and mass transit operations, as well as the loss of sales tax revenue as a result of the slot machine operations (the argument was made that revenue going to slot machines would have otherwise been used for discretionary purchases).

In accordance with the terms of the agreement, the pari-mutuel facilities remitted to the County an initial payment of $4 million on January 31, 2005 to help defray the significant upfront costs involved in studying, planning and preparing for the possible authorization of slot machines. At the end of the fiscal year ending September 30, 2005, any unspent portion of the $4 million one-time payment became a part of General Fund carryover.

In addition to the one-time payment, the agreement provides the County with a share of the gross revenues generated from the slot machines, 1.5 percent of the first $250 million in gross revenues per facility and two percent for any amount above $250 million. These payments were negotiated as a way to mitigate the impact of these activities on county government and the community as a whole.

In addition to standard elements regarding auditing, indemnification, events of default, and severability, there are provisions included to protect the position of the pari-mutuel facilities, as well. If the Board takes any action that may negatively impact the generation or capacity of gross slot machine revenues, both parties agreed to negotiate in good faith to revise the terms of the agreement. In addition, if Broward County reopens any of its agreements with pari-mutuel facilities

or any other county in Florida enters into an agreement with a pari-mutuel facility related to the operating of slot machines with terms that are favorable to the existing agreements, Miami-Dade County may, at its sole discretion, reopen the terms of the existing agreement. In the event Miami-Dade County and the pari-mutuel facilities agree to reopen the agreement, both parties agree to renegotiate in good faith to modify the existing agreements to provide terms and conditions similar to the agreement which triggered the reopening.

On March 8, 2005, Broward County voters approved the measure, while Miami-Dade County voters narrowly defeated the measure with 52 percent voting against allowing slot machines at the designated facilities. However, Miami-Dade voters were presented with another opportunity to vote on the slot machine issue on January 29, 2008 and approved it with 63 percent of voters voting in favor. At that time, the terms of R-81-05 became effective.

Revenues

Revenues have not performed as originally anticipated both because per machine revenues have not been as high as originally estimated and the pari-mutuel facilities have not installed as many machines as had been initially proposed. However, projections for FY 2013-14 are collections in excess of $3.2 million. Attachment 2 details the number of machines, the total revenues, and the amount paid to the County since the slot machines were installed.

As payments are made to the County, it is deposited in a trust fund (TF628). On an annual basis, the balance from the previous year is budgeted as revenue to the General Fund to support the law enforcement, traffic mitigation, and social services activities necessary as a result of the implementation of slot machines in our community.

If you have any questions regarding this information, please contact Deputy Mayor Edward Marquez at 305-375-1451.

c: Robert A. Cuevas, County Attorney
Office of the Mayor Senior Staff
Jennifer Moon, Budget Director, Office of Management and Budget
Charles Anderson, Commission Auditor

Mayor04614

AGREEMENT AMONG WEST FLAGLER ASSOCIATES, LTD. D/B/A FLAGLER GREYHOUND TRACK, BET MIAMI GREYHOUND JOINT VENTURE AND MIAMI-DADE COUNTY REGARDING SLOT MACHINES IN PARIMUTUEL FACILITIES

THIS AGREEMENT is entered this 31st day of January, 2005, by and among West Flagler Associates, Ltd., a Florida limited partnership, d/b/a Flagler Greyhound Track ("Flagler") and Bet Miami Greyhound, a Florida joint venture ("Bet Miami;" Flagler and Bet Miami hereinafter collectively referred to as the "PARI-MUTUEL"), and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the "COUNTY").

WITNESSETH:

WHEREAS, at the November 2, 2004 general election, the electors of the State of Florida voted to adopt an amendment to the Florida Constitution authorizing the electors of Miami-Dade and Broward Counties to hold county-wide elections on whether to authorize slot machines in existing, licensed pari-mutuel facilities that have conducted live racing or games in that county during each of the last two calendar years before the effective date of the amendment. Article X, Section 23 of the Florida Constitution, a copy of which amendment is attached and incorporated by reference as Exhibit A ("Amendment 4");

WHEREAS, pursuant to a resolution passed on January 20, 2005, the Miami-Dade Board of County Commissioners called a countywide special election to be held by the County on Tuesday, March 8, 2005 (the "Special Election") for the purpose of submitting to the qualified electors of the County the question of whether to authorize slot machines in certain existing, licensed pari-mutuel facilities as provided in Article X, section 23;

WHEREAS, the COUNTY and the PARI-MUTUEL recognize that each entity impacts the health and general welfare of the residents of Miami-Dade County; and

WHEREAS, the COUNTY and the PARI-MUTUEL recognize that the residents of Miami-Dade County have legitimate concerns over increased development, traffic, congestion, and the quality of life in Miami-Dade County; and

WHEREAS, the PARI-MUTUEL desires to assist the COUNTY in offsetting and defraying governmental impacts, including the costs of regional law enforcement, human services, mass transit operation, and to mitigate lost revenues such as sales tax surcharges that the COUNTY will incur as a result of the PARI-MUTUEL's slot machine operations in Miami-Dade County; and

WHEREAS, in consideration of the COUNTY incurring additional costs of administration and services, the COUNTY experiencing losses of revenues, and other good and valuable consideration, the PARI-MUTUEL and the COUNTY agree to enter into this Agreement; and

WHEREAS, prior to the special election on March 8, 2005, the COUNTY will incur significant upfront expenses in planning and preparing for the possibility that voters will authorize slot machines, regardless of the outcome of the election; and

WHEREAS, such upfront and start-up expenses include, but are not limited to expenses related to planning and developing road, signal and sign improvements to handle additional traffic at and near the PARI-MUTUEL facilities, forecasting and planning necessary enhancements to the rail and bus transit system on routes to and from the PARI-MUTUEL facilities, planning and development of additional infrastructure needs at the airport and seaport to accommodate increased tourist traffic resulting from the presence of slot machines in the COUNTY, planning and development of a coordinated marketing and promotional campaign related to having slot machines in the COUNTY, and/or studying new economic development opportunities, such as hotel and resort complexes, retail centers and restaurants, presented by having slot machines in the COUNTY; and

WHEREAS, if the Referendum is adopted by a majority of the qualified electorate voting in the Special Election, slot machines shall be authorized to operate in each of the following pari-mutuel facilities located in Miami-Dade County, Florida:

Calder Race Course
21001 N.W. 27th Avenue
Miami, FL. 33056

Flagler Greyhound Track
401 NW 38th Ct
Miami, FL 33126

Miami Jai-Alai Fronton
3500 NW 37th Ave
Miami, FL 33142

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do and hereby mutually agree and bind themselves as follows:

Section 1. RULES OF LEGAL CONSTRUCTION.

For all purposes of the Agreement, unless otherwise expressly provided:

a) A defined term has the meaning assigned to it;

b) Words in the singular include the plural, and words in plural include the singular;

c) A pronoun in one gender includes and applies to other genders as well; and

d) The terms "hereunder", "herein", "hereof", "hereto" and such similar terms shall refer to the instant Agreement in its entirety and not to individual sections or articles

e) The Parties hereto agree that this Agreement shall not be more strictly construed against either the COUNTY or the PARI-MUTUEL.

f) The whereas clauses set forth above shall be deemed incorporated herein.

g) All exhibits and appendices attached hereto shall be deemed incorporated herein.

Section 2. Definitions As used herein:

"Agreement" means this Agreement between the COUNTY and the PARI-MUTUEL.

"Applicable Laws" means those applicable federal, state or local laws, rules, regulations, codes, ordinances, resolutions, administrative orders, schedules, permits, decrees, tariffs, policies and procedures and orders which govern or relate to the respective Parties' obligations and performance under this Agreement, all as they may be amended from time to time.

"COUNTY" means Miami-Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof.

"Effective Date" shall have the meaning set forth in Section 3 hereof.

"Fiscal Year" means the County's fiscal year, which begins October 1 and ends September 30.

"Gross Slot Revenues" means all currency and other consideration placed into any slot machine at the PARI-MUTUEL Facility, less payouts to and credits redeemed by players at the PARI-MUTUEL Facility.

"Pari-Mutuel Facility" means the facilities at which the PARI-MUTUEL operates.

"Slot Machine" means any machine as defined by Section 849.16 Florida Statutes or any other Applicable Laws.

Section 3. Term and Effective Date

Subject to Section 28 and the terms and conditions contained herein, this Agreement between the COUNTY and the PARI-MUTUEL shall be effective as of the effective date of the resolution of the Miami-Dade Board of County Commissioners approving this Agreement.

This Agreement shall remain in effect for a term of 30 years and shall be automatically renewed for successive thirty (30) year terms unless the COUNTY sends to the PARI-MUTUEL written notice of its intent not to renew at least thirty (30) days prior to the expiration of any such term or renewal term. This Agreement may not be terminated during its term except as expressly provided herein.

Section 4. Compensation

a. To help offset the upfront expenses set forth in the whereas clauses, the PARI-MUTUEL agrees to pay the COUNTY one million, three hundred thirty three thousand, three hundred thirty three dollars ($1,333,333.00) within ten (10) calendar days (including weekends and holidays) after the effective date of this Agreement (the "Flat Fee Payment"), pursuant to the provisions of Section 7. In addition, beginning on the date that any slot machines are authorized and operating, and continuing through the term of the Agreement, the PARI-MUTUEL agrees to pay the COUNTY a monthly amount in arrears equal to one and one-half percent (1.50 %) of Gross Slot Revenues generated at the PARI-MUTUEL (the "Monthly Percentage Payment"). The Monthly Percentage Payment shall become due and payable in the amount calculated pursuant to the immediately-preceding sentences on the 15th day of the calendar month following its accrual. The Monthly Percentage Payment shall be made as an advance on the total amount of any percentage payments on Gross Slot Revenues paid by the PARI-MUTUEL to the

COUNTY. In addition to the cumulative amounts of the Monthly Percentage Payments during the PARI-MUTUEL's fiscal year, the PARI-MUTUEL shall on an annual basis within 60 days following the conclusion of such PARI-MUTUEL's fiscal year pay the County a supplemental annual percentage of Gross Slot Revenues in accordance with the sliding scale set forth below for the additional amounts, if any, of the percentage of Gross Slot Revenues that are due to the COUNTY for the preceding fiscal year (the "Annual Sliding Scale Percentage Payment") after giving credit for the Monthly Percentage Payments already made to the COUNTY for such fiscal year:

> One and one-half percent (1.50 %) of the first $250 million of Gross Slot Revenues;
>
> Two percent (2.0 %) of any and all amounts by which the Gross Slot Revenues exceed $250 million;

[For example, assuming that the first full calendar year of slot machine operations in the PARI-MUTUEL corresponded directly to such PARI-MUTUEL'S fiscal year beginning January 1, 2006, and concluding December 31, 2006, and the total amount of the Gross Slot Revenues generated by the PARI-MUTUEL Facility during such fiscal year was $500,000,000.00, the total amount of the Annual Sliding Scale Percentage Payment would be $8,750,000 (i.e., $3,750,000, representing 1.5 % of the first $250 million of Gross Slot Revenues *plus* $5,000,000 representing 2.0 % of any and all amounts by which the Gross Slot Revenues exceeded $250 million less the cumulative amounts of the Monthly Percentage Payments already paid to the COUNTY over the course of such fiscal year.]

The PARI-MUTUEL shall submit payment of the fee by corporate check made payable to the COUNTY by delivery to the following address:

> Finance Department
> Miami-Dade County

Stephen P. Clark Center
111 N.W. 1st Street, 26th Floor
Miami, Florida 33128

Together with each payment, the PARI-MUTUEL shall submit to the County an accounting of the operation of the slot machines and the computation of the fee.

b. Prepayment of County Costs Incurred. In addition to any fees and taxes as may be imposed pursuant to Applicable Laws, the PARI-MUTUEL has agreed to and has paid concurrent with the execution of this Agreement the sum of $1,333,333.00 to pay the COUNTY for any out-of-pocket costs as defined herein, up to a maximum amount of the Flat Fee Payment, that are incurred by the COUNTY as a result of the start-up of slot machine operations (the "Start-Up Costs"). Such Start-Up Costs shall include, but are not limited to, expenses related to planning and developing road, signal and sign improvements to handle additional traffic at and near the PARI-MUTUEL facilities, forecasting and planning enhancements to the rail and bus transit system on routes to and from the PARI-MUTUEL facilities, planning and development of additional infrastructure at the airport and seaport to accommodate increased tourist traffic resulting from the presence of slot machines in the COUNTY, planning and development of a coordinated marketing and promotional campaign related to having slot machines in the COUNTY, and studying new economic development opportunities, such as hotel and resort complexes, retail centers and restaurants, arising from the operation of slot machines in the COUNTY.

Section 5. Regulatory Cost Reimbursement.

If the Florida Legislature passes any act of law establishing an affirmative obligation on the part of the COUNTY to regulate slot machine operations, each of the PARI-MUTUEL agree to reimburse the COUNTY for one-third of any costs to the COUNTY attributable to such a law.

Section 6. Auditing.

The COUNTY shall have the right to audit the books, records, and accounts of the PARIMUTUEL directly relating to the calculation of Gross Slot Revenues, upon reasonable notice, in order to ascertain the correctness of the Gross Slot Revenues Payment required to be made to the COUNTY pursuant to this Agreement, including the accurate reporting of Gross Slot Revenues and the determination of Gross Slot Revenues Payment under this Agreement. The PARIMUTUEL shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the calculation of Gross Slot Revenues. All books, records, and accounts of the PARIMUTUEL relating to Gross Slot Revenues shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon reasonable request to do so, the PARIMUTUEL shall make same available at no cost to COUNTY in written form. Audited financial statements of the PARIMUTUEL which in addition details the amount of annual Gross Slot Revenues shall be provided to the COUNTY within four (4) months of the close of each fiscal year of the PARIMUTUEL.

The PARIMUTUEL shall preserve and make available, at reasonable times for examination and audit by the COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to the calculation of Gross Slot Revenues and the Gross Slot Revenues Payment pursuant to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after the creation of the record. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined

to be applicable to the PARIMUTUEL's records relating to Gross Slot Revenues. the PARIMUTUEL shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the PARIMUTUEL. Any incomplete or incorrect entry or entries in excess of Two Hundred Thousand and 00/100 ($200,000.00) of cumulative, annual funds that should have been paid to the COUNTY as a Gross Slot Revenues Payment in a particular fiscal year in such books, records, and accounts shall be a basis for the COUNTY's applying an administrative fee of ten percent (10%) of any amount owed to the COUNTY plus interest in an amount of one percent (1%) per month until the amount owed has been paid. Any underpayment shall be paid by the PARIMUTUEL to the COUNTY within ten (10) days of notice of the audit finding, including interest and the administrative fee if owed.

Section 7. Fees. The PARI-MUTUEL shall pay all impact fees as may be required pursuant to the Code of Miami-Dade County and other Applicable Laws as such fees become due and payable. After any such payment, the PARI-MUTUEL shall be entitled to deduct from the Monthly Percentage Payment in the subsequent month an amount equal to the amount in developmental impact fees that the PARI-MUTUEL has paid to the COUNTY for square footage used for slot machines. The PARI-MUTUEL shall also be entitled to a credit against fees assessed by the COUNTY as set forth in the Code of Miami-Dade County for the administrative processing and review of applications for development permits for square footage used for slot machines submitted to Miami-Dade County for review and approval.

Notwithstanding and prevailing over any other provision of this section, this section shall not apply to the construction or renovation of any square footage of buildings on the PARI-MUTUEL Facility not used for slot machines, including but not limited to hotels, retail uses, or commercial uses.

The PARI-MUTUEL acknowledges that it is required to obtain COUNTY occupational licenses related to slot machine operations pursuant to the Code of Miami-Dade County during the term of this Agreement, but pursuant to this section, is deemed to have prepaid any fees for such licenses.

Section 8. Bond and assignment of revenues.

Within thirty (30) days following the commencement of slot machine operations at the PARI-MUTUEL, the PARI-MUTUEL shall provide a bond or irrevocable letter of credit in the amount of $100,000.00 to the COUNTY to secure the obligations of the PARI-MUTUEL under this Agreement. The PARI-MUTUEL shall keep the bond or irrevocable letter of credit in effect until the earlier of such time as (a) slot machine operations cease at the PARI-MUTUEL Facility; (b) this Agreement terminates or (c) the COUNTY Manager agrees to waive or modify the requirements of this section based upon satisfactory payment history by the PARI-MUTUEL.

Section 9. Notices

All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing and delivered by personal service or sent by telex, telecopy, telegram, United States Registered or Certified Mail, return receipt requested, postage prepaid, or by overnight express delivery, such as Federal Express, to the parties at the addresses and telecopy numbers listed below. Any notice given pursuant to this Agreement shall be deemed given when received. Any actions required to be taken hereunder which fall on Saturday, Sunday, or United States legal holidays shall be deemed to be performed timely when taken on the succeeding day thereafter which shall not be a Saturday, Sunday or legal holiday.

To the COUNTY:

County Manager
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, Florida 33128

With a copy to:

County Attorney
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, Florida 33128

To the PARI-MUTUEL:

Flagler Dog Track
401 NW 38th Court
Miami, Florida 33126
Attn: Fred Havenick

With copies to:

Ronald L. Book, P.A.
Lead Counsel to Pari-Mutuel Facility
2999 NE 191st St.
PH 6
Aventura, FL 33180
Attn: Ronald L. Book

-- and --

Holland & Knight LLP
Co-Counsel to Pari-Mutuel Facility
701 Brickell Avenue
Suite 3000
Miami, Florida 33161
Attn: Lori K. Weems

Section 10. Agreement Not a Lease

It is agreed that this Agreement is not a lease, and that no interest or estate in, or lien on, real property or improvements is created by this Agreement.

Section 11. Indemnification

The PARI-MUTUEL agrees to indemnify, protect and hold harmless the COUNTY, its agents and employees, from and against all suits, actions, claims, demands, damages, losses, penalties or fines, expenses, attorneys' fees, and costs of every kind or description to which the COUNTY, its agents or employees may be subjected which are caused by or arise out of, in whole or in part, the negligent acts or intentional misconduct of the PARI-MUTUEL or its

agents, employees, officers or contractors which arise from, grow out of, or are connected with this Agreement; except to the extent that such damage, loss or liability is caused by the negligence of, or intentional misconduct of the COUNTY or its employees, agents or contractors. This indemnity obligation shall apply regardless of whether such suits, actions, claims, damages, losses, penalties, or expenses and costs be against or sustained by others to whom the COUNTY, its agents or employees may become liable. Upon request of the COUNTY, the PARI-MUTUEL shall undertake to defend, at its sole cost and expense, any and all suits brought against the COUNTY in connection with the matters specified in this Section, in the event such suit is solely caused by the negligence by the PARI-MUTUEL or its agents, employees, officers or contractors. PARI-MUTUEL shall have the right to cooperate in the defense, including the selection of private counsel, if any, at its sole cost and expense, against any suit, action, claim, demand, damage, loss, penalty or fine made by any party to this Agreement or any third party that could reasonably and forseeably result in a material adverse impact on the amount of Gross Slot Revenues generated or capable of being generated at the PARI-MUTUEL, provided however that nothing contained herein shall limit the COUNTY's right to direct the defense.

Section 12. Exclusive Venue, Choice of Law, Specific Performance

It is mutually understood and agreed by the parties hereto, that this Agreement shall be governed by the laws of the State of Florida, and any applicable federal law, both as to interpretation and performance, and that any action at law, suit in equity or judicial proceedings for the enforcement of this Agreement or any provision hereof shall be instituted only in the courts of the State of Florida or federal courts and venue for any such actions shall lie exclusively in a court of competent jurisdiction in Miami, Miami-Dade County, Florida. In addition to any other legal rights, the COUNTY and the PARI-MUTUEL shall each have the right to specific performance of this Agreement in court.

Section 13. Voluntary payment.

The PARI-MUTUEL and the COUNTY each agree that in the event all or any part of this Agreement is struck down by judicial proceeding or preempted by legislative action, the PARI-MUTUEL and the COUNTY shall continue to honor the terms and conditions of this Agreement to the extent allowed by law.

Section 14. No Oral Change or Termination

This Agreement and the exhibits and appendices appended hereto and incorporated herein by reference, if any, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Agreement cannot be changed or terminated orally.

Section 15. Compliance with Applicable Laws

Throughout the Term of this Agreement, the PARI-MUTUEL shall comply with all Applicable Laws.

Section 16. Nuisance

The PARI-MUTUEL shall not commit any nuisance or do or permit to be done anything that may result in the creation or commission of a nuisance in or around the PARI-MUTUEL FACILITIES.

Section 17. Representations

Each party represents to the other that this Agreement has been duly authorized, delivered and executed by such party and constitutes the legal, valid and binding obligation of such party, enforceable in accordance with its terms.

Section 18. No Exclusive Remedies

No remedy or election given by any provision in this Agreement shall be deemed exclusive unless expressly so indicated. Wherever possible, the remedies granted hereunder upon a default of the other party shall be cumulative and in addition to all other remedies at law or equity arising from such event of default, except where otherwise expressly provided.

Section 19. Failure to Exercise Rights not a Waiver

The failure by either party to promptly exercise any right arising hereunder shall not constitute a waiver of such right unless otherwise expressly provided herein.

Section 20. Events of Default

(a) The PARI-MUTUEL shall be in default under this Agreement if any of the following events occur and continue beyond the applicable grace period:

(i) The PARI-MUTUEL fails to comply timely with any payment obligation which is not cured within fifteen (15) days from PARI-MUTUEL failure to meet such payment obligation.

(ii) The PARI-MUTUEL fails to perform or breaches any term, covenant, or condition of this Agreement which is not cured within thirty (30) days after receipt of written notice from the COUNTY specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, then the PARI-MUTUEL shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

(iii) If the PARI-MUTUEL shall be adjudicated bankrupt, or if the PARI-MUTUEL shall make a general assignment for the benefit of creditors, or if in any proceeding based upon the insolvency of the PARI-MUTUEL are

commenced and not dismissed within 60 days of filing or a receiver is appointed for all the property of the PARI-MUTUEL which is not dismissed within 60 days of such appointment.

(b) The COUNTY shall be in default under this Agreement if the COUNTY fails to perform or breaches any term, covenant, or condition of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice from a PARI-MUTUEL specifying the nature of such breach; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the COUNTY shall not be in default if it commences to cure such breach within said thirty (30) day period and diligently prosecutes such cure to completion.

Section 21. Remedies Upon Default

Upon the occurrence of a default by a PARI-MUTUEL under this Agreement not cured within the applicable grace period, the PARI-MUTUEL and the COUNTY agree that the COUNTY, in addition to any other rights provided by law, shall have the right to be reimbursed from the bond set forth elsewhere in this Agreement and shall have the right to impose a lien on the land on which the PARIMUTUEL facility is located.

Section 22. Severability

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

Section 23. Assignment and Transfer

This Agreement shall be binding on the PARI-MUTUEL and their heirs, successors and assigns. The PARI-MUTUEL shall not assign this Agreement without the prior written consent of the COUNTY, which shall not be unreasonably withheld.

Section 24. Obligations Surviving Termination Hereof

Notwithstanding and prevailing over any contrary term or provision contained herein, in the event any party hereto exercises any lawful termination rights herein, the following obligations shall survive such termination and continue in full force and effect until the expiration of a one year term following the earlier of the effective date of such termination or the expiration of the Term: (i) any and all outstanding payment obligations hereunder of any party hereto arising prior to termination; (ii) any and all indemnity obligations hereunder of any party hereto; (iii) the exclusive venue and choice of law provisions contained herein, and (iv) any other term or provision herein which expressly indicates either that it survives the termination or expiration hereof or is or may be applicable or effective beyond the expiration or permitted early termination hereof.

Section 25. Lack of Agency Relationship

Nothing contained herein shall be construed as establishing an agency relationship between the COUNTY and the PARI-MUTUEL and neither the PARI-MUTUEL nor its employees, agents, contractors, subsidiaries, divisions, affiliates or guests shall be deemed agents, instrumentalities, employees, or contractors of the COUNTY for any purpose hereunder, and the COUNTY, its contractors, agents, and employees shall not be deemed contractors, agents, or employees of the PARI-MUTUEL or its subsidiaries, divisions or affiliates.

Section 26. Non-Exclusivity

Nothing in this Agreement is intended to create any exclusive rights in the PARI-MUTUEL to conduct slot machine operations within Miami-Dade County. In the event that by operation of law other persons are authorized to conduct slot operations within the County, then the County may permit, authorize and regulate such business and may enter into contracts to the same or similar effect as contemplated by this Agreement without incurring any liability, contractual or otherwise, to the PARI-MUTUEL.

Section 27. Government Approvals

Notwithstanding any rights under this Agreement this Agreement shall not bind the Miami-Dade Board of County Commissioners, the Zoning Appeals Board, the Building Department, the Planning and Zoning Department, or any other department or board of the County, including Community Councils, to agree to or grant any zoning changes, permits or any other approvals.

Section 28. Contemporaneous Contracts

The Parties acknowledge that the COUNTY is entering similar contracts with the other two (2) Pari-Mutuels listed in the Whereas clauses above. The Pari-Mutuels shall pay in full the Flat Fee Payment in the total amount of three million, nine hundred ninety nine thousand, nine hundred ninety nine dollars ($3,999,999.00).

Section 29. Covenants.

The PARI-MUTUEL agrees to execute a Declaration of Covenants which shall run with the land to ensure that the PARI-MUTUEL shall comply with the monetary obligations of this Agreement and by any person or entity who purchases the stock or assets of the PARI-MUTUEL and/or operates slot machines from the PARI-MUTUEL's location. The declaration is attached and incorporated by reference as Attachment A.

Section 30.

If the COUNTY takes affirmative action by way of ordinance, resolution or otherwise that would have the reasonable or foreseeable result of negatively impacting the generation or capacity of generation of Gross Slot Revenues at the PARI-MUTUEL, then the COUNTY and the PARI-MUTUEL agree to negotiate in good faith to revise the terms and conditions of this Agreement. By exception, the County shall have no good faith obligation in the event the County's affirmative action is mandated by State law. If and until such time as an amendment or revised agreement is executed, all terms and conditions of this Agreement shall remain in place. Nothing herein shall be construed to obligate the COUNTY to revise any term or condition of this Agreement.

Section 31. Covenant Not to Sue

The PARI-MUTUEL hereby covenants that it shall not commence or maintain any lawsuit, administrative proceeding, or other action, whether at law or in equity, which challenges the validity or enforceability of this Agreement, any provision of this Agreement or any payment obligation under this Agreement, including but not limited to the obligation of the PARI-MUTUEL to pay the Flat Fee Payment to the COUNTY. This covenant shall be binding upon, and inure to, the benefit of the parties, their successors, assigns, heirs, legal representatives, and personal representatives.

Section 32. Right to Re-open

If Broward County reopens any of its agreements with pari-mutuel facilities related to the operation of slots in such facilities, and Broward County negotiates terms and conditions in a new agreement that are more favorable to Broward County than the terms and conditions of this Agreement are to the COUNTY, then the COUNTY in its sole discretion shall have the right to reopen this Agreement. In such event, the COUNTY and the PARI-MUTUEL agree to

renegotiate in good faith to modify the terms and conditions of this Agreement so as to provide the COUNTY and the PARI-MUTUEL substantially similar terms and conditions to those contained in the new Broward County agreement.

If any other county in the State of Florida enters an agreement with a pari-mutuel facility licensed under Chapter 550, Florida Statutes, related to the operation of slots in such facility, and such agreement contains terms and conditions that are more favorable to the other county than the terms and conditions of this Agreement are to the COUNTY, then the COUNTY in its sole discretion shall have the right to reopen this Agreement. In such event, the COUNTY and the PARI-MUTUEL agree to reopen this Agreement and renegotiate in good faith to modify the terms and conditions of this Agreement so as to provide the COUNTY and the PARI-MUTUEL substantially similar terms and conditions to those contained in the relevant agreement.

[Signature pages to follow.]

IN WITNESS WHEREOF, the COUNTY and the PARI-MUTUEL have caused this Agreement to be duly executed.

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

By_____
George M. Burgess
County Manager

ATTEST:
CLERK OF THE BOARD

_____
Deputy Clerk

Approved as to form and legal sufficiency:

By_____
Assistant County Attorney

Witnesses (if partnership):

West Flagler Associates, Ltd.

By: Its General Partner
Southwest Florida Enterprises, Inc.,
A Florida corporation

Lori Weems
(Signature)
Print name: Lori Weems

By Fred Havenick
(Signature)
Print name: Fred Havenick
Title: President
Address: 401 NW 38th Court,
Miami, Florida 33126

(Signature)
Print name: ISADORE HAVENICK

31st day of January, 2005

ATTEST (if corporation):

(CORPORATE SEAL)

(Secretary Signature)
Print Name of Secretary: _____

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 31st day of January, 2005, by Fred Havenick, as President of Southwest Florida Enterprises, Inc., a Florida corporation, the General Partner of West Flagler Associates, Ltd., a Florida limited partnership, on behalf of the partnership. He or she is:
[ ]personally known to me, or
[✓]produced identification. Type of identification produced Florida D/L.

NOTARY PUBLIC:

(Seal)

Ronald Albert Jr.
Print name:

My commission expires:

RONALD ALBERT, JR.
MY COMMISSION # DD 003566
EXPIRES: March 20, 2005
Bonded Thru Notary Public Underwriters

Witnesses (if partnership):

Bet Miami Greyhound,
A Joint Venture
By: Its General Partner
West Flagler Associates, Ltd.,
A Florida Limited Partnership.
By: Its General Partner
Southwest Florida Enterprises, Inc.,
A Florida corporation

Lori Weems
(Signature)
Print name: Lori Weems

By Fred Havenick
(Signature)
Print name: Fred Havenick
Title: President
Address: 401 NW 38th Court,
Miami, Florida 33126

Isadore Havenick
(Signature)
Print name: ISADORE Havenick

31st day of January, 2005

ATTEST (if corporation):

(CORPORATE SEAL)

(Secretary Signature)
Print Name of Secretary: _____

ACKNOWLEDGMENT – JOINT VENTURE

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 31st day of January, 2005, by Fred Havenick, as President of Southwest Florida Enterprises, Inc., a Florida corporation, the General Partner of West Flagler Associates, Ltd., a Florida limited partnership, as a joint venturer / general partner on of Bet Miami Greyhound, a Florida joint venture, the joint venture. He or she is:

[ ]personally known to me, or
[✓]produced identification. Type of identification produced Florida P/L.

NOTARY PUBLIC:

(Seal)

Print name:

My commission expires:

RONALD ALBERT, JR.
MY COMMISSION # DD 003566
EXPIRES: March 20, 2005
Bonded Thru Notary Public Underwriters

2584082_v1

Return recorded copy to:

Lori K. Weems
Holland & Knight LLP
701 Brickell Ave., Ste. 3000
Miami, Florida 33131

Document prepared by:

Lori K. Weems
Holland & Knight LLP
701 Brickell Ave., Ste. 3000
Miami, Florida 33131

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants, made this 31st day of January, 2005, by West Flagler Associates, Ltd., hereinafter referred to as "PARIMUTUEL FACILITY", a Florida limited partnership corporation whose address is 401 NW 38th Court, Miami, Miami-Dade County, Florida 33126 for the benefit of MIAMI-DADE COUNTY, a political subdivision of the State of Florida, with a post office address at 111 N.W. 1st Street, Suite 2910, Miami, Florida 33128.

WHEREAS, PARIMUTUEL FACILITY is the fee title owner of that certain real property, located in Miami-Dade County, Florida, and legally described in Exhibit A, attached hereto and incorporated herein (the "Property"); and

WHEREAS, OWNER hereby covenants that OWNER is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the purposes of this Declaration; that OWNER has good right and lawful authority to make this Declaration; and that OWNER agrees to fully warrant and defend this Declaration against the claims of all persons whomsoever; and

WHEREAS, in the November 2004 general election, the residents of the State of Florida voted to adopt an amendment to the Florida Constitution so that the residents of Miami-Dade County could vote at a referendum election in order to decide whether to authorize the operation of slot machines exclusively at existing licensed parimutuel facilities located in Miami-Dade County; and

WHEREAS, COUNTY and PARIMUTUEL FACILITY recognize that each entity is concerned with the health and general welfare of the residents of Miami-Dade County as it relates to addition of slot machines within the PARIMUTUEL FACILITY; and

WHEREAS, COUNTY and PARIMUTUEL FACILITY recognize that each entity impacts the health and general welfare of the residents of Miami-Dade County; and

WHEREAS, COUNTY and PARIMUTUEL FACILITY recognize that the residents of Miami-Dade County have legitimate concerns over increased development, traffic, crime, congestion, and the quality of life in Miami-Dade County;

NOW, THEREFORE, the undersigned agree and covenant to the following:

1. The recitals set forth above are true and correct and are incorporated into these restrictive covenants.

2. In order to assist Miami-Dade County in offsetting and defraying governmental impacts, including but not limited to, the costs of regional law enforcement, human services, mass transit operation, and to mitigate lost revenues such as port fees that COUNTY will incur as a result of PARIMUTUEL FACILITY'S slot machine operations in Miami-Dade County, PARIMUTUEL FACILITY agrees to pay Miami-Dade County in accordance with the Agreement (hereinafter referred to as "Agreement") entered into between Miami-Dade County and PARIMUTUEL FACILTY, attached hereto and made a part hereof as Exhibit "B".

3. MIAMI-DADE COUNTY, through its Board of County Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, MIAMI-DADE COUNTY may enforce these covenants by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of this Covenant.

4. Any failure of MIAMI-DADE COUNTY to enforce these covenants shall not be deemed a waiver of the right to do so thereafter.

5. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other conditions which remain in full force and effect.

6. This Declaration of Covenants shall be recorded in the Public Records of Miami-Dade County, Florida, and the provisions hereof shall run with the land and shall remain in full force and effect and be binding upon the undersigned, their heirs, legal representatives, personal representatives, grantees, and assigns, including any person or entity taking title to the land; provided, however, that the intent of this Declaration of Covenants shall not have the effect of impairing any existing or future credit or financing agreements of the Pari-Mutuel Facility as the intent of the Declaration of Covenants is to enforce Exhibit B regardless of future ownership.

IN WITNESS WHEREOF, PARIMUTUEL FACILITY has executed this Declaration of Restrictive Covenants on the 31st day of January, 2005.

PARIMUTUEL FACILITY

Witnesses (if partnership):

West Flagler Associates, Ltd.

By: Its General Partner
Southwest Florida Enterprises, Inc.,
A Florida corporation

Lori Weems
(Signature)
Print name: Lori Weems

By Fred Havenick
(Signature)
Print name: Fred Havenick
Title: President
Address: 401 NW 38th Court,
Miami, Florida 33126

(Signature)
Print name: Isaac Havenick

31st day of January, 2005

ATTEST (if corporation):

(CORPORATE SEAL)

(Secretary Signature)
Print Name of Secretary: _____

ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP

STATE OF FLORIDA)
) SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 31st day of January, 2005, by Fred Havenick, as President of Southwest Florida Enterprises, Inc., a Florida corporation, the General Partner of West Flagler Associates, Ltd., a Florida limited partnership, on behalf of the partnership. He or she is:
[ ] personally known to me, or
[✓] produced identification. Type of identification produced Florida D/L.

(Seal)

NOTARY PUBLIC:

My commission expires:

Print name:

RONALD ALBERT, JR.
MY COMMISSION # DD 003566
EXPIRES: March 20, 2005
Bonded Thru Notary Public Underwriters

EXHIBIT "A"

LEGAL DESCRIPTION

See attached.

Exhibit A

Description of Real Property

All those tracts, pieces or parcels of land in Dade County, Florida more particularly described below:

Tract "A" "Amended Plat of Airline Center", according to the Plat thereof as recorded in Plat Book 33, at Page 77, of the Public Records of Dade County, Florida; /and the North 289.91 feet of the East 1/2 of the SE 1/4 of the NE 1/4, less the E.35 feet and South 25 feet thereof; /and the East 225 feet of the North 289.91 feet of the W 1/2 of the SE 1/4 of the NE 1/4 less the South 25 feet and the West 25 feet thereof; /and the East 225 feet of the West 1/2 of the NE 1/4 of the NE 1/4 less the West 25 feet and less the North 35 feet thereof in Section 5, Township 54 South, Range 41 East in the City of Miami, Dade County, Florida. /Less the external area formed by a 25 feet radius curve at the S.E. corner of the parcel herein described, said curve being tangent to the East and South lines of said parcel.

Area 1

EXHIBIT B

Lots 13, 14 and 15, in Block 4, TWELFTH STREET MANORS according to the Plat thereof, as recorded in Plat Book 5 at Page 59 in the Public Records of Dade County, Florida; and

Lots 1 to 12, both inclusive, and Lots 16 to 20, both inclusive, all in Block 4; and Lots 1,2,3, in Block 5, of TWELFTH STREET MANORS, according to the Plat thereof, recorded in Plat Book 5, at Page 59, of the Public Records of Dade County, Florida; LESS AND EXCEPTING therefrom the following described parcels thereof, to-wit:

(a) The North 5.00 feet of the West 24.88 feet of Lot 1, in Block 4, of TWELFTH STREET MANORS, according to the Plat thereof, recorded in Plat Book 5, at Page 59, of the Public Records of Dade County, Florida, together with all that part of said Lot 1 included in the external area formed by a 25.00 foot radius arc concave to the Southeast, tangent to the West line of said Lot 1 and tangent to a line that is 5.00 feet South of and parallel to the North line of said Lot 1;

(b) The South 5.00 feet of the West 25.12 feet of Lot 8, in said Block 4, together with all that part of Lots 7 and 8 in said Block 4 included in the external area formed by a 25.00 foot radius arc concave to the Northeast, tangent to the West line of said Block 4 and tangent to a line that is 5.00 feet North of and parallel to the South line of said Lot 8; and

(c) The North 5.00 feet of the West 24.88 feet of Lot 1, in Block 5, of TWELFTH STREET MANORS, according to the Plat thereof, recorded in Plat Book 5, at Page 59, of the Public Records of Dade County, Florida, together with all that part of said Lot 1 included in the external area formed by a 25.00 foot radius arc concave to the Southeast, tangent to the West line of said Lot 1 and tangent to a line that is 5.00 feet South of and parallel to the North line of said Lot 1.

Area 2

1464k(4)

4-54-41

FLAGLER

#11 LEGAL DESCRIPTION:

Tract A of Airline Center, P.B. 33, Page 77, Sub. of East one-half of Northeast Quarter of Northeast Quarter Section 5, Township 54 South, Range 41 East.

Slot Machine Revenue Forecast

			FY 2009-10 **	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
			**				Projected
Flagler Dog Track	Opening Date	10/15/2009	351				
	Number of Machines	787					
	# of Slot Days		272,199	287,377	287,920	292,304	294,931
				1.056	1.002	0.9945	1.0090
	Revenue		$ 63,204,786	$ 76,595,341	$ 78,138,260	$ 77,709,023	$ 78,407,359
	Tax at 1.5%		$ 948,072	$ 1,148,930	$ 1,172,074	$ 1,165,635	$ 1,176,110
			**				
Calder	Opening Date	1/21/2010	252				
	Number of Machines	1,207					
	# of Slot Days		450,694	435,901	441,640	440,950	444,935
				0.967	1.013	1.0072	1.0000
	Revenue		$ 65,915,947	$ 72,689,710	$ 73,397,239	$ 73,924,983	$ 73,924,983
	Tax at 1.5%		$ 988,739	$ 1,090,346	$ 1,100,959	$ 1,108,875	$ 1,108,875
Miami Jai-Alai	Opening Date	4/1/2010					
	Number of Machines	1,039			252	365	365
	# of Slot Days				261,912	383,037	382,520
						1.1154	0.9843
	Revenue		$ -	$ -	$ 39,281,024	$ 63,634,536	$ 62,636,785
	Tax at 1.5%		$ -	$ -	$ 589,215	$ 954,518	$ 939,552
	Revenue to County		$ 1,936,811	$ 2,239,276	$ 2,862,248	$ 3,229,028	$ 3,224,537

**divided by 365 to have a complete year

Income per Machine per Day

FY 2009-10	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
Flagler	$ 232.20	$ 266.53	$ 271.39	$ 270.64	$ 273.07
Calder	$ 146.25	$ 166.76	$ 166.19	$ 167.65	$ 167.85
Miami Jai-Alai	$ -	$ -	$ 149.98	$ 167.74	$ 165.11
Average	$ 189.23	$ 216.65	$ 195.85	$ 202.01	$ 202.01

Attachment 2