



THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE

Charlotte Amalie, V.I. 00802
340-774-0001

November 16, 2016

The Honorable Neville A. James
President
Thirty-First Legislature of the Virgin Islands
Capitol Building
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00804

Dear Mr. President:

I am pleased to submit to you proposed legislation, the "Amendments to the Virgin Islands Horse Racing Industry Assistance Act of 2010," together with a comprehensive package of agreements and related documents between the Government of the Virgin Islands ("Government") and VIGL Operations, LLC ("VIGL"), a Virgin Islands limited liability company, which will modernize the horse racing industry in the Virgin Islands and help jump-start sports tourism in the Territory, especially on the island of St. Croix. The legislation submitted herewith has been revised slightly from the version previously submitted on October 27, 2016, primarily to alter the allocation of revenues received from pari-mutuel wagering at the race tracks pursuant to 32 V.I.C. §901. Two percent (2%) of those revenues that were previously allocated to the Virgin Islands Horse Racing Commission have been re-allocated to the Department of Agriculture to place in a special fund for the treatment of race horses who are injured or retired and cannot continue to race.

Horse Racing Decline & Proposed Solution

Horse racing has had a storied history in the U.S. Virgin Islands. Unfortunately, the horse racing industry has fallen on hard times across the country, including the U.S. Virgin Islands. During the course of our inquiries, we spoke to racetrack operators and horsemen in the States and learned that to keep the sport alive they are combining casinos with horse racing to improve the deteriorating horse racing facilities and infrastructure. The most successful tracks in the United States have introduced, and now depend on, casino gaming as an additional draw to increase track attendance and as a means to help finance track operations, improvements and maintenance, while increasing race purses and support for horsemen and the betting public.

The Clinton Phipps Racetrack on St. Thomas and the Randall "Doc" James Racetrack on St. Croix are both in a state of serious disrepair, with operators who are either unwilling or unable

William W. Bushnell

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to invest the necessary capital required to revitalize and operate the racetracks to a standard that the people of the Virgin Islands deserve. Our tracks need significant new capital investment, a minimum number of race days, and larger purses for our horsemen. Without these improvements, we cannot develop sports tourism in the Territory that will attract additional economic opportunities.

My administration has developed a comprehensive approach to address all of the deficiencies of the current situation. We have identified an operator with nationally recognized experience in the horse racing industry who is willing to invest nearly \$30 million in private capital to build modern state-of-the-art racetracks and related facilities on both St. Thomas and St. Croix. We negotiated a tough but fair agreement that imposes specific obligations on the new operators in terms of track improvements including:

- Revenue sharing and fees to the Government;
- Minimum number of race days on both St. Thomas and St. Croix;
- Minimum purse sizes;
- Increased training and scholarships for the community;
- Stringent reporting requirements;
- Performance guarantees.

Prior to drafting proposed legislation, we examined horse racing statutes and regulations in several leading horse racing states in order to modernize our regulatory structure and to strengthen the industry. In turn, the proposed legislation will provide a professional infrastructure, which will attract new businesses and also maximize the benefits to our horsemen, the patrons, and the Government.

Accordingly, the comprehensive reorganization I am submitting today also includes amendments to the Virgin Islands Casino and Resort Act to permit "Racinos" with limited slot machines at both the St. Thomas and St. Croix racetracks. The legislation substantially increases the gaming fees the Racino operator would pay to the Government. The Legislation also requires contributions to increase purses and for other community purposes.

It is important to recognize that in developing these improvements to our horse racing industry, I have consulted with the Government's other gaming partners in the Territory. The owners of the Divi Carina Bay Casino fully cooperated with this transition, and will remain active in operating the St. Croix Racino for several years during the new operator's construction phase. I thank the Divi personnel for their cooperation and assistance. I have also met with the Government's partner in Video Lottery Terminals (VLTs), Southland Gaming, whose president

personally assured me that he anticipates that the new St. Thomas Racino will have very little impact on Southland's VLT business on St. Thomas.

Amendments to the VI Horse Racing Industry Assistance Act of 2010

First, the proposed bill would streamline the regulatory structure by consolidating the two existing District Commissions and establishing one commission within the Department of Sports, Parks and Recreation, called the Virgin Islands Horse Racing Commission ("Commission"). The Commission would be composed of nine voting members, with four from St. Croix and four from St. Thomas-St. John (with one member from St. John), each appointed by the Governor, and the Commissioner of Sports, Parks and Recreation as the ninth member. The amendments enhance the Commission's regulatory powers and implement much needed conflict of interest rules. In order to attract the best candidates, the amendments increase the stipend for each Commission member to \$500 for each race day.

The proposed bill would also authorize the Governor to award a Franchise Agreement to a racetrack operator for a term up to 20 years to any eligible individual, partnership, organization, association, corporation or other entity to promote and conduct horse racing and related activities at the Clinton Phipps Racetrack on St. Thomas and the Randall "Doc" James Racetrack on St. Croix, subject to the approval of the Legislature. The racetrack operator would be subject to tough new disclosure requirements to ensure greater transparency and prevent potential conflicts of interest. The license would also terminate if there were a substantial change of ownership without Commission approval. The bill would also require the racetrack operator to comply with best practices in the horse racing industry, including compliance with federal and local anti-doping rules, to ensure that horse races in the Virgin Islands are conducted safely and with integrity.

Importantly, the bill would also amend the casino statute to allow the holder of a valid horse racing license to operate a casino at the horse track on St. Thomas and St. Croix, except that gaming at the racetracks would be limited to slot machines operated by an entity with a valid casino license. In order to avoid competition with other casinos and Video Lottery Terminal ("VLT") operators, the Racinos would be limited to 200 slot machines on each island.

The bill would also increase the casino fees from 19 ¼% to 25% — which would be paid into a separate and distinct special fund called the "Horse Racetrack Casino Revenue Fund." This nearly 30% increase in casino fees would be distributed from the fund as follows:

- 50% to the General Fund of the Virgin Islands Treasury;
- 30% to the respective horsemen's associations in both island districts, evenly divided;
- 3% to a newly established Thoroughbred Fund for use in the Certified Thoroughbred Program to improve facilities and breeding stock in the horse racing industry;

- 3% to a newly established Hospitality Fund for hospitality training in the tourism industry;
- 4% to the Agriculture Revolving Fund established and administered pursuant to 33 V.I.C. §3018, for the purchase and cultivation of fresh fruits and vegetables for consumption within the Territory;
- 2% to the Department of Agriculture to place in a special fund for the treatment of horses who are injured or cannot continue to race to assist the Horsemen Associations on both St. Croix and St. Thomas in taking care of the medical needs of the horses;
- 5% to the Department of Sports, Parks and Recreation for the development of youth sports activities in the Territory; and,
- 3% to the Virgin Islands Olympic Committee for the funding of athletes and national teams to represent the Virgin Islands in national and regional competitions.

This proposed legislation evidences my administration's commitment to revitalizing and improving the horse racing industry in the Territory. It also serves as the catalyst for the sound development of a sports tourism industry in the Territory which will benefit the people of the Virgin Islands for many years to come.

Agreement with VIGL Operations LLC

In addition to the proposed amendments, the Franchise Agreement between VIGL Operations, LLC and the Government of the Virgin Islands is attached. VIGL is a Virgin Islands limited liability company that presently operates the renovated Caravelle Hotel & Casino in Christiansted, which has been thoroughly vetted and licensed by the Casino Control Commission. VIGL's parent company plans, designs, and operates casinos and other entertainment venues in Illinois and Louisiana. For the racetrack project, VIGL has enlisted a team of highly credentialed and experienced horse racing and betting experts to ensure that the two racetracks are built, renovated and operated to meet the highest standards of the horse racing industry.

The Franchise Agreement provides for a 20-year exclusive concession in the Territory for live horse racing, telephonic account betting, and simulcast wagering, and the right of use of all of the facilities and equipment at the St. Thomas and St. Croix racetracks. The effective date of the Franchise Agreement is subject to several conditions precedent, including (among other things) approval by the Legislature; receipt by VIGL of a Racino gaming license awarded by the Casino Control Commission; execution of racing agreements between VIGL and the horsemen's organizations on St. Thomas and St. Croix; and termination of existing racing agreements.

The Franchise Agreement is comprehensive. Its material provisions can be broken down into seven broad categories: (1) minimum capital investments and construction projects; (2)

ongoing fees and payments; (3) racing and purse requirements; (4) charitable contributions, training, and scholarships; (5) financial protections and remedies; (6) reporting and audit requirements; and (7) termination, renewal, and transfer provisions.

1. Capital Investment and Construction:

Once it becomes effective, the Franchise Agreement requires VIGL to make large up-front investments of not less than \$27 million for the improvement and expansion of the two racetracks. That \$27 million will be allocated as follows: \$14 million to the St. Croix track, \$12 million to the St. Thomas track (including \$2 million for the purchase of the 12.8 acre Lima Property adjacent to the track), and \$1 million to a reserve fund.

Within 30 days of the effective date, VIGL must present to the Government a project management plan setting forth in detail its specific plans for investing that money to restore, improve, and enhance the racetracks. The Government has the right to review and approve that plan. Once the plan is approved, VIGL's implementation must begin immediately and be (1) not less than 40% complete within 24 months of approval, and (2) substantially complete within 42 months of approval. Failure to achieve those deadlines is deemed a breach of the Agreement.

The specific projects required by the Agreement include the construction of new "Racing Entertainment Centers" at both tracks, which will include improved grandstands, a live betting parlor, slot machines, luxury suites, betting facilities, dining establishments, bars and lounges, picnic/tent areas, and kiosks for use by local vendors on race days. In addition, VIGL will undertake significant construction and improvement of the racing facilities themselves, including building new horse barns, new quarantine barns, new veterinary facilities, and new locker rooms for jockeys. The racing ovals will be completely resurfaced, and VIGL will supply them with new video screens, new starting chutes, and new watering equipment. The end result will be two racetracks renovated to premiere standards—standards sufficient to attract quality racehorses both from within and from outside the Territory.

2. Taxes, Fees and Payments:

VIGL is obligated to pay full taxes and all permit and other fees, except as otherwise provided by statute. Specifically, 33 V.I.C. §§205(b), 206, and 208 provide that in lieu of gross receipts tax, a franchisee pays to the Government four percent (4%) of its pari-mutuel take, 4% of its simulcasting take, and two percent (2%) of its off-track betting take. VIGL is also obligated to pay statutory casino fees, which will be increased under the legislation presented simultaneously with the Agreement.

In addition, VIGL is required to make a variety of payments during the term of the Agreement, including license fees of \$20,000 annually; franchise fees that begin at \$10,000 annually for the first three years, then rise to \$25,000 annually for the fourth and fifth years, and rise to \$50,000 annually thereafter; maintenance fees in the amount of four percent (4%) of the annual gross Racino revenues; and, under separate lease agreements, rent of \$108,000 annually for the St. Croix track and \$24,000 annually for the St. Thomas track (the lower annual rent for St.

Thomas reflecting the additional cost to VIGL of purchasing the 12.8-acre Lima property adjacent to the racetrack), in each case subject to an annual increase of five percent (5%). In addition, VIGL will subsidize the operating expenses of the Virgin Islands Horse Racing Commission such that the Commission will be guaranteed funding (from all source) of not less than \$450,000 annually.

3. Racing and Purse Requirements:

For the first three years, VIGL must hold a minimum aggregate total of 18 live races; thereafter, it must hold a minimum aggregate total of 24 live races. The purse for each race day at each racetrack must be at least \$100,000, and the total purse value for a given year must be at least \$2 million for years 1-3; \$2.5 million for years 4-6; and \$3 million for each year thereafter. To the extent the purses for a given year exceed those minimum amounts; VIGL must contribute an amount equal to the excess to the purses for the following year. That is, Year 2 has a minimum annual purse amount of \$2 million. If VIGL distributes purses for that year of \$2.6 million, then the minimum purse for the following year will be increased by \$600,000. The purse amounts are subject to a reset after 9 years.

4. Charity, Training, and Scholarships:

VIGL must make three \$1000 donations to charities on each live race day, for a minimum aggregate donation of \$54,000 in each of the first three years and \$72,000 in the fourth year. Thereafter, the minimum annual donation amount will rise by ten percent (10%) annually until it is capped at \$150,000. The selected charities will be given space at the racetracks on each live race day to conduct charitable activities.

VIGL is also required to develop training programs for its employees and interested students at the University of the Virgin Islands, and to fund a scholarship program for two or more individuals to study a discipline relevant to horse racing. The scholarship program will be jointly developed and administered by VIGL and the Horse Racing Commission, with input from the St. Thomas and St. Croix horsemen's organizations. The amount expended for training and scholarships will initially be not less than \$20,000 annually, with the minimum increasing fifteen percent (15%) per year to a maximum requirement of \$100,000.

5. Financial Protections and Remedies:

To ensure that VIGL performs its obligations under the Agreement, the Government insisted upon several protective measures. First, VIGL must post a performance bond in the amount of \$25 million, against which the Government can claim if VIGL fails to perform its construction and renovation obligations. The amount of the bond will be reduced by the amount of money spent on each completed project, but will never fall below \$1 million.

Second, in the event VIGL breaches its contractual obligations and fails to timely cure the breach, the Government may elect any of several available legal remedies, including an order obligating VIGL to remedy the violation; liquidated damages of up to \$1,500 per day while the breach continues; and under certain circumstances, revocation of the franchise.

6. Reporting and Audit:

VIGL will be subject to extensive reporting and audit requirements. Each year, VIGL must submit an annual report describing its operations, its progress on construction and improvement projects, and its financial results for the preceding year. The financial report must include audited financial statements. Based in part upon the annual report, the Horse Racing Commission will conduct an annual performance evaluation of the company, which will include public evaluation sessions reviewing VIGL's performance under the Agreement and its compliance with applicable laws and regulations. The results of the evaluation will be compiled into a written report available to the public.

In addition to annual reporting, VIGL is subject to periodic independent audits conducted at the request of the Horse Racing Commission, and must open its facilities to inspection on 24 hours' notice.

7. Termination, Renewal, and Transfer:

The Agreement gives the Government right to terminate the Agreement and revoke the franchise in several circumstances, including abandonment of the racetracks by VIGL; criminal fraud by a VIGL officer in performance of the Agreement; failure to begin or complete the construction and improvement projects required by the Agreement; and insolvency or bankruptcy.

Any renewal of the Agreement must be done in accordance with 32 V.I.C. §209, which governs the grant of lease-franchise agreements. In effect, a renewal will be treated like the initial award of a franchise.

Finally, VIGL's rights under the Agreement are not transferable or assignable without the Government's prior consent. Any such transfer of control over the Racino portion of VIGL's operation would also require the consent of the Casino Control Commission and the Division of Gaming Enforcement. To that end, VIGL is required to notify both the Government and the Horse Racing Commission of any actual or proposed change in its ownership or control.

The terms of the Franchise Agreement were the subject of extensive negotiations between VIGL and the Government, and represent a dramatic improvement over the terms of any previous racetracks agreements. The capital investment alone represents a substantial economic boon to both islands, and the tax revenues generated by ongoing operations of both the racing business and the Racinos will provide badly needed revenue to the Treasury.

Leases/Subleases

Because the racetracks are owned by the Department of Property and Procurement (acting on behalf of the Department of Sports, Parks, and Recreation), VIGL's use and occupancy of the facilities require lease agreements with that agency. The two leases do not require separate approval by the Legislature, but are submitted as appendices to the Agreement.

The St. Croix lease is styled as a "Sub-Lease," because there is already a Master Lease governing the property. The St. Thomas lease is simply a lease. Otherwise, the two documents are substantially identical. The primary difference is the annual rent: \$108,000 for the St. Croix facility and \$24,000 for the St. Thomas facility, in each case increasing by five percent (5%) annually. The lower rent for the St. Thomas facility—a \$1.7 million value over the 20-year term, exclusive of the annual five percent (5%) increases—reflects the approximately \$2 million VIGL has already spent to acquire the adjacent Lima property, which will become an integral part of the St. Thomas racetrack grounds and will revert to the Government with the rest of the facility upon expiration of the Franchise Agreement (except in the case of early termination of the Agreement by the Government).

Traxco Issue and Settlement

A condition precedent for the new Agreement is the termination of the existing Agreement held by Traxco, Inc. for the St. Croix racetrack which is the subject of ongoing litigation between Traxco and the Government. The Government, Traxco, and VIGL have reached an agreement pursuant to which Traxco will settle its litigation with the Government and renounce any claim to operate the St. Croix racetrack in exchange for (1) the right of its parent, Treasure Bay VI Corp. ("TBVI") to operate a Racino on the racetrack premises until the VIGL Agreement is approved and VIGL receives the licenses and permits necessary to begin Racino operations, (2) statutory amendments permitting a temporary reduction in TBVI's gross receipts tax rate from twelve percent (12%) to eight percent (8%), and (3) certain payments from VIGL. The end result for the Government will be the elimination of the Traxco litigation, the substitution of a new, experienced operator with deep pockets and contractual commitments to make large investments in the Territory, which will improve and professionalize the Virgin Islands horse racing industry and attract new business.

* * *

I look forward to working with you and the Members of the 31st Legislature to approve the entire package provided herein for the benefit for the Government, our horse racing industry, and our community.

Sincerely,


Kenneth E. Mapp
Governor

Enclosures

BILL NO. _____

THIRTY-FIRST LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2016

An Act amending title 32 Virgin Islands Code, chapter 21 relating to the establishment of Racinos in the Virgin Islands and amending title 29 Virgin Islands Code, chapter 3 relating to the zoning for Racinos in the Virgin Islands.

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. This Act may be cited as “Amendments to the Virgin Islands Horse Racing Industry Assistance Act of 2010”.

SECTION 2. The purpose of this Act is to amend certain sections of The Virgin Islands Casino and Resort Act of 1995, title 32 Virgin Islands Code, Chapter 21, Sections 401, *et. seq.*, to consolidate the Horse Racing Commissions on each island; to allow the Government to enter directly into a Franchise Agreement for the racetracks on St. Croix and St. Thomas; to provide for slot machines at licensed horse racetracks in St. Croix and St. Thomas operated only by a Licensed Casino Operator and to disallow video lottery terminals (“VLTs”) at licensed horse race tracks in St. Croix and St. Thomas; to increase the racino fees; to amend the zoning provision at title 29 Virgin Islands Code, Chapter 3, to allow slot machines at licensed horse race tracks on St. Croix and St. Thomas.

SECTION 3. Title 32 Virgin Islands Code, chapter 11, section 201 is amended in its entirety as follows:

§ 201. Horse Racing Commission

(a) There is hereby established within the Department of Sports, Parks and Recreation, one commission for the regulation of horse racing known as the Virgin Islands Horse Racing Commission. The commission shall be composed of nine voting members. Four members from St. Croix and four members from St. Thomas-St. John (with one member from St. John) shall be appointed by the Governor, with the advice and consent of the Legislature. The Commissioner of Sports, Parks and Recreation shall serve as the ninth voting member, *ex officio*, of the Commission. A quorum shall consist of not fewer than two members from St. Croix and two members from St. Thomas-St. John.

(b) In the initial appointments hereunder, two members shall be appointed for two years, and two members for three years; thereafter all appointments shall be for six years; except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed

for the remainder of such term. Each member shall serve until the appointment and qualification of his or her successor.

(c) The members of the Commission shall annually elect one of their membership to serve as Chair thereof; provided, that the initial meeting of each Commission shall be called by the Commissioner of Sports, Parks and Recreation for the purpose of organizing the same.

(d) Any member may be removed by the Governor for cause.

(e) In addition to actual travelling expenses, each member of the Commission shall receive \$500 for each race day spent in the work of the Commission.

(f) The Commission shall have the powers, duties and authority as are prescribed by law. No member of the Commission, who has any pecuniary interest, direct or indirect, in any horse registered for participation in horse races in the Virgin Islands, may participate in any meeting, hearing, decision, or determination in relation to—

- (1) the order of finish of any race;
- (2) the disqualification of any horse participating in a race;
- (3) the granting, denial, suspension, or revocation of any license; and,
- (4) the imposition of any administrative penalties or sanctions.

(g) Until new Commission members are appointed pursuant to section (b), the existing Commissioners shall serve as temporary Commissioners until replaced.

(h) After the new Commission is formed, it shall adopt Rules and Regulations to comply with all federal, local and industry standards.

SECTION 4. Title 32 Virgin Islands Code, chapter 11, section 202 is amended as follows:

(a) Subsection (a) is amended by deleting the reference to the phrase “the St. Croix Racing Commission and the “St. Thomas-St. John Racing Commission, as appropriate” and replacing it with the phrase “the Virgin Islands Horse Racing Commission.”

(b) Subsection (b) is amended by (1) deleting the first two sentences, such that the provision begins with the existing sentence “The Virgin Islands Commission is hereby authorized . . .”; (2) deleting subsection (b)(8) in its entirety and renumbering accordingly; and (3) in what was previously subsection (b)(9), deleting the words “authorize the St. Croix Racing Commission and the St. Thomas/St. John Racing Commission to” and the words “in the respective districts.”

(c) subsection (c) is amended by (1) deleting the phrase “the St. Croix Racing Commission and the St. Thomas/St. John Racing Commission shall each” with the phrase “the Virgin Islands Horse Racing Commission shall”, and (2) deleting each reference to

the phrases "each Commission" and "the pertinent Commission" and replacing them with references to "the Commission."

(d) Subsection (e) is amended by deleting the phrase "a Commission" and replacing it with the phrase "the Commission."

(e) Subsection (g) is amended by deleting the phrase "or the St. Croix or St. Thomas-St. John Racing Commission."

(f) Subsection (h) is amended by deleting the phrase "and/or its district commissions."

(g) Subsection (i) is amended by (1) deleting the phrase "the St. Croix Racing Commission and the St. Thomas-St. John Racing Commission" and replacing it with the phrase "the Virgin Islands Horse Racing Commission," and (2) deleting the phrase "the Commissions' authority" and replacing it with the phrase "the Commission's authority."

SECTION 5. Title 32 Virgin Islands Code, chapter 11, section 204(a) is amended to delete the phrases "and/or its district commissions," "or commissions," and "or its district commissions."

SECTION 6. Title 32 Virgin Islands Code, chapter 11, section 205(b) is amended by deleting the last sentence, so that no funds will be shared with or deposited into the Horse Racing Improvement Fund.

SECTION 7. Title 32 Virgin Islands Code, chapter 11, section 208 is amended as follows:

(a) Subsection (a) is amended to delete the phrase "and/or its district commissions." Additionally, the second to last sentence is deleted, so that no funds will be shared with the Horse Racing Commission or deposited into the Horse Racing Improvement Fund.

(b) Subsection (b) is amended to delete the last sentence, so that no funds will be shared with the Horse Racing Commission or deposited into the Horse Racing Improvement Fund.

SECTION 8. Title 32 Virgin Islands Code, chapter 11, section 209 is amended to (1) delete the phrase "and its respective district commissions," and (2) delete the phrase "are hereby authorized" and replace it with the phrase "is hereby authorized."

SECTION 9. Title 32 Virgin Islands Code, Chapter 11, is hereby amended by adding new sections 300 through 311 as follows:

§ 300. Race Track Operator Franchise Agreement

Notwithstanding any other provisions of law to the contrary, the Governor is hereby authorized to award for a term of up to twenty (20) years to any eligible individual, partnership, organization, association, corporation, or other entity a Franchise Agreement,

also referred to as a "leasehold-concession agreement and license" to promote and conduct horse racing and related activities in the Virgin Islands. Any such agreement awarded shall be for the exclusive daily occupancy, operation and use of all of the facilities and equipment located at Clinton Phipps Park on St. Thomas and the Doctor Randall Nicholas "Doc" James Racetrack on St. Croix (each a "racetrack," and together the "racetracks") and shall be subject to approval by the Governor and the Legislature. For the avoidance of doubt, a Franchise Agreement awarded under this Chapter shall not constitute a "franchise" for purposes of Title 12A of the Virgin Islands Code.

§ 301 Conditions of License

A race track operator who has a valid Franchise Agreement shall have the duty to enforce applicable statutory requirements, including but not limited to, Chapter 11 of Title 32, and any rules and regulations enacted by the Virgin Islands Horse Racing Commission pursuant to its authority under such chapter.

§ 302 Required Disclosures For Holder of Franchise Agreement

Unless the holder of a Franchise Agreement is the holder of a casino license, such holder must comply with the following disclosures and notices:

- (a) All individuals, entities, associations, partnerships, and corporations who own 5 percent or more of the equity of the Race Track Operator applicant shall disclose such ownership interest in writing to the Virgin Islands Horse Racing Commission;
- (b) The Race Track Operator shall identify all persons, entities, financial institutions, REITs, corporations or partnerships extending credit to Race Track Operator in excess of \$10,000 for less than one year, but more than 30 days, provided that a horseman to whom moneys are owed as reflected in accounts maintained by the horsemen's bookkeeper shall not be considered a creditor.
- (c) The Virgin Islands Horse Racing Commission shall be notified of the identity of each new officer, director, substantial owner, or creditor of a Race Track Operator. Each new officer, director, substantial owner, or creditor shall make a written disclosure to the Commission on forms prescribed by the Commission for approval of their participation in racing in the U.S. Virgin Islands.

§ 304 Termination of License

Unless provided otherwise in an approved Franchise Agreement, the license to conduct a horse race meeting is deemed personal in nature and non-transferable, and will terminate upon a substantial change of ownership of the Race Track Operator, unless the Virgin islands Horse Racing Commission has granted prior approval. The sale of transfer of 25 percent or more of the equity of a Race Track Operator shall be considered a substantial change of ownership.

§ 305 Race Track Requirements

The holder of a Franchise Agreement to operate a race track must make provisions for complying with the following requirements:

- (a) **Horse Transporter**—A horse transporter must be provided at all race tracks for the safe and expedient removal of crippled animals from the track, as well as a screen for use when an animal must be destroyed in view of the general public, and a winch to lift dead or injured animals on to the transporter.
- (b) **Emergency Medical Services**—An emergency medical services plan must be provided to the Virgin Islands Horse Racing Commission thirty (10) days prior to the start of each race. The plan shall include all information relative to emergency medical services to be provided to racing participants and patrons.
- (c) **Virgin Islands Racing Commission Office**— An office for use by the members of the Virgin Islands Racing Commission must be provided on Race Days suitable for use by such persons in the performance of their duties.
- (d) **Judges' Stand**—Each racetrack shall include a judge's stand and/or remote controlled video cameras so located and constructed as to afford to the officials an unobstructed view of the entire track. No obstruction shall be permitted upon or near the track or the centerfield which shall obscure the officials' vision of any portion of the track during the race.
- (e) **Jockeys' Bench**— A covered bench, located conveniently to the gate gap through which horses enter the track at the beginning of a race, shall be provided at each racetrack for jockeys who are not competing in a particular race and who are wearing colors.
- (f) **Stabling of Horses**—All horses participating in racing at any racetrack operated by a Race Track Operator must be stabled within the confines of that track in numbered stalls. Horses must be stabled in individual box stalls with appropriate feeding and watering facilities. Stables and immediate surrounding areas must be kept in a sanitary condition at all times. Satisfactory drainage must be provided and manure and other refuse must be promptly and properly removed.
- (g) **Outrider**—Each race must have an outrider who is to be on duty and suitably mounted each day during racing hours. The outrider must display excellent riding ability. Among his duties shall include, but not be limited to, leading tough horses, holding a horse during an equipment change before a race, controlling the horses until they reach the gate, catching the horses if they stray at the gate or after an accident, detouring other horses away from an accident, leading

a post parade, and being a stopper at a distance behind the starting gate after a warm-up of horses.

(h) Rest Room Facilities —Each track shall have wash rooms throughout its grounds and buildings for the use of the public and the stable area, including the handicapped, in an adequate number to be determined by the Virgin Islands Horse Racing Commission.

(i) Pest Control—Sanitary conditions must be maintained at all times on each track, including the implementation of effective controls against birds, flies, mosquitoes, other insects and rats at all times.

(j) Alcohol Sales—Alcoholic beverages shall not be sold on the backstretch or in any other area used by it for stabling of horses.

(k) Fire Prevention—Adequate provisions must be made for fire prevention and fire suppression.

(l) Backstretch Paging System—All tracks shall have in place a suitable backstretch paging system.

§ 306 Anti-Doping

Horses participating in horse races shall be examined before and immediately after the race or races in which they participate. A horse to which drugs have been administered or to which an electric battery or any similar device had been applied may not participate in any race during the program. The order of finish of a race may not be determined until after the post-race examination for electric batteries or any similar device. If the administration of a drug or application of an electric battery or any similar device to a horse is discovered after a race and before the order of finish is determined, the horse shall be disqualified. No prize, in cash or otherwise, may be awarded until after the necessary test and analyses for drugs have been completed. If after any such test the administration of a drug to a horse is discovered, the horse may not receive any such prizes. Anti-doping testing includes the following defined items:

(a) An Official Sample is a sample of urine or blood that is collected at a racetrack from a horse by, or under the supervision of, a test inspector for the purpose of determining whether a prohibited substance is present;

(b) The Test Inspectors are the individuals in charge of the test barn. This includes the collection of samples, the supervision of the horse, its sample, and related documents;

(c) A Positive Test is one in which the presence of a prohibited substance is detected and confirmed in an official sample by a qualified official chemist working in a lab under contract to the Horse Racing Commission;

(d) A Qualitative Analysis means the identification of the substance in a sample. A Quantitative analysis means the measurement of the concentration of a substance in a sample.

§ 307 Collection of Samples

The collection of samples shall be as follows:

(a) Samples are collected from racehorses to test for the presence of prohibited substances to protect the integrity of Virgin Islands Racing and the betting public.

(b) Judges/stewards generally select horses for testing. Horses may be selected at random or on the basis of their racing performance.

(c) Immediately after a race, the horse is taken to the test barn (retention area), where it is placed in a secure stall until such time as a urine or blood sample is obtained. Horses may also be selected for pre-race sample collection.

(d) In the event that a horse does not produce a urine sample within a period of up to one hour after the last race of the day, a blood sample is collected in the test barn. Blood samples are also taken from horses that are entered in special drug-control programs such as the Exercise-Induced Pulmonary Hemorrhage (EIPH) Lasix7® (Salix ®) Program and the Quantitative Limit Program.

(e) An official sample is collected, the sample is sealed, labeled, and placed in a box with other samples from that race day. The label on the sample contains only the track name, date, and sample number. The horse's name and other identifying information, cross-referenced to the sample number, is retained at the track. The box is locked, sealed, and shipped to an official lab for analysis.

§ 308 Permitted and Prohibited Substances

The list of prohibited substances and methods shall be developed by the Commission after consultation with the Department of Agriculture. The list shall at a minimum include any substance or method that is included on either—

(a) Class 1, 2, 3, and 4 drugs, medications and substances in the Uniform Classification Guidelines for Foreign Substances of the Association of Racing Commissioners International (ARCI), as amended from time to time, published at ARCI's Website, or,

(b) The Prohibited List, International Standard, of the World Anti-Doping Code, as amended from time to time.

Except to the extent that such a substance or method described in subsections (a) or (b) is contained on the list of permitted substances and methods identified on the Association of Racing Commissioners International Therapeutic Medication Schedule for Horses, as amended from time to time, they shall be prohibited.

§ 309 Testing and Quality Assurance Plan

The Virgin Islands Horse Racing Commission shall determine the laboratory to be used in testing samples taken within its jurisdiction, provided that the laboratory selected has been accredited by, and complies with the testing protocols and standards established by, the Commission and any all federal and local laws.

§ 310 Anti-Doping Rule Violation-The Virgin Islands Horse Racing Commission, after notice to and with appropriate opportunity for comment from industry representatives and the public, shall establish a list of anti-doping rule violations applicable to either horses or affiliated persons including, but not limited to:

- (1) strict liability for the presence of a prohibited substance or method in a horse's sample or the use of a prohibited substance or method;
- (2) attempted use of a prohibited substance or method;
- (3) possession of any prohibited substance or method;
- (4) attempted possession of any prohibited substance or method;
- (5) administration or attempted administration of any prohibited substance or method;
- (6) refusing or failing without compelling justification to submit a horse for sample collection;
- (7) tampering or attempted tampering with any part of doping control; and

(8) trafficking or attempted trafficking in any prohibited substance or method and complicity in any anti-doping rule violation.

§ 310 Rules and Regulation of Doping

Not later than 90 days after the effective date of this Act or 90 days after sufficient members of the new commission are seated, whichever is later, the Virgin Islands Horse Racing Commission, after notice to and with appropriate opportunity for comment from Thoroughbred industry representatives and the public, shall establish rules for anti-doping results management and the disciplinary process for anti-doping rule violation results management, including provisions for notification of anti-doping rule violations, hearing procedures, burden of proof, presumptions, evidentiary rules, appeals, and guidelines for confidentiality and public reporting of decisions. Such rules shall provide adequate due process, including impartial hearing officers or tribunals commensurate with the seriousness of the alleged anti-doping rule violation and the possible sanctions for such violation.

§ 311 Doping Sanctions

The Virgin Islands Horse Racing Commission, after notice to and with appropriate opportunity for comment from Thoroughbred industry representatives and the public, shall establish uniform rules imposing sanctions against covered persons and/or covered horses for anti-doping rule violations. The sanctioning rules shall take into account the unique aspects of Thoroughbred horseracing, and shall be designed to ensure fair and transparent Thoroughbred horseraces and deter the commission of anti-doping rule violations. The rules shall impose sanctions up to and including a lifetime ban from horseracing and shall include opportunities for anti-doping rule violators to reduce the otherwise applicable sanctions generally comparable to those opportunities afforded by the United States Anti-Doping Agency's Protocol for Olympic Movement Testing.

§ 312 Relationship to Federal Anti-Doping Laws

To the extent the anti-doping rules enacted by Sections 306-311 of this Title are inconsistent with any subsequently enacted federal anti-doping laws, the federal laws shall govern.

§ 313 Authority of the Attorney General

- (a) It shall be the duty of the Attorney General to enforce this Act. The Commissioner of Police may, upon request of the Attorney General, order the law enforcing officers to assign a sufficient number of deputies to aid members of the Attorney General in preventing horse racing at any track within the respective districts for which a license has been refused, suspended or revoked by the Commission. The Police Commissioner may similarly assign such deputies to aid the Attorney General when, by his determination, additional forces are needed to preserve the health, welfare or safety of any person or animal within the grounds of any race track in the Territory.
- (b) The Attorney General is the legal adviser for the Commission and shall represent the Commission in any proceeding to which it is a party.
- (c) The Attorney General may audit and investigate service providers, totalizator companies, site operators, or organizations applying to conduct or conducting parimutuel wagering. The Attorney General may:
 - (1) Inspect all sites in which parimutuel wagering is conducted.
 - (2) Inspect all parimutuel wagering equipment and supplies.
 - (3) Seize, remove, or impound any parimutuel equipment, supplies, or books and records for the purpose of examination and inspection.
 - (4) Inspect, examine, photocopy, and audit all books and records.
- (d) The Commission shall reimburse the Attorney General for auditing and investigation. Payment for auditing and investigation must be deposited in the attorney general's operating fund.

SECTION 9. Title 32 Virgin Islands Code, chapter 21. Article 1, section 402, is amended as follows:

(a) Paragraph (4) is amended by deleting the phrase "Video Lottery Terminals (VLTs) only at the St. Thomas racetrack casino".

(b) Paragraph (68) is amended by adding "Video Lottery Terminals are not included in this definition, but if any such device is ever determined to be the same as or the equivalent of a slot machine, it shall then be defined as a slot machine and be subject to the same regulation and full control as any gaming device under this Chapter."

SECTION 10. Title 32 Virgin Islands Code, chapter 21. Article VI, section 434 is amended in the following instances:

(a) Subsection (d)(1) is amended to read as follows:

"The holder of a valid horse racing license granted by the Horse Racing Commission or the Government under chapter 11 of this title and a Lease-Franchise

Agreement under sections 209 or 300 of this title may be issued a casino license to operate a casino at the horse racetrack in St. Croix and the horse racetrack on St. Thomas under the conditions prescribed in this chapter; except that gaming at the horse racetrack casino in St. Croix and the horse racetrack casino in St. Thomas is limited to slot machines only operated by an entity with a valid Casino license."

(b) Subsection (d)(2)(A) is amended by adding the phrase "and the horse racetrack in St. Thomas" after the phrase "the horse racetrack in St. Croix" each time it appears as well as adding "or 300" after the words "section 209", as well as replacing the phrase "lease or management agreement" with the phrase "lease, management agreement or other similar agreement".

(c) Subsection (d)(2)(b) is amended by adding the phrase "and the horse racetrack in St. Thomas" after the phrase "the horse racetrack in St. Croix" each time it appears as well as adding "or 300" after the words "section 209".

SECTION 11. Title 32 Virgin Islands Code; chapter 21, Article VI. is amended in the following instances:

(a) Section 435a is amended to read as follows:

"§435a Limit on number of racetrack casino licenses

(a) The Commission may issue only one racetrack casino license on St. Croix and one racetrack casino license on St. Thomas

(b) No racetrack casino may operate or be authorized to operate more than 200 slot machines on any one island

(c) No other type of gaming machine or casino gaming activity may take place at any racetrack casino in the Virgin Islands. except as provided in section 434 (d)(1)."

(b) Section 436 is amended in the introductory clause by deleting the phrase "An applicant for a casino including an application for the operation of a casino at the horse racetrack in St. Croix license" and replacing it with the phrase "An applicant for a casino license, including an application for a casino license to operate at the horse racetrack on either St. Croix or St. Thomas."

SECTION 12. Title 32 Virgin Islands Code. Chapter 21, Article VII is amended in the following instances:

(a) Section 453 is amended in the following instances:

(1) The end of subsection (a) is amended to add the words "or St. Thomas" after the words "St. Croix."

(b) Section 456 is amended by deleting "VLT's" wherever the term "VLT's" appears in this section.

SECTION 13. Title 32 Virgin Islands Code, Chapter 21, Article XI, Section 515 is hereby amended by adding subsection (d) as follows:

(d) Notwithstanding the foregoing subsections, the holder of a Class III Casino License for more than three years as of September 1, 2016, shall be deemed to be in its first year of operations as of the effective date of this amendment for purposes of this Section 515.

SECTION 14. Title 32 Virgin Islands Code, chapter 21, Article XV is amended in the following instances:

§801-subsections (a) and (b) are amended by inserting "and the horse racetrack on St. Thomas" after "St. Croix"

§802 is replaced to now state "A casino license for a horse racetrack becomes void when the operator of the racetrack is, after a formal determination and required notice by the Horse Racing Commission or a determination by a competent judicial body, in default of its Franchise Agreement issued under either §209 or §300 of this title.

§803 is replaced to now state:

(a) Sections 515 and 516 of this chapter do not apply to any gross revenues derived from the operation of the casinos at the horse racetracks in St. Croix and St. Thomas. Gross revenues derived at the racetrack casinos in St. Croix and St. Thomas are not subject to gross receipts tax. Gross revenues received by the holder of a Lease-Franchise or Concession pursuant to 32 VIC §§209 or 300 and derived from a License Agreement with the operator(s) of the racetrack casinos in St. Croix and St. Thomas are not subject to gross receipts tax.

(b) There is imposed on the horse racetrack casinos in St. Croix and St. Thomas an annual tax of 25 percent on gross revenues as defined in Section 402 of this Title.

(c) Monies derived through taxation of casino gaming at the horse racetracks in St. Croix and St. Thomas are separate and apart from any live racing agreement(s) between the racetrack operator(s) and the St. Croix Horsemen Association and/or St. Thomas Horsemen Association, as applicable.

SECTION 15. Title 32 Virgin Islands Code, chapter 21, Article XVI is amended in the following instances:

§901-Horse Racetrack Casino Revenue Fund

(a) A separate and distinct special fund is established in the Treasury of the Virgin Islands known as the "Horse Racetrack Casino Revenue Fund" into which all revenues derived from the tax imposed by section 803(b) must be deposited.

(b) Monies in the Fund may be distributed only for the purposes prescribed under this subsection as follows:

(1) Fifty percent to the Treasury of the Virgin Islands pursuant to title 32 V.I.C., §517;

(2) Thirty percent to be evenly divided between the Association which represents the majority of all of the licensed horse owners and trainers on each of St. Croix and St. Thomas/St. John, respectively, and is so recognized by the Virgin Islands Horseracing Commission, for purses;

(3) Three percent to the Thoroughbred Fund established by Section 902 of this Title, for use in the Certified Thoroughbred Program.

(4) Three percent to the Hospitality Training Fund established by Section 903 of this Title;

(5) Four percent to the Agriculture Revolving Fund established by Section 3018 of Title 33 of the Virgin Islands Code,

(6) Two percent to the Department of Agriculture to place in a special Horse Treatment Fund for the treatment of horses who are injured or cannot continue to race to assist the Horsemen Associations on both St. Croix and St. Thomas in taking care of the medical needs of the horses as well as their euthanasia if needed;

(7) Five percent to the Department of Sports, Parks and Recreation for the development of youth sports activities in the territory; and

(8) Three percent to the Virgin Islands Olympic Committee for funding of athletes and national teams to represent the Virgin Islands in national and regional competitions.

§902. Thoroughbred Fund

(a) A separate and distinct special fund is established in the Treasury of the Virgin Islands for promotion of Horse Racing in the Virgin Islands designated as the Thoroughbred Fund. Monies in the Thoroughbred Fund are administered by the Virgin Islands Horse Racing Commission, through the Department of Finance.

(b) Monies in the Fund must be used to stimulate the horse racing industry in the Virgin Islands through assistance with increased economic activity and vitality to enable the industry to improve its facilities and breeding stock, and cause increased employment. Such monies shall be divided evenly to benefit the horse racing industry on St. Croix and the horse racing industry on St. Thomas, respectively.

§903 Hospitality Training Fund

(a) A separate and distinct special fund is hereby established in the Treasury of the Virgin Islands for hospitality training in the Virgin Islands designated the "Hospitality Training Fund".

(b) The Fund is to be administered by the Commissioner of the Department of Finance.

(c) Monies in the Fund shall be evenly divided for use solely for hospitality training on each of St. Croix and St. Thomas/St. John, respectively.

(d) The Department of Tourism shall coordinate the training programs to be implemented under the Fund.

SECTION 16. Title 32 Virgin Islands Code, Chapter 21, Section 1001 is hereby repealed.

SECTION 17. Title 29 Virgin Islands Code chapter 3 is amended in the following instances:

(a) Section 228 is amended in A-I Agricultural Zone and P-I Public Zone, in the paragraph captioned "Uses permitted subject to the conditions set forth in sections 231 and 232 of this subchapter" by adding item 7 to read as follows:

"7. Slot machines at the St. Croix horse racetrack and St. Thomas horse racetrack pursuant to title 32 V.I.C. chapter 21; and

(b) Section 231 is amended by adding item 32 to read as follows:

"32. Slot machines are permitted uses in the A-I Agricultural Zone and P-Public zone in the St. Croix and St. Thomas districts under the following conditions:

(A) Slot machines may be operated at only one horse racetrack on each of St. Croix and St. Thomas pursuant to title 32 V.I.C., chapter 21; and

(B) No structure may exceed a height of three stories."

BILL SUMMARY

The bill amends Title 32, Virgin Islands Code, chapter 21 relating to the establishment of Racinos in the Virgin Islands and amending title 29 Virgin Islands Code, chapter 3 relating to the zoning for Racinos in the Virgin Islands. It further amends certain sections of The Virgin Islands Casino and Resort Act of 1995, Title 32 Virgin Islands Code, Chapter 21, Sections 401, *et. seq.*, to consolidate the Horse Racing Commissions on each island; to allow the Government to enter directly into a Franchise Agreement for the racetracks on St. Croix and St. Thomas; to provide for slot machines at licensed horse racetracks in St. Croix and St. Thomas operated only by a Licensed Casino Operator and to disallow video lottery terminals ("VLTs") at licensed horse race tracks in St. Croix and St. Thomas; to increase the Racino fees; to amend the zoning provision at Title 29, Virgin Islands Code, Chapter 3, to allow slot machines at licensed horse race tracks on St. Croix and St. Thomas.