

**WESTERN REGIONAL OFF-TRACK BETTING CORPORATION**

Minutes of the regular meeting of Board of Directors of the Western Regional Off-Track Betting Corporation, ("Western") held on the 26th day of August, 2021 and commencing at 10:01 a.m. in the *Boardroom*, Corporate Headquarters at 8315 Park Road Batavia, New York.

**Participating were:**

Cattaraugus	Richard E. Haberer
Erie	Francis G. Warthling
Genesee	Richard E. Siebert
Livingston	Thomas P. Wamp
Monroe	Richard D. Bianchi
Orleans	Edward F. Morgan
Rochester	Dennis Bassett
Wayne	Ken Lauderdale
Wyoming	Susan May

**Absent:**

Buffalo	Parmer-Garner
Cayuga	Lattimore
Chautauqua	Hendrickson
Niagara	Winter
Oswego	Vacant
Schuyler	Barnes
Seneca	Ricci
Steuben	Vacant

constituting the Directors of all participating municipalities.

Also participating were: Henry F. Wojtaszek, President & CEO; Scott Kiedrowski, Vice President Operations; Jacquelyne A. Leach, Chief Financial Officer; William R. White, Vice President – Administration; Mark Gabriele, Associate General Counsel; Steven Haigh, Internal Auditor; Ryan Hasenauer, Director of Marketing-WROTBC & Video Gaming; Mark Bombardo, Oswego County; Mike Pettinella, The Batavian; Brian Quinn, The Batavia Daily News.

A roll of the membership of the Board having been called, Mr. Kiedrowski declared a quorum present.

Chairman Bianchi proceeded to conduct the meeting following the published Agenda for this regular meeting.

Chairman Bianchi asked Mr. Haigh to lead the assemblage in the Pledge of Allegiance.

1. **Approval of Previous Minutes:**

Chairman Bianchi called for amendments, additions, deletions, or corrections to the minutes of the previous meeting of July 22, 2021. There being none, a motion was made by Director May and seconded by Director Winter to approve the July minutes as submitted. The minutes were approved unanimously by voice vote.

2. **Communications:**

Mr. Scott P. Kiedrowski, Vice President – Operations informed the Board of the following:

A thank you note from Mr. and Mrs. Lowell Dennison and Mr. and Mrs. Ron Ritz for the heartwarming welcome to their entire group.

A letter from Mr. Chris Jacobs member of Congress, congratulating Batavia Downs Gaming receiving an ARC New York 2021 Employer of the Year Award.

A thank you note from Mr. Martin Miskell, Executive Director at The ARC Genesee Orleans for the sponsorship to the annual Golf Tournament.

**3. Personnel Committee Report:**

Committee Chairman Winter reported the Personnel Committee was held on Wednesday August 25, 2021 at 3:14 p.m. and the following items were discussed:

A motion to enter into Executive Session was made by Director Bianchi and seconded by Director Bassett.

At 3:40 p.m. a motion was made by Director May and seconded by Director Ricci to come out of Executive Session.

A motion was made by Director Morgan and seconded by Director May for the recommendation of staff for the Gaming Union employees wage adjustment to be brought to the full Board.

A motion was made by Director Haberer to adjourn, seconded by Director May, the Personnel Meeting adjourned at 3:44 p.m.

**4. Finance Committee Report:**

Committee Chairman Lauderdale reported that the Finance Committee meeting was held on Wednesday August 25, 2021 at 2:10 p.m. and the following items were discussed.

Mrs. Jacquelyne A. Leach, Chief Financial Officer reviewed the July 2021 Chief Financial Officer Report with Committee members. Mrs. Leach discussed the results of operations for branches and Batavia Downs. The Corporation will distribute \$74,267 in surcharge to member municipalities for the month of July.

Mrs. Leach also reviewed the July 2021 Batavia Downs results of operations, and provided information on credits played, net win and free play, food & beverage and hotel operations, and other statistics.

A motion to adjourn was made by Director Winter and seconded by Director Lauderdale. The Finance Committee meeting adjourned at 2:42 pm.

5. **Advertising Committee Report:**

Committee Chairperson May reported that the Advertising & Promotions Committee meeting was held on Thursday August 26, 2021 at 9:30 a.m. and the following items were discussed.

Mr. Todd Haight, Director/GM Live Racing/Branch Ops Specialist delivered a presentation on betting handle surrounding various horse racing events.

Mr. Ryan Hasenauer, Director of Marketing discussed the record weeks, attributing the success to the combined gaming floor and hotel offers, and the staff.

Mr. Hasenauer discussed statistics from the recent concerts as photos were shown.

Mr. Hasenauer informed the Committee of the "Employer of the Year Award" from the New York ARC. Batavia Downs was nominated by the Genesee/Orleans ARC. The award was received by Mr. Kiedrowski.

Mr. Hasenauer presented Resolution #43-2021 to purchase suite use from WNY Arena for various events for a five (5) year period in the following amounts:

2021-22 for \$170,000;  
2022-23 for \$172,000;  
2023-24 for \$174,000;  
2024-25 for \$176,000;  
2025-26 for \$178,000.

A motion was made by Director May and seconded by Director Morgan and passed to bring the Resolution #43-2021 to the full Board.

Upon motion by Director May and seconded by Director Wamp a roll call vote was taken. The motion passed to purchase suite use from WNY Arena for various events for a five (5) year period Ayes: 10; Nays: 0; Vacant: 2; Oswego; Steuben; Absent: 5; Parmer-Garner, Lattimore, Warthling, Siebert, Barnes. **See Resolution #43-2021.**

The Advertising & Promotions Committee meeting adjourned at 9:45 a.m.

6. **Legislative Committee Report:**

The Legislative Committee did not meet.

7. **Insurance Committee Report:**

The Insurance Committee did not meet.

8. **Audit Committee Report:**

The Audit Committee did not meet.

9. **Batavia Downs Operations Committee Report:**

Committee Chairman Morgan reported the Batavia Downs Operations Committee meeting was held on Wednesday August 25, 2021 at 1:08 p.m. and the following items were discussed.

Mr. Wojtaszek updated the committee discussing hotel revenue.

Mr. Mark Wolf, General Manager provided gaming statics to the Committee.

Mr. Todd Haight, Director /General Manager-Live Racing provided a Live Racing update.

Mr. Wojtaszek presented Resolution #47-2021 for Trane US Inc., Inc. for the purchase of a 167 ton air conditioning unit which the purchase was delayed due to COVID 19 for the total amount of \$126,070.00.

A motion made by Director Morgan and seconded by Director Winter and passed to bring the Resolution #47-2021 to the full Board.

9. **Batavia Downs Operations Committee Report continued:**

A motion made by Director Lauderdale and seconded by Director Winter and passed to bring the Resolution #50-2021 to the full Board.

Upon motion by Director Morgan and seconded by Director Winter a roll call vote was taken. The motion passed for 570 DAB 30, LLC the owner of K-Mart store parking lot for approval for leasing additional parking for the period Jun 1, 2021 through May 31, 2022 in the total amount of \$75,000.00. Ayes: 10; Nays: 0; Vacant: 2; Oswego; Steuben; Absent: 5; Parmer-Garner, Lattimore, Warthling, Siebert, Barnes. **See Resolution #50-2021.**

Mr. Wojtaszek presented Resolution #51-2021 for 4800 Square foot warehouse put on hold in 2020 due to COVID 19, the project is now moving forward with the scope and size of the building has increased to a 4,800 square foot warehouse and cold storage. Staff is requesting that the agreement with EI Team Inc. be amended to reflect an increase of \$52,818.63 plus out of pocket expenses.

A motion made by Director Winter and seconded by Director Bianchi and passed to bring the Resolution #51-2021 to the full Board.

Upon motion by Director Morgan and seconded by Director Haberer a roll call vote was taken. The motion passed for 4800 Square foot warehouse put on hold in 2020 due to COVID 19, the project is now moving forward with the scope and size of the building has increased to a 4,800 square foot warehouse and cold storage. Staff is requesting that the agreement with EI Team Inc. be amended to reflect an increase of \$52,818.63 plus out of pocket expenses. Ayes: 10; Nays: 0; Vacant: 2; Oswego; Steuben; Absent: 5; Parmer-Garner, Lattimore, Warthling, Siebert, Barnes. **See Resolution #51-2021.**

Upon motion by Director Haberer and seconded by Director Lauderdale the Batavia Downs Operations Committee meeting adjourned at 2:00 p.m.

10. **Branch Operations Committee Report:**

Committee Acting Chairperson Bassett reported the Branch Operations Committee meeting was held on Thursday, August 26, 2021 at 2:40 p.m. and the following items were discussed.

10. **Branch Operations Committee Report continued:**

Ms. Dina Pane, OTB Office Manager, updated the Committee on the work done installing a security door at the Marway Branch in Monroe County. She also informed the Committee that the already approved roof work at the Military branch in Niagara County will not begin until September due to supply shortages.

Ms. Pane informed the Committee that the Rainbow Lanes EZ Bet in Weedsport, Cayuga County, has closed due to lack of business. Director Lattimore is aware and approved as well. Staff continues to look for a replacement in Cayuga County.

Mr. Sean Schiano, Director of Branch Operations informed the Committee that Batavia Bets handled almost \$1.7 million but was down \$393,000 or 19% in July. In August, month to date, we have handled almost \$1.4 million, down about 11%. Year to date handle is \$12.5 million, up \$2.1 million or 21%

Mr. Schiano informed the Committee that the Jefferson Road, Monroe County, sale closed yesterday. McKinley in Erie County continues to proceed with their due diligence.

Upon motion by Director Bianchi, seconded by Director Hendrickson, the Branch Operations Committee adjourned at 2:46 p.m.

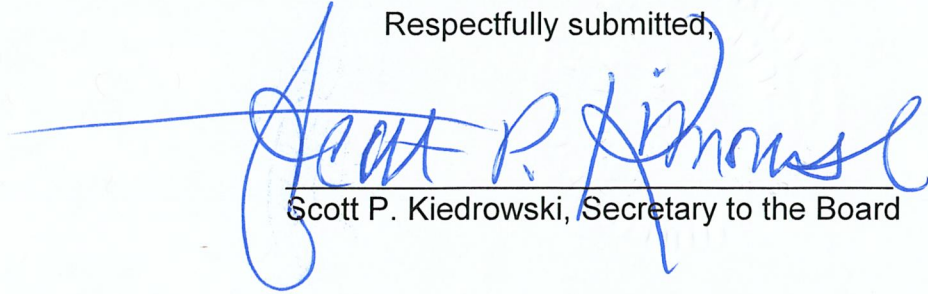
11. **New Business:**

The Committees and Board meetings are scheduled for September 22 and September 23, 2021 respectively.

12. **Adjournment:**

A motion made by Director Bassett to adjourn seconded by Director Hendrickson the meeting was adjourned at 10:27 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Scott P. Kiedrowski", is written over a horizontal line. The signature is fluid and cursive.

Scott P. Kiedrowski, Secretary to the Board

/pma



## RESOLUTION #43-2021

**WHEREAS**, as part of its ongoing patron attraction and retention program, Western Regional Off-Track Betting Corporation ("Western") contracts with local venues to provide entertainment event tickets for a certain level of our patrons, as well as for special promotions; and

**WHEREAS**, Western was provided an opportunity to purchase Suite use from the Western New York Arena ("Arena") for the Buffalo Sabres, Buffalo Bandits and various Arena events for a five (5) year period in the following amounts:

2021-22 for \$170,000;

2022-23 for \$172,000;

2023-24 for \$174,000;

2024-25 for \$176,000; and

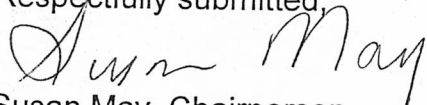
2025-26 for \$178,000.00

**WHEREAS**, Staff recommends that Western enter into an agreement with Arena for the purchase of the Suite tickets as set forth above; and therefore

**BE IT RESOLVED**, that the Board of Directors of Western hereby approves the purchase of Suite tickets from Arena in the annual amounts set forth above; and further

**RESOLVED**, that the Board of Directors of Western hereby authorizes an officer of Western to execute an agreement with Arena in furtherance of this resolution.

Respectfully submitted,



Susan May, Chairperson  
Advertising & Promotions Committee

Dated: August 26, 2021  
Batavia, New York



SUITE LICENSE AGREEMENT
Basic Information Sheet

BASIC INFORMATION SHEET by and between WESTERN NEW YORK ARENA, LLC, a New York limited liability company ("Licensor") and LICENSEE (as defined herein), on and as of the date set forth below. By execution of this Basic Information Sheet, Licensor and Licensee hereby agree to be bound by the terms and conditions of (i) this Basic Information Sheet and (ii) the attached Standard Provisions (including all Schedules), which together shall constitute the Suite License Agreement ("Agreement") in respect of the below designated Suite at the sports arena known as KeyBank Center, or such other name as designated by Licensor, ("Arena")

- 1. Licensee: Batavia Downs Gaming, LLC
Contact: Ryan Hasenauer
Address: 8351 Park Road, Batavia, NY 14020
Phone Number: (716) 445-2444
Email Address: rhasenauer@westernotb.com
2. Suite Number: 14
3. Suite Usage: All Events - Full Season
4. Term: 5 Years
License Years:
Effective Date: July 1, 2021 Expiration Date: June 30, 2026

Table with 3 columns: License Year(s), Amount (\$)(US). Rows for years 2021-22 to 2025-26 with amounts ranging from \$170,000.00 to \$178,000.00.

The Annual Fee for each License Year shall be paid in accordance with the schedule outlined below:

Table with 4 columns showing payment dates and amounts for Year 1 through Year 5, with amounts increasing from \$42,500 to \$44,500.

6. The Standard Provisions (including all Schedules) attached hereto are hereby incorporated by reference and made a part hereof. In the event of any conflict between this Basic Information Sheet and the Standard Provisions, the Basic Information Sheet shall control

IN WITNESS WHEREOF, the parties have executed this Agreement on and as of the \_\_\_ day of \_\_\_, 2021

LICENSEE
BATAVIA DOWNS GAMING, LLC

LICENSOR:
WESTERN NEW YORK ARENA, LLC

By [Signature]
Henry F. Wojtaszek
President / CEO
w20TB

DocuSigned by:
[Signature]
Michael McFarlane
SVP Finance

**SUITE LICENSE AGREEMENT**  
**Standard Provisions**

These Standard Provisions (including all Schedules hereto), together with the attached Basic Information Sheet ("BIS"), set forth the terms and conditions of the Suite License Agreement between Licensor and Licensee in respect of the Suite. The Suite shall be as identified on the BIS and Schedule 1 and have the internal design and furnishings as set forth on Schedule 2. Unless otherwise defined herein or in the BIS, all initially capitalized terms shall have the meanings set forth in Schedule 3.

**ARTICLE I - RIGHTS AND PRIVILEGES OF THE LICENSEE.**

A. **Suite Tickets.** In respect of each License Year of the Term, Licensee will receive Suite Tickets for all Arena Events as follows: (i) eighteen (18) Suite Tickets for all pre-season and regular season Sabres Games presented at the Arena and all preseason and regular season Bandits Games presented at the Arena and (ii) twelve (12) Suite Tickets for all other Arena Events. For the Arena Events referred to in clause (ii) above, Licensee may also purchase up to six additional Suite Tickets at the Premium Price. For purposes hereof, "Arena Events" shall mean all Arena covered events open to the general public for viewing or participation for an admission charge EXCEPT for Excluded Activities. "Excluded Activities" shall mean: (a) all nonpublic events; b) the Stanley Cup Playoffs and National Lacrosse League ("NLL") Playoffs; (c) all extraordinary international or national sporting events, as designated by Licensor; (d) all events whose organizers require exclusive use of the Arena, and; (e) up to one (1) non-hockey Arena Event that is not already an Excluded Activity under (a) - (d) above, per License Year, to be chosen by the Licensor, in its sole discretion, with at least twenty (20) days' notice to Licensee. For further clarification, examples of Excluded Activities under clause (a) - (d) include, but are not limited to, the National Hockey League ("NHL") or National Basketball Association ("NBA") All Star Games, the NHL Draft, NCAA, MAAC or other college athletic tournaments/competition, world championship and national championship sporting events, entertainment award shows and other similar events, political conventions and all private activities held at the Arena.

In addition, Licensee shall be afforded the first opportunity to purchase 18 Suite Tickets (or such fraction thereof in accordance with the fractional usage set forth in the BIS), at the Premium Playoff Price (as defined in Schedule 3), for any Sabres Games presented at the Arena in the Stanley Cup Playoffs and any Bandits Games presented at the Arena in the NLL Playoffs AND Licensee shall also be afforded the first opportunity to purchase a minimum of 12 (maximum of 18) Suite Tickets (or such fraction thereof in accordance with the fractional usage set forth in the BIS), at the Premium Price (as defined in Schedule 3), for all other Excluded Activities. These Standard Provisions will apply to any Excluded Activities. Licensor will endeavor to notify Licensee of the Excluded Activities as soon as practicable following promulgation of the schedule of Sabres Games and Bandits Games, and the public announcement of any other Arena Events.

Notwithstanding anything else herein, if the BIS indicates fractional usage of the Suite (e.g., 1/2 usage for each Arena Event or full Suite usage for 1/2 of all Arena Events), then for all Suite usages and entitlements (including, but not limited to Stanley Cup Playoffs and NLL Playoffs) Licensee will be entitled to receive ONLY the fraction (as stated in the BIS) of such Suite usage or entitlement (whether in Tickets, Arena Events, or a combination of both), and the remaining usage may be licensed to one or more other parties or retained by Licensor for its own use, without further liability or responsibility to Licensee. In addition, Licensor reserves the right to license or use the Suite and to permit other parties to use the Suite during Excluded Activities or Multi-Performance Events (as defined below) without further liability or responsibility to Licensee. Selection of Licensee's Arena Events shall be reasonably determined by Licensor as soon as practicable following promulgation of the schedule of Sabres Games and Bandits Games and public announcement of any other Arena Events.

For all multi-performance Arena Events, such as the circus (each a "Multi-Performance Event"), Licensee shall receive Suite Tickets for only one (1) of such performances, with the specific performance for which tickets will be provided to be designated by Licensor. Licensor will also have the option, at their sole discretion, to offer Licensee the opportunity to purchase a minimum of 12 (maximum of 18) Suite Tickets (or such fraction thereof in accordance with the fractional usage set forth in the BIS), at the Premium Price (as defined in Schedule 3), for one or more of the remaining performances. Notwithstanding the foregoing,

Licensor has the option, in its sole discretion, to provide Suite Tickets for more than one performance of a Multi-Performance Event, if it so chooses, at no additional cost.

Licensor shall not be liable or responsible for reimbursing Licensee for any additional expenses or any cancelled or delayed Arena Events.

B. Parking. Licensee will receive four covered parking spaces for Sabres and Bandits games and two covered parking spaces for all other Arena Events. Licensee's entitlement to any parking spaces is subject to all rules, regulations and procedures established by Licensor.

C. Suite Amenities and Privileges. Suite amenities include: (1) a fully furnished lounge area; (2) upholstered spectator seats for 12 people; (3) a wet bar with a refrigerator; (4) a private rest room; (5) coat closet; (6) private telephone service (local calls); (7) handicap accessibility; and (8) general housekeeping services. Suite holder privileges include: an identifying logo for the suite and concierge services.

D. Use of Suite. Licensee shall have use of the Suite for Arena Events and any Excluded Activities for which the Licensee has elected (within the time frame established by Licensor) to purchase Suite Tickets. For any Excluded Activities for which Licensee has not elected to purchase any Suite Tickets, Licensor shall be entitled, without the necessity of obtaining Licensee's consent, to use the Suite or to license usage of the Suite to third parties for such Excluded Activities, provided that Licensee shall have been provided the first opportunity to purchase Suite Tickets as set forth in Section I.A. but did not elect to do so within the time frame established by Licensor. The Licensee's use of the Suite shall be subject to the Suite Regulations (attached as Schedule 4), and all guest and invitees compliance with KeyBank policies and protocols including, but not limited to, those ticket terms and conditions located on ticket-backs and at Sabres.com/ticketback, all as the same may be amended or modified from time to time.

E. Services and Utilities

1. General Services and Utilities. The Licensor shall furnish the following utilities and services free of charge: (a) Two color televisions, with standard reception for the Buffalo area, and closed circuit broadcast of all Sabres home games to the extent available, (b) Heating, ventilation and air conditioning, (c) Electricity for standard lighting and the Licensee's incidental use, (d) Water sufficient to service suite drinking and lavatory use; and (e) Routine cleaning and rubbish removal and disposal.

2. Catering Services. The Licensor shall provide a full-scale catering service, including menus, procedures and charges established by Licensor. Licensee shall be entitled to receive an annual food and beverage credit of \$3,000.00 ("Credit"). The Credit will be based on retail suite food and beverage pricing, cannot be rolled over to following license year if not utilized and cannot be used to reduce the Annual Fee.

3. Maintenance and Repair. Licensor shall perform all necessary maintenance and repair of the Suite subject to reasonable wear and tear. The Licensor shall have a reasonable time to decide whether, how and when to proceed with any maintenance or repair requested in writing by the Licensee and Licensee waives the benefit of any law now or hereafter in effect that would grant it the right to maintain or repair the Suite at the Licensor's expense or otherwise. Any maintenance or repair of the Suite and/or the Arena occasioned by any negligent or intentional act or omission of the Licensee or the Licensee's Personnel and Guests, including that resulting from the installation or removal of any of the Licensee's Property and Decorations, shall be performed by the Licensor's employees or contractors at the Licensee's expense. All such costs shall be payable by the Licensee within thirty (30) days of receipt of the Licensor's invoice, including a fifteen percent (15%) administrative charge upon the cost of labor and materials.

4. Additional Services. The Licensee may subscribe to any additional services offered by the Licensor upon terms and conditions determined by the Licensor.

F. Suite Improvements. The Licensor reserves the right to redesign or reconfigure the Arena or the Suite in its reasonable discretion, provided that the Suite's final location and design are not substantially altered from that described in Schedules 1 and 2. The Licensee may install movable furnishings and

equipment (collectively, the "Licensee Property"), and/or decorations of a minor, non-structural nature (the "Licensee Decorations") which are not permanently affixed to the Suite or Suite Improvements with the Licensor's prior written consent. The Licensee shall retain title to all Licensee Decorations and Licensee Property, which may be removed at anytime provided the Licensee is not in default hereunder. Except for the Licensee Property and Licensee Decorations, all decorations, furniture, equipment and the like in the Suite shall be and remain the property of the Licensor. Any Licensee Decorations or Licensee Property remaining in the Suite after the termination or expiration of this Agreement shall become the Licensor's property. The Licensor may remove any unapproved Licensee Decorations or Licensee Property at any time, at the Licensee's expense and without liability on the part of Licensor. Licensee agrees not to alter or add to the Suite or the Suite Improvements without Licensor's prior written consent.

**G. Health and Safety.** As a condition for the use and enjoyment of the Suite, the Licensee and its guest and invitees shall also comply with the policies and guidelines issued by any federal, state, county, town or village governmental entity, the New York State Department of Health, the Erie County Department of Health and/or the Centers for Disease Control. Specifically, as relate to the COVID 19 pandemic, such rules may include, but not be limited to, social distancing, limitation on gatherings, wearing a face covering, COVID 19 diagnostic testing and contact tracing.

#### **ARTICLE II - TERM**

The Term of this Agreement ("Term") shall be as set forth on the BIS.

#### **ARTICLE III - FEES**

The Annual Fee for each License Year of the Term shall be as set forth on the BIS. All sums payable by the Licensee pursuant to this Agreement shall be paid when due without deduction, offset, prior notice or demand.

#### **ARTICLE IV - LIABILITY AND INDEMNIFICATION**

**A. Absence of Extraneous Representations and Warranties.** The Licensee agrees that neither the Licensor nor Licensor's Personnel nor its Affiliates have made any representations or warranties as to the suitability or fitness of the Suite or the Arena for the Licensee's use, nor have they agreed to undertake any improvement to the Suite or the Arena, except as specified herein. The Licensee will accept the Suite "as is". Neither the Licensor nor Licensor's Personnel nor the Affiliates have made any representations as to the taxation or other financial aspects of this Agreement, and the Licensee has relied solely upon its own investigation and the advice of its professional advisors with respect to such matters. The Licensee has not received any assurances regarding, and this License is not in any way dependent upon, the number or type of Arena Events presented at the Arena.

**B. Indemnification.** Licensee shall indemnify, defend and hold harmless Licensor and its Affiliates and Personnel, to the fullest extent permitted under applicable law, from and against any and all claims, liabilities, losses, demands and costs, including attorney's fees, arising from any violation or default by Licensee of this Agreement or otherwise arising from: (i) any injury to any person or damage to any property whatsoever occurring in, on or about the Suite, (ii) any negligence or willful misconduct of Licensee or Licensee's Personnel and Guests, or (iii) the sale, service, use or consumption of alcohol in the Suite. Termination of the Agreement shall not affect the continuing obligations of any indemnitor. Upon written request of any indemnitee hereunder, the indemnitor will assume the defense of any claim, demand or action subject to indemnification hereunder and will, upon request by such indemnitee, allow the indemnitee to participate in the defense thereof, such participation to be subject to the control of the action by the indemnitor and at the expense of the indemnitee.

**C. Mutual Waiver of Subrogation.** Notwithstanding any other provision of this Agreement, in respect of any loss or damage to either party's real or personal property in or about the Suite, or any business interruption resulting therefrom, (i) Licensee waives all rights of recovery against Licensor and (ii) Licensor waives all rights of recovery against Licensee, provided, however, that the foregoing provisions shall apply only to the extent (iii) that such loss or damage, or such resulting business interruption, is covered by property insurance and (iv) such provision does not void, negate or otherwise render unavailable any insurance coverage that would otherwise apply. Furthermore, this mutual waiver shall not apply to any amounts that

are uncollectable from such property insurance by reason of any deductible that may apply, lack of collectable proceeds available from such insurer, or otherwise.

#### ARTICLE V - DAMAGE, DESTRUCTION OR TAKING

- A. If the Suite (i) shall be destroyed or damaged so as to be untenable, (ii) such destruction or damage is not caused by negligence of Licensee or its invitees, and (iii) the Licensor elects to repair such damage, then Licensee's license to access and use the Suite shall remain in force, but no portion of the Annual Fee shall be due until repairs are completed.
- B. If the Licensor elects under paragraph A to repair the Suite and keep the Licensee's license to access and use the Suite in force, and such damage to the Suite was not caused by the Licensee or its invitees, then either (i) the Annual Fee shall be reduced (pro-rata) by an amount to be agreed upon between the Licensor and the Licensee for each Arena Event remaining for the Term as a result of untenability of the Suite; or (ii) the Licensee shall have the option of licensing a like number of seats elsewhere in the Arena (provided such seats available) for each Arena Event while the Suite is untenable.
- C. If the Licensor does not elect under paragraph A to repair the Suite, the Licensor shall take possession thereof of the Suite and Licensee's license to access and use the Suite shall terminate; provided, however, if the damage to the Suite was not caused by the Licensee or its invitees, then either (i) the Annual Fee shall be reduced (pro-rata) by an amount to be agreed upon between the Licensor and the Licensee for each Arena Event remaining for the Term as a result of the termination of the Licensee's license to access and use the Suite; or (ii) the Licensee shall have the option of licensing a like number of seats elsewhere in the Arena (provided such seats are available).
- D. If such damage is caused by Licensee, employees, agents, representatives or its invitees, then Licensor may: (i) elect to terminate Licensee's right to use and access the Suite regardless of whether such damage is repaired; or (ii) restore the Suite with this Agreement continuing without abatement of or reduction in the License Fee or other obligations of Licensee hereunder. In addition Licensee shall pay for the cost to repair and restore the condition of the Suite.

#### ARTICLE VI - ASSIGNMENT

- A. Assignment by the Licensee. The Licensee may not voluntarily nor involuntarily sell, assign, hypothecate or otherwise dispose of any of its rights or interests arising under this Agreement without the Licensor's prior written approval. Such prospective assignee or sublicense is subject to the Licensor ordinary review of character and creditworthiness. Without limiting the foregoing, the Licensee covenants, represents and warrants that, except as expressly provided in these Standard Provisions, it has not and will not enter into any agreements, sublicenses or other arrangements for sharing or sale of the Suite and Suite Tickets. Consistent with this, Licensee acknowledges that it shall not permit the Suite or Suite Tickets to be used in connection with any contest or promotion without the prior written approval of Licensor
- B. Assignment by the Licensor. The Licensor shall have the right to assign, convey, pledge and encumber in whole or part any and all of its rights under this Agreement. If the Licensor fully assigns its rights hereunder, either voluntarily or involuntarily, the Licensor shall be released from any further obligations under this Agreement and the Licensee shall look solely to the assignee for performance obligations arising thereafter. The Licensee agrees to execute and deliver those instruments reasonably required to effect the provisions of this Section.

#### ARTICLE VII - EVENTS OF DEFAULT

- A. Events of Default by the Licensee. The following events shall constitute a default by the Licensee: (i) the failure to pay any Fees or Deposits or other sums when due; (ii) the failure to comply with or perform any other obligation imposed by this Agreement or the Suite Regulations which is not cured within thirty (30) days after notice from the Licensor (except that the same or similar violations occurring on a repetitive basis or on multiple occasions shall not be susceptible to cure by the Licensee); (iii) if the Licensee seeks relief voluntarily, or is subjected involuntarily to relief, under federal law for the benefit of creditors such as debt adjustment, liquidation, winding up, dissolution, reorganization or bankruptcy; or (iv) if a custodian

(as defined in 11 U.S.C. Section 101), receiver or liquidator takes charge of any of the Licensee's property, whether by judicial appointment, agreement or operation of law.

**B. Remedies of the Licensor.** In the event of a default, all Suite Tickets, admission cards and parking passes shall be invalid, and the Licensor shall be excused from performing any obligation hereunder. Additionally, in such event, the Licensor may: (a) preclude the Licensee's entry to the Suite and the Arena; (b) terminate this Agreement; (c) with or without termination, re-enter and remove all persons and property from the Suite; and/or (d) pursue all other rights and remedies, including, without limitation, application of any prepaid Fees and Deposits toward the Licensee's obligations hereunder. If the Licensor re-enters or takes possession of the Suite, it may alter, repair, re-license or otherwise let the Suite upon terms and conditions set in its sole discretion, without electing to terminate this Agreement, absent a written acceptance from the Licensor pursuant to Section VIII. In addition, the Licensor may recover from the Licensee all losses and damages resulting from the default including, without limitation, the cost of recovering, repairing, altering or re-letting the Suite (including attorney's fees and broker's commissions) and any unpaid Fees for the remainder of the Term which shall be immediately due, together with interest at the Default Rate. The Licensor shall have no obligation to re-license or otherwise mitigate damages. The Licensor shall have the right, but not the obligation, to render any performance required to cure the default at the Licensee's expense.

**C. Remedies Not Exclusive.** No remedy conferred upon the Licensor herein shall be exclusive of any other remedy, all of which shall be cumulative and in addition to every other remedy hereunder, at law or in equity. The Licensor may exercise its rights and remedies at any time, in any order, to any extent and as often as it deems advisable.

**D. Events of Default by the Licensor.** The Licensor shall be in default if it fails to perform any material obligation hereunder which is not cured within thirty (30) days after written notice, or such other period as shall be reasonable under the circumstances. In no event shall the Licensee have the right to terminate or cancel this Agreement on account of any Licensor default nor shall Licensee have the right to collect punitive, exemplary or consequential damages; rather Licensee's remedies shall expressly be limited to the reimbursement of Licensee's actual damages.

#### **ARTICLE VIII - SURRENDER**

Upon expiration or termination of this Agreement for any reason, the Licensee immediately and peaceably shall surrender the Suite to the Licensor in a safe and clean condition, in good order and repair, reasonable wear and tear excepted. The Licensor shall not be deemed to have accepted surrender of the Suite prior to the expiration of the Term absent a written acknowledgment of acceptance from Licensor. Without limiting the general applicability of Article IV hereof, the Licensee shall indemnify Licensor from and against any and all claims, liabilities, losses, demands and costs (including attorney's fees) resulting from a delay in surrendering the Suite at the expiration or termination of the Term.

#### **ARTICLE IX - MISCELLANEOUS**

**A. Estoppel Certificate.** Upon written request, Licensee agrees to promptly execute, acknowledge and deliver to Licensor a written statement: (1) certifying that this License is in full force and effect and describing the nature of any modifications, and the amount of Fees paid to the date thereof, and (2) stating that the Licensee is unaware of any uncured defaults by Licensor or specifying any claimed defaults, for conclusive reliance by Licensor. Licensee's failure to respond to Licensor's request within ten (10) days will constitute both an event of default and Licensee's acknowledgment that this Agreement is in full force and effect without any uncured defaults by Licensor.

**B. Force Majeure.** Neither party shall be liable to the other for failure to perform hereunder if, and to the extent, such failure results from a Force Majeure Event (defined below). Financial difficulty shall not be considered a Force Majeure Event. Upon occurrence of a Force Majeure Event and to the extent such occurrence interferes with either party's performance of this Agreement, such party shall be excused from performance of its obligations (other than payments), provided such party uses its best efforts to avoid or remove such causes of non-performance as soon as possible.

"Force Majeure Event" shall mean any act, event or condition (except, in each case, for the payment of money) which is beyond the reasonable control of the party asserting the Force Majeure (defined below).

which wholly or partially prevents or delays the performance of any of the duties, responsibilities or obligations of the party asserting the Force Majeure. The term "Force Majeure" shall include, but not be limited to, an act of God; an act of the public enemy; civil disturbance or unrest; lawsuits; injunctions; lightning; fire, explosion or other serious casualty; water damage; terrorist attack (or threats thereof); epidemics; strike, lock-out, work stoppage or labor dispute (without regard to the reasonableness of any party's demands or any party's ability to satisfy such demands); accident or sabotage; unusually severe weather (including hurricane, earthquake, tornado, landslide or flood); war (whether declared or not); blockades; embargoes; condemnation or other taking by the action of any governmental body on behalf of any public, quasi-governmental or private entity; other governmental action or change in Law; or shortages or failures of sources of labor, material, energy, fuel, water, other vital utility, equipment or transportation.

In the event that COVID 19 pandemic results in: (x) any preseason or regular season Sabres Game or Bandits Game within the Term of this Agreement being cancelled or (y) any preseason or regular season Sabres Game or Bandits Game within the Term of this Agreement being played in a manner that prohibits Licensee and its guests from attending, then, in the case of either (x) or (y), the Licensor shall elect, at its discretion, to either (i) extend the Agreement for a period following COVID 19 so as to provide Licensee comparable benefits; (ii) provide to Licensee a substitute benefit of comparable value, as mutually determined by the parties in good faith, as a "make good" for the loss of such benefit; or (iii) permit a pro rata reduction to the Annual Fee, calculated in a manner acceptable to both parties, acting reasonably.

**C. Notices.** Unless otherwise specified, all notices and other communications required or permitted to be issued hereunder shall be in writing and sent by personal delivery, by overnight courier, or by certified U S mail, postage prepaid, return receipt requested: If to Licensor, to: Western New York Arena, LLC, KeyBank Center, One Seymour H. Knox III Plaza, Buffalo, New York 14203, Attn: Chief Operating Officer, with a copy to Legal Department at the same address; and, if to Licensee, to the address set forth in the BIS. Any party may alter its address by notifying the other. Any notice shall be effective upon receipt in the case of personal delivery or courier or, in the case of a notice by mail, on the earlier of the date of receipt or three days after mailing.

**D. Waivers.** No waiver of any breach or potential breach of any party shall be effective unless in writing and executed by the party granting the waiver. No waiver or consent on any occasion shall constitute a waiver or consent to any other matter or on any subsequent occasion. Licensor's acceptance of any payment shall not constitute a waiver of any default by Licensee other than that occasioned by Licensee's failure to remit such payment or portion thereof.

**E. Subordination.** At Licensor's option, this license shall be subordinate to any ground or other lease, mortgage, deed of trust or any other hypothecation for security (collectively "Encumbrance") now or hereafter placed upon the Suite or the Arena by Licensor and to any and all advances thereunder and all renewals, modifications, consolidations, replacements and extensions thereof. Such subordination shall be effective only if the holder of the Encumbrance agrees to recognize this Agreement and not disturb Licensee's rights hereunder. If any such Encumbrance holder shall elect to have this Agreement prior to the lien of its Encumbrance, and shall issue written notice thereof to Licensee, this License shall be deemed prior to such Encumbrance. Licensee agrees to execute any Agreement required to subordinate this Agreement to any Encumbrance(s), subject to the terms of this Section. If the Licensee fails to comply within ten (10) days after the Licensor's written demand for such action, the Licensee shall be (i) in default; and (ii) deemed to have irrevocably appointed the Licensor as its attorney-in-fact and in its name, place and stead, to comply with this Section.

**F. Relationship.** Neither the Licensee, nor the Licensee's Personnel and Guests, shall be considered the Licensor's employees or agents, or to have been authorized to incur any expense on behalf of or bind the Licensor in any way. The Licensor shall not be liable for any acts, omissions or negligence of the Licensee or the Licensee's Personnel and Guests. The Licensor and the Licensee shall not be construed to be either partners or joint ventures. This Agreement is not a lease or sublease, and the relationship of the parties shall be solely that of licensor and licensee.

**G. Interpretation.** The invalidity of any provision of this Agreement shall not affect the validity of any other provision hereof. Headings are for convenience of reference only and shall not constitute a part hereof. Each of the Licensee's obligations shall be deemed both a covenant and a condition with respect to which time is of the essence. Use of the terms "including", "include" and "includes" shall be without



limitation. Any action or inaction that may be taken by Licensor pursuant to this Agreement, unless expressly qualified to the contrary, may be taken or not taken by the Licensor in Licensor's sole and absolute discretion. The Schedules hereto are incorporated as a part hereof. Subject to Article VI, this Agreement shall bind and inure to the benefit of the parties hereto and their respective permitted successors and assigns. This Agreement shall be governed by the laws of the State of New York.

H. **Entire Agreement.** This Agreement is the entire agreement of the parties with respect to the Suite, and no prior or contemporaneous oral or written agreement or understanding pertaining thereto shall be effective. This Agreement may be modified only by a writing signed by the parties in interest. No license or obligation of the Licensor shall arise until this Agreement is executed and delivered by both the Licensee and the Licensor. This Agreement may be executed in facsimile.

I. **Authority.** Any individual executing this Agreement on behalf of, or as representative for, a person, partnership, corporation or other entity, represents that he is duly authorized to execute and deliver this Agreement on behalf of such person or entity and that this Agreement is binding upon such person or entity in accordance with its terms.

J. **Joint and Several Obligations.** If the Licensee is or becomes comprised of two or more persons or entities, all obligations of the Licensee herein shall be the joint and several obligations of the persons and entities constituting the Licensee

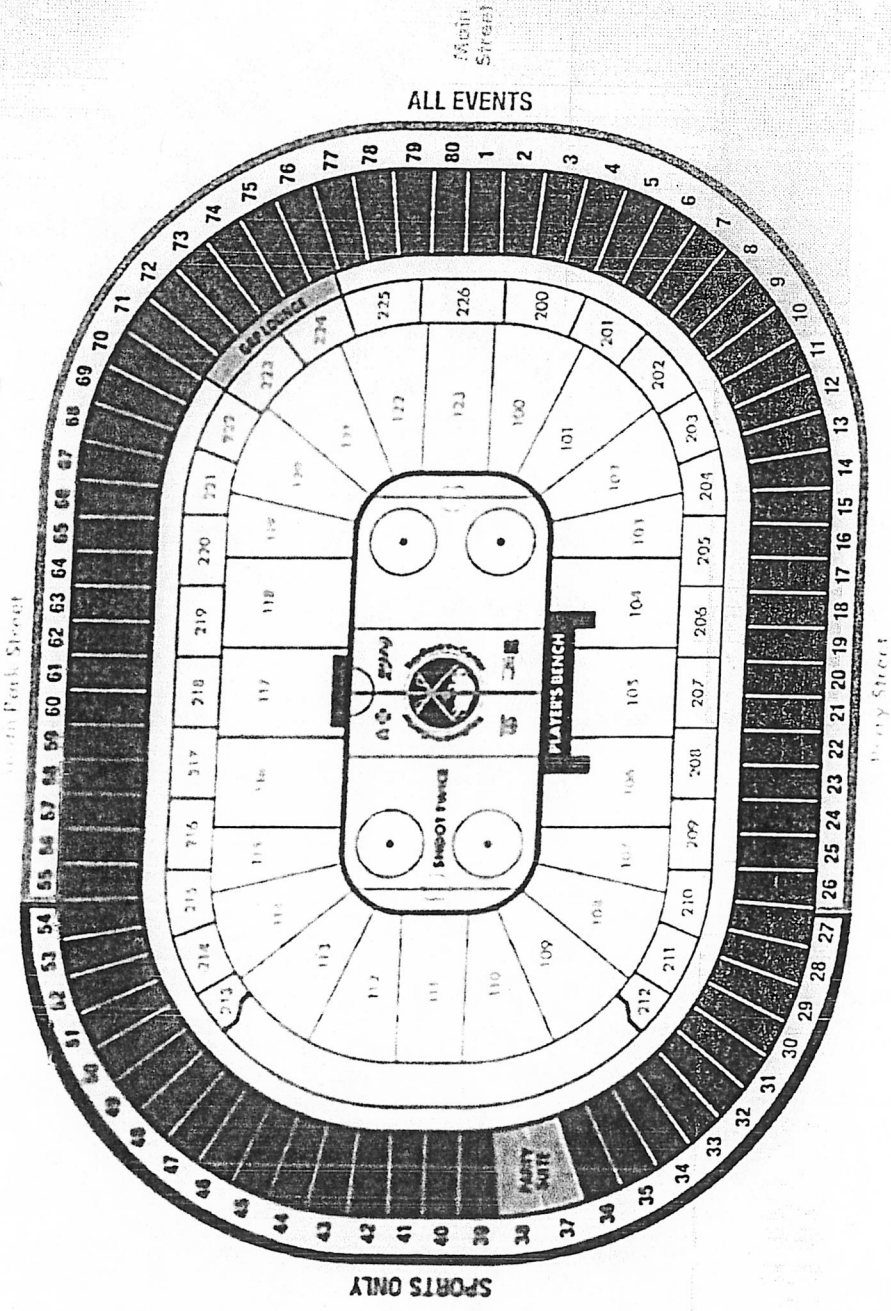
K. **Relocation.** For suites of less than 100% usage (as set forth in paragraph 4 of the Basic Information Sheet) Licensor reserves the right to relocate Licensee to another Suite of similar price, sight lines, etc and to match up with one or more other licensees having usage rights for the remaining balance of the Suite. Licensee hereby consents to said relocation.

L. **Trip.** Licensee shall be entitled to receive, at no additional cost, (4) tickets to attend a regular season Buffalo Sabres away game during the Term. In addition to the tickets, Licensor shall also arrange for and provide transportation and hotel accommodations for the ticketholders (collectively, the "Trip"). Date and location of the Trip, as well as transportation/accommodations are to be determined by Licensor, at their sole discretion. Licensee will be entitled to receive one (1) TRIP per Term.

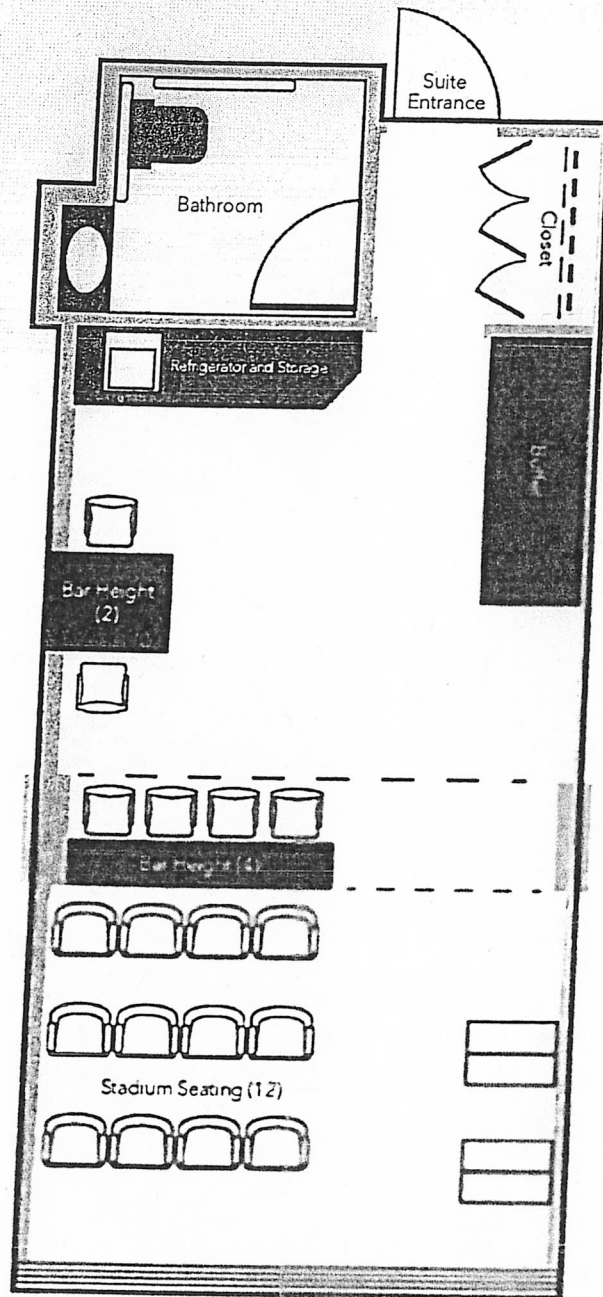
Schedule 1



**KeyBank**  **Center**  
2021-2022 Suite Map

Schedule 2



### SCHEDULE 3 – Definitions

1. **“Arena Event”** shall mean all Arena covered events open to the general public for viewing or participation for an admission charge except for events deemed as Excluded Activities. In view of various factors, some suites may be available for use in connection with certain Arena Events while other suites are not.
2. **“Affiliate”** means any parent, subsidiary, member or other entity which is controlled by, or is the under common control with, the subject entity.
3. **“Bandits Game”** means a National Lacrosse League game played by the Buffalo Bandits at the Arena in which the Buffalo Bandits participate as home team.
4. **“Default Rate”** means the rate of interest which is three percentage points in excess of the rate then designated as the prime or base rate by KeyBank, NA, Buffalo, New York, or its successor bank, from time-to-time during the period when the Default Rate applies.
5. **“Deposits”** means any amount made by Licensee as a deposit pursuant to the terms hereof.
6. **“Excluded Activities”** shall mean: a) all nonpublic events; b) the Stanley Cup Playoffs and the NHL Playoffs; (c) all extraordinary international or national sporting events, as designated by Licensor; (d) all events whose organizers require exclusive use of the Arena; and (e) up to one (1) non-hockey Arena Event that is not already an Excluded Activity under (a) – (d) above, per License Year, to be chosen by the Licensor, in its discretion, with at least twenty (20) days' notice to Licensee. Examples of Excluded Events under clause (a) – (d) include, but are not limited to, the NHL or NBA All Star Games, the NHL Draft, NCAA, MAC or other college athletic tournaments, world championship and national championship sporting events, entertainment award shows and other similar events, political conventions and all private activities held at the Arena.
7. **“Fees”** means any Annual Fee and/or other fees payable to Licensor hereunder
8. **Intentionally Deleted**
9. **“License Year”** means each successive twelve (12) month period during the Term beginning on July 1 and ending on June 30, except that the first License Year shall begin on the Commencement Date.
10. **“Licensor's Personnel”** means the officers, directors, employees, representatives, agents, partners, contractors and consultants of the Licensor and its Affiliates.
11. **“Licensee's Personnel and Guests”** means the officers, directors, employees, shareholders, representatives, agents, guests and invitees of the Licensee
12. **“National Lacrosse League Playoffs”** means any National Lacrosse League game(s) played in the post regular season, i.e. “playoffs.”
13. **“Premium Playoff Price”** means, with respect to any Suite Tickets purchased by Licensee pursuant to Section I (A) (i.e., for any playoff Sabres Game for the Stanley Cup Playoffs), the price established by Licensor, in its sole discretion.
14. **“Premium Price”** means, with respect to any Suite Tickets purchased pursuant to Section I (A), the price established by the Licensor for that Arena Event, in its sole discretion.
15. **“Sabres Game”** means a National Hockey League game played by the Buffalo Sabres at the Arena in which the Buffalo Sabres participate as home team.
16. **“Stanley Cup Playoffs”** means any National Hockey League game(s) played in the post regular season, i.e. “playoffs.”

17. **“Suite Improvements”** means the standard furniture, fixtures and equipment to be installed in the Suite as described on Schedule 3, subject to modification pursuant to Section I (F).
18. **“Suite Tickets”** means the tickets to an Arena Event or Excluded Activities as made available by the Licensor for use in the Suite by the Licensee or Licensee’s Personnel and Guests.
19. **“Suite Regulations”** means the rules, regulations and policies from time-to-time established by the Licensor with respect to the Arena and/or the Suites, the initial compilation of which is set forth in Schedule 4 to the Agreement.

#### SCHEDULE 4 – Suite Regulations

1. Suites may not be used for lodging, sleeping, manufacturing, gambling, illegal purposes or for any other purpose except Daily Use and Event Use.
2. Distribution of advertisements, solicitations and canvassing upon the premises is prohibited.
3. Reasonable quantities and sizes of the Licensee's merchandise may be displayed in the Suite, provided they are not visible from outside the Suite and do not disturb other patrons.
4. The Licensor's prior written approval is required for the installation of additional lighting, window, floor or wall coverings or paint, or additional video, television, telephone or other electronic equipment or wiring. Except for incidentals related to wall decorations; marks, nail or screw holes and other defacements of the Suite or the Arena are prohibited.
5. Any filming, video or audio taping, photographs, records and all other depictions of Arena and/or Arena Events are prohibited.
6. Storage shall be limited to the coat closet and other cabinets within the Suite, and there shall be no access above the standard ceiling line or below the standard floor.
7. The Licensee is responsible for the costs of repairing all damage to the Arena and/or the Suite resulting from the moving or maintenance of any of the Licensee's Property.
8. The Licensor is not responsible for any loss of or damage to the Licensee's Property by or as a result of the actions of the Licensor's agents, employees or contractors, or any other person.
9. Any activity or possession which would result in an increase of any insurance premium or cause the cancellation of any insurance policy applicable to the Suite or the Arena is prohibited.
10. Any activity which is offensive, noisy, dangerous or may disturb the Licensor or any Arena patron is prohibited.
11. No food or beverages may be brought or delivered to the Suite except through the Caterer.
12. The Suite must be kept in good order and cleanliness, and cleaning services such as dusting and routine housekeeping will be provided by the Licensor, provided the Suite is unoccupied at the time such services are routinely provided. Cleaning services shall not include the Licensee's Property or Decorations, moving of furniture or any other special services.
13. Waste, defacement, or marring of the Suite or the Arena in any manner, including the rest room, is prohibited. The Licensee shall be responsible for the expense of any breakage, stoppage or damage resulting there from. Material may not be thrown from any Suite opening or doorway. Any damage, injury or defects to or in the Suite or any plumbing, electrical, heating or air conditioning equipment or apparatus must be promptly reported to the Licensor or its designee.
14. Licensor may control Suite access through security personnel and/or devices, requiring either a Suite Ticket for an Arena Event or an admission card for Daily Use. No more than 18 persons are permitted in the Suite at any time unless additional seats are sold by Licensor for the Arena Event. The Licensor is not liable for any damages or otherwise for any error in granting or denying access. Access to the Suite may be denied entirely in the event of an emergency, as determined in the Licensor's judgment. The Licensor reserves the right to enter the Suite for inspection, performance of its obligations under the License, in emergencies, and as otherwise necessary for the operation or improvement of the Arena, by using a key retained for that purpose, or otherwise without abatement of Fees or other compensation or liability on the part of Licensor to the Licensee, so long as the Licensee's enjoyment is not unreasonably disturbed.
15. The Licensor is not responsible for any theft or robbery from the Suite or the personal effects of the Licensee, or of Licensee's Personnel and Guests. Duplicate keys will be provided at a

reasonable charge, and shall be surrendered upon the termination or expiration of the License. The Licensee is responsible for the cost of replacing lost keys or changing locks because of misplaced keys, but (unless authorized by Licensor) lock installations or lock changes upon the Suite and Cabinet doors are prohibited.

16. Parking in unauthorized areas may result in removal of the offending vehicle at the Licensee's cost, without any liability on the part of the Licensor or the Licensor's Personnel with respect thereto.

17. The sale, consumption, service and availability of alcohol in the Suite may be restricted by the Licensor in its sole discretion, and is subject to compliance with all applicable governmental statutes, ordinances and regulations. The Licensee is responsible for controlling the conduct of all patrons within the Suite. The Licensor may exclude or expel from the Arena any person who, in its judgment, is intoxicated or under the influence of alcohol or drugs, or who violates the Suite Regulations or the license.

18. The Licensor reserves the following rights (which shall be exercisable without notice and without liability on the part of Licensor to the Licensee for injury to person or damage to property, and which in no event shall constitute an eviction, constructive or actual, or a disturbance of the Licensee's use or possession, or give rise to any reduction of Fees or any other claim of any kind by the Licensee): (a) the right to make any change of the name or street address of the Arena; (b) the right to make additions, alterations or improvements to the Arena or the Parking Facility; (c) right to close doors and the common area and to interrupt or suspend services; (d) right to control and extinguish the Suite lighting during Arena Events and at such other times as the Licensor deems appropriate; (e) right to prevent access to the Suite as required by any governmental authority; (f) right to grant exclusive rights for any business in or service to the Arena; (g) right to control and receive revenues from the use and sale of beverages, foods, candies, cigarettes and other commodities and concessions within the Suite and the Arena; (h) right to install all signs located on or in the Suite or elsewhere in the Arena, to receive all revenue therefrom, and to designate all sources of sign painting and lettering; (i) right to grant or withhold any consent or approval in its sole discretion; (j) right to waive a Suite Regulation in its sole discretion. The Licensor is not responsible or liable to the Licensee for any breach or nonperformance of these Regulations by any other person or entity.

## RESOLUTION #47-2021

**WHEREAS**, it is the corporate responsibility of the Western Regional Off-Track Betting Corporation ("Western") to operate its Batavia Downs location in the most efficient manner possible, while providing a comfortable experience to our patrons; and

**WHEREAS**, staff requested that the Board replace the existing air conditioning unit with a new 167 ton air conditioning unit at its Batavia Downs location: and

**WHEREAS**, as part of the NYS OGS Contract #PT65823, Trane U.S. Inc. ("Trane") has provided Western with a proposal for the purchase of a 167 ton air conditioning unit, as more particularly described in the attached proposal, for the total amount of \$115,500.00; and

**WHEREAS**, the Board approved the purchase of the air conditioning unit from Trane as set forth above

**WHEREAS**, due to COVID 19, the purchase of the air conditioning unit from Trane was delayed, resulting in a \$10,570.00 increase in price for the unit; and

**WHEREAS**, staff is requesting that the Board authorize the additional expenditure of \$10,570.00 to purchase the air conditioning unit from Trane; now therefore

**BE IT RESOLVED**, that the Western's Board of Directors hereby approves the additional amount of \$10,570.00 to purchase of the 167 ton air conditioning unit from Trane for the amount of \$126,070.00; and

**BE IT FURTHER RESOLVED**, that an officer of Western is hereby authorized to execute an agreement that reflects the Board's actions.



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward Morgan", with a long horizontal flourish extending to the right.

Edward Morgan, Chairman  
Batavia Downs Operations Committee

Dated: August 26, 2021  
Batavia, New York

## RESOLUTION - #48-2021

**WHEREAS**, it is the corporate responsibility of the Western Regional Off-Track Betting Corporation ("Western") to provide the best dining experience to its patrons at Western's Batavia Downs restaurants; and

**WHEREAS**, Western had previously approved a blanket purchase order for the purchase of seafood and meats and related items from Schneiders Seafood & Meats ("Schneiders") in the amount of \$15,000.00 for the 2021 calendar year; and

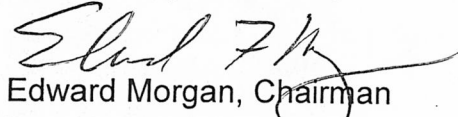
**WHEREAS**, Western requires a supplemental blanket purchase order in the amount of \$35,000.00 for use by the Food and Beverage Department through the end of 2021; and

**WHEREAS**, staff requests that the Board of Directors of Western approve a supplemental blanket purchase order in an amount not to exceed \$35,000.00 with Schneiders for the purchase of seafood and meats and related products through the end of 2021; now therefore

**BE IT RESOLVED**, that the Western's Board of Directors hereby approves a supplemental blanket purchase order in an amount not to exceed \$35,000.00 from Schneiders through the end of 2021; and

**BE IT FURTHER RESOLVED**, that an officer of Western is hereby authorized to execute an agreement that reflects the Board's actions.

Respectfully submitted,

  
Edward Morgan, Chairman  
Batavia Downs Operations Committee

Dated: August 26, 2021  
Batavia, New York

## **RESOLUTION #49-2021**

**WHEREAS**, Western Regional Off-Track Betting Corporation ("Western") received responses to a request for proposal for the construction of a 4800 square foot pre-fabricated steel superstructure warehouse building; and

**WHEREAS**, the project consists of four (4) separate contracts as follows:

- Concrete Foundation/Asphalt;
- Pre-Fabricated Steel Building;
- Electrical/Fire/CCTV; and
- HVAC/Plumbing; and

**WHEREAS**, public bids were opened on July 22, 2021 and based on the responses received, staff is recommending the following as lowest responsible bidders for the various areas for the construction of the warehouse building:

- Concrete Foundation, Ed Hulme General Contracting with bid of \$325,548.18;
- Pre-Fabricated Building, Building Innovations Group with bid of \$328,264.00;
- Electrical/Fire/CCTV, Suburban Electric with bid of \$143,000.00; and
- HVAC/Plumbing, Crosby-Brownlie Inc with bid of \$114,900.00.

**WHEREAS**, that the Board of Directors of the Western wishes to accept the above bids from each of the respective lowest responsible bidders as set forth above in the total amount of \$921,712.18, and, therefore be it

**RESOLVED**, that the Board of Directors of Western hereby accepts the above stated bids from the respective lowest responsible bidders in the total amount of \$921,712.18; and further

**RESOLVED**, that an officer of Western is authorized to execute such documentation in furtherance of the Board's approval of this resolution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward Morgan", with a stylized flourish extending to the right.

Edward Morgan, Chairman  
Batavia Downs Operations Committee

Dated: August 26, 2021  
Batavia, New York

## RESOLUTION #50-2021

**WHEREAS**, the Western Regional Off-Track Betting Corporation ("Western") is the owner and operator of Batavia Downs Gaming located at 8315 Park Road, Batavia, New York; and

**WHEREAS**, at times Western requires additional parking for its gaming and hotel customers, as well as attendees at its concert series held at the Batavia location; and

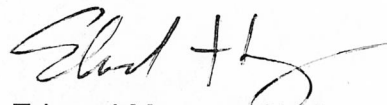
**WHEREAS**, 570 DAB 30, LLC ("570 DAB") is the owner of the property, formally used as a K-mart store, which is located adjacent to Western's Batavia location; and

**WHEREAS**, 570 DAB is willing to provide Western with additional parking for the period June 1, 2021 through May 31, 2022 for the total amount of \$75,000.00; and

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the Western approve leasing additional parking from 570 DAB for the period June 1, 2021 through May 31, 2022 in the total amount of \$75,000.00; and

**IT IS FURTHER, RESOLVED** that an officer of Western is directed to execute such documents as to further this resolution.

Respectfully submitted,



Edward Morgan, Chairman  
Batavia Downs Committee

Dated: August 26, 2021  
Batavia, New York

LEASE

THIS AGREEMENT, made this 3rd day of September, 2021, between 570 DAB 30, LLC ("Lessor"), having offices at 7978 Cooper Creek Boulevard, Suite # 100, University Park, Florida 34201, and WESTERN REGIONAL OFF-TRACK BETTING CORPORATION ("Lessee"), having offices at 8315 Park Road, Batavia, New York, 14020.

DEMISED PREMISES

1. The Lessor hereby lets to the Lessee and the Lessee hereby hires from the Lessor in the area shown on Exhibit A attached hereto and made a part hereof (the "Demised Premises") located at 8363 Lewiston Road, Batavia, New York (the "Development"). From June 1, 2021 through August 31, 2021, Demised Premises is defined and labeled as "Lot 1" on Exhibit A. From September 1, 2021 through May 31, 2022, Demised Premises is defined and labeled as "Lot 2" on Exhibit A.

TERM

2. The Demised Premises are leased for a term commencing on June 1, 2021 and ending on May 31, 2022.

RENT

3. A. Beginning on June 1, 2021 (the "Rent Commencement Date") Lessee agrees to pay to Lessor \$10,000.00 monthly through August 31, 2021 and on September 1, 2021 Lessee agrees to pay to Lessor \$5,000.00 monthly through May 31, 2022, in advance on the first day of each month without offset or deduction to Lessor, in its name, at P.O. Box # 713201, Philadelphia, Pennsylvania 19171-3201, or to such other address or payee as Lessor may designate in writing. In the event that the Rent Commencement Date commences on other than on the first of the month, then the rental for the balance of the month shall be pro-rated accordingly.

LATE CHARGE

4. Lessee agrees to pay all rents and other charges under the terms of this Lease when they are due and payable. Any rents remaining unpaid ten (10) days after receipt of invoice shall be subject to a two percent (2%) monthly late charge (or the maximum amount permitted by law, if less).

USE

5. Lessee covenants and agrees to use the Demised Premises for the following purpose only: parking for Lessee's Summer Concert Series and for additional parking for the nearby casino ("Batavia Downs Gaming & Hotel"). Lessee acknowledges that its use of the Demised Premises is on a non-exclusive basis and shared with other tenants of Lessor's property. Lessee further covenants and agrees with the Lessor that during the term of this Lease and for such other times as the Lessee shall hold or have access to the Demised Premises, that (a) there will be no tailgating activities at

Demised Premises, such as, food and/or alcohol consumption inside or outside of the vehicles of Lessee's invitees at the Demised Premises, and (b) no obnoxious use and/or a nuisance at the Demised Premises. Lessee shall carry on no other business on said Premises without the prior written consent of Lessor. Lessee may not assign or sublet the Demised Premises without the prior written consent of Lessor.

#### LIABILITY

6. A. Lessee further covenants and agrees with the Lessor that during the term of this Lease and for such other times as the Lessee shall hold or have access to the Demised Premises, that (a) the Lessor and its affiliates shall not be liable to the Lessee or to any other person for any claim, injury, loss or damage to any person or property on or about the Demised Premises, sidewalks adjacent thereto, or any public areas, and that (b) the Lessee will save the Lessor harmless and indemnified from and against such claim, injury, loss, or damage (including defense costs). Lessee agrees to provide commercial general liability insurance with a minimum limit of \$3,000,000.00 per occurrence covering bodily injury and property damage. Insurance policies will be written in the name of the Lessee with the Lessor, its ground lessor(s) and/or mortgagee(s), if any, named as additional insureds and Lessee shall provide Lessor with certificates and the appropriate policy sections evidencing such policies and shall thereafter provide Lessor with appropriate evidence of such coverage upon each anniversary date of the policy or upon a change in coverage on such policy.

B. The minimum coverage amounts as stated in this Section may be satisfied with any combination of primary and excess/umbrella limits, but in no event shall a deductible or retention exist in excess of \$5,000.00 before the required insurance applies.

C. Lessee further covenants and agrees with the Lessor to indemnify and hold Lessor harmless from and against all damage on the Demised Premises caused by Lessee, its agents, their invitees, guests, customers, and employees.

#### MAINTENANCE

7. Lessor shall be responsible for all maintenance and repairs to the Demised Premises. Lessee shall be responsible for snow removal of the Demised Premises.

#### TRASH REMOVAL

8. Lessee shall be responsible for all trash removal on the Demised Premises. Lessee further covenants and agrees that Lessee shall install and regularly empty at least two (2) trash cans on Lot 2.

#### CANCELLATION

9. Notwithstanding anything contained herein to the contrary, Lessee agrees that Lessor may terminate this Lease for any reason upon ten (10)

days prior written notice to Lessee, and Lessor agrees Lessee may terminate this Lease for any reason upon thirty (30) days prior written notice to Lessor.

#### INITIAL PAYMENT

10. Upon signing this Lease, Lessee shall pay to Lessor \$20,000.00 to be applied to the first full calendar month of rent due hereunder.

#### CONDITION OF PREMISES

11. Lessee agrees to accept the Demised Premises in an "as is" condition with no representation or warranty, express or implied, as to its present or future condition or suitability for its intended use. Upon expiration or sooner termination of this Lease Lessee shall vacate and surrender the Demised Premises in at least as good a condition as upon initial delivery to Lessee, broom clean and with all of Lessee's fixtures, furnishings and equipment removed by Lessee.

#### SIGNS/ALTERATIONS

12. Lessee shall not install any signs at the Demised Premises, nor make any alterations to the Demised Premises without Lessor's prior written consent. Notwithstanding the foregoing, Lessee may install signage at the Demised Premises which is consistent and conforms to Exhibit B ("Approved Signage").

#### DEFAULT

13. A. In the event that Lessee shall violate any condition, covenant or agreement contained in this Lease or any part thereof, then Lessor shall have the right at Lessor's election to terminate this Lease, on first giving to Lessee ten (10) days notice of such election to be served by private delivery service such as FedEx where a signed delivery receipt is obtained, by registered or certified mail in a postpaid envelope addressed to the Lessee, or by posting the same in some conspicuous place in or about the Demised Premises and the above mentioned term shall thereupon cease upon the expiration of said ten (10) days in the same manner and to the same effect as if that were the expiration of the original term of this Lease; it being further understood and agreed that such election shall be solely in the discretion of Lessor, and if exercised shall be conclusive upon Lessee.

B. Upon the termination of this Lease either at the option of the Lessor as aforesaid or at the expiration by lapse of time of the term hereof, the Lessee will at once surrender possession of Demised Premises to the Lessor and remove all effects therefrom and if such possession be not immediately surrendered, the Lessor may forthwith re-enter Demised Premises and repossess itself thereof as in its former estate and remove all persons and effects therefrom, using such force as may be necessary, without being deemed guilty of any trespass or forcible entry.



C. Any and all rights and remedies which Lessor may have under this Lease shall be in addition to and not in limitation of Lessor's rights at law or in equity, shall be cumulative, shall not be deemed inconsistent with each other, and any two or more or all of such rights and remedies may be exercised at the same time. Lessee's default shall entitle Lessor to declare the entire rental for the balance of the term immediately due and payable at once.

#### NOTICES

14. Unless specifically stated to the contrary in this Lease, any notice or other communication which is or may be required to be given by Lessor or Lessee under this Lease or by law to the other party, hereinafter referred to as "Notice", shall be in writing and shall be either personally delivered to such other party or shall be sent by registered or certified mail, postage paid by sender, return receipt requested, or by overnight courier service. Said Notice shall be sent to such other party at the address specified in the opening paragraph of this Lease. Notwithstanding the foregoing, any invoice, statement, or bill which is or may be required to be sent to Lessee under this Lease or by law may be sent by regular U.S. mail.

#### CAPTIONS AND DEFINITIONS

15. Marginal captions of this Lease are solely for convenience of reference and shall not in any way limit or amplify the terms and provisions thereof. The necessary grammatical changes which shall be required to make the provisions of this Lease apply, (a) in the plural sense if there shall be more than one Lessor, and (b) to any Lessor which shall be either a corporation, an association, a partnership, or individual, male or female, shall in all instances be assumed as though in each case fully expressed. Unless otherwise provided, upon the termination of this Lease under any of the Articles hereof, the parties hereto shall be relieved of any further liability hereunder except as to acts, omissions or defaults occurring prior to such termination.

#### WAIVER OF COVENANT OR CONDITION

16. The failure of either party to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same be and remain in full force and effect.

#### NEGOTIATION AND EXECUTION

17. The furnishing of this Lease to the Lessee by the Lessor shall not be considered an offer to lease, even though completed in every respect, until and unless the document has been executed by the appropriate officers of Lessor. No deposit of proposed rent or security deposit and no correspondence or other communication respecting this Lease shall create any obligation to go forward with this Lease until the Lease document is fully completed and executed by both the Lessor and Lessee.

COUNTERPARTS AND ELECTRONIC TRANSMITTAL

18. This agreement may be executed in several counterparts each of which when taken together shall be considered one and the same instrument and shall constitute a binding agreement. This agreement may be effected by electronic means, (including pdf and/or certificate based digital signature), executed and delivered by electronic copy or via facsimile, which such electronic copy or facsimile signatures and delivery shall be valid and binding the same as if original documents were delivered.

NEITHER PARTY HAS MADE ANY REPRESENTATIONS OR PROMISES EXCEPT AS HEREIN CONTAINED, AND NO MODIFICATION OF ANY PROVISION HEREOF SHALL BE VALID UNLESS IN WRITING AND SIGNED BY THE PARTIES HERETO.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

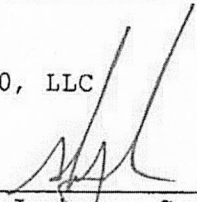

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals, the corporate parties by their proper officers thereunto duly authorized, as of the day and year first above written.

**LESSOR:**

570 DAB 30, LLC

Date: 9/9/21

By:    
Shaun Jackson, Counsel and  
Authorized Agent

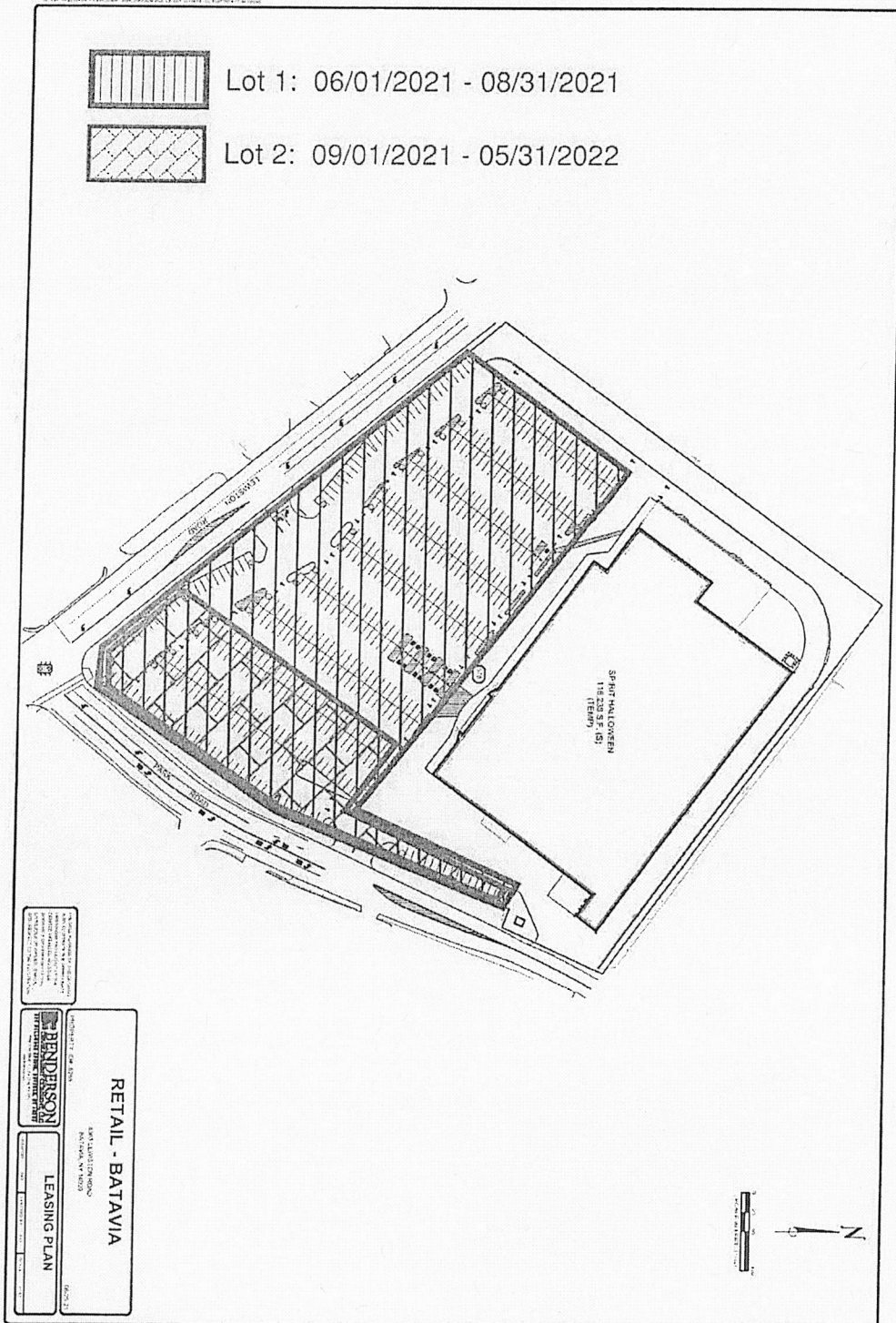
**LESSEE:**

WESTERN REGIONAL OFF-TRACK BETTING  
CORPORATION

Date: 9/2/2

By: Henry F. Wojtaszel  
Print Name: Henry F. Wojtaszel  
Print Title: President / CEO  
Tax ID#: 16-1019940

EXHIBIT A  
SITE PLAN  
Property #5266



## **RESOLUTION #51-2021**

**WHEREAS**, Western previously received responses to a request for proposal for architectural and engineering design services in respect to a proposed new 2,000 square foot warehouse and cold storage facility at its Batavia Downs location; and

**WHEREAS**, upon a review of the bids received, the Board of Directors of Western previously accepted and entered into an agreement with EI Team Inc to perform such services; and

**WHEREAS**, the project was put on hold in 2020 due to the Covid-19 pandemic; and

**WHEREAS**, the project is now moving forward, however the scope and size of the building has increased to a 4,800 square foot warehouse and cold storage facility; and

**WHEREAS**, due to the scope and size of the project, staff is requesting that the agreement with EI Team Inc. be amended to reflect an increase of \$52,818.63 for the architectural and engineering design services relating to the proposed new warehouse and cold storage facility; and, therefore be it

**RESOLVED**, that the Board of Directors of Western hereby agree to increase the contract amount with EI Team Inc. by the amount of \$52,818.63, plus out of pocket expenses; and further

**RESOLVED**, that an officer of Western is authorized to execute such documentation in furtherance of the Board's approval of this resolution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward Morgan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Edward Morgan, Chairman  
Batavia Downs Operations Committee

Dated: August 26, 2021  
Batavia, New York